

GUIDEBOOKS FOR REPRESENTING YOURSELF IN THE SUPERIOR COURT OF JUSTICE:



Defending a Civil Proceeding in the Superior Court of Justice

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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.

Defending a Civil Proceeding in the Superior Court of Justice

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.

1. Before you start

This guidebook will assist you in defending a proceeding started against you in the Superior Court of Justice of Ontario. The proceeding may have been started with a *Statement of Claim* or a *Notice of Application*. For information about what these documents are, please see the guidebook called *Starting a Civil Proceeding in the Superior Court of Justice*.

If you have been served with a Statement of Claim or a Notice of Application, you might find it helpful to talk to a lawyer about what you need to do. Defending a proceeding is complicated and time-consuming and the consequences of doing things late or incorrectly may be serious. If you have any questions at all about your case, see a lawyer. Court staff cannot give you legal advice.

Going to court can be an expensive way of resolving a disagreement. There are court fees for most steps in a case. You could be ordered by the court to pay some or all of the costs of the other parties, which could be very significant. Even if you win and are entitled to costs from the other parties, those costs may not even come close to the money you spend on your case.

The majority of cases settle before trial. If you think your case can be settled, you may want to consult a lawyer about your alternatives. For example, if you agree that you owe money to the person who is suing you, you may be able to resolve the case by paying it to them. Other alternatives are:

- Mediation,
- Arbitration,
- A letter from a lawyer to the other party.

Being served

You may have been served with a Statement of Claim or a Notice of Application. Both documents start a proceeding against you.

- If you are served with a Statement of Claim, you are a party to an *action*. You are called the *defendant*. The person who started the action is called the *plaintiff*.
- If you are served with a Notice of Application (which may be contained within an Application Record), you are a party to an *application*. You are called the *respondent*. The person who started the action is called the *applicant*.

Generally, you must be *personally served* with the Statement of Claim or Notice of Application. Someone will have handed you the document either at your home or work. However, if a person has difficulty serving you, the Rules provide for other ways for the plaintiff or applicant to serve you. There are different rules for serving a business.

For additional information on service of documents (including information about alternative ways for you to be served), read the guidebook called *Starting a Civil Proceeding in the Superior Court of Justice* and see Rules 16 and 17 of the *Rules of Civil Procedure*.

You have been served once the document has been left with you. Be aware that once you have been served, procedural time limits relating to your lawsuit begin to run.

About the proceeding

The Statement of Claim or Notice of Application sets out general information you need to know about the proceeding:

- The Statement of Claim or Notice of Application will include a *general heading* that you will need to include on every document you prepare in the proceeding. This is the part at the top of the document that identifies it

as belonging to your case. It includes a court file number, which is the identifying number for your case. For more information about general headings, see the guidebook called *Starting a Civil Proceeding in the Superior Court of Justice*;

- The location of the court office where all subsequent documents must be filed;
- The name and address of the person or lawyer who filed the document;
- The delivery address for the plaintiff or applicant;
- If you have been served with a Statement of Claim, how long you have from the day you were served to file a Statement of Defence and respond to the Statement of Claim before the plaintiff can proceed to seek default judgment against you; and
- If you have been served with a Notice of Application, the location and date of the court hearing (this determines when you will need to serve and file your responding materials).

If you were served with a Statement of Claim, it may say that the action is brought under Simplified Procedure, Rule 76 of the *Rules of Civil Procedure*. This Rule applies to actions for \$100,000 or less, not including interest or costs. Procedures under Rule 76 are simpler, and the trials are generally shorter. For example, each party is permitted to engage in up to two hours of oral examination for discovery, with the total two-hour maximum time limit applying regardless of the number of parties or persons to be examined. A plaintiff can choose to bring a claim under Rule 76 even if the claim is for more than \$100,000, but you can object to the use of Simplified Procedure in these cases. For more information, please see Rule 76 or the guidebook called *Starting a Civil Proceeding in the Superior Court of Justice*.

Other special rules may apply to your case which is not covered by this series of guidebooks. If one of these special rules applies to your case, you will need to find out more by reading the rules and/or speaking to a lawyer. See Part 1 of the guidebook called *Starting a Civil Proceeding in the Superior Court of Justice* for more information.

