A Guide to Process for Family Cases at the Superior Court of Justice

Ontario Superior Court of Justice, April 2016

Please refer to Ontario's Family Law Rules and the Practice Directions of The Ontario Superior Court of Justice for changes that have been made since that time.

Contents

Introduction

The goal of this Guide is to help you understand the steps in a family case at the Superior Court of Justice, including the Family Court of the Superior Court of Justice (Family Court).

There will be either a Superior Court of Justice or a Family Court in your community. There may also be an Ontario Court of Justice where some family cases are heard. If you are seeking a divorce or there are property issues, either on their own or with other claims, your case must be started in the Superior Court. Cases that only include claims for custody and or access of a child or support can be started in the Ontario Court of Justice, if there is one in your community.

There will be some differences depending on whether your case is at the Superior Court of Justice or the Family Court which are explained below.

This guide gives basic legal information about the steps in a family case. It does not provide a summary of the family laws that may apply in your situation. **It also does not give legal advice**. Try and speak with a family lawyer for advice regarding your case. You can find information about how to find a lawyer at page 7 of this guide.

The Superior Court of Justice thanks Community Legal Education Ontario, Legal Aid Ontario, Mediate393, TAG and Pro Bono Law Ontario as well as family lawyers Cheryl Goldhart, Lorna Yates, and Carol Smith for their assistance with the preparation of this document.

Legal issues

Family law is complicated. There are a number of different laws that may apply in your situation. Some of them are the ***Child Support Guidelines***, the ***Family Law Act*** and the ***Children's Law Reform Act***. If you've been married, the ***Divorce Act*** also applies.

Information about these laws is available on the Your Legal Rights website from Community Legal Education Ontario (CLEO). You can start by looking at the family law resources section of this website. You may also want to review the Ministry's publication *What You Should Know About Family Law in Ontario* which should be available in the Family Law Information Centre (FLIC) in your courthouse.

The Family Law Rules

The ***Family Law Rules*** tell you the Court process you have to follow. Each section of this guide shows you the ***Family Law Rules*** that apply at each step in the court process. You need to be familiar with them and follow them. These Rules are available online at: www.ontario.ca/laws/regulation/990114.

Under the **Family Law Rules**, *you will need to prepare certain documents for each step in the process. These documents are available at:* www.ontariocourtforms.on.ca/english/family/. *You can also get these forms at the courthouse.*

These Rules give you the minimum timelines that you must meet and have specific rules about how days are counted. For example, if a rule or order provides for less than seven days for something to be done, Saturdays, Sundays and other holidays when the court office is closed do not count as part of the period. See rule 3 for more information about counting days.

In addition to the rules, the Superior Court of Justice has Practice Directions that must be followed. This includes a provincial Practice Direction that applies to all locations and as one or more Practice Directions for each region in the province. These Practice Directions can be found on the Practice Directions and Policies page of the Superior Court of Justice's website.

Please note that these rules and Practice Directions apply to all parties. You will be expected to take all steps and prepare all documents that are required regardless of whether or not you have a lawyer assisting you with your case.

Legal advice

Understanding the law and making sure you get correct information can be difficult. If you get the wrong information or do not know how the law applies to your situation, it can be harder to resolve your family law case. Getting advice from a family lawyer can help.

Many people find a lawyer based on recommendations from friends or family members. You can also find a lawyer through the **Law Society of Upper Canada**'s online referral service at www.lawsocietyreferralservice.ca. The Referral Service will give you the name of a lawyer who practices family law in your community who will give you a free consultation of up to 30 minutes.

If you can't use the online service, you can call the referral service's crisis line between 9:00 a.m. and 5:00 p.m. Monday to Friday. The crisis line can be reached toll free at **1-855-947-5255** or **416-947-5255** from the Greater Toronto area.

If you can't hire a lawyer for your whole case, you can still meet with one for some initial advice or to help you with one or more steps in the case. A lawyer who is willing to provide services for part of a case is sometimes known as a lawyer who provides unbundled or limited scope services.

If your income is low, **Legal Aid Ontario** has Advice Lawyers who are available at certain times in the FLIC to give you legal advice about your case. If your income isn't low enough, the Advice Lawyer can still give you general information about the family court process. If you are in Court that day and your case is about child custody, access, or support, you may also be able to get some help from a Duty Counsel lawyer if you qualify for their assistance. Duty Counsel are only available in some Superior Court of Justice locations. You can call your local court office or Legal Aid's summary advice telephone service at **1-800-668-8258** to see what services are available in your community.

If you live in a community where there is an Ontario law school, some help may be available from a **student legal aid clinic**. Contact information for these clinics is available from Legal Aid Ontario.

Alternative dispute resolution

There are a number of other ways that you and your ex-partner can try to settle your issues, either before or after a court case has been started.

Negotiation

Negotiations are discussions in which you and your ex-partner try to resolve some or all of the outstanding issues. You are encouraged to negotiate with your ex-partner throughout the court process. If you are unable to negotiate directly with them because of a bail restriction or for any other reason, you can negotiate through lawyers or another neutral person.

If you are able to reach an agreement, you need to put the terms that you have agreed to in writing. If you haven't started a court action, the written agreement that should be prepared is called a Separation Agreement. If a court case has been started, the written agreement that is normally prepared is called Minutes of Settlement.

There are rules in sections 54 to 56 of the ***Family Law Act*** about how to prepare an enforceable separation agreement. It is important to note that a Separation Agreement can potentially be set aside if a party failed to make financial disclosure when the agreement was made. Also, it is always best for each of you to get independent legal advice before the Agreement is signed to ensure that you understand your rights and obligations.

Mediation

Mediation is a voluntary, private way to resolve family law issues. If you and your ex-partner agree, a trained family mediator can work together with you to reach an agreement.

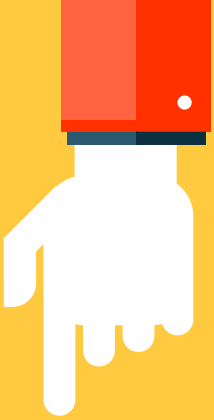
There are many benefits to the mediation process, especially for family issues. For example:

- It is a process where you and your ex-partner work together to address the issues that must be resolved.
- Mediators are trained to help you and your ex-partner communicate and negotiate better.
- The focus in mediation is for you and your ex-partner to find your own solutions.

- Mediation is very affordable. Mediators are available in your Court and their services are either free or available for a fee that is based on your income.
- Mediation can also be less stressful than the court process.

A mediator will first meet with you and your ex-partner separately to make sure you both want to participate and that the process will be safe for everyone. After that meeting, the mediator will usually arrange a few meetings with both of you. At those meetings, the mediator uses a number of different skills to help you identify potential solutions that can meet both your interests.

Family mediators do not provide legal advice. It is important that you and your ex-partner get the advice you need to make informed decisions about your agreement. If your income is low enough, Legal Aid Ontario may help you pay for a lawyer who can give you advice about your agreement.



You can find information about the subsidized mediation services that are available on the Ministry's website or at the Family Law Information Centre at your court office. Contact information for each court in Ontario is available on the Ministry's website.

Mediation-arbitration

In some communities in Ontario, mediation-arbitration services are available as another way to help people resolve their family law issues. In this process, a professional acts first as a mediator to help you and your ex-partner agree on your issues. Most people are able to settle some or all of their issues in mediation, which can then be put into a written agreement.

If your issues aren't settled in mediation, you begin a separate arbitration process, usually with the same professional. In arbitration, you present your case to the arbitrator and respond to your ex-partner's case. Your ex-partner does the same.

After the hearing is finished, the arbitrator makes a final decision which is called a family arbitration award. The final arbitration award must be followed by both of you and may be enforced by the Court. See rule 8(3.2) for more information (or rule 14(24) if a case has already been started).

If either you or your ex-partner believe that the arbitrator has made a mistake you may be able to appeal the decision. Information about family arbitrations, including mediation-arbitrations, is available in the family arbitration section of the Ministry's website. See sections 46 to 54 of rule 38 for more information.

Collaborative family law

Collaborative family law is a cooperative approach to resolving family disputes. If you and your partner agree to try collaborative family law, your lawyers agree in advance in writing not to go to Court. They then work together with you and your ex-partner to exchange information and develop an understanding of your needs and expectations.

Once you have this information, you are supported to make choices that you and your ex-partner agree on about financial and parenting issues. What you agree on using this team problem-solving approach is then put in your separation agreement.

