
An Introduction to Civil Cases in the Superior Court of Justice

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The purpose of this brochure is to provide you with some basic information about civil cases in the Ontario courts. For more information about civil cases, please refer to the Ministry of the Attorney General's web-based publication, "Civil Cases: Suing and Being Sued," which is available online at www.attorneygeneral.jus.gov.on.ca. You should also refer to the *Rules of Civil Procedure*, which are available online at www.e-laws.gov.on.ca or at your local law library.

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

Ce (brochure) est également disponible en français.

Part 1: What is a civil case?

A civil case is a lawsuit that usually deals with **contracts** and/or **torts**. Torts, generally speaking, are wrongful (negligent) acts that result in damage or injury.

Civil cases can occur by way of **action** or **application**. You must bring your case as an **action**, unless a statute or the *Rules of Civil Procedure* provide that you should bring your case as an **application**. The information that follows generally describes the procedure for actions. For information on the application procedure, consult the *Rules of Civil Procedure*.

Please be advised that, as of January 1, 2010, the Small Claims Court monetary jurisdiction will be increased from \$10,000 to \$25,000, pursuant to [O. Reg. 439/08](#).

Note that **claims worth \$10,000 or less** can be heard in the Small Claims Court, which has its own procedures and rules and is generally considered simpler and less expensive than bringing a civil claim in the Superior Court of Justice. For information on bringing a claim in Small Claims Court, please visit the Small Claims Court section of the Ministry's website at www.attorneygeneral.jus.gov.on.ca/english/courts/scc.

Cases involving some areas of law are dealt with by specialized bodies or are governed by specialized procedures. As a result, the information that follows with respect to civil cases may not apply to these types of cases. Here is a list of some of these specialized areas of law, as well as links to sources for more information:

- Does your concern relate to the **breakdown of your spousal relationship**, or **access to or custody of your children**? If so, consult the Ministry's materials on family justice at: www.attorneygeneral.jus.gov.on.ca/english/family.
- Does your matter relate to **wills, estates or trusts**? If so, consult the Ministry's materials on estates at: www.attorneygeneral.jus.gov.on.ca/english/estates/estates-FAQ.asp.
- Does your dispute relate to the building of a **new home**? Contact the Ministry of Government Services regarding the *Ontario New Home Warranties Plan Act* at: www.cbs.gov.on.ca.
- Does your dispute relate to your **lawyer's bill**? Assessments of lawyers' bills may be conducted by an assessment officer. You may find further information about this process from the Law Society of Upper Canada at: www.lsuc.on.ca or from the court office.
- Are you having a dispute with your **residential landlord or tenant**? Contact the Ontario Rental Housing Tribunal regarding your rights and responsibilities under the *Tenant Protection Act* at: www.orht.gov.on.ca.
- Do you have a complaint regarding **insurance**? Contact the Financial Services Commission of Ontario for information regarding insurance and insurance complaints at: www.ontarioinsurance.com/english/insurance.
- Are you considering declaring **bankruptcy**, or does someone who is declaring bankruptcy owe you money? Contact the Office of the Superintendent in Bankruptcy for more information at: <http://strategis.ic.gc.ca/epic/internet/inbsf-osb.nsf/en/home>.
- Do you have a **complaint against a private bailiff**? The *Bailiffs Act* sets out a procedure for complaints against private bailiffs. Contact the Ministry of Government Services for more information at: www.cbs.gov.on.ca.
- Do you have a **complaint against a lawyer**? Contact the Law Society of Upper Canada at: www.lsuc.on.ca.
- Do you have a **complaint against a judicial official**? Visit the Ontario Courts website for more information, at www.ontariocourts.on.ca/ontario_judicial_council/complaint.htm.

For more information, see "Civil Cases: Suing and Being Sued" at www.attorneygeneral.jus.gov.on.ca.

Part 2: Things to consider before deciding whether to sue

The information provided below is offered to help you in your decision to make a claim if you do not have a lawyer. The information provided below is not legal advice, and it may not apply in every situation.

WHO do you want to sue?

