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A Guide to Procedures in Family Court

June 2010

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

PART 1: INFORMATION BEFORE YOU START YOUR FAMILY CASE, THE RIGHT COURT AND RESOURCES

Family Law

You have a family law matter if you're faced with issues concerning:

- Separation;
- Divorce;
- Children, including the time they spend with each parent;
- Dividing family property between you and your spouse;
- Determining who will live in the family home;
- Support for you, your partner or your children after your relationship ends;
- Adoption; and
- Child protection (Children's Aid Society matters).

Unless your issues are urgent, it's a good idea to do some research on the options available to you to resolve your family issues. Talking to a lawyer can help you understand your options and the steps that make the most sense in your case. It will also give you a better idea of your rights and responsibilities.

Options to Resolve Family Law Issues

There are many ways to resolve your family law issues. Options include:

- Negotiating an agreement;
- Collaborative family law;
- Mediation;
- Arbitration; and
- Going to court.

More information about these options can be found on the Ministry website at www.attorneygeneral.jus.gov.on.ca. Choose your preferred language and select "Family Justice"

Not all of these options would be appropriate in every circumstance. For example, mediation may not be appropriate where there is domestic violence in the relationship. In these circumstances the best options may be going to court.

Keep in mind that when you go to court, you are asking someone you don't know and who doesn't know you to make serious decisions about your family. Court can be expensive and can take a long time. It can also be stressful for you, the other person, and your children.

Overview

The *Divorce Act*, the *Family Law Act*, the *Children's Law Reform Act* and the *Child and Family Services Act*, contain much of the law that applies to families. These laws can be found at www.e-laws.gov.on.ca. Some family law is also contained in written decisions of judges, known as "case law".

You must follow the *Family Law Rules* in order for your case to proceed. For example, Rule 8 tells you how to start a case. Rule 10 explains how to answer a case that has been started against you. There is a rule for every step in a case and every person using the court is responsible for following the procedures as set out in the Rules.

Generally, each person in a family case must be given the opportunity to receive and respond to the other's requests from the court and the information that is provided in support of the request. The other person or party in your case must be provided with a copy of any document that you provide to the court. This requirement ensures that the other person will have the opportunity to respond and tell their side of the story.

The role of judges is to decide cases that come before them based on the evidence and the law. Judges must be neutral and impartial and cannot give legal advice or assistance to the parties in a case. You may not contact nor may you discuss your case with the judge outside of your scheduled court appearances. A judge may not accept or consider information not previously shared with the other party.

Common Terms

The person starting a family case is called the **applicant**. The other person responding to the application is called the **respondent**.

To start a family case, you must complete an **application**, which tells the court what you are asking from the court, for example custody of a child, a divorce or spousal support. The application provides important background information about the history of your relationship with the other person and any children you have. It also sets out the facts that you are relying on to support your request. More detailed information about making an application is found at **A Guide to Family Procedures, Part 2: Starting A Family Case**.

You must give the respondent a copy of your application together with any other forms and documents supporting the claims that you make in your application. For example, a financial statement must accompany any claim for spousal support. Giving the respondent these documents is called **service**. Detailed

information about service including the timelines you must follow when you serve a document and how you may serve it is found at **A Guide to Family Procedures, Part 6: Serving Documents**.

The respondent has the opportunity to review the application materials and to respond to the application completing an **answer**. If you are a respondent, filing an **answer** gives you the opportunity to tell the court:

- What you do and don't agree with in the application;
- Your version of the history of the relationship; and,
- What order you think the court should make in the circumstances.

Refer to **A Guide to Family Procedures, Part 3: Answers** for additional information on completing and serving an answer.

Conferences take place throughout the family court process. Conferences give you, the other party, and your lawyers an opportunity to meet with the judge to talk about the progress of the case and to discuss ways in which some or all of the matters might be resolved.

Conferences also give the judge the chance to make sure you and the other party have provided each other and the court with the information required to move your case forward.

In most cases, the first time you will appear before a judge is for a **case conference**. It is very important that you and the other party exchange all of the necessary information with each other and the court before every conference. You will do this by completing and serving a **conference brief** on the other party.

If you are not able to settle all of the issues at a case conference, the next step is usually a **settlement conference**.

Before a settlement conference, the parties need to exchange settlement conference briefs and other supporting information (for example, net family property statements). At a settlement conference, the judge will usually discuss the issues that are in dispute, the parties' positions on those issues and ways in which the issues can be resolved.

More detailed information about conferences is found in **A Guide to Family Procedures, Part 7: Required Steps**.

During the case you or any other party may ask the court for a decision or ruling. This request is called a **motion**. A motion may be brought at any time after a

case conference has been held. In some cases where there is a situation of urgency or hardship, a judge may hear a motion before a case conference.

The person bringing the motion is called the **moving party**. The person receiving the motion is called the **responding party**. The moving party starts a motion by serving the other party with a **notice of motion**. The decision made by the judge on the motion is an **order**. An order can be temporary or final.

The order the judge makes on a motion would normally set out the arrangements that are to be followed until a final decision on the issue can be made. An example of a motion is a request by the moving party for a decision by the judge about where the children will live and whether child support is to be paid by one of the parties until a final decision can be made.

The court will usually decide a motion based on affidavit evidence. Affidavit evidence is where you set out the information or evidence you think the judge needs to make a decision in a written document that is called an **affidavit**. You must **swear or affirm** that the information in the affidavit is true and you must sign the affidavit in front of a person who is a **commissioner for taking affidavits**. If you do not know where to find a commissioner for taking affidavits, you can ask for help at the family court office.

More information about making a motion is found in **A Guide to Family Procedures, Part 8: Motions**.

If you are not able to work out the issues on your own or after attending conferences before a judge, it may be necessary to go to **trial**. At a trial, you and the other party will present the information and evidence in support of your position. You will also have the opportunity to bring witnesses to court to ask them questions about the issues in the case and you will have a chance to ask questions of any witnesses the other party brings to court.

The judge will make a final decision based on the information and evidence presented at trial. The decision will be set out in a judgment.

THE RIGHT COURT FOR YOUR FAMILY CASE

There are three different courts in Ontario that deal with family law cases and it is important that you have the right court. They are:

- Superior Court of Justice;
- Family Court Branch of the Superior Court of Justice; and
- Ontario Court of Justice.

When starting a family case, there are two factors that you must consider to ensure that you have the right court .

First, you must start your case in the municipality where you or the other person lives. However, if you are asking the court for custody of or access to a child, you must start the proceeding in the municipality where the child ordinarily lives.

For more information on where you should start a family law case, refer to the *Family Law Rules*, Rule 5: Where A Case Starts And Is To Be Heard, which is found on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Click on "Family Justice", then scroll down and click on "Family Law Rules".

Second, you need to determine which of the family courts can deal with the issues that you need to have resolved, e.g. Superior Court of Justice or Ontario Court of Justice. Court staff can assist you to determine if you are using the right court.

The Right Court

The Family Court Branch of the Superior Court of Justice is the only court in Ontario that can hear all types of family law cases, including cases involving:

- Divorce;
- Child support;
- Spousal support;
- Support enforcement;
- Custody of, and access to, children;
- Division of family property;
- Exclusive possession of the family home;
- Trust claims and claims for unjust enrichment;
- Adoption; and
- Child Protection.

In Ontario, the Family Court Branch of the Superior Court of Justice is located in:

- Oshawa (Regional Municipality of Durham);
- Kingston (County of Frontenac);
- Perth (County of Haliburton & County of Lanark);
- City of Hamilton;
- Brockville (United Counties of Leeds and Grenville);
- Napanee (County of Lennox and Addington);
- London (County of Middlesex);
- Bracebridge (Territorial District of Muskoka);
- St Catharines (Part of the Regional Municipality of Niagara that was the County of Lincoln as it existed on December 31, 1969);

- Cobourg (County of Northumberland);
- City of Ottawa;
- Peterborough (County of Peterborough);
- L'Orignal (United Counties of Prescott and Russell);
- Barrie (County of Simcoe);
- Cornwall (United Counties of Stormont, Dundas and Glengarry);
- City of Kawartha Lakes;
- Newmarket (Regional Municipality of York).

For all other municipalities, you would start your case in either the Superior Court of Justice or the Ontario Court of Justice, depending on the issues in your case. Only certain kinds of decisions can be made in each court.

The Superior Court of Justice can hear family law cases involving:

- Divorce;
- Division of family property;
- Claims relating to the family home;
- Trust claims and claims for unjust enrichment;
- Applications and appeals relating to family arbitrations;
- Child support;
- Spousal support; and
- Custody of and access to children.

The Ontario Court of Justice can hear family law cases involving:

- Custody of and access to children;
- Child support;
- Spousal support;
- Enforcement of support set out in a domestic contract or separation agreement;
- Adoption; and
- Child protection.

If you're not sure which court you should go to, call the family court office in your municipality to ask. You can find the addresses and phone numbers for the family courts on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Go to "Court Services" and click on "Court Addresses".

RESOURCES

Legal Advice

Before choosing an option listed above, it is important to speak to a lawyer. A lawyer is in the best position to advise you of your legal rights and obligations and to help you understand the legal consequences of your decision.

Finding a lawyer can be confusing. Information is available to help you choose a lawyer that's right for you, and taking the time to make the right choice is very important. When choosing a lawyer you should consider contacting:

- Friends and family who have used a family law lawyer before;
- The Lawyer Referral Service;
- Legal Aid Ontario; or
- The Family Law Information Centre at the family court in your municipality.

If you chose to go to court, you can represent yourself, but you need to know that judges and court staff cannot give you legal advice. Only lawyers can do that. Parties who represent themselves are responsible for informing themselves about the law and the court's procedures. You will be held to the same standard as parties who have lawyers representing them.

