QUEEN'S BENCH RULES

PART ONE

PRELIMINARY MATTERS

I Application and Interpretation

Rules, how cited

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

Effect of amendment

(2) Subject to the directions of the court, proceedings commenced prior to any amendment shall be governed by the rules as amended, with such modification as may be required. R. 1.

Forms

2 The forms in the Appendix shall be completed and used where applicable with such variations as the circumstances of the proceeding require. Where no form is provided, any suitable form may be used. R. 2.

Interpretation of terms

3 In these rules, unless otherwise defined by order or by implication, or unless there is anything in the subject or context repugnant thereto, the words hereinafter mentioned shall have or include the meanings following:

"**Attorney General for Saskatchewan**" includes the Minister of Justice for Saskatchewan, and "Department of the Attorney General" means the Department of Justice for Saskatchewan;

"**court"** means a judge sitting in court with or without a jury, or a judge sitting in chambers;

"**deliver**" or "**delivery**" means the serving and filing of a document, except where a document is issued, in which case it means the issuing and serving thereof;

"**guarantee company**" means a company as defined in *The Guarantee Companies Securities Act*;

"**lawyer**" means:

(a) a person who is a member of the Law Society of Saskatchewan and who holds a current certificate issued by the Law Society entitling him or her to practice law in Saskatchewan; or

(b) a person who is eligible to practice law in another Canadian jurisdiction and who meets the requirements set by the Benchers of the Law Society of Saskatchewan in order to practice law in Saskatchewan as a non-member pursuant to section 10 of *The Legal Profession Act, 1990*;

"**litigation guardian**" includes a reference in any Act to a "guardian ad litem" or "next friend";

"**person**" includes a body corporate or politic;

"**receiver**" includes manager appointed by, or under, an order of the court;

"**registrar**" means the registrar of the court;

"**taxing officer**" **Repealed.** R. 3 Gaz. Dec. 13, 2002; Amend. Gaz. Dec. 5, 2003.

Number,gender

4 In these rules, unless repugnant to the context, the singular number shall include the plural, the plural number shall include the singular, and the masculine shall include the feminine. R. 4.

II Irregularities and Non-Compliance

Procedural defect

5(1) Unless the court otherwise orders, any procedural defect, including a failure to comply with these rules, shall be treated as an irregularity and shall not nullify a proceeding, any step taken in the proceeding, or any document, or order made therein.

Consequences

(2) Where there has been a failure to comply with these rules, the court may, at any time and on such terms and conditions as it thinks just,

(a) set aside a proceeding, either wholly or in part;

(b) set aside any step taken in a proceeding, or a document, or order made therein;

(c) allow an amendment to the pleadings under the rules therefor;

(d) amend any defect or error in a proceeding, in order to secure the just determination of the real matters in dispute;

(e) make such other order as may seem just.

Delay or fresh step

(3) An application under this rule to set aside any proceeding, or any step taken in a proceeding, or any document or order made therein, shall be made within a reasonable time and, unless otherwise ordered, before the applicant has taken any fresh step after becoming aware of the irregularity.

Wrong commencement document

(4) The court shall not set aside any proceeding or the document by which the proceeding was begun solely on the ground that the proceeding was required by any of these rules to be initiated by a commencement document other than the one employed. R. 5.

III Court Documents

Formal requirements

6(1) Every document in a proceeding shall contain:

(a) the name of the court;

(b) the year in which the proceeding was commenced and, when assigned, the court file number;

(c) the judicial centre at which the proceeding is commenced or the judicial centre to which the proceeding has been transferred;

(d) the style of cause;

(e) the title of the document;

(f) its date; and

(g) the name of the party or lawyer delivering the document;

and it is not necessary that such of this information as is set out on the first page of the document be repeated on subsequent pages.

Style of cause

(2) A style of cause shall give the names of the parties (but not their addresses) and the capacity in which a party sues or is sued, if it is in a representative capacity.

Figures to be used

(3) Dates, sums and numbers shall be expressed in figures and not in words. R. 6.

Paper size; Spacing

6A Documents shall be printed, typewritten or reproduced legibly on one side of good quality paper of 8.5 inches by 11 inches or 21.5 centimeters by 28 centimeters with a margin of 1.25 inches or 3.33 centimeters on the left-hand side. A document prepared for use in court may be typed with a line and a half spacing. R. 6A.

Entry in Procedure Book

7 All documents filed in a proceeding shall be entered in the Procedure Book, and every proceeding shall be distinguished by the year in which it was commenced and the court file number. R. 7.

Address information

8(1) In every proceeding each party shall file an address for service including a proper place in Saskatchewan where pleadings, notices, orders and other documents and written communications in the proceeding may be left for or mailed to a party, and:

(a) where a party is represented by a lawyer carrying on the practice of law in Saskatchewan, his or her address for service shall be the office of a lawyer in the Province of Saskatchewan, and:

(i) shall include the name, address, and telephone number of the legal firm, and the name of the lawyer in charge of the file; and

(ii) may include the facsimile number or electronic transmission address, if any, of the lawyer; or

(b) where the party is an individual not represented by a lawyer, his or her address for service:

(i) shall include the full name, business or residence address, and telephone number of the party; and

(ii) may include the facsimile number or electronic transmission address, if any, of the party.

(2) No party to a proceeding may file any document and no document shall be received or entered by the local registrar unless an address for service of that party has been filed or is filed with the document.

(3) Any party may apply to the court to set aside all documents filed or issued by a party whose address for service is illusory or fictitious.

(4) Except where otherwise ordered, a party who fails to provide or file an address for service is not entitled to notice of any subsequent proceedings in the cause or matter.

(5) Except where otherwise ordered, service of a document at the last filed address for service of a party is deemed valid service despite a change in the address of that party. R. 8. Gaz. Dec. 13, 2002 New. Amend. Gaz. Jan. 17, 2003. Amend. Gaz. Oct. 6, 2006.

Filing or issuing by mail

9(1) In any action or proceeding documents may be sent by ordinary mail or by prepaid courier to the local registrar together with the proper fees and such documents shall be processed by the local registrar in the order in which the envelopes or packages containing the documents are received.

(2) All documents received by the local registrar by mail or by prepaid courier prior to 10 o'clock in the forenoon shall be deemed to be received at 10 o'clock in the forenoon and prior to any documents received at the office of such local registrar in person at 10 o'clock in the forenoon.

(3) Any document received without the proper fee shall not be processed but shall be returned to the sender forthwith. R. 9. Gaz Dec. 13, 2002. Amend.

Filing of Documents by Fax

9A In this Part, "telecopier" means a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunication system. R9A Gaz Feb 16/96 New

9A.1(1)(a) Any document that may be issued or filed, and

(b) any transaction that may be carried out,

by means of mail under Rule 9 may be issued or filed or carried out by means of a telecopier in accordance with this Part.

(2) Notwithstanding Subrule (1), the local registrar may refuse to issue or file a document under this Part if in the opinion of the local registrar the document is of a type or has physical characteristics that are such that the document should not be issued or filed under this Part.

(3) Notwithstanding Subrule (1), the local registrar may refuse to issue or file a document under this Part for any lawyer who is in default of payment of any fees or charges payable to the local registrar. R9A.1 Gaz Feb 16/96 New

9A.2 Where the local registrar

(a) issues or files a document under this Part, and

(b) returns by telecopier or otherwise to the person who submitted the document for issuing or filing a true copy of that issued or filed document bearing a notation that the document was issued or filed by means of a telecopier,

that copy of the issued or filed document is valid for the purposes of any Rule that refers to an original, true copy, certified copy or concurrent copy. R9A.2 Gaz Feb 16/96 New

IV Demand for Notice

Notice, entitled to

9B(1) A defendant who does not necessarily oppose the Statement of Claim may, at any time, deliver a Demand for Notice which may be in Form 10. Thereafter the plaintiff may proceed against him as if he had failed to defend, except that notice of all subsequent pleadings and proceedings in the action shall be served on such defendant.

(2) This rule shall apply with any necessary modification to any proceeding commenced otherwise than by Statement of Claim. R. 9B.

V Representation by Lawyer

Lawyer required

10(1) A party to a proceeding who is under disability or acts in a representative capacity shall be represented by a lawyer.

(2) Unless otherwise ordered by the Court, a party that is a corporation shall be represented in a proceeding by a lawyer; provided that this Subrule shall not apply to the enforcement of judgments filed with the court pursuant to *The Small Claims Act* nor to the enforcement of Rentalsman's orders filed with the court pursuant to *The Residential Tenancies Act*.

(3) Any party other than a party referred to in Subrules (1) and (2) may act in person or be represented by a lawyer. R. 10, Am. Gaz. Dec. 5/86; Am. Gaz. Dec. 9/94.

Students-at-law

10A(1) An articled student-at-law may represent a party before a judge sitting in chambers when:

(a) he is accompanied by the lawyer in charge of the file; or

(b) subject to Subrule (2), the matter on which he appears is:

(i) uncontested; or

(ii) an uncomplicated contested matter.

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

(3) Notwithstanding Subrules (1) and (2) the chamber judge may require the personal attendance of the lawyer in charge of the file. R. 10A.

Change of lawyer

11(1) A party represented by a lawyer may change his lawyer by serving on his former lawyer and on every other party to the proceeding a notice to that effect.

Change to lawyer

(2) A party representing himself in a proceeding may appoint a lawyer to represent him, in which case he shall forthwith serve on every other party to the proceeding a notice to that effect.

Change to self

(3) Except where required to be represented by a lawyer, a party may represent himself in a proceeding by serving on his former lawyer and on every other party to the proceeding a notice to that effect.

Effect of notice

(4) Until such notice has been served on a party and filed with proof of service, that party may proceed as if there has been no change of representation or address for service.

Address information required

(5) Any notice served pursuant to this rule shall include the required address for service. R. 11 Gaz Dec. 13, 2003. Amend.

Lawyer may cease to act

12(1) A lawyer who desires to cease to act for the party shall do so by serving on his client and on all parties except parties who have not defended a written notice in Form 1 of his intention to cease acting and by filing the notice with proof of the required service. Service on the client may be effected by ordinary mail.

Last known address

(2) The notice shall contain the last known address of the client.

No service on lawyer

(3) On the expiry of 10 days from delivery of the notice no documents relating to the proceedings shall be served on the lawyer or at his address for service.

How service effected

(4) On the expiry of the 10 days, unless and until that party has delivered a notice setting forth an address for service any document in the proceeding required to be served on that party may be served by ordinary mail addressed to him at his last known address. R. 12. Amend. Gaz Dec. 13, 2002.

Lawyer ceases practice

12A Where a lawyer for a party in a proceeding has, for any reason, ceased to practice law and no notice of appointment of another lawyer has been given, service of any subsequent document may be effected by ordinary mail addressed to the party at his last known address, endorsed with a memorandum: "This document is served by mail as your lawyer has ceased to practice law and no new lawyer has been appointed in his place". R. 12A. Amend. Gaz Dec. 13, 2002.

Declaration by lawyer

12B(1) Every lawyer whose name is endorsed on any document commencing a proceeding shall forthwith on receipt of a demand in writing from any person who has been served with such document declare in writing whether the proceeding is commenced by him or with his authority, and a lawyer who fails to comply with such a demand may be held in contempt.

Effect of

(2) If the lawyer declares that such proceeding was not so commenced the same shall be stayed and no further step therein shall be taken without leave of the court. R. 12B.

(The next rule is Rule 12D)

VII Transitional Rules

Writ of summons

12D(1) The words **"writ of summons"** or word **"writ"**, where referring to a writ of summons, wherever used throughout the rules are deleted and, unless the context otherwise requires, the words **"Statement of Claim"** are substituted therefor.

Appearance

(2) Wherever used throughout the rules, unless the context otherwise requires, the word "**appearance**" shall mean "**defence**" and the words "**enter an appearance**" shall mean "**deliver a Statement of Defence**", "**file a Statement of Defence**", "**defend**" or as the case may be, "**appear**" shall mean "**defend**" and "**appeared**" shall mean "**defended**" where such words are a reference to the filing of an appearance, and in all cases such like and necessary substitution shall be made as the circumstances may require. R. 12D.

PART TWO

COMMENCEMENT OF ACTIONS

Commencement of action

13(1) Except as otherwise provided, every action shall be commenced by the issue of a Statement of Claim in Form 2.

Statement of Claim

(2)(a) The first page of the Statement of Claim shall include the court file number, the judicial centre at which the action is commenced, style of cause, notice to defendant, date of issue and the signature of the local registrar;

(b) the claim shall commence on the second page and shall set forth the names of the parties to the action and their places of residence;

(c) the first or last page shall set forth the required address for service;

(d) the last page shall contain the signature of the plaintiff or his lawyer. R. 13. Amend. Gaz Dec. 13, 2002.

Issue of Statement of Claim

14 The Statement of Claim shall be signed and sealed by the local registrar and shall thereupon be deemed to be issued and shall bear the date on which it was issued. The original shall be filed with the local registrar. R. 14.

Issue by telephone

15(1) Where the main office of a lawyer is not located at or within 15 kilometres of a judicial centre, an action may be commenced as follows:

(a) the lawyer may, by telephone, notify the local registrar at the judicial centre nearest to his main office, of the names in full of the parties to the action, the type of claim to be made, and such other information as may be required by the local registrar;

(b) the local registrar shall record the information in the procedure book and inform the lawyer of the court file number;

(c) the lawyer shall on the day the court file number is assigned endorse on the Statement of Claim, Originating Notice or Petition the court file number and a certificate that the Statement of Claim, Originating Notice or Petition was issued by telephone by the local registrar, and it shall on that date be deemed to be issued;

(d) the lawyer shall no later than the next day file with the local registrar, or mail to him by registered mail, the original Statement of Claim, Originating Notice or Petition together with the proper fee and any other documents required by these Rules for the commencement of a proceeding.

Local registrar to compare information

(2) (a) When the local registrar receives the Statement of Claim, Originating Notice or Petition, it shall be compared with the information recorded in the procedure book and if it is in conformity with the information in the procedure book, if it was filed or mailed as required, and all other documents required by these Rules to be filed at the time of the commencement of the proceeding were filed, he shall sign, seal and file it.

Non-conformity, effect of

(b) If the Statement of Claim, Originating Notice or Petition does not conform to the information in the procedure book, was not filed or mailed as required and all other documents required by these Rules to be filed at the time of the commencement of the proceeding were not filed, the local registrar shall attach to the original document a memorandum to that effect, and notify the lawyer who filed the same, and no further step in the proceedings may be taken by the plaintiff without leave of the court.

Refusal to issue

(3) A local registrar may refuse to issue a Statement of Claim, Originating Notice or Petition under this Rule for any lawyer who is in default of payment of any fees or charges payable to the local registrar.

Restriction

(4) A judge may at any time instruct the local registrar to refuse to issue Statements of Claim, Originating Notices or Petitions by telephone for a lawyer designated by the judge. Gaz Feb. 16/96 New.

Time for service

16 A Statement of Claim shall be served within six months of the date of issue or within such further time as the court may allow on application which may be made *ex parte* before or after the expiration of the time for service. Any extension of time for service of the Statement of Claim shall be marked thereon and shall be dated and signed by the local registrar. R. 16.

Variation of time for defence

17 On application before or after the issue of the Statement of Claim the court may vary the time within which a Statement of Defence must be served and filed, and the notice to defendant shall be amended accordingly and initialed by the local registrar or notice of such variation shall be served on the defendant. R. 17.

Motor vehicle accident claim notice

17A(1) A person who wishes to file a notice pursuant to section 60 of *The Queen's Bench Act, 1998* shall do so, either personally or by his solicitor or agent, by filing with the local registrar a notice in Form 2.1.

(2) A person who files a notice pursuant to Subrule (1) and who subsequently commences his action during the extended time thereby allowed to him shall plead particulars of the filing and serving of the notice. R. 17, Am. Gaz. Jan. 28/2000.

PART THREE

SERVICE OF DOCUMENTS

Division I

Discretion of Court to Validate or Set Aside Service

Discretion of the Court

18(1) Subject to the express provisions of any statute or regulation and notwithstanding any rule respecting service, the court has discretion to validate or set aside the service of any document.

Notice the Primary Consideration

(2) The primary consideration for the court in the exercise of its discretion is that the person served or to be served:

(a) received notice of the document; or

(b) would have received notice except for the attempts of that person to evade service.

When court may validate service

(3) Where the court is satisfied that the person to be served received notice of the document, the court may:

(a) validate any irregular or unauthorized service of a document, and

(b) impose any terms that it considers appropriate on the validation.

When court may set aside service

(4) Where the court is not satisfied that the person to be served received notice of a document, the court may:

(a) set aside service of the document; and

(b) order further or other service of the document.

When court may set aside consequences of default

(5) The court may set aside the consequences of any default to respond to service of a document, or may extend the time to respond to service of a document, where the court is satisfied that:

(a) the person to be served did not have notice of the document;

(b) the person to be served did not have notice of the document until a date later than the effective date of service; or

(c) the document served was incomplete or illegible. R. 18. Gaz Dec. 13, 2002. New.

DIVISION 2

Modes of Service

Personal service

19(1) Service of a document shall be effected by personal service of that document on the person to be served except where:

(a) a statute, regulation or order of the court provides otherwise; or

(b) these rules authorize service by an alternate or special mode of service.

(2) A document may be served personally notwithstanding that service in another manner is authorized.

(3) Personal service of a document is effected by leaving a copy of the document with the person to be served.

(4) It is not necessary for the person effecting personal service of a document to possess or produce the original document.

(5) A document commencing a proceeding is deemed to have been personally served where the person to be served has delivered a defence or taken any action that is necessary to participate in the proceeding.

(6) A document is deemed to have been personally served where an Acknowledgment of Service that complies with rule 20 is filed. R. 19. Gaz Dec. 13, 2002. New.

Requirement for Acknowledgement of Service

20(1) An Acknowledgement of Service shall be in Form 3.

(2) An Acknowledgement of Service shall:

(a) be signed by the person to be served, or by his or her lawyer or an authorized person as provided in rules 22 to 26;

(b) set out the date of service;

(c) clearly identify the document served; and

(d) include an address for service of the person to be served that is in compliance with rule 8.

(3) A document commencing a proceeding shall be accompanied by:

(a) an Acknowledgement of Service;

(b) a request that the person served return the signed and completed Acknowledgement of Service without delay; and

(c) a postage prepaid envelope addressed to the person serving the document, except where service is effected by fax or electronic transmission.

(4) The person to be served shall bear all costs of service necessitated by that person's neglect or refusal to sign and return a completed Acknowledgment of Service without delay.

(5) Except where otherwise ordered, a party is not entitled to notice of any subsequent proceedings in the cause or matter if that party:

(a) neglects or refuses to sign and return a completed Acknowledgment of Service including a proper address for service; or

(b) fails to otherwise file an address for service. R. 21. Gaz Dec. 13, 2002. New; Amend. Gaz. Dec. 5, 2003.

Service by alternate modes

21(1) Service of a document may be effected by an alternate mode, including courier, registered or ordinary mail, fax, or electronic transmission, where expressly authorized by statute, regulation, an order of the court or these rules.

(2) Subject to subrule (3), where an address for service in a proceeding has been filed respecting the person to be served, a document required to be served may be served at the address for service by any of the following modes:

(a) courier, including any adult person who delivers the document;

(b) registered or ordinary mail;

(c) fax; or

(d) electronic transmission, but only if an electronic transmission acknowledging receipt is received from the person to be served.

(3) Subrule (2) does not apply to a subpoena or an application for committal of a person for contempt of court.

(4) In the case of service by courier, a copy of the document shall be:

(a) left at the address for service with the person to be served;

(b) left at the address for service with an adult person who appears to be an employee, agent, representative or household member of the person to be served; or

(c) left in a mail receptacle at the address for service where there is no person described in clause (b) present:

(i) at an address for service that is a residential address; or

(ii) during regular office hours, at an address for service that is a business address.

(5) In the case of service by registered or ordinary mail, a copy of the document shall be placed in an envelope and mailed to the address for service of the person to be served.

(6) In the case of service by fax, the document shall be faxed to the fax number shown in the address for service of the person to be served and shall include a cover page that sets out the following information:

(a) the sender's name, address, telephone and fax number;

(b) the name of the person to be served;

(c) the date and time of transmission;

(d) the total number of pages transmitted including the cover page; and

(e) the name and telephone number of a person to contact in the event of transmission problems.

(7) In the case of service by electronic transmission, the document shall be electronically transmitted to the electronic transmission address shown in the address for service of the person to be served and the electronic transmission shall set out the following information:

(a) the sender's name, address, telephone number, electronic transmission address and the sender's fax number if there is one;

(b) the name of the person to be served;

(c) the date and time of transmission;

(d) the electronic file name of the document being transmitted, the style of cause, name and date of the document being transmitted and the total number of hard copy pages of the document;

(e) the name and telephone number of a person to contact in the event of transmission problems; and

(f) confirmation that the original document has been signed, that the original signed document has been or will be filed with the court, and that the original signed document is available for inspection at the place and times specified. R. 21. Gaz Dec. 13, 2002. New.

DIVISION 3

Special Modes of Service on Certain Persons

Service on Corporation

22 Subject to the express provisions of any statute or regulation, service of a document may be made:

(a) on a municipal corporation, by leaving a copy of the document with the mayor, reeve, clerk or secretary of the municipal corporation or their respective deputies;

(b) on a corporation incorporated or registered pursuant to any statute or regulation, in accordance with the provisions for service of that statute or regulation; or

(c) on any other corporation or on a corporation mentioned in subrule (b) where the statute or regulation contains no provisions for service, by leaving a copy of the document with:

(i) any officer, director, agent or liquidator of the corporation; or

(ii) any clerk, manager, agent or other representative of the corporation at or in charge of any office or other place where the corporation carries on business. R. 22. Gaz Dec. 13, 2002. New.

Service on proprietorships, partnerships and other unincorporated entities

23 Subject to the express provisions of any statute or regulation, service of a document may be made:

(a) on a sole proprietorship, by leaving a copy of the document with the sole proprietor or any person at the principal place of business of the sole proprietorship who appears to be in control or management of the proprietorship;

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

(c) on an unincorporated association, by leaving a copy of the document with any officer of the association or any person at the office or premises of the association who appears to be in control or management of the association; or

(d) on a board or commission, by leaving a copy of the document with any member or secretary of the board or commission. R. 23. Gaz Dec. 13, 2002. New.

Agent of corporation or unincorporated entity

24(1) In this rule, **"unincorporated entity"** means a sole proprietorship, partnership, unincorporated association or board or commission.

(2) If a person in Saskatchewan transacts or carries on any business for or on behalf of any corporation or unincorporated entity that has its principal place of business out of Saskatchewan, that person is deemed to be an agent of that corporation or unincorporated entity for the purposes of service until an address for service is filed by or on behalf of that corporation or unincorporated entity. R. 24. Gaz Dec. 13, 2002. New.

Service on a person having no legal capacity

25 Subject to the express provisions of any statute, regulation or order of the court, service of a document may be made:

(a) on a minor, by leaving a copy of the document with:

(i) the minor; and

(ii) the father, mother, guardian or legal custodian of the minor or an adult person who has the care of the minor and with whom the minor resides;

(b) on a dependent adult as defined in *The Public Guardian and Trustee Act*, by leaving a copy of the document with:

(i) the dependent adult; and

(ii) his or her personal or property decision-maker; or

(c) on a person who may be of unsound mind but has no personal or property decision-maker, in accordance with the terms of an order of the court authorizing service. R. 25. Gaz Dec. 13, 2002. New. Amend. Mar. 31, 2006.

Service on a person represented by a lawyer

26(1) Subject to the express provisions of any statute or regulation and to subrule (2), service of a document on a person who is represented by a lawyer respecting the proceeding to which the document pertains shall be effected by service on the lawyer.

(2) This rule does not apply to a subpoena or an application for committal of a person for contempt of court.

(3) An Acknowledgment of Service in Form 3 signed by the lawyer representing the person to be served constitutes a representation that the person to be served has authorized the lawyer to accept service on his or her behalf.

(4) If the lawyer representing the person to be served respecting the proceeding to which the document to be served pertains refuses or neglects to sign and return the completed Acknowledgment of Service without delay:

(a) the document may be served on the person who is represented by the lawyer; and

(b) the lawyer shall personally bear all costs of service necessitated by the refusal or neglect. R. 26. Gaz Dec. 13, 2002. New.

DIVISION 4

Substituted Service

Substituted Service

27(1) Where it is impractical to effect service of a document by any of the modes authorized by this Part, an *ex parte* application may be made to the court for an order:

(a) for substituted service of the document; or

(b) dispensing with service of the document.

(2) An application pursuant to subrule (1) may include directions for service or dispensing with service of any subsequent documents in the proceeding.

(3) An application pursuant to subrule (1) shall comply with rule 441A and shall be supported by an affidavit that sets out:

(a) the attempts, if any, that have been made to effect service of a document by a mode authorized by this Part;

(b) the circumstances that make it impractical to effect service by that mode;

(c) the mode of service that, in the opinion of the deponent, is likely to provide the party to be served with notice of the document; and

(d) the grounds on which an order dispensing with service of the document should be made, if that order is sought.

