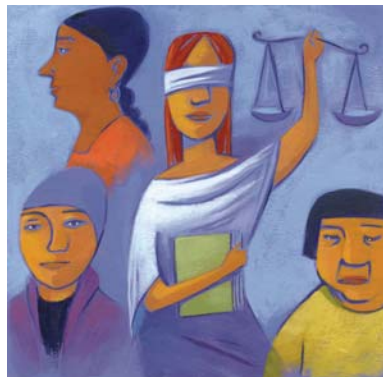


GUIDEBOOKS FOR REPRESENTING YOURSELF IN THE SUPERIOR COURT OF ONTARIO:



A Guide to Motions in a Civil Action

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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 Motions in a Civil Action

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 guide gives a general overview of the steps and procedures to follow to bring a motion in a civil case in the Ontario Superior Court of Justice.

A civil lawsuit requests compensation, often money, for cases such as breach of contract and injury from an auto accident. Criminal, family, small claims, residential tenant and housing cases are not dealt with in the civil motions court.

1. What is a motion?

A “motion” is a request to the court for an order in some preliminary issue of the action, often in a procedural matter.

Any person or company who is a “party” to a case can bring a motion. The “moving party” is the one making the motion to the court. The “responding party” is the opposing party.

Motions are heard by Masters and Judges; both are judicial officers of the court.

Rules of Civil Procedure

The Ontario *Rules of Civil Procedure* is the law that sets out the procedures in the Superior Court including the required steps for a motion. The *Rules* tell you what forms to fill out and the timelines that you must follow.

Some rules for motions are:

- Rule 16 (Service of Documents)
- Rule 37 (Motions – Jurisdiction and Procedure)
- Rule 39 (Evidence on Motions and Applications)
- Rules 56, 57, and 58 (Costs)
- Rules 59 and 60 (Orders)
- Rule 76 (Simplified Procedure)

Some types of motions are:

- Extend time to service a statement of claim or statement of defence
- Require production of documents related to the case
- Allow the statement of claim/defence to be amended
- Allow a new party to be added to the claim
- Grant a certificate of pending litigation on real estate
- Dismiss an action for delay
- Grant an interlocutory injunction to require a party to immediately stop doing something or to do something before the actual trial
- Set aside a registrar’s dismissal of an action

Toronto Motions: New Practice Direction

Effective January 1, 2010, the Superior Court of Justice implements a new practice direction.

For more information, visit: <http://www.ontariocourts.on.ca/scj/en/notices/pd/toronto/civil.htm>

2. Appearance motions

Step One: Schedule a Motion

Talk to your opponent first to find a time that is convenient for both of you to appear in court. If outside of Toronto, check with your local registrar at the court house as some courts have different procedures.

To schedule a motion in Toronto, call the scheduling unit at 416-327-5292.

Step Two: Prepare Motion Material

Prepare a **motion record** that contains a **Notice of Motion**, your request to the court, and a sworn **affidavit** with the facts and evidence you rely on for your position on the motion

Prepare one copy for the Court and one copy to be served on your opponent with the timeline in the rules. Remember to make one copy for yourself. The original motion record should be filed with the Court.

Affidavit of service sets out the day you served your opponent with the motion record.

Forms for use on motions are available at: www.lawhelpontario.org

Download form 37A or 76A (simplified rules) or get a copy from the court registrar.

Fill in the form with the necessary information. Ask for an oral hearing.

In the heading “RELIEF SOUGHT,” detail what you are asking the Court to decide.

An **affidavit** contains the facts on which you rely, usually set out in chronological order. State the facts objectively and simply. Attach photocopies of any documents that will help the court to understand your position such as contracts, invoices, or medical reports at the end of the affidavit as exhibits. Exhibits must be certified as true copies of the original document. A lawyer, paralegal or notary public can certify the exhibits as true copies and take your oath on the affidavit.

If someone brings a motion against you, you may want to prepare a motion record to respond to the motion. The responding motion record will contain an affidavit setting out the facts on which you rely upon in response to the motion. As stated above, state the facts objectively and simply. Attach any supporting documentation as Exhibits to your affidavit. You do not need to prepare a Notice of Motion for your responding motion record as a Notice of Motion is only required if you are the moving party.

