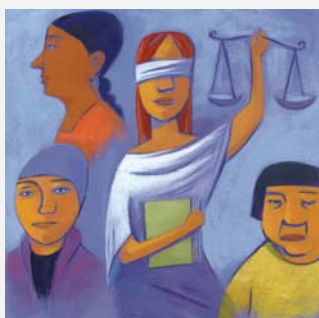


GUIDEBOOKS FOR REPRESENTING YOURSELF IN THE SUPERIOR COURT:

# *Overview of the Superior Court of Justice Civil Process*



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1. What is Litigation?
2. Courts in Ontario
3. The Sources of Law
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*For more information, you can also review the Ministry of the Attorney General's brochure, *An Introduction to Civil Cases in the Superior Court of Justice*, available on line at [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca)*

# Overview of the Superior Court of Justice Civil Process

*This guidebook provides general information about civil, non-family claims in the Superior Court of Justice of Ontario. It does not explain the law. Court staff (and this guidebook) can only give you legal information, not legal advice. They also cannot fill out your forms for you. Legal advice must come from a lawyer.*

## Where you can get help with your case

### Information if You Represent Yourself

Law Help Ontario ([www.lawhelpontario.org](http://www.lawhelpontario.org)) provides legal information, education, and referral services for civil (non-family) cases for unrepresented litigants who are involved in civil actions in the Toronto location of the Superior Court.

### Legal Advice

You may be eligible for free (pro bono) legal advice. Services are listed on the website for Law Help Ontario.

Otherwise, you can contact the Lawyer Referral Service operated by the Law Society of Upper Canada. The Lawyer Referral Service will provide the name of a lawyer who practices in the relevant legal area and will provide a half-hour free consultation. The telephone number for the service is 1-900-565-4577. Please note that there is a fixed charge of six dollars to use this service.

### Rules of Civil Procedure

The *Rules of Civil Procedure* govern the conduct of litigation in the Superior Court of Justice. The *Rules* include prescribed time periods for certain procedures. To view the *Rules of Civil Procedure*, go to [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca) and follow these steps:

1. Choose your preferred language
2. Click on “Search or Browse Current Consolidated Law”
3. Under “Browse Current Consolidated Law,” click on “C”
4. Scroll down to “Courts of Justice Act”
5. Click on the “plus” sign to the left of “Courts of Justice Act”
6. Click on “Rules of Civil Procedure.”

### Forms

Official court forms must be used when you bring a dispute to court. Content of forms under the *Rules of Civil Procedure* is available at: [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca). These forms do not comply with the rule that governs the format of court documents. You must format your forms in accordance with the formatting requirements of the *Rules of Civil Procedure* (e.g. Rule 4.01) before filing them with the court. You can also obtain forms from a supplier of legal stationery.

For information about the Small Claims Court, which hears civil disputes up to \$10,000, go to [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca). Choose your preferred language, click on “Court Services,” and scroll down to “Small Claims Court.”

For information about family law matters, go to [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca). Choose your preferred language, then click on “Family Justice.”

Before proceeding with a case in the Superior Court of Justice, consider talking to a lawyer to help you understand the law and the procedures that might apply to your case.

If you do not have a lawyer, you will have to prepare your case and do the legal research to represent yourself. You will have to do all the things a lawyer would do and it will not be easy. You will need to learn about:

- the court system;
- the law that relates to your case;
- what you and the other side need to prove; and
- the possible legal arguments for your case.

You will also need to know about the court rules and forms that must be used in your case. If you do not understand these things, you might miss something (e.g. a deadline) and hurt your case. You might be ordered to pay some or all of the costs of the other party.

# Overview of the Civil Litigation Process

This guidebook is intended to give you a general overview of Superior Court process and how to deal with its various aspects. The process of bringing disputes to court to have them resolved by the court is sometimes referred to as *litigation*.