If you decide to hire a lawyer and you do not know whom to call, you can contact the Lawyer Referral Service operated by the Law Society of Upper Canada. The Lawyer Referral Service will provide the name of a lawyer in your area who practices family law. That lawyer will provide a free half-hour consultation. The telephone number for the service is 1-800-268-8326.

If you can't afford a lawyer, you may wish to contact Legal Aid Ontario to see whether you would qualify to receive legal aid. You may contact Legal Aid Ontario by calling 1-800-668-8258 or by visiting www.legalaid.on.ca. You can also visit an Advice Lawyer (a lawyer provided by Legal Aid Ontario) at the Family Law Information Centre at the family court in your municipality. If you meet the financial requirements for legal aid, an Advice Lawyer can give you legal advice about your case. If you do not meet the financial requirements, an Advice Lawyer can still provide some general information about the family court process.

Family Law Information Centres

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. Visit www.attorneygeneral.jus.gov.on.ca to find the location of a FLIC nearest you. Before visiting a FLIC, you should contact the court office for information about the availability of an Advice Lawyer.

Family Law Rules

The ***Family Law Rules*** set out the procedures that guide each step of your family case. The *Family Law Rules* can be found on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Go to "Family Justice" and click on "*Family Law Rules*."

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 for a list of the available family court forms and instructions on how to use the program.



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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.



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PART 3: ANSWERS

If you are named as a respondent in a family case and you are served with an application, you will also receive a blank **answer** that will allow you to respond to the claims that have been made in the application. You may also make claims against the applicant or another person (an added respondent) in your answer.

The information that you write on the answer lets the applicant and the judge know what you and the applicant do and do not agree on in the application. You may also add any other issues, not set out in the application, that you would like the judge to decide.

In addition to an answer, you may also need to complete other forms depending on the claims that have been made, such as a financial statement.

Within 30 days of being served with the application, or by the first court date, whichever is earlier, you must:

- Serve your answer and any other forms and documents on every party named in the case, including any parties that you may have added in your answer; and
- File all documents with the court.

If there is a first court date, it will be set out on the first page of the application.

If you do not serve and file an answer within 30 days of being served with the application, or the first court date, the case can go ahead without you. This means that the court could make an order that affects you and your children, if any, without hearing from you. It's very important for you to file an answer before the deadlines if you disagree with the information or the claims in the application or if you want to make your own claims.

The rules for answering the claims set out in an application is found at Rule 10: Answering a Case of the *Family Law Rules*. You can find the *Family Law Rules* on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Click on "Family Justice", then scroll down and click on "Family Law Rules".

Steps to Answering an Application in a Family Case

Step 1: Identifying the Forms You Need to Answer the Application

The forms you will need to answer the application will depend on what it is you are asking the court to do.

In all cases, you will need:

- Form 10: Answer;
- Form 6B: Affidavit of Service; and
- A copy of the Cumulative Table of Contents.

You may also need:

- Form 35.1: Affidavit in Support of Claim for Custody or Access, if you are making a claim for custody of or access to a child; and,
- Form 13: Financial Statement (Support Claims), if you are responding to or asking for support for you and/or your children and are not making or responding to any property claims; or
- Form 13.1: Financial Statement (Property and Support Claims) if you are responding to or asking for support for you and/or your children and are making or responding to any property claims.

If you are responding to or asking for support for you and/or your children, you will need a Support Deduction Order Information Form, which the court office will provide you. You will also need your notices of assessment for the past three years, which you will attach to your Financial Statement. If you do not have a copy of your notices of assessment, a copy of the Income and Deductions printout may be obtained from the Canada Revenue Agency by calling 1-800-959-8281.

If your case is started at the Superior Court of Justice or at the Family Court Branch of the Superior Court of Justice and you are asking for a divorce, court staff will provide you with a Registration of Divorce Proceeding form.

Most of the court forms you need are available at the family court office or on line at www.ontariocourtforms.on.ca. Read and follow the instructions on the forms carefully.

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 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.

You will need to:

- Sign and date your answer; and supporting material (if required); and
- Write the court file number in the top right hand corner of each page of your forms.

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: Serving the Forms

You will need to serve the applicant and any other party named in your case with a copy of the answer, supporting forms and documents you want the judge to consider before they are filed with the court. The answer and any supporting forms and documents may be served on a party to the case by **regular service or by special service**.

Check the service rule, Rule 6: Service of Documents of the *Family Law Rules* to ensure that all your documents are served properly and within the proper timelines. For example, if you mail a document, the rules consider the other party served on the fifth day after a document is mailed. So, if you have 30 days to serve your answer, you must remember that if you mail your answer, the rules provide that the applicant and other person would not receive your answer until five days after you mail it.

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

After the application, supporting forms and documents are served, the person who served the documents will need to complete and file Form 6B: Affidavit of Service with the court for each person they served.

If the application has a first court date, you must file your documents with the court as soon as possible before the first court date.

Step 4: Completing the Affidavit of Service

After serving the answer, supporting forms and documents as described in Step 3, the person who served the documents will need to complete and file Form 6B: Affidavit of Service for each person served.

The **affidavit of service** tells the court when, where and how your documents were provided to the applicant and any other party.

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.

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

Step 5: Filing the Forms with the Court

You will need to file your completed answer, any other original forms and the affidavit of service at the family court office where your case was started. You will need to file your answer, other documents and the affidavit(s) of service in the continuing record and update the table of contents contained in the endorsements volume.

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

In some cases, such as where you or the other person is asking for a divorce and/or division of property, you will need to pay court fees.



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PART 4: FINANCIAL STATEMENTS

Financial Statements

A financial statement is a court form where you set out your financial information for the court, including information about your income, expenses, property and debts. There are two different financial statements under the *Family Law Rules*, Form 13 and Form 13.1.

Financial statements must be signed and sworn or affirmed to be true, like an affidavit, and must be completed and served with your application or answer, where required.

Filing a Financial Statement

The *Family Law Rules* require you to file a financial statement where either you or the other party makes a claim for child or spousal support or for an order for division of property.

You do not have to file a financial statement if:

- Your case does not involve claims for support or property claims;
- You want the other person to pay child support in the table amount under the Child Support Guidelines; or
- You and the other party are filing a Motion to Change a support payment on consent and have agreed that financial statements do not need to be filed.

Form 13 and Form 13.1

Form 13: Financial Statement (Support Claims) should be completed if you are making or responding to a claim for child support or spousal support, or a claim to change child or spousal support, but no claim is made for a division of property or relating to the matrimonial home.

Form 13.1: Financial Statement (Property and Support Claims) should be used if you are making or responding to a claim for property, an equalization payment or relating to the matrimonial home. You would also use this form if you were also making a claim for child or spousal support.

Completing Financial Statements

You can obtain and fill in most of the court forms you will need online. You may also print the forms from the website and complete them by hand. The forms can be found on line at www.ontariocourtforms.on.ca. Read and follow the instructions on the forms carefully.

Forms are 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.

Be sure to read the instructions on how to complete the financial statement found on page 1 of the statement carefully. It will tell you which schedules must be completed and attached to the statement.

You should also pay attention to the timing of the requests for information. For example, some parts of the form ask for current information, and other parts ask for information at a certain time (for example, your income for the past three years). It is important that the figures that you provide are accurate at the specified dates as these amounts will be used to determine your rights and obligations.

You should also double check your calculations in the form, since there are many sections that need to be added up into subtotals, and you will be required to show some of the figures on a monthly or yearly basis. The following tips may help you with these calculations:

- If you know the cost of an expense on a weekly basis, for example food, you multiply it by 4.3 to get the monthly figure;
- Monthly figures should be multiplied by 12 to get to the yearly figure; and
- In Part II, where you have an annual expense, you should divide it by twelve to show a monthly figure in the expense column.

Be sure to attach any documents that the form requires. For example, sections 3 and 4 of Part I of the statement requires you to attach proof of your year-to-date income, as well as proof of your income over the last three years. Where appropriate, the schedules require you to attach proof of special or extra-ordinary expenses for a child. If you do not include these attachments, you will not be able to file your Financial Statement with the court.

Once you have finished completing your Financial Statement, you must swear or affirm that the information in the statement is true and sign it in front of a person who is 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 statement. It is the responsibility of the person completing the statement to make sure that the information contained in the financial statement is true.

Updating Your Financial Statement

You will have to update your financial statement at each new stage in your case if the last Financial Statement is more than 30 days old. You can do so by either:

- Preparing a new Financial Statement; or
- Preparing a Form 14: Affidavit that either confirms that the statement is still accurate or lists any minor changes that should be made.

You are also required to update your financial statement at any point in the case if there is a significant change in your circumstances that affects the information in the Financial Statement. For example, if you change jobs and have a significant change in the amount of your income, you should prepare a new Financial Statement.



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PART 5: FILING DOCUMENTS

Filing a document means that you are giving the court a document, usually the original that:

- The court rules require you to file in your case; or
- Is relevant to your case and that you want the judge to consider.

Rule 9: Continuing Record of the *Family Law Rules* requires that you file every document in your case in a **continuing record** so that the judge can find it easily when it is needed. The continuing record is kept in the court file at the court office.

The continuing record contains two volumes, the **endorsement volume** and **documents volume**.

There is also a **table of contents**, which lists all documents that have been filed with the court. You must update the table of contents each time you file a document with the court. Each party is responsible for updating the table of contents with any document they add to the continuing record.

The table of contents is contained in the endorsements volume of the continuing record. The endorsements volume has a yellow cover and includes all of the judge's endorsements and the orders made in the case.

The documents volume of the continuing record contains the documents that have been filed in the case, including applications, answers, replies, affidavits of service, financial statements, motions, affidavits and trial management conference briefs.

While it is the parties that are responsible for the creating the continuing record, if you do not have a lawyer, court staff will provide you with the materials to help you make a continuing record and may be able to help you determine where a certain document goes.

You are responsible for updating the table of contents whenever you file a document with the court.

