PART 1: FOUNDATIONAL RULES

What this Part is about: Part 1 of *The Queen's Bench Rules* is the foundation for all the other rules. It sets out the purpose and intention of the rules and outlines the following:

- the general authority of the court to provide remedies;
- the general authority of the court to make procedural orders;
- a means to correct contraventions and non-compliance with the rules and irregularities in proceedings that are not fatal to a claim; and
- how the rules are to be interpreted

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PART 1: Foundational Rules

PART 1: FOUNDATIONAL RULES

DIVISION 1
Citation of Rules

How to cite these rules

1-1 These rules may be cited as *The Queen's Bench Rules*.

Information Note

These rules were adopted by the Court effective July 1, 2013.

DIVISION 2
Purpose and Intention of the Rules

What these rules do

1-2(1) These rules govern the practice and procedure in the Court of Queen's Bench for Saskatchewan.

(2) These rules govern all persons who come to the Court for resolution of a claim, whether the person is a self-represented litigant or is represented by a lawyer.

Purpose and intention of these rules

1-3(1) The purpose of these rules is to provide a means by which claims can be justly resolved in or by a court process in a timely and cost effective way.

(2) In particular, these rules are intended to be used:

(a) to identify the real issues in dispute;

(b) to facilitate the quickest means of resolving a claim at the least expense;

(c) to encourage the parties to resolve the claim themselves, by agreement, with or without assistance, as early in the process as is practicable;

(d) to oblige the parties to communicate honestly, openly and in a timely way; and

(e) to provide an effective, efficient and credible system of remedies and sanctions to enforce these rules and orders and judgments.

(3) To achieve the purpose and intention of these rules, the parties shall, jointly and individually during an action:

(a) identify or make an application to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense;

(b) periodically evaluate dispute resolution process alternatives to a full trial, with or without assistance from the Court;

(c) refrain from filing applications or taking proceedings that do not further the purpose and intention of these rules; and

(d) when using publicly funded Court resources, use them effectively.

(4) Resolving a claim justly in a timely and cost effective way includes, so far as is practicable, conducting the proceeding in ways that are proportionate to:

(a) the amount involved in the proceeding;

(b) the importance of the issues in dispute; and

(c) the complexity of the proceeding.

DIVISION 3
Authority of the Court

General authority of the Court to provide remedies

1-4(1) The Court may do either or both of the following:

(a) give any relief or remedy described or referred to in *The Queen's Bench Act*, 1998;

(b) give any relief or remedy described or referred to in or under these rules or any enactment.

(2) The Court may grant a remedy whether or not it is claimed or sought in an action on providing the parties with:

(a) a notice of its intention to grant a remedy; and

(b) an opportunity to respond.

(3) Nothing in these rules prevents or is to be interpreted as preventing the Court, as a superior court, from exercising its inherent jurisdiction.

Orders respecting practice or procedure

1-5(1) To implement and advance the purpose and intention of these rules described in rule 1-3, the Court may, subject to any specific provision of these rules, make any order with respect to practice or procedure, or both, in an action, application or proceeding before the Court.

(2) Without limiting subrule (1), and in addition to any specific authority the Court has pursuant to these rules, the Court may do one or more of the following:

(a) grant, refuse or dismiss an application or proceeding;

(b) set aside any process exercised or purportedly exercised pursuant to these rules that is:

(i) contrary to law;

(ii) an abuse of process; or

(iii) for an improper purpose;

(c) give orders or directions or make a ruling with respect to an action, application or proceeding or a related matter;

(d) make a ruling with respect to how or if these rules apply in particular circumstances or to the operation, practice or procedure pursuant to the rules;

(e) impose terms, conditions and time limits;

(f) give consent, permission or approval;

(g) make proposals, provide guidance, make suggestions and make recommendations;

(h) adjourn or stay all or any part of an action, application or proceeding, extend the time for doing anything in the proceeding or stay the effect of a judgment or order;

(i) determine whether a judge is or is not seized with an action, application or proceeding.

(3) A decision of the Court affecting practice or procedure in an action, application or proceeding that is not a written order, direction or ruling must be:

(a) recorded in the court file of the action by the local registrar; or

(b) endorsed by the local registrar on:

(i) a commencement document, filed pleading or filed document; or

(ii) a document to be filed.

Information Note

In considering subrule 1-5(1), you may also wish to refer to section 27 of *The Queen's Bench Act, 1998*, which states:

Procedure generally

27(1) Procedure in the court is to be in accordance with this Act and the rules of court.

(2) Where, in a particular case, a procedure is not expressly provided for by this Act or the rules of court, the procedure to be followed is the procedure for a similar circumstance or the procedure that a judge, on an application made *ex parte* or on notice, directs.

Section 37 of *The Queen's Bench Act, 1998* also deals with stay of proceedings.

Rule contravention, non-compliance and irregularities

1-6(1) If a person contravenes or does not comply with these rules, or if there is an irregularity in a commencement document, pleading, affidavit, Form or other document, a party may apply to the Court:

(a) to cure the contravention, non-compliance or irregularity; or

(b) to set aside an application, proceeding or other thing because of prejudice to that party arising from the contravention, non-compliance or irregularity.

(2) An application pursuant to this rule must be filed within a reasonable time after the applicant becomes aware of the contravention, non-compliance or irregularity.

(3) An application pursuant to this rule may not be filed by a party who alleges prejudice as a result of the contravention, non-compliance or irregularity if that party has taken a further step in the action knowing of the prejudice.

(4) The Court may cure any contravention, non-compliance or irregularity but only if:

(a) to do so will cause no irreparable harm to any party;

(b) in doing so the Court imposes terms or conditions that will:

(i) eliminate or ameliorate any reparable harm; and

(ii) prevent the recurrence of the contravention, non-compliance or irregularity;

(c) in doing so the Court imposes a suitable sanction, if any, for the contravention, non-compliance or irregularity; and

(d) it is in the overall interests of justice to cure the contravention, non-compliance or irregularity.

(5) The Court shall not cure any contravention, non-compliance or irregularity if to do so would have the effect of extending a time period that the Court is prohibited from extending.

(6) The Court shall not set aside any proceeding or the document by which the proceeding was begun solely on the ground that the proceeding was required by any of these rules to be initiated by a commencement document other than the one employed.

Information Note

Other rules may contain specific methods to resolve contraventions, non-compliance or irregularities. For example, see the following:

- rule 3-83 [Incorrect parties are not fatal to actions]
- rule 7-9 [Striking out a pleading or other document, etc. in certain circumstances]
- clause 11-27(1)(c) [Punishment for civil contempt of Court]
- rule 12-1 [Validating or setting aside service]

The Court may also consider a contravention of the rules, non-compliance or irregularity in making a costs award pursuant to rule 11-1 [Discretion of Court].

DIVISION 4
Interpreting These Rules

Interpreting these rules

1-7(1) The meaning of these rules is to be ascertained from their text, in light of the purpose and intention of these rules and in the context in which a particular rule appears.

(2) These rules may be applied by analogy to any matter arising that is not dealt with by these rules.

Information Note

Subrule 1-7(1) refers to the purpose and intention of the rules. The purpose of the rules is set out in subrule 1-3(1) and the intention of the rules is set out in subrule 1-3(2).

With respect to subrule 1-7(2), refer to the information note following rule 1-5.

Information notes and other information guides for the assistance of users, such as boxed summary overviews, are inserted only as a reader's aid, do not in themselves form part of these rules or the text to be interpreted, and have no legal effect. See rule 17-3. You are now reading an information note. If you go to the title page for Part 1, you will see an example of a boxed summary overview.

Conflicts and inconsistencies with enactments

1-8 If there is a conflict or inconsistency between these rules and an enactment, the enactment prevails to the extent of the conflict or inconsistency.

Where definitions are located

1-9 Definitions of words and terms for the purposes of these rules are located in Part 17.

PART 2: THE PARTIES TO LITIGATION

What this Part is about: Rules in this Part facilitate Court actions by and against personal representatives, trustees, partnerships, sole proprietors, and other entities.

The rules in this Part also specify those individuals who must be represented in Court by a litigation representative.

This Part describes when a lawyer becomes and ceases to be a lawyer of record and the responsibilities associated with that designation.

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PART 2: THE PARTIES TO LITIGATION

DIVISION 1
Facilitating Legal Actions

Subdivision 1
Estates with a Personal Representative or Trustee

Actions by or against personal representatives and trustees

2-1(1) An action may be brought by or against a personal representative or trustee without naming any of the persons beneficially interested in the estate or trust.

(2) Notwithstanding subrule (1), the plaintiff may join as parties to the action those persons that may be appropriate having regard to the nature of the action or the remedy claimed.

Information Note

If an estate does not have a personal representative or trustee, refer to the rules in Subdivision 2 of Division 2 of this Part.

Court may order service and add parties

2-2 At any stage of an action, the Court may order:

(a) that a beneficiary, next of kin, creditor or other interested person be served, or that he or she be entitled to be heard, with or without making him or her a party; or

(b) that a beneficiary, next of kin, creditor or other interested person be made a party, in place of or in addition to the personal representative or trustee, if the personal representative or trustee may not or cannot represent the interests of those persons.

All personal representatives and trustees must be parties

2-3 All personal representatives and trustees must be joined in an action commenced on behalf of an estate or trust, and each personal representative or trustee who does not consent to be joined as a plaintiff must be joined as a defendant.

Subdivision 2
Partnerships

Action by partners

2-4(1) An action may be brought by:

(a) a partnership that has not been dissolved, in the firm name of the partnership;

(b) a partnership that has been dissolved, in the firm name of the partnership unless a person who was a partner at the material time does not consent;

(c) all the partners, in the individual names of those partners; or

(d) subject to subrule (2), one or more of the partners, in the individual names of those partners if all partners who do not consent to be joined as plaintiffs are joined as defendants.

(2) The Court may relieve against the necessity for the joinder of any partner as required by clause (1)(d).

Action against partners

2-5(1) An action may be brought against:

(a) a partnership and all the partners in the firm name of the partnership;

(b) the partners of a partnership in the individual names of those partners; or

(c) a partnership and all the partners in the firm name of the partnership and one or more of the partners in the individual names of those partners.

(2) A person not individually named as a defendant may be served with the statement of claim and notice to alleged partner in Form 2-5.

(3) Each person who is served pursuant to subrule (2) is deemed to have been a partner at the material time, unless that person defends by denying that he or she was a partner at the material time.

Information Note

Rules for service of commencement documents on partnerships are contained in rule 12-6.

Rules respecting judgments against partnerships are found in rule 10-6.

Defence

2-6(1) A partnership shall defend in its firm name.

(2) A partner may defend separately or may join in a common defence with the partnership or with other partners.

(3) In an action to which this rule applies:

(a) costs are not allowed for more than one defence for common grounds of defence; and

(b) a successful plaintiff is to have costs for each separate unsuccessful defence.

Information Note

The Court may order otherwise respecting costs pursuant to this rule: see rules 11-1 and 11-6.

Disclosure of members of partnership

2-7(1) If an action is commenced by or against a partnership in the firm name, or against a person alleging that the person was a member of a partnership, any party may, at any time, serve a notice requiring the partnership or that person to deliver an affidavit sworn or affirmed by a partner or that person disclosing, as on the date or dates specified in the notice:

(a) the names and present addresses of all the partners constituting the partnership, and designating which, if any, were limited partners; and

(b) the firm name of the partnership.

(2) A notice pursuant to subrule (1) must be in Form 2-7.

(3) If the present address of a partner is not known, the affidavit must show the partner's address last known to the deponent.

(4) The affidavit required by subrule (1) must be delivered within 8 days after service of the notice.

(5) If an affidavit is not delivered as required by this rule:

(a) any claim or defence as against the party who served the notice may be dismissed or struck out or the proceeding may be stayed; and

(b) an application may be made for an order that any person personally served with the order shall comply with the notice, and that the order may be enforced by process for contempt.

(6) The affidavit required by subrule (1) is admissible as against the partnership and each partner as proof that each person so listed was a partner at the date specified, unless proven otherwise.

Irregularity

2-8(1) A proceeding by or against a partnership or partners must not be treated as a nullity because:

(a) the proceeding was not properly constituted;

(b) the partnership is dissolved; or

(c) there is a change in a claim or defence of a partner or a partnership.

(2) A proceeding mentioned in subrule (1) may continue as constituted, or may be reconstituted by the Court on any terms that the Court considers just.

(3) If necessary, the Court may give directions with respect to the conduct or carriage of any claim or defence.

(4) The rules in this subdivision apply, with any necessary modification:

(a) to an action between a partnership and one or more of its partners and between partnerships having one or more partners in common; and

(b) to any action in which a partnership may be interested.

Subdivision 3
Sole Proprietors and Other Entities

Actions by and against sole proprietors

2-9(1) If a person carries on business under a business name other than the person's own name, an action may be commenced by or against the person in either or both names.

(2) The rules respecting actions by or against partners apply, with any necessary modification, to an action by or against a sole proprietor in the sole proprietor's business name as though the sole proprietor were a partner and the sole proprietor's business name were the firm name of a partnership.

Information Note

Refer to Subdivision 2, above, for rules respecting actions by or against partners.

Rules for service of commencement documents on individuals and corporations operating under trade names are contained in rule 12-6 and rule 12-7.

Representative actions

2-10(1) If numerous persons have a common interest in the subject of an intended claim, one or more of those persons may make or be the subject of a claim or may be authorized by the Court to defend on behalf of or for the benefit of all.

(2) If a certification order is obtained pursuant to *The Class Actions Act*, an action referred to in subrule (1) may be continued pursuant to that Act.

Information Note

Section 3 of *The Class Actions Act* reads as follows:

"**3** This Act does not apply to:

(a) an action that may be brought in a representative capacity pursuant to another Act;

(b) an action required by law to be brought in a representative capacity; and

(c) a representative action commenced before this Act comes into force".

Representation order

2-11(1) In this rule:

"**absent person**" means a person for whom a representative is or may be appointed pursuant to this rule and includes an unborn person, an unascertained person, or a person or member of a class of persons who cannot readily be ascertained, found or served, who has a present, future, contingent or unascertained interest in, or may be affected by, a proceeding; (« *personne absente* »)

"**proceeding**" means a proceeding concerning:

(a) the interpretation of:

(i) a deed, will, contract or other instrument; or

(ii) an enactment, order in council or municipal bylaw or resolution;

(b) the determination of a question arising in the administration of an estate or trust;

(c) the approval of a sale, purchase, compromise or other transaction;

(d) the approval of an arrangement pursuant to *The Trustee Act, 2009*;

(e) the administration of the estate of a deceased person; or

(f) any other matter if the Court considers it necessary or desirable. (« *instance* »)

(2) In a proceeding, the Court may appoint one or more persons to represent an absent person.

(3) If an appointment is made pursuant to this rule, a judgment in the proceeding is binding on an absent person represented pursuant to subrule (2), unless the Court, in the same or a subsequent proceeding, orders otherwise.

(4) The Court may approve a settlement that it is satisfied is for the benefit of the represented or absent persons if, in a proceeding:

(a) a settlement is proposed; and

(b) either:

(i) a person is represented in the proceeding by a person appointed pursuant to this rule who consents to the settlement; or

(ii) some of the persons interested in the proceeding are not parties but to require service on them would cause undue expense and delay and there are other parties of the same interest who consent to the settlement.

(5) If the settlement mentioned in subrule (4) is approved, it is binding on the absent persons but, in the same or a subsequent proceeding, the Court may order that the absent person is not bound if the Court is satisfied that:

(a) the order was obtained by fraud or non-disclosure of material facts;

(b) the interests of the absent person were different from those represented at the hearing; or

(c) for some other sufficient reason the order should be set aside.

Information Note

A person acting in a representative capacity must be represented by a lawyer. See rule 2-34.

Subdivision 4
Intervenors

Intervenor status

2-12 On application, the Court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

Information Note

The rules about making application to the Court are in Part 6: see rule 6-3.

Leave to intervene as a friend of the Court

2-13(1) The Court may order that a person may, without becoming a party to the proceeding, intervene in the proceeding as a friend of the Court for the purpose of assisting the Court by way of argument or by presentation of evidence.

(2) The Court may make an order pursuant to subrule (1) on any terms as to costs or otherwise that the Court may impose.

DIVISION 2
Litigation Representatives

Subdivision 1
Persons Under Disability

Minor may proceed as adult or by litigation guardian

2-14(1) A minor may commence, continue or defend a proceeding as if of the age of majority if:

(a) the minor is party to a proceeding as a spouse or a co-respondent and the proceeding is a family law proceeding;

(b) the minor is represented by a lawyer appointed by The Saskatchewan Legal Aid Commission;

(c) before or after commencing the proceeding, the minor obtains the leave of the Court.

(2) A minor may sue for wages as if of the age of majority.

(3) Except where otherwise provided, a minor may commence, continue or defend a proceeding by a litigation guardian.

Amended. Gaz. 2 Sep. 2016.

Rules re appointment of litigation guardian for minor

2-15(1) Unless the Court orders otherwise, any person who is not under disability may act as a litigation guardian for a minor without being appointed by the Court.

(2) No person other than the Public Guardian and Trustee acting pursuant to *The Public Guardian and Trustee Act* or a litigation guardian appointed by the Court shall act as litigation guardian for a minor until the person has filed an affidavit in Form 2-15.

(3) No person may be appointed as a litigation guardian without that person's consent.

If minor becomes adult

2-16(1) If, in the course of an action, a minor for whom a litigation guardian has been acting, other than a minor under mental disability, reaches the age of majority, the minor or the minor's litigation guardian shall file an affidavit verifying this fact.

(2) On the filing of an affidavit pursuant to subrule (1), the local registrar shall issue an order to continue in Form 2-16 authorizing the continuation of the action without the litigation guardian.

Approval of settlement

2-17(1) On an application for the approval of a settlement of a claim of a minor pursuant to subsection 25(3) of *The Public Guardian and Trustee Act*, the applicant shall file:

(a) the comment, if any, of the Public Guardian and Trustee;

(b) the consent of the litigation guardian;

(c) evidence regarding the facts and circumstances of the claim and injuries sustained;

(d) if the minor is over the age of 14 years and not under mental disability, the minor's consent in writing;

(e) a copy of the minutes of settlement and draft order;

(f) if the lawyer who acts for the minor requests that legal fees be paid out of the settlement proceeds, a copy of the account sought to be paid together with a statement of the time spent by each lawyer and the basis on which the amount is charged or calculated; and

(g) all other material necessary to set out in full the particulars on which the application may be judged.

(2) If the Court approves a settlement of a claim of a minor, any moneys payable pursuant to the settlement to the minor must be paid to the Public Guardian and Trustee unless the Court directs otherwise.

Litigation guardian for adult person or person under mental disability

2-18(1) Unless otherwise ordered or provided, a person with respect to whom an order has been made pursuant to *The Adult Guardianship and Co-decision-making Act* or a person under a mental disability may commence, continue or defend an action by a litigation guardian.

(2) For the purposes of this rule, **"litigation guardian"** means:

(a) a property guardian appointed pursuant to *The Adult Guardianship and Co-decision-making Act*, except where the Court has imposed a limitation or condition on the property guardian's authority to make decisions respecting the carrying on of any legal proceeding;

(b) a personal guardian appointed pursuant to *The Adult Guardianship and Co-decision-making Act* with the authority to make decisions respecting the carrying on of any legal proceeding that does not relate to the estate of the adult;

(c) the Public Guardian and Trustee if he or she has signed an acknowledgment to act pursuant to clause 29(2)(a) of *The Public Guardian and Trustee Act*;

(d) subject to section 44.1 of *The Public Guardian and Trustee Act*, the Public Guardian and Trustee or another person appointed as litigation guardian pursuant to section 32 of *The Public Guardian and Trustee Act*;

(e) the litigation guardian of a minor who has reached the age of majority; or

(f) any other person appointed by the Court.

Rules apply to litigation guardian

2-19(1) Except where otherwise provided, anything that is required or authorized by these rules to be done by or invoked against a party under disability may:

(a) be done on the party's behalf by the party's litigation guardian; or

(b) be invoked against the party by invoking it against the party's litigation guardian.

(2) Notwithstanding any other provision of these rules, if a party under disability has a litigation guardian in an action:

(a) service of a document that would otherwise be required to be served on the party under disability must be served on the litigation guardian; and

(b) service of a document on the party under disability for whom the litigation guardian is appointed is ineffective.

Duty and power of litigation guardian

2-20 A litigation guardian:

(a) shall diligently attend to the interests of the party under disability for whom the litigation guardian acts and take all proceedings that may be necessary to protect the party under disability's interests, including proceedings by way of counterclaim, cross-claim or third party claim; and

(b) may defend a counterclaim.

Substitution of litigation guardian

2-21(1) If, at any time, it appears to the Court that a litigation guardian is not acting in the best interests of the party under disability or if the litigation guardian wishes to resign, the Court may appoint and substitute another person as litigation guardian on any terms and conditions that the Court considers just.

(2) The Court may give any directions to protect a party under disability that the Court considers proper if, at any time:

(a) no person appears for a party under disability;

(b) the interests of the litigation guardian are, or may be, adverse to the interests of the party under disability; or

(c) the Court is satisfied for any other reason that the interests of the party under disability may require protection.

Information Note

See sections 22 and 23 of *The Public Guardian and Trustee Act* regarding notice to the Public Guardian and Trustee in circumstances where a litigation guardian is adverse in interest to a minor or fails to protect the interests of a minor.

A litigation guardian is not liable to pay a costs award, and a litigation guardian of a minor cannot be compensated, unless ordered otherwise: see rule 2-22.

The Court may order that the costs of a litigation guardian be paid: see rule 11-5.

Litigation guardian - no costs or compensation without order

2-22(1) A litigation guardian is not personally liable for costs.

(2) A litigation guardian for a minor may not receive any compensation for his or her services on behalf of the minor in the proceeding.

Subdivision 2
Estates with No Personal Representative or Trustee

Action against estate where no personal representative

2-23 If a person wishes to commence or continue an action against the estate of a deceased person and there is no personal representative for the estate of the deceased person, or the person who wishes to commence or continue the action does not know or is in doubt as to the name of the personal representative, the action may be commenced against any of the following persons to represent the estate of the deceased person:

(a) a person to whom a grant of probate or administration has been made in any other jurisdiction, as administrator *ad litem*, without appointment by the Court;

(b) a person appointed by the Court, before or after the commencement of the action, as administrator *ad litem*.

Information Note

With respect to clause (b), see section 9 of *The Survival of Actions Act*.

An administrator *ad litem* is a person appointed to advise a minor or other person under a disability with respect to legal proceedings.

Action by estate where no personal representative

2-24(1) If there is no personal representative for the estate of a deceased person, an action may be commenced or continued by or on behalf of the estate of a deceased person by:

(a) any person to whom a grant of probate or administration has been made in any other jurisdiction, as administrator *ad litem*, without appointment by the Court;

(b) any person entitled to apply for probate, as administrator *ad litem*, without appointment by the Court;

(c) any person entitled to apply for administration, as administrator *ad litem*, without appointment by the Court; or

(d) any person appointed by the Court as administrator *ad litem*.

(2) Unless the Court orders otherwise, if more than one person seeks to bring or continue an action as administrator *ad litem* pursuant to this rule without appointment, the priority of right to bring that action is the same as the priority of right to a grant of probate or administration.

(3) If more than one person of equal priority seeks to bring or continue an action as administrator *ad litem* pursuant to this rule without appointment, the action shall be brought by all those persons as plaintiffs.

Information Note

The priority of right to a grant of letters probate or administration is found in rule 16-16 and rule 16-24.

Unrepresented estate

2-25(1) If the estate of a deceased person has an interest in a proceeding and there is no personal representative, the Court may:

(a) proceed in the absence of a person representing the estate of the deceased person; or

(b) appoint a person to represent the estate for the purposes of the proceeding.

(2) A judgment in the proceeding mentioned in subrule (1) binds the estate of the deceased person to the same extent as it would have been bound had a personal representative of that deceased person been a party to the proceeding.

Information Note

See also section 33 of *The Queen's Bench Act, 1998* respecting appointment of a representative for the estate of a deceased person where there is no personal representative.

Appointment of administrator *ad litem*

2-26(1) An application for the appointment of an administrator *ad litem* may be made without notice or on any notice that the Court may direct.

(2) No person may be appointed an administrator *ad litem* without the person's consent.

Information Note

A person acting in a representative capacity, including as an administrator *ad litem*, must be represented by a lawyer. See rule 2-34.

Powers of administrator ad litem

2-27(1) An administrator *ad litem* may take all proceedings that may be necessary for the protection of the interests of the estate, including proceedings by way of counterclaim, cross-claim or third party claim.

(2) A judgment in an action to which an administrator *ad litem* is a party binds the estate of the deceased person but, unless otherwise ordered, has no effect against the administrator *ad litem* in the administrator *ad litem*'s personal capacity.

Administrator *ad litem* is trustee – Court approval required re actions

2-28 If an estate of a deceased person is represented in an action by an administrator *ad litem*:

(a) the administrator *ad litem* is deemed to be a trustee for the estate and the persons beneficially interested in the estate;

(b) the action may not be settled or discontinued without leave of the Court; and

(c) no distribution of the proceeds, if any, may be made, except to a personal representative to whom probate or administration has been granted or resealed.

Court may make orders or give directions

2-29 If an estate of a deceased person is represented in an action by an administrator *ad litem*, the Court may, at any stage of the action:

(a) remove an administrator *ad litem*, whether or not the administrator *ad litem* has been appointed by the Court, and substitute another;

(b) remove an administrator *ad litem* and substitute a person to or for whom a grant of administration has been made or resealed in Saskatchewan;

(c) remove an administrator *ad litem* and substitute a person to or for whom a grant of probate has been made or resealed in Saskatchewan;

(d) substitute parties and amend the style of cause as may be necessary;

(e) give directions for the service of notice of the action on any person who might be beneficially interested in the estate or who might be adversely affected by the action or a judgment in the action;

(f) grant a stay of proceedings until probate or letters of administration have been granted or resealed in Saskatchewan, or for any other reason; or

(g) dismiss the action or make any other order or give any directions that the Court considers just.

Where action not defeated

2-30(1) An action must not be treated as a nullity solely on the ground that:

(a) it was commenced in the name of, or against, a person who died before its commencement;

(b) it was commenced or continued by or against an administrator *ad litem* who acted or was appointed for the estate of a deceased person for which there was a personal representative;

(c) it was commenced by or against a person as an administrator before a grant of administration in Saskatchewan;

(d) it was commenced by or against the estate of a deceased person naming:

(i) "the estate of A.B. deceased", "the personal representative of A.B. deceased" or any similar designation; or

(ii) the wrong person as the personal representative;

(e) it was commenced or continued by or against a person as an executor before a grant of probate in Saskatchewan; or

(f) it was otherwise not properly constituted.

(2) At any stage of the action, the Court may:

(a) on any terms that the Court considers just:

(i) reconstitute the action; or

(ii) order that the action be continued by or against the personal representative of the deceased person or an administrator *ad litem* appointed for the purpose of the action or otherwise as the circumstances may require; or

(b) order that no further step in the action be taken until the action is properly constituted and, unless the action is properly constituted within a reasonable time, dismiss the action or make any other order that the Court considers just.

Information Note

You may also wish to refer to rule 1-6.

Enforcement of judgment against person other than administrator *ad litem*

2-31(1) If a person claims to be entitled to enforce a judgment or order against any person other than an administrator *ad litem*, the person claiming to be entitled may apply for leave to do so.

(2) On an application pursuant to subrule (1), the Court may:

(a) if the liability is not disputed, give the leave applied for; or

(b) if liability is disputed, order that the liability of the person other than an administrator *ad litem* be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Rules apply to trusts and administration actions

2-32 The rules in this subdivision apply, with any necessary modification:

(a) to actions by or against trusts or trustees for the execution of a trust; and

(b) to actions for the administration of the estates of deceased persons.

DIVISION 3
Self Representation before the Court

Self-represented litigants

2-33 Individuals may represent themselves in an action unless these rules otherwise provide.

Information Note

Rules for service of commencement documents on individuals are contained in rules 12-2 to 12-4.

DIVISION 4
Lawyer of Record

Lawyer required

2-34(1) A party to a proceeding who is under disability or acts in a representative capacity must be represented by a lawyer.

(2) Subject to subrule (3), unless the Court orders otherwise, a party that is a corporation must be represented in a proceeding by a lawyer.

(3) Subrule (2) does not apply to:

(a) the enforcement of judgments filed with the Court pursuant to *The Small Claims Act, 2016*; or

(b) the enforcement of orders of the Director of Residential Tenancies filed with the Court pursuant to *The Residential Tenancies Act, 2006*.

Amended. Gaz. 27 Apr. 2018.

Students-at-law

2-35(1) An articled student-at-law may represent a party before a judge sitting in chambers if:

(a) the student-at-law is accompanied by the lawyer in charge of the file; or

(b) subject to subrule (2), the matter on which the student-at-law appears is:

(i) uncontested; or

(ii) an uncomplicated contested matter.

(2) An articled student-at-law may not appear on a matter pursuant to subclause (1)(b)(ii) unless the lawyer in charge of the file has filed, no later than the day before the matter is to be heard, a written notice stating that the student-at-law will be appearing and certifying that the student-at-law has been properly briefed.

(3) Notwithstanding subrules (1) and (2), the chambers judge may require the personal attendance of the lawyer in charge of the file.

Lawyer of record

2-36(1) The lawyer or firm of lawyers whose name appears on a commencement document, pleading, affidavit or other document filed or served in an action as acting for a party is a lawyer of record for that party.

(2) If there is a lawyer of record, the party for whom the lawyer of record acts may not self-represent unless the Court permits.

(3) A lawyer of record remains a lawyer of record until the lawyer ceases to be a lawyer of record under these rules.

Duties of lawyer of record

2-37 The duties of a lawyer of record include:

(a) conducting the action in a manner that furthers the purpose and intention of these rules described in rule 1-3; and

(b) continuing to act as lawyer of record while the lawyer is recorded in that capacity.

Verifying lawyer of record

2-38(1) If a person who is served with a commencement document, pleading, affidavit or other document asks a lawyer if the lawyer is a lawyer of record in an action, application or proceeding, the lawyer shall respond to the question in writing as soon as is practicable.

(2) If a lawyer or firm of lawyers whose name appears as a lawyer of record in an action denies being the lawyer of record:

(a) every application and proceeding in the action is stayed; and

(b) no further application, proceeding or step may be taken in the action without the Court's permission.

Retaining a lawyer for limited purposes

2-39(1) If a self-represented litigant or a lawyer of record retains a lawyer to appear before the Court for a particular purpose, the lawyer appearing shall inform the Court of the nature of the appearance before the appearance by filing the terms of the retainer, other than the terms related to the lawyers's fees and disbursements.

(2) If a self-represented litigant retains a lawyer for a particular purpose, the litigant shall attend the application or proceeding for which the lawyer is retained unless the Court otherwise permits.

Change in lawyer of record or self-representation

2-40(1) A party may change the party's lawyer of record or may self-represent by:

(a) serving on every other party and on the lawyer or former lawyer of record and filing a notice of the change in Form 2-40; and

(b) filing proof of service in accordance with Part 12.

(2) A self-represented litigant who retains a lawyer to act on the litigant's behalf shall:

(a) serve on every other party and file a notice naming the lawyer of record in Form 2-40; and

(b) file proof of service in accordance with Part 12.

(3) The notice must include an address for service.

(4) The notice is not required to be served on:

(a) a party noted in default; or

(b) a party against whom default judgment has been entered.

Information Note

The "address for service" mentioned in subrule (3) is a defined term. See Part 17.

Amended. Gaz. 13 Nov. 2015.

Withdrawal of lawyer of record

2-41(1) Subject to rule 2-43, a lawyer or firm of lawyers may withdraw as lawyer of record by:

(a) serving on every party and filing a notice of withdrawal in Form 2-41A that states the client's last known address;

(b) filing an affidavit of service of the notice; and

(c) serving on the client or former client and filing a notice in Form 2-41B to the effect that, on the expiry of 10 days after the date on which the affidavit of service of the notice is filed, the withdrawing lawyer will no longer be the lawyer of record.

(2) The withdrawal of the lawyer of record takes effect 10 days after the affidavit of service is filed.

(3) The address of the party stated in the notice of withdrawal is the party's address for service after the lawyer of record withdraws unless another address for service is provided or the Court orders otherwise.

(4) The Court may, on application, order that a lawyer need not disclose the last known address of a client and instead provide an alternative address for service for the client in a notice of withdrawal served pursuant to this rule if the Court considers it necessary to protect the safety and well-being of the client.

(5) An application pursuant to subrule (4) may be made without notice.

(6) Service of the notice on the client or former client may be by ordinary mail.

(7) The lawyer withdrawing as lawyer of record shall provide the local registrar with any other address, phone number, cell phone number and email address the lawyer may have concerning the party stated in the notice of withdrawal unless that disclosure is, in the opinion of the lawyer, contrary to:

(a) the safety or well-being of the party; or

(b) the interests of justice.

Amended. Gaz. 13 Nov. 2015.

Service after lawyer ceases to be lawyer of record

2-42 After a lawyer or firm of lawyers ceases to be a lawyer of record, no delivery of a pleading, affidavit, notice or other document relating to the action is effective service on the former lawyer of record or at any address for service previously provided by the former lawyer of record.

Withdrawal after trial date scheduled

2-43 After a pre-trial date or a trial date is scheduled, a lawyer of record may not, without the Court's permission, serve a notice of withdrawal as lawyer of record, and any notice of withdrawal that is served without the Court's permission has no effect.

Information Note

A trial date is scheduled pursuant to rule 9-2.

Automatic termination of lawyer of record and resolving difficulties

2-44(1) A lawyer or firm of lawyers ceases to be the lawyer of record if:

(a) in the case of an individual lawyer:

(i) the lawyer dies;

(ii) the lawyer is suspended or disbarred from practice as a lawyer; or

(iii) the lawyer ceases to practise as a lawyer; or

(b) in the case of a firm of lawyers, the firm dissolves.

(2) If any of the circumstances described in subrule (1) occurs, any party may apply to the Court, without notice to any other party, for directions respecting service of documents.

(3) The Court may:

(a) direct the manner in which service is to be effected;

(b) dispense with service in accordance with rule 12-10; or

(c) make any other order respecting service that the circumstances require.

(4) An order pursuant to this rule applies until a notice is given pursuant to rule 2-40 or rule 2-41 or the Court orders otherwise.

(5) Nothing in this rule prevents a party from serving a notice of change of lawyer of record or notice that the party intends to self-represent.

PART 3: COURT ACTIONS

What this Part is about: This Part describes the documents to be used to commence and defend court actions and the options that parties have during court proceedings.

The Part begins by describing how court actions are commenced (either by a statement of claim or by an originating application) and in which court office the commencement document must be filed to start the court action.

The Part then deals with actions started by statement of claim, time limits for serving the commencement document and the options that the defendant has.

The Part describes how a defence to a statement of claim is filed and served and the reply to the defence, and what happens if no defence is filed.

The Part also describes how to make a cross-claim against a co-defendant, a third party claim, a counterclaim or a request for more particulars about a claim, and explains how documents filed in court (called pleadings) can be amended.

The rules then describe the requirements for originating applications and the specific rules for originating application for judicial review, which is the process used to challenge a decision, act or omission of a person or body, and the specific rules for originating application for *habeas corpus*.

The Part describes how parties to a court action can be joined, separated or changed.

The Part ends by describing the specific rules for class actions.

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PART 3: COURT ACTIONS

DIVISION 1
Court Actions and their Venue

Rules govern Court actions

3-1 A Court action for a claim may only be brought and carried on, applications may only be filed and proceedings may only be taken in accordance with these rules.

How to start an action

3-2(1) An action, other than a family law proceeding, may only be started by filing in the appropriate judicial centre described in rule 3-3 or 3-4:

(a) a statement of claim by a plaintiff against a defendant;

(b) an originating application by an originating applicant against a respondent; or

(c) a notice of appeal, reference or other procedure or method specifically authorized or permitted by an enactment.

(2) A statement of claim must be used to start an action, unless an enactment or these rules provide otherwise.

(3) An action may be started by originating application if these rules authorize the commencement of an action by originating application.

(4) If an enactment authorizes, requires or permits an application to be made to the Court and the application:

(a) is made in an action with respect to which a commencement document has been filed, the application must be made pursuant to Part 6, unless the Court orders otherwise; or

(b) is not made in an action with respect to which a commencement document has been filed and the enactment does not provide a procedure to be used, an originating application must be used unless the Court orders otherwise or these rules provide otherwise.

(5) If an enactment authorizes, requires or permits an appeal or reference to be made to the Court and provides a procedure, the appeal or reference must be made by notice of appeal:

(a) in the form prescribed by the enactment; or

(b) if no form is prescribed, in a form consistent with the procedure.

(6) If an enactment authorizes, requires or permits an appeal or reference to be made to the Court and does not provide a procedure, the appeal or reference must be made by originating application.

(7) If an action that is started in one form should have been started or should continue in another, the Court may make any procedural order to correct and continue the proceeding and deal with any related matter.

Information Note

The rules regarding a family law proceeding are found in Part 15.

The rules regarding actions started by statement of claim are found in Division 2. Rules about the contents of statements of claim, defence and other related documents (called ***pleadings***), and rules for affidavits are contained in Part 13.

The rules regarding actions started by originating applications and the rules for contents of originating applications are in Division 3.

Determining the appropriate judicial centre

3-3(1) Subject to this rule, all actions must be commenced and, unless ordered otherwise, tried at the judicial centre nearest to the place where:

(a) the cause of action arose;

(b) the defendant or one of several defendants resides when the action is commenced; or

(c) the defendant or one of several defendants carries on business when the action is commenced.

(2) If the parties have agreed in writing to a venue, the plaintiff may commence the action at the judicial centre specified in the agreement as long as that judicial centre has not been disestablished.

(3) Except where the parties have agreed in writing to a venue, an action may be commenced at any judicial centre, but, unless an action is commenced at one of the judicial centres mentioned in subrule (1), a defendant may request a transfer of the action in accordance with rule 3-6.

Appropriate judicial centre – *Adult Guardianship and Co-decision-making Act*

3-4 If a proceeding is an application pursuant to *The Adult Guardianship and Co-decision-making Act*, the appropriate judicial centre is:

(a) the judicial centre nearest to the location of the property, or some of the property, of the dependent adult; or

(b) the judicial centre nearest to the residence of the dependent adult.

Claim regarding land

3-5 Notwithstanding any agreement to the contrary or any provision in a mortgage of land or in an agreement for the sale of land, all actions for foreclosure or sale under a mortgage, or for enforcement of the vendor's lien, specific performance, termination, cancellation or rescission of a contract respecting land, must be commenced and, unless ordered otherwise, continued and tried at the judicial centre nearest to which the land or any part of it lies.

Information Note

In order to determine which is the nearest judicial centre, refer to section 23 of *The Queen's Bench Act, 1998*.

Transfer of an action

3-6(1) If there is only one defendant, the defendant may, at any time after filing a statement of defence and before the action is set down for trial, file with the local registrar at the judicial centre where the action was commenced a notice requesting a transfer of the action to a judicial centre mentioned in subrule 3-3(1) that is specified in the notice.

(2) If there are 2 or more defendants, any defendant may, at any time after filing a statement of defence and before the action is set down for trial, file with the local registrar at the judicial centre where the action was commenced:

(a) a notice requesting a transfer of the action to the judicial centre nearest to the place where the cause of action arose; or

(b) with the concurrence of all other defendants, a notice requesting a transfer of the action to a judicial centre mentioned in subrule 3-3(1) that is specified in the notice.

(3) On receipt of a notice requesting the transfer of an action:

(a) the local registrar shall immediately forward to the local registrar at the judicial centre specified in the notice all documents in the action and transfer all matters in the action to that judicial centre; and

(b) unless the Court orders otherwise, the action must be continued at the judicial centre specified in the notice as if it had been commenced there.

(4) A judge may order the transfer of any action to any judicial centre.

Where an action is carried on

3-7 Subject to rule 3-8, an action must be:

(a) carried on in the judicial centre in which the statement of claim or originating application was filed; or

(b) if the action is transferred in accordance with rule 3-6, continued in that judicial centre and all subsequent documents in the action must be titled accordingly.

Where applications and originating applications may be heard

3-8 An application and an originating application may be heard or a trial may be held in any judicial centre specified by the Court other than the judicial centre mentioned in rule 3-7.

DIVISION 2
Actions Started by Statement of Claim

Subdivision 1
Statement of Claim

Contents of statement of claim

3-9 A statement of claim must:

(a) be in Form 3-9;

(b) include the notice to defendant on the first page;

(c) state the names of the parties and their places of residence;

(d) state the claim and the basis for it;

(e) state any specific remedy sought; and

(f) comply with the rules about pleadings in Division 3 of Part 13.

Subdivision 2
Time Limit for Service of Statement of Claim

Time for service of statement of claim

3-10(1) Unless an enactment provides otherwise, a statement of claim must be served on the defendant within 6 months after the date that the statement of claim is issued unless the Court, on application, grants an extension of time for service.

(2) An application for an extension of time for service pursuant to this rule may be made without notice, before or after the expiration of the time for service.

(3) Any extension of time for service of the statement of claim must be marked on the statement of claim and dated and signed by the local registrar.

Information Note

An Act may expressly provide that a statement of claim to enforce a claim or recover damages respecting a matter governed by that Act must be served within a period other than the 6-month period mentioned in subrule 3-10(1). All enactments relevant to the cause or matter should be checked.

Throughout this Part there are references to service of pleadings and other documents. Part 12 describes how commencement documents and other documents are to be served.

Rule 13-5 describes how to count months and years.

Effect of not serving a statement of claim in time

3-11 If a statement of claim is not served on a defendant within the time or extended time for service:

(a) no further proceeding may be taken in the action against a defendant who was not served in time; and

(b) a statement of claim served on any defendant in time is unaffected by the failure to serve any other defendant in time.

Subdivision 3
Defence to a Statement of Claim, Reply to Defence and Demand for Notice

Variation of time for defence

3-12(1) On application before or after the issue of the statement of claim, the Court may vary the time within which a statement of defence must be served and filed.

(2) If an order is made pursuant to subrule (1), either:

(a) the notice to the defendant must be amended to reflect the variation and initialled by the local registrar; or

(b) a notice of the variation must be served on the defendant.

Defendant's options

3-13 A defendant who is served with a statement of claim may do one or more of the following:

(a) serve and file a statement of defence, notice of intent to defend or demand for notice;

(b) apply to the Court to set aside service in accordance with rule 12-1;

(c) apply to the Court for an order pursuant to rule 7-9;

(d) apply to the Court for an order pursuant to rule 1-6;

(e) apply to the Court for an order pursuant to rule 3-14.

Information Note

The rule relating to a demand for notice is rule 3-18. The rule relating to a notice of intent to defend is subrule 3-15(5).

Objection to jurisdiction

3-14(1) Within the time limited for service and filing of a statement of defence and before serving and filing the statement of defence, a defendant may apply to the Court to object to the jurisdiction of the Court.

(2) An application pursuant to subrule (1) is not deemed to be a submission to the jurisdiction of the Court.

(3) On an application made pursuant to this rule, the Court may make any order it considers just, including an order requesting transfer of the proceeding pursuant to *The Court Jurisdiction and Proceedings Transfer Act*.

(4) If an application is made pursuant to this rule, the plaintiff shall take no further step in the proceeding against the applicant, except with leave of the Court, until 5 days after the application has been decided.

Statement of defence

3-15(1) If a defendant files a statement of defence, the statement of defence must:

(a) be in Form 3-15A; and

(b) comply with the rules about pleadings in Division 3 of Part 13.

(2) Within the applicable period after service of the statement of claim, the defendant shall serve the statement of defence on the plaintiff and file the statement of defence.

(3) The applicable period is:

(a) 20 days if the defendant is served in Saskatchewan;

(b) 30 days if the defendant is served elsewhere in Canada or in the United States of America;

(c) 40 days if the defendant is served outside Canada and the United States of America.

(4) Notwithstanding subrule (3), a statement of defence may be served and filed at any time before the action is noted for default.

(5) Notwithstanding subrule (2), a defendant who intends to defend the action may, within the time limited for the service and filing of a statement of defence, serve and file a notice of intent to defend in Form 3-15B.

(6) On filing a notice of intent to defend pursuant to subrule (5), the defendant:

(a) is entitled to have 10 days in addition to the period mentioned in subrule (3) within which to serve and file a statement of defence; and

(b) is deemed to have submitted to the jurisdiction of the Court.

Information Note

See rules 13-4 and 13-5 respecting how time is counted.

Additional options for defendant who files a defence

3-16 If a defendant files a statement of defence, the defendant may also do one or more of the following:

(a) file a cross-claim against a co-defendant in accordance with rule 3-30;

(b) file a third party claim in accordance with rule 3-31;

(c) file a counterclaim in accordance with rule 3-42.

Reply to a defence

3-17(1) A plaintiff may file a reply to a statement of defence.

(2) If the plaintiff files a reply, the reply must:

(a) be in Form 3-17; and

(b) comply with the rules about pleadings in Division 3 of Part 13.

(3) Within 8 days after service of the statement of defence on the plaintiff, the plaintiff shall serve the reply on the defendant and shall file the reply.

Demand for notice by defendant

3-18(1) If the defendant files a demand for notice, the demand must be in Form 3-18.

(2) The defendant may, at any time, serve the demand for notice on the plaintiff and file the demand for notice.

(3) If the defendant serves a demand for notice on the plaintiff and files it, the defendant must be served with notice of all subsequent pleadings and proceedings in the action, but service and filing of the notice does not give the defendant a right to contest liability.

(4) If the defendant serves a demand for notice on the plaintiff and files it, the plaintiff may proceed against the defendant as if the defendant had failed to defend, subject to subrule (3).

(5) This rule applies with any necessary modification to any proceeding commenced otherwise than by statement of claim.

(6) This rule does not apply to:

(a) noting a defendant in default pursuant to rule 3-21; or

(b) taking out a default judgment for a debt or liquidated demand pursuant to rule 3-22.

Amended. Gaz. 13 Nov. 2015.

Judgment or order by agreement

3-19(1) If a lawyer files a statement of defence, notice of intent to defend or demand for notice on behalf of a defendant, no judgment or order may be obtained by agreement of the parties unless the defendant's lawyer of record is a party to the agreement or consents to the agreement.

(2) No judgment or order may be obtained by agreement of the parties unless the defendant's agreement, with an affidavit of execution, is filed with the application for the judgment or order if the defendant:

(a) does not file a statement of defence, notice of intent to defend or a demand for notice;

(b) files a statement of defence, notice of intent to defend or demand for notice in person or by a lawyer who has ceased to be the defendant's lawyer of record; or

(c) is not represented by a lawyer of record.

Information Note

Rules about lawyers of record are contained in Division 4 of Part 2.

Subdivision 4
Failure to Defend

Default of defence by minor

3-20(1) If no defence or notice of intent to defend has been filed by a minor who has been served with a statement of claim, no further proceeding must be taken against the minor except by leave of the Court.

(2) Notice to the minor must be given of an application for leave to note an action for default or for judgment.

(3) On an application pursuant to subrule (2), the Court may order the judgment to be entered that the Court considers that the plaintiff is entitled to, with or without evidence of the truth of the statement of claim.

(4) Evidence of the truth of the statement of claim may be given orally, by affidavit or by any other means that the Court may direct.

(5) A plaintiff who has noted an action for default or has taken any further proceeding in the action may apply without notice for an order to set aside the noting or proceeding and, subject to the terms of the order, may then proceed pursuant to subrules (1) to (4).

Default of defence

3-21(1) If any defendant fails to deliver a statement of defence and the time for so doing has expired, the plaintiff may, on filing proof of service of the statement of claim, require the local registrar to note the default of that defendant.

(2) On filing proof of service pursuant to subrule (1), the local registrar shall:

(a) endorse on the statement of claim and on the fly-leaf accompanying the court file the words "Noted for default the _____ day of _____, 20 _____";

(b) sign the statement of claim and fly-leaf; and

(c) make an entry in the court registry database that the default has been noted.

(3) After default has been noted in accordance with subrule (2), the defendant shall not file a statement of defence without leave of the Court or the written consent of the plaintiff.

(4) On default being noted as provided in this rule, the plaintiff may enter judgment or take any other proceedings that the plaintiff may be entitled to take on default of defence.

Information Note

See subrule 13-21(2) for the requirements for service if no address for service is filed.

Claim for debt or liquidated demand

3-22(1) If the plaintiff's claim is for a debt or liquidated demand only, and the defendant fails, or all the defendants, if more than one, fail to serve and file a statement of defence, the plaintiff may, after the time limited for defence has elapsed and after filing an affidavit in Form 3-22, enter final judgment for:

(a) any sum, not exceeding the sum claimed in the action, together with lawful interest, if claimed; and

(b) costs of the action.

(2) If the plaintiff's claim is for a debt or liquidated demand only, and there are several defendants, of whom one or more defend and another or others of whom fail to defend, the plaintiff may, without prejudice to the plaintiff's right to proceed with the action against the defendants that have defended:

(a) enter final judgment pursuant to subrule (1) against the defendants that have not defended; and

(b) issue an enforcement instruction with respect to the final judgment.

(3) If the plaintiff's claim for a debt or liquidated demand has been partially satisfied, default judgment shall be confined to the balance of the plaintiff's claim.

(4) In the assessment of costs, fees shall be allowed in accordance with Item 39 of Schedule I "B" – General of the Tariff as follows:

(a) on Column 1 or 2, if *The Small Claims Act, 2016* applies to the claim; and

(b) on Column 3, if *The Small Claims Act, 2016* does not apply to the claim.

Information Note

The Small Claims Act, 2016 applies to claims for debt or liquidated demand that are not greater than the prescribed monetary limit that is to be calculated without taking into consideration interest or costs. Currently, the prescribed monetary limit is $30,000.

Amended. Gaz. 22 Feb. 2019.

Claim for pecuniary damages or detention of goods

3-23(1) If the plaintiff's claim is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages and the defendant fails, or all the defendants, if more than one, fail to defend:

(a) the plaintiff may have the default noted as provided in rule 3-21; and

(b) on an application without notice by the plaintiff, the Court may:

(i) assess the value of the goods and the damages or either of them; or

(ii) order that the value of the goods and the damages, or either of them, be ascertained in any way the Court may direct.

(2) On assessing or ascertaining the value of the goods and the damages, or either of them, in accordance with clause (1)(b), judgment may be entered in accordance with the Court's assessment or order or as the Court may direct.

(3) If the plaintiff's claim is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and there are several defendants of whom one or more serve and file a statement of defence and another or others of whom fail to defend:

(a) the plaintiff may proceed against the defendant or defendants failing to defend by having the default noted as provided in rule 3-21; and

(b) on an application without notice by the plaintiff, the value of the goods and the damages, or either of them, as the case may be, must, unless the Court directs otherwise, be assessed as against the defendant or defendants failing to defend at the same time as the trial of the action or issue against the other defendant or defendants.

Claim for debt or liquidated demand and pecuniary damages or detention of goods

3-24 If the plaintiff's claim is for a debt or liquidated demand, and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to serve and file a statement of defence, the plaintiff may:

(a) after filing an affidavit in Form 3-22, enter final judgment for the debt or liquidated demand, any claimed interest and costs against the defendant or defendants failing to defend; and

(b) as to the balance of the claim:

(i) have the default noted as provided in rule 3-21; and

(ii) proceed as mentioned in rule 3-23.

Amended. Gaz. 22 Feb. 2019.

Claim for recovery of land only or with other remedy

3-25(1) If a statement of defence has not been served and filed in an action for the recovery of land only, the plaintiff may enter a judgment that the person whose title is asserted in the claim shall recover possession of the land together with the costs of the action.

(2) In an action for the recovery of land where the plaintiff also claims any other remedy, the plaintiff may:

(a) enter judgment pursuant to subrule (1) for the land; and

(b) proceed as otherwise provided in this subdivision for the other remedy.

(3) Subrule (2) does not apply to proceedings taken pursuant to Division 5 of Part 10.

Judgment in other actions

3-26(1) In any other action on default of defence by one or more defendants, the plaintiff may apply without notice to the Court for an order for judgment.

(2) On an application pursuant to subrule (1), the Court may order the judgment to be entered that the Court considers that the plaintiff is entitled to, with or without evidence of the truth of the statement of claim.

(3) Evidence of the truth of the statement of the claim may be given orally, by affidavit or by any other means that the Court may direct.

Where a defence is delivered to part of claim only

3-27(1) Subject to subrules (2) and (3), if the plaintiff's claim is for a debt or liquidated demand, or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any of those matters or for the recovery of land, and the defendant delivers a statement of defence that purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may, by leave of the Court, enter judgment for the part unanswered.

(2) Subrule (1) applies only if the unanswered part:

(a) consists of a separate cause of action; or

(b) is severable from the rest of the claim, as in the case of part of a debt or liquidated demand.

(3) If there is a counterclaim, an enforcement instruction with respect to any judgment pursuant to subrule (1) with respect to the plaintiff's claim must not be issued without leave of the Court.

(4) If in any action mentioned in subrule (1) there are several defendants and if any of the defendants defaults as set out in that subrule, the plaintiff may:

(a) if the cause of action is severable, proceed in accordance with subrules (1) to (3) against the defendant in default; or

(b) apply for judgment against the defendant at the time of trial or other final disposition of the action.

Judgment entered in excess of amount due

3-28 If, on any application to set aside a judgment entered pursuant to this subdivision, the Court is satisfied that the judgment has been entered for an amount in excess of that to which the plaintiff was entitled on the plaintiff's pleadings or by the order of the Court and that the judgment was entered by inadvertence, the Court may direct that the judgment be amended in any manner that the Court considers necessary and on those terms as to costs or otherwise that the Court considers just.

Limitation on when judgment or noting in default can occur

3-29 Notwithstanding the other rules in this Division, judgment may not be entered against a defendant and a defendant may not be noted in default if the defendant has filed an application that has not been decided:

(a) to set aside service of a statement of claim;

(b) pursuant to rule 7-9, to set aside or amend a statement of claim, to strike out a claim or to stay an action, application or proceeding;

(c) pursuant to rule 1-6; or

(d) pursuant to rule 3-14.

Subdivision 5
Cross-claims: Claims Against Co-defendants

Cross-claims

3-30(1) A defendant may cross-claim against a co-defendant who the defendant claims:

(a) is or may be liable to the defendant for all or part of the plaintiff's claim, including a claim for contribution or indemnity; or

(b) is or may be liable to the defendant for any other remedy relating to or connected with the subject matter of the main action.

(2) A cross-claim:

(a) must be in Form 3-30; and

(b) must be made by serving it with a copy of the statement of defence on the co-defendant:

(i) at any time before filing a joint request to the local registrar to schedule a pre-trial conference date;

(ii) if no joint request is filed, within 10 days after service of an application for an order that a pre-trial conference be held; or

(iii) at any time with leave of the Court.

(3) The cross-claim must also:

(a) be served on all other parties to the action; and

(b) be filed within the time limited for service of the cross-claim on the co-defendant.

(4) Except as modified by this rule, the rules respecting a third party claim apply to a cross-claim.

(5) The rules respecting cross-claim apply with any necessary modification to the assertion of a cross-claim:

(a) by one defendant to a counterclaim against another defendant to the same counterclaim; or

(b) by one third party defendant against another third party defendant to the same third party claim.

Subdivision 6
Third Party Claims

When a third party claim can be filed

3-31 A defendant or third party defendant may file a third party claim against another person not already a party to the action who:

(a) is or may be liable to the party filing the third party claim for all or part of the claim, including a claim for contribution or indemnity against that party;

(b) is or may be liable to the party filing the third party claim for an independent claim relating to or connected with the subject matter of the main action; or

(c) should be bound by a decision about an issue between the plaintiff and the defendant.

Information Note

Refer to section 32 of *The Queen's Bench Act, 1998* regarding third parties.

Some enactments may provide for third party procedures that differ from these rules. For example, section 7 of *The Contributory Negligence Act* requires leave of the Court to add a third party defendant. See also: *The Automobile Accident Insurance Act*, subsection 45(6); *The Saskatchewan Insurance Act*, subsections 210(14)-(16); and *The Municipalities Act*, section 349.

Form of third party claim

3-32 A third party claim must:

(a) be in Form 3-32;

(b) comply with the rules about pleadings in Division 3 of Part 13;

(c) be served on the third party defendant and all other parties to the action and filed:

(i) at any time before filing a joint request to the local registrar to schedule a pre-trial conference date;

(ii) if no joint request is filed, within 10 days after service of an application for an order that a pre-trial conference be held; or

(iii) at any time with leave of the Court; and

(d) be accompanied, when it is served on the third party defendant, with a copy of the statement of claim served on the defendant and the defendant's statement of defence.

Third party defendant becomes a party

3-33(1) On service of a third party claim:

(a) the third party defendant becomes a party to the action between the plaintiff and defendant; and

(b) all subsequent proceedings in the action must name the third party as a party in the action between the plaintiff and defendant.

(2) The pleadings between the defendant and the third party defendant, and a third party plaintiff and a third party defendant, form part of the Court file between the plaintiff and defendant.

(3) A third party claim must be tried at or immediately after the trial of the main action, unless the Court orders otherwise.

Third party defendant's options

3-34 A third party defendant may do one or more of the following:

(a) serve and file a statement of defence, notice of intent to defend or demand for notice;

(b) apply to the Court to set aside service in accordance with rule 12-1;

(c) apply to the Court for an order pursuant to rule 7-9 with respect to the third party claim;

(d) apply to the Court for an order pursuant to rule 7-9 with respect to the plaintiff's statement of claim;

(e) apply to the Court for an order pursuant to rule 1-6;

(f) apply to the Court for an order pursuant to rule 3-14.

Other parties' options

3-35 Any party affected in an action in which a third party claim is filed may apply to the Court for an order pursuant to rule 7-9, or for directions, with respect to the third party claim.

Third party statement of defence

3-36(1) A statement of defence by a third party defendant:

(a) must be in Form 3-36;

(b) must comply with the rules about pleadings in Division 3 of Part 13; and

(c) may dispute either or both of the following:

(i) the defendant's liability to the plaintiff and may raise any defence open to the defendant; or

(ii) the third party defendant's liability described in the third party claim.

(2) If a third party defendant files a statement of defence, the third party defendant shall serve it on each of the other parties and file it within the applicable period after service of the third party claim on the third party defendant.

(3) The applicable period is:

(a) 20 days after the day of service of the third party claim if the third party defendant is served in Saskatchewan;

(b) 30 days after the day of service of the third party claim if the third party defendant is served elsewhere in Canada or in the United States of America;

(c) 40 days after the day of service of the third party claim if the third party defendant is served outside Canada and the United States of America.

(4) Notwithstanding subrule (3), a third party's statement of defence may be served and filed at any time before the third party defendant is noted for default.

(5) Notwithstanding subrule (2), a third party defendant who intends to defend the third party claim may, within the time limited for the service and filing of the third party's statement of defence, serve and file a notice of intent to defend in Form 3-15B.

(6) If a notice of intent to defend is served and filed pursuant to subrule (5), the third party defendant:

(a) is entitled to 10 days in addition to the period mentioned in subrule (3) within which to serve and file the third party's statement of defence; and

(b) is deemed to have submitted to the jurisdiction of the Court.

(7) If a third party defendant files a statement of defence, the third party defendant may do any or all of the following:

(a) make a claim against a third party co-defendant in accordance with rule 3-30;

(b) make a counterclaim in accordance with subrule 3-42(2);

(c) make a third party claim against another person, whether or not the person is already a party to the action.

Rules re a third party statement of defence

3-37(1) Unless the Court orders otherwise, the directions in this rule apply with respect to a third party statement of defence.

(2) If a third party defendant disputes the liability of the defendant to the plaintiff:

(a) the third party defendant and all other parties who have filed an address for service shall serve one another with all subsequent pleadings and proceedings in the action;

(b) the third party defendant and the plaintiff are entitled to discovery each from the other;

(c) the third party defendant may defend the liability of the defendant to the plaintiff at trial in any manner and to any extent that the trial judge may direct;

(d) the third party defendant is bound by any judgment with respect to the liability of the defendant to the plaintiff and saving all just exceptions, and unless otherwise directed, has the same right to appeal as a defendant.

(3) If the third party defendant disputes liability to the defendant:

(a) the third party defendant and all other parties who have filed an address for service shall serve one another with all subsequent pleadings and proceedings in the action;

(b) the third party defendant and the defendant are entitled to discovery each from the other;

(c) the third party defendant is, unless otherwise directed, bound by any judgment for the plaintiff against the defendant on the pleadings.

(4) If the third party defendant serves and files a third party statement of defence, the third party defendant and every other party with whom the third party is adverse in interest are entitled to discovery each from the other.

Default of defence

3-38(1) If a third party defendant fails to serve and file a third party statement of defence, the defendant may:

(a) have the third party defendant noted for default, as though the third party claim were a statement of claim; and

(b) if the defendant suffers judgment by default, enter judgment against the third party defendant:

(i) after satisfaction of the judgment against the defendant; or

(ii) with leave of the Court, before satisfaction of the judgment against the defendant.

(2) For the purposes of subclause (1)(b)(ii):

(a) leave may be obtained without notice or otherwise as the Court may direct; and

(b) the Court may vary or rescind any judgment granted without notice.

Plaintiff's reply to third party defence

3-39(1) A plaintiff or third party plaintiff may file a reply to a statement of defence filed by a third party defendant.

(2) If a plaintiff or third party plaintiff files a reply, the reply must:

(a) be in Form 3-39;

(b) comply with the rules about pleadings in Division 3 of Part 13; and

(c) be served on the third party defendant and each of the other parties and filed within 8 days after service of the statement of defence by the third party defendant on the plaintiff or third party plaintiff, as the case may be.

Application of rules to third party claims

3-40(1) Except when the context or these rules provide otherwise, a rule that applies to or with respect to:

(a) a plaintiff applies equally to or with respect to a third party plaintiff;

(b) a defendant applies equally to or with respect to a third party defendant; and

(c) a pleading related to a claim made by a statement of claim applies equally to or with respect to a pleading related to a third party claim.

(2) The rules respecting a third party claim apply, with any necessary modification, to the assertion of a third party claim:

(a) by a defendant to a counterclaim; or

(b) by a defendant to a cross-claim.

No prejudice or delay to plaintiff

3-41(1) A plaintiff must not be prejudiced or unnecessarily delayed by a third party claim.

(2) The Court shall give all directions on terms or otherwise that may be necessary to prevent prejudice or delay to the plaintiff if it can be done without injustice to the defendant or third party.

Subdivision 7
Counterclaims

Right to counterclaim

3-42(1) A defendant may, by counterclaim, file a claim against:

(a) a plaintiff; or

(b) the plaintiff and another person whether the other person is a party to the action by the plaintiff or not.

(2) A third party defendant may, by counterclaim, file a claim against the plaintiff, defendant or third party plaintiff, or any combination of them, and another person, whether the other person is a party to the action or not.

Information Note

Refer to section 31 of *The Queen's Bench Act, 1998* regarding counterclaims.

Contents of counterclaim

3-43 A counterclaim must:

(a) be set forth in the statement of defence under the heading "Counterclaim";

(b) include the added defendant-by-counterclaim, if any, in the style of cause to the statement of defence;

(c) include the notice of counterclaim in Form 3-43 in the statement of defence;

(d) comply with the rules about pleadings in Division 3 of Part 13;

(e) be served on the defendant-by-counterclaim and the other parties to the main action and filed within the same period that the plaintiff-by-counterclaim must file a statement of defence pursuant to subrule 3-15(2); and

(f) be accompanied, when it is served on a defendant-by-counterclaim not already a party to the main action, with a copy of the statement of claim served on the defendant.

Statement of defence to counterclaim

3-44(1) A defendant-by-counterclaim may file a statement of defence to counterclaim.

(2) If a defendant-by-counterclaim files a statement of defence to counterclaim, the statement of defence to counterclaim must:

(a) be in Form 3-15A;

(b) comply with the rules about pleadings in Division 3 of Part 13; and

(c) be served on the plaintiff-by-counterclaim and each of the other parties and filed within 20 days after service of the counterclaim by the plaintiff-by-counterclaim on the defendant-by-counterclaim.

Default of defence to counterclaim

3-45 If a defendant-by-counterclaim fails to serve and file a statement of defence to counterclaim pursuant to subrule 3-44(2), the plaintiff-by-counterclaim may:

(a) have the defendant-by-counterclaim noted for default; and

(b) enter judgment or take any other proceedings that the plaintiff-by-counterclaim may be entitled to take on default of defence as though the counterclaim were a statement of claim.

Status of counterclaim

3-46(1) A counterclaim is an independent action.

(2) Unless the Court orders otherwise, the counterclaim must be tried at or immediately after the trial of the main action.

(3) If it appears that a counterclaim may unduly complicate or delay the trial of the main action, or cause undue prejudice to any party, the Court may:

(a) order separate trials; or

(b) strike out the counterclaim without prejudice to the right of the defendant to assert a claim in a separate action.

(4) If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued or dismissed, the defendant may nevertheless proceed with the counterclaim.

(5) If a defendant does not dispute the claim of the plaintiff in the main action but sets up a counterclaim, the Court may stay the main action until the disposition of the counterclaim.

(6) If the plaintiff does not dispute the counterclaim of a defendant, the Court may stay the counterclaim until the disposition of the claim.

(7) If both the plaintiff in the main action and the plaintiff-by-counterclaim succeed, either in whole or in part, and there is a balance in favour of one of them, the Court may in a proper case give judgment for the balance.

Claiming a set-off

3-47(1) A matter that might be claimed by set-off may be claimed by counterclaim or by pleading set-off as a defence or by both.

(2) A defendant may plead that a claim be set-off against the claim of the plaintiff if:

(a) there are mutual debts between the plaintiff and the defendant;

(b) in the case where either party sues or is sued in a representative capacity, there are mutual debts between the person represented and the other party; or

(c) a claim, whether of an ascertained amount or not, by the defendant arises out of the same dealings, transactions or occurrence giving rise to the claim of the plaintiff.

(3) The defendant's claim pursuant to subrule (2) must be pleaded in accordance with the principles that would govern the pleading of the defendant's claim if the defendant were a plaintiff.

(4) If, on a plea of set-off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance remaining due to the defendant.

Application of rules to counterclaims

3-48 Except when the context or these rules provide otherwise, a rule that applies to or with respect to:

(a) a plaintiff applies equally to or with respect to a plaintiff-by-counterclaim and a third party plaintiff-by-counterclaim;

(b) a defendant applies equally to or with respect to a defendant-by-counterclaim and a third party defendant-by-counterclaim; and

(c) a pleading related to a claim made by statement of claim applies equally to or with respect to a pleading related to a counterclaim.

DIVISION 3
Actions Started by Originating Application

Subdivision 1
General Rules

Actions started by originating application

3-49(1) An action may be started by originating application if the remedy claimed is:

(a) the opinion or direction of the Court on a question affecting the rights of a person with respect to the administration of the estate of a deceased person or the execution of a trust;

(b) an order directing executors, administrators or trustees to do or abstain from doing any particular act with respect to an estate or trust for which they are responsible;

(c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;

(d) the determination of rights that depend solely on the interpretation of:

(i) a deed, will, contract or other instrument; or

(ii) an enactment, order in council or municipal bylaw or resolution;

(e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;

(f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;

(g) the judicial review of a decision, act or omission of a person or body;

(h) for a remedy pursuant to the *Canadian Charter of Rights and Freedoms*; or

(i) with respect to any matter where it is unlikely that there will be any material facts in dispute.

(2) An action may be started by originating application if an enactment or these rules authorize or require an application, an originating application, an originating notice, an originating summons, a notice of motion or a petition to be used.

(3) An action may be started by originating application if an enactment provides for a remedy, certificate, direction, opinion or order to be obtained from the Court without describing the procedure to obtain it.

(4) An originating application must:

(a) be in Form 3-49;

(b) state the claim and the basis for it;

(c) state the remedy sought; and

(d) identify the affidavit or other evidence to be used in support of the originating application.

Information Note

Rules for affidavits are contained in Part 13. See rule 13-30 and the rules that follow that rule.

Service of originating application, evidence and written argument

3-50(1) Except on an originating application for an order in the nature of *habeas corpus* and unless ordered otherwise by the Court on an application without notice, an originating application and any affidavit and other evidence to be used to support the originating application must be served on each of the other parties and filed at least 14 days before the date set for hearing the application.

(2) On an originating application, each party shall serve on each of the other parties and file a brief consisting of a concise argument stating the facts and law relied on by the party.

(3) The applicant's brief must be served and filed at least 10 days before the hearing.

