

Courts of Justice Act

ONTARIO REGULATION 258/98

RULES OF THE SMALL CLAIMS COURT

Consolidation Period: From January 1, 2011 to the [e-Laws currency date](#).

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This is the English version of a bilingual regulation.

CONTENTS

| <i>Rule</i> | |
|-------------|---------------------------------------|
| 1 | General |
| 2 | Non-Compliance with the Rules |
| 3 | Time |
| 4 | Parties under Disability |
| 5 | Partnerships and Sole Proprietorships |
| 6 | Forum and Jurisdiction |
| 7 | Commencement of Proceedings |
| 8 | Service |
| 9 | Defence |
| 10 | Defendant's Claim |
| 11 | Default Proceedings |
| 11.1 | Dismissal by Clerk |
| 11.2 | Request for Clerk's Order on Consent |
| 11.3 | Discontinuance |
| 12 | Amendment |
| 13 | Settlement Conferences |
| 14 | Offer to Settle |
| 15 | Motions |
| 16 | Notice of Trial |
| 17 | Trial |
| 18 | Evidence at Trial |
| 19 | Costs |
| 20 | Enforcement of Orders |
| 21 | Referee |
| | Table of Forms |

RULE 1 GENERAL

Citation

1.01 These rules may be cited as the Small Claims Court Rules. O. Reg. 258/98, r. 1.01.

Definitions

1.02 (1) In these rules,

“court” means the Small Claims Court; (“tribunal”)

“disability”, where used in respect of a person or party, means that the person or party is,

(a) a minor,

(b) mentally incapable within the meaning of section 6 or 45 of the *Substitute Decisions Act, 1992* in respect of an issue in the proceeding, whether the person or party has a guardian or not, or

(c) an absentee within the meaning of the *Absentees Act*; (“incapable”)

“document” includes data and information in electronic form; (“document”)

“electronic” includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means, and “electronically” has a corresponding meaning; (“électronique”, “par voie électronique”)

“holiday” means,

(a) any Saturday or Sunday,

(b) New Year’s Day,

(b.1) Family Day,

(c) Good Friday,

(d) Easter Monday,

(e) Victoria Day,

(f) Canada Day,

(g) Civic Holiday,

(h) Labour Day,

(i) Thanksgiving Day,

(j) Remembrance Day,

(k) Christmas Day,

(l) Boxing Day, and

(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor,

and if New Year’s Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and if Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday; (“jour férié”)

“order” includes a judgment; (“ordonnance”)

“self-represented”, when used in reference to a person, means that the person is not represented by a lawyer, student-at-law or agent; (“s’autoreprésenter”)

“territorial division” means,

(a) a county, a district or a regional municipality, and

(b) each of the following, as they existed on December 31, 2002:

(i) The combined area of County of Brant and City of Brantford.

(ii) Municipality of Chatham-Kent.

(iii) Haldimand County.

- (iv) City of Hamilton.
 - (v) City of Kawartha Lakes.
 - (vi) Norfolk County.
 - (vii) City of Ottawa.
 - (viii) County of Prince Edward.
 - (ix) City of Toronto. (“division territoriale”) O. Reg. 258/98, r. 1.02; O. Reg. 461/01, s. 1 (1); O. Reg. 78/06, s. 2 (1, 2); O. Reg. 574/07, s. 1; O. Reg. 393/09, s. 1.
- (2) Revoked: O. Reg. 78/06, s. 2 (3).

General Principle

1.03 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 25 of the *Courts of Justice Act*. O. Reg. 258/98, r. 1.03 (1).

Matters Not Covered in Rules

(2) If these rules do not cover a matter adequately, the court may give directions and make any order that is just, and the practice shall be decided by analogy to these rules, by reference to the *Courts of Justice Act* and the Act governing the action and, if the court considers it appropriate, by reference to the Rules of Civil Procedure. O. Reg. 78/06, s. 3.

Orders on Terms

1.04 When making an order under these rules, the court may impose such terms and give such directions as are just. O. Reg. 258/98, r. 1.04.

Standards for Documents

1.05 A document in a proceeding shall be printed, typewritten, written or reproduced legibly. O. Reg. 78/06, s. 4.

Forms

1.06 (1) The forms prescribed by these rules shall be used where applicable and with such variations as the circumstances require. O. Reg. 78/06, s. 4.

Table of Forms

(2) In these rules, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and is available on the Internet through www.ontariocourtforms.on.ca. O. Reg. 78/06, s. 4.

Additional Parties

(3) If a form does not have sufficient space to list all of the parties to the action on the first page, the remaining parties shall be listed in Form 1A, which shall be appended to the form immediately following the first page. O. Reg. 78/06, s. 4; O. Reg. 393/09, s. 2 (1).

Additional Debtors

(4) If any of the following forms do not have sufficient space to list all of the debtors in respect of which the form applies, the remaining debtors shall be listed in Form 1A.1, which shall be appended to the form:

1. Certificate of judgment (Form 20A).
2. Writ of seizure and sale of personal property (Form 20C).
3. Writ of seizure and sale of land (Form 20D).
4. Direction to enforce writ of seizure and sale of personal property (Form 20O). O. Reg. 393/09, s. 2 (2).

Affidavit

(5) If these rules permit or require the use of an affidavit, Form 15B may be used for the purpose unless another form is specified. O. Reg. 393/09, s. 2 (2).

Telephone and Video Conferences — Where Available

1.07 (1) If facilities for a telephone or video conference are available at the court, all or part of any of the following may be heard or conducted by telephone or video conference as permitted by subrules (2) and (3):

1. A settlement conference.
2. A motion. O. Reg. 78/06, s. 4.

(1.1) If facilities for a video conference are available at the court, all or part of an examination of a debtor or other person under rule 20.10 may be conducted by video conference as permitted by subrules (2) and (3). O. Reg. 393/09, s. 3 (1).

Request to be Made

(2) A settlement conference or motion may be heard or conducted by telephone or video conference or all or part of an examination under rule 20.10 may be conducted by video conference if a party files a request for the conference (Form 1B), indicating the reasons for the request, and the court grants the request. O. Reg. 78/06, s. 4; O. Reg. 393/09, s. 3 (2).

Balance of Convenience

- (3) In deciding whether to direct a telephone or video conference, the judge shall consider,
- (a) the balance of convenience between the party that wants the telephone or video conference and any party that opposes it; and
 - (b) any other relevant matter. O. Reg. 78/06, s. 4.

Arrangements for Conference

(4) If an order directing a telephone or video conference is made, the court shall make the necessary arrangements for the conference and notify the parties of them. O. Reg. 78/06, s. 4.

Setting Aside or Varying Order

(5) A judge presiding at a proceeding or step in a proceeding may set aside or vary an order directing a telephone or video conference. O. Reg. 78/06, s. 4.

RULE 2 NON-COMPLIANCE WITH THE RULES

Effect of Non-Compliance

2.01 A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute. O. Reg. 258/98, r. 2.01.

Court May Dispense With Compliance

2.02 If necessary in the interest of justice, the court may dispense with compliance with any rule at any time. O. Reg. 258/98, r. 2.02.

RULE 3 TIME

Computation

3.01 If these rules or an order of the court prescribe a period of time for the taking of a step in a proceeding, the time shall be counted by excluding the first day and including the last day of the period; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday. O. Reg. 258/98, r. 3.01.

Powers of Court

3.02 (1) The court may lengthen or shorten any time prescribed by these rules or an order, on such terms as are just. O. Reg. 258/98, r. 3.02 (1).

Consent

(2) A time prescribed by these rules for serving or filing a document may be lengthened or shortened by filing the consent of the parties. O. Reg. 258/98, r. 3.02 (2); O. Reg. 461/01, s. 3.

RULE 4 PARTIES UNDER DISABILITY

Plaintiff's Litigation Guardian

4.01 (1) An action by a person under disability shall be commenced or continued by a litigation guardian, subject to subrule (2). O. Reg. 258/98, r. 4.01 (1).

Exception

(2) A minor may sue for any sum not exceeding \$500 as if he or she were of full age. O. Reg. 258/98, r. 4.01 (2).

Consent

(3) A plaintiff's litigation guardian shall, at the time of filing a claim or as soon as possible afterwards, file with the clerk a consent (Form 4A) in which the litigation guardian,

- (a) states the nature of the disability;
- (b) in the case of a minor, states the minor's birth date;
- (c) sets out his or her relationship, if any, to the person under disability;
- (d) states that he or she has no interest in the proceeding contrary to that of the person under disability;

- (e) acknowledges that he or she is aware of his or her liability to pay personally any costs awarded against him or her or against the person under disability; and
- (f) states whether he or she is represented by a lawyer or agent and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding. O. Reg. 258/98, r. 4.01 (3).

Defendant's Litigation Guardian

4.02 (1) An action against a person under disability shall be defended by a litigation guardian. O. Reg. 258/98, r. 4.02 (1).

(2) A defendant's litigation guardian shall file with the defence a consent (Form 4A) in which the litigation guardian,

- (a) states the nature of the disability;
- (b) in the case of a minor, states the minor's birth date;
- (c) sets out his or her relationship, if any, to the person under disability;
- (d) states that he or she has no interest in the proceeding contrary to that of the person under disability; and
- (e) states whether he or she is represented by a lawyer or agent and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding. O. Reg. 258/98, r. 4.02 (2); O. Reg. 78/06, s. 5.

(3) If it appears to the court that a defendant is a person under disability and the defendant does not have a litigation guardian the court may, after notice to the proposed litigation guardian, appoint as litigation guardian for the defendant any person who has no interest in the action contrary to that of the defendant. O. Reg. 258/98, r. 4.02 (3).

Who May Be Litigation Guardian

4.03 (1) Any person who is not under disability may be a plaintiff's or defendant's litigation guardian, subject to subrule (2). O. Reg. 258/98, r. 4.03 (1).

(2) If the plaintiff or defendant,

- (a) is a minor, in a proceeding to which subrule 4.01 (2) does not apply,
 - (i) the parent or person with lawful custody or another suitable person shall be the litigation guardian, or
 - (ii) if no such person is available and able to act, the Children's Lawyer shall be the litigation guardian;
- (b) is mentally incapable and has a guardian with authority to act as litigation guardian in the proceeding, the guardian shall be the litigation guardian;
- (c) is mentally incapable and does not have a guardian with authority to act as litigation guardian in the proceeding, but has an attorney under a power of attorney with that authority, the attorney shall be the litigation guardian;
- (d) is mentally incapable and has neither a guardian with authority to act as litigation guardian in the proceeding nor an attorney under a power of attorney with that power,

- (i) a suitable person who has no interest contrary to that of the incapable person may be the litigation guardian, or
 - (ii) if no such person is available and able to act, the Public Guardian and Trustee shall be the litigation guardian;
- (e) is an absentee,
- (i) the committee of his or her estate appointed under the *Absentees Act* shall be the litigation guardian,
 - (ii) if there is no such committee, a suitable person who has no interest contrary to that of the absentee may be the litigation guardian, or
 - (iii) if no such person is available and able to act, the Public Guardian and Trustee shall be the litigation guardian;
- (f) is a person in respect of whom an order was made under subsection 72 (1) or (2) of the *Mental Health Act* as it read before April 3, 1995, the Public Guardian and Trustee shall be the litigation guardian. O. Reg. 258/98, r. 4.03 (2).

Duties of Litigation Guardian

4.04 (1) A litigation guardian shall diligently attend to the interests of the person under disability and take all steps reasonably necessary for the protection of those interests, including the commencement and conduct of a defendant's claim. O. Reg. 258/98, r. 4.04 (1).

Public Guardian and Trustee, Children's Lawyer

(2) The Public Guardian and Trustee or the Children's Lawyer may act as litigation guardian without filing the consent required by subrule 4.01 (3) or 4.02 (2). O. Reg. 258/98, r. 4.04 (2).

Power of Court

4.05 The court may remove or replace a litigation guardian at any time. O. Reg. 258/98, r. 4.05.

Setting Aside Judgment, etc.

4.06 If an action has been brought against a person under disability and the action has not been defended by a litigation guardian, the court may set aside the noting of default or any judgment against the person under disability on such terms as are just, and may set aside any step that has been taken to enforce the judgment. O. Reg. 258/98, r. 4.06.

Settlement Requires Court's Approval

4.07 No settlement of a claim made by or against a person under disability is binding on the person without the approval of the court. O. Reg. 258/98, r. 4.07.

Money to be Paid into Court

4.08 (1) Any money payable to a person under disability under an order or a settlement shall be paid into court, unless the court orders otherwise, and shall afterwards be paid out or otherwise disposed of as ordered by the court. O. Reg. 258/98, r. 4.08 (1).

(2) If money is payable to a person under disability under an order or settlement, the court may order that the money shall be paid directly to the person, and payment made under the order discharges the obligation to the extent of the amount paid. O. Reg. 258/98, r. 4.08 (2).

RULE 5 PARTNERSHIPS AND SOLE PROPRIETORSHIPS

Partnerships

5.01 A proceeding by or against two or more persons as partners may be commenced using the firm name of the partnership. O. Reg. 258/98, r. 5.01.

Defence

5.02 If a proceeding is commenced against a partnership using the firm name, the partnership's defence shall be delivered in the firm name and no person who admits being a partner at any material time may defend the proceeding separately, except with leave of the court. O. Reg. 258/98, r. 5.02.

Notice to Alleged Partner

5.03 (1) In a proceeding against a partnership using the firm name, a plaintiff who seeks an order that would be enforceable personally against a person as a partner may serve the person with the claim, together with a notice to alleged partner (Form 5A). O. Reg. 258/98, r. 5.03 (1).

