



BRINGING CIVIL MOTIONS IN THE CENTRAL EAST REGION¹

Prepared for:

A STEP-BY-STEP GUIDE TO BRINGING A MOTION

Law Society of Ontario

Donald Lamont Learning Centre, 130 Queen Street West, Toronto, ON

April 30, 2019, 9:00 a.m. to 12:00 p.m.

Chair: **Jonathan Kulathungam**, [Teplitsky, Colson^{LLP}](#)

Co-Panelists: **Amrita Mann**, [Simmons da Silva^{LLP}](#)

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QUICK REFERENCES – CENTRAL EAST REGION (“CER”):

Court Offices:

Barrie; Bracebridge; Cobourg; Durham (Oshawa); Lindsay; Newmarket; and Peterborough

[Court Office Locations](#)

Regional Senior Judge: The Honourable Madam Justice M. K. Fuerst

[Regional Calendar](#) (Jan – Dec. 2019)

[List of CER Judges](#)

[CER Trial Co-ordinators](#)

[Civil Motion Hearing Dates in Each Court Office](#)

KEY REFERENCES AND TOOLS:

- [1] [Practice Direction Concerning Civil Proceedings in Central East Region](#), Superior Court of Justice, Central East Region, effective Jan. 1, 2017 (“CEPD”);
- [2] [Consolidated Provincial Practice Direction](#), Superior Court of Justice (Ontario), effective December 7, 2018 (“ONPD”);
- [3] [Rules of Civil Procedure](#), RRO 1990, Reg. 194 (the “Rules”):
 - R. 37: Motions – Jurisdiction and Procedure;
 - R. 39: Evidence on Motions and Applications;
 - R. 76: Simplified Procedure; and
 - R. 57: Costs;
- [4] [Courts of Justice Act](#), RSO 1990, c. C. 43, Part VII – Court Proceedings:
 - Common Law and Equity [ss. 95 to 100];
 - Interlocutory Orders [ss. 101 to 107]; and
 - Interest and Costs [ss. 130 and 131];
- [5] [Rules of Professional Conduct](#), LSO (“LSO-RPC”);
- [6] [Paralegal Rules of Conduct](#), LSO (“LSO-PRC”);
- [7] [Principles of Professionalism/Principles of Civility for Advocates](#), The Advocates’ Society, Institute for Civility and Professionalism (collectively, the “Principles”); and
- [8] [Ontario Court Forms – Rules of Civil Procedure Forms](#) – downloadable Word format forms for motions.

QUICK TIPS FOR MOTIONS IN THE CER:

- [1] Motions to **transfer jurisdiction** – Refer to: CEPD, s. 3; ONPD, Part III;
- [2] Motions in writing **without notice** (*ex parte*) – Refer to: CEPD, Part V, s. 14;
 - **Note:** The moving party has a duty to make “*full and fair disclosure of all material facts*” for any motion made without notice, with consequences for failing to do so [R. 39.01(6)];

- [3] **Regular** motions² – cannot exceed one hour, generally allocated as:
- moving party’s argument – 20 min;
 - responding party’s argument – 20 min;
 - moving party’s reply argument – 5 min; and
 - Court disposition and costs submissions, if any –15 min³;
- [4] Motions to **compel answers** and/or **deliver undertakings**:
- review R. 37.10(10) for the requirements, including [Form 37C](#);
- [5] **Long** motions (exceeding one hour)⁴ and **summary judgment**⁵ motions:
- must obtain date from Trial Co-ordinator – CEPD, Part VII, s. 18⁶;
 - factum is mandatory; cannot exceed 25 pages – CEPD, Part VII, s. 19;
 - counsel to confer and file a Joint Compendium “*where possible*”, not exceeding 30 pages; if counsel cannot agree, each to file separate Compendium, with same length restriction – CEPD, Part VII, 2. 19;
 - case brief must be filed (only cases to be cited in argument); relevant passages should be side-barred – CEPD, Part VII, s. 19;
 - e-copies of the factum, Compendium(s) and case brief(s) to be filed (USB, DVD, CD), with explanatory covering letter (specific details required) – CEPD, Part VII, s. 21;
 - long motions are generally allocated as:
 - moving party’s argument - 1/3 of the scheduled time;
 - responding party’s argument – 1/3 of the scheduled time;
 - moving party’s reply argument – 5 min for each hour of the scheduled time; and
 - Court disposition and submissions on costs, if any – balance of the scheduled time.

² Regular motions (not exceeding one hour) must be scheduled with the Trial Co-ordinator on a regular civil motion hearing date for that Court Office. The hearing date must be obtained, in advance, from the Trial Co-ordinator and availability should be canvassed beforehand with the other counsel.

