

Recent decisions illustrate the consequences of deficient or absent motion materials

Litigation & Dispute Resolution | Personal Property Security Act (PPSA) | Rules of Civil Procedure

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In litigation, both the substance and the form of court materials matter. The [Rules of Civil Procedure](#) govern the conduct of civil claims in Ontario and set out, among other things, the requirements relating to the form, content, and manner in which court materials are prepared and filed. Complemented by the applicable practice directions, these requirements ensure that the evidence and law relied on by parties provide the necessary foundation for the relief sought.

Several recent decisions of the Ontario Superior Court of Justice illustrate that non-compliance with these requirements have consequences, spanning from adjournments to the denial of relief sought.

In *Maestra v. Blue Line Distribution Limited et al.*, [2026 ONSC 4784](#), the plaintiff commenced a wrongful dismissal action and moved for default judgment after obtaining an order to strike the defendants' statement of defence. The motion was ultimately adjourned due to several procedural issues.

First, the plaintiff had not served his motion on the defendants who, the court held, had a right to contest the claim for unliquidated damages. This was both contrary to the *Rules* and a prior court order directing the plaintiff to serve the defendants.

Second, the claim was brought under [Rule 76](#), which governs simplified procedure actions. Damages claimed in actions commenced under this Rule cannot exceed \$200,000, exclusive of interest and cost. The plaintiff's claim, however, more than doubled this amount and sought damages of about \$425,000 for wrongful dismissal. The plaintiff did not provide any authority for the court to award damages in excess of its jurisdiction under the Rule and provided no evidence that he sought to continue his action under the ordinary procedure.

Further, the claim appeared to have been commenced in the wrong forum. All of the defendants had addresses in Brampton or Burlington, and the plaintiff resided in Hamilton, yet the claim was commenced in Toronto. The court found that there was no connection between the parties and Toronto. The court considered [Rule 13.1](#) which sets out the factors that support the transfer of a proceeding to another forum and held that the plaintiff must convene a case conference to address the proper venue for the claim.

Finally, the court found the amount of hearsay evidence in the record "problematic". On a motion for default judgment, a claim for unliquidated damages must be proven and supported by admissible evidence. The plaintiff had attempted to prove the content of several exhibits attached to his affidavit by merely appending them. The court noted that the content of an exhibit is not sworn evidence.

In the result, the court adjourned the motion and held that the issue of venue must first be established before a return date could be set.

The court also identified issues with the affidavits filed in *Paletta v. Paletta*, [2026 ONSC 4724](#), which involved a motion brought by the daughters of an elderly woman whose property was being administered by her son in the context of an application under the [Substitute Decisions Act, 1992](#). The daughters sought a dismissal of the application, largely arguing that their mother was capable of managing her own property.

The mother was not represented and did not appear at the motion but swore an affidavit that was prepared by the daughters' lawyers. The affidavit was brief, containing primarily one-line sentences, and stating that she wanted her son to account for everything he had done with her property. The daughters sought this

relief on their motion. The court noted the extreme brevity of the mother's affidavit as well as the faintness of her signature.

The parties themselves filed affidavits which contained numerous hearsay statements, including statements allegedly made by the mother who, in her own affidavit, did not make the statements attributed to her by others.

Rule 39.01(4) provides that affidavits on a motion may contain statements of the deponent's information and belief if the source of that information and the fact of the belief are specified. However, in applications, this is limited to facts which are not contentious. The hearsay evidence in the affidavits filed pertained to issues central to the dispute and were accordingly contentious and improper.

The volume of material filed was also an issue. The applicant filed three factums for a single motion, whereas the *Rules* permit only one unless the court grants leave. Conversely, the respondents filed one factum and a reply factum. The *Rules* generally do not provide for the filing of a reply factum. Further, several of the factums exceeded the allowable page limit set out in the region's practice directions.

The court ultimately dismissed the motion, noting that it was the sixth court appearance for the relatively short-lived application. The court urged the parties to take a sensible approach to the issues, not only for the mother and the family relationships involved but also to avoid wasting court resources.

In *Royal Bank of Canada v. Sajawal*, 2026 ONSC 3320, the court dismissed a straightforward motion for possession of a vehicle registered under the *Personal Property Security Act* (PPSA) on account of the plaintiff's deficient materials.

The plaintiff had financed the purchase of a Jaguar sedan by an individual, who thereafter sold it to the defendant. The plaintiff registered a lien under the PPSA in connection with the financing. The individual immediately defaulted on the loan, but the defendant argued that he had no knowledge of the lien and bought the vehicle in good faith, having obtained a CARFAX report and a VIN history prior to his purchase. He only discovered the lien months later, when he sought to transfer ownership of the vehicle to his name.

Under Rule 44.01 and section 104 of the *Courts of Justice Act*, a plaintiff may bring a motion for an interim order for the recovery of possession of personal property, supported by an affidavit that sets out, among other things, a description of the property and its value, the plaintiff's lawful entitlement to possession, and the facts and circumstances surrounding the alleged unlawful taking of the property.

The test for an order under Rule 44.01 requires the plaintiff to set out "substantial grounds" for its assertions that it is the legal owner entitled to possession of the property, the property was unlawfully detained by the defendant, and the balance of convenience favours the plaintiff: *Baca v. Tatarinov*, 2017 ONSC 2935. The court was not satisfied that the plaintiff met this test.

One issue was that the plaintiff had not filed any case law supporting the motion, and referred only to a single case in oral argument. The court noted that while factums are not strictly required for short motions, they are encouraged, particularly where a represented party is seeking an exceptional remedy against a self-represented litigant.

Further, aside from a statement in an affidavit that about \$50,000 was owing on the loan, there was no evidence put forward to support the plaintiff's assertion that it was entitled to possession of the vehicle upon an event of a default under the loan. More evidence was required to establish a default, including at least a loan statement.

The plaintiff's motion was dismissed in its entirety.

Finally, in *Tokhy v. Horlor et al*, 2026 ONSC 4831, the court granted the defendant's motion to dismiss the plaintiff's action for delay and chided the plaintiff's counsel for failing to file proper materials in response.

The court noted that the *Consolidated Civil Provincial Practice Directions* require counsel to present their complete argument at the hearing and bring all material facts and authorities upon which they rely to the court. Practically, a litigant cannot meet this obligation where no affidavit and factum have been filed.

The plaintiff's counsel appeared on the motion without any materials. Where he referred to facts and the procedural history of the claim, the matters were not contained in an affidavit. The court held that the submissions of counsel are not evidence and thus it declined to hear his factual assertions. Further, on certain points, his factual assertions conflicted with the evidentiary record.

During oral submissions, the plaintiff's counsel relied on *Faris v. Eftimovski*, 2013 ONCA 360, but was unable to direct the court to passages upon which he sought to rely and did not have a copy of the decision to provide to the court. The court held that while the case provided a helpful review of the principles applicable on



the motion, the plaintiff failed to engage with the relevant test in any substantive way or address how it should apply to the circumstances of its claim.

The court proceeded to consider the motion based on admissible evidence and its own review of the applicable law and granted the motion, dismissing the action for delay.

These decisions highlight the repercussions of failing to tender the necessary evidence and applicable legal arguments in the proper and admissible form, consistent with the *Rules* and the court's practice directions. Courts depend upon the parties to file appropriate motion material in support of the relief they are seeking. Litigants and counsel alike should take care to comply with the applicable procedural and substantive requirements when seeking relief from the court, or they may face adjournments, costs awards, or the refusal of their requested relief.

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