(2) A person served as provided in subrule (1) is deemed to have been a partner at the material time, unless the person defends the proceeding separately denying having been a partner at the material time. O. Reg. 258/98, r. 5.03 (2).

Disclosure of Partners

5.04 (1) If a proceeding is commenced by or against a partnership using the firm name, any other party may serve a notice requiring the partnership to disclose immediately in writing the names and addresses of all partners constituting the partnership at a time specified in the notice; if a partner's present address is unknown, the partnership shall disclose the last known address. O. Reg. 258/98, r. 5.04 (1).

(1.1), (1.1.1) Revoked: O. Reg. 78/06, s. 6.

Partnership's Failure to Comply

(2) If a partnership fails to comply with a notice under subrule (1), its claim may be dismissed or the proceeding stayed or its defence may be struck out. O. Reg. 258/98, r. 5.04 (2).

Enforcement of Order

5.05 (1) An order against a partnership using the firm name may be enforced against the partnership's property. O. Reg. 258/98, r. 5.05 (1).

(2) An order against a partnership using the firm name may also be enforced, if the order or a subsequent order so provides, against any person who was served as provided in rule 5.03 and who,

- (a) under that rule, is deemed to have been a partner at the material time;
- (b) has admitted being a partner at that time; or
- (c) has been adjudged to have been a partner at that time. O. Reg. 258/98, r. 5.05 (2).

Against Person not Served as Alleged Partner

(3) If, after an order has been made against a partnership using the firm name, the party obtaining it claims to be entitled to enforce it against any person alleged to be a partner other than a person who was served as provided in rule 5.03, the party may make a motion for leave to do so; the judge may

grant leave if the person's liability as a partner is not disputed or, if disputed, after the liability has been determined in such manner as the judge directs. O. Reg. 258/98, r. 5.05 (3); O. Reg. 78/06, s. 7.

Sole Proprietorships

5.06 (1) If a person carries on business in a business name other than his or her own name, a proceeding may be commenced by or against the person using the business name. O. Reg. 258/98, r. 5.06 (1).

(2) Rules 5.01 to 5.05 apply, with necessary modifications, to a proceeding by or against a sole proprietor using a business name, as though the sole proprietor were a partner and the business name were the firm name of a partnership. O. Reg. 258/98, r. 5.06 (2).

RULE 6 FORUM AND JURISDICTION

Place of Commencement and Trial

6.01 (1) An action shall be commenced,

(a) in the territorial division,

(i) in which the cause of action arose, or

(ii) in which the defendant or, if there are several defendants, in which any one of them resides or carries on business; or

(b) at the court's place of sitting that is nearest to the place where the defendant or, if there are several defendants, where any one of them resides or carries on business. O. Reg. 78/06, s. 8 (1).

(2) An action shall be tried in the place where it is commenced, but if the court is satisfied that the balance of convenience substantially favours holding the trial at another place than those described in subrule (1), the court may order that the action be tried at that other place. O. Reg. 78/06, s. 8 (1).

(3) If, when an action is called for trial or settlement conference, the judge finds that the place where the action was commenced is not the proper place of trial, the court may order that the action be tried in any other place where it could have been commenced under this rule. O. Reg. 78/06, s. 8 (1).

6.02 A cause of action shall not be divided into two or more actions for the purpose of bringing it within the court's jurisdiction. O. Reg. 258/98, r. 6.02.

6.03 Revoked: O. Reg. 78/06, s. 8 (2).

RULE 7 COMMENCEMENT OF PROCEEDINGS

Plaintiff's Claim

7.01 (1) An action shall be commenced by filing a plaintiff's claim (Form 7A) with the clerk, together with a copy of the claim for each defendant. O. Reg. 258/98, r. 7.01 (1).

Contents of Claim, Attachments

(2) The following requirements apply to the claim:

1. It shall contain the following information, in concise and non-technical language:

i. The full names of the parties to the proceeding and, if relevant, the capacity in which they sue or are sued.

- ii. The nature of the claim, with reasonable certainty and detail, including the date, place and nature of the occurrences on which the claim is based.
 - iii. The amount of the claim and the relief requested.
 - iv. The name, address, telephone number, fax number if any, and Law Society of Upper Canada registration number if any, of the lawyer or agent representing the plaintiff or, if the plaintiff is self-represented, the plaintiff's address, telephone number and fax number if any.
 - v. The address where the plaintiff believes the defendant may be served.
2. If the plaintiff's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the claim, unless it is unavailable, in which case the claim shall state the reason why the document is not attached. O. Reg. 461/01, s. 5; O. Reg. 78/06, s. 9 (1); O. Reg. 56/08, s. 1.

(3) Revoked: O. Reg. 78/06, s. 9 (2).

7.02 Revoked: O. Reg. 461/01, s. 6.

Issuing Claim

7.03 (1) On receiving the plaintiff's claim, the clerk shall immediately issue it by dating, signing and sealing it and assigning it a court file number. O. Reg. 258/98, r. 7.03 (1).

(2) The original of the claim shall remain in the court file and the copies shall be given to the plaintiff for service on the defendant. O. Reg. 258/98, r. 7.03 (2).

RULE 8 SERVICE

Service of Particular Documents Plaintiff's or Defendant's Claim

8.01 (1) A plaintiff's claim or defendant's claim (Form 7A or 10A) shall be served personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03. O. Reg. 258/98, r. 8.01 (1).

Time for Service of Claim

(2) A claim shall be served within six months after the date it is issued, but the court may extend the time for service, before or after the six months has elapsed. O. Reg. 258/98, r. 8.01 (2).

Defence

(3) A defence shall be served by the clerk, by mail or by fax. O. Reg. 258/98, r. 8.01 (3).

(3.1) Revoked: O. Reg. 78/06, s. 10.

Default Judgment

(4) A default judgment (Form 11B) shall be served by the clerk, by mail or by fax, on all parties named in the claim. O. Reg. 78/06, s. 10.

(4.1), (4.1.1) Revoked: O. Reg. 78/06, s. 10.

Assessment Order

(5) An order made on a motion in writing for an assessment of damages under subrule 11.03 (2) shall be served by the clerk to the moving party if the party provides a stamped, self-addressed

envelope with the notice of motion and supporting affidavit. O. Reg. 78/06, s. 10; O. Reg. 393/09, s. 4 (1).

Settlement Conference Order

(6) An order made at a settlement conference shall be served by the clerk by mail or by fax, on all parties that did not attend the settlement conference. O. Reg. 78/06, s. 10.

Summons to Witness

(7) A summons to witness (Form 18A) shall be served personally by the party who requires the presence of the witness, or by the party's lawyer or agent, at least 10 days before the trial date; at the time of service, attendance money calculated in accordance with the regulations made under the *Administration of Justice Act* shall be paid or tendered to the witness. O. Reg. 78/06, s. 10.

Notice of Garnishment

(8) A notice of garnishment (Form 20E) shall be served by the creditor,

- (a) together with a sworn affidavit for enforcement request (Form 20P), on the debtor, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03; and
- (b) together with a garnishee's statement (Form 20F), on the garnishee, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03. O. Reg. 78/06, s. 10.

Notice of Garnishment Hearing

(9) A notice of garnishment hearing (Form 20Q) shall be served by the person requesting the hearing on the creditor, debtor, garnishee and co-owner of the debt, if any, and any other interested persons by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal services as provided in rule 8.03. O. Reg. 78/06, s. 10.

Notice of Examination

(10) A notice of examination (Form 20H) shall be served by the creditor on the debtor or person to be examined personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03. O. Reg. 78/06, s. 10; O. Reg. 393/09, s. 4 (2).

Financial Statement

(11) If the person to be examined is the debtor and the debtor is an individual, the creditor shall serve the notice of examination on the debtor together with a blank financial information form (Form 20I). O. Reg. 78/06, s. 10.

(12) The notice of examination,

- (a) shall be served, together with the financial information form if applicable, at least 30 days before the date fixed for the examination; and
- (b) shall be filed, with proof of service, at least three days before the date fixed for the examination. O. Reg. 393/09, s. 4 (3).

Notice of Contempt Hearing

(13) A notice of a contempt hearing shall be served by the creditor on the debtor or person to be examined personally as provided in rule 8.02. O. Reg. 78/06, s. 10.

Other Documents

(14) A document not referred to in subrules (1) to (13) may be served by mail, by courier, by fax, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise. O. Reg. 78/06, s. 10.

Personal Service

8.02 If a document is to be served personally, service shall be made,

Individual

- (a) on an individual, other than a person under disability, by leaving a copy of the document with him or her;

Municipality

- (b) on a municipal corporation, by leaving a copy of the document with the chair, mayor, warden or reeve of the municipality, with the clerk or deputy clerk of the municipality or with a lawyer for the municipality;

Corporation

- (c) on any other corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business;

Board or Commission

- (d) on a board or commission, by leaving a copy of the document with a member or officer of the board or commission;

Person Outside Ontario Carrying on Business in Ontario

- (e) on a person outside Ontario who carries on business in Ontario, by leaving a copy of the document with anyone carrying on business in Ontario for the person;

Crown in Right of Canada

- (f) on Her Majesty the Queen in right of Canada, in accordance with subsection 23 (2) of the *Crown Liability and Proceedings Act* (Canada);

Crown in Right of Ontario

- (g) on Her Majesty the Queen in right of Ontario, in accordance with section 10 of the *Proceedings Against the Crown Act*;

Absentee

- (h) on an absentee, by leaving a copy of the document with the absentee's committee, if one has been appointed or, if not, with the Public Guardian and Trustee;

Minor

- (i) on a minor, by leaving a copy of the document with the minor and, if the minor resides with a parent or other person having his or her care or lawful custody, by leaving another copy of the document with the parent or other person;

Mentally Incapable Person

- (j) on a mentally incapable person,
 - (i) if there is a guardian or an attorney acting under a validated power of attorney for personal care with authority to act in the proceeding, by leaving a copy of the document with the guardian or attorney,
 - (ii) if there is no guardian or attorney acting under a validated power of attorney for personal care with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, by leaving a copy of the document with the attorney and leaving an additional copy with the person,
 - (iii) if there is neither a guardian nor an attorney with authority to act in the proceeding, by leaving a copy of the document bearing the person's name and address with the Public Guardian and Trustee and leaving an additional copy with the person;

Partnership

- (k) on a partnership, by leaving a copy of the document with any one or more of the partners or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business; and

Sole Proprietorship

- (l) on a sole proprietorship, by leaving a copy of the document with the sole proprietor or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business. O. Reg. 258/98, r. 8.02.

Alternatives to Personal Service

8.03 (1) If a document is to be served by an alternative to personal service, service shall be made in accordance with subrule (2), (3) or (5); in the case of a plaintiff's claim or defendant's claim served on an individual, service may also be made in accordance with subrule (7). O. Reg. 258/98, r. 8.03 (1); O. Reg. 393/09, s. 5 (1).

At Place of Residence

- (2)** If an attempt is made to effect personal service at an individual's place of residence and for any reason personal service cannot be effected, the document may be served by,
 - (a) leaving a copy in a sealed envelope addressed to the individual at the place of residence with anyone who appears to be an adult member of the same household; and
 - (b) on the same day or the following day, mailing or sending by courier another copy of the document to the individual at the place of residence. O. Reg. 258/98, r. 8.03 (2); O. Reg. 78/06, s. 11 (1); O. Reg. 393/09, s. 5 (2, 3).

Corporation

(3) If the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Government Services, service may be made on the corporation,

- (a) by mailing or sending by courier a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address; and
- (b) by mailing or sending by courier a copy of the document to each director of the corporation as recorded with the Ministry of Government Services, at the director's address as recorded with that Ministry. O. Reg. 78/06, s. 11 (2).

When Effective

(4) Service made under subrule (2) or (3) is effective on the fifth day after the document is mailed or verified by courier that it was delivered. O. Reg. 258/98, r. 8.03 (4); O. Reg. 78/06, s. 11 (3).

Acceptance of Service by Lawyer

(5) Service on a party who is represented by a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer's office, but service under this subrule is effective only if the lawyer or employee endorses on the document or a copy of it an acceptance of service and the date of the acceptance. O. Reg. 258/98, r. 8.03 (5).

(6) By accepting service the lawyer is deemed to represent to the court that he or she has the client's authority to accept service. O. Reg. 258/98, r. 8.03 (6).

Service of Claim

(7) Service of a plaintiff's claim or defendant's claim on an individual against whom the claim is made may be made by sending a copy of the claim by registered mail or by courier to the individual's place of residence, if the signature of the individual or any person who appears to be a member of the same household, verifying receipt of the copy, is obtained. O. Reg. 393/09, s. 5 (4); O. Reg. 440/10, s. 1 (1).

(8) Service under subrule (7) is effective on the date on which receipt of the copy of the claim is verified by signature, as shown in a delivery confirmation provided by or obtained from Canada Post or the commercial courier, as the case may be. O. Reg. 393/09, s. 5 (4); O. Reg. 440/10, s. 1 (2).

(9) Revoked: O. Reg. 393/09, s. 5 (4).

Substituted Service

8.04 If it is shown that it is impractical to effect prompt service of a claim personally or by an alternative to personal service, the court may allow substituted service. O. Reg. 258/98, r. 8.04.

Service Outside Ontario

8.05 If the defendant is outside Ontario, the court may award as costs of the action the costs reasonably incurred in effecting service of the claim on the defendant there. O. Reg. 258/98, r. 8.05; O. Reg. 78/06, s. 12.