³ If any party seeks to bring a cross-motion or responding motion on the same hearing date, it must also be scheduled through the Trial Co-ordinator. If no additional time is required for argument, because the issues are the same as those raised by the initial motion, the cross-motion or responding motion may be scheduled for hearing on the same hearing date as the initial motion.

⁴ Long motions must be scheduled with the Trial Co-ordinator and may, or may not, be scheduled on regular motion hearing dates in that Court Office. The proposed hearing date must be obtained, in advance, from the Trial Co-ordinator. Generally, counsel must provide an estimate for the total hearing time and indicate if cross-motions or responding motions are anticipated. Long motions in Oshawa are addressed by special appointment, usually categorized as: (a) more than one hour and up to two hours; and (b) more than two hours.

⁵ For additional information and requirements for summary judgment motions, review Rule 20.

⁶ R. 37.05(2) also requires that a hearing be obtained from the registrar before the notice of motion is served, if “*a lawyer estimates that the hearing of the motion will be more than two hours long*”.

SPECIAL RULES – NEWMARKET COURT:

- [1] **No “Placeholder” Motions** - The notice of motion must be filed (and fee paid) no later than ten days immediately following booking the date for the hearing with the Trial Co-ordinator, failing which the motion date will be vacated without notice to counsel – CEPD, s. 15.; and
- [2] **Consent Orders** – The motion confirmation, signed consent and draft order must be e-mailed to the Court [newmarket.SCJ.TC@ontario.ca] by 2 p.m. three days before the hearing date; to be reviewed in chambers [CEPD, Part VI, s. 16; R. 37.10.1]. If the motion confirmation is filed, counsel can attend at 9 a.m. and file the signed consent and draft order with the Courtroom registrar; to be reviewed in chambers [CEPD, Part VI, s. 17].

MOTIONS THAT MAY BE HEARD IN WRITING (NO ORAL HEARING):

- [1] relief sought is on consent [R. 37.12.1(1)] – a consent and draft order must be filed with the notice of motion [R. 37.12.1(2)];
- [2] relief sought is unopposed [R. 37.12.1(1)] – a notice by the responding party (verifying the relief is unopposed) and draft order must be filed [R. 37.12.1(3)];
- [3] notice is not required because: (a) impracticable or unnecessary [R. 37.07(2)]; and/or (b) delay would have serious consequences [R. 37.07(3)] – R. 37.12.1(1); and
- [4] the moving party proposes in the notice of motion for a determination in writing only (no attendance), provided that:
- issues of fact and law must not be complex;
 - notice for the motion must be at least fourteen days before the hearing date;
 - moving party must serve and “*immediately*” file, with proof of service, a motion record, draft order and factum; and
 - the responding party delivers either: (a) a consent; (b) a notice of no opposition; (c) a motion record (including consent to the motion being heard in writing) and factum; or (d) notice that the responding party intends to make oral argument (and materials relied upon), in which case the moving party can attend and argue, or not attend and rely on the moving party’s motion record and factum only [R. 37.12.1(4) and (5)].

RULE 76 – TIPS FOR MOTIONS IN SIMPLIFIED PROCEDURE⁷:

Specific rules apply:

- the moving party must serve a motion form (**Form 76B**) [R. 76.05(1)], pursuant to R. 37.07 and submit it to the Court before the motion is brought and heard;
- the motion is to be heard in the jurisdiction of the action [R. 76.05(2)];
- depending “*on the practical requirements of the situation*”, the motion may be made: [1] with or without supporting material or a motion record; [2] by attendance, in writing, by fax or under R. 1.08 (telephone and video conferences) [R. 76.05(3)];
- the motion may be determined by the registrar only, if there is consent or the adverse party fails to respond and the relief sought falls within R. 76.05(5) [R. 76.05(4)];
- the disposition of the motion may not require a formal order [R. 76.05(6) and (7)]; and
- unless otherwise provided by R. 76.05, the *Rules* apply to motions made in Simplified Procedure actions, including Rules 37, 39 and 57.

KEY EVIDENTIAL AND STRATEGIC DECISIONS:

Review and consider Rule 39 not only before and during the preparation of the written materials for the motion (notice of motion, motion record, factum, etc.), but throughout the motion process, including to prepare for the motion hearing.

