










The National Self-Represented Litigants Project

# Child protection primer

Understanding your rights and requesting  
the legal assistance you need



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# About this primer

A child protection case is the painful legal situation when the Children's Aid Society asks the court to take children away from their parents. Or, when the court makes rules on how parents are to care for their children.

Parents involved in child protection cases have the right to ask Legal Aid to cover the cost of their lawyer. But Legal Aid does not always pay for lawyers in these types of cases. And if Legal Aid turns them down, requesting help from the court is complex.

If you applied for Legal Aid in Ontario and were turned down, you may be able to bring a "G.J. motion," where you can request that the government pay for legal representation. You can use this guide if:

- You are involved in a child protection case in Ontario, and
- You are the *natural* parent, step-parent, grandparent, or other person who wants to care for the child – note that this guide is *not* for foster parents or adoptive parents, and
- You applied for Legal Aid and didn't get it, and
- You can't afford a lawyer.

This guide has been developed specifically for people living in Ontario. If you live in a province or territory other than Ontario, the forms and process will be different.

We hope that this guide is helpful to you. If you have feedback on this primer, or ideas on how to make it more helpful, we would like to hear from you. You can reach us at [representingyourself@gmail.com](mailto:representingyourself@gmail.com).



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## Using this primer

**This guide is for people in Ontario** who need a lawyer to help them with a child protection court case and **who have been turned down by Legal Aid.**

This is NOT a guide about custody and access or issues between parents where the Children's Aid Society is not part of the court case.





# Part 1: How did we find ourselves here?

Most parents who become involved in child protection cases can't afford to pay for a lawyer to help them. The *Charter of Rights and Freedoms* is part of the Canadian Constitution and requires that governments make sure that parents can participate in child protection cases.

What this means is that governments must pay for lawyers for parents who can't afford a lawyer and who need a lawyer to help them in these cases.

## The limits of Legal Aid

The Ontario government usually provides a lawyer for people in child protection cases who can't afford one. They do this through the Legal Aid office. But sometimes, Legal Aid will refuse to pay for a lawyer even when the parent can't afford one. **Parents who are turned down by Legal Aid, but still don't have enough money to pay for a lawyer, can ask the court to order the government to pay for one. This is known as a G.J. motion.**

## The origin of the "G.J. order"

The first case where the Supreme Court ordered a government to pay for a lawyer was called "G.J." because those were the initials of the parent in that case. The full name of the case is "New Brunswick (Minister of Health and Community Services) v. G.J." Today, when a parent asks a court to order the government to pay for a lawyer in a child protection case, it's called a "G.J. motion."

G.J. motions are also called "motions for state-funded counsel." This is because it is the state (the government) that will end up paying for the counsel (the lawyer) if the parent wins the motion. In criminal cases, the same kind of motion is called a "Rowbotham motion," because it was first done in a case involving someone with the last name "Rowbotham."

## The legal argument behind the G.J. decision

The Supreme Court of Canada is the highest court in Canada. This means that all judges in Canada must follow what the Supreme Court has ruled. This is known as *precedent*.

The *Charter of Rights and Freedoms* says that the government can't interfere with our liberty or our "security of the person" unless it follows certain rules, called the "principles of fundamental justice." In the G.J. decision, the Supreme Court of Canada decided that removing or interfering with a parent's relationship with their child interferes with the parent's "security of the person."

The "principles of fundamental justice" mean that the government has to make sure the court case is fair to the parent. That usually means the parent will need to have a lawyer. The Supreme Court decided that if the parent is "indigent," meaning too poor to be able to pay for a lawyer themselves, the government has to pay for the lawyer.

## An option if Legal Aid says no

After the Supreme Court decided the G.J. case in 1999, Legal Aid Ontario (which is part of the government of Ontario) started paying for lawyers in most child protection cases, but not all of them.

**Usually the reason Legal Aid says no is because the parent makes more money than their income threshold.**

The threshold is the amount of money Legal Aid says a parent needs to make in order to be able to pay for a lawyer.

After applying for Legal Aid (and being turned down), parents then have the option of bringing a G.J. motion and explaining to the judge why they can't afford a lawyer, even though they make more money than the threshold.

If the judge decides that the parent needs a lawyer, and can't afford to pay for a lawyer themselves, the court will make a G.J. order and force the government to pay. While parents don't always win G.J. motions, there are a number of things parents can do to increase their chance of winning.



# Part 2: Are you allowed to bring a G.J. motion?

If you're interested in bringing a G.J. motion to have the government pay for a lawyer in your child protection case, your first task is to determine if you are allowed to bring the motion for your case.

## Characteristics your case *must* have

You can only bring a G.J. motion if your case has **all of these characteristics**:

### ✓ Your case is a child protection case

Child protection cases always involve a Children's Aid Society as one of the parties in a case. In your area of Ontario, this organization may be called "Children's Services" or sometimes "Family and Child Services."

### ✓ You applied for Legal Aid and were denied

The court will only look at your motion if Legal Aid has turned you down. The court will also want you to appeal the Legal Aid decision and lose the appeal before you bring a G.J. motion.

If Legal Aid said they would give you some of the funding for a lawyer, but you still don't think you can afford the lawyer's full fees, you can still bring a G.J. motion. However, you'll need to explain why the amount Legal Aid is giving you isn't enough.