In reviewing this guidebook and the other guidebooks in this series, *Representing Yourself in the Superior Court*, you may come across terms that you are not familiar with. To see definitions of terms commonly used in Superior Court, please see the guidebook called *Common Superior Court Terms*.

## 1. What is litigation?

Litigation is the process of bringing disputes to court to have them resolved by the court on the basis of evidence presented by those involved in the dispute. Litigation can be criminal or civil but this series of guidebooks deals only with civil litigation.

Any party, including individuals, corporations, partnerships, or other legal entities can be involved in civil litigation. Civil litigation deals with torts – the legal term for a civil wrong, injury or harm – and contractual and other disputes or claims under the law.

A civil litigation case can be called:

- an action,
- a matter,
- a lawsuit,
- a proceeding,
- a case, or
- an application.

While all these terms are not interchangeable, you may hear or see your case referred to by any of these terms.

In a civil case before the court, proof is based on a balance of probabilities. This means that the court only needs to be convinced that it is more probable than not that one side is right. A judgment or order may be given in favour of one party. The judgment or order may involve an order for costs. “Costs” are monies awarded by the court for expenses incurred in bringing or defending a legal proceeding or a step in the proceeding.

Depending on the type of case there is generally a right of appeal to another level of court in Ontario, if you are not satisfied with the judgment.

## Parties to litigation

A civil proceeding in Ontario can occur by way of action or application. An action is generally commenced by preparing a *statement of claim*. An application is commenced by preparing a *notice of application*. These are documents which notify both the court and the people you are suing that you have started litigation. These documents, as well as the documents that are filed in response to them, are called pleadings. For more complete information about starting a case, see the guidebook called *Starting a Civil Proceeding in the Superior Court of Justice*.

In general, people who start a proceeding are called:

- a plaintiff (if the action is started by a statement of claim or a notice of action); or
- an applicant (if the action is started by an application).

People who defend or respond to a proceeding are called:

- a defendant (if the action was started by a statement or claim or a notice of action); or
- a respondent (if the action was started by application).

## 2. Courts in Ontario

The court system in Ontario has three levels:

**1. Ontario Court of Justice** - one of two trial courts in Ontario (together with the Superior Court of Justice) that make up the Court of Ontario. The Ontario Court of Justice is composed of provincially appointed judges and justices of the peace.

In broad terms, the justices of the peace of the Court have jurisdiction with respect to provincial offences, bail hearings and search warrants. Judges of the Court deal with a wide range of family law cases (including child protection, custody, access, support and adoption) as well as the overwhelming majority of criminal charges laid within the province.

**2. Superior Court of Justice** – the higher level trial court. The Superior Court of Justice is the largest superior trial court in Canada. The Court has jurisdiction over criminal, civil, and family cases.

The Court serves 8 judicial regions in Ontario. Each region is headed by a Regional Senior Judge who exercises the powers and performs the duties of the Chief Justice. A complement of 242 full-time judges serves the 12.7 million people of Ontario.

There are two other distinct branches of the Superior Court of Justice that hear civil cases – the *Small Claims Court* and the *Divisional Court*.

*Small Claims Court* - has civil jurisdiction for monetary claims up to \$10,000. The majority of matters are heard by Deputy Judges who are lawyers that preside part-time in Small Claims Court and are appointed by the Regional Senior Judge with the approval of the Attorney General of Ontario.

Significant amendments to the Small Claims Court Rules came into force on July 1, 2006. The revised Rules are less complex to permit individuals to represent themselves. Self-help guides to procedures are available from the Ministry of the Attorney General of Ontario website, available at the following address: <http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/>.

*Divisional Court* – is an appellate court and not a trial Court. Every judge of the Superior Court of Justice is also a judge of the Divisional Court.

Appeals to the Divisional Court are generally heard in the judicial region where the matter originally arose.

The Divisional Court is the principal forum for judicial review of government action in the province of Ontario. The Divisional Court also hears statutory appeals from administrative tribunals in the province and some civil appeals as provided for under the *Courts of Justice Act*. The jurisdiction of civil appeals to the Divisional Court increased to \$50,000 effective January 10, 2007.

