

GUIDE TO PREPARING AND SIGNING OF ORDERS

MADE BY THE *ONTARIO COURT OF JUSTICE (FAMILY)* AT BRAMPTON

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INTRODUCTION

This Guide was prepared by the *Orders Task Force* of the *Ontario Court of Justice (Family Bench & Bar Committee for Peel)*. **It has been approved by the *Bench & Bar Committee*.** This Guide is intended as an aid to lawyers, clerks, and others, regarding the preparation and signing of *Ontario Court of Justice* (“OCJ”) family court orders.

It is written with two goals:

- to facilitate the prompt signing of orders (by reducing the errors in the drafts, there should be less delay for all); and
- to improve the technical quality of orders (by having consistent, clear, readable orders, there should be fewer problems for those asked to apply the orders).

This Guide does not attempt to deal with all situations. It is not a replacement for legal judgement regarding the wording of the orders sought.

In the event of any conflict between this guide and the Family Law Rules or other regulations, or any Practice Direction of the court, the regulations and the Practice Directions prevail.

Rules and practices change from time to time. Updates to this Guide may not keep pace with changes to rules and practices.

This Guide does not apply to orders under the *Child and Family Services Act*.

This Guide applies to preparing *Ontario Court of Justice* orders. Generally, these principals can be applied to preparing *Superior Court of Justice* orders, but some practices may be different.

EXPECTATIONS:

Lawyers are expected to:

- provide the judge with the wording for proposed orders, when possible and appropriate
- confirm, before leaving the courtroom, who will draft the order and if there is no agreement, seek directions for the Justice
- submit the draft order to *Court Operations* in a timely manner
- ensure any order made when he or she was on record is taken out, even if that lawyer has subsequently removed from the record or has not been paid
- draft orders in keeping with this Guide
- ensure draft orders reflect the judge’s *Endorsements*
- carefully proofread the drafts

OCJ *Court Operations* is expected to:

- process draft orders in a timely and consistent manner
- ensure the draft orders reflect the judge’s *Endorsements*
- only reject drafts when necessary, given the principals set out in this Guide
- promptly communicate any problems with the preparation and signing of the order
- expedite the signing of orders in appropriate cases
- when preparing orders in cases where both parties are self-represented:
 - do so in a timely manner
 - draft in keeping with this Guide
 - proofread drafts carefully

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1. eORDERS (TBD)

2. PRINCIPALS:

The following principals should be used in drafting orders:

2.1 Clarity.

The order should be clear to a lay person with no prior knowledge of the case. Write the order for a police officer who is asked to apply it at 2:00 a.m., a tax official trying to figure out who gets the child tax credit, or an immigration officer deciding if a child can travel.

2.2 Stand-Alone.

The order should stand on its own. Reference to other documents should not be required to understand the order.

2.3 Unambiguous.

If an order is clear and concise, it is less likely parties will get into arguments about its application.

2.4 Consistency.

The more consistent the wording used in orders, the less likely there will be problems determining how they should be interpreted.

2.5 Care.

Careful consideration and review of the wording used, particularly of non-standard provisions, is essential. Badly worded provisions can have a serious impact on clients and add to the burden of the Courts.

2.6 Preparation.

Draft your *Minutes of Settlement*, *Consent to Order*, *Notice of Motion*, or draft wordings of order sought in a manner that can easily be transferred to the order. You may accomplish a number of goals:

- (a) give careful consideration of the wording and its effect in advance of the appearance;
- (b) advocate for the wording that is in your client's interest; and
- (c) assist the judge by reducing the Endorsement, as the judge can incorporate the wording of the order by reference to the document provided.

3. OBLIGATION TO TAKE OUT ORDER

- 3.1 The obligation to take out an order, if the lawyer appeared at the making of the order, is owed to the court, not merely to the client. A change of representation does not remove this obligation.
- 3.2 If neither party is represented when the order is made, *Court Operations* will take out the Order [(Rule 25(11)(a))].
- 3.3 Restraining Orders are taken out by *Court Operations* (Rule 25(11)(b)).
- 3.4 If, on the appearance, one party is represented and the other is not, most judges will expect the lawyer to take out the order, regardless of who is more successful in the order.
- 3.5 If both parties are represented on the appearance, the lawyer of the more successful party shall take out the order (Rule 25(2)).