Key evidential issues and strategic considerations may include:

- the requirements for adducing evidence by affidavit [R. 4.06 and 39.01], including the content of affidavits [R. 39.01(4)];
- obtaining further evidence by conducting cross-examinations on affidavits filed by any other party(ies) [R. 39.02];
- the service and filing requirements for all affidavit evidence, including the restriction that all affidavits by all parties must be filed at least four days before the hearing [R. 39.01(2) and (3)];
- examining (and potentially cross-examining) a non-party witness before the hearing to adduce a transcript thereof at the hearing [R. 39.03];
- seeking the leave of the Court to examine a non-party witness at the motion hearing, which is generally an exceptional exercise [R. 39.03(4)];
- the moving party’s duty to make “*full and fair disclosure of all material facts*” for any motion made without notice, together with the serious consequences of failing to do so [R. 39.01(6)];

⁷ Actions must be commenced under Rule 76 Simplified Procedure when the plaintiff’s claim is exclusively for one or more of the following: [1] money; [2] real property; and/or [3] personal property, and the total amount claimed, or at issue, is \$100,000 or less, exclusive of interest and costs [R. 76.02(1)]. Rule 76 does not apply to: (a) class actions; (b) actions commenced under the *Construction Lien Act*, RSO 1990, c. C.30, except trust claims; and (c) Rule 77 [R. 76.01(1)]. The *Rules* apply to actions under Rule 76, unless Rule 76 “*provides otherwise*” [R. 76.01(2)].

- the requirements for the admission of opinion evidence by any expert witness [R. 39.01(7)];
- the conditions and requirements for requesting and conducting cross-examinations on affidavits delivered by any other party [R. 39.02(1)], including an obligation to exercise reasonable diligence [R. 39.02(3) and 39.03(3)] and the ability to adduce and rely on transcripts from any cross-examinations [R. 39.03];
- key restrictions on any party attempting to adduce further evidence if cross-examination is conducted by that party [R. 39.02(2)];
- a requirement, except for summary judgment and contempt motions, to purchase and deliver transcript(s) for cross-examinations on affidavit(s) to every adverse party free of charge [R. 39.02(4)(a)];
- liability of the cross-examining party for partial indemnity costs of every adverse party (for the cross-examination), “*regardless of the outcome of the proceeding*”, unless the Court orders otherwise [R. 39.02(4)(b)]; and
- utilizing transcript evidence from an examination for discovery of an adverse party in the proceeding [R. 39.04].

ADJOURNMENT REQUESTS, SCHEDULING, etc. – YOUR DUTY:

Remain mindful that, when dealing with the other lawyer, you must:

- display and act with courtesy, civility and good faith [[LSO-RPC](#), ss 7.2.1];
- agree to *reasonable* requests for adjournments [[LSO-RPC](#), ss. 7.2-1.1; *Principles – “[Co-operating with Opposing Counsel on Scheduling Matters](#)”*, s. 13];
- co-operate with opposing counsel about scheduling to avoid conflicts [*Principles – “[Co-operating with Opposing Counsel on Scheduling Matters](#)”*, s. 12];
- act reasonably and co-operate with opposing counsel to avoid unnecessary motion practice by negotiating, whenever practicable [*Principles – “[Co-operating with Opposing Counsel](#)”*, s. 5] – don’t lose sight of your client’s best interests in the heat of the moment;
- ensure that your communications are prompt, timely and undertaken without unnecessary delay [*Principles – “[Communication with Opposing Counsel](#)”*, s. 7]; and
- avoid engaging in misleading or “*sharp*” practice to take advantage of mistakes, slips and/or irregularities involving the opposing counsel [[LSO-RPC](#), ss. 7.2-2].

Represent your client vociferously, but with courtesy, fair play and civility, even if the other lawyer may not do so – the ‘*high road*’ is the only road on which you should travel. The Court appreciates enlightened, informed counsel, and will often sanction sharp practice. Avoid prejudicing your own client by your own actions.

DEALING WITH SELF-REPRESENTED LITIGANTS:

When you must deal with self-represented parties on motions in the CER, you should:

- take steps to ensure the self-represented party does not form, or hold, any view or impression that his or her interests would be advanced or protected by you;

- affirm, preferably in writing, to he or she that you act only in the interest of your client;
- suggest to the self-represented party that he or she seek and obtain legal advice from a qualified lawyer of his or her choice and offer to identify and suggest those to the party;
- act with courtesy and civility, like you must with opposing counsel;
- do not take advantage of the self-represented party for technical, non-substantive reasons (*i.e.*, lack of knowledge of the *Rules*, etc.) to gain a tactical advantage, unless you are prepared for the Court to know you did so and consider your conduct;
- be patient and at least appear to be reasonably accommodating; and
- remain mindful that the Court is likely to grant a self-represented litigant more latitude and flexibility, including for non-compliance with the *Rules*.