Time limits

Time limits are important in legal claims in two ways:

1. Limitation periods

There may be a time limit on how long someone can wait before starting a lawsuit, which is set out in the *Limitations Act* or other legislation. If the person who has started the lawsuit against you has not done so within the applicable limitation period, you can use that as a defence to the lawsuit. If you are uncertain about what limitation period applies to your case, you should consult a lawyer. Court staff cannot advise you on limitation periods.

Most limitation periods for lawsuits started in Ontario are 2 years and start from the date that:

- The event that the lawsuit is about happened; or
- The date the person who has sued you found out or reasonably should have found out about his or her possible claim.

2. Procedural time limits

There are many procedural time limits that will affect your case, which are set out in the *Rules of Civil Procedure*. These time limits exist to make sure that cases proceed in a timely way. Not following them can result in costs or judgment being ordered against you.

2. Defending the proceeding

Whether the lawsuit against you has been started by Statement of Claim or by Notice of Application, the first thing you need to do is to prepare either a Statement of Defence (Form 18A) (if you were served with a Statement of Claim) or a Notice of Appearance (Form 38A) (if served with a Notice of Application). If you don't have time to complete your Statement of Defence, you will need to prepare a Notice of Intent to Defend (Form 18B). If you are preparing a Statement of Defence and want to make a claim against the plaintiff, another defendant or a third party, you may want to bring a counterclaim, crossclaim or third party claim.

Once you have prepared your document, you will need to *serve* it on the other parties. You will then need to prepare an Affidavit of Service (Form 16B) to swear that the document was served and *file* your document and Affidavit of Service at the court office.

Parts 3, 4, 5, 6 and 7 of this guidebook explain each of these steps. Sample forms 18A, 18B, 38A, and 16B are included at the end of this guidebook with easy-to-read instructions on completing them. You can download the official content of forms from the following website: www.ontariocourtforms.on.ca. 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. You will need to attach a Backsheet (Form 4C) to all documents you file with the court. This has to be the last page on all documents you file with the court, with the type facing out. A sample Backsheet is included at the end of the guidebook in this series called *A Guide to Preparing your Affidavit*.

On all court forms, you need to set out the facts carefully and clearly. Be concise and specific. Do not give your opinion about the case. You will need to do research on the laws that apply to your case to understand what you need to prove to the court.

Serious consequences can result if you decide not to file a Statement of Defence or respond to an Application, or do so outside of the time limits set out in the Statement of Claim or Notice of Application. The rest of Part 2 of this guidebook describes the time limits for serving and filing a Statement of Defence and Notice of Appearance, and the consequences of not meeting those time limits.

Time limits for serving and filing a Statement of Defence

You need to serve your Statement of Defence and file it with the court (with an Affidavit of Service) within the following time limits:

IF YOU WERE SERVED	THE TIME LIMIT IS
in Ontario	within 20 days
elsewhere in Canada or in the United States	within 40 days
anywhere else	within 60 days

When you calculate the number of days you have to file a Statement of Defence, you do not include the day you were served.

If you do not file a Statement of Defence in time, the plaintiff might ask the court for a *default judgment* requiring you to pay the amount the plaintiff seeks (see Rule 19). If the plaintiff gets a default judgment against you, you no longer have the opportunity to tell the court why you should not have to pay that amount, unless the default judgment is set aside.

If you require more time to prepare your Statement of Defence, you can serve and file a Notice of Intent to Defend (Form 18B) within the time you have to deliver the Statement of Defence. By delivering a Notice of Intent to Defend, you will have an extra 10 calendar days to deliver your Statement of Defence.

If you want to defend yourself but are filing your Statement of Defence late, the court office may still accept it for filing. When you file the Statement of Defence, court staff will check if you have been *noted in default* or if a default judgment has been granted against you (see Rule 19).

If you have been noted in default or a default judgment has been granted, you can ask the court to set aside the noting in default or default judgment. You will need to bring a *motion*, and you may want to speak to a lawyer about how to do this.