**3. Court of Appeal for Ontario** – located at Osgoode Hall in downtown Toronto. The Court is composed of the Chief Justice of Ontario, the Associate Chief Justice of Ontario and 20 other judges.

The Court hears over 1,000 appeals and over 1,000 motions each year, and sits in panels of 1 to 5 judges.

The Court's jurisdiction includes that consideration of both civil and criminal appeals from decisions of Ontario's two trial courts, the Superior Court of Justice and Ontario Court of Justice.

In a very practical sense, the Court of Appeal is the last avenue of appeal for most litigants in Ontario, because the Supreme Court of Canada hears appeals from less than 3% of the decisions of the Court of Appeal.

Beyond Ontario, there are other courts that have jurisdiction across Canada. These include the **Federal Court** and the **Supreme Court of Canada**.

The **Federal Court** has jurisdiction over all matters involving federal laws and tribunals.

The **Supreme Court of Canada** is the court of appeal for the Federal Court and from all the appeal courts of the provinces.

## General Information about the Superior Court of Justice

Right now, there are about 242 judges of the Superior Court of Justice, and the court presides in 51 locations in Ontario.

Because of the number of filings in the court system, the registry and the courts are very busy and you may find that things may not move as quickly as you expect. This is simply a result of the number of cases passing through the system. Be patient.

You can find a complete and current list of the Justices of the Ontario Superior Court of Justice at the court website at: [www.ontariocourts.on.ca](http://www.ontariocourts.on.ca)

Right now, there are, in total, 19 Masters and Case Management Masters of the Superior Court of Justice. Masters and Case Management Masters hear matters as determined by the *Rules of Civil Procedure*. This may include motions as prescribed by the *Rules*. For more information about bringing motions before masters and judges see the Tip Sheet called *Motions: When Do I Appear Before a Judge or Master?* available at [www.lawhelpontario.org](http://www.lawhelpontario.org).

## Court Registries

There are court registries in courthouses all over the province. Each court registry maintains its own files for each action begun in that registry.

They are the official record keepers of pleadings and all other documents which are filed in relation to each case. Their staff also reviews documents to ensure that they are in the correct form before accepting them for filing.

For the court registry nearest you, check the Ministry of the Attorney General website through the following website address: <http://www.attorneygeneral.jus.gov.on.ca/english/courts/cadaddr.asp>

## 3. The Sources of Law

Generally speaking, there are three broad sources of law that you must consider when deciding whether to start litigation. These are statutes (also called legislation or Acts), regulations (in particular the *Rules of Civil Procedure*) and case law. Together they govern the litigation process.

It is important to remember that not all disputes can be resolved by the court. The law determines whether a claim you believe you have against another party is one that can properly be brought to the court for resolution.

The law can be complicated and for that reason, it is a good idea to consult with a lawyer about what law applies to your case. This could save you time and energy and will help to ensure that your case is presented in the most efficient way. Lawyers have spent years researching the law and will have a good sense of where you can start to find the law that applies to your case.

### a. Statutes

Statutes (which often have “Act” in the title e.g. the *Limitation Act*) are brought into law by the Parliament of Canada and the Provincial Legislature. They give a general framework for the law in a specific topic area (for example, motor vehicle insurance or retirement homes).

You can find copies of the federal or provincial statutes at most libraries. You can also find them at any courthouse library or on the Ontario government website at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).

### b. Rules of Civil Procedure

The *Rules of Civil Procedure* (called the *Rules*) are regulations that govern the conduct of litigation in the Superior Court of Justice. They are a road map for steering your case through trial and beyond.

The *Rules* are very important because they provide guidelines for each step in the litigation process and also set time limits for when certain steps must be completed. You can find answers to many of your questions about the litigation process by referring to the *Rules*.

A complete and current list of the *Rules* can be found online at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).