TIPS FOR PREPARING FOR AND ATTENDING THE HEARING:

On the (business) day before the hearing:

- after 4:30 p.m., check ontariocourtdates.ca to verify your motion is on the hearing list for the day of your hearing;
- if, by 4:30 p.m., that confirmation is unavailable, or your motion is not on the list, contact the Trial Co-ordinator (by telephone, if possible) to confirm your motion is on the list;
- if that confirmation cannot be obtained on the (business) day before your hearing date, attend early on your hearing day and speak to the Court Office (Civil);
- deliver your [costs outline](#) to the other lawyer (or self-represented litigant) and, if sent by e-mail, request verification of receipt;
- prepare your motion materials to take with you to the hearing;
- prepare your brief, bullet-point outline for your submissions for your argument, but be prepared to be taken away from your outline at the outset of, or during, your argument (often the hearing Judge may ask you to focus on specific issues, or ask questions at the outset) – know your case, the other party’s case and always be ready to ‘*speak on your feet*’;
- practice your submissions beforehand, including to ensure you make your argument within the twenty-minute allotment;
- take a copy of your sworn affidavit(s) of service for the motion materials you served on the other party (notice of motion, motion record, factum, etc.);
- ideally, take an extra copy of your motion record and case brief, if any, in case they are not in the Court file;
- have three copies of your [costs outline](#), including proof that you gave a copy to the other party at least one business day before the hearing (*i.e.*, facsimile confirmation, e-mail transmission, etc.);
- have two extra copies of any case law or statutory authority you intend to refer to (if no case brief was delivered for the motion), in which you highlight or side bar the specific content to which you will refer;
- have a copy of your motion confirmation, including proof that you delivered it to both the registrar and the other party by the deadline (*i.e.*, facsimile confirmation, e-mail

transmission, affidavit of service, *etc.*), including to have your motion brought in and placed on the list, if it is not;

- prepare and attend with three draft [orders](#) for the relief you seek;
- have a paper copy of the *Rules* (you may be able to obtain a copy from the Court Office's library or resource centre, but do not count on it) [**Recommended:** [Ontario Annual Practice](#) (2018-2019 Edition; Thomson Reuters)]; and
- pack a pad of paper and extra pens – you will not have the opportunity to type on, refer to or fiddle with, your laptop or mobile 'phone during your argument.

When you attend your hearing:

- gown (for all motions heard in the CER);
- arrive at least fifteen minutes earlier than your scheduled hearing time (unless your motion is not on the list, in which case you should attend earlier);
- when you arrive, find the Courtroom to which your motion has been assigned;
- verify your motion is on the paper list for hearing (usually the hearing list will be posted outside the Courtroom or be available from the Courtroom registrar);
- before the hearing begins, ensure the other party has been given copies of every document and authority you intend to rely on, or refer to (including every case and statutory authority) – avoid referring to records or authorities that were not disclosed to the other party in advance of your argument;
- when you arrive, if possible, check in with the Courtroom registrar to verify your motion materials are in the Court file, ready for the hearing Judge;
- when you arrive, complete your counsel slip, if required (check with the Courtroom registrar when you arrive);
- ensure your brief submissions outline remains confidential and not openly observable by the other lawyer, or anyone else;
- do not seat your client at the counsel table; clients sit in the gallery;
- if, for some reason, you have not robed, request the Court's permission to speak to and address the Court despite your non-compliance (hopefully you would have a good reason for not being robed);
- speak to other counsel if you need any assistance or guidance – they will certainly be helpful; and
- ensure your mobile 'phone is turned off, or at least on silent mode – avoid irritating your hearing Judge.

During the hearing:

- always ask the Court's permission before presenting any document to the hearing Judge, through the Courtroom registrar (assuming you previously gave a copy to the other party in advance);
- refrain from interrupting the hearing Judge at any time;
- refrain from interrupting the other party during his or her argument, unless there is very good reason to do so;
- take succinct notes during the other party's argument to assist you in your reply argument, if permitted;

- be professional - avoid using gestures revealing your view or opinion on the other party's argument (*i.e.*, frowns, squinting, rolling your eyes, *etc.*);
- pay attention to the hearing Judge's comments, facial expressions and physical signals during arguments – take your cue, if given;
- remain seated when you are not making an argument;
- avoid shuffling your papers, or otherwise making any noise unnecessarily, during the other party's submissions – again, be professional, poised and respectful;
- recognize when you may need to consider making a concession, or admission, in your discussions with the hearing Judge – they will usually make that opportunity clear to you;
- at the end of the hearing, regardless of the outcome, thank the hearing Judge and the Courtroom registrar (and other Courtroom staff present, such as the Court Security Officer, *etc.*);
- if you are invited to hand in a draft [order](#), provide a copy to the other party at the same time; and
- politely request the Court for a copy of the endorsement, if applicable, to the extent you are not informed that you will be given a copy.

BASIC FLOWCHART FOR BRINGING A REGULAR MOTION IN THE CER:

Refer to page 10.

