

# Litigation Process

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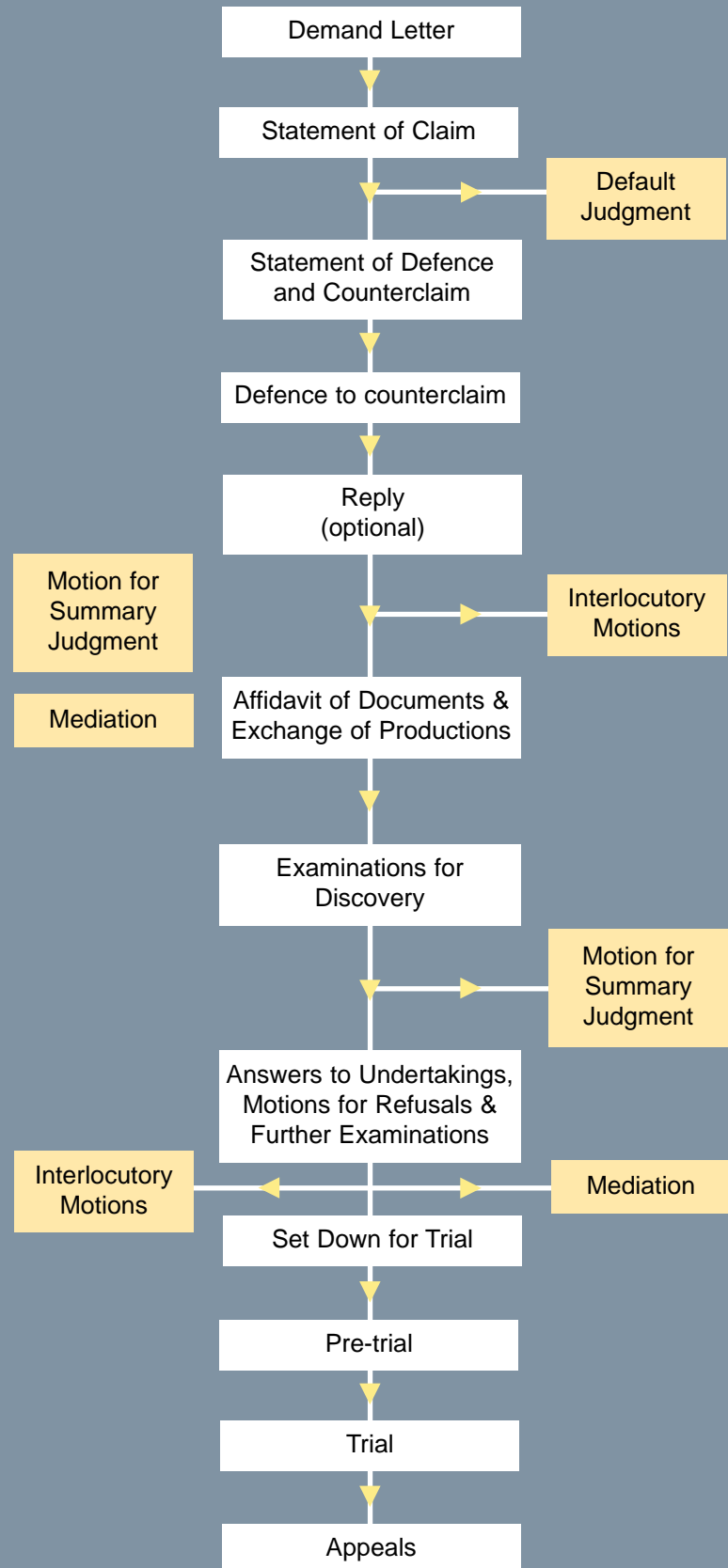
*in the Province* *Of* Ontario

*This document is only intended to provide a generic outline of the litigation process for educational purposes. The specific details of each case will usually affect the process in some way. Clients should discuss their circumstances and their options with the litigation lawyers at Pallett Valo, LLP.*

The framework for litigation in Ontario is established in the Rules of Civil Procedure. These Rules govern the entire litigation process, including:

- the content and format of court documents
- how documents are served and filed
- time periods for various events
- scheduling of court appearances
- appeals and enforcement of judgments

Although the Rules establish deadlines for certain steps in the litigation, the schedules of the courts, the lawyers and their respective clients really determine the schedule. This requires counsel and clients to agree on reasonable extensions of deadlines. Although the litigation process is by nature adversarial, the system requires a degree of accommodation and courtesy to operate effectively.



