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A Guide to Procedures in Family Court

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This guide does not provide legal advice. It is recommended that all parties seek legal advice where possible.

PART 2: STARTING A FAMILY CASE

An **application** starts the court process. It sets out the issues that you are asking the court to decide. The information that you write in the application tells the judge what you are asking for and provides important background about the history of your relationship and any children you have.

The person who makes the application is called the **applicant**. The other person, or persons responding to the application is called the **respondent**. The only exception is where you and your spouse agree to both ask for a divorce. In that case, there is no respondent - you and your spouse are both applicants.

Applications can be listed in three categories:

1. **General Application**

These types of applications are made when the parties cannot agree on how their family matters should be resolved.

2. **Simple Application**

You would make this application where the only claim you are making is for a divorce.

3. **Joint Application**

This is where you and your spouse consent to a divorce and bring the application for divorce together. You may also bring a joint application where you and your former partner agree on other family matters such as custody, access, support or property.

Additional Information About Divorce Applications

Central Registry of Divorce Proceedings

The Central Registry of Divorce Proceedings must be notified whenever a party applies for a divorce anywhere in Canada. Completing a **registration of divorce proceedings form** notifies the Central Registry of a divorce application. Court staff will provide you with the form, which you will complete at the court office at the time you file your application for divorce.

The Central Registry of Divorce Proceedings will check its database to see if the same parties have registered any other divorce application. If the check is clear, the Central Registry will issue a **clearance certificate** and send it to the court. The court cannot grant your divorce until the Clearance Certificate has been received.

Marriage Certificate

When you make an application for divorce, you must also file your original **marriage certificate**. You can file your marriage certificate when you file your application for divorce or at the time you complete the affidavit for divorce (Form 36). A divorce order will not be granted until you file your marriage certificate.

If you do not have your marriage certificate and you were married in Ontario, you may obtain a copy of your marriage certificate from ServiceOntario or the Registrar General of Ontario. There is a fee charged for the certificate.

You may contact ServiceOntario at www.serviceontario.ca or toll free at 1-800-267-8097 or within Toronto at 416-326-1234. The Office of the Registrar General may be contacted toll free at 1-800-461-2156 or within Toronto at 416-325-8305.

If you were married in another province or territory in Canada, you may order a copy of your marriage certificate from the government of that province or territory.

If you were married outside of Canada, and your marriage certificate is not in English, you will be required to have it translated. Refer to the yellow pages of your phone book or the Internet for information on certified translation services nearest you.

Previous Divorce or Death of a Spouse

You will be required to provide proof of the death of your spouse if you were married in Canada. If you were married outside of Canada, you must also provide proof of any previous divorce or the death of your spouse.

Divorce Order

If the judge grants your divorce claim, he or she will grant you a **divorce order**.

The court will send you the signed order in the self addressed stamped envelopes that you provided to the court. One envelope must be addressed to you and the other addressed to your former spouse.

Divorce Certificate

Where the court grants a divorce, the divorce order will state that the divorce is effective on the 31st day after the date on which the order was made. The **certificate of divorce** is proof of the date of your divorce.

Either party may request the certificate of divorce from the court.

Steps to Making an Application

Step 1: Identifying the Forms You Need to Make Your Application

Application

The forms you will need to make your application depend on the issues that you want the court to decide.

1. General Application

Applies to all claims where you and the other person cannot agree on how to resolve your family claims, including claims for divorce, support, custody, access and property. You will need:

- Form 8: Application (General)
- Registration of Divorce Proceeding form – only required when you are asking for a divorce (available at the court office).

You will also need:

- Form 6B: Affidavit of Service;
- Continuing Record cover; and
- Cumulative Table of Contents; and

Where you are claiming a divorce, you must also provide the court with two self addressed stamped envelopes, one addressed to you and one addressed to the respondent. This will allow the court to mail to you your divorce order.

