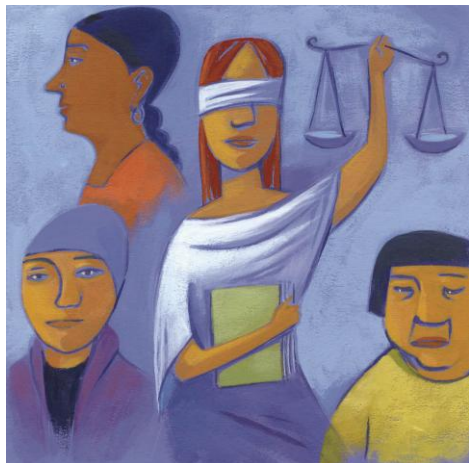


GUIDEBOOKS FOR REPRESENTING YOURSELF IN THE SUPERIOR COURT OF ONTARIO:



Preparing Your Affidavit

CONTENTS:

1. Get a general idea of what you put in affidavits
2. The structure of an affidavit
3. How to fill in the technical parts
4. How to fill in the main part
5. Resources

Law Help Ontario is a self-help centre for low income, unrepresented litigants appearing before the Superior Court of Ontario (limited civil matters – no family law). Visit us in Toronto at:

393 University Avenue, Ground Floor, Toronto
Monday to Friday, 9:30 am to 4:00 pm

Walk-in centre only. No appointments. We do not guarantee assistance to all applicants. You must meet our eligibility requirements.

A Guide to Preparing your Affidavit

Where you can get help with your case

Information If You Represent Yourself

Law Help Ontario is a project of Pro Bono Law Ontario that provides pro bono legal services to people who cannot afford to hire a lawyer and are unrepresented in a legal matter. The project is currently piloting two self-help centres in courthouses in the Toronto area. In the future, centres may be launched in other locations across Ontario. The Law Help Ontario web site provides online resources relating to pro bono legal services.

If you live in the Toronto area, have a civil matter and are unrepresented because you cannot afford a lawyer, visit us at our centre in Superior Court or Small Claims Court. You may be eligible for free (pro bono) legal advice.

Get legal help in person on a civil case such as:

- starting or defending a civil action in Superior Court
- motions in Superior Court
- appeals (merit assessment only)

We CANNOT help you at the centre with: family law matters, criminal cases, human rights, landlord and tenant matters etc. Please refer to our online resources for information that might be available in these areas.

If you are located in other areas of the province or need help in another area of the law, check out our online resources at lawhelpontario.org.

Rules of Civil Procedure

The *Rules of Civil Procedure* describe how litigation is handled in the Superior Court of Justice. The rules will guide you through every step of your case and set time limits for when certain steps must be done. To view the *Rules of Civil Procedure*, go to <http://www.canlii.org/on/laws/regu/1990r.194/index.html>

Forms

Official court forms must be used when you bring a dispute to court and 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. Visit www.lawhelpontario.org for help with forms.

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 can help you file documents or swear your affidavits, but they cannot tell you whether you should do something. Legal advice must come from a lawyer.

Before proceeding with a case in the Superior Court of Justice on your own, 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.

Introduction

This guidebook describes the steps you take to prepare your affidavit (Form 4D).

There are special kinds of affidavits, such as Affidavits of Service (Form 16B) and Affidavits of Documents (Forms 30A and 30B). The general principles regarding affidavits described in this guidebook apply to all affidavits, but special kinds of affidavits have their own structure and form. For more information about Affidavits of Service (Form 16B), see the guidebook in this series called *Starting a Civil Proceeding in the Superior Court of Justice*. For more information about Affidavits of Documents (Forms 30A and 30B), see the guidebook in this series called *The Discovery Process*.

What is an affidavit?

- Affidavits are used to present evidence to the court. Sometimes, courts hear evidence from witnesses who give their evidence in person, orally. An example of this is the TV show, *Law and Order*. However, for certain court cases you must present your evidence by affidavits. A lawyer can tell you if your case requires an affidavit.
- An affidavit is a written statement that contains important facts you want the court to know about. You *swear it* before an authorized commissioner for taking affidavits, a notary public or a lawyer. To *swear* means you promise that the information contained in the affidavit is true.
- The affidavit may have letters or other important documents attached to it. These are often referred to as *exhibits* to the affidavit.
- The affidavit is filed with the court. Copies of the affidavit have to be given to the other persons named in the proceeding.
- The first rule about preparing an affidavit is that you are bound by law to **tell the truth** in your affidavit.
- In the Superior Court of Justice, there is a form you must complete for your affidavit. It is called Form 4D. Form 4D and a sample affidavit with a backsheet (Form 4C) are included at the end of this guide.