- **Who are the parties in a civil action?** In an action, the party who commences the lawsuit is a plaintiff; the party who is being sued is the defendant. In an application, the party who commences a lawsuit is an applicant; the party who is being sued is a respondent.
- **Do you know the legal name of the person or business you wish to sue and their current residential or business address?** You will need correct information about whom you are suing to properly prepare and serve your claim, and to enforce a judgment if you are successful. For information on how to search a corporation or registered business name, you may contact the Companies Helpline, Ministry of Government Services. Please note that there is a fee for the search and the search **will not** be conducted over the phone. The Helpline can be reached at (416) 314-8880 or toll free in Ontario at 1(800) 361-3223. Before requesting a search, you must have the exact name of the corporation or the Ontario corporation number, or the exact name of the registered business.
- **If you win, will you be able to collect from the person/business?** If you obtain a judgment in your favour, you may have to enforce the judgment. In order for you to collect, the person/business must have one of the following
 - money,
 - assets that can be seized and sold, or
 - a debt owed to them by someone else (e.g. bank account, employment income) that can be garnished.
- **Does the person/business owe others money?** You may be able to find out by contacting your local credit bureau, enforcement office, land registry office, and/or court offices. (Please note that a fee may be payable.) You may find that there are other creditors who are already waiting to collect their judgments.
- Even if the person/business does not have money now, you may be able to collect your judgment in the future.

WHERE should you sue?

- **Is the Superior Court of Justice or the Small Claims Court the right place for you to bring your claim?** If your claim is for money or the return of personal property valued at \$10,000.00 (Canadian) or less, not including interest and costs, you may wish to bring your claim in Small Claims Court. If the amount of your claim is more than the current limit, you may still choose to use Small Claims Court because it is simpler and less expensive. However, you will have to give up any future attempt to recover the excess amount over the Small Claims Court limit, even in another court. Small Claims Court cannot issue a judgment valued at more than \$10,000. Claims valued above \$10,000 must be brought in the Superior Court of Justice.
- **Which office of the Superior Court of Justice should you attend to have your claim issued?** Unless a statute or rule directs otherwise, you may commence your proceeding at any court office in any county in Ontario. For a list of court addresses, see www.attorneygeneral.jus.gov.on.ca/english/courts/cadaddr.asp. Note, however, that a defendant may ask the court to have the case transferred to a different court location.
- Please be advised that, as of January 1, 2010, the Small Claims Court monetary jurisdiction will be increased from \$10,000 to \$25,000, pursuant to [O. Reg. 439/08](#).

For more information, see “Civil Cases: Suing and Being Sued” at www.attorneygeneral.jus.gov.on.ca.

Part 2: Things to consider before deciding whether to sue (cont.)

WHAT information do you have to support your claim?

- **Do you have enough evidence to support your claim?** You will have to prove your case. Consider what witnesses and/or documents you have to support you. If you do not have supporting documents (e.g. you entered into a verbal agreement) or witnesses, your claim may still be successful. However, if it is just your word against the other person's, it may be more difficult to prove your case.
- **Do you have a record of any payments, such as returned cheques, or a clear recollection of what happened and when?** You will be required to include in your statement of claim a short, clear summary of the events that took place and the reasons you think you are entitled to judgment against the defendant.
- **Remember**, the other party is able to respond to your claim and may give evidence that will affect the judge's view of your entitlement.

WHEN should you sue?

- **How long ago did the dispute take place?** There may be a time limit on how long you can wait before starting a lawsuit, which is set out in the *Limitations Act* (available online at www.e-laws.gov.on.ca). If you are uncertain about what limitation period applies to your case, you should consult a lawyer. See "Who can help me with my civil case? How can I get a lawyer?" available online at: www.attorneygeneral.jus.gov.on.ca.
- **Can you attend at the court office to file documents and/or attend in court for a trial?** You will have to attend court on a number of occasions to pursue your claim. You or someone acting on your behalf must attend the court office to have documents issued. For more on issuing documents, see "Steps in a civil action: Bringing a claim" available online at: www.attorneygeneral.jus.gov.on.ca. You will also be required to attend court for trial dates.
- **Is it possible for you to resolve the issue in another fashion?** You may want to consider a less formal method of resolving a dispute through a neutral third party, such as a private mediator or arbitrator. See Part 3: Alternatives to Suing, below.

HOW much will it cost you to make a claim?