### If the reason you were denied is not about money

If the reason you were denied a lawyer is **not** about money, it may be harder for you to win the G.J. motion. For example, if the reason is that you have not been happy with your lawyer, and Legal Aid doesn't want to pay for another lawyer, the judge might not make a G.J. order. However, the judge might instead order an "amicus" to help the court understand your position. *Amicus* or *amicus curiae* refers to a lawyer whose job it is to help the court, and who does not work for any of the parties.

### ✓ You are not able to argue the case yourself, without a lawyer

The Supreme Court of Canada has said that the government must ensure that parents can "effectively participate" in child protection cases. In most cases, that means the parents will need a lawyer. In very rare cases, the court might decide that you are able to argue the case by yourself. It will depend on things like:

- if you have a university degree, especially an advanced degree, and
- how complicated the case is. Most child protection cases are so complicated that parents will need a lawyer.

The Supreme Court also decided that **it will be rare for a parent to be able to represent themselves** in a child protection case without a lawyer because these cases are difficult and complicated.

### ✓ You cannot afford to pay for a lawyer yourself

The judge will only order the government to pay for a lawyer if you can't pay for one yourself. This means that you must prove to the judge that you don't have enough money to pay. This guide will help you give the judge the information they need to make this decision.

It's understandable that you may not feel comfortable giving your private financial information to the judge and the other parties. However, the court will probably not make a G.J. order without this information. Child protection cases are private, so only people who are involved in the case will see this information.

### ✓ G.J. motions can only be used in child protection cases.

They don't apply to domestic family law cases. **In other words, if the Children's Aid Society is not one of the parties in your case, this guide is not for you.**

Domestic family law cases include divorce, custody, access, child support, spousal support, or how to divide property after a couple has separated. They may also be cases between parents, where parents disagree on such issues as which parent the child should live with.

However, you may be able to bring a G.J. motion if your child protection case is *combined* with a domestic family law case. If you have a lawyer helping you with your domestic family law case, they may also be able to help bring a G.J. motion.



# Part 3: Preparing your G.J. motion

You have a number of options for preparing and bringing a G.J. motion.

## Asking a lawyer

Before deciding to use this guide to do-it-yourself, you may wish to ask if a lawyer can help. If you decide to approach a lawyer, here are some tips:

- Find a child protection lawyer and ask them if they will help you for free. Give them this guide if they haven't done it before. They might say no. It takes a long time to prepare these motions. There is a chance that if they win the motion, the court will order the government to pay them for some of the time they spent working on it. But if they lose, the lawyer won't be paid at all.
- If you have some money, but not enough to pay for a lawyer for your whole case, you might be able to hire a lawyer **just** to bring the G.J. motion for you.

## Asking the judge

If you're going to be in court, use the opportunity to ask the judge for help. Tell the judge:

- You didn't get Legal Aid, but you can't afford a lawyer,
- You want to bring a G.J. motion, and
- You are hoping the court will appoint a lawyer to help you.

Sometimes the court will order a lawyer just for the G.J. motion, or will order something called "*amicus*" to help. An "*amicus*" is a lawyer who does not work for anyone in the case; they are there just to help the judge.

**Before asking the judge questions, make sure you read this entire guide first** so you understand the process and can make the best use of this opportunity.

## Do-it-yourself using this guide

If the judge says no and you can't find a lawyer to bring the motion for you, you can bring the G.J. motion yourself, using this guide. The rest of this guide explains each step you need to take to bring your G.J. motion.

**Make sure to follow all these steps in order.**



**Tip:** When you're ready to start, use this guide as a working guide. Use it to make notes, or even use some of the steps as a checklist.

## A bird's eye view of the process

To bring a G.J. motion, there are specific steps you must follow, in a certain order and by certain deadlines. We get into each in more detail later on.





= important dates and deadlines



1. Make sure you have applied for and appealed to Legal Aid, and been turned down both times.
2. Set your court (motion) date, giving yourself **at least a month** to do the paperwork.
3. Prepare your supporting documents. Many of these will be used as "exhibits" in the affidavit you prepare as part of your motion.
4. Write your G.J. motion, which consists of: *Notice of Constitutional Question*, *Notice of Motion*, and an *Affidavit* (telling your story). You might also include a *Sworn Financial Statement*, or a *Financial Affidavit* (telling your financial story).



5. Get your *Affidavit(s)* signed by a commissioner of oaths.
-  6. Give a copy of your G.J. motion and supporting documents to all parties **15 days before your court date.**
7. Prepare *Affidavits of Service* for each party, and have them signed by a commissioner of oaths.
-  8. File all the documents that make up your motion, *Affidavits of Service*, and supporting documents with the court by the deadline the court gave you **(at least 4 days before your court date, or sooner if the court gave you an earlier deadline).**
9. Prepare for and argue your motion in court.

## 1. Make sure you've applied for and appealed to Legal Aid and have been turned down both times

You can only ask the court to make a G.J. order if you can't get Legal Aid. This means that you must apply for Legal Aid, and be rejected, before you bring a G.J. motion. You will probably also have to appeal Legal Aid's decision all the way up to the Provincial Office, and be rejected.