(4) The respondent's brief must be served and filed at least 5 days before the hearing.

(5) If the applicant wishes to reply to any new matters raised in the respondent's brief, the applicant must serve and file a reply brief at least 3 days before the hearing.

Information Note

The rules for service of documents are in Part 12.

New. 23 Sep. 2022.

Application of Part 4 and Part 5 to originating applications

3-51 Part 4 and Part 5 do not apply to an action started by originating application unless the parties otherwise agree or the Court otherwise orders.

Information Note

See also rule 3-53. Typically, an action started by originating application will not require the same kind of management, either by the parties or the Court, nor require the same kind of disclosure of documents or questioning, as actions started by statement of claim. However, if management, document disclosure and questioning are required, the parties may agree to them or the Court may order them.

Service and filing of affidavits and other evidence in reply and response

3-52(1) If the respondent to an originating application intends to rely on an affidavit or other evidence at the hearing of the originating application, the respondent shall reply by, at least 10 days before the hearing, serving on the applicant and filing the affidavit and other evidence on which the respondent intends to rely.

(2) If the applicant wishes to respond to the respondent's affidavit or other evidence, the applicant must:

(a) serve on the respondent and file a response affidavit or other evidence at least 5 days before the hearing; and

(b) limit the response to replying to the respondent's affidavit or other evidence.

(3) If a party fails to comply with a filing deadline set out in subrule (1) or (2), and if an adjournment is not granted:

(a) the party who failed to comply with the filing deadline may not rely on the affidavit or other evidence that is filed late, unless the Court permits otherwise; and

(b) the Court may make a costs award against the party that filed late.

Information Note

See rules 3-55 and 13-38 regarding the type of evidence that may be contained in affidavits and the use of affidavits filed for chambers.

New. Gaz. 23 Sep. 2022.

Application of statement of claim rules to originating applications

3-53 At any time in an action started by originating application, the Court may, on application, direct that all or any rules applying to an action started by statement of claim apply to the action started by originating application.

Information Note

See also rule 3-51.

Questioning on an affidavit

3-54(1) On any originating application, evidence may be given by affidavit, but the Court may, on the application of either party, order the attendance for cross-examination of the person making the affidavit.

(2) The costs of any cross-examination pursuant to subrule (1) must be paid by the party applying for the cross-examination.

Information Note

Regarding the form and content of affidavits, see Subdivision 2 of Division 4 of Part 13.

See rule 6-32 regarding the practice on cross-examination at trial.That rule extends to evidence taken pursuant to this rule.

Originating application evidence (other than judicial review)

3-55 When making a decision about an originating application, other than an originating application for judicial review, the Court may consider the following evidence only:

(a) affidavit evidence, including an affidavit by an expert;

(b) an admissible document that is an exhibit to an affidavit;

(c) anything permitted by any other rule or by an enactment;

(d) evidence taken in any other action, but only if the party proposing to submit the evidence gives every other party 5 days or more notice of that party's intention and obtains the Court's permission to submit the evidence;

(e) with the Court's permission, oral evidence, which if permitted must be given in the same manner as at trial.

Subdivision 2
Additional Rules Specific to Originating Applications for Judicial Review

Originating application for judicial review

3-56(1) An originating application for judicial review may be made by any person having an interest that the Court considers sufficient in the matter to which the originating application relates.

(2) An originating application must be filed in the form of an originating application for judicial review if the originating applicant seeks from the Court any one or more of the following remedies against a person or body whose decision, act or omission is subject to judicial review:

(a) an order in the nature of mandamus, prohibition, *certiorari, quo warranto, habeas corpus*, or to quash proceedings;

(b) a declaration or injunction.

(3) Subject to rule 3-63 and any enactment limiting the time in which an originating application for judicial review may be made, if there has been undue delay in making an originating application, the Court may refuse to grant any remedy sought if the order:

(a) would be likely to cause substantial hardship to or substantially prejudice the rights of any person; or

(b) would be detrimental to good administration.

(4) An originating application for judicial review must be served on:

(a) the person or body with respect to whose act or omission a remedy is sought;

(b) the Minister of Justice and Attorney General for Saskatchewan or the designate of the Minister of Justice and Attorney General for Saskatchewan if the Minister of Justice and Attorney General for Saskatchewan appears to have an interest;

(c) the Minister of Justice and Attorney General of Canada or the designate of the Minister of Justice and Attorney General of Canada if the Minister of Justice and Attorney General of Canada appears to have an interest; and

(d) every person or body directly affected by the application.

(5) The Court may require an originating application for judicial review to be served on any person or body not otherwise required to be served.

(6) The Minister of Justice and Attorney General for Saskatchewan, the Minister of Justice and Attorney General of Canada or the designate of either of them may be served by registered mail.

Information Note

Generally, an order:

- of mandamus compels the performance of a statutory or public duty;
- of prohibition restrains a decision-making body from further proceeding with a matter which exceeds its jurisdiction;
- of *certiorari* requires a decision-making body to deliver a record of its decision to the Court for review so the Court may determine whether to quash or set aside the decision;
- of *quo warranto* requires a public officer to show by what authority the officer holds that office;
- of *habeas corpus* brings a person before the Court to determine whether the person's detention or imprisonment is legal;
- to quash proceedings will make a proceeding or decision void, of no force or effect.

See *The Queen's Bench Act, 1998*:

- section 11 regarding a declaration;
- section 51 regarding an injunction in a labour dispute;
- section 65 regarding an interlocutory injunction or mandamus; and
- section 66 regarding damages in addition to or instead of injunction.

The Court may grant intervenor status to other persons pursuant to rule 2-12. References to the Attorney General for Saskatchewan are to the Saskatchewan Minister of Justice and Attorney General.

Notice to obtain record of proceedings

3-57(1) An originating applicant for judicial review who seeks an order to set aside a decision or act must include with the originating application a notice in Form 3-57, addressed to the person or body that made or possesses the record of proceedings on which the decision or act sought to be set aside is based, to send the record of proceedings to the local registrar named in the notice.

(2) The notice must require the following to be sent or require an explanation of why an item cannot be sent:

(a) the written record, if any, of the decision or act that is the subject of the originating application for judicial review;

(b) the reasons given for the decision or act, if any;

(c) the document that started the proceeding;

(d) the evidence and exhibits filed with the person or body, if any.

(3) The Court may add to, dispense with or vary anything required to be sent to the local registrar under this rule.

Sending in certified copy of record of proceedings

3-58(1) On receipt of an originating application and a notice in accordance with rule 3-57, the person or body named in the notice shall, as soon as is practicable:

(a) comply with the notice and send to the local registrar a certified copy of the record of proceedings in Form 3-58; or

(b) provide in Form 3-58 a written explanation as to why the notice cannot be complied with or fully complied with.

(2) The certified copy of the record of proceedings sent to the local registrar pursuant to this rule constitutes part of the Court file of the originating application.

(3) If the Court is not satisfied with the explanation for not sending all or part of the record of proceedings, the Court may order any or all of the following:

(a) a better explanation;

(b) a certified copy of a document to be sent to the local registrar;

(c) the person or body to take any other action the Court considers appropriate.

Other circumstances when a record of proceedings may be required

3-59(1) The Court may order a person having custody or control of any material or evidence in any proceeding to produce at or before the hearing:

(a) the whole or any part of the record of proceedings or a copy of the record of proceeding; or

(b) the whole or any part of the evidence in the proceeding or a copy of the evidence.

(2) Unless the Court orders otherwise, if compliance with the order would require a transcription of evidence or unusual expense, no transcription shall be required or expense incurred unless the proper fees for the transcription have been paid.

(3) If the Court orders the record of proceedings to be sent to the local registrar, rules 3-57 and 3-58 apply, unless the Court orders otherwise.

Interim orders and stay of proceedings

3-60(1) The Court may:

(a) make any interim orders that it considers appropriate, including orders preserving the status quo or the position of the parties; and

(b) extend, modify or set aside any interim orders.

(2) An originating application for judicial review does not constitute a stay of the proceedings to which the originating application relates, but the Court may grant a stay of those proceedings on an application made for that purpose.

(3) An interim order may be granted without notice or on any notice, including short notice or oral notice, that the Court may direct.

Information Note

See rule 10-25 regarding enforcement of mandamus or injunction by Court.

See rules 10-26 and 10-29 regarding enforcement by committal.

See Division 3 of Part 6 regarding interlocutory orders as to mandamus, injunctions, etc.

Additional remedies on judicial review

3-61(1) If the Court is satisfied that there are grounds for quashing or declaring void a decision to which the originating application relates, the Court, in addition to granting that remedy, may remit the matter to the court, tribunal or other authority concerned with the direction:

(a) to rehear it or to reconsider it; and

(b) to reach a decision according to law.

(2) If the sole ground for a remedy is a defect in form or a technical irregularity, the Court may, if the Court finds that no substantial wrong or miscarriage of justice has occurred, despite the defect:

(a) refuse a remedy; or

(b) validate the decision made to have effect from a date and subject to any terms and conditions that the Court considers appropriate.

Rules adopted under *Criminal Code*

3-62 The rules in this subdivision are adopted, with any necessary modification, as rules in applications to which the provisions of the *Criminal Code* apply.

Subdivision 3
Additional Rules Specific to Originating Applications for Judicial Review: Habeas Corpus

Originating application for judicial review: *habeas corpus*

3-63(1) An originating application for an order in the nature of *habeas corpus* may be filed at any time and must be served pursuant to subrule 3-56(4) as soon as is practicable after filing.

(2) An originating application for an order in the nature of *habeas corpus* may, with leave of the Court, be made without notice.

(3) An affidavit or other evidence to be used to support the originating application must be served on each of the other parties and filed at least 10 days before the date set for hearing the application:

(a) served on each of the other parties 10 days or more before the date scheduled for hearing the application; and

(b) filed in accordance with rule 13-23.1.

(4) An originating application for an order in the nature of *habeas corpus* may be in Form 3-63.

Information Note

An order of *habeas corpus*, usually, but not always, brings a person before the Court to determine whether the person's detention or imprisonment is legal.

Amended. Gaz. 15 Jly. 2016, Gaz. 23 Sep. 2022.

Habeas corpus ad subjiciendum

3-64(1) An order of *habeas corpus ad subjiciendum* to have the validity of the detention of any person determined must be in Form 3-64A.

(2) Any person is entitled to bring proceedings, on his or her own behalf or on behalf of any other person, to obtain an order of *habeas corpus ad subjiciendum*.

(3) If an application is brought by a person on behalf of another person, the Court may determine which of the applicant or the subject of the application is to have the carriage of the proceedings.

(4) An application pursuant to this rule may include *certiorari-in-aid* for the purpose of:

(a) bringing forward evidence to determine the truth of a matter before the Court; or

(b) quashing a warrant of committal or an order of detention where the detention is held to be invalid.

(5) On the return of the originating application, the detained person may apply to be admitted to bail.

(6) On an application to be admitted to bail pursuant to subrule (5), unless the detained person is otherwise required to be detained, the Court may admit him or her to bail until the validity of his or her detention has been determined.

(7) If an originating application is made pursuant to this rule, the Court may, without determining the validity of the detention:

(a) make an order for the further detention of the person; and

(b) authorize or direct that the head of the institution in which the person is detained, or any other person, take any steps or do any other thing that the Court considers just.

(8) On the argument of an application for an order of *habeas corpus ad subjiciendum*, the Court may grant an order for the person's discharge, and that order is a sufficient warrant to any jailer or other person for the person's discharge.

(9) An order of discharge pursuant to subrule (8) must be in Form 3-64B.

Information Note

An order of *habeas corpus ad subjiciendum* is directed to someone detaining another person and commands them to bring the detainee before the Court to give evidence before the Court.

An order of *certiorari* requires a decision-making body to deliver a record of its decision to the Court for review.

The *habeas corpus* procedure differs from the judicial interim release, or bail, procedure outlined in Part XVI of the *Criminal Code*.

Order of *habeas corpus*

3-65(1) All necessary provisions for *habeas corpus* may be given by judgment or order.

(2) An order of *habeas corpus* pursuant to subrule (1) must be in Form 3-64A.

(3) An order of *habeas corpus* shall be signed by:

(a) the local registrar under the seal of the Court; or

(b) a judge of the Court.

Enforcement by committal for contempt

3-66 If an order of *habeas corpus* is disobeyed, an application may be made, on proof of service of the order:

(a) for summary committal for contempt; or

(b) for committal by separate proceedings for that purpose.

Information Note

The rules regarding contempt proceedings are found in Subdivision 2 of Division 3 of Part 11.

Directions on hearing

3-67 If a hearing or trial of any issue is ordered on an application for an order or for committal for contempt, the Court may give any directions and set any terms and conditions that the Court considers appropriate.

When fees payable

3-68 Unless the Court orders otherwise, if the detention is by the Crown or one of its servants or agents or by a peace officer, no fee is payable to the local registrar:

(a) for filing or hearing an application pursuant to this subdivision; or

(b) for issuing an order of *habeas corpus* or a discharge.

Rules apply to other *habeas corpus*

3-69 The rules in this subdivision, other than rule 3-64, apply with any necessary modification to any application for an order of *habeas corpus* that these rules do not specifically provide for.

Rules adopted under *Criminal Code*

3-70 The rules in this subdivision apply, with any necessary modification, to applications to which the provisions of the *Criminal Code* apply.

DIVISION 4
Request for Particulars, Amendments to Pleadings and Close of Pleadings

Request for particulars

3-71(1) A party on whom a pleading is served may, at any time before the action is set down for trial, serve on the party who served the pleading a request for particulars about anything in the pleading.

(2) If the requesting party does not receive a sufficient response within 8 days after the date on which the request is served, the requesting party may apply to the Court for an order requiring the party who served the pleading to provide the particulars.

(3) If the Court orders particulars to be provided, it may do so on any terms as to costs and otherwise that the Court considers just.

(4) The requesting party must have the same length of time for pleading after delivery of the particulars as the requesting party had when the request for particulars was made.

Information Note

Division 3 of Part 13 sets out generally what particulars must be included in a pleading.

Amending a pleading

3-72(1) A party may amend the party's pleading, including an amendment to add, remove, substitute or correct the name of a party, as follows:

(a) before a statement of defence is filed, any number of times without the Court's permission;

(b) subject to subrule (2), in the case of an action proposed as a class action, before a statement of defence is filed;

(c) after a statement of defence is filed:

(i) by agreement of the parties filed with the Court; or

(ii) with the Court's prior permission, in any manner and on any terms that the Court considers just.

(2) A party in an action proposed as a class action may amend its pleading, including an amendment to add, remove, substitute or correct the name of a party:

(a) before an application for certification is filed, any number of times without the Court's permission; and

(b) after an application for certification is filed:

(i) by agreement of the parties filed with the Court; or

(ii) with the Court's prior permission, in any manner and on any terms that the Court considers just.

(3) Parties shall make all amendments to their pleadings that are necessary to determine the real questions in issue between the parties.

(4) An amended pleading must be served on each of the other parties and filed within 8 days after:

(a) the date of the order pursuant to subclause (1)(c)(ii); or

(b) the date of service of the last pleading of the other party on the party amending, unless the Court orders otherwise or the parties agree otherwise.

(5) Unless the Court orders otherwise, a party may amend that party's pleading before or after pleadings close if that amended pleading is:

(a) a statement of defence in response to an amended statement of claim, an amended counterclaim or an amended third party claim; or

(b) a reply to an amended statement of defence, amended statement of defence to a counterclaim or amended statement of defence to an amended third party claim.

(6) A response pleading must be served on each of the other parties and filed:

(a) within 8 days after the date that the amended pleading mentioned in subrule (5) is served; or

(b) if the party has not yet pleaded, within the time the party then has to plead, if it is longer than in clause (a).

(7) If a party has pleaded in response to a pleading that is subsequently amended and served on that party and the party does not file and serve a further response to the amended pleading, the party is assumed to rely on the party's unamended pleading in response to the amended pleading mentioned in subrule (5).

(8) Unless the Court orders otherwise, if a pleading is amended at a trial or hearing, the amended pleading does not need to be served and filed.

Information Note

See rule 3-84 for more information on amending the parties to an action.

Rule 3-94 says that after a certification order is made in a class action, pleadings in a class action may only be amended with the Court's permission.

See section 20 of *The Limitations Act* regarding amendment notwithstanding the expiry of a limitation period after the commencement of a proceeding.

Identifying amendments to pleadings

3-73(1) Unless the Court otherwise orders, if a party amends a pleading, a new pleading must be served on each of the other parties and filed, being a copy of the original pleading but amended and bearing the date of the original.

(2) The amendment must be dated and identified and each amended version identified.

(3) The amendment must be underlined or otherwise designated to distinguish it from the original wording.

Time limit for application to disallow amendment to a pleading

3-74(1) On application, the Court may disallow an amendment to a pleading or a part of it.

(2) The application to disallow an amendment must be filed within 8 days after service on the applicant of the amended pleading.

Costs

3-75 The costs, if any, as a result of an amendment to a pleading are to be paid by the party filing the amendment unless:

(a) the amendment is a response to an amended pleading; or

(b) the Court orders otherwise.

Close of pleadings

3-76(1) This rule applies to pleadings between the following:

(a) a plaintiff and a defendant;

(b) a plaintiff by counterclaim and a defendant by counterclaim;

(c) a third party plaintiff and a third party defendant;

(d) a plaintiff and a third party defendant.

(2) Pleadings close when the earlier of the following occurs:

(a) a reply is filed and served by a plaintiff, plaintiff by counterclaim or third party plaintiff, as the case may be;

(b) the time for filing and serving a reply expires.

Information Note

The time for service and filing of a reply is covered in earlier rules in this Part. For example rule 3-17 requires the plaintiff's reply to be filed and served on the defendant within 8 days after service of the statement of defence on the plaintiff. See also subrule 3-39(2).

DIVISION 5
Refining Claims and Changing Parties

Subdivision 1
Joining and Separating Claims and Parties

Joining claims

3-77(1) A party may join 2 or more claims in an action unless the Court orders otherwise.

(2) A party may sue or be sued in different capacities in the same action.

(3) If there is more than one defendant or respondent, it is not necessary for each to have an interest:

(a) in all the remedies claimed or sought; or

(b) in each claim included in the action.

Information Note

This rule and the following rules of this Division apply to all actions, whether started by statement of claim or by originating application.

See also section 29 of *The Queen's Bench Act, 1998* regarding avoiding multiplicity of proceedings.

Parties joining to bring an action

3-78(1) Persons may be joined as plaintiffs, petitioners or originating applicants in a proceeding if:

(a) they claim a remedy, whether jointly or severally or in the alternative, with respect to or arising out of the same transaction, occurrence or series of transactions or occurrences;

(b) a common question of law or fact may arise in the proceeding; or

(c) their presence in the proceeding may promote the convenient administration of justice.

(2) Persons may be joined as defendants or respondents if:

(a) a remedy is claimed against them, whether jointly or severally or in the alternative, arising out of the same transaction, occurrence or series of transactions or occurrences;

(b) a common question of law or fact may arise in the proceeding;

(c) there is doubt as to the person or persons from whom the plaintiff, petitioner or originating applicant is entitled to a remedy;

(d) damage or loss has been caused to the same plaintiff, petitioner or originating applicant by more than one person, whether or not:

(i) there is any factual connection between the several claims apart from the involvement of the plaintiff, petitioner or originating applicant; and

(ii) there is doubt as to the respective amounts for which each may be liable; or

(e) their presence in the proceeding may promote the convenient administration of justice.

Mandatory joining of parties

3-79(1) A plaintiff, petitioner or originating applicant who claims a remedy to which another person is jointly entitled with the plaintiff, petitioner or originating applicant shall join each person who is entitled as a party to the action.

(2) In an action by the assignee of a debt or other chose in action, whether or not *The Choses in Action Act* applies, the assignor must be joined as a party unless the assignment is absolute.

(3) For the purposes of subrule (2), an assignment is absolute if it purports to assign the entire interest of the assignor, whether or not it purports to be given by way of security or on certain trusts or otherwise.

(4) If a person ought to be joined as a plaintiff, petitioner or originating applicant but does not consent to be joined, the person must be added as a defendant or respondent.

(5) The Court may relieve against the necessity for the joining of any person.

Separating claims

3-80(1) The Court may make an order pursuant to this rule if:

(a) 2 or more claims are made in an action or 2 or more parties join or are joined in an action; and

(b) the Court is satisfied that the joined claims or parties, or both, may:

(i) unduly complicate or delay the action; or

(ii) cause undue prejudice to a party.

(2) The Court may make one or more of the following orders:

(a) an order for separate trials, hearings, applications or other proceedings;

(b) an order for one or more of the claims to be asserted in another action;

(c) an order for a party to be compensated by a costs award for having to attend part of a trial, hearing, application or proceeding in which the party has no interest;

(d) an order that excuses a party from having to attend all or part of a trial, hearing, application or proceeding in which the party has no interest;

(e) an order that the action against a defendant or respondent be stayed pending the hearing against another defendant or respondent, on condition that the party against whom the action is stayed is bound by the findings made at the hearing against the other defendant or respondent;

(f) any other order that the Court considers just.

Information Note

Subrule 3-33(3) says that third party claims are to be tried at or immediately after the main action unless the Court orders otherwise.

Consolidation or separation of claims and actions

3-81(1) The Court may order one or more of the following:

(a) that 2 or more claims or actions be consolidated;

(b) that 2 or more claims or actions be tried at the same time or one after the other;

(c) that one or more claims or actions be stayed until another claim or action is determined;

(d) that a claim be asserted as a counterclaim in another action.

(2) An order pursuant to subrule (1) may be made for any reason the Court considers appropriate, including, without limitation, that 2 or more claims or actions:

(a) have a common question of law or fact; or

(b) arise out of the same transaction, occurrence or series of transactions or occurrences.

Information Note

See also section 37 of *The Queen's Bench Act, 1998* regarding stay of proceedings.

Directions for consolidation or separation of claims

3-82 If an order is made pursuant to rule 3-80 or 3-81, the Court may:

(a) give directions that will avoid unnecessary costs or delay;

(b) vary the procedure for setting an action down for trial; and

(c) alter, rescind or modify any order or directions mentioned in clauses (a) and (b).

Incorrect parties are not fatal to actions

3-83(1) No claim or action fails solely because:

(a) 2 or more parties join in an action that they should not have joined;

(b) 2 or more parties do not join an action that they could or should have joined; or

(c) a party was incorrectly named as a party or was incorrectly omitted from being named as a party.

(2) If subrule (1) applies, a judgment entered with respect to the action is without prejudice to the rights of persons who were not parties to the action.

Subdivision 2
Changes to Parties

Court may add necessary parties

3-84(1) At any stage of the action, the Court may order that any person be added as a party if:

(a) that person ought to have been joined as a party; or

(b) the person's presence as a party is necessary to enable the Court to adjudicate effectively and completely on the issues in the action.

(2) At any stage of the action, the Court may grant leave to add, delete or substitute a party, or to correct the name of a party, and that leave shall be given, on any terms that the Court considers just, unless prejudice will result that cannot be compensated for by costs or an adjournment.

(3) A person must not be added as a plaintiff, petitioner or originating applicant without the person's consent in writing being filed.

(4) If a person ought to be joined as a plaintiff, petitioner or originating applicant but does not consent to be joined, the person may be added as a defendant or respondent.

Information Note

See also rule 3-72.

See section 20 of *The Limitations Act* regarding adding parties after limitation period.

Person may apply to be added

3-85(1) A person who is not a party may apply to be added as a party if that person claims:

(a) that the person has an interest in the subject matter of the action;

(b) that the person may be adversely affected by a judgment in the action; or

(c) that there exists between the person and one or more of the parties a question of law or fact in common with a question in issue in the action.

(2) On an application pursuant to this rule, the Court may:

(a) add the person as a party; and

(b) give any directions, impose any conditions or make any order that the Court considers just.

Action to be taken when defendant or respondent added

3-86(1) If a defendant or respondent is added to or substituted in an action, the plaintiff, petitioner, originating applicant, plaintiff by counterclaim or third party plaintiff shall, unless the Court orders otherwise:

(a) amend the commencement document, as required, to name the new party; and

(b) serve the amended commencement document on each of the other parties.

(2) Unless the Court orders otherwise:

(a) in the case of a new defendant, the new defendant shall serve and file a statement of defence within the period provided pursuant to subrule 3-15(2); and

(b) the action against the new defendant or new respondent, as the case may be, starts on the date that the new party is added to or substituted in the action.

Judgment may stand where party given leave to defend

3-87 If, after judgment, a party is added or is given leave to defend, the Court may, without affecting any step that has been taken and without setting aside any judgment, enforcement instruction or any other step in the action, give any directions that may be necessary, including directions:

(a) for the exchange of pleadings;

(b) for any adjournment;

(c) that no further step may be taken under the judgment or enforcement instruction without leave of the Court; and

(d) that the judge hearing the matter may confirm, vary or rescind the judgment and enforcement instruction as may be required.

DIVISION 6
Class Action Rules

Interpretation of Division

3-88 In this Division:

"Act" means *The Class Actions Act*; (« *Loi* »)

"designated judge" means the judge designated by the Chief Justice to consider an application for certification of a class action and appointment of a representative plaintiff. (« *juge désigné* »)

Application of Division

3-89(1) This Division applies to actions and applications brought pursuant to the Act.

(2) Unless provided otherwise by the Act or by this Division, the general procedure and practice of the Court applies to actions and applications brought pursuant to the Act.

Application to the Chief Justice

3-90 An application to the Chief Justice for the appointment of a designated judge may be made without notice and must be made:

(a) within 90 days after the later of:

(i) the date on which the statement of defence was served and filed; and

(ii) the date on which the time prescribed for service and filing of the statement of defence expires without it being served and filed; or

(b) with leave of the Court, at any other time.

Information Note

Clause 4(2)(a) of *The Class Actions Act* requires that the proposed representative plaintiff apply to the Chief Justice for the appointment of a designated judge.

Conferences

3-91(1) The designated judge may, on his or her initiative, order a conference to be held respecting the conduct of the action, including the application for certification, at any time after his or her designation.

(2) The rules relating to pre-trial conferences in Subdivision 2 of Division 3 of Part 4 do not apply to a conference ordered pursuant to this rule, unless the designated judge orders otherwise.

Information Note

The designated judge may, but need not, preside at the trial of the common issues: see subsection 16(3) of *The Class Actions Act*.

Application by defendant

3-92(1) If a defendant applies for certification of a class action pursuant to section 5 of the Act:

(a) the defendant shall apply to the Chief Justice for the designation of a judge to consider the application; and

(b) the designated judge shall order a conference to be held respecting the conduct of the action.

(2) If the Court certifies 2 or more actions as a class action pursuant to section 5 of the Act, the Court may:

(a) order the addition, deletion or substitution of parties;

(b) order the amendment of the pleadings; and

(c) make any other order that it considers appropriate.

Information Note

The Class Actions Act does not provide for a defendant class. Rule 2-10 therefore applies to a defendant class.

Application for certification

3-93(1) A notice of application for certification pursuant to clause 4(2)(b) or section 5 of the Act must be in Form 3-93.

(2) An application for a certification order pursuant to section 4 of the Act must be supported by an affidavit of the proposed representative plaintiff:

(a) deposing to the proposed representative plaintiff's willingness to be appointed;

(b) setting out the basis of the proposed representative plaintiff's personal claim, if applicable, and the reason the proposed representative plaintiff believes that common issues exist for the rest of the members of the class;

(c) setting out objective criteria for determining membership in the proposed class, and providing the proposed representative plaintiff's best information on the number of members in the proposed class;

(d) setting out sufficient information to establish that the proposed representative plaintiff would fairly and adequately represent the interests of the class and is aware of the responsibilities to be undertaken;

(e) exhibiting a plan for the class action that sets out a workable method of:

(i) advancing the action on behalf of the class; and

(ii) notifying class members of the action; and

(f) setting out sufficient information to establish that the proposed representative plaintiff does not have, on the common issues, an interest that is in conflict with the interests of other class members.

(3) An application for a certification order pursuant to section 5 of the Act must be supported by an affidavit of the defendant applying for certification:

(a) setting out the reason the defendant believes that common issues exist for the members of the proposed class;

(b) setting out objective criteria for determining membership in the proposed class; and

(c) providing the defendant's best information on the number of members in the proposed class.

(4) A notice of application for certification and the supporting materials must be filed and a copy served on all parties to the action.

(5) Unless the Court orders otherwise, there must be at least 14 days between:

(a) the service of a notice of application for certification and supporting materials; and

(b) the day set for the hearing.

(6) Unless the Court orders otherwise, a party opposing an application for certification must:

(a) file an affidavit in response; and

(b) serve a copy of the affidavit on all parties to the action at least 7 days before the day set for the hearing.

(7) A party filing an affidavit pursuant to subrule (6) must provide the party's best information on the number of members in the proposed class.

Amendments to pleadings in class actions

3-94 After a certification order is made pursuant to the Act, a party may amend a pleading only with the Court's permission.

Information Note

Rule 13-15 describes how class actions must be titled.

Discovery

3-95(1) If a class member is questioned pursuant to subsection 19(2) of the Act:

(a) rule 5-20 does not apply to that class member; and

(b) unless the Court orders otherwise, the evidence of that class member may not be read into evidence at the trial of the common issues.

(2) The Court may:

(a) require the parties to propose which class members should be questioned pursuant to subsection 19(2) of the Act;

(b) limit the purpose and scope of questioning of a class member; and

(c) determine the use that may be made of the evidence obtained on questioning of a class member.

Information Note

Section 20 of *The Class Actions Act* states the following:

> **20** A class member who fails to submit to an examination for discovery is subject to the sanctions set out in *The Queen's Bench Rules*.

For sanctions respecting a refusal or neglect in answering questions, please refer to rule 5-36.

Rule 3-95 applies to questioning of class members other than the representative plaintiff. The usual questioning rules would apply to the representative plaintiff who is a party to the action: see subsection 19(1) of *The Class Actions Act*.

Notices

3-96(1) If an agreement respecting fees and disbursements is summarized in the notice to class members, notice that the agreement is not enforceable unless approved by the Court pursuant to section 41 of the Act must be included.

(2) If an application for settlement has been filed, or a settlement has been approved, notice must be given by the representative plaintiff to the class members in accordance with the provisions of subsections 21(3) to (5) of the Act, unless the Court orders otherwise.

(3) Notice pursuant to section 23 of the Act may:

(a) state that common issues have been determined;

(b) identify the common issues that have been determined and explain the determinations made;

(c) state that members of the class or subclass may be entitled to individual relief;

(d) describe the steps that must be taken to establish an individual claim;

(e) state that failure on the part of a member of the class or subclass to take those steps will result in the member not being entitled to assert an individual claim except with leave of the Court;

(f) give an address to which members of the class or subclass may direct inquiries about the proceeding; and

(g) give any other information that the Court considers appropriate.

(4) The Court may order any appropriate means of giving notice pursuant to clause 21(4)(e) of the Act, including creating and maintaining an Internet site.

(5) If the Act or these rules require notice to class members, notice must be given to other interested parties, including the lawyer for a subclass, as directed by the Court.

Agreements respecting fees and disbursements

3-97(1) An application for approval of an agreement respecting fees and disbursements must be brought after:

(a) judgment on the common issues; or

(b) approval of a settlement, discontinuance or abandonment of the class action.

(2) The application pursuant to subrule (1):

(a) must be made to the judge who presided over the trial of the common issues, or who approved the settlement, discontinuance or abandonment, as the case may be; and

(b) must be made on that notice to class members that is required by the Court.

(3) If, on an application pursuant to subrule (1), the Court determines that the agreement ought not to be followed, the Court may amend the terms of the agreement.

PART 4: MANAGING LITIGATION

What this Part is about: This Part states that each party is responsible for managing litigation. Once a statement of claim, defence, reply and, in more complicated actions, a counterclaim or third party claim and related pleadings have been served and filed, each party knows what claims and defences are being made in an action. The rules then:

- require the parties to manage the litigation so that the parties know when important stages in the action should be complete;

- provide a means for the parties to obtain Court assistance for managing the litigation, including the appointment of a case management judge; and

- require the parties to participate in mandatory mediation and in a pre-trial conference.

This Part also includes:

- rules describing how an award for security for payment of costs can be obtained; and

- rules for a formal offer to settle the litigation and a description of the potential costs consequences when settlement is not pursued, to ensure that formal offers are given careful consideration.

Lastly, this Part deals with litigation delay, the effects of the death of a party and discontinuing an action.

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Part 4: Managing Litigation

PART 4: MANAGING LITIGATION

DIVISION 1
Responsibilities of the Parties

Responsibilities of the parties to manage litigation

4-1 The parties are responsible for managing their dispute and for planning its resolution in a timely and cost effective way.

What the responsibility includes

4-2 The responsibility of the parties to manage their dispute and to plan its resolution requires the parties:

(a) to act in a manner that furthers the purpose and intention of the rules described in rule 1-3;

(b) to respond in a substantive way and within a reasonable time to any proposal for the conduct of an action; and

(c) when the complexity or the nature of an action requires it, to apply to the Court for direction or request case management pursuant to rule 4-5.

Information Note

This Part does not apply to an action brought by originating application unless the parties agree otherwise or the Court orders otherwise. See rule 3-51 and rule 3-53.

Pursuant to rule 9-2, no trial date can be scheduled by the local registrar until the parties have engaged in a pre-trial conference, unless the Court orders otherwise.

DIVISION 2
Court Assistance in Managing Litigation

Issues of fact, preparing and settling

4-3(1) If in any cause or matter it appears to the Court that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues.

(2) If the parties differ respecting the issues directed pursuant to subrule (1), the issues must be settled by the Court.

Assistance by the Court

4-4(1) The Court may, at any time, direct the parties and any other person to attend a conference with the Court.

(2) A request for a conference pursuant to this rule must be in Form 4-4, and the party making the request shall:

(a) give one or more reasons for the conference in the request; and

(b) serve on every other party and file the request.

(3) On receiving a request for a conference, the local registrar shall schedule a date for the conference.

(4) The participants in the conference may consider:

(a) dispute resolution possibilities, the process for them and how they can be facilitated;

(b) simplification or clarification of a claim, a pleading, a question, an issue, an application or a proceeding;

(c) setting or adjusting dates by which a stage or a step in the action is expected to be complete;

(d) case management by a judge;

(e) practice, procedural or other issues or questions and how to resolve them;

(f) any other matter that may aid in the resolution or facilitate the resolution of a claim, application or proceeding or otherwise meet the purpose and intention of the rules described in rule 1-3.

(5) The Court may make a procedural order before, at or following the conference.

Information Note

If the parties desire trial management advice and meet the rest of the requirements in rule 6-23, a party may make an appearance day application pursuant to Subdivision 3 of Division 1 of Part 6.

Amended. Gaz. 13 Nov. 2015.

Request for case management

4-5(1) A request for a case management order must be in Form 4-5 and made to the Chief Justice, and a copy of the request must be served on every other party.

(2) The request must state whether any other party agrees with the request.

(3) An action commenced or continued pursuant to *The Class Actions Act* must have a designated judge for case management appointed pursuant to rule 3-90.

Appointment of case management judge

4-6 The Chief Justice may order that an action be subject to case management and appoint a judge as the case management judge for the action after having considered all the relevant circumstances, including any or all of the following:

(a) the purpose and intention of the rules described in rule 1-3;

(b) the complexity of the issues of fact or law;

(c) the importance to the public of the issues of fact or law;

(d) the number and type of parties or prospective parties, and whether they are represented;

(e) the number of proceedings involving the same or similar parties or causes of action;

(f) the amount of intervention by the Court that the proceeding is likely to require;

(g) the time required for questioning, if applicable, and for preparation for trial or hearing;

(h) the number of expert witnesses and other witnesses;

(i) the time required for the trial or hearing;

(j) whether there has been substantial delay in the conduct of the proceeding.

Authority of the case management judge

4-7(1) A case management judge, or, if the circumstances require, any other judge, may:

(a) order that steps be taken by the parties to identify, simplify or clarify the real issues in dispute;

(b) set or adjust dates by which a stage or a step in the action is expected to be complete and order the parties to comply with the dates;

(c) make an order to facilitate an application, proceeding, questioning or pre-trial proceeding;

(d) make an order to promote the fair and efficient resolution of the action by trial;

(e) facilitate efforts the parties may be willing to take towards the efficient resolution of the action or any issue in the action through negotiation or a dispute resolution process other than trial; and

(f) make any procedural order that the judge considers necessary.

(2) Unless the Chief Justice or the case management judge directs otherwise or these rules provide otherwise, the case management judge shall hear every application filed with respect to the action for which the case management judge is appointed.

Appearance at case management conference

4-8 A case management conference may take place either by personal appearance, video conference, teleconference or a combination of them.

Case management judge presiding at summary judgment hearing and trial

4-9 Unless every party and the judge agree, a case management judge shall not hear an application for summary judgment or preside at the trial of the action for which the case management judge is appointed.

DIVISION 3
Dispute Resolution

Subdivision 1
Mandatory Mediation

Mandatory mediation

4-10 The parties shall participate in mediation as required by *The Queen's Bench Act, 1998* and the regulations made pursuant to that Act.

Information Note

With some exceptions, parties in non-family law proceedings must participate in a mediation session following the close of pleadings before taking any further step in the action. See sections 42 to 44 of *The Queen's Bench Act, 1998*.

Subdivision 2
Pre-trial Conference

Obtaining a date for pre-trial conference

4-11(1) On the close of the pleadings, the parties may request a pre-trial conference by filing with the local registrar:

(a) a joint request in Form 4-11 that:

(i) contains a certificate of readiness;

(ii) confirms that efforts at settlement have been made;

(iii) sets out the estimated time required for the pre-trial conference and the trial; and

(iv) estimates the number of witnesses to be called at the trial; and

(b) a certified copy of the pleadings, but, in a proceeding commenced by petition, a certified copy of the petition and answer is not required.

(2) If one of the parties neglects or refuses to join in a joint request, the party wishing to obtain a pre-trial conference may obtain from the local registrar a date for a pre-trial conference by filing:

(a) the documents described in subrule (1) other than a joint request; and

(b) a certificate confirming that the opposite party was requested to execute a joint request but failed to do so within 20 days without stating any reason.

(3) If one of the parties refuses to join in a joint request, the party wishing to obtain a pre-trial conference may apply for an order scheduling a pre-trial conference date and a date by which the party refusing to join in a joint request must file the documents described in subrule (1) other than a joint request.

(4) The unsuccessful party to an application pursuant to subrule (3) shall immediately pay the costs of the application.

(5) The party obtaining a date for a pre-trial conference pursuant to subrule (3) or (4) shall immediately notify all other parties of the date, and, unless the Court orders otherwise, the pre-trial conference must proceed on that date.

(6) Notwithstanding subrule (1), if all the parties file a written request with the local registrar, they may apply to a judge to direct that a pre-trial conference be held.

(7) On an application pursuant to subrule (6), if the judge is satisfied that a pre-trial conference will substantially settle the proceedings, the judge may:

(a) direct that a pre-trial conference be held; and

(b) dispense with any or all of the requirements set out in subrule (1).

(8) A trial judge or a chambers judge may, on his or her initiative:

(a) order a pre-trial conference to be held respecting any proceeding coming before him or her; and

(b) conduct the pre-trial conference if appropriate to do so.

(9) The local registrar shall schedule a pre-trial conference date to ensure optimum use of court time, but shall endeavour to suit the convenience of the parties.

(10) The parties shall accept the date scheduled pursuant to subrule (9).

(11) If a pre-trial conference date has been scheduled, the party having carriage of the proceeding shall immediately pay the required fee for setting down.

Purpose of pre-trial conference

4-12(1) The parties shall make a genuine attempt to settle an action before a pre-trial conference.

(2) A pre-trial conference is not to replace normal negotiations between the parties.

(3) The goals of a pre-trial conference are:

(a) to allow the parties to participate in the problem-solving process;

(b) to allow the parties to receive the view of a trial judge as to the issues, both facts and law, in dispute, as far as the material before the pre-trial judge allows;

(c) to allow settlement options to be presented that would not necessarily be available at trial;

(d) to seek settlement of the dispute so as to improve the efficiency of the court system and to save time and costs for all parties and witnesses.

(4) A pre-trial conference must be for the purpose of attempting to settle the proceeding, and if that is not possible, to consider:

(a) the identification and simplification of the issues;

(b) the necessity or desirability of amendments to the pleadings;

(c) the possibility of obtaining admissions that will facilitate the trial;

(d) whether all necessary steps have been taken in preparation for trial;

(e) the possibility of settlement of specific issues;

(f) the quantum of damages;

(g) any other matters that may aid in the disposition of the proceedings;

(h) the actual trial time required; and

(i) the date for trial.

Pre-trial briefs

4-13(1) The parties shall file and exchange pre-trial briefs not later than 10 days before the date scheduled for pre-trial conference.

(2) Each pre-trial brief:

(a) must clearly state on the first page the name of the party on whose behalf it is filed;

(b) must include a concise summary of the evidence expected to be adduced;

(c) must include a concise statement of the issues in dispute and the law relating to those issues, together with a List of Authorities prepared in accordance with rule 13-38.1;

(d) subject to subrule (4), must be accompanied by all documents, or legible copies of documents, intended to be used at trial that may be of assistance to the pre-trial judge in achieving the purposes of a pre-trial conference, including medical and expert reports; and

(e) may be accompanied by a proposal for settlement of the issues involved in the proceedings that may include admissions for the purpose of the pre-trial conference or other statements relating to the issues that the party may choose not to have available to the trial judge.

(3) All documents and copies filed pursuant to clause (2)(d) must, at the request of the party producing them, be returned to that party at the conclusion of the pre-trial conference.

(4) If the parties agree in writing that a productive pre-trial conference is possible without medical or expert reports and that these reports are not critical to a liability or valuation issue, the parties shall file the written agreement, and not the reports, with the pre-trial brief.

(5) If the proceeding is to go to trial after the conclusion of the pre-trial conference, a proposal filed pursuant to clause (2)(e) must be returned to the party submitting it.

Amended. Gaz. 3 Apr. 2020.

Witness lists

4-14(1) Unless the Court orders otherwise, each party shall, not later than 10 days before the date scheduled for a pre-trial conference, serve on every other party and file a list of the witnesses the party may call at trial, other than expert witnesses who are to provide evidence pursuant to Division 3 of Part 5.

(2) Unless the Court orders otherwise, a witness list must include the full name and address of each listed witness.

(3) If a party who had provided a witness list or an amended witness list later learns that the list is inaccurate or incomplete, the party shall promptly:

(a) amend the witness list to make it accurate and complete; and

(b) serve a copy of the amended witness list on all parties and file the amended list.

(4) Nothing in this rule requires a party to call as a witness at trial an individual named as a witness on a witness list served by the party pursuant to subrule (1) or (3).

(5) This rule does not apply to family law proceedings.

Information Note

Expert reports must be served before the date scheduled for the pre-trial conference pursuant to rule 5-40, unless there is a written agreement.

Appraisal reports intended to be submitted in evidence must be served on every other party not less than 10 days before the date scheduled for a pre-trial conference pursuant to rule 5-46.

Medical reports intended to be used at trial must be served on every other party not less than 10 days before the date scheduled for a pre-trial conference pursuant to rule 5-47, unless there is a written agreement.

Participants at pre-trial

4-15(1) Unless the Court orders otherwise, every party shall appear with the party's lawyer, if any, at all pre-trial conferences.

(2) Unless the Court orders otherwise, a corporation shall have a representative present, in addition to its lawyer, at all pre-trial conferences.

(2.1) Unless the Court orders otherwise, in any action where the consent of an insurer may be required to settle the action, the insurer's claim representative shall be present at all pre-trial conferences.

(3) If a party is represented by a lawyer and wishes to dispense with the appearance of the party or a representative of a corporation, the lawyer shall send a written request, with reasons, to the local registrar.

(4) The local registrar shall present the request mentioned in subrule (3) to the pre-trial judge, who may:

(a) refuse or grant the request without hearing from all parties to the proceeding;

(b) grant the request with conditions, including a requirement that the party or representative must be available by conference telephone or immediately available for telephone communication; or

(c) order the request to proceed by way of application.

(5) Unless the Court orders otherwise, the lawyer representing a party at the pre-trial conference must be the lawyer who will be representing that party at the trial.

(6) A pre-trial judge may at any time request that any other person whose attendance may be of assistance be present at the pre-trial conference.

Information Note

If a trial date is scheduled at the pre-trial conference, a lawyer of record may not withdraw without the Court's permission: see rule 2-43.

Amended. Gaz. 13 Nov. 2015.

Use of transcript of questioning or affidavit in answer to written questions at pre-trial conference

4-16 The transcript of questioning pursuant to rule 5-29 and the affidavit in answer to written questions pursuant to rule 5-32:

(a) must be available for the use of the pre-trial judge; and

(b) at the conclusion of the pre-trial conference, must be resealed until trial.

Adjournment of pre-trial conference

4-17 A pre-trial conference may be adjourned from time to time at the discretion of the pre-trial judge.

Documents resulting from pre-trial conference

4-18(1) The only documents, if any, resulting from a pre-trial conference are to be:

(a) an agreement prepared by the parties and any other document necessary to implement the agreement;

(b) a consent order or consent judgment;

(c) an order for the preparation of a custody report, an access report or both pursuant to section 97 of *The Queen's Bench Act, 1998*;

(d) an order for costs; and

(e) if the matter is to proceed to trial, the pre-trial conference report form that includes:

(i) matters agreed on by the parties;

(ii) issues of fact and law in dispute;

(iii) whether required documents were filed;

(iv) whether there have been or will be any pre-trial applications relevant to the trial;

(v) the estimated number of witnesses, including expert witnesses;

(vi) the estimated length of trial; and

(vii) whether summaries, books of exhibits or books of authorities will be provided by the parties to the trial judge.

(2) In the absence of an order pursuant to clause (1)(d), costs must be costs in the cause.

Confidentiality and use of information

4-19(1) A pre-trial conference is a confidential process intended to facilitate the resolution of a claim, or if that is not possible, to manage the action until trial.

(2) Unless the parties otherwise agree in writing, statements made or documents generated for or in the pre-trial conference with a view to resolving the dispute:

(a) are privileged and are made without prejudice;

(b) must be treated by the parties and participants in the process as confidential and may only be used for the purpose of the pre-trial conference; and

(c) may not be referred to, presented as evidence or relied on, and are not admissible in a subsequent application or proceeding in the same action or in any other action, or in proceedings of a judicial or quasi-judicial nature.

(3) Subrule (2) does not apply to the documents referred to in rule 4-18.

Trial date

4-20 If the matter is to proceed to trial, the pre-trial judge shall direct the local registrar to schedule a date for trial.

Information Note

See also rule 9-2.

Trial judge other than pre-trial judge

4-21(1) A pre-trial judge shall not preside at the trial unless all parties and the judge consent in writing.

(2) This rule does not prevent or disqualify the trial judge from holding trial meetings subsequent to the pre-trial conference and before or during the trial, to consider any matter that may assist in the just, most expeditious or least expensive disposition of the proceeding.

Subdivision 3
Binding Pre-trial Conference

Definition

4-21.1 In this subdivision, **"binding pre-trial conference"** means a pre-trial conference in which, if settlement fails, the presiding judge may make a binding decision in accordance with terms of the written agreement signed by the parties to the action and executed in accordance with the rule 4-21.4.

Purpose of binding pre-trial conference

4-21.2(1) The parties shall make a genuine attempt to settle an action before requesting a binding pre-trial conference.

(2) A binding pre-trial conference is not to replace normal negotiations between the parties.

(3) The goals of a binding pre-trial conference are:

(a) to allow the parties to participate in the problem-solving process;

(b) to allow settlement options to be presented;

(c) to seek settlement of the dispute, or if settlement fails, to obtain a binding decision on one or more of the claims or issues in the dispute so as to improve the efficiency of the court system and to save time and costs for all parties and witnesses; and

(d) to facilitate the resolution of a dispute.

Application and procedure

4-21.3(1) On the close of pleadings, the parties may request a binding pre-trial conference by filing with the local registrar:

(a) a joint request:

(i) in Form 4-21.3A in proceedings commenced other than under Part 15 (Family Law Proceedings); or

(ii) in Form 4-21.3B in proceedings commenced under Part 15 (Family Law Proceedings);

(b) a certified copy of pleadings, but in a proceeding commenced under Part 15, certified copies of the petition and answer are not required; and

(c) a written agreement signed by the parties and executed in accordance with rule 4-21.4.

(2) A joint request for binding pre-trial conference must:

(a) contain a certificate of readiness;

(b) confirm that efforts at settlement have been made; and

(c) set out the estimated time required for the binding pre-trial conference.

(3) The local registrar shall schedule a binding pre-trial conference date to ensure optimum use of court time but shall endeavour to suit the convenience of the parties.

(4) The parties shall accept the date scheduled pursuant to subrule (3).

(5) If a binding pre-trial conference date has been scheduled, the party having carriage of the proceeding shall immediately pay the required fee for setting down.

Written agreement

4-21.4(1) The written agreement to participate in a binding pre-trial conference must be:

(a) in Form 4-21.4A in proceedings commenced other than under Part 15 (Family Law Proceedings); or

(b) in Form 4-21.4B in proceedings commenced under Part 15 (Family Law Proceedings).

(2) The written agreement to participate in a binding pre-trial conference must:

(a) be signed by each of the parties, separate and apart from the other party, and before a witness;

(b) contain an acknowledgment in writing by each party confirming that the signing party:

(i) has entered into the agreement voluntarily;

(ii) has executed the agreement separate and apart from the other party;

(iii) is aware of the nature and the effect of the agreement;

(iv) understands and consents to participate in the binding pre-trial conference process as prescribed by rules 4-21.1 to 4-21.92;

(v) understands and agrees that if the parties are unable to reach a settlement, the presiding judge may make a binding decision that may include costs; and

(vi) understands and agrees that a binding decision shall be deemed to be a consent order or judgment of the Court and cannot be appealed without leave of the presiding judge pursuant to section 38 of *The Queen's Bench Act, 1998*;

(c) contain a certificate of independent legal advice for each party executed in accordance with subrule (4) by the lawyer before whom the acknowledgment required pursuant to clause (b) is made;

(d) describe each party's right to withdraw their consent to participate in the binding pre-trial conference in accordance with rule 4-21.7; and

(e) set out the claims or issues that the presiding judge may determine in the absence of a settlement agreement at the conclusion of the binding pre-trial conference.

(3) Each party shall make the acknowledgment required pursuant to clause (2)(b) before a lawyer other than the lawyer acting in the matter for the other party or before whom the acknowledgment is made by the other party.

(4) The lawyer before whom an acknowledgment required pursuant to clause (2)(b) is made must execute and file a certificate of independent legal advice confirming that the party understands and consents to participate in the binding pre-trial conference process as prescribed by rules 4-21.1 to 4-21.92, including the understanding that, if the action does not settle, the presiding judge may make a binding judgment that may include costs.

Notice of assigned judge

4-21.5 At least 30 days before the date fixed for the binding pre-trial conference, the local registrar shall inform the parties of the judge assigned to conduct the binding pre-trial conference.

Binding pre-trial briefs

4-21.6(1) The parties shall file and exchange binding pre-trial briefs not later than 15 days before the date scheduled for the binding pre-trial conference.

(2) Each binding pre-trial brief:

(a) must clearly state on the first page the name of the party on whose behalf it is filed;

(b) must include a concise statement of the issues in dispute and the law relating to those issues, together with a list of the authorities prepared in accordance with rule 13-38.1(1)(b);

(c) must include a concise summary of the evidence that the party relies on;

(d) must be accompanied by all documents, or legible copies of documents, intended to be referenced at the binding pre-trial conference that may be of assistance to the presiding judge in achieving the purposes of a binding pre-trial conference, including medical and expert reports, financial documents and those documents and materials as may have been directed to be filed by the presiding judge at a pre-conference meeting as described in rule 4-21.8; and

(e) may be accompanied by a proposal for settlement of the issues involved in the proceedings that may include admissions for the purpose of the binding pre-trial conference or other statements relating to the issues that the party may choose.

Withdrawal of consent

4-21.7(1) A party may withdraw consent to participate in a binding pre-trial conference on any issues at any time up to 10 days before the commencement of the binding pre-trial conference by serving and filing a notice of withdrawal in Form 4-21.7.

(2) A party may seek leave of the Court to withdraw consent within the 10 days before the commencement of the binding pre-trial conference, and a judge may grant leave on such terms as the judge sees fit, including an order for costs.

(3) If consent is withdrawn, the binding pre-trial conference shall proceed as a pre-trial conference in accordance with Division 3, Subdivision 2 of this Part.

Pre-conference meeting

4-21.8 The parties shall attend any pre-conference meeting as may be directed by the presiding judge, by telephone or in person, to:

(a) determine if it is inappropriate to conduct a binding pre-trial conference in relation to one or more issues or claims submitted;

(b) confirm the issues to be determined;

(c) instruct the parties with respect to the process; and

(d) direct whether any additional documents must be filed, or other requirements met, in advance of the binding pre-trial conference.

Powers of judge

4-21.9(1) If the parties do not reach agreement on any or all of the issues that the parties have agreed may be determined in accordance with their written agreement, the presiding judge may do one or more of the following:

(a) make a binding decision on one or more of the issues or claims submitted by the parties for determination in accordance with the written agreement;

(b) adjourn the binding pre-trial conference or delay making a binding decision on such terms, conditions and directions that the presiding judge considers appropriate;

(c) determine it is not appropriate to make a decision on any or all of the issues;

(d) make an award of costs.

(2) If the presiding judge makes a binding decision under subrule (1), the decision shall be in the form of a written order or judgment.

(3) If the presiding judge makes an oral decision under subrule (1), the matter must proceed in open court for the purposes of recording the binding decision as an order or judgment of the court.

(4) In accordance with the written agreement of the parties, the binding decision is deemed a consent order or judgment as contemplated by section 38 of *The Queen's Bench Act, 1998*.

(5) If the presiding judge determines it is not appropriate to make a decision on any or all of the issues, the judge shall direct the local registrar to schedule a date for trial on any undetermined issues.

(6) The presiding judge shall not hear any further applications in the action nor preside at the trial unless all parties and the judge consent in writing.

Documents resulting from binding pre-trial conference

4-21.91(1) Unless the presiding judge directs otherwise, the binding pre-trial brief and all documents and copies thereof filed pursuant to rule 4-21.6 shall be returned to the parties on completion of the binding pre-trial conference.

(2) The only documents filed in conjunction with the binding pre-trial conference that shall remain on the court file at the conclusion of the binding pre-trial conference are:

(a) the written agreement of the parties to participate in the binding pre-trial conference filed pursuant to rule 4-21.3(1)(c);

(b) any settlement agreement prepared by the parties;

(c) any consent order or consent judgment prepared by the parties;

(d) any judgment or order or a transcript of proceedings made in open court at the time the presiding judge renders a binding decision on any or all of the issues determined in accordance with the written agreement;

(e) if the matter is to proceed to trial, the pre-trial conference report form that includes the matters described in rule 4-18(1)(e); and

(f) any other document that the presiding judge may direct.

Confidentiality and use of information

4-21.92 Rule 4-19 applies to binding pre-trial conferences except with respect to any issue or claim that results in a binding decision pursuant to rule 4-21.9.

Amended. Gaz. 18 Sep. 2020.

DIVISION 4
Security for Payment of a Costs Award

Security for costs in the discretion of the Court

4-22(1) Subject to the express provisions of any enactment and notwithstanding any other rule, the Court:

(a) has discretion respecting security for costs; and

(b) may order security for costs against any party to a proceeding, including a party who is ordinarily resident in Saskatchewan.

(2) The Court has discretion to determine the amount and form of security for costs.

Application procedure

4-23(1) A party may apply for an order for security for costs against another party at any time.

(2) A party applying for an order for security for costs shall serve the application on all other parties to the proceeding.

(3) An application for an order for security for costs must be supported by an affidavit of the party applying for the order, or an agent of that party, that:

(a) alleges the party applying for the order has a good claim or defence on the merits, as the case may be; and

(b) specifies the nature of that claim or defence.

Considerations for a security for costs order

4-24 The Court may order a party to provide security for payment of a costs award if the Court considers it just and reasonable to do so, taking into account all of the following:

(a) whether it is likely the applicant for the order will be able to enforce an order or judgment against assets in Saskatchewan;

(b) the ability of the respondent to the application to pay the costs award;

(c) the merits of the action in which the application is filed;

(d) whether an order to give security for payment of a costs award would unduly prejudice the respondent's ability to continue the action;

(e) any other matter the Court considers appropriate.

Contents of security for costs order

4-25(1) An order to provide security for payment of a costs award must, unless the Court orders otherwise:

(a) specify the nature and amount of the security to be provided, which may include payment into Court;

(b) require a party to whom the order is directed to provide the security no later than 2 months after the date of the order or any other time specified in the order;

(c) stay some or all applications and other proceedings in the action until the security is provided; and

(d) state that if the security is not provided in accordance with the order, as the case requires:

(i) all or part of an action is dismissed without further order; or

(ii) a claim or defence is struck out.

(2) If the security is given by bond, the bond must be given to the party requiring security unless the Court orders otherwise.

(3) If the security is given by money paid into Court, the money may, by agreement of the parties, be paid out and a bond substituted for it.

(4) As circumstances require, the Court may:

(a) increase or reduce the security required to be provided; and

(b) vary the nature of the security to be provided.

(5) The Court may order that security be given in stages as costs are incurred.

DIVISION 5
Settlement Using Court Process

Formal offers to settle

4-26(1) One party may serve on the party to whom the offer is made a formal offer to settle the action or a claim in the action at any time after a proceeding is commenced, but 10 days or more before:

(a) an application for summary judgment is scheduled to be heard;

(b) a trial is scheduled to start; or

(c) an application is scheduled to be heard or considered.

(2) To be a valid formal offer, the offer to settle must:

(a) be made within the period described in subrule (1);

(b) be in Form 4-26; and

(c) include the following information:

(i) the name of the party making the offer;

(ii) the name of the party or parties to whom the offer is made;

(iii) what the offer is and any conditions attached to it;

(iv) whether or not the amount of the offer is inclusive of interest and, if not, to what date and at what rate interest is payable under the terms of the offer;

(v) whether or not the amount of the offer is inclusive of costs and, if not, the amount or scale of the costs and the date to which they are payable under the terms of the offer;

(vi) the requirements that must be complied with to accept the offer;

(vii) a form of acceptance of the offer; and

(viii) notice of the costs consequences specified in rule 4-31.

(3) Unless a valid formal offer is withdrawn pursuant to subrule (4), the valid formal offer remains open for acceptance until the earlier of:

(a) the expiry of 30 days after the date of the offer or any longer period specified in the offer; and

(b) the start of the hearing of an application for summary judgment or the start of the trial, as the case may be.

(4) A valid formal offer may not be withdrawn unless the Court first gives permission for the withdrawal, and the Court shall give that permission only if the Court is satisfied that there are special circumstances that justify withdrawal.

(5) If the Court gives permission for a valid formal offer to be withdrawn, the withdrawal is effective as of the time of service of the notice of application for withdrawal on the party to whom the offer was made.

Acceptance of formal offer to settle

4-27(1) For the purpose of this Division, a valid formal offer to settle an action or a claim in an action may only be accepted in accordance with this rule.

(2) At any time a valid formal offer remains open for acceptance or before a valid formal offer is withdrawn, a party to whom a valid formal offer to settle has been made may accept the offer by serving on the party who made the offer notice that:

(a) the offer has been accepted; and

(b) the terms of any judgment or order in the offer have been agreed to.

(3) After the service and filing of the formal offer to settle and the acceptance of it, a party may:

(a) apply to the Court for judgment or an order in accordance with the agreement;

(b) continue the action with respect to any matter not covered by the judgment or order; and

(c) continue the action against any party who is not a party to the settlement.

If costs are not dealt with in formal offer

4-28 If a valid formal offer and acceptance filed pursuant to rule 4-27 does not deal with costs, either party may apply to the Court for an order pursuant to rule 11-1.

Status of formal offers

4-29 Unless agreed otherwise by the parties, a valid formal offer pursuant to this Division:

(a) is to be considered as an offer to settle that is made without prejudice; and

(b) is not an admission of anything.

Confidentiality of formal offers

4-30(1) Subject to subrule 4-26(4) and subrule (2), a valid formal offer is to be kept confidential and not disclosed to the Court until:

(a) it is accepted; or

(b) the remedy for the claim has been decided.

(2) Subrule (1) does not apply to an offer of a written or printed apology made pursuant to section 4 of *The Libel and Slander Act*.

Costs consequences of formal offer to settle

4-31(1) Subject to subrule (3), if a plaintiff makes a valid formal offer that is not accepted and subsequently obtains a judgment or order in the action that is equal to or more favourable to the plaintiff than the formal offer, the plaintiff is entitled to double the costs to which the plaintiff would otherwise have been entitled pursuant to rule 11-18 for all steps taken in relation to the action or claim after service of the formal offer, excluding disbursements.

(2) Subject to subrule (3), if a defendant makes a valid formal offer that is not accepted and a judgment or order in the action is made that is equal to or more favourable to the defendant than the formal offer, the defendant is entitled to double costs for all steps taken in the action in relation to the action or the claim after service of the formal offer.

(3) This rule does not apply:

(a) if costs are awarded pursuant to rule 11-1;

(b) in the case of an offer made with respect to an application for summary judgment, if the offer is made less than 10 days before the date scheduled to hear the application for summary judgment;

(c) in the case of an offer made with respect to any other matter, if the offer is made less than 10 days before the date scheduled for the trial to start;

(d) if an offer is withdrawn in accordance with subrule 4-26(4); or

(e) if in special circumstances the Court orders that this rule is not to apply.

When this Division does not apply

4-32 This Division does not apply to an action or a claim in an action with respect to which a defence of tender before the commencement of a proceeding is pleaded unless that defence is first withdrawn.

Information Note

Rule 4-33 sets out the conditions for a defence of tender before action.

DIVISION 6
Payment into and out of Court

Subdivision 1
Tender

Payment into Court where defence of tender

4-33(1) If a defence of tender before the commencement of a proceeding is pleaded, the defence may not be delivered or relied on unless concurrently with that pleading and on notice to the plaintiff, the sum of money alleged to have been tendered is paid into Court.

(2) A notice of payment into Court:

(a) may be in Form 4-33A; and

(b) must specify the claims with respect to which payment is made and the sum paid with respect to each of those claims.

(3) Payment pursuant to this rule may not be revoked except by leave of the Court.

(4) The plaintiff may accept the money in satisfaction of the claim or claims to which it relates by serving on the defendant and filing, with proof of service, a notice of acceptance.

(5) A notice of acceptance:

(a) must be in Form 4-33B; and

(b) must specify the claims to which it relates.

(6) If the plaintiff accepts the money in satisfaction of all claims made in the action:

(a) the defendant may assess his or her costs of the action;

(b) the amount of those assessed costs shall be paid to the defendant out of the money; and

(c) the balance of the money must be paid to the plaintiff.

Information Note

See rule 13-13 [Pleadings: payment into Court] regarding defence of tender as an exception to the rule against pleading payments into Court.

See section 79 of *The Queen's Bench Act, 1998* respecting a tender of amends in a case of torts.

Subdivision 2
Satisfaction

Payment into Court as satisfaction

4-34(1) At any time before commencement of the trial, a defendant may, on notice to the plaintiff, pay into Court a sum of money in satisfaction of:

(a) any claim made by a plaintiff; or

(b) if there is more than one claim, any one or more claims.

(2) A notice of payment into Court:

(a) may be in Form 4-33A; and

(b) must specify the claim or claims with respect to which payment is made and the sum paid with respect to each claim.

(3) Payment into Court pursuant to this rule is deemed to be an offer of compromise made without prejudice and is not to be taken as an admission of liability for the claim with respect to which it is made, unless otherwise shown in the notice of payment into Court.

(4) No communication of the fact that money has been paid into Court pursuant to this rule must be made to the trial judge or the jury until all questions of liability and the amount of debt or damages have been decided.

(5) A payment into Court pursuant to this rule is irrevocable for a period of 8 days after the date of service of the notice of payment into Court.

(6) After the expiry of the 8-day period mentioned in subrule (5) but before the commencement of the trial or the acceptance by the plaintiff, the defendant may revoke any payment by serving on the plaintiff a notice of revocation in Form 4-34.

(7) On filing the notice of revocation with proof of service, the money in Court must be paid out to the defendant.

(8) If money has been paid out to a defendant pursuant to a notice of revocation, the payment into Court is to have no effect on the costs of the action.

(9) The plaintiff may accept the money in satisfaction of the claim or claims to which it relates by serving on the defendant and filing, with proof of service, a notice of acceptance.

(10) A notice of acceptance:

(a) must be in Form 4-33B; and

(b) must specify the claims to which it relates.

(11) If the plaintiff accepts the money in satisfaction of all claims in the action:

(a) the plaintiff may assess his or her costs to the date of service with the notice of payment into Court; and

(b) the defendant may assess his or her costs from the date the plaintiff was served with notice of payment into Court.

(12) Following the assessment of costs pursuant to subrule (11), the money must be paid out to the plaintiff, after deducting the amount payable to the defendant for his or her assessed costs.

(13) If the money paid out to the plaintiff pursuant to subrule (12) is insufficient to pay the plaintiff's assessed costs and if the defendant fails to pay to the plaintiff an amount sufficient to pay the assessed costs in full within four days after the assessment, then the plaintiff may cause a judgment to be issued against the defendant for the unpaid portion of the assessed costs, including the costs of issuing the judgment.

Information Note

See Form 10-9G [Judgment for Costs After Acceptance of Money Paid Into Court].

Subdivision 3
General

Costs, where judgment less than amount paid into Court

4-35 If a plaintiff fails to obtain judgment for more than the amount paid into Court:

(a) the plaintiff is entitled to costs to the date of service of the notice of payment into Court; and

(b) the defendant is entitled to double costs from the date of service of the notice of payment into Court to the date of judgment.

Interest

4-36(1) The plaintiff is entitled to interest earned on money paid into Court from the date of the plaintiff's acceptance.

(2) The defendant is entitled to interest earned on money paid into Court by the defendant before acceptance by the plaintiff, unless that payment is not sufficient to satisfy the judgment obtained by the plaintiff, after deducting any costs to which the defendant may be entitled.

(3) In the circumstances mentioned in subrule (2), the plaintiff is entitled to the whole or any part of the interest that may be necessary to satisfy the plaintiff's judgment, unless the Court orders otherwise.

Payment out, where all claims not satisfied

4-37 If a plaintiff accepts money paid into Court with respect to one or more but not all of the claims in an action, the money must not be paid to the plaintiff except with:

(a) the written consent of the parties; or

(b) leave of the Court.

Money remaining in Court

4-38 If all of the money paid into Court is not taken out pursuant to this Division, the money remaining in Court must not be paid out except pursuant to:

(a) an order of the Court; or

(b) the written consent of the parties that is filed with the local registrar.

Defendant may surrender counterclaim

4-39 If a counterclaim is asserted, a defendant may offer to surrender his or her counterclaim and pay into Court a sum of money in satisfaction of one or more of the claims for which the plaintiff sues, in settlement of the action and counterclaim.

Where payment into Court by third party

4-40 The defendant shall not take out any money paid into Court by a third party without leave of the Court.

Payment out

4-41 If money is paid out of Court, payment must be made to:

(a) the person entitled to the money; or

(b) on the written authority of the person entitled to the money or by order of the Court, the person's lawyer.

Application to other claims

4-42 The rules in this Division apply with any necessary modification to any claim, counterclaim, cross-claim or third party claim.

Issuance of judgment

4-43 If money has been paid into Court, the local registrar shall not issue a judgment until:

(a) the fact that money has been paid has been drawn to the attention of the trial judge; or

(b) an agreement as to costs has been filed with the local registrar.

DIVISION 7
Delay in an Action

Application to deal with delay

4-44 If delay occurs in an action, on application the Court may:

(a) dismiss all or any part of a claim if the Court is satisfied that the delay is inordinate and inexcusable and that it is not in the interests of justice that the claim proceed; or

(b) make a procedural order or any other order provided for by these rules.

Agreement about delay

4-45 If 2 or more parties agree to delay an application or proceeding in an action, every other party must be served with notice of the agreement to delay and of the nature and extent of the delay.

Notice after one year

4-46(1) In any cause or matter in which there has been no proceeding for one year from the last proceeding, the party who desires to proceed shall give a month's notice to the other party of the party's intention to proceed.

(2) On the expiry of one month after the service on all parties of the notice, any party may proceed without further notice, but that further proceeding must be taken within one year of the date of that service.

(3) For the purposes of this rule, an application on which no order has been made, other than a request for a pre-trial conference or for a trial, is not deemed to be a proceeding within this rule.

