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Superior Court of Justice

Ce guide est également disponible en français.

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A Guide to Family Procedures in the Superior Court of Justice

Revised July 2004

*This guide does not provide legal advice.
It is recommended that all parties in the
Superior Court of Justice seek legal advice
where possible.*

Part 5: Motions

What is a motion?

A motion is a court procedure that is used to obtain certain kinds of orders from a judge. You can “bring a motion” to ask for an order to:

- Resolve an issue in the case on a temporary basis;
- Obtain directions on how to proceed in the case; or
- Change an order that has already been made.

When can you bring a motion?

Generally, you cannot bring a motion until after you attend a case conference. However, there are some exceptions to this general rule. A motion can be brought before a case conference in certain situations, including:

- Situations of **hardship or urgency**. (For example, you do not have to wait for a case conference to apply for a restraining order if there is an immediate danger to the health or safety of you or your children.)
- If the motion is uncontested or you need a procedural order. (For example, you may need to ask the court’s permission to file an Answer if you have missed the timeline for filing.)

If you bring a motion before a case conference, the judge will decide first whether your case falls within one of the exceptions. If the judge decides that it does not, your motion will only be heard after a case conference. *Refer to the Case Conference Guide for more information.*

Who can bring a motion?

Anyone who is a party to a case, or anyone (other than a child) who is affected by the case, can bring a motion. **The person who brings the motion is the “moving party.” The person who responds to the motion is the “responding party.”**

How do you bring a motion?

In order to bring a motion, you must provide evidence supporting your request for an order. This is usually done by preparing and serving an Affidavit. In most cases, you must also attend a formal court hearing to have the motion considered by a judge.

Motions to Ask for Temporary Orders

A motion may be brought to resolve issues temporarily, until a final order can be made. For example, a motion may be brought for an order determining support payments, or visitation rights with the children, until these issues are settled between the parties, or finally determined by the court.

You should be aware that the court rules discourage parties from bringing motions early in the case, particularly before a case conference is held.

The case conference provides an early opportunity to meet with a judge to narrow and settle the issues in dispute. The judge can also make orders at a case conference to resolve matters that cannot be resolved through agreement between the parties.

The case conference provides a simpler and less formal way of resolving issues early in the process.

Refer to the Case Conference Guide for more information.

Motions to Ask for Procedural Directions

Motions may also be brought to ask the court for directions about how to proceed in the case. For example, one of the parties may bring a motion to ask the court's permission to file documents outside the timelines established by the court rules, or to ask the court for an order requiring the other side to disclose documents that are relevant to the case.

Motions to Change Existing Orders

Either party may bring a motion to ask the court to change an order that has already been made. For example, if you already have an order establishing support payments for you or your children, you may bring a motion asking for a change to these payments.

General Procedures for Bringing a Motion

The discussion below describes the steps to bring a motion. This guide does not address procedures when the motion is being heard before a judge. **It is strongly recommended that you retain a lawyer to represent you in court.**

Step 1: Schedule the motion.

The moving party must get a date for the motion from the court office.

Motions are generally heard by a judge in court. However, they can also be heard by telephone or video conference. If you want to argue the motion in court, ask court staff to schedule a court date. If it is necessary to bring the motion by telephone or video conference, make an appointment with the court clerk for a motion date. **It is then up to you** to make the arrangements for the telephone or video conference.

Step 2: Pick up the forms you need.

You will need the following documents for a motion:

- A Notice of Motion – Form 14
- An Affidavit – Form 14A
- A Confirmation of Attendance – Form 14C
- An Affidavit of Service – Form 6B
- A copy of the Table of Contents for the Continuing Record

If your case involves a claim for support (but does not include a claim for property) and it is more than 30 days since you made your last Financial Statement, you need:

- A Financial Statement (Support Claims) – Form 13

If your case involves a claim for property (whether or not it also includes a claim for support) and it is more than 30

days since you made your last Financial Statement, you need:

- A Financial Statement (Property and Support Claims) – Form 13.1

In either case, you may need:

- An Affidavit – Form 14A indicating either that there is no change from your last filed financial statement or that there are only minor changes (include details of the changes).

Refer to the Financial Statements Guide for more information.

Step 3: Fill out the court forms.

The moving party starts the motion with a Notice of Motion – Form 14. The Notice of Motion informs the other party that you intend to bring a motion, what order(s) you are asking the court to make and the date of the motion.

You must also complete an Affidavit – Form 14A setting out the facts to support your motion. The judge will use the information in your Affidavit to make his or her decision.