The court will probably only consider your G.J. motion after the Provincial Office of Legal Aid rejects your appeal. Because these appeals take time (sometimes weeks), you need to start this process right away.

Make sure you keep any written notice of your refusal for legal aid, including the refusal from the Provincial Legal Aid Office.

## 2. Set your court (motion) date



**DO NOT set your court date until you're finished reading this guide so you understand the process and timing involved.**



**Set your court date at least a month in the future.** It needs to be far enough ahead, so you have enough time to do the following:

- prepare your supporting documents,
- write the documents that make up your G.J. motion,
- give copies to all the parties (this is called "serving"),
- prepare an affidavit that confirms that you gave the documents to all the parties,
- file your motion with the court, and
- prepare for your court appearance.

**If you won't be in court for a few months,** you'll need to go to the courthouse and ask the clerk for a motion date. That is the date that you will write on all your court papers, and calculate your other deadlines from, so make sure to write it down.

**If you have a court appearance coming up,** it will probably make things easier for you if you tell the judge that you are planning to bring a G.J. motion. The judge may be able to give you a court date for the motion, and answer your questions on the process and timing.

## Questions you can ask the judge

If you have an opportunity to ask the judge questions before you start preparing your motion, here's what you may want to ask:

When I bring a G.J. motion, I know that I must give a copy to (serve): the Attorney General of Canada, the Attorney General of Ontario, the Children's Aid Society, and Legal Aid with my motion materials. But do I need to serve anyone else? (You may not want the other parent to see your personal financial information, for example.)

Can I serve everyone by email?



Do I have to file the motion material in the continuing record (the binder or folder containing all the court documents, which can be accessed by every party to the case), or can we keep it separate so the other parties can't see my personal financial information?

What date should we argue the motion on?

Is it possible to have *amicus curiae* (a lawyer who helps the court, not any of the parties) appointed to help the court with the legal arguments for my G.J. motion?

Can I file the memorandum of law [attached to this guide] instead of a factum? (A factum is a special document explaining the law. This guide contains a memorandum of law, where we've done the legal research for you. This can take the place of a factum, but the court must give you permission to use it.)

### 3. Prepare your supporting documents

This is your proof, or evidence supporting your argument. In a later section, we'll help you label each of these documents as "exhibits," and refer to them when you present your *Affidavit* (your story) in court.

When deciding what's important, remember that your documents are intended to prove that you:

- Have tried to get Legal Aid, but were turned down,
- Cannot afford a lawyer for your case, and
- Are unable to represent yourself in court.

**If you find it hard to gather all this information, see if you can find a friend to help.** If you can't do it, tell the judge at your next appearance. The judge may be able to find help for you.

#### A list of what you'll need to pull together

- ☐ Notices and correspondence from Legal Aid
- ☐ Information on how this case is affecting you
- ☐ *Optional* – Information about special circumstances
- ☐ Information about your ability to represent yourself
- ☐ Information about your financial situation

#### Notices and correspondence from Legal Aid

Gather together your letters from Legal Aid that show that you applied for aid, were turned down, appealed to be reconsidered, and was turned down again.



**If you are reading this and haven't applied to Legal Aid, start this process RIGHT AWAY as it can take a number of weeks.**

Make sure you keep any written notice of your refusal from Legal Aid, including the refusal from the Provincial Office. If Legal Aid approved only a partial payment, make sure you keep your notices about this, and your Legal Aid Certificate (a paper which says that the Legal Aid Office will pay a lawyer's bills) if you were given one.



## Information on how this case is affecting you

It is important to show the impact the court proceedings have had on you. For many parents, involvement in child protection proceedings causes great stress and often, emotional distress. Consider including additional information such as **letters** or **other documents** from doctors, therapists, psychologists, or other professionals describing how the proceedings have affected your emotional or physical health. You will refer to these in your affidavit as “exhibits,”

## Information about special circumstances

If you have other special circumstances that make it especially hard for you to afford a lawyer or represent yourself, it is very important to explain those circumstances. For example, you could include information about your efforts to try to hire a lawyer and whether you have already paid a lawyer at any time to work on this case. If you owe any money to a lawyer, you should also include that information.

## Information about your ability to represent yourself

The court will only grant your G.J. order if the case is reasonably complicated and you are not able to represent yourself. For this reason, you should include information about your education and other facts that may affect your ability to understand the case and represent yourself in court. This information might include **letters**, **school transcripts**, or **doctors’ notes** about:

- your education,
- any physical disability, learning disability, cognitive impairment, visual impairment, or mental health issues you have,
- the fact that English is your second language, or
- any other circumstances that would affect your ability to understand and respond to the case.

## Information about your financial situation

The court will grant you a G.J. order only if you can’t afford a lawyer. So the court will need to know a lot about your financial situation. It’s very important to provide accurate and detailed information about your finances. This should include a full picture, including information about your **income**, **assets** (like a car, a house, and savings), and **debts**.

Some of the financial documents that you may wish to include with your motion are:

- Income tax returns and Notices of Assessment
- Recent pay stubs
- Bank account statements
- Credit card or line of credit statements
- Receipts for major monthly expenses, including expenses related to children in your care
- Amounts paid to hire a lawyer to assist you in the case
- Other documents that explain your financial situation

If you can, **put together a budget** to show how much money you spend every month. That can help to clearly show that you have little to no extra money to afford a lawyer.

