

Articled Student-at-law Rights to Appear Before Courts and Tribunals

- A.** Rights of appearance conferred on students-at-law in civil and criminal law matters are set out below. However, Articling Principals and/or supervising lawyer are under an obligation to ensure in each case where students-at-law are instructed to appear before courts or tribunals that:
- (i) the attendance of the Articling Principal and/or supervising member is not necessary in order to secure the client's rights, assist the court or for any other reason;
 - (ii) the student-at-law is adequately supervised;
 - (iii) the matter is appropriate for the student-at-law's training, experience and ability; and
 - (iv) the student-at-law is properly prepared.
- B. Articled Students-at-law are permitted to appear on the following civil law matters:**
- (i) Consent motions and matters before Ontario Court of Justice and the Superior Court of Justice, and before the Masters and Registrars of the Superior Court of Justice and the Registrars of the Court of Appeal for Ontario, including references and assessments of costs.
 - (ii) Matters brought without notice to the opposing party before the Ontario Court of Justice and the Superior Court of Justice, and before the Masters and Registrars of the Superior Court of Justice, provided no substantial rights will be affected.
 - (iii) Simple contested interlocutory motions before the Ontario Court of Justice and the Superior Court of Justice and before the Masters and Registrars of the Superior Court of Justice, unless the result of such interlocutory motion could be to finally dispose of a party's substantive rights by determining the subject matter in dispute.
 - (iv) Subject to the discretion of a judge of the Superior Court of Justice, on the passing of accounts in estate matters.
 - (v) Examinations for discovery, examinations in aid of execution, examinations of witnesses on pending motions and cross-examinations on affidavits in support of interlocutory motions.
 - (vi) Assignment court matters in both the Superior Court of Justice and the Ontario Court of Justice.
 - (vii) Status hearings in the Superior Court of Justice.
 - (viii) Applications in the Ontario Court of Justice. Students-at-law may not appear on contested Crown Wardship Applications.
 - (ix) Proceedings before administrative tribunals in appropriate matters and the Small Claims Court.
- C. Articled Students-at-law are permitted to appear on the following criminal law matters:**
- (i) Applications for adjournments in the Ontario Court of Justice.
 - (ii) Summary conviction matters punishable by a maximum of six months imprisonment in the Ontario Court of Justice, and on remands in indictable offences.

Explanatory Notes

- 1) The Superior Court of Justice (Family Division) is a specialized Court that handles only Family Law (and Youth Court) matters. An increasing number of locations in Ontario are being serviced by this Court. All family law proceedings in the Superior Court of Justice (Family Division) are governed by the Family Law Rules. Rule 4 of these rules provides that anyone acting for a litigant must be a lawyer unless the Court gives permission in advance.
- 2) Appearances by articulated students-at-law at pre-trial conferences in the Superior Court of Justice and at Trial Scheduling Court in Toronto have been expressly disapproved. However, articulated students-at-law may appear at pre-trial conferences in Small Claims Court.
- 3) Under subsection B.(i) civil law matters, students-at-law may not appear on motions for certificates of pending litigation and for interlocutory injunctions brought without notice.
- 4) Under subsection B.(iii) civil law matters, above, students-at-law may not appear, whether they appear on behalf of the applicant or respondent, on motions to strike pleadings on the ground of no reasonable cause of action or defence, or on motions for summary judgment, default judgment and dismissal on any ground, subject to the following limited exception. Students-at-law may appear on behalf of a responding party on a motion to dismiss an action on any ground, if such relief is merely alternative to the primary relief sought on the motion, and there is no reasonable prospect that dismissal of the action will be ordered. Students-at-law should appear on matters that are truly interlocutory in nature. The question of whether a matter is interlocutory or final in nature is a matter of law. Examples of interlocutory orders, which may be found in the case law listed under Rule 62.02 of the Rules of Civil Procedure, Ontario Annual Practice, includes orders: to amend pleadings, granting a judgment debtor examination, granting a stay of execution etc.
- 5) The *Criminal Code* provides for a number of offences where the Crown may elect to proceed either by way of summary conviction or by way of indictment. In terms of classification the offence is an indictable offence until the Crown elects to proceed by summary conviction. Authority for this position is to be found in the *Interpretation Act*, R.S.C. 1985, c. 1-21, s. 34(1), which provides:

Where an enactment creates an offence,

 - (a) the offence shall be deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment.
- 6) Section C.(ii) should not be interpreted to confer upon a student-at-law the unrestricted right to appear on a summary conviction trial in all instances. The Articling Principal is responsible for providing effective supervision to the student-at-law according to all the circumstances of the situation, including the complexity of the matter. This includes consideration of the possible consequences to the accused.
- 7) Articled student-at-law rights to appear in Youth Court are guided by the same rules as for criminal matters heard in other courts. Therefore, articulated students-at-law may appear on summary conviction matters in Youth Court subject to the qualifications in note 6 above. They may, however, appear only on remands in indictable offence matters.
- 8) Articled students-at-law may appear in the Ontario Court of Justice under the *Provincial Offences Act*.
- 9) Students-at-law may extend their rights of appearance beyond the conclusion of their articles up until their call to the bar by executing an Agreement and Confirmation of Supervision form with their supervising lawyer and filing it with the Office of the Registrar. The forms are available from the Articling office and on our website.
- 10) A memorandum entitled **Delegation to Summer Students** that outlines tasks to be delegated to summer law students is available from the Law Society or on the Articling website.