(4) This rule does not apply to any defendant who has not appeared.

(5) A defendant mentioned in subrule (4) is not required to give a notice pursuant to this rule before applying to dismiss an action for want of prosecution.

DIVISION 8
Transfer and Transmission of Interest

Orders on transfer or transmission of interest

4-47(1) If at any time in an action the interest or liability of a party is transferred or transmitted to another person by assignment, bankruptcy, death or other means, the Court may, on application or on its own motion, make orders for:

(a) the addition, removal, substitution or arrangement of the parties or their personal representatives;

(b) the conduct of the proceedings; and

(c) the service of notice of any proceeding or order.

(2) The Court may at any time vary, rescind or modify any order made pursuant to this rule.

Death has no effect on an action after evidence heard

4-48 If a party dies before judgment but after all the evidence has been heard:

(a) the death does not terminate the action, whether or not the claim survives death; and

(b) judgment may be pronounced and entered despite the death.

DIVISION 9
Discontinuance

Discontinuance or withdrawal of claim

4-49(1) At any time before receipt of the statement of defence of any defendant, or after the receipt of the statement of defence and before taking any other proceeding in the action other than an interlocutory application, the plaintiff may wholly discontinue the plaintiff's action against the defendant or withdraw any part of the action by serving and filing a notice in Form 4-49.

(2) If the plaintiff serves and files a notice in accordance with subrule (1), the defendant is entitled to:

(a) if the action is wholly discontinued, the costs of the action; or

(b) if the action is not wholly discontinued, the costs occasioned by the part of the action that has been withdrawn.

(3) If the action is wholly discontinued, the costs to which the defendant is entitled pursuant to subrule (2) may be assessed on production of the notice served, and if not paid within 30 days after assessment, the defendant may issue an enforcement instruction with respect to those costs.

(4) A plaintiff may discontinue the action respecting one or more defendants.

(5) The discontinuance or withdrawal of all or part of the action may not be raised as a defence to any subsequent action for the same or substantially the same claim.

(6) Notwithstanding the expiration of the time limited in subrule (1), a plaintiff may give written notice to the other parties that at the trial of the action the plaintiff will apply to withdraw a part or parts of the plaintiff's claim that involve substantially a complete discontinuance.

(7) On an application pursuant to subrule (6), the trial judge may allow that withdrawal on those terms as to costs or otherwise as the judge considers just.

(8) Except as provided in this rule, a plaintiff shall not discontinue in whole or in part, unless:

(a) it is with the consent of the party or parties against whom discontinuance is sought; or

(b) it is with the leave of the Court.

(9) For the purposes of clause (8)(b), the Court may grant leave on those terms as to costs and as to any other action against all or any of the defendants and otherwise that the Court considers just.

Information Note

"Interlocutory application" is defined in Part 17.

Discretionary stay of subsequent action pending payment

4-50 If a subsequent action is brought before payment of the costs of a discontinued action for the same or substantially the same cause of action, the Court may in its discretion order a stay of that subsequent action until those costs have been paid.

Discontinuance of defence

4-51(1) A defendant may discontinue the whole of a statement of defence by serving a notice of discontinuance in Form 4-51 on the plaintiff and filing it.

(2) On filing a notice of discontinuance:

(a) the defendant is in default of defence; and

(b) the plaintiff is entitled to a costs award against the defendant for having responded to the discontinued defence.

PART 5: DISCLOSURE OF INFORMATION

What this Part is about: This Part describes the information and documents that the parties must disclose to each other and when and how the parties may question each other about the dispute. The Part requires the parties to share information relevant to any matter in issue in the action, in order to clearly identify:

- what is in dispute; and
- what evidence is available about the dispute.

This information helps minimize surprises during court proceedings and avoids delay later in the litigation, assists the parties in evaluating their own and the other party's case, and facilitates resolution of the dispute or elements of it.

This Part also contains rules for the evidence of experts and rules for medical examinations and reports.

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PART 5: DISCLOSURE OF INFORMATION

DIVISION 1
Purpose of Part

Purpose of this Part

5-1(1) Within the context of rule 1-3, the purpose of this Part is:

(a) to obtain evidence that will be relied on in an action;

(b) to narrow and define the issues between parties;

(c) to encourage early disclosure of facts and documents;

(d) to facilitate evaluation of the parties' positions and, if possible, resolution of issues in dispute; and

(e) to discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases the cost of them.

(2) The Court may give directions or make any orders necessary to achieve the purpose of this Part.

Information Note

This Part does not apply to actions started by an originating application unless the parties otherwise agree or the Court otherwise orders. See rule 3-51.

DIVISION 2
How Information is Disclosed

Subdivision 1
Introductory Matters

Disclosure not admission of relevancy

5-2 The disclosure or production of a document pursuant to this Division alone is not to be considered as an agreement or acknowledgement that the document is admissible or relevant to any matter in issue.

Modification or waiver of this Part

5-3(1) The Court may modify or waive any right or power pursuant to a rule in this Part or make any order warranted in the circumstances if:

(a) a person acts or threatens to act in a manner that is vexatious, evasive, abusive, oppressive, improper or tediously lengthy; or

(b) the expense, delay, danger or difficulty in complying with a rule would be grossly disproportionate to the likely benefit.

(2) In addition to making a procedural order, the Court may do any one or more of the following:

(a) make a costs award pursuant to Part 11 or require an advance payment against costs payable, or both;

(b) order future questioning to be conducted before a judge or person designated by the Court;

(c) make any other order respecting an action or an application or proceeding the Court considers necessary in the circumstances.

Information Note

A procedural order may include any order described in rule 1-5 or an order pursuant to any other rule respecting practice or procedure.

Confidentiality and use of information

5-4(1) Subject to subrule (2), the information and documents described in subrule (3) must be treated as confidential and may only be used by the recipient of the information or documents for the purpose of carrying on the action in which the information or documents were provided or disclosed unless:

(a) the Court otherwise orders;

(b) the parties otherwise agree; or

(c) it is otherwise required or permitted by law.

(2) If, in the course of carrying on the action in which the information or documents described in subrule (3) were provided or disclosed, the recipient of the information or documents finds it necessary to file the document with the Court or make reference to the information or documents in materials filed with the Court on an application not determinative of the merits of the action, the information or documents or any reference to the information or documents must be sealed in a form satisfactory to the local registrar or a judge when filed, unless:

(a) the Court otherwise orders; or

(b) the parties otherwise agree.

(3) For the purposes of this rule, the information and documents are the following:

(a) information provided or disclosed by one party to another in an affidavit served pursuant to this Division;

(b) information provided or disclosed by one party to another in a document referred to in an affidavit served pursuant to this Division;

(c) information recorded in a transcript of questioning made or in answers to written questions given pursuant to this Division.

Subdivision 2
Disclosing and Identifying Documents Relevant to Any Matter in Issue

When an affidavit of documents must be served

5-5(1) Every party shall serve an affidavit of documents on each of the other parties in accordance with the period specified in subrule (2), (3) or (4).

(2) The plaintiff shall serve an affidavit of documents on each of the other parties within 30 days after the date that the last statement of defence is filed.

(3) The defendant shall serve an affidavit of documents on each of the other parties within 30 days after the date the defendant is served with the plaintiff's affidavit of documents.

(4) A third party defendant who has filed a statement of defence shall, within 30 days after that filing, serve an affidavit of documents on each of the other parties.

(5) Unless the Court orders otherwise, an affidavit of documents must not be filed with the Court.

(6) Unless the Court orders otherwise, this rule does not apply to family law proceedings.

Information Note

An affidavit of documents must not be filed unless it is needed for the purpose of an application or at trial.

Form and content of affidavit of documents

5-6(1) An affidavit of documents must:

(a) be in Form 5-6; and

(b) disclose all documents relevant to any matter in issue in the action.

(2) The affidavit of documents must also:

(a) specify which of the documents are in the possession, custody or control of the party on whose behalf the affidavit is made;

(b) specify which of those documents, if any, the party objects to produce and the grounds for the objection;

(c) for those documents for which there is no objection to produce, contain a notice stating:

(i) the time when the documents may be inspected, which must be within 10 days after the affidavit is served; and

(ii) the place where the documents may be inspected, which must be:

(A) the address for service of the party serving the affidavit;

(B) a place agreed on by the parties or ordered by the Court; or

(C) if the documents are in constant use, the place where they are usually kept;

(d) specify which documents relevant to any matter in issue the party previously had in the party's possession, custody or control and:

(i) the time when, and the manner in which, those documents ceased to be in the party's possession, custody or control; and

(ii) the present location of the documents, if known; and

(e) specify that the party does not have and has never had any other document relevant to any matter in issue in the party's possession, custody or control.

(3) If a party does not have and has never had any documents relevant to any matter in issue in the party's possession, custody or control, the affidavit must say so.

Information Note

Electronic documents are included in the definition of "document". Please see Practice Directive CIV-PD No.1 entitled "E-discovery guidelines". Practice Directives may be viewed online at <http://www. publications.gov.sk.ca/details.cfm?p=69850>.

The Court may give directions to facilitate disclosure and examination of documents that may be costly or lengthy. See subrule 5-1(2) and rule 1-5.

Amended. Gaz. 13 Nov. 2015.

Electronic documents

5-7 Notwithstanding any other provisions of this Part, the Practice Directive on E-Discovery in force from time to time applies to the disclosure, discovery and inspection of electronic documents.

Listing documents

5-8(1) Each document in an affidavit of documents must:

(a) be numbered in a convenient order; and

(b) be briefly described.

(2) A group of documents may be bundled and listed once pursuant to subrule (1) if:

(a) the documents are all of the same nature; and

(b) the bundle is described in sufficient detail to enable another party to understand what it contains.

(3) For each document, or bundle of documents, that a party objects to produce, the affidavit of documents must identify the grounds for the objection.

Who makes an affidavit of documents

5-9(1) Subject to subrule (2), an affidavit of documents must be sworn or affirmed by:

(a) the party;

(b) if the party is a corporation, by a member of the corporation's senior management; or

(c) if a litigation representative is appointed for a party, by the party's litigation representative.

(2) A suitable person, other than the lawyer of record of the party, may swear or affirm the affidavit of documents if:

(a) it is inconvenient for the party, the member of the corporation's senior management or the litigation representative to do so; and

(b) the parties agree or the Court so orders.

(3) If the party is represented by a lawyer, the lawyer shall certify on the affidavit of documents that the lawyer has explained to the person swearing or affirming the affidavit:

(a) the necessity of making full disclosure of all documents relevant to any matter in issue in the action; and

(b) what kinds of documents are likely to be relevant to the allegations made in the pleadings.

Subsequent disclosure of documents

5-10(1) If, after a party has served an affidavit of documents on another party, the first party finds, creates or obtains possession, custody or control of a document relevant to any matter in issue not previously disclosed, the first party shall:

(a) immediately give notice of it to each of the other parties;

(b) on written request and on payment of reasonable copying expenses, supply each of the other parties with a copy of it; and

(c) not later than 10 days before the date scheduled for pre-trial conference, serve a supplementary affidavit of documents on each of the other parties.

(2) A supplementary affidavit of documents must not be filed with the Court unless the Court orders otherwise.

Notice to produce documents

5-11(1) Every party is entitled at any time to give notice in writing to any other party in whose pleadings, affidavits or affidavit of documents reference is made to any document:

(a) to produce that document for inspection by the party giving the notice or for inspection by the party's lawyer; and

(b) to permit the party or the party's lawyer to make copies of the document.

(2) A notice to produce documents mentioned in subrule (1) must be in Form 5-11A.

(3) The party to whom a notice to produce documents pursuant to subrule (1) is given shall, within 2 days after service of that notice, serve on the party giving the notice a notice to inspect documents in Form 5-11B stating:

(a) a time at which the documents that the party giving the notice to inspect documents does not object to produce may be inspected; and

(b) the place at which the documents may be inspected, which must be one of the following:

(i) that party's address for service;

(ii) a place agreed to by the parties; or

(iii) a place ordered by the Court.

(4) For the purposes of clause (3)(a), the time at which documents may be inspected must be within 3 days after the service of the notice to produce documents.

(5) Notwithstanding clause (3)(b), bankers' books or other books of account or books in constant use for the purpose of any trade or business may be produced at their usual place of custody.

(6) On assessment of costs, no allowance is to be made for any notice to produce or for inspection unless it is shown to the assessment officer that there was good and sufficient reason for giving that notice or making that inspection.

(7) If a notice to inspect documents has been given, the party giving the notice shall:

(a) at the time and place stated in the notice:

(i) produce for inspection by the party requiring the documents all those documents that are in the possession, custody or control of the party giving the notice and which that party does not object to produce; and

(ii) permit the party requiring the documents to inspect the documents and to make copies of them; or

(b) on payment of the proper fees, deliver to the party requiring the documents copies of all the documents that the party may require.

Default in disclosure or production

5-12(1) A party desiring production of documents may apply to the Court for an order mentioned in subrule (2) if any party:

(a) has neglected, refused or objected to serve an affidavit of documents in accordance with this subdivision;

(b) has served an affidavit of documents that is not satisfactory to a party entitled to be served with that affidavit;

(c) has made a claim of privilege with respect to documents referred to in an affidavit of documents;

(d) having been served with a notice to produce documents pursuant to rule 5-11, has neglected or refused to produce any document mentioned in that notice;

(e) has neglected to give notice to inspect documents or, having given that notice, has neglected or refused:

(i) to produce the documents for inspection;

(ii) to permit the lawyer for the other party to make copies of the documents; or

(iii) to furnish the lawyer for the other party with copies of those documents on payment of the proper fees; or

(f) has offered production at a place elsewhere than the address for service unless these rules provide for another place.

(2) In the circumstances mentioned in subrule (1), the Court may make any of the following orders:

(a) an order requiring the other party to produce documents;

(b) an order for further or better production of documents;

(c) an order for inspection;

(d) an order determining whether documents with respect to which privilege is claimed are in fact privileged.

(3) In an order made pursuant to subrule (2), the Court may make an order for production or inspection of documents in any manner that the Court thinks just.

(4) If on an application pursuant to subrule (1) any privilege is claimed for any document, the Court may:

(a) inspect the document for the purpose of deciding the validity of the claim for privilege; and

(b) consider all relevant evidence that may be adduced tending to establish or destroy the claim for privilege.

(5) On any application pursuant to subrule (1), the Court may permit cross-examination under oath or affirmation of a party on the original or any supplementary affidavit of documents.

(6) If an order is made determining that any documents with respect to which privilege is claimed are in fact privileged, the documents must be returned to the party claiming privilege.

Verified copies

5-13(1) If a party applies to inspect any business books, the Court may, instead of ordering inspection of the original books, order a copy of any entries in the original books to be furnished and proved by the affidavit of a person who has verified the copy by comparing them with the original entries.

(2) An affidavit mentioned in subrule (1) must state:

(a) whether or not there are in the original book any erasures, interlineations or alterations; and

(b) if there are erasures, interlineations or alterations, what they are.

(3) Notwithstanding that a copy of entries has been supplied in accordance with this rule, the Court may order inspection of the business book from which the copy was made.

Non-compliance with notice or order for disclosure or inspection

5-14(1) In this rule, **"party in non-compliance"** means a party who neglects or refuses:

(a) to serve an affidavit of documents in accordance with this subdivision;

(b) to produce for inspection any document for which notice to produce documents for inspection has been given; or

(c) to comply with any order for production or inspection pursuant to rule 5-12.

(2) A party in non-compliance is liable:

(a) if the party is a plaintiff, to have the party's action dismissed; or

(b) if the party is a defendant, to have the party's defence, if any, struck out and to be placed in the same position as if the party had not defended.

(3) In addition to any other order or sanction that may be imposed, the Court may award double costs of the application pursuant to this rule against a party in non-compliance.

Obtaining documents from others

5-15(1) On application, and after notice of the application is personally served on the person affected by it, the Court may order the production of a document from a person who is not a party at a date, time and specified place if:

(a) the document is in the possession, custody or control of that person;

(b) there is reason to believe that the document is relevant to any matter in issue; and

(c) the person who has possession, custody or control of the document might be required to produce it at trial.

(2) In addition to an order pursuant to subrule (1), the Court may give directions respecting the preparation of a certified copy of a document that may be used for all purposes instead of the original, saving all just exceptions.

(3) The person producing a document pursuant to this rule is entitled to receive the same conduct money that the person would be entitled to receive if he or she were questioned pursuant to Subdivision 3.

(4) Subject to subrule (5), the costs of an application must be borne by the party making the application.

(5) If the Court is satisfied that, by reason of the production of the document, there has been a saving of expenses, the Court may award the whole or part of those costs to the party making the application.

Admissions of authenticity of documents

5-16(1) In this rule, **"authentic"** includes the fact that:

(a) a document that is said to be an original was printed, written, signed or executed as it purports to have been; and

(b) a document that is said to be a copy is a true copy of the original.

(2) Subject to subrules (3), (4) and (5), a party who makes an affidavit of documents or on whose behalf an affidavit of documents is served and a party on whom an affidavit of documents is served are both presumed to admit that:

(a) a document specified or referred to in the affidavit is authentic; and

(b) if a document purports or appears to have been transmitted, the original was sent by the sender and was received by the addressee.

(3) Subrule (2):

(a) does not apply if the maker or the recipient of the affidavit objects in accordance with subrule (4);

(b) does not prejudice the right of a party to object to the admission of a document in evidence; and

(c) does not constitute an agreement or acknowledgment that the document is relevant to any matter in issue.

(4) The maker or recipient of an affidavit of documents is not presumed to make the admission mentioned in subrule (2) if, within 1 month after the date the documents are produced, the maker or recipient serves notice on the other party that the authenticity or transmittal of a document, as the case may be, is disputed and that it must be proved at trial.

(5) This rule does not apply to a document whose authenticity, receipt or transmission has been denied by a party in the party's pleadings.

Information Note

A party who invokes subrule (4) unreasonably may be ordered to pay costs pursuant to subrule 11-1(4).

Undisclosed documents not to be used without permission

5-17(1) This rule applies to a party who:

(a) does not disclose a document relevant to any matter in issue in an affidavit of documents referred to in rule 5-6;

(b) does not disclose as required by rule 5-10 a document relevant to any matter in issue that is found, created or obtained; or

(c) does not produce a document relevant to any matter in issue in accordance with a valid request to do so under rule 5-11.

(2) A party described in subrule (1) shall not use in evidence a document that has not been disclosed in the action unless:

(a) the parties otherwise agree; or

(b) the Court otherwise orders on the basis that there was a sufficient reason for the failure to disclose.

Subdivision 3
Questions to Discover Documents and Information Relevant to Any Matter in Issue

People who can be questioned

5-18(1) Subject to Part 15, any party to an action or issue may:

(a) without order, be questioned before the trial about information relevant to any matter in issue by any party adverse in interest; and

(b) be compelled to attend and testify in the same manner, on the same terms with respect to conduct money and otherwise and subject to the same rules of examination as a witness except as otherwise provided in this Division.

(2) A person for whose immediate benefit an action is brought or defended must be regarded as a party for the purpose of questioning.

(3) If an action is brought by an assignee of a chose in action, the assignor may, without order, be questioned.

Information Note

For class actions, refer to sections 19 and 20 of *The Class Actions Act* regarding who can be questioned and the sanctions for refusing to submit to questioning.

Questioning one who is or has been an officer or employee of a corporation

5-19(1) In the case of a corporation, anyone who is or has been an officer or employee of the corporation may:

(a) without order, be questioned before the trial by any party adverse in interest to the corporation; and

(b) be compelled to attend and testify in the same manner as a witness.

(2) After questioning anyone who is or has been an officer or employee of a corporation, a party may not question any other person who is or has been an officer or employee of the corporation without an order of the Court.

(3) The questioning of a person who is an employee of a corporation, or who has been an officer or employee of a corporation, must not be used in evidence.

(4) The questioning of a person who is an officer of the corporation must only be used as evidence against the corporation if permitted in accordance with subrules (5) to (7).

(5) Any party desiring to question an officer of a corporation for the purpose of using the questioning as evidence may apply to the Court to designate the proper person to be so questioned.

(6) On an application pursuant to subrule (5) and after making any inquiries that the Court considers fit, the Court shall designate the proper person to be questioned, and the questioning of the person designated may be used as evidence against the corporation, saving all just exceptions.

(7) If the parties agree on the proper person to be questioned, the Court is not required to make any designation pursuant to subrule (6), and the questioning of that person may be used as evidence against the corporation, saving all just exceptions.

When non-parties may be questioned

5-20(1) The Court may grant leave to question any person who may have information relevant to any matter in issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation.

(2) The Court may grant leave pursuant to subrule (1) on any terms respecting costs and other matters that the Court considers just.

(3) An order pursuant to subrule (1) must not be made unless the Court is satisfied that:

(a) the applicant has been unable to obtain the information from other persons whom the applicant is entitled to question or from the person the applicant seeks to question;

(b) it would be unfair to require the applicant to proceed to trial without having the opportunity of questioning the person; and

(c) the questioning will not:

(i) unduly delay the commencement of the trial of the action;

(ii) entail unreasonable expense for other parties; or

(iii) result in unfairness to the person the applicant seeks to question.

(4) Any party who attended or was represented on the questioning is entitled to a copy of the transcript or affidavit in answer, as the case may be, on payment of the appropriate fee, unless the Court orders otherwise.

(5) The questioning party is not entitled to recover the costs of the questioning from another party.

(6) The evidence of a person questioned pursuant to this rule must not be read into evidence at trial pursuant to rule 5-34.

Costs of questioning

5-21 If, in the opinion of the Court, questioning has been held unreasonably, vexatiously or at unnecessary length, the party at fault shall bear the costs occasioned by the questioning.

When questioning is to take place

5-22(1) Unless the parties otherwise agree, or the Court in exceptional circumstances otherwise orders, a party may not question a party or person pursuant to this Division unless the questioning party has served an affidavit of documents on the party adverse in interest.

(2) Subject to subrule (1), the questioning of a person is to take place as follows:

(a) in the case of questioning by the plaintiff, at any time after:

(i) the statement of defence of the party to be questioned has been served on the plaintiff; or

(ii) the time for serving the statement of defence has expired;

(b) in the case of questioning by a defendant, at any time after the defendant has served a statement of defence.

Appointment for questioning a person who resides in Saskatchewan

5-23(1) If a party is entitled to question a person who resides in Saskatchewan:

(a) the questioning may be held by consent before an official court reporter;

(b) the party may procure an appointment for questioning from the local registrar of the judicial centre at which the proceeding is commenced or the judicial centre to which the proceeding has been transferred; or

(c) the Court may order the questioning to be held before any person and at any place.

(1.1) The appointment for questioning must:

(a) be in Form 5-23; and

(b) fix the time and place for the questioning.

(2) A party liable to questioning, or a person who is an officer or employee of a corporation and liable to questioning, who resides in Saskatchewan shall attend for questioning:

(a) in accordance with the consent pursuant to clause (1)(a); or

(b) if:

(i) not less than 10 days before the day appointed for the questioning, service of a copy of the appointment for questioning pursuant to clause (1)(b) or of the order for questioning pursuant to clause (1)(c), as the case may be, has been made on the party's lawyer, if any, or on the corporation's lawyer, as the case may be; and

(ii) proper conduct money has been paid or tendered to the lawyer.

(3) The lawyer mentioned in clause (2)(b) shall:

(a) immediately communicate the consent, appointment or order to the person required to attend for questioning; and

(b) not apply the conduct money mentioned in subclause (2)(b)(ii) towards any debt due to the lawyer, or any other person, or pay the money other than to the person required to attend for questioning for his or her conduct money.

(4) The conduct money mentioned in subclause (2)(b)(ii) is not subject to attachment, garnishment, seizure or other similar legal process.

(5) Notwithstanding anything in this rule, the person to be questioned may be served personally with a subpoena requiring his or her attendance at the time and place consented to, appointed or ordered for the questioning.

(6) If a subpoena is served pursuant to subrule (5):

(a) the conduct money mentioned in subclause (2)(b)(ii) must be paid to the person required to attend for questioning at the time of service; and

(b) a copy of the subpoena must be served on the person's lawyer, if any, or on the lawyer of the corporation of which the person to be questioned is or has been an officer or employee, as the case may be, at least 48 hours before the time fixed for the questioning.

Information Note

Rules regarding subpoenas are found in Division 3 of Part 9.

Amended. Gaz. 13 Nov. 2015.

Questioning a person who resides outside Saskatchewan

5-24(1) A party liable to questioning, or a person who is an officer or employee of a corporation and liable to questioning, who is not in Saskatchewan may, by order of the Court, be questioned before any person and at any place that the Court may order.

(2) A copy of the order for questioning under subrule (1) must be served:

(a) on the person to be questioned; and

(b) subject to subrule (3), on the agent of the lawyer of the party to be questioned or of the corporation, as the case may be, at least 48 hours before the time fixed for the questioning.

(3) If no agent of the lawyer of the party to be questioned or of the corporation has been appointed, service of the order for questioning is not required.

Preparation for questioning

5-25 Unless the Court otherwise orders, a person to be questioned pursuant to this Division:

(a) shall inform himself or herself of documents relevant to any matter in issue and of information relevant to any matter in issue before questioning pursuant to this Division;

(b) shall bring to the questioning any documents likely to be required with respect to which there is no claim of privilege;

(c) shall give appropriate evidence of the documents relevant to any matter in issue and of information relevant to any matter in issue; and

(d) is compellable to give the names and addresses of all persons who reasonably might be expected to have knowledge relevant to any matter in issue in the action.

Explanatory questioning and re-questioning

5-26(1) Any person questioned may:

(a) be further questioned on his or her own behalf, or on behalf of the corporation of which he or she is or was an officer or employee, in relation to any matter respecting which he or she has been so questioned; and

(b) be re-questioned.

(2) Any explanatory questioning and re-questioning must be proceeded with immediately after questioning by the other party.

Objections by witness

5-27(1) If a person being questioned objects to any question or questions put to him or her, the official court reporter shall take down:

(a) the question or questions so put; and

(b) the objection of the witness to the question or questions.

(2) The questioning party shall file the questions and objections mentioned in subrule (1) with the local registrar in whose office the proceedings are pending.

(3) On application, the Court shall decide the validity of any objections.

Information Note

See rule 5-36 regarding possible sanctions for failure to answer any lawful question.

Questioning under oath or affirmation

5-28(1) A person being questioned must be sworn or affirmed before the person is questioned.

(2) The oath or affirmation must be administered by a judge, local registrar or official court reporter.

Transcript of oral questioning

5-29(1) Unless otherwise ordered or agreed:

(a) the questioning must be taken by an official court reporter;

(b) the questioning must be taken down by question and answer either in shorthand or recorded in a recording device in the presence of a court transcriber appointed pursuant to *The Court Officials Act, 2012;*

(c) the deposition so taken must be transcribed or be caused to be transcribed by the official court reporter.

(2) The official court reporter shall certify the transcription mentioned in clause (1)(c) to be a correct transcription of the questions and answers so taken or dictated.

(3) A copy of the deposition taken and certified in accordance with this rule must be received in evidence saving all just exceptions.

(4) The deposition taken in accordance with this rule:

(a) must be sealed and filed by the official court reporter in the office of the local registrar of the Court in which the proceedings are being carried on; and

(b) must not be inspected by anyone without an order of the Court.

(5) Copies of the deposition taken in accordance with this rule may be delivered directly to any of the parties who require those copies or their lawyers.

(6) For the information of the assessment officer, the official court reporter taking the questioning shall note on every deposition the length and time occupied by the questioning.

Amended. Gaz. 13 Nov. 2015.

Exhibits on questioning to be marked and produced at trial

5-30(1) The questioning party may direct that any exhibit marked on a questioning need not be filed with the official court reporter.

(2) If a direction is made pursuant to subrule (1) respecting an exhibit, the exhibit must be available to be produced at the trial of the action without notice.

Continuing duty to disclose

5-31(1) A person who is or has been the subject of questioning shall, by affidavit, correct an answer if:

(a) the answer was incorrect or misleading; or

(b) an answer becomes incorrect or misleading as a result of new information.

(2) The correcting affidavit must be made and served on each of the other parties as soon as is practicable after the person realizes that the answer was or has become incorrect or misleading.

Written questions

5-32(1) A party may serve written questions in Form 5-32 on any other party, or on any person who is or has been an officer or employee of any other party that is a corporation, within the period that is:

(a) at least 30 days before the date consented, appointed or ordered for the questioning of the other party or officer or employee; and

(b) not less than 60 days before the date scheduled for a pre-trial conference.

(2) The number of written questions to be served pursuant to subrule (1) must not exceed 25 unless the parties otherwise agree.

(3) A person to whom written questions are directed shall serve an answer by affidavit to the written questions within 21 days.

(4) If a person objects to answering a written question on the grounds of privilege or on the grounds that it is not relevant to any matter in issue in the action, the person may make the objection in an affidavit in answer.

(5) If a person to whom written questions have been directed answers any of them insufficiently, the Court may require the person to make a further answer either by affidavit or on oral questioning.

(6) If a party objects to a written question on the grounds that it will not further the purpose and intention of these rules:

(a) the party may apply to the Court to strike out the written question; and

(b) the Court shall take into account any offer by the party to make admissions, to produce documents or to give oral discovery.

(7) A person who has given an answer to a written question shall, by affidavit, correct an answer if the person later learns that the answer is incorrect or misleading.

(8) The correcting affidavit mentioned in subrule (7) must be made and served on the other party as soon as is practicable after the person realizes that the answer was or has become incorrect or misleading.

(9) Any affidavit in answer to written questions:

(a) must be sealed and filed by the questioning party in the office of the local registrar of the Court in which the proceedings are being carried on; and

(b) must not be inspected by anyone without an order of the Court.

(10) Copies of the affidavit in answer to written questions may be delivered directly to any of the parties who require those copies or their lawyers.

(11) This rule does not apply to family law proceedings.

Undertakings

5-33(1) A person answering questions shall undertake to inform himself or herself and provide an answer, or produce a document, within a reasonable time if, during questioning, the person:

(a) does not know the answer to a question but would have known the answer if the person had reasonably informed himself or herself; or

(b) has under the person's control a document relevant to any matter in issue that is not privileged.

(2) After the undertaking has been discharged, the person who gave the undertaking may be questioned on the answer given or document provided.

Use of transcript and answers to written questions

5-34(1) Subject to all just exceptions, a party, in support of an application or proceeding or at trial, may use in evidence:

(a) any part of the transcript of questioning or affidavit in answer to written questions of the opposite party without putting in the whole transcript or affidavit; and

(b) subject to subrules 5-19(5) to (7), any part of the transcript or affidavit of a designated officer of a corporation that is adverse in interest.

(2) If only part of the transcript of questioning or affidavit in answer to written questions of the opposite party is put in evidence pursuant to subrule (1), the opposite party may apply to the judge to consider certain designated parts of the transcript or affidavit that may explain those portions of the transcript or affidavit that are put in evidence.

(3) On an application pursuant to subrule (2), if the judge is of the opinion that any other part is so connected with the part put in evidence that the last mentioned part ought not to be used without that other part, the judge shall direct that other part to be put in evidence by way of explanation but not as part of the evidence of the party putting in the portions of the transcript or affidavit in the first instance.

Information Note

Rule 9-16, in the limited circumstances described in that rule, permits transcript evidence pursuant to this Part to be admitted as evidence.

Special report of official court reporter

5-35(1) If requested, the official court reporter shall make a special report to the Court in which the proceedings are pending that deals with:

(a) the questioning; and

(b) the conduct or absence of any person in relation to the questioning.

(2) The special report mentioned in subrule (1) is admissible in evidence as proof, in the absence of evidence to the contrary, of the truth of the matters contained within the special report.

Penalties for refusal or neglect to answer

5-36(1) This rule applies to a person who:

(a) refuses or neglects to attend at the time and place consented to, appointed or ordered for their questioning;

(b) refuses to be sworn or to take an affirmation;

(c) refuses to answer any lawful question put to him or her by any party entitled to do so or by the party's lawyer; or

(d) having undertaken at the questioning to answer at a later date any lawful question put to him or her, fails to do so within a reasonable time after the questioning.

(2) A person described in subrule (1) is liable:

(a) if the person is a plaintiff, to have his or her action dismissed; or

(b) if the person is a defendant, to have his or her defence, if any, struck out and to be placed in the same position as if he or she had not defended.

(3) If a person described in subrule (1) is an officer or employee of a corporation, the corporation is liable:

(a) if the corporation is a plaintiff, to have its action dismissed; and

(b) if the corporation is a defendant, to have its defence, if any, struck out and to be placed in the same position as if it had not defended.

(4) The party questioning a person described in subrule (1) may apply to the Court for an order pursuant to subrule (2) or (3).

Information Note

See rule 5-27 regarding the questioning party filing any objections to questions made by a witness with the Court.

DIVISION 3
Experts and Expert Reports

Duty of expert witness

5-37(1) In giving an opinion to the Court, an expert appointed pursuant to this Division by one or more parties or by the Court has a duty to assist the Court and is not an advocate for any party.

(2) The expert's duty to assist the Court requires the expert to provide evidence in relation to the proceeding as follows:

(a) to provide opinion evidence that is objective and non-partisan;

(b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and

(c) to provide any additional assistance that the Court may reasonably require to determine a matter in issue.

(3) If an expert is appointed pursuant to this Division by one or more parties or by the Court, the expert shall, in any report the expert prepares pursuant to this Division, certify that the expert:

(a) is aware of the duty mentioned in subrules (1) and (2);

(b) has made the report in conformity with that duty; and

(c) will, if called on to give oral or written testimony, give that testimony in conformity with that duty.

Appointment of joint experts

5-38(1) If 2 or more parties who are adverse in interest wish to jointly appoint an expert, the following must be settled before the expert is appointed:

(a) the identity of the expert;

(b) the issue in the action that the expert opinion evidence may help to resolve;

(c) any facts or assumptions of fact agreed to by the parties;

(d) for each party, any assumptions of fact not included pursuant to clause (c) that the party wishes the expert to consider;

(e) the questions to be considered by the expert;

(f) when the report must be prepared by the expert and given to the parties;

(g) responsibility for fees and expenses payable to the expert.

(2) If the parties agree on the matters mentioned in subrule (1), they and the expert shall enter into an agreement that reflects the terms agreed on.

(3) The agreement mentioned in subrule (2):

(a) shall be signed by each party to the agreement; and

(b) shall be signed by the expert to signify that the expert:

(i) has been made aware of the content of this Division; and

(ii) consents to the appointment reflected in the agreement.

(4) A copy of the agreement mentioned in subrule (2) must be served, promptly after signing, on every party who is not a party to the agreement.

(5) Unless the Court otherwise orders on an application mentioned in subrule (6), if an agreement is made pursuant to this rule for a joint expert to give expert opinion evidence on an issue, the joint expert is the only expert who, in relation to the parties to the agreement, may give expert opinion evidence in the action on the issue.

(6) A party wishing to apply pursuant to subrule (5) for leave to tender the evidence of an additional expert at trial shall, within 21 days after receipt of the joint expert's report, serve notice of the application on all parties.

(7) On an application mentioned in subrule (5), the Court may grant leave for the evidence of an additional expert to be tendered at trial if the Court is satisfied that the evidence of that additional expert is necessary to ensure a fair trial.

(8) Each party, including each of the appointing parties, has the right to cross-examine at trial a joint expert appointed pursuant to this rule.

(9) Nothing in this rule prevents parties who are not adverse in interest from appointing a common expert.

Service of expert report

5-39(1) An expert's report must:

(a) contain, at a minimum, the following information or any modification agreed on by the parties:

(i) the expert's name, address and qualifications;

(ii) the information and assumptions on which the expert's opinion is based; and

(iii) a summary of the expert's opinion; and

(b) be served as required by rule 5-40.

(2) An expert's report must be accompanied by a statement of the party tendering the expert, or that party's lawyer, in Form 5-39 identifying the area of expertise in which the expert is tendered to offer an opinion.

Timing of exchange of expert reports

5-40(1) If a party intends to use the evidence of an expert at trial, the expert's report must be served as described in subrule (2).

(2) Unless the Court otherwise orders, expert reports must be served as follows:

(a) a party who intends to use the evidence of an expert at trial shall serve on each of the other parties the report of that party's expert not less than 60 days before the date scheduled for a pre-trial conference; and

(b) the other party or parties who intend to use the evidence of an expert at trial in rebuttal shall serve their expert's rebuttal report, if any, not less than 30 days before the date scheduled for a pre-trial conference.

(3) If the parties have filed a written agreement pursuant to subrule 4-13(4) that a productive pre-trial conference is possible without expert reports, expert reports must be served as follows:

(a) a party who intends to use the evidence of an expert at trial must serve on each of the other parties the report of that party's expert not less than 90 days before the date scheduled for trial; and

(b) the other party or parties who intend to use the evidence of an expert at trial in rebuttal must serve their expert's rebuttal report, if any, not less than 60 days before the date scheduled for trial.

(4) Unless the Court otherwise orders, expert evidence must not be presented at trial unless subrule (2) or (3) has been complied with.

(5) A party is not entitled to any assessed costs or disbursements related to the evidence of an expert unless the party complies with subrule (2) or (3).

Information Note

No party may call more than 5 expert witnesses without leave of the Court: *Canada Evidence Act*, section 7; *The Evidence Act*, subsection 21(1). Leave for more than 5 experts must be sought before any expert for that party testifies: *The Evidence Act*, subsection 21(2).

Objection to expert's report

5-41(1) A party who receives an expert's report shall notify the party serving the report of:

(a) any objection to the expert's qualifications, or the admissibility of the expert's report, that the party receiving the report intends to raise at trial; and

(b) the reasons for the objection.

(2) No objection to the admissibility of an expert's report is permitted at trial unless:

(a) notice of the objection is served on the other party within 40 days after receipt of the expert report or 20 days before the date of the scheduled pre-trial conference, whichever date is earlier; or

(b) the Court permits the objection to be made.

Amended. Gaz. 15 Jly. 2016.

Questioning experts before trial

5-42(1) An expert may be questioned by any party adverse in interest to the party proposing to call the expert witness at trial if:

(a) the parties agree; or

(b) in exceptional circumstances, the Court so directs.

(2) The questioning must be limited to the expert's qualifications or the expert's report.

(3) The questioning must take place not later than 30 days before the date fixed for trial.

(4) The Court may impose conditions about questioning with respect to all or any of the following:

(a) limiting the length of questioning;

(b) specifying the place where the questioning is to take place;

(c) directing payment of costs incurred;

(d) any other matter concerning the questioning.

(5) Evidence of an expert under this rule may not be used as evidence of the proper person to be questioned pursuant to subrule 5-19(5).

Continuing obligation on expert

5-43 If, after an expert's report has been provided by one party to another, the expert changes his or her opinion on a matter in the report, the change of opinion must be:

(a) disclosed by the expert in writing; and

(b) immediately served on each of the other parties.

Use of expert's report at trial without expert

5-44(1) A party serving an expert's report may, at the same time, also serve notice of intention to have the report entered as evidence without calling the expert as a witness.

(2) If a party serves a notice of intention pursuant to subrule (1), no objection may be made at trial to entering the expert's report as evidence unless, within 2 months after service of the notice pursuant to subrule (1), another party does either or both of the following:

(a) serves on the party serving the notice of intention a statement setting out all or parts of the report to which that other party objects to being entered as evidence pursuant to this rule and giving reasons for the objection;

(b) serves on the party serving the notice of intention a request that the expert attend the trial for cross-examination.

(3) Agreeing to have the expert's report entered as evidence without calling the expert as a witness, either explicitly or by allowing subrule (2) to operate without objection, is not an admission of the truth or correctness of the expert's report.

Expert's attendance at trial

5-45(1) A party who agrees to have all of an expert's report entered in evidence at trial, either explicitly or by allowing subrule 5-44(2) to operate without objection, may, at the same time as responding to the notice of intention, serve a request that the expert be in attendance at trial for cross-examination.

(2) The expert whose entire report is to be entered at trial shall not give oral evidence at trial unless:

(a) a request that the expert attend for cross-examination has been served; or

(b) the Court permits.

(3) The party who requests an expert's attendance for cross-examination shall pay the costs of the expert's attendance unless the Court is satisfied that the cross-examination is of sufficient assistance to warrant a different order about who is to pay those costs.

(4) If the party proposing to enter the expert's report receives a request to produce the expert for cross-examination, the party proposing to enter the report may re-examine the expert at trial following cross-examination.

Appraisal report in evidence

5-46(1) Subject to subrule (4), in all proceedings to which these rules apply an appraisal report is admissible in evidence.

(2) A party intending to submit an appraisal report in evidence must, not less than 30 days before the date scheduled for a pre-trial conference, provide to every other party to the action:

(a) a copy of the appraisal report; and

(b) a summary of the qualifications of the person making the report.

(3) A party who has been provided with a copy of an appraisal report and who intends to require the author of the report to attend at trial to be cross-examined on the report shall give notice to the other party of that intention within 30 days after the trial date has been scheduled.

(4) Unless the Court otherwise orders, an appraisal report must not be admitted in evidence unless subrule (2) has been complied with.

Information Note

For more detail on the use of appraisal reports, refer to section 35 of *The Queen's Bench Act, 1998*.

DIVISION 4
Medical Examinations and Reports

Medical report in evidence

5-47(1) A party intending to submit in evidence a professional report as permitted by section 22 of *The Evidence Act* shall provide to every other party to the action a copy of the report:

(a) not less than 30 days before the date scheduled for a pre-trial conference; or

(b) if the parties have filed a written agreement pursuant to subrule 4-13(4) that a productive pre-trial conference is possible without those reports, not less than 90 days before the date scheduled for trial.

(2) A party who has been provided with a copy of a professional report and who intends to require the author of the report to attend at trial to be cross-examined on the report shall give notice to the other party of that intention:

(a) at least 30 days before the date scheduled for trial; or

(b) if the parties have filed a written agreement pursuant to subrule 4-13(4) that a productive pre-trial conference is possible without those reports, not less than 60 days before the date scheduled for trial.

(3) A professional report must not be admitted in evidence, except with leave of the trial judge, unless subrule (1) has been complied with.

Information Note

Section 22 of *The Evidence Act* states the following:

22(1) With leave of the Court, a professional report purporting to be signed by a physician, chiropractor, dentist, psychologist, physical therapist or occupational therapist authorized pursuant to a statute to practise in any part of Canada is admissible in evidence in any proceeding without proof of the person's signature, qualifications or authority to practise.

(2) If a member of a profession mentioned in subsection (1) has been required to give evidence orally in a proceeding and the Court is of the opinion that the evidence could have been produced as effectively by a professional report in writing, the Court may order the party that required the attendance of the professional practitioner to pay costs in any amount that the Court considers appropriate.

Rules 5-39 to 5-45 not to apply to restricted professional report

5-48 Rules 5-39 to 5-45 do not apply to a professional report that is restricted to the treatment provided by the author of the report and that does not offer an opinion on medical causation or future prognosis.

Examination of party by medical practitioner

5-49 In an action brought to recover damages or other compensation with respect to bodily injuries sustained by any person, a judge may order the injured person to be examined by one or more duly qualified medical practitioners who are not being called by a party as witnesses at the trial of the action.

Information Note

See section 36 of *The Queen's Bench Act, 1998* for more information involving examinations by medical practitioners.

PART 6: RESOLVING ISSUES AND PRESERVING RIGHTS

What this Part is about: This Part is designed to resolve issues and questions arising in the course of a Court action. It includes rules describing how applications are made to the Court and responded to by others, rules on admissions, rules for preserving and protecting property and rules for preserving and obtaining evidence.

The Part also:

- describes resources and rules available to assist the Court (experts, inquiries and accounts);
- includes rules for receivers; and
- includes special rules for replevin and interpleader proceedings.

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PART 6: RESOLVING ISSUES AND PRESERVING RIGHTS

DIVISION 1
Applications to the Court

What this Division applies to

6-1 This Division:

(a) applies to every application filed in the Court unless a rule or an enactment provides otherwise or the Court orders or permits otherwise; and

(b) does not apply to originating applications unless the parties agree otherwise or the Court orders otherwise.

Subdivision 1
Application Process Generally

Interpretation of Subdivision

6-2 In this subdivision, **"application"** means an application in the course of an action with respect to which a commencement document has been filed.

Applications generally

6-3(1) All applications must be by notice of application except where otherwise specifically provided.

(2) If pursuant to any enactment an application may be made to the Court or to a judge, the application must be by notice of application unless the enactment or these rules provide otherwise.

(3) If the Court is satisfied that a delay caused by proceeding in the ordinary way would result in serious mischief, the Court may make an order without notice on any terms it considers appropriate, and subject to any undertaking, that the Court considers just.

(4) Any party affected by an order mentioned in subrule (3) may move to set it aside or to vary it.

(5) In all applications, any pleading on file in the office of the local registrar may be used and taken as evidence of the pleading, unless proven otherwise.

Procedure on applications without notice

6-4 Every application without notice must be by memorandum in Form 6-4 that sets out all of the following:

(a) the special provision authorizing the application to be made without notice;

(b) the precise remedy sought;

(c) a statement that either:

(i) sets out that none of the opposite parties is, to the knowledge of the applicant, represented by a lawyer; or

(ii) if any of the opposite parties is, to the knowledge of the applicant, represented by a lawyer, sets out the name of the lawyer representing the opposite party;

(d) citations of all the following authorities relied on:

(i) the short titles, chapter numbers and section numbers of enactments;

(ii) rule numbers;

(iii) complete citations of cases with designation of relevant passages.

Information Note

Many judges, in exercising their discretion respecting applications without notice, will require some form of notice be given to the opposite party or, if represented, to the opposite party's lawyer.

Amended. Gaz. 23 Sep. 2022.

Contents of notice of application

6-5(1) Every notice of application must be in Form 6-5 and must be addressed to and served on all parties and every other person affected by the application.

(2) Every notice of application must set out all of the following:

(a) the precise remedy sought;

(b) the grounds to be argued, including a reference to any section of an enactment or rule to be relied on; and

(c) a list of the documentary evidence to be used at the hearing of the application.

Affidavits in support

6-6 Every affidavit on which any application to the Court is founded must:

(a) if the application is made without notice, be filed with the application; or

(b) be served and filed with any notice of application or petition or other proceeding, as the case may be.

Chambers sittings

6-7(1) Regular sittings for the transaction of business and the hearing of applications that may be heard in chambers must be held at those times and places that:

(a) are designated by the Chief Justice; and

(b) are published in *The Saskatchewan Gazette*.

(2) With leave of the Court, an application may be heard at a time or place other than a time and place mentioned in subrule (1).

(3) An application within a proceeding must be brought:

(a) if weekly chamber sittings are held at the judicial centre where the proceeding is commenced or pending, at that judicial centre; or

(b) with leave of the Court, at any other judicial centre.

Applications in chambers

6-8(1) Every application that is authorized by these rules or by an enactment to be made to the Court, other than an application made at or during the trial of any action, issue or other proceeding, must be made to a judge in chambers.

(2) Every application may be made returnable before and heard by a judge sitting in chambers on any of the days designated for that purpose.

(3) If any day designated for the purpose of sitting in chambers falls on a holiday or if an application has been made returnable on a day on which a judge does not sit in chambers, the application stands adjourned to the next day on which a judge sits in chambers.

Length of notice and filing deadlines

6-9(1) The party bringing an application pursuant to this rule shall serve with the application:

(a) each affidavit on which the party intends to rely at the hearing; and

(b) a draft order setting out the precise relief or remedy sought.

(2) Subject to an order granted pursuant to subrule (4) abridging the time for service, an application, supporting affidavits and draft order must be served on each of the other parties and filed at least 14 days before the date set for hearing the application.

(3) If all parties consent to an earlier date for hearing the application, the application may be heard on the earlier date with leave of the Court.

(4) An application without notice for leave to abridge the time for service of an application must be brought before service of the application, and any order that is obtained must be served with the application.

(5) A party who wishes to oppose a claim made in the application shall:

(a) serve on each of the other parties to the application each affidavit on which that party intends to rely at the hearing; and

(b) file the affidavits, with proof of service, at least 7 days before the date set for hearing the application.

(6) The party bringing the application may then serve an affidavit replying only to any new matters raised by the opposite party, and shall file the affidavit, with proof of service, at least 2 clear days before the date set for hearing the application.

(7) No additional affidavits may be relied on without leave of the Court.

(8) An affidavit filed in contravention of this rule may be struck and costs awarded against the party filing it.

(9) If any new matters are raised by the party bringing the application in the affidavit in reply without the leave of the Court:

(a) those matters may be disregarded; and

(b) costs may be awarded against the party filing the affidavit.

(10) If there is or may be a dispute as to the facts on the hearing of an application, a judge may, before or on the hearing:

(a) order that the application be heard on oral evidence, either alone or with any other form of evidence; and

(b) give directions relating to pre-hearing procedure and the conduct of the proceeding.

New. Gaz. 23 Sep. 2022.

Service of notice of application before defence

6-10 The plaintiff may, without leave, serve any notice of application on any defendant along with the statement of claim or at any time after service of the statement of claim.

Court may direct application to be turned into application for judgment or hearing

6-11(1) If the Court is satisfied on the hearing of any application that may be pending before the Court that it is conducive to the ends of justice to permit it, the Court may direct any application to be turned into:

(a) an application for judgment; or

(b) a hearing of the cause or matter.

(2) In making a direction pursuant to subrule (1), the Court may make an order respecting:

(a) the time and manner of giving the evidence in the cause or matter; and

(b) the further conduct of the cause or matter as the circumstances of the case may require.

(3) On a hearing directed pursuant to subrule (1), the Court may:

(a) pronounce judgment; or

(b) make any order that the Court considers expedient.

Subdivision 2
Evidence, Argument and Procedure on Applications

Affidavits to be filed

6-12(1) Except with leave of the Court, every affidavit to be used in a cause, matter or proceeding must be filed before being used.

(2) Every affidavit to be used on an application in chambers, and proof of service of the affidavit, must be filed before the hearing of the application with:

(a) the local registrar of the judicial centre at which the application is to be heard; or

(b) the chamber clerk where the application is to be heard.

(3) The local registrar shall transmit any material filed pursuant to subrule (2) to the chamber clerk, and the chamber clerk shall, after the application is disposed of, transmit all material to the proper local registrar.

Evidence on applications

6-13(1) On any application or petition, evidence may be given by affidavit, but the Court may, on the application of either party, order the attendance for cross-examination of the person making the affidavit.

(2) The party applying for any cross-examination pursuant to subrule (1) shall bear the costs of the cross-examination.

Information Note

Regarding the form and content of affidavits, see Subdivision 2 of Division 4 of Part 13.

See rule 6-32 regarding how the practice on cross-examination at trial extends to evidence taken pursuant to this rule.

6-14 Repealed. Gaz. 23 Sep. 2022.

Repealed. Gaz. 23 Sep. 2022.

Brief of law

6-15 If a party files a brief of law with respect to an application, the brief:

(a) must be concise and address the legal aspects of the case and not the factual aspects; and

(b) must be served on every other party to the application and filed at least 2 days before the designated chamber day to which the application is made returnable.

Information Note

If filing copies of any case reports, statutes or articles from legal journals with a brief, please refer to the Practice Directive on the topic.

Adjournment by consent or by Court

6-16(1) The local registrar for the judicial centre at which any application is to be heard shall adjourn the hearing to any subsequent chamber day if:

(a) the parties consent to the adjournment; and

(b) the parties either:

(i) file with the local registrar a memorandum that requests the adjournment and that is signed by the parties or by the lawyers for the parties or their agents without the appearance of lawyers; or

(ii) if the local registrar considers it appropriate to accept an oral consent, orally consent to the adjournment.

(2) Unless a party is otherwise required to appear by the Court, a party is not required to appear in chambers on:

(a) an application made without notice; or

(b) an application where the written consent of each party is filed.

(3) If a party is required to appear, the local registrar shall notify the party or the party's lawyer of the date and time set for the hearing.

(4) The hearing of any application may be adjourned on any terms that the Court considers appropriate.

Electronic hearings

6-17(1) In this rule, **"electronic hearing"** means an application, proceeding or trial conducted, in whole or part, by electronic means in which all the participants in a hearing and the Court can hear each other, whether or not all or some of the participants and the Court can see each other or are in each other's presence.

(2) An electronic hearing may be held if:

(a) the parties agree and the Court permits; or

(b) the Court orders an electronic hearing.

(3) The Court may:

(a) direct that an application for an electronic hearing be heard by electronic hearing;

(b) direct that an application or a trial be heard in whole or in part by electronic hearing;

(c) give directions about arrangements for the electronic hearing or delegate that responsibility to another person;

(d) give directions about the distribution of documents and the practice and procedure at the electronic hearing;

(e) order that an electronic hearing be completed in person.

(4) The local registrar must participate in an electronic hearing unless the Court directs otherwise.

Hearing without oral argument

6-18(1) If an application is on consent or unopposed or is without notice pursuant to rule 6-4, the application may be heard in writing without the attendance of the parties, unless the Court orders otherwise.

(2) If an application is on consent, the consent and a draft order must be filed with the notice of application.

(3) If an application is unopposed, a notice from the responding party stating that the party does not oppose the application and a draft order must be filed with the notice of application.

(4) If all parties are represented by lawyers and the issues of fact and law are not complex, the applicant may propose in the notice of application that the application be heard in writing without the attendance of the parties, in which case:

(a) the application must be made on at least 14 days notice;

(b) the applicant shall serve with the notice of application and immediately file, with proof of service, in the judicial centre where the application is to be heard:

(i) any affidavits on which the application is founded;

(ii) a draft order; and

(iii) a brief of argument entitled Brief of Argument for an Application; and

(c) the application may be heard in writing without the attendance of the parties, unless the Court orders otherwise.

(5) Within 10 days after being served with the applicant's material, the responding party shall serve and file, with proof of service, in the judicial centre where the application is to be heard:

(a) a consent to the application;

(b) a notice that the responding party does not oppose the application;

(c) all of the following materials:

(i) any affidavits on which the responding party intends to rely;

(ii) a notice that the responding party agrees to have the application heard and determined in writing pursuant to this rule;

(iii) a brief of argument entitled Brief of Argument for an Application; or

(d) a notice that the responding party intends to make oral argument, along with any material intended to be relied on by the party.

(6) If the responding party delivers a notice pursuant to subrule (5) that the party intends to make oral argument, the applicant may either:

(a) attend the hearing and make oral argument; or

(b) not attend and rely on the party's affidavits and brief of argument.

How the Court considers applications

6-19 The Court may consider a filed application in one or more of the following ways:

(a) in person, with one, some or all of the parties present;

(b) by means of an electronic hearing if an electronic hearing is permitted pursuant to rule 6-17;

(c) in writing pursuant to rule 6-18.

Proceeding failing by non-attendance of party

6-20 If a proceeding in chambers fails by reason of the non-attendance of any party and the Court does not think it expedient to proceed without that party, the Court may order that an amount for any costs that the Court considers reasonable is to be paid to the party attending by:

(a) the absent party; or

(b) the absent party's lawyer personally.

Applications may include several matters, and Court power to make orders

6-21(1) In every cause or matter, if any party makes any application in chambers, the party may include in that application all matters on which the party desires an order or any directions of the Court.

(2) On the hearing of any application pursuant to subrule (1), the Court may make any order and give any directions relative to or consequential on the matter of the application that the Court considers just.

(3) If the Court considers it appropriate to do so, the Court may adjourn an application pursuant to subrule (1):

(a) from chambers into Court; or

(b) from Court into chambers.

Subdivision 3
Appearance Day Applications

Interpretation of Subdivision

6-22 In this subdivision, **"appearance day notice"** means a notice that is made pursuant to rule 6-24.

When appearance day application appropriate

6-23(1) A party may make an appearance day application if:

(a) the only remedy being sought is to require another party to comply with these rules respecting the conduct of a proceeding;

(b) a party wishes to have the Court set a timetable for steps to be taken in a proceeding; or

(c) the parties jointly request the Court's direction on an issue respecting the management of a trial or proceeding.

(2) Subdivisions 1 and 2 do not apply to an appearance day application.

Appearance day notice

6-24(1) A party may make an appearance day application by filing and serving an appearance day notice.

(2) Unless the Court permits otherwise, an appearance day notice must:

(a) be in Form 6-24;

(b) briefly describe the proposed order or direction sought and the reason for the application;

(c) refer to any provision of an enactment or rule relied on;

(d) contain a representation that the application can be heard and determined in less than 30 minutes; and

(e) be signed by the party making the application or the party's lawyer.

(3) An appearance day notice must be served on each of the other parties and filed at least 14 days before the appearance day application is set to be heard:

(a) served on each of the other parties 14 days or more before the appearance day application is scheduled to be heard or considered; and

(b) filed in accordance with rule 13-23.1.

Amended. Gaz. 15 Jly. 2016.; Gaz. 23 Sep. 2022

How appearance day applications are to be dealt with

6-25(1) Appearance day applications will be scheduled to commence 30 minutes before the time chambers is scheduled to commence and shall be heard by telephone.

(2) The parties to an appearance day application must be available by telephone when the appearance day application is scheduled to commence and remain available until the application is heard.

Amended. Gaz. 24 Jly. 2020.

Evidence on appearance day application

6-26(1) A party may make representations to the judge on appearance day of a fact that could not reasonably be contested.

(2) Representations may be made in the appearance day notice and expanded on in oral submissions to the judge when the application is heard.

(3) The judge may act on the representations.

Disposition of appearance day application

6-27 After the hearing of an appearance day application, the judge may:

(a) if satisfied that there is no relevant fact that may reasonably be contested, make any order that the circumstances require; or

(b) if not satisfied that it is appropriate to deal with the application pursuant to this subdivision, order that the application be heard in general chambers, in which case the general application rules apply.

DIVISION 2
Preserving Evidence, Obtaining Evidence, and Obtaining Evidence for Courts and Tribunals Outside Saskatchewan

Interpretation of Division

6-28 In this Division, **"examiner"** means the officer of the Court or other person appointed by the Court to take the examination on oath or affirmation of any witness or person.

Subdivision 1
Preserving Evidence and Obtaining Evidence

Examination of witnesses and persons

6-29(1) If the Court considers it necessary for the purposes of justice in any cause or matter, the Court may:

(a) order that any witness or person be examined on oath or affirmation:

(i) before the Court, any officer of the Court or any other person; and

(ii) at any place; and

(b) permit any party to the cause or matter to give any deposition in evidence respecting the cause or matter on any terms that the Court may direct.

(2) An order to examine witnesses or persons pursuant to this rule must be in Form 6-29.

(3) If an order for the examination or cross-examination of any witness or person has been made pursuant to any provision of these rules, the party desiring the examination or cross-examination may:

(a) require the attendance of that witness or person before an examiner by serving a *subpoena ad testificandum* or *subpoena duces tecum* in the same manner that the witness or person would be bound to attend and be examined at a hearing or trial; and

(b) use the witness's or person's evidence in any proceeding in the cause or matter.

(4) If any witness or person is ordered to be examined before an examiner, the party that applied for the order shall provide the examiner with:

(a) a copy of the pleadings in the cause or matter; or

(b) a copy of the documents necessary to inform the examiner of the questions at issue between the parties.

(5) An examiner may administer oaths or take affirmations.

(6) The examination must take place in the presence of the parties, their lawyers or agents, or any of them that attend, and the witnesses or persons are subject to cross-examination and re-examination.

(7) If a witness or person does not understand English or French, the examiner may use an interpreter to ask any questions and to translate any answers.

(8) For the purposes of subrule (7):

(a) the interpreter shall:

(i) be nominated by the examiner; and

(ii) swear or affirm to interpret truly the questions to be put to the witness or person and the witness's or person's answers; and

(b) the examination must take place in English or French.

(9) The depositions must be taken and certified in a manner provided for in rule 5-29.

Information Note

Refer to Division 3 of Part 9 regarding the form and service of subpoenas. A *subpoena ad testificandum* is a subpoena to testify and is the technical term for the ordinary subpoena. A *subpoena duces tecum* is a subpoena compelling the production of documents and items in the custody and control of the person served with the subpoena.

See section 24 of *The Evidence Act* or section 13 of the *Canada Evidence Act* regarding who may administer oaths.

See section 25 of *The Evidence Act* or section 14 of the *Canada Evidence Act* with respect to an affirmation instead of an oath.

See section 27 of *The Evidence Act* regarding oaths or affirmations made outside Saskatchewan, and Part III of the *Canada Evidence Act* regarding oaths or affirmations made outside Canada.

Witness's or person's failure to comply

6-30(1) An examiner may file a certificate in Court if any witness or person summoned by subpoena to attend for examination:

(a) refuses or neglects to attend;

(b) refuses to be sworn or make an affirmation; or

(c) refuses to answer any lawful question.

(2) On filing a certificate pursuant to clause (1)(a), the party requiring the attendance of the witness or person may apply to the Court for an order directing the witness or person to attend, to be sworn or make an affirmation or to answer any question, as the case may be.

(3) In addition to any other powers that the Court may have, the Court may issue a warrant to a sheriff or officer to arrest a witness or person and bring that witness or person before the Court or an examiner if the Court is satisfied that:

(a) the witness or person has been duly served with a subpoena;

(b) the witness's or person's fees for travel and attendance have been paid or tendered to the witness or person; and

(c) the witness or person has refused or neglected to attend to give evidence as required by the subpoena.

(4) If the Court acts pursuant to this rule, the Court may order the witness or person to pay any costs occasioned by his or her refusal or neglect.

Information Note

Refer to subrule 6-29(9) and rule 5-29 regarding taking down objections.

See subrule 6-29(3) regarding enforcing attendance at examination by use of subpoena.

Return and use of depositions and special reports

6-31(1) On the conclusion of the examination of any witness or person before an examiner, the examiner shall:

(a) authenticate the original depositions by signing them; and

(b) send the original depositions as authenticated to the local registrar.

(2) The local registrar shall file original depositions sent pursuant to subrule (1).

(3) The examiner may, and if requested by a party shall, make a special report to the Court respecting the examination and the conduct or absence of any witness or other person at the examination.

(4) On receipt of a special report pursuant to subrule (3), the Court may direct any proceedings and make any order resulting from the report that the Court considers just.

(5) Unless ordered otherwise by the Court, depositions taken pursuant to rule 6-29 and certified by the examiner may be given in evidence at the hearing or trial of the cause or matter without proof of the signature of the examiner.

Practice on taking evidence

6-32 Subject to any special directions that the Court may give, the practice respecting examination, cross-examination and re-examination of witnesses at a trial extends to and applies to evidence taken in any cause or matter at any stage.

Action to preserve testimony

6-33(1) In this rule, **"eligible applicant"** means a person who alleges that:

(a) the person will become entitled, on the happening of any future event, to a right or claim to:

(i) any office; or

(ii) any estate or interest in any real or personal property; and

(b) the person cannot bring to trial the right or claim mentioned in clause (a) before the happening of the event.

(2) An eligible applicant may apply to the Court by originating application for an order to preserve any testimony that may be material to establishing the eligible applicant's right or claim.

(3) An originating application for the purposes of this rule must be served on those parties that the Court may direct on an application without notice.

(4) The evidence to be preserved must:

(a) be taken in the manner that the Court may order; and

(b) be filed with the local registrar.

Subdivision 2
Obtaining Evidence for Courts and Tribunals Outside Saskatchewan

Court may order examination of person and production of documents

6-34(1) If the evidence of a person in Saskatchewan is desired for use outside Saskatchewan, the Court may:

(a) order the person to be examined on oath or under affirmation, on written questions or otherwise, before any examiner named in the order; and

(b) direct the person to be examined:

(i) to attend for the purpose of being examined; or

(ii) to produce any writings or other documents mentioned in the order.

(2) Subject to any directions of the Court, the examiner may by appointment give directions respecting:

(a) the time, place and manner of the examination; and

(b) any other matters connected with the examination.

(3) The Court may appoint as an examiner for the purposes of this rule:

(a) an individual who is nominated by the person applying for the examination and who the Court is satisfied is appropriate;

(b) the local registrar; or

(c) any other individual who the Court is satisfied is appropriate.

Information Note

See section 65 of *The Evidence Act* and sections 43 to 51 of the *Canada Evidence Act.*

Application without notice

6-35(1) An application for an order pursuant to this subdivision may be made without notice.

(2) The Court may vary any order pursuant to this subdivision on those terms and conditions that the Court considers just.

(3) An order for taking evidence for a court or tribunal outside Saskatchewan must be in Form 6-35.

Person has right to refuse to answer questions

6-36 A person examined pursuant to an order made pursuant to this subdivision has the same right to refuse to answer questions that the person would have as a party or witness, as the case may be, in a proceeding in Saskatchewan.

Depositions

6-37 Unless the Court directs otherwise, depositions must be taken and certified in accordance with rule 5-29.

Certificate of registrar

6-38 Unless the Court directs otherwise, on receiving the evidence, the registrar shall:

(a) attach to the evidence the registrar's certificate in Form 6-38, duly sealed with the seal of the Court; and

(b) transmit the evidence, the registrar's certificate and the order of the Court to the proper officer of the requesting court or tribunal.

Applications pursuant to *The Evidence Act* and the *Canada Evidence Act*

6-39(1) All applications made pursuant to the provisions of *The Evidence Act* and the *Canada Evidence Act* respecting the taking of evidence relating to proceedings in courts and tribunals outside Saskatchewan must be made pursuant to this subdivision.

(2) Nothing in these rules prevents the taking of evidence for use outside Saskatchewan in accordance with orders of any court or tribunal with the consent of the witness.

DIVISION 3
Preserving and Protecting Property or its Value and Inspection of Property

Interpretation of Division

6-40 In this Division, **"property"** includes money.

How applications are made

6-41 Subject to the provisions of *The Queen's Bench Act, 1998*, the Court may make an interim order for mandamus, an injunction, the appointment of a receiver or for the interim preservation of property on an application:

(a) without notice; or

(b) on any notice that the Court may direct.

Information Note

See section 65 of *The Queen's Bench Act, 1998* regarding mandamus, injunction or the appointment of a receiver.

See section 66 of *The Queen's Bench Act, 1998* regarding damages in addition to or in substitution for an injunction.

Regarding the appointment of a receiver, refer to section 65 of *The Queen's Bench Act, 1998*.

Statutory jurisdiction for a Court-appointed receiver is also found in, for example:

- *The Enforcement of Maintenance Orders Act, 1997*, section 49;
- *The Partnership Act*, sections 25 and 73;
- *The Personal Property Security Act*, *1993*, subsection 64(8);
- *The Family Property Act*, section 29;
- *The Non-profit Corporations Act, 1995*, sections 81 to 87 and 225;
- the *Bankruptcy and Insolvency Act*, sections 46 to 47.2; and
- the *Canada Business Corporations Act*, section 100.

See also rule 6-48 regarding injunctions.

Interim preservation of property

6-42 If there is a dispute arising on a contract or any alleged contract affecting the title to any property, the Court may on application make any of the following orders without prejudice to the rights of any party to the action:

(a) an order respecting the preservation or interim custody of the property;

(b) an order directing that the amount in dispute be paid into Court or otherwise secured;

(c) an order directing the sale of the property and the payment of the proceeds into Court.

Order for early trial to avoid going into merits on interlocutory applications

6-43 On an application made before trial for an injunction or other order, at any time during the hearing of the application, if the Court is satisfied that the matter in controversy in the cause or matter can be more conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, the Court may make an order:

(a) directing the early trial;

(b) directing the trial to be held at the next or any other sittings for any place, if from local or other circumstances, the Court considers it convenient so to do; and

(c) directing any other matter the Court considers appropriate.

Detention, preservation or inspection of property

6-44(1) On the application of any party to a cause or matter and on those terms that the Court considers just, the Court may:

(a) make an order for the detention or preservation of any property that:

(i) is the subject of the cause or matter; or

(ii) may be evidence on any issue arising in the cause or matter; and

(b) make an order for the inspection of any property by either of the parties or their respective agents, including permitting the property to be photographed.

(2) For all or any of the purposes mentioned in subrule (1), the Court may make an order:

(a) authorizing any person or persons to enter on or into any land or building in the possession of any party to the cause or matter; and

(b) authorizing any samples to be taken, any observations to be made or experiment to be tried that may be necessary or expedient to obtain full information or evidence.

(3) Notwithstanding subrule (1), no order shall be made for the detention or preservation of all or any part of any property that prejudices any party in the party's business, profession, trade or calling, unless the applicant pays full compensation before the order is issued.

Information Note

Regarding inspection by a judge or jury, see rule 9-28.

Application for preservation and inspection

6-45(1) An application for an order pursuant to rule 6-44 may be made to the Court by any party.

(2) If the application is made by:

(a) the plaintiff, it may be made only after notice to the defendant at any time after the issue of the statement of claim; or

(b) any other party, it may be made only after notice to the plaintiff at any time after the party making the application has filed a statement of defence.