What is in this guide?

This guide has five sections:

1. **Get a general idea of what you put in affidavits**
2. **Review the structure of an affidavit**
3. **Find out how to fill in the technical parts**
4. **Find out how to fill in the main part**
5. **Resources**
 - A. Where to get legal advice and useful tips about seeing a lawyer
 - B. Questions to ask a lawyer
 - C. Checklist
 - D. Affidavit (Form 4D)
 - E. Sample affidavit with backsheet (Form 4C)

If you're doing it yourself, get some legal advice

If you are going to represent yourself, get some advice from a lawyer. Do this before you start. Look at **Resource A** to find out where to get free legal advice if you're on a low income.

Look at **Resource B** for questions you can take to a lawyer. A lawyer can tell you what special information about your case you should include in your affidavit.

1. Get a general idea of what you put in affidavits

There are two important things to remember about affidavits: what you put in must be relevant, and it must be fact, not opinion.

1. What you put in your affidavit must be relevant to your case

The statement you make in the affidavit and documents attached to the affidavit must be **relevant** to the matter before the court. This is the key to having a good affidavit.

- What are the important facts that have to be put in the affidavit? A lawyer can answer that question.
- The preparation of the affidavit must be done in the context of the whole case. What are your strategies for the court case? Your affidavit should be drafted in that context. Again, get legal advice.

2. Your affidavit sets out facts, not opinions

Affidavits contain facts and not opinions.

Fact: You saw something happen and you have personal knowledge of it.

Example: *I saw Tom Smith hit Harry Jones on the nose on February 7, 2006 at 3:00 p.m. This occurred outside the home of Harry Jones at 123 Main Street, Toronto, Ontario.*

Opinion: What you think or believe:

Example: *I think Tom Smith is a bad person.*

Sometimes, opinions are important. For instance, doctors and other experts can give their opinion in court. However, lay people (non-experts) present facts in an affidavit, not opinions.

2. Review the structure of an affidavit

Look at **Form 4D** and the **sample affidavit** in the Resources section of this guide. An affidavit has 7 parts. We will look at each of them in turn.

1. General heading
2. Deponent's statement (*deponent* is the person making the affidavit)
3. Knowledge statement
4. Body of the affidavit (this is the **most important part** of the affidavit)
5. Ending of the affidavit
6. Exhibits
7. Backsheet

Most parts of the affidavit are technical. Section 3 explains how to fill them out.

The body of the affidavit is where you explain your story to the court. Follow the steps in section 4 to fill it out correctly.

IMPORTANT: Read **both** section 3 and section 4 before you start work on your affidavit.

3. Find out how to fill in the technical parts

As you go through each part of this section, look at **Form 4D** and the *sample affidavit*. They are located in the Resources section of this guide.

General heading

A general heading appears on the first page of all court documents. It states who is suing whom and also gives the file number and court name. See the **sample affidavit** at the end of this guidebook and Part 4 of the guidebook called *Starting a Civil Proceeding in the Superior Court of Justice* for more information about general headings.

You should also include a page number on each page of your affidavit, other than the backsheet.

Deponent's statement

A deponent is the person who is making the affidavit. You have to identify yourself as the person who is making the statements in the affidavit.

Here is an example:

I, Tom Jones, electrician, of 132 Main Street, in the City of Toronto, Province of Ontario, MAKE OATH AND SAY THAT:

This deponent's statement has to be put at the beginning of each affidavit. It identifies who you are and what your occupation is. If you are retired, you would put in "retired" or "old age pensioner."

You need to "swear" the affidavit. This means you swear under oath (to God) OR you affirm that you are telling the truth in the affidavit. You do one or the other, not both. **Cross out the one that does not apply to you.** See **Form 4D** and the **sample affidavit**.

Knowledge statement

The knowledge statement is the first numbered paragraph in your affidavit (i.e. paragraph 1). The knowledge statement does two things.

1. You state whether you are the plaintiff, defendant, applicant, or respondent.
2. You state that you have personal knowledge of the information and facts that you are putting in the affidavit.

Here is an example of what you would put in:

I am the plaintiff in this matter and have personal knowledge of the matters herein referred to.

An affidavit should not contain information told by another person unless the other person is a party to the court case.

Note: This rule about having personal knowledge does not apply if the judge is being asked to make a temporary order (called an *interlocutory order*). In these situations you can make an affidavit based on

information and belief. You should get legal advice before you do this. A lawyer can advise you if you can use information and belief in your affidavit, and can tell you how to phrase the sentences.