Where you aren't able to come to an agreement through collaborative family law you can still go to Court, but you will need to hire a different lawyer to represent you.

Information about how to find a collaborative family lawyer in your community is available at the Ontario Collaborative Law Federation website.

Other services available at your court

There are **Family Law Information Centres** (FLICs) at each Superior Court of Justice where family cases are heard. Information and Referral Coordinators (IRCs) are available at certain times in the FLIC to help you understand your needs and to refer you to services in your community. IRCs can also give you information about family mediation and other ways to solve your issues.

If your income is low, **Legal Aid Ontario** has Advice Lawyers who are available at certain times in the FLIC to give you legal advice about your case. If your income isn't low enough, the Advice Lawyer can still give you general information about the family court process. If you are in Court that day and your case is about child custody, access, or support, you may also be able to get some help from Duty Counsel if you qualify for their assistance. Duty Counsel are only available in some Superior Court of Justice locations.

You may also be able to get help to complete your family court forms from law students through the **Family Law Project of Pro Bono Students Canada**. These services are currently available in Windsor, Kingston, Ottawa, London, Toronto, Milton and Brampton.

If you have a case in Court, you need to attend a **Mandatory Information Program** (MIP) session. The MIP is a two-hour information session that explains the processes and laws that relate to separation and divorce. It also tells you about:

- how a divorce or separation affects adults
- how a divorce or separation affects children
- legal issues when you divorce or separate
- options to solve issues you don't agree on
- how the court process works

You and your ex-partner have to attend a MIP session when you start a court case in most circumstances. You can also attend a MIP session before a case has been started. Contact your local Family Law Information Centre to ask to be scheduled for a MIP session.

There is more information about the MIP on page 18 of this guide.

Family Court Support Workers are also available to provide assistance to survivors of domestic violence who are involved with the family court system.

Starting your case

The first step in a court case is to file an Application. The Application tells the Court and your ex-partner the issues that you are asking the Court to decide and the orders you want the Court to make. This can include a divorce order, if you have been married, or other orders that relate to your separation (for example custody and support of your children or a division of your property).

The person who completes the Application is called the Applicant and the other person is called the Respondent.

Step 1: What kind of Application do you need?

To start, you must figure out what kind of Application you need. The three kinds of Applications that you must choose from are:

i. Form 8A: Simple Application

If the only claim you are making is for a divorce, you should file a Simple Application. You cannot make any other claim in a Simple Application.

ii. Form 8A: Joint Application

If you and your ex-partner agree on all of the claims you are making, which can include a divorce and other issues, for example, custody and support, you should file a Joint Application.

iii. Form 8: General Application

If you and your ex-partner cannot agree on how to resolve some or any of the issues arising out of your separation, you should file a General Application.

Step 2: Preparing your Application

You should prepare your Application completely and include all of the information that is asked for in the form. You will also be given space to provide additional information that is important to support your claims.

To get a divorce, you need to make sure that your name and your ex-partner's name on the Application match the names that appear on your marriage certificate.

Step 3: What documents do you need to file with your Application?

You need to prepare a number of other documents for the Court to accept your Application depending on the issues you raise in your Application.

The Continuing Record

The documents that are filed by each party in a family case go into a Continuing Record which is stored in your court file and updated every time new documents are filed. Both parties should also keep their own up to date copies of the Continuing Record.

There are specific requirements for your Continuing Record. For example, it must have a cover page and a Table of Contents. You must update the Table of Contents every time you file a document in the Continuing Record.

Information about these requirements is available on the Ministry's court forms website at: www.ontariocourtforms.on.ca/english/continuing_record.

Payment

You may be required to pay filing fees depending on the claims that you have made in your Application. If fees must be paid, you need to bring a cheque or money order payable to the Minister of Finance or cash to court with your Application.

If you're asking for a divorce

You also need to give the Court your original Marriage Certificate if it is available. If you don't have it, you can request a replacement copy of an Ontario marriage certificate online through Service Ontario. If you can't get a copy of your marriage certificate, you will have to provide details regarding the marriage later on in your affidavit for divorce.

If you're asking for custody of and/or access to a child

You must also prepare and file a **Form 35.1: Affidavit in Support of Custody and/or Access**.

If you're asking for support but not making a claim relating to property

You must also prepare:

i. **Form 13: Financial Statement (Support Claims)**
ii. **Support Deduction Order Information Form**
iii. **Draft Support Deduction Order**

The Support Deduction Order Information Form and Support Deduction Order are available on the Family Responsibility Office website.

You must attach a number of documents to your Financial Statement as proof of your income. This includes proof of your year-to-date income and your Notices of Assessment from the Canada Revenue Agency (CRA) for the past 3 years. If you don't have your Notices of Assessment, you can contact the Canada Review Agency at 1-800-959-8281 to get a summary of those statements.

In Ontario, child support is based on the ***Child Support Guidelines*** ("the Guidelines"). The Guidelines calculate the amount of child support that is to be paid based on the income of the parent paying child support and the number of children they have to support. This payment is called the table amount of child support.

In some situations, the Guidelines allow the parent asking for child support to ask for more than the table amount of support. They can do this, for example, to get the other parent to contribute to the child's daycare or medical needs. These are called special and extraordinary expenses.

If you **only** want the table amount of child support, you don't have to prepare a Financial Statement.

If you're asking to divide property *without* support

You must also prepare a **Form 13.1: Financial Statement (Property and Support Claims)**.

If you're asking to divide property *and* for support

i. **Form 13.1: Financial Statement (Property and Support Claims)**
ii. **Support Deduction Order Information Form**
iii. **Draft Support Deduction Order**

As noted above, the Support Deduction Order Information Form and Support Deduction Order are available on the Family Responsibility Office website.

Also, if you have made a claim for support, you must attach a number of documents to your Financial Statement as proof of your income. This includes proof of your year-to-

date income and your Notices of Assessment from the Canada Revenue Agency for the past 3 years. If your Notices of Assessment are not available, you can contact the Canada Review Agency at 1-800-959-8281 to get a summary of those statements.

Step 4: Issuing your Application

Before you go to issue your Application, make sure you are in the right Court. If you are seeking a divorce or there are property issues, either on their own or with other issues, you must start your case in a Superior Court of Justice (including the Family Court). If you only need to deal with custody and or access to a child or support, you may choose to start your case in the Ontario Court of Justice if there is one in your community. Rule 5 of the ***Family Law Rules*** tells you more about where you should start your case.

You should make 3 copies of all your documents: one set for you, one set for the Court, and one set for your ex-partner.

Once you have completed your Application and put together the documents you need, you have to get your Application issued by the Court. This means a court clerk checks your Application and documents. If everything has been properly completed, the clerk gives you a file number and signs and seals the Application. Once this is done, your Application has been issued by the Court and you can now have your documents served on your ex-partner.

Step 5: Serving your Application

Next you need to have your Application and documents served **personally** upon your ex-partner. This means that someone **other than you** must give these documents directly to your ex-partner. You may have a friend or family member who is 18 or older serve your documents or you can hire a process server to do this. A process server is an independent person who will serve your documents on your ex-partner for a fee. See rule 6(2) of the ***Family Law Rules*** for more information about personal service of your documents.

You must serve your documents within **six months** of the date your Application was issued. If you don't serve them within six months, the Court may close your file.

The person who served your ex-partner needs to complete a **Form 6B: Affidavit of Service**. This document proves to the Court that your documents were served personally upon your ex-partner and they know you have started a case against them. Because it is an affidavit, this document must be sworn or affirmed by the party who served the documents. A document is sworn or affirmed when the person signs it before a lawyer or commissioner of oaths to confirm what it says is true. You can swear or confirm your affidavit at the court office if you do not have a lawyer.

Step 6: Filing your Application

After one copy of your documents has been served on your ex-partner, you need to bring them and the Affidavit of Service back to Court and file them in the Continuing Record. You also need to update the Table of Contents to show that these documents have been filed.

Once your Application has been served, your ex-partner has 30 days to prepare, serve, and file their Answer, which is their response to the claims that you made in your Application.

If your ex-partner has not filed their Answer within 30 days of them being properly served and has not asked for more time to do so, you can take steps to have your case heard by the Court on an undefended basis. You normally do this by preparing a **Form 23C: Affidavit for Uncontested Trial** and, if appropriate, a **Form 35.1: Affidavit in Support of Claim for Custody or Access**. A lawyer can help you prepare these documents.