For more information on the formal requirements of the continuing record, **see** Rule 9: Continuing Record of the *Family Law Rules*, which can be found on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Click on "Family Justice", then scroll down and click on "Family Law Rules". These requirements can also be found at www.ontariocourtforms.on.ca.



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PART 6: SERVING DOCUMENTS

The *Family Law Rules* tell you which forms and documents must be used for each step of a family case. You must give a copy of the forms and documents to the other party named in the family case. Sometimes you may also be required to give the forms and documents to other people or agencies. For example, if the person receiving support receives social benefits like Ontario Works, the Ministry of Community and Social Services will need to be served with any material filed on an application for child support.

Giving your documents to the other parties and agencies is called **service**.

Under the rules, no person shall serve a document unless he or she is at least 18 years of age.

Special Service Rule

There are some documents in a family case, such as an application or a motion to change, that must be served by **special service**.

Where the special service rules apply, the person required to serve the document must arrange for the service of the document by another person. The party may not serve the document himself or herself.

Other persons who can serve the document include:

- A friend or family member; or
- A process server.

For information on process servers in your area look in the yellow pages or visit www.canada411.ca and search for “process server”.

Special service of a document requires the person serving the document to serve it by one of the following three methods:

- 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; or

- 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 second 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.

Regular Service Rule

The party or another person can serve most documents in the family court process by **regular service**. Regular service of a document means that you may serve a document by using one of the following methods:

- Mailing a copy of the document to the person or to the person's lawyer;
- Sending a copy of the document to the person or to the person's lawyer by courier;
- Faxing a copy of the document to the person or to the person's lawyer; or
- Using any one of the three special service methods as set out above.

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.

For more information on the different methods for serving documents, see Rule 6: Service of Document of the *Family Law Rules*. You can find the *Family Law Rules* on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Click on "Family Justice", then scroll down and click on "Family Law Rules".

When to Serve and File Documents

In addition to setting out the different methods to serve a document, the *Family Law Rules* will also help you determine:

- How far in advance you must serve the document on the other party; and
- When the original documents must be filed with the court.

For example, if you have been served with an application in Canada, Rule 10: Answering a Case requires that you serve an answer on every other party and file it with the court where the case was started within 30 days after being served with the application.

Another example is the rule of service for motions. If you are bringing a motion, Rule 14 requires you to serve every other party by regular service at least four days in advance of the date set for the hearing of the motion.

Counting Days

Throughout the *Family Law Rules* there are timelines for when documents must be served on the other party and filed with the court. Rule 3 deals with the issue of time, including how to count the number of days. Generally speaking, counting starts on the day after the first thing happens. For example, if you serve a document on Monday that requires 7 days service, the first day you count is Tuesday and the 7th day is the following Monday.

For more details, see Rule 3 at <http://www.attorneygeneral.jus.gov.on.ca>. Click on “Family Justice” then scroll down and click on “Family Law Rules”.

You should always check the *Family Law Rules* and the family court form to make sure that you are serving and filing your documents properly and on time. Court staff cannot accept your documents if you have not complied with the rules of service.

Proof of Service

Cases cannot be decided fairly unless everyone who has the right to know:

- Is aware that a court case is going on;
- Is aware that a step in a case is going to happen and what information is being provided to the court as part of that step; and
- Has enough time to put their own side of the story before the court.

The court requires that you provide proof that the other party or parties were served with all the documents that you file with the court. Proof is in the form of an **affidavit of service**. In the affidavit, you must set out when, where and how the document(s) were served.

The affidavit of service form is available at the family court office or on-line at www.ontariocourtforms.on.ca. Read and follow the instructions on the form carefully.

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.

More detailed information on filing an affidavit of service is found in **A Guide to Family Procedures, Part 5: Filing Documents**.



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PART 7: REQUIRED STEPS

There are several steps that you will need to take before a judge can make a final decision in your family case. Many of these steps encourage you and the other party to try and settle as many of the issues as possible early on, so that you do not have to have a trial. A trial can take a long time and may be a very difficult and expensive experience for you and your family.

The *Family Law Rules* provide you and the other party with opportunities to settle at events called case conferences, settlement conferences and trial management conferences. You and the other party can always decide to settle on your own, even after a family case has started. It is not necessary to wait for a conference to try to resolve your issues.

First Court Date

In some cases at the Family Court Branch of the Superior Court of Justice and for all cases at the Ontario Court of Justice, the first step may be a **first court date**. Court staff schedules the first court date and the date and time of the first court date is set out on the application.

The first court date often begins as a meeting with the court clerk, who will ensure that each party to the case, and any other person or agency required to be served, was served with a copy of the relevant forms and documents. The clerk also ensures that all required forms and documents have been filed with the court.

For all other cases at the Family Court Branch of the Superior Court of Justice and the Superior Court of Justice where a first court date is not required, one of the parties will need to ask the clerk to schedule a **case conference** for the case to proceed. It is important to remember that unlike a first court date where it is court staff that will automatically schedule a first court date, for case conferences, it is you that must ask court staff to schedule a case conference

Conferences

Case Conference

The first time you will speak to a judge about the issues in your case is called a case conference.

All the parties named in the family case must go to the case conference. If you have a lawyer, your lawyer must attend the conference with you.

A case conference can be held in a courtroom or in a less formal space in the courthouse, like a conference room or the judge's office. A case conference can also be held by telephone or videoconference, with the permission of the judge. When you get to court on the day of your case conference, you can check for your name and court file number on a case event list which will be posted outside a courtroom to see where the conference will be held, or you may ask court staff.

A case conference is held so that you and the other party can meet with a judge to:

- Discuss the chances of settling your case;
- Identify the issues that you and the other party cannot resolve;
- Determine if you and the other party have disclosed all relevant information that is required to settle the issues; and
- Set a date for the next step in the case.

The judge can make certain orders at a case conference, including:

- An order requiring one or both parties to provide the other with certain documents, like business financial statements or proof of business income;
- An order that one or both parties be allowed to ask the other questions about the evidence they have filed with the court;
- An order identifying next steps to be taken in the case;
- If both parties agree, an order that they participate in an alternative form of dispute resolution, like mediation; or
- An order based on the agreement of the parties.

The judge can also make other orders where a party has served the other party with notice of the request and the judge agrees that the order should be made.

A case conference can be scheduled by:

- The clerk at a first court date (if applicable);
- One of the parties asking the clerk to schedule a case conference; or
- The judge, if it considers it appropriate.

At least one case conference must be held in each family case. There may be more, if you or the other party requests a case conference or if the judge orders it.

In addition to case conferences, you may also ask for, or the judge may order, a settlement conference and/or a trial management conference.

Settlement Conference or Trial Management Conference

At a settlement conference, the judge focuses on how the issues in dispute may be resolved and which issues may be settled without further court attendances.

Trial management conferences are in place to ensure that the parties are ready to proceed with their case once a trial date is set. At a trial management conference, each party must provide the court with information about how they intend to present their case at trial, including the witnesses they intend to bring and how long the party expects that it will take to put his or her evidence before the judge.

Steps to Schedule a Case Conference at Family Court

Step 1: Identifying the Forms You Need for a Case Conference

You will need:

- Form 17: Conference Notice; and
- Form 17A: Case Conference Brief (General).

You will also need:

- Form 6B: Affidavit of Service;
- A copy of the Cumulative Table of Contents; and
- Form 14C: Confirmation.

If your financial statement is more than 30 days old, you will also need to update your financial information before the case conference date by serving and filing either:

- A new financial statement (Form 13 or Form 13.1) if any major changes to your existing financial statement are required;
- An affidavit (Form 14) that sets out any minor changes that should be made; or
- An affidavit (Form 14) saying that the information you provided in the last financial statement has not changed and is still true.

All of the court forms you will need for a case conference are available at the family court office or on-line at www.ontariocourtforms.on.ca . Read and follow the instructions on the forms carefully.

Step 2: Completing the Forms

You can obtain and fill in most of the court forms you will need on-line. The Ministry of the Attorney General has developed the Ontario Court Forms Assistant to help you to complete 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 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.

Once you have completed the forms, you will need the original form(s) to file with the court, together with one copy for each of the following:

- Your copy of the continuing record;
- You to serve on each party to the case; and
- You to serve on any other person or agency required to be served.

If a case conference has not already been scheduled, you must attend court to obtain a case conference date. Once the clerk has scheduled the case conference, he or she will also sign and date the conference notice.

Step 3: Serving the Forms

You will need to serve every party named in the case with a copy of the conference notice and all the documents you want the judge to consider.

If you are the one that requested the case conference, you must serve and file your case conference brief and any other supporting documents **at least seven days before** the case conference date is scheduled to be heard to allow the other party enough time to prepare and also serve you with their case conference brief before the case conference date.

If you are the party served with the notice of case conference and case conference brief, you must serve and file your case conference brief and any other supporting documents **no later than four days before** the scheduled case conference date.

A conference notice and a case conference brief may be served by **regular service or by special service**. See **A Guide to Family Procedures, Part 6: Serving Documents**.

Step 4: Completing the Affidavit of Service

After serving the case conference notice and all supporting forms and documents as described in Step 3, the person who served the documents will need to complete and file Form 6B: Affidavit of Service for each person served.

Step 5: Filing the Forms with the Court

You will need to bring your completed, original form(s) identified in Step 1 and at least one copy to the family court office where your case is being heard, along with your affidavit of service. The case conference brief is not included in the continuing record, but it will be placed in your court file so that the judge has an opportunity to review it before the case conference. After the case conference, it will either be returned to you or destroyed by the clerk.

You will need to file the affidavit(s) of service in the continuing record and update the table of contents contained in the Endorsements volume

Confirming the Conference - Form 14C: Confirmation.

No later than 2:00 p.m. two days before the case conference, each party must file a Confirmation – Form 14C, confirming that he or she will attend the conference. You can do this either by taking the form to the court office or by faxing it to the court. You can call the court to obtain the fax number.