- Fees are payable to the Minister of Finance upon filing a claim and for most steps in a proceeding, such as filing a motion. These fees may be paid at the court counter. The number of steps in a proceeding varies from case to case.
- For more information on fees, go to www.attorneygeneral.jus.gov.on.ca/english/courts/default.asp#fees.
- If you are successful and are granted a judgment, the judgment may include the fees you have paid.
- If the debtor refuses to pay even after you have a judgment, additional fees must also be paid to enforce (attempt to collect) the judgment. You may also incur expenses to enforce a judgment.
- If you are not able to afford the court fees, you may be eligible to have fees waived. Information regarding fee waiver is available at the court counter and online at: www.attorneygeneral.jus.gov.on.ca/english/courts/feewaiver/guide-forms.asp.
- You should expect to pay other costs related to your lawsuit as well. These might include photocopying fees for relevant documents, and fees paid to expert witnesses. The cost of a lawsuit will vary from case to case.

For more information, see "Civil Cases: Suing and Being Sued" at www.attorneygeneral.jus.gov.on.ca.

Part 3: Alternatives to suing

There are many alternatives to suing that you may wish to consider before you bring a claim, and at any point after you bring your claim.

Mediators and arbitrators are private sector professionals who can help you resolve your dispute outside of court. Mediation and arbitration services are listed in the Yellow Pages.

Mediation

Mediation is one way for people to settle disputes or lawsuits outside of court. In mediation, a neutral third party – the mediator – helps the disputing parties look for a solution that works for both of them. Mediators, unlike judges, do not decide cases or impose settlements. The mediator's role is to help the people involved in a dispute to communicate and negotiate with each other in a constructive manner, to gain a better understanding of the interests of all parties, and to find a resolution based on common understanding and mutual agreement.

The purpose of mediation is not to determine who wins and who loses, but to develop creative solutions to disputes in a way that is not possible at a trial.

Mediation has many benefits:

- Mediation can be less time-consuming, more flexible, and less expensive than proceeding in court.
- Mediation often leads to resolutions that are tailored to the needs of all parties. Generally, the best solution to a problem is one worked out by the parties themselves.
- Many people find mediation more satisfying than a trial because they play an active role in resolving their dispute, rather than having a solution determined by a judge.
- The mediation process is informal and completely confidential. Parties in mediation may speak more openly than in court. Many people find mediation a more comfortable and constructive process than a trial.
- In situations where the parties have an ongoing relationship, mediation is particularly helpful because it promotes cooperative problem-solving and improved communication.

Arbitration

Arbitrators, like mediators, are neutral third parties. However, unlike mediation, parties who wish to arbitrate a case must agree to be bound by any decision made by the arbitrator. That decision is legally binding and enforceable against the parties. Arbitration is a less formal process than a trial. Arbitration is governed by the *Arbitration Act*, which is available online at: www.e-laws.gov.on.ca.

Arbitration has many benefits:

- It can be a fast and effective way to reach a final resolution to a dispute.
- It allows parties to determine who will decide their case.
- An arbitration hearing can be private.

For more information, see “Civil Cases: Suing and Being Sued” at www.attorneygeneral.jus.gov.on.ca.

Part 4: Overview of a civil action

The following chart summarizes the main steps in a civil action in the Superior Court. Note that **applications** follow a different procedure. More information on applications may be found in the *Rules of Civil Procedure*.

Note that your case may follow a different procedure if one of the following rules apply:

- Simplified procedure under Rule 76 – Simplified procedure under Rule 76 is mandatory for all civil actions where the plaintiff’s claim is (a) for \$50,000 or less and (b) exclusively for money, real property, or personal property. Simplified procedure is available for other actions if the defendant does not object. Rule 76 does not apply to actions under the *Class Proceedings Act, 1992*, actions under the *Construction Lien Act* (except trust claims), or actions under Rule 77.
- Civil case management under Rule 77 – Civil case management under Rule 77 applies to civil actions and applications in Ottawa and Windsor. See Rule 78 with respect to when Rule 77 may apply to civil cases in Toronto. Rule 77 does not apply to family law actions, class proceedings, estates, bankruptcy and insolvency proceedings, mortgage actions (Rule 64), construction lien proceedings (except trust claims), Toronto Commercial List matters, or simplified rules (Rule 76) proceedings.
- Mandatory mediation under Rules 24.1 and 75.1 – Rule 24.1 establishes mandatory mediation for civil, non-family, case managed actions. The mandatory mediation program is in effect in Toronto, Ottawa and Windsor. Mandatory mediation under Rule 75.1 applies to certain estates, trusts, and substitute decisions proceedings in Toronto, Ottawa, and Windsor.
- Civil case management under Rule 78 – Rule 78 applies to civil cases in Toronto only. Under a 3-year pilot project (ending May 2008), all civil cases in Toronto will not automatically be assigned to case management under Rule 77 or mandatory mediation under Rule 24.1.