Responding to an Application

If your ex-partner has started an Application with you as a Respondent, you will need to prepare, serve and file your response on a **Form 10: Answer**. In your Answer, you can also make your own claims against your ex-partner.

Your Answer must be served on your ex-partner within **30 days** if you live in Canada or the United States.

If your Answer includes a claim for custody of or access to a child, you must include a **Form 35.1: Affidavit in Support of Custody and/or Access**.

You will also have to provide a Financial Statement where financial issues have been raised (Form 13.1 if there are support and property issues or Form 13 if there are only support issues).

You may have to pay a fee to file your Answer. If fees must be paid, you need to bring a cheque or money order payable to the Minister of Finance or cash to Court with your Application.

If you do not prepare and serve your Answer within 30 days, the case can go ahead without you. This means that your ex-partner may obtain an order without your involvement and then enforce that order against you. A lawyer can help you prepare your response and, if necessary, ask the Court for an extension of the time to prepare your materials.

Mandatory Information Program

The Mandatory Information Program (MIP) is a two-hour information session that explains the processes and laws that relate to separation and divorce. It also tells you about:

- how a divorce or separation affects adults
- how a divorce or separation affects children
- legal issues when you divorce or separate
- options to solve issues you don't agree on
- how the Court process works

Usually anyone who has started a family law court case or has a case started against them, must attend a MIP. You do not have to go to a MIP if your case is proceeding on consent, if you have already attended a MIP or if you are only seeking a divorce or claims relating to a family arbitration. Rule 8.1(2) sets out these exceptions. You can also ask the Court for permission to not have to attend a MIP in limited situations (for example on the basis of urgency or hardship).

When you file your Application, the Court will give each of you a date to attend a MIP. You both have to attend, but you should not attend the same session. After you attend a MIP, you will get a certificate to prove you attended the session. You have to file this certificate with the Court the next time you go to Court to file materials.

Financial disclosure

If your case is about child or spousal **support** or dividing **property**, you and your ex-partner must give each other documents regarding your finances. This is called financial disclosure. These rules are found in rule 13 of the ***Family Law Rules***.

It is very important for both of you to prepare and serve your financial disclosure as soon as possible in your case. This will ensure that you and your ex-partner have the information that you need in order to resolve the support and property issues. If one of you does not give the other your financial disclosure, it can delay the resolution of your case and add to your costs. Also, if you have not provided your disclosure as required by this rule, the Court can order you to pay all or part of your ex-partner's legal costs.

Support issues

Where a claim for support has been made, you must give each other the following documents:

1. Income tax returns for the past 3 years
2. Notices of assessment and reassessment for the past 3 years
3. Your most recent statement of earnings or other statement that shows how much you earn in a year
4. For people who are self-employed, proof of income from the past three years including financial statements and a breakdown of all salaries wages and other benefits paid to others
5. Proof of income from a partnership, corporation or trust
6. Proof of any income received from employment insurance, social insurance, a pension, workers compensation, disability payments or any other source

If you've been unemployed within the past 3 years, you also have to give your ex-partner a copy of your record of employment or other proof that your job ended, along with a statement of any income or benefits that you have received or will receive.

Only some of these documents must be attached to your financial statement and filed with the Court. See rule 13(7) in the ***Family Law Rules*** to know which ones you need to attach and file with the Court.

If support is the **only** issue, these documents must be served on the other party **with** your Financial Statement.

Property issues

If you were married and your case is about dividing property, you and your ex-partner must share more documents so that you can calculate your net family properties. Net family property is the value of the property you owned on the day you and your ex-partner separated, less any debts that were owed, after deducting or excluding certain items. There are rules about the kinds of deductions or exclusions you can make in section 4 of the ***Family Law Act***.

Below is a list of the documents you need to share at the beginning of your case. They have to be the documents that are closest to the time that you separated, which is called the date of separation.

1. Statements of your bank accounts, savings plans and other investments, including RRSPs and pensions
2. A copy of an application to value your pension
3. Assessments for real estate in Ontario by the Municipal Property Assessment Corporation
4. A document that shows the cash value of any life insurance policies
5. Financial Statements and income tax returns if you have an interest in a sole proprietorship or partnership
6. Additional documents if you have an interest in a corporation, to show the number and types of shares or other interests you owned. If your interest is in a privately held corporation, this will include financial statements and, in some cases, corporate income tax returns
7. Documents to show the interest you have in any trusts
8. Statements for the debts you owe, for example, mortgages and credit cards

9. Documents showing the value, at the time of marriage, of any property that you owned or debts that you owed. These are called deductions.

10. Documentation of any exclusions that you are claiming pursuant to section 4(2) of the ***Family Law Act***. This can include a gift that you received from someone other than your spouse during the marriage.

If your court case involves a claim for property, these documents must be served on your ex-partner within 30 days after the Financial Statement is due.

After you and your ex-partner have served these documents, you have to confirm you served them by preparing and serving a **Form 13A: Certificate of Financial Disclosure**. This document must be filed with the Court either before or with your case conference materials.

Putting together, serving and filing all these financial documents can be difficult but you must follow these rules. This will help to resolve your case as quickly as possible and avoid unnecessary delays. It can be helpful to get help from a family lawyer.

First Appearance

If your case is at the Family Court a first court date will be scheduled by the Court when the Application is issued, unless you are asking for a divorce or to divide property. This date is called a first appearance.

The court clerk at the first appearance meets with you and your ex-partner, and checks all of your documents to make sure they are complete and have been properly served. You will also have an opportunity to discuss settlement or attempt mediation with your ex-partner. If you are able to agree on any issues at the first appearance you can file your agreement with the Court and ask for an order to be made on consent.

If the case has not been settled and your documents are complete, the court clerk will normally set a date for a case conference. If your documents are not yet complete, another first appearance may be scheduled.

If your case is in the Superior Court of Justice or you are asking for a divorce or to divide property you will be not be given a first court date. You or your ex-partner must ask for a case conference to be scheduled by contacting the court office. Once you have your case conference notice from the Court, you need to serve it on your ex-partner and file it with the Affidavit of Service.

Conferences

A conference is a step in a family case where a judge meets with you and your ex-partner and your lawyers, if you have them, to discuss:

- the issues that you can agree on
- the issues that you don't agree on,
- the chances of resolving those issues, and
- how the case should move forward.

Each conference is an opportunity for you to resolve all or some of your issues with your ex-partner which can save you time and costs. If you are both prepared and have exchanged your financial disclosure, one conference may be enough to resolve all of the issues in dispute.

Rule 17 of the ***Family Law Rules*** is the main rule that applies to conferences in family courts and provides for case conferences, settlement conferences and trial management conferences.

Before each conference, you have to fill out certain forms which are described below.

The forms for each conference must be completed properly, served on the other party, and filed with the Court with the Affidavit of Service at least **7 days** before the case conference date by whoever scheduled the conference. The other person must serve and file their forms with the Court at least **4 days** before the conference date.

Each party must also confirm they will be in court and show which portions of the material the judge should review by completing and filing a Form 14C: Confirmation Form by 2pm 2 days before the Conference. You should complete the Confirmation Form carefully, noting the specific issues that you want the Court to address (for example custody, access and child support) and the specific materials that the judge should read (for example the Case Conference Brief and your Financial Statement at Tab 6 of the Continuing Record). You must also accurately estimate the time that you need for your conference in your Confirmation Form.

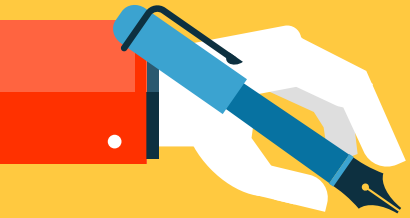
You can send your Confirmation Form to the Court by fax. If you and your ex-partner don't send your Confirmation Forms to Court on time, the conference may be cancelled.

You will both be expected to have provided your financial disclosure before the case conference. If all or some of the disclosure is missing, you can provide a list of the outstanding documents in your Case Conference Brief and ask the judge to make an order requiring your ex-partner to disclose those documents. If there is no reason why those documents have not already been provided, you can also ask the Court for an order of costs against your ex-partner.

The case conference should not be the first time that you and your ex-partner have discussed the case or tried to resolve the issues. These efforts should be noted in paragraph 8 of your Case Conference Brief.