Settlement Conference or Trial Management Conference

If the judge thinks that another conference is necessary, he or she can schedule another case conference. The judge may also schedule a settlement conference or a trial management conference.

The purpose of a settlement conference or a trial management conference is similar to those of a case conference and your preparation steps are similar as well.

For a settlement conference, each party must file a Settlement Conference Brief – Form 17C and for a trial management conference, each party must file a Trial Management Conference Brief – Form 17E.

The time for serving and filing documents is the same for all of the conferences. The Confirmation – Form 14C is also the same for all of the conferences.

For more information on case conferences, settlement conferences or trial management conferences, see Rule 17: Conferences of the *Family Law Rules*. You can find the *Family Law Rules* on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Go to "Family Justice" and click on "Family Law Rules".



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PART 8: MOTIONS

Motions allow the parties to ask the court to make temporary decisions on the matters that you have asked the court to decide. Either party can make motions before the court makes a final decision on the matters in your case.

An example of a motion is where one party asks the judge for a temporary order concerning where the children will live or how much time they will spend with each parent. This temporary decision would be in place until the court makes a final decision about custody and access.

If you are the person making a motion, you are called the **moving party**. The other person is called the **responding party**.

Types of Family Law Motions

Any party named in a case may make a **motion**, unless a judge has ordered otherwise. A motion is a request to the court by a party for one or more of the following:

- A **temporary order** until a final order can be decided, especially in **situations of urgency or hardship**.
- An order to **change** a temporary order.
- An order where **all the parties named in the case agree** on what is being asked for.
- An order on **procedural, uncomplicated or unopposed** matters in a case.
- An order for **summary judgment**.
- A **contempt order** under Rule 31:Contempt of Court.
- A **refraining order** or an **alternative payment order** related to support paid to the Family Responsibility Office.
- An order to **set aside the registration of a support order** made outside of Canada.

A motion can also be made to **change a final order or a support agreement** filed with the court. However, this type of motion is referred to as a **motion to change**.

In some circumstances, you may determine that you need to make a motion without notifying the other person. This is called a **motion without notice**.

Motions for Consent Orders or an Order on an Uncomplicated or Procedural Matter

Where you and the other party agree, you can ask the court to put your agreement in a court order. This is called an order on consent. When you ask the court for an order on consent, you must attach the consent or any minutes of settlement that show what you and the other party have agreed to to your Affidavit.

In these circumstances, you should also include a draft order that includes the terms that you are seeking, if possible.

In most cases where all the parties consent to the order to be made, the parties do not need to appear in person before the judge. The clerk will present the documents you have filed to the judge.

If your materials are complete and the judge does not have any questions for you or the other person, the judge will sign the draft order. The clerk will send a certified copy of the signed order to you and every other party named in the case.

If the judge has questions for you or the other person, the clerk will contact you with a court date or provide you with a copy of the judge's endorsement that sets out any additional steps that should be taken.

Motions to Change a Final Order

Where the court has previously granted a final order or where a support agreement has been filed with the court, you may bring a motion to **change a final order or a support agreement**.

Motions to change are similar to the process involved when making an application. The motion to change and supporting documents must be served on the other party by special service. The court process begins once the motion to change is filed with the court. A motion to change may involve a first court date, if your case is at the Ontario Court of Justice or the Family Court Branch of the Superior Court of Justice, unless the application includes a claim for divorce or a property claim. For the Superior Court of Justice you will be required to schedule a case conference.

A motion to change might be made, for example, if the person paying child support loses his or her job and needs to reduce the amount of support payments. Another example is when one party wants to move, which would require a change to the custody and/or access order.

If a Motion to Change is being brought on consent of all parties, you must attach the consent or any minutes of settlement that show what you and the other party have agreed to to your Affidavit. You should also include a draft order that includes the terms that you are seeking, if possible. The motion to change and supporting documents that you filed with the court will be reviewed by the judge and either an order will be made, or an endorsement will be made that sets out any additional steps that should be taken.

See Rule 15: Motions to Change a Final Order or Agreement of the *Family Law Rules* for more information on changing a final order or agreement. You can find the *Family Law Rules* on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Go to "Family Justice" and click on "Family Law Rules". You can also review the Ministry's guides to Motions to Change which are available at: www.attorneygeneral.jus.gov.on.ca/english/family/divorce/support/motion.asp

Timing of Motions

A motion can be made at any time after the first case conference. However, there are occasions when a judge will hear a **motion before a case conference** or a **first court date** if your case is started at the Ontario Court of Justice or the Family Court Branch of the Superior Court of Justice and the application does not include a divorce or property claim. These include:

- **Situations of urgency or hardship**, such as an issue of immediate danger, health or safety that cannot wait until after a case conference or first court date. These motions are often heard without notice to the other parties named in the case; or
- **Procedural, uncomplicated or unopposed matters** (14B motions). For example, asking the court for permission to file an answer after the time to file an answer has passed.

It is only in the most serious circumstances that a judge will make a temporary order on a motion before a case conference or a first court date. You should think carefully about whether or not you need to make a motion because if you make a motion and the judge decides it was not necessary to do so, the judge can order you to pay the other party's costs related to their preparation for the motion.

Motion by Telephone or Video Conference

A motion may also be heard by telephone or videoconference with the judge's permission. The person requesting a telephone or videoconference must contact the family court office before completing their motion documents. It is the responsibility of the person asking for the telephone or videoconference to make all necessary arrangements and to let the other party know by serving them with a notice of the arrangements and filing the information with the court office.

The Day of the Motion

Make sure you arrive early to court on the motion date

When you arrive at the courthouse, you should look for the name of your case or your court file number on that day's list of cases to be heard. The day's list of cases is usually posted on a board somewhere near the entrance to the court or outside the courtroom. If you have trouble finding it, you may ask staff at the family court counter.

If you do not have a lawyer and you are at a court location where **duty counsel** is available, you may wish to speak with duty counsel. Duty counsel are lawyers provided in family courts by Legal Aid Ontario and provide assistance to parties who qualify for legal aid and are attending court without a lawyer.

You should check in with the clerk in the courtroom when the motion is scheduled to be heard. When your name is called, you and the other party will sit at the tables set up at the front of the courtroom. When the judge enters, you should stand and should remain standing until the clerk says that you can be seated.

There are usually no witnesses on a motion. Instead, you and the other party will each have a chance to tell the judge what you are asking for, or what it is you do not agree with about what the other party is asking for, and why you disagree. You may only refer to the evidence in your affidavit or other documents you have served and filed with the court, so it is very important to include all of the evidence you wish to rely on in your affidavit.

The person who brought the motion will usually be asked to speak first, and then the responding party will have a chance to speak. The judge may also ask you or the other party questions about your motion.

Once you have finished telling the judge your side of the events and the judge has asked all of his/her questions, the judge may make a decision. Alternatively, he or she may **reserve the decision** to a later time or date.

If the judge reserves the decision, it means that he or she needs more time to review the evidence and consider the requests that have been made. You may need to come back to court for the decision or you and the other party may be notified of the decision in writing.

Steps to Making a Motion at Family Court

Step 1: Identifying the Forms You Need for a Motion

If you want to make a motion, you will need:

- Form 14: Notice of Motion or Form 14B: Motion Form (see below);
- Form 14A: Affidavit (General); **and**
- Form 6B: Affidavit of Service.

Use Form 14B: Motion Form where:

- You are requesting the court to make an order on an uncomplicated or procedural matter; or
- You and the other party agree about the order you would like the court to make and you have a signed consent or minutes of settlement that sets out the agreement.

If your motion involves a claim for child or spousal support or family property, you may need:

- Form 13 (or Form 13.1): Financial Statement.

If your financial statement is more than 30 days old, you will also need to update your financial information by serving and filing either:

- A new financial statement (Form 13 or Form 13.1) if any major changes to your existing financial statement are required;
- An affidavit (Form 14) that sets out any minor changes that should be made; or
- An affidavit (Form 14) saying that the information you provided in the last financial statement has not changed and is still true.

If you are asking for a temporary order for child or spousal support or to change child or spousal support, you will need:

- A Support Deduction Order Information Form.

Motions to Change

To change a final order or agreement for child support only, with the agreement of both parties, you need:

- Form 15 D: Consent Motion to Change Child Support;
- Form 25: Draft Order (you will need 5 copies);
- Stamped envelopes addressed to each party;
- Support Deduction Order Information Form; and
- Draft Support Deduction Order;

To change a final order other than for child support only, with the agreement of both parties, you need:

- Form 15A: Change of Information Form;
- Form 15C: Consent Motion to Change;
- Form 13: Financial Statement;
- Form 14B: Motion;
- Form 25: Draft Order (you will need 5 copies);
- Stamped envelopes addressed to each party;
- Support Deduction Order Information Form; and
- Draft Support Deduction Order.

If you are asking for a change in support and the other party does not agree, you will need:

- Form 15: Motion to Change;
- Form 15A: Change of Information;
- Form 13: Financial Statement.

You will also be required to serve the responding party with:

- Form 15B: Response to Motion to Change;
- Form 15C: Consent Motion to Change.

See Rule 15: Motions to Change a Final Order or Agreement of the *Family Law Rules* for more information on changing a final order or agreement. You can find the *Family Law Rules* on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Go to "Family Justice" and click on "Family Law Rules". You can also review the Ministry's guides to Motions to Change which are available at:

www.attorneygeneral.jus.gov.on.ca/english/family/divorce/support/motion.asp

All of the court forms you will need are available at the family court office or online at www.ontariocourtforms.on.ca. Read and follow the instructions on the forms carefully.

Step 2: Requesting a Motion Date and Completing the Forms

You must contact the family court office for a motion date. The date you are given must be filled-in on the notice of motion or motion form before you serve it on the other parties named in the motion.

You will need to:

- Sign and date your notice of motion or motion form; and
- Write the court file number in the top right hand corner of each document.