Time limits for serving and filing a Notice of Appearance

A Notice of Appearance needs to be served on the applicant and filed with the court **right away** (see Rule 38.07). Any delay in delivering a Notice of Appearance may result in you not having notice of any further steps or other documents in the proceeding.

If you have been served with a Notice of Application and do not file a Notice of Appearance, you may not receive important information about the application. At the hearing, the court may make an order against you without hearing your side of the story.

3. Preparing a Statement of Defence

When you start preparing your Statement of Defence, remember the following:

- You must set out a statement of the facts (*allegations*) that you think the court should consider. Your research on what you need to prove to the court will be important to ensure that you do not include too much information or forget to include important information. You will have to prove the facts in your Statement of Defence in court, if the case goes to trial.
- You will need to outline in your Statement of Defence whether you agree with, deny, or have no knowledge of each paragraph in the Statement of Claim. Follow the format of Form 18A accordingly.
- You must respond to each paragraph of the Statement of Claim in your Statement of Defence. The easiest way to do this is to go through the paragraphs one by one. You could say: “in response to paragraphs 3 to 4 of the Statement of Claim” and then set out your response to those particular paragraphs. When you have finished your defence, make sure you have responded to every paragraph in the Statement of Claim.

This document will be critical to your defence. You will want to make sure you get it right. There may be defences available to you that you do not know about. You may have questions about the claim or your defence. It might help you to consult a lawyer at this point to make sure your Statement of Defence is correct and complete.

For further information about the Statement of Defence, see Rule 18.

4. Do you need to prepare a counterclaim, crossclaim or third party claim?

If an action is started against you, you may want to make a claim against the plaintiff (“counterclaim”), another defendant (“crossclaim”), or a person or business that is not yet a party (“third party claim”). You may need to include information about your claim in your Statement of Defence. See Rules 27, 28 and 29 for more information.

Counterclaims, crossclaims and third party claims are complicated procedures. You should speak to a lawyer to find out more about these procedures and whether you should pursue them.

5. Preparing a Notice of Appearance and other documents for an application

A Notice of Appearance is a simple form, but it is important to your response to an application. It tells the Applicant that you are going to respond to the claim against you. It also provides them with your address for service so they can mail, fax or deliver documents to you, rather than serving them personally.

Until you deliver your Notice of Appearance, you are generally not entitled to receive further notice or documents, to file material, to examine or cross-examine a witness, or to be heard at the hearing of the application.

Once the Notice of Appearance is filed you will serve and file a Factum. A Factum is a concise argument stating the facts and law that you will rely on. The applicant will serve and file an Application Record (as well as a Factum), and if you think the applicant’s Application Record is incomplete, you may also prepare a Respondent’s Application Record. The Application Record contains all the material that will be used at the hearing, such as affidavits, transcripts of examinations of witnesses, and transcripts of cross-examinations on affidavits. See Rule 38 for more information about other documents in an application, and when they need to be served and filed.

For information on preparing affidavits, see the guidebook in this series called *A Guide to Preparing your Affidavit*. Swearing an affidavit is a serious matter and swearing a false affidavit may be a criminal offence.

6. Serving your documents

Once you have prepared your documents, you need to *serve* them on the other parties. You can do this by delivering the document to the address for delivery for each party set out in the Statement of Claim or Notice of Application.

Serving a document is different from simply sending it. There are special rules for how to serve a court document. The correct way of serving a document on a party in Ontario is set out in Rule 16. For information about serving a party outside of Ontario, see Rule 17 or speak to a lawyer.

A Statement of Defence, Counterclaim, Notice of Appearance, Respondent’s Application Record or Factum can be served on a party who has a lawyer of record by:

- mailing it to the lawyer’s office;
- leaving it with the lawyer or an employee in the lawyer’s office;
- sending a copy to the lawyer’s office by courier;
- faxing it to the lawyer’s office; or

- emailing it to the lawyer, if you can get an acknowledgement from the lawyer you are serving.

If you are serving documents on a lawyer of record by email, courier, or fax, there are restrictions that you need to be aware of. See Rule 16.05 for more information.