Case conference

A case conference is usually the first meeting that the parties and their lawyers attend with the judge in order to explore the issues in the case and how they can be resolved. For your case conference, you need to fill out **Form 17A: Case Conference Brief** and serve it on your ex-partner and then file it with the Court with the Affidavit of Service.



When preparing any conference brief, you should:

- *Focus on the key issues in your case and the information that is relevant to those issues.*
- *Write as briefly and clearly as you can, using headings to organize your paragraphs and keep your sentences and paragraphs short.*
- *Be civil and avoid language that is likely to upset your ex-partner or the judge unnecessarily.*

This document can be served by regular service. This means that you can give your ex-partner, or their lawyer, your documents by mail, courier, or fax. If you and your ex-partner agree or the Court allows it, your forms can also be served by e-mail or through a document exchange service. Service by mail must be mailed five days before the normal deadlines. See rule 6(2) for more information about regular service.

If your Financial Statement will be more than 30 days old at the time of your conference, you also have to prepare either a new, updated **Form 13/13.1 Financial Statement** or an affidavit. Your affidavit should either say that the information in your last financial statement is still true or, if there have been minor changes to the information in your statement, provide details of those changes.

Once your Case Conference Brief has been served on your ex-partner with any other necessary documents, for example, your Certificate of Financial Disclosure, you have to prepare an Affidavit of Service using **Form 6B**. The Affidavit of Service and case conference materials have to be filed at Court by the deadlines on page 23 of this guide. Also, don't forget to file your Confirmation Form.

It is the Court's expectation in most cases that there will be some temporary agreement for child support and contact with the children made at a case conference. You should therefore come to Court ready to discuss the child support and custody and access arrangements that you will agree to at least on a temporary basis. This will help avoid the need for you to bring a motion for temporary relief, which is described on page 30 of this guide.

If you come unprepared or your conference is postponed because you didn't follow the Rules, not only will you lose this chance to discuss the issues with a judge, but you may even have to pay all or part of your ex-partner's legal costs. For more information about conferences and costs, see rules 17(18) and 24(7) of the ***Family Law Rules***.

At the conference

When you arrive at the courthouse, you have to find out which courtroom your conference is being held in. Court staff can help you find this information.

Arrive at least 30 minutes before the time your case conference is scheduled to begin. This will give you one more chance to discuss your case with your ex-partner, which is something the judge will expect you to do unless you are not able to negotiate directly because of a bail provision or other reason. This also makes sure that you are ready to proceed when the judge is ready.

If Duty Counsel is available at your Court and you want to see them, you should come an hour earlier.

Plan to spend at least a half day at Court. While conferences generally only take up to an hour, in some courts they are scheduled in groups and so you may have to wait for your turn. Even after you have seen the judge, you may be asked to try to negotiate based on the judge's suggestions and then to return to see the judge afterwards.

Conferences are usually less formal than a motion or a trial. When your conference starts, the judge will explain the process. They will then lead a discussion on the issues you don't agree on and can give you suggestions about how those issues might be decided by the Court. You should be prepared to discuss all your issues and how you are willing to resolve them.

For more information about how to behave in Court, see page 41.

Most of the discussions at a case conference are considered to be private, or without prejudice, settlement discussions. This means that your discussions can't be repeated to others or used later as evidence in your case at a motion or trial. You also can't order a transcript of the conference without the judge's permission.

If you and your ex-partner agree on an issue at your case conference, the judge will ask you or your lawyers to write out what you agreed to in a document called Minutes of Settlement. You and your ex-partner need to sign this document to show that you agree to it. After the judge reviews your Minutes of Settlement, they can put what you have agreed to into a Court Order.

At the case conference, the judge can make orders with agreement from both of you, as noted above. The judge is also allowed to make some other orders without the agreement of one or both parties at a conference. This includes a number of different procedural orders, like orders for additional financial disclosure or orders that give directions for the next steps in the case. For example, the judge could ask the parties to meet with an on-site mediator to discuss a part of the case or set a timetable for outstanding steps to take place. In limited circumstances, the judge can make some additional orders if the requesting party has given the other party notice of the order that they have requested. For example, a temporary child support order could potentially be made where the important facts are not in dispute. See rule 17(8) and rule 1(7.2) for more information about the orders that can be made at a conference.

Settlement conference

A settlement conference is the second type of conference you may have. Before your settlement conference, you need to prepare the following forms:

- **Form 17C: Settlement Conference Brief**
- **Form 13A: Certificate of Financial Disclosure**
- If your Financial Statement will be more than 30 days old at your settlement conference, you have to file either a new, updated **Form 13/13.1 Financial Statement** or an affidavit using **Form 14A** that either confirms that the information in your Financial Statement is still true or has details about how your financial situation has changed
- If you were married and you or your partner are asking to divide property you must also file a **Form 13B: Net Family Property Statement** and **Form 13C: Comparison of Net Family Property Statement**
- Your **Offer to Settle** the outstanding issues (attached to your Settlement Conference Brief)

You should prepare your Settlement Conference Brief carefully and complete all of the sections that apply to your situation. It should clearly set out the issues that remain to be resolved, your explanation of those issues and how they can be resolved.

You must do everything you are supposed to do **before** your settlement conference for it to be useful. You and your ex-partner should have shared all financial documents. If there are property issues, you should have also sent your Net Family Property Statements to each other **30 days** before your settlement conference and prepared your Comparison of Net Family Property Statement (jointly with your ex-partner if possible). The Comparison of Net Family Property Statement will show any of the items in the net family property calculations where you and your ex-partner disagree.

Again, you should come to Court earlier than the scheduled time so that you have one more chance to discuss your case with your ex-partner. This is something the judge will expect you to do unless you are not able to negotiate directly. This also makes sure that you are ready to proceed when the judge is ready.

When you go to your settlement conference, the judge will review the issues you don't agree on and can give you suggestions about how those issues might be decided by the Court. They may also meet separately with each party (and their lawyer) to discuss the strengths and weaknesses of their case. They will also encourage you to settle all or some of the outstanding issues based on that feedback. Settling your issues can avoid the need for a motion and even bring your case to a conclusion if all of the issues have been resolved.

Again, if you and your ex-partner can agree on an issue at your settlement conference, the judge will ask you or your lawyers to write the agreement out in Minutes of Settlement. If you don't have a lawyer and you qualify for their assistance, Duty Counsel may be able to help you by reviewing the draft document, which you and the other party must sign. After the judge reviews your Minutes of Settlement, they can put what you agreed to into a Court Order.

Trial Scheduling Endorsement Forms

At the end of your settlement conference, if it is clear that another settlement conference would not be helpful, your case must move forward to trial. The first step is for you and your partner to complete Parts 1 and 2 of the **Trial Scheduling Endorsement Form** which is available on the rules and forms section of the Superior Court of Justice's website. This form reviews the issues to be decided at trial, you and your ex-partner's proposed witnesses, and other issues that must be resolved before the trial can start. It also includes an estimate of the total time required for the trial.

The Trial Scheduling Endorsement Form has to be reviewed and endorsed by the judge. If you can't complete it right away, the judge may schedule a time for you to return to Court to do so. Your trial will not be scheduled until the Trial Scheduling Endorsement Form has been reviewed by the judge who can make changes, give directions regarding how your trial will proceed and schedule your trial management conference.

The completion of the Trial Scheduling Endorsement Form and the judge's review of this form will help organize and prepare you and the other side for trial.

Trial Management Conference

Before your trial management conference, you need to file the following documents with the Court:

You should file these forms **instead** of **Form 17D: Trial Management Conference Brief**.

- Your completed **Trial Scheduling Endorsement Form**, unless it has already been filed
- An offer to settle all issues that aren't agreed to by you and your ex-partner
- An outline of your opening statement for trial. The opening statement is explained on page 43 of this guide.

At a trial management conference, you and your ex-partner need to be prepared to:

- see if you can agree on any outstanding issues
- confirm that you and your witnesses are ready to proceed as scheduled
- confirm whether the time you estimated for your trial is correct.

Confidentiality and Offers to Settle

Case Conference Briefs and Settlement Conference Briefs are private and should not be included in the Continuing Record. The Court's copy is either given back to you or destroyed after the conference has been held. However, your completed Trial Scheduling Endorsement Form should be part of the Trial Record and available to the trial judge. The Trial Record is discussed on page 39 of this guide.