Usually the following paragraph is put in if you are able to have an affidavit on information and belief:

I have personal knowledge of the facts and matters herein referred to by me except where indicated to be on information and belief, and where so stated I verily believe them to be true

You have to indicate the specific person you are relying on for the information and belief. You also have to add a statement to the effect that you believe it to be true. For example, you would probably have to say something like:

On or about August 30, 2004 John Smith (her husband) told me that Mary Smith had not gone to work the day before and I believe this to be true.

Body of the Affidavit

This is the most important part. It is covered in section 4 of this guide.

Ending of the Affidavit

- You must swear your affidavit (promise you are telling the truth) in front of an authorized commissioner for taking affidavits, a notary public, or a lawyer.
- You both sign the affidavit in each other's presence at the time you swear the affidavit.
- Swearing an affidavit is a serious matter and swearing a false affidavit may be a criminal offence.
- There are special requirements if you (the deponent) do not understand the language used in the affidavit (e.g. you do not speak English), or cannot read the affidavit yourself (e.g. you have a visual impairment). See Rule 4.06 for more information.

The person who commissions your affidavit must also print (or stamp) his/her name below his/her signature. Check to make sure this is done.

Exhibits

You may attach letters or other important documents you want the court to consider. These are **exhibits** to the affidavit.

Here is an example of what you can say in the body of the affidavit:

Letter as Exhibit

On July 30, 2004, I received by mail a letter from Helen Duong. That letter is attached to this affidavit as Exhibit "A."

If you have any exhibits, arrange them in order (i.e., Exhibit "A", Exhibit "B" etc.).

The person commissioning the affidavit will stamp each exhibit with an exhibit stamp. Exhibit stamps go on the first page of each document and they read as follows:

This is Exhibit “.....” referred to in the
affidavit of
sworn before me at
this day of
200....

.....
A Commissioner for taking Affidavits for Ontario

Do not put a stamp on the documents until you have run things by the lawyer who is giving you advice. It may be necessary to add or delete documents.

Backsheet (Form 4C)

A backsheet is part of an affidavit. This document is attached to the back of all court documents with the type facing out. See the sample backsheet at the end of this guidebook and Form 4C.

The backsheet consists of three parts on one page:

1. The court file number, title of proceeding, court and location.
2. A description of the document set between two lines, e.g. “Affidavit of Mary Brown sworn April 17, 2007.”
3. Your name, address and phone number. Include a fax number and e-mail address, if you have these.

4. Find out how to fill in the main part

1. Follow the S.O.S. Principle

One of the keys to success is to follow the S.O.S. principle:

Simple Organized Short

Simple

Try to make your affidavit as simple as possible. Use simple words and sentences. Many people think that if they make things complicated and sophisticated they will impress the judge. The judge will see through this. Judges are more impressed with a simple affidavit. Also, a simple affidavit is easier for you to prepare and to present to the court.

Remember: **Judges prefer people to use ordinary language.**

Organized

The second principle is that your affidavit should be organized. **This is the most important rule.**

If your affidavit is organized, it is easier for the judge to understand what is going on. Here are some tips for being organized:

1. In most cases it is best to tell what happened in chronological order (in order of date). Do not jump all over the place from one time period to another.
2. Try as much as possible to give specific dates (i.e., July 13, 2005, or, the middle of July, 2005).
3. When you refer to people it is best to use their names, such as *John Smith*. Try to avoid using “him” or “her.” It can get confusing.

Remember: **Judges like to see facts, not broad general statements.**

Short

The third principle is to keep your affidavit short. It is more effective. Decide what you need to say and put that in the affidavit. Don’t fall into the trap that more means better.

The same is true of paragraphs and sentences. Keep them short. Sentences should be less than 10 words. If you can make sentences shorter, then do it. Edit your affidavit and break the long sentences into short sentences.

This does not mean you ignore important matters. However, if your affidavit is short it allows both you and the judge to focus on the important matters.

Remember: **Judges want you to focus on the important matters.**

2. Put in the relevant facts

The body of the affidavit should contain the relevant facts in numbered paragraphs, starting with paragraph 2 (after the knowledge statement). You can use headings to clearly set out sections of the body of your affidavit.

Usually it’s best to draft an affidavit in the first person. For instance, a sentence would read as follows:

I went to the appeal hearing on March 23, 2005.

Here are some useful tips:

1. The affidavit should be done on white paper (8.5” x 11”).
2. The font size should be at least 12 point.
3. The text should be double-spaced with a margin of approximately 40 millimetres on the left hand side.
4. Consider putting headings in the affidavit to make it easier to organize.
5. Each page should be numbered.
6. Each paragraph should be numbered.
7. If at all possible, **type the affidavit**. Although in theory you can provide a (legible) handwritten affidavit, try to avoid it.