(4) An order for substituted service shall be served with any document to be served substitutionally.

(5) Service of a document in accordance with the terms of an order for substituted service constitutes valid service on the person served R. 27. Gaz Dec. 13, 2002. New.

DIVISION 5

Service out of Saskatchewan

Manner of Service

28(1) Service of a document outside Saskatchewan may be effected:

(a) in the manner provided by these rules for service in Saskatchewan where it is not incompatible with the law of the jurisdiction where service is made;

(b) in the manner provided by the law of the jurisdiction where service is made; or

(c) as provided in rule 29.

(2) Service of a document in the manner provided for service in Saskatchewan is deemed to be valid service unless the person served shows that the service is incompatible with the law of the jurisdiction where service is made. R. 28. Gaz Dec. 13, 2002. New.

Service pursuant to the Hague Convention

29(1) In this Rule:

"document" means a judicial or extra-judicial document in a civil or commercial matter;

"Hague Convention" means the *Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters*, signed at The Hague on November 15, 1965;

"state" means a state outside of Canada that is a signatory to the Hague Convention.

(2) When a document is to be transmitted abroad for service in a state pursuant to the Hague Convention, it shall be filed with the local registrar and shall be accompanied by:

(a) a Request in Form 86;

(b) a Summary in Form 87;

(c) a translation of each document in the official language or one of the official languages of the state in which service is to be effected;

(d) a duplicate copy of each document;

(e) a request that the local registrar transmit each document and the translation in duplicate to the state in which service is to be effected; and

(f) a deposit for fees and disbursements in an amount satisfactory to the local registrar.

(3) When the local registrar receives the documents, supporting material and deposit mentioned in subrule (2), the local registrar shall forward all material to the appropriate authority for service as provided for or permitted by the Hague Convention.

(4) A Certificate in Form 88 completed and signed by the Central Authority of a state, or the designated authority for a state, is proof of service when it shows that service has been effected by:

(a) personal service; or

(b) where service cannot be made personally, by a method that is consistent with the practice and usage of the state.

(5) Where a Certificate in Form 88 is not received, judgment may be given under the conditions stated in Article 15 of the Hague Convention and in the case of urgency, the court may order any provisional or protective measures. R. 29. Gaz Dec. 13, 2002. New.

DIVISION 6

Effective Date of Service

Effective date of service

30(1) Notwithstanding the following subrules, service of a document by any mode where a signed Acknowledgment of Service has been received is effective on the date specified in the Acknowledgment of Service.

(2) Service of a document by any mode between 4:00 p.m. and midnight or on a Saturday, Sunday or holiday is effective on the next day that is not a Saturday, Sunday or holiday.

(3) Service of a document by registered mail is effective on the date specified in the post office confirmation of delivery to the person to be served or, if no date is specified, on the date the sender receives the confirmation of delivery.

(4) Service of a document by ordinary mail is effective on the seventh day after the document is delivered by the sender to the post office for mailing.

(5) Service of a document by fax is effective on the date of transmission.

(6) Service of a document by electronic transmission is effective on the date set out in the electronically transmitted acknowledgment of receipt or, if no date is specified, on the date the sender receives the acknowledgment of receipt.

(7) Deemed service of a document pursuant to subrule 19(5) is effective on the date the person to be served files a defence or takes any other action in the proceeding. R. 30. Gaz Dec. 13, 2002. New.

DIVISION 7

Proof of Service

Acknowledgment of Certificate of Service

31(1) Service of a document may be proved by filing an Acknowledgment of Service that complies with subrule 20(2).

(2) Service of a document effected by a sheriff, his or her deputy or a bailiff may be proved by filing a Certificate of Service in Form 3A that clearly identifies the document served.

(3) An Acknowledgment of Service or Certificate of Service may be endorsed on or attached to an original or true copy of the document served, except where the document served is already on the court file.

(4) No affidavit of service is required where service is proved by an Acknowledgment of Service or a Certificate of Service. R. 31. Gaz Dec. 13, 2002. New.

Affidavit of Service

32(1) Subject to rule 31, service of a document shall be proved by an Affidavit of Service stating:

(a) the mode of service;

(b) the date, time and place the document was served;

(c) the person who effected service; and

(d) the person who was served.

(2) An Affidavit of Service shall be in Form 4.

(3) Where service is effected other than at the address for service of the person to be served, the deponent completing the Affidavit of Service shall state the basis of his or her information respecting the current address of the person served.

(4) An original or true copy of the document served shall be exhibited to the affidavit of service except where the document is already on the court file.

(5) The following documents shall be exhibited to the affidavit of service if they are relied on for proof of service:

(a) a copy of a post office confirmation of delivery to the person served;

(b) a copy of a fax confirmation; or

(c) a hard copy of an electronically transmitted acknowledgment of receipt. R. 32. Gaz Dec. 13, 2002. New.

Service out of Saskatchewan

33 Where service has been effected out of Saskatchewan, proof of service may be made in the manner provided by:

(a) these rules;

(b) the law of the jurisdiction where service was made; or

(c) rule 29. R. 33. Gaz Dec. 13, 2002. New.

PART FOUR

SERVICE OUT OF THE JURISDICTION

Repealed. Amend. Gaz. Dec. 13, 2002.

(The next part is Part Six)

PART SIX

PARTIES AND JOINDER OF CAUSES OF ACTION

I GENERALLY

Plaintiff, defendant, in this part

34(1) In this part, "**plaintiff**" includes an applicant or petitioner and "**defendant**" includes a respondent.

Rules apply to all proceedings

(2) The rules in this part apply, with necessary modification, to all proceedings in the court. R. 34.

Joinder of causes

35(1) A plaintiff, whether claiming in the same or different capacities, may join any causes of action he has against a defendant and may claim against a defendant in different capacities in the same action.

(2) It is not necessary that every defendant be interested in all the relief claimed or in every cause of action included in an action. R. 35.

Mandatory joinder of joint plaintiffs

36(1) A plaintiff who claims relief to which another person is jointly entitled with the plaintiff shall join as a party to the action each person so entitled.

Mandatory joinder of assignor, unless assignment absolute

(2) In an action by the assignee of a debt or other chose in action, whether or not *The Choses in Action Act* applies, the assignor shall be joined as a party unless the assignment is absolute. For purposes of this subrule, an assignment is absolute where it purports to assign the entire interest of the assignor whether or not it purports to be given by way of security or on certain trusts or otherwise.

Nonconsenting plaintiff

(3) Where a person ought to be joined as a plaintiff but does not consent thereto he shall be added as a defendant.

Relief against compulsory joinder

(4) The court may relieve against the necessity for the joinder of any person. R. 36.

Permissive joinder of plaintiffs

37(1) Persons may be joined as plaintiffs in a proceeding where:

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

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

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

Permissive joinder of defendants

(2) Persons may be joined as defendants where:

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

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

(c) there is doubt as to the person or persons from whom the plaintiff is entitled to relief;

(d) damage or loss has been caused to the same plaintiff by more than one person, whether or not there is any factual connection between the several claims apart from the involvement of the plaintiff, and there is doubt as to the respective amounts for which each may be liable; or

(e) their presence in the proceeding may promote the convenient administration of justice. R. 37.

Court may add necessary parties

38(1) The court may, at any stage of the action, order that any person who ought to have been joined as a party or whose presence as a party is necessary to enable the court to adjudicate effectively and completely on the issues in an action be added as a party.

Misjoinder, non-joinder

(2) An action shall not be defeated by reason of the misjoinder or non-joinder of a person, and

(a) the court may decide issues or questions in dispute so far as they affect the rights and interests of the persons who are parties and pronounce judgment without prejudice to the rights of persons who are not parties, and

(b) at any stage the court may grant leave to add, delete or substitute a party, or to correct the name of a party and such leave shall be given, on such terms as may be just, unless prejudice will result which cannot be compensated for by costs or an adjournment.

Consent of added plaintiff

(3) A person shall not be added as a plaintiff without his consent in writing being filed.

Nonconsenting plaintiff

(4) Where a person ought to be joined as a plaintiff but does not consent thereto he may be added as a defendant. R. 38.

Person may apply to be added

39 Where a person who is not a party claims:

(a) an interest in the subject matter of the action;

(b) that he may be adversely affected by a judgment in the action; or

(c) that there exists between him and one or more of the parties a question of law or fact in common with a question in issue in the action;

he may apply to be added as a party, and the court may add the person as a party and may give such directions and impose such conditions or make such order as may seem just. R. 39.

Intervention in constitutional issue

39A(1) When there is an issue before the court that any law is inconsistent with the Constitution of Canada, any person interested in that issue, who is not already a party in the proceeding may, by leave of the court, intervene in the proceeding with respect to such issue upon such terms and conditions, and with such rights and privileges, as the court may direct.

Application

(2) Unless otherwise ordered, an application to intervene shall be by motion upon notice to all parties and intervenors in the proceeding, and shall specify the nature of the interest of the proposed intervenor, the position to be adopted with respect to the constitutional issue and the relevancy of the submissions of the proposed intervenor. R. 39A, Gaz. Oct. 25/91. New.

Judgment may stand where party given leave to defend

40 Where, after judgment, a party is added or is given leave to defend, the court may, without affecting any step then having been taken, and without setting aside any judgment, execution, or any other step in the action, give such directions as may be necessary, including directions:

(a) for the exchange of pleadings;

(b) for any adjournment;

(c) that no further step may be taken under the execution or judgment without leave of the court; and

(d) that the judge hearing the matter may confirm, vary, or rescind the judgment and execution as may be required. R. 40.

II SEVERANCE AND CONSOLIDATION

Severance

41(1) Where the joinder of multiple claims or parties in the same action may unduly complicate or delay the trial, or cause undue prejudice to a party, the court may:

(a) order separate trials;

(b) require one or more of the claims to be asserted, if at all, in another action;

(c) order that a party be compensated for being required to attend, or be relieved from attending, any part of a trial in which he has no interest;

(d) stay the action against a defendant pending the hearing against another defendant, on condition that the party against whom the action is stayed is bound by the findings made at the hearing against the other defendant; or

(e) make such other order as may seem just.

Consolidation

(2) Where two or more actions are pending and it appears to the court that

(a) they have a question of law or fact in common;

(b) the claims therein relate to, or arise out of, the same transaction, occurrence or series of transactions or occurrences; or

(c) for any other reason it is desirable to make an order under this rule;

the court may order the actions to be consolidated, or to be tried at the same time, or one immediately after the other, or may order any of them to be stayed until after the determination of any other of them, on such terms as may seem just.

Directions

(3) Where an order is made under this rule the court may give directions which will avoid unnecessary costs or delay and may vary the procedure for setting an action down for trial, but the court may alter, rescind or modify any such order or directions. R. 41, Am. Gaz. Dec. 5/86.

III PERSONS UNDER DISABILITY

A Minors

Minor may proceed as adult

42(1) A minor may commence, continue or defend a proceeding as if of full age where:

(a) he is party to a proceeding as a spouse or a co-respondent and the proceeding is a Matrimonial Cause or a Divorce;

(b) he has been granted a needy person's certificate; or

(c) before or after commencing the proceeding he obtains the leave of the court.

Wages

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

Litigation guardian

(3) Except where otherwise provided, a minor may commence, continue or defend a proceeding by a litigation guardian. R. 42.

Court appointment not necessary

43(1) Unless otherwise ordered, any person who is not under disability may act as litigation guardian for a minor without being appointed by the court.

Affidavit required

(2) No person other than the Public Guardian and Trustee acting under *The Public Guardian and Trustee Act* or a litigation guardian appointed by the court shall act as litigation guardian for a minor until he has filed an affidavit in Form 5.

(The next Subrule is (4))

Consent to appointment

(4) No litigation guardian shall be appointed by the court without his consent. R. 43. Amend. Mar. 31, 2006.

Where minor becomes adult

44 Where, in the course of an action, a minor, other than a minor under mental disability, for whom a litigation guardian has been acting, reaches the age of majority, he or his litigation guardian shall file an affidavit verifying this fact, and the local registrar shall issue an Order to Continue in Form 5A authorizing the continuation of the action without the litigation guardian. R. 44.

Approval of settlement

45(1) On an application for the approval of a settlement of a claim of a minor under subsection 25(3) of *The Public Guardian and Trustee Act* the applicant shall file:

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

(b) the consent of the litigation guardian;

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

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

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

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

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

(2) Where the court approves a settlement of a claim of a minor, any monies payable thereunder to the minor shall be paid to the Public Trustee unless the court otherwise directs. R. 45. Amend. Mar. 31, 2006.

B Dependent Adults and Persons of Unsound Mind

Litigation guardian

46(1) Unless otherwise ordered or provided, a person with respect to whom an order has been made under *The Adult Guardianship and Co-decision-making Act* or a person under a mental disability may commence, continue or defend an action by a litigation guardian. New. Mar. 31, 2006.

Defined

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

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

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

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

(d) subject to section 44.1 of *The Public Guardian and Trustee Act*, the Public Guardian and Trustee or another person appointed as litigation guardian pursuant to subsection 32(2) of *The Public Guardian and Trustee Act*;

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

(f) any other person appointed by the court. R. 46, Am. Gaz. Oct. 25/91. Amend. Mar. 31, 2006.

C General

Rules apply to litigation guardian

47 Except where otherwise provided, anything that is required or authorized by the rules to be done by or invoked against a party under disability may:

(a) be done on his behalf by his litigation guardian; or

(b) be invoked against him by invoking the same against his litigation guardian. R. 47.

Duty of litigation guardian

48 A litigation guardian shall diligently attend to the interests of the person under disability for whom he acts and take all proceedings that may be necessary for the protection of his interests including proceedings by way of counterclaim, cross-claim or third party claim and may defend a counterclaim. R. 48.

Substitution of litigation guardian

49(1) Where, at any time, it appears to the court that a litigation guardian is not acting in the best interests of the person under disability, the court may appoint and substitute another person as litigation guardian on such terms and conditions as may seem just.

Directions for protection

(2) Where, at any time:

(a) no person appears for a minor;

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

(c) the court is satisfied for any other reason that the interests of a person under disability may require protection;

the court may give such directions for the protection of the person under disability as it considers proper. R. 49.

No costs or compensation without order

50(1) A litigation guardian shall not be liable personally for costs.

(2) A litigation guardian for a minor may not receive any compensation for his or her services on behalf of the minor in the proceeding. R. 50. Gaz Dec. 13, 2002. New.

IV PARTNERSHIPS

Action by partners

51 An action may be brought by:

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

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

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

(d) one or more of the partners, in the individual names of such partners, where all partners who do not consent to be joined as plaintiffs are joined as defendants, provided that the court may relieve against the necessity for the joinder of any partner. R. 51.

Action against partners

52(1) An action may be brought against:

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

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

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

Deemed partner

(2) A person not individually named as a party defendant may be served with the statement of claim and Notice to Alleged Partner in Form 5B, and each person so served shall be deemed to have been a partner at the material time, unless he defends denying that he was a partner at the material time. R. 52.

Defence

53(1) A partnership shall defend in its firm name. A partner may defend separately or may join in a common defence with the partnership or with other partners.

Costs limited

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

(i) no costs shall be allowed for more than one defence for common grounds of defence; and

(ii) a successful plaintiff shall have costs for each separate unsuccessful defence. R. 53. Gaz Dec. 13, 2002. Amend.

Disclosure of members of partnership

54(1) Where an action is commenced by or against a partnership in the firm name, or against a person alleging that he was a member of a partnership, any party may, at any time, serve a notice, which may be in Form 5C, requiring the partnership or any such person to deliver an affidavit sworn by a partner or such person disclosing:

(a) the names and present addresses and telephone numbers of all the partners constituting the partnership; and

(b) the firm name of the partnership;

on the date or dates specified in the notice. Where the present address and telephone number of a partner is not known, the affidavit shall show his address and telephone number last known to the deponent.

Time for disclosure

(2) The affidavit shall be delivered within eight days.

Failure to disclose

(3) Where an affidavit is not delivered as required by this rule:

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

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

Affidavit as proof

(4) The affidavit is admissible as against the partnership and each partner as *prima facie* proof that each person so listed was a partner at the date specified.

Judgment

(5) Where a defendant obtains judgment against a plaintiff partnership, he may, unless otherwise ordered, sign judgment against the partnership and each partner named in the affidavit as a partner in the plaintiff partnership. R. 54.

Judgment against unnamed partners

55(1) Where a plaintiff is entitled to judgment against a partnership, or against one or more persons as partners of a partnership, he may:

(a) apply *ex parte* for an order to add as a named party defendant and sign judgment against any person who:

(i) was served with the statement of claim and Notice to Alleged Partner and failed to defend;

(ii) has admitted in the pleadings or otherwise in the proceeding that he was a partner; or

(iii) having delivered a defence or Notice of Intent to Defend, has been adjudged to have been a partner at the material time; or

(b) apply for an order adding as a named party defendant to whom the judgment applies any other person he alleges to have been a partner at a material time, and the court may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined;

and the style of cause shall be amended according to any such order.

(2) This rule does not apply to a person named as a defendant to the action. R. 55.

Irregularity

56(1) A proceeding by or against a partnership or partners shall not be treated as a nullity because it was not properly constituted, or by reason of the dissolution of the partnership or a change in a claim or defence of a partner or a partnership, but it may continue as constituted, or may be reconstituted by the court on such terms as may be just.

Directions, where required

(2) Where necessary, the court may give directions with respect to the conduct or carriage of any claim or defence.

Application

(3) The rules in this subpart apply, with necessary modification:

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

(b) to any action in which a partnership may be interested. R. 56.

V SOLE PROPRIETORSHIPS

Partnership rules apply

57(1) Where a person carries on business under a business name other than his own, an action may be commenced by or against him in either or both names.

(2) The rules respecting actions by or against partners apply, with any necessary modification, to an action by or against a sole proprietor in his business name as though the sole proprietor were a partner and his business name were the firm name of a partnership. R. 57.

VI ESTATES

Personal representative represents estate

58(1) An action may be brought by or against an executor or administrator as representing an estate and the beneficiaries of the estate without joining the beneficiaries as parties.

Beneficiaries and others may be added

(2) Notwithstanding Subrule (1), the plaintiff may join as parties to the action such persons as may be appropriate having regard to the nature of the action or the relief claimed. R. 58.

Court may order service and add parties

59 At any stage of an action, the court may order:

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

(b) that a beneficiary, next of kin, creditor or other interested person be made a party, in place of or in addition to the executor or administrator, where the executor or administrator may not or cannot represent the interests of any such persons. R. 59.

All personal representatives must be parties

60 All executors or administrators of an estate of a deceased person shall be joined in an action commenced on behalf of the estate and each executor or administrator who does not consent to be joined as a plaintiff shall be joined as a defendant. R. 60.

Action against estate where no personal representative

61 Where a person wishes to commence or continue an action against the estate of a deceased person, and the deceased person has no executor or administrator, or the person who wishes to commence or continue the action does not know or is in doubt as to the name of the executor or administrator, the action may be commenced against:

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

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

to represent the estate of the deceased person in the action. R. 61.

Action by estate where no personal representative

62(1) Where there is no executor or administrator, an action may be commenced or continued by or on behalf of the estate of a deceased person by:

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

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

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

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

Priority of right to bring action

(2) Where more than one person seeks to bring or continue an action as administrator *ad litem* under this rule without appointment, the priority of right to bring such action shall be the same as the priority of right to a grant of probate or administration, unless otherwise ordered.

Where priority is equal

(3) Where more than one person of equal priority seeks to bring or continue an action as administrator *ad litem* under this rule without appointment, the action shall be brought by all such persons as plaintiffs. R. 62.

Appointment of administrator *ad litem*

63(1) An application for the appointment of an administrator *ad litem* may be made *ex parte* or on such notice as the court may direct.

Consent

(2) No person may be appointed an administrator *ad litem* without his consent. R. 63.

Powers of administrator *ad litem*

64(1) An administrator *ad litem* may take all proceedings that may be necessary for the protection of the interests of the estate including proceedings by way of counterclaim, cross-claim or third party claim.

Judgment binds estate

(2) A judgment in an action to which an administrator *ad litem* is a party binds the estate of the deceased person but, unless otherwise ordered, has no effect against the administrator *ad litem* in his personal capacity. R. 64.

Administrator *ad litem* is trustee; court approval required

65 Where an estate of a deceased person is represented in an action by an administrator *ad litem*, the administrator *ad litem* shall be a trustee for the estate and the persons beneficially interested therein, and:

(a) the action may not be settled or discontinued without leave of the court; and

(b) no distribution of the proceeds, if any, may be made, except to an executor or administrator to whom probate or administration has been granted or resealed. R. 65.

Court may make orders or give directions

66 Where an estate of a deceased person is represented in an action by an administrator *ad litem*, the court may, at any stage of the action:

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

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

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

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

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

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

(g) dismiss the action or make such other order or give such directions as may be just. R. 66.

Where action not defeated

67(1) An action shall not be treated as a nullity solely on the ground that:

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

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

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

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

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

(ii) the wrong person as the personal representative;

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

(f) it was otherwise not properly constituted.

(2) At any stage of the action the court may:

Reconstitution of action

(a) reconstitute the action or order that the action be continued by or against the personal representative of the deceased person or an administrator *ad litem* appointed for the purpose of the action or otherwise as the circumstances may require, on such terms as may be just; or

Stay or dismissal

(b) order that no further step in the action shall be taken until it is properly constituted and, unless the action is properly constituted within a reasonable time, the court may dismiss it or make such other order as may be just. R. 67.

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

68 Where a person claims to be entitled to enforce a judgment or order against any person other than an administrator *ad litem*, he may apply for leave to do so; and the court may give such leave if the liability be not disputed, or if such liability be disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. R. 68.

VII TRUSTS AND ADMINISTRATION ACTIONS

Estate rules apply

69 The rules respecting actions by or against estates of deceased persons apply, with any necessary modification:

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

(b) to actions for the administration of the estates of deceased persons. R. 69.

VIII REPRESENTATION

Suit or defence by one person for others

70 Where there are numerous persons having the same interest in one cause or matter, including actions for the prevention of waste or otherwise for the protection of property, one or more of such persons may sue or be sued, or may be authorized by the court to defend in such cause or matter, on behalf of or for the benefit of all persons so interested. R. 70.

Representation order

71(1) In a proceeding concerning:

(a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order-in-council, regulation, municipal by-law or resolution,

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

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

(d) the approval of an arrangement under *The Variation of Trusts Act,*

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

(f) any other matter where it may seem necessary or desirable,

the court may appoint one or more persons to represent any persons, including unborn persons, unascertained persons, or persons or members of a class of persons who cannot readily be ascertained, found or served, who have a present, future, contingent or unascertained interest in, or may be affected by, the proceeding.

Judgment binding on persons represented

(2) Where an appointment is made under this rule, a judgment in the proceeding is binding on a person so represented, unless the court, in the same or a subsequent proceeding, orders otherwise.

Court approval of settlement required;

(3) Where in a proceeding a settlement is proposed and:

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

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

Approval binds absent persons; exceptions

the court may approve the settlement if it is satisfied that the settlement is for the benefit of the represented or absent persons. Where the settlement is approved, it is binding on the absent persons provided that, in the same or a subsequent proceeding, the court may order that the person not be bound where it is satisfied that:

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

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

(c) for some other sufficient reason the order should be set aside. R. 71.

Unrepresented estate

72 Where the estate of a deceased person has an interest in a proceeding and there is no personal representative, the court may proceed in the absence of a person representing the estate of the deceased person, or may appoint a person to represent the estate for the purposes of the proceeding, and a judgment in the proceeding shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceeding. R. 72.

IX TRANSFER OR TRANSMISSION OF INTEREST

Orders on transfer or transmission of interest

73 Where at any stage of a proceeding the interest or liability of a party is transferred or transmitted to another person by assignment, bankruptcy, death or otherwise, the court may on application or on its own motion make orders for:

(a) the addition, removal, substitution or arrangement of the parties or their personal representatives;

(b) the conduct of the proceedings; and

(c) serving notice of any proceeding or order;

and may vary, rescind or modify any such order. R. 73.

Death between verdict and judgment

74 Where one of the parties dies between the verdict or findings of the issues of fact and entry of judgment, judgment may in such case be entered notwithstanding the death. R. 74.

X *AMICUS CURIAE*

Leave to intervene as *amicus curiae*

75 With leave of the court a person may, without becoming a party to the proceeding, intervene therein as *amicus curiae* for the purpose of rendering assistance to the court by way of argument or by presentation of evidence, on such terms as to costs or otherwise as the court may impose. R. 75, Am. Gaz. Nov. 13/87.

XI CLASS ACTION

Definitions

76 In this Division:

"**Act**" means *The Class Actions Act*;

"**designated judge**" means the judge designated by the Chief Justice to consider an application for certification of a class action and appointment of a representative plaintiff. R. 76. New. Gaz Feb. 8, 2002.