Your Offers to Settle are also confidential. An Offer to Settle says what you are willing to agree to in order to resolve your case. Your Offers to Settle should be clear, reasonable, and fair. Offers to Settle can help you and your ex-partner come to an agreement on your issues. They can also be used to ask the judge to order your ex-partner to pay your legal costs if the case proceeds to a motion or a trial and you get most of the orders you are asking for. Rules 18 and 24 explain when you or your ex-partner would have to pay the other person's legal costs if an Offer to Settle has not been accepted.

Motions

A motion is when you ask the Court for:

i. A temporary order (Notice of Motion: Form 14)

If you need the Court to make orders on a temporary basis you will need to file a motion. For example, you may need to bring a motion to ask the Court to order your ex-partner to pay temporary child support, spousal support, or to set up a temporary parenting schedule.

ii. Procedural, uncomplicated, or unopposed matters (Motion: Form 14B)

You may bring a 14B Motion for procedural or uncomplicated matters, for example, asking the Court for permission to file a document after a deadline has passed. You can also bring a 14B Motion for requests that your ex-partner agrees with or will not oppose. This motion is submitted to the Court in writing. A judge will normally make a decision about this without having to hear from you or your ex-partner. The Court will let you know what the decision is.

If you are asking the Court to make an order that you and your ex-partner agree to, you must attach the Consent or Minutes of Settlement that both of you have signed to your 14B Motion Form. If possible, you should also include a draft order that shows the clauses that you are asking for in the order.

If you are the person bringing the motion, you are called the **moving party**. Your ex-partner is called the **responding party**, because they respond to your motion.

Before bringing any Motion, you should review rule 14 of the **Family Law Rules** *and the Practice Directions for the Ontario Superior Court of Justice. Please note that there is a* Provincial Practice Direction *that applies to every Superior Court of Justice and Family Court location in Ontario, as well as one or more* Practice Directions for each region in the province. *These Practice Directions can be found on the Practice Directions and Policies page of the Superior Court's website.*

When can you bring a motion?

Unless your situation is urgent, you cannot bring a motion until after you've been to a case conference.

If you've been to a case conference and your main issues were discussed, for example, custody, access, support, or property division, the judge will normally make an order that confirms that a case conference was held.

If a case conference either hasn't been held, or was held but only procedural issues were discussed (for example, setting a timeline for how to move forward), then you cannot normally bring a motion.

Urgent motions

You can bring a motion before a case conference only in **very limited urgent situations**. For example, where there is an immediate danger that your child will be removed from the country or you or your children's safety is at risk. See rule 14(4.2) for more information about these situations.

If you aren't sure whether you can bring a motion before a case conference and you don't have a lawyer, try to speak to Duty Counsel if they are available and able to assist you.

If you are bringing an urgent motion, you must prepare, serve, and file, all of the documents listed in the section on page 33 'Documents for your Motion'. The only difference with an urgent motion is that you are asking the Court for permission to bring a motion before a case conference has been held and, in true emergencies, you may also need to ask the Court for permission to shorten the timelines in rule 14(11) to serve your ex-partner with your motion materials.

If the Judge hearing the motion finds that your matter is not urgent, they may refuse to hear your motion and may, in some situations, order costs against you.

What kind of motion should you bring?

There are two different kinds of motions and the type that you need to bring depends on your situation.

Motion with notice

Almost all motions proceed with notice to the other party. This means that you have to serve your materials on your ex-partner and they are able to respond before your motion is heard so that the Court hears from both sides at the motion.

Motion without notice (also referred to as an ex-parte motion)

In **very limited situations** you may be able to bring a motion without first providing notice to your ex-partner. ***Family Law Rule*** 14(12) says what these limited situations are:

i. Notice is either unnecessary or not reasonably possible. For example, where you have exhausted all efforts but cannot locate your ex-partner;

ii. There is an immediate danger of your child's removal from Ontario and the delay in serving a notice of motion, or alerting the other party to your motion, would probably have serious consequences; or

iii. Serving a notice of motion would probably have serious consequences.

Motions without notice are the **exception to the rule** that the other party must know of any motion. The Court will decide whether or not to hear your motion without notice based on your motion materials, which should include an affidavit that explains why you cannot provide notice to your ex-partner.

If the Court finds that a motion without notice was improper, the judge may order you to pay your ex-partner's legal costs.

How do you schedule a motion?

Motions with notice

When are motions heard?

Your first step is to check with the Court in your area to find out when you can bring your motion. Some Courts keep one or more days open each week to hear motions and you can bring your motion on any of those days. In other Courts you must book a specific time with the Court for your motion to be brought. You should check with your ex-partner and their lawyer to see when they are available before you book your motion.

Do you need a regular or long motion?

In most courts, regular motions are motions that take one hour or less to be heard by the Court. This means that you and your ex-partner must both make your submissions to the Court in an hour or less.

Long motions are motions that will take longer than an hour and are generally scheduled through the Trial Coordinator at the Court. In some Courts you must get the Court's permission for a long motion before it will be scheduled by filing a 14B Motion.

Documents for your motion

A motion with notice requires the following documents, even if it is an urgent motion:

i. **Form 14 – Notice of Motion** (three copies)

   The Notice of Motion includes the date, time, and location of your motion and the orders you are asking the Court to make.

   One copy of the Notice of Motion is for you, one for the Court, and one for your ex-partner.

ii. **Form 14A – Affidavit** (three original copies)

   Your affidavit is a document you have sworn or affirmed that has the evidence that you are relying on to support the orders you are asking for. A document is sworn or affirmed when the person signs it before a lawyer or commissioner of oaths to confirm what it says is true. You can swear or affirm your affidavit at the court office if you do not have a lawyer. If you want the Court to review any evidence in support of your claim, you may attach documents to your affidavit as exhibits.

   One copy of the Affidavit is for you, one for the Court, and one for your ex-partner.

iii. **Form 13 or Form 13.1 – Financial Statement** if your motion involves financial issues (three original copies)

   Your Financial Statement has details of your financial situation. If you are making a claim or responding to a claim for child or spousal support but not making or responding to a claim for property you must use Form 13. If you are making a claim or responding to a claim for property, either on its own or with a claim for support, you must use Form 13.1.

   One copy of the Financial Statement is for you, one for the Court, and one for your ex-partner.

iv. **Factum or Summary of Argument** (three copies)

You may also need to submit a Factum or Summary of Argument. This is the written summary of the key facts from your affidavit, as well as the rules and the law that apply to your case that you prepare in support of your motion.

In most courts, all long motions require a Factum or Summary of argument. Check the provincial Practice Direction and the Practice Direction(s) for your region to see when a Factum or Summary of Argument must be prepared.

One copy is for you, one for the Court, and one for your ex-partner.

If you are required to provide a Factum or Summary of Argument, you should also prepare a Brief with copies of the cases that you refer to in your Factum/Summary of Argument. However, you do not have to include copies of the most common family law cases. These cases are listed on the Court's website at: www.ontariocourts.ca/scj/practice/practice-directions/list/.

v. **Support Deduction Order and Support Deduction Order Information Form**

If you are seeking support, you will also have to bring a draft Support Deduction Order and Support Deduction Order Information Form to Court if you have not already filed one with the Court.

vi. **Form 6B – Affidavit of Service** (two copies)

An Affidavit of Service confirms to the Court that your ex-partner has been properly served with your materials. This affidavit must be sworn or affirmed by the person who served the materials, which can be done at the Court office.

One copy is for you and the other is for the Court.

vii. **Updated Table of Contents for the Continuing Record** (two copies, plus the Court copy)

Each time you file materials with the Court, they form part of the Continuing Record and you have to update the Table of Contents. When you serve your motion materials on your ex-partner, you should provide them with an updated copy of the Table of Contents. You need to update the Court's copy, keep one copy of the updated Table of Contents for yourself.

A motion ***without notice*** requires the same documents as a motion with notice, except for:

i. **Notice of Motion and Affidavit**

You should still prepare a Notice of Motion and Affidavit but you don't have to serve them on your ex-partner.

ii. **Form 14D – Order made on motion without notice** (one copy)

You should also prepare a draft order setting out what you want the Court to order and bring it with you to Court. If the judge makes an order, they may sign the draft order that you've prepared. The order must then be issued at the court office. After the order has been issued, you must serve your ex-partner with a copy of the order immediately, along with all documents that were used in the motion. See ***Family Law Rule*** 14(15) for more information.