Once you are on the e-laws page, click on the link for “Search or Browse Consolidated Law”. Under “Browse Consolidated Law” click on “C”. Scroll down to “Courts of Justice Act”. Click on the “plus” sign to the left of “Courts of Justice Act”. Click on “Rules of Civil Procedure”.

### c. Regulations

Regulations usually set out practical information or procedures relating to particular statutes. They provide specific instructions about the implementation of the statute and tend to change more often than the statute itself. Regulations often deal with court fees and interest rates.

There are two main regulations that apply to all civil litigation. Regulation 293/92 made under the *Administration of Justice Act* sets out the fees, for example, payable by you to the Court for:

- Issuing a Statement of Claim or a Notice of Application
- Filing of Court documents
- Making copies of documents that are in the Court file
- Filing of a Trial Record

Regulation 294/92 made under the same Act sets out the fees you pay to a sheriff for specific work, such as serving a document on the other party, or filing or renewing Court Orders.

You should also note Tariff A made under the Rules. This gives you a list of the costs, with fixed amounts, which you have to pay to a person whom you wish to call as a witness at trial.

These fees change from time to time, so you should check with the court registry, at the courthouse library or on the court website for the current fees payable in each case.

## d. Case law

It is crucial to understand the case law that relates to your case. Our court system works by making decisions that are based on decisions made in earlier cases – case law – and because of this, you will need to understand those cases similar to yours which the court has already decided.

Case law review is complicated and time consuming. There may be hundreds (or even thousands) of cases that seem similar to yours and you may have trouble knowing which cases you should refer to in court. It is a good idea to consult a lawyer about the law that applies to your case. This will give you a good starting point.

It is important to keep in mind that Ontario Superior Court of Justice judges and masters *must* follow the law as set out in cases that have been decided by higher courts, meaning the Ontario Court of Appeal and the Supreme Court of Canada.

Although a judge in the Superior Court of Justice is not strictly bound to follow cases decided by other judges in the same court, a case with similar facts from the same court will usually be persuasive because it benefits everyone to have consistent decisions from the court on the same point of law. Decisions made by trial or appeal courts in other provinces will generally not be helpful unless the courts in Ontario have not made a decision on the point of law which is relevant to your case.

If you are researching case law for your own case, the best place to start is at your courthouse library. The library contains summaries of cases going back hundreds of years, and also has access to numerous online summaries of more current cases. Courthouse library staff are trained in research and can help you with the practical aspects of your search; however, they cannot provide you with legal advice. If you require legal advice, you should contact a lawyer.

## Forms Used in Superior Court of Justice

Documents called pleadings must be filed with the court to start and respond to a lawsuit. Other documents are required to take certain steps in your action. The electronic version of the regulated forms for the Superior Court of Justice can be found at: [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca). Please note that it is your responsibility to prepare the documents in the format required by the *Rules of Civil Procedure* (see, for example, rule 4.01 with respect to formatting). You need to be aware that many of the *Rules of Civil Procedure* forms on the website contain the phrase (*General heading*). General headings are separate

forms under the *Rules of Civil Procedure* and must be inserted where this phrase appears with the proper content.

## 4. The Litigation Process

It is important for you to understand the litigation process. The more you know and understand about the litigation process, the fewer difficulties you will have. Knowledge will also help you anticipate, prepare for and deal with:

- the cost of the proceeding;
- the length of time it might take to get a final resolution;
- the complicated and personal questions you might have to ask or answer; and
- the amount of time and money it takes to prepare for all aspects of litigation, but especially:
  - starting a case;
  - document discovery;
  - examination for discovery;
  - trial; and
  - getting your judgment paid.

Many of these topics are dealt with more fully in the other guidebooks in this series. You may want to read each of the guidebooks before starting a proceeding so that you have a good overview of the process before you decide to begin. The full list of guidebooks is available at [www.lawhelpontario.org](http://www.lawhelpontario.org).