Affidavit

Evidence on a motion is usually provided to the court in writing in the form of an affidavit - Form 14A: Affidavit (General)

The affidavit is a document that contains your sworn or affirmed evidence about the issues you are asking the judge to decide. It is your opportunity to give the judge the information that he or she will need in support of what you are asking for.

After completing the affidavit you 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.

Completing an Affidavit

Preparing an affidavit can be difficult. The following tips should help you to complete an affidavit.

- A. Clearly set out the type of order you are asking for. For example:
 - A custody order—are you asking for sole or joint custody;
 - An access order—specify the time you think the children should spend with each parent;
 - A support order for yourself or the children—remember to consult the Child Support Guidelines and tables;
 - A restraining order—what are the specific terms you are looking for? Are you asking that the responding party be restricted from contacting

you and/or the children, from coming within a certain distance of you, your home, workplace or the children's school? Or are you asking for something else?

B. Set out the facts the judge will need to know. Remember it is the facts about what you are asking the court to make a decision on that the judge will need to make a decision. Include all of the information you think is necessary to support your motion. This information should include the history of your court case and the relevant information that explains why you are asking for a certain order. For example:

- If you are proposing a specific type of access, you must explain why this access is in the best interests of the children.
- If you are asking for a change in support payments, you must provide the judge with information about what circumstances have changed and why you think a change is necessary now.
- If you are asking for a restraining order, you must outline the specific instances in your relationship and since your separation that makes you believe that a restraining order is necessary.

The affidavit must contain facts only and should, as much as possible, be what you know, not what you think may have or may be happening. What you put in your affidavit must be correct and a true description of what is or has happened. Remember that the affidavit will become part of your court record, which is public. Stick to the facts the judge needs to know to make a fair and informed decision.

The information in your affidavit should, as much as possible, be what you know. You can include information that has been provided to you by someone else, but if you do you must name the person who gave you the information and state that you believe it to be true. For example;

Facts you know to be true

The respondent and I were married on July 5, 1993.

What you have been told by others and what you think to be true

The respondent's employer, John Doe, tells me that the respondent started working at his current job in November 2008. I believe this information to be true.

C. A document referred to in your affidavit must be attached to your affidavit. This document is referred to as an "Appendix", and it must be specifically

referred to in your affidavit. Each appendix must be given a letter of the alphabet to identify it. For example:

The child's parent and I developed an access schedule that sets out the days on which the children were to be at his house and the days on which they were to be at my house. Attached and marked "Appendix A" is a copy of that schedule.

It is important to understand that you cannot ask the court to look at a document (other than a court form) unless it has been attached to an affidavit as an appendix.

Step 3: Serving the Forms

After completing all the required forms for your motion, you will need to make arrangements to serve the responding party and any other person or agency required to be served with a copy of all of the documents you want the judge to consider. In most cases, the notice of motion or motion form and any accompanying documents can be served by **regular service**. However, you must ensure that the documents are received within the timeframes set out in Rule 14: Motions for Temporary Orders or Rule 15: Motions to Change of the *Family Law Rules*. You can find the *Family Law Rules* on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Go to "Family Justice" and click on "Family Law Rules". You can also review the Ministry's guides to Motions to Change, which are available at: www.attorneygeneral.jus.gov.on.ca/english/family/divorce/support/motion.asp

Rule 3 of the *Family Law Rules* deals with the issue of time when serving documents, including how to count the number of days. Generally speaking, counting starts on the day after the first thing happens. For example, if you serve a document on Monday that requires 7 days service, the first day you count is Tuesday and the 7th day is the following Monday.

For more details, see Rule 3 at <http://www.attorneygeneral.jus.gov.on.ca>. Click on "Family Justice" then scroll down and click on "Family Law Rules".

You should always check the *Family Law Rules* and the family court form to make sure that you are serving and filing your documents properly and on time. Court staff cannot accept your documents if you have not complied with the times set out in the court rules.

See **A Guide to Family Procedures, Part 6: Serving Documents** for additional information on serving documents.

If you are served with motion materials and you need more time to prepare your materials, you can ask the judge to adjourn (or reschedule) the motion to a later date; however the judge may not agree to do so. If the judge agrees to the adjournment, he/she may impose conditions, such as the payment of a specific amount of money for child support until the motion can be heard.

If possible, it is best to try to agree on a date for a motion ahead of time so that you can both be prepared.

Step 4: Completing the Affidavit of Service and Filing the Forms with the Court

You will need the original form(s) to file with the court, together with one copy for:

- Your copy of the continuing record;
- Each party named in the answer; and
- Any other person or agency required to be served

After the documents have been served, the person who served the documents will need to complete Form 6B: Affidavit of Service for each person served.

The **affidavit of service** tells the court when, where and how your documents were provided to the responding party and any other person or agency required to be served. See **A Guide to Family Procedures, Part 6: Serving Documents** or more information.

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.

Making a Motion Without Notice

In extreme circumstances, you may need to make a motion without notifying the other person. This is called a **motion without notice**.

Making a motion without notice means that the other party will not know that you are asking the court to make an order and, as a result, they will not be at court on the motion date to tell the court their side of the events. Because the judge hearing the motion without notice may not have all of the information needed to make a decision, the judge may not make the order you have requested.

You may consider making a motion without notice if:

- It's not possible to provide the other party with notice because, for example, you do not know where the other party is so you cannot serve him or her;
- There is an immediate danger that a child will be taken out of Ontario and requiring service on the respondent could result in serious consequences; or
- There is an immediate health or safety risk to you or your child and delay in serving the other party would probably have serious consequences.

You would use the same forms as you would if the motion was with notice to the other party. However, in your Notice of Motion, you should ask the court for permission to have the motion heard even though it has not been served on the party. You do not serve the materials on the other party until after the motion is heard by a judge and only if the order requested in your motion materials is granted. Where the judge makes an order on the motion date, you must serve the other party with all your motion documents and a copy of the order made on the motion without notice.

Your motion documents must be filed with the court **on or before** the motion date.

If the judge gives you the order you have requested on the motion without notice, he or she will also order that you come back to court, usually within 14 days, so that the order may be reviewed. The reason is to provide the other party with an opportunity to tell the judge their side of the events. At this time, the judge can decide whether the order should remain, be changed or revoked.

Confirming the Motion

At least two days before the motion date you must **confirm** that the motion is ready to be heard. You will need to file with the court, Form 14C: Confirmation. If you do not confirm that the motion is going to proceed, it may not be able to be heard on the day that has been scheduled by the clerk.

See Rule 14: Motions for Temporary Orders of the *Family Law Rules* for additional information on the rules for Motions. You can find the *Family Law Rules* on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Go to "Family Justice" and click on "Family Law Rules".



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A Guide to Procedures in Family Court

June 2010

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

PART 9: TRIAL

If you and the other person are not able to work out the issues in your case on your own or if the issues are too complicated, the judge may order the case to a **trial**.

If you cannot afford a lawyer, you may contact Legal Aid Ontario to see if you are eligible for legal aid. Legal Aid Ontario's toll-free number is 1-800-668-8258 or 416-979-1446 in Toronto. To learn more about Legal Aid Ontario, you may wish to visit their website at, www.legalaid.on.ca.

You may represent yourself in your court case. However, it is a good idea to have a lawyer help you with your case. A lawyer can help you understand your rights and responsibilities and explain the court process to you. If you don't have a lawyer, you will need to work extra hard to familiarize yourself with the *Family Law Rules* to be prepared and to be clear about what you want to say to the judge. Court staff cannot advise you.

It is important for you to know that the court may order you to pay some or all of the costs of the other person, if you fail to appear in court, you are not properly prepared, or if the judge feels that you have taken an unreasonable position in the case. The judge will consider any offers to settle that have been made by either party when determining whether a party should be required to pay all or some of the other party's costs.

It is important to understand that trials can be long and expensive. They can also be very stressful for you and your family. If you have children, it can be difficult to reach a good place to parent together after going through a trial. Remember when you go to court it will be a third party that will be making the important decisions about your family.

For all of these reasons, it's usually a good idea to take all reasonable steps to avoid a trial and for you and the other person to make your own decisions about your family and your future.

Preparing for Trial

Trial Record

If you are going to trial, and if you are the applicant or the moving party in a motion, you must prepare a **trial record**.

Rule 23: Evidence and Trial of the *Family Law Rules* provides that the trial record must be served on every party and any person or agency required to be served and filed with the court at least **30 days** before the start of the trial.

The trial record must include:

- A table of contents;
- A copy of the application or motion, answer or response, and reply, if any;
- Any agreed statement of facts,
- If they are relevant to an issue at trial, financial statements and net family property statements for all parties, completed or updated not more than **30 days** before the record is served;
- Any assessment report ordered by the court or obtained by consent of the parties;

An assessment report is usually completed by a mental health professional like a social worker or psychologist. An assessment report includes any report completed by the Office of the Children's Lawyer.

- Any temporary order relating to a matter that has not been resolved;
For example, if you or the other party asked for an order for temporary custody of the children before a final order was made, you would need to include it in the trial record.
- Any order relating to the trial;
For example, if you or the other party asked the judge for permission to present a witness' evidence in writing, by way of affidavit, instead of by asking them to attend the trial in person and questioning them. You would need to attach a copy of the judge's order.
- The relevant parts of any transcript on which you intend to rely at trial;
For example, if the judge allowed you to question the other party on an affidavit they provided and you wanted to refer to some of their answers, you would include these pages of the transcript in your trial record.

If you need all or part of a transcript for your trial record, you should speak to family court office staff where the record was taken as soon as possible.

If you are the respondent in the case or the responding party in a motion, you do not have to prepare a trial record, but you can, no later than **seven days** before the start of the trial, add to the trial record that the applicant has prepared any document listed above that is not already there. You must also serve the applicant with any new document and file it with the court.

Witnesses

The documents in the trial record will help you tell your side of the case to the judge, but you might also decide that certain people or documents that you do not have access to would also help.