To serve these documents on a party who does not have a lawyer, you can mail a copy to the last address for service provided by the party, or, if no such address is provided, to the party’s last known address (see Rule 16). You can mail the document by registered mail or regular lettermail. Your document will be considered served on the fifth day after it was mailed, but you can file it before then. Another option is to serve your document by *personal service* or an *alternative to personal service*. See the guidebook called ***Starting a Civil Proceeding in the Superior Court of Justice*** for more information about personal service and alternatives to personal service.

Normally, when you file a document at the court office that you needed to serve on another party, you will also need to file an Affidavit of Service (Form 16B) swearing that the document was served. An Affidavit of Service includes all the details of when and how each party was served and a copy of the document that was served on them. A sample Affidavit of Service is included at the end of this guidebook.

7. Filing your documents

Once your documents have been served, it is time to file them at the court office. Remember to keep copies for your own file.

When you file certain documents, you will also need to pay a court fee. For a current listing of fees, go to www.e-laws.gov.on.ca. Choose your preferred language and click on “Search or Browse Current Consolidated Law.” Click on “A” and then click on the plus sign to the left of “Administration of Justice Act.” Click on “Superior Court of Justice and Court of Appeal – Fees.”

If you are not able to afford court fees, you may be eligible to have fees waived. For more information on fee waiver, go to www.attorneygeneral.jus.gov.on.ca. Click on your preferred language, and then click on “Court Services.” Scroll down to “Court Fees” and click on “A Guide to Fee Waiver Requests.”

You do not have to go to the court office yourself to file your document. You may send a representative to file the document for you or you can mail them. However, if you can, you should take your documents in personally. If there are problems with your documents, court staff may inform you and you can avoid wasting time sending documents back and forth.

TO FILE:	YOU WILL NEED TO BRING WITH YOU:
a Statement of Defence (Form 18A) or Notice of Intent to Defend (Form 18B)	1 copy with an Affidavit of Service for the court file and the filing fee.
a Notice of Appearance (Form 38A)	1 copy with an Affidavit of Service for the court file and the filing fee.
a Factum, a Respondent’s Application Record and supporting affidavits	1 copy with an Affidavit of Service for the court file. There is no fee for filing the Respondent’s Application Record, factum or affidavits.

Court staff will stamp each original with the date it was filed. The original will be placed in the court file. You should keep a copy of all your filed documents for yourself.

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.

Appendix 1: Statement of Defence (Form 18A)

[Insert general heading as described in Part 4 of the guidebook called Starting a Civil Proceeding in the Superior Court of Justice]

STATEMENT OF DEFENCE

1. The defendant admits the allegations contained in paragraphs ***[insert the numbers of the paragraphs you admit to]*** of the statement of claim.
2. The defendant denies the allegations contained in paragraphs ***[insert the numbers of the paragraphs you deny]*** of the statement of claim.
3. The defendant has no knowledge in respect of the allegations contained in paragraphs ***[insert the numbers of the paragraphs you have no knowledge of]*** of the statement of claim.
4. ***[In numbered paragraphs, set out the facts (allegations) that support your position, as described in Part 3. You will have to prove these facts in court if your case goes to trial. If there is a document that supports your position, give details of that document, such as the date, who wrote it, and the reason why you are relying on the document to support your position.]***

[Insert the date you prepared the document]

[Type or clearly print your name, address and telephone number here. Sign directly above your name.]

TO *[Insert the name and address of each party or their lawyer.]*

RCP-E 18A (November 1, 2005)

Appendix 2: Notice of Intent to Defend (Form 18B)

[Insert general heading as described in Part 4 of the guidebook called Starting a Civil Proceeding in the Superior Court of Justice]

NOTICE OF INTENT TO DEFEND

The defendant *[Insert your name]* intends to defend this action.

[Insert the date you prepared the document]

[Type or clearly print your name, address and telephone number here. Sign directly above your name.]

TO *[Insert the name and address of each party or their lawyer.]*

RCP-E 18B (November 1, 2005)

Appendix 3: Notice of Appearance (Form 38A)

[Insert general heading as described in Part 4 of the guidebook called Starting a Civil Proceeding in the Superior Court of Justice]

NOTICE OF APPEARANCE

The respondent *[Insert your name]* intends to respond to this application.