### The process from start to finish

It is helpful to see, in short form, how things might take place as your case progresses. Not all steps will be needed in all litigation, but this list gives general details of what is likely to happen in most cases.

You will find it helpful before you begin any litigation to consult a lawyer. A lawyer can give you information and assistance with every stage of the litigation whether you are suing or being sued. This is true even if you decide to do most of the work yourself. Consulting a lawyer – even if only for a short time – can save you time, money and difficulties in the long run. A lawyer can also put your problem into perspective by giving you neutral, objective advice, something which is very important in litigation.

The list below sets out most of the common steps that are taken in litigation. Not all of these steps will be necessary in every proceeding. This is simply a general outline for your information.

Some of the steps are taken by the person suing, while others are taken by those who are being sued. Depending on who the steps apply to, the words plaintiff or applicant (for the person starting the proceeding) or defendant or respondent (for the person being sued) will appear.

#### Actions commenced by statement of claim:

1. Begin the action by filing and serving a statement of claim (see guidebook on *Starting a Civil Proceeding in Superior Court of Justice*). **Plaintiff**
2. File and Deliver a notice of intent to defend and/or a statement of defence (see guidebook called *Defending a Civil Proceeding in the Superior Court of Justice*). **Defendant**
3. File and Deliver a counterclaim or third party notice, if required (see guidebook on *Defending a Civil Proceeding in Superior Court of Justice*). **Defendant**
4. File and Deliver a statement of defence to counterclaim, if required. **Plaintiff**

5. File and Deliver a statement of defence to third party notice, if required. **Third Party**
6. Decide when filing the statement of claim or statement of defence whether or not to use simplified procedure under Rule 76. **Plaintiff or Defendant**
7. Discovery process (see guidebook on *Discovery Process*). **Plaintiff and Defendant**
  - a. Discovery of documents.
  - b. Examinations for discovery
  - c. Examinations by written question
8. Determine whether your case is suitable for summary judgment or summary trial. **Plaintiff and/or Defendant**
9. Prepare for trial, including the following steps:
  - a. Set a trial date;
  - b. Decide on expert opinions;
  - c. Prepare appropriate books of documents, arguments, and other documentation. **Plaintiff and Defendant**
10. Determine whether the case is appropriate for alternatives to trial. **Plaintiff and Defendant**
11. Trial. **Plaintiff and Defendant**
12. Receive judgment or order and costs.

## Proceedings commenced by notice of application

1. Prepare and serve a notice of application and supporting affidavits (see guidebook on *Starting a Civil Proceeding in the Superior Court*). **Applicant**
2. Prepare and deliver a notice of appearance and responding affidavits (see guidebook on *Defending a Civil Proceeding in Superior Court*). **Respondent**
3. A claim commenced by a Notice of Application proceeds under Rule 14 and other related Rules, and the case is heard before a judge. For further information, please refer to “Starting a Civil Proceeding in the Superior Court of Justice”.
4. Obtain a date for hearing. **Applicant**
5. Prepare for hearing. **Applicant and Respondent**
6. Attend hearing in court. **Applicant and Respondent**
7. Receive judgment or order and costs.

## Simplified procedure litigation

Litigation can be expensive and take a long time to complete. However, there may be ways to shorten the process. The simplified procedure under Rule 76 is a shortened form of litigation you may want to use if your case was started by a statement of claim or notice of action. All civil cases in Ontario between \$10,000 and \$50,000 are subject to the simplified procedure under Rule 76.

Many of the steps you will take under Rule 76 will be the same as in a regular lawsuit, but every step is condensed and shortened to save you time and money. You can find more information about Rule 76 in another guidebook in this series called *Simplified Procedure in the Superior Court of Justice – Rule 76*.

## Settlement

One important step which is not mentioned in the steps above is settlement of your case. It is not mentioned as part of the steps because the court is not generally involved in settling cases although there are certain Rules which can be used to seek the assistance of the court in settling a matter.