In addition to the documents listed above, you may wish to include a sworn Financial Statement (Form 13). This is optional.

 You can find the Financial Statement form here:  
<http://ontariocourtforms.on.ca/static/media/uploads/courtforms/family/13/flr-13-e.pdf>

If you include this form, it must be commissioned by a commissioner of oaths. (See below.) You may choose not to use this form and just include your financial information in the same affidavit you use to tell the court about your education, your efforts to get Legal Aid, etc.



### If you’re concerned about financial privacy

In most cases, the person asking for a G.J. order will serve all the parties in the case. This might include other parents, the Office of the Children’s Lawyer if there is one, and the child’s Band or Indigenous community, if there is one. However, it’s not legally clear whether serving every party is actually required. If there is private information in your *Affidavit* that you’d rather not have all these people know, ask the judge ahead of time whether you need to serve them.



## 4. Write your G.J. motion

The G.J. motion includes a number of forms and documents that act as a legal notice to the court, and tell your story. The supporting documents we mention in an earlier step plug into your *Affidavit*, as “exhibits” or proof.



### What makes up your motion

Here are the pieces that make up your motion, which you will *write*, *serve* to all parties, and *file* with the court.

When you prepare your documents, you’ll also decide if you want to refer to and file our **memorandum of law** (included with this guide) or a **factum** to support your arguments. A factum is a special document explaining the law. The memorandum of law can take the place of a factum, if the court gives you permission to use it. We’ll cover this a bit later.

### Notice of Constitutional Question



Download “Form 4F” here: <http://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms>

We’ve also included a sample of this form with instructions at the back of this guide.

### Notice of Motion



Download “Form 14” here: <http://ontariocourtforms.on.ca/en/family-law-rules-forms>

We’ve also included a sample of this form with instructions at the back of this guide.

### Affidavit (your story) – “Form 4A”



Download “Form 14A” here: <http://ontariocourtforms.on.ca/static/media/uploads/courtforms/family/14a/flr-14a-e.pdf>

We’ve also included a fill in the blanks affidavit to use at the back of this guide.

### Sworn Financial Statement (optional)



Download “Form 13” (Financial statement template) here:

<http://ontariocourtforms.on.ca/static/media/uploads/courtforms/family/13/flr-13-e.pdf>

## Tips for writing your motion

Here are tips on preparing the forms and documents that make up your motion.



### Notice of Constitutional Question

A G.J. motion must include a *Notice of Constitutional Question*. This document tells the Ontario and Canadian government that you are seeking a constitutional remedy (an order from the court which will “fix” the constitutional problem). In this case, that remedy is providing you with a lawyer whose bills are paid by the province.



You must give a copy of the *Notice of Constitutional Question* to the Attorney General of Canada and the Attorney General of Ontario at least 15 days before the date of your motion. **It’s a good idea to give it to them as soon as it is done.**

Here’s how to fill out the *Notice of Constitutional Question*:

- **Type or write the court file number** in the box in the top right hand corner. You’ll find the court file number on the other court documents you have received from the Children’s Aid Society.
- **Fill in the boxes at the top labelled “Applicant” and “Respondent”** with the names of each party in the child protection proceeding, with the Applicant (normally the Children’s Aid Society) on top and the Respondents (you and the other parent, if there is one) on the bottom. The Respondent’s box should include the Attorney General of Ontario and the Attorney General of Canada. Their addresses are already filled in in the blank Notice of Constitutional Question in this guide.
- **Fill in the “preamble”** in the first part of the document. It should say that you are claiming a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Ontario. The sample form at the back of this guide has some suggested wording.



- **Fill in the date, time, and place** with the time and date you were given for the G.J. motion, and the address of the court where you'll argue your G.J. motion.
- Under **"The following are the material facts giving rise to the constitutional question"**, you should explain in a few paragraphs the facts that support your G.J. motion. But please note: this is not the place to argue your child protection case. Instead, explain:
  - What the Children's Aid Society is asking for (for example, an order placing the child in the interim care of the Society for six months);
  - How the case is affecting you financially and emotionally (in a few sentences);
  - That you've applied for and been denied Legal Aid, including any appeals;
  - That you cannot afford to pay for a lawyer; and
  - How complicated the case is for you to manage without legal training and experience. For example, if the Children's Aid Society is using expert evidence, such as a report from a parenting capacity assessor, a medical report or drug tests, this will make the case more complicated, and you should say that.
- **Explain why the court should grant your G.J. motion.** This can include a simple statement that the Children's Aid Society's request infringes or may infringe on your s.7 Charter rights and that the only remedy is to provide state-funded counsel under s.24(1) of the Charter. The sample form at the back of this guide has suggested wording.
- Add the **names and addresses of all lawyers** and all other **self-represented parties** at the end of the form.



### Notice of Motion

Most of the information that you put in the *Notice of Constitutional Question* will be the same in the *Notice of Motion*. **There is one significant difference between the two forms:** the *Notice of Motion* does not ask for a summary of the facts or the legal reasons supporting your motion. Instead, you only have to fill in what orders you are requesting.

The orders you will be requesting are:

- a. A declaration that your right to life, liberty, and security of the person has been deprived and that such deprivation is not in accordance with the principles of fundamental justice.
- b. An order directing the Attorney General of your province or territory to provide state-funded counsel.