Proof of Service

8.06 An affidavit of service (Form 8A) made by the person effecting the service constitutes proof of service of a document. O. Reg. 78/06, s. 13.

Service by Mail

8.07 (1) If a document is to be served by mail under these rules, it shall be sent, by regular lettermail or registered mail, to the last address of the person or of the person's lawyer or agent that is,

- (a) on file with the court, if the document is to be served by the clerk;
- (b) known to the sender, if the document is to be served by any other person. O. Reg. 258/98, r. 8.07 (1); O. Reg. 78/06, s. 14.

When Effective

(2) Service of a document by mail is deemed to be effective on the fifth day following the date of mailing. O. Reg. 258/98, r. 8.07 (2).

Exception

(3) This rule does not apply when a claim is served by registered mail under subrule 8.03 (7). O. Reg. 393/09, s. 6.

Service by Courier

8.07.1 (1) If a document is to be served by courier under these rules, it shall be sent by means of a commercial courier to the last address of the person or of the person's lawyer or agent that is on file with the court or known to the sender. O. Reg. 78/06, s. 15.

When Effective

(2) Service of a document sent by courier is deemed to be effective on the fifth day following the date on which the courier verifies to the sender that the document was delivered. O. Reg. 78/06, s. 15.

Exception

(3) This rule does not apply when a claim is served by courier under subrule 8.03 (7). O. Reg. 78/06, s. 15; O. Reg. 393/09, s. 7.

Service by Fax

8.08 (1) Service of a document by fax is deemed to be effective,

- (a) on the day of transmission, if transmission takes place before 5 p.m. on a day that is not a holiday;
- (b) on the next day that is not a holiday, in any other case. O. Reg. 258/98, r. 8.08 (1).

(2) A document containing 16 or more pages, including the cover page, may be served by fax only between 5 p.m. and 8 a.m. the following day, unless the party to be served consents in advance. O. Reg. 258/98, r. 8.08 (2); O. Reg. 393/09, s. 8.

Notice of Change of Address

8.09 (1) A party whose address for service changes shall serve notice of the change on the court and other parties within seven days after the change takes place. O. Reg. 78/06, s. 16.

(2) Service of the notice may be proved by affidavit if the court orders that proof of service is required. O. Reg. 78/06, s. 16.

Failure to Receive Document

8.10 A person who has been served or who is deemed to have been served with a document in accordance with these rules is nevertheless entitled to show, on a motion to set aside the consequences

of default, on a motion for an extension of time or in support of a request for an adjournment, that the document,

- (a) did not come to the person's notice; or
- (b) came to the person's notice only at some time later than when it was served or is deemed to have been served. O. Reg. 461/01, s. 9 (1).

RULE 9 DEFENCE

Defence

9.01 (1) A defendant who wishes to dispute a plaintiff's claim shall file a defence (Form 9A), together with a copy for each of the other parties with the clerk within 20 days of being served with the claim. O. Reg. 258/98, r. 9.01 (1); O. Reg. 461/01, s. 10 (1); O. Reg. 440/03, s. 2; O. Reg. 78/06, s. 17 (1); O. Reg. 440/10, s. 2 (1).

Service of Copy by Clerk

(2) On receiving the defence, the clerk shall retain the original in the court file and shall serve a copy in accordance with subrule 8.01 (3) on each of the other parties. O. Reg. 440/10, s. 2 (2).

(3) Revoked: O. Reg. 78/06, s. 17 (3).

Contents of Defence, Attachments

9.02 (1) The following requirements apply to the defence:

1. It shall contain the following information:
 - i. The reasons why the defendant disputes the plaintiff's claim, expressed in concise non-technical language with a reasonable amount of detail.
 - ii. If the defendant is self-represented, the defendant's name, address and telephone number, and fax number if any.
 - iii. If the defendant is represented by a lawyer or agent, that person's name, address and telephone number, and fax number if any.
2. If the defence is based in whole or in part on a document, a copy of the document shall be attached to each copy of the defence, unless it is unavailable, in which case the defence shall state the reason why the document is not attached. O. Reg. 461/01, s. 11; O. Reg. 78/06, s. 18.

(2) Revoked: O. Reg. 78/06, s. 19.

Admission of Liability and Proposal of Terms of Payment

9.03 (1) A defendant who admits liability for all or part of the plaintiff's claim but wishes to arrange terms of payment may in the defence admit liability and propose terms of payment. O. Reg. 258/98, r. 9.03 (1).

Where No Dispute

(2) If the plaintiff does not dispute the proposal within the 20-day period referred to in subrule (3),

- (a) the defendant shall make payment in accordance with the proposal as if it were a court order;

- (b) the plaintiff may serve a notice of default of payment (Form 20L) on the defendant if the defendant fails to make payment in accordance with the proposal; and
- (c) the clerk shall sign judgment for the unpaid balance of the undisputed amount on the filing of an affidavit of default of payment (Form 20M) by the plaintiff swearing,
 - (i) that the defendant failed to make payment in accordance with the proposal,
 - (ii) to the amount paid by the defendant and the unpaid balance, and
 - (iii) that 15 days have passed since the defendant was served with a notice of default of payment. O. Reg. 258/98, r. 9.03 (2); O. Reg. 78/06, s. 20 (1).

Dispute

[\(3\)](#) The plaintiff may dispute the proposal within 20 days after service of the defence by filing with the clerk and serving on the defendant a request to clerk (Form 9B) for a terms of payment hearing before a referee or other person appointed by the court. O. Reg. 78/06, s. 20 (2).

[\(4\)](#) The clerk shall fix a time for the hearing, allowing for a reasonable notice period after the date the request is served, and serve a notice of hearing on the parties. O. Reg. 258/98, r. 9.03 (4).

Manner of Service

[\(4.1\)](#) The notice of hearing shall be served by mail or fax. O. Reg. 330/02, s. 8 (1).

Financial Information Form, Defendant an Individual

[\(4.2\)](#) The clerk shall serve a financial information form (Form 20I) on the defendant, together with the notice of hearing, if the defendant is an individual. O. Reg. 78/06, s. 20 (3).

[\(4.3\)](#) Where a defendant receives a financial information form under subrule (4.2), he or she shall complete it and serve it on the creditor before the hearing, but shall not file it with the court. O. Reg. 78/06, s. 20 (3).

Order

[\(5\)](#) On the hearing, the referee or other person may make an order as to terms of payment by the defendant. O. Reg. 258/98, r. 9.03 (5); O. Reg. 78/06, s. 20 (4).

Failure to Appear, Default Judgment

[\(6\)](#) If the defendant does not appear at the hearing, the clerk may sign default judgment against the defendant for the part of the claim that has been admitted and shall serve a default judgment (Form 11B) on the defendant in accordance with subrule 8.01 (4). O. Reg. 78/06, s. 20 (5).

[\(6.1\)](#) Revoked: O. Reg. 78/06, s. 20 (5).

Failure to Make Payments

[\(7\)](#) Unless the referee or other person specifies otherwise in the order as to terms of payment, if the defendant fails to make payment in accordance with the order, the clerk shall sign judgment for the unpaid balance on the filing of an affidavit by the plaintiff swearing to the default and stating the amount paid and the unpaid balance. O. Reg. 258/98, r. 9.03 (7).

RULE 10 DEFENDANT'S CLAIM

Defendant's Claim

10.01 (1) A defendant may make a claim,

- (a) against the plaintiff;
- (b) against any other person,
 - (i) arising out of the transaction or occurrence relied upon by the plaintiff, or
 - (ii) related to the plaintiff's claim; or
- (c) against the plaintiff and against another person in accordance with clause (b). O. Reg. 258/98, r. 10.01 (1).

(2) The defendant's claim shall be in Form 10A and may be issued,

- (a) within 20 days after the day on which the defence is filed; or
- (b) after the time described in clause (a) but before trial or default judgment, with leave of the court. O. Reg. 78/06, s. 21 (1).

Copies

(3) The defendant shall provide a copy of the defendant's claim to the court. O. Reg. 258/98, r. 10.01 (3); O. Reg. 461/01, s. 13 (1).

Contents of Defendant's Claim, Attachments

(4) The following requirements apply to the defendant's claim:

1. It shall contain the following information:
 - i. The full names of the parties to the defendant's claim and, if relevant, the capacity in which they sue or are sued.
 - ii. The nature of the claim, expressed in concise non-technical language with a reasonable amount of detail, including the date, place and nature of the occurrences on which the claim is based.
 - iii. The amount of the claim and the relief requested.
 - iv. If the defendant is self-represented, the defendant's name, address and telephone number, and fax number if any.
 - v. If the defendant is represented by a lawyer or agent, that person's name, address and telephone number, and fax number if any.
 - vi. The address where the defendant believes each person against whom the claim is made may be served.
 - vii. The court file number assigned to the plaintiff's claim.
2. If the defendant's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the claim, unless it is unavailable, in which case the claim shall state the reason why the document is not attached. O. Reg. 461/01, s. 13 (2); O. Reg. 78/06, s. 21 (2, 3).

(5) Revoked: O. Reg. 78/06, s. 21 (4).

Issuance

(6) On receiving the defendant's claim, the clerk shall immediately issue it by dating, signing and sealing it, shall assign it the same court file number as the plaintiff's claim and shall place the original in the court file. O. Reg. 258/98, r. 10.01 (6); O. Reg. 461/01, s. 13 (3).

(7), (8) Revoked: O. Reg. 78/06, s. 21 (4).

Service

10.02 A defendant's claim shall be served by the defendant on every person against whom it is made, in accordance with subrules 8.01 (1) and (2). O. Reg. 258/98, r. 10.02.

Defence

10.03 (1) A party who wishes to dispute the defendant's claim or a third party who wishes to dispute the plaintiff's claim may, within 20 days after service of the defendant's claim, file a defence (Form 9A) with the clerk, together with a copy for each of the other parties or persons against whom the defendant's or plaintiff's claim is made. O. Reg. 78/06, s. 22.

Service of Copy by Clerk

(2) On receiving a defence under subrule (1), the clerk shall retain the original in the court file and shall serve a copy on each party in accordance with subrule 8.01 (3). O. Reg. 78/06, s. 22.

Defendant's Claim to be Tried with Main Action

10.04 (1) A defendant's claim shall be tried and disposed of at the trial of the action, unless the court orders otherwise. O. Reg. 258/98, r. 10.04 (1).

Exception

(2) If it appears that a defendant's claim may unduly complicate or delay the trial of the action or cause undue prejudice to a party, the court may order separate trials or direct that the defendant's claim proceed as a separate action. O. Reg. 258/98, r. 10.04 (2).

Rights of Third Party

(3) If the defendant alleges, in a defendant's claim, that a third party is liable to the defendant for all or part of the plaintiff's claim in the action, the third party may at the trial contest the defendant's liability to the plaintiff, but only if the third party has filed a defence in accordance with subrule 10.03 (1). O. Reg. 258/98, r. 10.04 (3); O. Reg. 78/06, s. 23.

Application of Rules to Defendant's Claim

10.05 (1) These rules apply, with necessary modifications, to a defendant's claim as if it were a plaintiff's claim, and to a defence to a defendant's claim as if it were a defence to a plaintiff's claim. O. Reg. 258/98, r. 10.05 (1).

Exception

(2) However, when a person against whom a defendant's claim is made is noted in default, judgment against that person may be obtained only in accordance with rule 11.04. O. Reg. 258/98, r. 10.05 (2); O. Reg. 56/08, s. 2.

RULE 11 DEFAULT PROCEEDINGS

Noting Defendant in Default

11.01 (1) If a defendant to a plaintiff's claim or a defendant's claim fails to file a defence to all or part of the claim with the clerk within the prescribed time, the clerk may, when proof is filed that the claim was served within the territorial division, note the defendant in default. O. Reg. 78/06, s. 24.

Leave Required for Person under Disability

(2) A person under disability may not be noted in default under subrule (1), except with leave of the court. O. Reg. 78/06, s. 24.

Service Outside Territorial Division

(3) If all the defendants have been served outside the court's territorial division, the clerk shall not note any defendant in default until it is proved by an affidavit for jurisdiction (Form 11A) submitted to the clerk, or by evidence presented before a judge, that the action was properly brought in that territorial division. O. Reg. 78/06, s. 24.

Default Judgment, Plaintiff's Claim, Debt or Liquidated Demand

11.02 (1) If a defendant has been noted in default, the clerk may sign default judgment (Form 11B) in respect of the claim or any part of the claim to which the default applies that is for a debt or liquidated demand in money, including interest if claimed. O. Reg. 78/06, s. 24.

(2) The fact that default judgment has been signed under subrule (1) does not affect the plaintiff's right to proceed on the remainder of the claim or against any other defendant for all or part of the claim. O. Reg. 78/06, s. 24.

Manner of Service of Default Judgment

(3) A default judgment (Form 11B) shall be served in accordance with subrule 8.01 (4). O. Reg. 78/06, s. 24.

Default Judgment, Plaintiff's Claim, Unliquidated Demand

11.03 (1) If all defendants have been noted in default, the plaintiff may obtain judgment against a defendant noted in default with respect to any part of the claim to which rule 11.02 does not apply. O. Reg. 78/06, s. 24.

(2) To obtain judgment, the plaintiff may,

- (a) file a notice of motion and supporting affidavit (Form 15A) requesting a motion in writing for an assessment of damages, setting out the reasons why the motion should be granted and attaching any relevant documents; or
- (b) file a request to clerk (Form 9B) requesting that an assessment hearing be arranged. O. Reg. 78/06, s. 24; O. Reg. 393/09, s. 9.

