

## ADJOURNMENTS

*Prepared by Law Help Ontario, Pro Bono Law Ontario*

*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

The court expects parties to prepare for the hearing and to be ready to attend once the date is set. However, in some circumstances, it is not always possible or fair to proceed on the scheduled date. Any party to the proceeding may bring a motion for an adjournment to request that the date be changed.

An *adjournment* is an order by the court that the hearing (e.g. a motion, action, application or appeal) will be deferred until another date.

### HOW CAN I ASK FOR AN ADJOURNMENT?

There are two types of adjournments: (1) "consent" adjournments and (2) contested adjournments.

#### **(1) "Consent" Adjournments**

The term "consent adjournment" refers to the arranging of adjournments between the parties "on consent." The term "consent adjournment" is a bit misleading as it is still for the court to make the final determination on whether it is appropriate to grant the adjournment. However as long as the court is consulted well in advance of any changes, the court will normally respect the parties' agreement to adjourn the hearing.

In order to obtain a "consent" adjournment, you should take the following steps:

- **Make your request as soon as possible.** The first step in obtaining an adjournment is to seek the consent of all relevant parties to the proceeding. If you need an adjournment, you should advise all other parties to the proceeding as far ahead of time as possible. Otherwise, you may have to pay costs.

- **Put your request in writing.** You should make your request in writing to the other parties to the proceeding or their lawyer and you should set out the reasons for the request.
- **Get consent of all other parties to the proceeding in writing.** If consent is obtained, it is best to have a letter from the lawyer for the other parties or from the other parties directly (if the other party does not have a lawyer and is self-represented). Some parties or their counsel will include a list of available dates but it is ultimately for the court to assign a new date if the adjournment request is granted.

## **(2) Contested Adjournments**

If consent of all the other parties cannot be obtained, then you will have to ask the court to adjourn the case to another date. You should do this before your proceeding gets under way. You should still prepare to proceed with the hearing, as there is no guarantee that your request will be granted.

In the case of a contested adjournment, it is good practice for the party seeking the adjournment (known as the *moving party*) to bring a motion for adjournment following the procedure set out under Rule 37. You should review the guidebook called *A Guide to Motions in a Civil Action* available at [www.lawhelpontario.org/civil](http://www.lawhelpontario.org/civil).

In addition, it is a very useful practice to put your arguments and reasons for the adjournment in writing and file it with the court and serve it on the other parties as soon as possible (i.e., as long before the scheduled hearing date as possible).

### **HOW DO I RESPOND TO AN ADJOURNMENT REQUEST BY THE OTHER SIDE?**

Depending on your own situation, you may wish to consider agreeing to another party's request for an adjournment since it may give you more time to prepare your own case. However, if it will be difficult to get your witnesses to attend another day or evidence could be lost, you may wish to object to the other party's adjournment request.

### **WHAT IF I NEED TO MAKE AN URGENT REQUEST FOR AN ADJOURNMENT?**

Adjournment requests made late or even at the date of hearing (for the first time) should generally be based on unforeseeable circumstances such as the unavailability of a key witness or party, incarceration, illness, absence of translator, very late retention of counsel, or other emergencies.

While in these cases, a motion for the adjournment should certainly still be served on all the other parties and filed with the court, all parties should be prepared to proceed with the full case on the scheduled date. The adjournment is argued as a preliminary motion before the main hearing is to begin.

## WHAT FACTORS DOES A COURT CONSIDER IN DECIDING A MOTION FOR AN ADJOURNMENT?

A court has a general power to postpone or adjourn a hearing to such time and place, and on such terms, as are *just*. An adjournment is, for the most part, a matter of discretion for the court. This means that the court does not have to grant an adjournment, but must consider what the parties say are the reasons for wanting an adjournment. Adjournments are not given automatically or easily.

In deciding an adjournment request, the court will consider whether an adjournment is necessary in order to provide an opportunity for a fair hearing. In making its decision, the court will balance the interests of the parties and the interests of the administration of justice in the orderly processing of civil trials on their merits. In any particular case, several considerations may be factors.

Some of the considerations that might favour granting an adjournment are set out below (**NOTE:** *This list is not complete and other considerations may apply in your case*):

- A key witness or documentary evidence necessary or crucial to the case is not available as a result of some type of event outside the reasonable control of the party seeking the adjournment;
- An interpreter needed for the case is unavailable;
- A party to the case has a representative or lawyer who is unavailable or the party needs to seek counsel;
- A party to the case has his or her own proceeding on another date or is about to file an application and the matters should be heard together since their outcomes affect one another;
- Where a party is otherwise taken by surprise. For example, where a party to the case has little or no notice of the proceeding or insufficient details and is not prepared to defend the case;
- A party has made the adjournment request at the earliest opportunity;
- A party has made reasonable efforts to avoid the need for an adjournment;
- A party has recently retained a lawyer or made an application for legal aid; or
- Any prejudice that may result from granting or refusing the adjournment that cannot be remedied by the conditions being imposed by the court.

**TIP:** Every case is different and every request for an adjournment is also different. It is hard to compare one case to another when the court is exercising its discretion to grant or refuse an adjournment based on the particular circumstances of the case. The important thing to do is ensure that the court knows about all of the reasons that an adjournment should be granted (if you are requesting an adjournment) or all of the reasons that an adjournment should be denied (if you are opposing an adjournment request).

To get an idea of the factors that a court considers when deciding adjournment requests, you can review the case of *Khimji v. Dhanani Estate* (2004), 69 O.R. (3d) 790 (C.A.), available at the law library or through CanLII available through the following website address: <http://www.canlii.ca>

In *Khimji*, two judges of the Ontario Court of Appeal found that it was reasonable to deny the plaintiff a third adjournment because the plaintiff failed to make any effort to retain counsel who could act on the trial date and failed to make any effort to pay a previous costs order. The third judge disagreed and found that the plaintiff's request for a further adjournment was reasonable and should have been granted.

## 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: [www.attorneygeneral.jus.gov.on.ca](http://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](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"