- 3.6 If there is any confusion over who should take out the order, a direction from the judge should be sought when the order is made.
- 3.7 If the lawyer of the successful party does not take out the order within 10 days, the other party (or their lawyer) *may* take out the order (Rule 25(3)).
- 3.8 A lawyer should take out the order promptly. The Rules envision orders being prepared within 10 days. A delay of more than 30 days of the date of the order is generally unacceptable. If either party may be affected by a delay in having the order taken out, then it should be done on an urgent basis.
- 3.9 A party may bring a 14B motion, on notice to a lawyer or lawyers who appeared on the order (including a former lawyer), to compel the lawyer(s) to take out the order.

4. PROCEDURE

4.1 Number of Copies.

Provide enough copies:

- (a) one for the court
- (b) one for each lawyer
- (c) one for each party
- (d) if there is a support order (or change to one), one copy for the *Family Responsibility Office*;
- (e) if there is an order affecting support and *Ontario Works* has an interest in the support, one copy for *Ontario Works*;
- (f) if there is a *Children's Lawyer*, one copy for the Children's Lawyer
- (g) one for any other party affected by the Order

4.2 Copy of *Endorsement*.

It is helpful to provide a copy of the *Endorsement* with the draft Order.

4.3 Extra Certified Copies.

The court will entertain reasonable requests for extra Court certified orders, at the stage the order is being issued. A request with an explanation should be made in writing, when the draft order is submitted. Otherwise, there will be a fee for extra copies.

4.4 Original Copy.

The court retains the original (signed and entered) order and will provide court certified copies.

4.5 Envelopes.

Include with each copy of the draft order, a stamped, self-addressed envelope. (Make sure the envelope is big enough for the copies being sent and that there is sufficient postage.)

4.6 Rejected Drafts.

If the draft is rejected,

- (a) *Court Operations* will return the order indicating the problem, along with a copy of the rejected draft order.
- (b) You must send back a copy of the court returned order and the re-drafted order (enough copies and replacement self-addressed stamped envelope)

4.7 Court Seal.

Court Operations stamps the order with the court seal impression, at the upper left part of the order:

- (a) Leave room between the judge's name and date of order for the stamp.
- (b) Do not place red seals on the drafts.
- (c) If using DivorceMate, consider removing the circle and the word "seal".

4.8 No Alterations.

Court Operations will not make any changes on the face of the draft. Make sure the date, name of judge, file numbers, etc. are correct in the draft.

4.9 Amended Orders.

- (a) Where an issued order contains an error (i.e. does not reflect the *Endorsement* or contains a typographical error), the corrected order shall be referred at the top of the document as an "**Amended – <date of amendment>**", for example: "**Amended – 01 Oct 2014 ORDER**".
- (b) Underline all changes.
- (c) If there is uncertainty whether the error is in the drafting or in the order made, clarification may be sought from the judge who made the order. A 14B motion for directions may be required.
- (d) If the order was initially drafted by *Court Operations* (parties were unrepresented), then the error should be brought to the attention of the the Group Leader.
- (e) If the order was initially drafted by counsel, then counsel should advise the *Court Operations* of the error, provide a draft Amended Order, an approval of the draft Amended Order, and otherwise follow all the procedures for the initial submission of a draft order for issuance.
- (f) If there is a dispute as to whether or how an issued order should be amended, and it cannot be resolved by *Court Operations*, a party may bring a 14B Motion seeking directions from the judge.

4.10 Urgent Signing.

Where an order is required on an urgent basis, attend at the "Counter" (*Court Operations*) with a draft (with an approved copy and with the correct number of copies and envelopes) and request that the order be issued on an expedited basis. The urgency must be clear. Efforts will be made to issue the order while you wait.

You may request the judge, when making the order, to direct *Court Operations* to expedite the issuing of the order. You should also request that the approval of the draft by the other party/ies is not required.