Inadequate Supporting Affidavit

(3) On a motion in writing for an assessment of damages under clause (2) (a), a judge who finds the plaintiff's affidavit inadequate or unsatisfactory may order that,

- (a) a further affidavit be provided; or
- (b) an assessment hearing be held. O. Reg. 78/06, s. 24.

Assessment Hearing

(4) If an assessment hearing is to be held under clause (2) (b) or (3) (b), the clerk shall fix a date for the hearing and send a notice of hearing to the plaintiff, and the assessment hearing shall proceed as a trial in accordance with rule 17. O. Reg. 78/06, s. 24.

Matters to be Proved

(5) On a motion in writing for an assessment of damages or at an assessment hearing, the plaintiff is not required to prove liability against a defendant noted in default, but is required to prove the amount of the claim. O. Reg. 78/06, s. 24.

Service of Order

(6) An order made on a motion in writing for an assessment of damages shall be served by the clerk in accordance with subrule 8.01 (5). O. Reg. 78/06, s. 24.

No Assessment where Defence Filed

(7) If one or more defendants have filed a defence, a plaintiff requiring an assessment of damages against a defendant noted in default shall proceed to a settlement conference under rule 13 and, if necessary, a trial in accordance with rule 17. O. Reg. 78/06, s. 24.

Default Judgment, Defendant's Claim

11.04 If a party against whom a defendant's claim is made has been noted in default, judgment may be obtained against the party only at trial or on motion. O. Reg. 78/06, s. 24.

Consequences of Noting in Default

11.05 (1) A defendant who has been noted in default shall not file a defence or take any other step in the proceeding, except making a motion under rule 11.06, without leave of the court or the plaintiff's consent. O. Reg. 78/06, s. 24.

(2) Any step in the proceeding may be taken without the consent of a defendant who has been noted in default. O. Reg. 78/06, s. 24.

(3) A defendant who has been noted in default is not entitled to notice of any step in the proceeding and need not be served with any other document, except the following:

1. Subrule 11.02 (3) (service of default judgment).
2. Rule 12.01 (amendment of claim or defence).
3. Subrule 15.01 (6) (motion after judgment).
4. Postjudgment proceedings against a debtor under rule 20. O. Reg. 78/06, s. 24.

Setting Aside Noting of Default by Court on Motion

11.06 The court may set aside the noting in default or default judgment against a party and any step that has been taken to enforce the judgment, on such terms as are just, if the party makes a motion to set aside and the court is satisfied that,

- (a) the party has a meritorious defence and a reasonable explanation for the default; and
- (b) the motion is made as soon as is reasonably possible in all the circumstances. O. Reg. 78/06, s. 24.

RULE 11.1 DISMISSAL BY CLERK

Dismissal — Undefended Actions

11.1.01 (1) The clerk shall make an order dismissing an action as abandoned if the following conditions are satisfied, unless the court orders otherwise:

1. More than 180 days have passed since the date the claim was issued or an order was made extending the time for service of the claim under subrule 8.01 (2).
2. No defence has been filed.
3. The action has not been disposed of by order and has not been set down for trial.
4. The clerk has given 45 days notice to the plaintiff that the action will be dismissed as abandoned. O. Reg. 78/06, s. 24; O. Reg. 56/08, s. 3 (1); O. Reg. 393/09, s. 10 (1).

Dismissal — Defended Actions

(2) The clerk shall make an order dismissing an action as abandoned if the following conditions are satisfied, unless the court orders otherwise:

1. More than 150 days have passed since the date the first defence was filed.
2. Revoked: O. Reg. 56/08, s. 3 (2).
3. The action has not been disposed of by order and has not been set down for trial.
4. The clerk has given 45 days notice to all parties to the action that the action will be dismissed as abandoned. O. Reg. 78/06, s. 24; O. Reg. 56/08, s. 3 (2); O. Reg. 393/09, s. 10 (2).

Transition

(3) If an action was started before July 1, 2006, the following applies:

1. The action or a step in the action shall be carried on under these rules on or after July 1, 2006.
2. Despite paragraph 1, if a step in the action is taken on or after July 1, 2006, the timetable set out in subrules (1) and (2) shall apply as if the action started on the date on which the step was taken. O. Reg. 78/06, s. 24.

Same

(4) If an action was commenced before July 1, 2006 and no step is taken in the action on or after that date, the clerk may make an order dismissing it as abandoned if,

- (a) where an action is undefended, more than two years have passed since the date the claim was issued and the conditions set out in paragraphs 2, 3 and 4 of subrule (1) are satisfied; or
- (b) more than two years have passed since the date the first defence was filed and the conditions set out in paragraphs 3 and 4 of subrule (2) are satisfied. O. Reg. 78/06, s. 24; O. Reg. 56/08, s. 3 (3).

Exception Where Terms of Settlement Signed

(5) Subrules (1), (2) and (4) do not apply if terms of settlement (Form 14D) signed by all parties have been filed. O. Reg. 78/06, s. 24.

Exception Where Admission of Liability

(6) Subrule (2) and clause (4) (b) do not apply if the defence contains an admission of liability for the plaintiff's claim and a proposal of terms of payment under subrule 9.03 (1). O. Reg. 78/06, s. 24.

Service of Orders

(7) The clerk shall serve a copy of an order made under subrule (1) or clause (4) (a) on the plaintiff and a copy of an order made under subrule (2) or clause (4) (b) on all parties to the action. O. Reg. 78/06, s. 24.

RULE 11.2 REQUEST FOR CLERK'S ORDER ON CONSENT

Consent Order

11.2.01 (1) The clerk shall, on the filing of a request for clerk's order on consent (Form 11.2A), make an order granting the relief sought, including costs, if the following conditions are satisfied:

1. The relief sought is,
 - i. amending a claim or defence less than 30 days before the originally scheduled trial date,
 - ii. adding, deleting or substituting a party less than 30 days before the originally scheduled trial date,
 - iii. setting aside the noting in default or default judgment against a party and any specified step to enforce the judgment that has not yet been completed,
 - iv. restoring a matter that was dismissed under rule 11.1 to the list,
 - v. noting that payment has been made in full satisfaction of a judgment or terms of settlement, or
 - vi. dismissing an action.
2. The request is signed by all parties (including any party to be added, deleted or substituted) and states,
 - i. that each party has received a copy of the request, and
 - ii. that no party that would be affected by the order is under disability.
- 3., 4. Revoked: O. Reg. 393/09, s. 11 (3).

O. Reg. 78/06, s. 24; O. Reg. 393/09, s. 11 (1-3).

Service of order

(2) The clerk shall serve a copy of an order made under subrule (1) in accordance with subrule 8.01 (14) on a party that requests it and provides a stamped, self-addressed envelope. O. Reg. 78/06, s. 24.

Same, Refusal to Make Order

(3) Where the clerk refuses to make an order, the clerk shall serve a copy of the request for clerk's order on consent (Form 11.2A), with reasons for the refusal, on all the parties. O. Reg. 78/06, s. 24; O. Reg. 393/09, s. 11 (4).

Notice of Setting Aside of Enforcement Step

(4) Where an order is made setting aside a specified step to enforce a judgment under subparagraph 1 iii of subrule (1), a party shall file a copy of the order at each court location where the enforcement step has been requested. O. Reg. 78/06, s. 24.

RULE 11.3 DISCONTINUANCE

Discontinuance by Plaintiff in Undefended Action

11.3.01 (1) A plaintiff may discontinue his or her claim against a defendant who fails to file a defence to all or part of the claim with the clerk within the prescribed time by,

- (a) serving a notice of discontinued claim (Form 11.3A) on all defendants who were served with the claim; and
- (b) filing the notice with proof of service. O. Reg. 393/09, s. 12.

(2) A claim may not be discontinued by or against a person under disability, except with leave of the court. O. Reg. 393/09, s. 12.

Effect of Discontinuance on Subsequent Action

11.3.02 The discontinuance of a claim is not a defence to a subsequent action on the matter, unless an order granting leave to discontinue provides otherwise. O. Reg. 393/09, s. 12.

RULE 12 AMENDMENT

Right to Amend

12.01 (1) A plaintiff's or defendant's claim and a defence to a plaintiff's or defendant's claim may be amended by filing with the clerk a copy that is marked "Amended", in which any additions are underlined and any other changes are identified. O. Reg. 258/98, r. 12.01 (1).

Service

(2) The amended document shall be served by the party making the amendment on all parties, including any parties in default, in accordance with subrule 8.01 (14). O. Reg. 258/98, r. 12.01 (2); O. Reg. 78/06, s. 25 (1).

Time

(3) Filing and service of the amended document shall take place at least 30 days before the originally scheduled trial date, unless,

- (a) the court, on motion, allows a shorter notice period; or
- (b) a clerk's order permitting the amendment is obtained under subrule 11.2.01 (1). O. Reg. 393/09, s. 13.

Service on Added Party

(4) A person added as a party shall be served with the claim as amended, except that if the person is added as a party at trial, the court may dispense with service of the claim. O. Reg. 258/98, r. 12.01 (4).

No Amendment Required in Response

(5) A party who is served with an amended document is not required to amend the party's defence or claim. O. Reg. 78/06, s. 25 (3).

Motion to Strike out or Amend a Document

12.02 (1) The court may, on motion, strike out or amend all or part of any document that,

- (a) discloses no reasonable cause of action or defence;

(b) may delay or make it difficult to have a fair trial; or

(c) is inflammatory, a waste of time, a nuisance or an abuse of the court's process. O. Reg. 78/06, s. 26.

(2) In connection with an order striking out or amending a document under subrule (1), the court may do one or more of the following:

1. In the case of a claim, order that the action be stayed or dismissed.
2. In the case of a defence, strike out the defence and grant judgment.
3. Impose such terms as are just. O. Reg. 78/06, s. 26.

RULE 13 SETTLEMENT CONFERENCES

Settlement Conference Required in Defended Action

13.01 (1) A settlement conference shall be held in every defended action. O. Reg. 78/06, s. 27.

Duty of Clerk

(2) The clerk shall fix a time, date and place for the settlement conference and serve a notice of settlement conference, together with a list of proposed witnesses (Form 13A), on the parties. O. Reg. 78/06, s. 27.

Timing

(3) The settlement conference shall be held within 90 days after the first defence is filed. O. Reg. 78/06, s. 27.

Exception

(4) Subrules (1) to (3) do not apply if the defence contains an admission of liability for all of the plaintiff's claim and a proposal of terms of payment under subrule 9.03 (1). O. Reg. 78/06, s. 27.

Attendance

13.02 (1) A party and the party's lawyer or agent, if any, shall, unless the court orders otherwise, participate in the settlement conference,

(a) by personal attendance; or

(b) by telephone or video conference in accordance with rule 1.07. O. Reg. 78/06, s. 27.

Authority to Settle

(2) A party who requires another person's approval before agreeing to a settlement shall, before the settlement conference, arrange to have ready telephone access to the other person throughout the conference, whether it takes place during or after regular business hours. O. Reg. 78/06, s. 27.

Additional Settlement Conferences

(3) The court may order the parties to attend an additional settlement conference. O. Reg. 78/06, s. 27.

(4) The clerk shall fix a time and place for any additional settlement conference and serve a notice of settlement conference, together with a list of proposed witnesses (Form 13A) on the parties. O. Reg. 78/06, s. 27.

Failure to Attend

(5) If a party who has received a notice of settlement conference fails to attend the conference, the court may,

- (a) impose appropriate sanctions, by way of costs or otherwise; and
- (b) order that an additional settlement conference be held, if necessary. O. Reg. 78/06, s. 27.

(6) If a defendant fails to attend a first settlement conference, receives notice of an additional settlement conference and fails to attend the additional settlement conference, the court may,

- (a) strike out the defence and dismiss the defendant's claim, if any, and allow the plaintiff to prove the plaintiff's claim; or
- (b) make such other order as is just. O. Reg. 78/06, s. 27.

Inadequate Preparation, Failure to File Material

(7) The court may award costs against a person who attends a settlement conference if,

- (a) in the opinion of the court, the person is so inadequately prepared as to frustrate the purposes of the conference;
- (b) the person fails to file the material required by subrule 13.03 (2). O. Reg. 78/06, s. 27.

Purposes of Settlement Conference

13.03 (1) The purposes of a settlement conference are,

- (a) to resolve or narrow the issues in the action;
- (b) to expedite the disposition of the action;
- (c) to encourage settlement of the action;
- (d) to assist the parties in effective preparation for trial; and
- (e) to provide full disclosure between the parties of the relevant facts and evidence. O. Reg. 78/06, s. 27.

Disclosure

(2) At least 14 days before the date of the settlement conference, each party shall serve on every other party and file with the court,

- (a) a copy of any document to be relied on at the trial, including an expert report, not attached to the party's claim or defence; and
- (b) a list of proposed witnesses (Form 13A) and of other persons with knowledge of the matters in dispute in the action. O. Reg. 78/06, s. 27.

(3) At the settlement conference, the parties or their representatives shall openly and frankly discuss the issues involved in the action. O. Reg. 78/06, s. 27.

Further Disclosure Restricted

(4) Except as otherwise provided or with the consent of the parties (Form 13B), the matters discussed at the settlement conference shall not be disclosed to others until after the action has been disposed of. O. Reg. 78/06, s. 27.

