

# Fact Sheet:

## Simplified Procedure

under rule 76 of the *Rules of Civil Procedure*

**NOTE:** This document contains general information about civil court processes. It does not cover every situation. This document does not explain the law. It does not tell you what you should do and why you should do it. For legal advice, talk to a lawyer.

For more information see the *Rules of Civil Procedure* and the guides and flowcharts on Simplified Procedure in the Superior Court of Justice which are available on the [Ministry of the Attorney General](#) website.

# Simplified Procedure

under rule 76 of the *Rules of Civil Procedure*

## **My claim is for money or property valued at between \$25,000 to \$100,000. Where should I start my claim after January 1, 2010?**

A claim for between \$25,000 to \$100,000 can be started in the Superior Court of Justice using the Simplified Procedure ([r. 76.01\(1\)](#)) process.

The simplified procedure must be used in a civil action if:

i. Your claim is only for one or more of the following:

- Money
- Real property (e.g. land)
- Personal property

AND

ii. The total amount is \$100,000 or less, exclusive of interest and costs, including the amount of money claimed (if any) and the fair market value of any real property and personal property, as at the date the action is commenced.

## **What type of cases should not be brought under the Simplified Procedure?**

The Simplified Procedure does **not** apply to:

- Class proceedings
- Construction lien actions (except trust claims)
- Case managed actions (rule 77)
- Family Law actions
- Small Claims Court actions
- Applications

## **What is the process for Simplified Procedure cases?**

The process for Simplified Procedure cases is described in this Guide.

See the flowchart: [Simplified Procedure](#).

## **What happens if I do not start my claim under Simplified Procedure?**

If you do not start your claim using the Simplified Procedure and it is determined later by the court that your case should have been started under this process, you may not be awarded any costs. You may also be required to pay all or part of the defendant's costs.

If you realize that you started the claim under the ordinary process but you should have started the claim under the Simplified Procedure (because it is valued at less than \$100,000.00) you can amend your claim so that your action will go forward under the Simplified Procedure. You will need to serve and file a [Form 76A](#). For more information about the process to amend a claim, see rule 26.

## **What if there is more than one Plaintiff?**

Simplified Procedure must be used if each Plaintiff's claim is valued at \$100,000 or less [see: [Rule 76.02\(2\)](#)].

## **What if there is more than one Defendant?**

Simplified Procedure must be used if the claim against each Defendant is valued at less than \$100,000 [see [r. 76.02\(3\)](#)].

## Can I use the Simplified Procedure process if my claim is for more than \$100,000?

If your claim is for more than \$100,000 you may be able to use the Simplified Procedure process.

However, if the Defendant objects, your case will go ahead under the Ordinary Procedure (for more information see below: *What happens if the Defendant objects to proceeding under Simplified Procedure?*).

A lawyer is in the best position to advise you of your options.

## How do I start a claim under the Simplified Procedure?

Your Statement of Claim or Notice of Action must indicate that you are bringing the case under the Simplified Procedure rules.

Generally, an action is started under Simplified Procedure by:

1. Complete a Statement of Claim [[Form 14A](#)].

Make sure that you indicate that the action is being brought under the Simplified Procedure by including the following caption in the Statement of Claim immediately before the heading "CLAIM":  
"THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE."

2. Bring to the court:
  - Two copies of the Statement of Claim [[Form 14A](#)]
  - Information for Court Use [[Form 14F](#)]
3. Pay the court filing fee. The court will return the original issued claim to you.
4. Serve a copy of the issued Statement of Claim on the other parties. To do this, use one of the methods in [rule 16.02](#) or [rule 16.03](#). Complete an Affidavit of Service [[Form 16B](#)].

For more information about how to start an action, read [rule 14](#) and the Guide: *Civil Cases: Suing and Being Sued*.

To read rule 76, click here: [rule 76](#).

## What happens if the Defendant objects to proceeding under the Simplified Procedure process?

The defendant can object to proceeding under the Simplified Procedure by saying so in the Statement of Defence [\[r. 76.02\(5\)\]](#). If this happens you must serve on the parties and file with the court a [Form 76A](#).