[Insert the date you prepared the document]

[Type or clearly print your name, address and telephone number here. Sign directly above your name.]

TO *[Insert the name and address of each party or their lawyer.]*

RCP-E 38A (November 1, 2005)

Appendix 4: Affidavit of Service (Form 16B)
(To be filed as proof of service of other documents)

[Insert general heading as described in Part 4 of the guidebook called Starting a Civil Proceeding in the Superior Court of Justice]

AFFIDAVIT OF SERVICE

I, *(full name)*, of the *(City, Town, etc.)* of, in the *(County, Regional Municipality, etc.)* of, MAKE OATH AND SAY *(or AFFIRM)*:

[INSERT ONE OF PARAGRAPHS A TO G BELOW, DEPENDING ON HOW YOU SERVED THE DOCUMENT. THEN PROCEED TO PARAGRAPH H.]

[A. Personal Service]

1. On *(date)*, at *(time)*, I served *(identify person served)* with the *(identify documents served)* by leaving a copy with him *(or her)* at *(address where service was made)*. *(Where the rules provide for personal service on a corporation, etc. by leaving a copy of the document with another person, substitute: by leaving a copy with (identify person by name and title) at (address where service was made).)*
2. I was able to identify the person by means of *(state the means by which the person's identity was ascertained.)*

[B. Alternative to Personal Service – Leaving a copy with an adult person in the same household]

1. I served *(identify person served)* with the *(identify documents served)* by leaving a copy on *(date)*, at *(time)*, with a person *(insert name if known)* who appeared to be an adult member of the same household in which *(identify person served)* is residing, at *(address where service was made)*, and by sending a copy by regular lettermail *(or registered mail)* on *(date)* to *(identify person served)* at the same address.
2. I ascertained that the person was an adult member of the household by means of *(state how it was ascertained that the person was an adult member of the household)*.
3. Before serving the documents in this way, I made an unsuccessful attempt to serve *(identify person)* personally at the same address on *(date)*. *(If more than one attempt has been made, add: and again on (date).)*

[C. Alternative to Personal Service – Service by mail]

1. On *(date)*, I sent to the *(identify person served)* by regular lettermail *(or registered mail)* a copy of

the *(identify documents served)*.

2. On *(date)*, I received the attached acknowledgment of receipt card *(or post office receipt)* bearing a signature that purports to be the signature of *(identify person)*.

[D. Service by Mail on a Solicitor]

1. I served *(identify party served)* with the *(identify documents served)* by sending a copy by regular lettermail *(or registered mail)* on *(date)* to *(name of solicitor)*, the solicitor for the *(identify party)*, at *(full mailing address)*.

[E. Service by Fax on a Solicitor]

1. I served *(identify party served)* with the *(identify documents served)* by sending a copy by fax to *(fax number)* on *(date)* to *(name of solicitor)*, the solicitor for the *(identify party)*.

[F. Service by Courier on a Solicitor]

1. I served *(identify party served)* with the *(identify documents served)* by sending a copy by *(name of courier)*, a courier, to *(name of solicitor)*, the solicitor for the *(identify party)*, at *(full address of place for delivery)*.

2. The copy was given to the courier on *(date)*.

[G. Service by Mail on a Party acting in Person or a Non-Party]

1. I served *(identify party or person served)* with the *(identify documents served)* by sending a copy by regular lettermail *(or registered mail)* on *(date)* to *(full mailing address)*, the last address for service provided by *(identify party or person)* *(or, where no such address has been provided: the last known address of (identify party or person).)*

[H. You must have your Affidavit of Service sworn before an authorized commissioner for taking affidavits, a notary public, or a lawyer. See the guidebook Guide to Preparing your Affidavit for more information.]