Order for delivery of specific personal property claimed under lien on payment into Court

6-46 If an action or counterclaim seeks recovery of specific property other than land and the party from whom recovery is sought does not dispute the title of the party seeking to recover the property but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court may, at any time after that claim appears from the pleadings or proceedings, order:

(a) that the party claiming to recover the property may pay into Court:

(i) the amount of money with respect to which the lien or security is claimed; and

(ii) any further sum for interest and costs that the Court may direct; and

(b) that the property claimed be given up to the party claiming it, on payment into Court of the money and further sum mentioned in clause (a).

Information Note

If the plaintiff claims that personal property was unlawfully taken or detained, refer also to Division 6.

Allowance out of property while the action is pending

6-47 If any real or personal property is the subject of any proceedings in the Court and the Court is satisfied that the value of the property will be more than sufficient to answer all the claims on the property that ought to be provided for in the proceedings, the Court may, at any time after the commencement of the proceedings, allow all or any of the parties interested in the property to receive for that period that the Court directs:

(a) all or part of the annual income of the real property or all or part of the personal property; or

(b) all or part of the income of the real property or all or part of the personal property.

Injunction against wrongful act or breach of contract

6-48(1) In any cause or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from:

(a) repeating or continuing the wrongful act or breach of contract complained of; or

(b) committing any injury or breach of contract of a like kind that:

(i) relates to the same property or right that is the subject of the cause or matter; or

(ii) arises out of the contract that is the subject of the cause or matter.

(2) On an application pursuant to subrule (1), the Court may grant the injunction on any terms that the Court considers just.

Information Note

See also rule 6-41 regarding applications for interim injunctions.

Mandamus to be claimed in statement of claim

6-49 If the plaintiff in any action claims a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, the plaintiff shall include that claim in the statement of claim.

DIVISION 4
Facilitating Proceedings

Admission of other party's case

6-50 Any party to a cause or matter may, in the party's pleadings or in any other writing, admit the truth of all or any part of the other party's case.

Notice to admit facts

6-51(1) Any party may, by notice in writing at any time not later than 10 days before the date scheduled for trial, call on any other party to admit, for the purposes of the cause, matter or issue only, any specific fact or facts mentioned in that notice.

(2) If a party refuses or neglects to admit the fact or facts mentioned in subrule (1) within 6 days after service of the notice to admit facts or within any further time that the Court may allow, the cost of proving that fact or those facts must be paid by the party refusing or neglecting to admit.

(3) An admission made pursuant to a notice to admit facts is deemed to be made only for the purpose of the particular cause, matter or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice.

(4) An affidavit of a person's lawyer respecting the person's signature on any admission made pursuant to a notice to admit facts is evidence of that admission.

(5) A notice to admit facts must be in Form 6-51A and admissions of facts must be in Form 6-51B.

Judgment on admissions

6-52(1) At any stage of a cause or matter where facts have been admitted, a party may apply to the Court for a judgment or order that, based on the admissions, the party may be entitled to.

(2) An application pursuant to subrule (1) may be made without waiting for the determination of any other question between the parties.

(3) On an application pursuant to subrule (1), the Court may make any order, or give any judgment, that the Court considers just.

Order to produce prisoner

6-53 On application, the Court may order the person having custody of a prisoner to produce that person, at a time and place specified by the Court, for a trial, for hearing or for questioning authorized by these rules.

DIVISION 5
Resources to Assist the Court

Subdivision 1
Experts

Appointment of court experts

6-54(1) On application or on the judge's own initiative, a judge may appoint a person as a court expert to give evidence on a matter.

(2) The court expert shall give independent evidence to the Court.

(3) If possible, the parties shall agree on the expert to be appointed pursuant to subrule (1).

(4) The appointment of a court expert does not affect the right of a party to call the party's own expert as a witness.

Instructions or questions to the court expert

6-55(1) If the parties do not agree on the directions or instructions to be given or questions to be put to a court expert, the Court may decide what directions or instructions are to be given or questions are to be put to the court expert.

(2) The Court may give any direction or instruction or pose any question to the court expert that the Court considers necessary, whether the parties agree or not.

(3) The court expert's report:

(a) must be in writing, verified by affidavit;

(b) must set out the expert's qualifications;

(c) must be served on the parties by the local registrar; and

(d) is admissible in evidence.

Application to question court expert

6-56(1) Within 20 days after receipt of a copy of the court expert's report, a party may apply to the Court to question the court expert on the report.

(2) The Court may order the questioning of the court expert:

(a) before or at a hearing of an application or originating application; or

(b) before or at trial.

(3) The questioning may take the form of cross-examination.

Costs of court experts

6-57 The costs of a court expert are to be paid by the parties in equal proportions, unless the Court orders otherwise.

Subdivision 2
Inquiries and Accounts

When and how inquiries and accounts are undertaken

6-58(1) At any stage of the proceedings in a cause or matter, on an application pursuant to rule 6-59, the Court may order a local registrar or other person whom the Court considers competent:

(a) to undertake any necessary inquiries; or

(b) to take or verify any accounts.

(2) The Court may make an order pursuant to subrule (1) notwithstanding that it may appear that there is some special or further remedy being sought or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

How an application is made

6-59 A party seeking an order pursuant to rule 6-58 shall:

(a) apply for the order by notice of application; and

(b) support the application by an affidavit stating concisely the grounds of the party's claim to an account.

Special directions as to mode of taking account

6-60(1) In the order directing an account to be taken or verified or in any subsequent order, the Court may give special directions with respect to the manner in which the account is to be taken or verified.

(2) Without limiting the generality of subrule (1), the Court may direct that:

(a) in taking or verifying the account, the books in which the accounts in question have been kept must be taken as evidence of the truth of the matters contained in them, unless proven otherwise; and

(b) the parties may make any objections to the accounts that they consider advisable.

Account

6-61(1) Unless the Court directs otherwise, if any account is directed to be taken, the accounting party shall, within the period that the Court may designate:

(a) make out and serve on all other interested parties a statement of the accounting party's account with the items on each side being numbered consecutively; and

(b) file a copy of the statement of account mentioned in clause (a) with the local registrar or other person taking or verifying the accounts.

(2) The Court may direct that after the statement of account has been filed:

(a) all vouchers must be produced at the address for service of the accounting party or at any other convenient place; and

(b) only those items that may be contested or surcharged must be brought before the Court.

(3) A party desiring to dispute the account that has been filed and served shall within 20 days after being served:

(a) file with the local registrar or other person taking or verifying the accounts a statement of exceptions to the account; and

(b) serve a copy of the statement of exceptions on the accounting party.

(4) All items in an account to which no exception is taken in accordance with subrule (3) are deemed to be admitted.

(5) Any interested party may apply to the local registrar or other person taking or verifying the accounts to view the accounts.

(6) An application pursuant to subrule (5) must be made within 10 days after:

(a) the date of service of the statement of exceptions; or

(b) the expiry of the time for delivery of the statement of exceptions.

Expediting proceedings, case of undue delay

6-62(1) If the Court is satisfied that there is an undue delay in the prosecution of any accounts or inquiries or in any other proceedings pursuant to a judgment or order, the Court may require the party having the conduct of the proceedings, or any other party, to explain the delay.

(2) After hearing any explanation pursuant to subrule (1), the Court may make any order that the Court considers appropriate:

(a) with respect to expediting the proceedings or the conduct of the proceedings;

(b) staying the proceedings; or

(c) respecting the costs of the proceedings.

(3) For the purposes of this rule, the Court may:

(a) order the attendance of any party whose presence is required; and

(b) give directions to any party to conduct any proceedings and carry out any directions that may be given.

Certificate

6-63(1) The local registrar or other person taking or verifying the accounts shall forward to the Court, in a concise certificate, the result of any proceedings before the local registrar or other person respecting inquiries or taking and verifying the accounts.

(2) A judge is not required to sign a certificate forwarded pursuant to subrule (1).

(3) A certificate forwarded pursuant to subrule (1) is deemed to be approved and adopted by the Court and is binding on all parties to the proceedings unless discharged or varied on application to the Court made before the expiration of 9 days after forwarding of the certificate.

(4) A certificate:

(a) must not, unless the circumstances of the case make it necessary, set out the order directing the account or any documents, evidence or reasons; but

(b) must refer to the order directing the account, documents and evidence, or particular paragraphs of them, so that the certificate clearly shows the basis on which the result stated in the certificate is founded.

(5) If an account is directed, the certificate:

(a) must state the result of the account and not set out the result by way of schedule;

(b) must refer to the account filed;

(c) must specify by the numbers attached to the items in the account which, if any, of those items have been disallowed or varied; and

(d) must state what additions, if any, have been made by way of surcharge or otherwise.

(6) If an account has been so altered that it is necessary to have a fair transcript of the account as altered, the local registrar or other person taking or verifying the accounts may require the party seeking the judgment or order to make that transcript, and the transcript must be referred to in the certificate.

(7) The local registrar or other person taking or verifying the accounts shall file with the certificate:

(a) the accounts; and

(b) any transcripts referred to in the certificate.

(8) No copy of any account shall be required to be taken by any party.

Referral to Court

6-64 Before the proceedings before the local registrar or other person taking or verifying the accounts are completed:

(a) any party to the proceedings may require the local registrar or other person to refer any matters arising in the course of the proceedings to the Court; or

(b) the local registrar or other person may refer any matters to the Court on his or her own initiative.

Application to vary after certificate binding

6-65 On an application, if the Court is satisfied that the special circumstances of the case require it, the Court may order that a certificate be discharged or varied at any time after it has become binding on the parties.

Reference for assessment of damages

6-66(1) If, on the trial of any action, any party establishes his or her right to damages but is unable to prove the amount of the damages or if it appears that the amount of damages sought to be recovered is substantially a matter of calculation, the judge may refer the assessment of damages to himself or herself in chambers on those terms as to costs or otherwise that the judge considers just.

(2) On hearing the evidence, the judge to whom the assessment of damages is referred shall certify the amount of damages ascertained.

(3) The certificate of the amount of damages must be filed in the office of the local registrar.

(4) On filing, any assessment of costs, entering judgment and other matters may proceed as in ordinary cases.

Where continuing cause of action

6-67 If damages are to be assessed with respect to any continuing cause of action, the damages must be assessed down to the time of assessment.

DIVISION 6
Replevin

Recovery of goods unlawfully detained

6-68(1) A plaintiff in any action brought to recover any personal property who claims, alone or with any other claim, that the property was unlawfully taken or is unlawfully detained, may apply to the Court for a replevin order to deliver that property to the plaintiff on the plaintiff's complying with the rules in this Division.

(2) An application pursuant to subrule (1) may be made at any time after the issue of the statement of claim.

(3) A replevin order must be in Form 6-68.

(4) Nothing in this Division authorizes the replevying of any property seized by a sheriff or other officer charged with the execution of any process issued out of the Court.

Issue of replevin order

6-69(1) The local registrar shall issue a replevin order on the plaintiff filing the plaintiff's affidavit, or the affidavit of the plaintiff's duly authorized agent, that contains all of the following:

(a) a description of the property and its value, to the best of the deponent's belief;

(b) a statement that the plaintiff claiming the property is the owner or is entitled to the possession of the property;

(c) if replevin is sought in the case of property distrained for rent or damage feasant, a statement that the property was taken under colour of distress for rent or damage feasant, as the case may be;

(d) if replevin is sought in the case of property wrongfully taken out of the possession of the plaintiff, or fraudulently got out of the plaintiff's possession, a statement of:

(i) the time when and the wrongful and fraudulent manner in which the property was taken or gotten out of the plaintiff's possession; and

(ii) those facts and circumstances that show that the plaintiff is entitled to the possession of the property;

(e) the name of the judicial centre nearest to which the property sought to be replevied is situated.

(2) If the affidavit substantially complies with the requirements of subrule (1), the validity of the replevin order must not be questioned in any interlocutory proceeding.

Information Note

Damage feasant refers to damage caused by another's animal or other personal property being found on land and doing damage on the land, for example, by treading down grass.

Replevin security

6-70(1) Before the sheriff recovers by replevin, the plaintiff or an agent of the plaintiff shall provide the sheriff with security equal to the value of the property to be replevied as stated in the replevin order.

(2) For the purposes of subrule (1), security must consist of:

(a) cash;

(b) negotiable securities;

(c) an irrevocable letter of credit issued by a chartered bank; or

(d) a bond with sufficient sureties.

(3) At the defendant's request, the sheriff shall assign the security to the defendant.

(4) On an assignment pursuant to subrule (3), the defendant is entitled to bring an action on the security in the defendant's own name against the party depositing the cash or negotiable securities, the chartered bank or the parties who execute a bond.

(5) For the purposes of this rule:

(a) a bond must be in Form 6-70A;

(b) a deposit of cash or securities must be accompanied by a Deposit of Cash or Securities for Replevin in Form 6-70B; and

(c) a deposit of a letter of credit issued by a chartered bank must be accompanied by a Deposit of Letter of Credit for Replevin in Form 6-70C.

(6) If the defendant retains possession of personal property in accordance with rule 6-72:

(a) any security deposited by the plaintiff must immediately be returned to the plaintiff; or

(b) if the security consists of cash or negotiable securities and is not returned, the cash or negotiable securities must not be released without an order of the Court.

Service of copy of replevin order where property secured or concealed from sheriff

6-71(1) A copy of a replevin order must be served:

(a) on the defendant personally;

(b) if the defendant cannot be found, by leaving it at the defendant's usual or last place of residence with the defendant's spouse or another adult person who is a member of the defendant's family or household;

(c) if no person as described in clause (b) is resident at the defendant's usual or last place of residence, by posting it in a conspicuous place on the premises; or

(d) if the defendant has no known residence, by posting it in the office of the local registrar who issued the replevin order.

(2) Service or posting pursuant to subrule (1) must not be made until the sheriff has replevied the property described in the replevin order or that part of the property that can be found.

(3) Subject to subrule (4), a sheriff or other officer may, if necessary, break open, enter and search any premises for the purpose of replevying any property demanded if:

(a) the sheriff or other officer believes on reasonable grounds that all or any part of the property to be replevied is secured, contained or concealed in any premises, building or enclosure of:

(i) the defendant; or

(ii) any other person keeping or holding the property for or on behalf of the defendant;

(b) the sheriff or other officer has demanded that the owner, occupier or other person in charge of the premises, building or enclosure deliver the property; and

(c) the property has not been delivered on that demand.

(4) A sheriff or other officer may break open, enter and search pursuant to subrule (3) only between sunrise and sunset.

(5) If the sheriff or other officer finds all or any of the property to be replevied in the premises, building or enclosure, the sheriff or other officer may replevy the property.

Defendant's right to retain on giving security

6-72(1) Except in case of distress for rent or damage feasant, the defendant or an agent of the defendant has the right to retain possession of all or part of the property described in the replevin order if the defendant provides the sheriff with security equal to the value of the property to be replevied as stated in the replevin order.

(2) For the purposes of subrule (1), security must consist of:

(a) cash;

(b) negotiable securities;

(c) an irrevocable letter of credit issued by a chartered bank; or

(d) a bond with sufficient sureties.

(3) At the plaintiff's request, the sheriff shall assign the security to the plaintiff.

(4) On an assignment pursuant to subrule (3), the plaintiff is entitled to bring an action on the security in the plaintiff's own name against the party depositing the cash or negotiable securities, the chartered bank or the parties who execute a bond.

(5) For the purposes of this rule:

(a) a bond must be in Form 6-72A;

(b) a deposit of cash or securities must be accompanied by a Deposit of Cash or Securities for Replevin in Form 6-72B; and

(c) a deposit of a letter of credit issued by a chartered bank must be accompanied by a Deposit of Letter of Credit for Replevin in Form 6-72C.

(6) Security consisting of cash or negotiable securities must not be released without an order of the Court.

Sheriff's return to replevin order

6-73 The sheriff shall without delay make a return of the replevin order to the Court at the judicial centre where that order was issued and shall attach to the return:

(a) the names, places of residence and occupation of the parties to and the date of the security taken from the plaintiff and the names of the witnesses to the security;

(b) the number, quality and quantity of the articles of property replevied;

(c) if the sheriff has replevied only a portion of the property mentioned in the replevin order and cannot replevy the residue, a statement respecting those articles that the sheriff cannot replevy and the reason why not; and

(d) if the property is retained by the defendant pursuant to rule 6-72, the date and the names, places of residence and occupation of the parties and the witnesses to any security document.

DIVISION 7
Interpleader

Interpretation of Division

6-74 In this Division:

"applicant" means an applicant for an interpleader order; (« *requérant* »)

"application" means an application for an interpleader order; (« *requête* »)

"claimant" means a party making or expected to make an adverse claim against personal property; (« *réclamant* »)

"personal property" includes debt. (« *bien personnel* »)

Cases in which relief by interpleader granted

6-75(1) An application for an interpleader order may be made by a person seeking relief who is under liability for any personal property, for or with respect to which the applicant is, or expects to be sued by 2 or more claimants.

(2) An application for an interpleader order may be made by a sheriff or other officer of the Court if:

(a) the sheriff or other officer is:

(i) charged with enforcing a judgment pursuant to an enforcement instruction by or under the authority of the Court pursuant to which any personal property may be seized to enforce a judgment; or

(ii) required to make a seizure of personal property under any security agreements or other instrument that creates a lien or charge on personal property or that reserves a right of possession in the personal property; and

(b) a claim is made or expected to be made to any personal property seized or intended to be seized pursuant to subclause (a)(i) or to any personal property seized or repossessed pursuant to a security agreement or other instrument mentioned in subclause (a)(ii), or to the proceeds or value of the personal property, by:

(i) any person other than the person against whom the process issued;

(ii) any landlord for rent;

(iii) any judgment creditor claiming priority under any previous judgment, enforcement instruction, process or proceeding; or

(iv) any party claiming the benefit of any exemptions allowed by law.

(3) The sheriff or other officer may apply for an interpleader order notwithstanding the fact that the sheriff or other officer has, before making any seizure or repossessing any goods, taken a bond or other security by way of indemnity or otherwise from:

(a) the judgment creditor; or

(b) any other person authorizing or requiring the sheriff or other officer to make the seizure or to repossess the goods.

Matters to be proved by applicant

6-76(1) The applicant shall satisfy the Court by affidavit or otherwise:

(a) that the applicant claims no interest in the subject matter in dispute, other than for charges or costs;

(b) that the applicant does not collude with any of the claimants; and

(c) subject to subrule (2), that the applicant is willing to pay or transfer the subject matter into Court or to dispose of it as the Court may direct.

(2) Clause (1)(c) does not apply if the applicant is a sheriff or other officer of the Court who:

(a) is charged with enforcing a judgment by or under the authority of the Court or is authorized and required to seize any goods under a security agreement or other instrument creating a lien or charge on any personal property or reserving a right of possession with respect to any personal property; and

(b) has withdrawn from possession in consequence of the judgment creditor admitting the claim of the claimant pursuant to rule 6-85.

Adverse titles

6-77 An applicant is not disentitled to relief by reason only that the titles of the claimants do not have a common origin, but are adverse to and independent of one another.

Defendant applying

6-78(1) If the applicant is a defendant, the applicant shall make the application in the action at any time after service of the statement of claim.

(2) On an application, the Court may stay all proceedings in the action.

Form of application and notice

6-79(1) An application must be made by notice directed to the claimants requiring them to:

(a) appear before the presiding judge in chambers at the time and place that may be designated in the notice;

(b) state the nature and particulars of their claims; and

(c) either maintain or relinquish them.

(2) Unless the Court, on an application without notice, gives special leave to the contrary, there must be at least 11 days between the service of the notice and the day named in the notice for appearing in accordance with the notice.

Claimant defaulting

6-80(1) The Court may make an order declaring that a claimant and all persons claiming under the claimant are forever barred from taking any further interpleader proceedings against the applicant and persons claiming under the applicant if the claimant:

(a) has been served with a notice and does not appear;

(b) fails to satisfy the Court by affidavit filed of the merits of the claimant's claim; or

(c) fails to comply with an order.

(2) Clause (1)(b) does not apply if the Court has dispensed with the requirement to file an affidavit.

Summary disposal of issue

6-81(1) If the claimants appear, the Court may:

(a) dispose of the matters in issue in a summary manner; or

(b) order either:

(i) that any claimant be made a defendant in any action already commenced with respect to the subject matter in dispute in lieu of or in addition to the applicant; or

(ii) that an issue between the claimants be stated and tried.

(2) If the Court orders that an issue be stated and tried pursuant to subclause (1)(b)(ii), the Court may direct:

(a) which of the claimants is to be plaintiff and which is to be defendant; and

(b) the time and place for the trial of the issue.

Question of law

6-82 When the question is one of law and the facts are not in dispute, the Court may:

(a) decide the question without directing the trial of an issue; or

(b) order that an application be made pursuant to rule 7-1.

Appeal decision otherwise final

6-83(1) An appeal to the Court of Appeal lies from any order, decision or judgment of the Court in any proceeding pursuant to this Division whether:

(a) a decision was made in a summary way pursuant to rule 6-81;

(b) a decision was made on a question of law pursuant to rule 6-82; or

(c) after trial of an issue.

(2) An appeal to the Court of Appeal is subject to the same privileges, rights, responsibilities and burdens as an appeal from any order, decision or judgment in any action.

(3) Subject to any appeal to the Court of Appeal, a decision of the Court pursuant to this Division is final and conclusive against the claimants and all persons claiming under them.

Discovery, powers of Court, costs

6-84(1) The rules in Division 3 and Division 5 of this Part and in Division 2 of Part 5 apply with any necessary modification to proceedings pursuant to this Division.

(2) The Court may make any orders that are necessary respecting the satisfaction or payment of any lien or charge of the applicant with respect to the subject matter of the application.

(3) If the Court is trying an issue or disposing of a matter in a summary way or on an application pursuant to rule 7-1, the Court may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise disposed of.

Information Note

If proceedings are taken by a sheriff, you may also wish to refer to *The Creditors' Relief Act*, sections 12 to 14.

Sheriff's interpleader

6-85(1) A notice of a claim must be made in writing if the claim is made to or with respect to:

(a) any property that:

(i) a sheriff has seized for the purpose of enforcing a judgment; or

(ii) a sheriff has seized or repossessed under or by virtue of any security agreement or other document that creates any charge on personal property or gives a right to repossess personal property; or

(b) the proceeds of any property mentioned in clause (a).

(2) In a notice of claim, the claimant shall give an address for service.

(3) On receipt of a notice of claim, the sheriff shall immediately give, by registered mail, notice in writing of the claim to:

(a) the judgment creditor; or

(b) if the seizure or repossession has been by extrajudicial process, to the party authorizing the seizure or repossession.

(4) The notice by the sheriff required pursuant to subrule (3) must be in Form 6-85A or in a substantially similar form with the same effect.

(5) Within 14 days after the sheriff mails the notice pursuant to subrule (3), the judgment creditor or the person authorizing the seizure or repossession shall give written notice to the sheriff that the judgment creditor or the person authorizing the seizure or repossession admits or disputes the claim.

(6) The notice required pursuant to subrule (5) must be in Form 6-85B or in a substantially similar form with the same effect.

(7) If the judgment creditor or person authorizing the seizure or repossession admits the title of the claimant and gives notice as directed by this rule, the judgment creditor or person authorizing the seizure or repossession is only liable to the sheriff for any fees and expenses incurred before the receipt of the notice admitting the claim.

(8) After giving a notice pursuant to subrule (5), a claimant to goods seized or taken into possession by the sheriff is deemed to be a party to the proceedings and may be questioned on his or her claim, and Subdivision 3 of Division 2 of Part 5 applies, with any necessary modification, to that questioning.

(9) If the claimant mentioned in subrule (8) is a corporation, the rules for questioning applicable in an action apply with any necessary modification to questioning pursuant to this Division.

(10) If the claimant mentioned in subrule (8) has given notice of his or her claim by a lawyer, the lawyer is entitled to notice of any questioning pursuant to the provisions of this rule, and service of the consent, appointment or order accompanied by the proper conduct money on that lawyer is deemed sufficient service within the provisions of rule 5-22.

(11) A claimant is liable to have the claimant's claim barred if the claimant:

(a) has been duly served with a consent, appointment or order for questioning or with a consent, appointment or order and subpoena, as the case may be, and has received or been tendered the proper conduct money; and

(b) either:

(i) neglects or refuses to attend at the proper time and place for the claimant's questioning; or

(ii) if having attended, refuses to be sworn or affirmed or to answer any lawful question put to the claimant by any party entitled to do so or by the party's lawyer.

(12) The party who does the questioning pursuant to this rule shall bear the costs of the questioning.

(13) If the Court is satisfied, based on reasonable grounds, that questioning cannot be completed within 14 days after the mailing to the judgment creditor or the person authorizing seizure or repossession of the notice from the sheriff, the Court may, on an application without notice, grant to the judgment creditor or person authorizing seizure or repossession an extension of time for giving notice to the sheriff of his or her admission of the claim or dispute of the claim.

(14) This rule applies to third person claims and interpleader proceedings by a sheriff arising under *The Enforcement of Money Judgments Act* to the extent that this rule is not in conflict with the provisions of that Act or its regulations.

Amended. Gaz. 13 Nov. 2015.

Judgment creditor admitting claim

6-86 On the judgment creditor or other person authorizing seizure or repossession giving notice to the sheriff that he or she admits the claim of the claimant, the sheriff shall withdraw from possession.

Judgment creditor not admitting or disputing

6-87(1) The sheriff may apply for an interpleader order if:

(a) the judgment creditor or the person authorizing seizure or repossession does not admit or dispute the title of the claimant to the property in question within the 14-day period mentioned in subrule 6-85(5);

(b) the claimant does not withdraw the claimant's claim to the property by notice in writing to the sheriff; and

(c) no order has been made pursuant to subrule 6-85(13).

(2) Service of the notice of application may be made on all interested parties personally or by registered mail.

(3) The Court may, for the purposes of the interpleader proceedings, make any orders as to costs and any other orders that the Court considers just if:

(a) the claimant withdraws the claimant's claim, or the judgment creditor or person authorizing seizure or repossession admits the title of the claimant by notice in writing to the sheriff before the return of the notice of application; and

(b) the claimant or judgment creditor or person authorizing seizure or repossession gives notice of the withdrawal or admission to the other party.

One application only

6-88 If a sheriff has seized the same property pursuant to more than one enforcement instruction, the sheriff:

(a) shall not make a separate application in each case;

(b) may make one application; and

(c) may make all judgment creditors who have not admitted the claim of the claimants and all claimants parties to the application.

Delivery of property to claimant pending adjudication, sale of perishable goods

6-89(1) Pending the adjudication of a claim, the sheriff may permit the claimant to retain possession of the property until the final adjudication of the claim if the claimant provides the sheriff with security in an amount that the sheriff considers sufficient, by bond or otherwise, for the delivery to the sheriff of the property taken or the value of the property when demanded.

(2) Notwithstanding the provision of a bond or security pursuant to subrule (1), the sheriff or other officer of the Court is entitled at any time to again seize the property.

(3) On the request of any party and on that party giving sufficient security to the sheriff or other officer of the Court, or an order of the Court, the sheriff or other officer may sell at a public auction to the highest bidder:

(a) any horses, cattle, sheep or perishable goods that are the subject of an application; or

(b) any property that is perishable, that cannot be stored or is disproportionately costly to store or that is likely to significantly decline in value before an interpleader order is issued.

(4) A public auction pursuant to subrule (3) is to be conducted on any terms as to notice and otherwise that the Court may direct.

(5) If the debtor from whom the property has been seized pursuant to an enforcement instruction claims that the seized property is exempt by virtue of *The Exemptions Act*, the Court may order the release of that property to the debtor, pending determination of the issue of exemption, on any terms and conditions that the Court may direct.

Order for sale of goods

6-90 If a sheriff has seized personal property pursuant to an enforcement instruction and a claimant alleges that the claimant is entitled, under a bill of sale or otherwise, to the personal property by way of security for debt, the Court may:

(a) order a sale of the personal property; and

(b) direct that:

(i) the proceeds from the sale be applied to discharge the amount due the claimant if it is not disputed; or

(ii) a sufficient amount of the proceeds from the sale be applied to answer the claim and be paid into Court pending trial of the claim.

PART 7: RESOLVING CLAIMS WITHOUT A FULL TRIAL

What this Part is about: This Part allows a claim to be resolved through processes to expedite proceedings or avoid a full trial. These processes include:

- applications to resolve a particular issue or question, including a question of law;
- applications for summary judgment; and
- applications to strike out a pleading or other document.

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Part 7: Resolving Claims Without A Full Trial

PART 7: RESOLVING CLAIMS WITHOUT A FULL TRIAL

DIVISION 1
Trial of Particular Questions or Issues

Application to resolve particular questions or issues

7-1(1) On application, the Court may:

(a) order a question or an issue to be heard or tried before, at or after a trial for the purpose of:

(i) disposing of all or part of a claim;

(ii) substantially shortening a trial; or

(iii) saving expense;

(b) in the order mentioned in clause (a) or in a subsequent order:

(i) define the question or issue or, in the case of a question of law, approve or modify the issue agreed to by the parties;

(ii) fix time limits for the filing and service of briefs, an agreed statement of facts or any other materials required for the hearing; and

(iii) set out any other direction to organize the hearing;

(c) stay any other application or proceeding until the question or issue has been decided; or

(d) direct that different questions of fact in an action be tried by different modes.

(2) If the question is a question of law, the parties may agree on:

(a) the question of law for the Court to decide;

(b) the remedy resulting from the Court's opinion on the question of law; and

(c) the facts, or may agree that the facts are not in issue.

(3) If the Court is satisfied that its determination of a question or issue substantially disposes of a claim or makes the trial of an issue unnecessary, it may:

(a) strike out a claim or order a pleading to be amended;

(b) give judgment on all or part of a claim and make any order it considers necessary;

(c) make a determination on a question of law; and

(d) make a finding of fact.

(4) Division 2 of Part 5 applies to an application pursuant to this rule unless the parties agree otherwise or the Court orders otherwise.

(5) A determination of a question or issue mentioned in subrule (1) is final and conclusive for the purposes of the action, subject to the determination being varied on appeal.

Information Note

In subrule 7-1(1), "a question or an issue" may include:

- a question of law,
- a question of fact,
- a question of mixed law and fact,
- a question of jurisdiction,
- a question of the legal capacity of the parties,
- a question of admissibility of evidence, and
- a question of the effect of other pending proceedings between the same parties with respect to the same subject matter.

Refer to Division 1 of Part 6 for rules respecting how to file an application and what may be filed with the application.

DIVISION 2
Summary Judgment

Application for summary judgment

7-2 A party may apply, with supporting affidavit material or other evidence, for summary judgment on all or some of the issues raised in the pleadings at any time after the defendant has filed a statement of defence but before the time and place for trial have been set.

Evidence on application

7-3(1) A response to an application for summary judgment must not rely solely on the allegations or denials in the respondent's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial.

(2) The Court may draw an adverse inference from the failure of a party to cross-examine on an affidavit or to file responding or rebuttal evidence.

(3) An affidavit for use on an application for summary judgment may be made on information and belief as provided in rule 13-30, but, on the hearing of the application, the Court may draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts.

Information Note

A respondent to an application pursuant to this rule may file a response to the application pursuant to Subdivision 2 of Division 1 of Part 6.

Briefs required

7-4(1) On an application for summary judgment, each party shall serve on each of the other parties to the application and file a brief consisting of a concise argument stating the facts and law relied on by the party.

(2) The applicant's brief must be served and filed at least 10 days before the hearing.

(3) The respondent's brief must be served and filed at least 5 days before the hearing.

(4) If the applicant wishes to reply to any new matters raised in the respondent's brief, the applicant must serve and file a reply brief at least 3 days before the hearing.

New Gaz. 23 Sep. 2022.

Disposition of application

7-5(1) The Court may grant summary judgment if:

(a) the Court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or

(b) the parties agree to have all or part of the claim determined by summary judgment and the Court is satisfied that it is appropriate to grant summary judgment.

(2) In determining pursuant to clause (1)(a) whether there is a genuine issue requiring a trial, the Court:

(a) shall consider the evidence submitted by the parties; and

(b) may exercise any of the following powers for the purpose, unless it is in the interest of justice for those powers to be exercised only at a trial:

(i) weighing the evidence;

(ii) evaluating the credibility of a deponent;

(iii) drawing any reasonable inference from the evidence.

(3) For the purposes of exercising any of the powers set out in subrule (2), a judge may order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

(4) If the Court is satisfied that the only genuine issue is a question of law, the Court may determine the question and grant judgment accordingly.

(5) If the Court is satisfied that the only genuine issue is the amount to which the applicant is entitled, the Court may order a trial of that issue or grant judgment with a reference or an accounting to determine the amount.

(6) If the Court is satisfied there are one or more genuine issues requiring a trial, the Court may nevertheless grant summary judgment with respect to any matters or issues the Court decides can and should be decided without further evidence.

(7) If an application for summary judgment is dismissed, either in whole or in part, a judge may order the action, or the issues in the action not disposed of by summary judgment, to proceed to trial in the ordinary way.

(8) If an application for summary judgment is dismissed, the applicant may not make a further application pursuant to rule 7-2 without leave of the Court.

Information Note

If the amount of an award is referred for determination, Subdivision 2 of Division 5 of Part 6 applies.

Amended. Gaz. 13 Nov. 2015.

Directions and terms

7-6(1) If an application for summary judgment is dismissed, either in whole or in part, and the action is ordered to proceed to trial, in whole or in part, a judge may give any directions or impose any terms that the judge considers just, including an order:

(a) specifying what facts are not in dispute;

(b) defining the issues to be tried;

(c) establishing a time line for pre-trial procedures;

(d) regulating disclosure or production of documents or other evidence;

(e) permitting evidence on the application for summary judgment to stand as evidence at trial;

(f) specifying that the evidence of a witness be given in whole or in part by affidavit;

(g) specifying that any experts engaged by or on behalf of the parties in relation to the action meet on a without prejudice basis in order to identify the issues on which the experts agree and the issues on which they do not agree, to attempt to clarify and resolve any issues that are the subject of disagreement and to prepare a joint statement setting out the areas of agreement and any areas of disagreement and the reasons for them if, in the opinion of the Court:

(i) the cost or time savings or other benefits that may be achieved from the meeting are proportionate to the amounts at stake or the importance of the issues involved in the case; and

(ii) either:

(A) there is a reasonable prospect for agreement on some or all of the issues; or

(B) the rationale for opposing expert opinions is unknown and clarification on areas of disagreement would assist the parties or the Court;

(h) directing payment into Court of all or part of the claim; and

(i) directing security for costs.

(2) At the trial, any facts specified pursuant to clause (1)(a) are deemed to be established unless the trial judge orders otherwise to prevent injustice.

(3) In deciding whether to make an order pursuant to clause (1)(f), the fact that an adverse party may reasonably require the attendance of the deponent at trial for cross-examination is a relevant consideration.

(4) If an order is made pursuant to clause (1)(g), each party shall pay that party's own costs.

(5) If a party fails to comply with an order pursuant to clause (1)(h) for payment into Court or pursuant to clause (1)(i) for security for costs, the Court on application of the opposite party may dismiss the action, strike out the statement of defence or make any other order that the Court considers just.

(6) If on an application pursuant to subrule (5) the statement of defence is struck out, the defendant is deemed to be noted in default.

Stay of enforcement

7-7 If it appears that the enforcement of a summary judgment ought to be stayed pending the determination of any other issue in the action or a counterclaim, crossclaim or third party claim, the Court may make that order on those terms that the Court considers just.

Proceedings after summary judgment against a party

7-8 A plaintiff who obtains summary judgment may proceed against the same defendant for any other remedy and against any other defendant for the same or any other remedy.

DIVISION 3
Striking Out or Amending Pleading or Document and Related Powers of Court

Striking out a pleading or other document, etc. in certain circumstances

7-9(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:

(a) that all or any part of a pleading or other document be struck out;

(b) that a pleading or other document be amended or set aside;

(c) that a judgment or an order be entered;

(d) that the proceeding be stayed or dismissed.

(2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:

(a) discloses no reasonable claim or defence, as the case may be;

(b) is scandalous, frivolous or vexatious;

(c) is immaterial, redundant or unnecessarily lengthy;

(d) may prejudice or delay the fair trial or hearing of the proceeding; or

(e) is otherwise an abuse of process of the Court.

(3) No evidence is admissible on an application pursuant to clause (2)(a).

PART 8: EXPEDITED PROCEDURE

What this Part is about: This Part describes the abbreviated pre-trial procedures available if the trial of the action will be 3 days or less, and the action otherwise meets the requirements set out in rule 8-2.

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Part 8: Expedited Procedure

PART 8: EXPEDITED PROCEDURE

Application of other rules

8-1 The rules that apply to an action apply to an action pursuant to this Part, unless this Part provides otherwise.

When Part applies

8-2(1) Subject to subrules (2) and (3) and unless the Court orders otherwise, the expedited procedure in this Part applies to an action if:

(a) the only claims in the action are for one or more of money, land, a builder's lien and personal property and the total of the following amounts is $100,000 or less, exclusive of interest and costs:

(i) the amount of any money claimed in the action by the plaintiff for pecuniary loss;

(ii) the amount of any money to be claimed in the action by the plaintiff for non-pecuniary loss;

(iii) the fair market value, as at the date the action is commenced, of:

(A) all land and all interests in land claimed in the action by the plaintiff; and

(B) all personal property and all interests in personal property claimed in the action by the plaintiff;

(b) the parties to the action consent; or

(c) the Court, on its own motion or on the application of any party, so orders.

(2) The expedited procedure in this Part applies to an action only if the trial of the action can be completed within 3 days.

(3) The expedited procedure in this Part does not apply to:

(a) family law proceedings, other than a family property action in which the only remedy claimed is a division of family property;

(b) class actions; or

(c) actions when the trial is before a jury.

(4) If there are 2 or more plaintiffs, the expedited procedure set out in this Part applies to an action pursuant to clause (1)(a) if the plaintiffs' claims, considered together, meet the requirements of that clause.

(5) If there are 2 or more defendants, the expedited procedure set out in this Part applies to an action pursuant to clause (1)(a) if the plaintiff's claim against each defendant, considered separately, meets the requirements of that clause.

Subsequent filings

8-3 If this Part applies to an action:

(a) any party may file a notice of expedited procedure in Form 8-3; and

(b) the words "Subject to Part 8 Expedited Procedure" must be added to the style of cause, immediately below the listed parties, for all documents filed after:

(i) the notice of expedited procedure is filed pursuant to clause (a); or

(ii) the Court order is made pursuant to clause 8-2(1)(c).

Judgment not limited

8-4 Nothing in this Part prevents the Court from awarding a judgment to a plaintiff in an expedited procedure action for an amount in excess of $100,000.

When Part ceases to apply

8-5(1) This Part ceases to apply to an expedited procedure action if the Court, on its own motion or on the application of any party, so orders.

(2) If the Court makes an order pursuant to subrule (1) that this Part ceases to apply to an action, the words "Commenced in Part 8 Expedited Procedure and continued in the general procedure" must be added to the style of cause, immediately below the listed parties, for all documents filed after the order is made.

Bringing an application

8-6(1) Subject to subrule (2), a party to an expedited procedure action shall not serve a notice of application on another party unless a pre-trial conference has been conducted in relation to the action.

(2) Subrule (1) does not apply to:

(a) an application made for an order pursuant to rule 8-5 that this Part cease to apply to the action;

(b) an application made to obtain leave to bring an application referred to in subrule (3);

(c) an application made pursuant to Division 2 or Division 3 of Part 7;

(d) an application made pursuant to Subdivision 3 of Division 1 of Part 6;

(e) an application made to add, remove or substitute a party; or

(f) an application made by consent.

(3) On application by a party, a judge may relieve a party from the requirements of subrule (1) if:

(a) it is impracticable or unfair to require the party to comply with the requirement of subrule (1); or

(b) the application mentioned in subrule (1) is urgent.

Oral questioning

8-7 Unless the Court orders otherwise, in an expedited procedure action the questioning of any person who can be questioned pursuant to Subdivision 3 of Division 2 of Part 5 by all parties who are adverse in interest must not, in total, exceed in duration:

(a) 2 hours; or

(b) any greater period to which the person being examined consents.

Information Note

Refer to Subdivision 2 of Division 2 of Part 5 for rules regarding the timing of exchange and content of Affidavits of Documents.

Pre-trial conference

8-8(1) A joint request for pre-trial conference in an expedited procedure action must be filed not more than one year after the date of service of the statement of claim on all defendants.

(2) If one of the parties refuses to join in a joint request for pre-trial conference, the party wishing to obtain a pre-trial conference in an expedited procedure action may follow the procedures set out in rule 4-11 to obtain a pre-trial conference without consent.

(3) A pre-trial brief filed pursuant to this Part must not exceed 8 pages in length.

(4) The 8-page limit mentioned in subrule (3) does not include any documents intended to be used at trial or authorities relied on.

(5) The rules pursuant to Subdivision 2 of Division 3 of Part 4 relating to a pre-trial conference apply, with any necessary modification, as required by the rules of this Part.

If trial will require more than 3 days

8-9 If, as a result of the pre-trial conference in an expedited procedure action, the pre-trial conference judge considers that the trial will likely require more than 3 days:

(a) the pre-trial conference judge may adjourn the trial to a date to be fixed as if the action were not subject to this Part; and

(b) the pre-trial conference judge is not seized of the action.

Affidavit evidence at trial

8-10 If all parties consent, uncontested evidence may be submitted by affidavit at trial in an expedited procedure action.

Information Note

The rules regarding the form and content of affidavits are found in Subdivision 2 of Division 4 of Part 13.

Costs

8-11(1) Unless the Court orders otherwise or the parties consent, the amount of costs, exclusive of disbursements, to which a successful party to an expedited procedure action is entitled is as follows:

(a) if the time spent on the hearing of the trial is 1 day or less, $5,000;

(b) if the time spent on the hearing of the trial is 2 days or less but more than 1 day, $6,000;

(c) if the time spent on the hearing of the trial is more than 2 days, $7,000.

(2) If the time spent on the hearing of the trial is more than the 3 days permitted pursuant to subrule 8-2(2), the amount of costs for the additional days are in the discretion of the trial judge.

(3) For the purposes of subrule (2), a trial judge may consider the relative responsibility of the parties for the time spent on the hearing of the trial that exceeds 3 days.

Settlement offers

8-12 In exercising its discretion pursuant to rule 8-11, the Court may consider a formal offer to settle pursuant to Division 5 of Part 4.

Taxes to be added to costs

8-13(1) If tax is payable by a party to an expedited procedure action with respect to legal services, an additional amount to compensate for that tax must be added to the costs to which the party is entitled pursuant to rule 8-11.

(2) The additional amount mentioned in subrule (1) must be determined by multiplying the amount of costs to which the party is entitled pursuant to rule 8-11 by the percentage rate of the tax.

PART 9: TRIAL

What this Part is about: This Part includes rules for obtaining a trial date and subpoenas and also includes rules for the conduct of a trial.

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Part 9: Trial

PART 9: TRIAL

DIVISION 1
Mode of Trial

Demand for jury

9-1(1) Unless the Court orders otherwise, at any time before the local registrar has scheduled a date for trial and notified the parties of the date, a party may demand that the issues be tried or that the damages be assessed by a jury by:

(a) serving on the opposite party a notice in writing making a demand for a jury; and

(b) filing a copy of that notice with the local registrar.

(2) If a demand for a jury is made:

(a) the party who makes the demand shall deposit with the local registrar the sum required by *The Jury Act, 1998* to be deposited with the local registrar; and

(b) the local registrar shall not receive or file a demand unless the deposit mentioned in this rule is made.

(3) If an action has been ordered to be retried after having been set down for trial by a judge with a jury and a party desires that the action be retried by a judge with a jury, that party shall, within 30 days after the order, deposit with the local registrar the sum required by *The Jury Act, 1998*.

(4) If the sum mentioned in subrule (3) is not deposited within the 30-day period, the action must be tried without a jury.

(5) If a jury is summoned by a sheriff pursuant to a demand for a jury filed with the local registrar and the demand is subsequently withdrawn, the party who filed the demand for a jury is liable for the fees prescribed by law for summoning a jury and cancelling the summons.

Information Note

See *The Jury Act, 1998*, sections 15 to 23 regarding juries in civil proceedings.

You may also wish to refer to the Court's *Jury Selection Practice Directive*.

DIVISION 2
Scheduling of Trial Dates

Setting down for trial

9-2(1) Unless the Court orders otherwise, a proceeding must not be set down for trial unless a pre-trial conference is held.

(2) The local registrar shall schedule a trial date to ensure the optimum use of Court time, but shall endeavour to assign a date to suit the convenience of the parties.

(3) The parties must accept the trial date scheduled by the local registrar unless the Court orders otherwise.

Information Note

Rule 3-7 governs where the trial is set down to be heard.

Fee for setting down

9-3 If a trial date has been scheduled pursuant to subrule 9-2(2), the party having the carriage of the proceeding shall immediately pay the required fee for setting down.

Information Note

If a pre-trial conference date is scheduled for a proceeding pursuant to rule 4-11, the fee for setting down is paid at that time by the party having carriage of the proceeding pursuant to subrule 4-11(11).

Adjournment of trial date

9-4(1) Subject to subrule (3), with the consent of the parties, the local registrar may adjourn the trial date for any proceeding that is scheduled for 5 trial days or less if, in the local registrar's opinion, the adjournment does not unreasonably interfere with the optimum use of court time.

(2) Except as permitted by subrule (1), if a trial date has been scheduled for any proceeding, the trial date must only be adjourned on the order of a judge on application by a party and supported by affidavit.

(3) This rule does not apply to trials arising under *The Child and Family Services Act*.

Amended. Gaz. 15 Jly. 2016.

Lists of trials to be provided by local registrar

9-5(1) The local registrar shall provide a numbered list for trials with juries, and a numbered list for trials without juries, with the cases listed in the order in which they are to be heard.

(2) The lists mentioned in subrule (1) are to be open for inspection during office hours of the Court.

DIVISION 3
Attendance of Witnesses at Trial

Witness must be listed in witness list

9-6(1) Unless the Court orders otherwise, a party shall not, at trial, lead evidence from a witness unless that witness is listed in a witness list.

(2) This rule does not apply to family law proceedings.

Form of praecipe for subpoena

9-7 If a party intends to issue a subpoena, a praecipe for that purpose, in Form 9-7, must be delivered and filed with the local registrar.

Form of subpoena

9-8(1) A subpoena must be in one of the Form 9-8A or Form 9-8B.

(2) The names of the witnesses to be summoned are not required to be included in the subpoena when issued but any number of names may, after the subpoena is issued, be inserted by the party issuing the subpoena.

Information Note

Form 9-8A is a *subpoena ad testificandum*. Form 9-8B is a *subpoena duces tecum*. A *subpoena ad testificandum* is a subpoena to testify and is the technical term for the ordinary subpoena. A *subpoena duces tecum* is a subpoena compelling the production of documents and items in the possession, custody and control of the person served with the subpoena.

Service of subpoena

9-9(1) A subpoena must be served in accordance with a method of service for commencement documents described in Part 12.

(2) At the time of service of the subpoena, the person served must be paid proper conduct money.

(3) If, after service of a subpoena and payment of the proper conduct money, the person served establishes a permanent residence at a place other than that at which the person resided when served, the person:

(a) is entitled to any additional conduct money on the basis of that to which the person would have been entitled with respect to the person's new residence; and

(b) must not be excused from attending by reason of non-payment of that increased conduct money before trial.

How long subpoena to remain in force

9-10(1) Every subpoena remains in force from the date of service until the trial of the action or matter in which it is served.

(2) If, after service of a subpoena, the trial or hearing is adjourned, the witnesses served:

(a) if they have attended as commanded, shall attend the adjourned hearing or trial on being paid the proper conduct money; or

(b) if they have not attended, shall attend the adjourned hearing or trial without being paid any further conduct money.

Requiring attendance of witnesses

9-11(1) The Court may order a person to attend trial as a witness, or direct a peace officer to apprehend a person anywhere in Saskatchewan, if the Court is satisfied that:

(a) proper service of the subpoena and payment of conduct money, both of which may be proved by an affidavit, were effected in compliance with rule 9-9;

(b) the person did not attend or remain in attendance at the trial in accordance with the subpoena; and

(c) the presence of the person is necessary.

(2) The Court may order one or more of the following:

(a) that the person be brought immediately, or at a time specified, before the Court or before a person named by the Court;

(b) that the person bring records described in the order that the person could be required to produce at trial;

(c) that the person be detained in custody in accordance with the order until the presence of the person is no longer required;

(d) that the person be released for a specified purpose on a recognizance, with or without sureties, on condition that the person appear as ordered;

(e) anything else necessary to ensure the attendance of the person and production of the records ordered to be produced.

Information Note

See rule 6-30 regarding the consequences if a person summoned by subpoena refuses to attend, to be sworn or affirmed or to answer any lawful question.

Rule 6-53 allows the Court to order the person having custody of a prisoner to produce that prisoner as a witness at trial.

DIVISION 4
Procedure at Trial

Notice to produce documents

9-12(1) A notice to produce documents at trial must:

(a) be in Form 9-12; and

(b) state the particular documents required.

(2) If a notice to produce comprises documents that are not necessary, the costs occasioned by that notice must be borne by the party giving the notice.

Party not appearing

9-13(1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove the plaintiff's claim, so far as the burden of proof lies on the plaintiff.

(2) If, when a trial is called, the defendant appears and the plaintiff does not appear, the defendant:

(a) if the defendant has no counterclaim, is entitled to judgment dismissing the action; and

(b) if the defendant has a counterclaim, the defendant may prove the counterclaim so far as the burden of proof lies on the defendant.

(3) Any verdict or judgment obtained if one party does not appear at the trial may be set aside by the Court on those terms that the Court considers just, on an application made within 15 days after the trial.

Postponement or adjournment of trial

9-14(1) If the Court considers it expedient in the interest of justice, the Court may postpone or adjourn a trial for that time, to that place and on those terms, if any, that it considers fit.

(2) No trial must be postponed on the ground of the absence of a material witness, unless the affidavit on which the application to postpone is made states:

(a) that the deponent is advised and believes that the party on whose behalf the application is made has a just cause of action or defence on the merits; and

(b) that the application is not made for the purpose of improperly delaying the trial.

Information Note

See rule 9-4 regarding an application to adjourn trial.

Witnesses may be excluded

9-15(1) The trial judge may, at the request of either party:

(a) order a witness to be excluded from the Court until the witness is called to give evidence; and

(b) order any party intending to give evidence to be excluded.

(2) If the trial judge does not consider it expedient to order a party to be excluded, the judge may require the party to be examined before the other witnesses on that party's behalf.

(3) If any witness or party does not comply with an order pursuant to this rule, the trial judge may:

(a) impose any punishment that the judge considers just; and

(b) in the judge's discretion, exclude the testimony of that witness or party.

Unavailable witness

9-16(1) In this rule, **"unavailable witness"** means a person questioned pursuant to Subdivision 3 of Division 2 of Part 5 who:

(a) has died; or

(b) is unable to testify because of infirmity or illness.

(2) Any party may, with leave of the trial judge, read into evidence all or part of the evidence given on questioning as the evidence of an unavailable witness to the extent that the evidence would be admissible if the unavailable witness were testifying in Court.

(3) Subrule (2) does not apply to questioning pursuant to rule 5-20.

(4) At least 5 clear days' notice must be given of an application pursuant to subrule (2).

Information Note

See rule 5-34 for when transcript evidence may be used.

Notice of persons not intended to be called as witnesses

9-17(1) If an adverse inference might be drawn from the failure of a party to call a person as a witness, that party may serve on every other party a notice of the names of those persons that the party does not intend to call as witnesses.

(2) The notice must be served 1 month or more before the date the trial is scheduled to start.

(3) The party on whom the notice is served may serve on the party who served the notice, within 10 days after service of the notice, a statement setting out any objection to the intention not to call a person as a witness.

(4) If the party on whom the notice is served does not respond to the notice of intention not to call a person as a witness, the failure to call that person as a witness is not to be considered to be adverse to the case of the party who served the notice.

(5) If a party objects to the notice of intention not to call a person, the cost of calling that person as a witness must be paid by the party who objects, regardless of the result of the claim, issue or question, unless the Court decides that the objection is reasonable.

Number of experts

9-18(1) Unless the Court permits otherwise, not more than one expert is permitted to give opinion evidence on any one subject on behalf of a party.

(2) If 2 or more corporate parties are affiliates within the meaning of the term "affiliate" in *The Business Corporations Act* and the corporate parties cannot agree respecting the expert witness to call, the Court may direct which of the corporate parties may call an expert witness.

Information Note

Other rules relating to experts are found in Division 3 of Part 5.

Witnesses to be examined orally unless otherwise ordered

9-19(1) In the absence of any agreement in writing between the parties or their lawyers and subject to the provisions of these rules, the witnesses at the trial of any action or at any assessment of damages must be examined orally and in open court.

(2) Notwithstanding subrule (1) but subject to subrule (3), the Court may, at any time and for any reason the Court considers sufficient, order:

(a) that any particular fact or facts may be proved by affidavit;

(b) that the affidavit of any witness may be read at the hearing or trial, on those conditions that the Court considers reasonable; or

(c) that any witness whose attendance in Court ought, for some sufficient cause, to be dispensed with be examined pursuant to rule 6-29.

(3) If it appears to the Court that the other party reasonably desires the production of a witness for cross-examination and that the witness can be produced, an order must not be made authorizing the evidence of the witness to be given by affidavit.

Information Note

Rule 9-28 describes when a judge or jury may inspect any place, property or thing concerning which a question may arise at trial or hearing.

Evidence by telephone or audio-visual method

9-20(1) The Court may order that the testimony of any witness taken orally by telephone or by any audio-visual method approved by the Court is admissible in evidence:

(a) if the parties consent; or

(b) if the Court so orders.

(2) Unless the Court orders otherwise, the witness may be sworn or affirmed by answering affirmatively the oath or affirmation administered by the Court.

(3) The oath or affirmation mentioned in subrule (2) may be in these words:

"Do you solemnly affirm (swear) that the evidence to be given by you shall be the truth, the whole truth and nothing but the truth? (So help you God?)"

(4) If the taking of evidence by telephone or approved audio-visual method is or becomes unsatisfactory or if the personal attendance of the witness is desirable, the presiding judge may:

(a) refuse to hear or continue to hear the evidence;

(b) receive or reject any evidence that may have been heard; and

(c) make any order or give any directions, including directions as to costs, that the judge considers appropriate.

(5) Unless the Court orders otherwise, copies of all reports, memoranda or other written material to which the witness intends to refer must be disclosed to the other party.

(6) Telephone or other charges:

(a) must be paid in the first instance by the party on whose behalf the witness is called; and

(b) unless the Court orders otherwise, may be claimed as a proper disbursement in the proceedings.

Admissibility of evidence; life expectancy, discount rate, dollar value

9-21(1) Except where there is evidence to the contrary:

(a) the life expectancy of an individual as set forth in Appendix 1 to this Part is admissible in evidence;

(b) the discount rate to be used in determining the amount of an award with respect to future pecuniary damages, to the extent that it reflects the difference between estimated investment and price inflation rates, is:

(i) for the 15-year period that follows the start of the trial, the greater of:

(A) the average of the value for the last Wednesday in each month of the real rate of interest on long-term Government of Canada real return bonds, monthly series, as published in the Bank of Canada's *Weekly Financial Statistics* for the period commencing on March 1 and ending on August 31 of the year before the year in which the trial begins, less 0.5% and rounded to the nearest 0.1%; and

(B) zero; and

(ii) for any later period covered by the award, 2.5% per year for each year in that period; and

(c) the value of $1 per year as set forth for the respective periods shown in Appendix 2 to this Part is admissible in evidence.

(2) If a party intends to call evidence on any matter provided for by this rule, the party shall, not less than 10 days before the date scheduled for a pre trial conference, give notice to each other party of the party's intention to do so and serve each other party with:

(a) a summary of the qualifications of each witness to be called;

(b) a copy of each document, including any tables and statistics, proposed to be submitted in evidence; and

(c) a copy of any calculations proposed to be submitted in evidence.

(3) Notwithstanding subrule (1):

(a) Appendix 1 is not conclusive as to life expectancy; and

(b) the health and habits of the individual and any other relevant fact or circumstance may be considered by the Court in determining life expectancy.

Information Note

As at June 1, 2017, the Government of Canada's long-term return bond, monthly series, is V122553.

Amended. Gaz. 11 Aug. 2017.

Reading of evidence taken in other causes

9-22(1) An order to read evidence taken in another cause or matter is not necessary.

(2) Evidence mentioned in subrule (1) may, subject to all just exceptions, be read:

(a) on an application without notice with leave of the Court; or

(b) on 2 days' notice being given to the other parties by the party desiring to use the evidence.

Evidence in mitigation for damages in actions for libel and slander

9-23(1) This rule applies to actions for libel or slander in which the defendant does not by defence assert the truth of the statement complained of.

(2) Subject to subrule (3), in an action mentioned in subrule (1), the defendant may, at the trial, give evidence in chief with a view to mitigation of damages as to:

(a) the circumstances under which the libel or slander was published; or

(b) the character of the plaintiff.

(3) The evidence mentioned in subrule (2) may be given only:

(a) with the leave of the judge; and

(b) by furnishing, at least 7 days before the trial, particulars to the plaintiff of the matters as to which the defendant intends to give evidence.

Cross-examination, vexatious or irrelevant questions

9-24 The judge may, in all cases, disallow any questions put in cross-examination of any party or other witness that appear to the judge to be vexatious and not relevant to any matter proper to be inquired into in the cause or matter.

Accidental omission to prove material fact or document

9-25(1) If, through accident, mistake or other cause, any party omits or fails to prove some fact or document material to the party's case, the Court may:

(a) proceed with the trial, subject to:

(i) the fact or document being proved afterwards; and

(ii) those terms as to costs or otherwise that the Court directs; and

(b) if the case is being tried by a jury:

(i) adjourn the jury sittings and require the attendance of the jury trying the case on a date to be fixed by the Court on those terms as to costs that the judge considers just; or

(ii) if satisfied that the fact or document is one for which formal proof could not be seriously controverted, direct the jury to find a verdict as if that fact or document had been proved before the judge.

(2) In the circumstances mentioned in subclause (1)(b)(ii):

(a) if the fact or document is proved before the judge, the jury's verdict takes effect on the fact or document being proved; or

(b) if the fact or document is not proved, judgment must be entered for the opposite party, unless the Court orders otherwise.

Application for dismissal at close of plaintiff's case

9-26 At the close of the plaintiff's case, the defendant may request the Court to dismiss the action on the ground that no case has been made, without being asked to elect whether evidence will be called.

Addresses to jury or to Court

9-27(1) Unless the judge orders otherwise, on a trial with a jury, the addresses to the jury must be as follows:

(a) if the opposite party does not announce any intention to present evidence:

(i) the party who begins, or that party's lawyer, must be allowed at the close of the party's case to address the jury a second time for the purpose of summing up the evidence; and

(ii) the opposite party or the opposite party's lawyer has the right to address the jury in reply;

(b) if both parties present evidence, the party who begins, or that party's lawyer, has the right to address the jury after the other party or the other party's lawyer has addressed the jury.

(2) Unless the Court orders otherwise, in non-jury cases, the lawyer for the party who bears the onus of proof shall first address the Court and has the right to reply.

Inspection by a judge, inspection by jury

9-28(1) Any judge by whom any cause or matter may be heard or tried may inspect any place, property or thing concerning which any question may arise in the cause or matter.

(2) In any cause or matter heard or tried by a judge with a jury, the judge may:

(a) order a viewing by the jury; and

(b) make any orders directing the sheriff or any other person who may be necessary to ensure the attendance of the jury at the time and place and in the manner that the judge considers fit.

Delivery of judgment

9-29 At or after trial, the judge shall direct a judgment to be entered that the judge considers right, and no application for judgment is necessary in order to obtain that judgment.

Information Note

See rule 6-11 regarding when an application may be turned into an application for judgment.

Trial book

9-30(1) The local registrar present at any hearing or trial shall keep a note in a book for the purpose of communicating to the assessment officer, if required, all of the following:

(a) the time at which the hearing or trial commenced and terminated, on each day on which the trial takes place;

(b) the names of the lawyers engaged and of the witnesses sworn or affirmed.

(2) The local registrar shall also enter in the book mentioned in subrule (1):

(a) all findings of fact or other matters that the judge may direct to be entered; and

(b) any directions of the judge as to judgment.

(3) Exhibits filed on a hearing or trial must be numbered and marked according to Form 9-30 and a list of exhibits, briefly describing each exhibit and stating by whom it was put in, must be entered in the book mentioned in subrule (1).

Minute of verdict, judgment or order

9-31 A minute of any verdict, judgment or order given, delivered or made in Court at any hearing or trial:

(a) must be endorsed on the copy of pleadings or notice of application filed; and

(b) when signed by the judge or by the local registrar present at the hearing or trial, is a sufficient authority to the local registrar to enter judgment or issue the order accordingly.

Use of trial evidence in subsequent proceedings

9-32 Evidence at a hearing or trial may be used in a subsequent application or subsequent proceedings in that action.

Recording of proceedings

9-33 No person shall record by any device, machine or system the proceedings of any Court or chambers:

(a) without leave of the presiding judge; and

(b) except as provided by *The Evidence Act* or any order issued pursuant to that Act.

Information Note

Refer to sections 28 to 37 of *The Evidence Act* respecting the recording of evidence.

Court recording of proceedings – request for copy

9-34(1) In this rule, **'recording of a proceeding'** means an audio or video recording of a proceeding made by or on behalf of the Court, but does not include a recording made of a chamber application, a pre-trial conference or a case management conference.

(2) Court recordings of chamber applications, pre-trial conferences and case management conferences do not form part of the Court record, and no access to these recordings shall be granted by the Court to any party, lawyer of record, member of the media, or member of the public.

(3) Subject to subsection (4) and to any enactment, rule or order restricting access to a proceeding, no person shall obtain or make a copy of a recording of a proceeding except by order of the Court.

(4) The local registrar may provide a copy of the recording of a proceeding to a lawyer of record who files a request with the Court in Form 9-34A.

(5) Any person, other than a lawyer of record, seeking a copy of the recording of a proceeding must file an application with the Court in Form 9-34B.

(6) On receipt of an application pursuant to subrule (5), the Court may do any of the following:

(a) require that notice of the application be given to the other parties to the proceeding or to other interested persons;

(b) set the matter down for a hearing;

(c) grant the application, on any terms and conditions that the Court may direct;

(d) dismiss the application.

(7) An order granting a request for a copy of the recording of a proceeding shall be in Form 9-34C, with any additional terms and conditions that the Court may direct.

New. Gaz. 27 Apr. 2018.

Appendix 1

(Clause 9-21(1)(a))

LIFE EXPECTANCY IN YEARS

Age	Sex	Life Expectancy (in years)
0 year	Male Female	77.5 82.3
1 year	Male Female	77.0 81.7
2 years	Male Female	76.0 80.8
3 years	Male Female	75.1 79.8
4 years	Male Female	74.1 78.8
5 years	Male Female	73.1 77.8
6 years	Male Female	72.1 76.9
7 years	Male Female	71.1 75.9
8 years	Male Female	70.1 74.9
9 years	Male Female	69.1 73.9
10 years	Male Female	68.1 72.9
11 years	Male Female	67.1 71.9
12 years	Male Female	66.2 70.9
13 years	Male Female	65.2 69.9
14 years	Male Female	64.2 68.9
15 years	Male Female	63.2 67.9

Age	**Sex**	**Life Expectancy (in years)**
16 years	Male Female	62.2 67.0
17 years	Male Female	61.3 66.0
18 years	Male Female	60.3 65.1
19 years	Male Female	59.4 64.1
20 years	Male Female	58.5 63.1
21 years	Male Female	57.5 62.2
22 years	Male Female	56.6 61.2
23 years	Male Female	55.7 60.2
24 years	Male Female	54.7 59.3
25 years	Male Female	53.8 58.3
26 years	Male Female	52.9 57.3
27 years	Male Female	52.0 56.4
28 years	Male Female	51.0 55.4
29 years	Male Female	50.1 54.4
30 years	Male Female	49.2 53.5
31 years	Male Female	48.2 52.5
32 years	Male Female	47.3 51.5
33 years	Male Female	46.4 50.6
34 years	Male Female	45.4 49.6

Age	**Sex**	**Life Expectancy (in years)**
35 years	Male Female	44.5 48.6
36 years	Male Female	43.6 47.7
37 years	Male Female	42.6 46.7
38 years	Male Female	41.7 45.8
39 years	Male Female	40.8 44.8
40 years	Male Female	39.8 43.9
41 years	Male Female	38.9 42.9
42 years	Male Female	38.0 42.0
43 years	Male Female	37.1 41.1
44 years	Male Female	36.2 40.1
45 years	Male Female	35.3 39.2
46 years	Male Female	34.3 38.3
47 years	Male Female	33.4 37.3
48 years	Male Female	32.5 36.4
49 years	Male Female	31.6 35.5
50 years	Male Female	30.8 34.6
51 years	Male Female	29.9 33.7
52 years	Male Female	29.0 32.8
53 years	Male Female	28.1 31.9
54 years	Male Female	27.2 31.0

Age	**Sex**	**Life Expectancy (in years)**
55 years	Male Female	26.4 30.1
56 years	Male Female	25.5 29.2
57 years	Male Female	24.7 28.3
58 years	Male Female	23.9 27.4
59 years	Male Female	23.0 26.5
60 years	Male Female	22.2 25.7
61 years	Male Female	21.4 24.8
62 years	Male Female	20.6 23.9
63 years	Male Female	19.8 23.1
64 years	Male Female	19.0 22.3
65 years	Male Female	18.3 21.4
66 years	Male Female	17.5 20.6
67 years	Male Female	16.8 19.8
68 years	Male Female	16.0 19.0
69 years	Male Female	15.3 18.2
70 years	Male Female	14.6 17.4
71 years	Male Female	13.9 16.6
72 years	MaleFemale	13.3 15.9
73 years	Male Female	12.6 15.1

Age	**Sex**	**Life Expectancy (in years)**
74 years	Male Female	12.0 14.4
75 years	Male Female	11.3 13.7
76 years	Male Female	10.7 12.9
77 years	Male Female	10.1 12.3
78 years	Male Female	9.6 11.6
79 years	Male Female	9.0 10.9
80 years	Male Female	8.5 10.3
81 years	Male Female	7.9 9.6
82 years	Male Female	7.4 9.0
83 years	Male Female	7.0 8.5
84 years	Male Female	6.5 7.9
85 years	Male Female	6.1 7.3
86 years	Male Female	5.6 6.8
87 years	Male Female	5.2 6.3
88 years	Male Female	4.9 5.8
89 years	Male Female	4.5 5.4
90 years	Male Female	4.2 5.0
91 years	Male Female	3.9 4.6
92 years	Male Female	3.6 4.2

Age	**Sex**	**Life Expectancy (in years)**
93 years	Male Female	3.4 3.9
94 years	Male Female	3.1 3.6
95 years	Male Female	3.0 3.3
96 years	Male Female	2.8 3.0
97 years	Male Female	2.6 2.8
98 years	Male Female	2.4 2.6
99 years	Male Female	2.3 2.4
100 years	Male Female	2.2 2.3
101 years	Male Female	2.0 2.1
102 years	Male Female	1.9 2.0
103 years	Male Female	1.8 1.9
104 years	Male Female	1.7 1.7
105 years	Male Female	1.7 1.7
106 years	Male Female	1.6 1.6
107 years	Male Female	1.5 1.5
108 years	Male Female	1.5 1.4
109 years	Male Female	1.4 1.4
110 years and over	Male Female	1.4 1.4

Amended. Gaz. 11 Aug. 2017.