An action commenced under Simplified Procedure (Rule 76) will continue under Simplified Procedure, unless:

- i. The defendant objects that the claim is in excess of \$100,000 and indicates this in the Statement of Defence;
- ii. The defendant objects that the claim is not one of the types of matters that should proceed under Simplified Procedure and indicates this in the Statement of Defence; OR
- iii. The defendant makes a counterclaim, crossclaim or third party claim in excess of \$100,000 and states in their Statement of Defence that the matter is to proceed under the ordinary procedure.

If the Defendant makes an objection to proceeding under Simplified Procedure and the objection is later found by a court to have been improper, the Defendant will suffer cost consequences [see [r. 76.13\(7\)](#)].

An action is defended when a defendant serves and files a Statement of Defence [\[Form 18A\]](#). A statement of defence must be delivered within 20, 40 or 60 days after service of the statement of claim, depending on where the defendant was served [\[r. 18.01\]](#). A defendant is entitled to ten additional days to file a statement of defence when a Notice of Intent to Defend [\[Form 18B\]](#) is served and filed within the prescribed time [\[r. 18.02\(2\)\]](#).

Despite the time limits for delivery of a Statement of Defence, the defendant may deliver a statement of defence at any time prior to being noted in default [\[r. 19.01\(5\)\]](#).

PRESCRIBED TIME FOR DELIVERY OF STATEMENT OF DEFENCE	CRITERIA
20 DAYS	If claim served in Ontario
40 DAYS	If claim served elsewhere in Canada or USA
60 DAYS	Anywhere else
Add 10 days to each time frame noted above	If Notice of Intent to Defend is filed within prescribed time
Anytime	Prior to being noted in default

## Will we be required to go to mediation?

If the case is in Toronto, Windsor and Ottawa, you will be required to participate in mandatory mediation. Simplified Procedure cases are automatically subject to mandatory mediation in these three locations. For more information about the mandatory mediation process, see [rule 24.1](#) and the Fact Sheet: [Mandatory Mediation](#).

In other locations, you and the other parties may choose to have a mediation session to try to come to a cheaper and quicker resolution of your case.

For more information on mediation see the [Civil Cases: Suing and Being Sued](#).

## What happens after all the pleadings are filed with the court?

Parties have a certain amount of time to serve and file pleadings under the civil court rules.

The pleadings are:

- Statement of Claim
- Statement of Defence
- Counterclaim
- Crossclaim
- Third Party Claim
- Reply to Defences

Once the time for serving and filing pleadings has ended, the pleadings are “closed”. After the pleadings are closed, you must serve:

1. A form “Notice of Whether Action is Under Rule 76”. Complete [Form 76A](#), and serve and file it together with an affidavit of service (if you have not already filed this form with the court).
2. A form “Affidavit of Documents”. Complete [Form 30A](#) or [Form 30B](#) and serve on the parties within 10 days of the close of pleadings.
3. Copies of all of the documents which are listed in your Affidavit of Documents “Schedule A”.

## How do we exchange our “Affidavit of Documents”?

The “Affidavit of Documents” sets out all documents relevant to any matter in issue that are or have been in the party’s possession. You and each party must deliver an Affidavit of Documents to each party.

You must serve the “Affidavit of Documents” in the proper format within 10 days after the close of pleadings. Fill out [Form 30A](#) or [Form 30B](#). Be sure to complete the whole form including Schedule “D” which is a list of the names and addresses of the

persons who might be expected to have knowledge of the matters at issue in the action.

The Affidavit of Documents is made under “oath” or under “affirmation” before a person authorized to commission affidavits. There are serious consequences if you do not make full disclosure of all documents relevant to any matter in issue or if you do not provide a list of the names and addresses of persons who might reasonably be expected to have knowledge of the matters in issue. For example, if you do not list a person’s name in the “Affidavit of Documents” you will not be able to call that person as a witness at the trial.

The Affidavit of Documents must be filed with the court at least 5 days before the scheduled pre-trial conference.