**You'll find a sample of this form with instructions at the back of this guide with some suggested wording.**

You may also wish to ask that the court appoint *amicus curiae* to assist the court. Sometimes a court will decide not to grant a G.J. order, but they will still appoint *amicus curiae* to help present your case to the court.



### DOUBLE-CHECK THE FOLLOWING

- Remember to give the **date and time** you will be arguing your motion in the appropriate places.
- Make sure you **sign** the **Notice of Motion** at the space provided. If you don't sign it, court staff might not accept it.



### Affidavit

To complete your G.J. motion, you have to explain why you need a lawyer to help you, and why you can't pay for a lawyer yourself. The rules say that you have to put this information in a special document called an affidavit. An affidavit has to be signed in front of a special witness, called a commissioner of oaths.

To complete this step, you need to:

1. Write your affidavit, and
2. Get it signed and witnessed by a commissioner of oaths (often a lawyer).

The affidavit is an extremely important part of your G.J. motion. It provides the court with your sworn evidence about facts that support your motion.



### What to include in your affidavit

You should take great care when completing your affidavit. The information it contains is the same as you testifying in the witness box. **This is why it is important that the affidavit be absolutely accurate and true.**

**This guide has a fill-in-the-blanks questionnaire at the back, which you can attach to your affidavit and use instead of writing your own affidavit, if you want to.**

If you decide to write your own affidavit, make sure it is clear and well-organized. We recommend that you organize your affidavit using the following headings:

- Background information about me
- Information about my child protection (Children's Aid Society) case
- How I have been affected by the child protection case
- My ability to represent myself and the complexity of my case
- My efforts to retain a lawyer or get Legal Aid
- My financial circumstances and ability to afford a lawyer



You may find it helpful to refer to this guide for **general tips on writing your affidavit:**

<https://representingyourselfcanada.com/wp-content/uploads/2019/06/Affidavits-Primer-Final.pdf>

### Referring to your supporting documents

You know all of those supporting documents you've gathered together? Your affidavit is where you'll talk about them. Each document is an *exhibit*, and you'll need to give each of them letters such as "Exhibit A" and "Exhibit B" to clearly identify them.

Your supporting documents are any document or piece of information you want the court to see that goes along with your affidavit – like pay stubs, income tax returns, or education records, for example. Each document needs to be referred to in the text of your affidavit.

- For example, if you said "I earn \$250 per week at my current job," then the next line could be "I have attached my most recent pay stub as Exhibit A."
- If you then explain that you pay a certain amount in rent, you could attach your rental contract and say "I have attached my rental contract as Exhibit B." You must attach a true, unchanged copy of all the documents you refer to in the affidavit.



**TIP: While it is sometimes tempting to want to attach many exhibits to your affidavit, it is important to exercise judgment and include only the *most* important documents.**



### Sworn Financial Statement

A sworn financial statement is a separate document which you can fill out to show your financial situation, if you want to. These are usually used in cases involving child support or spousal support, but you may also use one in support of your G.J. motion. It is optional.

The fill-in-the-blanks affidavit at the back of this guide asks you for the same information as a sworn financial statement. So you don't need a sworn financial statement if you just answer those questions.



You can find the form here: **Financial statement template – Ontario Form 13:**

<http://ontariocourtforms.on.ca/static/media/uploads/courtforms/family/13/flr-13-e.pdf>

This form needs to be sworn by taking it to a lawyer, the same way you would commission your affidavit.

Or, you can simply include your financial information in your affidavit rather than completing this form, or a sworn statement.

### Getting your affidavit commissioned

After you've finished your affidavit, you must get it commissioned (witnessed and signed by an authorized person). This takes the place of swearing to tell the truth in front of the judge, which people do when testifying in court.



**The court will only accept your affidavit if you sign it in front of a “commissioner of oaths.”** That person, usually a lawyer, will:

- confirm that you are the person named in the affidavit (by looking at your identification),
- ask you if you swear or affirm that the contents of the affidavit are true,
- watch you sign it, and
- sign it themselves, in the space at the bottom of the affidavit form.

**All lawyers who are licensed to practice in Ontario are also commissioners of oaths.** Some other people get special permission to act as one. There are usually commissioners of oaths at your local courthouse and city hall. They may charge a fee to commission your document. Often, law firms will do this for a small fee – you can call a local law firm and ask if they will perform this service for you, and how much it costs.

The person who commissions (witnesses and signs) your affidavits will also stamp and sign each document you include as an exhibit.

Keep in mind that you if you have filled out a sworn financial statement (above), you will also need to get that commissioned.

Finally, if you aren’t able to see a commissioner in person due to COVID-19, here’s a guide that can help:

### **Making arrangements for swearing affidavits during COVID-19:**



<https://representingyourselfcanada.com/arrangements-for-swearing-affidavits-during-covid-19>

### **Factum or Memorandum of law**

A factum is a written legal argument which is often given to the other side and the court to help them understand why they should agree to your motion. Factums are not required in GJ motions, but courts often request them, and they can be very helpful. It is very difficult for someone who is not a lawyer to write a factum, because they are very technical. Instead, we have prepared a memorandum of law with hyperlinks to the cases.