Application of Rules

77(1) The rules in this Division apply to actions and applications brought under the Act.

(2) Unless provided otherwise by the Act or by the rules in this Division, the general procedure and practice of the court shall apply to actions and applications brought under the Act. R. 77. New. Gaz Feb. 8, 2002.

Style of Cause

78(1) The style of cause must include the words "Brought under *The Class Actions Act"* immediately below the listed parties if:

(a) it is intended, at the commencement of the action, that a certification order will be sought under the Act; or

(b) in any other case, a certification order is subsequently granted in respect of the action.

(2) Where a certification order is refused in respect of the action or the action is decertified, the words "Brought under *The Class Actions Act*" shall be removed from the style of cause. R. 78. New. Gaz Feb. 8, 2002.

Application to the Chief Justice

79 An application to the Chief Justice for the appointment of a designated judge may be made *ex parte* and must be made:

(a) within 30 days after the later of:

(i) the date on which the statement of defence was delivered; and

(ii) the date on which the time prescribed for delivery of the statement of defence expires without it being delivered; or

(b) with leave of the court at any other time R. 79. New. Gaz Feb. 8, 2002.

Conferences

80(1) The designated judge may, on his or her initiative, order a conference to be held respecting the conduct of the action, including the application for certification, at any time after his or her designation.

(2) The rules relating to pre-trial conferences shall not apply to a conference ordered pursuant to this rule, except as otherwise ordered by the designated judge. R. 80. New. Gaz Feb. 8, 2002.

Application by Defendant

81(1) Where a defendant applies for certification of a class action pursuant to section 5 of the Act:

(a) the defendant shall apply to the Chief Justice of the court for the designation of a judge to consider the application; and

(b) the designated judge shall order a conference to be held respecting the conduct of the action.

(2) If the court certifies two or more actions as a class action under section 5 of the Act, the court may:

(a) order the addition, deletion or substitution of parties;

(b) order the amendment of the pleadings; and

(c) make any other order that it considers appropriate. R. 81. New. Gaz Feb. 8, 2002.

Application for Certification

82(1) A Notice of Motion for Certification pursuant to clause 4(2)(b) or section 5 of the Act shall be in Form 5D.

(2) An application for a certification order pursuant to section 4 of the Act must be supported by an affidavit of the proposed representative plaintiff:

(a) deposing to the proposed representative plaintiff's willingness to be appointed;

(b) setting out the basis of the proposed representative plaintiff's personal claim, where applicable, and the reason the proposed representative plaintiff believes that common issues exist for the rest of the members of the class;

(c) setting out objective criteria for determining membership in the proposed class, and providing the proposed representative plaintiff's best information on the number of members in the proposed class;

(d) setting out sufficient information to establish that the proposed representative plaintiff would fairly and adequately represent the interests of the class and is aware of the responsibilities to be undertaken;

(e) exhibiting a plan for the class action that sets out a workable method of:

(i) advancing the action on behalf of the class; and

(ii) notifying class members of the action; and

(f) setting out sufficient information to establish that the proposed representative plaintiff does not have, on the common issues, an interest that is in conflict with the interests of other class members.

(3) An application for a certification order pursuant to section 5 of the Act must be supported by an affidavit of the defendant applying for certification:

(a) setting out the reason the defendant believes that common issues exist for the members of the proposed class;

(b) setting out objective criteria for determining membership in the proposed class; and

(c) providing the defendant's best information on the number of members in the proposed class.

(4) A Notice of Motion for Certification and the supporting materials must be filed and a copy served on all parties to the action.

(5) Unless otherwise ordered, there must be at least 14 days between:

(a) the service of a Notice of Motion for Certification and supporting materials; and

(b) the day set for the hearing.

(6) Unless otherwise ordered, a party opposing an application for certification must:

(a) file an affidavit in response; and

(b) serve a copy of the affidavit on all parties to the action at least 7 days before the day set for the hearing.

(7) A party filing an affidavit under subrule (6) must provide the party's best information on the number of members in the proposed class. R. 82. New. Gaz Feb. 8, 2002.

Amendments to pleadings

83 After a certification order has been granted, a party may only amend any pleading filed by that party with leave of the court. R. 83. New. Gaz Feb. 8, 2002.

Discovery

84(1) Where a class member is examined for discovery pursuant to subsection 19(2) of the Act:

(a) rule 222A does not apply to that class member; and

(b) unless otherwise ordered, the evidence of that class member may not be read into evidence at the trial of the common issues.

(2) The court may:

(a) require the parties to propose which class members should be discovered pursuant to subsection 19(2) of the Act;

(b) limit the purpose and scope of discovery of a class member; and

(c) determine the use that may be made of the evidence obtained on discovery of a class member. R. 84. New. Gaz Feb. 8, 2002.

Notices

85(1) Where an agreement respecting fees and disbursements is summarized in the notice to class members, notice that the agreement is not enforceable unless approved by the court pursuant to section 41 of the Act shall be included.

(2) Where a motion for settlement has been filed, or a settlement has been approved, notice must be given by the representative plaintiff to the class members in accordance with the provisions of subsections 21(3) - (5) of the Act, unless otherwise ordered.

(3) Notice under section 23 of the Act may:

(a) state that common issues have been determined;

(b) identify the common issues that have been determined and explain the determinations made:

(i) state that members of the class or subclass may be entitled to individual relief;

(ii) describe the steps that must be taken to establish an individual claim; and

(iii) state that failure on the part of a member of the class or subclass to take those steps will result in the member not being entitled to assert an individual claim except with leave of the court;

(c) give an address to which members of the class or subclass may direct inquiries about the proceeding; and

(d) give any other information that the court considers appropriate.

(4) The court may order any appropriate means of giving notice pursuant to clause 21(4)(e) of the Act, including creating and maintaining an internet site.

(5) Where the Act or these rules require notice to class members, notice shall be given to other interested parties, including counsel for a subclass, as directed by the court. R. 85. New. Gaz Feb. 8, 2002.

Agreements respecting fees and disbursements

86(1) An application for approval of an agreement respecting fees and disbursements must be brought after:

(a) judgment on the common issues; or

(b) approval of a settlement, discontinuance or abandonment of the class action.

(2) The application pursuant to subrule (1):

(a) shall be made to the judge who presided over the trial of the common issues, or who approved the settlement, discontinuance or abandonment, as the case may be; and

(b) shall be made on such notice to class members as is required by the court.

(3) Where, on an application pursuant to subrule (1), the court determines that the agreement ought not to be followed, the court may amend the terms of the agreement. R. 86. New. Gaz Feb. 8, 2002.

(The next rule is Rule 99)

PART SEVEN

PROCEEDINGS BY DEFENDANTS

I OBJECTIONS

Application before defence

99(1) A defendant may apply to the court, within the time limited for delivery of a defence and before delivering the same, to object to the jurisdiction of the court, and such application shall not be deemed to be a submission to the jurisdiction of the Court.

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

(3) Where an application is made pursuant to this rule, the plaintiff shall take no further step in the proceeding against the applicant, except with leave of the court, until five days after the application has been concluded. R. 99. New. Gaz. Dec 13, 2002.

II STATEMENT OF DEFENCE

Time for delivery of defence

100(1) Except where otherwise ordered, a defendant who intends to defend the action shall serve and file a Statement of Defence:

(a) within 20 days after the day of service of the Statement of Claim where the defendant is served in Saskatchewan;

(b) within 30 days after the day of service of the Statement of Claim where the defendant is served elsewhere in Canada or in the United States of America;

(c) within 40 days after the day of service of the Statement of Claim where the defendant is served outside Canada and the United States of America;

provided that a Statement of Defence may be served and filed at any time before the action is noted for default.

Notice of Intent to Defend

(2) Notwithstanding Subrule (1), a defendant who intends to defend the action may within the time limited for the delivery of his Statement of Defence, serve and file a Notice of Intent to Defend in Form 6 and he then shall be entitled to an additional 10 days within which to serve and file his Statement of Defence and he shall be deemed to have submitted to the jurisdiction of the court. R. 100.

(The next part is Part Seven A and the next rule is Rule 104A.)

PART SEVEN A

CLAIMS BY DEFENDANT

I SET-OFF

Where available

104A(1) A defendant may plead that a claim be set-off against the claim of the plaintiff:

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

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

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

provided his claim is pleaded in accordance with the principles which would govern the pleading of his claim if he were a plaintiff.

Judgment for balance

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

Alternative

(3) All matters which may be pleaded by way of set-off in a defence may in addition or in the alternative be pleaded in a counterclaim. R. 104A.

II COUNTERCLAIM

Where available

105(1) A defendant may assert by way of counterclaim any right or claim which he may have against the plaintiff.

Added defendant by counterclaim

(2) Where a defendant counterclaims against a plaintiff, he may join as an added defendant by counterclaim any other person, whether a party to the action or not, who is a necessary or proper party to the counterclaim. R. 105.

Defence and counterclaim

105A(1) A defendant shall in his Statement of Defence set forth the allegations supporting his counterclaim under the heading "Counterclaim".

Style of cause

(2) Where there is an added defendant by counterclaim, the style of cause shall show who are the defendants by counterclaim. R. 105A.

Service on parties

105B(1) The Statement of Defence and Counterclaim shall be served on the plaintiff and the other parties to the main action within the time limited for the delivery of the Statement of Defence in the main action.

Service on added defendant

(2) An added defendant by counterclaim shall be served with the Statement of Defence and Counterclaim together with a copy of the Statement of Claim, and such Statement of Defence and Counterclaim shall be endorsed in Form 7. R. 105B.

Time for defence

105C A defendant by counterclaim shall deliver a Defence to Counterclaim within 20 days after the day of service of the Statement of Defence and Counterclaim on him. R. 105C.

Default of defence

105D Where a defendant by counterclaim fails to deliver his Defence to Counterclaim within the time limited, the plaintiff by counterclaim may have the defendant by counterclaim noted for default and may enter judgment or take such other proceedings as he may be entitled to take on default of defence as though the counterclaim were a Statement of Claim. R. 105D.

Trial with main action

105E(1) Unless otherwise ordered, the counterclaim shall be tried at or immediately after the trial of the main action.

Separate or strike out counterclaim

(2) Where it appears that a counterclaim may unduly complicate or delay the trial of the main action, or cause undue prejudice to any party, the court may order separate trials or strike out the counterclaim without prejudice to the right of the defendant to assert any such claim in a separate action.

Counterclaim may proceed

(3) If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued or dismissed, the defendant may nevertheless proceed with the counterclaim. R. 105E.

Main action stayed

105F(1) Where a defendant does not dispute the claim of the plaintiff in the main action, but sets up a counterclaim, the court may stay the main action until the disposition of the counterclaim.

Counterclaim stayed

(2) Where the plaintiff does not dispute the counterclaim of a defendant, the court may stay the counterclaim until the disposition of the claim.

Judgment for balance

(3) Where both the plaintiff in the main action and the plaintiff by counterclaim succeed, either in whole or in part, and there is a balance in favour of one of them, the court may in a proper case give judgment for the balance. R. 105F.

Rules apply

105G(1) Except as modified in this part, the rules relating to a plaintiff and defendant apply to the parties to a counterclaim.

Application to claims by other parties

(2) The rules respecting counterclaim shall apply, with any necessary modification, to the assertion of the counterclaim by an added defendant by counterclaim, a defendant to a cross-claim or a third party. R. 105G.

III CROSS-CLAIM

Where available

106(1) A defendant may cross-claim against a co-defendant who he claims:

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

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

Cross-claims

(2) A cross-claim shall be in Form 8 and shall be made by serving it with a copy of the Statement of Defence on the co-defendant:

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

(b) where no joint request is filed, within 10 days after service of a notice of motion for an order that a pre-trial conference be held; or

(c) at any time with leave of the Court. Am. Gaz. Dec. 5/86; Am. Gaz. Dec. 9/94.

Service on other parties

(3) The cross-claim shall also be served on all other parties to the action within the time limited for the service thereof on the co-defendant.

Third party rules apply

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

Application to claims by other parties

(5) The rules respecting cross-claim shall apply with any necessary modification to the assertion of a cross-claim by one defendant to a counterclaim against another defendant to the same counterclaim, or by one third party against another third party to the same third party claim. R. 106.

IV THIRD PARTY CLAIM

Where available

107 In any action a defendant may claim against any person not already a party to the action (in these rules called "**third party**") who he claims:

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

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

(c) should be bound by the determination of some issue arising between the plaintiff and the defendant. R. 107.

Third Party Claim

107A A Third Party Claim shall be in Form 9 and shall be made by serving it with a copy of the Statement of Claim and Statement of Defence on the intended third party:

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

(b) where no joint request is filed, within 10 days of service of a notice of motion for an order that a pre-trial conference be held; or

(c) at any time with leave of the Court. R. 107A, Am. Gaz. Dec. 5/86; Am. Gaz. Dec. 9/94.

Filing of claim

107B(1) The defendant shall file a copy of the Third Party Claim with the local registrar.

Service on other parties

(2) The Third Party Claim shall also be served on all other parties to the action within the time limited for the service thereof on the third party. R. 107B.

Time for defence

107C(1) A third party shall deliver a defence:

(a) within 20 days after the day of service of the Third Party Claim where the third party is served in Saskatchewan;

(b) within 30 days after the day of service of the Third Party Claim where the third party is served elsewhere in Canada or in the United States of America;

(c) within 40 days after the day of service of the Third Party Claim where the third party is served outside of Canada and the United States of America;

provided that a Third Party Defence may be served and filed at any time before the third party is noted for default.

(2) A copy of the Third Party Defence shall be served on the plaintiff in the main action within the time limited for the service thereof on the defendant initiating the Third Party Claim. R. 107C. Gaz. Dec. 9/94 New.

Third Party Defence

107D(1) A third party may in his Third Party Defence:

(a) dispute the liability of the defendant to the plaintiff and may raise any defence open to the defendant; and

(b) dispute his own liability to the defendant.

Fourth party claim

(2) A third party may assert against any person, whether or not he is already a party to the action, any claim which is properly the subject matter of a third party claim by commencing a fourth party claim and the rules respecting a third party claim shall apply to any such claim with any necessary modification.

Subsequent parties

(3) A fourth party, or any subsequent party, may assert any such claim in a like manner and the rules respecting a third party claim shall apply thereto, with any necessary modification. R. 107D.

Directions

107E Unless otherwise ordered the following directions apply:

Disputes liability of defendant to plaintiff

(1) Where the third party disputes the liability of the defendant to the plaintiff:

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

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

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

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

Disputes liability to defendant

(2) Where the third party disputes his liability to the defendant:

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

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

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

Discovery

(3) Where the third party delivers a Third Party Defence, the third party and every other party with whom he is adverse in interest are entitled to discovery, each from the other. R. 107E. Amend. Gaz Dec. 13, 2002.

Trial

107F Unless otherwise ordered, the third party claim shall be tried at or immediately after the trial of the main action. R. 107F.

Default of defence

107G Where a third party fails to deliver a Third Party Defence:

(a) the defendant may have the third party noted for default, as though the Third Party Claim were a Statement of Claim; and

(b) if the defendant suffers judgment by default or otherwise he may after satisfaction of the judgment, or before satisfaction by leave of the court, enter judgment against the third party. Such leave may be obtained *ex parte*, or otherwise as the court may direct but the court may vary or rescind any judgment granted *ex parte*. R. 107G.

Rules apply to claims by other parties

107H The rules respecting a third party claim shall apply, with any necessary modification, to the assertion of a third party claim by a defendant to a counterclaim, or by a defendant to a cross-claim. R. 107H.

Rules apply

107I(1) Except as modified in this part, the rules relating to a plaintiff and defendant apply to the parties to a third party claim.

Setting aside or directions

(2) Any party affected may apply at any time to set aside a Third Party Claim or for directions.

No prejudice or delay to plaintiff

(3) A plaintiff shall not be prejudiced or unnecessarily delayed by a third party claim and the court shall give all such directions on terms or otherwise as may be necessary to prevent prejudice or delay to the plaintiff where it can be done without injustice to the defendant or the third party.

Court may vary

(4) These rules or any directions or *ex parte* order may be varied or rescinded by the court on such terms as may be just. R. 107I.

PART SEVEN B

REPLY AND CLOSE OF PLEADINGS

Time for reply

108 Where allegations in the Statement of Defence require an answer, the plaintiff shall deliver a Reply within eight days after the defence or the last of the defences has been delivered. No Reply that is a simple joinder of issue shall be delivered. R. 108.

Pleadings subsequent to reply

109 No pleading subsequent to a Reply may be delivered except with the written consent of the other party or by leave of the court. Every pleading subsequent to a Reply shall be delivered within eight days after the delivery of the previous pleading, unless the court otherwise orders.R. 109

Non-delivery of reply or subsequent pleading

110 If no Reply or subsequent pleading has been delivered within the time allowed the pleadings shall be deemed to be closed and all material allegations of fact in the pleading last delivered shall be deemed to have been denied and put in issue. R. 110.

Rules apply to replies by other parties

111 The rules in this part shall apply, with any necessary modification, to a Reply to a defence to counterclaim, cross-claim and third party claim. R. 111.

(The next rule is Rule 113.)

PART EIGHT

JUDGMENT IN DEFAULT OF DEFENCE

Default of defence by minor

113(1) Where no defence or Notice of Intent to Defend has been filed by a minor who has been served with a statement of claim, no further proceeding shall be taken against the minor, except by leave of the court. An application for leave to note an action for default or for judgment may be *ex parte* or on such notice as the court may require, and the court shall order such judgment to be entered as the plaintiff appears entitled to, with or without evidence of the truth of the statement of claim, (which may be given *viva voce* or by affidavit or otherwise as the court may direct) in the discretion of the court.

(2) A plaintiff who has noted an action for default or has taken any further proceeding therein may apply *ex parte* for an order to set aside the noting or proceeding and, subject to the terms of such order, may then proceed under Subrule (1) of this rule. R. 113.

Default of defence

114(1) Where any defendant fails to deliver his Statement of Defence and the time for so doing has expired, the plaintiff may, on filing proof of service of the Statement of Claim, require the local registrar to note the default of such defendant.

Noting for default

(2) The local registrar shall thereupon endorse on the Statement of Claim and on the fly-leaf accompanying the court file the words "Noted for default the_____day of_____, 20___" and shall sign the same and make an entry in the procedure book that such default has been so noted. Am. Gaz. Oct. 25/91

No defence after default

(3) After default has been noted as aforesaid the defendant shall not file a defence without leave of the court.

Effect of noting for default

(4) On default being noted as provided in this rule, the plaintiff may enter judgment or take such other proceedings as he may be entitled to take on default of defence. R. 114.

Claim liquidated

115 Where the plaintiff's claim is for a debt or liquidated demand only, and the defendant fails, or all the defendants, if more than one, fail, to defend thereto, the plaintiff may after the time limited for defence has elapsed, enter final judgment for any sum, not exceeding the sum claimed in the action, together with lawful interest, if claimed, and costs of action. R. 115.

Liquidated demand, Several defendants

116 Where the plaintiff's claim is for a debt or liquidated demand only, and there are several defendants, of whom one or more defend and another or others of them fail to defend, the plaintiff may enter final judgment, as in the preceding rule against such as have not defended, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have defended. R. 116.

Claim, detinue and damages

117 Where the plaintiff's claim is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages and the defendant fails, or all the defendants if more than one, fail to defend, the plaintiff may have the default noted as provided in Rule 114, and on an *ex parte* application of the plaintiff the court may assess the value of the goods and the damages, or either of them or order that they shall be ascertained in any way the court may direct, and judgment may be entered accordingly, or as the court may direct. R. 117.

Default judgment where more than one defendant

118 Where the plaintiff's claim is as in the last preceding rule, and there are several defendants of whom one or more deliver a Statement of Defence to the Statement of Claim and another or others of them fail to defend, the plaintiff may proceed against the defendant or defendants so failing to defend by having the default noted as provided in Rule 114, and on the *ex parte* application of the plaintiff the value of the goods and the damages, or either of them, as the case may be, shall be assessed as against the defendant or defendants failing to defend, at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the court shall otherwise direct. R. 118.

Claim, detinue and liquidated demand

119 If the plaintiff's claim be for a debt or liquidated demand, and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to deliver a Statement of Defence to the Statement of Claim, the plaintiff may enter final judgment for the debt or liquidated demand, interest (if claimed), and costs against the defendant or defendants failing to defend and have the default noted as provided in Rule 114 as to the balance of the claim and proceed as mentioned in such of the preceding rules as may be applicable. R. 119.

Claim recovery of land

120 In case a defence has not been delivered in an action for the recovery of land only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the claim shall recover possession of the land together with the costs of the action. R. 120.

Claim other relief and recovery of land

121 In an action for the recovery of land when the plaintiff also claims any other relief he may enter judgment as in the last preceding rule mentioned for the land, and may proceed as in the other preceding rules mentioned as to such other relief; provided however that this rule shall not apply to proceedings taken under Part Thirty-seven. R. 121.

Judgment in other actions

122 In any other action upon default of defence by one or more defendants, the plaintiff may apply *ex parte* to the court for an order for judgment, and the court shall order such judgment to be entered as the plaintiff appears entitled to, with or without evidence of the truth of the statement of claim (which may be given *viva voce* or by affidavit) in the discretion of the court. R. 122.

Where several defendants some not served

123 Where in an action there are several defendants of whom one or more have been served, and another or others of them have not, the court may order the striking out of the defendant or defendants not served, and allow the plaintiff to proceed with his action against the defendant or defendants served, on payment of costs or otherwise as may be considered just. R. 123.

(The next rule is Rule 125)

Where a defence is delivered to part of claim only

125 If the plaintiff's claim be for a debt or liquidated demand, or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any of such matters or for the recovery of land, and the defendant delivers a defence which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the court enter judgment for the part unanswered, provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand; provided also that where there is a counterclaim, execution on any judgment as above mentioned in respect to the plaintiff's claim shall not be issued without leave of the court. R. 125.

Where more than one defendant

126 Where in any such action as mentioned in the last preceding rule there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) proceed against the defendant so making default as mentioned in the last preceding rule, or may apply for judgment against him at the time of trial or other final disposition of the action. R. 126.

Default by parties other than plaintiff or defendant

127 In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the court for such judgment, if any, as upon the pleadings he may appear to be entitled to, and the court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties. R. 127.

Judgment entered in excess of amount due

128 If upon any application to set aside a judgment entered under this part, it shall be made to appear to the court that such judgment has been entered for an amount in excess of that to which the plaintiff was entitled upon his pleadings or by the order of the court, the court, if satisfied that such judgment was entered by inadvertence for an amount in excess of that so due, may direct that the said judgment shall be amended as may be necessary and upon such terms as to costs or otherwise as may seem just. R. 128.

PART NINE

SUMMARY JUDGMENT

Summary judgment on debt or liquidated demand

129(1) Where the action is brought to recover a debt or liquidated demand and the defendant, or one or more of the defendants if there are several defendants, has or have defended, the plaintiff may on affidavit, made by himself or by any other person who can swear positively to the facts, or if the plaintiff is a corporation by any officer or servant or other person who can swear positively to the facts, verifying the cause of action and the amount claimed as due, and stating in the belief of the deponent that there is no defence to the action on the merits, apply to the court for leave to enter final judgment for the amount of the claim or the amount so verified as due to the plaintiff (not exceeding the amount of the claim) together with interest (if any) and costs.

Unliquidated demand included

(2) If, on the hearing of any application under this rule, it shall appear that a cause or causes of action, other than for a debt or a liquidated demand have been joined therewith, the court may, if it shall think fit, forthwith amend the statement of claim by striking out such other cause or causes of action, or may deal with such claims for debts or liquidated demands, as if no other claim had been joined in the action, and allow the action to proceed in respect to the residue of the claim. R. 129

Final judgment, service and affidavits

130 The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be by notice of motion, returnable not less than five days after service accompanied by a copy of the affidavit or affidavits and exhibits referred to therein:

provided that the court may by order upon *ex parte* application shorten the time for the return of said motion and may also dispense with service of copies of the exhibits to the affidavit. R. 130.

Defendant may show cause

131(1) Upon the return of such motion the defendant may show cause by affidavit disclosing facts indicating that he has a good defence upon the merits to the whole or part of the plaintiff's claim.

Cross examination

(2) Where the defendant appears upon the return of such motion and opposes the same, the court may order the defendant, and in the case of a corporation any officer thereof, to attend and be examined upon oath and to produce such books, papers and documents as may be relevant. R. 131.

Order striking-out

132 If the defendant does not by affidavit or otherwise as in the next preceding rule provided, satisfy the court that he has a good defence upon the merits, or disclose such facts as may be deemed sufficient by the court to entitle him to defend, the court may make an order giving the plaintiff leave to enter judgment accordingly. R. 132.

Defendant admitting or failing to meet application as to part

133(1) If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of the claim is admitted, the plaintiff shall immediately have judgment for that part of the claim that the defence does not apply to, or that is admitted.

