

GUIDEBOOKS FOR REPRESENTING YOURSELF IN THE SUPERIOR COURT:

# *Common Superior Court of Justice Terms*



## CONTENTS:

This guidebook is intended to provide you with brief definitions of terms commonly used in the Superior Court and found in the *Guidebooks for Representing Yourself in the Superior Court* series.

You can find out more about these terms in the *Rules of Civil Procedure*. The *Rules of Civil Procedure* can be found in any courthouse library or at the following website: [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca). You can find more detailed information by researching these terms at any courthouse library.

You can also find a more complete glossary of legal terms on the following website: [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca)

## Common Superior Court Terms

*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.

# Common Superior Court of Justice Terms

**Acceptance of Offer:** A document used to accept a formal offer to settle.

**Action:** A legal proceeding in a civil case that is not an application, and includes a proceeding commenced by a statement of claim, notice of action, counterclaim, crossclaim, or third or subsequent party claim.

**Administrative decision maker or administrative tribunal:** A specialized body or person that is given the authority by legislation to administer the law and government policy.

**Affidavit:** A written statement setting out facts and evidence. The statement is sworn to or solemnly affirmed by the person making those statements before a person authorized to administer oaths.

**Alternative Dispute Resolution (ADR):** Ways to resolve a dispute outside of the court system. Arbitration, mediation and negotiation are all examples of alternative dispute resolution processes.

**Appellant:** A person who brings an appeal.

**Application:** A proceeding started by a notice of application. The notice of application sets out the basic facts of the event or transaction, the legal consequences and the remedy or relief the applicant is asking for. The evidence is written down and filed with the court by way of affidavits. You may start an application only if legislation or the *Rules of Civil Procedure* allow you to.

**Arbitration:** A method of dispute resolution involving one or more neutral third parties called adjudicators. The adjudicator receives evidence and arguments from both parties and has the authority to make a binding decision to resolve the dispute.

**Balance of Probabilities:** The burden of proof in a civil trial. The court must be convinced the

evidence shows it is more likely than not that one side is right.

**Bill of Costs:** A document setting out the amount owed by one party to another for legal costs incurred in a lawsuit.. It may also refer to a bill setting out the fees, charges and disbursements for work done by a lawyer.

**Book of Authorities:** A bound book containing all of the statutes, case law, and other authorities the party is relying on to support his or her case. Copies are made for the opposing parties and the court. It is also called a *Case Book*.

**Book of Documents:** A bound book containing all of the documents that are to be presented as evidence at trial. Copies are made for the opposing parties and the court.

**Case Law:** Decisions of courts relating to a particular matter or issue. Case law from the same level of court may be persuasive, but the court does not have to follow it. Case law from the higher court is binding on the lower court. For example, the Ontario Superior Court of Justice must follow the decisions made by the Ontario Court of Appeal and by the Supreme Court of Canada. Case law is also called *jurisprudence*.

**Civil Case Management:** A process that gives parties in dispute scheduled opportunities to discuss the case in order to streamline proceedings (See rules 77 and 78). Civil case management does not apply to family law actions, class proceedings, estates, bankruptcy and insolvency proceedings, mortgage actions (under Rule 64), construction lien proceedings (except trust claims), Toronto Commercial List matters, or simplified rules (Rule 76) proceedings.

**Cause of Action:** A situation that may entitle one person to obtain from the court a remedy against another person.

**Civil Litigation:** A proceeding that is brought to enforce, redress, or protect a private or civil right. It is initiated by the person who actually suffered the effects of the harm. Civil litigation usually deals with torts, contracts and other private disputes.

**Consent Dismissal Order:** A document that tells the court the case between the parties has settled and the parties agree to have the court dismiss the claim.

**Contempt of Court:** Disobeying an order of the court or conduct that interferes with the administration of justice. It may be punishable by fine or imprisonment.

**Costs:** A money award made by a court or tribunal for expenses in bringing or defending a legal proceeding or a step in a proceeding. The unsuccessful party is usually ordered to pay a part of the expenses associated with the successful party's litigation.

**Counterclaim:** An independent action commenced by a defendant against the plaintiff or another party related to the lawsuit started by the plaintiff that can be tried with the plaintiff's claim. The counterclaim acts as the defendant's statement of claim against those parties.

**Court of Appeal for Ontario:** The province's highest court. This court hears appeals from lower Ontario courts.

**Court Forms:** Official court documents that must be used when you bring a dispute to court. Content of the forms under the *Rules of Civil Procedure* can be found at: [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca).