Contact your court office for information about how to schedule a motion without notice.

A 14B Motion requires the following documents:

i. **Form 14B – Motion Form (two copies)**

The Form 14B has details on what you're asking the Court for as well as evidence for your request. You have to be asking for something "procedural, uncomplicated or unopposed". An example of a procedural or uncomplicated motion may be a motion to get more time to serve your documents. An unopposed motion is one that you do not expect your ex-partner to defend.

If your ex-partner fails to respond to your 14B Motion within four days of being served, your Motion continues on an uncontested basis.

ii. **Form 14A – Affidavit (General) (three copies)**

If you want to provide the Court with information to support your requests, you should complete a Form 14A Affidavit (General).

iii. **Form 6B – Affidavit of Service (two copies)**

An Affidavit of Service confirms to the Court that you properly served your ex-partner with your materials. It must be sworn or affirmed by the party who served the materials, which can be done by your lawyer or at the Court office.

One copy is for you and the other is for the Court.

Serving & filing your motion materials

The party bringing the motion, or the moving party, must serve their motion materials on their ex-partner by regular service and then file them with the Court along with an Affidavit of Service. Information about regular service can be found on page 24 of this guide.

The responding party must then serve their responding materials on the moving party by regular service and then file them with the Court with an Affidavit of Service.

The ***Family Law Rules*** tells you the time within which you and your ex-partner have to serve and responds to motion materials. They are:

Motion with notice

- Not less than **seven days before the motion**, the moving party must prepare an updated Financial Statement or affidavit with details of any changes to their Financial Statement. See rule 13(12.2). They have to serve this document on the other party, and file it with the Court.
- Not less than **four days before the motion**, the moving party's Notice of Motion, Affidavit, Financial Statement and updated Table of Contents for the Continuing Record must be served upon the other party. They must also file an Affidavit of Service at this time, confirming these documents have been served on the other party, and file all of these documents with the Court at least two days before the motion.
- If the other party is responding to the motion, they have to serve and file their materials in response by no later than **2pm two days before the motion**.
- If they are required by Practice Direction in your region, each party must also serve their Factum/Summary of Argument no later than **four days before the motion**.
- If the responding materials are served more than two days prior to the motion, the moving party may serve and file a reply affidavit, to respond only to any new issues raised by the responding party, no later than **2pm two days before the motion**.

These rules give you the minimum timelines that you must meet and have specific rules about how days are counted. For example, if a rule or order provides for less than seven days for something to be done, Saturdays, Sundays and other holidays when the court office is closed do not count as part of the period. See rule 3 for more information about counting days.

You may wish to prepare a timetable before your motion to provide each party with more time to prepare and serve their materials. This can help make sure that both parties are ready to proceed with the scheduled motion date.

Long motions

- Timelines to serve and file materials for long motions should be arranged when the long motion is booked.

Confirming your motion

The Court requires you and your ex-partner to file a **Form 14C: Confirmation** with the Court no later than 2:00 p.m. two days before the motion is to be heard. If you don't, the motion may be cancelled.

Both of you should speak with each other (or your lawyers should speak) before filling out the forms unless you aren't allowed to speak with each other by Court order. The Form 14C should list the specific issues you want the motion to address, as well as the specific materials that the judge should read before hearing your motion. You also have to note the volume and tab of the continuing record where that information can be found. This helps the judge find your materials. Your Form 14C must also say how much time you will take to present your motion.

Contact your local court office for details of where to send your confirmation form.

The hearing of your motion

The motion judge expects you or your lawyer to have contacted your ex-partner to see which if any of the issues can be settled before your motion is heard.

When you arrive at the courthouse, you have to find the courtroom where your motion will be heard. Court staff can help you find this information.

Once you've found the courtroom, you may be required to sign in with the court registrar. The judge normally has several motions to hear and they may not be heard in order, so you may have to wait to have your motion heard. Some judges deal with consent motions and motions that are not being opposed first. You should let the court registrar know if you and your ex-partner have come to an agreement or if you don't expect your ex-partner to attend the motion.

If you don't have a lawyer, you should arrive early at Court to ask for help from Duty Counsel, if they are available in your court location. If your ex-partner agrees, you can also see the on-site mediator if you want to try working with your ex-partner to resolve the issues in your motion.

You should be ready to speak to the judge to explain what you are asking the Court for and the information that you are relying upon in support of your request. This is known as 'making your submissions'. In your submissions, you can only refer to the evidence that you have included in your motion materials or evidence that has been filed by your ex-partner. In other words, you can't refer to information that is not in any affidavits or sworn Financial Statements.

When hearing a motion, the judge will normally hear first from the moving party and then from the responding party. The judge may also have questions for you or your ex-partner.

At the end of the hearing, the judge usually makes a temporary order that stays in place while you and your ex-partner continue to try to resolve your issues on a permanent basis. The judge may make a decision right away or they may reserve their decision to a later time. The judge's written decision is usually called an endorsement.

If the judge reserves the decision, it means that they need more time to review the evidence and think about the orders you have asked for. You may need to come back to court for the decision or you and your ex-partner may be sent the decision in writing.

If a support order has been made, the judge will normally sign the Support Deduction Order right away and you may be asked for information so that the Support Deduction Order Information Form can be completed.

It is the responsibility of the lawyers in the case to have an order prepared. If neither of you have lawyers, court staff at the filing office will prepare the order for you. See rule 25 for more information about how orders are prepared.

It is important to make sure that your Continuing Record has copies of any decisions that the judge has made and any Orders that have been signed.

Trial

Most cases settle, but a small percentage of cases must go to trial for a final resolution.

Before your trial

Trial Record

At least 30 days before the start of your trial, the Applicant must serve the other party with a Trial Record and then file it with the Court. See rule 23(1) for the required documents. The Trial Record is used instead of the Continuing Record at trial.

The Respondent may add to the Trial Record with documents that they have served on the Applicant up to 7 days before the start of the Trial. See rule 23(2).

The completed Trial Scheduling Endorsement Form must be added to the Trial Record.

Financial Statements

If support or property is an issue at trial, you must continue to update your Financial Statement before trial in accordance with rule 13 unless your Trial Scheduling Endorsement Form does not require this. Your updated Financial Statement must be included in your Trial Record.

Offers to Settle

You may make an Offer to Settle at any time during your court case. An Offer to Settle says what you are willing to agree to in order to resolve your case. Your Offer to Settle should be clear, reasonable, and fair. These kinds of offers can help you come to an agreement with your ex-partner, and they can also be used to request costs against your ex-partner if your case goes to trial.

You can't show your Offer to the trial judge until after they've made their decision.

More information about Offers to Settle, including what can happen if you don't make an Offer to Settle, can be found in rule 18 and rule 24.

Arranging your witnesses

You shouldn't call witnesses unless you need their evidence to help prove your case.

Remind your witnesses to bring with them any documents that they have that you want to provide to the Court as evidence when the witness testifies. The original should be brought along with 4 copies of the document. One copy should be given to your ex-partner before the trial.

If you want to make sure that your witnesses come to court to testify, they should be summoned according to the following procedure:

- Fill out **Form 23: Summons to a Witness**, and list any documents that you want the witness to bring with them.
- Serve the form on the witness and file it with the Court
- Provide the necessary witness fee in accordance with rule 23(4)

It is your responsibility to make sure your witnesses are available when needed so that the trial is not delayed.

Interpreters

If you or any of your witnesses require an interpreter, you need to let the Court know well in advance of your trial date. The Ministry of the Attorney General provides interpreters for people with low incomes who qualify for a fee waiver who are French, require sign language, or if the Court orders an interpreter.

See the Ministry's website for more information: www.attorneygeneral.jus.gov.on.ca/english/courts/interpreters/request.asp

Documents as evidence

Documents that are admissible as evidence are submitted as exhibits during the trial. Admissibility means that the document is relevant to your case and genuine.

You can use admissible documents as evidence either when you testify or when you are questioning a witness who can testify about the document. If anyone disagrees about whether a document is admissible, the judge hears submissions from both parties and decides whether it is admissible.

Ideally, you should have prepared a brief listing all of the documents that you plan to rely on at trial, which is called a document brief. You and your ex-partner should

exchange document briefs well in advance of your trial.