Preparing an Affidavit

Preparing an Affidavit can be difficult. The following may assist you when completing Form 14A:

1. Outline the **type of order** you are requesting:

- Custody of the child(ren)
- Access to the child(ren)
- Support for yourself or child(ren)
- A restraining order
- A property order
- Any other order – be specific

2. Provide the **factual information** the judge will need to know about your situation:

- Describe the relationship between you and the responding party (married, living together, separated etc.) and if you currently live with anyone.
- Indicate whether you and the responding party have any children and if so, their names, ages, and where they currently reside. Provide information about whether there are currently any existing access arrangements and details on who is responsible for daily care. If the case is for custody and/or access, outline the reasons you feel it would be in the best interests of the child(ren) to be with you.
- If you are asking for child support, provide information about whether the amount of support you are asking for is the same or different from the amount set out in the Child Support Guidelines tables. (You can ask at the Family Law Information Centre for a kit that will help you calculate child support under the Guidelines.)
- If you are asking for financial support, include details about your source of income (where you work, if you are receiving benefits) or indicate if this information can be found on the Financial Statement.
- If you are asking for a restraining order, provide details on the restrictions being sought (e.g. not to come within so many metres of work, home or school, not to telephone or communicate) and details of any incident(s) that have resulted in your request for a restraining order.

3. Include any **background information** the judge will need to know about your case:
- State whether there has been a case conference and if not, the reason you believe you should be permitted to have the motion heard before a case conference.
 - State whether there has ever been any family court order or written agreement. Be sure to attach a copy of the agreement or order.
 - If you are asking for costs, provide details about your expenses in bringing the motion.

In completing your Affidavit, please note:

- **The Affidavit should contain facts only.** Do not include your opinions or feelings or try to use the Affidavit to damage the other party.
- **The information should be, as much as possible, within your own personal knowledge.** You can include information provided to you by someone else but you must name the person who gave you the information and state that you believe it to be true.
- **You can attach Exhibits to your Affidavit.** Exhibits are documents (such as an order or separation agreement) or objects (such as photographs) that support the information in your Affidavit. You must refer to each exhibit and mark it at the top using a letter of the alphabet, for example “Exhibit A”.
- **You should include all of the information to support your motion in the Affidavit.**

It is a criminal offence to swear a false or misleading Affidavit and it is your responsibility to make sure that the information is true. Because the judge must be convinced that you believe everything you state in your Affidavit is true, it must be “sworn” or “affirmed”. This means that when you complete your Affidavit, you must sign it in the presence of a person who is commissioned to swear Affidavits. Some court staff are commissioners. You may also go to a law office or a legal aid clinic to have a lawyer commission the Affidavit for you. There may be a small fee for the service.

Note: In simple or uncontested matters, motions can be brought using Form 14B, which does not require an Affidavit (*see the discussion on page 6*).

In addition to filling out the Notice of Motion and Affidavit, you should also update the Table of Contents to include your motion documents.

If the motion involves a claim for support (but does not involve a claim for property) you must include an up-to-date Financial Statement (Support Claims) – Form 13.

If the motion involves a claim for property (whether or not it also involves a claim for support) you must include an up-to-date Financial Statement (Property and Support Claims) – Form 13.1.

If you have filled out a Form 13 or Form 13.1 within the previous 30 days, you can use the existing form. If your Financial Statement is more than 30 days old but is still accurate or there are only minor changes, you do not need to fill out a new one, but you must fill out an Affidavit – Form 14A saying that the information in the last statement has not changed and is still true, or provide details of the minor

changes. If the information is more than 30 days old and there are significant changes, you must complete a new Form 13 or Form 13.1.

You should also make **two** copies of all documents: one for your files and one to serve on the other party. The originals are filed in the Continuing Record.

Step 4: Serve the motion documents on the other party.

No later than 7 days before the scheduled motion date you must serve the other party and file with the court:

- An updated Financial Statement (Support Claims) – Form 13 or Financial Statement (Property and Support Claims) – Form 13.1 or an Affidavit – Form 14A (if applicable).

No later than 4 days before the scheduled motion date, you must serve the other party with a copy of:

- The Notice of Motion – Form 14
- The sworn Affidavit – Form 14A
- A copy of the updated Table of Contents from the Continuing Record, listing the motion documents you are serving.

After the documents are served, an Affidavit of Service should be prepared by the person who served the documents.

Refer to the General Information Sheet – "Serving Documents" for more information.

Note: In some situations, a motion may be brought without serving the other party. (See the discussion on page 6 on *Motions Without Notice*.)

Step 5: File the motion documents with the court.