**Court Registry:** The official record keeper of the pleadings and all other documents that are filed in relation to a case. They are located in courthouses all over the province. Each court registry maintains its own files for each action initiated in that registry.

**Crossclaim:** A claim by one defendant against another defendant or by one plaintiff against another plaintiff in an existing action. A

defendant or plaintiff may crossclaim if related to the claim involved in the main action.

**Cross-Examination:** The examination of a witness by an opposing party. It is used to weaken the effect of the witness's testimony, to discredit the witness and to elicit evidence in favour of the cross-examining party.

**Damages:** An amount of money claimed or ordered to be paid to compensate for loss or injury.

**Default Judgment:** A final judgment that is awarded when one party has not complied with the *Rules of Civil Procedure*, such as by failing to defend the claim against him or her.

**Defendant:** The person against whom an action is commenced.

**Direct Examination:** Where a party asks their own witness questions. Direct examination is also called examination-in-chief.

**Discontinuance:** The termination of all or part of a proceeding by the plaintiff against any defendant using a document called a notice of discontinuance.

**Dismissal for Delay:** A motion available to a defendant in an action, who is not in default, to have the action dismissed because the plaintiff had failed to take certain steps in the conduct of their action.

**Discovery of Documents:** Disclosure by the parties (to each other) of information and documents that relate to the lawsuit. Documents can be photographs, films, sound recordings, any record of a permanent or semi permanent character, or any information stored or recorded by any means.

**Discovery Process:** The way the parties in an action discover what happened in the case. It allows the parties to collect information in order to assess the strengths and weaknesses of the case. The process can include: discovery of documents, examinations for discovery, and requests to admit.

**Evidence:** Oral and written statements, information and objects presented to the court to prove or disprove the facts that are necessary to a claim or to a defence. It can be given by witnesses or can be presented to the court in the form of documents or other things.

**Examinations for Discovery:** A meeting where one party asks an opposing party a series of questions. The examination takes place in the presence of a court reporter who records each question and its answer and then provides a transcript (a written record) of the examination. The party answering questions must take an oath or give a solemn affirmation that they will tell the truth. No judges or court officials are present during examinations for discovery.

**Exhibit:** A document, record, or object admitted as evidence in court or before a tribunal. It can include, for example, a document attached to and made a part of an affidavit.

**Expert:** A witness who gives evidence to help the court to understand technical and/or scientific issues raised by the pleadings. He or she may give opinions in areas that would not normally be within the judge's knowledge. The expert must be shown to possess the necessary skill and qualifications in the area in which the opinion is sought. An expert can give evidence in person or by writing a report called an expert report.

**Factum:** A concise written summary of the relevant facts, law and argument in support of your case. Factums are used primarily in motions and appeals.

**Fee Waivers:** A mechanism for waiving court or enforcement fees. Fee waivers may be granted by the court to individuals who cannot afford to pay the fees required to issue or file court documents. Individuals who cannot afford to pay court fees may apply to the court for this waiver.

**Federal Court:** This court has jurisdiction over all matters involving federal laws and tribunals.

**File:** Taking a document to the court registry to be stamped and placed in the court file.

**Final Judgment:** A court's final decision about the rights and obligations of the parties in a case.

**Final Submission:** A statement made after all the evidence has been presented at trial. A party, or their lawyer, summarizes the facts they have proven and points out anything the other party has failed to prove. A party may also discuss any case law that supports their case. It is also called a closing statement.

**Formal Offer to Settle:** A document used to make an offer to settle according to the Rules. Sets out what the party is willing to accept or do to settle all or part of the case. It is not filed with the court or mentioned to the judge until all questions of liability and the relief to be granted in the proceeding, other than costs, have been determined.

**Hearsay:** Evidence that is given by a witness who relates what others have said.

**Inherent Jurisdiction:** A power vested in the court that does not come from a statute or case law, but from the very nature of the court as a superior court. Courts use this power to maintain their authority and to prevent the abuse of court processes.

**Interlocutory Application:** One party asks the court to make an order, which does not finally dispose of the case or claim before the court. These applications often deal with issues that arise in the course of a proceeding that require a court order.

**Interlocutory Judgment or Order:** A judgment or order that is valid for a specified period of time or until there is a final judgment or order. It does not finally dispose of the case or claim before the court.

**Jointly and Severally Liable:** Where two or more individuals are liable for the same wrong the person wronged may bring an action against all of the individuals, or against one of the individuals for the full amount.