Recommendations to Parties

13.04 The court may make recommendations to the parties on any matter relating to the conduct of the action, in order to fulfil the purposes of a settlement conference, including recommendations as to,

- (a) the clarification and simplification of issues in the action;
- (b) the elimination of claims or defences that appear to be unsupported; and
- (c) the admission of facts or documents without further proof. O. Reg. 78/06, s. 27.

Orders at Settlement Conference

13.05 (1) A judge conducting a settlement conference may make any order relating to the conduct of the action that the court could make. O. Reg. 78/06, s. 27.

(2) Without limiting the generality of subrule (1), the judge may,

- (a) make an order,
 - (i) adding or deleting parties,
 - (ii) consolidating actions,
 - (iii) staying the action,
 - (iv) amending or striking out a claim or defence under rule 12.02,
 - (v) staying or dismissing a claim,
 - (vi) directing production of documents,
 - (vii) changing the place of trial under rule 6.01,
 - (viii) directing an additional settlement conference under subrule 13.02 (3), and
 - (ix) ordering costs; and
- (b) at an additional settlement conference, order judgment under subrule 13.02 (6). O. Reg. 78/06, s. 27.

Recommendations to Judge

(3) If the settlement conference is conducted by a referee, a judge may, on the referee's recommendation, make any order that may be made under subrules (1) and (2). O. Reg. 78/06, s. 27.

Consent to Final Judgment

(4) A judge may order final judgment at a settlement conference where the matter in dispute is for an amount under the appealable limit and a party files a consent (Form 13B) signed by all parties before the settlement conference indicating that they wish to obtain final determination of the matter at the settlement conference if a mediated settlement is not reached. O. Reg. 78/06, s. 27.

Service of Order

(5) Within 10 days after the judge signs an order made at a settlement conference, the clerk shall serve the order on the parties that were not present at the settlement conference in accordance with subrule 8.01 (6). O. Reg. 78/06, s. 27.

Memorandum

13.06 (1) At the end of the settlement conference, the court shall prepare a memorandum summarizing,

- (a) recommendations made under rule 13.04;
- (b) the issues remaining in dispute;
- (c) the matters agreed on by the parties;
- (d) any evidentiary matters that are considered relevant; and
- (e) information relating to the scheduling of the remaining steps in the proceeding. O. Reg. 78/06, s. 27.

(2) The memorandum shall be filed with the clerk, who shall give a copy to the trial judge. O. Reg. 78/06, s. 27.

Notice of Trial

13.07 At or after the settlement conference, the clerk shall provide the parties with a notice stating that one of the parties must request a trial date if the action is not disposed of within 30 days after the settlement conference, and pay the fee required for setting the action down for trial. O. Reg. 78/06, s. 27.

Judge Not To Preside At Trial

13.08 A judge who conducts a settlement conference in an action shall not preside at the trial of the action. O. Reg. 78/06, s. 27.

Withdrawal of Claim

13.09 After a settlement conference has been held, a claim against a party who is not in default shall not be withdrawn or discontinued by the party who brought the claim without,

- (a) the written consent of the party against whom the claim is brought; or
- (b) leave of the court. O. Reg. 78/06, s. 27.

Costs

13.10 The costs of a settlement conference, exclusive of disbursements, shall not exceed \$100 unless the court orders otherwise because there are special circumstances. O. Reg. 78/06, s. 27.

RULE 14 OFFER TO SETTLE

14.01 A party may serve on any other party an offer to settle a claim on the terms specified in the offer. O. Reg. 258/98, r. 14.01.

Written Documents

14.01.1 (1) An offer to settle, an acceptance of an offer to settle and a notice of withdrawal of an offer to settle shall be in writing. O. Reg. 78/06, s. 28.

Use of Forms

(2) An offer to settle may be in Form 14A, an acceptance of an offer to settle may be in Form 14B and a notice of withdrawal of an offer to settle may be in Form 14C. O. Reg. 78/06, s. 28.

Terms of Settlement

(3) The terms of an accepted offer to settle may be set out in terms of settlement (Form 14D). O. Reg. 78/06, s. 28.

Time for Making Offer

14.02 (1) An offer to settle may be made at any time. O. Reg. 78/06, s. 29.

Costs Consequences

(2) The costs consequences referred to in rule 14.07 apply only if the offer to settle is served on the party to whom it is made at least seven days before the trial commences. O. Reg. 78/06, s. 29.

Withdrawal

14.03 (1) An offer to settle may be withdrawn at any time before it is accepted, by serving a notice of withdrawal of an offer to settle on the party to whom it was made. O. Reg. 78/06, s. 29.

Deemed Withdrawal

(2) If an offer to settle specifies a date after which it is no longer available for acceptance, and has not been accepted on or before that date, the offer shall be deemed to have been withdrawn on the day after that date. O. Reg. 78/06, s. 29.

Expiry When Court Disposes of Claim

(3) An offer may not be accepted after the court disposes of the claim in respect of which the offer is made. O. Reg. 78/06, s. 29.

No Disclosure to Trial Judge

14.04 If an offer to settle is not accepted, no communication about it or any related negotiations shall be made to the trial judge until all questions of liability and the relief to be granted, other than costs, have been determined. O. Reg. 78/06, s. 29.

Acceptance of an Offer to Settle

14.05 (1) An offer to settle may be accepted by serving an acceptance of an offer to settle on the party who made it, at any time before it is withdrawn or before the court disposes of the claim in respect of which it is made. O. Reg. 78/06, s. 30.

Payment Into Court As Condition

(2) An offer by a plaintiff to settle a claim in return for the payment of money by a defendant may include a term that the defendant pay the money into court; in that case, the defendant may accept the offer only by paying the money into court and notifying the plaintiff of the payment. O. Reg. 258/98, r. 14.05 (2).

(3) If a defendant offers to pay money to a plaintiff in settlement of a claim, the plaintiff may accept the offer with the condition that the defendant pay the money into court; if the offer is so accepted and the defendant fails to pay the money into court, the plaintiff may proceed as provided in rule 14.06. O. Reg. 258/98, r. 14.05 (3).

Costs

(4) If an accepted offer to settle does not deal with costs, the plaintiff is entitled,

- (a) in the case of an offer made by the defendant, to the plaintiff's disbursements assessed to the date the plaintiff was served with the offer;
- (b) in the case of an offer made by the plaintiff, to the plaintiff's disbursements assessed to the date that the notice of acceptance was served. O. Reg. 258/98, r. 14.05 (4).

Failure to Comply With Accepted Offer

14.06 If a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,

- (a) make a motion to the court for judgment in the terms of the accepted offer; or
- (b) continue the proceeding as if there had been no offer to settle. O. Reg. 258/98, r. 14.06.

Costs Consequences of Failure to Accept

14.07 (1) When a plaintiff makes an offer to settle that is not accepted by the defendant, the court may award the plaintiff an amount not exceeding twice the costs of the action, if the following conditions are met:

1. The plaintiff obtains a judgment as favourable as or more favourable than the terms of the offer.
2. The offer was made at least seven days before the trial.
3. The offer was not withdrawn and did not expire before the trial. O. Reg. 258/98, r. 14.07 (1).

(2) When a defendant makes an offer to settle that is not accepted by the plaintiff, the court may award the defendant an amount not exceeding twice the costs awardable to a successful party, from the date the offer was served, if the following conditions are met:

1. The plaintiff obtains a judgment as favourable as or less favourable than the terms of the offer.
2. The offer was made at least seven days before the trial.
3. The offer was not withdrawn and did not expire before the trial. O. Reg. 258/98, r. 14.07 (2).

(3) If an amount is awarded under subrule (1) or (2) to a self-represented party, the court may also award the party an amount not exceeding \$500 as compensation for inconvenience and expense. O. Reg. 78/06, s. 31.

RULE 15 MOTIONS

Notice of Motion and Supporting Affidavit

15.01 (1) A motion shall be made by a notice of motion and supporting affidavit (Form 15A). O. Reg. 393/09, s. 14 (1).

(2) The moving party shall obtain a hearing date from the clerk before serving the notice of motion and supporting affidavit under subrule (3). O. Reg. 78/06, s. 32; O. Reg. 393/09, s. 14 (2).

(3) The notice of motion and supporting affidavit,

- (a) shall be served on every party who has filed a claim and any defendant who has not been noted in default, at least seven days before the hearing date; and
- (b) shall be filed, with proof of service, at least three days before the hearing date. O. Reg. 78/06, s. 32; O. Reg. 393/09, s. 14 (3-5).

Supporting Affidavit in Response

(4) A party who prepares an affidavit (Form 15B) in response to the moving party's notice of motion and supporting affidavit shall serve it on every party who has filed a claim or defence and file it, with proof of service, at least two days before the hearing date. O. Reg. 78/06, s. 32; O. Reg. 393/09, s. 14 (6).

Supplementary Affidavit

(5) The moving party may serve a supplementary affidavit on every party who has filed a claim or defence and file it, with proof of service, at least two days before the hearing date. O. Reg. 78/06, s. 32.

Motion After Judgment Signed

(6) A motion that is made after judgment has been signed shall be served on all parties, including those who have been noted in default. O. Reg. 78/06, s. 32.

Method of Hearing

15.02 (1) A motion may be heard,

- (a) in person;
- (b) by telephone or video conference in accordance with paragraph 2 of subrule 1.07 (1);
- (c) by a judge in writing under clause 11.03 (2) (a);
- (d) by any other method that the judge determines is fair and reasonable. O. Reg. 78/06, s. 32.

(2) The attendance of the parties is not required if the motion is in writing under clause (1) (c). O. Reg. 78/06, s. 32.

Motion Without Notice

15.03 (1) Despite rule 15.01, a motion may be made without notice if the nature or circumstances of the motion make notice unnecessary or not reasonably possible. O. Reg. 78/06, s. 32.

Service of Order

(2) A party who obtains an order on motion without notice shall serve it on every affected party, together with a copy of the notice of motion and supporting affidavit used on the motion, within five days after the order is signed. O. Reg. 78/06, s. 32; O. Reg. 393/09, s. 15.

Motion to Set Aside or Vary Motion Made Without Notice

(3) A party who is affected by an order obtained on motion without notice may make a motion to set aside or vary the order, within 30 days after being served with the order. O. Reg. 78/06, s. 32.

No Further Motions Without Leave

15.04 If the court is satisfied that a party has tried to delay the action, add to its costs or otherwise abuse the court's process by making numerous motions without merit, the court may, on motion, make an order prohibiting the party from making any further motions in the action without leave of the court. O. Reg. 78/06, s. 32.

Adjournment of Motion

15.05 A motion shall not be adjourned at a party's request before the hearing date unless the written consent of all parties is filed when the request is made, unless the court orders otherwise. O. Reg. 78/06, s. 32.

Withdrawal of Motion

15.06 A motion shall not be withdrawn without,

- (a) the written consent of all the parties; or
- (b) leave of the court. O. Reg. 78/06, s. 32.

Costs

15.07 The costs of a motion, exclusive of disbursements, shall not exceed \$100 unless the court orders otherwise because there are special circumstances. O. Reg. 78/06, s. 32.

RULE 16 NOTICE OF TRIAL

Clerk Fixes Date and Serves Notice

16.01 (1) The clerk shall fix a date for trial and serve a notice of trial on each party who has filed a claim or defence if,

- (a) a settlement conference has been held; and
- (b) a party has requested that the clerk fix a date for trial and has paid the required fee. O. Reg. 78/06, s. 32.

Manner of Service

(2) The notice of trial shall be served by mail or fax. O. Reg. 78/06, s. 32.

RULE 17 TRIAL

Failure to Attend

17.01 (1) If an action is called for trial and all the parties fail to attend, the trial judge may strike the action off the trial list. O. Reg. 258/98, r. 17.01 (1).

(2) If an action is called for trial and a party fails to attend, the trial judge may,

- (a) proceed with the trial in the party's absence;
- (b) if the plaintiff attends and the defendant fails to do so, strike out the defence and dismiss the defendant's claim, if any, and allow the plaintiff to prove the plaintiff's claim, subject to subrule (3);
- (c) if the defendant attends and the plaintiff fails to do so, dismiss the action and allow the defendant to prove the defendant's claim, if any; or
- (d) make such other order as is just. O. Reg. 258/98, r. 17.01 (2).

(2.1) In the case described in clause (2) (b) or (c), the person with the claim is not required to prove liability against the party who has failed to attend but is required to prove the amount of the claim. O. Reg. 78/06, s. 33 (1).

(3) In the case described in clause (2) (b), if an issue as to the proper place of trial under subrule 6.01 (1) is raised in the defence, the trial judge shall consider it and make a finding. O. Reg. 258/98, r. 17.01 (3).

Setting Aside or Variation of Judgment

[\(4\)](#) The court may set aside or vary, on such terms as are just, a judgment obtained against a party who failed to attend at the trial. O. Reg. 258/98, r. 17.01 (4).

Conditions to Making of Order under Subrule (4)

[\(5\)](#) The court may make an order under subrule (4) only if,

- (a) the party who failed to attend makes a motion for the order within 30 days after becoming aware of the judgment; or
- (b) the party who failed to attend makes a motion for an extension of the 30-day period mentioned in clause (a) and the court is satisfied that there are special circumstances that justify the extension. O. Reg. 78/06, s. 33 (2).

Adjournment

[17.02 \(1\)](#) The court may postpone or adjourn a trial on such terms as are just, including the payment by one party to another of an amount as compensation for inconvenience and expense. O. Reg. 258/98, r. 17.02.

[\(2\)](#) If the trial of an action has been adjourned two or more times, any further adjournment may be made only on motion with notice to all the parties who were served with the notice of trial, unless the court orders otherwise. O. Reg. 78/06, s. 34.