STEP	DESCRIPTION
Bringing a claim	The plaintiff prepares a statement of claim, which contains a concise statement of material (i.e. legally significant) facts on which the plaintiff relies. The court issues the statement of claim. The plaintiff serves the statement of claim on all defendants and files an affidavit of service with the court. If the defendant does not defend the action, this affidavit of service is necessary for the plaintiff to obtain default judgment.
Defending a claim	The defendant prepares a statement of defence and serves it on the plaintiff, and files a copy with the court together with proof of service. The defendant may counterclaim against the plaintiff, crossclaim against a co-defendant, or make a third party claim against a non-party. Where a defendant fails to deliver a statement of defence within the prescribed time, the plaintiff may obtain default judgment from the court registrar or a judge, depending on the type of claim.
Discovery	Within 10 days of the exchange of all pleadings, the parties must deliver to all other parties an affidavit that lists all relevant documents in the party’s power, possession or control. Copies of the documents are to be made available at a party’s request. A party may serve a notice of examination on an opposing party, indicating a time and place where the party must attend to answer questions under oath. The examination is recorded, and where requested, transcribed. Generally, only parties may be examined.
Setting an action down for trial	A trial record is required to set an action down for trial. Either party may set the action down for trial by serving and filing the trial record. A trial record includes a copy of all pleadings and orders relating to the trial. If the action is proceeding under Simplified Procedure (Rule 76), a Notice of Readiness for Pre-Trial Conference should be served and filed in order to set the action down for trial. The registrar places the action on the trial list 60 days later, or in some locations, trial dates are fixed by a judge in assignment court.
Pre-trial conference	The judge, on his or her own initiative or at the request of a party, directs the parties to attend a pre-trial conference before a judge or court officer to attempt to settle the case or narrow the issues.
Trial	The plaintiff and defendant make opening statements. The plaintiff’s witnesses are examined and cross-examined. The defendant’s witnesses are examined and cross-examined. The plaintiff and defendant make closing arguments.

For more information, see “Civil Cases: Suing and Being Sued” at www.attorneygeneral.jus.gov.on.ca.

Part 5: Legal resources

Who can help me with my civil case? How can I get a lawyer? When am I required to have a lawyer?

Court staff cannot provide you with any legal advice. They also cannot fill out forms for you. A lawyer is in the best position to advise you about your legal rights and responsibilities. If you retain a lawyer, consultations with your lawyer are private and confidential.

If you wish to retain a lawyer, you may contact the Lawyer Referral Service operated by the Law Society of Upper Canada. Please note that there is a fixed charge of six dollars for each telephone call to use this service. The Lawyer Referral Service will provide a name of a lawyer who practices in the relevant area of law and will provide a half-hour free consultation. If you are calling from Ontario, the telephone number for the service is 1-900-565-4577. If you are calling from outside the province, you may reach the Lawyer Referral Service by dialling 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.

If you are not in a financial position to retain the services of a lawyer, you may wish to contact the Legal Aid Ontario office closest to you to see if you qualify for legal aid. For more information you may visit Legal Aid Ontario's website at: www.legalaid.on.ca.

Parties under a disability and parties acting in a representative capacity must be represented by a lawyer. A party under a disability is defined in the *Rules of Civil Procedure* as a minor, or a person who is mentally incapable within the meaning of the *Substitute 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, except if the court allows otherwise. Any other party to a proceeding can either represent themselves or be represented by a lawyer.

An overview of laws, rules and forms in civil cases

Depending on the nature of your case, any number of statutes or regulations may be important. Ontario's statutes and regulations are available online at www.e-laws.gov.on.ca

The *Rules of Civil Procedure* are contained in a regulation under the *Courts of Justice Act*. The Rules govern procedure, including required forms, in the Superior Court of Justice and the Court of Appeal. The Rules are available online at www.e-laws.gov.on.ca/DBLaws/Regs/English/900194a_e.htm.

An electronic version of the regulated forms for the Superior Court of Justice may be found at the following website: www.ontariocourtforms.on.ca.

For more information, see "Civil Cases: Suing and Being Sued" at www.attorneygeneral.jus.gov.on.ca.