Appendix 2

(Clause 9-21(1)(c))

PRESENT VALUES FOR GUARANTEED PAYMENTS UNDER AN ANNUITY CERTAIN

Schedule A: interest rate 2½% per annum

N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain	N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain
1	0.98674	23	17.52982
2	1.94941	24	18.08900
3	2.88860	25	18.63455
4	3.80489	26	19.16679
5	4.69882	27	19.68604
6	5.57096	28	20.19263
7	6.42182	29	20.68687
8	7.25193	30	21.16905
9	8.06179	31	21.63947
10	8.85190	32	22.09842
11	9.62274	33	22.54617
12	10.37478	34	22.98300
13	11.10847	35	23.40918
14	11.82427	36	23.82496
15	12.52262	37	24.23061
16	13.20392	38	24.62635
17	13.86862	39	25.01245
18	14.51710	40	25.38913
19	15.14976	41	25.75662
20	15.76699	42	26.11515
21	16.36917	43	26.46493
22	16.95666	44	26.80619

N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain	N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain
45	27.13911	58	30.79574
46	27.46392	59	31.03136
47	27.78081	60	31.26124
48	28.08997	61	31.48551
49	28.39159	62	31.70431
50	28.68585	63	31.91777
51	28.97293	64	32.12603
52	29.25301	65	32.32920
53	29.52626	66	32.52743
54	29.79285	67	32.72081
55	30.05293	68	32.90948
56	30.30667	69	33.09355
57	30.55423	70	33.27313

Schedule B: interest rate 3% per annum

N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain	N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain
1	0.98415	26	18.12134
2	1.93964	27	18.57768
3	2.86730	28	19.02074
4	3.76794	29	19.45089
5	4.64234	30	19.86851
6	5.49128	31	20.27397
7	6.31549	32	20.66761
8	7.11570	33	21.04980
9	7.89260	34	21.42085
10	8.64687	35	21.78109
11	9.37917	36	22.13084
12	10.09014	37	22.47041
13	10.78041	38	22.80008
14	11.45057	39	23.12015
15	12.10121	40	23.43090
16	12.73290	41	23.73260
17	13.34619	42	24.02551
18	13.94161	43	24.30989
19	14.51970	44	24.58599
20	15.08095	45	24.85405
21	15.62585	46	25.11429
22	16.15488	47	25.36696
23	16.66850	48	25.61227
24	17.16716	49	25.85043
25	17.65130	50	26.08166

N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain	N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain
51	26.30615	61	28.22111
52	26.52411	62	28.38329
53	26.73571	63	28.54075
54	26.94115	64	28.69362
55	27.14061	65	28.84203
56	27.33426	66	28.98612
57	27.52227	67	29.12602
58	27.70480	68	29.26184
59	27.88202	69	29.39371
60	28.05407	70	29.52173

Schedule C: interest rate 3½% per annum

N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain	N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain
1	0.98159	26	17.15962
2	1.92998	27	17.56093
3	2.84630	28	17.94867
4	3.73164	29	18.32329
5	4.58703	30	18.68525
6	5.41350	31	19.03497
7	6.21202	32	19.37286
8	6.98354	33	19.69933
9	7.72897	34	20.01475
10	8.44919	35	20.31951
11	9.14505	36	20.61397
12	9.81739	37	20.89846
13	10.46699	38	21.17334
14	11.09462	39	21.43892
15	11.70102	40	21.69552
16	12.28692	41	21.94344
17	12.85301	42	22.18298
18	13.39995	43	22.41441
19	13.92840	44	22.63802
20	14.43898	45	22.85407
21	14.93229	46	23.06282
22	15.40892	47	23.26450
23	15.86943	48	23.45937
24	16.31437	49	23.64764
25	16.77426	50	23.82955

N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain	N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain
51	24.00530	61	25.46700
52	24.17512	62	25.58738
53	24.33919	63	25.70370
54	24.49771	64	25.81608
55	24.65087	65	25.92466
56	24.79885	66	26.02956
57	24.94183	67	26.13092
58	25.07997	68	26.22885
59	25.21345	69	26.32348
60	25.34240	70	26.41490

Schedule D: interest rate 4% per annum

N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain	N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain
1	0.97904	26	16.27371
2	1.92043	27	16.62684
3	2.82561	28	16.96639
4	3.69597	29	17.29288
5	4.53286	30	17.60681
6	5.33756	31	17.90867
7	6.11131	32	18.19891
8	6.85530	33	18.47800
9	7.57068	34	18.74635
10	8.25854	35	19.00437
11	8.91995	36	19.25248
12	9.55592	37	19.49104
13	10.16742	38	19.72043
14	10.75541	39	19.94099
15	11.32078	40	20.15307
16	11.86441	41	20.35700
17	12.38713	42	20.55308
18	12.88974	43	20.74161
19	13.37302	44	20.92290
20	13.83772	45	21.09722
21	14.28454	46	21.26483
22	14.71418	47	21.42599
23	15.12729	48	21.58096
24	15.52451	49	21.72996
25	15.90646	50	21.87324

N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain	N Years	Present value of $ 1 per Annum Payable Monthly in Arrears for N Years Certain
51	22.01100	61	23.12838
52	22.14346	62	23.21787
53	22.27083	63	23.30392
54	22.39331	64	23.38666
55	22.51107	65	23.46621
56	22.62430	66	23.54271
57	22.73317	67	23.61626
58	22.83786	68	23.68698
59	22.93853	69	23.75499
60	23.03532	70	23.82038

PART 10: JUDGMENTS AND ORDERS

What this Part is about: This Part describes how judgments and Court orders are prepared and how they can be amended, varied or set aside, as well as how they can be enforced.

This Part also deals with:

- foreclosure actions and other actions dealing with land; and
- how judgments and orders from jurisdictions outside Saskatchewan may be registered in the Court.

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Part 10: Judgments And Orders

PART 10: JUDGMENTS AND ORDERS

DIVISION 1
Preparation and Entry of Judgments and Orders

Time to be stated for doing any act ordered to be done

10-1 Every judgment or order made in any cause or matter requiring any person to do any particular act other than the payment of money must state the time, or the time after service of the judgment or order, within which the act is to be done.

Notifying parties of decision or filing of reasons for judgment

10-2(1) When a judge files his or her reasons for judgment in any proceeding or issues any fiat, the local registrar shall immediately:

(a) notify the parties to the action or their lawyers, as the case may be, of the fact; and

(b) enter a memorandum of that notice in the court registry database.

(2) On all reserved applications, the chamber clerk or the local registrar, as the case may be, shall, immediately on giving the decision, notify the parties to the action or their lawyers, as the case may be, of the decision.

Form of order

10-3(1) An order must be in Form 10-3.

(2) An order must be sealed with the seal of the Court and state the name of the judge by whom it is made.

(3) The original order must be retained by the Court.

(4) Unless the Court directs otherwise, when an order is drawn up, the order:

(a) must be dated showing the day of the week, month and year on which it was made; and

(b) takes effect accordingly.

(5) If an order is issued pursuant to an application without notice, it must be drawn with the following endorsement appearing below the line indicated on the form for the signature of the chamber clerk:

"Take notice that, unless the order is consented to by the respondent or a person affected by the order or unless otherwise authorized by law, every order made without notice to the respondent or a person affected by the order may be set aside or varied on application to the Court. You should consult your lawyer as to your rights".

(6) It is not necessary in any judgment or order to reserve liberty to apply, but any party may apply to the Court from time to time.

Amended. Gaz. 13 Nov. 2015.

Preparation of judgments and orders

10-4(1) The Court may direct which party is to prepare a draft of the judgment or order pronounced by the Court, but if the Court does not do so, the successful party is responsible for preparing the draft.

(2) Unless the Court orders otherwise, the following rules apply:

(a) within 10 days after the judgment or order is pronounced, the responsible party shall prepare a draft of the judgment or order in accordance with the Court's pronouncement and serve it on every party in attendance at the hearing, but, if the responsible party does not prepare and serve the draft, then any other party may do so;

(b) within 10 days after the draft order or judgment is served, each party served may:

(i) approve the draft; or

(ii) object to the draft and apply to the Court to set the terms of the judgment or order;

(c) if a party does not approve or object to the draft judgment or order within the 10 days described in clause (b) but all other requirements are met and service of the draft is proved, the judgment or order may be signed and entered.

(3) This rule does not apply to proceedings in chambers for matters arising under:

(a) *The Child and Family Services Act*; or

(b) *The Enforcement of Maintenance Orders Act, 1997.*

Amended. Gaz. 15 Jly. 2016.

Entry of judgment

10-5(1) Unless the Court orders otherwise, when a judgment is pronounced:

(a) the entry of judgment must be dated as of the day on which the judgment is pronounced; and

(b) subject to subrule (2), the judgment takes effect from the date mentioned in clause (a).

(2) With special leave of the Court, a judgment may be antedated or post-dated.

(3) In all other cases not within subrules (1) and (2):

(a) the entry of judgment must be dated as of the day on which the requisite documents are left with the proper Court officer for the purpose of that entry; and

(b) the judgment takes effect from the date mentioned in clause (a).

(4) A judgment must not be entered in an action on any negotiable instrument until:

(a) that negotiable instrument is filed with the local registrar;

(b) the plaintiff files an affidavit:

(i) stating that the original negotiable instrument does not exist or no longer exists; and

(ii) setting out the reasons why it does not exist or no longer exists; or

(c) the plaintiff's lawyer files an affidavit:

(i) stating that he or she has made inquiries with the plaintiff and is satisfied that the original negotiable instrument does not exist or no longer exists; and

(ii) setting out the reasons why it does not exist or no longer exists.

(5) If pursuant to these rules or otherwise a judgment may be entered pursuant to a fiat, a note or memorandum of an order signed by a judge, an order, a certificate or a return to a writ, the production of that fiat, note or memorandum, order, certificate or return is sufficient authority to the local registrar to enter the judgment.

(6) On the production of the certificate of the Registrar of the Supreme Court of Canada on an appeal to that court or of a certified copy of the judgment of the Court of Appeal on an appeal to that court:

(a) the local registrar with whom the judgment or order appealed from was entered shall cause the certificate of the Supreme Court or the certified copy of the judgment of the Court of Appeal to be entered in the Court registry database; and

(b) all subsequent proceedings may be taken as if the decision had been given in the Court.

Information Note

See rule 3-19 regarding when a judgment or order may be obtained by consent.

See rule 4-48 regarding entry of judgment after death of a party.

Judgment against partners or partnership

10-6(1) Unless the Court orders otherwise, if a defendant obtains judgment against a plaintiff partnership, the defendant may sign judgment against:

(a) the partnership; and

(b) each partner named as a partner in the affidavit disclosing the members of the plaintiff partnership.

(2) If a plaintiff is entitled to judgment against a partnership, or against one or more persons as partners of a partnership, the plaintiff may:

(a) apply without notice for an order to add as a named party defendant and sign judgment against any person who:

(i) was served with the statement of claim and Notice to Alleged Partner and who failed to defend;

(ii) has admitted in the pleadings or otherwise in the proceeding that he or she was a partner; or

(iii) having delivered a defence or Notice of Intent to Defend, has been adjudged to have been a partner at the material time; or

(b) apply for an order adding as a named party defendant to whom the judgment applies any other person the plaintiff alleges to have been a partner at a material time.

(3) On an application pursuant to subrule (2), the Court may:

(a) if the liability is not disputed, give leave to add the named party; or

(b) if liability is disputed, order that the liability of the person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

(4) The style of cause in the action must be amended according to any order made pursuant to this rule.

(5) Subrules (2) to (4) do not apply to a person named as a defendant to the action.

Orders granted in chambers

10-7(1) A chamber clerk shall attend all chambers held at a judicial centre.

(2) The chamber clerk shall keep a minute of all proceedings in chambers and all orders granted.

(3) All orders that are granted must:

(a) be prepared in accordance with the fiat recorded by the judge or by the chamber clerk under the direction of the judge;

(b) be prepared by the applicant or his or her lawyer; and

(c) be signed and dated by a local registrar and sealed with the seal of the Court.

(4) On being signed, dated and sealed in accordance with clause (3)(c), the order is deemed to be issued.

(5) Unless the Court directs otherwise, it is not necessary to draw up an order that has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceedings or doing any act or giving leave:

(a) for issuing any writ;

(b) for commencing any proceeding;

(c) for amending any writ or pleading;

(d) for filing any document;

(e) for doing any act by an officer of the Court other than a lawyer; or

(f) for staying proceedings until the hearing of a notice of application, petition or originating application.

(6) In the case of an order mentioned in subrule (5), the production of a note or memorandum of the order signed by a judge, local registrar or chamber clerk is sufficient authority for doing the things mentioned in that subrule.

(7) A direction that the costs of an order mentioned in subrule (5) are to be costs in any cause or matter is not deemed to be a special direction within the meaning of this rule.

(8) The lawyer of the person on whose application an order mentioned in subrule (5) is made shall immediately give notice in writing of the order to every person who would have been required to be served with the order if this rule had not been made.

(9) If an order is issued that pursuant to this rule is unnecessary, the assessment officer shall not allow the costs of that order.

Amended. Gaz. 13 Nov. 2015.

Enforcing return of writ or order by sheriff

10-8(1) No order is to be issued:

(a) for the return of any writ; or

(b) to bring to the Court any person who has been ordered to be committed.

(2) If the person issuing the writ or obtaining the order for committal or that person's lawyer serves a notice on the sheriff to return the writ or to bring the person within 10 days and the sheriff does not do so, that person is entitled to apply for an order for the committal of the sheriff.

Recording judgments, decrees and orders, certified copies

10-9(1) Every judgment or decree entered and a copy of every order issued by the local registrar must be filed with the Court.

(2) A certified copy of a judgment, decree or order under the seal of the Court is to be received for all purposes and has the same force and effect as the original judgment, decree or order.

(3) Subject to subrules (4) and (5), a judgment may be in any of Forms 10-9A to 10-9G.

(4) Subject to subrule (5), if an Act provides that an order or decision of another court or authority may be filed with the Court to be enforced as an order of the Court, then, unless the Act provides for an alternate procedure, the original or certified copy of the order or decision may be entered as a judgment of the Court when:

(a) an address for service of the applicant is provided; and

(b) the order or decision is endorsed with a court file number and stamped as filed by the local registrar.

(5) If only a portion of an order or decision issued by another court or authority may be filed with the Court as a decision of the Court, then a judgment for that portion of the order or decision may be entered in Form 10-9F.

Information Note

Form 10-9A is titled "JUDGMENT IN DEFAULT OF DEFENCE IN CASE OF LIQUIDATED DEMAND AND CERTIFICATE OF ASSESSMENT OF COSTS"

Form 10-9B is titled "JUDGMENT IN DEFAULT OF DEFENCE IN ACTION FOR RECOVERY OF LAND"

Form 10-9C is titled "JUDGMENT AFTER TRIAL BY JUDGE WITHOUT A JURY"

Form 10-9D is titled "JUDGMENT AFTER TRIAL BY JUDGE WITH A JURY"

Form 10-9E is titled "JUDGMENT IN COURT FOR AMOUNT TO BE ASCERTAINED"

Form 10-9F is titled "JUDGMENT IN PURSUANCE OF AN ORDER"

Form 10-9G is titled "JUDGMENT FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT".

Amended. Gaz. 13 Nov. 2015.

DIVISION 2
Amendments, Further Orders, Setting Aside, Varying and Discharging Judgments and Orders

Amendment of judgment or order

10-10 Any judgment or order may be amended:

(a) by the local registrar on written consent of the parties or by the Court, if there are clerical mistakes or errors arising from an accidental slip or omission; or

(b) by the Court if the judgment or order requires amendment:

(i) in any particular on which the Court should have but did not adjudicate; or

(ii) in any calculation arising out of a decision of the Court.

Further directions after judgment

10-11(1) Subject to subrule (2), the Court may make a further or other order and give further or other remedy that the Court considers may be required if in an action:

(a) a judgment has been pronounced or an order has been made and the judgment or order has been formally drawn up and entered; and

(b) it subsequently appears that further directions are necessary in order to insure to the party entitled to the benefit of the judgment or order the remedy to which he or she is entitled, whether costs or otherwise.

(2) The Court may give further or other remedy only if it does not necessitate any variation of the judgment or order as to any matter decided by the original judgment or order.

Information Note

See sections 80 to 89 of *The Queen's Bench Act, 1998* regarding directions for payment of money recoverable under a judgment.

New judgment by notice

10-12(1) If a judgment has been recovered and the judgment creditor alleges that all or any part of the judgment remains unsatisfied, he or she may, at any time before proceedings under the judgment would be barred by *The Limitations Act*, serve on the judgment debtor a notice of application requiring the judgment debtor:

(a) to appear before a judge in chambers; and

(b) to show cause why the judgment creditor should not have a new judgment for the amount remaining due and unpaid on the original judgment.

(2) A proceeding pursuant to subrule (1) is deemed an action on a judgment or order of the Court.

(3) Notice of the application:

(a) must issue in the original cause or matter; and

(b) must be served on the judgment debtor at least 20 days before its return date.

(4) If on the return of an application pursuant to this rule the judgment debtor does not appear and the judge is satisfied as to due service of the notice of application and as to the amount still due and unpaid under the original judgment, the judge may make an order that the judgment creditor has leave to enter a new judgment for the recovery of the amount due and costs.

(5) If the judgment debtor appears and disputes the judgment creditor's claim in whole or in part, the judge may:

(a) give directions for the trial of an issue with or without pleadings as the circumstances of the case may require; and

(b) give all other necessary directions.

(6) After the trial of an issue directed pursuant to subrule (5), the judge may make any order or give any judgment that the Court considers required.

Setting aside default judgment

10-13 Subject to rule 9-13, in the case of any judgment by default, whether by reason of non-delivery of defence or non-compliance with any of these rules or with any order of the Court, the Court may set aside or vary the judgment on those terms as to costs or otherwise that the Court considers fit.

Information Note

For judgment against parties noted in default, see Subdivision 4 of Division 2 of Part 3.

Satisfaction of judgment

10-14(1) When a judgment has been satisfied, the judgment creditor shall, at the request of the judgment debtor, execute a consent to entry of memorandum of satisfaction in Form 10-14, and the execution of the memorandum of satisfaction must be verified by affidavit of the attesting witness.

(2) On the memorandum of satisfaction being filed with the local registrar, the local registrar shall make an entry in the Court registry database that the judgment is "satisfied".

(3) If the judgment creditor refuses to execute a memorandum of satisfaction or if for any reason signature of the judgment creditor cannot be secured, the Court may make an order that the local registrar mark the judgment as "satisfied".

(4) The Court may make an order pursuant to subrule (3) without notice or on any notice that the Court may determine.

Consent to discharge of order

10-15 On consent of all parties interested, the Court may set aside, vary or discharge any order made by it.

DIVISION 3
Enforcement of Judgments and Orders

Judgment or order to be obeyed without demand

10-16 If any person is by any judgment or order directed to pay any money or deliver up or transfer any property to another person:

(a) it is not necessary for the judgment creditor to make any demand for the money or property; and

(b) the person against whom the direction is made shall obey, without demand, the judgment or order on being duly served with the judgment or order.

Conditional judgment, breach or non-performance of condition

10-17 If any person has obtained any judgment or order on condition, the judgment or order does not specifically provide for default and the person has not complied with the condition:

(a) the person is deemed to have waived or abandoned the judgment or order so far as it is beneficial to himself or herself; and

(b) unless the Court orders otherwise, any other person interested in the matter may, on breach or non-performance of the condition and after 2 days' notice to the party entitled to the benefit of the judgment or order, either:

(i) take any steps that the judgment or order may warrant; or

(ii) take any proceedings that might have been taken if no judgment or order had been made.

Information Note

See rule 10-19 regarding enforcement of conditional judgments.

Enforcing payment of money

10-18(1) Subject to subrules (2) and (3), every person to whom any sum of money or any costs are payable under a judgment or order is entitled, as soon as the money or costs are payable, to enforce that judgment or order in any manner authorized by law.

(2) If the judgment or order mentioned in subrule (1) is for payment within a period mentioned in the order, a person may take any enforcement measure only after the expiration of that period.

(3) At or after the time of giving judgment or making an order, the Court may stay any enforcement measure until the time the Court considers fit.

Information Note

A judgment governed by *The Enforcement of Money Judgments Act* must be enforced in accordance with the procedures established pursuant to that Act.

DIVISION 4
Executions

Subdivision 1
Executions Generally

Execution of judgment on condition

10-19(1) If a judgment or order entitles a party to any remedy subject to or on the fulfilment of any condition or contingency and the party fulfils the condition or contingency, the party may:

(a) serve a demand on the party against whom he or she is entitled to the remedy; and

(b) after serving the demand, apply to the Court for leave to issue execution against the party against whom he or she is entitled to the remedy.

(2) On an application pursuant to this rule, if the Court is satisfied that the right to a remedy has arisen according to the terms of the judgment or order, the Court may:

(a) order that execution issue accordingly; or

(b) direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in any action may be tried.

Information Note

See rule 10-17 regarding non-compliance with condition.

Leave to issue execution in certain cases

10-20(1) The party alleging to be entitled to the execution may apply to the Court, without notice or on any notice that the Court shall determine, for leave to issue the execution if:

(a) any change has taken place by death or otherwise in the parties entitled or liable to execution; or

(b) a party is entitled to execution on a judgment of assets *in futuro*.

(2) If the Court is satisfied that the party applying is entitled to issue execution, the Court may:

(a) make an order to that effect; or

(b) order that any issue or question necessary to determine the rights of the parties be tried in any of the ways in which any question in any action may be tried.

(3) In an order pursuant to subrule (2), the Court may impose any terms as to costs or otherwise that the Court considers just.

Set-off of judgments

10-21(1) If there are judgments between the same parties in separate actions or in the same action, the Court may order that one judgment be set off against another and direct that execution may issue with respect to the balance only.

(2) An order for set-off against a judgment for maintenance must not be made if hardship would be caused by that order.

Enforcement of orders

10-22 Every order of the Court in any cause or matter may be enforced against all persons bound by the order in the same manner as a judgment to the same effect.

Execution by or against a person not a party

10-23(1) Any person who is not a party to a cause or matter and who obtains any order or in whose favour any order is made is entitled to enforce the order by the same process as if he or she were a party to the cause or matter.

(2) Any person who is not a party to a cause or matter and against whom a judgment or order issued in the cause or matter may be enforced is liable to the same process for enforcing the judgment or order as if he or she were a party to the cause or matter.

Application for remedy by judgment debtor

10-24(1) The writ of *audita querela* is abolished.

(2) A party against whom a judgment has been given may apply to the Court for a stay of execution or other remedy against the judgment on the ground of facts that have arisen too late to be pleaded.

(3) On an application pursuant to subrule (2), the Court may give any remedy on any terms that the Court considers just.

Court may order act to be done at expense of party refusing

10-25(1) If a mandamus granted in an action or otherwise or a mandatory order, injunction or judgment for the specific performance of any contract is not complied with, the Court, in addition to or instead of proceeding against the disobedient party for contempt, may direct that the act required to be done be done so far as is practicable and at the cost of the disobedient party:

(a) by the party who obtained the judgment or order; or

(b) by another person appointed by the Court.

(2) On completing the act mentioned in subrule (1):

(a) the expenses incurred may be ascertained in the manner that the Court may direct; and

(b) execution may issue for the amount ascertained and costs.

Enforcement of judgment against corporation

10-26 With leave of the Court, a judgment or order against a corporation that is wilfully disobeyed by the corporation may be enforced:

(a) by sequestration against its corporate property; or

(b) by an order of committal against the directors or other officers of the corporation.

Execution of delivery of property or recovery of assessed value

10-27(1) If by judgment or order of the Court any party is entitled to the recovery of any property other than land or money, the party may issue a writ of delivery of the property without giving the other party the option of retaining the property on payment of the assessed value, if any.

(2) In the writ mentioned in subrule (1), a sheriff may, at the option of the party entitled to recovery, be commanded, if the property other than land or money cannot be found, to cause to be made of the judgment debtor's goods the assessed value, if any, of the property with costs.

(3) If the party issuing the writ mentioned in subrule (1) is entitled to recover damages or costs against another party, the sheriff may be required by the writ to cause to be made of the judgment debtor's goods the amount of the damages, costs or damages and costs, as the case may be.

(4) A writ for the purposes of this rule must be in Form 10-27.

Writ of possession for recovery of land

10-28(1) A judgment or order that a party recover possession of any land or that any person named in the judgment or order deliver up possession of any land to some other person may be enforced by writ of possession without any order for the purpose.

(2) A writ of possession may be issued only after 15 days after the entry of the judgment or service of a copy of the order.

(3) A writ of possession must be in Form 10-28.

(4) A writ of possession is effective to enable the sheriff to maintain the party entitled to possession in possession of the land as against:

(a) any party bound by the proceedings; or

(b) any person or persons claiming through or under a party bound by the proceedings.

Order for committal

10-29(1) A judgment requiring any person to do any act other than pay money, or to abstain from doing anything, may be enforced by committal.

(2) For the purposes of this rule, it is not necessary to apply for a writ of attachment.

Recovery of land and costs

10-30 On any judgment or order for the recovery or delivery of possession of any land and costs:

(a) the judgment or order for the recovery or delivery of possession of the land may be enforced by issuance of a writ of possession; and

(b) the judgment or order for costs may, after being assessed, be enforced in accordance with the provisions of *The Enforcement of Money Judgments Act*.

Writ of sequestration

10-31(1) If a person is taken or detained in custody under an order for committal for contempt of Court, on proof that the person has been so taken or is so detained, the party prosecuting the judgment is entitled on application to the Court to a writ of sequestration against the estate and effects of the person in custody.

(2) The Court may grant a writ of sequestration against the estate and effects of a person refusing or neglecting to obey the judgment if an order for committal for contempt of Court cannot be executed against the person by reason of:

(a) the person being out of the jurisdiction of the Court;

(b) the person having absconded; or

(c) the impossibility of finding the person with due diligence.

(3) A writ of sequestration must be directed to the sheriff unless otherwise ordered.

When committed to jail for contempt Court may modify order

10-32(1) If a person has been committed to jail for contempt of Court or is in custody pursuant to that committal, the Court may modify the order and limit the term of imprisonment or grant any other remedy that the Court considers just.

(2) Any remedy granted to a person pursuant to this rule does not relieve that person from any civil liability.

Subdivision 2
Discovery in Aid of Execution

Questioning of judgment debtor

10-33(1) A judgment creditor or party entitled to enforce a judgment that has not been fully performed or satisfied may, without order, question the judgment debtor pursuant to these rules concerning any matter related to the judgment, including questions the judgment creditor or other party requires to enquire fully into:

(a) any reason existing for non-payment or non-performance of the judgment;

(b) whether the judgment debtor has, had or may have means or assets to satisfy the judgment or has made any disposition or transfer of the assets either before or after the recovery of judgment; and

(c) whether the judgment debtor intends to obey the judgment of the Court or has any lawful reason for not doing so.

(2) The local registrar for the judicial centre at which the judgment was obtained or for the judicial centre nearest to which the judgment debtor resides may issue an appointment for questioning of the judgment debtor.

(3) The appointment for questioning:

(a) must be in Form 10-33; and

(b) must fix the time and place for the questioning.

(4) On service of a copy of the appointment for questioning and the payment of proper conduct money, the judgment debtor shall:

(a) attend at the time and place appointed; and

(b) submit to questioning.

(5) On application to the Court without notice, any employee or former employee of the judgment debtor and, if the judgment debtor is a corporation, any officer or employee may be directed to attend for questioning.

(6) On application to the Court with notice, the Court may direct that any of the following attend for questioning:

(a) any person or firm or any member of a firm to which any property has been transferred or assigned that the Court is satisfied ought to have been applied towards the payment of the judgment; or

(b) any officer or employee of a corporation to which any property has been transferred or assigned that the Court is satisfied ought to have been applied towards the payment of the judgment.

(7) Subject to subrule (8), questioning pursuant to this rule is to be for the purpose of discovery only and no order is to be made on the evidence given on the questioning.

(8) Any evidence given on the questioning may be read:

(a) in any subsequent proceedings between the same parties or between the judgment creditor and transferee of the property of the judgment debtor; or

(b) in any proceedings to obtain payment directly or indirectly whether by attachment of debts, equitable execution or otherwise.

If difficulty enforcing judgment other than for money

10-34(1) If any difficulty arises in or about the execution or enforcement of a judgment or order other than for the recovery or payment of money, any interested party may apply to the Court for the attendance and questioning of any party or otherwise.

(2) On an application pursuant to subrule (1), the Court may:

(a) make any order that it considers just; and

(b) direct how the judgment or order may be enforced or executed.

Conduct money, production of documents, rules of questioning, disobedience

10-35 Any person liable to be questioned pursuant to this subdivision:

(a) is entitled to the same conduct money and payment for expenses and loss of time as on attendance at trial in Court;

(b) may be compelled to attend and testify and to produce books and documents in the same manner as in the case of a witness on a trial; and

(c) is subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters with respect to which he or she may be questioned as in the case of a witness on a trial.

Costs

10-36 The costs of any application pursuant to this subdivision and of any proceedings arising from or incidental to an application are to be paid, in the first instance, by the party applying, but if the Court is satisfied that the proceedings were justified, the Court may direct the judgment debtor to pay the costs.

DIVISION 5
Foreclosure and Cancellation Proceedings

Foreclosure actions, Recovery on covenant only

10-37(1) A statement of claim may be used to commence an action by a mortgagee or a mortgagee's personal representatives or assigns:

(a) for the foreclosure of the equity of redemption;

(b) for the sale or possession of the mortgaged premises;

(c) for the recovery of any moneys payable under the mortgage;

(d) for the appointment of a receiver; or

(e) for any other incidental remedy.

(2) Subject to this Division, the general procedure and practice of the Court must be adopted and applied in all actions commenced pursuant to this Division.

(3) In an action to recover only the amount due under a mortgage, the proceedings must be carried on pursuant to the general rules.

Actions pursuant to *The Land Contracts (Actions) Act, 2018* or *The Limitation of Civil Rights Act*

10-38 Except where inconsistent with *The Land Contracts (Actions) Act, 2018* or *The Limitation of Civil Rights Act*, these rules apply to proceedings pursuant to those Acts.

New. Gaz. 6 Sep. 2019.

Notice of application for leave to commence an action pursuant to *The Land Contracts (Actions) Act, 2018*

10-39(1) A notice of application for leave to commence an action pursuant to *The Land Contracts (Actions) Act, 2018* must be in Form 10-39A.

(2) The notice of application mentioned in subsection (1) must be accompanied by an affidavit of the applicant setting out the state of the respondent's account:

(a) in Form 10-39B in the case of an action respecting a mortgage; or

(b) in Form 10-39C in the case of an action respecting an agreement for the sale of land.

New. Gaz. 6 Sep. 2019.

Claim in mortgage action

10-40(1) Except as otherwise provided in this Division, the claim in all actions commenced pursuant to this Division must:

(a) be in Form 10-40A; and

(b) include the notice to defendant in Form 3-9 on the first page.

(2) In a claim pursuant to this Division, it is not necessary to allege to any greater extent than is indicated in Form 10-40A:

(a) any term, covenant or condition expressed or implied in the mortgage or in any agreement:

(i) to extend the time for payment pursuant to the mortgage; or

(ii) to vary the terms or conditions of the mortgage; or

(b) any other fact.

(3) If Form 10-40A is duly completed, all terms, covenants, conditions and allegations necessary to support the plaintiff's claim pursuant to the mortgage or any agreement relating to the mortgage are deemed to have been duly pleaded.

(4) All persons who appear from the records of the Land Titles Registry to have an interest in the equity of redemption must be named as defendants.

(5) A defendant is entitled at any time by notice in writing to demand particulars of the amount claimed by the plaintiff.

(6) Within 3 days after the receipt of the notice mentioned in subrule (5), the plaintiff shall:

(a) deliver to the defendant a statement of account setting out the full particulars of the amount claimed by the plaintiff; or

(b) mail the statement mentioned in clause (a) to the defendant by registered mail to the address given by the defendant in the notice.

(7) If the plaintiff fails to comply with a demand pursuant to subrule (5), the defendant may, without delivering any defence to the statement of claim, apply to the Court for an order staying the action as against the defendant until the demand is complied with.

(8) On an application pursuant to subrule (7), the Court may grant the order on those terms as to costs or otherwise that the Court considers just.

(9) The plaintiff may serve by registered mail a true copy of the statement of claim in any action commenced pursuant to this Division on any of the defendants, other than:

(a) the defendant who was the registered owner of the mortgaged premises at the time of the issue of the statement of claim; and

(b) those defendants against whom judgment for the recovery of money is claimed.

(10) Service pursuant to subrule (9) is sufficient, if a post office confirmation of delivery to the person to be served is produced as an exhibit to the affidavit of service.

(11) The affidavit of service for the purposes of subrules (9) and (10) must be in Form 10-40B.

Amended. Gaz. 13 Nov. 2015.

Service on parties interested

10-41 On an application for order nisi, the Court shall direct all of the following persons to be served with a copy of the order nisi by registered mail:

(a) persons who appear from the material before the Court to have acquired any lien, charge or incumbrance on the mortgaged land;

(b) persons who appear from the material before the Court to have otherwise become interested in the subject matter of the action subsequent to the issue of the statement of claim.

Certificates by local registrar and lawyer

10-42(1) On the request of the plaintiff, the local registrar may search the Court record and file a certificate of search in Form 10-42A as proof that no payment has been made to the credit of the action.

(2) The plaintiff's lawyer may file a certificate of lawyer in Form 10-42B as proof that no payment has been made to the office of the plaintiff's lawyer to the credit of the action.

Determination of amount due

10-43(1) On an application for order nisi, the Court shall determine the amount due:

(a) under the mortgage; or

(b) under any provision of an agreement to extend the time for payment under the mortgage or to vary the terms and conditions of the mortgage.

(2) For the purpose of subrule (1), the Court:

(a) may make any order for reference for the purpose of taking the accounts that may be necessary; and

(b) shall fix a time within which the defendant or defendants may redeem the mortgage.

(3) An order nisi for foreclosure:

(a) for a non-matured mortgage is to be in Form 10-43A1; and

(b) for a matured or demand mortgage is to be in Form 10-43A2.

(3.1) The applicant for an order under this rule shall file a draft order in the applicable form, with all additions, insertions and changes underlined.

(4) In determining the amount due and required to redeem the mortgage, the plaintiff may estimate the amount of and give credit for anticipated rents and profits to be derived from the land in question before the expiration of the period of redemption.

(5) If the amount actually received does not exceed the amount estimated pursuant to subrule (4), it is not necessary by reason of the rents and profits having been received to reopen the account and fix a new period of redemption.

(6) Except as otherwise provided in this rule, if the state of the accounts ascertained by a judgment or order under this rule is changed before the date fixed for redemption:

(a) the plaintiff may apply, without notice or on any notice that the Court may determine, to fix the amount to be paid in lieu of the amount previously ascertained; and

(b) on an application pursuant to clause (a), the Court may fix a new period of redemption.

(7) If the day appointed for payment by any order nisi under this rule has not arrived and the state of the account has been changed by payment or otherwise, the plaintiff may give notice, by registered mail if no defence has been delivered, to the party by whom the money is payable that:

(a) the plaintiff gives the party credit for a sum certain to be named in the notice; and

(b) the plaintiff claims that there remains due with respect to the mortgage a sum certain to be named in the notice.

(8) If a notice of credit is given pursuant to subrule (7) and if the sums named in the notice appear proper to be allowed and paid, the final order may be granted in Form 10-43B without fixing a new period of redemption, but the party to whom the notice is given may apply to the Court to fix, by reference or otherwise, the amounts proper to be allowed and paid instead of the amounts mentioned in the notice.

(9) If after the expiry of the period of redemption but before the final order is made, the plaintiff receives any money by way of rents and profits of the land in question, the Court may make the final order in Form 10-43B without fixing a new period of redemption.

Amended. Gaz. 15 Jly. 2016.

Immediate possession in or after order nisi

10-44(1) If in any action commenced pursuant to this Division the plaintiff asks in the statement of claim for immediate possession of the land in question, the Court may, on the application for order nisi, direct that the plaintiff is to have immediate possession of that land.

(2) If an order for possession is not made on the application for order nisi, the plaintiff may apply to the Court for an order that, at any time after the order nisi has been made and before the expiry of the period fixed for redemption, the plaintiff is to have immediate possession of that land.

(3) An application pursuant to subrule (2) must be made on any notice that the Court may direct.

(4) On an application pursuant to subrule (2), the Court may grant the order applied for.

Actions respecting agreements for sale of land

10-45(1) The provisions of this Division applicable to mortgage actions apply, with necessary modification, to actions by vendors, or their personal representatives or assignees:

(a) for specific performance or cancellation of agreements for the sale of land;

(b) for sale or possession of the land sold pursuant to any agreement for the sale of land; or

(c) for any other remedy that may be granted pursuant to the provisions of any agreement for the sale of land.

(2) For the purposes of this rule:

(a) the claim in all actions with respect to an agreement for sale of land is to be in Form 10-45A;

(b) an order nisi for cancellation of an agreement for sale of land is to be in Form 10-45B; and

(c) a final order for cancellation of an agreement for sale of land is to be in Form 10-45C.

Amended. Gaz. 15 Jly. 2016.

DIVISION 6
Sale of Land and Partition

Court may order sale of real property

10-46(1) If in any cause or matter relating to real property the Court considers it necessary or expedient that all or any part of the real property should be sold, the Court may order the real property to be sold.

(2) Any party who is bound by an order pursuant to this rule and who possesses the real property, or is in receipt of the rents and profits of the real property, must deliver up the possession or receipt to:

(a) the purchaser; or

(b) any other person named in the order.

Manner of carrying out sale, mortgage, etc., when ordered by Court

10-47(1) If a sale, mortgage, partition or exchange of real property is ordered, the Court may, in addition to any other power it has, authorize the sale, mortgage, partition or exchange to be carried out:

(a) by laying proposals before the judge in chambers for his or her sanction; or

(b) subject to subrule (3), by proceedings out of Court.

(2) Any moneys resulting from the sale, mortgage, partition or exchange must be paid into Court or to trustees, or otherwise dealt with as the judge in chambers may order.

(3) The judge in chambers shall not authorize proceeding out of Court, unless the judge is satisfied by evidence that the judge considers sufficient that all persons interested in the real property to be sold, mortgaged, partitioned, or exchanged:

(a) are before the Court; or

(b) are bound by the order for sale, mortgage, partition or exchange.

(4) Every order authorizing proceedings out of Court must contain:

(a) a declaration that the chambers judge is satisfied as required by subrule (3); and

(b) a statement of the evidence on which the declaration is made.

(5) For the purposes of this rule:

(a) an order nisi for sale of land subject to a non-matured mortgage is to be in Form 10-47A;

(b) an order nisi for sale of land subject to a matured or demand mortgage is to be in Form 10-47B;

(c) an order nisi for sale of land subject to a non-matured mortgage by real estate listing is to be in Form 10-47C;

(d) an order nisi for sale of land subject to a matured or demand mortgage by real estate listing is to be in Form 10-47D; and

(e) an order confirming sale is to be in Form 10-47E.

(6) The applicant for an order under this rule shall file a draft order in the applicable form, with all additions, insertions and changes underlined.

Amended. Gaz. 15 Jly. 2016.

Order for sale in debenture holders' action

10-48(1) This rule applies to debenture holders' actions if:

(a) the debenture holders are entitled to a charge by virtue of the debentures, a trust deed or otherwise;

(b) the plaintiff is suing on behalf of himself or herself and other debenture holders; and

(c) the judge is of the opinion that there must eventually be a sale.

(2) In the circumstances mentioned in subrule (1), the judge may direct a sale before judgment and also after judgment, before all the persons interested are ascertained or served.

Sale requires approval of Court

10-49(1) Unless the Court orders otherwise, if a judgment is given or an order made, whether in Court or in chambers, directing any property be sold, the property must be sold to the best purchaser.

(2) For the purposes of this rule, the best purchaser is the person so approved by the Court.

(3) All proper parties shall join in the sale and conveyance in accordance with any direction of the Court.

Special directions

10-50 The Court may give any special directions that the Court considers just respecting:

(a) the carrying out or execution of a judgment or order pursuant to this Division; or

(b) the service of a judgment or order on any persons who are not parties.

DIVISION 7
Registration of Judgments Made Outside Saskatchewan

Registration of judgments made outside Saskatchewan

10-51(1) These rules apply to all proceedings taken under statutory provisions for registration of judgments or orders made outside Saskatchewan in the Court of Queen's Bench for Saskatchewan, including proceedings pursuant to:

(a) *The Enforcement of Canadian Judgments Act, 2002*;

(b) *The Reciprocal Enforcement of Judgments Act, 1996*;

(c) *The Judgments Extension Act*;

(d) *The Enforcement of Foreign Judgments Act*; and

(e) *The Canada-United Kingdom Judgments Enforcement Act*.

(2) The fees and costs payable for services rendered are to be those that are provided for similar services in the Tariff.

PART 11: RECOVERABLE COSTS OF LITIGATION, ASSESSMENT OF COSTS AND SANCTIONS

What this Part is about: This Part deals with:

- how the Court may make an order or direction with respect to costs in a proceeding;
- how assessment officers assess the costs of litigation that are payable by one party to another;
- the sanctions the Court may impose for contravention of the rules and the Court's authority to declare a person in civil contempt of Court, including the penalties that may be imposed as a result of the declaration; and
- the Court's ability to declare a person a vexatious litigant.

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PART 11: RECOVERABLE COSTS OF LITIGATION, ASSESSMENT OF COSTS AND SANCTIONS

DIVISION 1
Awarding and Fixing of Costs by the Court

Subdivision 1
Discretion Generally

Discretion of Court

11-1(1) Subject to the express provisions of any enactment and notwithstanding any other rule, the Court has discretion respecting the costs of and incidental to a proceeding or a step in a proceeding, and may make any direction or order respecting costs that it considers appropriate.

(2) In exercising its discretion as to costs, the Court may determine:

(a) by whom costs are to be paid, which may include a successful party;

(b) to whom costs are to be paid;

(c) the amount of costs;

(d) the date by which costs are to be paid; and

(e) the fund or estate or portion of the fund or estate out of which costs are to be paid.

(3) In awarding costs the Court may:

(a) fix all or part of the costs with or without reference to the Tariff;

(b) award a lump sum instead of or in addition to any assessed costs;

(c) award or refuse costs with respect to a particular issue or step in a proceeding;

(d) award assessed costs up to or from a particular step in a proceeding;

(e) award all or part of the costs to be assessed as a multiple or a proportion of any column of the Tariff;

(f) award costs to one or more parties on one scale, and to another party or other parties on the same or another scale;

(g) direct whether or not any costs are to be set off; and

(h) make any other order it considers appropriate.

(4) In exercising its discretion as to costs, the Court may consider:

(a) the result of the proceeding;

(b) the amounts claimed and the amounts recovered;

(c) the importance of the issues;

(d) the complexity of the proceedings;

(e) the apportionment of liability;

(f) any written offer to settle or any written offer to contribute;

(g) the conduct of any party that tended to shorten or to unnecessarily lengthen the proceeding;

(h) a party's denial of or refusal to admit anything that should have been admitted;

(i) whether any step in the proceeding was improper, vexatious or unnecessary;

(j) whether any step in the proceeding was taken through negligence, mistake or excessive caution;

(k) whether a party commenced separate proceedings for claims that should have been made in one proceeding or whether a party unnecessarily separated his or her defence from that of another party; and

(l) any other matter it considers relevant.

Time for dealing with costs

11-2(1) The Court may make a direction or order as to costs at any stage of the proceedings.

(2) Any direction or order as to costs may be made after entry of judgment unless it is inconsistent with the express provisions of the entered judgment.

If proceeding dismissed for want of jurisdiction

11-3 If a proceeding is dismissed for want of jurisdiction or transferred to another state pursuant to *The Court Jurisdiction and Proceedings Transfer Act*, the Court retains jurisdiction over the costs of that proceeding up to the time of the dismissal or transfer.

Directions to assessment officer

11-4 If costs are to be assessed, the Court may give directions to the assessment officer with respect to any matter referred to in these rules.

Information Note

See also rule 11-21(1), which requires an assessment officer to follow any direction given by the Court.

Subdivision 2
Discretion in Special Cases

Costs of a litigation guardian

11-5 If the Court appoints a litigation guardian of a party under disability, the Court may:

(a) direct that the costs incurred in the performance of the duties of the litigation guardian are to be paid:

(i) by the parties or one or more of the parties; or

(ii) out of any fund in Court in which the party under disability has an interest; and

(b) give directions for the payment or allowance of costs that the Court considers just.

Information Note

For rules about litigation guardians see Division 2 of Part 2.

Subdivision 3
Costs Provisions that Apply Unless Otherwise Ordered

Costs rules apply unless Court orders otherwise

11-6 Any express provision in these rules respecting costs, including rules 11-7 to 11-9, is to apply unless the Court orders otherwise in the exercise of its discretion mentioned in subrule 11-1(1).

Costs follow the event

11-7(1) Subject to subrule (2), the costs of a proceeding must follow the event.

(2) Trustees, personal representatives or mortgagees who have acted reasonably in instituting, carrying on or resisting any proceedings retain their entitlement to costs out of a particular fund or estate.

Costs in interlocutory proceedings

11-8(1) The costs of any interlocutory application:

(a) must follow the outcome of the application;

(b) must be assessed on the same scale as the general costs of the action or proceeding; and

(c) are not payable until final determination of the action or proceeding, unless the Court orders otherwise.

(2) No order without notice is to contain any directions as to costs.

Information Note

"Interlocutory application" is defined in Part 17.

Costs on appeal

11-9(1) The costs of an appeal, and of the proceeding appealed from, must follow the event of the appeal.

(2) The costs of an appeal that does not finally dispose of the matter must not be assessed and are not payable until the final determination of the action or proceeding in the court appealed from.

DIVISION 2
Assessment of Costs

Subdivision 1
General

Interpretation of Division

11-10(1) In this Division, **"assessment officer"** means, subject to subrule (2):

(a) the local registrar for the judicial centre in which the proceeding was commenced; or

(b) if the proceeding has been transferred to another judicial centre, the local registrar for that judicial centre.

(2) At a judicial centre where the sheriff is also the local registrar, the assessment officer for the assessment of sheriff's costs must be a local registrar from another judicial centre.

(3) Unless the context otherwise requires, for the purpose of applying these rules, a reference in an enactment:

(a) to **"tax"**, **"taxing"**, **"taxed"** or **"taxation"**, used in connection with the costs of a proceeding, is deemed to be a reference to **"assess"**, **"assessing"**, **"assessed"** or **"assessment"**; and

(b) to **"taxing officer"** is deemed to be a reference to **"assessment officer"**.

How costs are to be assessed

11-11(1) If a party is entitled to the costs of all or part of a proceeding and the costs have not been fixed by the Court, they must be assessed in accordance with the rules in this Division and any directions given by the Court.

(2) An assessment officer shall assess costs.

Information Note

Additional rules governing costs awards include:

- Rule 4-31 [Costs consequences of formal offer to settle];
- Rule 5-11 [Notice to produce];
- Rule 5-20 [When non-parties may be questioned];
- Rule 5-21 [Costs of questioning];
- Rule 5-40 [Timing of exchange of expert reports];
- Rule 5-49 [Examination of party by medical practitioner];
- Rule 10-7 [Orders granted in chambers].

Subdivision 2
Assessment Procedure

Time for assessment of costs

11-12 Unless provided otherwise by a rule or an order of the Court, costs may be assessed at any time after:

(a) the judgment or order entitling a party to costs has been entered or issued; or

(b) an action is dismissed with costs or an application is refused with costs.

Assessment at instance of party entitled

11-13(1) A party entitled to costs may obtain a notice of appointment for assessment of costs on filing with the assessment officer:

(a) a bill of costs; and

(b) an affidavit of disbursements, if required by subrule 11-18(3).

(2) A notice of appointment for assessment of costs must be in Form 11-13A and a bill of costs must be in Form 11-13B.

(3) In every bill of costs:

(a) the lawyer's fees must be entered in a separate table from the disbursements; and

(b) all items of costs must be totalled before the bill is filed with the assessment officer.

(4) The affidavit of disbursements must:

(a) clearly set forth how the amount of any witness fees claimed is calculated;

(b) if a claim is made for a witness who was not called at trial, clearly state the nature of the evidence the witness was expected to give and the reason the witness was not called;

(c) if a claim is made for transportation, state:

(i) the mode of transportation;

(ii) by whom it was provided; and

(iii) whether any other witness travelled in the same vehicle; and

(d) exhibit any receipts proving actual payment of the sums claimed.

(5) The notice of appointment for assessment of costs, the bill of costs and any affidavit of disbursements must be served on every party interested in the assessment:

(a) at least 14 days before the date fixed for the assessment; or

(b) at any earlier date that the assessment officer may direct.

(6) If a party has served or been served with a notice of appointment for assessment of costs and fails to attend, the assessment officer may proceed with the assessment in that party's absence on proof of service of the documents mentioned in subrule (5) by or on that party.

Assessment at instance of party liable

11-14(1) If a party entitled to costs fails or refuses to file or serve a bill of costs for assessment within a reasonable time, any party liable to pay the costs, or any party whose costs depend on the determination of another party's costs, may obtain a notice to deliver a bill of costs for assessment on filing proof of:

(a) a written demand for the assessment made to the party entitled to costs; and

(b) the failure or refusal to file or serve the bill of costs by the party entitled to costs.

(2) The notice to deliver a bill of costs for assessment must be in Form 11-14.

(3) The notice to deliver a bill of costs for assessment must be served on every party interested in the assessment at least 28 days before the date fixed for assessment.

(4) The party entitled to costs shall file and serve a copy of the bill of costs and any affidavit of disbursements on every party interested in the assessment at least 14 days before the date fixed for assessment.

(5) If the party entitled to costs fails to file and serve a bill of costs for assessment as provided in subrule (4), the assessment officer may:

(a) assess the costs of that party;

(b) disallow any or all costs of that party; or

(c) defer the assessment of that party's costs.

(6) If a party has served or been served with a notice to deliver a bill of costs for assessment and fails to attend, the assessment officer may proceed with the assessment in that party's absence on proof of service of the notice by or on that party.

Power and authority of assessment officer

11-15(1) On an assessment of costs, the assessment officer may:

(a) take evidence by affidavit, administer oaths or affirmations and examine witnesses, as the assessment officer considers it to be appropriate;

(b) require production of books, papers and documents;

(c) require notice of the assessment to be given to all persons who may be interested in the assessment or in the fund or estate out of which costs are payable;

(d) give any directions and perform any duties that the assessment officer considers are necessary for the conduct of an assessment; and

(e) refer a matter requiring the Court's direction to the Court.

(2) If parties are liable to pay costs to each other, the assessment officer may:

(a) adjust the costs by way of set-off;

(b) delay the allowance of costs a party is entitled to receive until that party has paid or tendered the costs that the party is liable to pay; or

(c) certify the costs to be paid by each party and direct payment of those costs.

(3) The assessment officer may award the costs of an assessment to any party and may fix those costs.

Certificate of assessment

11-16(1) On the conclusion of an assessment of costs, the assessment officer shall certify the amount of costs assessed and allowed by:

(a) endorsing a certificate on the bill of costs filed; or

(b) filing a certificate of assessment of costs.

(2) A certificate of assessment of costs must be in Form 11-16.

(3) If requested to do so by a party interested in the assessment, the assessment officer shall provide written reasons for the decision.

(4) If a party specifically objects to items on the assessment before the assessment officer, the assessment officer shall note those objections in the certificate.

(5) On certification of the amount of costs as provided in subrule (1), the party entitled to costs shall notify all parties interested in the assessment of costs who did not appear at the assessment of the result of the assessment.

(6) Notice to a party pursuant to subrule (5) may be made by ordinary mail addressed to the party's last known address.

(7) Subject to a review pursuant to rule 11-22 and to the terms contained in the certificate or in the judgment or order under which the assessment was made, a certificate of assessment of costs is final and conclusive as to the amount of costs specified.

(8) Payment of costs in the amount certified by the assessment officer may be enforced in the same manner as a judgment of the Court.

Assessment procedure in certain cases

11-17(1) If a proceeding is settled on the basis that any party is to pay or recover costs and the amount of costs is not determined by the settlement, on the filing of a consent signed by the party agreeing to pay the costs, the costs must be assessed on application of any party as provided in this Division.

(2) On signing a default judgment, the local registrar may, without an appointment, fix the costs to which the plaintiff is entitled against the defendant in default and certify the costs by entering the amount allowed on the judgment.

(3) If a bill of costs is consented to by a lawyer on behalf of the party liable to pay the costs, the assessment officer may, without an appointment and without further consideration, certify the costs by endorsing the bill of costs.

Subdivision 3
Assessment of Party and Party Costs

Assessment in accordance with Tariff

11-18(1) If costs are to be assessed, the assessment officer shall assess and allow:

(a) fees in accordance with the appropriate column of the applicable table in Tariff Schedule I, together with all necessary and proper disbursements;

(b) disbursements for fees paid to the Court as prescribed by regulation and set out in Tariff Schedule II, VI or VII, as may be applicable;

(c) disbursements for fees paid to sheriffs as prescribed by regulation and set out in Tariff Schedule III, VI or VII, as may be applicable;

(d) disbursements for fees paid to witnesses, interpreters and parties appearing as witnesses on questioning or cross-examination on an affidavit in accordance with Tariff Schedule IV "A";

(e) disbursements for fees paid to jurors as prescribed by regulation and set out in Tariff Schedule IV "B";

(f) disbursements for fees paid to official court reporters as prescribed by regulation and set out in Tariff Schedule V.

(2) Fees, disbursements or charges other than those set out in subrule (1), and variation in the amounts set out in the Tariff Schedule referred to in clause (1)(d), must not be assessed or allowed unless the Court orders otherwise:

(a) on the determination of the proceeding; or

(b) on an application to the trial judge made on notice to the other parties.

(3) Disbursements other than fees paid to the Court must not be assessed or allowed unless it is established by affidavit that the disbursement was made or that the party is liable for the disbursement.

(4) If tax is payable by a party with respect to legal services or disbursements, the assessment officer shall allow an additional amount equal to the tax payable on the legal services or disbursements as assessed.

Information Note

For more information on the affidavit referred to in subrule (3), refer to rule 11-13.

Assessment of fees in accordance with Tariff

11-19(1) The assessment of fees pursuant to clause 11-18(1)(a):

(a) is in the discretion of the assessment officer; and

(b) must be assessed according to the appropriate column of the applicable table of Tariff Schedule I.

(2) Each item in Tariff Schedule I "B" is deemed to include all necessary or reasonable services taken or had for the purpose of fully completing the step referred to in that item, and, if any step has only been partially completed, a proportionate part of the charge may be allowed.

(3) Notwithstanding subrule (2), if a lawyer has performed services that are not provided for by the Tariff, either expressly or by necessary implication, the assessment officer may give an allowance for that service that the assessment officer considers fair and reasonable.

(4) The assessment officer, in his or her discretion, may give an allowance for any steps taken by a lawyer that have:

(a) expedited the proceeding;

(b) saved costs; or

(c) settled the proceeding.

(5) If the assessment officer has exercised his or her discretion to give an allowance pursuant to subrule (3) or (4), an application to review the assessment of costs may be made pursuant to rule 11-22.

New. Gaz. 15 Jly. 2016.

Solicitor and client costs

11-20 If the Court awards costs as between solicitor and client, the judge awarding those costs shall assess them.

Factors to be considered on assessment

11-21(1) In assessing costs, an assessment officer is bound by any direction given by the Court.

(2) Unless the Court orders otherwise, in assessing costs the assessment officer is bound by any express provision in these rules respecting costs.

(3) In assessing costs, the assessment officer shall allow those fees and disbursements that the assessment officer considers were proper or reasonably necessary to conduct the proceeding.

(4) In exercising his or her discretion pursuant to this Division, the assessment officer shall consider all of the circumstances, including the factors referred to in subrule 11-1(4).

Information Note

See rule 11-4 regarding directions the Court may give the assessment officer.

Subdivision 4
Review of Assessment

Review of assessment

11-22(1) A person with a pecuniary interest in the result of an assessment of costs who is dissatisfied with an assessment may apply to the Court for a review of the assessment of costs.

(2) An application pursuant to this rule must be made within 14 days after the date of the assessment.

(3) A review of the assessment of costs:

(a) must be limited to items that have been objected to before the assessment officer; and

(b) may include items in which the assessment officer exercised discretion.

(4) An application for review of an assessment of costs must be brought by filing a notice of application for review and serving it on every other party.

(5) A notice of application for review must specify any item objected to and the grounds of the objection.

(6) Unless the Court otherwise orders, a review of assessment of costs must be:

(a) limited to the items and grounds specified in the notice of application; and

(b) heard on the evidence presented before the assessment officer.

(7) On a review of an assessment of costs, the Court may:

(a) review any discretion exercised by the assessment officer; and

(b) grant any order, including the costs of review and assessment, that the Court considers just.

Subdivision 5
Assessment pursuant to The Legal Profession Act, 1990

Assessment of lawyer's bill of costs

11-23 On the assessment of a lawyer's bill of costs pursuant to *The Legal Profession Act, 1990*:

(a) the assessment officer in exercising his or her discretion to determine a fair and reasonable amount shall consider the factors set out in the commentary to rule 2.06(1) of the Code of Professional Conduct; and

(b) the rules in this Division apply except where they are inconsistent with that Act.

Information Note

The commentary to rule 2.06(1) of the Code of Professional Conduct states the following:

"What is a fair and reasonable fee depends on such factors as:

(a) the time and effort required and spent;

(b) the difficulty of the matter and the importance of the matter to the client;

(c) whether special skill or service has been required and provided;

(d) the results obtained;

(e) fees authorized by statute or regulation;

(f) special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;

(g) the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer's inability to accept other employment;

(h) any relevant agreement between the lawyer and the client;

(i) the experience and ability of the lawyer;

(j) any estimate or range of fees given by the lawyer; and

(k) the client's prior consent to the fee.".

You may also wish to refer to the Rules of the Law Society of Saskatchewan regarding contingent fee agreements.

DIVISION 3
Sanctions

Subdivision 1
Penalty

Costs against a lawyer

11-24(1) If the Court considers that a lawyer for a party has caused costs to be incurred improperly or without reasonable cause or has caused costs to be wasted through delay, neglect or some other fault, the Court may do any one or more of the following:

(a) order that the lawyer indemnify his or her client for all or part of any costs that the client has been ordered to pay to another party;

(b) order that the lawyer be personally liable for all or part of any costs that his or her client has been ordered to pay to another party;

(c) make any other order it considers appropriate.

(2) An order pursuant to subrule (1) may be made by the Court on its own initiative or on the application of any party to the proceeding.

(3) No order pursuant to subrule (1) is to be made against a lawyer unless the lawyer has been given an opportunity to be heard.

(4) The Court may order that notice be given to the lawyer's client, in a manner specified by the Court, of:

(a) an order against a lawyer made pursuant to subrule (1); or

(b) a hearing pursuant to subrule (3).

Subdivision 2
Civil Contempt of Court

Order to appear

11-25 The Court may grant an order in Form 11-25 that requires a person to appear before it, or may order a peace officer to take a person into custody and to bring the person before the Court, to show cause why that person should not be declared to be in civil contempt of Court.

Declaration of civil contempt

11-26(1) Except when a person is before the Court as described in subclause (3)(a)(ii) or (v), before an order declaring a person in civil contempt of Court is made, notice of the application for a declaration for civil contempt must be served on the person in the same manner as a commencement document.

(2) A notice of the application pursuant to subrule (1) must be in Form 6-5.

(3) A judge may declare a person to be in civil contempt of Court if:

(a) the person, without reasonable excuse:

(i) does not comply with an order, other than an order to pay money, that has been served in accordance with the rules for service of commencement documents or of which the person has actual knowledge;

(ii) is before the Court and engages in conduct that warrants a declaration of civil contempt of Court;

(iii) does not comply with an order served on the person, or an order of which the person has actual knowledge, to appear before the Court to show cause why the person should not be declared to be in civil contempt of Court;

(iv) does not comply with an order served on the person, or an order of which the person has actual knowledge, to attend for questioning pursuant to these rules or to answer questions that the person is ordered by the Court to answer;

(v) is a witness in an application or at trial and refuses to be sworn or affirmed or refuses to answer proper questions; or

(vi) does not perform or observe the terms of an undertaking given to the Court; or

(b) an enactment so provides.

Punishment for civil contempt of Court

11-27(1) Every person declared to be in civil contempt of Court is liable to any one or more of the following penalties or sanctions in the discretion of a judge:

(a) imprisonment until the person has purged the person's contempt;

(b) a fine;

(c) if the person is a party to an action, application or proceeding, an order that:

(i) all or part of a commencement document, affidavit or pleading be struck out;

(ii) an action or an application be stayed;

(iii) a claim, action, defence, application or proceeding be dismissed, a judgment be entered or an order be made; or

(iv) a document or evidence be prohibited from being used or entered in an application or proceeding or at trial.

(1.1) A warrant of committal for civil contempt of Court may be in Form 11-27.

(2) The Court may also make a costs award against a person declared to be in civil contempt of Court.

(3) If a person declared to be in civil contempt of Court purges the person's contempt, the Court may waive or suspend any penalty or sanction.

(4) The judge who imposed a penalty or sanction for civil contempt may, on notice to the person concerned, increase, vary or remit the penalty or sanction.

Amended. Gaz. 24 Jly. 2020.

DIVISION 4
Vexatious Proceedings

Vexatious proceedings

11-28(1) If, the Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings against the same person or against different persons, the Court may order that the person shall not institute any proceedings in the Court without leave of the Court.

(2) The Court may require that the local registrar at each judicial centre be notified of an order pursuant to this rule.

Amended. Gaz. 24 Jly. 2020.

PART 12: SERVICE OF DOCUMENTS

What this Part is about: Many rules require documents to be served on parties to a Court action. This Part describes how the documents that start Court actions (commencement documents) and all other documents must be served. Special rules describe how documents are to be served outside Saskatchewan.

This Part also includes rules:

- for situations that require service to be validated or set aside, or other methods of service to be used (substituted service); and
- describing how service of documents is proved and when service of documents is effective.

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Part 12: Service of Documents

PART 12: SERVICE OF DOCUMENTS

DIVISION 1
Discretion of Court to Validate or Set Aside Service

Validating or setting aside service

12-1(1) Subject to the express provisions of any enactment and notwithstanding any rule respecting service, the Court has discretion to validate or set aside the service of any document.

(2) The primary consideration for the Court in the exercise of its discretion is that the person served or to be served:

(a) received notice of the document; or

(b) would have received notice except for the attempts of that person to evade service.

(3) If the Court is satisfied that the person to be served received notice of the document, the Court may:

(a) validate any irregular or unauthorized service of a document; and

(b) impose any terms that it considers appropriate on the validation.

(4) If the Court is not satisfied that the person to be served received notice of a document, the Court may:

(a) set aside service of the document; and

(b) order further or other service of the document.

(5) The Court may set aside the consequences of any default to respond to service of a document or may extend the time to respond to service of a document if the Court is satisfied that:

(a) the person to be served did not have notice of the document;

(b) the person to be served did not have notice of the document until a date later than the effective date of service; or

(c) the document served was incomplete or illegible.

DIVISION 2
Modes of Service

Personal service

12-2(1) Service of a document must be effected by personal service of that document on the person to be served except where:

(a) an enactment or order of the Court provides otherwise; or

(b) these rules authorize service by an alternative or special mode of service.

(2) A document may be served personally notwithstanding that service in another manner is authorized.

(3) Personal service of a document is effected by leaving a copy of the document with the person to be served.

(4) It is not necessary for the person effecting personal service of a document to possess or produce the original document.

(5) A commencement document is deemed to have been personally served if the person to be served has delivered a statement of defence or taken any action that is necessary to participate in the proceeding.

(6) A document is deemed to have been personally served if an acknowledgment of service that complies with rule 12-3 is filed.

Requirements for acknowledgement of service

12-3(1) An acknowledgement of service must be in Form 12-3.

(2) An acknowledgement of service must:

(a) be signed by the person to be served, or by his or her lawyer or an authorized person as provided in rules 12-5 to 12-9;

(b) set out the date of service;

(c) clearly identify the document served; and

(d) include an address for service of the person to be served.

(3) A commencement document must be accompanied by:

(a) an acknowledgement of service;

(b) a request that the person served return the signed and completed acknowledgement of service without delay; and

(c) a postage prepaid envelope addressed to the person serving the document, except where service is effected by fax or electronic transmission.

(4) The person to be served shall bear all costs of service necessitated by that person's neglect or refusal to sign and return a completed acknowledgment of service without delay.

(5) Unless the Court orders otherwise, a party is not entitled to notice of any subsequent proceedings in the cause or matter if that party:

(a) neglects or refuses to sign and return a completed acknowledgment of service including a proper address for service; or

(b) fails to otherwise file an address for service.

Information Note

"Address for service" is defined in Part 17. See also rule 13-21 regarding addresses for service.

See subrule 12-13(1). If an acknowledgment of service is received, the effective date of service is the date stated in the acknowledgment of service.

Service by alternative modes

12-4(1) If expressly authorized by enactment, an order of the Court or these rules, service of a document may be effected by an alternative mode, including:

(a) courier;

(b) registered or ordinary mail;

(c) fax; or

(d) electronic transmission.

(2) Subject to subrule (3), if an address for service in a proceeding has been filed respecting the person to be served, a document required to be served may be served at the address for service by any of the following modes:

(a) courier, including any adult person who delivers the document;

(b) registered or ordinary mail;

(c) fax; or

(d) electronic transmission.

(3) Subrule (2) does not apply to a subpoena or an application for committal of a person for contempt of Court.

(4) In the case of service by courier, a copy of the document must be:

(a) left at the address for service with the person to be served;

(b) left at the address for service with an adult person who appears to be an employee, agent, representative or household member of the person to be served; or

(c) left in a mail receptacle at the address for service if there is no person described in clause (b) present:

(i) at an address for service that is a residential address; or

(ii) during regular office hours, at an address for service that is a business address.

(5) In the case of service by registered or ordinary mail, a copy of the document must be placed in an envelope and mailed to the address for service of the person to be served.

(6) In the case of service by fax, the document must be faxed to the fax number shown in the address for service of the person to be served and must include a cover page that sets out all of the following information:

(a) the sender's name, address, telephone number and fax number;

(b) the name of the person to be served;

(c) the date and time of transmission;

(d) the total number of pages transmitted, including the cover page;

(e) the name and telephone number of a person to contact in the event of transmission problems.

(7) In the case of service by electronic transmission:

(a) the document must be electronically transmitted to the electronic transmission address shown in the address for service of the person to be served; and

(b) the electronic transmission must set out all of the following information:

(i) the sender's name, address, telephone number, electronic transmission address and the sender's fax number if there is one;

(ii) the name of the person to be served;

(iii) the date and time of transmission;

(iv) the electronic file name of the document being transmitted, the style of cause, name and date of the document being transmitted and the total number of hard copy pages of the document;

(v) the name and telephone number of a person to contact in the event of transmission problems;

(vi) confirmation that the original document has been signed, that the original signed document has been or will be filed with the Court and that the original signed document is available for inspection at the place and times specified.

Information Note

See rule 12-13 regarding the effective date of service by the alternative modes.

Amended. Gaz. 15 Jly. 2016.

DIVISION 3
Special Modes of Service on Certain Persons

Service on corporation

12-5 Subject to the express provisions of any enactment, service of a document may be made:

(a) on a municipal corporation, by leaving a copy of the document with the mayor, reeve, clerk or secretary of the municipal corporation or their respective deputies;

(b) on a corporation incorporated or registered pursuant to any enactment, in accordance with the provisions for service of that enactment; or

(c) on any other corporation or on a corporation mentioned in clause (b) if the enactment contains no provisions for service, by leaving a copy of the document with:

(i) any officer, director, agent or liquidator of the corporation; or

(ii) any clerk, manager, agent or other representative of the corporation at or in charge of any office or other place where the corporation carries on business.

Service on proprietorships, partnerships and other unincorporated entities

12-6 Subject to the express provisions of any enactment, service of a document may be made:

(a) on a sole proprietorship, by leaving a copy of the document with the sole proprietor or any person at the principal place of business of the sole proprietorship who appears to be in control or management of the proprietorship;

(b) on a partnership, by leaving a copy of the document with one of the partners or any person at the principal place of business of the partnership who appears to be in control or management of the partnership;

(c) on an unincorporated association, by leaving a copy of the document with any officer of the association or any person at the office or premises of the association who appears to be in control or management of the association; or

(d) on a board or commission, by leaving a copy of the document with any member or secretary of the board or commission.

Information Note

See rules 2-4 to 2-8 regarding actions by or against a partnership.

See rule 2-9 regarding actions by or against a sole proprietorship.

See rule 2-10 regarding actions by or against unincorporated associations.

Agent of corporation or unincorporated entity

12-7(1) In this rule, **"unincorporated entity"** means a sole proprietorship, partnership, unincorporated association or board or commission.

(2) If a person in Saskatchewan transacts or carries on any business for or on behalf of any corporation or unincorporated entity that has its principal place of business outside Saskatchewan, that person is deemed to be an agent of that corporation or unincorporated entity for the purposes of service until an address for service is filed by or on behalf of that corporation or unincorporated entity.