3. Avoid vague statements

Affidavits should avoid vague statements. The following is an example of a vague statement:

I met the defendant contractor John Smith on several occasions. I walked away from these meetings with the impression that he would not charge me for the extra paint put on the porch.

A better statement to put into the affidavit would be as follows:

I had a meeting with the defendant contractor John Smith on April 3, 2004 at my home in the late afternoon. He specifically stated to me “I will not charge you for the extra paint on the porch.” I relied on this statement that he would not charge me for this extra paint.

4. Take your time

Draft the affidavit over several days to give yourself enough time to think about what needs to be done. It’s not a good idea to draft an affidavit in a hurry. That won’t give you the time you need to think about it.

5. Use the checklist

Look at Resource C, **Checklist**. Use this checklist to make sure you have completed all the steps.

6. Check for consistency

- Check to make sure your affidavit is consistent throughout. Make sure it does not say one thing in one place, and something that contradicts it in another place.
- Also check the affidavit for consistency with your other documents, including any other affidavits you have made.

7. Read it over

Read it over. Have a friend check your affidavit to make sure there are no typing errors and the language is clear. Then revisit the checklist to make sure everything has been completed.

What do judges look for in an affidavit?

People who are representing themselves often ask: What do judges look for in an affidavit?

Judges assess credibility of an affidavit based on the following factors:

- *Are there **internal inconsistencies** in the affidavit?* For instance, does the person making the affidavit state one thing in one part of the affidavit and in another part of the affidavit state the opposite?
- *Are statements made in the affidavit **inconsistent with other statements** made in other affidavits or documents?* Sometimes, in a rush, you may carelessly make statements in an affidavit that are at odds with your other affidavits or documents. This could hurt your case.
- *Is the statement **inherently unbelievable**?* If a person is late for work and his excuse is his car ran out of gas, that is believable. However, if his excuse is that he was beamed up to the Starship Enterprise to have dinner with Captain Kirk, that is probably unbelievable.
- *Is the person **biased** in making the affidavit?* Do the statements in the affidavit show an obvious bias?

There are other factors judges may consider in determining the credibility in affidavits.

- *Is there a statement of conclusion with no details to back up the statement?* Remember, **judges like to see facts, not broad general statements.**

- *Are there statements in the affidavit that are **evasive***? In other words, does the person making the affidavit attempt to avoid an issue or statement? An example would be that one affidavit in the case says you and another person had a conversation on a certain day. But you state in your affidavit that you never met that person on that day. That is true, except for the fact that you did have a telephone conversation with that person. This is an example of artful drafting. You should avoid this.
- *Does the person use language that one would not expect a normal person to use?* **Judges prefer people to use plain language.**
- *Is the second-best evidence used instead of the first source?* Even if you are allowed to make an affidavit on information and belief, it may be in your interest to get the person who had the original information to swear an affidavit. This is more effective than relying on **hearsay** (information and belief). Please note that not all court proceedings allow hearsay.
- *Is there a **lack of precision** in the affidavit?* Does the person making the affidavit give vague dates or vague information?
- *Are there **mistakes** that indicate the person making the affidavit has not read it?* This would include typing and grammatical errors.
- *Are **important facts left out**?* If important facts are left out, this may indicate the person making the affidavit is hiding something.

5. Resources

The following pages contain resources you can use to help you prepare your affidavit:

- A. Where to get legal advice and useful tips about seeing a lawyer
- B. Questions to ask a lawyer
- C. Checklist
- D. Affidavit (Form 4D)
- E. Sample affidavit with backsheet (Form 4C)

For more information about court processes, read the other guidebooks in this series by visiting www.lawhelpontario.org.

Your feedback is important to us.

Please tell us how we can help you better by taking a moment to comment on this Guidebook. Was this Guidebook helpful to you and why? What can we do to make this Guidebook better?

Send your response to lho@pblo.org or

393 University Avenue, Suite 110, Toronto, Ontario M5E 1E6.

Useful tips about seeing a lawyer

Seeing a lawyer for the first time can be a bit intimidating. Here are some useful tips.

1. If you think it will help, bring a friend with you for moral support and ask the lawyer if your friend can sit in on the interview. Depending on the nature of the problem the friend can sit through the interview with you. Some types of legal problems do not lend themselves to having a friend sitting in on the interview, but a friend can still provide you with moral support before or after the interview.
2. Organize all the documents in chronological order. The documents would include letters, court documents, etc. The best way is to put the documents in a three-ring binder with an index page. Tabs separating the documents in the binder are also very helpful. Remember, you do not have to be lawyer to organize documents.
3. Take this guide with you. Ask the lawyer to clarify anything you don't understand.
4. Briefly write out your story. It is best to type, but clear handwriting is acceptable. This story should be no more than a page or two. Really try to condense your story to a page or two.
5. Next, write out in a page or two the questions you have for the lawyer. If you don't, you will probably forget some important questions. Also, do not be afraid to ask what you might think are "simple questions." Sometimes, they are the most important questions. Use *Resource B: Questions to ask a lawyer*. Add to that list.

