# Civil Litigation, Revised, 4th Edition

# Errata

Please note that the ebooks have been corrected as of **June 16, 2023,** to reflect all of the changes below.

However, only the print books reprinted **after June 2023** will have the chapter 6 (below) correction implemented. To see if your book is a reprint, go to the copyright page and check for a note under the line “Printed in Canada.”

***June 2023***

There is an error in Chapter 6, page 153. The book states the following:

**Material for Use on the Application**

The applicant is required to serve and file an application record and factum, along with proof of service, **at least four days before the hearing of the application.**

But the **RULES OF CIVIL PROCEDURE** states under Rule 38.09 the following:

**Material for Use on Application**

***Application Record and Factum***

**38.09** (1) The applicant shall,

(a)  serve an application record, together with a factum consisting of a concise argument stating the facts and law relied on by the applicant, **at least seven days before the hearing**, on every respondent who has served a notice of appearance; and

(b)  file the application record and factum, with proof of service, at least seven days before the hearing, in the court office where the application is to be heard.  R.R.O. 1990, Reg. 194, r. 38.09 (1); O. Reg. 171/98, s. 17 (1); O. Reg. 206/02, s. 9 (1); O. Reg. 438/08, s. 40 (1, 2).

Please note that the print books reprinted **June 2023** have the correction below implemented. To see if your book is a reprint, go to the copyright page and check for a note under the line “Printed in Canada.”

***August 2022***

* Figure 19.2: On the line “Total Fees and Disbursements” the total of each column has been corrected.
  + The total for the Partial Indemnity column is**$4300.65** not $3965.34.
  + The total for the Substantial Indemnity column is**$6021.08**not $5685.77.
  + The total for the Actual column is**$6594.55**not $6258.49.

# Updates

# November 2022: Updates to Ontario’s Rules of Civil Procedure (O Reg 520/22).

# Summary

On November 15, 2022, O. Reg. 520/22 was filed, which amended the *Rules of Civil Procedure*. The regulation is posted on e-Laws at https://www.ontario.ca/laws/regulation/r22520. The amendments come into force **January 30, 2023.**

Essentially, the change permits both lawyers and sheriffs to use an unsworn certificate of service rather than a sworn affidavit.

A summary of the regulation is available on Ontario’s Regulatory Registry at: [22-MAG013](https://www.ontariocanada.com/registry/view.do?postingId=43067&language=en).

# In Detail

There is an update to the *Rules of Civil Procedure* which, in effect, simplifies somewhat the procedure for proving service of documents, which affects the contents of Chapter 8 of *Civil Litigation,* particularly pp 187-200 of the revised 4th edition.

Basically, it permits both lawyers and sheriffs to use an unsworn certificate of service rather than a sworn affidavit. The new forms are quite detailed in terms of the information provided by the lawyer or a sheriff, particularly with information about what was served, the type of proceeding, and the mode of service. The lawyer’s certificate of service also allows a lawyer to either serve a document or direct another person to serve a document, which eliminates the need to have affidavits of service from the person actually carrying out service on behalf of or at the direction of the lawyer. It may also simplify proof of service in the expanding area of online procedures including on-line service of documents. For a sole practitioner this is very useful, as one does not need a second person to commission this document, as would be the case for an affidavit, which must also be signed by a commissioner.

The new unsworn lawyer’s certificate of service is Form 16B.1 for general court use, and Form 74B1 for probate applications. The new forms are available at: <http://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms/>

**A sample filled-out Form 16B.1 has been provided on the instructor page.**

The use of a certificate of service as well as the e-filing of certain documents is an exception to the general rule that self-represented litigants may take any procedural step assigned to lawyers under the rules.

The sheriff’s certificate is used by the sheriff actually serving the document, and there is no provision for the sheriff to use the document if directing someone else to serve a document. But as with a lawyer, the sheriff does not need a second person to commission the certificate as would be the case for an affidavit of service.

The lawyer’s certificate of service is governed under Rule 16.09(1.1); the sheriff’s certificate is governed under a revised version of Rule 16.09(3).

References in court forms to affidavits of service in probate application has resulted in revised versions for probate/ estate forms:74.44, 74.49.2, 74.49.3, 74.50, 74.51, and 75.8.

# April 2022: Updates to Ontario's Rules of Civil Procedure (O Reg 224/22).

# Background

On March 23, 2022, O. Reg. 224/22 was filed, which amended the Rules of Civil Procedure. The regulation is posted on e-Laws at https://www.ontario.ca/laws/regulation/r22224. The amendments come into force **April 23, 2022.**

The regulation addresses the rules regarding the deadlines for parties to submit their confirmation of motion and confirmation of application forms (Forms 37B and 38B), as well as the deadline to upload materials to CaseLines.

A summary of the regulation is available on Ontario’s Regulatory Registry at: [22-MAG004](https://www.ontariocanada.com/registry/view.do?language=en&postingId=41410)

# Amendments to Text

**Ch 6, p. 154:**

Under header Confirmation of Application

2nd paragraph, 1st line, strike out “3 days” and replace with “5 days”.

2nd paragraph, after first sentence, add a new sentence: The confirmation form may be emailed to the registrar at the court office where the application is to be heard.”

**Ch 9, p. 233:**

Under header Confirmation of Motions

1st paragraph:

8th line from top, strike out “**three**” and replace with “**five**” so that the sentence reads “five days.”

At the end of the first paragraph, add a sentence: “The notice of confirmation may be emailed to the court office.”