Inspection

[17.03](#) The trial judge may, in the presence of the parties or their representatives, inspect any real or personal property concerning which a question arises in the action. O. Reg. 258/98, r. 17.03.

Motion for New Trial

[17.04 \(1\)](#) A party may make a motion for a new trial within 30 days after a final order is made. O. Reg. 78/06, s. 35.

Transcript

[\(2\)](#) In addition to serving and filing the notice of motion and supporting affidavit (Form 15A) required under rule 15.01, the moving party shall serve and file proof that a request has been made for a transcript of,

- (a) the reasons for judgment; and
- (b) any other portion of the proceeding that is relevant. O. Reg. 393/09, s. 16 (1).

Service and Filing of Transcript

[\(3\)](#) If available, a copy of the transcript shall, at least three days before the hearing date,

- (a) be served on all parties who were served with the original notice of trial; and
- (b) be filed, with proof of service. O. Reg. 78/06, s. 35; O. Reg. 393/09, s. 16 (2).

Powers of Court on Motion

[\(4\)](#) On the hearing of the motion, the court may,

- (a) if the party demonstrates that a condition referred to in subrule (5) is satisfied,

- (i) grant a new trial, or
 - (ii) pronounce the judgment that ought to have been given at trial and order judgment accordingly; or
- (b) dismiss the motion. O. Reg. 78/06, s. 35.

Conditions

(5) The conditions referred to in clause (4) (a) are:

1. There was a purely arithmetical error in the determination of the amount of damages awarded.
2. There is relevant evidence that was not available to the party at the time of the original trial and could not reasonably have been expected to be available at that time. O. Reg. 78/06, s. 35.

RULE 18 EVIDENCE AT TRIAL

Affidavit

18.01 At the trial of an undefended action, the plaintiff's case may be proved by affidavit, unless the trial judge orders otherwise. O. Reg. 258/98, r. 18.01.

Written Statements, Documents and Records

18.02 (1) A document or written statement or an audio or visual record that has been served, at least 30 days before the trial date, on all parties who were served with the notice of trial, shall be received in evidence, unless the trial judge orders otherwise. O. Reg. 78/06, s. 36 (1).

(2) Subrule (1) applies to the following written statements and documents:

1. The signed written statement of any witness, including the written report of an expert, to the extent that the statement relates to facts and opinions to which the witness would be permitted to testify in person.
2. Any other document, including but not limited to a hospital record or medical report made in the course of care and treatment, a financial record, a receipt, a bill, documentary evidence of loss of income or property damage, and a repair estimate. O. Reg. 258/98, r. 18.02 (2); O. Reg. 78/06, s. 36 (2).

Details about Witness or Author

(3) A party who serves on another party a written statement or document described in subrule (2) shall append to or include in the statement or document,

- (a) the name, telephone number and address for service of the witness or author; and
- (b) if the witness or author is to give expert evidence, a summary of his or her qualifications. O. Reg. 78/06, s. 36 (3).

(4) A party who has been served with a written statement or document described in subrule (2) and wishes to cross-examine the witness or author may summon him or her as a witness under subrule 18.03 (1). O. Reg. 258/98, r. 18.02 (4).

Where Witness or Author is Summoned

(5) A party who serves a summons to witness on a witness or author referred to in subrule (3) shall, at the time the summons is served, serve a copy of the summons on every other party. O. Reg. 78/06, s. 36 (4).

(6) Service of a summons and the payment or tender of attendance money under this rule may be proved by affidavit (Form 8A). O. Reg. 78/06, s. 36 (4).

Adjournment

(7) A party who is not served with a copy of the summons in accordance with subrule (5) may request an adjournment of the trial, with costs. O. Reg. 78/06, s. 36 (4).

Summons to Witness

18.03 (1) A party who requires the attendance of a person in Ontario as a witness at a trial may serve the person with a summons to witness (Form 18A) requiring him or her to attend the trial at the time and place stated in the summons. O. Reg. 258/98, r. 18.03 (1).

(2) The summons may also require the witness to produce at the trial the documents or other things in his or her possession, control or power relating to the matters in question in the action that are specified in the summons. O. Reg. 258/98, r. 18.03 (2).

(3) A summons to witness (Form 18A) shall be served in accordance with subrule 8.01 (7). O. Reg. 78/06, s. 37 (1).

(4) Service of a summons and the payment or tender of attendance money may be proved by affidavit (Form 8A). O. Reg. 78/06, s. 37 (1).

(5) A summons to witness continues to have effect until the attendance of the witness is no longer required. O. Reg. 258/98, r. 18.03 (5).

Interpreter

(5.1) If a party serves a summons on a witness who requires an interpreter, the party shall arrange for a qualified interpreter to attend at the trial unless the interpretation is from English to French or French to English and an interpreter is provided by the Ministry of the Attorney General. O. Reg. 78/06, s. 37 (2).

(5.2) If a party does not comply with subrule (5.1), every other party is entitled to request an adjournment of the trial, with costs. O. Reg. 78/06, s. 37 (2).

Failure to Attend or Remain in Attendance

(6) If a witness whose evidence is material to the conduct of an action fails to attend at the trial or to remain in attendance in accordance with the requirements of a summons to witness served on him or her, the trial judge may, by warrant (Form 18B) directed to all police officers in Ontario, cause the witness to be apprehended anywhere within Ontario and promptly brought before the court. O. Reg. 258/98, r. 18.03 (6).

Identification Form

(6.1) The party who served the summons on the witness may file with the clerk an identification form (Form 20K) to assist the police in apprehending the witness. O. Reg. 78/06, s. 37 (3).

(7) On being apprehended, the witness may be detained in custody until his or her presence is no longer required or released on such terms as are just, and may be ordered to pay the costs arising out of the failure to attend or remain in attendance. O. Reg. 258/98, r. 18.03 (7).

Abuse of Power to Summon Witness

(8) If satisfied that a party has abused the power to summon a witness under this rule, the court may order that the party pay directly to the witness an amount as compensation for inconvenience and expense. O. Reg. 258/98, r. 18.03 (8).

RULE 19 COSTS

Disbursements

19.01 (1) A successful party is entitled to have the party's reasonable disbursements, including any costs of effecting service or preparing a plaintiff's or defendant's claim or a defence and expenses for travel, accommodation, photocopying and experts' reports, paid by the unsuccessful party, unless the court orders otherwise. O. Reg. 78/06, s. 38 (1); O. Reg. 440/10, s. 3 (1).

(2) The clerk shall assess the disbursements in accordance with the regulations made under the *Administration of Justice Act* and in accordance with subrules (3) and (4); the assessment is subject to review by the court. O. Reg. 258/98, r. 19.01 (2); O. Reg. 440/10, s. 3 (2).

(3) The amount of disbursements assessed for effecting service shall not exceed \$60 for each person served unless the court is of the opinion that there are special circumstances that justify assessing a greater amount. O. Reg. 258/98, r. 19.01 (3); O. Reg. 78/06, s. 38 (2); O. Reg. 440/10, s. 3 (3).

(4) The amount of disbursements assessed for preparing a plaintiff's or defendant's claim or a defence shall not exceed \$100. O. Reg. 440/10, s. 3 (4).

Limit

19.02 Any power under this rule to award costs is subject to section 29 of the *Courts of Justice Act*, which limits the amount of costs that may be awarded. O. Reg. 78/06, s. 39.

19.03 Revoked: O. Reg. 440/10, s. 4.

Representation Fee

19.04 If a successful party is represented by a lawyer, student-at-law or agent, the court may award the party a reasonable representation fee at trial or at an assessment hearing. O. Reg. 440/10, s. 5.

Compensation for Inconvenience and Expense

19.05 The court may order an unsuccessful party to pay to a successful party who is self-represented an amount not exceeding \$500 as compensation for inconvenience and expense. O. Reg. 440/10, s. 5.

Penalty

19.06 If the court is satisfied that a party has unduly complicated or prolonged an action or has otherwise acted unreasonably, the court may order the party to pay an amount as compensation to another party. O. Reg. 78/06, s. 39.

RULE 20 ENFORCEMENT OF ORDERS

Definitions

20.01 In rules 20.02 to 20.12,

“creditor” means a person who is entitled to enforce an order for the payment or recovery of money;
 (“créancier”)

“debtor” means a person against whom an order for the payment or recovery of money may be enforced. (“débiteur”) O. Reg. 258/98, r. 20.01; O. Reg. 78/06, s. 40.

Power of Court

20.02 (1) The court may,

- (a) stay the enforcement of an order of the court, for such time and on such terms as are just; and
- (b) vary the times and proportions in which money payable under an order of the court shall be paid, if it is satisfied that the debtor’s circumstances have changed. O. Reg. 258/98, r. 20.02 (1).

Enforcement Limited While Periodic Payment Order in Force

(2) While an order for periodic payment is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff. O. Reg. 258/98, r. 20.02 (2).

Service of Notice of Default of Payment

(3) The creditor may serve the debtor with a notice of default of payment (Form 20L) in accordance with subrule 8.01 (14) and file a copy of it, together with an affidavit of default of payment (Form 20M), if the debtor fails to make payments under an order for periodic payment. O. Reg. 78/06, s. 41.

Termination on Default

(4) An order for periodic payment terminates on the day that is 15 days after the creditor serves the debtor with the notice of default of payment, unless a consent (Form 13B) in which the creditor waives the default is filed within the 15-day period. O. Reg. 78/06, s. 41.

General

20.03 In addition to any other method of enforcement provided by law,

- (a) an order for the payment or recovery of money may be enforced by,
 - (i) a writ of seizure and sale of personal property (Form 20C) under rule 20.06,
 - (ii) a writ of seizure and sale of land (Form 20D) under rule 20.07, and
 - (iii) garnishment under rule 20.08; and
- (b) a further order as to payment may be made under subrule 20.10 (7). O. Reg. 258/98, r. 20.03.

Certificate of Judgment

20.04 (1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor’s request, supported by an affidavit for enforcement request (Form 20P) stating the amount still owing, issue a certificate of judgment (Form 20A) to the clerk at the court location specified by the creditor. O. Reg. 393/09, s. 17.

(2) The certificate of judgment shall state,

- (a) the date of the order and the amount awarded;

(b) the rate of postjudgment interest payable; and

(c) the amount owing, including postjudgment interest. O. Reg. 258/98, r. 20.04 (2).

Delivery of Personal Property

20.05 (1) An order for the delivery of personal property may be enforced by a writ of delivery (Form 20B) issued by the clerk to a bailiff, on the request of the person in whose favour the order was made, supported by an affidavit of that person or the person's agent stating that the property has not been delivered. O. Reg. 258/98, r. 20.05 (1).

Seizure of Other Personal Property

(2) If the property referred to in a writ of delivery cannot be found or taken by the bailiff, the person in whose favour the order was made may make a motion to the court for an order directing the bailiff to seize any other personal property of the person against whom the order was made. O. Reg. 258/98, r. 20.05 (2).

(3) Unless the court orders otherwise, the bailiff shall keep personal property seized under subrule (2) until the court makes a further order for its disposition. O. Reg. 258/98, r. 20.05 (3); O. Reg. 78/06, s. 42.

Storage Costs

(4) The person in whose favour the order is made shall pay the bailiff's storage costs, in advance and from time to time; if the person fails to do so, the seizure shall be deemed to be abandoned. O. Reg. 258/98, r. 20.05 (4).

Writ of Seizure and Sale of Personal Property

20.06 (1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor's request, supported by an affidavit for enforcement request (Form 20P) stating the amount still owing, issue to a bailiff a writ of seizure and sale of personal property (Form 20C), and the bailiff shall enforce the writ for the amount owing, postjudgment interest and the bailiff's fees and expenses. O. Reg. 258/98, r. 20.06 (1); O. Reg. 78/06, s. 43 (1).

(1.1) If more than six years have passed since the order was made, a writ of seizure and sale of personal property may be issued only with leave of the court. O. Reg. 78/06, s. 43 (2); O. Reg. 393/09, s. 18 (1).

(1.2) If a writ of seizure and sale of personal property is not issued within one year after the date on which an order granting leave to issue it is made,

(a) the order granting leave ceases to have effect; and

(b) a writ of seizure and sale of personal property may be issued only with leave of the court on a subsequent motion. O. Reg. 393/09, s. 18 (2).

(1.3) A writ of seizure and sale of personal property shall show the creditor's name, address and telephone number and the name, address and telephone number of the creditor's lawyer or agent, if any. O. Reg. 393/09, s. 18 (2).

Duration of Writ

(2) A writ of seizure and sale of personal property remains in force for six years after the date of its issue and for a further six years after each renewal. O. Reg. 78/06, s. 43 (3).

Renewal of Writ

(3) A writ of seizure and sale of personal property may be renewed before its expiration by filing a request to renew a writ of seizure and sale (Form 20N) with the bailiff. O. Reg. 78/06, s. 43 (3); O. Reg. 393/09, s. 18 (3).

Direction to Enforce

(4) The creditor may request enforcement of a writ of seizure and sale of personal property by filing a direction to enforce writ of seizure and sale of personal property (Form 20O) with the bailiff. O. Reg. 393/09, s. 18 (4).

Inventory of Property Seized

(5) Within a reasonable time after a request is made by the debtor or the debtor's agent, the bailiff shall deliver an inventory of personal property seized under a writ of seizure and sale of personal property. O. Reg. 258/98, r. 20.06 (5).