4.11 Orders Presented to the Judge for Signing.

Lawyers are encouraged to submit the draft orders so that a judge may, if they so choose, adopt the wording by reference in their *Endorsement* (and reduce the necessity to write it out in their *Endorsement*). Give the judge an extra copy of the order for this purpose.

Presenting draft orders for procedural orders ahead of time, and especially on 14B Motions, is strongly encouraged.

Generally, judges will not sign draft orders. Orders signed by judges would then be reviewed and issued by *Court Operations*, to ensure it meets technical requirements. There is no time saved by having the judge sign the draft.

5. APPROVAL AS TO FORM AND CONTENT

5.1 Draft Approved.

Normally draft orders must be approved by all other parties present. Unless the *Endorsement* waives approval by the other party/ies, the draft order must be submitted in one of the following forms:

- (h) a fax or photocopy of the approval; or
- (i) a lawyer signing on behalf of the other party's lawyer (the lawyer should have written authorization but need not provide that authorization to *Court Operations*); or
- (j) the original signatures by both parties/lawyers.

5.2 No Approval.

Rule 25(8) allows a draft order to be issued without approval as to form and content by the other party/ies, where two criteria are met:

- (a) the draft was served on the party whose approval is required; and
- (b) there has been no approval or *Form 25E: Notice Disputing Approval of Order* received by the party drafting the order.

5.3 Procedure if No Approval.

If no approval of *Form 25E* is received within 10 days of service, file with the court:

- (a) a *Form 6B: Affidavit of Service* of the draft order
- (b) a written request that the Order be signed without an approval, pursuant to Rule 25(8)
- (c) the copies of the draft order and the envelopes set out above.

However, beware if the other party or his/her lawyer communicates an objection to the draft Order, without filing a *Form 25E*. Your professional obligation, if you cannot resolve their concern, is to warn them that you will proceed with requesting the draft order be signed, unless they file a *Form 25E*.

5.4 Procedure if Dispute.

Rule 25(5) to (7) governs disputes regarding the draft orders. In preparing the Dispute form, a date and time for a telephone conference with the clerk must be specified. To obtain this appointment, call the Group Leader of OCJ Family Operations at 905-456-4756. If he/she is not available, call the OCJ Family number (905-456-4702) and ask for the person leading the OCJ Family *Court Operations* that day.

6. IN GENERAL

6.1 Typed.

Provide a "clean" draft. *Type* the document and do not hand print or writing in ink. No crossing-out or white-out.

- (a) It is important that there be no suggesting that the order was altered.

- (b) While the Rules allow documents to be hand printed, it would be rather difficult to prepare a draft order by hand, without any corrections on the face of the document.

6.2 Font.

For general readability, use a standard business sans-serif font (for example, Arial or Calibri), 12-point size (11 point size for Tahoma acceptable).

6.3 Directive or Permissive.

The paragraphs in an order should either:

- (a) be directive
for example, “X shall have custody ...”; “Y shall pay ...”; “shall not ...” or
- (b) be permissive
for example, “Y may travel ...”
- (c) “will” as in “X will ...” is not appropriate (it is predictive)

See discussions about reasons for judgement, acknowledgements and findings.

6.4 Judge, Date, and File Number.

Ensure this information is entered correctly. Do not expect *Court Operations* to add in in ink. For the name of the judge specify first initial and last name.

6.5 Title of Proceeding.

Ensure that the names and full contact information of the parties and lawyers are up-to-date, according to the court record.

If the contact information in the court file is no longer correct, a *Form 4: Notice Change in Representation* should be served and filed, before submitting the draft Order.

6.6 Numbering.

All paragraphs and pages must be numbered.

6.7 Complex Paragraphs.

Avoid long complicated sentences. Follow the example of legislation by using “outline numbering” (in Microsoft Word) or multi-level numbering. This is particularly useful for lists of children, access terms, support findings, etc. This makes the provisions easier to read and less likely to be misinterpreted. This is similar to the format used in legislation.

For example:

1. text text text text
 - (a) text text text text; and
 - (b) text text text text,
text text text text
2. text text text text.