If the respondent does not file an answer in response to the claims in your application and the application includes a claim for divorce, you will also need:

- Form 36: Affidavit for Divorce; and
- Form 25A: Divorce Order

See **A Guide to Family Procedures, Part 3: Answers** for more information on answering claims in an application.

In addition to the general application form and the other forms listed above, where your application includes a claim for a divorce, support, custody or access or division of property, you will also require the following forms:

Claim for Support (Application Does not include Property Claims)

If you are asking for support for you and/or your children in your application and you are not making any property claims, you will also need:

- Form 13: Financial Statement (Support Claims); and

- A Support Deduction Order Information Form (available at the court office); and
- Support Deduction Order (available at the court office).

You will also require your notices of assessment from Revenue Canada for the past three years. If you do not have a copy of your notices of assessment, a copy of your income and deductions printout may be obtained from the Canada Revenue Agency by calling 1-800-959-8281.

If you are claiming child support, including extraordinary expenses for children for daycare or other activities, you will also need proof of these expenses in the form of receipts. For more information on Child Support Guidelines visit www.attorneygeneral.jus.gov.on.ca/english/family/divorce/support/. Choose “Family Justice” and click on “child support”.

Property Claim (May also Include Support Claims)

If your application includes a claim for the division of your matrimonial property or for exclusive possession of the matrimonial home, you will also need:

- Form 13.1: Financial Statement (Property and Support Claims) if you are asking for an order

If you are also claiming support for yourself or you children, you will also need:

- A Support Deduction Order Information Form (available at the court office); and
- Support Deduction Order (available at the court office).

Custody or Access of Children

If your application includes a claim for custody of or access to a child, you must also complete:

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

2. Simple Application – Divorce

If you are seeking a divorce only (a simple divorce), you will need:

- Form 8A: Application (Divorce); and
- Registration of Divorce Proceeding form (available at the court office).

You will also need:

- Form 6B: Affidavit of Service;
- Continuing Record cover; and,
- Cumulative Table of Contents.

If the respondent does not file an answer in response to your claim for a divorce, you will need:

- Form 36: Affidavit for Divorce; and
- Form 25A: Divorce Order.

See **A Guide to Family Procedures, Part 3: Answers** for more information on answering claims in an application.

You must also provide the court with two self addressed stamped envelopes, one addressed to you and one addressed to the respondent. This will allow the court to mail to you your divorce order.

3. Joint Application – Includes Claim for Divorce

If you and your spouse are jointly claiming a divorce and you also agree on how your other family law matters should be resolved, including custody of or access to children, support for yourself and your children or division of matrimonial property you will need,

- Form 8A: Application (Divorce).
- Form 36: Affidavit for Divorce.
- Form 25A: Divorce Order
- Registration of Divorce Proceeding form (available at the court office).

You must also provide the court with two self addressed stamped envelopes, one addressed to you and one addressed to the respondent. This will allow the court to mail to you your divorce order.

If your application also includes a claim for support, custody or access or division of property, you will also require additional forms to support these claims. See 1. General Application above for a list of the forms required for:

- A Claim for Support (Application Does not include Property Claims)
- A Property Claim (May also Include Support Claims)
- Custody or Access of Children

Step 2: Completing the Forms

You can obtain and fill in most of the court forms you will need online. The Ministry of the Attorney General has developed the Ontario Court Forms Assistant to help you to complete some family court forms on-line. Once you select a form, you will answer a series of questions. The Assistant will use your answers to create the court form. You can print and save your forms and take them to the courthouse to be filed. Visit www.ontariocourtforms.on.ca a list of the family court forms and instructions on how to use the program.

You may also print the forms from the website and complete them by hand. Forms are also available at the family court office. If you handwrite the information, make sure it is clear so that the other party and the judge can read it. Court staff cannot fill in the forms for you.

If you need help filling in the forms and don't have a lawyer, you can visit a Family Law Information Centre (FLIC) where, at certain times an Advice Lawyer may be available to help you understand the basics of family law. If you meet Legal Aid financial requirements, the Advice Lawyer may also be able to provide you with some specific advice about your case. Before visiting a FLIC, you should contact the court office for information about the availability of an Advice Lawyer. Visit www.attorneygeneral.jus.gov.on.ca to find the location of a FLIC nearest you.