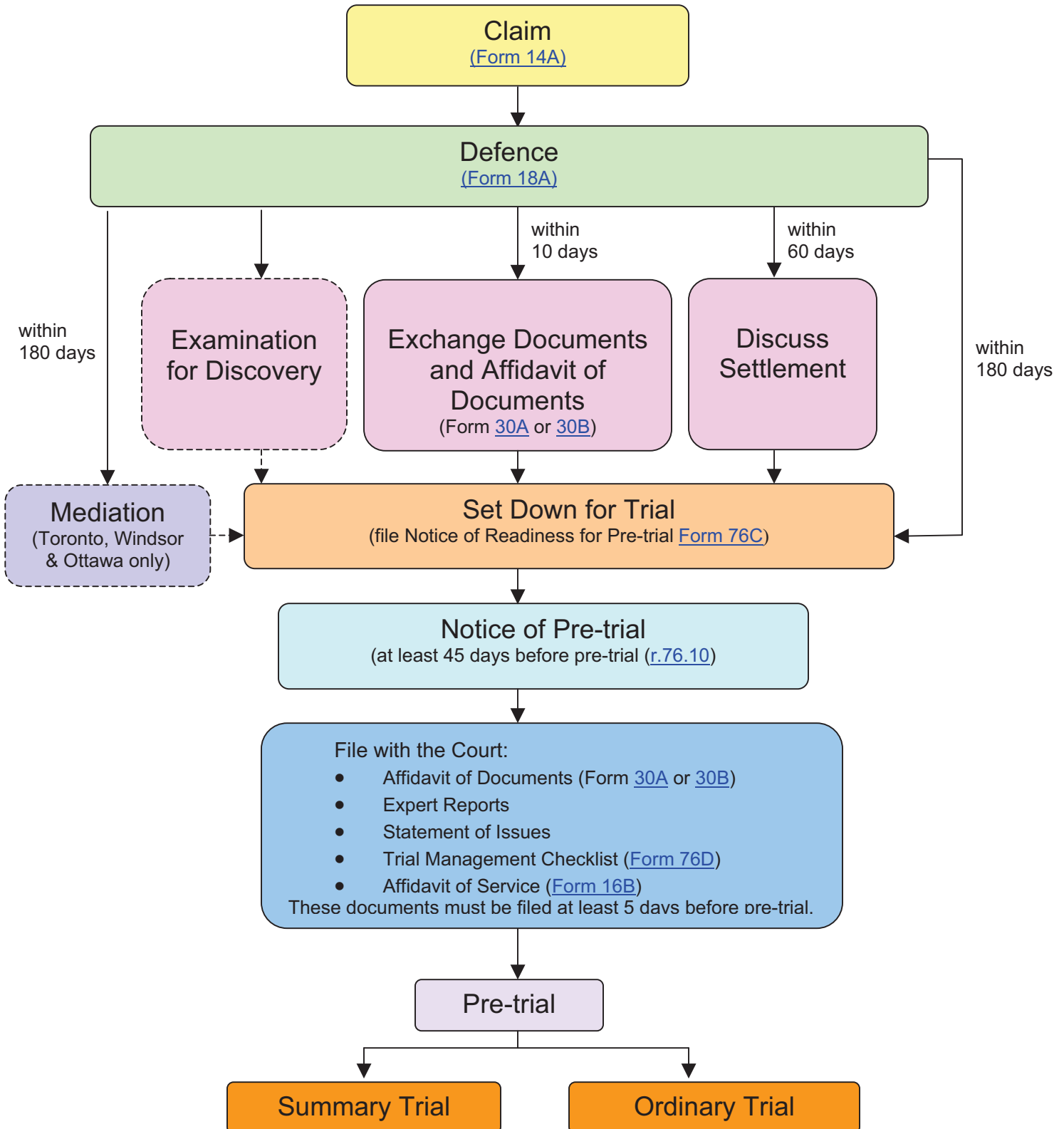
Sworn *(or affirmed)* before _____)
me at the *(City/Town/etc.)* of _____)
in the Province of Ontario _____)
this ____ day of _____, 20__)

Person Serving Document

Commissioner for Taking Affidavits
(or other title)