CREDITS AND ADDITIONAL REFERENCES:

“[How to Bring a Motion](#)”, Law Society of Ontario, November 2016;

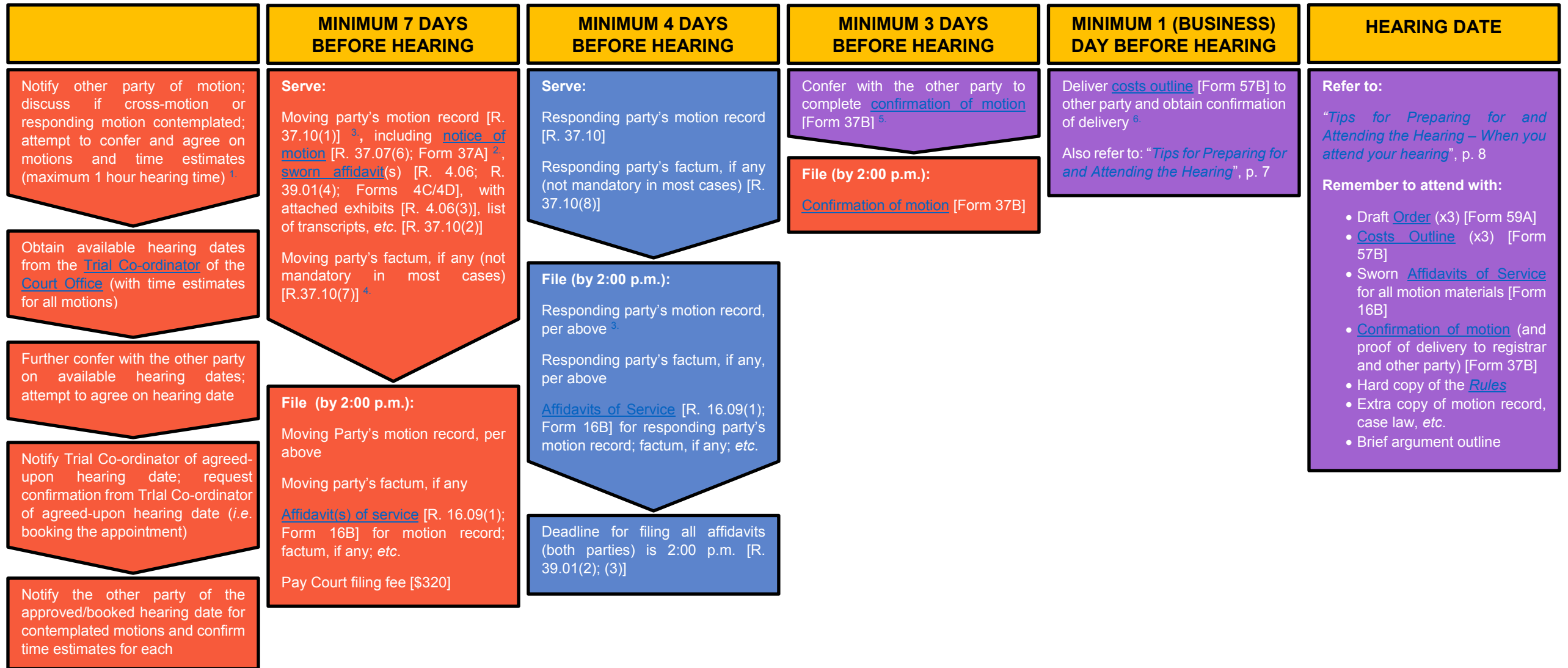
“[How to Prepare Motion Materials](#)”, Law Society of Ontario, November 2016;

“[Self-Represented Litigants: A Survival Guide by Carol Cochrane](#)”, LAWPRO (PracticePro), March 21, 2017;

“[Supreme Court of Canada Endorses A New Approach to Self-Represented Litigants](#)”, LАWNOW, Sean Sutherland and Cassie Richards, November 1, 2017; and

“[Civil Motions in the Superior Court of Justice: A Practical Guide](#)”, Siskinds Law Firm, London, Ontario, August 26, 2016.

FLOWCHART FOR A REGULAR MOTION IN THE CER



Notes:

Time - To calculate time for service and filing, exclude the first day but include the final day of the relevant time period [R. 3.01]. If the period is seven days or less, do not count holidays [defined by R. 1.03]. **Refer to:** R. 3.01 (Time – Computation); R. 3.02 (Time – Extension or Abridgement) and R. 3.03 (Time – When Proceedings May be Heard).

Service - Motion materials must be served on any party or person who will be affected by the order sought [R. 37.07]. Motion materials are not originating processes; service by any method listed under R. 16.05 is acceptable.