No later than 2 days before the scheduled motion date, the moving party must file in the Continuing Record all of the original motion documents that were served on the respondent.

The completed Affidavit of Service, proving the motion documents were served, must be filed in the court file, not in the Continuing Record.

In addition, the Table of Contents in the front of the Continuing Record should be up-to-date.

Refer to the General Information Sheet – "Filing Documents" for more information.

Step 6: File a confirmation with the court.

No later than 2:00 p.m. two days before the scheduled motion, the moving party must file a Confirmation – Form 14C with the court. This lets the judge know that the moving party will be present for the motion.

If a confirmation is not filed, the motion may not be heard. The confirmation can be sent by fax, so it is useful to know the court's fax number.

No documents for use on the motion may be served or filed after **2:00 p.m. two days before** the motion date.

The Responding Party

If you are the responding party, you will be served with a Notice of Motion telling you what orders the other party is asking for, and the date of the motion. At least seven days before the motion date, you will be served with updated financial information. At least four days before the motion date, you will be served with the other party's Affidavit setting out the facts being relied on to support the motion.

You must serve and file an updated Financial Statement (Support Claims) – Form 13, or Financial Statement (Property and Support Claims) – Form 13.1 if one is required, or an Affidavit – Form 14A, swearing that the information on the old one still remains accurate, or that there are only minor changes (provide details) **no later than 4 days before the scheduled motion date.**

If you have different evidence that you want the judge to consider, you must fill out an Affidavit and serve it on the other party. You should file the Affidavit with the court **as soon as possible** before the day of the motion. No documents can be filed after **2:00 p.m. two days before** the motion. Pages 3, 4 and 5 of this guide contain some information to assist in completing the Affidavit.

Also serve and file an updated Table of Contents for the Continuing Record listing the motion documents you have served.

If you are the responding party, you do not have to file a Confirmation with the court, but you must attend the motion to present your views.

If you require more time to prepare your case, you should attend court on the day of the motion to ask for an adjournment. The judge may or may not allow the

adjournment. If allowed, there may be terms set out by the judge.

Special Motion Procedures

Simple, Procedural and Uncontested Motions

If you are bringing a motion to ask the court for directions in the case, or to decide a simple or uncontested matter, you can use Motion – Form 14B rather than a Notice of Motion and an Affidavit. Form 14B is much easier to fill out than a Notice of Motion and Affidavit.

Motions Without Notice to the Other Party

In limited circumstances, you may bring a motion without serving the other party. For example:

- If there is an immediate health or safety risk to you or your child and a delay in serving the other party would probably have serious consequences;
- If there is immediate danger that your child will be removed from Ontario; or
- If it is not reasonably possible for you to notify the other party (for example, because you do not know where he or she is).

You must still file the appropriate motion documents with the court even if you are bringing the motion without notice to the other party.

If you bring a motion without notice, the judge will decide first whether or not you should be permitted to bring the motion without notifying the other side. If the judge decides that notice is required, your motion will only be heard after you have served the other party.

If the motion is heard, and the judge grants the order you are asking for, he or she will also order that the issue come back to the court for review, within 14 days. You will have to serve a copy of the order on the other party, together with copies of all of the documents you prepared to support the motion. The other party will then have an opportunity to serve and file a response to your motion and to attend court on the date scheduled for review of the order.

Motions to Change a Final Order or Agreement

If either you or the other party want to change something in a final order or agreement, you can bring a motion to ask the judge for the change. These motions are different from the motions discussed in this guide.

Sample Forms

This section contains sample forms that parties will need to fill out when filing a motion.

You may wish to visit the Family Law Information Centre to obtain information about completing court forms.

Some tips on completing all forms:

1. **Be neat.** These are court documents and the court will not take them if they are not neat or the court cannot read them. **All court forms must be typed or printed.**
2. Fill in the name and address of the court where the application was filed at the top of all court documents.
3. Once court staff have provided a **court file number**, make sure it is on the upper right-hand corner of **all** of your documents.
4. Make enough **copies** of your completed forms. In most cases you will need to make two copies: one to serve on the other party and one for your files. The original forms will be filed with the court in the Continuing Record.
5. When completing the forms, you are asked to fill in the address where documents can be served on you. If being served at your home address would put your physical safety at risk, speak to court or Family Law Information Centre staff about using an alternative address.

Form 14: Notice of Motion or Form 14B: Motion

For a motion you need to complete either Form 14: Notice of Motion or Form 14B: Motion.

ONTARIO

Court File Number

(Name of Court)

Family Law Rules, O. Reg. 114/99
Form 14: Notice of Motion

at _____
Court office address

Applicant(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Respondent(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

The person making this motion or the person's lawyer must contact the clerk of the court by telephone or otherwise to choose a time and date when the court could hear this motion.