Resource B

Questions to ask a lawyer

Here are some basic questions you should ask a lawyer before you draft your affidavit. Use these and add your own questions about your case.

1. What are the important facts that I should put in my affidavit?
2. In what order should I organize my affidavit?
3. Who should I get an affidavit from?
4. Can this affidavit be based on information and belief?
5. Should documents be attached to the affidavit as exhibits? If so, which documents should be attached?
6. When does this affidavit have to be filed in court?
7. Who do I have to give copies to, and what is the time limit for doing this?

Checklist

No.	Remember	Check
1.	Have you obtained legal advice from a lawyer?	
2.	Have you numbered the pages of your affidavit?	
3.	Have you entered your name, address and occupation?	
4.	Have you decided to swear under an oath or affirm and adjusted the affidavit accordingly? (Crossed out the option you are not using?)	
5.	Have you put in the affidavit whether you are the applicant, defendant, petitioner, or respondent?	
6.	Have you put in a paragraph stating that you have personal knowledge of the matters?	
7.	Have you put in a paragraph stating that it is based on information and belief? Have you determined whether you can put information and belief in your affidavit?	
8.	Have you drafted the affidavit in the first person (i.e. "I went to the court house on January 5, 2005")?	
9.	Have you put in facts and not opinions?	
10.	Have you put in exact dates?	
11.	Have you typed in paragraphs that are numbered?	
12.	Have you kept your paragraphs short?	
13.	Have you kept your sentences short?	
14.	Have you broken long sentences into short sentences?	
15.	Have you used simple language?	
16.	Have you considered putting headings in your affidavit?	
17.	Have you organized your affidavit in a logical way (e.g. chronologically)?	
18.	If you have exhibits, have you numbered them (i.e. "A", "B") etc.?	
19.	Have you attached the exhibits to the affidavit and ensured there are exhibit stamps on the exhibits?	
20.	Have you attached the backsheet as the last page, face side up?	
21.	Have you had the affidavit signed and sworn in front of an authorized commissioner for taking affidavits, a notary public or a lawyer?	
22.	Has the person commissioning your affidavit printed (or stamped), as well as signed his/her name?	
23.	Have you determined how many copies of the affidavit you need to have?	
24.	Have you filed the affidavit with the court on time?	
25.	Have you served copies of the affidavit on the proper persons on time?	

Affidavit (Form 4D)

[Below is the prescribed content of Form 4D. It is not formatted. 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.]

(General heading)

AFFIDAVIT OF (name)

I, (full name of deponent), of the (City, Town, etc.) of , in the (County, Regional Municipality, etc.) of , (where the deponent is a party or the solicitor, officer, director, member or employee of a party, set out the deponent's capacity), MAKE OATH AND SAY (or AFFIRM):

1. (Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact.)

Sworn (or Affirmed) before me at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of... .. , on (date).

.....

.....
Commissioner for Taking Affidavits
(or as may be)

(Signature of deponent)

RCP-E 4D (November 1, 2005)

Sample Affidavit (Form 4D)

Court File No. *****

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

IVAN HOE

Applicant

- and -

000000 ONTARIO LTD., AIMI TANAKA and
MARY BROWN

Respondents

AFFIDAVIT OF MARY BROWN

I, Mary Brown, of the City of Toronto, in the Province of Ontario, President of 000000 Ontario Ltd.,
MAKE OATH AND SAY:

- 1. *[Mary Brown would outline the relevant facts here, as described in Part 4 of this guidebook.]*

Sworn before me at the City of Toronto
in the Province of Ontario, this 17th day of April, 2007.

[Neera Gupta would sign here]

.....

[Mary Brown would sign here]

.....

Commissioner for Taking Affidavits
Neera Gupta

Mary Brown

RCP-E 4D (November 1, 2005)

Sample Backsheet (Form 4C)

Court File No. *****

IVAN HOE -and- 0000000 ONTARIO LTD., AIMILTANAKA and MARY BROWN

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF MARY BROWN
SWORN APRIL 17, 2007

*[Mary Brown or her lawyer would clearly
print her name, address, telephone number
and fax number here]*

RCP-E 4D (November 1, 2005)