# Litigation Process *in the Province of* Ontario

## Preparing for Litigation

To provide you with the best representation, your litigation lawyer needs to know all the facts. This includes facts that may be detrimental to your case as well as facts that support it.

Full disclosure of the facts helps provide a realistic assessment of your case at the outset. Litigation is expensive, and it is best to discover early in the process whether your chances of success justify the cost.

If the case proceeds, strategies can be developed to address the negative aspects of the situation. It is much more difficult for your litigation lawyer to minimize the impact of negative factors late in the litigation process, and win the case.

## Tips for *Preparing Successful Litigation*

- Identify, organize and safeguard important documents as soon as possible
- Give copies to your lawyer as soon as possible
- Tell your lawyer the whole story—the good and the bad—as soon as possible
- Keep a written journal of all events and dates relevant to your case
- When in doubt on any issue, contact your lawyer immediately

## The Pleadings Phase

### Statement of Claim:

Most litigation begins with a Statement of Claim. The Statement defines the scope of the issues, outlines the Plaintiff's case, and identifies the remedy the Plaintiff is seeking.

Once a Statement of Claim is prepared by your lawyer, it must be "issued" or opened for action by the Ontario Superior Court. A court fee applies.

The Statement of Claim is then hand delivered to the Defendant. Defendants served in Ontario have the next 20 days to prepare and deliver a Statement of Defence. The 20 days can be extended to 30 days if the Defendant delivers a Notice of Intent to Defend. Defendants residing outside the province or country are given longer times to respond. Personal service can at times be difficult and in those instances a Court Order may be required for alternative methods of service.

### Statement of Defence:

The Statement of Defence sets out the Defendant's version of events, and outlines the case for the defence. A Plaintiff has the option of delivering a Reply to a Statement of Defence.

Defendants may claim relief against the Plaintiff through a counterclaim in the Statement of Defence, which forces a Plaintiff to respond with a Defence to Counterclaim. The Defendant can also issue a Third Party Claim when they believe a third party is fully or partially responsible for damages suffered by the Plaintiff.

## The Pleadings Phase (continued)

### Notice of Application:

In specific circumstances, the litigation process can be started with a Notice of Application. The process with a Notice of Application is very different from the one just described. Your litigation lawyer will advise you if an Application is appropriate in your circumstances, and will describe the process for you.

### Simplified Procedure:

A set of rules called “Simplified Procedure” applies to all cases where claims amount to \$50,000 or less. The Simplified Procedure Rules are designed to expedite and economize the litigation process, but they sacrifice some procedures ordinarily available to litigants such as discovery and cross-examination.

Because of Simplified Procedure, Plaintiffs must be completely candid with their litigation lawyer about the value of the claims. Serious court costs can be imposed upon a Plaintiff who waives Simplified Procedure and then recovers less than \$50,000. An exaggerated claim that cannot be proved at trial often triggers these consequences.

Cases involving \$10,000 or less are heard in Small Claims Court.

## Productions and Examinations For Discovery

After the pleadings phase, litigation moves into the production and discovery phase. The Rules of Civil Procedure require that each litigant disclose all relevant documents to the other. This means not only trial documents, but also other documents—electronic and hard copy—that support or undermine your case.

All applicable documents must be listed in an Affidavit of Documents and delivered to the other side. Each litigant has the right to obtain and inspect all documents (called productions) in the opposing party’s Affidavit. It’s a good idea to identify and organize all relevant documents as soon as possible, and to provide them to your litigation lawyer.

Once documents have been exchanged, each side is entitled to examine the opposing litigant on relevant issues. This is called ‘examination for discovery’. An examination for discovery is usually an out-of-court interview under oath or affirmation. A verbatim reporter attends and produces an exact transcript.

**Two of the most important functions of the discovery process are:**

1. To obtain complete disclosure of the opposition’s case; and,
2. To pin down their evidence to be given at trial.

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On most examinations, some questions are answered with promises (undertakings) to supply information or documents at a later date. Many motions are fought in Court over the failure of a party to fulfill these promises on time. Your litigation lawyer will prepare you in advance for examinations, which may be intense depending on the nature of the case.

## Pre-Trial and Trial

At this point, the case is ready for trial. A fee is paid and a Trial Record filed with the Court. On average, litigants must wait 6 to 18 months for a case to be heard. Further delays are possible if one party obtains an adjournment of a trial date.

In most jurisdictions, a pre-trial hearing is held several months in advance of the trial itself. Held before a different Judge, a pre-trial hearing provides a forum for settlement or mediation, and encourages the parties to narrow the issues for trial.