Sale of Personal Property

(6) Personal property seized under a writ of seizure and sale of personal property shall not be sold by the bailiff unless notice of the time and place of sale has been,

(a) mailed, at least 10 days before the sale,

(i) to the creditor at the address shown on the writ, or to the creditor's lawyer or agent, and

(ii) to the debtor at the debtor's last known address; and

(b) advertised in a manner that is likely to bring it to the attention of the public. O. Reg. 78/06, s. 43 (4); O. Reg. 393/09, s. 18 (5).

Writ of Seizure and Sale of Land

20.07 (1) If an order for the payment or recovery of money is unsatisfied, the clerk shall at the creditor's request, supported by an affidavit for enforcement request (Form 20P) stating the amount still owing, issue to the sheriff specified by the creditor a writ of seizure and sale of land (Form 20D). O. Reg. 258/98, r. 20.07 (1); O. Reg. 78/06, s. 44 (1); O. Reg. 393/09, s. 19 (1).

(1.1) If more than six years have passed since the order was made, a writ of seizure and sale of land may be issued only with leave of the court. O. Reg. 393/09, s. 19 (2).

(1.2) If a writ of seizure and sale of land is not issued within one year after the date on which an order granting leave to issue it is made,

(a) the order granting leave ceases to have effect; and

(b) a writ of seizure and sale of land may be issued only with leave of the court on a subsequent motion. O. Reg. 393/09, s. 19 (2).

(2) A writ of seizure and sale of land issued under subrule (1) has the same force and effect and may be renewed or withdrawn in the same manner as a writ of seizure and sale issued under rule 60 of the Rules of Civil Procedure. O. Reg. 258/98, r. 20.07 (2).

Duration of Writ

(3) A writ of seizure and sale of land remains in force for six years after the date of its issue and for a further six years after each renewal. O. Reg. 78/06, s. 44 (2).

Renewal of Writ

(4) A writ of seizure and sale of land may be renewed before its expiration by filing a request to renew a writ of seizure and sale (Form 20N) with the sheriff. O. Reg. 393/09, s. 19 (3).

Garnishment

20.08 (1) A creditor may enforce an order for the payment or recovery of money by garnishment of debts payable to the debtor by other persons. O. Reg. 258/98, r. 20.08 (1).

Joint Debts Garnishable

(2) If a debt is payable to the debtor and to one or more co-owners, one-half of the indebtedness or a greater or lesser amount specified in an order made under subrule (15) may be garnished. O. Reg. 258/98, r. 20.08 (2).

Where Leave Required

(2.1) If more than six years have passed since the order was made, or if its enforcement is subject to a condition, a notice of garnishment may be issued only with leave of the court. O. Reg. 393/09, s. 20 (1).

(2.2) If a notice of garnishment is not issued within one year after the date on which an order granting leave to issue it is made,

(a) the order granting leave ceases to have effect; and

(b) a notice of garnishment may be issued only with leave of the court on a subsequent motion.
O. Reg. 393/09, s. 20 (1).

(2.3) A notice of renewal of garnishment may be issued under subrule (5.3) without leave of the court before the original notice of garnishment or any subsequent notice of renewal of garnishment expires. O. Reg. 393/09, s. 20 (1).

Obtaining Notice of Garnishment

(3) A creditor who seeks to enforce an order by garnishment shall file with the clerk of a court in the territorial division in which the debtor resides or carries on business,

(a) an affidavit for enforcement request (Form 20P) naming one debtor and one garnishee and stating,

(i) the date of the order and the amount awarded,

(ii) the territorial division in which the order was made,

(iii) the rate of postjudgment interest payable,

(iv) the total amount of any payments received since the order was granted,

(v) the amount owing, including postjudgment interest,

(vi) the name and address of the named garnishee to whom a notice of garnishment is to be directed,

(vii) the creditor's belief that the named garnishee is or will become indebted to the debtor, and the grounds for the belief, and

(viii) any particulars of the debts that are known to the creditor; and

(b) a certificate of judgment (Form 20A), if the order was made in another territorial division. O. Reg. 78/06, s. 45 (1); O. Reg. 393/09, s. 20 (2).

(4) On the filing of the documents required by subrule (3), the clerk shall issue a notice of garnishment (Form 20E) naming as garnishee the person named in the affidavit. O. Reg. 78/06, s. 45 (1).

(5) A notice of garnishment issued under subrule (4) shall name only one debtor and only one garnishee. O. Reg. 258/98, r. 20.08 (5).

Duration and Renewal

(5.1) A notice of garnishment remains in force for six years from the date of its issue and for a further six years from each renewal. O. Reg. 393/09, s. 20 (3).

(5.2) A notice of garnishment may be renewed before its expiration by filing with the clerk of the court in which the notice of garnishment was issued a notice of renewal of garnishment (Form 20E.1), together with an affidavit for enforcement request (Form 20P). O. Reg. 393/09, s. 20 (3).

(5.3) On the filing of the notice and affidavit required by subrule (5.2), the clerk shall issue the notice of renewal of garnishment (Form 20E.1) naming as garnishee the person named in the affidavit. O. Reg. 393/09, s. 20 (3).

(5.4) The provisions of these rules that apply with respect to notices of garnishment also apply with respect to notices of renewal of garnishment. O. Reg. 393/09, s. 20 (3).

Service of Notice of Garnishment

(6) The notice of garnishment (Form 20E) shall be served by the creditor in accordance with subrule 8.01 (8). O. Reg. 78/06, s. 45 (2).

(6.1) The creditor shall serve the notice of garnishment on the debtor within five days of serving it on the garnishee. O. Reg. 78/06, s. 45 (2).

Financial Institution

(6.2) If the garnishee is a financial institution, the notice of garnishment and all further notices required to be served under this rule shall be served at the branch at which the debt is payable. O. Reg. 78/06, s. 45 (2).

Proof of Service

(6.3) Service of the notice of garnishment may be proved by affidavit. O. Reg. 78/06, s. 45 (2).

Garnishee Liable From Time of Service

(7) The garnishee is liable to pay to the clerk any debt of the garnishee to the debtor, up to the amount shown in the notice of garnishment, within 10 days after service of the notice on the garnishee or 10 days after the debt becomes payable, whichever is later. O. Reg. 258/98, r. 20.08 (7).

(8) For the purpose of subrule (7), a debt of the garnishee to the debtor includes,

(a) a debt payable at the time the notice of garnishment is served; and

(b) a debt payable (whether absolutely or on the fulfilment of a condition) after the notice is served and within six years after it is issued. O. Reg. 258/98, r. 20.08 (8); O. Reg. 78/06, s. 45 (3); O. Reg. 393/09, s. 20 (4).

Payment by Garnishee

(9) A garnishee who admits owing a debt to the debtor shall pay it to the clerk in the manner prescribed by the notice of garnishment, and the amounts paid into court shall not exceed the portion of the debtor's wages that are subject to seizure or garnishment under section 7 of the *Wages Act*. O. Reg. 78/06, s. 45 (4).

Equal Distribution Among Creditors

(10) If the clerk has issued notices of garnishment in respect of a debtor at the request of more than one creditor and receives payment under any of the notices of garnishment, he or she shall distribute the payment equally among the creditors who have filed a request for garnishment and have not been paid in full. O. Reg. 258/98, r. 20.08 (10); O. Reg. 461/01, s. 18.

Disputing Garnishment

(11) A garnishee referred to in subrule (12) shall, within 10 days after service of the notice of garnishment, file with the court a statement (Form 20F) setting out the particulars. O. Reg. 258/98, r. 20.08 (11).

(12) Subrule (11) applies to a garnishee who,

- (a) wishes to dispute the garnishment for any reason; or
- (b) pays to the clerk less than the amount set out in the notice of garnishment as owing by the garnishee to the debtor, because the debt is owed to the debtor and to one or more co-owners of the debt or for any other reason. O. Reg. 258/98, r. 20.08 (12); O. Reg. 78/06, s. 45 (5).

Service on Creditor and Debtor

(13) The garnishee shall serve a copy of the garnishee's statement on the creditor and the debtor. O. Reg. 78/06, s. 45 (6).

Notice to Co-Owner of Debt

(14) A creditor who is served with a garnishee's statement under subrule (13) shall forthwith send to any co-owners of the debt, in accordance with subrule 8.01 (14), a notice to co-owner of debt (Form 20G) and a copy of the garnishee's statement. O. Reg. 258/98, r. 20.08 (14); O. Reg. 78/06, s. 45 (7).

Garnishment Hearing

(15) At the request of a creditor, debtor, garnishee, co-owner of the debt or any other interested person, the clerk shall fix a time and place for a garnishment hearing. O. Reg. 78/06, s. 45 (8).

Service of Notice of Garnishment Hearing

(15.1) After having obtained a hearing date from the clerk, the party requesting the garnishment hearing shall serve the notice of garnishment hearing (Form 20Q) in accordance with subrule 8.01 (9). O. Reg. 78/06, s. 45 (8).

Powers of Court at Hearing

(15.2) At the garnishment hearing, the court may,

- (a) if it is alleged that the garnishee's debt to the debtor has been assigned or encumbered, order the assignee or encumbrancer to appear and state the nature and particulars of the claim;

- (b) determine the rights and liabilities of the garnishee, any co-owner of the debt, the debtor and any assignee or encumbrancer;
- (c) vary or suspend periodic payments under a notice of garnishment; or
- (d) determine any other matter in relation to a notice of garnishment. O. Reg. 78/06, s. 45 (8).

Time to Request Hearing

[\(16\)](#) A person who has been served with a notice to co-owner of debt is not entitled to dispute the enforcement of the creditor's order for the payment or recovery of money or a payment made by the clerk unless the person requests a garnishment hearing within 30 days after the notice is sent. O. Reg. 258/98, r. 20.08 (16).

Enforcement Against Garnishee

[\(17\)](#) If the garnishee does not pay to the clerk the amount set out in the notice of garnishment and does not send a garnishee's statement, the creditor is entitled to an order against the garnishee for payment of the amount set out in the notice, unless the court orders otherwise. O. Reg. 258/98, r. 20.08 (17).

Payment to Person other than Clerk

[\(18\)](#) If, after service of a notice of garnishment, the garnishee pays a debt attached by the notice to a person other than the clerk, the garnishee remains liable to pay the debt in accordance with notice. O. Reg. 258/98, r. 20.08 (18).

Effect of Payment to Clerk

[\(19\)](#) Payment of a debt by a garnishee in accordance with a notice of garnishment is a valid discharge of the debt as between the garnishee and the debtor and any co-owner of the debt, to the extent of the payment. O. Reg. 258/98, r. 20.08 (19).

Distribution of Payments

[\(20\)](#) When proof is filed that the notice of garnishment was served on the debtor, the clerk shall distribute a payment received under a notice of garnishment to a creditor in accordance with subrule (20.1), unless,

- (a) a hearing has been requested under subrule (15);
- (b) a notice of motion and supporting affidavit (Form 15A) has been filed under rule 8.10, 11.06 or 17.04; or
- (c) a request for clerk's order on consent (Form 11.2A) has been filed seeking the relief described in subparagraph 1 iii of subrule 11.2.01 (1). O. Reg. 78/06, s. 45 (9); O. Reg. 393/09, s. 20 (5).

[\(20.1\)](#) The clerk shall distribute the payment,

- (a) in the case of the first payment under the notice of garnishment, 30 days after the date it is received; and
- (b) in the case of every subsequent payment under the notice of garnishment, as they are received. O. Reg. 78/06, s. 45 (9).

Notice Once Order Satisfied

(20.2) Once the amount owing under an order that is enforced by garnishment is paid, the creditor shall immediately serve a notice of termination of garnishment (Form 20R) on the garnishee and on the clerk. O. Reg. 393/09, s. 20 (6).

Payment if Debt Jointly Owned

(21) If a payment of a debt owed to the debtor and one or more co-owners has been made to the clerk, no request for a garnishment hearing is made and the time for doing so under subrule (16) has expired, the creditor may file with the clerk, within 30 days after that expiry,

- (a) proof of service of the notice to co-owner; and
- (b) an affidavit stating that the creditor believes that no co-owner of the debt is a person under disability, and the grounds for the belief. O. Reg. 258/98, r. 20.08 (21).

(22) The affidavit required by subrule (21) may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit. O. Reg. 258/98, r. 20.08 (22).

(23) If the creditor does not file the material referred to in subrule (21), the clerk shall return the money to the garnishee. O. Reg. 258/98, r. 20.08 (23); O. Reg. 393/09, s. 20 (7).

Consolidation Order

20.09 (1) A debtor against whom there are two or more unsatisfied orders for the payment of money may make a motion to the court for a consolidation order. O. Reg. 258/98, r. 20.09 (1).

(2) The debtor's notice of motion and supporting affidavit (Form 15A) shall set out, in the affidavit portion,

- (a) the names and addresses of the creditors who have obtained an order for the payment of money against the debtor;
- (b) the amount owed to each creditor;
- (c) the amount of the debtor's income from all sources, identifying them; and
- (d) the debtor's current financial obligations and any other relevant facts. O. Reg. 258/98, r. 20.09 (2); O. Reg. 393/09, s. 21 (1).

Notice of Motion

(3) For the purposes of clause 15.01 (3) (a), the notice of motion and supporting affidavit shall be served on each of the creditors mentioned in it at least seven days before the hearing date. O. Reg. 393/09, s. 21 (2).

Contents of Consolidation Order

(4) At the hearing of the motion, the court may make a consolidation order setting out,

- (a) a list of unsatisfied orders for the payment of money against the debtor, indicating in each case the date, court and amount and the amount unpaid;
- (b) the amounts to be paid into court by the debtor under the consolidation order; and
- (c) the times of the payments. O. Reg. 258/98, r. 20.09 (4).