Step Three: Service of Motion Material

Service means giving a copy of your motion record and the cases you want the master or judge to consider to your opponents. You must do this at least 7 days before the date of the motion but it is best to serve the material several weeks before the motion date so that the other side can prepare responding materials and will not ask for an adjournment (a new date) for the motion that can then delay the matter for six weeks or more.

If you are the responding party, your responding motion record must be served at least 4 days before the date of the motion.

Factum: A factum is a written submission that sets out the legal question you wish the court to answer with the facts, law and cases that support your arguments. A factum is generally not required on simple motions, but some rules state when a factum is required. A factum can be no longer than 20 pages. If you are the moving party, your factum must be served at least 7 days before the date of the motion. If you are the responding party, your factum must be served at least 4 days before the date of motion.

Step Four: Filing Motion Material

File all your motion material with the court office where the hearing will take place. If you are the moving party, your motion record must be filed with proof of service with the Court at least 7 days before the hearing date of the motion. If you are the responding party, your motion record must be filed with proof of service with the Court at least 4 days before the hearing date of the motion.

Also file an **Affidavit of Service** with the notice of motion. This is proof that your opponents received your written material.

If you have transcripts of cross-examination or discovery, these may also be filed.

Unless you have a waiver of fees granted by the court, the charge for filing a motion is currently \$127.00

Factum: If you are the moving party, your factum must be filed at least 4 days before the date of the motion.

Step Five: Confirmation

You must contact the other party to make sure that the motion will take place. (Rule 37.10.1). Then you should fax, e-mail or deliver confirmation of the motion in the one page form 37B to the Registrar of the court by 2:00 pm at least 3 days before the hearing. You should also send a copy of the confirmation to the other party by fax or e-mail. You may not request more time for your motion in the confirmation form than originally booked.

If you do not send in a motion confirmation form, your motion will not be heard and will be struck from the Court list. If you then wish to bring your motion again at a later date you will have to pay the \$127.00 filing fee again.

3. Going To Court

Where and When To Go

When scheduling your motion, make sure you get the address of the court building where your motion will be heard. A list of motions and courtrooms should be posted in a public area in the court buildings, often near the courtrooms where motions are being heard. There is a list of all court houses in Ontario online: <http://www.attorneygeneral.jus.gov.on.ca/english/courts/cadaddr.asp>.

In Toronto, most Masters' motions will be heard on the sixth floor of the court house at 393 University Ave. A list of motions and courtrooms are posted on the sixth floor across from the elevator, as well as on the tenth floor.

Court will usually open at 10 am. You should, however, always get to the courtroom early. This will give you a chance to "sign in" with the court registrar – print your name and telephone numbers legibly on the counsel slip and indicate that you are representing yourself.

Preparation

Review all the materials in your motion material and the other side's materials.

Write out what you want to say to the court; an outline is helpful. Focus on the big picture – what you want, what facts and evidence and law support your position. If there is a rule or case that sets out a test to be met to get the relief you want, be sure that you talk about the factors or steps in the test as it relates to the facts in your case.

Bring to court two copies of your motion record – one for you to use and one in case of a problem with the court’s copy.

Bring two copies of the draft **order** you want the master or judge to sign. An **order** is the official record of the court’s decision.

Making Your Submission

The Master or judge will usually hear the motions that are on consent and unopposed first, then the shorter opposed motions followed by the longer opposed motions. When your case name is called by the registrar, stand and move to the tables facing the judge or master.

The moving party will be the first to make submissions. The responding party will follow, then the moving party is able to **reply** to the arguments made by the responding party. Reply is short and not the time to repeat the original submission.

When making submissions, you may read from your notes but also look at the judge or master from time to time.

Court Room Etiquette

Demonstrating respect and deference to the court is important; it will make you look more professional.

Always stand when speaking to the court.

Address the judge as “Your Honour” and the master as “Master”. You should never interrupt the judge or master or speak when they are speaking. Nor should you interrupt your opponent.

During argument, speak directly to the judge or master and never to your opponent. If you want to refer to a submission made by your opponent, you do so in your response or reply.

It is important to treat your opponent with respect. Do not criticize or make any accusations about your opponent; a calm, rational response will make a favourable impression with the judge or master.