6.8 “Application/Motion”.

Either cross off or remove either “Application/” or “/Motion” from the line “The court heard an application/motion made by”. (The draft will not be rejected if you fail to do this.)

Standard Clauses.

- (a) **FRO Clause.** If the order deals with support, include the FRO clause (O. Reg. 454/07):

“Unless the Support Order and Support Deduction Order is withdrawn from the Office of the Director of the Family Responsibility Office, it shall be enforced by the Director, and amounts owing under the Support Order shall be paid to the Director, who shall pay them to the party to whom they are owed.

- (b) **FRO Clause – Local Practice.** Also, if a child support order is made:

If the parties agree to withdraw of the Family Responsibility Office at any time, they both are required to file with the Office of the Director of the Family Responsibility Office a separate written request consenting to the withdrawal of the Support Order and the Support Deduction Order.”

- (c) **Continued Financial Disclosure Clause.** If a child support order is made:

“For as long as child support is paid, the Payor (and the Recipient, if applicable) must provide updated income disclosure to the other party each year, within 30 days of the anniversary of this Order, in accordance with section 24.1 of the Child Support Guidelines.”

To make the expectation clear to the parties, consider requesting a judge add a specific provision setting out *who* provides *what* documents.

The above standard clause may be confusing as it says “For as long as child support is paid” when it should say “For as long as child support is to be paid”.

Consider adding to your Minutes of Settlement or requesting that the judge include this more specific paragraph in the order, in addition to the standard clause.

- (d) **Interest Clause.** If there is any money order (support or costs), include the interest clause as the last numbered paragraph in the order (O. Reg. 454/07):

“This order bears post-judgment interest at the rate of <look up and fill in the current rate>% per year effective from the date of this order. The payment in default shall bear interest only from the date of default.”

The current post-judgment interest rate can be found by searching the internet for “Pre-judgement Interest court Ontario” and selecting the *Ministry of the Attorney General* site.

6.9 Headings.

Headings should be used for long or complex orders and when headings improve the readability of the order. Use simple, neutral headings like “CUSTODY”, “ACCESS”, “SUPPORT”. Consider the use of bold text instead (see the next item).

6.10 Minutes.

When preparing a draft order from *Minutes of Settlement*, under the line “The court received evidence and heard submissions on behalf of <name or names>”, after identifying the Parties, add the following:

“and on receiving *Minutes of Settlement*, dated <date>”
(Follow the same practice for a “Consent to Order”).)

6.11 References to Legislation.

You *may* refer to the legislation or the rule under which a particular provision in an order was made. This is useful when it is an unusual provision, when it may result in criminal charges or it may be relied upon outside Ontario.

6.12 Nature of Provision.

Certain provisions are made under general heads of relief. For example, there is no stand-alone provision for a non-removal order. It is either an aspect of the custody order or a condition of access. You may specify under which head of relief the provision was made. For example, “[As a term of the custody order, ... not remove ...](#)”. The head of relief under which the provision is ordered may have significant impact. For example, see interpretations applied to the *Hague Convention of the Civil Aspects of International Child Abduction*.

7. ORDER FORMS

For most purposes, the *Form 25: Order (General)* will serve. However, there are a number of special use forms used in the *Ontario Court of Justice*.

7.1 Form 06: Refraining Order.

Usually this is completed by lawyers and signed by the judge. It is an exception to the no ink rule. It must be done on an urgent basis (to meet the deadline for suspension of the license) and the only audience is the client and the Family Responsibility Office.

7.2 Form 23B: Order for Prisoner’s Attendance.

7.3 Child-Access Order (*Office of the Children’s Lawyer*).

Used for appointment of the OCL. Created under regulations, but not the *Family Law Rules*. *Court Operations* usually prepares this order (and serves the OCL).

7.4 Form 02: Support Deduction Order.

Usually prepared by *Court Operations* (the SCJ requires it be prepared by the party/lawyer when starting a proceeding for support).

7.5 Form 14D: Order on Motion Without Notice.

The only difference from the *Form 25* is the form number and “[on Motion Without Notice](#)” under “[Order](#)” at the top.