Service on a person having no legal capacity

12-8 Subject to the express provisions of any enactment or order of the Court, service of a document may be made:

(a) on a minor, by leaving a copy of the document with:

(i) the minor; and

(ii) the father, mother, guardian or legal custodian of the minor or an adult person who has the care of the minor and with whom the minor resides;

(b) on a dependent adult, by leaving a copy of the document with:

(i) the dependent adult; and

(ii) his or her personal or property decision-maker; or

(c) on a person who may be of unsound mind but has no personal or property decision-maker, in accordance with the terms of an order of the Court authorizing service.

Service on a person represented by a lawyer

12-9(1) Subject to the express provisions of any enactment and to subrule (2), service of a document on a person who is represented by a lawyer respecting the proceeding to which the document pertains must be effected by service on the lawyer.

(2) This rule does not apply to a subpoena or an application for committal of a person for contempt of Court.

(3) An acknowledgment of service in Form 12-3 signed by the lawyer representing the person to be served constitutes a representation that the person to be served has authorized the lawyer to accept service on his or her behalf.

(4) If the lawyer representing the person to be served respecting the proceeding to which the document to be served pertains refuses or neglects to sign and return the completed acknowledgment of service without delay:

(a) the document may be served on the person who is represented by the lawyer; and

(b) the lawyer shall personally pay all costs of service necessitated by the refusal or neglect.

DIVISION 4
Substituted Service

Substituted service

12-10(1) If it is impractical to effect service of a document by any of the modes authorized by this Part, an application without notice may be made to the Court for an order:

(a) for substituted service of the document; or

(b) dispensing with service of the document.

(2) An application pursuant to subrule (1) may include directions for service or dispensing with service of any subsequent documents in the proceeding.

(3) An application pursuant to subrule (1) must comply with rule 6-4 and must be supported by an affidavit that sets out:

(a) the attempts, if any, that have been made to effect service of a document by a mode authorized by this Part;

(b) the circumstances that make it impractical to effect service by that mode;

(c) the mode of service that, in the opinion of the deponent, is likely to provide the party to be served with notice of the document; and

(d) the grounds on which an order dispensing with service of the document should be made, if that order is sought.

(4) An order for substituted service must be served with any document to be served substitutionally.

(5) Service of a document in accordance with the terms of an order for substituted service constitutes valid service on the person served.

DIVISION 5
Service outside Saskatchewan

Manner of service

12-11(1) Service of a document outside Saskatchewan may be effected:

(a) in the manner provided by these rules for service in Saskatchewan if it is not incompatible with the law of the jurisdiction where service is made;

(b) subject to subrule (3) in the manner provided by the law of the jurisdiction where service is made; or

(c) in the manner provided in rule 12-12.

(2) Service of a document in the manner provided for service in Saskatchewan is deemed to be valid service unless the person served shows that the service is incompatible with the law of the jurisdiction where service is made.

(3) Service of a document in the manner provided by the law of the jurisdiction where service is made must be made by a method by which the document can be reasonably expected to come to the notice of the person to be served, if the document is to be served:

(a) in a jurisdiction that is not a contracting state, as defined in rule 12-12; or

(b) in a jurisdiction that is a contracting state, as defined in rule 12-12:

(i) that has determined that the Hague Convention, as defined in rule 12-12, does not apply; or

(ii) where the address of the person to be served is not known".

Information Note

See rule 12-16 regarding proof of service when service is effected outside Saskatchewan.

Amended. Gaz. 3 Mar. 2017.

Service pursuant to the Hague Convention

12-12(1) In this rule and in rule 12-11:

"central authority", with respect to a contracting state, means the central authority that the contracting state has designated under the Hague Convention; (« *autorite centrale* »)

"contracting state" means a state outside of Canada that is a signatory to the Hague Convention; (« *Etat contractant* »)

"document" means a judicial or extrajudicial document in a civil or commercial matter; (« *document* »)

"forwarding authority" means the registrar, a local registrar or a lawyer; (« *autorite transmettrice* »)

"Hague Convention" means the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, concluded at The Hague on November 15, 1965. (« *Convention de La Haye* »)

(2) A statement of claim or other document that is to be served in a contracting state must be served:

(a) through the central authority in the contracting state;

(b) directly through a Canadian diplomatic or consular agent, unless:

(i) the document is being served on a national that is not Canadian; and

(ii) the contracting state has declared that it is opposed to that method of service in its territory;

(c) through consular channels where the contracting state has designated an authority to receive requests for service through these channels;

(d) through diplomatic channels;

(e) by another method that is provided for by the Hague Convention and that is prescribed by rule 12-11, unless the contracting state has objected to that method; or

(f) by a method to which the Hague Convention is not opposed and that is prescribed by rule 12-11.

(3) If a statement of claim or other document is to be transmitted abroad for service in a contracting state pursuant to clause (2)(a), it must be filed with the forwarding authority and must be accompanied by:

(a) a request in Form 12-12A;

(b) a translation of each document in the official language or one of the official languages of the contracting state in which service is to be effected;

(c) a duplicate copy of each document;

(d) a request that the forwarding authority transmit each document and the translation in duplicate to the contracting state in which service is to be effected; and

(e) a deposit for fees and disbursements in an amount satisfactory to the forwarding authority.

(4) If the forwarding authority receives the documents, supporting material and deposit mentioned in subrule (3), the forwarding authority shall forward all material to the central authority as provided for or permitted by the Hague Convention.

(5) A certificate in Form 12-12B completed and signed by the central authority of the contracting state, or any other designated authority for the contracting state, is proof of service when it shows that service has been effected by:

(a) personal service; or

(b) if service cannot be made personally, by a method that is consistent with the practice and usage of the contracting state.

(6) If a certificate in Form 12-12B is not received, judgment may be given under the conditions stated in Article 15 of the Hague Convention, and, in the case of urgency, the Court may order any provisional or protective measures.

New. Gaz. 3 Mar. 2017.

DIVISION 6
Effective Date of Service

Effective date of service

12-13(1) Notwithstanding the following subrules, service of a document by any mode where a signed acknowledgment of service has been received is effective on the date specified in the acknowledgment of service.

(2) Service of a document by any mode between 4:00 p.m. and midnight or on a Saturday, Sunday or holiday is effective on the next day that is not a Saturday, Sunday or holiday.

(3) Service of a document by registered mail is effective on the date specified in the post office confirmation of delivery to the person to be served or, if no date is specified, on the date the sender receives the confirmation of delivery.

(4) Service of a document by ordinary mail is effective on the seventh day after the document is delivered by the sender to the post office for mailing.

(5) Service of a document by fax is effective on the date of transmission.

(6) Service of a document by electronic transmission is effective on the date set out in the electronically transmitted acknowledgment of receipt or, if no date is specified, on the date the sender receives the acknowledgment of receipt.

(7) Deemed service of a document pursuant to subrule 12-2(5) is effective on the date the person to be served files a statement of defence or takes any other action in the proceeding.

Information Note

See section 27 of *The Interpretation Act, 1995* for the definition of "holiday".

DIVISION 7
Proof of Service

Acknowledgment or certificate of service

12-14(1) Service of a document may be proved by filing an acknowledgment of service that complies with subrule 12-3(2).

(2) Service of a document effected by a sheriff, his or her deputy or a bailiff may be proved by filing a certificate of service in Form 12-14 that clearly identifies the document served.

(3) An acknowledgment of service or a certificate of service may be endorsed on or attached to an original or true copy of the document served, except where the document served is already on the Court file.

(4) No affidavit of service is required if service is proved by an acknowledgment of service or a certificate of service.

Information Note

See rule 15-12 regarding proof of service in family law proceedings.

Affidavit of service

12-15(1) Subject to rule 12-14, service of a document must be proved by an affidavit of service stating:

(a) the mode of service;

(b) the date, time and place the document was served;

(c) the person who effected service; and

(d) the person who was served.

(2) An affidavit of service must be in Form 12-15.

(3) If service is effected other than at the address for service of the person to be served, the deponent completing the affidavit of service shall state the basis of his or her information respecting the current address of the person served.

(4) An original or true copy of the document served must be exhibited to the affidavit of service except where the document is already on the Court file.

(5) The following documents must be exhibited to the affidavit of service if they are relied on for proof of service:

(a) a copy of a post office confirmation of delivery to the person served;

(b) a copy of a fax confirmation; or

(c) a hard copy of an electronically transmitted acknowledgment of receipt.

Service outside Saskatchewan

12-16 If service has been effected outside Saskatchewan, proof of service may be made in the manner provided by:

(a) these rules;

(b) the law of the jurisdiction where service was made; or

(c) rule 12-12.

PART 13: TECHNICAL RULES

What this Part is about: This Part contains rules respecting calculating time. It also deals with various administrative matters, including the filing of documents and certification of copies of original documents. The Part also has rules concerning the contents of pleadings, affidavits, exhibits, funds in Court, proceedings by and against persons who have obtained a fee waiver certificate pursuant to *The Fee Waiver Act*, and transfer of proceedings under *The Court Jurisdiction and Proceedings Transfer Act*.

Amended. Gaz. 2 Sep. 2016.

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PART 13: TECHNICAL RULES

DIVISION 1
Judge Unable to Continue

When one judge may act in place of or replace another

13-1 One judge may act in place of or replace another judge if:

(a) that other judge dies;

(b) that other judge ceases to be a judge; or

(c) it is inconvenient, improper, inappropriate or impossible for that other judge to act.

Information Note

Section 18 of *The Queen's Bench Act, 1998* states:

18 To the extent that is practicable and convenient:

(a) every action or matter in the court shall be heard, determined and disposed of before a single judge; and

(b) all proceedings in an action or matter that are subsequent to a hearing or trial, down to and including the final judgment or order, shall be heard, determined and disposed of before the judge before whom the trial or hearing took place.

DIVISION 2
Calculating Time

Application of these rules for calculating time

13-2 This Division describes how to calculate periods of time and applies to:

(a) these rules; and

(b) judgments and orders.

Time less than 6 days

13-3 If the time appointed or allowed to do any act or take any proceeding is stated to be less than 6 days from or after any date or event, the days on which the offices of the Court are closed are not to be included in calculating that time.

Counting days

13-4(1) In any case where a particular number of days, not expressed to be clear days, is prescribed:

(a) the first day must be excluded; and

(b) the last day must be included.

(2) In any case where a particular number of days, expressed to be clear days, is prescribed, the first day and the last day must be excluded.

Information Note

See also subsections 24(3) to (7) of *The Interpretation Act, 1995*.

Counting months and years

13-5 If the time appointed or allowed to do any act or take any proceeding is expressed in months, or if the word "month" occurs in any document that is part of any proceeding pursuant to these rules, that time must be computed by calendar months, unless otherwise expressed.

Information Note

See also subsection 24(8) of *The Interpretation Act, 1995* and the definition of "month" in subsection 27(1) of that Act.

Time expiring on Sunday or when offices closed

13-6 If the time appointed or allowed to do any act or take any proceeding expires on a Sunday or any other day on which the offices of the Court are closed and, as a result, that act or proceeding cannot be done or taken on that day, the time to do that act or take that proceeding is extended to include the next day on which the office is open.

Information Note

See also subsections 24(1) and (2) of *The Interpretation Act, 1995* and the definition of "holiday" in subsection 27(1) of that Act.

Variation of time periods

13-7(1) Unless the Court orders otherwise or a rule provides otherwise, the parties may agree to extend any period specified in these rules.

(2) The Court may enlarge or abridge the time appointed by these rules or fixed by any order for doing any act or taking any proceeding, on any terms that the Court considers just.

(3) The Court may order an enlargement of time notwithstanding that the application is not made until after the expiration of the time appointed or allowed.

(4) The costs of an application to enlarge the time for doing any act or taking any proceeding must be borne by the party making the application.

Information Note

See also section 45 of *The Interpretation Act, 1995*.

DIVISION 3
Pleadings

Pleadings: general requirements

13-8(1) Every pleading must:

(a) be divided into paragraphs, numbered consecutively, and each allegation must, as far as is practicable, be contained in a separate paragraph;

(b) be signed by the party's lawyer or, if the party is self-represented, by the party;

(c) contain only a statement in summary form of the material facts on which the party pleading relies for the party's claim or defence, but not the evidence by which the facts are to be proved; and

(d) be as brief as the nature of the case will permit.

(2) If necessary, full particulars of any claim or defence must be stated in the pleading.

(3) A party shall plead specifically any matter, fact or point of law that:

(a) makes a claim or defence of the other party not maintainable;

(b) if not specifically pleaded, might take the other party by surprise; or

(c) raises issues not arising out of the preceding pleadings.

(4) A party shall refer to any enactment on which the party's action or defence is founded and, if practicable, give particulars of the specific sections on which the party relies.

Pleadings: particulars

13-9(1) In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, full particulars must be stated in the pleading.

(2) If particulars of debt, expenses or damages exceed 300 words, that fact must be stated, with a reference to full particulars already delivered or to be delivered with the pleading.

(3) The effect of any document or the purport of any conversation, if material, must be stated briefly, and the precise words of the document or conversation need not be stated unless those words are themselves material.

Pleadings: allegations as a fact

13-10(1) If a contract or relation between persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it is sufficient to allege that contract or relation as a fact.

(2) If notice to any person is alleged, it is sufficient to allege that notice as a fact, unless the form or the precise terms of the notice or the circumstances from which the notice is to be inferred are material.

(3) It is sufficient to allege malice, fraudulent intention, knowledge or other condition of the mind of any person as a fact without setting out the circumstances from which it is to be inferred.

Pleadings: other contents

13-11(1) A party shall not, in any pleading, make an allegation of fact or raise any new ground or claim inconsistent with the party's previous pleading.

(2) This rule does not affect the right of a party:

(a) to make allegations of fact or raise grounds or claims in the alternative; or

(b) to amend or apply for leave to amend a pleading.

(3) A party may raise any point of law in the party's pleading.

(4) Conclusions of law may be pleaded but only if the material facts supporting those conclusions are pleaded.

(5) A party need not plead any fact that is presumed by law to be true or in the party's favour or as to which the burden of disproving it lies on the other party, unless the other party has specifically denied it in the other party's pleading.

(6) A party need not plead the performance or occurrence of a condition precedent to the assertion of the party's claim or defence, unless the other party has specifically denied it in the other party's pleading.

(7) Subject to the rules with respect to amendment of pleadings, a party may plead any fact that has occurred since the commencement of the action, notwithstanding that the fact may give rise to a new claim or defence.

Pleadings: remedy

13-12(1) If a pleading contains a claim for a remedy, the pleading:

(a) must state the specific remedy claimed; and

(b) may ask for a remedy in the alternative.

(2) It is not necessary to ask for a general or other remedy, and that remedy may be given to the same extent as if it had been asked for.

Pleadings: payment into Court

13-13 Except in an action to which a defence of tender before action is pleaded or in which a plea pursuant to section 9 of *The Libel and Slander Act* has been filed, a statement of the fact that money has been paid into Court must not be inserted in the pleadings.

Information Note

Regarding when a defence of tender before action may be pleaded, see rule 4-33.

Pleadings: specific requirements for replies

13-14(1) In this rule, **"reply"** means a reply to:

(a) a statement of defence;

(b) a statement of defence to a counterclaim; or

(c) a statement of defence to a third party claim.

(2) In addition to the other requirements of these rules, a reply may only make admissions or respond to matters raised for the first time in the statement of defence.

Pleadings: specific requirements for class proceedings

13-15(1) The style of cause of a proceeding pursuant to *The Class Actions Act* must include the words "Brought under *The Class Actions Act*" immediately below the listed parties:

(a) if it is intended, when the proceeding starts, that a certification order will be sought pursuant to the Act; or

(b) if a certification order is subsequently made with respect to the proceeding pursuant to the Act.

(2) If a certification order is refused with respect to the proceeding or the proceeding is decertified, the words "Brought under *The Class Actions Act*" must not be included in the style of cause in any subsequent pleadings and documents filed in the proceeding.

Pleadings: specific requirements for expedited procedure

13-16 If Part 8 applies to an action, the style of cause must be modified as described in rule 8-3.

True allegations to be admitted

13-17 Each party shall admit the allegations contained in the pleadings of the other party that the party knows to be true.

Information Note

See rule 13-19 regarding failure to admit true allegations.

Pleadings: denial of facts

13-18(1) All allegations of fact that are not denied or stated in the pleadings not to be admitted are deemed to be admitted.

(2) Unless these rules provide otherwise, it is not necessary to deny separately each allegation made in a preceding pleading, but a general denial of all those allegations that are not admitted may be sufficient.

(3) A denial of a fact in a pleading must meet the point of substance.

(4) If it is intended to prove a different version of the facts than that pleaded by the other party, the party intending to prove the different version shall plead the party's own version of the facts.

(5) Unless a party specifically denies the following, they are deemed to be admitted:

(a) the right of any other party to claim as executor or as trustee, whether for the benefit of creditors or otherwise, or in any representative capacity;

(b) the constitution of a partnership or firm;

(c) the incorporation of a corporate party.

(6) In claims on bills of exchange, promissory notes or cheques, or in a claim for debt or liquidated demand in money, a party shall specifically deny any allegation of fact made in support of the claim of the other party that the party disputes.

(7) If a contract or agreement is alleged in any pleading, a bare denial of the contract or agreement by the other party is to be construed only as a denial of the making of the contract or agreement alleged, or of the facts from which the contract or agreement may be implied by law, and not as a denial of the legality or sufficiency in law of the contract or agreement.

(8) No denial is necessary as to damages claimed or the amount of damages, but they are deemed to be put in issue, unless expressly admitted.

Information Note

See rule 13-19 regarding failure to meet the point of substance in a denial pursuant to subrule (3) or failure to plead the party's own version of facts pursuant to subrule (4).

Pleadings: Court may direct costs

13-19(1) The Court may act pursuant to subrule (2) if a party:

(a) intending to prove a different version of the facts than is pleaded by the other party fails to plead the party's own version of the facts;

(b) fails to admit any of the material allegations contained in the pleadings that are true; or

(c) denies an allegation of fact in a previous pleading of the other party, and does so evasively or fails to answer the point of substance.

(2) In the circumstances mentioned in subrule (1), the Court may:

(a) refuse to allow that party to call evidence as to a different version of the facts from that pleaded; and

(b) direct that no costs be allowed to that party for that pleading and that any additional costs occasioned by that failure be paid to the other party regardless of the final result of the action.

DIVISION 4
Filed Documents

Subdivision 1
Contents and Filing

Requirements for all filed documents

13-20(1) In this rule:

"full style of cause" means a style of cause consisting of the names of all of the parties to an action or proceeding; (« *intitulé intégral* »)

"short style of cause" means a style of cause consisting of the names of the first 4 parties of any group that contains more than 4 parties, with the remainder being omitted and replaced by the words "et al.". (« *intitulé abrégé* »)

(2) Every document filed in an action must be in the appropriate form set out in the Schedule of Forms to these rules, if any, and may be modified as circumstances require.

(3) Whether or not a Form is set out in the Schedule of Forms, each document must begin with the following:

(a) the name of the Court;

(b) the name of the judicial centre;

(c) the names of the parties as determined by subrules (5) and (6) and the capacity in which a party sues or is sued, if it is in a representative capacity;

(d) the year in which the proceeding was commenced and, when assigned, the Court file number;

(e) the title of the document;

(f) once filed, the date the document was filed;

(g) anything required to be included by these rules.

(4) Whether or not a Form is set out in the Schedule of Forms, each document must end with the following:

(a) an address for service of documents;

(b) the name, address and contact information of the party or lawyer of record who prepared the document.

(5) The full style of cause must be used for:

(a) a commencement document;

(b) a document that changes any party;

(c) an order, judgment or pronouncement of the Court that grants a remedy; or

(d) a document that in the opinion of the person filing the document should contain the full style of cause.

(6) The short style of cause may be used for any document other than those specified in subrule (5).

(7) Every document filed and every exhibit to an affidavit:

(a) must be legible; and

(b) must be printed, typewritten or reproduced legibly on one side of good quality paper that is 8.5 inches by 11 inches or 21.5 centimetres by 28 centimetres with a margin of 1.25 inches or 3.33 centimetres on the left-hand side; and

(c) if the document is prepared for use in Court, may be typed with a line and a half spacing.

(8) If a document is filed, the local registrar shall retain the original of the document.

(9) Every document filed must express dates and numbers in numerals, unless words or a combination of words and numerals make the meaning clearer.

Information Note

Very large numbers are better expressed in a combination of numerals and words, for example, $25 billion. The first word of a sentence is usually better expressed as a word than a numeral. For dates, unless the pleading is clear about the convention being used, the month should be stated as a word.

When a Form is set out in the Schedule of Forms, keep in mind rule 13-28, which states that certain deviations from the Form that are not intended to mislead do not invalidate the Form. Rules for affidavits and exhibits are contained in Subdivision 2 of this Division.

Address for service

13-21(1) Any party may apply to the Court to set aside all documents filed or issued by a party whose address for service is illusory or fictitious.

(2) Unless the Court orders otherwise, a party who fails to provide or file an address for service is not entitled to notice of any subsequent proceedings in the cause or matter.

(3) Unless the Court orders otherwise, service of a document at the last filed address for service of a party is deemed valid service despite a change in the address of that party.

Information Note

"Address for service" is defined in Part 17.

Endorsements on documents

13-22(1) When the local registrar is presented with a commencement document for filing, the local registrar must:

(a) endorse on the document:

(i) a Court file number assigned to the action by the local registrar; and

(ii) the date that the document is filed;

(b) ensure that the document to be filed has endorsed on it:

(i) the name of the judicial centre where the document is filed; and

(ii) the year in which the action was commenced; and

(c) stamp the document as filed.

(2) If a lawyer is acting for a person on whose behalf the action is started, when the local registrar is presented with a commencement document for filing, the local registrar must ensure that the lawyer has endorsed on the document:

(a) the name and address of the law firm;

(b) the name of the lawyer in the law firm in charge of the action; and

(c) the law firm's telephone number, fax number and email address, if any.

(3) When the local registrar is presented with a statement of defence, a notice of intent to defend or a demand for notice for filing, the local registrar must ensure that the document has endorsed on it:

(a) the name of the person filing the document and, if the person filing the document is a lawyer, the same information as is required pursuant to clauses (2)(a) to (c); and

(b) the defendant's address for service.

(4) When the local registrar is presented with a document that is to be filed in an action after the action has started, the local registrar shall:

(a) endorse on the document the date that the document is filed; and

(b) ensure that the document to be filed has endorsed on it:

(i) the name of the judicial centre at which the document is filed; and

(ii) the appropriate Court file number.

(5) If the local registrar is presented with a document that is to be filed after an action has commenced, the local registrar shall also, if a lawyer is acting with respect to the person on whose behalf the document is filed, ensure that the lawyer has endorsed on the document the same information as is required pursuant to clauses (2)(a) to (c).

(6) When a document is filed, the local registrar shall note in the Court registry database, under the Court file number assigned to the action by the local registrar, the fact that the document was filed.

When a document is determined to be filed

13-23 A document is filed when the local registrar of the judicial centre acknowledges on the document that the document is filed in the action.

Late filing of documents

13-23.1 If the local registrar accepts for filing any document after the filing deadline set out in these rules, the local registrar shall mark the front page of the document with the words 'Filed Late', in a conspicuous location**.**

New. Gaz. 23 Sep. 2022.

Information Note

The appropriate judicial centre is determined pursuant to rule 3-3 and rule 3-4.

New. Gaz. 15 Jly. 2016.

When a commencement document is determined to be issued

13-24(1) Subject to subrule (2), a commencement document is issued when the local registrar has signed, sealed and dated the document on filing.

(2) A counter claim or third party claim is issued when it has been served and filed.

(3) The original commencement document must be filed with the local registrar.

Amended. Gaz. 13 Nov. 2015.

Filing or issuing by mail or courier

13-25(1) In any action or proceeding, documents may be sent by ordinary mail or by prepaid courier to the local registrar together with the proper fees.

(2) The local registrar shall process the documents mentioned in subrule (1) in the order in which the envelopes or packages containing the documents are received.

(3) All documents received by the local registrar by mail or by prepaid courier before 10:00 a.m. are deemed to be received:

(a) at 10:00 a.m.; and

(b) before any documents received at the office of the local registrar in person at 10:00 a.m.

(4) The local registrar shall not process any document received without the proper fee, but return the document immediately to the sender.

Filing or issuing by fax

13-26(1) Any document that may be filed or issued, and any transaction that may be carried out, by means of mail pursuant to rule 13-25 may be filed or issued or carried out by means of fax in accordance with this rule.

(2) Notwithstanding subrule (1), the local registrar may refuse to file or issue a document pursuant to this rule if, in the opinion of the local registrar, the document is of a type or has physical characteristics that are such that the document should not be filed or issued pursuant to this rule.

(3) Notwithstanding subrule (1), the local registrar may refuse to file or issue a document pursuant to this rule for any lawyer who is in default of payment of any fees or charges payable to the local registrar.

(4) A copy of the following documents is valid for the purposes of any rule that refers to an original, true copy, certified copy or concurrent copy:

(a) a document filed or issued by a local registrar pursuant to this rule;

(b) a document returned by fax or otherwise by the local registrar to the person who submitted the document for issuing;

(c) a true copy of a filed or issued document mentioned in clause (a) or (b) that bears a notation that the document was issued or filed by means of fax.

Issuing by telephone

13-27(1) If the main office of a lawyer is not located at or within 15 kilometres of a judicial centre, a commencement document may be issued as follows:

(a) the lawyer may notify the local registrar at the judicial centre nearest to the lawyer's main office, by telephone, at any time that the local registrar's office is open of:

(i) the names in full of the parties to the action;

(ii) the type of claim to be made; and

(iii) any other information that may be required by the local registrar;

(b) the local registrar shall, on the day that notice by a lawyer is received pursuant to clause (a), record the information provided in the Court registry database, assign a Court file number and inform the lawyer of the Court file number;

(c) on the day the Court file number is assigned, the lawyer shall endorse on the commencement document the Court file number and a certificate that the commencement document was issued by telephone by the local registrar on the date that the document was deemed to be issued pursuant to subrule (2); and

(d) the lawyer shall not later than the next day file with the local registrar, or mail to the local registrar by registered mail:

(i) the original commencement document together with the proper fee; and

(ii) any other documents required by these rules for the commencement of a proceeding.

(2) A commencement document issued pursuant to subrule (1) is deemed to be issued on the date that the local registrar assigns the court file number pursuant to clause (1)(b).

(3) When the local registrar receives the commencement document, the local registrar shall:

(a) compare the commencement document with the information recorded in the Court registry database; and

(b) sign, stamp and file the commencement document if:

(i) it is in conformity with the information in the Court registry database;

(ii) it was filed or mailed as required; and

(iii) all other documents required by these rules to be filed at the time of the commencement of the proceeding were filed.

(4) If the commencement document does not conform to the information in the Court registry database, was not filed or mailed as required and all other documents required by these rules to be filed at the time of the commencement of the proceeding were not filed:

(a) the local registrar shall:

(i) attach to the original document a memorandum to that effect; and

(ii) notify the lawyer who filed the document; and

(b) no further step in the proceeding may be taken by the plaintiff without leave of the Court.

(5) A local registrar may refuse to issue a commencement document pursuant to this rule for any lawyer who is in default of payment of any fees or charges payable to the local registrar.

(6) A judge may at any time instruct the local registrar to refuse to issue commencement documents by telephone for a lawyer designated by the judge.

Deviations from and changes to Forms

13-28 A Form or a document prepared in place of a Form is not invalidated nor is there any contravention of these rules if there is a deviation from or an addition to or omission from the Form or document that:

(a) does not adversely affect the substance of the information required to be provided or that the Court requires to be provided; and

(b) is not intended to mislead.

Amendments to documents other than commencement documents, pleadings or affidavits

13-29 If the Court orders that an amendment be made to a document filed with the Court, other than a commencement document, pleading or affidavit:

(a) a note of the amendment must be attached to, made on or made in the document;

(b) the amendment must be:

(i) dated, identified and each amended version identified; and

(ii) endorsed by the local registrar in the following form:

Amended on [date] by [order]

Dated . . . ;

and

(c) except as required by this rule, the document must not be otherwise physically altered.

Subdivision 2
Form and Contents of Affidavits and Exhibits

Affidavit to be on knowledge or belief

13-30(1) Subject to subrule (2), an affidavit must be confined to facts that are within the personal knowledge of the person swearing or affirming the affidavit.

(2) In an interlocutory application, the Court may admit an affidavit that is sworn or affirmed on the basis of information known to the person swearing or affirming the affidavit and that person's belief.

(3) If an affidavit is sworn or affirmed on the basis of information and belief in accordance with subrule (2), the source of the information must be disclosed in the affidavit.

(4) The costs of every affidavit that unnecessarily sets forth matters of hearsay or argumentative matter, or copies of or extracts from documents, must be paid by the party filing the affidavit.

(5) If an affidavit based on information and belief is filed and does not adequately disclose the grounds of that information and belief, the Court may direct that the costs of the affidavit shall be paid personally by the lawyer filing the affidavit.

(6) An affidavit filed in a subsequent proceeding for the same action must not repeat matters filed in earlier affidavits, but may make reference to earlier affidavits containing those matters.

Information Note

Subsection 27(1) of *The Interpretation Act, 1995* provides that an "'oath" or "affidavit" includes a solemn affirmation or declaration and "sworn" includes "affirmed" or "declared".

Requirements for affidavits

13-31(1) In addition to complying with rule 13-20, an affidavit pursuant to these rules must comply with all of the following:

(a) be in Form 13-31;

(b) state, on the front page, the style of cause of the proceeding and the full name of the person swearing or affirming the affidavit;

(c) state the place of residence of the person swearing or affirming the affidavit;

(d) be written in the first person;

(e) be divided into paragraphs, consecutively numbered, and as nearly as may be, each paragraph must be confined to a distinct portion of the subject;

(f) subject to rule 13-35, be signed or acknowledged, and sworn or affirmed, before a person empowered to administer oaths and affirmations, whether that person prepared the affidavit or not;

(g) contain a statement of when, where and before whom the affidavit was sworn or affirmed;

(h) be signed by the person administering the oath or taking the affirmation.

(2) Affidavits sworn or affirmed in Saskatchewan must be sworn or affirmed before a judge, local registrar, deputy local registrar, notary public, justice of the peace or commissioner empowered to administer oaths or affirmations.

(3) An affidavit is not invalid or otherwise improper solely because it was sworn or affirmed before a commencement document was filed.

(4) No costs are to be allowed for any affidavit substantially departing from this rule.

Information Note

The place of residence mentioned in clause (1)(c) could be an address or the municipality in which the person swearing or affirming the affidavit resides.

See also section 43 of *The Interpretation Act, 1995* regarding who may administer an oath.

Alterations in affidavits

13-32 Without leave of the Court, no affidavit must be read or made use of in any matter pending in Court if the affidavit has in the jurat or body any interlineation, alteration or erasure, unless the interlineation, alteration or erasure is authenticated by the initials of the officer taking the affidavit.

Scandalous matter

13-33 The Court may order any matter that is scandalous to be struck out from any affidavit.

Requirements for exhibits to an affidavit

13-34(1) Subject to subrule (3), any document referred to in an affidavit need not be annexed to the affidavit but may be referred to and marked as an exhibit.

(2) Unless the Court orders otherwise, if a document that is marked as an exhibit is not annexed to the affidavit, the document need not be filed, but must be left for the use of the Court and must be delivered on determination of the application to the party leaving the document.

(3) Unless the Court orders otherwise, if an affidavit in any proceeding refers to a document as an exhibit and the original or true copy of the document is already a part of the Court file:

(a) the exhibit must not be attached or annexed to the affidavit; and

(b) following the reference to the exhibit in the affidavit, the following words must appear:

"an original or true copy of which was filed in Court on the _____ day of _____ , 20_____."

(4) Every certificate on an exhibit referred to in an affidavit and not annexed to it must be marked with the style of cause.

(5) If the total number of pages of an affidavit and attached exhibits is 25 or more:

(a) the exhibits must be separated by tabs, and the pages within each tab must be numbered consecutively; or

(b) the pages of the affidavit and all exhibits must be consecutively numbered using a single series of numbers.

Affidavits by the visually impaired or those unable to read

13-35(1) If it seems to the person administering the oath or taking the affirmation that the person swearing or affirming the affidavit is visually impaired or unable to read, the person administering the oath or affirmation must:

(a) read the affidavit to the person swearing or affirming the affidavit; and

(b) certify that:

(i) the affidavit was read to the person;

(ii) the person seemed to understand it; and

(iii) the person signed the affidavit or made the person's mark in the presence of the person administering the oath.

(2) The affidavit must not be used in evidence without the certification mentioned in subrule (1) unless the Court is satisfied that the affidavit was read to, and appeared to be understood by, the person swearing or affirming it.

Understanding an affidavit

13-36(1) If it seems to the person administering the oath or taking the affirmation that the person swearing or affirming an affidavit does not understand the language in which the affidavit is written, then before the affidavit is sworn or affirmed the contents of the affidavit must be translated for the person swearing or affirming the affidavit by a person competent to do so.

(2) Before the affidavit is translated, the translator must swear or affirm to accurately translate the affidavit and the oath or affirmation.

(3) The person administering the oath or taking the affirmation shall certify that the affidavit was translated for the person swearing or affirming the affidavit by the sworn or affirmed translator.

(4) The affidavit must not be used in evidence without the certification mentioned in subrule (3) unless the Court is satisfied that the affidavit was interpreted to, and appeared to be understood by, the person swearing or affirming it.

(5) Unless the Court permits otherwise, a sworn or affirmed affidavit that is not in English or French must:

(a) be translated into English or French, according to the language in which the action is being conducted, by a translator competent to do so; and

(b) when filed, be accompanied with a certificate of the translator that the translation is accurate and complete.

More than one individual swearing or affirming an affidavit

13-37(1) An affidavit may be made by 2 or more individuals, and that fact must be stated in the statement of when, where and before whom the affidavit was sworn or affirmed.

(2) An affidavit referred to in subrule (1) must:

(a) be sworn or affirmed by each of the individuals separately; and

(b) indicate that the individuals have been sworn or affirmed in the manner required by clause (a).

Use of filed affidavits

13-38(1) All affidavits that have been made and filed in any cause or matter may be referred to and used at any stage of the proceedings in any application in chambers.

(2) The Court may:

(a) receive any affidavit sworn or affirmed for the purpose of being used in any cause or matter, notwithstanding any defect by mis-description of parties or otherwise in the title or jurat, or any other irregularity in the form of the affidavit; and

(b) direct a memorandum to be made on the document that it has been so received.

(3) An affidavit filed after the deadline set out in these rules or set by order of the Court must not be used without leave of the Court.

(4) On applications founded on affidavits, either party may, by leave of the Court, make affidavits in answer to the affidavits of the opposite party as to new matters arising out of those affidavits.

Amended. Gaz. 23 Sep. 2022.

Subdivision 2.1
Briefs of Law

Brief of law and List of authorities

13-38.1(1) Except where otherwise provided by these rules, or with leave of the Court, a brief of law filed in Court, including a pre-trial brief filed pursuant to rule 4-13:

(a) must not exceed 40 pages in length, excluding the List of Authorities and any appended materials;

(b) must include a List of Authorities that:

(i) identifies the authorities relied on, including case reports, legislation and articles from legal journals;

(ii) identifies the legal principle relied on for each authority listed;

(iii) identifies the section or paragraph relied on for each authority listed; and

(iv) includes a neutral citation for each authority listed; and

(c) may not be filed with the Court except with proof of service on the other parties to the action.

(2) Printed copies of authorities that are available on www.canlii.org shall not be appended to the List of Authorities or filed without leave of the Court.

(3) Printed copies of authorities that are not available on www.canlii.org, as well as repealed legislation and articles from legal journals, shall be appended to the List of Authorities.

(4) With leave of the Court, electronic copies of authorities may be sent to the Court by email.

(5) If printed copies of authorities are filed, either with leave of the Court or as otherwise provided by these rules:

(a) the party filing the printed copies shall first serve copies of the same on the other parties to the action;

(b) the copies do not form part of the Court record; and

(c) at the conclusion of the application, pre-trial conference or trial, the copies are to be:

(i) at the request of the party who filed them, returned to that party; or

(ii) destroyed by the local registrar.

(6) This rule does not apply to applications made pursuant to *The Class Actions Act*.

New. Gaz. 15 Jly. 2016; Gaz. 3 Apr. 2020.

Subdivision 3
Lost and Concurrent Documents, Certified Copies, Authenticated Photographs and Video Recordings

Lost documents

13-39(1) If a commencement document or other document has been lost and the local registrar is satisfied of the loss and of the correctness of a copy of the document, the local registrar may certify the copy.

(2) A copy certified pursuant to subrule (1) may be used in place of the original.

Certified copies of original documents

13-40(1) The Court may give directions:

(a) respecting the preparation of a certified copy of an original document that has been filed; and

(b) if necessary, respecting the use of the certified copy in place of the original document in an action, application or proceeding.

(2) The local registrar may certify or authenticate any document in the Court file.

(3) The certified copy of an original document is admissible in evidence to the same extent as the original.

Information Note

Refer to sections 39 and 47 of *The Evidence Act* regarding certified copies and Court records.

Video recordings in place of transcripts

13-41 If the parties agree or the Court orders that a video recording be made instead of a transcript, the person operating the video recording device that records the questioning must give a certificate containing all of the following:

(a) the name and address of the person giving the certificate;

(b) the date, time and place of the video recording;

(c) the names of the persons questioned and the persons doing the questioning;

(d) whether the video recording is of the entire questioning or only a portion of it;

(e) any other information required by the Court.

DIVISION 5
Proceedings By and Against Fee Waiver Certificate Holders

Interpretation of Division and rules re Fee Waiver Certificate Holders

13-42(1) In this Division:

'certificate holder' means a person who has obtained a fee waiver certificate that is issued, or deemed to be issued, by the Court for the purposes of proceedings in the Court; (*« détenteur de certificat »*)

'fee waiver certificate' means a fee waiver certificate issued pursuant to *The Fee Waiver Act*; (*« certificat de dispense des droits »*)

'local registrar' means the local registrar at the judicial centre at which the matter is proceeding or intended to proceed; (*« registraire local »*)

'material change in circumstances' means a material change in circumstances as defined in *The Fee Waiver Regulations*. (*« changement important de situation »*)

(2) A certificate holder may take, defend or be a party to any legal proceedings in the Court on the terms and conditions mentioned in this Division.

Information Note

See, in general, *The Fee Waiver Act* and *The Fee Waiver Regulations* respecting the eligibility requirements for a fee waiver certificate, which excuses the certificate holder from paying certain Court fees in light of his or her financial circumstances.

New. Gaz. 2 Sep. 2016.

Application for certificate

13-43 A party seeking to obtain a fee waiver certificate for the purposes of proceedings in the Court shall apply to the local registrar in accordance with *The Fee Waiver Act* and *The Fee Waiver Regulations*.

New. Gaz. 2 Sep. 2016.

Holders of previously-issued certificates

13-44(1) A party seeking to rely on a previously-issued fee waiver certificate for the purposes of proceedings in the Court shall:

(a) apply to the local registrar for a waiver of the requirement to apply for a fee waiver certificate; and

(b) provide evidence, satisfactory to the local registrar, that:

(i) the applicant is the holder of a valid fee waiver certificate that was issued within the previous 12 months by another court or a public body pursuant to *The Fee Waiver Act*; and

(ii) the applicant has not experienced a material change in circumstances since the fee waiver certificate was issued.

(2) If, on an application pursuant to subrule (1), the local registrar waives the requirement for the applicant to apply for a new fee waiver certificate, the previously-issued fee waiver certificate is deemed, in accordance with subsection 3(8) of *The Fee Waiver Act*, to be a fee waiver certificate issued by the Court.

New. Gaz. 2 Sep. 2016.

Material change in circumstances

13-45(1) If a certificate holder's lawyer learns that the certificate holder has experienced a material change in circumstances, the lawyer must immediately report that fact, in writing, to the local registrar at the judicial centre at which the matter is proceeding or intended to proceed.

(2) Nothing in subrule (1) alters a certificate holder's obligation pursuant to *The Fee Waiver Regulations* to report a material change in circumstances.

New. Gaz. 2 Sep. 2016.

Security for costs; issuance of certificate after order

13-46(1) If an order for security for costs has been made against a person applying for a fee waiver certificate, the fee waiver certificate must not be granted until after 2 days' notice to the party who has obtained the order for security for costs or the party's lawyer.

(2) A party mentioned in subrule (1) or the party's lawyer has the right to be heard on the application for a fee waiver certificate.

(3) Unless the Court orders otherwise, if a fee waiver certificate is granted:

(a) the filing of the fee waiver certificate supersedes any previous order obtained by any other party for security for costs as against the certificate holder; and

(b) no order for security for costs shall be issued after that date against the certificate holder.

Information Note

Security for costs: See Division 4 of Part 4 regarding obtaining an order for security for costs.

Order for costs: The Court may make an order for costs to or against a certificate holder in accordance with section 7 of *The Fee Waiver Act* and Part 11 of these rules.

New. Gaz. 2 Sep. 2016.

Leave required by certificate holder re involvement in legal proceedings

13-47 No certificate holder may take, defend or be a party to any legal proceedings pursuant to this Division without leave of:

(a) the Court;

(b) the judge before whom the matter is heard; or

(c) the court or judge to whom the appeal is taken.

New. Gaz. 2 Sep. 2016.

Stay of proceedings

13-48 Unless the Court orders otherwise, nothing in this Division operates as a stay of any proceedings.

New. Gaz. 2 Sep. 2016.

Confidentiality

13-49 Unless the Court orders otherwise, any information disclosed on an application for a fee waiver certificate pursuant to this Part shall be kept confidential and not made available to any person other than:

(a) the applicant;

(b) the applicant's lawyer; and

(c) the Court

New. Gaz. 2 Sep. 2016.

Increased means to be reported

13-50(1) If the needy person or, in family law proceedings, the needy person or the needy person's spouse acquires means beyond those stated in the application for a certificate, the needy person shall at once report the matter to the conducting lawyer or to the Saskatchewan Legal Aid Commission.

(2) When the facts mentioned in subrule (1) come to the notice of the conducting lawyer, whether by means of a report or otherwise, the conducting lawyer shall immediately report those facts in writing to the Saskatchewan Legal Aid Commission.

Recovery of costs

13-51(1) If a needy person recovers judgment:

(a) the Court may order costs to be paid by the opposite party;

(b) the costs ordered pursuant to clause (a) must be assessed as in an ordinary action;

(c) the assessment officer shall assess and allow all customary disbursements for Court fees, official court reporter's fees, sheriff's fees or any other fees or charges pursuant to any enactment in force in Saskatchewan that would be necessarily incurred in the conduct of the proceedings, otherwise than pursuant to this Division, as if those costs had been disbursed; and

(d) in the event of recovery of the amounts mentioned in clause (c) pursuant to the judgment, the amounts or a pro rata share of the amounts must, on the judgment being made, be paid to the persons entitled to them.

(2) In the event of a needy person recovering on a judgment against any other party or parties to the proceedings:

(a) the conducting lawyer is entitled to his or her assessed lawyer's fees and disbursements out of the moneys so recovered; and

(b) if the needy person recovers any real or personal property, the Court may grant a charging order in favour of the conducting lawyer for the assessed amount.

(3) If the conducting lawyer recovers money or property on behalf of a needy person without proceedings or on the settlement of any proceedings before trial or other final disposition, the Saskatchewan Legal Aid Commission or the Court may, on the application of the conducting lawyer, allow the conducting lawyer to be paid out of that money or property those collection or other fees that the Saskatchewan Legal Aid Commission or the Court considers proper.

Conducting lawyer to sign proceedings

13-52(1) The conducting lawyer shall sign every notice of application or summons on behalf of the needy person.

(2) Subrule (1) does not apply to an application for the discharge of the conducting lawyer.

(3) The conducting lawyer shall take care that no application is made without reasonable cause.

Security for costs; issue of certificate following order

13-53(1) If an order for security for costs has been made against a person applying for a certificate as a needy person, the certificate must not be granted until after 2 days' notice to the party who has obtained the order for security for costs or the party's lawyer.

(2) A party mentioned in subrule (1) or the party's lawyer has the right to be heard on the application for the certificate.

(3) Unless the Court orders otherwise, if the certificate is granted, the filing of the certificate supersedes any previous order obtained by any other party for security for costs as against the needy person, and no order for security for costs must after that date be issued against the needy person.

Information Note

See Division 4 of Part 4 regarding obtaining an order for security for costs.

Leave required by needy person re involvement in legal proceedings

13-54 No needy person may take, defend or be a party to any legal proceedings pursuant to this Division without leave of:

(a) the Court;

(b) the judge before whom the matter is heard; or

(c) the Court or judge to whom the appeal is taken.

Stay of proceedings

13-55 Unless the Court orders otherwise, nothing in this Division operates as a stay of any proceedings.

DIVISION 6
Moneys in Court

Investment of moneys in Court

13-56(1) Moneys under the control of or subject to the order of the Court may be invested in Federal or Provincial Government securities on order of the Court.

(2) Notice of every application for the purpose of the conversion of any securities must be served on:

(a) any trustees of the securities; and

(b) any other persons that the Court may direct.

Moneys to be paid into chartered bank or credit union

13-57(1) All moneys required to be paid into Court must be paid into the chartered bank or credit union that is designated for the purpose by the Minister of Finance.

(2) The moneys mentioned in subrule (1) must be placed to the credit or a special account of the Court at the judicial centre at which the moneys have been paid.

(3) The account mentioned in subrule (2) is to be styled "Special Account".

(4) Subject to rule 13-58, there is to be credited to each deposit the rate of interest that the bank or credit union in which the deposit is made may agree to allow, and that interest is to be added to the principal.

(5) If the Minister of Finance directs that moneys deposited in any bank or credit union be transferred to another chartered bank or credit union, the local registrar shall issue a cheque payable to the order of the bank or credit union so designated for the amount on deposit with the accrued interest, less the amount of any outstanding cheques.

(6) Every cheque mentioned in subrule (5) must be countersigned in the manner set out in subrule (7).

(7) No moneys paid into Court are to be withdrawn from the bank or credit union in which the moneys are deposited unless the cheque for withdrawal of the same is signed by 2 persons appointed from time to time for that purpose by the Ministry of Justice and Attorney General.

Limitation on interest

13-58(1) Interest on moneys paid into Court is not payable if the sum paid into Court is:

(a) $1,000 or less; and

(b) on deposit for 30 days or less.

(2) For the purposes of subrule (1), days on deposit must be reckoned by including the day the sum is deposited in the bank or credit union and excluding the day of the payment out of Court.

Payment out in small intestate estates

13-59(1) In this rule, **"person entitled to administration"**, with respect to a deceased person, means a widower, widow, child, father, mother, brother or sister of the deceased person.

(2) The Court may direct that moneys, or a share of moneys, in Court be paid to a person entitled to administration of a deceased person's estate if:

(a) the deceased person died intestate;

(b) the estate of the deceased person is entitled to the moneys or to a share of the moneys in Court;

(c) the moneys or share of the moneys mentioned in clause (b) does not exceed $1,000; and

(d) it is proved to the satisfaction of the Court that:

(i) no administration has been taken out for the deceased person's estate; and

(ii) the deceased person's assets do not exceed the value of $1,000 including the amount of the moneys or share to which the estate of the deceased person is entitled.

Certificate of local registrar re third party

13-60 If an application is made for payment out of moneys paid into Court pursuant to a garnishee summons, proof may be made by filing the certificate of the local registrar in Form 13-60 that it has not been suggested by the garnishee or any other person claiming to be interested:

(a) that the moneys paid in belongs to a third person; or

(b) that a third person has a lien or charge on the moneys.

DIVISION 7
Transfer of Proceedings

Application of rules

13-61 This Division applies to proceedings pursuant to *The Court Jurisdiction and Proceedings Transfer Act*.

Transfer of proceeding to a court outside Saskatchewan

13-62(1) An order requesting a court outside Saskatchewan to accept a transfer of a proceeding may be made:

(a) on application of a party to the proceeding, including on application of a defendant made pursuant to rule 3-14; or

(b) on the Court's own motion.

(2) The local registrar shall forward to the receiving court outside Saskatchewan certified copies of:

(a) an order requesting transfer to that court; and

(b) the portions of the record directed by the Court to be sent in support of the order.

Transfer of proceeding to Saskatchewan

13-63(1) On the filing of a request made by a court outside Saskatchewan to transfer a proceeding to the Court, the local registrar shall serve the parties to the proceeding in the transferring court, by ordinary mail, with:

(a) a notice of request for transfer in Form 13-63A; and

(b) a copy of the documents received from the transferring court.

(2) Within 30 days after service of the notice of request for transfer, any party to the proceeding brought in the transferring court may apply by notice of application for an order accepting or refusing the transfer of the proceeding, and that application is not deemed to be a submission to the jurisdiction of the Court.

(3) If no application pursuant to subrule (2) is brought within the 30-day period mentioned in subrule (2), the local registrar shall place the documents received from the transferring court before a judge for an order accepting or refusing the transfer of the proceeding.

(4) On receipt of further material from the transferring court, the local registrar shall serve the parties by ordinary mail with:

(a) a copy of the documents received from the transferring court; and

(b) a notice of receipt of further material in Form 13-63B.

(5) An order accepting or refusing a transfer of a proceeding must be in Form 13-63C, and the local registrar shall forward a certified copy of the order to the court outside Saskatchewan that requested the transfer.

Parties to be notified

13-64 If any order is made pursuant to *The Court Jurisdiction and Proceedings Transfer Act* in the absence of the parties, the local registrar shall, immediately on the decision being given, notify the parties to the proceeding.

PART 14: CIVIL APPEALS TO QUEEN'S BENCH

What this Part is about: This Part describes how an appeal of an order or decision of a provincial court judge dealing with civil (non-criminal) matters may be heard by a judge of the Court of Queen's Bench.

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Part 14: Civil Appeals To Queen's Bench

PART 14: CIVIL APPEALS TO QUEEN'S BENCH

Appeal by motion

14-1(1) A civil appeal from an order or decision of a provincial court judge to a judge in chambers must be made by originating application that:

(a) states briefly the grounds of appeal; and

(b) is returnable within 30 days after the decision being appealed or any further time that a judge may allow.

(2) The originating application must be served on all parties directly affected but it is not necessary to serve parties who have not appeared in the action or proceeding unless the Court orders otherwise.

(3) If service of the originating application is not required, the originating application must be filed with the local registrar within the time limited for appealing or within any further time that a judge may allow.

Appeal not a stay

14-2 Unless the enactment pursuant to which the appeal is taken provides otherwise or a judge orders otherwise, an appeal from a provincial court judge's decision does not act as a stay of proceedings.

Evidence

14-3(1) An appeal from a provincial court judge's decision may be heard in chambers or in court.

(2) Unless provided otherwise in the enactment pursuant to which the appeal is taken:

(a) if a judge considers that it would not be prejudicial to either party to do so, the judge may dispense with production of the evidence, if any, submitted to the provincial court judge; and

(b) the judge appealed to may:

(i) receive further evidence, by oral examination, affidavit or otherwise as the judge may allow; or

(ii) hold a hearing by way of a new trial.

PART 15: FAMILY LAW PROCEEDINGS

What this Part is about: This Part applies to family law proceedings, which include proceedings under *The Adoption Act, 1998, The Child and Family Services Act, The Children's Law Act, 2020, The Dependants' Relief Act, 1996, the Divorce Act (Canada), The Enforcement of Maintenance Orders Act, 1997, The Family Maintenance Act, 1997, The Family Property Act, The Homesteads Act, 1989, The Inter-jurisdictional Support Orders Act, The International Child Abduction Act, 1996, The Marriage Act, 1995, The Victims of Interpersonal Violence Act,* certain provisions of *The Queen's Bench Act, 1998*, and any other Act that confers jurisdiction on the Family Law Division.

This Part also applies to annulments; parenting of, guardianship of, or contact with, a child; the determination of parentage or other family relationships; the division of property between spouses, former spouses or persons who have lived together as spouses; judicial separations; the maintenance of a spouse, child or other person; and any other proceeding heard in the Family Law Division.

Unless a different procedure is specified in this Part, the other Parts of the Rules also apply to family law proceedings.

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PART 15: FAMILY LAW PROCEEDINGS

DIVISION 1
Preliminary Matters

Subdivision 1
Definitions

Definitions for Part

15-1 In this Part:

"corollary relief proceeding" means a corollary relief proceeding as defined in section 2 of the *Divorce Act*; (« *instance en mesures accessoires* »)

"*Divorce Act*" means the *Divorce Act* (Canada); (« *Loi sur le divorce* »)

"divorce proceeding" means a divorce proceeding as defined in section 2 of the *Divorce Act*; (« *instance en divorce* »)

"document commencing a family law proceeding" means:

(a) a petition;

(b) a counter-petition that raises relief not raised in the petition;

(c) an application for corollary relief pursuant to rule 15-24; or

(d) an application for variation of a final order pursuant to rule 15-26; (« *document introductif d'instance en matière familiale* »)

"family law proceeding" means a family law proceeding as defined in section 2 of *The Queen's Bench Act, 1998*; (« *instance en matière familiale* »)

"financial statement" means a financial statement in the Form prescribed in rule 15-47; (« *état financier* »)

"guidelines" means the *Federal Child Support Guidelines* established pursuant to section 26.1 of the *Divorce Act* and adopted by *The Family Maintenance Act, 1997*; (« *lignes directrices* »)

"parenting assessment" means the preparation of a report for the assistance of the Court respecting the parenting of children, and includes a voice of the child (VOC) report; (« *évaluation de parentage* »)

"property claim" means a claim pursuant or with respect to:

(a) *The Family Property Act*; or

(b) the division of property between spouses, former spouses or persons who have lived together as spouses; (« *revendication de biens* »)

"property statement" means a property statement in the Form prescribed in rule 15 49; (« *état des biens* »)

"support" includes maintenance; (« *aliments* »)

"trial" includes a hearing; (« *procès* »)

"vary" or **"variation"** includes rescind and suspend, or rescission and suspension. (« *modifier* » ou « *modification* »)

Subdivision 2
Application and Foundational Rules

Application of Part

15-2(1) This Part applies to family law proceedings.

(2) Unless provided otherwise by enactment or by the rules in this Part, the general procedure and practice of the Court must be adopted and applied, with any necessary modification, in a family law proceeding.

(3) The Court, having due regard for the proper administration of justice, shall conduct all family law proceedings as informally as the circumstances of the case permit.

(4) Subject to the Court's supervision, a party may modify a Form prescribed by this Part as the circumstances of the family law proceeding may require.

(5) This Part applies to family law proceedings commenced before, on or after the day on which this Part takes effect.

Foundational rules

15-3(1) In addition to the foundational rules in rule 1-3, the objectives and foundations set out in this rule apply to all family law proceedings pursuant to this Part.

(2) The objectives of this Part are:

(a) to help parties justly resolve the legal issues in a family law proceeding:

(i) taking into account the impact that the conduct of the family law proceeding may have on a child; and

(ii) minimizing conflict and promoting cooperation between the parties; and

(b) to secure the just, speedy and cost-effective determination of a family law proceeding on its merits.

(3) Securing the just, speedy and cost-effective determination of a family law proceeding on its merits includes, so far as is practicable, conducting the family law proceeding in ways that are proportionate to:

(a) the interests of any child affected;

(b) the importance of the issues in dispute; and

(c) the complexity of the family law proceeding.

Subdivision 3
Confidentiality

Private hearings

15-4 Any family law proceeding may be heard in private at the discretion of the Court.

Access to Court records

15-5(1) Subject to subrule (3), no person other than a party, a party's lawyer or a person authorized by a party or by a party's lawyer may have access to:

(a) the Court record, including documents, exhibits and transcripts, respecting a family law proceeding; or

(b) a support or separation agreement filed in the Court.

(2) Before granting a person authorized by a party or by a party's lawyer access to the Court record or to an agreement filed in the Court, the local registrar may require that person to sign an undertaking to keep the information obtained from the Court record or the agreement in confidence.

(3) Any other person seeking access to the Court record or to an agreement filed in the Court shall without notice make an application to the Court, and the Court may:

(a) grant or refuse access to the Court record or agreement, subject to any enactment allowing or restricting access; or

(b) require that:

(i) the parties to the family law proceeding be given notice of the application; and

(ii) a hearing be held to determine whether access to the Court record or agreement shall be granted or refused.

(4) Any person seeking a copy of the recording of a family law proceeding must follow the procedures set out in rule 9-34.

Confidentiality

15-6(1) Any person who has access to documents, evidence or information obtained pursuant to the financial disclosure provisions of this Part or obtained pursuant to discovery or from the Court record:

(a) must keep the documents and evidence, and any information obtained from them or from the Court record, in confidence; and

(b) may only use the documents, evidence and information for the purposes of the family law proceeding in which the document, evidence or information was obtained or to which the Court record relates.

(2) Subrule (1) does not apply if:

(a) the person who disclosed the document or gave the evidence consents;

(b) the document or evidence is used to impeach the testimony of a witness in another proceeding; or

(c) the document or evidence is used in a later proceeding between the same parties or their successors, if the proceeding in which the document or evidence was obtained was withdrawn or dismissed.

(3) Notwithstanding subrule (1), the Court may, on application, give a person permission to disclose or use documents or evidence, or information obtained from them or from the Court record, if the interests of justice outweigh any harm that would result:

(a) to the person who provided the documents or evidence; or

(b) to the parties to the family law proceeding.

(4) Use of documents or evidence, or of information obtained from them or from the Court record, in a manner contrary to this rule is contempt of Court, unless an order has been obtained pursuant to subrule (3).

Subdivision 4
Service

Service

15-7(1) Subject to the other provisions of this rule, Part 12 applies to service of documents and to proof of service of documents in a family law proceeding.

(2) Service of a document commencing a family law proceeding must be effected by personal service on the party being served.

(3) Personal service of a document commencing a family law proceeding must be effected by a person other than the petitioner or the respondent, as the case may be.

(4) Any document other than a document commencing a family law proceeding may be served by an alternative mode in accordance with rule 12-4.

(5) If service has been effected by an alternative mode in accordance with rule 12-4:

(a) the Court may direct further or other service; and

(b) unless the Court orders otherwise, no remedy is to be granted unless the Court is satisfied that the person required to be served received the document.

(6) For the purposes of clause (5)(b), it is not necessary to satisfy the Court that the person received the document if the document has been mailed to an address for service provided by that person.

(7) If a minor is a party to a family law proceeding, the minor may be served as if of the age of majority.

Proof of service

15-8(1) Proof of service may be made:

(a) in Form 15-8A if personal service is effected; or

(b) in Form 15-8B if service is effected by an alternative mode in accordance with rule 12-4.

(2) Every affidavit of service of a petition must, as far as is possible, state the postal address of the person served.

(3) If the person effecting service is unable of the person's own knowledge to state a postal address of the person served, a statement in the affidavit of service as to the belief of the person effecting service respecting the postal address and the grounds of that belief may be admitted.

(4) Unless the document served is a document commencing a family law proceeding, an acknowledgment of service in Form 12-3, signed by the person to be served and returned to the party effecting service, may be filed as proof of service.

Time for service

15-9 A petition must be served:

(a) within 6 months after the date of its issue; or

(b) within any further time that the Court may allow on an application without notice made before or after the expiration of the time for service.

DIVISION 2
Commencing and Defending a Family Law Proceeding

Subdivision 1
General

Parties

15-10(1) Subject to subrule (3) and to subrule 15-100(2):

(a) the party commencing a family law proceeding, other than by counter-petition, shall be called the petitioner; and

(b) the opposite party shall be called the respondent, including when the respondent commences a family law proceeding by counter-petition.

(2) Unless otherwise ordered, the document commencing a family law proceeding must be signed by the party filing it.

(3) Unless provided otherwise by enactment, by the rules in this Part or by order of the Court, the description of the parties in the style of cause:

(a) must remain the same in any subsequent pleadings, on an application within the family law proceeding or on an application for variation of a final order; and

(b) must not be amended or added to because of any other pleadings or applications that may be filed.

(4) A person alleged to have committed adultery with a party must not be named in the petition or any other document, unless the Court orders otherwise on an application that may be made without notice.

(5) The Court at any time may:

(a) order that a person who may have an interest in the matters in issue be served with notice of the family law proceeding with or without adding that person as a party;

(b) give directions respecting the manner of service on that person and the conduct of the family law proceeding; and

(c) add a party on application in accordance with these rules or in accordance with any enactment.

(6) A minor may commence, continue or defend a family law proceeding as if of the age of majority.

Venue, transfer of family law proceedings

15-11(1) A party may commence a family law proceeding at any judicial centre.

(2) Notwithstanding subrule (1), a party shall commence a corollary relief proceeding or a variation proceeding:

(a) at the judicial centre where the divorce or the order sought to be varied was granted; or

(b) at any judicial centre:

(i) with leave of the Court; or

(ii) if the divorce or the order sought to be varied was not granted in Saskatchewan.

(3) The Court may direct that a family law proceeding be transferred to any other judicial centre:

(a) with the consent of the parties;

(b) by reason of the balance of convenience, including the convenience of witnesses; or

(c) for the purpose of being heard with another proceeding before the Court.

(4) Except by consent of the parties or leave of the Court, an application to transfer a family law proceeding must not be brought before the pleadings are considered to be closed in accordance with rule 15-13.

(5) If an order directing the transfer of a family law proceeding is consented to by the parties, the local registrar may:

(a) issue the order without referring it to a judge; or

(b) refer the order to a judge.

Pleadings regarding children

15-12(1) If the petitioner or the respondent, or both, have a child or children, the document commencing a family law proceeding must:

(a) set out the name and birth date of every child of the petitioner or the respondent in the care of either party and whether or not any remedy is claimed with respect to that child; or

(b) include a statement that there are no children of the parties who are in the care of either party.

(2) If the petitioner or the respondent, or both, assert a claim for child support, the document commencing a family law proceeding must include the following:

(a) whether child support is sought in accordance with the table amount determined pursuant to the guidelines;

(b) whether the party claims:

(i) there is a child who is the age of majority or older;

(ii) the income of the payor is greater than $150,000;

(iii) the payor stands in the place of a parent for a child;

(iv) there is split parenting time with respect to one or more children; or

(v) there is shared parenting time with respect to a child;

(c) whether a claim for undue hardship is being advanced;

(d) whether special or extraordinary expenses are sought, the child to whom the expenses relate and the particulars of the expenses and the amount claimed.

Close of pleadings

15-13(1) For a family law proceeding commenced by petition, the pleadings are considered to be closed when the earlier of the following occurs:

(a) a reply is served and filed by a petitioner or a respondent, as the case may be;

(b) the time for serving and filing a reply has expired.

(2) For a family law proceeding not commenced by petition, the pleadings are considered to be closed when the earlier of the following occurs:

(a) an answer or response is served and filed;

(b) the time for serving and filing an answer or response has expired.

Mandatory family dispute resolution

15-14(1) When required by *The Queen's Bench Act, 1998* and the regulations made pursuant to that Act, and unless the Court orders otherwise, on the close of pleadings, the parties must:

(a) comply with the family dispute resolution provisions of *The Queen's Bench Act, 1998* and the regulations made pursuant to that Act; and

(b) file:

(i) a signed certificate of participation in family dispute resolution; or

(ii) an exemption certificate signed by a person authorized by *The Queen's Bench Act, 1998* and the regulations to exempt a party from the requirement to participate in family dispute resolution.

(2) If no exemption or other order is obtained:

(a) a party who fails to comply with this rule and the requirements of *The Queen's Bench Act, 1998* and the regulations made pursuant to that Act with respect to family dispute resolution is prohibited from:

(i) taking any further step in the family law proceeding; and

(ii) filing any further application for relief; and

(b) the Court, on application, may:

(i) strike out the party's pleadings or other documents;

(ii) refuse to allow the party to make submissions on an application or at trial;

(iii) order the party to participate in family dispute resolution; or

(iv) order costs or any other relief.

Information Note

Rule 15-14 applies only to family law proceedings commenced or continuing in judicial centres designated in section 7.4 of *The Queen's Bench Regulations*.

Section 44.01 of *The Queen's Bench Act, 1998* defines "family dispute resolution". Section 7.4 of *The Queen's Bench Regulations* defines the close of pleadings and prescribes the form to be used for the certificate of participation in family dispute resolution.

Mandatory parenting education program

15-15(1) Each party to a family law proceeding involving child support or parenting must attend a parenting education program as defined in section 44.1 of *The Queen's Bench Act, 1998* unless:

(a) the Court has otherwise ordered; or

(b) both parties certify to the Court, in writing, that they have entered into a written agreement settling all issues between them respecting child support and parenting.

(2) A party who is required to attend a parenting education program pursuant to this rule and section 44.1 of *The Queen's Bench Act, 1998* must, before taking any further step in the family law proceeding, file a certificate of attendance with the Court that certifies that the party has attended a parenting education program within the preceding 2 years.

(3) If a party fails to attend a parenting education program as required, the Court may, on application:

(a) strike out the party's pleadings or other documents;

(b) refuse to allow the party to make submissions on an application or at trial; or

(c) order the party to attend a parenting education program within any time that the Court may specify and adjourn the application.

Information Note

Subsections 44.1(9) and (10) of *The Queen's Bench Act, 1998* identify circumstances in which the Court may, on application without notice:

(a) exempt a party from the requirement to attend a parenting education program; or

(b) postpone the requirement to attend a parenting education program.

Subdivision 2
Petitions

Petition

15-16(1) Unless provided otherwise by enactment or by the rules in this Part, every family law proceeding pursuant to this Part must be commenced by the issue of a petition in Form 15-16.

(2) The petition:

(a) must be signed by the petitioner;

(b) must be signed and sealed by the local registrar; and

(c) on being signed and sealed, is deemed to be issued.

(3) The petition must bear the date on which it was issued.

(4) The original petition must be filed with the local registrar at the time of issuing.

(5) In a divorce proceeding, the petition must contain a statement by the petitioner certifying that the petitioner is aware of the petitioner's duties pursuant to sections 7.1 to 7.5 of the *Divorce Act*.

(6) If the petitioner is represented by a lawyer, there must be endorsed on a petition commencing:

(a) a divorce proceeding, a statement signed by the lawyer certifying that the lawyer has complied with section 7.7 of the *Divorce Act*;

(b) a proceeding pursuant to *The Children's Law Act, 2020*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 20(1) of that Act;

(c) a proceeding pursuant to *The Family Maintenance Act, 1997*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 16(1) of that Act;

(d) a proceeding pursuant to *The Family Property Act*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 44.1(1) of that Act.

Joining a claim with other claims in a petition

15-17(1) A claim for a remedy pursuant to this Part, including a claim pursuant to the *Divorce Act*, may be joined with a claim for any other remedy that may be sought pursuant to this Part whether as an additional remedy or in the alternative.

(2) On application, the Court may direct that a claim that, on its own, would not be the subject matter of a family law proceeding may be continued in a family law proceeding if the claim is related to or connected with any remedy sought in that proceeding.

(3) Unless the Court determines otherwise, a petition has the effect of raising all issues concerning or in any way relating to the matters for which a remedy is specifically sought notwithstanding that an issue is not specifically referred to in the petition, and the Court may make any judgment or order that the justice of the case may require.

Proof of marriage

15-18(1) If a family law proceeding is for divorce, judicial separation or nullity of marriage, the petitioner must file with the petition:

(a) a certificate of marriage; or

(b) a certificate of registration of marriage.

(2) Notwithstanding subrule (1), if a remedy is urgently required, the Court, on an application without notice, may permit a petition to be issued without filing a certificate of marriage or a certificate of registration of marriage if the petitioner files an undertaking to file that certificate within a period specified by the Court.

(3) If it is impossible or impractical to obtain a certificate of marriage or a certificate of registration of marriage, the petitioner may apply without notice for an order dispensing with production of that certificate.

Answer

15-19(1) Unless the Court orders otherwise, a respondent who wishes to oppose a claim made in the petition shall serve and file an answer in Form 15-19A:

(a) within 30 days after service of the petition in Canada or in the United States of America; or

(b) within 60 days after service of the petition outside Canada or the United States of America.

(2) Notwithstanding subrule (1), an answer may be served and filed at any time before the family law proceeding is noted for default.

(3) The answer must be signed by the respondent.

(4) In a divorce proceeding, the answer must contain a statement by the respondent certifying that the respondent is aware of the respondent's duties pursuant to sections 7.1 to 7.5 of the *Divorce Act*.