(2) The court may direct a judgment under subrule (1) to be subject to any terms as to suspending execution, payment into court, assessment of costs, or otherwise, that the court considers appropriate.

(3) The court may allow the defendant to defend as to the remainder of the plaintiff's claim. R. 133. Gaz Dec. 13, 2002. New.

One defendant may be permitted to defend and judgment against others

134 If it appears to the court that any defendant has a good defence to, or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former. R. 134.

Conditional leave to defend

135 Leave to defend may be given unconditionally or subject to such terms as to giving security or time and mode of trial or otherwise, as the court may think fit. R. 135.

136 Repealed. Gaz Dec. 13, 2002.

137 Repealed. Gaz Dec. 13, 2002.

PART TEN

PLEADING

I GENERAL

Form

138(1) Every pleading shall be divided into paragraphs, numbered consecutively, and each allegation shall, as far as is practicable, be contained in a separate paragraph.

(2) Every pleading of a party shall be signed by the party's lawyer, or by the party if he sues or defends in person. R. 138.

II PRINCIPLES GOVERNING PLEADING

Contents

139(1) Every pleading shall contain and contain only a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which the facts are to be proved. A pleading shall be as brief as the nature of the case will permit.

(2) Where necessary full particulars of any claim, or defence shall be stated in the pleading. R. 139.

Inconsistent allegations

140 A party shall not in any pleading make an allegation of fact or raise any new ground or claim inconsistent with his previous pleading. This rule does not affect the right of a party:

Alternative allegations

(a) to make allegations of fact or raise grounds or claims in the alternative; or

Amendment

(b) to amend or apply for leave to amend a pleading. R. 140.

Point of law

141 A party may raise any point of law in his pleading. Conclusions of law may be pleaded provided that the material facts supporting such conclusions are pleaded. R. 141.

Reference

142 A party shall refer to any statute or regulation on which his action or defence is founded and where practicable shall give particulars of the specific sections on which he relies. R. 142.

Presumptions of law

143 A party need not plead any fact which is presumed by law to be true or in his favour or as to which the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading. R. 143.

Conditions precedent

144 A party need not plead the performance or occurrence of a condition precedent to the assertion of his claim or defence, unless the other party has specifically denied it in his pleading. R. 144.

Effect of document or conversation

145 The effect of any document or the purport of any conversation, if material, shall be stated briefly, and the precise words of the document or conversation need not be stated unless those words are themselves material. R. 145.

Contract or relation implied from letters, etc.

146 Where a contract or relation between persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact. R. 146.

Allegation that person had notice

147 Where notice to any person is alleged, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of the notice or the circumstances from which the notice is to be inferred are material. R. 147.

Allegations of malice, fraudulent intention, knowledge, etc.

148 It shall be sufficient to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person as a fact, without setting out the circumstances from which it is to be inferred. R. 148.

Where particulars necessary

149 In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, full particulars shall be stated. R. 149.

Reference, if particulars necessary

150 Where particulars of debt, expenses or damages exceed 300 words, that fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading. R. 150.

Fact arising after commencement

151 Subject to the rules with respect to amendment of pleadings, a party may plead any fact that has occurred since the commencement of the action, notwithstanding that any such fact may give rise to a new claim or defence. R. 151.

True allegations to be admitted

152 Each party shall admit such of the allegations contained in the pleadings of the other party that he knows to be true. R. 152.

Pleading specifically

153 A party shall plead specifically any matter, fact or point of law which:

(a) makes a claim or defence of the other party not maintainable; or

(b) if not specifically pleaded, might take the other party by surprise; or

(c) raises issues not arising out of the preceding pleadings. R. 153.

Denial shall not be evasive

154 Where a party in a pleading denies an allegation of fact in a previous pleading of the other party, he shall not do so evasively but shall answer the point of substance. R. 154.

Different version to be pleaded

155 Where it is intended to prove a different version of the facts than that pleaded by the other party, a mere denial of the version so pleaded is not sufficient, but a party shall plead his own version of the facts. R. 155.

Deemed admitted

156 All allegations of fact which are not denied or stated in the pleadings not to be admitted shall be deemed to be admitted. R. 156.

General denial may be sufficient

157 Except where otherwise provided, it is not necessary to deny separately each allegation made in a preceding pleading, but a general denial of all those allegations which are not admitted may be sufficient. R. 157.

Status admitted

158 Unless a party specifically denies:

(a) the right of any other party to claim as executor, or as trustee, (whether for the benefit of creditors or otherwise) or in any representative capacity;

(b) the constitution of a partnership or firm;

(c) the incorporation of a corporate party;

it shall be deemed to be admitted. R. 158.

Money demand, specific denial required

159 In claims on bills of exchange, promissory notes, or cheques, or in a claim for debt or liquidated demand in money, a party shall specifically deny any allegation of fact made in support of the claim of the other party which he disputes. R. 159.

Denial of contract

160 Where a contract or agreement is alleged in any pleading, a bare denial of the same by the other party shall be construed only as a denial of the making of the contract or agreement alleged, or of the facts from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of the contract or agreement. R. 160.

Payment into court

161 Except in an action to which a defence of tender before action is pleaded, or in which a plea under section 9 of *The Libel and Slander Act* has been filed, no statement of the fact that money has been paid into court shall be inserted in the pleadings. R. 161.

Specific relief claimed

162(1) Where a pleading contains a claim for relief, such pleading shall state the specific relief claimed, and may ask for relief in the alternative.

General relief need not be claimed

(2) It shall not be necessary to ask for general or other relief, which may always be given to the same extent as if it had been asked for. R. 162.

No denial necessary as to damages

163 No denial shall be necessary as to damages claimed or their amount, but they shall be deemed to be put in issue in all cases, unless expressly admitted. R. 163.

III PARTICULARS

Demand for further particulars

164(1) A party may at any time before the action is set down for trial deliver a notice in writing, requiring from any other party a further and better statement of the nature of the claim or defence or further and better particulars of any matter of which particulars should properly be given and such notice shall clearly state the particulars required.

Delivery of particulars

(2) The party on whom such notice for particulars is served shall within eight days after service of such notice deliver a statement of the particulars required therein.

Time for pleading extended

(3) The party serving such notice for particulars shall have the same length of time for pleading after delivery of the particulars that he had when the demand for particulars was made.

Application to court for order

(4) If the party from whom particulars have been required makes default in delivering particulars within the time limited, or the particulars delivered are not satisfactory, the party making the demand may apply for an order requiring the party on whom such notice has been served to give further or better particulars and the court may order delivery of particulars on such terms as to costs and otherwise as may seem just. R. 164.

IV AMENDMENT

Amendment of pleadings

165 The court may, at any stage of the proceedings, grant leave to a party to amend his pleadings, in such manner and on such terms as may seem just, and all such amendments shall be made as may be necessary to determine the real questions in issue between the parties. R. 165.

When party may amend without leave

166 A party may amend any pleading filed by him in a proceeding once, without leave, at any time prior to the close of pleadings, and at any other time with the written consent of all the parties. R. 166.

Delivery of amended pleading

167 Where a pleading is amended, copies of the amended pleading shall be delivered within eight days of the order or of service of the last pleading of the other party on the party amending, unless otherwise ordered or the parties otherwise agree. R. 167.

Disallowance of improper amendments

168 Where a party has amended a pleading without leave of the court, the other party may, within eight days after the service on him of the amended pleading, apply to the court to disallow the amendment or any part thereof or for the imposition of terms, and the court may grant such order as may seem just. R. 168.

Pleading to amendments

169(1) Unless otherwise ordered, a party shall plead to the amended pleading, or amend his pleadings, within eight days from the service of the amended pleading on him, or within the time he then has to plead, whichever is longer.

Default of

(2) Where a party does not plead again or amend his pleadings within the time allowed, he shall be deemed to rely on his original pleadings in answer to the amended pleading. R. 169.

Manner of amending

170(1) An amendment to a pleading shall be made by written alterations on the face of the copy filed, unless the amendment is such as to make the amended pleading difficult or inconvenient to read, in which case a fresh copy of the original pleading as amended and bearing the date of the original pleading shall be delivered.

(2) Where a pleading is amended it shall be marked with the date on which the amendment is made.

(3) The amendment shall be underlined or otherwise designated to distinguish it from the original wording. R. 170.

Amendment at trial

171 Where a pleading is amended at a trial or hearing the amended document need not be delivered unless otherwise directed. R. 171.

Costs

172 The costs occasioned by any amendment shall in any event of the cause be borne by the party making the amendment. R. 172. Gaz Dec. 13, 2002. New.

V STRIKING OUT AND COSTS

Pleadings disclosing no cause of action or defence, or unnecessary, scandalous or embarrassing may be struck out

173 The Court may at any stage of an action order any pleading or any part thereof to be struck out, with or without leave to amend, on the ground that:

(a) it discloses no reasonable cause of action or defence, as the case may be;

(b) it is immaterial, redundant or unnecessarily prolix;

(c) it is scandalous, frivolous or vexatious;

(d) it may prejudice, embarrass or delay the fair trial of the action;

(e) it is otherwise an abuse of the process of the Court;

Action stayed, dismissed or judgment entered; Costs

and may order the action to be stayed or dismissed or judgment to be entered accordingly or may grant such order as may be just. Unless otherwise directed, the offending party shall pay double the costs to which the other party would otherwise be entitled. R. 173.

Where failure to plead own version, admit true allegations, or answer point of substance, court may direct costs, etc.

174 Where a party:

(a) intending to prove a different version of the facts than is pleaded by the other party, fails to plead his own version of the facts; or

(b) fails to admit such of the material allegations contained in the pleadings as are true; or

(c) denies an allegation of fact in a previous pleading of the other party, and does so evasively or fails to answer the point of substance;

the court may:

(i) refuse to allow that party to call evidence as to a different version of the facts from that pleaded; and

(ii) direct that no costs be allowed to that party for that pleading and that any additional costs occasioned by such failure be paid to the other party in any event of the cause. R. 174.

(The next part is Part Fourteen)

PART FOURTEEN

PAYMENT INTO AND OUT OF COURT

I TENDER

Payment into court where defence of tender

175(1) Where a defence of tender before the commencement of a proceeding is pleaded, the defence may not be delivered or relied on unless concurrently therewith, on notice to the plaintiff, the sum of money alleged to have been tendered is paid into court.

Irrevocable

(2) Payment under this rule may not be revoked except by leave of the court.

Acceptance

(3) The plaintiff may accept the money in satisfaction of the claim or claims to which it relates by serving on the defendant and filing, with proof of service, a Notice of Acceptance.

Costs

(4) Where the plaintiff accepts the money in satisfaction of all claims made in the action:

(a) the defendant may assess his or her costs of the action;

(b) the amount of those assessed costs shall be paid to the defendant out of the money; and

(c) the balance of the money shall be paid to the plaintiff. R. 175. Amend. Gaz Dec. 13, 2002.

II SATISFACTION

Payment into court as satisfaction

176(1) At any time before commencement of the trial a defendant may on notice to the plaintiff pay into court a sum of money in satisfaction of any claim made by a plaintiff, or, where there is more than one claim, in satisfaction of any one or more of them.

Without prejudice

(2) Payment into court under this rule shall be deemed to be an offer of compromise made without prejudice and shall not be taken as an admission of liability for the claim in respect of which it is made, unless otherwise shown in the Notice of Payment into Court.

No communication to court

(3) No communication of the fact that money has been paid into court under this rule shall be made to the trial judge or the jury until all questions of liability and the amount of debt or damages have been decided.

Irrevocable for eight days

(4) A payment into court under this rule is irrevocable for a period of eight days from the date of service of the Notice of Payment into Court but thereafter at any time before the commencement of the trial or until accepted by the plaintiff any such payment may be revoked by the defendant serving on the plaintiff a Notice of Revocation.

Payment out where revocation

(5) On filing the Notice of Revocation with proof of service the money in court shall be paid out to the defendant.

Revocation, no effect on costs

(6) Where money has been paid out to a defendant pursuant to a Notice of Revocation, the payment into court shall have no effect on the costs of the action.

Acceptance

(7) The plaintiff may accept the money in satisfaction of the claim or claims to which it relates by serving on the defendant and filing, with proof of service, a Notice of Acceptance.

Costs, where acceptance

(8) Where the plaintiff accepts the money in satisfaction of all claims in the action:

(a) the plaintiff may assess his or her costs to the date of service with the Notice of Payment into Court; and

(b) the defendant may assess his or her costs from the date the plaintiff was served with Notice of Payment into Court.

(9) Following assessment of costs pursuant to subrule (8), the money shall be paid out to the plaintiff, after deducting the amount payable to the defendant for his or her assessed costs. R. 176. Amend. Gaz Dec. 13, 2002.

III GENERAL

Notice of Payment into Court

177(1) Notice of Payment into Court may be in Form 11 and shall specify the claim or claims in respect of which payment is made and the sum paid in respect of each such claim.

Notice of Acceptance

(2) Notice of Acceptance may be in Form 12 and shall specify the claim or claims to which it relates.

Notice of Revocation

(3) Notice of Revocation may be in Form 13. R. 177.

Costs, where judgment

178 Where a plaintiff fails to obtain judgment for more than the amount paid into court:

(a) the plaintiff shall be entitled to costs to the date of service of the Notice of Payment into Court; and

(b) the defendant shall be entitled to double costs from the date of service of the Notice of Payment into Court to the date of judgment. R. 178. Gaz Dec. 13, 2002. New

Interest

179 The plaintiff is entitled to interest earned on money paid into court from the date of acceptance thereof, and the defendant is entitled to interest earned on money paid by him prior to acceptance thereof by the plaintiff, unless that payment is not sufficient to satisfy the judgment obtained by the plaintiff, after deducting costs, if any, to which the defendant may be entitled, in which case the plaintiff is entitled to the whole or any part of such interest as may be necessary to satisfy his judgment, unless otherwise ordered. R. 179.

Payment out, where all claims not satisfied

180 Where a plaintiff accepts money paid into court with respect to one or more but not all of the claims in an action, the money shall not be paid to the plaintiff except by written consent of the parties or leave of the court. R. 180.

Money remaining in court

180A If the whole of the money in court is not taken out under the rules in this part, the money remaining in court shall not be paid out except in pursuance of an order of the court or the written consent of the parties filed with the local registrar. R. 180A.

180B Repealed. Gaz Dec. 13, 2002.

Defendant may surrender counterclaim

180C Where a counterclaim is asserted, a defendant may offer to surrender his counterclaim and pay into court a sum of money in satisfaction of one or more of the claims for which the plaintiff sues, in settlement of the action and counterclaim. R. 180C.

Where payment in by third party

180D Money paid into court by a third party shall not be taken out by a defendant without leave of the court. R. 180D.

Payment out

180E Where money is paid out of court, payment shall be made to the person entitled thereto, or on the written authority of such person or by order of the court, to his lawyer. R. 180E.

Application to other claims

180F The rules in this part apply with any necessary modification to any claim, counterclaim, cross-claim or third party claim. R. 180F.

Issuance of judgment

180G Where money has been paid into court, a judgment shall not be issued by the local registrar until that fact has been drawn to the attention of the trial judge, or an agreement as to costs has been filed with the local registrar. R. 180G.

PART FOURTEEN A

OFFER TO SETTLE

Offer in writing

181(1) Any party to a proceeding may serve on an adverse party an offer in writing to settle any claim in a proceeding and, where there is more than one claim, to settle any one or more of them, on the terms therein specified.

Without prejudice

(2) An offer to settle shall be deemed to be an offer of compromise made without prejudice, and shall not be an admission of liability, unless the offer otherwise provides.

No communication to court

(3) No statement that an offer to settle has been made shall be contained in the pleadings, and no communication of that fact shall be made to the court or jury on the trial or hearing of the proceeding until after all questions of liability and the relief to be granted have been decided. R. 181.

Time for making offer

182(1) An offer to settle may be made at any time before the court disposes of the claim or claims in respect of which the offer is made.

Revocation

(2) An offer to settle may be revoked by serving notice in writing at any time before it is accepted.

Deemed revocation

(3) Where an offer to settle stipulates a time for acceptance and is not accepted within the time so stipulated, it shall be deemed to have been revoked. R. 182.

Acceptance of offer

183 An offer may be accepted by serving notice of acceptance in writing at any time before the court disposes of the claim or claims in respect of which the offer is made, unless the offer has been revoked. R. 183.

Offer silent as to costs

184(1) Where an accepted offer is silent as to costs, the plaintiff may:

(a) assess his or her costs to the date of service with the offer to settle or the notice of acceptance, as the case may be; and

(b) without order, sign a judgment for those costs.

Directions in certain cases

(2) Notwithstanding subrule (1), any judgment signed under this rule may be varied by the court where:

(a) the offer is made after the commencement of the trial; or

(b) the party to whom the offer is made is under a disability. R. 184. Gaz Dec. 13, 2002. New.

Failure to comply

184A(1) Where any party to an accepted offer fails to comply with the terms thereof, the other party may apply to the court:

(a) for judgment in the terms of the accepted offer; or

(b) where the defaulting party is a plaintiff, to have his proceeding dismissed or, where the defaulting party is a defendant, to have his defence struck out.

(2) Where one party to an accepted offer fails to comply with the terms of the offer, the other party shall be entitled to his or her costs from the date of the acceptance of the offer. R. 184A. Amend. Gaz Dec. 13, 2002.

Judgment equals or exceeds offer by plaintiff

184B(1) Where a plaintiff makes an offer to settle that has not been revoked, and obtains a judgment as favourable or more favourable than the terms of the offer to settle, the plaintiff shall be entitled to costs to the date of the service of the offer and double costs after that date.

(2) Where a defendant makes an offer to settle that has not been revoked, and the plaintiff:

(a) fails to obtain a judgment more favourable than the terms of the offer to settle, the plaintiff shall be entitled to costs to the date of the service of the offer and the defendant shall be entitled to double costs from the date of service of the offer to the date of judgment; or

(b) fails to obtain judgment, the defendant shall be entitled to costs to the date of the service of the offer and to double costs from the date of service of the offer to the date of judgment.

Multiple defendants

(3) This rule shall not apply where two or more defendants are liable to the plaintiff in respect of any particular claim or claims, unless:

(a) in the case of an offer made by the plaintiff, the offer is made to all such defendants, and is an offer to settle the claim or claims mentioned therein as against all such defendants; or

(b) in the case of an offer made to the plaintiff, the offer is made by all such defendants and is an offer to settle the claim or claims mentioned therein against all such defendants. R. 184B. Amend. Gaz. Dec. 13, 2002; Amend. Gaz. Dec. 5, 2003; Amend. Gaz. Jan. 16, 2004.

Costs, factors which may be considered

184C The court, in exercising its discretion as to costs, may take into account:

(a) any offer to settle made in writing, the date the offer to settle was served and the terms of the offer; and

(b) any offer to contribute toward a settlement of a particular claim or claims made in writing by one defendant to any other defendant jointly or jointly and severally liable to the plaintiff with respect to that claim or those claims. R. 184C. Gaz Dec. 13, 2002. New.

184D Repealed. Gaz. Dec. 13, 2002.

Notice to local registrar

184E Where the local registrar receives notice that an offer has been made, a judgment after trial shall not be issued by the local registrar until that fact has been drawn to the attention of the trial judge, or an agreement as to costs has been filed with the local registrar. R. 184E.

Rules apply

184F The rules in this part shall apply, with any necessary modification, to any counterclaim, cross-claim or third party claim. R. 184F.

(The next part is Part Sixteen and the next rule is Rule 188)

PART SIXTEEN

RAISING POINTS OF LAW, ETC.

Disposal of

188 Where it appears that a determination of a point of law may:

(a) dispose of all or part of the action;

(b) simplify the action;

(c) substantially shorten the trial; or

(d) result in a substantial saving of cost;

either party may make application to a chambers judge, supported by an agreed statement of facts, for determination of the point of law. R. 188.

Judgment where point raised disposes of action, etc.

189 If, in the opinion of the court, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim or reply therein, the court may thereupon dismiss the action or make such other order therein as may be just. R. 189.

PART SEVENTEEN

SETTING DOWN FOR TRIAL

Venue

190 Unless otherwise ordered, a proceeding shall be set down for trial at the judicial centre where it was commenced or at the judicial centre to which it has been transferred. 1981. R. 190, Am. Gaz. Dec. 5/86.

Pre-trial conference required

191(1) Subject to Part Forty, no proceeding shall, unless otherwise ordered, be set down for trial unless a pre-trial conference is held.

Request for pre-trial

(2) On the close of the pleadings, the parties may request a pre-trial conference by filing with the Local Registrar:

(a) a joint request:

(i) which contains a certificate of readiness;

(ii) which confirms that efforts at settlement have been made;

(iii) which sets out the estimated time required for the pre-trial conference and the trial; and

(iv) which estimates the number of witnesses to be called at the trial;

(b) a certified copy of the pleadings (in a proceeding commenced by petition, a certified copy of the petition and answer is not required). Am Gaz. Dec. 9/94.

Trial brief

(3) The parties shall file and exchange pre-trial briefs not later than 10 days prior to the date assigned for pre-trial conference. Each pre-trial brief:

(a) shall include a concise summary of the evidence expected to be adduced;

(b) shall include a concise statement of the issues in dispute and the law relating thereto, together with a list of the authorities relied on and legible copies of pertinent portions of such authorities with appropriate highlighting;

(c) shall be accompanied by all documents, or legible copies thereof, intended to be used at trial that may be of assistance to the pre-trial judge in achieving the purposes of a pre-trial conference (such as medical and expert reports). All such documents shall, at the request of the party producing them, be returned to that party at the conclusion of the pre-trial conference;

(d) may be accompanied by a proposal for settlement of the issues involved in the proceedings which may include admissions for the purpose of the pre-trial, or other statements relating to the issues which the party may choose not to have available to the trial judge. If the proceeding is to go to trial after the conclusion of the pre-trial conference, the proposal shall be returned to the party submitting it. Am. Gaz. Dec. 9/94.

Use of examination

(4) The examination for discovery shall be available for the use of the pre-trial judge but shall at the conclusion of the pre-trial conference be resealed until trial.

Pre-trial date

(5) The local registrar shall assign a pre-trial conference date to ensure optimum use of court time, but shall endeavour to suit the convenience of the parties. The parties must accept the date so assigned.

Parties

(6) Unless otherwise ordered, all parties shall appear with their counsel, if any, at all pre-trial conferences. Unless otherwise ordered, a corporation shall have a representative present, in addition to its counsel, at all pre-trial conferences.

Counsel

(7) Unless otherwise ordered, the counsel representing a party at the pre-trial conference shall be the counsel who will be representing that party at the trial.

Purpose of pre-trial

(8) A pre-trial conference shall be for the purpose of attempting to settle the proceeding, and if that is not possible, to consider:

(a) the identification and simplification of the issues;

(b) the necessity or desirability of amendments to the pleadings;

(c) the possibility of obtaining admissions that will facilitate the trial;

(d) whether all necessary steps have been taken in preparation for trial;

(e) the possibility of settlement of specific issues;

(f) the quantum of damages;

(g) any other matters that may aid in the disposition of the proceedings;

(h) the actual trial time required; and

(i) the date for trial.

Application for order for pre-trial

(9) Where one of the parties refuses to join in a joint request, the party wishing to obtain a pre-trial conference may, upon filing the documents described in Rule 191(2) other than a joint request, apply for an order setting a date for the pre-trial conference and a date by which the party refusing to join in a joint request must file the documents described in Rule 191(2). The unsuccessful party to the application shall immediately pay the costs of this application.

Obtaining date for pre-trial conference

(9A) Where one of the parties neglects or refuses to join in a request, the party wishing to obtain a pre-trial conference may, upon filing the documents described in Rule 191(2) other than a joint request, together with a certificate confirming that the opposite party was requested to execute a joint request but failed to do so within 20 days without stating any reason therefor, obtain from the local registrar a date for a pre-trial conference. New. Gaz. Dec. 9/94.

Notification of pre-trial conference date

(9B) The party obtaining a date for a pre-trial conference pursuant to either Subrule (9) or (9A) shall immediately notify all other parties of the date and the pre-trial conference shall proceed on that date, unless otherwise ordered. New Gaz. Dec. 9/94.

Judge may dispense with requirements

(10) Notwithstanding Subrule (2), if all the parties file a written request with the local registrar, they may apply to a judge to direct that a pre-trial conference be held. The judge, upon being satisfied that it will substantially settle the proceedings, may direct that a pre-trial conference be held, and may dispense with any or all of the requirements set out in Subrule (2).

Pre-trial ordered

(11) A trial judge or a chambers judge may, on his or her initiative, order a pre-trial conference to be held respecting any proceeding coming before him or her and may conduct the same if appropriate to do so.

Post pleadings conference

(11A) Notwithstanding the generality of the foregoing, all of the parties may, upon the close of pleadings, and prior to any discoveries or other pre-trial proceedings having been conducted, file with the local registrar a joint request that a post-pleadings conference be conducted. Unless otherwise ordered, or as may be agreed by the parties in writing, all of the rules relating to pre-trial conferences shall apply, *mutatis mutandis*, to post-pleadings conferences.