**Judicial Review:** A court's power to review the actions of other branches or levels of government as provided for by law. A court's review of a lower court's or an administrative body's factual or legal findings.

**Legal Advice:** Advice from a lawyer about the law as it applies to a particular case. It usually includes information about whether a party should do something or why a party should do something.

**Legal Information:** General information about the law or how to do something in a lawsuit.

**Limitation Period:** The period of time that a party is allowed to wait before starting a case. The statutory time limit for commencing a legal proceeding. Most limitation periods in Ontario are included in the *Limitations Act, 2002*.

**Liquidated Damages:** A claim where the amount sued for can easily be determined by referring to documents or other evidence.

**Litigation:** 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.

**Master:** A judicial officer of the Superior Court who is authorized to decide certain non-criminal matters.

**Material Fact:** A fact that is essential to the case. It tends to establish an issue that is raised.

**Mandatory Mediation:** A mediation under Rule 24.1 for civil, non-family, case managed actions or under Rule 75.1 for certain estates, trusts and substitute decisions proceedings. Mandatory mediation is available only in Toronto, Ottawa, and Windsor.

**Mediation:** A process in which a neutral third party with no decision-making authority attempts to facilitate a settlement between disputing parties. Mediation is usually a private, voluntary dispute resolution process.

**Motion:** A process used to make a request to a court for an order, either before, during, or after a trial or other proceeding.

**Moving Party:** A person who makes a motion by delivering a notice of motion.

**Negotiation:** Any form of non-facilitated communication that allows the parties to discuss the steps they need to take to resolve the dispute. Negotiations can take place between the parties directly, or through others (such as lawyers) acting on behalf of the parties.

**Notice of Action:** An originating process used to commence an action when there is insufficient time to prepare a statement of claim. It contains a short statement of the nature of the claim. The plaintiff must still file a statement of claim after a notice of action is used.

**Notice of Appearance:** A document delivered by a respondent when served with a notice of application. This document provides the applicant with the respondent's address for delivery. It does not include any responses to the application.

**Notice of Hearing:** A document that tells the parties and the court the date of their hearing.

**Notice of Intent to Defend:** A document used by a defendant served with a statement of claim that provides extra time to deliver a statement of defence.

**Notice of Motion:** A document that starts a motion. It sets out what the party wants the court to order. It is delivered with an affidavit setting out the facts relied upon by the party asking for the order.

**Notice of Withdrawal of Offer:** A document that withdraws a formal offer to settle.

**Opening Statement:** A statement made by each party at the beginning of the trial. The party or their lawyer gives a brief overview of the issues and the evidence/facts they intend to prove.

**Originating Process:** A document whose issuing commences a proceeding. Originating process includes a statement of claim, notice of action, notice of application, an application for a certificate of appointment of an estate trustee, a counterclaim against a person who is not already a party to the main action and a third or subsequent party claim.

**Order:** A ruling made by the court that tells a party to do something or not do something. It can also refer to the document that sets out the decision of the court.

**Plaintiff:** A person who commences an action.

**Pleadings:** A written statement of the facts that a party relies on to support their claim or defence. These documents must be filed with the court to start and respond to a proceeding. In an action, examples of pleadings are a statement of claim, statement of defence and reply. Pleadings may be amended with the court's approval.

**Pre-Trial Conference:** A short meeting with a judge or a master to consider settling any or all of the issues in a proceeding, simplify the issues and deal with any concerns, scheduling problems, or pre-trial matters that might happen right before the trial.

**Privileged Document:** A document the other party is not entitled to see because it was created during confidential communications between a lawyer and his or her client, or was created to help conduct the litigation.

**Pro Bono Legal Advice:** Legal advice donated to individuals free of charge.

**Proceeding:** An action or an application.

**Process Server:** A professional document server.

**Registered Office:** A head office or chief place of business. It is the office where documents may be served on the company and where certain documents and books must be kept. The address of this office is on file with the provincial Registrar of Companies.

**Regulations:** Statutory instruments that usually set out practical information or procedures relating to a particular statute. They provide specific instructions about how to implement the statute and tend to change more often than the statute itself.

**Release:** A document signed by the parties to acknowledge that they are giving up all claims in connection with the legal dispute. It is usually signed as part of a settlement.

**Requisition:** A document that asks the court registrar to do something. For example, a document that asks the registrar to search the court file for a statement of defence from the defendant.