(5) If the respondent is represented by a lawyer, there must be endorsed on the answer opposing:

(a) a divorce proceeding, a statement signed by the lawyer certifying that the lawyer has complied with section 7.7 of the *Divorce Act*;

(b) a proceeding pursuant to *The Children's Law Act, 2020*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 20(1) of that Act;

(c) a proceeding pursuant to *The Family Maintenance Act, 1997*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 16(1) of that Act;

(d) a proceeding pursuant to *The Family Property Act*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 44.1(1) of that Act.

(6) A respondent who intends to oppose the family law proceeding may serve and file a notice of intent to answer in Form 15-19B within the time prescribed for service of the answer.

(7) On serving and filing a notice of intent to answer, the respondent is entitled to an additional 10 days from the time for serving and filing set out in subrule (1) within which to serve and file an answer.

Counter-petition

15-20(1) A respondent who claims any remedy against the petitioner, other than dismissal of the proceeding, with or without costs, shall claim that remedy by serving and filing a counter-petition.

(2) An answer and counter-petition must be:

(a) in one document in Form 15-20; and

(b) signed by the respondent.

(3) A respondent may commence a counter-petition by serving an answer and counter-petition on the petitioner and filing it in the Court within the time prescribed for service of an answer.

(4) Except as modified in this rule, the rules of this Part relating to a petition apply to a counter-petition.

Demand for notice

15-21(1) A respondent who does not oppose the claims made in the petition may serve and file a demand for notice in Form 15-21.

(2) The petitioner may proceed against a respondent who has served and filed a demand for notice as if that respondent had failed to serve and file an answer, but shall serve on that respondent notice of all subsequent pleadings and proceedings.

Reply

15-22(1) If allegations in the answer or in the answer and counter-petition require further pleading, the petitioner shall serve and file a reply in Form 15-22 within 10 days after service of the answer or the answer and counter-petition, as the case may be.

(2) In the case of a counter-petition, the reply constitutes the answer to the counter-petition.

Noting for default

15-23(1) If a respondent fails to serve and file an answer within the prescribed period, the petitioner may, on filing proof of service of the petition, require the local registrar to note the default of that respondent.

(2) After default has been noted, the respondent shall not serve and file an answer without:

(a) the consent of the petitioner; or

(b) leave of the Court.

Subdivision 3
Corollary Relief Proceedings – Divorce Act

Application for corollary relief

15-24(1) A former spouse who wishes to commence a corollary relief proceeding shall do so by serving and filing an application for corollary relief in Form 15-24.

(2) If both former spouses jointly commence a corollary relief proceeding:

(a) the application shall be signed by both of them;

(b) the application need not be served on either party; and

(c) the judgment granting the divorce shall be exhibited to their joint affidavit.

(3) An application for corollary relief must:

(a) be signed by the applicant; and

(b) contain a statement by the applicant certifying that the applicant is aware of the applicant's duties pursuant to sections 7.1 to 7.5 of the *Divorce Act*.

(4) If the applicant under an application for corollary relief is represented by a lawyer, there must be endorsed on the application a statement signed by the lawyer certifying that the lawyer has complied with section 7.7 of the *Divorce Act*.

(5) There shall be not less than 45 days and not more than 90 days between the service of an application for corollary relief and the return date set out in the application.

(6) Evidence filed in support of an application for corollary relief must:

(a) comply with rule 15-83 in the case of an application for a parenting order;

(b) comply with rule 15-84 in the case of an application for a spousal support order; and

(c) comply with rule 15-85 in the case of an application for a child support order.

(7) Every affidavit filed in support of an application for corollary relief must be served with the application.

Answer

15-25(1) A party who wishes to oppose an application for corollary relief shall serve and file an answer in Form 15-25 setting out the reasons for opposing the application.

(2) An answer in response to an application for corollary relief must contain a statement by the respondent certifying that the respondent is aware of the respondent's duties pursuant to sections 7.1 to 7.5 of the *Divorce Act*.

(3) If the respondent is represented by a lawyer, there must be endorsed on the answer a statement signed by the lawyer certifying that the lawyer has complied with section 7.7 of the *Divorce Act*.

(4) An answer in response to an application for corollary relief must be served and filed at least 14 days before the date set for hearing the application.

(5) Every affidavit filed in response to an application for corollary relief must be served with the answer.

Information Note

An application for corollary relief pursuant to the *Divorce Act* to obtain a support order against a former spouse may be made pursuant to section 15.1 (child support) or section 15.2 (spousal support) of that Act. If the application for corollary relief is to obtain a support order against a former spouse who resides outside Saskatchewan but within Canada, regard should be had to section 18.1 of the *Divorce Act* whereby the application for corollary relief may be submitted to the designated authority for Saskatchewan in accordance with subsection 18.1(3) of that Act. If the application is made pursuant to section 18.1 of the *Divorce Act*, the designated authority for Saskatchewan will send the application to the designated authority for the province or territory where the former spouse resides to coordinate service of the application on the former spouse, and the application will be determined by the court there.

Subdivision 4
Applications for Variation of Final Orders

Application for variation

15-26(1) A person who wishes to commence an application for variation of a final parenting order, contact order or support order shall do so by serving and filing an application for variation of a final order in Form 15-26.

(2) An application for variation must be signed by the applicant.

(3) If the application made pursuant to subrule (1) seeks to vary a final order made pursuant to the *Divorce Act*, the application must contain a statement by the applicant certifying that the applicant is aware of the applicant's duties pursuant to sections 7.1 to 7.5 of the *Divorce Act*.

(4) If the applicant under an application for variation of a final order is represented by a lawyer, there must be endorsed on the application commencing:

(a) a divorce proceeding, a statement signed by the lawyer certifying that the lawyer has complied with section 7.7 of the *Divorce Act*;

(b) a proceeding pursuant to *The Children's Law Act, 2020*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 20(1) of that Act;

(c) a proceeding pursuant to *The Family Maintenance Act, 1997*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 16(1) of that Act.

(5) There shall be not less than 45 days and not more than 90 days between the service of an application for variation of a final order and the return date set out in the application.

Affidavit in support

15-27 An affidavit in support of an application for variation of a final parenting order, contact order or support order must set out, if applicable:

(a) the place where the parties and the children ordinarily reside;

(b) the name and birth date of every child of each of the parties in the care of either party;

(c) whether a party has married or begun living with another person;

(d) details of current parenting arrangements;

(e) details of current support arrangements, including details of any unpaid support;

(f) details of the current financial circumstances of the parties, with a financial statement in Form 15-47, when required by Division 4 of this Part, completed by the party applying for variation;

(g) details of the variation asked for and of the changed circumstances that are grounds for a variation of the final order;

(h) details of any efforts made to mediate or settle the issues and of any parenting assessment;

(i) on an application for variation of a final support order, whether the support was assigned and any details of the assignment known to the party asking for the variation; and

(j) any other supporting affidavit material or other evidence that may be necessary or relevant.

Copies of documents required

15-28(1) A certified copy of each of the following must be filed in support of an application for variation of a final parenting order, contact order or support order:

(a) any existing order that deals with parenting or support;

(b) if the order sought to be varied was granted in a divorce proceeding by a court outside Saskatchewan, the original pleadings.

(2) A copy of any existing agreement that deals with parenting or support must be exhibited to the affidavit in support of an application for variation of a final order.

(3) For the purposes of this rule, a document that has previously been filed with the Court need not be filed or exhibited to the affidavit in support of the application if the affidavit:

(a) identifies the document;

(b) states that the document is on the Court file; and

(c) states the date on which the order was made or the document was filed.

Answer

15-29(1) A party who wishes to oppose an application for variation of a final parenting order, contact order or support order shall serve and file an answer in Form 15-29 setting out the reasons for opposing the application.

(2) An answer in response to an application for variation of a final parenting order, contact order or support order made pursuant to the *Divorce Act* must contain a statement by the respondent certifying that the respondent is aware of the respondent's duties pursuant to sections 7.1 to 7.5 of the *Divorce Act*.

(3) If the respondent under an application for variation of a final order is represented by a lawyer, there must be endorsed on the answer if the application is:

(a) a divorce proceeding, a statement signed by the lawyer certifying that the lawyer has complied with section 7.7 of the *Divorce Act*;

(b) a proceeding pursuant to *The Children's Law Act, 2020*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 20(1) of that Act;

(c) a proceeding pursuant to *The Family Maintenance Act, 1997*, a statement signed by the lawyer certifying that the lawyer has complied with subsection 16(1) of that Act.

(4) An answer in response to an application for variation of a final order must be served and filed at least 14 days before the date set for hearing the application.

(5) An affidavit filed in response to an application for variation of a final order must be served with the answer.

Information Note

If an application is made in Saskatchewan pursuant to clause 17(1)(a) of the *Divorce Act* to vary a final order of support and the respondent to the application habitually resides outside Saskatchewan but within Canada, pursuant to section 18.2 of the *Divorce Act* the respondent may, within 40 days after being served with the application, file a request in Form 15-110 requesting that the application be converted to an application pursuant to subsection 18.1(3) of the *Divorce Act*. If the application is converted to an application pursuant to section 18.1 of the *Divorce Act*, the Court will send the application to the designated authority for the province or territory where the respondent resides, to be determined by the court there.

Local registrar to forward order – *Divorce Act*

15-30 If the Court varies a corollary relief order made pursuant to the *Divorce Act* by a court outside Saskatchewan, the local registrar shall forward a certified copy of the variation order to:

(a) the court that made the original order; and

(b) any other court that has varied the original order.

DIVISION 3
Applications to the Court in Family Law Proceedings

Subdivision 1
Applications Generally

Applications generally

15-31 This Division:

(a) applies to every application filed in the Court in the course of a family law proceeding with respect to which a commencement document has been filed, unless a rule or an enactment provides otherwise or unless the Court orders or permits otherwise; and

(b) does not apply to matters in which the application is a document commencing a family law proceeding.

Subdivision 2
Applications with Notice

Applications with notice

15-32(1) All applications must be by notice of application (family law proceeding) in Form 15-32 except where otherwise specifically provided.

(2) If pursuant to any enactment an application may be made to the Court or to a judge, the application must be by notice of application (family law proceeding) in Form 15-32 unless the enactment or these rules provide otherwise.

(3) In all applications, any pleading on file in the office of the local registrar may be used and taken as evidence of the pleading, unless proven otherwise.

(4) Subject to the other rules of this Part, every notice of application must, at a minimum, set out all of the following:

(a) the precise relief or remedy sought;

(b) the grounds to be argued, including a reference to any section of an enactment or rule to be relied on;

(c) a list of the documentary evidence to be used at the hearing of the application.

(5) Except where otherwise specifically provided, a notice of application (family law proceeding), supporting affidavits and draft order must be served on each of the other parties, and filed, at least 14 days before the date set for hearing the application.

Subdivision 3
Applications without Notice

Applications without notice

15-33(1) If an enactment or these rules provide that an application may be made without notice, or if the Court is satisfied that a delay caused by proceeding in the ordinary way would be contrary to the interests of justice or would result in serious mischief, the Court may make an order without notice on any terms it considers appropriate, and subject to any undertaking that the Court considers just.

(2) Any party affected by an order mentioned in subrule (1) may move to set it aside or to vary it.

Procedure on applications without notice

15-34(1) Every application without notice (family law proceeding) must be in Form 15-34 that sets out all of the following:

(a) the special provision authorizing the application to be made without notice;

(b) the precise relief or remedy sought;

(c) a statement that either:

(i) sets out that none of the opposite parties is, to the knowledge of the applicant, represented by a lawyer; or

(ii) if any of the opposite parties is, to the knowledge of the applicant, represented by a lawyer, sets out the name of the lawyer representing the opposite party;

(d) citations of all the following authorities relied on:

(i) the short titles, chapter numbers and section numbers of enactments;

(ii) rule numbers;

(iii) complete citations of cases with designation of relevant passages.

(2) The applicant must file, together with the application without notice, a draft order setting out the precise relief or remedy sought.

Information Note

Many judges, in exercising their discretion respecting applications without notice, will require some form of notice be given to the opposite party or, if represented, to the opposite party's lawyer.

Subdivision 4
Appearance Day Notices

When appearance day application is appropriate

15-35 A party may make an appearance day application if the only remedy being sought is to require another party to comply with these rules respecting the conduct of a proceeding.

Appearance day notice

15-36(1) A party may make an appearance day application by serving and filing an appearance day notice (family law proceeding).

(2) Unless the Court permits otherwise, an appearance day notice must:

(a) be in Form 15-36;

(b) briefly describe the proposed order or direction sought and the reason for the application;

(c) refer to any provision of an enactment or rule relied on;

(d) contain a representation that the application can be heard and determined in less than 30 minutes;

(e) be signed by the applicant or the applicant's lawyer; and

(f) be accompanied by a draft order setting out the precise relief or remedy sought.

(3) An appearance day notice, supporting affidavits and draft order must be served on each of the other parties, and filed, at least 14 days before the date set for hearing the application.

How appearance day application is to be dealt with

15-37(1) Appearance day applications will be scheduled to commence 30 minutes before the time chambers is scheduled to commence and shall be heard by telephone.

(2) The parties to an appearance day application must be available by telephone when the appearance day application is scheduled to commence and remain available until the application is heard.

Evidence

15-38(1) A party may make representations to the judge on the appearance day of a fact that could not reasonably be contested.

(2) Representations may be made in the appearance day notice and expanded on in oral submissions to the judge when the application is heard.

(3) The judge may act on the representations.

Disposition of appearance day application

15-39 After the hearing of an appearance day application, the judge may:

(a) if satisfied that there is no relevant fact that may reasonably be contested, make any order that the circumstances require; or

(b) if not satisfied that it is appropriate to deal with the application pursuant to this subdivision, order that the application be heard in general chambers, in which case the general application rules apply.

Subdivision 5
Applications for Procedural Matters

Applications for procedural matters

15-40(1) Applications made for purely procedural matters must be in Form 15-40.

(2) The party bringing an application pursuant to this rule shall serve with the application:

(a) a copy of each affidavit on which the party intends to rely at the hearing; and

(b) a draft order setting out the precise relief or remedy sought.

(3) An application for a procedural matter, supporting affidavits and draft order must be served on each of the other parties, and filed, at least 3 days before the date set for hearing the application.

Subdivision 6
Applications for Substantive Interim Relief

Application for substantive interim relief

15-41(1) An application for substantive interim relief must be in Form 15-41.

(2) The party bringing an application pursuant to this rule shall serve with the application:

(a) a copy of each affidavit on which the party intends to rely at the hearing; and

(b) a draft order setting out the precise relief or remedy sought.

(3) Subject to an order granted pursuant to subrule (6) abridging the time for service, an application for substantive interim relief, supporting affidavits and draft order must be served on each of the other parties, and filed, at least 14 days before the date set for hearing the application.

(4) Notwithstanding subrule (3):

(a) if the application claims interim spousal support, there must be at least 37 days between the date of service of the document commencing a family law proceeding and the date set for hearing the application; or

(b) if the application claims interim child support, there must be at least 37 days between the date set for hearing the application and:

(i) the date on which written notice was given pursuant to subsection 25(1) of the guidelines; or

(ii) the date of service of the document commencing a family law proceeding.

(5) If all parties consent to an earlier date for hearing the application, the application may be heard on the earlier date.

(6) An application without notice for leave to abridge the time for service of an application for substantive interim relief must be brought before service of the application for substantive interim relief, and any order that is obtained must be served with the application for substantive interim relief.

(7) A party who wishes to oppose a claim made in the application shall:

(a) serve a copy of each affidavit on which that party intends to rely at the hearing on every other party to the application; and

(b) file the affidavits, with proof of service, at least 7 days before the date set for hearing the application.

(8) The party bringing the application may then serve an affidavit replying only to any new matters raised by the opposite party, and shall file the affidavit, with proof of service, at least 2 clear days before the date set for hearing the application.

(9) No additional affidavits may be relied on without leave of the Court.

(10) An affidavit filed in contravention of this rule may be struck and costs awarded against the party filing it.

(11) If any new matters are raised by the party bringing the application in the affidavit in reply without the leave of the Court:

(a) those matters may be disregarded; and

(b) costs may be awarded against the party filing the affidavit.

(12) If there is or may be a dispute as to the facts on the hearing of an application, a judge may, before or on the hearing:

(a) order that the application be heard on oral evidence, either alone or with any other form of evidence; and

(b) give directions relating to pre-hearing procedure and the conduct of the proceeding.

Subdivision 7
Applications for Judgment in Uncontested Matters

Application for judgment in uncontested matter

15-42(1) An application for judgment in an uncontested family law proceeding or in an uncontested divorce proceeding must be:

(a) in Form 15-76A when permitted by these rules to be made without notice; and

(b) in Form 15-76B when the application is to be made with notice.

(2) Division 6, Subdivision 1 of this Part applies to all applications in uncontested family law proceedings and uncontested divorce proceedings.

Subdivision 8
Applications for Summary Judgment

Application for summary judgment

15-43(1) An application for summary judgment in a family law proceeding must be in Form 15-43.

(2) Division 6, Subdivision 2 of this Part applies to all applications for summary judgments in family law proceedings.

Subdivision 9
Applications for Variation of Interim Orders

Application for variation of interim order

15-44(1) An application for the variation of an interim order must be in Form 15-44.

(2) Subrules 15-41(2) to (12) apply, with any necessary modification, to this rule.

Subdivision 10
Applications for which no Document Commencing a Family Law Proceeding is Required

Application for which no document commencing a family law proceeding is required

15-45(1) If a person seeks an order from the Court in a family law proceeding in which no document commencing a family law proceeding has been filed or is required, the person shall serve on all interested parties and file with the Court, with proof of service, a notice of application (family law proceeding) in Form 15-32 setting out the precise relief or remedy sought.

(2) Applications that may be made pursuant to subrule (1) include, but are not restricted to, the following:

(a) applications for directions;

(b) applications for declaratory orders;

(c) applications pursuant to *The International Child Abduction Act, 1996* (Division 12 of this Part).

Subdivision 11
Affidavits in Support of Applications

Affidavit evidence

15-46(1) An affidavit must be confined to the statement of facts within the personal knowledge of the person signing the affidavit, except where this rule provides otherwise.

(2) An affidavit must not contain:

(a) argument;

(b) speculation;

(c) opinion;

(d) any matter that is scandalous;

(e) any matter that is irrelevant, that may delay the trial or make it difficult to have a fair trial, or that is unnecessary or an abuse of the Court process.

(3) An affidavit may, in special circumstances, contain information that the person learned from someone else if:

(a) the application on which the affidavit will be used is for an interim order, or for a matter that will not determine the final outcome of the family law proceeding except as permitted by subrule 15-89(4); and

(b) the source of the information is identified by name, the affidavit states that the person signing it believes the information is true and the circumstances that justify the use of information learned from someone else are stated.

(4) If an affidavit does not comply with this rule, the Court may, on its own motion or on the application of a party:

(a) strike out all or part of that affidavit; and

(b) award costs against the party filing the affidavit or that party's lawyer.

(5) If an affidavit or part of an affidavit has been struck pursuant to this rule, an opposing party who has filed an affidavit in response to the offending material may be awarded double costs of filing that affidavit.

(6) Part 13, Division 4, Subdivision 2 applies, with any necessary modification, to this rule.

DIVISION 4
Financial Disclosure

Subdivision 1
Financial Statements

Support claim - when financial statement required

15-47(1) Subject to the exceptions set out in rule 15-48, if a document commencing a family law proceeding contains a claim for child support or spousal support, or for variation of child support or spousal support, the petitioner shall serve and file a financial statement in Form 15-47 with the document commencing a family law proceeding.

(2) The party against whom a claim for support or for variation of support is made shall serve and file a financial statement in Form 15-47 with the answer.

(3) If a document commencing a family law proceeding does not contain a claim for support or for variation of support but the respondent claims support or a variation of support by way of counter-petition, the respondent shall serve and file a financial statement in Form 15-47 with the answer and counter-petition.

(4) The party against whom an answer and counter-petition is made pursuant to subrule (3) shall serve and file a financial statement in Form 15-47:

(a) with the reply; or

(b) if no reply is filed, within 10 days after being served with the answer and counter-petition.

(5) When a party is required pursuant to this Division to serve and file a financial statement, the party shall attach to the financial statement the income information required by the guidelines.

(6) The Court on application without notice may permit an application for an interim remedy to be brought before a financial statement is filed if:

(a) the remedy is urgently required; and

(b) the Court receives from the party bringing the application for an interim remedy an undertaking to serve and file the required financial statement within a time specified by the Court.

(7) Unless the Court orders otherwise, a local registrar shall not accept any of the following documents for filing without a financial statement if these rules require the document to be filed with a financial statement:

(a) a document commencing a family law proceeding;

(b) an answer;

(c) an answer and counter-petition;

(d) a reply.

(8) The Court on application without notice may permit the issuing or filing of a document mentioned in subrule (7) without the filing of a financial statement if:

(a) the filing of the document mentioned in subrule (7) is urgently required; and

(b) the Court receives from the party bringing the application without notice an undertaking to serve and file the required financial statement within a time specified by the Court.

Support claim - when financial statement not required

15-48(1) In the case of a claim for spousal support, a financial statement does not need to be served or filed if the parties have:

(a) agreed on the remedy to be granted; and

(b) filed a waiver of financial statements in Form 15-48A.

(2) In the case of a claim for child support or for variation of child support, a financial statement does not need to be served or filed if the parties have filed the following with the Court:

(a) an agreement as to child support in Form 15-48B:

(i) endorsed by each party either by the party's lawyer, or personally with an affidavit of execution;

(ii) agreeing on the amount to be paid for child support; and

(iii) agreeing on the annual income of each party who would be required to provide income information under the guidelines;

(b) as attachments to the agreement mentioned in clause (a), but subject to clause (c):

(i) a copy of the most recent personal income tax return filed by the payor, together with a copy of the payor's most recent income tax notice of assessment or reassessment; and

(ii) a copy of the most recent personal income tax return filed by the recipient, together with a copy of the recipient's most recent income tax notice of assessment or reassessment, if:

(A) there is to be shared or split parenting time;

(B) special or extraordinary expenses are to be shared; or

(C) the amount of child support agreed to differs from the table amount set out in the guidelines;

(c) if any of the documents mentioned in clause (b) are not available, an affidavit explaining why the documents are not available and providing evidence to satisfy the Court that:

(i) the amount of income of the payor or the recipient, as the case may be, is reasonable; and

(ii) the amount of child support agreed to by the parties is reasonable.

(3) If the only financial claim made by a party is for child support in the table amount under the guidelines, a financial statement does not need to be served or filed by the party making the claim.

Information Note

On an application for divorce, if there are children of the marriage, the Court has a duty pursuant to clause 11(1)(b) of the *Divorce Act* to satisfy itself that reasonable arrangements have been made for the support of each child of the marriage. Rules 15-85 and 15-101 identify the basic financial information that the Court will require to satisfy the reasonable arrangements requirement. However, on occasion, the Court may require additional financial information to be filed.

Subdivision 2
Property Statements

Property claim – when property statement required

15-49(1) Subject to the exceptions set out in rule 15-50, if a document commencing a family law proceeding contains a property claim, the petitioner shall serve and file a property statement in Form 15-49 with the document commencing a family law proceeding.

(2) The party against whom a property claim is made shall serve and file a property statement in Form 15-49 with the answer.

(3) If a document commencing a family law proceeding does not contain a property claim but the respondent makes a property claim by way of counter-petition, the respondent shall serve and file a property statement in Form 15-49 with the answer and counter-petition.

(4) The party against whom an answer and counter-petition is made pursuant to subrule (3) shall serve and file a property statement in Form 15-49:

(a) with the reply; or

(b) if no reply is filed, within 10 days after being served with the answer and counter-petition.

(5) The Court on application without notice may permit an application for an interim remedy to be brought before a property statement is filed if:

(a) the remedy is urgently required; and

(b) the Court receives from the party bringing the application for an interim remedy an undertaking to serve and file the required property statement within a time specified by the Court.

(6) Unless the Court orders otherwise, a local registrar shall not accept any of the following documents for filing without a property statement if these rules require the document to be filed with a property statement:

(a) a document commencing a family law proceeding;

(b) an answer;

(c) an answer and counter-petition;

(d) a reply.

(7) The Court on application without notice may permit the issuing or filing of a document mentioned in subrule (6) without the filing of a property statement if:

(a) the filing of the document mentioned in subrule (6) is urgently required; and

(b) the Court receives from the party bringing the application without notice an undertaking to serve and file the required property statement within a time specified by the Court.

Property claim – when property statement not required

15-50 In the case of a property claim, a property statement does not need to be served or filed if the parties have:

(a) agreed on the remedy to be granted; and

(b) filed a waiver of property statements in Form 15-50.

Subdivision 3
Notice to File a Financial Statement

Support claim – income information required

15-51(1) If a petition, answer and counter-petition or other document commencing a family law proceeding contains a claim for support or for variation of support:

(a) the party making the claim shall serve and file, with the document asserting the claim:

(i) a notice in Form 15-51 to file a financial statement; and

(ii) if the income information of the party making the claim is required by the guidelines, the party's financial statement in Form 15-47, together with the income information required by the guidelines;

(b) the party against whom the claim is made shall serve and file, with the document in response to the claim, a notice in Form 15-51 to file a financial statement if:

(i) that response raises an issue that requires the party making the claim to file income information pursuant to the guidelines; and

(ii) the party making the claim has not previously served and filed a financial statement in Form 15-47, together with the income information required by the guidelines.

(2) A party served with a notice in Form 15-51 to file a financial statement shall serve and file the party's financial statement in Form 15-47, together with the income information required by the guidelines, within:

(a) 30 days after service if the party resides in Canada or the United States of America; or

(b) 60 days after service if the party resides outside Canada or the United States of America.

Subdivision 4
Notice to Disclose

Notice to disclose

15-52(1) In a family law proceeding, if financial statements or property statements are required pursuant to this Division, a party may serve a notice to disclose in Form 15-52:

(a) once without leave; and

(b) at any other time with leave of the Court or written consent of the opposite party.

(2) Information requested in a notice to disclose must be limited to existing documents in the control of the opposite party.

(3) On being served with a notice to disclose, the opposite party shall serve the information requested within 30 days after service of that notice.

(4) If the opposite party objects to disclosing any of the information requested in a notice to disclose, that party shall:

(a) make the objection in writing, setting out the reason for the objection; and

(b) serve the objection, together with the information which that party does not object to disclosing, within the time for service set out in subrule (3).

Subdivision 5
Notice to Reply to Written Questions

Notice to reply to written questions

15-53(1) In a family law proceeding, if financial statements or property statements are required pursuant to this Division, a party may serve a notice to reply to written questions in Form 15-53, setting out a maximum of 25 singular questions relating to financial or property information:

(a) once without leave; and

(b) at any other time with leave of the Court or written consent of the opposite party.

(2) On being served with a notice to reply to written questions, the opposite party shall answer the questions in the form of an affidavit served within 30 days after service of that notice.

(3) If the opposite party objects to answering a question asked in a notice to reply to written questions, that party shall:

(a) make the objection in writing, setting out the reason for the objection; and

(b) serve the objection, together with the affidavit answering those questions which that party does not object to answering, within the time for service set out in subrule (2).

(4) Without leave of the Court, no question asked in a notice to reply to written questions shall touch on the parenting of a child.

Subdivision 6
Questioning

Questioning

15-54(1) If applicable, but subject to subrule (2), Part 5, Division 2, Subdivision 3 respecting questions to discover documents and information relevant to any matter in issue applies to family law proceedings pursuant to this Part.

(2) Only with leave of the Court shall a party be questioned in accordance with this rule on matters touching on the parenting of a child.

Subdivision 7
General

Correcting information

15-55(1) If, during the course of a family law proceeding, a party discovers that information in the party's financial statement or property statement, or in a response the party gave to a notice to file income information, a notice to disclose or a notice to reply to written questions, or in any affidavit was incorrect or incomplete when made, or that there has been a material change in the information provided, the party shall immediately serve on every other party to the claim:

(a) the correct information or a new statement containing the correct information; and

(b) any documents substantiating the information.

(2) The correct information or a new statement containing the correct information is only to be filed with the Court if the original document requiring correction is on the Court file.

Updating financial statements and property statements

15-56 Each party shall update the information in any financial statement or property statement that is more than 60 days old by serving and filing a new financial statement or property statement, or an affidavit stating that the information in the last statement has not changed and is still true:

(a) at least 7 days before a hearing of an application or before a trial;

(b) at least 10 days before a pre-trial conference; or

(c) at least 15 days before a binding pre-trial conference.

Application for directions

15-57(1) If the response to a notice to disclose or to a notice to reply to written questions is not satisfactory, the party seeking disclosure may apply to the Court for an order directing further or better disclosure.

(2) If an objection has been made pursuant to rule 15-52 or 15-53, either party may apply to the Court to decide the validity of that objection.

Disclosure by non-parties

15-58(1) If the Court determines that section 9 or 10 of the guidelines applies to an application for child support, the Court, on application by a party, may make an order directing a person who resides with the opposite party to serve and file a financial statement, with Schedule 1 of the financial statement completed, if:

(a) the person has a legal duty to support the opposite party or the opposite party has a legal duty to support the person;

(b) the person shares living expenses with the opposite party or the opposite party otherwise receives an economic benefit as a result of living with the person; or

(c) the person has a child whom the person or the opposite party has a legal duty to support.

(2) The party bringing an application pursuant to subrule (1) shall:

(a) serve the application, and a copy of each affidavit on which the party intends to rely at the hearing, on:

(i) the opposite party; and

(ii) the person against whom the order is sought; and

(b) file the application and supporting affidavits, with proof of service, at least 14 days before the date set for hearing the application.

(3) For the purposes of subrule (1), the income tax information attached to the person's financial statement need only be for the most recent taxation year, unless the Court orders otherwise.

(4) If a party to a family law proceeding fails to make satisfactory disclosure after having been served with an order to serve and file a financial statement together with the income information required by the guidelines, an order to serve and file a property statement, an order to respond to a notice to disclose, an order to respond to a notice to reply to written questions, or any other order to respond that may have been issued by the Court, the Court, on application by the other party, may make an order:

(a) directing a person, including a corporation or government institution, to provide information in the person's custody or control that may be relevant to the issues before the Court; and

(b) giving any directions that may be appropriate.

(5) The party bringing an application pursuant to subrule (4) shall:

(a) serve the application, and a copy of each affidavit on which the party intends to rely at the hearing, on:

(i) the opposite party; and

(ii) the person against whom the order is sought; and

(b) file the application and supporting affidavits, with proof of service, at least 14 days before the date set for hearing the application.

(6) The party bringing an application pursuant to subrule (1) or (4) shall satisfy the Court that:

(a) the party has been unable to obtain the information by more informal methods;

(b) it would be unfair to require the party to proceed to trial without the information; and

(c) the disclosure requested:

(i) will not unduly delay the progress of the family law proceeding;

(ii) will not entail unreasonable expense for any person;

(iii) will not result in unfairness to the person against whom the order is sought; and

(iv) is not otherwise prohibited by law.

(7) The opposite party and the other person served with an application pursuant to subrule (1) or (4) shall each serve and file any response affidavit at least 7 days before the date set for hearing the application, setting out:

(a) any objection to providing the information sought;

(b) a list of the information that the opposite party or other person, as the case may be, is willing to provide, including a reasonable time line as to when the information will be provided; and

(c) any further and other evidence of the opposite party or other person, as the case may be, that may be necessary or relevant.

(8) The costs of providing the information requested and the costs of an application pursuant to this rule are in the discretion of the Court, and the Court may order that the costs be paid in favour of or against:

(a) either of the parties to the family law proceeding; or

(b) the other person ordered to provide the information.

Order where failure to disclose

15-59(1) If a party to a family law proceeding fails to serve and file a financial statement, together with the income information required by the guidelines, after having been served with a notice to file a financial statement, or fails to serve and file a property statement, or fails to serve a response to a notice to disclose or a notice to reply to written questions, as required by this Division, the Court, on application by the other party, may make an order:

(a) if child support is in issue, drawing an adverse inference against that party and imputing income to that party in the amount that the Court considers appropriate;

(b) directing payment of support in the amount that the Court considers appropriate;

(c) directing that, within the time specified, the party:

(i) serve and file a financial statement, together with the income information required by the guidelines;

(ii) serve and file a property statement;

(iii) serve the financial or property information requested in a notice to disclose; or

(iv) serve the answers requested in a notice to reply to written questions;

(d) granting any other remedy requested; or

(e) awarding costs, including costs up to an amount that fully compensates the other party for all costs incurred in the proceedings.

(2) If, on a notice to file a financial statement, a notice to disclose or a notice to reply to written questions, the party bringing the application is also seeking an immediate order pursuant to subrule (1) if the opposite party fails to respond to the application, the party's application must include an application for an order pursuant to subrule (1).

(3) If a party does not obey an order made pursuant to this Division, the Court may:

(a) dismiss that party's family law proceeding or answer;

(b) strike out any document filed by that party;

(c) make a contempt order against that party;

(d) order that any information that should have appeared on a financial statement or property statement may not be used by that party on the application or at trial; or

(e) make any other order that the Court considers appropriate.

DIVISION 5
Pre-Trial Conferences, Parenting Assessments and Mediation

Subdivision 1
Expedited Pre-Trial Conferences and Parenting Assessments

Expedited pre-trial conferences and parenting assessments

15-60(1) On an application by a party or on the judge's own initiative, a judge may adjourn a family law proceeding and:

(a) order a parenting assessment; or

(b) direct the issue to an expedited pre-trial conference.

(2) The expedited pre-trial conference must be scheduled within 30 days after the date of the order authorizing it and must be for the sole purpose of determining if a parenting assessment is warranted.

(3) Unless the Court orders otherwise, pre-trial briefs are not required for an expedited pre-trial conference pursuant to this rule.

(4) If a judge directs the issue of a parenting assessment to an expedited pre-trial conference, the judge presiding over the expedited pre-trial conference may order a parenting assessment.

(5) An order directing a parenting assessment may include the amount of any charge for the report that each party is required to pay.

(6) Immediately on its issue, the local registrar shall send the order for a parenting assessment, accompanied by parenting assessment instructions prepared by the judge presiding over the expedited pre-trial conference, to the person ordered to prepare the report.

(7) On an application without notice or on the judge's own initiative, the judge may order that a person who prepares a parenting assessment be called as a witness, and the petitioner shall arrange for the attendance of the witness.

(8) A witness ordered to be called pursuant to subrule (7) is:

(a) subject to cross-examination by any party; and

(b) deemed not to be a witness of any party.

Subdivision 2
Pre-Trial Conferences

Obtaining a date for pre-trial conference

15-61(1) On the close of the pleadings, the parties may request a pre-trial conference by filing with the local registrar a joint request in Form 15-61 that:

(a) contains a certificate of readiness;

(b) confirms that efforts at settlement have been made;

(c) sets out the estimated time required for the pre-trial conference and the trial; and

(d) estimates the number of witnesses to be called at the trial.

(2) If one of the parties neglects or refuses to join in a joint request, the party wishing to obtain a pre-trial conference may obtain from the local registrar a date for a pre-trial conference by filing:

(a) the information described in subrule (1) other than a joint request; and

(b) a certificate confirming that the opposite party was requested to execute a joint request but failed to do so within 20 days without stating any reason.

(3) If one of the parties refuses to join in a joint request, the party wishing to obtain a pre-trial conference may apply for an order scheduling a pre-trial conference date.

(4) The Court may fix the amount of the costs of an application made pursuant to subrule (3) and may order the unsuccessful party to the application to immediately pay those costs.

(5) The party obtaining a date for a pre-trial conference pursuant to subrule (3) shall immediately notify all other parties of the date, and, unless the Court orders otherwise, the pre-trial conference must proceed on that date.

(6) A trial judge or a chambers judge may, on the judge's own initiative, order a pre-trial conference to be held respecting any family law proceeding coming before the judge.

(7) The local registrar shall schedule a pre-trial conference date to ensure optimum use of court time, but shall endeavour to suit the convenience of the parties.

(8) The parties shall accept the date scheduled pursuant to subrule (7).

(9) If a pre-trial conference date has been scheduled, the party who commenced the family law proceeding shall immediately pay the required fee for setting down.

Purpose of pre-trial conference

15-62(1) The parties shall make a genuine attempt to settle the family law proceeding before a pre-trial conference.

(2) A pre-trial conference is not to replace normal negotiations between the parties.

(3) The goals of a pre-trial conference are:

(a) to allow the parties to participate in the problem-solving process;

(b) to allow the parties to receive the view of a judge as to the issues, both facts and law, in dispute, as far as the material before the judge allows;

(c) to allow settlement options to be presented that would not necessarily be available at trial;

(d) to seek settlement of the dispute so as to improve the efficiency of the court system and to save time and costs for all parties and witnesses.

(4) A pre-trial conference must be for the purpose of attempting to settle the family law proceeding, and if that is not possible, to consider:

(a) the identification and simplification of the issues;

(b) the necessity or desirability of amendments to the pleadings;

(c) the possibility of obtaining admissions that will facilitate the trial;

(d) whether all necessary steps have been taken in preparation for trial;

(e) the possibility of settlement of specific issues;

(f) the identification of an agreement on valuations of property;

(g) any other matters that may aid in the disposition of the family law proceeding;

(h) the actual trial time required; and

(i) the date for trial.

Pre-trial briefs

15-63(1) The parties shall file and exchange pre-trial briefs not later than 10 days before the date scheduled for pre-trial conference.

(2) Pre-trial briefs that are filed late or that are clearly inadequate may result in the pre-trial brief being struck and the pre-trial conference being adjourned, with an assessment of costs against the offending party or lawyer.

(3) Each pre-trial brief:

(a) must clearly state on the first page the name of the party on whose behalf it is filed;

(b) must include a concise summary of the evidence expected to be adduced;

(c) must include a concise statement of the issues in dispute and the law relating to those issues, together with a List of Authorities prepared in accordance with rule 13-38.1;

(d) must, if the division of family property is in issue, include a property schedule identifying:

(i) each item of family property available for division between the parties;

(ii) the value of each item of family property and the date of that value, if not the date of application;

(iii) the value of any exemption being claimed with respect to any item of family property;

(iv) the debts and liabilities of the parties and the value of each debt or liability to be taken into consideration in the division of family property;

(v) the distribution proposed for each item of family property, including exemptions and liabilities of each party and their allocation in the division of family property;

(vi) if applicable, any income tax consequences or other anticipated disposition costs associated with the proposed distribution of family property; and

(vii) the source from which the indicated value is derived if the value of an item of family property, an exemption claimed or a debt or liability to be allocated is not agreed to, and including copies of any statements and any appraisal reports that support the indicated value;

(e) must, if the parenting of children is in issue, include a proposed parenting plan, together with a proposal for decision-making responsibility with respect to the children;

(f) subject to subrule (5), must be accompanied by all documents, or legible copies of documents, intended to be used at trial that may be of assistance to the pre-trial judge in achieving the purposes of a pre-trial conference, including expert reports; and

(g) must be accompanied by a proposal for settlement of the issues involved in the family law proceeding, which may include admissions for the purpose of the pre-trial conference or other statements relating to the issues that the party may choose not to have available to the trial judge.

(4) All documents and copies filed pursuant to subrule (3) must, at the request of the party producing them, be returned to that party at the conclusion of the pre-trial conference.

(5) If the parties agree in writing that a productive pre-trial conference is possible without expert reports and that these reports are not critical to a valuation or other issue, the parties shall file the written agreement, and not the reports, with the pre-trial brief.

(6) If the family law proceeding is to go to trial after the conclusion of the pre-trial conference, the pre-trial briefs shall be returned to the parties, including any proposals submitted pursuant to clause (3)(g).

Information Note

Pursuant to rule 5-40, expert reports must be served 60 days before the date scheduled for the pre-trial conference, unless there is a written agreement.

Pursuant to rule 5-46, appraisal reports intended to be submitted in evidence must be served on every other party not less than 30 days before the date scheduled for a pre-trial conference.

Pursuant to rule 5-47, medical reports intended to be used at trial must be served on every other party not less than 30 days before the date scheduled for a pre-trial conference, unless there is a written agreement.

Participants

15-64(1) Unless the Court orders otherwise, every party shall appear with the party's lawyer, if any, at all pre-trial conferences.

(2) If a party is represented by a lawyer and wishes to dispense with the appearance of the party, the lawyer shall send a written request, with reasons, to the local registrar.

(3) The local registrar shall present the request mentioned in subrule (2) to the pre-trial judge, who may:

(a) refuse or grant the request without hearing from all parties to the family law proceeding;

(b) grant the request with conditions, including a requirement that the party must be available by conference telephone or immediately available for telephone communication; or

(c) order the request to proceed by way of application.

(4) Unless the Court orders otherwise, the lawyer representing a party at the pre-trial conference must be the lawyer who will be representing that party at the trial.

(5) A pre-trial judge may at any time request that any other person whose attendance may be of assistance be present at the pre-trial conference.

Use of transcript of questioning or affidavit in answer to written questions

15-65 The transcript of questioning pursuant to rule 15-54 and the affidavit in answer to written questions pursuant to rule 15-53:

(a) must be available for the use of the pre-trial judge; and

(b) at the conclusion of the pre-trial conference, must be resealed until trial.

Adjournment of pre-trial conference

15-66 A pre-trial conference may be adjourned from time to time at the discretion of the pre-trial judge.

Documents resulting from pre-trial conference

15-67(1) The only documents, if any, resulting from a pre-trial conference are to be:

(a) an agreement prepared by the parties and any other document necessary to implement the agreement;

(b) a consent order or consent judgment;

(c) an order for a parenting assessment, accompanied by parenting assessment instructions prepared by the judge presiding over the pre-trial conference, to the person ordered to prepare the report;

(d) an order for costs; and

(e) if the matter is to proceed to trial, the pre-trial conference report form that includes:

(i) matters agreed on by the parties;

(ii) issues of fact and law in dispute;

(iii) whether required documents were filed;

(iv) whether there have been or will be any pre-trial applications relevant to the trial;

(v) the estimated number of witnesses, including expert witnesses;

(vi) the estimated length of trial; and

(vii) whether summaries, books of exhibits or books of authorities will be provided by the parties to the trial judge.

(2) In the absence of an order pursuant to clause (1)(d), costs must be costs in the cause.

Confidentiality and use of information

15-68(1) A pre-trial conference is a confidential process intended to facilitate the resolution of a claim, or if that is not possible, to manage the action until trial.

(2) Unless the parties otherwise agree in writing, statements made or documents generated for or in the pre-trial conference with a view to resolving the dispute:

(a) are privileged and are made without prejudice;

(b) must be treated by the parties and participants in the process as confidential and may only be used for the purpose of the pre-trial conference; and

(c) may not be referred to, presented as evidence or relied on, and are not admissible in subsequent applications or proceedings in the action or in any other action, or in proceedings of a judicial or quasi-judicial nature.

(3) Subrule (2) does not apply to the documents referred to in rule 15-67.

Trial date

15-69 If the matter is to proceed to trial, the pre-trial judge shall direct the local registrar to schedule a date for trial.

Trial judge

15-70(1) A pre-trial judge shall not preside at the trial unless all parties and the judge consent in writing.

(2) This rule does not prevent or disqualify the trial judge from holding trial meetings subsequent to the pre-trial conference and before or during the trial, to consider any matter that may assist in the just, most expeditious or least expensive disposition of the family law proceeding.

Subdivision 3
Binding Pre-trial Conference

Definition

15-71 In this subdivision, **"binding pre-trial conference"** means a pre-trial conference in which, if settlement fails, the presiding judge may make a binding decision in accordance with the terms of the written agreement signed by the parties to the action and executed in accordance with rule 4-21.4.

Application of Part 4, Division 3, Subdivision 3

15-72 Part 4, Division 3, Subdivision 3 respecting binding pre-trial conferences applies, with any necessary modification, to family law proceedings.

Subdivision 4
Mediation

Application to appoint family mediator

15-73(1) An application to appoint a family mediator must be made by notice of application (family law proceeding) in Form 15-32.

(2) The notice of application must set forth the name and address of a proposed family mediator.

(3) The affidavit filed in support of the application must include:

(a) the addresses and telephone numbers of the parties and the family mediator;

(b) details of the family mediator's experience and qualifications, or the family mediator's curriculum vitae, exhibited to the affidavit;

(c) a copy of the family mediator's form of agreement, exhibited to the affidavit;

(d) details of the fees and expenses to be charged by the family mediator, unless this information is contained in the mediation agreement; and

(e) the consent of the family mediator to act, exhibited to the affidavit.

(4) If the other party opposes the appointment, that party shall:

(a) submit the name of an alternative to the proposed family mediator; and

(b) file an affidavit containing the information prescribed by subrule (3).

(5) An order appointing a family mediator must include:

(a) a requirement that the parties attend the initial mediation session at a date to be set by the family mediator;

(b) the amount of the family mediator's fees and expenses that each party is required to pay;

(c) a requirement that a fixed portion of the family mediator's fees be paid by a date to be set by the family mediator;

(d) a requirement that the family mediator report on the outcome of the mediation to the Court, in writing, by the date specified pursuant to clause (e);

(e) the date to which the application is to be adjourned, not to exceed 45 days other than in exceptional circumstances; and

(f) the names, addresses and telephone numbers of the parties, the family mediator and the lawyer for each party.

(6) Immediately on its issue, the local registrar shall send a copy of a mediation order to the family mediator.

(7) The report of the family mediator must set out:

(a) whether an agreement was reached;

(b) why mediation did not commence, if that is the case; or

(c) whether mediation should continue.

(8) All communications in the course of mediation are privileged and must not be admitted as evidence in any proceeding, except with the written consent of:

(a) all parties to the family law proceeding in which the family mediator was appointed; and

(b) the family mediator.

DIVISION 6
Resolving Claims Without a Full Trial

Subdivision 1
Uncontested Family Law Proceedings

Information Note

This subdivision sets out rules for applying for judgment in uncontested family law proceedings. Parties may apply for judgment, on an uncontested basis, claiming one or more remedies (divorce, parenting, child support, spousal support, property division, judicial separation or nullity of marriage) if:

(a) those claims have been set out in the document commencing a family law proceeding (see Rules 15-1 and 15-17 and Division 2, Subdivision 2 of this Part for information on preparing a document commencing a family law proceeding); and

(b) the documents, affidavit materials and other evidence filed in support of the application for judgment contain the information identified in the corresponding rules in this subdivision for those remedies.

Definition

15-74 For the purposes of this subdivision, **"uncontested family law proceeding"** includes an uncontested divorce proceeding and means a family law proceeding in which:

(a) the respondent has failed to serve and file an answer and the matter has been noted for default in accordance with rule 15-23;

(b) the answer or answer and counter-petition has been withdrawn or struck out; or

(c) the parties to the proceeding have endorsed their consent on the draft judgment or order, either:

(i) personally, with an affidavit of execution; or

(ii) by their lawyers.

Application of subdivision

15-75 This subdivision applies to all uncontested family law proceedings.

Form of application

15-76(1) Subject to subrule (2), an application for judgment in an uncontested family law proceeding or in an uncontested divorce proceeding is to be made without notice in Form 15-76A.

(2) The petitioner must serve and file an application for judgment in Form 15-76B if:

(a) the respondent has served and filed a demand for notice in accordance with rule 15-21; or

(b) the Court orders the application for judgment to be made with notice.

(3) An application for judgment in Form 15-76B, together with the documents, supporting affidavit materials and other evidence required to be filed pursuant to this subdivision, must be served and filed at least 14 days before the date set for hearing the application.

Affidavit in support

15-77 Unless the Court orders otherwise, in an uncontested family law proceeding, any information or evidence required to enable the Court to perform its duties, and the evidence required to prove the claim, must be presented by affidavit.

Application for judgment

15-78 In an uncontested family law proceeding, the following documents and other evidence must be filed with an application for judgment made without notice in Form 15-76A, or served and filed with an application for judgment made with notice in Form 15-76B:

(a) evidence to satisfy the Court that the respondent personally received a copy of the petition or evidence that the petition was served in accordance with an order of the Court;

(b) an affidavit of petitioner in Form 15-78 that sets forth:

(i) particulars of the grounds on which the claim is based and evidence to support the claim;

(ii) confirmation that all the facts and information contained in the petition continue to remain true and accurate, with corrections or subsequent changes noted; and

(iii) if costs are claimed, particulars of the amount and basis for the claim;

(c) any other supporting affidavit material or other evidence that may be required in the family law proceeding;

(d) a draft judgment in Form 15-102, modified for the precise relief or remedy sought on an uncontested basis;

(e) if child support is sought, a separate draft child support order, which must include the particulars required by subrule 15-97(4);

(f) 4 envelopes, approximately 4 inches by 9 inches:

(i) unless the Court orders otherwise, 2 of which are addressed to the respondent at the address given in the affidavit of service of the petition, or any other address that may satisfy the Court that a copy of the judgment will reach the respondent; and

(ii) 2 of which are addressed to the petitioner at the address for service provided by the petitioner.

Oral evidence

15-79 The Court may order that the supporting affidavit material or other evidence in an uncontested family law proceeding be presented orally at a hearing.

Judgment

15-80 In an uncontested family law proceeding, the judge may:

(a) grant a judgment without an appearance by any party or the lawyer for any party; or

(b) direct that any party or the lawyer for any party appear or that oral evidence be presented at a hearing.

Costs

15-81 The costs of an application for judgment in an uncontested family law proceeding are to be assessed as an application without notice, unless otherwise ordered by the Court.

Uncontested divorce judgment

15-82(1) If a petitioner applies for a divorce judgment in an uncontested family law proceeding, in addition to the documents, supporting affidavit materials and other evidence required to be filed pursuant to rule 15-78 and Division 10 of this Part, the petitioner shall file the following:

(a) an affidavit of petitioner in Form 15-78 that sets forth the following, in addition to the matters mentioned in clause 15-78(b):

(i) if no certificate of marriage or certificate of registration of marriage has been filed, sufficient particulars to prove the marriage;

(ii) evidence to satisfy the Court that there is no possibility of reconciliation of the spouses;

(iii) evidence to satisfy the Court that there has been no collusion;

(iv) the information about arrangements for the support of any children of the marriage required by the *Divorce Act*;

(v) the income and financial information required by the rules in this Part;

(vi) if a divorce is sought on the basis of separation, evidence that the spouses have lived separate and apart for at least 1 year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding;

(vii) if a divorce is sought on the basis of adultery:

(A) evidence that there has been no condonation or connivance on the part of the petitioner with respect to the act or conduct complained of; and

(B) either:

(I) an affidavit of the respondent admitting adultery, in Form 15-82, with sufficient particulars to prove the adultery; or

(II) any other evidence that may satisfy the Court that the respondent has committed adultery;

(viii) if a divorce is sought on the basis of cruelty:

(A) evidence that there has been no condonation or connivance on the part of the petitioner with respect to the act or conduct complained of; and

(B) evidence that the conduct of the respondent has rendered continued cohabitation intolerable;

(ix) if no address for service of the respondent has been provided by the respondent or given in the affidavit of service, evidence to satisfy the Court of the present address of the respondent or evidence to satisfy the Court that service of the judgment on the respondent should be dispensed with;

(x) any other information necessary for the Court to grant the divorce;

(b) a draft certificate of divorce in Form 15-103 completed to the extent possible;

(c) any other document, supporting affidavit material or other evidence that may be necessary or relevant.

(2) If a petitioner does not apply for a divorce judgment in an uncontested family law proceeding based on separation, the respondent may apply for divorce judgment by serving and filing the following:

(a) an application for judgment in Form 15-76B requesting that the proceeding be determined on the basis of affidavit evidence;

(b) an affidavit of respondent in Form 15-78 that sets forth the matters mentioned in:

(i) clause (1)(a) of this rule; and

(ii) clause 15-78(b);

(c) any other document, supporting affidavit material or other evidence required pursuant to rule 15-78 and Division 10 of this Part or that may otherwise be required in the proceeding.

Uncontested parenting order

15-83 If a petitioner applies for a parenting order in an uncontested family law proceeding pursuant to the *Divorce Act* or *The Children's Law Act, 2020*, in addition to the documents, supporting affidavit materials and other evidence required to be filed pursuant to rule 15-78, the petitioner shall file the following:

(a) an affidavit of petitioner in Form 15-78 that sets forth the following, in addition to the matters mentioned in clause 15-78(b):

(i) if the petitioner is not a parent, evidence to satisfy the Court that the petitioner has a sufficient interest;

(ii) evidence of the following:

(A) the child's needs, given the child's age and stage of development, such as the child's need for stability;

(B) the nature and strength of the child's relationship with each parent, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

(C) each parent's willingness to support the development and maintenance of the child's relationship with the other parent;

(D) the history of care of the child;

(E) the child's views and preferences, by giving due weight to the child's age and maturity, unless they cannot be ascertained;

(F) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

(G) any plans for the child's care;

(H) the ability and willingness of each person with respect to whom the parenting order would apply to care for and meet the needs of the child;

(I) the ability and willingness of each person with respect to whom the parenting order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

(J) any family violence and its impact on, among other things:

(I) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child; and

(II) the appropriateness of making a parenting order that would require persons with respect to whom the parenting order would apply to cooperate on issues affecting the child;

(K) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child;

(iii) if the petition is for the appointment of a guardian of the property of a child, evidence of the ability of the proposed guardian to manage that property, the merits of the plan indicated by the proposed guardian for the care and management of the property, the personal relationship between the proposed guardian and the child, the wishes of the parents of the child and the views, if any, of the Public Guardian and Trustee;

(iv) the existence of any written agreements, parenting plans, deeds, wills or previous court orders applicable to the order sought, with copies exhibited;

(b) if the petition is for the appointment of a guardian of the property of a child who is 12 years of age or older, the consent of the child;

(c) any other document, supporting affidavit material or other evidence that may be necessary or relevant.

Uncontested spousal support order

15-84 If a petitioner applies for a spousal support order in an uncontested family law proceeding pursuant to the *Divorce Act* or *The Family Maintenance Act, 1997*, in addition to the documents, supporting affidavit materials and other evidence required to be filed pursuant to rule 15-78, the petitioner shall file the following:

(a) an affidavit of petitioner in Form 15-78 that sets forth, in addition to the matters mentioned in clause 15-78(b), evidence of the condition, means, needs and other circumstances of each spouse, including:

(i) the age and the physical and mental health of the spouses;

(ii) the length of time the spouses cohabited and the measures available for the dependent spouse to become financially independent and the length of time and cost involved to enable the dependent spouse to take those measures;

(iii) the legal obligation of either spouse to provide maintenance for any other person;

(iv) the income and financial information required by the rules in this Part; and

(v) the existence of any written agreement or previous Court order applicable to the order sought, with a copy exhibited;

(b) any other document, supporting affidavit material or other evidence that may be necessary or relevant.

Uncontested child support order

15-85 If a petitioner applies for a child support order in an uncontested family law proceeding pursuant to the *Divorce Act* or *The Family Maintenance Act, 1997*, in addition to the documents, supporting affidavit materials and other evidence required to be filed pursuant to rule 15-78, the petitioner shall file an affidavit of petitioner in Form 15-78 that sets forth, in addition to the matters mentioned in clause 15-78(b):

(a) all income information of the parties required by the guidelines; or

(b) the following:

(i) an agreement as to child support in Form 15-48B:

(A) endorsed by each party either by the party's lawyer, or personally with an affidavit of execution;

(B) agreeing on the amount to be paid for child support; and

(C) agreeing on the annual income of each party who would be required to provide income information under the guidelines;

(ii) as attachments to the agreement mentioned in subclause (i), but subject to subclause (iii):

(A) a copy of the most recent personal income tax return filed by the payor, together with a copy of the payor's most recent income tax notice of assessment or reassessment; and

(B) a copy of the most recent personal income tax return filed by the recipient, together with a copy of the recipient's most recent income tax notice of assessment or reassessment, if:

(I) there is to be shared or split parenting time;

(II) special or extraordinary expenses are to be shared; or

(III) the amount of child support agreed to differs from the table amount set out in the guidelines;

(iii) if any of the documents mentioned in subclause (ii) are not available, an affidavit explaining why the documents are not available and providing evidence to satisfy the Court that:

(A) the amount of income of the payor or the recipient, as the case may be, is reasonable; and

(B) the amount of child support agreed to by the parties is reasonable.

Information Note

On an application for divorce, if there are children of the marriage, the Court has a duty pursuant to clause 11(1)(b) of the *Divorce Act* to satisfy itself that reasonable arrangements have been made for the support of each child of the marriage. Rules 15-85 and 15-101 identify the basic financial information that the Court will require to satisfy the reasonable arrangements requirement. However, on occasion, the Court may require additional financial information to be filed.

Uncontested property judgment

15-86 If a petitioner applies for a judgment in an uncontested family law proceeding pursuant to *The Family Property Act*, in addition to the documents, supporting affidavit materials and other evidence required to be filed pursuant to rule 15-78, the petitioner shall file the following:

(a) an affidavit of petitioner in Form 15-78 that sets forth, in addition to the matters mentioned in clause 15-78(b), a property schedule identifying:

(i) each item of family property available for division between the parties;

(ii) the value of each item of family property and the date of that value, if not the date of application;

(iii) the value of any exemption being claimed with respect to any item of family property;

(iv) the debts and liabilities of the parties and the value of each debt or liability to be taken into consideration in the division of family property;

(v) the distribution proposed for each item of family property, including exemptions and liabilities of each party and their allocation in the division of family property;

(vi) if applicable, any income tax consequences or other anticipated disposition costs associated with the proposed distribution of family property; and

(vii) the source from which the indicated value is derived if the value of an item of family property, an exemption claimed or a debt or liability to be allocated is not agreed to, and including copies of any statements and any appraisal reports that support the indicated value;

(b) any other document, supporting affidavit material or other evidence that may be necessary or relevant.

Judicial separation or nullity of marriage

15-87 If a petitioner applies for judgment in an uncontested family law proceeding for judicial separation or nullity of marriage, in addition to the documents, supporting affidavit materials and other evidence required to be filed pursuant to rule 15-78, the petitioner shall file the following:

(a) an affidavit of petitioner in Form 15-78 that sets forth the following, in addition to the matters mentioned in clause 15-78(b):

(i) if no certificate of marriage or certificate of registration of marriage has been filed, sufficient particulars to prove the marriage;

(ii) if the petition is for judicial separation, evidence that:

(A) there has not been collusion, condonation or connivance within the meaning of section 104 of *The Queen's Bench Act, 1998*; and

(B) either spouse has been ordinarily resident in Saskatchewan for at least 1 year immediately preceding the commencement of the action;

(iii) if the petition is for nullity of marriage, evidence that there has been no collusion or connivance between the parties within the meaning of section 11 of the *Divorce Act*;

(b) any other document, supporting affidavit material or other evidence that may be necessary or relevant.

Subdivision 2
Summary Judgment Proceedings

Information Note

A party applying for summary judgment pursuant to this subdivision must be aware that this subdivision does not apply to an uncontested proceeding. Summary judgment applications are, by definition, contested proceedings.

Application for summary judgment in a contested matter

15-88 A party may apply, with supporting affidavit material or other evidence, for summary judgment on all or some of the issues raised in the family law proceeding at any time after the close of the pleadings but before the time and place for trial have been set.

Evidence

15-89(1) Rules 15-82 to 15-87 relating to evidence required for judgments pursuant to the *Divorce Act*, *The Children's Law Act, 2020*, *The Family Maintenance Act, 1997* and *The Family Property Act*, and for judicial separation or nullity of marriage, in uncontested family law proceedings and uncontested divorce proceedings apply with equal force to the provisions of this subdivision and summary judgment proceedings.

(2) A response to an application for summary judgment must not rely solely on the allegations or denials in the respondent's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue that requires a trial.

(3) The Court may draw an adverse inference from the failure of a party to cross-examine on an affidavit or to file responding or rebuttal evidence.

(4) An affidavit for use on an application for summary judgment may be made on information and belief as provided in rule 13-30, but, on the hearing of the application, the Court may draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts.

Briefs required

15-90(1) On an application for summary judgment, each party shall serve on each of the other parties to the application and file a brief consisting of a concise argument stating the facts and law relied on by the party.

(2) The applicant's brief must be served and filed at least 10 days before the hearing.

(3) The respondent's brief must be served and filed at least 5 days before the hearing.

(4) If the applicant wishes to reply to any new matters raised in the respondent's brief, the applicant must serve and file a reply brief at least 3 days before the hearing.

New. Gaz. 23 Sep. 2022.

Disposition of application

15-91(1) The Court may grant summary judgment if:

(a) the Court is satisfied that there is no genuine issue requiring a trial with respect to the outstanding issues raised in the pleadings; or

(b) the parties agree to have all or part of the claim determined by summary judgment and the Court is satisfied that it is appropriate to grant summary judgment.

(2) In determining pursuant to clause (1)(a) whether there is a genuine issue requiring a trial, the Court:

(a) shall consider the evidence submitted by the parties; and

(b) may exercise any of the following powers for the purpose, unless it is in the interest of justice for those powers to be exercised only at a trial:

(i) weighing the evidence;

(ii) evaluating the credibility of a deponent;

(iii) drawing any reasonable inference from the evidence.

(3) For the purposes of exercising any of the powers set out in subrule (2), a judge may order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

(4) If the Court is satisfied that the only genuine issue is a question of law, the Court may determine the question and grant judgment accordingly.

(5) If the Court is satisfied that the only genuine issue is the amount to which the applicant is entitled, the Court may order a trial of that issue or grant judgment with a reference or an accounting to determine the amount.

(6) If the Court is satisfied there are one or more genuine issues requiring a trial, the Court may nevertheless grant summary judgment with respect to any matters or issues the Court decides can and should be decided without further evidence.

(7) If an application for summary judgment is dismissed, in whole or in part, a judge may order the action, or the issues in the action not disposed of by summary judgment, to proceed to a pre-trial conference in the ordinary way.

(8) If an application for summary judgment is dismissed, the applicant may not make a further application pursuant to rule 15-88 without leave of the Court.

Directions and terms

15-92(1) If an application for summary judgment is dismissed, in whole or in part, and the action is ordered to proceed to trial, in whole or in part, a judge may give any directions or impose any terms that the judge considers just, including an order:

(a) specifying what facts are not in dispute;

(b) defining the issues to be tried;

(c) establishing a time line for pre-trial procedures;

(d) regulating disclosure or production of documents or other evidence;

(e) permitting evidence on the application for summary judgment to stand as evidence at trial;

(f) specifying that the evidence of a witness be given in whole or in part by affidavit;

(g) specifying that any experts engaged by or on behalf of the parties in relation to the action meet on a without prejudice basis in order to identify the issues on which the experts agree and the issues on which they do not agree, to attempt to clarify and resolve any issues that are the subject of disagreement and to prepare a joint statement setting out the areas of agreement and any areas of disagreement and the reasons for them if, in the opinion of the Court:

(i) the cost or time savings or other benefits that may be achieved from the meeting are proportionate to the amounts at stake and the importance of the issues involved in the case; and

(ii) either:

(A) there is a reasonable prospect for agreement on some or all of the issues; or

(B) the rationale for opposing expert opinions is unknown and clarification on areas of disagreement would assist the parties or the Court;

(h) respecting the preservation of property owned by either party; and

(i) directing security for costs.

(2) At the trial, any facts specified pursuant to clause (1)(a) are deemed to be established unless the trial judge orders otherwise to prevent injustice.

(3) In deciding whether to make an order pursuant to clause (1)(f), the fact that an adverse party may reasonably require the attendance of the deponent at trial for cross-examination is a relevant consideration.

(4) If an order is made pursuant to clause (1)(g), each party shall pay that party's own costs.

(5) If a party fails to comply with an order pursuant to clause (1)(i) for security for costs, the Court on application of the opposite party may dismiss the action, strike out the answer or make any other order that the Court considers just.

(6) If, on an application pursuant to subrule (5), the answer is struck out, the respondent is deemed to be noted for default.

Stay of enforcement

15-93 If it appears that the enforcement of a summary judgment ought to be stayed pending the determination of any other issue raised in the matter, the Court may make that order on those terms that the Court considers just.

Proceedings after summary judgment against a party

15-94 A petitioner or a respondent who obtains summary judgment may proceed against the same party for any other remedy.

DIVISION 7
Trials

Evidence at trial

15-95(1) The Court may try an issue on oral or affidavit evidence or otherwise as the judge conducting the trial may direct.

(2) The Court may admit a document purporting to be proof of marriage in a foreign jurisdiction as proof of the marriage, in the absence of evidence to the contrary.

(3) No party to a family law proceeding shall refuse to answer a question tending to show that the party has committed adultery if the adultery has been pleaded and is relevant to the proceeding.

(4) Each financial statement, property statement and response to a notice to answer written questions may be used by the other party as though it were a transcript of questioning, and all or any part of the statement or response may be admitted in evidence, saving all just exceptions.

(5) Reports ordered by the Court and contained on the Court file are evidence at trial, unless the trial judge orders otherwise.

(6) Subject to subrule (5), at trial, a party wanting to rely on any document contained on the Court file must seek to have the document admitted as evidence.

DIVISION 8
Costs

Costs

15-96(1) Costs are in the discretion of the Court and, except as modified by this rule, the following provisions apply to the costs of a family law proceeding:

(a) Part 4, Division 4;

(b) Part 11.

(2) Subject to subrule (3), there is a presumption that a successful party is entitled to the costs of a family law proceeding or a step in a family law proceeding.

(3) A successful party who has behaved unreasonably or has acted in bad faith during a family law proceeding may be:

(a) deprived of all or part of the party's own costs; or

(b) ordered to pay all or part of the unsuccessful party's costs.

(4) In deciding whether a party has behaved reasonably or unreasonably or in bad faith, the Court may examine:

(a) the party's behaviour in relation to the nature, importance and urgency of the issues from the time they arose;

(b) any conduct of the party that tended to lengthen unnecessarily the duration of the family law proceeding;

(c) whether any step in the family law proceeding was improper, vexatious or unnecessary;

(d) the party's denial or refusal to admit anything that should have been admitted;

(e) whether the party made an offer to settle;

(f) the reasonableness of any offer to settle the party made; and

(g) any offer to settle that the party withdrew or failed to accept.

(5) If success in a family law proceeding or a step in a family law proceeding is divided, the Court may apportion costs as appropriate.

(6) The Court may order costs against a party if the party:

(a) fails to appear at a step in the family law proceeding;

(b) appears but is not properly prepared to deal with the issues at that step; or

(c) appears but has failed to make the disclosure required before that step.

(7) After each step in the family law proceeding, the judge who dealt with that step may, in a summary manner:

(a) decide who, if anyone, is entitled to costs;

(b) set the amount of costs; and

(c) specify a date by which payment must be made.

(8) Offers to settle referred to in this rule do not include offers made during a pre-trial conference but do include:

(a) offers made before the commencement of a family law proceeding; and

(b) offers made pursuant to Part 4, Division 5.

DIVISION 9
Judgments and Orders

Judgments and orders

15-97(1) Subject to subrule (4), if a petitioner claims a remedy pursuant to more than one enactment, one judgment must be issued with respect to all remedies.

(2) If a remedy is granted on a claim made pursuant to a Saskatchewan or a federal enactment, that enactment must be referred to in the judgment.

(3) Every judgment and order must set out in the heading whether it is an interim or a final judgment or order.

(4) Every order for child support must be in the form of a separate order and must include the following particulars:

(a) the name of the Saskatchewan or the federal enactment pursuant to which the order is made;

(b) the name and birth date of each child to whom the order relates;

(c) the income of any party whose income is used to determine the amount of the child support order;

(d) if the amount of child support is determined pursuant to the applicable table of the guidelines, the amount determined pursuant to that table for the number of children to whom the order relates;

(e) for a child who is 18 years of age or older, the amount determined pursuant to clause 3(2)(b) of the guidelines, if applicable;

(f) the particulars of any expense described in subsection 7(1) of the guidelines, the child to whom the expense relates, and the amount of the expense or, if that amount cannot be determined, the proportion to be paid in relation to the expense;

(g) the date on which the first payment is payable and the date of the month or other time period on which all subsequent payments are to be made.

(5) Subject to subrule (6), every order for child support made pursuant to the *Divorce Act* or *The Family Maintenance Act, 1997* must include the following clause:

The amount of child support or maintenance for a child that is payable under this order may be recalculated by the Saskatchewan Child Support Recalculation Service if eligible for recalculation and if the recalculation service determines that recalculation is permissible and appropriate pursuant to *The Family Maintenance Act, 1997* and the regulations. Either party may apply to the recalculation service at:

Saskatchewan Child Support Recalculation Service
Room 323, 3085 Albert Street
Regina, SK

If the payor fails to comply with the income disclosure requirements of the recalculation service, the payor's income may be deemed to have increased as set out in section 21.33 of *The Family Maintenance Regulations, 1998*.

(6) If the Court determines that a recalculation of the amount of child support payable under a child support order would be inappropriate, the child support order must include the following clause:

> The amount of child support in this order shall not be recalculated by the Saskatchewan Child Support Recalculation Service.