You can download the memorandum here <https://representingyourselfcanada.com/>

### **You’ll need to ask if you can use it**

The clerk at the courthouse may not permit you to file the memorandum for your case, because this is not a typical legal document. However, here’s what to do if you’d like to use a memorandum.



If you want give the judge a copy of the memorandum of law, you will have to give a copy to the other parties in the case, including the Children’s Aid Society and the Attorney General of Ontario, at least four days before your motion. You will also need to have an affidavit of service proving that you did that. (See below.)

You will have to bring the memorandum of law to the court at least two days before the motion, along with the affidavit of service showing that you’ve given it to the other parties. You can tell the clerk at the courthouse that the memorandum of law takes the place of a factum. To help them understand why you want to file it, you can ask the clerk to look at the first page of the memorandum.

**If the court does *not* accept the memorandum for filing**, you can still hand it to the judge and to the lawyers for the other parties when you’re in court. Explain that you tried to file it, but weren’t allowed to, but you are hoping the court will look at it as an alternative to a factum.



### **Documents to take for your meeting with a commissioner**

Make sure you bring these documents with you when you go to see the commissioner of oaths:


1. Your driver’s license, health card, or other ID.
2. A printed copy of your completed affidavit, unsigned.
3. All the other documents you want to file along with your affidavit (your “exhibits”).
4. *Optional* – an electronic copy of your affidavit in case you or the commissioner of oaths notices a mistake and you need to print it again.
5. *Optional* – other court papers, so that you can double check your court file number and other information on your affidavit.



# Part 4: Serve your G.J. motion

After you have written your notice of constitutional question, notice of motion and affidavit, and after you've signed your affidavit in front of a commissioner, you have to give a copy of each of these documents to all the other parties in your case. This is called "serving" or "service." There are special rules about service, so you'll have to do some planning.

## The planning

1. Identify who to serve copies to,
2. Decide how you'll serve each person,
-  3. Determine what your latest deadline for service is (we suggest 15 days before your motion date to be safe), and
4. Figure out when you'll need to send materials to meet the service deadline. (For example, if you use a courier or mail, you have to send it earlier than if you deliver it in person.)

## The doing

After you've done your planning, you'll:

1. Serve your documents to all parties, and
2. Prepare an Affidavit of Service for each party (which proves to the court that you've served everyone by the deadline).

**Planning this out in advance is important. If you don't serve everyone you're supposed to serve by the deadline, the court won't accept your motion.**

## 1. Identify who to serve copies to

You must give a complete copy of your package to:

1. The Children's Aid Society involved in your case. You can give it to their lawyer, or to your social worker.  
**Write down the name of the person you send or give it to.**
2. The Attorney General for your province or territory – their address is on the *Notice of Constitutional Question*.
3. The Attorney General for Canada – their address is on the *Notice of Constitutional Question*.
4. Legal Aid for your province or territory – their address is on the *Notice of Constitutional Question*.
5. You also need to give a copy of your package to the other parents or family members who are parties, and the children's lawyer, if there is one, and the child's Band or Indigenous community, if there is one, **unless** the judge has told you that you don't need to.



**TIP:** Consider making a "working" table listing each party and their contact information. You can also add how you'll serve them, your deadlines for service, and notes.

## 2. Decide how you'll serve each person

You need to decide how to serve each party. You can serve documents **by handing them over in person, or by mail, courier, or fax**. If the other parties agree in advance, or if the judge gives you permission in advance, you can instead email a scanned copy of the finished package to them. **If parties don't agree in advance, or the court doesn't order it, you can't email it to them.**



If you're not sure how you can serve the parties, tell the judge that you're planning to bring the motion. Then ask the judge how you should serve anyone and if email can be used for service (if that's the easiest way for you to do it).

Service by mail or courier takes longer. Make sure you allow for the extra time when planning your service.

### 3. Determine what the latest deadline for service is

**There are very strict deadlines and rules for serving documents.** You should figure out your deadline date as soon as you can after you get your court date. You should try to serve your documents before the deadline if you can. The timing for service is different, depending on what you're serving and who you're serving to.



**You must serve the *Notice of Constitutional Question* to the Attorney General of your province or territory and the Attorney General of Canada 15 calendar days (so, 15 days including weekends and holidays) before the motion date.**



**You must serve *all other documents* to all parties 6 working days (not including weekends or holidays) before the motion date.**



**To keep it as simple as possible for you, we suggest that you serve everyone at least 15 days before your motion, just to be on the safe side.** Here are additional rules you'll need to follow:

- For service to count for that day, you must serve people by 4:00 p.m.
- If you serve by mail or courier, it will not count as being served on the day that you send it. So you'll need to allow for some extra time. See the table *How the courts count days for service* in this guide (keep reading).

#### If you miss the deadline

If you don't serve in time, you'll have to get another motion date from the court. If you only miss the deadline by a few hours or one day, you can try to see if the court will allow the motion to go ahead anyway. But you will probably not be able to. You can try checking with the court clerk, or ask the judge if you are in court again before the date of the motion.

### 4. Figure out when you'll need to send your package

Once you have your latest deadline for serving your package, you'll need to figure out the date that you need to send your package. You can serve your documents differently for different parties. For example, you may give the package to your Children's Aid Society worker in person, and send the package to Legal Aid by courier or mail.