If you haven't prepared a document brief, you should bring the originals and four copies of all documents with you to court.

Don't forget that you must let your ex-partner know about all documents that you plan to use at trial before the trial begins. See rules 13 and 19. If you haven't done this, you may not be allowed to use the documents at trial, the trial could be postponed, or you could be ordered to pay costs.

How to behave in Court

1. Turn off your cell phone and all electronic devices.
2. Stand up when the Judge enters or leaves the hearing room and when you are speaking to the Judge.
3. Refer to the Judge as "Your Honour" and ask the Judge for permission to speak before you begin speaking.
4. Always speak directly to the Judge, not to your ex-partner, except when you are examining a witness.
5. During the trial, don't interrupt other people except to object to an inappropriate question.
6. Don't argue with your ex-partner or the Judge.
7. Pay careful attention to what is being said. You can take notes while you are in Court and you can also ask court staff for a copy of the digital recording that is being made.
8. If you want to use your own recording device, you have to get permission from the Court first.
9. Don't eat food or chew gum. Only water is allowed in the courtroom.
10. Refer to any witness as Mr., Ms., Mrs., or Doctor. Don't use their first name.
11. Any documents you wish to give to the Judge must be handed to the Court Registrar.

Exclusion of witnesses

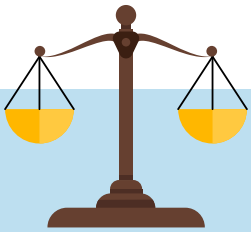
When the trial begins, if you or your ex-partner asks the trial judge for an order excluding witnesses, the judge will likely grant the order. In that case, all witnesses except for you and your ex-partner will be asked to stay outside the courtroom until they have to give their evidence. This is done to make sure that a witness doesn't change their evidence in response to hearing another witness' evidence.

If an order is made excluding witnesses, you must not discuss any of the evidence given at the trial with any of your witnesses. You must also make sure that your witnesses are aware of this order and know they shouldn't discuss their evidence with anyone until after the trial is over.

Burden of proof

The burden of proof is the duty of a party in a case to prove the claims that they have made. If you are the applicant, you are responsible for proving the claims that you have made in your application. If you are the respondent, you are responsible for proving the claims that you have made in your answer. This means that you must provide evidence in support of your claims.

The judge makes a decision in a family case based on a legal test called a "balance of probabilities". This means that your case must be accepted by the judge more than your ex-partner's position. In other words, your evidence must be accepted as more likely true than not.



Process overview

The Applicant goes first in a trial and they generally start with an opening statement. In their opening statement they summarize what they expect their evidence will be and let the judge know the specific orders they're asking for. The Respondent may then give an opening statement right away if they wish, or they may wait until after the Applicant has called all of their evidence.

After the opening statements, the parties introduce the evidence that they are relying on to support their claims. Evidence can include testimony from witnesses, including the Applicant, or the introduction of documents. Documents submitted at trial are called Exhibits.

The Applicant's witnesses go first. When a party questions their own witnesses, it is called their examination in chief. After their examination in chief, those witnesses can be questioned or cross-examined by the Respondent. If a witness has been cross-examined by the Respondent, they can be re-examined by the Applicant only to clarify issues that were raised during the cross-examination. After the Applicant's last witness has been called he or she closes their case.

The trial then continues with the examination of the Respondent's witnesses. First there is an examination in chief, then they are cross-examined by the Applicant and the Respondent can re-examine them if necessary. After all the Respondent's witnesses have been called, the Applicant may bring reply evidence that relates to any **new** issue that the respondent has raised. This cannot include evidence that should have initially been part of their case.

After all the witnesses have been called, both parties have the opportunity to make submissions or make a closing statement about what they think the Judge's decision should be based on:

- what the witnesses have said,
- the documents that have been submitted as evidence, and
- the laws that apply.

The Applicant speaks first, followed by the Respondent. The Applicant then has the chance to reply briefly to what the Respondent said.

Examination of witnesses

Examination in chief

When you are examining your witnesses in chief, you give them a chance to give their evidence on the issues that you and your ex-partner don't agree on.

You should prepare a list of questions that you plan to raise with each of your witnesses in advance.

You aren't allowed to ask leading questions during examination in chief, unless you are questioning the witness about introductory facts or facts that are in agreement. A leading question is a question that suggests the answer to the witness. For example, you should not ask one of your witnesses the following question: "She is always late in picking up the children, right?"

If you ask questions that start with "**who**", "**what**", "**where**", "**when**", "**why**", "**how**" or "**please describe**", it will help you avoid asking a leading question.

If you decide to testify on your own behalf, please note the following:

- You will be asked to swear an oath or promise that you will tell the truth.
- The Judge may ask you questions.
- You can use a written outline of your evidence if you agree to show it to the Trial Judge and your ex-partner first.
- If you made notes at the time something happened, you must ask the Judge for permission to look at those notes and explain why you need to look at them. For example, you may need to review your notes to refresh your memory. You will also have to show your ex-partner your notes first to see if they have any objections.
- This is your chance to give evidence, not make arguments. You must only say what you saw personally, heard, did or received. You also cannot give evidence on what you heard from other people, or what someone told you.
- Once your evidence as a witness has been completed and you leave the witness stand, you can no longer give evidence without permission from the Judge.
- If you don't call any witnesses and you don't testify, then the Judge's decision will be based on your ex-partner's evidence only.

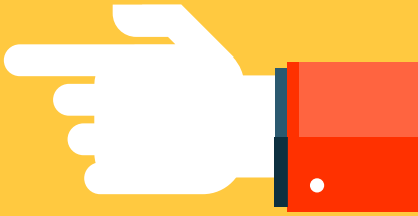
Cross-examination

You will be able to cross-examine each of your ex-partner's witnesses in order to test if they are telling the truth and to bring out evidence that is helpful to your case. You may ask leading questions in cross-examination.

During cross-examination, it may be helpful for you to ask a witness about:

- their ability and opportunity to observe the things that they told the Court
- their ability to give an accurate account of what they saw or heard
- whether they have any interest in the case or any other reason to be biased

Never argue with your witness or try to give evidence through your questions. Instead, you should put your view of the facts to the witness in the form of a question. For example, you could ask, **"Do you agree that I did not see the children during the month of July?"**



Prior statements

If a witness has made a sworn or unsworn statement before trial that is important to your case and then the witness says something different at trial, you can cross-examine them about the statement they made. You can also cross-examine a witness about a statement they made earlier that was helpful to your case. This can include things like an older Affidavit. In order to do so, you must:

- first ask the witness if they remember making the statement
- then read the prior statement
- then ask the witness to confirm that the statement was made and if it was true

If the witness says the earlier statement was true, it is evidence that the statement is true. If the witness says it isn't true, it can only be used to question whether the witness is telling the truth now. This is sometimes called the witness's credibility.

If you plan to contradict a witness with specific evidence that you intend to give or have one of your witnesses give, you should ask the witness about that intended evidence when you cross-examine them, so that the witness can give their version of the facts. If you don't do this, the Judge may give less weight or not allow you to present that evidence.

More rules about examinations

Hearsay

Normally, the only evidence a witness can give is what they personally saw or heard. When a witness testifies about what another person said it is called hearsay. Hearsay is generally not allowed to show that the statement was true, but can be allowed to show that a statement or observation about what happened was made.

There are limited situations when hearsay may be admitted because it is accepted as necessary and reliable. Statements are seen to be reliable when they are trustworthy because of the situation under which they were made.

Objections

At any time during the questioning of a witness by your ex-partner, you have the right to object to questions that are being asked or documents that are being introduced before they are submitted as evidence. You can only object to something if you can show that there is a reason why it is not proper for the judge to hear or receive the evidence.

If you want to make an objection, you should stand up and wait for the judge to ask you to speak. When the judge is ready, you should state the reason for your objection. After hearing the other side's response, the judge will decide whether your objection is valid.

Expert witnesses

Expert evidence is usually brought in when the expert can give the Court information that is outside of the experience and knowledge of the judge. The expert's opinion must also be related to an issue you are asking the Court to resolve at trial.

The most common experts in family law cases are custody and access assessors or financial experts.

If you want to give evidence from an expert, you must follow rule 23(23) by giving notice and serving a written expert report at least 90 days before the trial. Unless your ex-partner agrees to the introduction of the expert report at trial, you have to call the expert as a witness.