Rules of Civil Procedure

Simplified Procedure
under rule 76

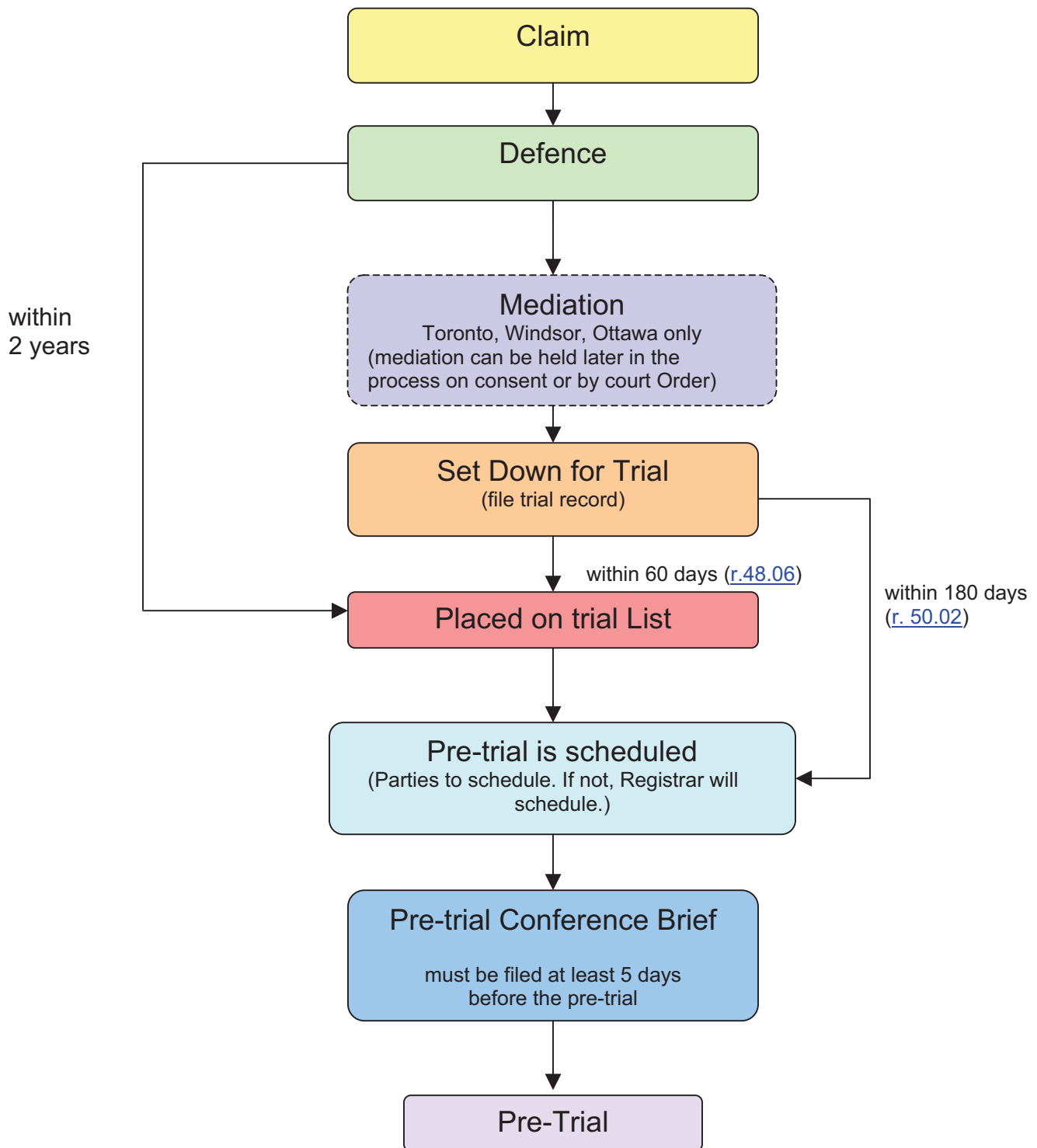


Note: This summary assumes one plaintiff and one defendant and the pleadings include only one claim and one defence. It is not intended to cover every situation. It does not cover every step in the proceeding. It does not constitute legal advice. You should consult a lawyer for legal advice. For more information, see the guide: *Simplified Procedure in the Superior Court of Justice* and the Mandatory Mediation flowcharts.

Rules of Civil Procedure

Pre-Trial

Ordinary Procedure



Note: This is a summary which assumes one claim and one defence. It 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.