**For each party, figure out the following:**

My service deadline date is **4:00 p.m.** on

I am **sending** this package how:

That means I'll need to send my package  days before, which is:



## How the courts count days for service

IF YOU SERVE YOUR DOCUMENTS BY...	THE COURT SEES THE <i>EFFECTIVE SERVICE DATE</i> AS...
<b>Mail</b>	<b>Five working days</b> after the date you mail the documents
<b>Same-day courier</b>	<b>The first working day</b> after the courier picks up the documents
<b>Next-day courier</b>	<b>Two working days</b> after the courier picks up the documents
<b>Fax, email, or electronic document exchange</b> (note: you have to get <b>permission</b> to serve by email or electronic document exchange before you do it)	The <b>same day</b> if sent <b>before 4:00 p.m.</b>
<b>Leaving a copy</b> with the person to be served, or their lawyer	The <b>next working day</b> if sent <b>after 4:00 p.m.</b>
<b>Leaving a copy at the other party's home with another adult</b> who lives there, <b>and also mailing a copy to that address</b>	The <b>same day</b> if sent <b>before 4:00 p.m.</b>
	The <b>next working day</b> if sent <b>after 4:00 p.m.</b>
	<b>Five working days</b> after the date you mail the documents

## Serve your documents

Once you have figured out the deadlines, here's how to prepare the document packages you'll serve. Make sure you keep all receipts, waybills, faxed confirmations, and printed emails, as you'll use them when you prepare your *Affidavit of Service* for each party.

### Have you been served?

It's possible that the Attorney General of your province or territory, Legal Aid and/or the Children's Aid Society may serve you with responding materials or cases. If this happens, read them through. If there's anything in them you don't understand, tell the judge when the hearing begins.

### Tips for preparing your document package

- Gather (in this order):
  - *Notice of Motion*
  - *Notice of Constitutional Question*
  - *Affidavit* (and all exhibits)
  - *Sworn Financial Statement* if you decided to use one
  - Make sure they're all complete and that you and the commissioner have both signed the affidavit.
- If you plan to refer to the memorandum of law included with this guide, include a copy with your package.
- If you're mailing or using a courier, make at least five copies of the entire package. You will need more than five copies if there is a children's lawyer, Indigenous band or community, or other parents who are parties – make sure you have a copy for each of them. The copies can be double or single-sided. Make sure to make a copy for yourself.
- If you'll be emailing your packages, you'll also need to scan the documents (so your signature is on them).
- Keep the original for now (this will be filed with the court).
- Give or send a complete copy to each party to the motion, according to your plan in the previous section.

## Prepare your affidavits of service

Once you have served all the parties who need to be served (well done, this is a significant milestone), you will have to complete *Affidavits of Service* for each of them. This is how you prove to the court that everyone has a copy of your motion material. **The court will not accept your motion material if you don't provide affidavits of service.**



1. Prepare your affidavits of service
  - Affidavit of service form: <http://ontariocourtforms.on.ca/en/family-law-rules-forms/>
  - We've also included a sample form with instructions in the back this guide.
2. Attach proof of service
  - If you served your documents using a **courier**, attach a copy of the courier waybill showing the date and time the documents were picked up.
  - If you **faxed** the documents, attach a fax confirmation.
  - If you served by email, attach a copy of the email you sent, and any reply you got that shows the party received your material.
3. Get a commissioner of oaths to sign each.
4. Finally, you will need to have a commissioner of oaths witness and sign each of your *Affidavits of Service*, as you did with the *Affidavit* in your motion.



## Part 5: File your motion with the court

Once you've served and have commissioned affidavits of service for everyone, you need to file your court documents. **This means giving your ORIGINAL DOCUMENTS to the court so that the judge can read them.**

Normally, you have to file your documents in person at the courthouse. During COVID, the courts are allowing people to use "e-filing," which means filing by email. Information about e-filing in your court can be found here: <https://representingyourselfcanada.com/court-closures-updates/>



If you don't use e-filing, you'll need to go to the court filing office to file them yourself. Your filing deadline will be 4 working days before your motion date unless the court has given you a different deadline. **To be safe, we suggest that you confirm the deadline with the court.**



### My motion date

My motion date is:

My latest deadline for filing is  working days before, which is:

### Here's what you'll file:

- ☐ **1. ORIGINAL COPIES of your signed, commissioned, and fully-completed:**
  - Notice of Constitutional Question
  - Notice of Motion
  - Affidavit (and all exhibits)
  - Sworn Financial Statement, or Financial Affidavit (and all exhibits)
- ☐ **2. ORIGINAL and commissioned Affidavits of Service**
- ☐ **3. Optional – The memorandum of law included with this guide.** You should explain to the court clerk that the memorandum of law takes the place of a factum. You can show the clerk the first page of the memorandum of law, which may help them understand why you want to file it. If the clerk does not let you file it, that's ok; just bring it to court on the day of the motion and ask the judge to look at it.



## If you're concerned about privacy

In child protection cases, all motion materials are included in the continuing record, which all parties will be able to access. This is the binder with a red cover in the court file. The court clerk will likely put your documents into this record. It's unclear whether this is the correct place for these documents, particularly if some of them contain private financial information.