TO THE PARTIES:
THE COURT WILL HEAR A MOTION ON (date)
at a.m./p.m., or as soon as possible after that time, at (place)

This motion will be made by (name of person making the motion)
who will be asking the court for an order for the item(s) listed on page 2 of this notice.

A copy of the affidavit(s) in support of this motion is/are served with this notice.
 A notice of a case conference is served with this notice to change an order.
If this material is missing, you should talk to the court office immediately.

The person making this motion is also relying on the following documents in the continuing record: (List documents)

If you want to oppose this motion or to give your own views, you should talk to your own lawyer and prepare on all other parties not later than 4 days before the date above and file it at the court office not later than 2 days before the date above. Written and affidavit evidence will be allowed at a motion unless the court gives permission for oral testimony to the motion.

IF YOU DO NOT COME TO THE MOTION, THE COURT MAY MAKE AN ORDER WITHOUT AGAINST YOU.

Date of signature _____

Signature of person making this motion or of person's lawyer _____

Typed or printed name of person or of person's lawyer _____
phone & fax number and e-mail _____

NOTE TO PERSON MAKING THIS MOTION: You MUST file a confirmation (Form 14C) not later than 2:00 p.m. 2 days before the date above.

If this is a motion to change past and future support payments under an order that has been assigned to a government agency, you must also serve this motion form on that agency. If you do not, the agency can ask the court to set aside any order that you may get in this motion against you.

FLR 14 (07/01)

Notice of Motion – Form 14 is to be completed by either party and is used when bringing a motion. This form must be accompanied by a completed Affidavit – Form 14A.

Motion – Form 14B can be used if you are bringing a motion to ask the court for directions in the case, or to decide a simple or uncontested matter.

ONTARIO

Court File Number

(Name of court)

Family Law Rules, O. Reg. 114/99
Form 14B: Motion Form

at _____
Court office address

Names of parties:
Applicant: Respondent:

Hearing date: **Name of case management judge:**

This form is filed by:
 applicant respondent (Other; specify)

This motion is made:
 with the consent of all persons affected with notice to all persons affected — unopposed
 with notice to all persons affected — opposition without notice expected

NOTE TO PERSON MAKING THIS MOTION: If this is a motion to change past and future support payments under an order that has been assigned to a government agency, you must also serve this motion form on that agency. If you do not, the agency can ask the court to set aside any order that you may get in this motion and can ask for court costs against you.

Order that you want the court to make: (If you need more space, add an extra sheet but do not make any changes to this form.)

.....

Laws and rules on which you are relying: (Give name of statute and section numbers; name of regulation and section numbers; and rule numbers.)

.....

Continued on next sheet
(Français au verso)

FLR 14B (08/01)

Form 14A: Affidavit (General)

To be completed by either party and used to set out facts when bringing a motion.

Page 1:

ONTARIO

Court File Number

(Name of court)

Family Law Rules, O.Reg. 114/98

Form 14A: Affidavit (general) dated

at Court office address

Applicant(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax and e-mail address (if any)

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any)

Respondent(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax and e-mail address (if any)

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any)

My name is (full legal name),

I live in (municipality & province),

and I swear/affirm that the following is true:

Set out the statements of fact in consecutively numbered paragraphs. Where possible, each numbered paragraph and be limited to a particular statement of fact. If you learned a fact from someone else, you must give believe that fact to be true.

1.

FLR 14A (06/00)

Page 2:

Form 14A: Affidavit (general) dated (page 2)

Court File Number

Put a line through any blank space left on this page.

Sworn/Affirmed before me at municipality

in province, state or country

on date

Commissioner for taking affidavits
(Type or print name below if signature is illegible.)

Signature

This form is to be signed in front of a lawyer, justice of the peace, notary public or commissioner for taking affidavits.

FLR 14A (06/00) (Français au verso)

Page 1 of the Affidavit is similar to all other forms (i.e. applicant and respondent information is required).

The blank spaces on the form allow you to set out the facts to support your motion. You may use additional paper if needed.

Sign at the end of the affidavit. The person signing is swearing or promising that the affidavit is true. **It must be signed in front of a commissioner for taking affidavits.** This can be done at a lawyer's office, at a legal aid clinic or at the court office. There may be a small fee for this service.

Form 6B: Affidavit of Service

This form should be completed when **any** documents are served on the other party.