This is a basic flowchart for *regular* motions in the CER only, pursuant to R. 37, the CEPD and the ONPD. For additional requirements for special, long and summary judgment motions, refer to "[Quick Tips for Motions in the CER](#)", pp. 2, 3.

ENDNOTES TO FLOWCHART FOR BRINGING A REGULAR MOTION IN THE CER:

1. **Place of Hearing** - Motion must be filed in the jurisdiction of the proceeding – R. 37.03.
2. **Notices of Motion and Service Requirements** - Notices of motion should not be delivered before the commencement of the proceeding, unless it is an urgent case and the moving party undertakes to commence the proceeding forthwith [R. 37.17]. The notice of motion must: (b) comply with the requirements of R. 37.06 - it must specify the precise relief sought, grounds (including reference to statutes and the *Rules* relied upon) and list the documentary evidence; and (b) be served and filed (with proof of service) at least seven days before the hearing date [R. 37.07(6); 37.08]. The notice of motion must be served on “*any party or other person who will be affected by the order sought, unless these rules provide otherwise*” – R. 37.07. In exceptional cases only, service of the notice of motion may not be required – Refer to R. 37.07(2) [impracticable or unnecessary] and (3) [delay with serious consequences]. If notice is not required, the notice of motion is filed at or before the hearing [R. 37.08(2)]. Failure to serve the notice of motion, where service should have been given, will result in the consequences specified by R. 37.07(5), including dismissal of the motion. Failure to file the notice of motion, or appear at the hearing, may deem the motion abandoned [R. 37.09(2)] and entitle the responding party to costs of the motion [R. 37.09(3)]. Orders made on motions may also be set aside, varied or amended where, *inter alia*: (a) a party is affected by the order, if granted on a motion without notice [R. 37.14(1)(a)]; (b) a party fails to appear at the motion “*through accident, mistake or insufficient notice*” [R. 37.14(1)(b)]; and/or (c) the order is made by the registrar [R. 37.14(1)(c)].
3. **Motion Records** - Motions on notice require a motion record to be served and filed at least seven days before the hearing [R. 37.10(1)]. The Motion Record must comply with R. 37.10(2) – index, notice of motion, affidavits, list of transcripts, other records necessary for the hearing. The responding party’s motion record, if any, must be delivered at least four days before the hearing and comply with R. 37.10(3). If a transcript is to be relied upon, a certified copy must be filed [R. 37.10(5)].
4. **Factums** - Factums **may** be delivered for regular motions (not exceeding one hour), but are not mandatory [R. 37.10(6)]. The moving party’s factum must be delivered at least seven days before the hearing; the responding party’s at least four days before the hearing [R. 37.10(7) and (8)].
5. **Motion Confirmations and Failure to Comply** - Motions on notice require motion confirmations (**Form 37B**) [R. 37.10.1(1)]. The moving party must: (a) attempt to confer with the other party(ies) about the issues for the motion; and (b) not later than 2 p.m. three days before the hearing: (i) give the registrar the confirmation of motion by facsimile, e-mail or leaving it at the Court Office; and (ii) send a copy of the confirmation to the other party(ies) by facsimile or e-mail [R. 37.10.1(1)], failing which the responding party may deliver a motion confirmation [R. 37.10.1(2)]. Every party has a duty to immediately update the registrar and every other party if a motion confirmation is determined “*no longer correct*” [R. 37.10.1(3)]. Failure to deliver a motion confirmation will result in the motion being removed from the list and deemed abandoned, unless the Court orders otherwise [R. 37.10.1(4)]. If the responding party delivered a motion confirmation, the party may seek costs at the abandoned motion [R. 37.10.1(5)].
6. **Costs Outlines** – Unless the motion constitutes an “*exceptional case*” [R. 57.01(3.1)], in which case the costs of the motion will be referred for assessment under R. 58, disposition of the costs of motions usually include: costs in the cause, costs to a particular party in the cause, costs to a party in any event of the cause, costs fixed and payable (forthwith, or within a specified period, including after the assessment thereof), costs reserved to the trial Judge and no costs (to any party). Unless the parties to the motion have agreed, before the hearing, on the appropriate costs for the motion, any party to the motion who, or which, intends to seek costs for the motion must give to every other party to the motion, and bring to the hearing, a costs outline (**Form 57B**) not exceeding three pages in length [R. 57.01(6)]. **Form 57B** incorporates a table with headings for the fee for each stage of the motion, the person who provided services, the hours spent by each person, the rate being sought for each person (adjusted to the partial, substantial or full indemnity standard) and the actual rate. The costs outline also incorporates brief submissions on each of the factors listed in R. 57.01(1), which are likely to be