If you do not want to file your documents in the continuing record where the other parties will have access to your private information, you may need to ask a judge ahead of time. If you do this, ask them for permission to file the documents independently as a separate record.



## Part 6: Argue your motion in court

The last but very important step in this process is getting ready for your hearing and arguing your motion in court.



This would be a great time to download and read our primer: ***Coping with the Courtroom***

Sometimes on the day of, the Attorney General and Legal Aid will agree to your motion. That means you'll get state-funded counsel and you won't have to argue the motion in court. However, most of the time they won't agree, and you'll have to argue the motion.

The Attorney General of Ontario, Legal Aid or the Children's Aid Society might serve you with papers or cases before the motion. Read those before the motion. If you have trouble understanding them, make sure to tell the judge. That will help the judge understand that you need a lawyer to help you with your case.

## Getting prepared and what to bring

On the day of your hearing, make sure you bring:

☐

a copy of all your motion materials

☐

the memorandum of law

☐

any papers or cases the other parties have given you in response

☐

any notes you made

☐

paper and a pen or pencil (so in your submission you can write down any ideas you have or keep track of what people are saying in court).

**Make sure to read over the memorandum of law** that is part of this guide. It explains the law and what the judge should do. Think about which parts of the memo are helpful for your case. You may want to write out a script of what you will say in court.

## Tips for arguing your motion



Here's an idea of what you can expect during your hearing. We've included more tips in our primer, ***Coping with the Courtroom***.



## If you're asked if you want to make any submissions

The court will probably ask you if you want to make any submissions. "Submissions" means that you stand up and explain to the court why you think you need a G.J. order and why you think you meet the legal test to get a G.J. order. You can:

- ask the court to read the parts of your *Affidavit* that you think will most help you, and
- ask the court to read certain parts of the memorandum of law that you think helps you. If you're not sure which parts help you, tell the judge that, and ask them to read all of it.

## Tell the court you relied on this guide

The court will not appoint a government-funded counsel for you if they think you can argue your case without a lawyer's help. The fact that you've prepared this motion for a G.J. order could make the judge think you don't need a lawyer for the rest of the case.

So it's very important that you explain to the court that you were able to prepare this motion because you used this guide. You can also tell the judge that you would not have been able to prepare the G.J. motion *without* this guide.

## If the judge asks you other questions

Listen carefully and perhaps write the questions down to help you to focus. If you aren't sure what the questions mean, ask the judge to explain. If you need a moment to find the answer to the question, ask the judge for a minute to find the answer.

## Listen, to ensure the facts of your case are accurate

During your hearing, the judge will ask the lawyers for Legal Aid, the Attorney General, and possibly the Children's Aid Society what their positions are. Listen to what they say and make notes. If they say something that is incorrect, or that you think the judge needs to understand better, be sure to stand up (but only when they're finished) and tell the judge your view.

## How you'll receive the decision

The judge may give you an answer right away at your hearing, or may need some time to think about it. You may get the answer the next time you're in court.

**If the judge doesn't grant you a G.J. order, you can appeal.** That would mean going to another hearing in a higher court. If you decide to appeal, you may want to see if duty counsel or a lawyer will help you.

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We hope this is helpful to you and we wish you the best. If you have any feedback on **how to improve this primer**, please let us know at [representingyourself@gmail.com](mailto:representingyourself@gmail.com)








# A list of the primers we offer

## Here are the primers we currently offer

 They're free for you to download here: <https://representingyourselfcanada.com/our-srl-resources/>





### Step 1: Getting ready and starting the legal process

-  **So you're representing yourself:** A primer to help you get ready to represent yourself in family or civil court
-  **A guide for SRLs with disabilities:** Understanding your rights and requesting the assistance you need
-  **A Courtroom Companion (McKenzie Friend)**
-  **The McKenzie Friend: Canadian cases and additional research**
-  **Considering Mindfulness:** How you can use Mindfulness to increase your focus and relieve the stress of representing yourself

### Step 2: Doing your research and preparing your arguments

-  **Doing Your Research Part 1:** Understanding precedent and navigating the CanLII legal database (available in English and French)
-  **Doing Your Research Part 2:** Assessing CanLII case reports, and using them to build your legal argument
-  **Reference Guide:** Legal definitions, court abbreviations and Canada's court systems at-a glance
-  **Critical Judicial Decisions for Self-Represented Litigants:** Using important case law that establishes rights for self-represented litigants and how the justice system should protect you from bias
-  **Settlement Smarts** Tips on effectively using negotiation, mediation and Judge-led settlement processes
-  **What you need to know about affidavits**

### Step 3: Presenting your case in court

-  **Coping with the courtroom:** A primer to help you navigate the written (and unwritten) rules of the courtroom
-  **How to order a court transcript**
-  **Working with opposing counsel:** Building constructive working relationships between self-represented litigants and opposing counsel
-  **Tips from the bench:** Advice for SRLs, and the judges who work with them

To keep up with what's happening at the National Self-Represented Litigants Project (NSRLP), visit **[RepresentingYourselfCanada.com](https://representingyourselfcanada.com)**.

If you have comments for us, or suggestions for ways to improve our primers, let us know at [representingyourself@gmail.com](mailto:representingyourself@gmail.com).