

Civil Litigation

Chapter 15: Jurisdiction and organization of Courts in Ontario

1. Organization of Courts of Ontario - 8 regions	109
<u>Court of Appeal for Ontario</u> : Inherent jurisdiction; Chief Justice of Ontario (president of Court)	
• Associate Chief Justice & 14 other judges; currently 21 judges (referred to as “Justice”)	109
<u>Court of Ontario</u> (1. <u>Superior Court of Justice</u> ; 2. <u>Ontario Court of Justice</u>)	
• Superior Court of Justice (civil & criminal) – proceedings heard by 1 judge	
○ Masters are on this court (if motion within their jurisdiction, should be heard by them)	110
○ <u>Divisional Court</u> (Appellate jurisdiction): applications for judicial review of admin actions	110
○ <u>Small Claims Court</u> (amounts less than \$25,000) – appeal to divisional court when \$2500+	111
• Ontario Court of Justice (also court for Youth Justice) – 1 judge	111-112
• Specialized courts: Toronto Region (Commercial, Estates, Family)	
○ Commercial List (branch of SCJ)	112
○ Estates List (branch of SCJ)	112-113
• Case Management (R. 77) (assigned by judicial order)	
○ Case Conferences (77.08)	113-114
• Simplified Procedure (R. 76): mandatory for any action \$100,000 or less	
○ Money, real/personal property	
○ Can be optional if \$100,000+ if D doesn’t object; even if D objects keep going but abandon any amount over 100k	114

Chapter 16: The Lawyer-Client Relationship

1. Authority to Act : Must have authority of client before taking any steps on client’s behalf	
2. Status of Client : Ensure that client capable of giving instructions & has status to appear before court	
• Capable, 18+, Not undischarged bankrupt	
• <u>Corporation</u> : must be incorporated; legitimate board of directors, <u>Trustees</u>	115
3. Communicating with Clients : Explain to the client that litigation is costly and not simple!	
4. Encouraging Compromise or Settlement and awareness of ADR : Duty to encourage ADR	115
5. Withdrawal of Service : Cant withdraw without good cause + reasonable notice	
• Good cause = loss of confidence	116

Chapter 17: Privacy Issues and Litigations

1. Gathering Evidence for Litigation	
• Consider PIPEDA (reasonableness of collection), Surveillance (investigators)	117
2. Pleadings : minimum amount of personal info that is necessary to properly describe the claim	117
3. Discovery : is document relevant to proceeding? (Proportionality)	
• Sedona Electronic Discovery	117-118
4. Facts : Don’t include personal data identifiers in facts	118
5. Published Findings : Yes – Publicly available information; No – Commissioner Reports	
6. Access and Solicitor-Client Privilege : can refuse during course of litigation	118

Chapter 18: Preliminary Matters before commencing proceedings

1. Causes of Action : set of facts & legal elements that justifies right to sue to obtain enforcement of a right	119
2. Demand Before Action : Make a demand before commence action	119
3. Notice required by statute : Notice before action or proceeding can be brought (clear & specific)	120
4. Notice of Constitutional Question : notice to AG of Canada & Ontario – 15 days before q argued	121
5. Limitation of Actions : Jan. 1, 2004 (2 year; ultimate 15 year) from when claim discovered	
• Ultimate doesn’t run during time person (i) willfully conceals (ii) willfully misleads	121-122

Chapter 27: Motions

- 1. Procedure on a motion (R. 37)** 187
- Case management and motion (R. 77)
 - Practice directions for motions: Certain regions give practice directions = *Ontario Reports*
 - Local Practice: verify matters with your local registrar (filing)
 - Timing of a Motion: if set down action for trial already, need leave of court to bring motion 187
 - **Motion before proceeding commenced**: in urgent cases can be brought before proceeding 188
 - **Motion post-judgment**: after if helping to enforce orders (enforcement orders)
 - Notice of Motions: motion is made by way of a notice of motion
 - Service & Filing of Notice of Motion
 - **Person or party to be served**: served on any person who will be affected by order sought
 - **Consequences where no notice**: dismiss, adjourn, direct motion to be served
 - **Motion without notice**: many motions don't require notice (extend time for 3rd party claim)
 - **When service to be effected**: at least 7 days before motion is heard
 - **Where service not required**: filed at or before hearing in court office where motion to be heard
 - **Extension or abridgment of time or service**: court can order extension/abridgement 188
 - Place of hearing on a motion: county in which proceeding was commenced 189
 - Jurisdiction of judge and master: same jurisdiction to hear all motions with exceptions
 - **Interlocutory Injunction**: can only be heard by judge (not for period over 10 days)
 - **Complicated Proceedings**: to be heard by judge
 - To whom a motion is to be made: to court (if master) otherwise to judge
 - Confirmation of a motion: party making a motion on notice to another party must confer with them 189
 - Attendance and manner of hearing: hearings are open to public unless possibility of serious harm 189-190
 - Heard in writing: may be heard in writing without attendance of other parties
 - **Response**: within 10 days respondent must file document to court 190
- 2. Material on a Motion**
- Motion Record: (table of contents; copy of notice of motion; affidavits; transcripts; other material)
 - Pleadings: copies of pleadings can be provided in "other material"
 - Responding party's motion record: can serve own motion record if feel the record is incomplete 190
 - Material filed as part of record: any material for use on motion can be filed as part of record 191
 - Transcript of evidence: if referring to a transcript, it must be filed
 - Factums: sometimes mandatory; other times unnecessary
 - Refusals and undertaking charts: file this chart when compelling answers/satisfying undertakings
 - Motion checklist: 9 items required to bring a motion (GOOD SUMMARY)
- 3. Evidence on a motion**: All evidence to be used on motion is to be listed in motion record 191-192
- Evidence by affidavit: Hearsay is permissible but be careful of including privileged information
 - **Corporation**: officer, director, employee of corporation
 - **Partnership**: member or employee of partnership
 - **Exhibit to an affidavit**: documents marked as exhibits = physically annexed to affidavit
 - **Service of affidavit**: affidavits in support of motion to be served with the notice of motion
 - **Cross-examination on affidavit**: can cross-x on any affidavit served by adverse party
 - Simplified Procedure: cant cross-x affidavit of adverse party
 - Delivery of affidavit after cross-x: cannot subsequently deliver that affidavit at hearing
 - Reasonable diligence: refuse adjournment of party seeking it failed to act reasonably
 - Transcript of cross-examination: purchase and serve copy of transcript on every adverse party
 - Liability for costs: cross-examining party liable for PI costs for adverse party's on motion 192
 - Scope of cross-examination: cross-x on all matters relevant to the issues on motion 193
 - Deponents duty to be informed: must inform themselves about matters relevant to issue
 - Re-examination: can be re-examined on affidavit by own lawyer right after cross-x
 - Notice of examination: party to proceeding (served on lawyer of record)
 - Not party to proceeding = notice to lawyer on party who filed affidavit
 - Resident v Non-resident of Ontario