

HOW DO I ISSUE AND ENTER MY ORDER?

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This publication contains general information intended to assist the public at large. It is not legal advice about your situation. You should consult a lawyer for advice on your particular situation. This publication is not a substitute for you or your lawyer's own research, analysis and judgment.

INTRODUCTION

An “order” is a ruling of 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. An “order” also includes a “judgment”. A “judgment” is a decision that finally disposes of an application or action on its merits and includes a judgment entered in consequence of the default of a party.

HOW DO I OBTAIN MY ORDER?

There are two ways to get your order from the court: (1) by draft order, and (2) by endorsement. The fastest way is to prepare a draft order ahead of time for the court to sign. This is not always possible in every case but is common practice in some proceedings, such as motions.

WHAT IS A DRAFT ORDER?

In some cases you may, before your hearing, make a draft order of the order that you are asking the court to grant. This will save you time because the court may be able to fill out the order at the end of your hearing. You will also avoid having to re-write the endorsement into a draft formal order.

TIP: *This approach is not always desirable. A draft order is useful where the order to be made by the court can be anticipated in advance. This is not always possible. You should review Forms 59A, 59B, or 59C under the Rules of Civil Procedure to get an idea of the form of the draft order to be submitted to the court.*

WHAT IS AN ENDORSEMENT?

In many cases, where no draft order is given to the court, the court will make an endorsement setting out its directions to the parties. This is usually handwritten on the back of one of the relevant court documents filed in the case, such as the appeal book and compendium, record, notice of motion or notice of application. If the court makes an endorsement setting out the order, then you will need to prepare a *draft formal order*.

TIP: *You should ask the court officer to make a photocopy of the endorsement for you before you leave the hearing. Some endorsements are very brief but others can be lengthy, particularly if reasons are given by the court. In some cases, the court officer may tell you to get a copy of the endorsement from the court filing office as the file will be returned there after your hearing.*

WHAT IS A DRAFT FORMAL ORDER?

A draft formal order is your attempt to summarize in writing the important parts of the court's directions at your hearing.

WHO IS RESPONSIBLE FOR PREPARING THE DRAFT FORMAL ORDER?

Any party affected by an order can prepare a draft of the formal order and send it to all other parties represented at the hearing for approval of its form. Normally, the party that is successful will act quickly to prepare the draft formal order.

IF I HAVE A COPY OF THE ENDORSEMENT, HOW DO I PREPARE MY DRAFT FORMAL ORDER?

Once you have the endorsement, you should take the following steps:

Step #1: Complete the preamble of the draft order

Your order must be in either Form 59A (order), 59B (judgment) or 59C (order or certificate on appeal). Form 59C is used only on appeals. Forms 59A and 59B are used at the trial stage. In general, Form 59A is used for orders that do not finally dispose of the case and Form 59B is used when the court is making its final disposition or final judgment. You will also need to complete Form 4C, the back sheet.

TIP: *Forms 59A, 59B and 59C (and all of the other forms made under the Rules of Civil Procedure) can be viewed at <http://www.ontariocourtforms.on.ca/english/forms/civil/index.jsp>*

You should also review Rule 59.03 of the *Rules of Civil Procedure* before you begin. To view the *Rules of Civil Procedure*, go to www.e-laws.gov.on.ca and follow these steps:

In your draft order, you will need to include the following:

1. The name of the judge or officer who made it;
2. The date on which the order was made (if the decision was reserved, the date on which the decision was released will be the date of the order);
3. The nature of relief sought in the notice of motion;
4. The date of the hearing;
5. The names of persons appearing personally or by counsel, and names of persons who did not appear at the proceedings;
6. Any undertaking given by a party as a condition of the order; and
7. Any other particulars necessary to understand the order, such as any consents, waivers or admissions related to the order, and any evidentiary documents before the court.

Step #2: Write the operative part of the draft order

In consecutively numbered paragraphs, write the substantive portion of the order, addressing the complete disposition of the matter in the following order:

1. The decision as to the rights of the parties;
2. Any directions providing for or giving effect to those rights and any consequential directions;
3. Any disposition as to costs (**NOTE:** an order for the payment of costs must direct payment to the party entitled to receive the costs and not to the party's lawyer); and
4. The particulars as to pre- and post-judgment interest, if applicable. See sections 128 and 129 of the *Court of Justice Act*. (**NOTE:** an order for the payment of money on which post-judgment interest is payable must set out the rate of interest and the date from which interest is payable).

Step #3: Send copies of the draft order to all other parties represented at the hearing for approval

Send a copy of the draft order to all other parties represented at the hearing and ask them to approve the order as to its form and contents. You must obtain written approval from all parties represented at the hearing in order to have your order signed.

If one of the parties refuses or fails to approve the order within a reasonable time, you will need to make an appointment to have the order settled by the registrar, or, where the registrar considers it necessary, by the court, judge or officer that made it [see Rule 59.04(10)].

Step #4: Have the order signed

File the approval of all parties represented at the hearing, together with three (3) clean copies of the order with the court office where the proceeding was commenced or where the hearing took place. Leave the copies of the order at the court office to be signed and entered by the court registrar.

One of two things can happen at this point – (1) the registrar can be satisfied or (2) not satisfied with your draft order.

If the court registrar is satisfied that the order is in proper form, he or she must sign the order and return the order to the party who left it to be signed.

If the court registrar is **not** satisfied with the order, then the registrar will not sign the order. The court registrar will return the unsigned order to the party who left it to be signed. The party must then either:

- Submit the order again in the proper form and, if required by the court registrar, file the approval of the parties to the order with a copy of the order, or
- Obtain an appointment to have the order settled by the court, judge or officer that made it and serve a notice of the appointment on all the parties represented at the hearing.

Where an objection is taken to the proposed form of the order in the course of settlement before the court registrar, the court registrar must settle the order in the form he or she considers appropriate and the objecting party may obtain an appointment with the court, judge or officer that made the order to settle the part of the order to which the objection has been taken.

TIP: *The objecting party must serve a notice of the appointment to all the parties represented at the hearing. After the order has been settled by the judge or officer who made it, the registrar will sign it unless it was signed by a judge or officer at the time it was settled.*

Step #5: Have the order entered

The order must be entered in the court office in which the proceeding was commenced and a copy of the order must be filed in the court file. The entering of your order means that your order is reviewed, the original order is sealed with the court seal, and all copies of the order are stamped by the court registrar.

The order then becomes an enforceable order of the court. For full information on the requirements for entry of the order, refer to Rule 59.05 of the *Rules of Civil Procedure*.

Finally, you should provide copies of the issued and entered order to all other parties involved in the proceeding.

WHERE CAN I GET MORE INFORMATION?

The Ministry of the Attorney General has a series of guides that are available at court offices and at the Ministry of the Attorney General website. The site also has general information on civil cases. The website is accessible through the following address: www.attorneygeneral.jus.gov.on.ca. Choose your preferred language, click on "Court Services" at the left side of the page, and scroll down to "Civil Cases".

Legal research resources are accessible to the public through CanLII available through the following: <http://www.canlii.ca>

To obtain forms under the *Rules of Civil Procedure*, visit the Ontario Court Forms website at: <http://www.ontariocourtforms.on.ca>. Choose your preferred language and click on "Rules of Civil Procedure Forms".

The "Guide to Ontario Courts" is available through: <http://www.ontariocourts.on.ca/>

The *Rules of Civil Procedure* are available through the e-laws website. Go to 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"