7.6 Form 25D Order (Uncontested Trial).

This is a fill-in-the-blank form. Use is optional and it is not commonly used in Peel. You may use a *Form 25* instead.

7.7 Form 25F: Restraining Order and Form 25G: Restraining Order on Motion without Notice.

These orders are prepared by *Court Operations*, on the same day the order is made, if possible.

If other orders are made that day, a separate *Form 25* is used for those provisions.

7.8 Interjurisdictional Support Orders Act Orders.

Created under the regulations to the ISO act. Usually prepared by *Court Operations*.

8. IDENTIFYING PERSONS & ORGANIZATIONS

Clearly and consistently identify individuals and organizations in every reference to them throughout the draft Order.

8.1 Title.

In the Title of Proceeding (Style of Cause):

- (a) If a party or a child is known by more than one name, add “(also known as <name>)” for example:
“Mary TAYLOR-ADAMS (also known as Mary ADAMS)”
- (b) You *may* put the relationship to the child next to the party classification. This is especially useful if the party is not a mother or father. For example, “Applicant(s) (maternal grandmother)”.
- (c) In a motion to change, you *may* clarify “Moving Party” and “Responding Party”. For example, “Respondent(s) (Moving Party)”. This can be done in the Title of Proceeding.
- (d) Address and phone number for parties must be set out, or else an explanation of why it is absent must be set out. In particular, use “(None)”, “(Unknown)”, “(Withheld)”, or “(Deceased)”, as applicable.
- (e) In the alternative to setting out your client’s contact information, you *may* write “care of solicitor of record”.
- (f) If the address provided is not the parties’ residence but instead only a mailing address, than add “c/o” to the beginning of the address.
- (g) Address, phone number and fax number for all lawyers must be set out. (Inclusion of email addresses is optional.)
- (h) All lawyers should identify themselves as “Barristers and Solicitors” or “Lawyer” to distinguish them from other agents that may be allowed to assist clients under the Rules.
- (i) If a party has no lawyer, then in the lawyer box print “(Unrepresented)” or “(Self-represented)”.
- (j) If a party has no lawyer, and you do not know their address, you must bring a procedural motion requesting permission to file without an address.

8.2 Identify in Detail.

A party should be identified in detail, the first time they are mentioned in the order. The format should be <Party> <relationship to child> <full name>. For example, “Applicant mother Mary Anne Barbara Doe”.

8.3 Children.

When the children are first mentioned, they should be fully identified. The format should be the child, <full name> <birth date>:
“the child, Mary Lou Doe, born July 1, 2000”

You *may* include the gender of the child. (This is helpful when gender is not clear from the name and third parties will need to identify the order to enforce it.) For Example: “the child, Kelly SPENSER-SMITH, a girl born July 1, 2000”.

8.4 Terms of Convenience.

Referring to individuals or organizations by their full names may negatively impact the readability of the draft order. You may define a term of convenience and thereafter use it. For example:

- (a) “... the Applicant mother Mary Anne Doe (hereinafter “Mary Doe”) ...”

- (b) "... the Applicant mother Mary Anne Doe (hereinafter the "Applicant mother")
..."
- (c) "... the Peel Family Supervised Access Program (hereinafter the "Program")
..."

For children, you may use the following structure:

"... the children, namely:

Mary Lou Doe, born July 1, 2000; and

Billy Bob Doe, born December 25, 1999 ..."

and thereafter refer to them as the "said children"

8.5 Caution about Referring to Children.

Referring to the children simply by using the term "child" or "children" is not acceptable.

Beware of cases where there is more than one child and some provisions refer to some but not all the children. In these cases, use the names (or a simplified version of the names) of the children.

8.6 No First Names Alone.

The use of first names on their own, even for children, runs contrary to the goals of dignity and formality in orders. Do not use first names on their own (i.e. use at least the first and last name).