**Respondent:** A person against whom a proceeding is brought by a notice of application. It also refers to a person against whom an appeal is brought.

**Responding Party:** A person against whom a motion is made by delivery of a notice of motion.

**Rules of Civil Procedure:** The *Rules* that govern the practice and procedure of all civil proceedings in the Ontario Superior Court of Justice (except proceedings in the Small Claims Court and the Family Court). They provide guidelines for each step in the litigation process and set time limits for when certain steps must be completed. The *Rules* are frequently revised, often several times each year.

**Serving a Document:** Bringing a legal document to the attention of the parties to a proceeding. The *Rules of Civil Procedure* set out certain procedures that must be followed when serving a document.

**Settlement:** An agreement between the parties in a dispute. A settlement can end or avoid a court proceeding. It usually involves the payment of money.

**Simplified Procedure:** A proceeding commenced under Rule 76. It is the mandatory

civil procedure for claims of \$50,000 or less (not including interest or costs). It is a streamlined process that limits pre-trial procedures and evidence the parties can call at trial, and requires parties to engage in earlier and more comprehensive exchange of information.

**Small Claims Court:** A branch of the Superior Court of Justice with jurisdiction for civil claims of \$10,000 or less. The court has its own procedures and rules which are simpler and less expensive than bringing a regular civil claim in Superior Court of Justice.

**Standing:** A party's right to make a legal claim or seek judicial enforcement of a duty or right.

**Statement of Claim:** A document that notifies both the court and the people who are being sued that a lawsuit has started. This document sets out the facts of the claim, the legal consequences arising from those facts, the remedy or relief the plaintiff is asking for and where the trial is going to be held.

**Statement of Defence:** A document that sets out the facts of the defence. It responds directly to the allegations in the statement of claim.

**Statutes:** Laws created by the Parliament of Canada or the Provincial Legislature. Statutes are also called legislation or Acts.

**Summons to Witness:** A document that notifies a witness that he or she is required to attend in court to give evidence at a trial. The summons may also require the person to bring documents or other things in their possession. The failure to do so may result in a charge of contempt of court.

**Summary Judgment:** A different way to obtain a final judgment without having to go through a full trial. A summary judgment application is usually only made in those cases where there is no genuine issue for trial with respect to a claim or defence.

**Summary Trial:** A trial under Rule 76 based on affidavit and other evidence that can result in a judgment even if there is a dispute between the

parties about the facts behind the claim or the defence to the claim. This is different than a summary judgment which is only given if there is no genuine issue for trial with respect to a claim or defence.

**Superior Court:** The Superior Court of Justice hears criminal prosecutions of indictable offences, summary conviction appeals, bail reviews, estates, civil suits (over \$10,000), and, where the Family Court branch of the Superior Court of Justice does not exist, the court also hears family cases other than child protection, secure treatment, adoption cases and appeals of child protection cases.

**Supreme Court of Canada:** The highest level of court in Canada. This court hears appeals from decisions of the Federal Court and from decisions of all the appeal courts of the provinces and territories.

**Third Party Claim:** A claim by a defendant against any person who is not a party to the main action and who may be liable to the defendant for the main action or for an independent action.

**Title of Proceeding:** The top part of every court document that identifies the registry number and location, the level of court and the names of the parties. It is how the court registry identifies the file. It is also known as the style of proceeding or the style of cause.

**Toronto Civil Case Management:** A proceeding under Rule 78. Civil cases in Toronto are not automatically assigned to case management under Rule 77.

**Trial:** The hearing of a legal issue before the court where evidence is presented, arguments are submitted and a final judgment or order is made.

**Trial Record:** A bound book that contains all the pleadings and other documents to be put before the court at the trial. Copies are made for the opposing parties and the court.

**Torts:** The legal term for injury or harm for which damages may be obtained. Someone who commits a tort is called a *tortfeasor*.

**Undertaking:** A promise or assurance that a person will do what is asked of them.

**Unliquidated Damages:** An amount claimed that must be assessed and determined by the court. For example, a claim for pain and suffering arising from an injury.

**Withdrawal:** When a defendant withdraws all or part of his or her defence using a document called a notice of withdrawal of defence.

**Without Prejudice:** Information contained in a document or communicated between the parties that cannot be admitted in evidence without the consent of both parties. Generally, negotiations to settle a dispute are conducted on a “without prejudice” basis.

**Witness:** A person who gives evidence in a proceeding orally under oath or affirmation, or by affidavit.

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