## **Will we have discovery?**

You and the other parties can choose to use the discovery process.

Discovery is a process that allows you to obtain information from the other party early in the litigation process. It helps parties find out the strength of the other side’s case. Knowing the facts early may help achieve settlements.

Oral discovery allows a party to examine another party under oath outside of the court room.

In Simplified Procedure cases, you can get up to two hours of oral discovery. This means that you have up to two hours to examine the other parties under oath outside of the court room.

For more information about the oral discovery process, see [rule 31](#).

## **Do we have to discuss settlement?**

Yes.

Within 60 days of the filing of the first Statement of Defence (or Notice of Intent to Defend) you must talk to the other party about:

- i. whether all the relevant documents have been disclosed; and
- ii. whether settlement of the issues is possible.

## How do I bring a motion?

To bring a motion, you must file a Motion Form with the court. The form is called a Simplified Procedure Motion Form ([Form 76B](#)). You must pay the court filing fee to file the Motion Form.

You can attend a motion by appearing at court in person on the motion date or you can also choose to bring a motion in writing. You can also ask for a telephone conference or video conference (but this will be granted only if these technologies are available in your court location) and the court permits.

If all the parties are agreeing to your motion, each party must file a written Consent.

## Can I bring a summary judgment motion?

Yes. You can bring a summary judgment motion in a Simplified Procedure case.

You may consider bringing a summary judgment motion to ask the court to decide if there is a genuine issue requiring a trial. If the court decides that there is no genuine issue requiring a trial, the court may grant you judgment. If you are successful, this step can avoid additional litigation costs and the time of a trial.

A defendant can also bring a summary judgment motion. If the court decides that there is no genuine issue requiring a trial and grants the defendant's motion, your claim can be dismissed.

For more information about the process for summary judgment motions read [rule 20](#).

## Do we have to attend a pre-trial?

Yes.

A pre-trial conference is a court hearing before a judge or master.

The reason for a pre-trial is to determine the current issues and the position of each party. The parties have a chance to discuss how to resolve the case.

If you and the other parties do not settle the case, you can choose to go ahead with an ordinary trial or a summary trial. If you and the other parties can't agree, the pre-trial judge or master will determine whether it will be an ordinary trial or summary trial. The pre-trial judge or master will schedule a date for the trial.

You and the other parties and your lawyers must attend a pre-trial. You can participate in a pre-trial in person or by telephone or video conference in certain circumstances.

## How do I ask for a pre-trial?

To ask the court to schedule a pre-trial date:

- i. Serve on each party a form called “Notice of Readiness for Pre-Trial” ([Form 76C](#));
- ii. File with the court the “Notice of Readiness for Pre-Trial” with proof of service (Affidavit of Service).

You must serve and file this Notice within 180 days of the filing of the first Statement of Defence or Notice of Intent to Defend.

This Notice is also used by the Court to “set the matter down” for trial.

For more information about the pre-trial process, see the flowchart: [Simplified Procedure](#).

## When is a pre-trial conference held?

The court will schedule a pre-trial date. The court will send you a Notice to let you know the date of the pre-trial.

The pre-trial date will be at least forty-five days after you receive the Notice of Pretrial. This will give you and the other parties at least forty-five days to prepare for your pre-trial.

## What do I need to do before the pre-trial?

Five days before the pre-trial each party must serve on the other parties:

1. a copy of a Trial Management Check-list ([Form 76D](#));
2. a two-page statement setting out the issues and your position on each issue.

Five days before the pre-trial you must file with the court a copy of:

1. your Affidavit of Documents ([Form 30A](#) or [Form 30B](#));
2. the documents which you are relying on for your claim (or defence);
3. any expert report;
4. any other material needed for the pre-trial;
5. the Trial Management Check-list ([Form 76D](#));
6. a two-page statement setting out the issues and your position on each issue;
7. an Affidavit of Service to prove that all parties were served with the Trial Management Checklist and with the two-page statement setting out the issues.

## How do I ask for a trial?

The court will schedule a defended action for trial after the pre-trial is held.