If you want a witness or document to be available to the judge at trial, you must prepare and serve the witness with **Form 23: Summons to Witness**. You are obligated to pay the person for each day he or she is needed in court. The fees to be paid to a witness are set out in Rule 23: Evidence and Trial of the *Family Law Rules*.

Remember, a witness can only give evidence about what they know, not what other people have told them.

If there are special circumstances and your witness cannot come to court, you can ask the judge for an order letting the witness answer questions before trial or provide their evidence in an affidavit that they will need to swear or affirm in front of a person who is a commissioner for taking affidavits.

If your witness is an expert in a particular area that is an issue in your case, you need to provide the other party with the report of the expert witness at least **90 days** before the trial. The summary must be signed by the expert and include their name, address, qualifications, employment and educational experience in his or her area of expertise and the substance of the expert's proposed evidence. Any supplementary reports by an expert witness must be served 30 days before the start of the trial. The parties may not call the expert witness unless they have complied with these terms or unless the trial judge allows otherwise. If you don't serve and file this summary, you may not be allowed to call the expert as a witness during the trial.

Trial

Judges alone without juries decide family cases. Trials are usually open to the public, which means there may be other people in the courtroom when your trial is being held. If there are reasons that you believe support a closed hearing, you can ask the judge not to let anyone other than the parties, their lawyers, if any, and courtroom staff in the courtroom. The judge may not grant your request.

Arrive Early on the Day of your Trial

When you arrive at the courthouse, you should look for the name of your case or court file number on that day's list of cases to be heard. The day's list of cases is usually posted on a board somewhere near the entrance to the court or outside the courtroom. If you have trouble finding it, you should ask at the family court counter.

You may need to check in with the clerk once you've found your courtroom. If court is already in session, wait to talk to the clerk until there is a break in the proceedings.

Who Goes First

Each party will have an opportunity to give the judge a short overview of their case and what they are asking for. These are called opening statements. The applicant will be asked to go first.

After opening statements, the applicant will ask their first witness to come forward and provide the court with the information that they believe is relevant to the case and would support what they are asking the court to decide. After the applicant has finished questioning their witness, the respondent will have a chance to ask the witness questions. After all of the applicant's witnesses have been questioned, it is the respondent's turn to call witnesses and ask them questions. The applicant will have a chance to question each of the respondent's witnesses after they give their evidence.

When all the witnesses have been questioned (including the applicant and the respondent if they choose to take the witness stand and give evidence), the parties will have a chance to summarize their evidence for the judge and tell the judge why an order should be made in their favour. These are called closing arguments, and again the applicant will present their closing argument first.

Decision

After closing arguments are finished, the judge may be ready to make a decision. Or, if the judge does not make a decision right away, he or she, may **reserve the decision** to a later time or date.

If the judge reserves the decision, it means that they need time to review the evidence. You may need to come back to court for the decision or you may be notified of the decision in writing.



MOTION TO CHANGE A FINAL FAMILY COURT ORDER OR A SUPPORT AGREEMENT

A Self-Help Guide

How to make a motion to change

This guide is not legal advice. If you have questions or need advice about your case, you should speak to a lawyer.

If you do not have a lawyer, you may contact the Lawyer Referral Service operated by the Law Society of Upper Canada. The Lawyer Referral Service will provide the name of a lawyer in your area who practises family law. This lawyer will provide a half-hour consultation for free. The telephone number for the service is 1-900-565-4577. There is a \$6 charge to use this service.

If you cannot afford a lawyer, you may be able to get legal aid. You can contact the nearest Legal Aid Ontario office to see if you are eligible. The telephone number of the Legal Aid office is listed in your telephone directory. If you cannot find the phone number, Legal Aid Ontario's toll-free line is 1-800-668-8258. To learn more about Legal Aid Ontario, you may wish to visit their website at: www.legalaid.on.ca.

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What is a motion to change?

A motion to change is the court process used when a person wants to ask a judge to:

- change or end a final family court order, or
- change or end an agreement to pay support.

When is a motion to change made?

The most common reason people bring a motion to change is to change a support payment.

A motion to change is often brought when one or more of the following happens.

- The support payor is making more money than he or she was when the order or agreement was made.
- The support payor is making less money than he or she was when the order or agreement was made.
- The child has finished school, married or moved out on their own.
- The child or children are now living with the payor or a different person.
- The person receiving spousal support is now able to support himself or herself.

A motion to change can also be used to ask a court to change a final order concerning:

- custody,
- access, or
- a restraining/non-harassment order.

Important terms

Agreement – a domestic contract or agreement, such as a separation or paternity agreement

Assignee – the social service agency that is receiving support payments because the person receiving support is on social assistance

Party – a person who makes a claim in a case or against whom a claim is made. A party may include an agency. In a motion to change, the moving party is the individual who makes a motion to change. The responding party is the individual who is served with a motion to change.

Payor – a person required to pay money under an order or agreement, such as support

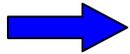
Proof of income – income tax returns and notices of assessment; pay stubs; a letter from an employer confirming income; business records; trust agreements; and other financial records

Recipient – a person entitled to receive money under an order or agreement, such as support

What if there is no court order, but we signed an agreement?

You may want to start by negotiating changes to the agreement. You and the other person may feel that some terms in the agreement are no longer working or fair. If you can both agree on what should be done, you can put the new terms in a new agreement and then you will not need to involve the court. You should consider getting legal advice before you sign a new agreement. If you are not sure how the new agreement might affect you, you should definitely see a lawyer. This can be the easiest and fastest way to make changes.

If you want to change child or spousal support contained in an agreement, but you are not able to negotiate the changes, you will need to ask the court to help. If you have not already done so, you will have to file the agreement with the court first. You will need to complete [Form 26B: Affidavit for Filing Domestic Contract or Paternity Agreement with the Court](#), telling the court that the agreement is in effect and has not been set aside by a court. You must sign the affidavit in front of a person who is a commissioner for taking affidavits. There are staff at the family court office who are commissioners for taking affidavits.



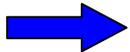
Form 26B is available at the family court office or on the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Click on "Family Justice", scroll down and click on "[Family Law Rules Forms](#)".

You can file your agreement only at the Ontario Court of Justice or the Family Court branch of the Superior Court of Justice. You cannot file your agreement at other locations of the Superior Court of Justice.

Once you have filed the agreement, the child and spousal support provisions can be enforced and changed as if they were a court order. You cannot change or enforce other terms in the agreement, such as custody and access, by bringing a motion to change. In those cases, you must start an application under [Rule 8](#) of the *Family Law Rules*.

How do I ask the court to change a final order or support agreement?

[Rule 15](#) of the *Family Law Rules* sets out the procedure to change a final order or support agreement. The *Family Law Rules* guide each step of your family court case and tell you the forms each person must complete.



The *Family Law Rules* are on the Ministry of the Attorney General's website www.attorneygeneral.jus.gov.on.ca. Click on "Family Justice" and scroll down to find "[Family Law Rules](#)" or "[Family Law Rules Forms](#)".

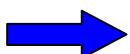
Are there special forms to use?

Yes, there are seven forms that are commonly used in motions to change. The forms you need depend on the nature of your case. The seven forms are:

- [Form 15: Motion to Change](#)
- [Form 15A: Change Information Form](#)
- [Form 15B: Response to Motion to Change](#)
- [Form 15C: Consent Motion to Change](#)
- [Form 15D: Consent Motion to Change Child Support](#)
- [Form 14B: Motion Form](#)
- [Form 25: Order \(General\)](#)

In some cases, you may also need a financial statement.

- [Form 13: Financial Statement \(Support Claims\)](#) or
- [Form 13.1: Financial Statement \(Property and Support Claims\)](#).



These forms are available at the family court counter or you can download them from the Ministry of the Attorney General's website at

www.attorneygeneral.jus.gov.on.ca. Click on “Family Justice”, scroll down and click on “[Family Law Rules Forms](#)”.

If you are asking the court to make changes to a support order or support agreement you will have to complete:

- [Support Deduction Order Information Form](#) (form number OO6-FRO-021E) and
- draft [Support Deduction Order](#) (form number 006-FRO-019).



These forms are available at the family court counter or you can download them at www.forms.ssb.gov.on.ca. Click on “Advanced Forms Search”. Go to “Form contains” and enter “support deduction order”, then “Start Search”.

How do I make a motion to change?

To make a motion to change, you take the following steps.

[Step 1: Determine if there is an assignee](#)

[Step 2: Decide where to make the motion](#)

[Step 3: Complete the proper forms](#)

[Step 4: File your documents at the family court office](#)

[Step 5: Serve a copy of the documents](#)

[Step 6: File affidavit\(s\) of service](#)

[Step 7: What to do after service](#)

STEP 1: DETERMINE IF THERE IS AN ASSIGNEE

Some support payments may be directed to a social service agency. If the payments are going through a social service agency then the support is paid or assigned to the agency and the social service agency is called the assignee.

The support will likely be assigned if:

- the person getting support is receiving social assistance through Ontario Works, the local municipality or another source, or
- the person getting support received social assistance in the past and money is still owed to the social service agency.

If you are asking the court to change or end a final support order, or an agreement for child or spousal support, you need to find out if the support has been assigned. If the support is assigned you will need to serve court documents on the assignee and obtain the assignee’s consent to any changes.

If you are not sure if the payments are going through a social service agency, you should submit a confirmation of assignment form to the Ministry of Community and Social Services Confirmation of Assignment Unit. They will confirm for you if the payments are assigned or not.



The Confirmation of Assignment form ([006-3006 English](#) or [006-3007 Français](#)) is available at the family court counter or you can download it at www.forms.ssb.gov.on.ca. Click on “Advanced Forms Search”. Go to “Form contains” and enter “confirmation of assignment”, then “Start Search”.