In most circumstances, the judge will then accept the individual as an expert in their field. They do this based on the expert's education, experience and any special knowledge of the issue. You should tell the Judge if you wish to object to the qualification of your ex-partner's expert witness.

If qualified, the expert will be permitted to give their opinions in the field of their expertise.

Closing statements

After all of the witnesses have been called, you and your ex-partner have an opportunity to address the judge to make submissions or closing statements about what you think the judge's decision should be, based on the testimony that the witnesses have given and the documents that have been accepted as exhibits. If you make your closing statement orally, the applicant goes first, followed by the respondent. The applicant then has a limited opportunity to reply to the respondent's statement.

Instead the Judge may ask for closing statements from both of you in writing.

You should not refer to evidence or issues that were not raised during the trial in your closing statement.

The Judge's decision

After the parties make their closing statements, the Judge may make a decision right away and tell you what it is. They can also reserve their decision which means that they will take more time and you will hear from the Court in writing. Once their decision is made, the Judge may schedule a separate hearing or ask that you file written statements so that you can deal with the issue of costs.

Costs

Under the ***Family Law Rules***, the successful party is usually allowed to have their legal costs paid by the other side. You may be asked to tell the Court why you are asking for costs either verbally or in writing and to provide the Court with a summary of your expenses. The Judge considers a number of things in their decision on the costs that should be paid. Some of them include how reasonable the party was during the trial and the offers to settle that were made. More information about how costs are decided can be found at rule 24 of the ***Family Law Rules***.

Motion to Change: Rule 15 Motion

After your case has ended, there may be times when your situation has changed and you need to request a change to some of the terms or decisions in your final court order. For example, you may need to change:

- child or spousal support payments
- support that had to be paid, but hasn't been (called arrears of support)
- custody or access plans

Which court to apply to for a Motion to Change

If the order you'd like to change is from the Superior Court of Justice or Family Court, you must start your case in one of these courts (and not the Ontario Court of Justice).

See rule 5 of the ***Family Law Rules*** to find out to where you should start your case.

Preparing your Motion to Change

If your ex-partner agrees to the requested change, you should prepare and file a **Form 15C: Consent to Motion to Change** or if it is only about child support a **Form 15D: Consent to Motion to Change Child Support**.

If the two of you don't agree on the requested change, you start your case by preparing a **Form 15: Motion to Change** and **Form 15A: Change Information Form**. These documents give your ex-partner and the Court the necessary information to support the requests that you are making.

Check the law to understand what you need to prove before the order can be changed. This may include the Divorce Act, *the* Family Law Act *and the* Children's Law Reform Act.

There are a number of different forms you may need to be prepare with your Motion to Change if it is not being brought on consent, depending on what you want to change. These include:

- **Form 15: Motion to Change**
- **Form 15A: Change Information Form** or a **Form 14A: Affidavit (General)**
- **A certified copy of the original Order you want to change**

Where a support payment is at issue:

- **Form 13: Financial Statement**
- **Completed Confirmation of Assignment form** which is available on Ontario's Central Forms Repository website if support has been assigned. See page 50 for more information.
- **Income information**, as described on page 19 of this guide, for the following time periods:
  - Current
  - Past years, if you are asking for a change to past support payments
- **Directors Statement of Arrears from Family Responsibility Office**. The form that must be completed to request this statement is available on the Family Responsibility Office website.

Where custody or access is at issue:

- **Form 35.1: Affidavit in Support of Claim for Custody or Access**

Once you have put together the documents you need, you have to get your Motion to Change issued by the Court. This means a court clerk checks your documents and if they are correct, signs and seals your documents and gives you a file number. Once this is done, your Motion to Change has been issued by the Court.

Next you need to have the Motion to Change and all of the related documents served **personally** on your ex-partner. This means that someone other than you must deliver these documents directly but you are not permitted to serve these documents yourself.

You may have a friend or family member serve your documents or you can hire a process server to do this. A process server is an independent person who will serve your documents on your ex-partner for a fee. See rule 6(2) of the ***Family Law Rules*** for more information about personally serving your documents.

Response

If your ex-partner agrees to the change after you have served your Motion to Change, they can complete the applicable portions of the **Form 15C: Consent Motion to Change** and return a signed copy to you within 30 days. If they don't agree, they must serve and file a **Form 15B: Response to Motion to Change** with all the required attachments.

Assignee and social assistance

If the person getting support is or was on social assistance, they may have assigned their support payments to the Ministry of Community and Social Services ("Ministry") or a municipality. This means that support that hasn't been paid may be owed to the Ministry or the municipality (the Assignee). If the arrears are owed to the Ministry or municipality, you **must** serve your Motion to Change on the Ministry or municipality (Assignee) as well.

Every Motion to Change involving support should include a **Confirmation of Assignment form**. *This document will tell the Court whether support has been assigned.*

Dispute Resolution Officer (DRO)

Some courts have lawyers who are trained as Dispute Resolution Officers (DROs) who conduct the initial case conferences on Motions to Change.

DROs try to identify, resolve or settle issues you don't agree on by:

- Helping you and your ex-partner to come to an agreement on the issues in dispute
- Where you have reached an agreement on any issues, helping you get a consent order from the Court
- Helping you and your ex-partner organize your issues and sharing disclosure documents to make the case "Judge ready"

The DRO is *not* a Judge. The DRO is an experienced family lawyer appointed by the Regional Senior Judge.

Case or settlement conference

You may have a First Appearance automatically scheduled if your case is in the Family Court. Depending on whether or not you have had a First Appearance, the next step may be a case conference or settlement conference with a judge. See the explanation of case conferences and settlement conferences on pages 24-27 of this guide.

What comes next

If they have not settled at a conference, most Motions to Change can be dealt with at on a long motion where a judge makes a decision based on the written material that has been filed. In some situations, it may be necessary to schedule a trial in order to have the motion resolved.

Additional information and resources

Family law

- Family Law Series (Community Legal Education Ontario)
- What You Should Know About Family Law in Ontario
- Family Law Information (Ministry of the Attorney General)
- Your Law – Ontario Law Simplified, see family law sections (Law Society of Upper Canada)
- Family Law Information Program (Legal Aid Ontario)
- Family law legislation

Parenting issues

- Custody, access and parenting plans (Community Legal Education Ontario)
- Tools to help create a parenting plan (Department of Justice Canada)
- Parenting Scheduling and Communications Tools (Our Family Wizard)

Support issues

- General information regarding child support and spousal support (Community Legal Education Ontario)
- How to determine child support
- How to determine spousal support
- Support calculation tools
- Information about enforcement of support orders

Property issues

- General information regarding division of property for married spouses (includes information about pensions and the matrimonial home)
- Separation and Divorce: Property Division (Community Legal Education Ontario)

Family Court procedures

- Guide to Procedures at Family Court (Ministry of the Attorney General)
- Family cases at the Superior Court of Justice
- Family Court forms and the Ministry of the Attorney General's Court Forms Assistant
- Family Law Rules
- Family law flowchart (Community Legal Education Ontario)

Superior Court of Justice processes

- Practice Directions of the Superior Court of Justice
- List of Often Cited Family Law Cases

Family mediation pervices

- Court-Connected Family Mediation Programs in Ontario (Ministry of the Attorney General Ontario)
- Locate an accredited mediator through the Ontario Association for Family Mediation or ADR Institute of Ontario

Finding legal services

- How to find a lawyer (Law Society of Upper Canada)

Information and services for children

- Where Do I Stand? A Child's Legal Guide to Separation and Divorce (Ministry of the Attorney General Ontario)
- What Happens Next? Information for Kids about Separation and Divorce (Department of Justice Canada)
- Families Change – A Kid's Guide to Separation and Divorce (Justice Education, Society British Columbia)
- Little Children, Big Challenges – Divorce (Sesame Street)
- It's My Life – Divorce Information (PBS)

Domestic violence

- Assaulted Women's Helpline
- Services for Women Experiencing Domestic Violence (Ontario Women's Directorate)
- Information about Violence in the Family (Ministry of the Attorney General Ontario)
- Male Abuse Awareness
- Contact information – Family Court Support Worker Program (Ministry of the Attorney General Ontario)

Emotional and mental health assistance

- Separation and Divorce – Things You Can Do (Canadian Mental Health Association)
- Your Mental Health – Children (Canadian Mental Health Association)
- Children's Mental Health – the Basics (Children's Mental Health Ontario)