Adjournment

(12)(a) A pre-trial conference may be adjourned from time to time at the discretion of the pre-trial judge.

Attendance

(b) A pre-trial judge may at any time request that any other person, whose attendance may be of assistance, be present at the pre-trial conference.

Trial judge other than pre-trial judge

(13) A judge who conducts a pre-trial conference shall not preside at the trial unless all parties consent in writing. This subrule shall not prevent or disqualify the trial judge from holding trial meetings, (subsequent to the pre-trial conference), before or during the trial, to consider any matter that may assist in the just, most expeditious, or least expensive disposition of the proceeding.

Disclosure

(14) No communication shall be made to the trial judge as to the proceedings at the pre-trial except as disclosed in the pre-trial conference report form.

Privilege

(15) All communications in the course of the pre-trial conference are privileged and shall not be admitted as evidence in any proceeding.

Orders, costs

(16) At the pre-trial conference, the pre-trial judge:

(a) may make any order by the consent of the parties;

(b) may make an order for the preparation of a custody and/or access report under section 97 of *The Queen's Bench Act, 1998* without the consent of the parties;

(c) may make an order for costs but, in the absence of such order, the costs shall be costs in the cause.

(17) Where a pre-trial date has been assigned, the party having carriage of the proceeding shall forthwith pay the required fee for setting down. R. 191, Gaz. Jan. 18/91. New; Am. Gaz. Dec. 9/94; Am. Gaz. Feb. 16/96; Am. Gaz. Dec. 12/97; Am. Gaz. Jan. 28/2000; Am. Gaz. Nov. 3/2000; Am. Gaz. Dec. 13, 2002.

Trial date

192(1) A judge who conducts a pre-trial conference where the matter is to proceed to trial shall direct the local registrar to assign a date for trial.

(2) The local registrar shall set a trial date to ensure the optimum use of court time, but shall endeavour to assign a date to suit the convenience of the parties. The parties must accept the trial date assigned by the local registrar unless otherwise ordered. R. 192, Gaz. Jan. 18/91 New; Am. Gaz. Feb. 16/96.

Adjournment of trial date

193 Subject to Subrule 191(9), when a trial date has been assigned to any proceedings, it shall only be adjourned on the order of a judge upon application by a party and supported by affidavit. R. 193, Gaz. Jan. 18/91. New.

Fee for setting down

194 Where a trial date has been assigned by an order pursuant to Subrule 191(1), the party having the carriage of the proceeding shall forthwith pay the required fee for setting down. Gaz. Feb. 16/96 New.

(The next rule is Rule 196)

Demand for jury

196(1) Unless otherwise ordered, in any action where a jury may be demanded a party may, at any time before the local registrar has assigned a date for trial and notified the parties of the date, make the demand by filing with the local registrar and serving on the opposite party a notice in writing requiring that the issues be tried or that the damages be assessed by a jury. 1981. Sr. 192(1) Am. Gaz. Dec. 5/86.

Deposit

(2) When a demand for a jury is made, the party who makes the demand shall deposit with local registrar the sum required by *The Jury Act, 1981*, to be deposited with the local registrar and the local registrar shall not receive or file a demand unless the deposit mentioned in this Rule is made. New. Gaz. Dec. 9/94.

Second payment of jury fees if new trial ordered

(3) Whenever an action has been ordered to be re-tried after having been set down for trial by a judge with a jury, and a party desires that the action be retried by a judge with a jury, that party shall within 30 days of the order deposit with the local registrar the sum required by *The Jury Act, 1981* and in the event that the sum is not deposited within that time the action shall be tried without a jury. 1981. Sr. 192(3). Am. Gaz. Dec. 5/86.

Costs of jury when demand withdrawn

(4) Where a jury is summoned by a sheriff pursuant to a demand for jury filed with the local registrar, and the demand is subsequently withdrawn, the party who filed the demand for jury is liable for the fees prescribed by law for the summoning of a jury and the cancellation of the summoning. R. 196, Gaz. Dec. 5/86. New.

Lists of trials to be provided by local registrar

197 The local registrar shall provide a numbered list for trials with juries, and a numbered list for trials without juries, with the cases listed in the order that they are to be heard, and the lists are to be open for inspection during office hours. R. 197, Am. Gaz. Dec. 5/86.

PART EIGHTEEN

DISCONTINUANCE

Discontinuance or withdrawal

198(1) The plaintiff may, at any time before receipt of the statement of defence of any defendant, or after the receipt thereof before taking any other proceeding in the action (save an interlocutory application), by notice in writing, filed and served, wholly discontinue his action against such defendant or withdraw any part thereof; and the defendant shall be entitled to the costs of the action if wholly discontinued against him, or if not wholly discontinued, to the costs occasioned by the part withdrawn.

Costs

(2) Where the action is wholly discontinued, the costs to which the defendant is entitled under subrule (1) may be assessed on production of the notice served, and if not paid within four days from assessment, the defendant may issue execution on those costs.

Several defendants

(3) A plaintiff may discontinue as to one or more of several defendants.

Subsequent action

(4) Such discontinuance or withdrawal shall not be a defence to any subsequent action.

No discontinuance without consent or leave

(5) Except as provided herein a plaintiff shall not discontinue in whole or in part, unless it be with the consent of the party or parties against whom discontinuance is sought or with the leave of the court, which may be granted upon such terms as to costs and as to any other action against all or any of the defendants and otherwise as may be proper;

Discontinuance at trial

provided that notwithstanding the expiration of the time limited in Subrule (1), a plaintiff may give written notice to the other parties that at the trial of the action he will apply to withdraw a part or parts of his claim (not involving substantially a complete discontinuance) and the trial judge may allow such withdrawal upon such terms as to costs or otherwise as he deems just. R. 198. Amend. Gaz Dec. 13, 2002.

Discrectionary stay of subsequent action pending payment

199 If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same or substantially the same cause of action, the court may in its discretion order a stay of such subsequent action until such costs shall have been paid. R. 199.

PART NINETEEN

TRANSFER OF PROCEEDINGS

Application of Rules

200 This Part applies to proceedings pursuant to *The Court Jurisdiction and Proceedings Transfer Act*. R.200. Gaz Dec. 13, 2002. New.

Transfer of Proceeding to a Court Outside Saskatchewan

201(1) An order requesting a court outside Saskatchewan to accept a transfer of a proceeding may be made:

(a) on application of a party to the proceeding, including on application of a defendant made pursuant to rule 99; or

(b) on the court's own motion.

(2) The local registrar shall forward to the receiving court outside Saskatchewan certified copies of:

(a) an order requesting transfer to that court; and

(b) the portions of the record directed by the Court to be sent in support of the order. R.201. Gaz Dec. 13, 2002. New.

Transfer of Proceeding to Saskatchewan

202(1) On the filing of a request made by a court outside Saskatchewan to transfer a proceeding to the court in Saskatchewan, the local registrar shall serve the parties to the proceeding in the transferring court, by ordinary mail, with:

(a) a Notice of Request for Transfer in Form 202A; and

(b) a copy of the documents received from the transferring court.

(2) Within 30 days of service of the Notice of Request for Transfer, any party to the proceeding brought in the transferring court may apply by Notice of Motion for an order accepting or refusing the transfer of the proceeding, and such application shall not be deemed to be a submission to the jurisdiction of the Court.

(3) Where no application pursuant to subrule (2) is brought within the time provided, the local registrar shall place the documents received from the transferring court before a judge for an order accepting or refusing the transfer of the proceeding.

(4) On receipt of further material from the transferring court, the local registrar shall serve the parties by ordinary mail with:

(a) a copy of the documents received from the transferring court; and

(b) a Notice of Receipt of Further Material in Form 202B.

(5) An order accepting or refusing a transfer of a proceeding shall be in Form 202C, and the local registrar shall forward a certified copy of the order to the court outside Saskatchewan that requested the transfer. R.202. Gaz Dec. 13, 2002. New.

Parties to be Notified

203 Where any order is made pursuant to the *Act* in the absence of the parties, the local registrar shall, immediately upon decision being given, notify the parties to the proceeding. R.203. Gaz Dec. 13, 2002. New.

(The next rule is Rule 211)

PART TWENTY

DISCOVERY AND INSPECTION OF DOCUMENTS

Document defined

211 In this Part, "**document**" includes information recorded or stored by means of any device and includes an audio recording, video recording, computer disc, film, photograph, chart, graph, map, plan, survey, book of account or machine readable information. R. 211, Gaz. Oct. 25/91. New.

Statement on discovery

212(1) Parties to an action shall, within ten days after a statement of defence has been filed, and without notice, serve on each opposite party a statement as to the documents which are or have been in his possession or power relating to any matter in question in the action.

Contents of statement

(2) The statement mentioned in Subrule (1) shall be made in Form 15 and shall be signed by the solicitor of the party making discovery or by the party himself if he sues or defends in person and the statement shall clearly state:

(a) the documents in the possession, custody or control of such party which he is ready and willing to produce but not including the pleadings and proceedings in the action;

(b) the documents which have been, but are not, at the time of making the statement, in the possession, custody or control of such party, the nature of such documents, and when they were last in his possession, custody or control, and where they are likely to be found;

(c) the documents which are in the possession, custody or control of such party and which he objects to produce, the general nature of such documents (which shall be identified with reasonable certainty) and the specific grounds upon which he objects to produce the same.

(3) If any such party has no documents to disclose or which should be disclosed, the said statement shall so state.

Service of statement

(4) A statement as to documents shall have endorsed thereon a notice stating the time when, (which shall not be later than ten days from the date of serving such statement), and the place where (which, unless otherwise ordered, shall be the address for service of the party making the statement), such documents, or such as he does not object to produce, may be inspected:

provided that bank books or other books of account, or books in constant use for the purpose of any trade or business, may be produced at their usual place of custody.

(5) A statement as to documents shall not be filed with the court unless otherwise ordered. R.212, Am. Gaz. Dec. 11/98.

Notice to produce

213(1) Every party to a cause or matter shall be entitled at any time, by notice in writing, to give notice to any other party in whose pleadings, affidavits, or statement as to documents reference is made to any document, to produce such document for the inspection of the party giving such notice or of his solicitor and to permit him or them to take copies thereof. Such notice shall be in Form 16.

Notice to inspect

(2) The party to whom notice under subrule (1) to produce documents is given shall, within two days after service of that notice, deliver to the party giving the notice a Notice to Inspect Documents in Form 17 stating a time, within three days from the delivery thereof, at which the documents or any of them that he or she does not object to produce may be inspected at his or her address for service.

(3) Notwithstanding subrule (2), bankers' books or other books of account or books in constant use for the purpose of any trade or business may be produced at their usual place of custody.

(4) On assessment of costs no allowance is to be made for any notice to produce or for inspection unless it is shown to the assessment officer that there was good and sufficient reason for giving that notice or making that inspection. R. 213. Amend. Gaz. Dec. 13, 2002

Production for inspection, Copies

214 Where notice to inspect documents has been given, the party giving such notice shall at the time and place appointed produce for the inspection of the party requiring same all such documents as are in his custody, possession or control and which he does not object to produce and shall permit such party to inspect the same and to make copies thereof, or shall, upon payment of the proper fees therefor, deliver to such party copies of all such documents as he may require. R. 214.

Default in discovery or production

215(1) If any party:

(a) neglects, refuses or objects to make discovery of documents as required by Rule 212; or

(b) has filed and served a statement pursuant to Rule 212 which statement is not satisfactory to a party entitled to be served with same; or

(c) shall in such statement so filed and served have made a claim to privilege in respect of documents referred to therein; or

(d) having been served with a notice under Rule 213 shall neglect or refuse to produce any document mentioned therein; or

(e) neglects to give notice to inspect or having given such notice neglects or refuses to produce such documents for inspection or to permit the solicitor for the other party to make copies thereof or to furnish such solicitor with copies thereof upon payment or tender of the proper fees in connection therewith; or

(f) offers production at a place elsewhere than the address for service except as otherwise provided;

then the party so desiring production may apply to the court for an order requiring the other party to make production of documents or for further or better production or for inspection or determining whether documents in respect of which privilege is claimed are in fact privileged and upon such application the court may make an order for production or inspection in such manner as may be just.

Privilege

(2) If upon such application any privilege is claimed for any document the court may inspect such document for the purpose of deciding as to the validity of the claim for privilege and to consider all relevant evidence which may be adduced tending to establish or destroy such claim for privilege.

Cross-examination on statement

(3) Upon any application under this rule the court may permit cross-examination under oath of a party upon the original or any subsequent statement given pursuant to Rule 212. R. 215.

Verified copies

216 Where inspection of any business books is applied for, the court may, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and proved by the affidavit of some person who has verified the copy by comparison with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations:

provided that, notwithstanding that such copy has been supplied, the court may order inspection of the book from which the copy was made. R. 216.

Non-compliance with notice or order for discovery or inspection

217(1) If any party neglects or refuses to make discovery as required by Rule 212 or to produce for inspection any document of which notice to produce for inspection has been given, or to comply with any order for production or inspection, under Rule 215, he shall be liable, if a plaintiff, to have his action dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and be placed in the same position as if he had not defended.

(2) If any party fails to comply with an order for discovery or inspection of documents, he shall also be liable to committal. R. 217.

Use of undisclosed documents as evidence

218 After any party has made discovery of documents or having been required to make discovery has neglected or refused so to do, he shall not afterwards be at liberty to put any document of which he has not made discovery in evidence on his behalf in any such cause or matter unless he shall satisfy the court that he had some reasonable cause for not making discovery thereof; in which case the court may allow the same to be put in evidence on such terms as to costs or otherwise as the court shall think fit:

Newly discovered documents to be disclosed

provided that if any party who has made discovery of documents as by these rules provided, shall discover or come into possession of any document not previously disclosed and which is relevant to the matters in question in the action or proceeding he shall give notice thereof to the opposite party not later than 10 days before the trial or hearing, and forthwith upon request shall supply such opposite party with a copy thereof, in which case the court may permit such document to be given in evidence upon such terms as to costs or otherwise as may seem just. R. 218.

Discovery no admission of relevancy

219 If any party makes discovery of any document under any of the provisions herein contained he shall not thereby be deemed to admit the relevancy or admissibility of such document. R. 219.

Service of order

220 Service of an order for discovery or inspection, made against any party on his solicitor, shall be sufficient service to found an application for committal for disobedience to the order. But the party against whom the application for committal is made may show, in answer to the application, that he has had no notice or knowledge of the order. R. 220.

Solicitor neglecting to inform client of order

221 A solicitor, upon whom an order against any party for discovery or inspection is served under the last preceding rule, who neglects, without reasonable excuse, to give notice thereof to his client, shall be liable to committal. R. 221.

PART TWENTY-ONE

EXAMINATION FOR DISCOVERY

Examination of parties for discovery

222 Subject to Part Forty-Eight, any party to an action or issue may, without order, be orally examined for discovery before the trial touching the matters in issue in the action by any party adverse in interest, and may be compelled to attend and testify in the same manner, upon the same terms with respect to conduct money and otherwise, and subject to the same rules of examination as a witness except as hereinafter provided. R. 222. Am. Gaz. May 15/87.

Discovery of non-parties with leave

222A(1) The court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who may have information relevant to a material issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation.

Test for granting leave

(2) An order under Subrule (1) shall not be made unless the court is satisfied that:

(a) the applicant has been unable to obtain the information from other persons whom the applicant is entitled to examine for discovery, or from the person he or she seeks to examine;

(b) it would be unfair to require the applicant to proceed to trial without having the opportunity of examining the person; and

(c) the examination will not:

(i) unduly delay the commencement of the trial of the action;

(ii) entail unreasonable expense for other parties; or

(iii) result in unfairness to the person the applicant seeks to examine.

Costs by party examining

(3) A party who examines a person orally under this rule shall serve every party who attended or was represented on the examination with the transcript free of charge, unless the court orders otherwise.

(4) The examining party is not entitled to recover the costs of the examination from another party.

Limitation on use at trial

(5) The evidence of a person examined under this rule may not be read into evidence at trial under Rule 239. R. 222A. Gaz. May 15/87. New. Amend. Gaz. Dec. 13, 2002.

Oath

222B(1) The person being examined shall be sworn before he is examined, and the oath shall be administered by a judge, local registrar, official court reporter or special court reporter.

(2) Where the person being examined is sworn before a court reporter, the court reporter shall receive the completed memorandum of Examination for Discovery and shall collect the proper fees and shall:

(a) in the case of an official court reporter, remit them promptly to the local registrar; and

(b) in the case of a special court reporter remit them within four days to the local registrar, together with such report as may be required by the local registrar. R. 222B. Gaz. Jan. 29/82. Am. Gaz. May 15/87.

Examination of one who is or has been officer or servant of corporation

223(1) In the case of a corporation, anyone who is or has been an officer or servant of such corporation may, without order, be orally examined for discovery before the trial by any party adverse in interest to the corporation, and may be compelled to attend and testify in the same manner as a witness.

Use of examination

(2) The examination of one who is a servant, or who has been an officer or servant of a corporation shall not be used in evidence, and the examination of one who is an officer of the corporation shall only be used as evidence against the corporation as hereinafter provided.

Apply to court to designate proper person

(3) Any party desiring to examine an officer of a corporation for the purpose of using such examination as evidence may apply to the court to designate the proper person to be so examined, and the court shall, after inquiry, designate the proper person to be so examined and the examination of the person so designated may be used as evidence against the corporation saving all just exceptions. Where the parties agree upon the proper person to be examined no such designation by the court is required.

After examination not at liberty to examine further without order

(4) After examining anyone who is or has been an officer or servant of a corporation a party shall not be at liberty to examine any other person who is or has been an officer or servant of the corporation without an order of the court. R. 223.

Person beneficially interested

224 A person for whose immediate benefit an action is prosecuted or defended, shall be regarded as a party for the purpose of examination. R. 224.

Assignor of chose in action examinable for discovery

225 Where an action is brought by an assignee of a chose in action the assignor may, without order, be examined for discovery. R. 225.

When examination may take place

226 The examination on the part of a plaintiff may take place at any time after the statement of defence of the party to be examined has been delivered, or after the time for delivering the same has expired, or after default of appearance has been noted against the party to be examined; and the examination on the part of a defendant may take place at any time after such defendant has delivered his statement of defence and the examination of a party to any issue at any time after the issue has been filed. R. 226.

Examining by appointment

227 Where a party is entitled to examine a person who resides in Saskatchewan he may procure an appointment from the local registrar of the judicial centre nearest the place where the person to be examined so resides for examination before him, but the court may order the examination to be held before any other person and at any place, or such examination may be held by consent before any other local registrar, process issuer, official court reporter or special court reporter. R. 227.

Service of appointment or order, Conduct money

228(1) A party liable to examination, or one who is an officer or servant of a corporation, and so liable, who resides in Saskatchewan, shall attend for examination upon service of a copy of the appointment and of the order, if any, for such examination upon his solicitor, if any, or upon the solicitor of the corporation, as the case may be, not less than five days where the party to be examined resides at a judicial centre and in all other cases 10 days before the day appointed for the examination, and proper conduct money shall, in such case, be paid or tendered to the solicitor.

Duty of solicitor

(2) The solicitor shall forthwith communicate the appointment to the person required to attend, and shall not apply the money to any debt due to the solicitor, or any other person, or pay the same otherwise than to such person for his conduct money, and the same shall not be liable to be attached.

Party to be examined may be served with subpoena

(3) Notwithstanding anything in this rule the person to be examined may be served personally with a subpoena requiring his attendance at the time and place appointed for the examination, in which case the proper conduct money shall be paid to him at the time of such service, and a copy of the appointment shall be served upon his solicitor, if any, or on the solicitor of the corporation of which the person to be examined is or has been an officer or servant, as the case may be, at least 48 hours before the time fixed for the examination. R. 228.

Examination outside the jurisdiction

229(1) A party liable to be examined for discovery, or one who is an officer or servant of a corporation and so liable, who is not in Saskatchewan, may, by order of the court be examined before such person and at such place as the court may order.

(2) A copy of the appointment of the person before whom the examination is to take place, and a copy of the order, shall be served upon the person to be examined, and upon payment to him of the proper conduct money he shall attend and submit to examination.

(3) A copy of the appointment shall be served upon the agent of the solicitor of the party to be examined, or of the corporation, as the case may be, at least 48 hours before the time fixed for the examination. If no agent has been appointed service of the appointment shall be dispensed with. R. 229.

Explanatory examination and re-examination

230 Any person examined for discovery may be further examined on his own behalf, or on behalf of the corporation, whose officer or servant he is or has been, in relation to any matter respecting which he has been so examined, and may then be re-examined, and such explanatory examination and re-examination shall be proceeded with immediately after his examination by the other party. R. 230.

Refusal or neglect to answer; penalties

231 Anyone refusing or neglecting to attend at the time and place appointed for his examination or refusing to be sworn or to answer any lawful question put to him by any party entitled to do so or his counsel or solicitor or having undertaken at the examination to answer at a later date any lawful question put to him fails to do so within a reasonable time after the examination shall be deemed guilty of a contempt of court and proceedings may be taken forthwith to commit him for contempt. He shall be liable if a plaintiff to have his action dismissed, and if a defendant to have his defence, if any, struck out and to be placed in the same position as if he had not defended. If the party so neglecting or refusing is an officer or servant of a corporation the corporation itself shall be liable if a plaintiff to have its action dismissed, and if a defendant to have its defence, if any, struck out and to be placed in the same position as if it had not defended; and in either case the party examining may apply to the court to that effect and an order may be made accordingly. R. 231.

Objections by witness, Decision as to validity

232(1) If any one under examination objects to any question or questions put to him or her, the examiner shall take down the question or questions so put and the objection of the witness to the question or questions.

(2) The examiner shall file the questions and objections mentioned in subrule (1) with the local registrar in whose office the proceedings are pending.

(3) The court shall decide the validity of any objections. R. 232. New. Gaz. Dec. 13, 2002.

Production of documents

233 The person to be examined shall, if so required by the subpoena served upon him, if any, or if none, then by written notice to be served with the appointment, produce on the examination all books, papers and documents which he would be bound to produce at a trial under a subpoena *duces tecum*. R. 233.

Exhibits to be marked and produced at trial

234 The examiner may direct that any exhibit marked on an examination need not be filed with him, but in such case all such exhibits shall be produced at the trial of the action without notice, or the examiner shall, at the request of the examining solicitor, cause copies thereof or extracts therefrom to be made by the shorthand writer and attached to the depositions and such copies or extracts may be used in every way as the originals. R. 234.

Production of documents for inspection of examiner

235(1) Any one who admits upon his examination that he has in his custody or power any deed, paper, writing or document relating to the matters in question in the cause, upon the order of the person before whom he is examined shall produce the same for his inspection and for that purpose a reasonable time shall be allowed; but no one shall be obliged to produce any deed, paper, writing or document which is privileged or protected from production.

Appeal from examiner's order

(2) Either party may appeal to the court from the order of the examiner and thereupon the examiner shall certify under his hand the question raised and the order made thereon. R. 235.

Document in possession of one not a party

236(1) When a document is in possession of a third party not a party to the action and it is alleged that any party has reason to believe that such document relates to the matters in issue, and the person in whose possession it is might be compelled to produce the same at the trial, the court may on the application of any party direct the production of such document at such time and place as the court may direct and give directions respecting the preparation of a certified copy thereof which may be used for all purposes in lieu of the original, saving all just exceptions.

(2) The person producing such document shall be entitled to receive such conduct money as he would be entitled to receive if examined for discovery.

(3) The costs of such application shall in the first instance be borne by the party making the application but if it shall thereafter appear to the court that by reason of such production there has been a saving of expense the court may award the whole or part of such costs to the party making the application. R. 236.

Deposition taken in shorthand or recording device, Transcription to be certified

237(1) The examination (unless otherwise ordered or agreed) shall be taken by an official court reporter or special court reporter, if available, otherwise by a person approved by the parties and duly sworn by the examiner and shall be taken down by question and answer either in shorthand or dictated by such reporter or person into a recording device. The deposition so taken shall be transcribed or be caused to be transcribed by such reporter or approved person, unless the parties otherwise agree. Such transcription shall be certified by the said reporter or approved person as the case may be to be a correct transcription of the questions and answers so taken or dictated.

Examination before special court reporter

(2) The examination may be held by consent before a special court reporter appointed and sworn for the purpose of taking such examinations in the proceeding by the local registrar. Form 17A may be used.

Certified copy of depositions

(3) A copy of the deposition so taken and so certified shall be received in evidence saving all just exceptions.

Filing of depositions

(4) The deposition so taken shall be sealed and returned to and filed by the court reporter or such approved person, as the case may be, in the office of the local registrar of the court in which the proceedings are being carried on and shall be inspected by no one without an order of the court. Copies, however, may be delivered direct to any solicitors requiring the same.