## Appeals

The Rules of Civil Procedure also provide a process for appeal to Divisional Court or the Ontario Court of Appeal. This means a successful litigant at trial may be prevented from enforcing the Judgment pending appeal, and may incur more legal fees responding to the Appeal.

## Enforcement of Judgments

A Judgment entitles the successful Plaintiff to collect amounts owing. The responsibility for collecting on that Judgment remains with the successful Plaintiff.

### **Bear two things in mind:**

1. The Rules of Civil Procedure allow Judgments to be enforced by seizing assets or garnishing funds; however, there will always be costs. These costs can be significant when a judgment debtor is determined to conceal his/her assets.
2. The Judgment debtor must have assets to satisfy the Judgment. In most circumstances, a bankruptcy can render a Judgment largely unrecoverable.

## **Enforcement of Judgments** (continued)

### **Interlocutory Motions**

At various stages in the litigation process, opponents may engage in skirmishes known as interlocutory motions. Motions are introduced to obtain rulings on issues that arise in the course of the litigation, such as:

- obtaining answers to undertakings
- obtaining injunctions to restrain damaging conduct
- striking out portions of pleadings
- resolving procedural disputes

While motions are sometimes essential, they are often used to delay the process and increase costs for opponents. Your litigation lawyer will always discuss the costs and potential benefits before launching or responding to a motion.

### **Mediation and Alternative Dispute Resolution**

Mediation allows the parties to explore settlement options with the help of an independent mediator—an individual trained in resolving disputes. Although the mediator does not have the powers of a Judge, the process offers the parties an opportunity for a negotiated rather than an imposed solution.

Mediation, which is mandatory in Toronto and Ottawa, can occur at any time in the litigation process. There are several types of mediation and alternative dispute resolution that can be explored with your litigation lawyer.

### **Conclusion**

Litigation is an unavoidable fact of life for most people at one point or another. When it occurs, the litigation process can be complex, expensive and time consuming.

You always have a direct role to play in the efficiency, effectiveness and ultimate success of your litigation. You can help by being completely candid with your litigation lawyer, and by providing documents and other information on time. Your litigation lawyer at Pallett Valo, LLP will guide you through the process, and help you make informed decisions along the way.

# Litigation Process *in the Province of* Ontario

## The Firm

Established in 1948, Pallett Valo, LLP is the largest law firm in Peel Region. We provide legal advice to businesses and to the people who start, acquire, manage and invest in them.

We help business owners and other high net-worth individuals protect and manage their assets through estate planning.

**Our clients tell us that we ‘Get It’ at all levels in the firm.**

- We ‘Get’ the realities of client situations.
- We ‘Get’ that we must meet the individual’s needs as well as those of the business.
- We ‘Get’ that we are in business to help our clients achieve their goals through the labyrinth of law.
- We ‘Get’ client service.

We understand that, as a law firm, we are in the service industry—and that service expectation is defined by each client.

### **Litigation:**

Our group is the largest litigation law specialist in Peel Region. We have the knowledge and experience required to deal with complex and difficult litigation cases. Recognizing the benefits of litigation avoidance and early extraction strategies, we apply a business approach to commercial disputes.

We work closely with clients to develop a sound strategy with achievable objectives. Our advice is designed to resolve commercial disputes with a minimum of business interruption by using negotiation and alternative dispute resolution.

However, there are times where a client’s interests are best served by decisive and aggressive action in the Courts. Our litigators have extensive trial and appellate experience, and have fought numerous motions over injunctive remedies such as Mareva and Anton Piller Orders.

### **Areas of Practice Include:**

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|------------------------------|-------------------------|
| Alternate dispute resolution | Estate litigation       |
| Arbitrations                 | Injunctive remedies     |
| Bankruptcy and insolvency    | Landlord and tenant     |
| Commercial disputes          | Mediation               |
| Construction litigation      | Professional negligence |
| Contract disputes            | Real Estate litigation  |
| Debt collections             | Shareholder disputes    |

### **The Firm’s Major Areas Of Practice:**

- |                        |   |
|------------------------|---|
| Business Law           | Construction law                                  |
| Litigation             | Bankruptcy, Insolvency & Restructuring            |
| Commercial Real Estate | Labour & Employment                               |
| Franchising            | Estates, Preservation of Wealth & Trusts Services |

**PALLETT VALO, LLP**  
Lawyers & Trade-Mark Agents

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