If you receive confirmation that the support has been assigned, you must serve the assignee with the motion to change (see [Step 5](#)). If you and the responding party agree to a change and ask the court for an order on consent, the assignee must also consent to the new support order.

What if I don't serve the assignee?

If you do not serve the assignee or get the assignee's consent, the assignee can ask the court to set aside the order you obtain. The court can also order costs against you. This means that you could have to pay the assignee's costs for asking the court to set aside the order.

STEP 2: DECIDE WHERE TO MAKE THE MOTION

In most cases, a motion to change a final order or support agreement must be started in the municipality where you or the other person lives. If the motion is to change custody of or access to a child, the motion should be started in the municipality where the child ordinarily lives.

If you are asking the court to change a final order, you must go back to the same level of court that made the order. For example, if the Superior Court of Justice made the order, you must go back to a Superior Court of Justice location to change it. You will likely go back to the same court that made the order you are asking to change unless one or both of you has moved to another court jurisdiction.

If a support agreement was filed with the court, the motion to change the agreement must be started at a Family Court branch of the Superior Court of Justice or the Ontario Court of Justice.

If you are asking the court to change a final order, the names of the parties will be the same as in the order, regardless of which party is making the motion to change. In other words, the parties continue to be referred to as the applicant or respondent, but if you are the person making the motion you are the moving party. The other person is the responding party.

STEP 3: COMPLETE THE PROPER FORMS

The documents you need to complete will depend on what you are asking the court to do and if the other party consents to this or not. The appropriate form(s) depend on whether you are:

- [A\) Changing only child support on consent,](#)
- [B\) Changing a final order or support agreement on consent \(not just child support\),](#) or
- [C\) Making a motion to change where there is no consent at the beginning of the case.](#)

In any case, be sure to read the forms carefully and follow the directions in the forms. (*The directions are often in italics and brackets next to the part of the form that you need to complete.*) If you are using a fillable form on-line, take as much space as you need to provide all of the information relevant to your case. If you are using a pre-printed form, you may attach extra sheets to the form if necessary. It is important that you provide complete, accurate and truthful information.

A) Changing only child support on consent

You and the other person may be agreeing, right from the start, to change or end a final order or agreement for child support only. In this case, you should complete [Form 15D: Consent Motion to Change Child Support](#) together. You use one form, and both of you sign it. The assignee, if any, signs the same form.

Form 15D: Consent Motion to Change Child Support

You each need to sign the consent form in front of a witness. You cannot witness each other's signatures. If the witness does not know you, you will need to provide identification to prove that you are who you say you are.

B) Changing a final order or support agreement on consent (not just child support)

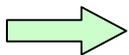
You and the other person may be agreeing, right from the start, to change or end a final order or support agreement for something other than just child support. In this case, you must complete [Form 15A: Change Information Form](#), [Form 15C: Consent Motion to Change](#), and [Form 14B: Motion Form](#).

Form 15A: Change Information Form

Form 15A is a document that provides the evidence the judge needs to change the order or support agreement in the way you are asking.

If you know or hear back from the Ministry of Community and Social Services Confirmation of Assignment Unit that the support has not been assigned, check the box on Form 15A: Change Information Form that says "this order has not been assigned". In this case, information about the assignee does not need to be completed.

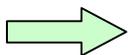
You must swear or affirm that the evidence is true in front of a person who is a commissioner for taking affidavits. If you need help finding a commissioner for taking affidavits, staff at the family court office may be able to help.



It is a criminal offence for a person to swear or affirm a false or misleading affidavit.

Form 15C: Consent Motion to Change

Use Form 15C if you both are agreeing to change or end a final order or support agreement for something other than just child support. You, the other party, and the assignee, if any, must complete and sign this form.



Form 15C can also be completed whenever you are able to reach an agreement, not just at the beginning of the case.

Remember, if you are changing support that has been assigned to a social service agency, you must get the assignee's written consent.

It is likely that the court will make the order asked for in the consent form. You should consider getting legal advice before you sign it. If you are not sure how the order might affect you, you should definitely see a lawyer.

When you sign Form 15C, you are each confirming that you are aware of your right to consult with a lawyer. You are also confirming that you know that signing the form may lead to a final court order that may be enforced.

You will need to sign the consent form in front of a witness. You cannot witness each other's signatures. If the witness does not know you, you will need to provide identification to prove that you are who you say you are.

You can both agree not to file financial statements. However, you should do this only if you are convinced that the other party has provided complete and accurate financial information. You must also provide complete and accurate financial information to the other party.

Form 14B: Motion Form

There are a number of places in the *Family Law Rules* that direct you to use [Form 14B: Motion Form](#). On Form 14B you ask the court to do something. You should ask the court to make the changes to the existing order or agreement you asked for in Form 15C: Consent Motion to Change. For example, you could write:

“I am asking the court to make an order in accordance with the Form 15C, dated _____, which is filed with the court along with this motion form.”

You do not need to see a judge for a Form 14B motion, because the motion to change is on consent. The clerk will present your documents to the judge. However, if, for example, the judge thinks the support amount you have agreed to is not right based on the information you have provided, you may be asked to come to court or provide more information.

C) Making a motion to change where there is no consent at the beginning of the case

You may want to change a final order or support agreement but you have not been able to negotiate a new agreement or obtain the consent of the other person. In this case, you must complete [Form 15: Motion to Change](#) and [Form 15A: Change Information Form](#).

STEP 4: FILE YOUR DOCUMENTS AT THE FAMILY COURT OFFICE

The process for filing your documents depends on what you are asking the court to do and if the other person consents to this or not. The correct process depends on:

- [A\) If you both agree and are asking for an order on consent for child support only;](#)
- [B\) If you both agree and are asking for an order on consent other than just child support;](#) or
- [C\) If you are not proceeding on consent.](#)

A) If you both agree and are asking for an order on consent for child support only

You and any assignee must complete and sign [Form 15D: Consent Motion to Change Child Support](#). You cannot file Form 15D until the assignee, if any, has signed the form.

You must file this form at the family court office together with the following:

- five copies of a draft order ([Form 25](#))
- stamped envelopes addressed to each party (including the assignee, if any)
- [Support Deduction Order Information Form](#) and
- draft [Support Deduction Order](#).

B) If you both agree and are asking for an order on consent other than just child support

You must file:

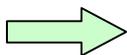
- [Form 15A: Change Information Form](#), including any required attachments or documents
- [Form 15C: Consent Motion to Change](#)
- [Form 14B: Motion Form](#)
- five copies of a draft order ([Form 25](#))
- stamped envelopes addressed to each party (including the assignee, if any)

and if the motion involves support:

- [Support Deduction Order Information Form](#) and
- draft [Support Deduction Order](#).

Form 15A: Change Information Form

Form 15A is a document that you swear or affirm to be true in front of a person who is a commissioner for taking affidavits. If you need help finding a commissioner for taking affidavits, staff at the family court office may be able to help.



It is a criminal offence for a person to swear or affirm a false or misleading affidavit.

Once you have filed your documents in either of these circumstances, the clerk will present them to the judge. You do not need to see a judge because the motion to change is on consent. However, if the judge has questions or concerns, the clerk will contact you with a date to appear in court.

When the judge makes the order, court staff will send the support deduction documents, if any, to the Family Responsibility Office. At this point, your motion is completed and no further steps are necessary.

C) If you are not proceeding on consent

If you and the other person cannot reach an agreement at the beginning of the case, you must:

- take your completed [Form 15: Motion to Change](#) and [Form 15A: Change Information Form](#), including any required attachments or documents, to the family court office.

The clerk will place the court seal on the first page of Form 15 and sign and date the second page. By doing so the clerk has “issued” the motion to change. The clerk will also complete either the box that starts: “THE FIRST COURT DATE IS” or “NO COURT DATE HAS BEEN SET FOR THIS CASE”. The documents are now ready to be served.

If your case is being heard at either the Family Court branch of the Superior Court of Justice or the Ontario Court of Justice the clerk will probably assign a first court date.

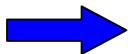
If your motion is started at the Superior Court of Justice (not the Family Court branch), you will not be given a first court date. You, the responding party or the assignee, if any, must ask for a case conference if you want the motion to go forward. A case conference is a meeting where you, the other party and the judge discuss the issues in your motion. You should ask for a case conference if the responding party files [Form 15B: Response to Motion to Change](#) and you are not able to reach an agreement.

STEP 5: SERVE A COPY OF THE DOCUMENTS

After the clerk has issued your motion to change, the court will keep the original documents and you must serve the responding party, and the assignee, if any, with copies. Be sure to keep a copy for yourself.

You must serve the responding party with the following documents:

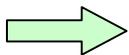
- [Form 15: Motion to Change](#)
- [Form 15A: Change Information Form](#)
- [Form 13](#) or [Form 13.1](#): Financial Statement (if required)
- blank [Form 15B: Response to Motion to Change](#) and
- blank [Form 15C: Consent Motion to Change](#).



These forms are available at the family court counter or you can download them from the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca. Click on “Family Justice”, scroll down and click on “[Family Law Rules Forms](#)”.

The *Family Law Rules* require these documents to be served by special service. To carry out special service, a copy of the document should be left:

- with the person to be served or
- with the person’s lawyer.



For more information on other options and more details on service, see [Rule 6](#) of the *Family Law Rules*.

To serve the documents on the responding party:

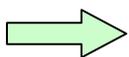
- You can have your lawyer, a friend or someone else serve the documents for you.
- You can hire someone to do it. You can look in the yellow pages under “Process Server”.
- If you are concerned about your safety or it would be difficult for you to arrange service because of cost or distance, tell court staff and they will arrange to have the documents served for you.

If there is an assignee:

- you can serve the assignee by regular mail. The documents are considered served five days after you mail them.

STEP 6: FILE AFFIDAVIT(S) OF SERVICE

Whoever serves the documents must complete [Form 6B: Affidavit of Service](#). In this document, the person who served the documents will swear or affirm in front of a person who is a commissioner for taking affidavits that they served the responding party or their lawyer, and an assignee, if any, and state when they were served and what documents they gave them.