(5) The total of the amounts to be paid into court by the debtor under a consolidation order shall not exceed the portion of the debtor's wages that are subject to seizure or garnishment under section 7 of the *Wages Act*. O. Reg. 78/06, s. 46 (1).

Creditor May Make Submissions

(6) At the hearing of the motion, a creditor may make submissions as to the amount and times of payment. O. Reg. 258/98, r. 20.09 (6).

Further Orders Obtained After Consolidation Order

(7) If an order for the payment of money is obtained against the debtor after the date of the consolidation order for a debt incurred before the date of the consolidation order, the creditor may file with the clerk a certified copy of the new order; the creditor shall be added to the consolidation order and shall share in the distribution under it from that time. O. Reg. 258/98, r. 20.09 (7).

(8) A consolidation order terminates immediately if an order for the payment of money is obtained against the debtor for a debt incurred after the date of the consolidation order. O. Reg. 258/98, r. 20.09 (8).

Enforcement Limited While Consolidation Order in Force

(9) While the consolidation order is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff. O. Reg. 258/98, r. 20.09 (9).

Termination on Default

(10) A consolidation order terminates immediately if the debtor is in default under it for 21 days. O. Reg. 258/98, r. 20.09 (10).

Effect of Termination

(11) If a consolidation order terminates under subrule (8) or (10), the clerk shall notify the creditors named in the consolidation order, and no further consolidation order shall be made in respect of the debtor for one year after the date of termination. O. Reg. 258/98, r. 20.09 (11); O. Reg. 461/01, s. 19 (1).

Manner of Sending Notice

(11.1) The notice that the consolidation order is terminated shall be served by mail or fax. O. Reg. 330/02, s. 12 (1).

(11.2), (11.3) Revoked: O. Reg. 78/06, s. 46 (2).

Equal Distribution Among Creditors

(12) All payments into a consolidation account belong to the creditors named in the consolidation order, who shall share equally in the distribution of the money. O. Reg. 258/98, r. 20.09 (12).

(13) The clerk shall distribute the money paid into the consolidation account at least once every six months. O. Reg. 258/98, r. 20.09 (13).

Examination of Debtor or Other Person

20.10 (1) If there is default under an order for the payment or recovery of money, the clerk of a court in the territorial division in which the debtor or other person to be examined resides or carries on

business shall, at the creditor's request, issue a notice of examination (Form 20H) directed to the debtor or other person. O. Reg. 258/98, r. 20.10 (1); O. Reg. 393/09, s. 22 (1).

(2) The creditor's request shall be accompanied by,

(a) an affidavit for enforcement request (Form 20P) setting out,

(i) the date of the order and the amount awarded,

(ii) the territorial division in which the order was made,

(iii) the rate of postjudgment interest payable,

(iv) the total amount of any payments received since the order was granted, and

(v) the amount owing, including postjudgment interest; and

(b) a certificate of judgment (Form 20A), if the order was made in another territorial jurisdiction. O. Reg. 258/98, r. 20.10 (2); O. Reg. 78/06, s. 47 (1); O. Reg. 393/09, s. 22 (2).

Service of Notice of Examination

(3) The notice of examination shall be served in accordance with subrules 8.01 (10), (11) and (12). O. Reg. 78/06, s. 47 (2).

(4) The debtor, any other persons to be examined and any witnesses whose evidence the court considers necessary may be examined in relation to,

(a) the reason for nonpayment;

(b) the debtor's income and property;

(c) the debts owed to and by the debtor;

(d) the disposal the debtor has made of any property either before or after the order was made;

(e) the debtor's present, past and future means to satisfy the order;

(f) whether the debtor intends to obey the order or has any reason for not doing so; and

(g) any other matter pertinent to the enforcement of the order. O. Reg. 258/98, r. 20.10 (4).

Duties of Person to be Examined

(4.1) A person who is served with a notice of examination shall,

(a) inform himself or herself about the matters mentioned in subrule (4) and be prepared to answer questions about them; and

(b) in the case of an examination of a debtor who is an individual, complete a financial information form (Form 20I) and,

(i) serve it on the creditor requesting the examination, but not file it with the court, and

(ii) provide a copy of it to the judge presiding at the examination hearing. O. Reg. 78/06, s. 47 (3); O. Reg. 440/10, s. 6 (1).

(4.2) A debtor required under clause (4.1) (b) to complete a financial information form (Form 20I) shall bring such documents to the examination hearing as are necessary to support the information that he or she provides in the financial information form. O. Reg. 440/10, s. 6 (2).

Who May Be Examined

(5) An officer or director of a corporate debtor, or, in the case of a debtor that is a partnership or sole proprietorship, the sole proprietor or any partner, may be examined on the debtor's behalf in relation to the matters set out in subrule (4). O. Reg. 258/98, r. 20.10 (5).

Attendance

(5.1) A person required to attend an examination may attend,

(a) in person; or

(b) by video conference in accordance with rule 1.07. O. Reg. 393/09, s. 22 (3).

Examinations Private, Under Oath and Recorded

(6) The examination shall be,

(a) held in the absence of the public, unless the court orders otherwise;

(b) conducted under oath; and

(c) recorded. O. Reg. 78/06, s. 47 (4).

Order As To Payment

(7) After the examination or if the debtor's consent is filed, the court may make an order as to payment. O. Reg. 258/98, r. 20.10 (7); O. Reg. 461/01, s. 20 (1).

Enforcement Limited while Order as to Payment in Force

(8) While an order as to payment is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff. O. Reg. 258/98, r. 20.10 (8).

(9)-(15) Revoked: O. Reg. 78/06, s. 47 (5).

Contempt Hearing

20.11 (1) If a person on whom a notice of examination has been served under rule 20.10 attends the examination but refuses to answer questions or to produce records or documents, the court may order the person to attend before it for a contempt hearing. O. Reg. 440/10, s. 7 (1).

Same

(2) If a person on whom a notice of examination has been served under rule 20.10 fails to attend the examination, the court may order the person to attend before it for a contempt hearing under subsection 30 (1) of the *Courts of Justice Act*. O. Reg. 440/10, s. 7 (1).

Notice of Contempt Hearing

(3) If the court makes an order for a contempt hearing,

(a) the clerk shall provide the creditor with a notice of contempt hearing setting out the time, date and place of the hearing; and

(b) the creditor shall serve the notice of contempt hearing on the debtor or other person in accordance with subrule 8.01 (13) and file the affidavit of service at least seven days before the hearing. O. Reg. 78/06, s. 48; O. Reg. 440/10, s. 7 (2).

Setting Aside Order for Contempt Hearing

(4) A person who has been ordered to attend a contempt hearing under subsection 30 (1) of the *Courts of Justice Act* may make a motion to set aside the order, before or after receiving the notice of contempt hearing but before the date of the hearing and, on the motion, the court may set aside the order and order that the person attend another examination under rule 20.10. O. Reg. 78/06, s. 48; O. Reg. 440/10, s. 7 (3).

Finding of Contempt of Court

(5) At a contempt hearing held under subrule (1), the court may find the person to be in contempt of court if the person fails to show cause why the person should not be held in contempt for refusing to answer questions or produce records or documents. O. Reg. 78/06, s. 48.

Same

(6) The finding of contempt at a hearing held under subsection 30 (1) of the *Courts of Justice Act* is subject to subsection 30 (2) of that Act. O. Reg. 440/10, s. 7 (4).

Other Powers of Court at Contempt Hearing

(7) At a contempt hearing, the court may order that the person,

- (a) attend an examination under rule 20.10;
- (b) be jailed for a period of not more than five days;
- (c) attend an additional contempt hearing under subrule (1) or subsection 30 (1) of the *Courts of Justice Act*, as the case may be; or
- (d) comply with any other order that the judge considers necessary or just. O. Reg. 78/06, s. 48; O. Reg. 440/10, s. 7 (5-7).

Warrant of Committal

(8) If a committal is ordered under clause (7) (b),

- (a) the creditor may complete and file with the clerk an identification form (Form 20K) to assist the police in apprehending the person named in the warrant of committal; and
- (b) the clerk shall issue a warrant of committal (Form 20J), accompanied by the identification form, if any, directed to all police officers in Ontario to apprehend the person named in the warrant anywhere in Ontario and promptly bring the person to the nearest correctional institution. O. Reg. 78/06, s. 48; O. Reg. 440/10, s. 7 (8).

Discharge

(9) A person in custody under a warrant issued under this rule shall be discharged from custody on the order of the court or when the time prescribed in the warrant expires, whichever is earlier. O. Reg. 78/06, s. 48; O. Reg. 440/10, s. 7 (9).

Duration and Renewal

(10) A warrant issued under this rule remains in force for 12 months after the date of issue and may be renewed by order of the court on a motion made by the creditor for 12 months at each renewal, unless the court orders otherwise. O. Reg. 78/06, s. 48; O. Reg. 440/10, s. 7 (10).

(11) Revoked: O. Reg. 440/10, s. 7 (11).

Satisfaction of Order

20.12 If payment is made in full satisfaction of an order,

- (a) where all parties consent, a party may file a request for clerk's order on consent (Form 11.2A) indicating that payment has been made in full satisfaction of the order or terms of settlement; or
- (b) the debtor may make a motion for an order confirming that payment has been made in full satisfaction of the order or terms of settlement. O. Reg. 78/06, s. 48; O. Reg. 393/09, s. 23.

RULE 21 REFEREE

21.01 (1) A person assigned the powers and duties of a referee under subsection 73 (2) of the *Courts of Justice Act* may, if directed by the regional senior justice or his or her designate,

- (a) hear disputes of proposals of terms of payment under rule 9.03;
- (b) conduct settlement conferences under rule 13;
- (c) hear motions for consolidation orders under rule 20.09; and
- (d) assess receipted disbursements for fees paid to the court, a court reporter or a sheriff under the regulations made under the *Administration of Justice Act*. O. Reg. 78/06, s. 49; O. Reg. 393/09, s. 24.

(2) Except under subrule 9.03 (5) (order as to terms of payment), a referee shall not make a final decision in any matter referred to him or her but shall report his or her findings and recommendations to the court. O. Reg. 78/06, s. 49.

22. Omitted (revokes other Regulations). O. Reg. 258/98, s. 22.

23. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 258/98, s. 23.

TABLE OF FORMS

| Form Number | Form Title | Date of Form |
|-------------|---|-------------------|
| 1A | Additional Parties | June 1, 2009 |
| 1A.1 | Additional Debtors | June 1, 2009 |
| 1B | Request for Telephone or Video Conference | September 1, 2010 |
| 4A | Consent to Act as Litigation Guardian | June 1, 2009 |
| 5A | Notice to Alleged Partner | June 1, 2009 |
| 7A | Plaintiff's Claim | September 1, 2010 |
| 8A | Affidavit of Service | September 1, 2010 |
| 9A | Defence | September 1, 2010 |
| 9B | Request to Clerk | June 1, 2009 |
| 10A | Defendant's Claim | June 1, 2009 |
| 11A | Affidavit for Jurisdiction | June 1, 2009 |
| 11B | Default Judgment | September 1, 2010 |
| 11.2A | Request for Clerk's Order on Consent | June 1, 2009 |
| 11.3A | Notice of Discontinued Claim | September 1, 2010 |
| 13A | List of Proposed Witnesses | June 1, 2009 |
| 13B | Consent | September 1, 2010 |
| 14A | Offer to Settle | June 1, 2009 |
| 14B | Acceptance of Offer to Settle | June 1, 2009 |
| 14C | Notice of Withdrawal of Offer to Settle | June 1, 2009 |
| 14D | Terms of Settlement | June 1, 2009 |
| 15A | Notice of Motion and Supporting Affidavit | September 1, 2010 |
| 15B | Affidavit | June 1, 2009 |

| | | |
|-------|--|-------------------|
| 18A | Summons to Witness | June 1, 2009 |
| 18B | Warrant for Arrest of Defaulting Witness | June 1, 2009 |
| 20A | Certificate of Judgment | September 1, 2010 |
| 20B | Writ of Delivery | June 1, 2009 |
| 20C | Writ of Seizure and Sale of Personal Property | June 1, 2009 |
| 20D | Writ of Seizure and Sale of Land | June 1, 2009 |
| 20E | Notice of Garnishment | September 1, 2010 |
| 20E.1 | Notice of Renewal of Garnishment | September 1, 2010 |
| 20F | Garnishee's Statement | September 1, 2010 |
| 20G | Notice to Co-owner of Debt | September 1, 2010 |
| 20H | Notice of Examination | September 1, 2010 |
| 20I | Financial Information Form | September 1, 2010 |
| 20J | Warrant of Committal | September 1, 2010 |
| 20K | Identification Form | June 1, 2009 |
| 20L | Notice of Default of Payment | June 1, 2009 |
| 20M | Affidavit of Default of Payment | September 1, 2010 |
| 20N | Request to Renew Writ of Seizure and Sale | June 1, 2009 |
| 20O | Direction to Enforce Writ of Seizure and Sale of Personal Property | June 1, 2009 |
| 20P | Affidavit for Enforcement Request | June 1, 2009 |
| 20Q | Notice of Garnishment Hearing | September 1, 2010 |
| 20R | Notice of Termination of Garnishment | September 1, 2010 |

O. Reg. 393/09, s. 25; O. Reg. 505/09, s. 1; O. Reg. 440/10, s. 8.

FORMS 1A-20J Revoked: O. Reg. 78/06, s. 51.