considered by the hearing Judge when making an order for costs for the motion, if any. Each party should deliver a costs outline to every other party to the motion at least one (business) day before the motion hearing, if not earlier. **Failure to give a costs outline may deprive that party from the opportunity to seek any costs, even if successful on the motion. Similarly, an adverse party may be denied the opportunity to make submissions on the successful party's costs, if that adverse party failed to deliver in advance and file at the hearing a costs outline** [*Roe v. Leone*, 2009 ONSC 26359 (CanLII), para. 19; *Larkman Estate v. Briginshaw*, 2007 ONSC 18020 (CanLII), para. 5]. The hearing Judge may also direct for costs submissions to be made in a specified manner and/or within a set deadline. If so, it is important to comply strictly with the Judge's directions. For example, in *Spengen Estate, Re*, 2006 ONSC 2780 (CanLII), costs were ordered against counsel, personally, who had submitted a thorough, tabbed brief on costs, when the Judge had ordered that submissions on costs not exceed three pages in length. A sample costs outline is attached as Schedule "A".

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE ESTATE OF [REDACTED] Deceased

B E T W E E N:

[REDACTED], [REDACTED], and [REDACTED]
personally and as **Executrix** of the [REDACTED]

Applicants

- and -

[REDACTED]

Respondent

**COSTS OUTLINE OF THE RESPONDENT
(RULE 57)**

THE RESPONDENT provides the following outline of the submissions to be made at the hearing in support of the costs the Respondent will seek if successful:

SUMMARY OF FEES, DISBURSEMENTS AND HST

	Partial	Actual
Fees (as detailed below)	\$5,850.00	\$6,825.00
Disbursements (as detailed in the attached Appendix "A")	\$535.15	\$535.15
HST (as detailed in the attached Appendix "B")	\$830.07	\$956.82
Total	\$7,215.22	\$8,316.97

FACTORS

The following points are made in support of the costs sought with reference to the factors set out in sub-rule 57.01(1):

- (a) The amount claimed and the amount recovered in the proceeding:

Applicants sought interlocutory orders: a) forcing the Respondent to vacate; b) sale of the property at issue; and c) appointing their own former counsel as Estate Trustee During Litigation

(b) The complexity of the proceedings:

Issues at hearing were more complex than necessary because the Applicants attempted to adduce evidence extensive affidavit evidence regarding: (a) testamentary capacity of the Deceased; (b) purported opinion(s) of a participant treating physician at the time; and (c) purported opinion(s) of the drafting lawyer (while refusing cross-examination)

(c) The importance of the issues:

Critical importance to the Respondent, who has very modest financial means and has occupied the property for more than twelve years. Orders to vacate and for sale would also have significantly compromised her claim(s), including for dependent's relief.

(d) The conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding:

Applicants: (a) brought their own Application seeking directions, when unnecessary, to attempt to seek their orders forcing vacancy and sale without cost consequences of doing so; (b) ignored the Respondent's prior offers to contribute and pay expenses for the property; and (c) unnecessarily filed extensive affidavit evidence on the merits of the case prematurely and refused requests to cross-examine.

(e) Whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence mistake or excessive caution:

Applicants: (a) did not need to apply for directions separately; (b) filed no factum or legal support for relief sought; (c) only sought relief to force Respondent from the property and for sale (not for her to pay rent or contribute); and (d) sought to appoint their own (former) counsel in this dispute as Court-appointed Estate Trustee During Litigation

(f) A party's denial of or refusal to admit anything that should have been admitted:

[REDACTED]

(g) The experience of the party's lawyer:

NAME	YEAR OF CALL	ACTUAL HOURLY RATE	PARTIAL INDEMNITY RATE
Jason Ward	2000	\$350.00	\$300.00

(h) The hours spent, the rates sought for costs and the rate actually charged by the party's lawyer:

FEE ITEMS	PERSON(S)	HOURS	PARTIAL INDEMNITY RATE	ACTUAL RATE
<p>To: Receipt and review of the Applicants' unissued Notice of Application for Directions, including: (a) Affidavit of [REDACTED], sworn April 9, [REDACTED], without exhibits annexed thereto [20 pages]; (b) Affidavit of [REDACTED], sworn January 22, [REDACTED], without exhibits annexed thereto [6 pages]; an unsworn Affidavit of Dr. [REDACTED], without exhibits annexed thereto [12 pages]; examination and consideration [Total: 38 pages]:</p>	Jason Ward	1.25	\$375.00	\$437.50
<p>To: Receipt and review of the Applicants' Application Record, dated April 15, [REDACTED], including: (a) unissued Notice of Application for Directions; b) Affidavit of [REDACTED], sworn April 9, [REDACTED], with exhibits annexed thereto (153 pages); b) Affidavit of [REDACTED], sworn January 22, [REDACTED], with exhibits annexed thereto (19 pages); examination and consideration of same [Total: 172 pages]:</p>	Jason Ward	2.25	\$675.00	\$787.50