If you need help finding a commissioner for taking affidavits, staff at the family court office may be able to help.

STEP 7: WHAT TO DO AFTER SERVICE

A) If you reach an agreement

If you and the other party reach an agreement at any time during the case, you can complete and sign [Form 15C: Consent Motion to Change](#). The process then proceeds the same as in [Step 4B](#).

B) If there is no response or consent

If you have served the responding party with a motion to change, they have 30 days from the date of being served to:

- sign and send to you [Form 15C: Consent Motion to Change](#) or
- to serve you and file with the court [Form 15B: Response to Motion to Change](#).

If the responding party does not take either of these steps, you can proceed with your motion. However, if support has been assigned, the assignee must consent to the change you are asking for.

You must file [Form 14B: Motion Form](#) asking for what has been set out in Form 15.

To speed up the process, you can also file:

- five copies of a draft order ([Form 25](#))
- stamped envelopes addressed to each party (including an assignee, if any)

and if the motion involves support:

- [Support Deduction Order Information Form](#) and
- draft [Support Deduction Order](#).

Once you have filed your documents, the clerk will present them to the judge. You do not need to see a judge because there is no response. However, if the judge has questions or concerns, the clerk will contact you with a date to appear in court.

When the judge makes the order, court staff will send the support deduction documents, if any to the Family Responsibility Office. At this point, your motion is completed and no further steps are necessary.

GOING TO COURT

If the responding party files [Form 15B: Response to Motion to Change](#), you will have to go to court unless you and the other party can work out an agreement.

If the motion to change was started at the Family Court branch of the Superior Court of Justice or at the Ontario Court of Justice, the clerk probably gave you a first court date when your motion to change was issued.

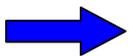
You must attend court on that first court date. If you are not able to attend you should ask a lawyer or someone else to attend on your behalf to explain your absence. You will probably see a clerk at that time. The clerk will make sure that you are ready to see a judge. For example, the clerk will want to check that you served the motion to change on all other parties, including an assignee, if any, and that affidavits of service have been filed with the court.

If you do not have a lawyer, you may have the chance to speak to duty counsel, who is a lawyer provided by Legal Aid Ontario. Duty counsel is available to give unrepresented parties who would qualify for Legal Aid some basic legal information and advice.

If you do not attend court or ask the court for an adjournment, the court may dismiss your motion to change.

If the motion to change was started at the Superior Court of Justice, you or the other party must ask the clerk to set a date for a case conference, if the motion is to proceed. A case conference is a meeting where the parties and a judge discuss the issues and try to come to an agreement.

The party who asks for the case conference must serve every other party with [Form 17: Conference Notice](#).



More information on case conferences is available in the Guide to Procedures from the Ministry of the Attorney General's website at www.attorneygeneral.jus.gov.on.ca. Click on "Family Justice", then go to "Guides to Procedures".

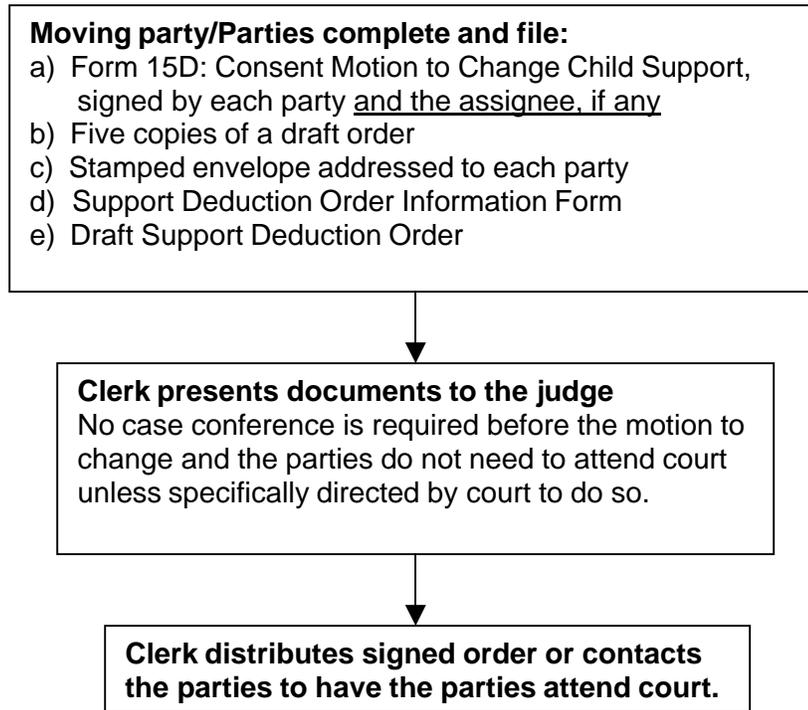
In some Superior Court of Justice locations, your motion to change may be sent to a Dispute Resolution Officer instead of a judge. A Dispute Resolution Officer is an experienced family law lawyer who has been asked by the court to meet with you and assist you in settling your issues.

WHAT HAPPENS NEXT

This will depend on your case and the steps the judge thinks are necessary.

FLOWCHARTS

MOTION TO CHANGE (CONSENT, CHILD SUPPORT ONLY)



MOTION TO CHANGE (CONSENT)

Moving party/Parties complete and file:

- a) Form 15A: Change Information Form
- b) Form 15C: Consent Motion to Change, signed by each party and an assignee, if any
- c) Form 13 (or 13.1) Financial Statement for each party, as required
- d) Form 14B: Motion Form
- e) Five copies of a draft order
- f) Stamped envelope addressed to each party
- g) Support Deduction Order Information Form
- h) Draft Support Deduction Order



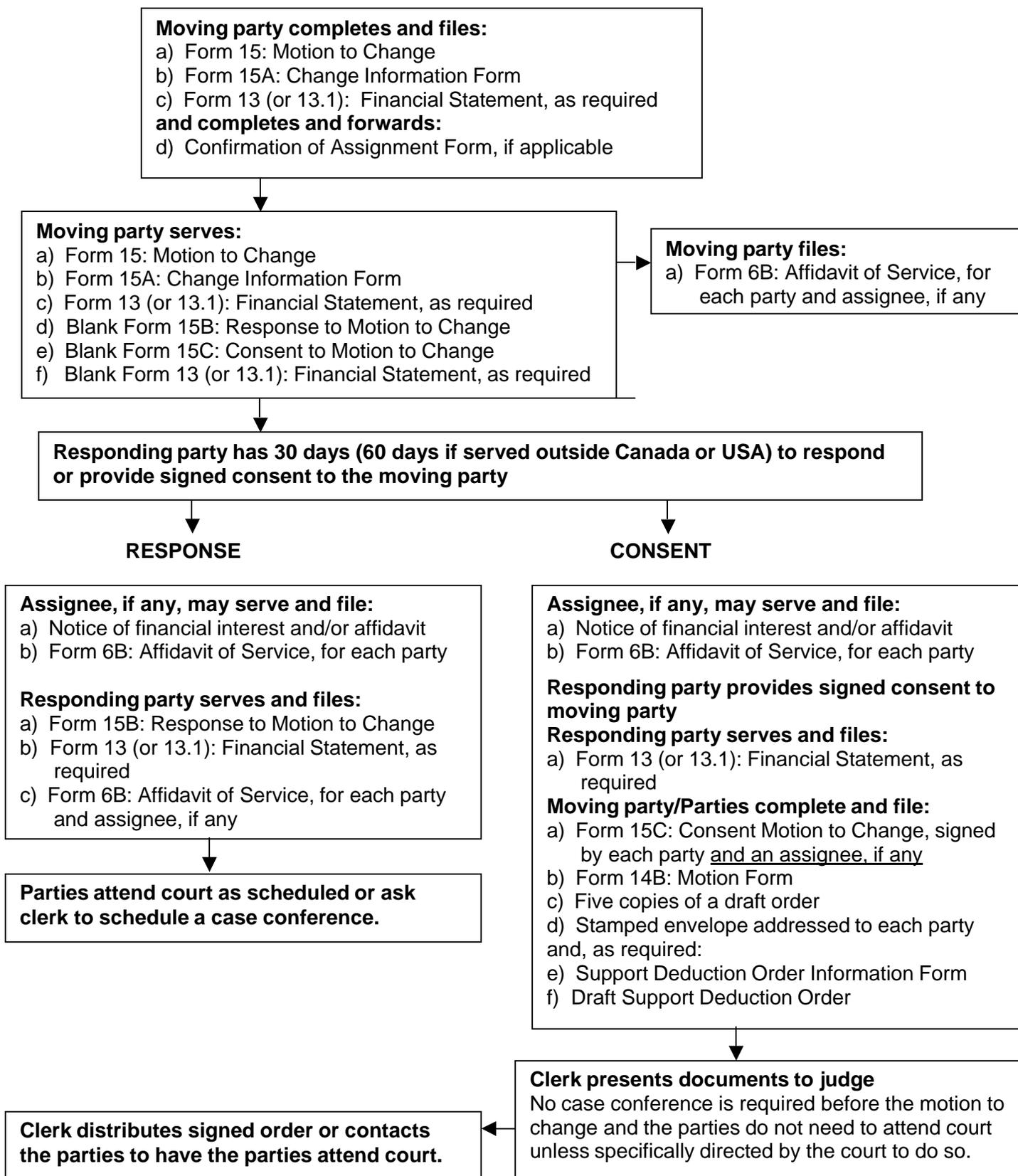
Clerk presents documents to the judge

No case conference is required before the motion to change and the parties do not need to attend court unless specifically directed by court to do so.



Clerk distributes signed order or contacts the parties to have the parties attend court.

MOTION TO CHANGE (NO CONSENT BEFORE SERVICE)



MOTION TO CHANGE (NO RESPONSE, NO CONSENT)