## What is a summary trial?

A summary trial is a special type of trial. It is a shorter trial. At the end of the trial the judge will make a decision.

The parties bring evidence by a written “affidavit”. An affidavit is a written document made under oath or affirmation in which a person sets out to the best of their knowledge, information and belief the facts which are relevant.

The person who gives the evidence by way of the written affidavit can be examined for 10 minutes by the party who submitted their evidence to the court.

This person can be cross-examined on their affidavit for up to 50 minutes.

If you want to examine or cross examine the person who gave evidence by affidavit you must, at least 10 days before the trial date:

1. give notice to the other side that you intend to do this;
2. arrange for the person who gave evidence by affidavit to be present at the trial.

Each party has 45 minutes to give their oral arguments.

## What do I need to do before a trial?

If you are proceeding to a trial, at least 10 days before trial, if you are the party who served and filed the “Notice of Pre-Trial Readiness” you must:

1. serve on each party a copy of the trial record;
2. file the trial record and an Affidavit of Service with the court.
3. Pay the court filing fee.

For information about how to prepare a trial record for a summary trial, see [rule 76.11\(4\)](#).

For information about how to prepare a trial record for an ordinary trial, see [rule 48.03](#).

## **What happens if I do not take steps to have my action resolved?**

If you do not take steps to have your action concluded, the court will automatically dismiss your action.

This process is the same for Simplified Procedure and for Ordinary Procedure cases.

For example, if the action is defended and 2 years after the date of the first defence the action is not terminated or placed on a trial list, you will receive a Notice from the court. This Notice will warn you that the action will be dismissed for delay unless you take certain steps. For more information, see [rule 48.14\(1\)](#) and the flowchart Dismissal of Defended actions.

Another example is where the action has been defended and placed on a trial list and then it is struck off the trial list. The action must be restored to the trial list within 180 days of being struck off. If it is not restored to a trial list within this timeframe, you will receive a Notice from the court. This Notice will warn you that the action will be dismissed for delay unless you take certain steps. For more information, see [rule 48.14\(2\)](#) and the flowchart Dismissal of Defended actions.

A third example is where the action is undefended and it has not been disposed of or set down for trial within 180 days of the date of the issuance of the Statement of Claim. In this case you will receive a Notice from the court which will warn you that the action will be dismissed for delay unless you take certain steps.

For more information, see [rule 48.15](#) and the flowchart Dismissal of Undefended actions.

## **At which court location should I start my Simplified Procedure claim?**

You can start your court claim in any county unless a statute or civil court rule requires your case to be heard in a particular county.

For a list of court addresses for the Superior Court of Justice click here: [http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court\\_Addresses/](http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/) .

## **Will I need to get a lawyer?**

A party is not required to get a lawyer unless the party is under a disability or is acting in a representative capacity.

A party under a disability is a person under the age of 18 years, or is a person who is mentally incapable within the meaning of the Statutory Decisions Act, 1992, whether he or she has a guardian or not, or an absentee within the meaning of the Absentee Act.

Corporations must be represented by a lawyer, unless the court allows otherwise.

Even if you don't have to be represented by a lawyer, you may want to consider consulting with a lawyer since a lawyer can advise you about your options.

## **How do I find a lawyer?**

If you wish to retain an Ontario lawyer, 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 provides a free consultation of up to 30 minutes. The Lawyer Referral is available by telephone only at 1-800-268-8326 (or in the Greater Toronto Area at 416-947-3330). If you are calling from outside the province, you can reach the Lawyer Referral Service by dialling 1-416-947-3330. Advise the operator that you are calling from outside the province. A half-hour consultation is not guaranteed if you do not have an Ontario phone number. The Law Society of Upper Canada also maintains a list of lawyers in Ontario and their contact information, which may be accessed through the Law Society of Upper Canada website at: [www.lsuc.on.ca](http://www.lsuc.on.ca).

For more information, visit the Ministry of the Attorney General web site at: <http://www.attorneygeneral.jus.gov.on.ca/english/courts>.