4. Costs and Consequences

Legal fees and disbursements such as the court fee and the cost of photocopies are known as “costs”. All parties are to complete a costs outline- form 57B-- and are to exchange them before the start of the motion. A costs order does not usually compensate 100% of the costs. The Judge or Master hearing the motion has the discretion to decide whether to give costs, the amount and when they must be paid. Costs must be asked for; they are not automatic. Remember to ask for costs in your Notice of Motion. If you are the responding party and you are successful on the motion, you can ask the Master or Judge for costs at the end of the motion.

If a costs order is made against you and you do not pay the money as ordered, the other side can ask the court to dismiss your claim or defence. You can bring a motion to review the costs order if you have difficulty paying the costs order, but you must provide full financial disclosure on such a motion.

Do not bring unnecessary motions that try to cause delay or add costs to the proceeding. In those situations, you may have to pay costs or the other party may bring a motion for an order prohibiting you from making more motions in a proceeding without permission of the court- Rule 37.16.

5. In-writing Motions

Motions on consent or unopposed by the other party may be brought in writing which means that you and the opposing party do not have to come to the court. An example is a motion to amend a claim or defence when the parties consent.

The notice of motion must state that it is in writing and must be served the same as an appearance motion.

Materials must be prepared and filed just as you would for an attendance motion whether you are the moving party or the responding party.

The responding party can insist on an attendance motion.

Ex Parte motion (without notice)

On rare occasions, the court allows a motion to be heard without serving the other side. When someone repeatedly does not comply with court orders, the court may give one last chance to obey the order and if the person still does not comply, the other side may be allowed to apply ex parte to strike the statement of claim or defence. Another example of when a party may bring an ex parte motion is where a party has been noted in default. A party who has been noted in default is generally not entitled to notice of any step in the action except in limited circumstances-Rule 19.02(3).

6. Other Issues

Rescheduling a motion

If you are **unable to attend** on the date of the motion, notify your opponent, in writing if possible, and call the court office to reschedule **before** the date of the motion. You must still confirm the motion as adjourned by faxing a motion confirmation form at least 3 days before the motion date. If you are not able to obtain a new date to reschedule the motion or the other side does not agree to reschedule the motion, you may have to attend court to ask the Master or Judge to grant you an adjournment.

Abandoned motions

If you do not want a scheduled motion to be heard, you can file a notice of abandonment before the date of the motion. If you are the moving party and you do not come to court on the motion day, the court assumes that you do not want the court to deal with the issue in your motion record.

STATUS HEARINGS - Rule 48

If an action has not been **set down for trial** within two years of the filing of the statement of defence, the court office will send the parties a **status notice**. The parties then have three choices:

Set the action down for trial; this means all procedural steps have been completed.

File with the court office form 78A, a timetable that all parties have agreed to with a set down date no later than one year from the date of the status notice.

Ask for a status hearing. The court office will notify you of the date to attend at the court. At the status hearing, the plaintiff will have to satisfy the court why the case should be allowed to continue and not dismissed.

If you **do not** do anything, the court office will **dismiss the action**.

Where you can get more information:

Remember to visit www.lawhelpontario.org for more help.

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: <http://www.attorneygeneral.jus.gov.on.ca/english/courts/>

Legal research: www.canlii.ca

Guide to Ontario Courts: <http://www.ontariocourts.on.ca/scj/en/>

Rules of Civil Procedure for Ontario: <http://www.canlii.org/on/laws/regu/1990r.194/20070813/toc.html>

Lawyer Referral Service (Free Service): Dial 1-800-268-8326 or 416-947-3330 (within the GTA).

When you call the LRS, they will provide you with the name of a lawyer who will provide a free consultation of up to 30 minutes to help you determine your rights and options. For more information, visit: <http://www.lsuc.on.ca/public/a/faqs---lawyer-referral-service/>

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

Your feedback is important to us.