Certificate of reporter or approved person

(5) The reporter or approved person shall for the information of the assessment officer note on every deposition the length and time occupied by the examination. R. 237. Amend. Gaz. Dec. 13, 2002.

Special report of examiner

238 The examiner or reporter may, and if need be shall, make a special report to the court in which such proceedings are pending touching upon such examination, and the conduct or absence of any person thereon or relative thereto, and such certificate shall be *prima facie* evidence of the truth of the matters therein contained. R. 238.

Use of examination

239 Any party at the trial of an action or issue, or upon any application or motion therein, may subject to all just exceptions, use in evidence any part of the examination of the opposite party without putting in the whole examination, and subject to the provisions of Subrule (3) of Rule 223 he may so use any part of the examination of a designated officer of a corporation which is adverse in interest; but the other party may request the judge to look at certain designated parts of the examination which may explain those portions of the examination so put in, and if the judge is of the opinion that any other part is so connected with the part put in that the last mentioned part ought not to be used without such other part or parts, he shall forthwith, or in his reasons for judgment, direct such other part or parts to be put in by way of explanation but not as part of the evidence of the party putting in such portions of the examination in the first instance. R. 239.

Examination for discovery evidence

239A(1) Where a person examined for discovery:

(a) has died; or

(b) is unable to testify because of infirmity or illness;

any party may, with leave of the trial judge, read into evidence all or part of the evidence given on examination for discovery as the evidence of the person examined, to the extent that it would be admissible if the person were testifying in court.

(2) Subrule (1) shall not apply to examinations for discovery pursuant to Rule 222A.

(3) At least five clear days notice shall be given of an application pursuant to Subrule (1). R. 239A Gaz. Dec. 11/98.

Costs of examination

240 If in the opinion of the court an examination for discovery has been held unreasonably, vexatiously or at unnecessary length the costs occasioned by the examination shall be borne by the party at fault. R. 240. Gaz. Dec. 13, 2002. New.

PART TWENTY-TWO

ADMISSIONS

Notice of admission of facts

241 Any party to a cause or matter may give notice by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. R. 241.

Notice to admit documents

242(1) Either party may by notice in writing at any time not later than 10 days before the day fixed for trial, call upon any other party to admit any document, saving all just exceptions, and if the other party desires to challenge the authenticity of the document, he shall within six days after service of such notice, give notice that he does not admit the document and requires it to be proved at the trial. Am. Gaz. May 15/87.

(2) If such other party refuses or neglects to give notice of non-admission within the time prescribed in the last preceding paragraph, he shall be deemed to have admitted the document unless the court or a judge otherwise orders.

Costs

(3) Where a party gives notice of non-admission within the time prescribed by subrule (1) and the document is proved at the trial, the costs of proving the document shall be paid by the party who has challenged the document. R. 242. Amend. Gaz. Dec. 13, 2002.

Form of notice

243 A notice to admit documents shall be in Form 18. R. 243.

Notice to admit facts, Costs where admission refused, Effect of admission

244(1) Any party may, by notice in writing at any time not later than 10 days before the day fixed for trial, call upon any other party to admit for the purposes of the cause, matter or issue only, any specific fact or facts mentioned in that notice.

(2) Where a party refuses or neglects to admit the fact or facts mentioned in subrule (1) within six days after service of the notice to admit, or within any further time that may be allowed by the court, the cost of proving that fact or those facts shall be paid by the party so neglecting or refusing to admit.

(3) An admission made in pursuance of a notice to admit is deemed to be made only for the purpose of the particular cause, matter or issue, and not as an admission to be used against the party on any other occasion, or in favour of any person other than the party giving the notice. R. 244. Gaz. Dec. 13, 2002. New.

Proof of admissions

245 An affidavit of the solicitor, or his clerk, of the due signature of any admission made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required. R. 245.

Form of notice of admissions

246 A notice to admit facts shall be in Form 19 and admissions of facts shall be in Form 20. R. 246.

Judgment on admissions

247 Any party may, at any stage of a cause or matter where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may, upon such application, make such order, or give such judgment as the court may think just. R. 247.

Notice to produce documents

248 Notice to produce documents shall be in Form 21 and such notice shall state the particular documents required. R. 248. Amend. Gaz. Dec. 13, 2002.

Notice to admit or produce, Costs

249 If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice. R. 249.

PART TWENTY-THREE

ISSUES, INQUIRIES AND ACCOUNTS

Issues of fact, preparing and settling

250 Where in any cause or matter it appears to the court that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the court. R. 250.

Inquiries and accounts, when and how taken

251 The court may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken by the local registrar or other competent person, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. R. 251.

Application, how made

252 An application for such order, as mentioned in the last preceding rule, shall be made by notice of motion, and be supported by an affidavit stating concisely the grounds of his claim to an account. R. 252.

Special directions as to mode of taking account

253 The court may, either by the judgment or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched; and in particular, may direct that, in taking the account, the books of account in which the accounts in question have been kept, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised. R. 253.

Account

254(1) Where any account is directed to be taken the accounting party, unless the court otherwise directs, shall within such time as may be designated make out and deliver to the local registrar a statement of his account, the items on each side of which shall be numbered consecutively and a copy of such account shall be served upon all other parties interested.

Production of vouchers

(2) The court may direct that after the statement of account has been filed, all vouchers shall be produced at the address for service of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the court.

Exceptions to account

(3) Any party desiring to dispute the account so filed and served shall within 20 days file with the local registrar a statement of exceptions thereto and serve a copy thereof upon the accounting party, and all items in such account to which no exception is taken shall thereupon be deemed to be admitted.

Appointment to take accounts

(4) Any party interested may at any time 10 days after the delivery of such statement of exceptions or the expiration of the time for delivery thereof apply to the officer or person designated for this purpose for an appointment to take the accounts. R. 254.

Expediting proceedings, case of undue delay

255 If it shall appear to the court that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the court may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid, may order the attendance of any party whose presence is required and give directions to any party to conduct any proceedings and carry out any directions which may be given. R. 255.

Local registrar's certificate

256 The result of such proceedings before the local registrar or other person for making inquiries or taking accounts shall be forwarded in a concise certificate to the court. It shall not be necessary for the judge to sign such certificate and the certificate shall be deemed to be approved and adopted by the court and shall thenceforth be binding upon all parties to the proceedings unless discharged or varied upon application to the court by a motion to be made before the expiration of nine days after the filing of the certificate. R. 256.

Documents not to be set out in certificate

257 Such certificate shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons; but shall refer to the judgment or order, documents, and evidence or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded. R. 257.

Certifying accounts

258 Where an account is directed, the certificate shall state the result of such account and not set the same out by way of schedule, but shall refer to the account filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise; and, where the account has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be filed therewith. No copy of any such account shall be required to be taken by any party. R. 258.

Taking the opinion of judge

259 Any party may, before the proceedings before the local registrar or other person are completed, require the local registrar or such other person to refer any matters arising in the course of the proceedings for the opinion of the court, or the local registrar or other person may so refer any such matter upon his own initiative. R. 259.

Application to vary after certificate binding

260 The court may, if the special circumstances of the case require it, upon an application by motion for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties. R. 260.

Reference for assessment of damages

261(1) If, on the trial of any action, any party establishes his right to damages but is for some reason unable to prove the amount thereof, or if it appears that the amount of damages sought to be recovered is substantially a matter of calculation, the judge may refer it to himself in chambers to assess such damages upon such terms as to cost or otherwise as may be just;

(2) The judge to whom the assessment of damages is referred shall, on hearing the evidence, certify the amount of damages as ascertained.

(3) The certificate of the amount of damages shall be filed in the office of the local registrar.

(4) On filing, any assessment of costs, entering judgment and other matters may proceed as in ordinary cases. R. 261. Amend. Gaz. Dec. 13, 2002.

Where continuing cause of action

262 Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of assessment. R. 262.

PART TWENTY-FOUR

SPECIAL CASE

Parties may state special case

263 The parties to any cause or matter may concur in stating the question of law arising therein, in the form of a special case for the opinion of the court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the court to decide the question raised thereby. Upon the argument of such case the court and the parties shall be at liberty to refer to the whole contents of such documents; and the court shall be at liberty to draw from the facts and documents stated in any special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. R. 263.

Special case or question of law raised by order before trial

264 If it appears to the court that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given, or any question or issue of fact is tried, or before any reference is made to a referee, the court may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such other manner as the court may deem expedient; and all such further proceedings, as the decision of such question of law may render unnecessary, may thereupon be stayed. R. 264.

Signing and filing special case

265 Every special case shall be prepared by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. R. 265.

(The next rule is Rule 267)

Form of entry

267 Either party may enter a special case for argument by delivering to the local registrar a memorandum of entry in Form 22. R. 267, Am. Gaz. Oct. 25/91.

Agreement for payment of money according to result of special case

268 The parties to a special case may, if they think fit, enter into an agreement in writing that, on the judgment of the court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the court may be entered for the sum so agreed or ascertained, with or without costs as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed or unless stayed on appeal. R. 268.

PART TWENTY-FIVE

TRIAL

Defendant not appearing

269 If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him. R. 269.

Plaintiff not appearing

270 If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action; but, if he has a counterclaim, then he may prove such counterclaim so far as the burden of proof lies upon him. R. 270.

Judgment by default; setting aside

271 Any verdict or judgment obtained, where one party does not appear at the trial, may be set aside by the court upon such terms as may be just, upon an application made within 15 days after the trial.

Witnesses may be excluded

272 The judge at the trial may at the request of either party order a witness to be excluded from the court until he is called to give evidence, and may also order any party intending to give evidence to be so excluded, and if the judge does not deem it expedient to order such party to be excluded he may require such party to be examined before the other witnesses on his behalf. Any such witness or party who does not conform to such order shall be liable to be punished, as to the judge may seem just, and the judge may in his discretion, exclude the testimony of any witness or party who does not conform to such order. R. 272.

(The next rule is Rule 274)

Postponement or adjournment of trial

274 The court may, if it thinks it expedient in the interest of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as it shall think fit; but no trial shall be postponed upon the ground of the absence of a material witness, unless the affidavit upon which the application is made distinctly states that the deponent is advised and believes that the party on whose behalf the application is made has a just cause of action or defence upon the merits, and that the application is not made for the purpose of improperly delaying the trial. R. 274.

Accidental omission to prove material fact or document

275 Where, through accident or mistake or other cause, any party omits or fails to prove some fact or document material to his case, the court may proceed with the trial subject to such fact or document being afterwards proved at such time and subject to such conditions as to costs or otherwise as the court shall direct; and if the case is being tried by a jury, the judge may adjourn the jury sittings and require the attendance of the jury trying the case upon a date to be fixed by him upon such terms as to costs as he deems just under the circumstances, or the trial judge may, if satisfied that such fact or document is one, formal proof of which could not be seriously controverted, direct the jury to find a verdict as if such fact or document had been proved before him, and the verdict shall take effect on such fact or document being afterwards proved before him; and, if not so proved, judgment shall be entered for the opposite party, unless the court otherwise directs. R. 275.

Evidence in mitigation for damages in actions for libel and slander

276 In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial, he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence. R. 276.

Addresses to jury

277(1) Unless the judge otherwise orders, upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party or his counsel shall have the right to address the jury in reply. If both parties adduce evidence, the party who begins, or his counsel, shall have the right to address the jury, after the other party or his counsel has addressed the jury.

(2) Unless the court otherwise orders, in non-jury cases the counsel for the party on whom lies the onus of proof shall first address the court and he shall have the right to reply. R. 277.

Cross-examination, Vexatious or irrelevant questions

278 The judge may, in all cases, disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter. R. 278.

Motion for dismissal

278A At the close of the plaintiff's case the defendant may, without being called upon to elect whether he will call evidence, move for dismissal of the action. R. 278A, Gaz. Oct. 25/91. New.

Delivery of judgment

279 The judge shall, at or after trial, direct judgment to be entered as he shall think right, and no motion for judgment shall be necessary in order to obtain such judgment. R. 279.

Local registrar to make notes

280 The local registrar present at any hearing or trial shall make a note in a book to be kept for the purpose of the time at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place, and the names of the counsel engaged and of the witnesses sworn, for communication to the taxing officer, if required; he shall also enter in such book all such findings of fact or other matters as the judge may direct to be entered, and the directions, if any, of the judge as to judgment. R. 280.

Inspection by a judge, Inspection by jury

281 Any judge by whom any cause or matter may be heard or tried may inspect any place, property or thing concerning which any question may arise therein; and in any cause or matter which may be heard or tried by a judge with a jury the judge may order a view by the jury and may make such orders upon the sheriff or other person as may be necessary to procure the attendance of the jury at such time and place, and in such manner as he may think fit. R. 281.

Exhibits

282 Exhibits filed on a hearing or trial shall be numbered and marked according to Form 23 and a list thereof, briefly describing such exhibit and stating by whom it was put in, shall be entered in the book mentioned in the next preceding rule. R. 282.

Minute of verdict,judgment or order

283 A minute of any verdict, judgment or order given, delivered or made in court at any hearing or trial shall be endorsed on the copy of pleadings or notice of motion filed, and when signed by the judge or by the local registrar present at the hearing or trial shall be a sufficient authority to the local registrar to enter judgment or issue the order accordingly. R. 283.

PART TWENTY-SIX

EVIDENCE, ETC.

I EVIDENCE GENERALLY

Witnesses to be examined *viva voce* unless otherwise ordered

284 In the absence of any agreement in writing between the parties or their solicitors, and subject to the provisions of these rules, the witnesses at the trial of any action, or at any assessment of damages, shall be examined *viva voce* and in open court; but the court may, at any time, for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the court may, think reasonable, or that any witness whose attendance in court ought, for some sufficient cause, to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner;

provided that, where it appears to the court that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit. R. 284.

Evidence by telephone, etc.

284A(1) The court may order that the testimony of any witness taken *viva voce* by telephone or by any audio-visual method approved by the court shall be admissible in evidence:

(a) where the parties consent; or

(b) where it may be necessary for the purposes of justice.

(2) Unless the court otherwise orders, the witness may be sworn by answering affirmatively the oath or affirmation administered by the court which oath or affirmation may be in these words

"Do you solemnly affirm (swear) that the evidence to be given by you shall be the truth, the whole truth and nothing but the truth. (So help you God)."

(3) Where the taking of evidence by telephone is or becomes unsatisfactory or where the personal attendance of the witness is desirable the presiding judge may refuse to hear or continue to hear such evidence and may receive or reject such evidence as may have been heard and may make such order or give such directions, including directions as to costs, as he may consider appropriate.

(4) Unless otherwise ordered, copies of all reports, memoranda or other written material to which the witness intends to refer shall be disclosed to the other party.

(5) Telephone or other charges shall be paid in the first instance by the party on whose behalf the witness is called, and unless otherwise ordered, may be claimed as a proper disbursement in the proceedings. R. 284A.

Admissibility of evidence; life expectancy, interest rate, dollar value

284B(1) Except where there is evidence to the contrary:

(a) the life expectancy of an individual as set forth in the table in Form 23A is admissible in evidence;

(b) three per cent per annum is admissible in evidence as the rate of interest to be used in determining the capitalized value of an award in respect of future pecuniary damages to the extent that it reflects the difference between estimated investment and price inflation rates; and

(c) the value of one dollar per year as set forth for the respective periods shown in Form 23B, is admissible in evidence.

Notice

(2) Where a party intends to call evidence on any matter provided for by this rule, he shall not less than 10 days before the date fixed for a pre-trial conference give notice to each other party of his intention to do so and serve each other party with:

(a) a summary of the qualifications of each witness to be called; and

(b) a copy of each document, including any tables and statistics, proposed to be submitted in evidence; and

(c) a copy of any calculations proposed to be submitted in evidence. Gaz. June 17/83. New. Am. Gaz. Oct. 25/91.

Life expectancy table not conclusive

(3) Notwithstanding Subrule (1), Form 23A is not conclusive as to life expectancy and the health and habits of the individual and any other relevant fact or circumstance may be considered by the court in determining life expectancy. R. 284B.

Appraisal report in evidence

284C(1) Subject to Subrule (5), in all proceedings to which these rules apply an "appraisal report" as defined in *The Queen's Bench Act* shall be admissible in evidence. Gaz. June 29/84. New. Am. Gaz. Oct. 25/91.

(2) A party intending to submit an appraisal report in evidence shall not less than 10 days before the date fixed for a pre-trial conference provide to every other party to the action:

(a) a copy of the appraisal report; and

(b) a summary of the qualifications of the person making the report. Gaz. June 29/84. New. Am. Gaz. Oct. 25/91.

Medical report, etc.: notice

(3) A party intending to submit in evidence a report of a duly qualified medical or chiropractic practitioner or dental surgeon, as permitted by *The Saskatchewan Evidence Act*, shall, not less than 10 days before the date fixed for a pre-trial conference, provide to every other party to the action a copy of the report. Gaz. Oct. 25/91. New.

Intention to cross-examine: notice

(4) A party who has been provided with a copy of an appraisal report or a report of a duly qualified medical or chiropractic practitioner or dental surgeon, and who intends to require the author of the report to attend at trial to be cross-examined on the report, shall give notice to the other party of such intention not less than 10 days prior to the commencement date of the trial. Gaz. Oct. 25/91. New.

Where report admitted

(5) An appraisal report shall not be admitted in evidence, except with leave of the trial judge, unless Subrule (2) has been complied with, and a report mentioned in Subrule (3) shall not be admitted in evidence, except with leave of the trial judge, unless Subrule (3) has been complied with. R. 284C, Gaz. Oct. 25/91. New.

Expert witnesses

284D(1) A party who intends to call an expert witness at trial shall, not less than 10 days before the date fixed for a pre-trial conference, serve on every other party to the action a report setting out the name, address and qualifications of the expert, the substance of the proposed testimony and a copy of any written report intended to be used in evidence. Gaz. Dec. 5/86. New. Am. Gaz. Oct. 25/91.

Leave of judge to testify

(2) No expert witness may testify, except with leave of the trial judge, unless Subrule (1) or Subrule (3), as the case may be, has been complied with. Gaz. Dec. 5/86. New. Am. Gaz. Oct. 25/91.

Rebuttal expert: notice

(3) A party who has been served with a report as provided in Subrule (1), and who intends to call an expert witness at trial in rebuttal, shall, within 15 days of the assignment of a trial date, serve on every other party to the action a report setting out the name, address and qualifications of the rebuttal expert, the substance of the proposed testimony and a copy of any written report intended to be used in evidence.

Taxable costs or disbursements entitlement

(4) A party who does not comply with either sub-rule (1) or sub-rule (3) shall not be entitled to any assessed costs or disbursements related to the testimony of an expert witness. R. 284D. Gaz. Oct. 25/91. New. Am. Gaz. Nov. 3/2000. Amend. Gaz. Dec. 13, 2002.

Reading of evidence taken in other causes

285 An order to read evidence taken in another cause or matter shall not be necessary; but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the court, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence, giving two days previous notice to the other parties of his intention to read such evidence. R. 285.

Evidence of admission

286 Any admission of facts or documents made in pursuance of a notice under the provisions of Part Twenty-two hereof may be proved by affidavit in accordance with Rule 245 if evidence thereof be required. R. 286.

Impounded documents

287 Impounded documents, while in the custody of the court, are not to be parted with, and are not to be inspected, except on a written order signed by the judge on whose order they were impounded. Such documents shall not be delivered out of the custody of the court, except on an order made on motion. R. 287.

Registration clerk not to produce documents

288 No registration clerk shall produce or shall be compelled to produce any book, document, or registered record, filed, received or kept in his office except by direction of the court which may be obtained on an *ex parte* application. R. 288.

II EXAMINATION OF WITNESSES

Order for examination of witness

289 The court may in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the court or any officer of the court, or any other person, and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the court may direct. R. 289.

Order for examination

290 An order to examine witnesses shall be in Form 24. R. 290.

Copy of proceedings to be furnished examiner

291 Where any witness or person is ordered to be examined before any officer of the court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the pleadings in the cause, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties. R. 291

Conduct of examination

292 The examination shall take place in the presence of the parties, their counsel, solicitors or agents, or such of them as may think fit to attend, and the witnesses shall be subject to cross-examination and re-examination. R. 292.

Where witness does not understand English

293 When a witness does not understand the English language, the examination shall be taken with the aid of an interpreter nominated by the examiner and sworn to interpret truly the questions to be put to the witness and his answers thereto, and the examination shall be taken in English. R. 293.

Depositions

294 The depositions shall be taken and certified to in a manner provided for in Rule 237. R. 294.

Disobedience of witness

295 If any person duly summoned by subpoena to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed in court, and thereupon the party requiring the attendance of the witness may apply to the court for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be. R. 295.

Witness disobeying subpoena, Warrant for arrest

296 If it shall be made to appear to the court that a witness has been duly served with a subpoena, and his fees for travel and attendance paid or tendered to him, and that such witness refuses or neglects to attend to give evidence, as required by his subpoena, it shall be lawful for the court, in addition to any powers which it may possess for the punishment of such witness, to issue a warrant under its seal, directed to any sheriff or other officer or officers, for the immediate arrest of such witness, to be brought before the court, or person authorized to hear the evidence for the purpose of giving evidence in the cause. R. 296.

Costs against disobedient witness

297 In any case under rules 295 and 296, the court has discretion to order the witness to pay any costs occasioned by his or her refusal or objection. R. 297. Gaz. Dec. 13, 2002. New.

Return of depositions

298 When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the local registrar and shall be filed by him. R. 298.

Special report by examiner

299 The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the court touching such examination, and the conduct or absence of any witness or other person thereon, and the court may direct such proceedings and make such order as upon the report it may think just. R. 299.

Depositions, use of in evidence

300 Depositions taken under the provisions of Rule 289 and duly certified under the hand of the person authorized to take the examination, may, unless otherwise ordered by the court, be given in evidence at the hearing or trial of the cause or matter saving all just exceptions without proof of the signature of the person taking the examination. R. 300.

Oaths

301 Any officer of the court, or other person directed to take the examination of any witness or person, may administer oaths. R. 301.

Examination for use in proceedings in cause

302 When an order for the examination or cross-examination of any person has been made under the provisions of these rules, the party desiring such examination or cross-examination may by subpoena *ad testificandum* or *duces tecum* require the attendance of such person before the officer of the court or person appointed to take such examination or cross-examination for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial. R. 302.

Practice on taking evidence

303 Subject to any special directions which may be given in any case, the practice with reference to examination, cross-examination and re-examination of witnesses at a trial shall extend to and be applicable to evidence taken in any cause or matter at any stage. R. 303

Evidence at trial, subsequent use of

304 All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the cause or matter. R. 304.

III SUBPOENA

Form of praecipe for subpoena

305 Where it is intended to issue a subpoena, a praecipe for that purpose, in Form 25 shall in all cases be delivered and filed with the local registrar. R. 305.

Form of writ

306(1) A writ of subpoena shall be in one of the Forms 26 or 27.

May be issued without insertion of names

(2) The names of the witnesses to be summoned need not be included in the subpoena when issued but any number of names may thereafter be inserted by the party issuing the same.

(3) **Repealed.** Gaz. Dec. 13, 2002. R. 306.

Service of subpoena

307(1) The service of a subpoena shall be effected by delivering a copy of the writ and of the indorsement thereon, provided that such copy need be addressed only to the person served.

Conduct money

(2) At the time of such service the parties served shall be paid or tendered proper conduct money.

Change of residence after service

(3) If, after service of a subpoena and payment of the proper conduct money, the person so served shall have established a permanent residence at a place other than that at which he resided when so served, he shall not be required to give evidence at a hearing or trial of the action unless paid the conduct money on the basis of that to which he would have been entitled in respect of his new residence, but he shall not be excused from attending by reason of non-payment of such increased conduct money before trial. R. 307.

How long to remain in force

308 Every subpoena shall remain in force from the date of issue until the trial of the action or matter in which it is issued and where, after service of a subpoena, the trial or hearing is adjourned, the witnesses so served if they have attended as commanded shall attend the adjourned hearing or trial upon payment of the proper conduct money, or if they have not attended, without payment of any further conduct money. R. 308.

IV PERPETUATING TESTIMONY

Action to perpetuate testimony

309 Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may apply to the court by originating notice for an order to perpetuate any testimony which may be material for establishing such right or claim. Such originating notice shall be served on such parties as the court may on *ex parte* application direct. The evidence shall be taken in such manner as the court may order and then filed with the local registrar. R. 309.

PART TWENTY-SEVEN

OBTAINING EVIDENCE FOR COURTS AND TRIBUNALS OUTSIDE SASKATCHEWAN

Court may order examination of person and production of documents

310(1) The court may order the examination upon oath, upon interrogatories or otherwise, before any examiner named in such order, of any person within Saskatchewan whose evidence is desired for use outside Saskatchewan, and by the same or any subsequent order command any person to attend for the purpose of being examined, or to produce any writings or other documents to be mentioned in such order.

Examiner may give directions

(2) Subject to any directions of the court, the examiner may by appointment give all such directions as to the time, place, and manner of such examination, and all other matters connected therewith.