8.7 Use Full Names.

While it is a good practice to use the full names of the parties and the children throughout the document, it is especially important to do this:

- (a) at key points in an order where a new type of relief is dealt with
- (b) provisions that may speak to different audiences – for example, the non-removal provision for immigration officers, and the support provisions for FRO)
- (c) if different provisions apply to different children, then the children should be referred to by name in each provision
- (d) the provision may be interpreted in a technical way by some authority other than the court making the order (for example, attempting to recover a child from a foreign jurisdiction or prosecuting a party for breach of a non-harassment order)

8.8 Last Name Capitalized.

You *may* capitalize all last names (e.g. "John SMITH" or "SMITH, John").

8.9 Mr. / Madam.

You may, at the top of the order, add to the line "The Honourable Justice" the word "Mr." or "Madam", but it is not mandatory.

9. REASONS FOR JUDGEMENT, ACKNOWLEDGEMENTS & FINDINGS

9.1 Reasons.

Do not include, in the draft order, the reasons for judgement or an acknowledgement of facts by a party.

9.2 Consent Order.

You *may* indicate “On Consent”, just above “THE COURT ORDERS THAT”, if it is clear from the *Endorsement* that it is on consent.

See also the discussions in this Guide about Minutes of Settlement and Orders on Uncontested Motion or Application.

9.3 Contempt.

A finding of contempt should be set out in the order. For example:

“The Respondent is found in contempt of court for breaching paragraph xxx of the order of this Court made on <date> by the Honourable Justice <name> at <location>.”

9.4 Child Support.

The *Child Support Guidelines* requires that the order for child support set out the number of children being supported and the income of the Payor and the Recipient.

Findings on which a support order is based should be sent out in a separate paragraph. For example:

“This child support order is based on the *Child Support Guidelines* table for:

- (a) the number of children entitled to support is <number>
- (b) the annual income of the Payor being \$<amount>
- (c) the annual income of the Recipient being \$<amount>”

9.5 Other Findings.

If you wish to include other findings in the text of the order, ask the judges making the direction that the findings be included in the text of the order. Examples of other findings that might be needed to be included in the order are:

- (a) the basis for ordering less (or more) than the table amount of child support
- (b) the comparison of household income test was passed
- (c) appropriate wording for other findings resulting in support different than the table amount can be included.
- (d) the jurisdiction of the court;
- (e) the habitual or ordinary residence;
- (f) “the <Respondent/Applicant> <name> is found to be the father of the child, <full legal name>, born <date>, pursuant to section 4 of the Children’s Law Reform Act”;
- (g) “the <Respondent/Applicant> <name> is found demonstrated a settled intention to treat the child, <full legal name>, born <date>, as a child of <his/her> family and to be a parent of the child within the meaning of section 1 of the Family Law Act”;
- (h) the basis / grounds for a spousal support order (i.e. “contributory” or “non-contributory need” basis);
- (i) the nature of a material change of circumstances in an order changing a final order;

- (j) to improve enforceability in cases of parental abduction and, in particular, use of the *Hague Convention on Parental Abduction* (for example, that “the ordinary and habitual residence of the child is the Province of Ontario, Canada”).

10. DIRECTIONS AND PROCEDURAL PROVISIONS

10.1 Not to Include.

Do NOT include the following in the order:

- (a) a direction that the *Support Deduction Order* issue
- (b) directions to add documents already filed to the *Continuing Record*

10.2 Include.

Do include the following in the order:

- (a) directions to a party or counsel to take some procedural step, such as filing or serving documents
- (b) that conference briefs be filed or not be filed
- (c) that a court date be vacated
- (d) a waiver of approval as to form and content
- (e) a direction on who shall take out the order
- (f) a direction expediting the issuing of an order
- (g) estimates of time for the next court appearance

11. ENDORSEMENTS

11.1 Priority.

It may sometimes be difficult to distinguish between reasons (not included) and findings (included in the order). Some judges start the order portion of there *Endorsement* with the words “order to go:”.

11.2 Judge.

The *Endorsement* should have the judge’s name printed or stamped at the end.

11.3 Clarifications.

If you cannot read the *Endorsement* then you may attend at the courthouse and request staff assistance. If necessary, the staff member may make inquiries of the Judge.