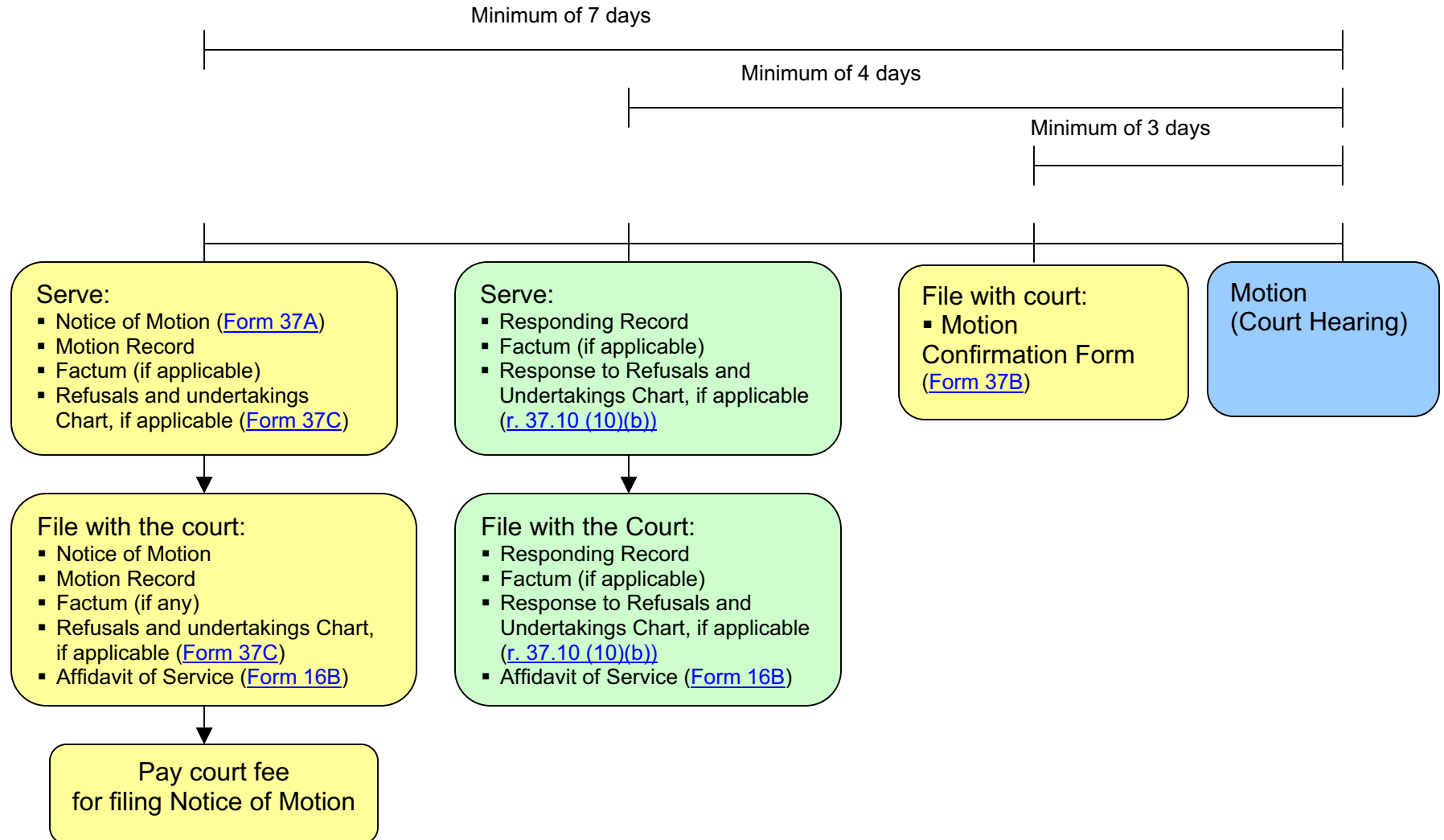
Please tell us how we can help you better by taking a moment to comment on this Guidebook. Was this Guidebook helpful to you and why? What can we do to make this Guidebook better?

Send your response to lho@pblo.org or

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

Rules of Civil Procedure

Service and Filing of Motion Materials



Note: This is a summary and is not intended to cover every situation. It does not cover every step in the proceeding. It does not constitute legal advice. You should consult a lawyer for legal advice. To calculate time under the *Rules of Civil Procedure*, refer to rule [3.01](#) and the definition of “holiday” under rule [1.03](#).