Settlement can happen at any time in the proceeding and is based on an agreement between the parties to the lawsuit. Very few of the cases which are filed with the court actually proceed all the way to the trial stage because most cases settle without going to trial.

## 5. Appearing in Court

Court is a formal and serious setting. Make sure that you do everything possible to make a good impression when you appear in the courtroom. Here are some tips to help you:

- **Dress in a professional and conservative way.**
- **Be on time.** A great many people will be waiting to get started and you don't want to make a bad impression by keeping them waiting. The hours of the Ontario Superior Court are from 8:30am to 5:00pm Monday through Friday. Sometimes an ongoing proceeding will begin earlier or run later if more time is needed. The court clerk concludes the day by saying what time and on what date the proceeding will continue.
- **Use professional language.** Don't use slang or swear words. Follow the guidelines below when speaking to the court.
- **Don't chew gum or bring food or drinks into the courtroom.**
- **Turn off your cell phone and other electronic devices.**
- **Address your remarks to the court, not to the lawyer on the other side.**
- **Speak up.** Courtrooms can be noisy and it is important that the court hears you clearly. You might also need to remind your witnesses to speak loudly so they can be heard.
- **Always be polite.** If someone is saying something you think is wrong, wait until they finish speaking before you make your point.
- **Be prepared.** You will make a better impression if you come to court with your position prepared and organized. Make a checklist of all the things you need to take with you and all the things you will need to tell the court.
- **Use a formal style when addressing everyone, whether in writing or in person.** No one is ever offended because you call them by their formal title; some people might be offended if you are too casual. Refer to other parties and witnesses as "Mr. X" or "Mrs/Ms. Y", rather than by their first names, even if you know them very well.
- **When a judge or master enters or leaves the courtroom, a court clerk will say, "Order in court." At that time, you should stand.**
- **When the judge or master gives his or her decision, take notes to ensure that you understand the result. If you need to have something clarified, ask for clarification right away.**

The ways to address members and staff of the court are set out below. Although they may seem awkward, addressing a judge or a master correctly will help you present your case in court. Because this guidebook deals only with the Ontario Superior Court of Justice, only members and staff of the Superior Court are mentioned.

# Proper Way to Address Court Staff

## **The Chief Justice of the Superior Court of Justice:**

- In writing, refer to the Chief Justice as The Honourable Chief Justice, followed by his or her last name (e.g., The Honourable Chief Justice Smith).
- In court, address the Chief Justice as “Your Honour” or “Chief Justice”.
- On a written court order, the correct term is The Honourable Chief Justice.

## **Superior Court of Justice Judges:**

- In writing, refer to a male judge of the Superior Court as The Honourable Mr. Justice followed by his last name (e.g., The Honourable Mr. Justice Brown).
- In court, address a male judge as “Your Honour.”
- On a written court order, the correct term is The Honourable Mr. Justice followed by his last name (e.g., The Honourable Mr. Justice Brown).
- In writing, refer to a female judge as The Honourable Madam Justice, followed by her last name (e.g., The Honourable Madam Justice White).

- In court, address a female judge as “Your Honour.”
- On a written order, the correct term is The Honourable Madam Justice, followed by her last name (e.g., The Honourable Madam Justice Brown).

## **Masters:**

- In writing, refer to the master as “Master” followed by his or her last name (e.g., Master White).
- In court, address a master as “Your Honour.”

## **Court Clerks:**

- In court, refer to a court clerk as “Mr. Registrar” or “Madam Registrar.”

## **For next steps or more information about civil proceedings, see the other guidebooks in this series called:**

*Starting a Civil Proceeding in Superior Court*  
*Defending a Civil Proceeding in Superior Court*  
*The Discovery Process*

## **For definitions of common court terms, see the guidebook called:**

*Common Superior Court of Justice Terms*

**Special thanks to the British Columbia Supreme Court Self Help Centre, whose self-help materials served as a model for this series of guidebooks.**