2nd paragraph:

Third line from top, strike out “as of February 2019,” and replace with “ as of April 2022.”

6th line down, strike out “two days” and replace with “four days”.

**p. 234, form 9B**

on page 235, on the last line, strike out “February 1, 2021” and add “ February 25, 2022”.

# March 2022: Updates to Ontario's Rules of Civil Procedure (O Reg 18/22).

# Background

In January 2022, O Reg 18/22 was filed, which amended the *Rules of Civil Procedure*. The amendments come into force on **March 31, 2022**.

The regulation amends service of experts’ reports, the scheduling of pre-trial conferences, the test for leave to admit evidence at trial, among other things. See more on the [Government of Ontario website](https://www.ontariocanada.com/registry/view_posting.jsp;jsessionid=Wnuw3lr4ob29_W6sMi_GsCB).

# Amendments to Text

Chapter 14:

* Page 332, under the heading “Rules that Relate to Discover,” add the following sentence to the end of item three in the numbered list:
  + “If not properly disclosed according to the Rules, the reports cannot be introduced into evidence without leave of the trial judge pursuant to the test set out in Rule 53.08(1).”

Chapter 16:

* Page 393, under the heading “Setting the Action Down for Trial: Rules 48.01 and 48.02,” add the following at the end of the second paragraph:
  + “Reflecting the increasing importance of the pre-trial conference to narrow issues and clarify matters for the trial judge, as of March 2022, the trial record must now include the pre-trial conference report and any order made at the pre-trial conference under Rule 50.07.”
* Page 395, under the heading “Placing the Act on the Trial List: Rules 48.05 to 48.13,” add the following at the end of the first sentence in the first paragraph:
  + “Rule 48.05 now specifically requires the registrar to take into account any pre-trial conference scheduling requirements.”
* Page 397, in footnote 6, line (c), remove “or” after “50.07” and replace it with “and any,” so the text for line (c) reads:
  + “(c) any order under rule 50.07 and any pre-trial conference report under rule 50.08; and”
* Page 398, third and fourth full paragraphs from the top of the page should be replaced with the following two paragraphs:
  + “The pre-trial conference in actions is mandatory in every case and must be held no more than 120 days and no fewer than 30 days before the date that the trial is scheduled to begin, or on the first day of the sitting during which the trial is expected to be held.”
  + “In the event that the parties fail to schedule a conference with the 120-day time requirement, the registrar will schedule a conference and give all the parties notice.”
* Page 398, at the end of the first new paragraph above, add a footnote:
  + “Rule 50.02(2.1).”
* Page 398, after the bulleted list near the bottom of the page, add:
  + “At the conclusion of the pre-trial conference, the judge or associate judge presiding under Rule 50.03.1 is required to prepare and produce a pre-trial conference report in every case, whether there are issues concerning scheduling the trial or not. Further, if a pre-trial conference is unproductive due to a party’s conduct, Rule 50.12 permits the judge or associate judge presiding over the pre-trial conference to order costs to be paid immediately to the other party or parties.”
* Page 398, remove the third last bullet point: “The advisability of fixing a date for the trial or hearing.”
* Page 399, in the numbered list, add at the end of the third item:
  + “Rule 50.03.1 now requires every party to an action to certify whether they intend to rely on expert evidence at trial, and if so, whether they have served their experts’ reports within the time for serving them under the Rules.”

Chapter 17:

* Page 420, under the heading “Expert Witnesses,” add the following sentence to the last paragraph:
  + “Although the times set out for service of an expert report or supplementary report may be extended or abridged by the judge or by the written consent of the parties (Rule 53.03(4)).”

Chapter 24:

* Page 561, under the heading “Trial Management Plan,” the second paragraph should be replaced with:
  + “The pre-trial judge or associate judge shall do the following:”
* Page 561, under the heading “Trial Management Plan,” in the bulleted list, remove “and” at the end of the second bullet and add it to the end of the third bullet. Replace period in third bullet with a semicolon. Then add a fourth bullet point reading as follows:
  + “makes any other order they consider necessary or advisable in relation to how the proceeding will be conducted.”
* Page 561, under the heading “Trial Management Plan,” in the seventh paragraph, remove the entire first sentence—"Immediately after the pre-trial conference, the registrar will place the action on the appropriate trial list.”
  + Add the following footnote at the end of the amended paragraph above:
    - “Rule 76.11(1) provides that any action set down for simplified trial before March 31, 2022 continues under the old subrule.”

# Bill 118: Changes limitation periods for personal injury claims caused by snow or ice.

***Update August 12, 2021***

The revised 4th edition of *Civil Litigation* covers the updates regarding extensions of the limitation period due to the COVID-19 pandemic. However, there are some other time limits affecting an action that your students should be aware of, which you may wish to raise with them when they are dealing with the subject of limitation periods in Chapter 2, pages 65-66 (“Limitation Periods”).

Bill 118, as of January 2021, now requires someone injured in a slip and fall on ice or snow to give notice to the occupier of a potential claim within 60 days. Even if an action would otherwise be within the 2-year limitation period, failure to give notice within 60 days will, with some exceptions, result in the action being statute barred, even though it is otherwise within the 2-year limitation period.

More detailed information can be found at:

<https://www.millerthomson.com/en/publications/communiques-and-updates/lloyds-brief-canadian-legal-perspectives/january-7-2021-lloyds/bill-118-changes-to-the-notice-period-for-slip-and-fall-claims-in-ontario/>.