Examination may be before any proper person

(3) The examiner shall be any fit and proper person nominated by the person applying, or the local registrar or such other qualified person as to the court may seem fit. R. 310.

***Ex parte* application**

311(1) An application for an order under this part may be made *ex parte*, and any such order may be varied upon such terms and conditions as to the court may seem just.

Order

(2) An order may be in Form 28. R. 311, New.

Person has right to refuse to answer questions

312 Any person examined under any order made under this part has the same right to refuse to answer questions as such person would have as a party or witness, as the case may be, to a proceeding in Saskatchewan. R. 312.

Depositions

313 Unless otherwise directed, depositions shall be taken and certified in accordance with the rules governing examination for discovery. R. 313.

Certificate of registrar

314 Unless otherwise directed, the registrar, upon receiving the evidence, shall append thereto his certificate in Form 29, duly sealed with the seal of the court, and shall transmit the same together with the order of the court to the proper officer of the requesting court or tribunal. R. 314, New.

The Saskatchewan Evidence Act* and the *Canada Evidence Act

315(1) All applications made pursuant to the provisions of *The Saskatchewan Evidence Act* and the *Canada Evidence Act* respecting the taking of evidence relating to proceedings in courts and tribunals out of Saskatchewan shall be made under this part.

Consent of witness

(2) Nothing in these rules shall prevent the taking of evidence for use outside Saskatchewan in accordance with orders of any court or tribunal with the consent of the witness. R. 315.

316 Repealed. September 1, 1980.

PART TWENTY-EIGHT

AFFIDAVITS AND DEPOSITIONS

Evidence on motions, etc.

317(1) Upon any motion or petition evidence may be given by affidavit, but the court may, on the application of either party, order the attendance for cross-examination of the person making such affidavit.

Cross-examination

(2) The costs of any cross-examination under subrule (1) shall be borne by the party applying for the cross-examination. R. 317. Amend. Gaz. Dec. 13, 2002.

Intituling affidavits

318(1) Every affidavit shall be:

(a) entitled in the cause or matter in which it is sworn, and

(b) endorsed with the name of the deponent.

(2) Where there is more than one plaintiff or defendant in the proceeding, the style of cause on an affidavit shall state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be.

(3) The assessment officer shall not allow the costs occasioned by any prolixity in any such style of cause, unless it appears to him or her that the inclusion of further names was necessary. R. 318. Gaz. Dec. 13, 2002. New.

Affidavits confined to facts, Statements of belief

319 Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may under special circumstances be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same; and where affidavits upon information and belief are filed which do not adequately disclose the grounds of such information and belief the court may direct that the costs of such affidavits shall be borne by the solicitor filing the same. R. 319.

Officers for oaths

320 Affidavits sworn in Saskatchewan shall be sworn before a judge, local registrar, or deputy local registrar, notary public, justice of the peace, or commissioner empowered to administer oaths. R. 320.

Jurat; time and place of oath

321 Every person administering oaths shall express the time when, and the place where he shall take any affidavit, otherwise the same shall not be held authentic nor be admitted to be filed without the leave of the court. R. 321.

Form of affidavits

322 Every affidavit shall state the full name, and the true place of abode of the deponent and shall be signed by him. It shall be drawn in the first person and shall be divided into paragraphs which shall be numbered consecutively, and as nearly as may be, each paragraph shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit substantially departing from this rule. R. 322. Am. Gaz. Dec. 9/94

Affidavits by several deponents

323 In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat; except that, if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents. R. 323.

Affidavits, etc., to be filed

324 Except with leave of the court or a judge every affidavit to be used in a cause, matter or proceeding shall be filed before being used. R. 324.

Affidavits to be filed before application is made, or before service of notice of motion

325 Affidavits upon which any application to the court is founded shall be filed before the application is made, if made *ex parte*, or before service of any notice of motion or petition, or other proceeding as the case may be. R. 325.

Affidavits to be filed with local registrar or chamber clerk

326 Affidavits to be used on a motion in chambers and the notice thereof shall be filed with the local registrar of the judicial centre in which the action is of record or with the chamber clerk where the motion is to be heard, before the hearing of the motion, and the local registrar shall transmit any material so filed to such chamber clerk and the chamber clerk shall, after the motion is disposed of, transmit all material to the proper local registrar. R. 326.

Scandalous matter

327 The court may order any matter which is scandalous to be struck out from any affidavit. R. 327. Dec. 13, 2002. New.

Alterations in affidavits

328 No affidavit having in the jurat or body thereof any interlineation, alteration or erasure, shall, without leave of the court, be read or made use of in any matter pending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the officer taking it. R. 328.

Affidavits by illiterate or blind persons

329(1) Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that deponent made his signature or mark in the presence of the officer.

Affidavits by persons not understanding English language

(2) Where an affidavit is sworn by any person, who appears to the officer taking the affidavit not to understand the English language, the contents of such affidavit before being sworn and the oath put shall be interpreted to the deponent by some person competent so to interpret and who before so interpreting shall by such officer be duly sworn to well and truly interpret such affidavit and oath, and such officer shall in the jurat certify that such affidavit was in his presence interpreted to the deponent by such sworn interpreter.

Use of affidavit without certificate

(3) No affidavit to which is required either of the above certificates shall be used in evidence in the absence of the certificate which is so required, unless the court is otherwise satisfied that the affidavit was read over or interpreted, as the case may be, to, and appeared to be perfectly understood by, the deponent. R. 329.

Use of defective affidavits

330 The court may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, any may direct a memorandum to be made on the document that it has been so received. R. 330.

Time limited for filing

331 Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used unless by leave of the court. On motions founded on affidavits either party may, by leave of the court, make affidavits in answer to the affidavits of the opposite party as to new matter arising out of such affidavits. R. 331.

All affidavits filed may be used in chambers

332 All affidavits which have been made and filed in any cause or matter may be referred to and used at any stage of the proceedings in any application in chambers. R. 332.

Exhibits need not be filed

333(1) Subject to Subrule (2) of this rule, any document referred to in an affidavit need not be annexed thereto but may be referred to and marked as an exhibit. When not annexed such exhibit need not be filed, but shall be left for the use of the court and shall be delivered upon determination of the motion to the party leaving the same, unless the court otherwise directs.

Where exhibit not attached

(2) Unless the court otherwise directs, where an affidavit in any proceeding refers to a document as an exhibit, an original or true copy of which document is already a part of the court file, such exhibit shall not be attached or annexed to the affidavit and following reference to the exhibit in the affidavit the following words shall appear: "an original or true copy of which was filed in court on the_____day of_____, 20____." R. 333, Gaz. Oct. 25/91. New.

Certificate on exhibit

334 Every certificate on an exhibit referred to in an affidavit and not annexed thereto signed by the commissioner or officer before whom the affidavit is sworn shall be marked with the short title of the cause or matter. R. 334.

PART TWENTY-NINE

JUDGMENT AND ENTRY OF JUDGMENT

Solicitor to be informed of filing of reasons for judgment

335 Whenever a judge files his reasons for judgment in any proceeding or issues any fiat, the local registrar shall forthwith notify the solicitors of the parties to the action of the fact, and enter a memorandum of such notification in the procedure book. R. 335.

Recording judgments, decrees and orders, Certified copies

336 Every judgment or decree entered and a copy of every order issued by the local registrar shall be filed; and a certified copy thereof under the seal of the court shall be received for all purposes as of the same force and effect as such original judgment, decree or order. The forms of judgment 30 to 36 may be used. R. 336.

Judgment to be entered as of date pronounced

337 When any judgment is pronounced, the entry of judgment shall be dated as of the day on which such judgment is pronounced, unless the court shall otherwise order, and the judgment shall take effect from that date:

provided that, by special leave of the court, a judgment may be antedated or post-dated. R. 337.

Date of entry in other cases

338 In all other cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date. R. 338.

Time to be stated for doing any act ordered to be done

339 Every judgment or order made in any cause or matter requiring any person to do any particular act other than the payment of money shall state the time, or the time after service of the judgment or order, within which the act is to be done. R. 339.

Entry of judgment on negotiable instrument

340 No judgment shall be entered in an action on any negotiable instrument until such instrument is filed with the local registrar, unless such filing is dispensed with by order of the court to be obtained *ex parte*. R. 340.

Entry on production of order or certificate

341 Where by these rules, or otherwise, any judgment may be entered pursuant to any fiat, note or memorandum of an order signed by a judge, any order or certificate, or return to any writ, the production of such fiat, note or memorandum of an order signed by a judge, order or certificate, or of such return, shall be a sufficient authority to the local registrar to enter judgment accordingly. R. 341.

Consent judgment

342(1) In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent, unless the consent of the defendant is given by his counsel or solicitor.

Verification of when no appearance by solicitor

(2) Where a defendant has not appeared or has appeared in person, no such order shall be made unless the written consent of such defendant with an affidavit of due execution thereof is filed on the application for such order. R. 342.

Settling judgments or orders

343(1) When a judgment or order is pronounced after a hearing or trial, the successful party thereon, or in the case of divided success such party as the court shall direct, shall prepare the formal judgment roll or order and submit the same to the local registrar, who may in simple cases settle the same.

Notice of settling

(2) Upon receipt of the formal judgment roll or order the local registrar may require that notice to settle the same be given to all parties interested in which case he shall appoint a time and place to settle such judgment roll or order, and thereupon the party having the carriage of such judgment or order shall give to the other parties interested two days notice of such appointment and serve therewith a copy of the proposed judgment roll or order.

Reference to judge

(3) In the event of any party being dissatisfied with the terms of any such judgment roll or order as so settled, the local registrar shall refer the matter to the judge who pronounced the judgment or made the order, who shall settle the terms thereof.

Default by party having carriage of

(4) If any party having the carriage of any judgment or order shall neglect to have the same finally drawn up and entered, any other party interested may serve notice requiring him within five days to take such steps, and if such party shall not within the time limited take such necessary steps any other party interested may apply to settle such judgment roll or order and to enter or issue the same as hereinbefore provided. R. 343.

Amendment of judgment or order

343A Any judgment or order may be amended:

(a) by the local registrar on written consent of the parties or by the court where there are clerical mistakes or errors arising from an accidental slip or omission; or

(b) by the court where the judgment or order requires amendment in any particular on which the court should have but did not adjudicate or in any calculation arising out of a decision of the court. R. 343A.

Further directions after judgment

344 Where in any action a judgment has been pronounced or an order has been made and such judgment or order has been formally drawn up and entered and it shall subsequently appear that further directions are necessary in order to insure to the party entitled to the benefit of such judgment or order, as to costs or otherwise, the relief to which he is entitled, the court may make such further or other order and give such further or other relief as the nature of the case may require; provided that such further or other relief does not necessitate any variation of the said judgment or order as to any matter decided by the original judgment or order. R. 344.

Satisfaction of judgment

345(1) When a judgment has been satisfied, the judgment creditor shall, at the request of the judgment debtor, execute a consent to entry of satisfaction in Form 41 and the execution of such memorandum shall be verified by affidavit of the attesting witness.

Entry by local registrar

(2) Upon such memorandum being filed with the local registrar he shall make an entry in the procedure book that such judgment is "satisfied".

Order for by court

(3) If the judgment creditor refuses to execute such memorandum, or if for any reason signature of such judgment creditor cannot be secured, the court may, *ex parte* or upon notice, make an order that the local registrar shall mark such judgment as "satisfied". R. 345.

Setting aside default judgment

346 Subject to Rule 271 any judgment by default, whether by reason of non-delivery of defence or non-compliance with any of these rules or with any order of the court, may be set aside or varied by the court upon such terms as to costs or otherwise as the court may think fit. R. 346.

New judgment by notice

347(1) Where any judgment has been recovered and the judgment creditor alleges that the same or any part thereof remains unsatisfied he may, at any time before proceedings under such judgment would be barred by *The Limitation of Actions Act*, serve upon the judgment debtor a notice of motion requiring him to appear before a judge in chambers and show cause why the judgment creditor should not have a new judgment for the amount remaining due and unpaid on such original judgment, and such proceeding shall be deemed an action on a judgment or order of the court.

Notice of motion

(2) Such notice of motion shall issue in the original cause or matter and shall be served upon the judgment debtor at least 20 days before its return date.

Order for new judgment

(3) If, upon the return of the motion under this rule, the judgment debtor does not appear and the judge is satisfied as to due service of the notice of motion and as to the amount still due and unpaid under the original judgment, the judge may make an order that the judgment creditor has leave to enter a new judgment for the recovery of the amount so due and costs.

Issue directed in case of dispute

(4) If the judgment debtor appears and disputes the judgment creditor's claim in whole or in part, the judge may give directions for the trial of an issue with or without pleadings as the circumstances of the case may require, and give all necessary directions.

Judgment thereon

(5) After the trial of an issue so directed, the judge may make such order or give such judgment as the circumstances of the case may require. R. 347. Amend. Gaz. Dec. 13, 2002.

Entry of judgment following appeal

348 Upon the production of the order of Her Majesty in Her Privy Council, made upon an appeal to Her Majesty in Council, or of the certificate of the Registrar of the Supreme Court of Canada upon an appeal to that court, or of a certified copy of the judgment of the Court of Appeal upon an appeal to that court, the local registrar with whom the judgment or order appealed from was entered shall cause such order of Her Majesty in Her Privy Council, or the certificate of the Supreme Court, or the certified copy of the judgment of the Court of Appeal to be entered in his procedure book, and all subsequent proceedings may be taken thereupon as if the decision had been given in this court. R. 348.

The Reciprocal Enforcement of Judgments Act*, *The Judgments Extension Act

349(1) These rules shall apply to all proceedings taken under statutory provisions for registration of judgments or orders made outside Saskatchewan in the Court of Queen's Bench for Saskatchewan, including:

(a) *The Enforcement of Canadian Judgments Act, 2002*;

(b) *The Reciprocal Enforcement of Judgments Act, 1996*;

(c) *The Judgments Extension Act*; and

(d) *The Enforcement of Foreign Judgments Act*.

(2) The fees and costs payable for services rendered shall be such as are provided for similar services in the tariff of costs. R. 349. Gaz. Dec. 13, 2002. New. Amend. Gaz. Jan. 17, 2003. Amend. Mar. 31, 2006.

PART THIRTY

EXECUTION

I EXECUTION GENERALLY

Judgment or order to be obeyed without demand

350 Where any person is by any judgment or order directed to pay any money, or deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand therefor, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand. R. 350.

Conditional judgment, Breach or non-performance of condition

351 Where any person has obtained any judgment or order upon condition, and such judgment or order does not specifically provide for default, and he has not complied with such condition, he shall be deemed to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may, on breach or non-performance of the condition after two days notice to the party entitled to the benefit of such judgment or order, take either such steps as the judgment or order may in such case warrant, or take such proceedings as might have been taken if no such judgment or order had been made, unless the court shall otherwise order. R. 351.

Execution to enforce payment of money

352 Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *fieri facias* to enforce payment thereof, subject nevertheless as follows:

Where time allowed by judgment

(a) if the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period;

Stay of execution

(b) the court may, at or after the time of giving judgment, or making an order, stay execution until such time as it shall think fit. R. 352.

Meaning of "writ of execution"

353 In these rules the term "writ of execution" shall include writs of *fieri facias*, sequestration and attachment and all subsequent writs that may issue for giving effect thereto; and the term "issuing execution against any party" shall mean the issuing of any such process against his property, as under the preceding rules shall be applicable to the case. R. 353.

Execution of judgment on condition

354 Where a judgment or order is to the effect that any party is entitled to any relief, subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the court for leave to issue execution against such party; and the court may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in any action may be tried. R. 354.

(The next rule is Rule 357)

Praecipe for execution

357 A writ of execution shall be issued upon the applicant filing a praecipe therefor. Form 37 shall be used. R. 357.

Execution on judgments

358 Every writ of execution issued on a judgment or order shall bear date the day of its issue and shall state the date of the judgment or order on which it is issued, and shall remain in force for a period of 10 years from the date of such judgment or order. Forms 38, 39 and 40 may be used. R. 358.

Execution to any sheriff

359(1) When entitled thereto, the party in whose favour such judgment has been entered may have one or more writs of execution directed to any of the sheriffs.

Separate writ for costs

(2) Upon any judgment or order for the recovery of a sum of money and costs, the party entitled thereto may issue a writ of execution for the recovery of the amount of the judgment exclusive of costs and thereafter may issue a separate writ of execution for the recovery of the costs. R. 359.

Indorsement of writ of execution

360 Every writ of execution shall be indorsed with the name and place of business of the solicitor issuing the same or the name and address of the party if the same is issued by the party in person, and shall be indorsed with a direction to the sheriff as in Form 38. R. 360.

Expenses of execution

361 In every case of execution the party entitled to execution may levy the poundage, fees and expenses of execution over and above the sum recovered. R. 361.

Leave to issue execution in certain cases

362 In the following cases, namely:

(a) where any change has taken place by death or otherwise in the parties entitled or liable to execution;

Assets *in futuro*

(b) where a party is entitled to execution upon a judgment of assets *in futuro*;

the party alleging himself to be entitled to the execution may apply to the court *ex parte,* or as the court shall determine, for leave to issue the execution accordingly. And such court may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in any action may be tried. And in either case the court may impose such terms as to costs or otherwise as shall be just. R. 362.

Set-off of judgments

362A Where there are judgments between the same parties in separate actions or in the same action, the court may order that one judgment be set off against another and direct that execution may issue in respect of the balance only. An order for set-off against a judgment for maintenance shall not be made where hardship would be caused thereby. Gaz. Jan. 29/82. New. Am. Gaz. Oct. 25/91. R. 362A.

Enforcement of orders

363 Every order of the court in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect. R. 363.

Execution by or against a person not a party

364 Any person not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter. R. 364.

Facts arisen too late to be pleaded, Stay of execution

365 No proceeding by *audita querela* shall hereafter be used; but any party against whom a judgment has been given may apply to the court for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the court may give such relief and upon such terms as may be just. R. 365.

Court may order act to be done at expense of part refusing

366 If a *mandamus* granted in an action or otherwise, or a mandatory order, injunction or judgment for the specific performance of any contract be not complied with, the court besides or instead of proceeding against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained or some other person to be appointed by the court at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and execution may issue for the amount so ascertained and costs. R. 366.

Enforcement of judgment against corporation

367 Any judgment or order against a corporation wilfully disobeyed may, by leave of the court, be enforced by sequestration against its corporate property or by an order of committal against the directors or other officers thereof. R. 367.

If money made on goods costs of execution lands, Return in each case

368 If the amount authorized to be made and levied under the writ is paid voluntarily or is made and levied out of goods, the person issuing the same or any writ against lands, shall be entitled to the expenses thereof as against lands, or of any seizure or advertisement of land thereunder, and the return to be made by the officer charged with the execution of the writ as against lands, to such writ, shall be to the effect that the amount has been so made and levied as aforesaid. R. 368.

Writ of *venditioni exponas* abolished, Sheriff to sell on order of a judge

369 It shall not be necessary to issue a writ of *venditioni exponas* but where property is held by the sheriff unsold for any reason the execution creditor may obtain an order on an *ex parte* application directing the sheriff to sell such property at the best price obtainable. R. 369.

Execution of delivery of property or recovery of assessed value

370(1) Where by judgment or order of the court any party becomes entitled to the recovery of any property other than land or money, such party may issue a writ of delivery of the property without giving the other party the option of retaining the property upon paying the assessed value, if any, and by such writ a sheriff may, at the option of the party entitled thereto, be commanded, if the said property other than land or money cannot be found, to cause to be made of the defendant's goods the assessed value, if any, of the property with costs, which writ shall be in Form 40.

(2) In either case if the party issuing such writ be entitled to recover damages or costs against the other party, the sheriff may be required by said writ to cause to be made of the defendant's goods the amount of such damages or costs or either damages or costs as the case may be, in which case the writ shall be in Form 40. R. 370.

Writ of possession for recovery of land

371 A judgment or order that a party do recover possession of any land, or that any person therein named do deliver up possession of any land to some other person, may be enforced by writ of possession without any order for such purpose, after 15 days from the entry of the judgment or service of a copy of the order, which writ shall be in Form 39 and shall be effective to enable the sheriff to maintain the party entitled to possession in possession of the said land as against any party bound by the proceedings or any person or persons claiming through or under such party. R. 371.

Order for committal

372 A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by committal. It shall in no case be necessary to apply for a writ of attachment. R. 372.

Execution for recovery of land and costs

373 Upon any judgment or order for the recovery or delivery of possession of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the successful party. R. 373.

Conduct of proceedings to confirm sale of land

374 In all cases where lands are sold under execution, the sheriff shall give the conduct of the proceedings to confirm the sale to the party or one of the parties under whose special instructions the lands have been sold:

provided, however, that the court may at any time order that the conduct of such proceedings be given to any other interested party. R. 374.

Writ of sequestration

375 Where a person is taken or detained in custody under an order for committal for contempt of court, then upon proof that the person has been so taken or is so detained, the party prosecuting the judgment shall be entitled upon motion to a writ of sequestration against the estate and effects of the disobedient person. R. 375.

Writ of sequestration without attachment

376 If an order for committal for contempt of court cannot be executed against the person refusing or neglecting to obey the judgment, by reason of his being out of the jurisdiction of the court, or his having absconded, or of an impossibility with due diligence to find him, an order may be granted for a writ of sequestration against the estate and effects of the disobedient person. R. 376.

Directed to sheriff

377 A writ of sequestration shall be directed to the sheriff unless otherwise ordered. R. 377.

When committed to gaol for contempt court may modify order

378 In case a person has been committed to gaol for contempt of court, there to be detained or imprisoned until he shall have purged his contempt, if it be made to appear that he is in actual custody under such committal, the court may modify the order and limit the term of imprisonment or grant such other relief as may in the nature and circumstances of the case seem just, but any relief that may be granted to any such person shall not relieve him from any civil liability. R. 378.

II POUNDAGE, INTEREST, ETC.

Poundage

379 In case a part only is levied by the sheriff on or by force of any execution against goods and chattels, the sheriff shall be entitled, besides his fees and expenses of execution, to poundage only upon the amount so made by him, whatever be the sum indorsed upon the writ. R. 379.

Sheriff's charges where satisfaction obtained under writ at other judicial centre

380 In the case of writs of execution upon the same judgment to the sheriffs of several judicial centres under which the personal estate of the judgment debtor or debtors has been seized or advertised, but not sold by reason of satisfaction having been obtained under or by virtue of a writ directed to the sheriff of some other judicial centre, and no money has been actually made on such execution, the sheriff shall not be entitled to poundage but to mileage and fees only for the services actually rendered and performed by him, and the court may allow him a reasonable charge for such services in case no special fees therefor are assigned in any tariff of costs. R. 380.

Sheriff's charges on withdrawal, stay, etc., of execution, Appeal

381 Upon the settlement of an execution either in whole or in part by payment, levy, or otherwise, or upon the withdrawal, stay or setting aside of an execution, the sheriff or officer claiming any fees, poundage, incidental expenses, or remuneration which have not been taxed, shall, upon being required by any party interested, within 48 hours deliver a copy of his bill in detail to the applicant. Such bill shall be taxed by the proper officer upon the applicant obtaining and serving an appointment for such taxation. Either party dissatisfied with the taxation may appeal to the court for a review of such taxation. R. 381.

Sheriff's costs

382 No sheriff shall collect any fees, costs, poundage, or incidental expenses, after having been required to have them assessed, without assessment. R. 382. Gaz. Dec. 13, 2002. New.

PART THIRTY-ONE

DISCOVERY IN AID OF EXECUTION

Examination of judgment debtor

383(1) Any judgment creditor or party entitled to enforce a judgment which has not been fully performed or satisfied may without order examine the judgment debtor for discovery concerning any matter pertinent thereto, to enquire fully into any reason existing for non-payment or non-performance of the said judgment, whether the judgment debtor has, had or may have means or assets to satisfy the same, has made any disposition or transfer thereof either before or after the recovery of judgment and whether the debtor intends to obey the judgment of the court or has any lawful reason for not doing so.

Appointment for examination of judgment debtor

(2) The local registrar for the judicial centre at which the said judgment was obtained or for the judicial centre nearest to which the judgment debtor resides may issue an appointment for the examination of the said judgment debtor, fixing the time and place therefor, and such appointment shall direct the said judgment debtor on service of a copy of the same upon him and payment of the proper conduct money to attend at the time and place appointed and submit to such examination, and upon service and payment of conduct money the said judgment debtor shall attend and submit to examination in accordance therewith.

Examination of clerk or employee, former clerk or employee

(3) On application *ex parte* to the court any clerk or employee or former clerk or employee of the judgment debtor and if the judgment debtor is a corporation any officer, clerk or employee may be directed to attend for examination as aforesaid.

Examination of transferee of debtor's property

(4) On notice to the judgment debtor, on application to the court any person or firm or any member thereof, or any officer, clerk or employee of any corporation to which the court is satisfied any property which ought to have been applied towards the payment of the said judgment has been transferred or assigned may be directed to attend for examination as aforesaid.