<p>To: Receipt and review of the Applicants' Supplementary Application Record, dated April 21, [REDACTED] including: a) Affidavit of Dr. [REDACTED] [REDACTED] sworn April 17, [REDACTED] with exhibits annexed thereto, including extensive medical/treatment related records; examination and consideration of same [Total: 157 pages]:</p>	Jason Ward	1.50	\$450.00	\$525.00
<p>To: Legal Research regarding: (a) standard of care of lawyer for: (i) taking instructions and attending to execution of revocation of powers of attorney and existing last will and testament; and (ii) execution of new last will and testament; undue influence; suspicious circumstances; onus of parties, etc.; and (b) proper scope and admissibility of participant treating physician's evidence regarding testamentary capacity, etc.:</p>	Jason Ward	1.75	\$525.00	\$612.50
<p>Preparation and delivery of Notices of Cross-Examination for: (a) [REDACTED] (b) [REDACTED] (c) [REDACTED]; and (d) Dr. [REDACTED] including Affidavits of Service:</p>	Jason Ward	1.00	\$300.00	\$350.00
<p>To: All correspondence and telephone calls exchanged with other counsel</p>	Jason Ward	1.50	\$450.00	\$525.00

regarding all matters regarding the Application materials served by Applicants, issues for the hearing, requesting cross-examinations, etc.:

To: Preparation of multiple drafts Orders Giving Directions; delivery to other counsel and the Court (regarding provisions adjourning Applicants' relief sought only):	Jason Ward	1.75	\$525.00	\$612.50
To: Preparation and delivery of Confirmation for hearing; receipt of Applicants' Confirmation:	Jason Ward	0.25	\$75.00	\$87.50
To: All preparation for the hearing on April 28, [REDACTED] regarding the interlocutory relief sought by the Applicants, including preparation of extensive submission notes on all issues raised in connection therewith:	Jason Ward	3.75	\$1,125.00	\$1,312.50
To: Preparation and drafting of Respondent's Costs Submissions, dated June 15, [REDACTED]:	Jason Ward	1.50	\$450.00	\$525.00
To: Preparation and drafting of Respondent's Costs Outline, dated June 15, [REDACTED]:	Jason Ward	1.00	\$300.00	\$350.00
And, in addition to the above and to date, all correspondence exchanged by and between and conferences with counsel, correspondence and	Jason Ward	2.00	\$600.00	\$700.00

conferences with the Respondent, meetings with the Respondent, additional legal research regarding all issues in dispute, together with all other related work and/or services required:

Total Fees:	19.50	\$5,850.00	\$6,825.00
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The above rates are charged for each person identifiable above. No contingency fee arrangement applies.

Any other matter relevant to the question of costs:

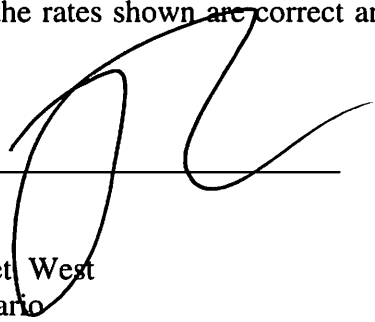
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LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

DATED: ██████, ██████

WARDS PC
LAWYERS
84 Kent Street West
Lindsay, Ontario
K9V 2Y4



Jason Ward
L.S.U.C. No.: 43388U
Tel: (705) 324-9273
Fax: (705) 324-2364
E-mail: jason@wardlegal.ca

Counsel to Respondent

APPENDIX "A"

DISBURSEMENTS

Description	Amounts
Filing fee(s) for Notice of Appearance (not subject to HST):	\$102.00
Printing, Photocopying, Courier and Facsimiles:	\$433.15
TOTAL OF DISBURSEMENTS	\$535.15

APPENDIX "B"

	HST		
	CALCULATION	PARTIAL INDEMNITY RATE	ACTUAL RATE
HST (13%) on Taxable Disbursements	(0.13 x \$535.15):	\$69.57	\$69.57
HST (13%) on Total Fees	(0.13 x \$5,850.00):	\$760.50	
	(0.13 x \$6,825.00):		\$887.25
TOTAL HST:		\$830.07	\$956.82

██████████, *et. al.* -and- ██████████

Court File No.: ██████████

Applicants

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING AT ██████████

**COSTS OUTLINE
OF THE RESPONDENT
(RULE 57)**

**WARDS PC
LAWYERS**
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Counsel to the Respondent