11.4 If the meaning of the Endorsement is unclear, you may have to file a 14B motion requesting judicial direction. Modifications.

You should:

- (a) expand abbreviations, for example, “Appl.” may become “Applicant mother”; “cus” may become “sole custody”; and
- (b) use complete sentences and correct grammar., for example, “child support of \$300 month” may become “The Applicant mother shall pay the Respondent father support for the said children in the amount of \$300.00 per month, commencing this day and payable on the X day of each following day.”

11.5 Preserve Meaning.

You may not change or add to the meaning of what is set out in the *Endorsement*.

12. TEMPORARY & FINAL ORDERS

12.1 Presentation:

Where an order contains both temporary and final provisions:

- (a) check off both “temporary” and “final” at the top of the order form;
- (b) either:
 - (i) (recommended) divide the provisions into temporary and final terms, leaving some space between the sections and use the headings:
“THE COURT ORDERS ON A FINAL BASIS:”
“THE COURT FURTHER ORDERS ON A TEMPORARY BASIS:”
 - (ii) or, indicate in *each paragraph* whether that provision is made on a final or temporary basis.

12.2 Without Prejudice.

Temporary without prejudice terms may be mixed in with temporary orders and should start with “On a temporary without prejudice basis,”.

12.3 Procedural Orders.

Most procedural orders (for example, substitute service or disclosure) are final.

12.4 Continuation of Temporary Orders.

In some cases, it *may be wise* to clarify that a temporary order remains in force, especially if related orders have changed. Ask the judge to endorse that these old temporary provisions continue in force. For example: “the temporary orders set out in paragraphs <numbers> of the order made on <date> shall continue in force”.

13. THE LAST ORDER

13.1 Outstanding Issues.

The last order made should tie up loose ends. Include the following in the Minutes of Settlement or request it be included in the *Endorsement*:

- (a) “All temporary orders made in this proceeding are terminated.” or
“All temporary orders are vacated.”
- (b) “For greater clarity, the temporary non-harassment / restraining order restraining [party & name] is terminated.”

If a temporary non-harassment order has been made, it has been registered on CPIC. It will only be removed from the CPIC system if there is an order clearly terminating the non-harassment order. A general (“all temporary orders made”) termination may not trigger the removal from CPIC. A *Form 25F* is used for this order.

- (c) “All other claims made in this case, not addressed on a final basis in this or previous orders, are hereby <withdrawn /or dismissed>, without costs <with or without prejudice> <without costs>.”
or
“All claims requested in the Application or Motion to Change dated / filed on <date>; the Answer or Response dated / filed <date> and the Reply dated / filed <date> or any amendments thereunder, not dealt with in this or a previous order are hereby withdrawn, without cost,”

13.2 Temporary Support Orders.

If a temporary support order is being terminated, it should be specifically referred to in the *Endorsement* and in the order. For example, “All temporary support orders are hereby terminated.” (A *Support Deduction Order Information Form* should be completed.) Without this, the *Family Responsibility Office* might not be advised of the termination.

14. ORDERS ON UNCONTESTED MOTION OR APPLICATION

14.1 Draft Order.

When seeking an order on an uncontested trial, provide a draft order, if at all possible.

Instead of setting out the order sought in the body of a *Form 23C: Affidavit for Uncontested Trial*, you may attach the draft order as an exhibit.

14.2 No Response.

Where an order is made upon the failure of a party to file a response, add the following wording before the line “THE COURT ORDERS ...”:

“The <party> <name> not having appeared or filed responding documents as required, although properly served on <date> as appears from the Affidavit of Service sworn <date>.”

14.3 Not Served.

Where service has been dispensed with:

“The <party> <name> not having appeared or filed responding documents as required, service having been dispensed with pursuant to the order made <date>.”

or:

“The <party> <name> not having appeared or filed responding documents as required, service having been dispensed with pursuant to this order.”

14.4 Sub-Service.

Where substituted service permitted:

“The <party> <name> not having appeared or filed responding documents as required, although properly served on <date> as appears from the Affidavit of Service sworn <date> and authorized by the order for substituted service made <date>.”