ONTARIO

Court File Number

(Name of court)

at -----
Court office address

Family Law Rules, O.Reg. 114/99
Form 6B: Affidavit of Service
sworn/affirmed

.....

Applicant(s)

| | |
|---|---|
| <small>Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</small> | <small>Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</small> |
| | |

Respondent(s)

| | |
|---|---|
| <small>Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</small> | <small>Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</small> |
| | |

My name is (full legal name)

I live in (municipality & province)

and I swear/affirm that the following is true:

1. On (date), I served (name of person to be served)

with the following document(s) in this case:

| Name of document | Author (if applicable) | Date when document signed, issued, sworn, etc. |
|------------------|------------------------|--|
| | | |

List the documents served

NOTE: You can leave out any part of this form that is not applicable.

2. I served the documents mentioned in paragraph 1 by:

| | |
|--------------------------|---|
| <input type="checkbox"/> | special service. (Go to paragraph 3 below if you used special service.) |
| <input type="checkbox"/> | mail. (Go to paragraph 4 if you used mailed service.) |
| <input type="checkbox"/> | courier. (Go to paragraph 5 if you used courier.) |
| <input type="checkbox"/> | deposit at a document exchange. (Go to paragraph 6 if you used a document exchange.) |
| <input type="checkbox"/> | fax. (Go to paragraph 7 if you used fax.) |
| <input type="checkbox"/> | substituted service or advertisement. (Go to paragraph 8 if you used substituted service or advertisement.) |

3. I carried out special service of the document(s) on the person named in paragraph 1 at (place or address)

by:

| | |
|--------------------------|---|
| <input type="checkbox"/> | leaving a copy with the person. |
| <input type="checkbox"/> | leaving a copy with (name) |
| | <input type="checkbox"/> who is a lawyer who accepted service on the person's behalf. |
| | <input type="checkbox"/> who is the person's lawyer of record. |
| | <input type="checkbox"/> who is the (office or position) |
| | of the corporation named in paragraph 1. |

FLR 6B (05/02) Continued on next sheet
(Français au verso)

Complete the court address and the court file number.

Applicant Information & Respondent Information: If either party has moved put in the new address.

In addition to the date served, it is a good idea to indicate the **time**.

Provide additional details about the person you served, if possible (e.g. Jane Doe, Receptionist at Family Child and Services).

List the document(s) that were served.

Check one of the boxes indicating how the document(s) were served. *For more information about the types of service, refer to the General Information Sheet – “Serving Documents.”*

The person who served the documents must sign at the end of the Affidavit swearing or affirming that the affidavit is true. **The Affidavit must be signed in front of a commissioner for taking affidavits.** This can be done at a lawyer’s office, at a legal aid clinic or at the court office. There may be a small fee for this service.

When completed, **Form 6B** must be filed in the court file, not in the Continuing Record.

Form 14C: Confirmation of Attendance

This form should be completed by the moving party prior to any motion.

Confirmation of attendance must be received from **the party bringing the motion, no later than 2:00 p.m. two days prior** to the scheduled court date.

ONTARIO

(Name of court)

at _____
Court office address

Court File Number

Family Law Rules, O. Reg. 114/99
Form 14C: Confirmation

Applicant(s)
Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Respondent(s)
Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Name & address of Children's Lawyer's agent (street & number, municipality, postal code, telephone any) and name of person represented.

1. My name is (full legal name)
and I am the lawyer for (name)
 (Other. Specify.)

2. I have not been able to contact the opposing lawyer or party in this case to contact paragraphs 3 to 7 below because: (Give reason for inability to contact other side)

contacted the opposing lawyer or party and have confirmed the matter below.

3. The scheduled date and time for this
 motion case conference settlement conference trial
is (date) at am/pm.
(complete only if motion is being confirmed)
 A case conference was held on the issues in this motion before Justice
 A case conference has not been held on the issues in this motion.

FLR 14C (07/01)

Court file number

Form 14C: Confirmation (page 2)

4. This matter is going ahead
 on all the issues.
 on only the following issues: (Specify)

for a consent order regarding: (Specify)

for an adjournment on consent to (date) because
(Give reason.)

for a contested adjournment to (date) asked for
by (name of person asking for adjournment) because
(Give reason.)

5. The judge should read pages/tabs of the continuing record.

6. Total time estimate: applicant: minutes; respondent minutes; for a total of minutes.

7. The case management judge for this case is Justice

_____ Date of signature _____ Lawyer's or party's signature

FLR 14C (07/01) (Français au verso)

Indicate if you know the issues that will be before the judge.

Check the "motion" box.

Indicate the documents in the Continuing Record you would like the judge to consider (e.g. the Financial Statement).