(7) An application for a judgment or order to be made by consent must be accompanied by:

(a) the consent of the lawyer of each party who is represented by a lawyer; and

(b) unless otherwise ordered by the Court, the written consent, together with an affidavit of execution of that consent, of each party who is not represented by a lawyer.

DIVISION 10
Divorce Proceedings

Application of Division

15-98 This Division applies to contested and uncontested divorce proceedings.

Written notification from central registry required

15-99 The Court shall not grant a divorce judgment:

(a) until a written notification issued from the central registry of divorce proceedings pursuant to the *Central Registry of Divorce Proceedings Regulations* made pursuant to the *Divorce Act* has been filed indicating that no other divorce proceedings are pending; or

(b) unless the Court is satisfied that there is no prior pending divorce proceeding.

Joint divorce proceeding

15-100(1) A divorce proceeding may be commenced jointly by the spouses if the facts establishing the breakdown of the marriage and the remedy claimed are not in dispute.

(2) If a divorce proceeding has been commenced jointly, the spouses shall be called co-petitioners, and the petition:

(a) must be in Form 15-100A;

(b) must be signed by the co-petitioners;

(c) must be signed and sealed by the local registrar following the signatures of the co-petitioners;

(d) need not be served on either of the co-petitioners; and

(e) need not be noted for default.

(3) A spouse who wishes to withdraw from a joint petition for divorce shall:

(a) serve and file a notice of withdrawal of joint petition in Form 15-100B; and

(b) if that spouse wishes to oppose the claim for divorce or other remedy claimed, or wishes to claim any other remedy, serve and file an answer or an answer and counter-petition at the time of serving and filing the notice of withdrawal of joint petition.

(4) If co-petitioners apply for judgment in a divorce proceeding, they shall file, and the local registrar shall place before the Court, the documents, supporting affidavit materials and other evidence required to be filed pursuant to rule 15-82, with any necessary modification.

(5) Without limiting the generality of subrule (4), if co-petitioners apply for judgment in a divorce proceeding, each co-petitioner shall file an affidavit of petitioner in Form 15-78.

Financial information if children, but no child support claimed

15-101 In a divorce proceeding in which there are children but no claim is made for child support, the parties shall produce at trial or shall exhibit to an affidavit filed in support of an application:

(a) all income information of the parties required by the guidelines; or

(b) the following:

(i) an agreement as to child support in Form 15-48B:

(A) endorsed by each party either by the party's lawyer, or personally with an affidavit of execution;

(B) agreeing on the amount to be paid for child support; and

(C) agreeing on the annual income of each party who would be required to provide income information under the guidelines;

(ii) as attachments to the agreement mentioned in subclause (i), but subject to subclause (iii):

(A) a copy of the most recent personal income tax return filed by the payor, together with a copy of the payor's most recent income tax notice of assessment or reassessment; and

(B) a copy of the most recent personal income tax return filed by the recipient, together with a copy of the recipient's most recent income tax notice of assessment or reassessment, if:

(I) there is to be shared or split parenting time;

(II) special or extraordinary expenses are to be shared; or

(III) the amount of child support agreed to differs from the table amount set out in the guidelines;

(iii) if any of the documents mentioned in subclause (ii) are not available, an affidavit explaining why the documents are not available and providing evidence to satisfy the Court that:

(A) the amount of income of the payor or the recipient, as the case may be, is reasonable; and

(B) the amount of child support agreed to by the parties is reasonable.

Information Note

On an application for divorce, if there are children of the marriage, the Court has a duty pursuant to clause 11(1)(b) of the *Divorce Act* to satisfy itself that reasonable arrangements have been made for the support of each child of the marriage. Rules 15-85 and 15-101 identify the basic financial information that the Court will require to satisfy the reasonable arrangements requirement. However, on occasion, the Court may require additional financial information to be filed.

Divorce judgment

15-102(1) A divorce judgment must be in Form 15-102.

(2) If a claim for divorce is made together with one or more other claims, the Court may:

(a) grant a divorce and direct that a divorce judgment alone be entered; and

(b) either:

(i) adjourn the hearing of the other claims; or

(ii) give judgment on the other claims.

(3) Unless the Court orders otherwise, in an uncontested divorce proceeding, the local registrar shall immediately forward to each of the parties, by ordinary mail, a copy of the judgment for divorce and for any other relief granted by the Court.

Certificate of divorce

15-103(1) A certificate of divorce, stating that a divorce dissolved the marriage of the parties as of a specified date, must be in Form 15-103.

(2) The local registrar shall issue a certificate of divorce, on request of either party, on or after the day on which the judgment granting the divorce takes effect, if:

(a) the local registrar is satisfied that no appeal, or application to extend time to appeal, has been instituted within that time or, if instituted, that it has been abandoned or dismissed; or

(b) the spouses have signed and filed with the local registrar an undertaking that no appeal from the judgment will be taken, or if any appeal has been taken, that it has been abandoned.

(3) In an uncontested divorce proceeding, the local registrar shall complete the certificate of divorce and mail a copy to each of the parties immediately on the divorce judgment taking effect.

Registration of order

15-104(1) If a parenting order, support order, variation order, interim parenting order or interim support order has been made in another province or territory of Canada pursuant to the *Divorce Act*, the registration of that order pursuant to subsection 20(3) of the *Divorce Act* must be effected by filing a certified copy of the order with the Court, at any judicial centre, with a written request that the order be registered.

(2) On receipt of a certified copy of an order pursuant to subrule (1), the local registrar shall:

(a) enter particulars of the order in the usual manner; and

(b) endorse on the order the following certificate:

This order has been registered in the _____
(*name of court*)

at the Judicial Centre of _____,

Saskatchewan, this _____ day of _____, 2 _____,

pursuant to section 20 of the *Divorce Act* (Canada).

(3) On application, the Court may set aside the registration of a support order, or an extraprovincial order or a foreign order as defined in section 16 of *The Inter-jurisdictional Support Orders Act*, on the basis that the order:

(a) was obtained by fraud or error; or

(b) is not a support order.

Transfer of divorce proceeding

15-105(1) If a divorce proceeding is transferred pursuant to section 6 of the *Divorce Act* to the Court from a court outside Saskatchewan, the transfer must be effected by filing certified copies of all pleadings and orders made in the proceeding.

(2) On the filing of the materials mentioned in subrule (1), the divorce proceeding must then be carried forward as if it had been commenced pursuant to these rules.

Notice of appeal

15-106 The appellant shall file a copy of the notice of appeal from a judgment granting a divorce, or a copy of an order extending the time for appeal, with the local registrar in the office in which the judgment granting the divorce was entered.

Local registrar to forward forms

15-107 The local registrar in the office in which the divorce proceeding was commenced shall:

(a) complete the forms required by the *Central Registry of Divorce Proceedings Regulations* pursuant to the *Divorce Act*; and

(b) forward the forms to the central registry of divorce proceedings in Ottawa as required by those regulations.

DIVISION 11
Inter-jurisdictional Support Orders

Application of Division

15-108(1) This Division applies to family law proceedings pursuant to:

(a) *The Inter-jurisdictional Support Orders Act*;

(b) sections 18 to 19.1 of the *Divorce Act*.

(2) In this Division, **"provisional order"** means:

(a) a provisional order as defined in section 2 of *The Inter-jurisdictional Support Orders Act*; or

(b) in the case of a proceeding brought pursuant to the *Divorce Act*, a provisional order within the meaning of subsection 19(14) of the *Divorce Act*.

(3) Subject to subrule (2), for the purposes of this Division, the terms used in this Division have the same meanings as in *The Inter-jurisdictional Support Orders Act* and the *Divorce Act*.

Registration of extraprovincial orders

15-109(1) On receipt of a certified copy of an order made by a court outside Saskatchewan, together with a written request to register the order in Saskatchewan pursuant to *The Inter-jurisdictional Support Orders Act* or pursuant to section 19.1 of the *Divorce Act*, the local registrar shall:

(a) enter particulars of the order in the usual manner; and

(b) endorse on the order the following certificate:

This order has been registered in the _____
(*name of court*)

at the Judicial Centre of _____,

Saskatchewan, this _____ day of _____ , 2 _____,

pursuant to [*choose one*: section 17 of *The Inter-jurisdictional Support Orders Act or* section 19.1 of the *Divorce Act* (Canada)].

(2) If a party who receives notice of a registration pursuant to section 17 of *The Inter-jurisdictional Support Orders Act* or section 19.1 of the *Divorce Act* wishes to dispute the registration, the party shall serve and file a notice of application in Form 15-109 within 30 days after receiving notice of the registration.

Outgoing applications – *Divorce Act* – request for conversion

15-110(1) A respondent who:

(a) is a former spouse within the meaning of the *Divorce Act*;

(b) resides outside Saskatchewan but within Canada; and

(c) has been served with an application pursuant to the *Divorce Act* for child support or for variation of child support;

may, within 40 days after being served with the application mentioned in clause (c), file with the Court a request in Form 15-110 to convert the application to an inter-jurisdictional application pursuant to section 18.1 of the *Divorce Act*.

(2) If the respondent files a request for conversion in accordance with subrule (1) and the Court determines that the application mentioned in clause (1)(c) should be converted to an inter-jurisdictional application pursuant to section 18.1 of the *Divorce Act*, the local registrar shall provide copies of the following to the designated authority for Saskatchewan:

(a) the application mentioned in clause (1)(c), together with all supporting materials filed, including any financial statement filed;

(b) any support order to be varied;

(c) the respondent's request for conversion;

(d) the court order granting the respondent's request for conversion.

(3) If the Court, on its own motion, determines that an application mentioned in clause (1)(c) should be converted to an inter-jurisdictional application pursuant to section 18.1 of the *Divorce Act*, the local registrar shall provide a copy of the court order:

(a) to both parties; and

(b) to the designated authority for Saskatchewan.

(4) If the respondent files a request for conversion in accordance with subrule (1) and the Court determines that the application mentioned in clause (1)(c) should not be converted to an inter-jurisdictional application pursuant to section 18.1 of the *Divorce Act*, the local registrar shall provide to the respondent a copy of the court order denying the request.

Outgoing applications – provisional orders

15-111(1) If a requesting province or territory requires a provisional order of support or a provisional order of variation of support, an applicant who commences an application for a provisional order for support, or for a provisional order of variation of support, shall do so by filing the documents required by:

(a) these rules for support or for variation of support;

(b) section 7 or 27 of *The Inter-jurisdictional Support Orders Act*; or

(c) section 19 of the *Divorce Act*.

(2) An application made pursuant to this rule shall be made without notice.

(3) An application for a provisional order of support, or for a provisional order of variation of support, must be accompanied by a statement giving any available information respecting the identification, location, income and assets of the other party.

(4) The local registrar shall endorse a certificate at the end of a provisional order of support, or a provisional order of variation of support, stating the order is made provisionally and has no legal effect until confirmed.

(5) If the Court makes a provisional order of support, or a provisional order of variation of support, pursuant to *The Inter-jurisdictional Support Orders Act* or the *Divorce Act*, the local registrar, the applicant or the applicant's lawyer shall send to the designated authority for Saskatchewan:

(a) the documents filed in accordance with subrules (1) and (3);

(b) a certified, sworn or affirmed document setting out or summarizing the evidence given to the Court;

(c) 3 certified copies of the provisional order of support or the provisional order of variation of support; and

(d) a copy of the enactments pursuant to which the alleged support obligation arises.

(6) If a court outside Saskatchewan remits any matter back to the Court for further evidence:

(a) the designated authority for Saskatchewan shall give to the applicant a notice of taking of further evidence in Form 15-111; and

(b) the matter may be brought before any judge of the Court.

(7) If the Court receives further evidence pursuant to this rule, the local registrar shall forward to the court outside Saskatchewan that remitted the matter back:

(a) a certified, sworn or affirmed document setting out or summarizing the evidence; and

(b) any recommendations that the Court considers appropriate.

Incoming applications – *Divorce Act*

15-112(1) If the designated authority for Saskatchewan receives a request from a designated authority for another province or territory of Canada to convert an application for variation of a support order brought pursuant to clause 17(1)(a) of the *Divorce Act* to an inter-jurisdictional application pursuant to section 18.1 of that Act, the designated authority for Saskatchewan shall forward to the Court any documents received from the designated authority on behalf of the applicant.

(2) The designated authority for Saskatchewan shall serve the respondent and the designated authority for the sending province or territory with notice of the hearing in the manner determined by the designated authority for Saskatchewan.

(3) The application shall include a copy of the divorce judgment and any and all corollary relief orders made.

(4) The local registrar shall forward a copy of the decision to the designated authority for Saskatchewan.

(5) An order for support or for variation of support shall:

(a) be prepared by the designated authority for Saskatchewan; and

(b) include the particulars required by subrule 15-97(4) if the order is for child support or for variation of child support.

(6) As soon as is practicable, the designated authority for Saskatchewan shall provide a copy of the issued order to:

(a) the respondent; and

(b) the designated authority for the province or territory in which the applicant resides.

DIVISION 12
The International Child Abduction Act, 1996

Definitions for Division

15-113 In this Division:

"Act" means *The International Child Abduction Act, 1996*; (« *Loi* »)

"applicant" includes any person, institution or other body claiming that a child has been removed or retained in breach of custody rights; (« *requérant* »)

"Central Authority" means a Central Authority designated pursuant to article 6 of the convention; (« *Autorité centrale* »)

"contracting state" means a state signatory to the convention; (« *État contractant* »)

"convention" means the Convention on the Civil Aspects of International Child Abduction, a copy of which is set out in the Schedule to the Act. (« *convention* »)

Application of Division

15-114(1) This Division applies to family law proceedings pursuant to the Act and the convention.

(2) Unless provided otherwise by the Act or the convention or by the rules in this Division, the provisions of this Part and the general procedure and practice of the Court must be adopted and applied, with any necessary modification, in a family law proceeding pursuant to this Division.

Application for relief

15-115 An applicant who wishes to apply for relief pursuant to the Act shall do so by notice of application (family law proceeding) in Form 15-32.

Affidavit in support

15-116 An affidavit in support of an application made pursuant to this Division must set out:

(a) information concerning the identity of the applicant, the child and the person or persons alleged to have removed or retained the child;

(b) the date of birth of the child;

(c) evidence of where the child was habitually resident before coming to Saskatchewan;

(d) the circumstances under which the child came to be in Saskatchewan;

(e) the grounds on which the applicant's claim for return of the child is based, including the circumstances of the alleged wrongful removal or retention of the child; and

(f) all available information relating to the whereabouts of the child and the identity of the person in whose care the child is presumed to be.

Evidence

15-117 The following must also be filed in support of an application made pursuant to this Division:

(a) a certified copy of any relevant judicial decision or agreement pertaining to parenting of the child;

(b) when any person is arguing that the law of another jurisdiction applies or is relevant to the application, an affidavit of law from the Central Authority or other person approved by the Court;

(c) any other relevant fact or document.

Service of application

15-118(1) A party bringing an application pursuant to this Division shall serve the application and supporting documents on:

(a) the person in Saskatchewan who has the child; and

(b) the Central Authority for Saskatchewan.

(2) Service must be effected in accordance with the provisions of this Part relating to the service of a notice of application commencing a family law proceeding claiming a substantive remedy, except that the party shall file the application and supporting material, with proof of service, at least 7 days before the date set for hearing the application.

Applications to be dealt with expeditiously

15-119 An application pursuant to this Division must be dealt with expeditiously and, except in extraordinary circumstances, a decision must be rendered within 6 weeks after the commencement of an application.

Powers of presiding judge

15-120 If the presiding judge considers it necessary, the presiding judge may:

(a) establish timelines for the filing and service of materials and set a date for the hearing of an application pursuant to this Division;

(b) permit any party to an application pursuant to this Division to appear by way of telephone or video conference where appropriate;

(c) adjourn the proceeding and order a voice of the child (VOC) report;

(d) initiate direct communication with either or both the Central Authority and a judge of the contracting state where the child habitually resides, subject to the following:

(i) the communication is to be limited to logistical issues and the exchange of information;

(ii) the parties to the application shall be entitled to be present during the communication and to participate as directed by the judge;

(iii) a record of the communication shall be kept by the local registrar;

(iv) the record of communication is to be confirmed in writing by both judges or by the judge and the individual representing the Central Authority of the contracting state.

Costs

15-121(1) Costs are in the discretion of the Court, and except as modified by this rule, the following provisions apply, with any necessary modification, to the costs of an application pursuant to this Division:

(a) Part 4, Division 4;

(b) Part 11;

(c) rule 15-96.

(2) The Court may order costs including, but not limited to:

(a) costs incurred for legal representation;

(b) costs incurred to locate the child; and

(c) costs associated with the return of the child.

DIVISION 13
Child and Family Services Proceedings

Information Note

The Court of Queen's Bench has concurrent jurisdiction with the Provincial Court in child and family services proceedings, except in the judicial centres of Prince Albert, Saskatoon and Regina where the Court of Queen's Bench, Family Law Division has exclusive jurisdiction over child and family services proceedings.

The procedures and forms used in child and family services proceedings are set out in *The Child and Family Services Act* and *The Child and Family Services Regulations*. If a child and family services proceeding involves an Indigenous child, *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada) should also be consulted.

The Court has published two practice directives:

(a) Family Practice Directive #4, which identifies additional forms to be used in child and family services proceedings; and

(b) Family Practice Directive #5, which sets out the process in a summary hearing.

Definitions for Division

15-122 In this Division:

"Act" means *The Child and Family Services Act*; (« *Loi* »)

"applicant" means a person who applies for an order under the Act, including the following, as defined in the Act:

(a) the minister:

(b) the ministry or any officer, employee or agent of the ministry;

(c) a director;

(d) a peace officer;

(e) an agency or any officer or employee of an agency; (« *requérant* »)

"federal Act" means *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada); (« *Loi fédérale* »)

"regulations" means *The Child and Family Services Regulations*. (« *règlement* »)

Application of Division

15-123(1) This Division applies to child and family services proceedings brought pursuant to the Act and the regulations in the Court of Queen's Bench.

(2) Child and family services proceedings are governed by the Act, the regulations, the federal Act, applicable Family Practice Directives and the rules in this Division.

(3) Unless provided otherwise by the Act, the regulations, the federal Act, a Family Practice Directive or the rules in this Division, the general procedure and practice of the Court may be adopted and applied, with any necessary modification, in child and family services proceedings.

Disclosure and confidentiality

15-124(1) Proceedings under the Act and the regulations are subject to the disclosure and confidentiality provisions of section 74 of the Act.

(2) Subject to subrules (3) and (4), the disclosure of information provisions of Part 5 of these rules do not apply to child and family services proceedings.

(3) Before granting a party access to the Court record in a child and family services proceeding under rule 15-5, the local registrar may require the party to sign an undertaking acknowledging that the party is aware of the confidentiality provisions of section 74 of the Act.

(4) The confidentiality provisions of rule 15-6 apply to child and family services proceedings, with any necessary modification, having regard to the confidentiality provisions set out in section 74 of the Act.

Application for relief

15-125(1) Division 2 of this Part does not apply to child and family services proceedings under the Act and the regulations.

(2) Proceedings under the Act and the regulations, including for a warrant for access to a child, a protective intervention order, a protection hearing, or for an order to vary or terminate an order granted under section 37 of the Act, shall be commenced in accordance with the Act and the regulations, having regard to the federal Act.

(3) In addition to the forms prescribed by the regulations for commencing a child and family services proceeding, the applicant shall complete and file the forms required by the Family Practice Directives.

Opposing a child and family services proceeding

15-126(1) A parent or other person served with notice of a child and family services proceeding, including an application for a warrant for access to a child, a protective intervention order, a protection hearing, or for an order to vary or terminate an order granted under section 37 of the Act, may oppose the relief sought by making oral or written submissions to the Court.

(2) The opposition of a parent or other person served with notice of a child and family services proceeding to the relief sought shall be endorsed on the Court record by the Court.

Evidence

15-127(1) In accordance with sections 28 to 32 of the Act, the Court may admit evidence, including hearsay evidence, by affidavit or any other means authorized by these rules for the taking of evidence.

(2) The following provisions do not apply to affidavits filed in child and family services proceedings:

(a) rules 6-9 and 6-12;

(b) Part 13, Division 4, Subdivision 2;

(c) rule 15-46.

(3) Except as otherwise provided in this Division, the Act or the regulations, affidavits filed in child and family services proceedings must comply with rule 15-128.

Amended. Gaz. 23 Sep. 2022.

Affidavit in support

15-128 An affidavit in support of an application for a warrant for access to a child, a protective intervention order, a protection hearing, or for an order to vary or terminate an order granted under section 37 of the Act must set out:

(a) the grounds on which the applicant's claim for relief is based, including the alleged circumstances for which the applicant has reasonable or probable grounds to believe that the child may be in need of protection;

(b) information as to the best interests of the child, having regard to section 4 of the Act and section 9 of the federal Act;

(c) if the application concerns an Indigenous child, information as to the best interests of the child having regard to section 10 of the federal Act; and

(d) any other relevant fact, document or other information that the applicant deems appropriate having regard to the relief sought.

Notice

15-129 Notice of proceedings under the Act and the regulations, including for a warrant for access to a child, a protective intervention order, a protection hearing, or for an order to vary or terminate an order granted under section 37 of the Act, shall be given in accordance with section 77 of the Act, with proof of service in accordance with section 12 of the regulations.

Application for substituted service or to dispense with service

15-130 On an application for a protection hearing, an application pursuant to subsection 77(7) of the Act to direct substituted or other service on a person, or to dispense with service on a person, may be made without notice in Form 15-34 supported by an affidavit setting out the circumstances for which the order is sought.

Request for status as a person of sufficient interest

15-131(1) On an application for a protection hearing, an oral or written request may be made to the Court for an order designating a person of sufficient interest to the child in accordance with section 23 of the Act.

(2) If a request is made pursuant to subrule (1), the Court may give further and other directions with respect to the request, including that an application be brought on notice to:

(a) each parent of the child; and

(b) the ministry.

Referral for appointment of a lawyer for child

15-132 On an application for a protection hearing, the Court may, on its own initiative or on a request being made by a person, direct a referral to the Public Guardian and Trustee for the appointment of a lawyer for the child, in accordance with section 6.3 of *The Public Guardian and Trustee Act*.

Summary hearing

15-133(1) On an application for a protection hearing, the Court, with the consent of the parties, may direct the application to a summary hearing in accordance with Family Practice Directive No. 5 if the order sought is:

(a) an order placing a child with a parent under supervision pursuant to section 37 of the Act; or

(b) an order temporarily placing a child in the care of the minister for a period of 6 months or less pursuant to section 37 of the Act.

(2) If the parties do not consent to the matter mentioned in subrule (1) proceeding to a summary hearing, the Court may direct the matter to a pre-trial conference.

(3) The following provisions do not apply to summary hearings under this rule:

(a) Part 7, Division 2;

(b) Division 6, Subdivision 2 of this Part.

Pre-trial conferences in child and family services proceedings

15-134(1) Division 5, Subdivision 2 of this Part applies to pre-trial conferences in child and family services proceedings, with the following modifications:

(a) on the oral or written request of the parties, and if the Court is satisfied that the matter is ready to proceed, the Court may direct a pre-trial conference in a child and family services proceeding;

(b) the pre-trial conference in a child and family services proceeding shall be set by a judge in chambers in consultation with the parties and on dates and times fixed by the Court;

(c) before the pre-trial conference, the parties shall exchange and file their pre-trial briefs prepared in accordance with Family Practice Directive No. 4.

(2) Rules 4-21.1 to 4-21.92 do not apply to child and family services proceedings.

Orders

15-135 If the Court grants an order in a child and family services proceeding, unless the Court otherwise directs, it is the applicant's responsibility:

(a) to prepare the order, having regard to the form of orders set out in the regulations; and

(b) to have the order signed and entered by the Court.

Appeal from Provincial Court

15-136 An appeal pursuant to section 63 of the Act from an order made by the Provincial Court shall be brought in accordance with Part 14 of these rules, with any necessary modification required by the Act, the regulations or the federal Act.

Costs

15-137(1) Subject to the Act, the regulations and the federal Act, costs are in the discretion of the Court.

(2) The following provisions apply, with any necessary modification, to the costs of an application pursuant to this Division:

(a) Part 4, Division 4;

(b) Part 11;

(c) rule 15-96.

DIVISION 14
The Enforcement of Maintenance Orders Act, 1997

Enforcement of judgments and orders

15-138(1) A judgment or order for support or maintenance granted in a family law proceeding may be enforced in accordance with *The Enforcement of Maintenance Orders Act, 1997*.

(2) If a receiver is appointed pursuant to *The Enforcement of Maintenance Orders Act, 1997*, the terms and conditions of the appointment must be set out in the order appointing the receiver.

(3) A warrant of committal for contempt of Court pursuant to *The Enforcement of Maintenance Orders Act, 1997* may be in Form 15-138.

PART 16: PROBATE AND ADMINISTRATION OF ESTATES

What this Part is about: This Part applies to proceedings for probate and administration of estates.

Unless a different procedure is specified in this Part or in an enactment, the other Parts of the Rules also apply to proceedings for probate and administration of estates.

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Part 16: Probate and Administration of Estates

PART 16: PROBATE AND ADMINISTRATION OF ESTATES

DIVISION 1
Application and Interpretation

Application

16-1(1) This Part applies to proceedings for probate and administration of estates.

(2) Unless an enactment or this Part provide otherwise, the general procedure and practice of the Court must be adopted and applied, with any necessary modification, in a proceeding pursuant to this Part.

Interpretation of Part

16-2 In this Part unless the context otherwise requires:

"grant" includes letters probate, letters of administration, letters of administration with will annexed, letters of administration *de bonis non* or other documents of a similar nature and the resealing of any of these; (« *lettres successorales* »)

"property guardian" means a property guardian as defined in *The Adult Guardianship and Co-decision-making Act*; (« *tuteur aux biens* »)

"trust company" means a trust corporation as defined in *The Trust and Loan Corporations Act, 1997*. (« *société de fiducie* »)

DIVISION 2
Court Administration

Notice of application

16-3 The notice of application for grant required by section 5 of *The Administration of Estates Act* must be made in duplicate in Form 16-3.

Registrar to be notified

16-4(1) If an applicant renounces after notice of application for grant has been given to the registrar or any alteration is subsequently made in the grant, the local registrar shall immediately notify the registrar.

(2) If an application for grant is dismissed, abandoned or for any other reason not proceeded with, the local registrar shall notify the registrar.

Scope of registrar's certificate

16-5(1) Every certificate issued by the registrar pursuant to section 6 of *The Administration of Estates Act* must be in Form 16-3.

(2) On receipt of a certificate or true copy of a certificate received from the office of the registrar, by facsimile or other means, the local registrar shall promptly lay the application for grant before the Court.

(3) If the registrar returns a copy of the certificate to the local registrar, the registrar shall file and retain the original certificate.

Signing and sealing of grant

16-6(1) A grant must:

(a) be signed by the local registrar and sealed with the seal of the Court; and

(b) bear the date of issue of the grant.

(2) A copy of the will, if any, annexed to a grant must be authenticated by the signature of the local registrar and the seal of the Court.

(3) A grant must be in Form 16-6A, 16-6B, 16-6C or 16-6D, as may be applicable.

(4) On issue of a grant, the local registrar shall give notice to the registrar in Form 16-6E.

Information Note

Form 16-6A is the form for Letters Probate.

Form 16-6B is the form for Letters of Administration with Will Annexed.

Form 16-6C is the form for Letters of Administration.

Form 16-6D is the form for Double Probate.

Certificate re no minor

16-7 On the request of the applicant, if the local registrar is satisfied that no minor is interested in the estate of the deceased, the local registrar shall provide the applicant with a certificate in Form 16-7 together with the grant.

Local registrar's duties re: wills

16-8(1) A will of a living person deposited for safekeeping in the office of a local registrar must be enclosed in an envelope and sealed, and the envelope must be endorsed with the following notice:

"This envelope contains the last will and testament (or as the case may be) dated (state date of paper enclosed) of (name and address of testator) and (names and addresses of executors) are named as the executors".

(2) The person depositing the will shall sign the endorsement required by subrule (1).

(3) The local registrar shall:

(a) number each envelope; and

(b) record:

(i) the names of the testator and the person depositing the will; and

(ii) the number of the envelope and the date of deposit.

(4) The local registrar in whose office a will is deposited shall:

(a) issue a certificate in Form 16-8;

(b) deliver a copy of the certificate to the person depositing the will; and

(c) immediately send the original certificate to the registrar.

(5) A will deposited for safekeeping must not be removed from the office of a local registrar except by the testator in person or, after the testator's death, by the executor or by order of the Court, and the seals of the covering envelope must not be broken while it is in the custody of the local registrar without leave.

(6) When a will deposited for safekeeping is removed from the office of the local registrar:

(a) the local registrar shall notify the registrar of the name and address of the person by whom it was removed; and

(b) the registrar shall record the fact.

Information on registrar's certificate

16-9 Each certificate in Form 16-3 must show whether the deceased person has deposited for safekeeping any will or other testamentary paper in the office of a local registrar.

DIVISION 3
Proofs Leading to Grant

Subdivision 1
Proof of Death

Proof of death

16-10(1) Proof of death of the deceased must be filed with an application for grant.

(2) If an application states that an executor or other person entitled to a grant is deceased, proof of death of that person must be filed with the application for grant.

(3) For the purposes of this rule, proof of death includes a statement of death or certificate of death issued by:

(a) a funeral director;

(b) a coroner; or

(c) the Registrar of Vital Statistics.

(4) If the applicant is unable to file direct evidence of death and there is evidence from which death may be presumed, the Court may give leave to swear to or affirm the death, on application without notice or on any notice that the Court may require.

New. Gaz. 13 Nov. 2015.

Subdivision 2
Applications for Grant in General

Applications for grant in general

16-11 An application for grant must be in Form 16-11A, 16-11B, 16-11C, 16-28B, 16-29A or 16-34A.

Information Note

Form 16-11A is the Form for an Application for a Grant of Letters Probate.

Form 16-11B is the Form for an Application for a Grant of Administration with Will Annexed.

Form 16-11C is the Form for an Application for a Grant of Administration.

Form 16-28B is the Form for an Application for a Grant of Administration as Attorney for Next-of-Kin.

Form 16-29A is the Form for an Application for Administration *de Bonis Non*.

Form 16-34A is the Form for an Application for Resealing a Foreign Grant.

General requirements for applications

16-12(1) An application for grant must set out:

(a) the name and address and relationship to the deceased of every person entitled to share in the deceased's estate;

(b) the age and marital status of the deceased at death; and

(c) that the applicant is of the full age of 18 years, is a trust company or is the Public Guardian and Trustee.

(2) If a minor or a dependent adult is interested in the estate or may have a claim under *The Dependants' Relief Act, 1996* or *The Family Property Act*:

(a) the application for grant must state that fact; and

(b) there must be filed with the application for grant a notice to the Public Guardian and Trustee or the property guardian, as the case may be, in duplicate, in Form 16-12.

(3) If the deceased is not survived by a minor or dependent adult, the application for grant must state that fact.

Signature on application and affidavit of applicant

16-13(1) An application for grant must:

(a) be signed by the applicant; and

(b) be verified and exhibited to the affidavit of the applicant.

(2) The affidavit of the applicant must be in Form 16-13A, 16-13B, 16-28C, 16-29B or 16-34B.

Information Note

Form 16-13A is the Form for the Affidavit of an Applicant for Probate or Administration with Will Annexed.

Form 16-13B is the Form for the Affidavit of an Applicant for Administration.

Form 16-28C is the Form for the Affidavit of an Applicant for Administration as Attorney for Next-of-Kin.

Form 16-29B is the Form for the Affidavit of an Applicant for Administration *de Bonis Non*.

Form 16-34B is the Form for the Affidavit of an Applicant for Resealing a Foreign Grant.

Statement of property required

16-14(1) An applicant shall file with an application for grant a statement in Form 16-14 showing all the real and personal property of the deceased at the time of death.

(2) The statement mentioned in subrule (1) must be verified by and exhibited to the affidavit of the applicant.

(3) On an application for a second grant in Saskatchewan, the statement mentioned in subrule (1) must be limited to the property then unadministered or to be administered in Saskatchewan at its value at the time of the application for grant.

Information Note

There is a rebuttable presumption that property, other than land or other real property, held by a deceased with an adult child in joint names with right of survivorship is held in a resulting trust for the benefit of the beneficiaries of the deceased's estate. (See *Pecore v Pecore*, 2007 SCC 17, [2007] 1 SCR 795.)

Amended. Gaz. 13 Nov. 2015; 24 Jly. 2020.

Special circumstances

16-15 An application for grant pursuant to section 17 of *The Administration of Estates Act* must set out the insolvency of the estate or other special circumstances on which the applicant relies.

Subdivision 3
Grants of Probate

Grants of probate

16-16(1) If the deceased died leaving a will, the persons entitled to apply for a grant of probate or administration with will annexed are the following in order of priority:

(a) executors;

(b) residuary beneficiaries in trust;

(c) residuary beneficiaries for life;

(d) ultimate residuary beneficiaries, or, if the residue is not wholly disposed of, the person entitled on an intestacy;

(e) executors and administrators of persons mentioned in clause (d);

(f) beneficiaries and creditors;

(g) contingent residuary beneficiaries, contingent beneficiaries and persons having no interest in the estate who would have been entitled to a grant if the deceased had died wholly intestate;

(h) the official administrator.

(2) If an executor does not apply for a grant, the executor shall renounce in Form 16-16.

(3) If a will appoints an executor whose right to act is subordinate to another, the executor shall state in the application for grant that the executor having a prior right has renounced, has died or as the case may be.

Information Note

See also section 10 of *The Administration of Estates Act* regarding the priority to apply for letters probate or letters of administration with the will annexed.

Grant re testamentary document

16-17 A testamentary document with respect to which a grant is sought must be exhibited to the affidavit of the applicant.

Application for grant of probate

16-18(1) An application for grant of probate must show:

(a) that at the time of the execution of the will the deceased:

(i) was of the age of majority;

(ii) was or had been married, or was or had been cohabiting in a spousal relationship;

(iii) was a member of the armed forces in actual service; or

(iv) was a sailor or mariner at sea or in the course of a voyage;

(b) either that:

(i) the deceased, after execution of the will, did not marry or cohabit in a spousal relationship continuously for 2 years; or

(ii) the will was made in contemplation of marriage or in contemplation of entering into a spousal relationship;

(c) that neither witness is a beneficiary named in the will or a spouse of a beneficiary, or if so, that:

(i) the will is sufficiently attested without the attestation of any of those persons; or

(ii) no attestation is necessary; and

(d) that after making the will and before the death of the testator:

(i) the marriage of the testator was not terminated by a final judgment of divorce, nor was it found to be void or declared a nullity by a court in a proceeding in which the testator was a party; and

(ii) the testator, and his or her spouse, who are not legally married, did not cease to cohabit in a spousal relationship for at least 24 months.

(2) The applicant for grant of probate shall give particulars of the following if:

(a) after the making of a will and before the death of the testator:

(i) the marriage of the testator is terminated by a final judgment of divorce;

(ii) the marriage of the testator is found to be void or is declared a nullity by a court in a proceeding to which the testator was a party; or

(iii) the testator, and his or her spouse, who are not legally married, ceased to cohabit in a spousal relationship for at least 24 months; and

(b) it is alleged that, pursuant to section 19 of *The Wills Act, 1996*:

(i) a devise, bequest, appointment or power is revoked; or

(ii) the will is to be construed as if the spouse had predeceased the testator.

(3) Unless the Court orders otherwise, the applicant shall file proof of service of the application for grant and the allegations on the person named in the will as a spouse.

Proof of execution of will

16-19(1) The execution of a will must be proved by one of the attesting witnesses by an affidavit in Form 16-19A that is sworn or affirmed by the witness at any time after the will is signed.

(2) If no affidavit can be obtained from an attesting witness, the execution of the will may be established by affidavit of the handwriting and signatures of the witnesses or of the testator, or both, or by affidavit from any other person present at the execution of the will.

(3) If a will that is deposited in the local registrar's office is accompanied by the affidavit of execution of each attesting witness and by a statutory declaration of the lawyer by whom the will was drawn setting forth that the will was executed on a specified date, the affidavits of execution are proof of the execution of the will in the absence of evidence to the contrary.

(4) If a will was signed by some person other than the testator, in the presence of, and by the direction of the testator, an affidavit setting forth the full circumstances under which the will was so signed must be filed in support of the application for grant.

(5) Proof of execution of a holograph will must be in Form 16-19B.

(6) If a will contains any alteration, interlineation, erasures or omissions, an affidavit of plight and condition in Form 16-19C must be filed in support of the application for grant.

(7) In every case, the Court may:

(a) require additional or other proof of execution of a will; or

(b) require proof in solemn form.

Other documents to be produced

16-20 If a will contains a reference to, or if an applicant has any knowledge of, any paper, deed, memorandum or other document that raises a question whether it forms a constituent part of the will, that paper, deed, memorandum or other document must:

(a) be produced; and

(b) if not produced, its non-production must be accounted for.

Proof of lost will

16-21 If a grant is sought of a will that is lost or destroyed, proof of the loss or destruction must be made as the Court may require.

Translation of a will

16-22(1) If a grant is sought of a will written in a language other than English or French, the following must be filed with the will:

(a) an English or French translation of the will; and

(b) an affidavit in Form 16-22 verifying the translation.

(2) A copy of the English or French translation together with a copy of the will in its original form must be attached to the grant.

Subdivision 4
Grants of Administration

Grants of administration

16-23 An application for grant of administration with will annexed must also comply with the applicable rules relating to grants of probate.

Information Note

The rules relating to grants of probate are found in Subdivision 3.

Priority of right to apply

16-24 If the deceased died intestate, the persons entitled to apply for a grant of administration are the following in order of priority:

(a) spouse of the deceased;

(b) children of the deceased;

(c) grandchildren and other issue of the deceased taking per stirpes;

(d) father or mother of the deceased;

(e) siblings of the deceased;

(f) nephews and nieces of the deceased;

(g) next of kin of the deceased of equal degree of consanguinity;

(h) creditors of the deceased;

(i) the official administrator.

Information Note

See also section 11 of *The Administration of Estates Act* regarding the priority to apply for letters of administration in intestacy.

Application for administration

16-25(1) The application for administration must show that the applicant:

(a) has a beneficial interest in the property to be administered;

(b) is attorney for a person having a beneficial interest;

(c) is a person the Court may consider fit in the circumstances of section 17 of *The Administration of Estates Act*; or

(d) is the official administrator.

(2) Unless the Court orders otherwise, on the making of a grant of administration:

(a) live interests will be preferred to dead interests; and

(b) in the case of conflicting claims, the nearer interest will be preferred to the more remote.

(3) Unless the Court orders otherwise, a grant of administration must be made to a person resident within Saskatchewan in preference to a person having equal right residing outside Saskatchewan.

Conditions for grant of administration

16-26(1) No grant of administration must be made to any person unless all persons with a prior or equal right have been cleared off by renunciation or by an order of the Court.

(2) If it is sought to join, with a person entitled to a grant, a person not equally or next entitled, all persons with a prior or equal right must be cleared off by renunciation.

(3) A renunciation must be in Form 16-16 or 16-26.

(4) If persons with a prior or equal right have not renounced or if there is a contest over the right to administration, an application must be made to the Court by notice of application, served on those having a prior or equal right:

(a) showing the applicant's claim; and

(b) stating that in the event of non-attendance of the person served an order will be made that the judge considers proper.

(5) On the return date of the application, the judge may hear the persons present and summarily determine to whom the grant shall be made.

Information Note

See Division 1 of Part 6 for the general application procedure.

Grant to no more than 3 persons

16-27 Unless the Court orders otherwise, a grant of administration must not be made to more than 3 persons.

Power of attorney for application

16-28(1) If a person is entitled to apply for a grant of administration and has not renounced but desires a grant to be made to an attorney on his or her behalf, that person shall execute a power of attorney in Form 16-28A appointing an attorney to apply for and obtain a grant.

(2) The application for grant by an attorney made pursuant to this rule must be in Form 16-28B.

(3) An affidavit verifying an application for grant made pursuant to this rule must be in Form 16-28C.

Grant of letters of administration *de bonis non*

16-29(1) If the administrator of an estate has died leaving part of the estate unadministered, an application may be made for a grant of letters of administration *de bonis non* to complete the administration of the estate.

(2) If the executor of an estate has died intestate and there are no other executors to carry on the administration of the estate or if the administrator with the will annexed of an estate has died leaving part of the estate unadministered, an application may be made for a grant of administration *de bonis non* with the will annexed to complete the administration of the estate.

(3) An application for administration *de bonis non* must be made by filing an application in Form 16-29A.

(4) An affidavit verifying an application for grant made pursuant to this rule must be in Form 16-29B.

(5) The original grant must be surrendered with the application or, if the original has been lost, a court certified copy of the grant must be filed.

Affidavit re search for will

16-30 On an application for grant of administration, it must be shown by affidavit that a search for a will has been made in all places where the deceased usually kept papers and had depositories.

Bond

16-31(1) The bond to be given on an application for grant of administration and the necessary affidavits of justification and execution must be in Form 16-31, or any other form that the Court may approve.

(2) Subject to subrule (3), unless the Court orders otherwise, the bond to be given must be in a penalty of double the value of the estate calculated in accordance with subsection 21(3) of *The Administration of Estates Act*.

(3) If the bond is given by a guarantee company, a bond equal to the value of the estate calculated in accordance with subsection 21(3) of *The Administration of Estates Act* may be accepted.

(4) The sureties to a bond, other than a guarantee company, shall make an affidavit of justification, and the net value of the property of which the several sureties swear or affirm they are possessed must in the aggregate equal the amount of the penalty of the bond.

(5) In estimating the value of the property of which any surety to a bond claims to possess, the value must be determined after deducting:

(a) debts owed;

(b) the value of statutory exemptions from seizure; and

(c) any other sums for which that person is already surety.

(6) The Court may:

(a) require a surety to a bond to file a sworn or affirmed statement of assets and liabilities or to appear before the Court for examination; and

(b) after the statement is filed or examination held, refuse or accept that surety.

(7) A surety, other than a guarantee company, must not be accepted unless that surety:

(a) is permanently resident in Saskatchewan; and

(b) has real or personal property in Saskatchewan exigible under execution to the amount of the bond.

(8) None of the following must be surety to a bond:

(a) a lawyer;

(b) a registrar, a local registrar or an employee of their respective offices.

Request to dispense with bond

16-32(1) If it is sought to dispense with a bond, there must be included in the affidavit information revealing that:

(a) the creditors and all persons who are or may be beneficially interested in the estate consent in writing; or

(b) there are no debts for which the estate is or may be liable and:

(i) the value of the estate does not exceed $25,000;

(ii) the administrator is the sole beneficiary; or

(iii) all persons who are or may be beneficially interested in the estate consent in writing.

(2) If a minor is or may be beneficially interested in the estate, the written consent of the Public Guardian and Trustee must be filed.

(3) If a dependent adult is or may be beneficially interested in the estate, the written consent of the Public Guardian and Trustee or property guardian, as the case may be, must be filed.

Subdivision 5
International Wills

International wills

16-33 A will must be regarded as valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made and executed according to the rules contained in the Convention Providing a Uniform Law on The Form of an International Will as set out in the schedule to *The Wills Act, 1996*.

Subdivision 6
Resealing Foreign Grants

Resealing foreign grants

16-34(1) An application to reseal a foreign grant must:

(a) be in Form 16-34A;

(b) be verified by affidavit in Form 16-34B; and

(c) comply with the rules relating to probate or administration, as the case may be.

(2) If the will affects immovable property, including real property and a leasehold or other interest in land in Saskatchewan, it must be shown that the manner of making, the validity and effect of the will is in accordance with the law of Saskatchewan.

(3) The manner of making the will may be proved for the purposes of subrule (2) by an affidavit or a certified copy of the affidavit filed in the original application.

(4) The original foreign grant, or a copy of that foreign grant certified by the issuing court, must be filed with an application for grant pursuant to this rule.

(5) An additional copy of the foreign grant certified by the issuing court, or a notarial copy of that foreign grant, must be exhibited to the affidavit of the applicant.

Subdivision 7
Ancillary Grants

Ancillary grants

16-35(1) An application for an ancillary grant must comply with all the rules relating to probate or administration, as the case may be.

(2) A certified copy of the original foreign grant must be exhibited to the affidavit of the applicant.

(3) If the application is for a grant ancillary to a grant issued by a court named in section 38 of *The Administration of Estates Act*, the affidavit of the applicant must show why the foreign grant ought not to be resealed.

Subdivision 8
Applications for Small Estates or in Special Circumstances

Applications for small estates or in special circumstances

16-36(1) An application for an order pursuant to section 9 of *The Administration of Estates Act* may be made without notice or on any notice that the Court may require.

(2) The application and the supporting affidavit must be in Form 16-36.

(3) All receipts for payment or other dispositions of the property of the deceased made by the person named in the order of the Court must be filed in the office of the local registrar of the judicial centre at which the order was made.

DIVISION 4
Contentious Business

Subdivision 1
Intervention

Intervention

16-37(1) Any person interested in an estate may intervene by filing:

(a) a notice in Form 16-37; and

(b) an affidavit showing the nature of the interest.

(2) An intervenor shall serve a copy of the notice and affidavit on the applicant for a grant and on other persons affected by the intervention, as soon as is reasonably possible after filing.

(3) Notice of all subsequent proceedings must be served on the intervenor and on any other persons affected by the intervention.

Subdivision 2
Caveats

Caveats

16-38(1) At any time before a grant is issued or resealed, any person intending to oppose it may file a caveat with the registrar or a local registrar at any judicial centre.

(2) The caveat must:

(a) be in Form 16-38; and

(b) set out the nature of the caveator's claim and the grounds on which a grant is opposed.

Filing caveat

16-39(1) On the filing of a caveat, the local registrar shall notify the registrar by telephone of that fact.

(2) If it appears from the records of the registrar that an application for grant has been filed and a certificate in Form 16-3 has been sent, the registrar shall notify the local registrar by telephone of that fact.

(3) All notices given pursuant to this rule must be confirmed by letter enclosing a copy of the caveat.

Withdrawal of caveat

16-40(1) A caveat may be withdrawn or vacated by order.

(2) A caveat lapses after the expiration of 3 months after the day on which it is filed unless it is extended by an order, which may be made without notice.

Issuance of grant

16-41 A grant must not issue until the caveat has lapsed, is withdrawn or is vacated by order.

Notification of applicant and caveator

16-42 If an application for grant is made and a caveat has been filed or is filed at any time before a grant is issued, the local registrar shall notify the applicant and the caveator.

Application for resolution

16-43 The applicant or the caveator may, after receiving notice from the local registrar, apply by notice of application to the Court at the judicial centre at which the application for grant is filed for a resolution of the matter in issue.

Information Note

See Division 1 of Part 6 for the general application procedure.

Subdivision 3
Compelling Production of Will

Compelling production of will

16-44 If an executor fails to file a will for probate within 60 days after the death of the testator, any person interested in the estate may serve a notice of application on the executor to:

(a) appear and produce the will; and

(b) either:

(i) accept or refuse the probate and execution of the will; or

(ii) show cause why letters of administration with will annexed should not be granted to the applicant or any other person who may be deemed to be legally entitled to that grant and willing to accept it.

Compelling production of testamentary document

16-45 If it is suggested that a testamentary document is in the custody of any person, a notice of application may be served on that person to:

(a) appear;

(b) either:

(i) produce the document and show cause why the document should not be deposited with the local registrar; or

(ii) state under oath or on affirmation that no such document is or has been in his or her custody or control; and

(c) provide any information in his or her possession as to the location of the document.

Information Note

See Division 1 of Part 6 for the general application procedure.

Subdivision 4
Applications

Applications to prove will in solemn form

16-46 A person who is or may be interested in the estate of a deceased person may give notice for the will to be proven in solemn form.

Revoking a grant

16-47(1) A person interested in an estate who seeks to revoke a grant may apply at the judicial centre at which the grant was made, or to which the estate has been transferred, by notice of application to be served on the personal representative to show cause why the grant should not be revoked.

(2) On an application pursuant to subrule (1), a judge may order that pending the disposition of the application nothing be done under the grant without leave.

DIVISION 5
Accounts

Subdivision 1
Advertising for Creditors

Advertising for creditors

16-48 Notice to creditors pursuant to the provisions of section 32 of *The Administration of Estates Act* must be in Form 16-48.

Subdivision 2
Passing of Accounts

Passing of accounts

16-49(1) A personal representative may file accounts with the local registrar at any time for passing.

(2) Subject to rule 16-57, a personal representative shall file the accounts for passing:

(a) when the administration of the estate has been completed;

(b) within 2 years after the issue of the grant unless that time is extended by order;

(c) when the personal representative desires to be discharged; or

(d) when the personal representative desires to substitute security other than that furnished when the grant was made, or by subsequent order, or to have the amount of the security reduced.

Failure to file

16-50(1) If a personal representative fails to file the accounts as required by rule 16-49, any person interested in the estate may serve the personal representative with notice requiring filing of the accounts within 30 days.

(2) If a personal representative does not file accounts after being served with notice, the person serving the notice may apply by notice of application for an order compelling filing of the accounts.

(3) A person interested in the estate may at any time apply for an order requiring a personal representative to file accounts if it is alleged by affidavit that a personal representative is negligent or is wasting the estate.

(4) On the return of a notice of application, the Court may order that the personal representative file the accounts within a time to be stated.

Information Note

See Division 1 of Part 6 for the general application procedure.

Powers of Court if administration of trust accounts not rendered

16-51 On application by a creditor or beneficiary interested in an estate or trust to require a personal representative or trustee to administer or execute an estate or trust, if no accounts or insufficient accounts have been rendered, the Court may, in addition to its other powers:

(a) order that:

(i) the application stand over for a certain time; and

(ii) the executors, administrators or trustees render to the applicant a proper statement of their accounts, with a warning that if this is not done, they may be made to pay the costs of the proceedings; and

(b) if necessary to prevent proceedings by other creditors or by persons beneficially interested, make the usual judgment or order for administration, with a condition that no proceedings are to be taken under the judgment or order without leave of the Court.

Verification of accounts

16-52(1) The accounts to be filed must:

(a) be verified by the affidavit of each personal representative in Form 16-52;

(b) contain a true and perfect inventory of the property of the deceased; and

(c) include:

(i) an account showing the assets and liabilities of the deceased at date of death;

(ii) an account showing all receipts and disbursements, including the amount distributed to each beneficiary;

(iii) an account of all property remaining on hand and all liabilities remaining unpaid;

(iv) a statement setting out the manner in which it is proposed to distribute the remaining assets, including the proposed amount of compensation claimed by the personal representative, the amount of lawyers' fees and the amounts proposed to be distributed to each beneficiary of the estate in full discharge; and

(v) any further accounts or information that may be necessary or that may be required by the examining officer or the Court.

(2) If principal and income are dealt with separately by the will, or if more than one trust is created by the will, the account must be divided to show separately:

(a) each trust; and

(b) receipts and disbursements with respect to principal and income respecting each trust.

(3) If a personal representative has invested or reinvested trust funds, the account must show separately particulars of:

(a) all moneys invested or reinvested from time to time;

(b) all moneys received by way of repayment or realizations on those investments in whole or in part; and

(c) the balance and particulars of all investments remaining on hand.

Examination of accounts

16-53(1) Within 30 days after filing the accounts, the personal representative shall apply without notice for an appointment for the examination of the accounts.

(2) On an application pursuant to this rule, the Court may:

(a) designate the local registrar or other person as the examining officer;

(b) give directions respecting the persons to be served with the appointment, the accounts and the affidavit verifying the accounts; and

(c) authorize the examining officer to fix a time and place for the examination of the accounts in accordance with Form 16-53 and to adjourn the examination from time to time.

Amended. Gaz. 3 Mar. 2017.

Referring disputed account to Court

16-54(1) Any person interested in the estate and appearing at the examination of the accounts may require the examining officer to refer any disputed item to the Court for a ruling and direction.

(2) On the examining officer's own initiative, the examining officer may refer any item in doubt or dispute to the Court for a ruling and direction.

(3) If a doubtful or disputed item is referred to the Court, the Court may fix a time and place for the hearing and determination of the matter in doubt or dispute and give directions as to the service of notice of that hearing.

Certificate of examining officer

16-55 On completion of the examination, the examining officer shall file a certificate in Form 16-55.

Order for passing of accounts

16-56(1) On the filing of the certificate mentioned in rule 16-55, the personal representative or any other person interested in the estate may apply for an order allowing and passing the accounts.

(2) Unless the Court orders otherwise, notice of an application pursuant to this rule must be served on all persons served with the appointment.

Subdivision 3
Discharge Without Passing Accounts

Discharge without passing accounts

16-57(1) A personal representative desiring to be discharged without passing accounts may apply without notice on filing:

(a) a release or a consent from each beneficiary; and

(b) proof that all debts are paid.

(2) The remedy sought on an application pursuant to this rule may include the fixing of compensation to the personal representative, costs, cancellation of security or other business necessary to wind up the estate.

DIVISION 6
Fees and Costs

Fees and costs

16-58(1) In this Rule and in Schedule I "C" of the Tariff:

"core services" means:

(a) receiving instructions from the personal representative;

(b) reviewing a will or *The Intestate Succession Act, 1996* with the personal representative;

(c) providing a copy of the will to each beneficiary;

(d) obtaining details about the deceased and the deceased's property and debts;

(e) attending to obtaining the grant from the Court;

(f) advertising for creditors;

(g) transmitting all estate assets to the personal representative and subsequently transferring them to each beneficiary;

(h) dealing with the Public Guardian and Trustee if required;

(i) generally advising the personal representative about estate matters;

(j) dealing with ordinary attendances and correspondence for the core services; (« *services essentiels* »)

"non-core services or other services" includes but is not limited to the following:

(a) with respect to estate administration, doing all or any of the following:

(i) determining who will apply for a grant in intestate estates;

(ii) locating beneficiaries;

(iii) locating assets in an intestacy or testate situation;

(iv) obtaining a bond for the purposes of Rule 16-31;

(v) determining whether joint property is an estate asset;

(vi) making court applications, including for matters such as substantial compliance, interpretation or contentious business;

(vii) dealing with distribution issues respecting personal belongings;

(viii) paying bills and dealing with creditors;

(ix) dealing with property in joint tenancy;

(x) dealing with life insurance claims where the beneficiary is not the estate;

(xi) dealing with pensions and investments where the beneficiary is not the estate;

(xii) handling receipts and disbursements through trust account;

(xiii) dealing with property management;

(xiv) acting for the estate in the sale of estate property;

(xv) gathering information and dealing with accounts respecting terminal income tax returns, trust returns and goods and services taxes;

(xvi) attending to preparation or filing of tax returns;

(xvii) obtaining tax clearance certificates;

(xviii) corresponding with and attending on beneficiaries;

(xix) preparing personal representative accounts for approval by the beneficiaries;

(xx) preparing and obtaining beneficiaries' releases;

(b) with respect to passing of accounts, doing all or any of the following:

(i) preparing an affidavit of the personal representative;

(ii) applying without notice for an appointment for examination of accounts and serving the appointment;

(iii) appearing on appointment date to speak to the application;

(iv) attending before the examining officer;

(v) setting and serving the appointment date;

(vi) appearing on the appointment date to speak to matters in dispute and to the order allowing and passing accounts;

(vii) issuing and serving the order allowing and passing accounts. (« *services non essentiels ou autres services* »)

(2) The lawyer retained by the personal representative is entitled to payment for providing core services to the personal representative or the estate as follows:

(a) as a percentage as set out in Schedule I "C" of the tariff; or

(b) any lesser fee than that provided for in clause (a) that is agreed to by the lawyer and the personal representative.

(3) Before being retained by the personal representative, the lawyer shall advise the personal representative in writing of the lawyer's method of billing for non-core services or other services to the personal representative or the estate, based on one or more of the following:

(a) a percentage of the value of the estate;

(b) at a specified hourly rate;

(c) as a fixed fee;

(d) a combination of the methods set out in clauses (a), (b) and (c).

(4) When presented with the lawyer's bill of fees and disbursements, a personal representative may proceed to have the account assessed pursuant to *The Legal Profession Act, 1990* and these rules.

PART 17: DEFINITIONS

What this Part is about: This Part contains definitions of words and phrases that appear in the rules. It also contains certain interpretive rules.

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Part 17: Definitions

PART 17: DEFINITIONS

Definitions

17-1 In these rules:

"action" means:

(a) a civil proceeding commenced by statement of claim or in any other manner authorized or required by *The Queen's Bench Act, 1998* or these rules; or

(b) any other original proceeding between a plaintiff and a defendant; (« *action* »)

"address for service" means a proper place in Canada where pleadings, notices, orders and other documents and written communications in a proceeding may be left for or mailed to a party and that complies with rule 17-2; (« *adresse aux fins de signification* »)

"administration *de bonis non*" means an administration granted for the purpose of settling the remainder of an estate that was not administered by the former executor or administrator; (« *lettres d'administration complétives* »)

"age of majority" means 18 years of age; (« *majorité* »)

"appraisal report" means a written report that contains a description, assessment or valuation of real or personal property and that may contain pictures, photographs or diagrams or statements of fact or opinion; (« *rapport d'évaluation* »)

"assessment officer" means:

(a) the local registrar for the judicial centre in which the proceeding was commenced;

(b) if the proceeding has been transferred to another judicial centre, the local registrar for that judicial centre; or

(c) if the sheriff is also the local registrar at a judicial centre, a local registrar from another judicial centre; (« *liquidateur des dépens* »)

"Attorney General for Saskatchewan" means the Minister of Justice and Attorney General for Saskatchewan; (« *procureur général de la Saskatchewa*n »)

"Chief Justice" means the Chief Justice of the Queen's Bench mentioned in subsection 4(1) of *The Queen's Bench Act, 1998*; (« *juge en chef* »)

"claim" means a claim respecting a matter in which a plaintiff, originating applicant, plaintiff-by-counterclaim, third party plaintiff or petitioner seeks a remedy; (« *demande en justice* » ou « *prétention* »)

"client" includes:

(a) a former client;

(b) any person to whom a lawyer has rendered an account for lawyer's charges; and

(c) a person who is or may be liable to pay or who has paid lawyer's charges or part of them; (« *client* »)

"commencement document" means:

(a) a statement of claim;

(b) an originating application;

(c) a counterclaim;

(d) a third party claim; or

(e) a document commencing a family law proceeding pursuant to Part 15;

and includes an amended commencement document; (« *document introductif* »)

"Court" means the Court of Queen's Bench for Saskatchewan acting by a judge except when the context refers to the Court as an institution; (« *Cour* »)

"defendant" means a person who is served, or is entitled to be served, with a statement of claim or other process; (« *défendeur* »)

"deliver" means:

(a) to serve and file a document; or

(b) if the document is issued, to issue and serve the document; (« *délivrer* »)

"dependent adult" means:

(a) an adult defined in *The Adult Guardianship and Co-decision-making Act*; or

(b) a dependent adult defined in clause 2(l)(c.l) of *The Public Guardian and Trustee Act*; (« *adulte à charge* »)

"document" includes information recorded or stored by means of any device, including an audio recording, video recording, computer disc, film, photograph, chart, graph, map, plan, survey, book of account or machine readable information; (« *document* »)

"duly qualified medical practitioner" means a person registered pursuant to *The Medical Profession Act, 1981*, other than a person registered pursuant to section 42.1 of that Act, whose registration is not under suspension; (« *médecin dûment qualifié* »)

"enactment" means an Act, a regulation, an Act of the Parliament of Canada, a regulation made pursuant to an Act of the Parliament of Canada or any portion of them, but does not include these rules; (« *texte* »)

"expert" means a person who is proposed to give expert opinion evidence; (« expert »)

"family law proceeding" means a family law proceeding defined in *The Queen's Bench Act, 1998*; (« *instance en matière familiale* »)

"fax" means a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunication system; (« *télécopieur* »)

"file" means:

(a) to present to the local registrar the correct commencement document, pleading, affidavit or other document; and

(b) to obtain an acknowledgment by the local registrar that the commencement document, pleading, affidavit or other document presented pursuant to clause (a) is part of the Court file; (« *déposer* »)

"Form" means a Form as set out in the Schedule of Forms to these rules; (« *formule* »)

"guarantee company" means a guarantee company as defined in *The Guarantee Companies Securities Act*; (« *société de cautionnement* »)

"interlocutory application" means an application that is made within an existing action or originating application; (« *requête interlocutoire* »)

"judge" means a judge of the Court and includes a supernumerary judge of the Court; (« *juge* »)

"judgment" means a judgment of the Court and includes a decree; (« *jugement* »)

"judgment creditor" means a person who has a judgment or order requiring a person who is the subject of the judgment or order or part of it to pay money; (« *créancier judiciaire* »)

"judgment debtor" means a person who is the subject of a judgment or order or part of it requiring the person to pay money; (« *débiteur judiciaire* »)

"judicial centre" means a judicial centre continued or established pursuant to section 21 of *The Queen's Bench Act, 1998*; (« *centre judiciaire* »)

"land" means real property; (« *bien-fonds* »)

"lawyer" means a person entitled to practise law in Saskatchewan; (« *avocat* »)

"liquidated demand" means:

(a) a claim for a specific sum payable under an express or implied contract for the payment of money, including interest, not being in the nature of a penalty or unliquidated damages, if the amount of money claimed can be determined by:

(i) the terms of the contract;

(ii) calculation only; or

(iii) taking an account between the plaintiff and the defendant; or

(b) a claim for a specific sum of money, whether or not in the nature of a penalty or damages, recoverable pursuant to an enactment that contains an express provision that the sum that is the subject of the claim may be recovered as a liquidated demand or as liquidated damages;(« *demande de somme déterminée* »)

"litigation guardian" includes a reference in any enactment to a "guardian *ad litem*" or "next friend"; (« *tuteur à l'instance* »)

"local registrar" means a local registrar of the Court appointed pursuant to section 3 of *The Court Officials Act, 1984*, and includes a deputy local registrar; (« *registraire local* »)

"minor" means a person under 18 years of age; (« *mineur* »)

"official administrator" means the Public Guardian and Trustee; (« *administrateur officiel* »)

"official court reporter" means a person appointed pursuant to clause 3(2)(h) of *The Court Officials Act, 1984*; (« *sténographe judiciaire officiel* »)

"order" means an order of the Court; (« *ordonnance* »)

"partnership" means a partnership to which *The Partnership Act* applies; (« *société de personnes* »)

"party" includes every person who is served, or is entitled to be served, with notice of any action or matter, even if the person is not named in the record; (« *partie* »)

"person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person; (« *personne* »)

"personal representative" includes an executor and an administrator; (« *représentant personnel* »)

"plaintiff" means a person who is named as plaintiff in a statement of claim; (« *demandeur* »)

"pleading" includes a petition, a summons and the statement in writing of:

(a) the claim or demand of:

(i) a plaintiff against a defendant;

(ii) a defendant against a third party;

(iii) a third party against a subsequent party; or

(iv) a subsequent party against any other subsequent party;

(b) a defence or counterclaim of a defendant, third party or subsequent party to a claim or demand mentioned in clause (a);

(c) a reply to a defence or counterclaim mentioned in clause (b); and

(d) a rejoinder to a reply mentioned in clause (c); (« *plaidoirie* »)

"procedural order" means an order relating to practice or procedure pursuant to rule 1-5 or any other rule respecting practice or procedure; (« *ordonnance procédurale* »)

"professional report" means a report purporting to be signed by a physician, chiropractor, dentist, psychologist, physical therapist or occupational therapist authorized pursuant to a statute to practise in any part of Canada; (« *rapport d'un professionnel* »)

"property" includes real and personal property; (« *bien* »)

"Public Guardian and Trustee" means the Public Guardian and Trustee of Saskatchewan continued pursuant to *The Public Guardian and Trustee Act*; (« *curateur public* »)

"receiver" includes a manager appointed by, or pursuant to, an order; (« *séquestre* »)

"registrar" means the registrar of the Court; (« *registraire* »)

"remedy" means relief or a remedy described or referred to in subrule 1-4(1); (« *réparation* »)

"style of cause" means the names of the parties and the capacity in which a party sues or is sued, if it is in a representative capacity; (« *intitulé de l'instance* »)

"Tariff" means the Tariff of Costs to these rules; (« *tarif* »)

"third party defendant" means the person named as defendant in a third party claim; (« *tiers défendeur* »)

"third party plaintiff" means:

(a) a defendant who files a third party claim against another person; or

(b) any third party defendant who files a third party claim against another person; (« *tiers demandeur* »)

"trustee" means a person who is the trustee of a trust, regardless of how that person is appointed, and includes, unless an enactment or these rules provide otherwise:

(a) an executor or administrator;

(b) a property guardian;

(c) the guardian of the property of a child as defined in *The Children's Law Act, 2020*; and

(d) a person named as a trustee in a will but who died before the testator. (« *fiduciaire* »)

Amended. Gaz. 15 Jly. 2016; Amended. Gaz. 2 Sep. 2016; Amended. Gaz. 2 Jly. 2021.

Requirements for stating address for service

17-2(1) If a party is represented by a lawyer, the party's address for service is the office of that lawyer in Canada, and that address for service:

(a) must include the name, physical address, mailing address, email address and telephone number of the legal firm, and the name of the lawyer in charge of the file; and

(b) may include the fax number, if any, of the legal firm.

(2) If a party is an individual not represented by a lawyer, the party's address for service:

(a) must include the party's full name, residential address and telephone number; and

(b) subject to subrule (3), may include the fax number or email address, if any, of the party.

(3) A party's address for service must include an email address if the party's address for service is located outside Saskatchewan.

New. Gaz. 15 Jly. 2016.

Reference aids

17-3 The following are not part of these rules, but are inserted for convenience of reference only:

(a) tables of contents;

(b) headings, including rule headings;

(c) information notes;

(d) any other informational guides.

New. Gaz. 2 Jly. 2021.

Application of *The Legislation Act*

17-4 Unless a contrary intention appears in these rules or these rules expressly provide otherwise, *The Legislation Act* applies to these rules.

Amended. Gaz. 2 Jly. 2021.

Information Note

In addition to the words and expressions defined in this Part, the rules contain definitions of words and expressions that apply only to specific Parts, Divisions, Subdivisions or rules. The following is a list of definitions found elsewhere in the rules:

Part 15	
15-1	"corollary relief proceeding" "Divorce Act" "divorce proceeding" "document commencing a family law proceeding" "family law proceeding" "financial statement" "guidelines" "parenting assessment" "property claim" "property statement" "support" "trial" "vary" or "variation"
15-71	"binding pre-trial conference"
15-74	"uncontested family law proceeding"
15-108	"provisional order"
15-113	"Act" "applicant" "Central Authority" "contracting state" "convention"
15-122	"Act" "applicant" "federal Act" "regulations"

Amended. Gaz. 15 Jly. 2016; Amended. Gaz. 2 Sep. 2016; Amended. Gaz. 3 Mar. 2017; Amended. Gaz. 27 Apr. 2018; Amended. Gaz. 2 Jly. 2021.

PART 18: TRANSITIONAL RULES AND COMING INTO FORCE

What this Part is about: This Part contains rules to facilitate the transition from the previous rules to the new rules.

This Part also sets out the coming into force date for the new rules.

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Part 18: Transitional Rules And Coming Into Force

PART 18: TRANSITIONAL RULES AND COMING INTO FORCE

Interpretation of Part

18-1 In this Part:

"existing proceeding" means a court proceeding commenced but not concluded under the former rules; (« *instance en cours* »)

"former rules" means *The Queen's Bench Rules* in effect immediately before these rules come into force. (« *anciennes règles* »)

New rules apply to existing proceedings

18-2(1) Except as otherwise provided in an enactment, by this Part or by an order pursuant to rule 18-3, these rules apply to every existing proceeding.

(2) Every order or judgment made pursuant to the former rules and everything done in the course of an existing proceeding is to be considered to have been done pursuant to these rules and has the same effect pursuant to these rules as it had pursuant to the former rules.

Resolution of difficulty or doubt

18-3 If there is doubt about the application or operation of these rules to an existing proceeding or if any difficulty, injustice or impossibility arises as a result of this Part, a party may apply to the Court for directions or an order, or the Court may make an order, with respect to any matter it considers appropriate in the circumstances, including:

(a) suspending the operation of any rule and substituting one or more former rules, with or without modification, for particular purposes or proceedings or any aspect of them; or

(b) modifying the application or operation of these rules in particular circumstances or for particular purposes.

Repeal

18-4 The former rules are repealed.

Coming into force

18-5 These rules come into force on July 1, 2013.