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A Guide to Procedures in Family Court

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

PART 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.