Step 3: Filing the Forms with the Court

At the family court office, courts staff will check to make sure that you have all the necessary forms to start your case and that you have completed them correctly.

If you are starting your case at the Superior Court of Justice or the Family Court Branch of the Superior Court of Justice, you may be required to pay a court fee to file your application. There is no fee to file an application at the Ontario Court of Justice.

Depending on the family court where your case was started and the issues that the judge is being asked to decide, the clerk may provide you with a **first court date**. A first court date is scheduled for all cases started at the Ontario Court of Justice as well as at the Family Court Branch of the Superior Court of Justice, unless the application includes a claim for divorce or a property claim. There is no first court dates scheduled for cases started at the Superior Court of Justice.

If you have all of the necessary forms and have completed them correctly, you must sign and date your application. The clerk will give you a court file number and will **issue** your original application by signing and dating the application and applying the court seal to the upper left corner of the form. You must write the court file number in the box provided at the top right hand corner of each page of your forms. You will need to do this for every copy.

After a court file number has been assigned and your application is issued, you must make copies of everything that the clerk returns to you in order to serve a copy on every party named in the case and any other person or agency required to be served. Remember to also make a copy for yourself for your continuing record.

See **A Guide to Family Procedures, Part 5: Filing Documents** for more information on the continuing record.

Step 4: Serving the Forms

After the court issues the application, you will need to make arrangements to serve the respondent and any other party named in your case. You may also be required to serve any other person or agency that may have an interest in the matter. For example, if a person makes an application for child support and he or she is receiving social benefits like Ontario Works, the Ministry of Community and Social Services will need to be served with any material filed for the application for child support.

In addition to serving the application, you must also serve any supporting forms and documents you want the judge to consider. You will also be required to serve the respondent with a blank Form 10: Answer and any other required forms such as Form 13: Financial Statement (Support Claims) or Form 13.1: Financial Statement (Property and Support Claims), which the respondent will be required to complete.

If a first court date is scheduled in your case, you must serve the application and all other forms and documents in enough time to ensure the respondent has at least 30 days to prepare and serve you with an answer to your application and file it with the court.

An application, any supporting forms and documents must be served on the respondent and any other party to the case by **special service**. A person other than the applicant must do special service. The person serving the documents must also be at least 18 years old. The person serving the documents for the applicant may:

- Give a copy of the document to the other person's lawyer, provided that the lawyer is willing to write on a copy of the document served that he or she accepts the document for the other person.
- Mail a copy of the document with Form 6: Acknowledgement of Service that the person served with the document must complete and return to you.
- Give a copy of the documents, in an envelope addressed to the person, to an adult who lives at the address of the person to be served and then mail a copy to the address that day or the next.

If you fear for your safety or the safety of any friend or family member who could serve the documents, you may ask one of the court staff to arrange to have your documents served for you.

Step 5: Completing and Filing the Affidavit of Service

After the application, supporting forms and documents have been served as described in Step 4, the person who served the documents will need to complete and file Form 6B: Affidavit of Service for each person they served.

The **affidavit of service** tells the court when, where and how your documents were given to the respondent and any other person required to be served.

The affidavit of service requires the person who served the documents to **swear or affirm** that the information in the affidavit is true. After completing the affidavit of service, the person must sign it in front of a **commissioner for taking affidavits**. There are commissioners for taking affidavits at the family court office.

Remember, it is a criminal offence for a person to swear or affirm a false or misleading affidavit. It is the responsibility of the person making the affidavit of service to make sure that the information in the affidavit is true.

After your document(s) are served and the affidavit of service is sworn or affirmed, you will need to file the affidavit with the court in the continuing record. You must also update the table of contents.

See **A Guide to Family Procedures, Part 6: Serving Documents** for more information on service.