14.5 Reason for This Wording.

This wording is added for two purposes:

- (a) The party against whom the order is made should know why it was made without his involvement
- (b) If the order is to be used outside the province, it may be essential to establish that the party against whom the order is made had notice.

15. ORDERS ON 14B MOTIONS

When submitting a 14B motion, also submit a draft order.

16. ORDER CHANGING A FINAL ORDER

16.1 Presentation.

Properly identify all orders you are changing, by date made and judge.
For example, “THE ORDER MADE ON <DATE> BY THE HONOURABLE <NAME> AT <CITY WHERE COURT LOCATED> SHALL BE CHANGED AS FOLLOWS:”

16.2 Specify Paragraphs.

You shall identify which paragraphs of the old order you are changing.
For example, “... by deleting paragraphs 2 and 3, and replacing them by the following:”

16.3 Completeness.

New provision should be as complete as possible. Change entire provision, rather than pieces of it.

for example, the following should not be done:
“... support shall be reduced to \$400 per month”
instead, draft the entire support clause again.

16.4 Mixed Old and New.

Where an order deals with terms changing an old order and original terms, these two types of terms should be separate sections of the order, with headings. It reads better if you set out the new provisions first, then the changes to the old order.

16.5 Attached.

You may add a copy of the old order (that is being changed) to the new order. Use the following words:

“The order made on <date> by the Honourable <name> at <city where court located>, a copy being attached hereto and marked as Schedule “A”, shall be changed as follows:”

16.6 Goal.

The goal is to make the change order as readable as possible, without reference to another document. Attaching the order being changed should only be used in rare cases.

17. STANDARD WORDING FOR CERTAIN ORDERS

The *Ontario Court of Justice Bench and Bar Committee* may recommend wording for certain orders, from time to time. The recommended wording is not mandatory and does not limit judicial discretion or reduce the need for legal judgement by the lawyers involved. Lawyers are encouraged to use these terms, unless they have a reason to deviate from the wording.

The following templates have been approved and copies are attached as a schedule hereto:

- (a) supervised access / exchanges using *Peel Supervised Access Program* services (approved 01 March 2016)
 - (i) *Supervised Access Terms Form – Supervised Access*
 - (ii) *Supervised Access Terms Form – Supervised Exchange*
- (b) disclosure from *Peel Children’s Aid* in a *Children’s Law Reform Act* proceeding (approved 01 March 2016)

- (c) police to locate and apprehend child under *Children's Law Reform Act* (approved 01 March 2016)

TERMS OF ART

<i>rescinded</i>	arrears of support that are no longer required to be paid are "rescinded"
<i>set aside</i>	an order that is cancelled from the beginning
<i>terminated</i>	an on-going order that is no longer to be in effect is " <i>terminated</i> "
<i>vacate</i>	a court date or appearance that is cancelled is " <i>vacated</i> "

Terms that have been changed:

Old:	New:
<i>Style of Cause</i>	<i>Title of Proceeding</i>
<i>dispense with (service)</i>	<i>(service) not required</i>
<i>varied</i>	<i>changed</i>
<i>leave</i>	<i>permission</i>
<i>interim</i>	<i>temporary</i>
<i>interim interim</i>	<i>temporary without prejudice</i> (not "temporary temporary")
<i>noted in default</i>	<i>found not to have delivered a response</i>
<i>default hearing</i>	<i>uncontested trial</i>

18. RESOURCES

18.1 Computers at the Courthouse.

Computers with DivorceMate Forms are available in the *Peel Law Library* in the Courthouse. There is a small fee for printing. There is also a fee for use of the DivorceMate by non-members.

18.2 Updated Copies of this Guide.

A copy of this Guide, with any updates or amendments, is available in Microsoft Word and PDF format:

- (a) on the *Peel Law Association*, in the members-only section at www.plalawyers.ca; or
- (b) on request to the *Peel Law Association* library (fees for copying may apply).

18.3 Minutes of Settlement Form.

The standard *Minutes of Settlement* form used can be found on the *Peel Law Association*, in the members-only section at www.plalawyers.ca.