Use of examination

(5) The examination is to be for the purpose of discovery only and no order is to be made on the evidence given on such examination but any such examination may be read on any subsequent proceedings between the same parties or between the execution creditor and transferee of the property or effects of the execution debtor or in any proceedings to obtain payment directly or indirectly whether by attachment of debts, equitable execution or otherwise. R. 383.

Difficulty of enforcing judgment other than for money

384 In the case of a judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the court and the court may make such order thereon for the attendance and examination of any party or otherwise as may be just and may direct how such judgment or order may be enforced or executed. R. 384.

Conduct money, production documents, rules of examination, disobedience

385 Any person liable to be examined under any of the preceding rules of this part shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at trial in court, and may be compelled to attend and testify and to produce books and documents in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness on a trial. R. 385.

Costs

386 The costs of any application under this part and of any proceedings arising from or incidental thereto shall be borne, in the first instance, by the party applying hereunder, but if it shall be made to appear to the court that such proceedings were justified, the court may direct the judgment debtor to pay the same. R. 386.

PART THIRTY-TWO

INTERLOCUTORY ORDERS AS TO *MANDAMUS*, INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY

Interpretation

387 In this Part **"property"** includes money. Gaz. Dec. 5/86. New.

Applications, how made

387A Subject to the provisions of *The Queen's Bench Act*, interim orders for *mandamus* or an injunction or the appointment of a receiver or for the interim preservation of property may be made by the court on an *ex parte* application or upon notice as the court may direct. R. 387. Gaz. Dec. 5/86. New.

Interim preservation of property

388 Where there is a dispute arising upon a contract or any alleged contract affecting the title to any property the court may make an order for the preservation or interim custody of such property, or may order that the amount in dispute be brought into court or otherwise secured, or may order the sale of the property and the payment of the proceeds into court, without prejudice to the rights of any party to the action. R. 388.

Order for early trial to avoid going into merits on interlocutory applications

389 Whenever an application shall be made before trial for an injunction or other order, and on the opening of such application or at any time during the hearing thereof, it shall appear to the court that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, the court may make an order for such trial accordingly, and direct such trial to be held at the next or any other sittings for any place, if from local or other circumstances, it shall appear to be convenient so to do, and in the meantime, to make such order as the justice of the case may require. R. 389

Detention, preservation or inspection of property

390 The court may upon the application of any party to a cause or matter and upon such terms as may be just make an order for the detention or preservation of any property or thing, being the subject of such cause or matter, or which may be evidence on any issue arising therein and may make an order for the inspection of any such property by either of the parties or their respective agents, and may permit the same to be photographed; and for all or any of the purposes aforesaid may authorize any person or persons to enter upon or into any land or building in the possession of any party to such cause or matter and for all or any of the purposes aforesaid may authorize any samples to be taken or any observations to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence: provided that no order shall be made for the detention or preservation of any property or any part thereof which shall prejudice any party in his business, profession, trade or calling, unless full compensation is paid by the applicant before such order is issued. R. 390.

Application for preservation and inspection

391 An application for an order under Rule 390 may be made to the court by any party. If the application be by the plaintiff, it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be made by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application. R. 391.

Order for delivery of specific chattel claimed under lien or payment into court

392 Where an action or counterclaim seeks recovery of specific property other than land, and the party from whom recovery is sought does not dispute the title of the party seeking to recover the property, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court may, at any time after that claim appears from the pleadings or proceedings, order:

(a) that the party claiming to recover the property may pay into court the amount of money with respect to which the lien or security is claimed, and any further sum for interest and costs that may be directed; and

(b) that the property claimed be given up to the party claiming it, on payment into court of the moneys and further sum mentioned in clause (a). R. 392. Gaz. Dec. 13, 2002. New.

Allowance out of estate *pendente lite*

393 Where any real or personal estate forms the subject of any proceedings in the court and the court is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the court may, at any time after the commencement of the proceedings, allow to the parties interested therein, or to any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such times as the court shall direct. R. 393.

Injunction against wrongful act or breach of contract

394 In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the court may grant the injunction, either upon or without terms, as may be just. R. 394.

***Mandamus* to be claimed in statement of claim**

395 The plaintiff, in any action in which he shall claim a *mandamus* to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall include such claim in his statement of claim. R. 394.

(The next part is Part Thirty-Three and the next rule is Rule 397)

PART THIRTY-THREE

EQUITABLE EXECUTION AND RECEIVERS

Receiver by way of equitable execution

397 In every case in which an application is made for the appointment of a receiver by way of equitable execution, the court, in determining whether it is just or convenient that such appointment should be made, shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment; and may direct any inquiries on these or other matters before making the appointment. R. 397.

Receiver, Security

398 Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be approved by the court, duly to account for what he shall receive as such receiver, and to pay the same as the court shall direct; and the person so to be appointed, shall, unless otherwise ordered, be allowed a proper salary or allowance. R. 398.

Adjournment to chambers to complete security

399 Where any judgment or order is pronounced or made in court appointing a person therein named to be receiver, the court may adjourn to chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up. R. 399.

Time for filing accounts and payment of balance

400(1) Where a receiver is appointed under the provisions of this part the court shall in making such appointment give directions as to the time when the said receiver shall file his accounts in court, and also as to payment into court of any balance which may from time to time come into the hands of such receiver.

Default of receiver, Procedure on

(2) If any receiver shall neglect or refuse to file his accounts as ordered, or having filed such accounts shall neglect or refuse to pay into court any balance or balances remaining in his hands, the court may upon the application of any person interested at any time after such default require such receiver to appear in chambers and show cause why such accounts should not be filed or balances paid into court and thereupon such directions as shall be proper may be given including an order for the passing of the accounts, the discharge of the receiver, the appointment of a new receiver and as to costs.

Disallowance of receiver's salary on default

(3) Upon such application the court may disallow the salary, fee or other remuneration to be paid to the receiver, or any part thereof, and may also charge him with interest upon any balance or balances which he may have neglected or refused to pay in and order him to pay any costs occasioned by his default.

Receiver's accounts to be filed

(4) Receiver's accounts shall be filed in court as directed and notice of such filing given to all parties interested.

Exceptions to, Accounts binding after 30 days

(5) Where such accounts have been so filed any party interested who may desire to take exception thereto shall file and serve a statement of exceptions and thereupon may apply for an appointment for the purpose of passing such accounts. If no such appointment shall be applied for within 30 days after service of notice of filing, such accounts shall be deemed to be approved and shall be binding upon all parties unless the court shall otherwise order. R. 400.

Receiver's accounts

401 When a receivership has been completed the book containing the accounts shall be deposited in the local registrar's office. R. 401.

Equitable executions

402 Where any judgment creditor or a person entitled under a judgment or order alleges that the debtor or person who is to pay, is entitled to, or has an interest in any property which under the former practice could not be sold under legal process, but could be rendered available in an action for equitable execution by sale for satisfaction of the debt, such judgment creditor or other person entitled may apply to the court by notice of motion in the action or other proceeding and duly served upon the judgment debtor for an order for the sale of the property or a competent part thereof to realize the amount of the judgment or order including the costs of the execution. R. 402.

Issue or inquiry

403 Upon any application under the next preceding rule, such proceedings shall be had, either in a summary way or by the trial of an issue, or by inquiry before an officer of the court or otherwise as the court may deem necessary or convenient for the purpose of ascertaining the truth of the matters in question, and whether the property or the debtor's or other person's interest therein is liable for the satisfaction of the execution. R. 403.

Order for sale

404 Where under either of the two preceding rules, any property or the interest of any debtor or other person therein is found liable to be sold, an order shall be made by the court declaring what property or what interest therein is liable to be sold and directing the sale thereof according to the usual practice. R. 404.

Interim injunction or receiver

405 Pending any such issue or inquiry an interim injunction order may be issued, or a receiver appointed to prevent the transfer or other disposition of the property. R. 405.

PART THIRTY-FOUR

REPLEVIN

Recovery of goods unlawfully detained, Property in custody of court

406 The plaintiff in any action brought for the recovery of any personal property, claiming, whether alone or with any other claim, that such property was unlawfully taken or is unlawfully detained, may at any time after the issue of the Statement of Claim, obtain a writ of replevin for the delivery of such property to him on his complying with the following rules. Such writ shall be in Form 42 but nothing herein contained shall authorize the replevying of any property seized by a sheriff or other officer charged with the execution of any process issued out of the court. R. 406.

Issue of writ of replevin

407(1) A writ of replevin shall be issued by the local registrar upon the plaintiff filing his affidavit or that of his duly authorized agent,

Affidavit therefor

(a) Embodying a description of such property and the value thereof, to the best of the deponent's belief, and stating that the plaintiff claiming is the owner, or is entitled to the possession of the said property;

(b) Further stating, if replevin is sought in the case of property distrained for rent or damage feasant, that the property was taken under colour of distress for rent or damage feasant, as the case may be, or

(c) In the case of property wrongfully taken out of the possession of the plaintiff, or fraudulently got out of his possession, stating in addition to the particulars required by clause (a) of this rule the time when and the wrongful and fraudulent manner in which the same was taken, or gotten out of his possession, and such facts and circumstances as show that the plaintiff is entitled to the possession of the property;

(d) Naming the judicial centre nearest to which the property sought to be replevied is situated. 1981. Am. Gaz. Oct. 25/91.

(2) Where the affidavit substantially complies with the requirements of Subrule (1), the validity of the writ of replevin shall not be questioned in any interlocutory proceeding. R.407. Gaz. Oct. 25/91. New.

Replevin security

408(1) Before the sheriff replevies, he shall take security from, or on behalf of, the plaintiff of the value of the property to be replevied as stated in the writ which security shall consist of either cash, negotiable securities, an irrevocable letter of credit issued by a chartered bank, or a bond with sufficient sureties.

Assignment of

(2) The security shall be assigned by the sheriff to the defendant at the defendant's request and the assignment shall enable the defendant to bring an action thereon in his own name against either the party depositing the cash or negotiable securities, the chartered bank, or the parties who execute a bond.

Forms

(3) The bond shall be in Form 43, the deposit of cash or securities shall be accompanied by a Deposit of Cash or Securities for Replevin in Form 43A, and the deposit of a letter of credit issued by a chartered bank shall be accompanied by a Deposit of Letter of Credit for Replevin in Form 43B.

Release of cash or securities

(4) If the defendant by acting pursuant to Rule 409A retains possession, any security deposited by the plaintiff shall forthwith be returned, otherwise no deposit of cash or negotiable securities shall be released without an order of the court. R. 408 Am. Gaz. May 15/87.

Service of copy of writ, Property secured or concealed from sheriff

409 A copy of such writ shall be served upon the defendant personally, or if he cannot be found, left at his usual or last place of abode with his wife or some other grown up person being a member of his family or household, or if no such person is resident there, posted in a conspicuous place on the premises, or if the defendant has no known residence, posted up in the office of the local registrar who issued the writ; but such service or posting shall not be made until the sheriff has replevied the property described in the writ or such part thereof as can be found; and in case the said sheriff or other officer has good reason to suspect that the property to be replevied or any part thereof is secured, contained, or concealed in any dwelling house, building or enclosure of the defendant, or of any other person keeping or holding the same for or on behalf of the defendant, and the said sheriff or officer demands from the owner, occupier or other person in charge of the premises aforesaid deliverance of the said property, and the same share not be delivered upon such demand, he shall, and if necessary he shall (but only between sunrise and sunset) break open such premises, and enter and search the same for the purpose of replevying the property demanded, and if found therein replevy the same. R. 409. Am. Gaz. May 15/87.

Defendant's right to retain on giving security

409A(1) The defendant or his agent (except in case of distress for rent or *damage feasant*) shall have the right to retain possession of the property described in the writ or any portion thereof if he shall give to the sheriff security of the value of the property as stated in the writ, which security shall consist of either cash, negotiable securities, an irrevocable letter of credit issued by a chartered bank, or a bond with sufficient sureties.

Assignment of security

(2) The security shall be assigned to the plaintiff by the sheriff at the plaintiff's request and the assignment shall enable the plaintiff to bring an action thereon in his own name against either the party depositing the cash or negotiable securities, the chartered bank, or the parties who execute a bond.

Forms

(3) The bond shall be in Form 44, the deposit of cash or negotiable securities shall be accompanied by a Deposit of Cash or Securities to Retain Possession of Property in Form 44A, and the deposit of a letter of credit shall be accompanied by a Deposit of Letter of Credit to Retain Possession of Property in Form 44B.

Release of cash or securities

(4) No deposit of cash or negotiable securities shall be released without an order of the court. R. 409A. Gaz. May 15/87. New.

Sheriff's return to writ

410 The sheriff shall without delay make a return of the writ to the court whence it issued and shall annex to the return:

(a) the names, places of residence and occupation of the parties to and the date of the bond taken from the plaintiff and the names of the witnesses thereto;

(b) the number, quality and quantity of the articles of property replevied and in case he has replevied only a portion of the property mentioned in the writ and cannot replevy the residue, he shall state in his return the articles which he cannot replevy and the reason why not;

(c) if the property is retained by the defendant under Rule 409A, the date and the names, places of residence and occupation of the parties and the witnesses to any security document. R. 410. Am. Gaz. July 10/87.

PART THIRTY-FIVE

INTERPLEADER

Interpleader

411 Relief by way of interpleader may be granted:

Cases in which relief granted

(a) where the person seeking relief (in this part called the applicant) is under liability for any debt, money, goods or chattels, for or in respect of which he is, or expects to be sued by two or more parties (in this part called the claimants) making adverse claims thereto;

(b) when the applicant is a sheriff or other officer of the court charged with the execution of process by or under the authority of the court, or required to make a seizure of chattels under any chattel mortgage or other instrument creating a lien or charge upon goods or chattels, or reserving a right of possession in the same and claim is made to any land, money, goods or chattels taken or intended to be taken in execution or attachment under any such process or to any goods or chattels seized or repossessed under any such chattel mortgage or other instrument as aforesaid, or to the proceeds or value of any such land, goods or chattels, by:

(i) any person other than the person against whom the process issued;

(ii) any landlord for rent;

(iii) any execution creditor claiming priority under any previous judgment, execution, process or proceeding;

(iv) any party claiming the benefit of any exemptions allowed by law.

The sheriff or other officer may apply for such relief notwithstanding the fact that he has, before making such seizure or repossessing such goods, taken from the execution creditor or other person authorizing or requiring him to make such seizure or to repossess such goods, a bond or other security by way of indemnity or otherwise. R. 411.

Matters to be proved by applicant

412 The applicant must satisfy the court by affidavit or otherwise:

(a) that the applicant claims no interest in the subject matter in dispute, other than for charges or costs; and

(b) that the applicant does not collude with any of the claimants; and

(c) that the applicant, except where he is a sheriff or other officer of the court charged with the execution of process by or under the authority of the court, or authorized and required to seize any goods under a chattel mortgage or other instrument creating a lien or charge on any goods or chattels or reserving a right of possession in respect of any goods and chattels and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under Rule 421 of this part, is willing to pay or transfer the subject matter into court or to dispose of it as the court may direct. R. 412.

Adverse titles

413 The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another. R. 413.

Defendant applying

414 Where the applicant is a defendant, application for relief shall be made in the action at any time after service of the Statement of Claim, and the court may stay all proceedings in the action. R. 414.

Form of application

415(1) Such applications shall be made by notice directed to the claimants requiring them to appear before the presiding judge in chambers at such time and place as may be designated in the notice and state the nature and particulars of their claims and either to maintain or relinquish them.

Notice

(2) Unless the court gives special leave *ex parte* to the contrary, there must be at least 11 days between the service of such notice and the day named in the notice for appearing in accordance therewith. R. 415.

Claimant defaulting

416 If a claimant having been served with such notice does not appear, or fails to satisfy the court by affidavit filed of the merits of his claim (unless the court for special reason shall dispense with an affidavit) or fails to comply with any order made, the court may make an order declaring him and all persons claiming under him forever barred against the applicant and persons claiming under him. R. 416.

Summary disposal, Issue

417 If the claimants appear, the court may dispose of the matters in issue in a summary manner, or order, either that any claimant be made a defendant in any action already commenced in respect to the subject matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants shall be plaintiff and which defendant, as also the time and place for the trial of such issue. R. 417.

Question of law

418 When the question is one of law, and the facts are not in dispute, the court may decide the question without directing the trial of an issue, or may order that a special case be stated for the opinion of the court. R. 418.

Appeal decision otherwise final

419 An appeal to the Court of Appeal shall lie from any order, decision or judgment of the court in any proceeding under this part whether in a summary way under Rule 417 or by decision upon a question of law under Rule 418, or after trial of an issue to the same extent and subject to the same incidents as an appeal from any order, decision or judgment in any action, but subject to such appeal the decision of the court shall be final and conclusive, against the claimants and all persons claiming under them. R. 419.

Discovery, owers of court, Costs

420 The rules of court in respect to discovery and inspection and the rules respecting the admission of facts and documents shall apply *mutatis mutandis* to proceedings under this part, and the court may make all such orders as are necessary respecting the satisfaction or payment of any lien or charge of the applicant in respect of the subject matter of the application, and the court trying such issue or disposing of the matter in a summary way or upon a point of law, may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise disposed of. R. 420.

Sheriff's interpleader, application for

421(1) Where a claim is made to or in respect of any property taken in execution by a sheriff or which any sheriff has seized or repossessed under or by virtue of any chattel mortgage or other document creating any charge upon goods and chattels or giving a right to repossess the same, or to the proceeds of any such property, it shall be in writing, and in such notice of claim the claimant shall give an address for service.

Execution creditor to be notified

(2) Upon receipt of such claim the sheriff forthwith shall give, by registered mail, notice in writing thereof to the execution creditor, or if the seizure or repossession shall have been by extrajudicial process, to the party authorizing such seizure or repossession according to Form 45 as the case may require or to like effect, and the execution creditor or the person authorizing such seizure or repossession, shall within 14 days after the mailing of such notice give notice in writing to the sheriff that he admits or disputes the claim according to Form 46 as the case may be, or to like effect. If the execution creditor or person authorizing such seizure or repossession admits the title of the claimant and gives notice as directed by this rule, he shall only be liable to the sheriff for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Claimant may be examined for discovery

(3)(a) Any claimant to goods seized or taken into possession by the sheriff, shall, after giving the notice as aforesaid, be deemed a party to the proceedings and may be examined for discovery on his claim as given and all the provisions of Part Twenty-one shall *mutatis mutandis* apply to such examination;

Corporation as claimant

(b) if such claimant is a corporation the rules for the examination for discovery applicable in an action shall, *mutatis mutandis*, apply to examinations under this part;

Notice of examination

(c) if the claimant has given notice of his claim by a solicitor such solicitor shall be entitled to notice of any examination under the provisions of this rule and service of the appointment accompanied by the proper conduct money upon such solicitor shall be deemed sufficient service within the provisions of Rule 228;

Claim barred by default

(d) any claimant duly served with an appointment for examination for discovery or with an appointment and subpoena, as the case may be, and having received or being tendered the proper conduct money, who neglects or refuses to attend at the proper time and place appointed for his examination, or having attended refuses to be sworn, or to answer any lawful question put to him by any party entitled to do so, or his counsel or solicitor, shall be liable to have his claim barred.

Costs of

(4) The costs of an examination under this rule shall be borne by the party who examines.

Time may be extended

(5) If for any good reason such examination cannot be completed within 14 days from the mailing to the execution creditor or the person authorizing seizure or repossession, of the notice from the sheriff, the court may on an *ex parte* application grant to the execution creditor or person authorizing seizure or repossession an extension of time for giving notice to the sheriff of his admission of the claim or dispute thereof. R. 421. Amend. Gaz. Dec. 13, 2002.

Execution creditor admitting claim

422 Where the execution creditor or other person authorizing such seizure or repossession, has given notice to the sheriff that he admits the claim of the claimant the sheriff shall thereupon withdraw from possession. R. 422.

Creditor not admitting or disputing

423(1) Where the execution creditor or the person authorizing seizure or repossession does not in due time admit or dispute the title of the claimant to the property in question and the claimant does not withdraw his claim thereto by notice in writing to the sheriff and no order has been made under Subrule 421(5), the sheriff may apply for an interpleader order and service of the notice of motion may be effected upon all parties interested personally or by registered mail.

(2) Should the claimant withdraw his claim, or the execution creditor or person authorizing seizure or repossession, admit the title of the claimant by notice in writing to the sheriff prior to the return of the notice of motion, and at the same time give notice of such withdrawal or admission to the other party, the court may in and for the purposes of the interpleader proceedings make all such orders as to costs and otherwise as may be just. R. 423.

One application only

424 In case a sheriff has more than one execution against the same property he shall not make a separate application in each case, but he may make one application and may make all execution creditors who have not admitted the claim of the claimants, and claimants, parties. R. 424.

(The next rule is Rule 426)

Delivery of property to claimant pending adjudication, Sale of perishable goods

426(1) Pending the adjudication of a claim the sheriff may upon sufficient security being given to him by bond or otherwise for the delivery to him of the property so taken or the value thereof when demanded, permit the claimant to retain possession of the same until there shall be final adjudication in respect thereof; but in every such case the sheriff or other officer may at any time resume the actual and absolute possession and custody of the said property notwithstanding such bond or security. Horses, cattle, sheep, or any perishable goods, the subject of interpleader, may at the request of either party and upon his furnishing sufficient security or by order of the court be sold by the seizing officer at public auction to the highest bidder upon such terms as to notice and otherwise as the court may direct. 1981. Am. Gaz. Oct. 25/91.

Property claimed exempt

(2) If the debtor, from whom the property has been seized in execution or in attachment, claims that the seized property is exempt by virtue of *The Exemptions Act*, the court may order the release of that property to the debtor, pending determination of the issue of exemption, upon such terms and conditions as the court may direct. R. 426. Gaz. Oct. 25 91. New.

Order for sale of goods

427 Where goods or chattels have been seized in execution or in attachment by a sheriff, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the court may order a sale, and direct the application of the proceeds of the sale in discharge of the amount due the claimant if it is not disputed, or that sufficient to answer the claim be paid into court pending trial of the claim. R. 427.

PART THIRTY-SIX

SALE OF LAND, PARTITION, ETC.

Court may order sale of real estate

428 If in any cause or matter relating to any real estate, it shall appear necessary or expedient that the real estate or any part thereof should be sold, the court may order the same to be sold, and any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed. R. 428.

Mode of carrying out sale, mortgage, etc., when ordered by court

429 In all cases where a sale, mortgage, partition or exchange is ordered, the court shall have power in addition to the powers already existing, with a view to avoiding expense or delay, or for other good reason, to authorize the same to be carried out:

(a) by laying proposals before the judge in chambers for his sanction; or

(b) by proceedings altogether out of court, any moneys produced thereby being paid into court or to trustees, or otherwise dealt with as the judge in chambers may order;

provided always, that the judge shall not authorize the said proceeding altogether out of court, unless and until he is satisfied, by such evidence as he shall deem sufficient, that all persons interested in the estate to be sold, mortgaged, partitioned, or exchanged are before the court, or are bound by the order for sale, mortgage, partition or exchange, and every order authorizing the said proceedings altogether out of court shall be prefaced by a declaration that the judge is so satisfied as aforesaid, and a statement of the evidence upon which such declaration is made. R. 429.

Order for sale in debenture holders' action

430 In debenture holders' actions where the debenture holders are entitled to a charge by virtue of the debentures, or of a trust deed, or otherwise, and the plaintiff is suing on behalf of himself and other debenture holders, and where the judge is of the opinion that there must eventually be a sale, he may in his discretion direct a sale before judgment and also after judgment, before all the persons interested are ascertained or served. R. 430.

Sale by court, Approval of judge, Parties

431 Where a judgment or order is given or made, whether in court or in chambers, directing any property to be sold, unless otherwise ordered the same shall be sold, with the approbation of the court to the best purchaser that can be got, the same to be allowed by the court and all proper parties shall join in the sale and conveyance as the court shall direct. R. 431.

Special directions

432 The court may give any special directions touching the carriage or execution of the judgment or order or the service thereof upon persons not parties as may be just. R. 432.

PART THIRTY-SEVEN

FORECLOSURE AND CANCELLATION PROCEEDINGS

Foreclosure actions, Recovery on convenant only

433 Actions by a mortgagee, his personal representatives or assigns, for foreclosure of the equity of redemption, or for sale or possession of the mortgaged premises, or for the recovery of any moneys payable under the mortgage, or for the appointment of a receiver, or for other incidental relief, may be commenced by Statement of Claim and except as herein otherwise provided, the general procedure and practice of the court shall be adopted and applied in all actions commenced under this part:

provided that in an action wherein it is sought to recover only the amount due under a mortgage the proceedings shall be carried on under the general rules. R. 433.

The Land Contracts (Actions) Act*; *The Limitation of Civil Rights Act

434 Except where inconsistent with *The Land Contracts (Actions) Act or The Limitation of Civil Rights Act,* the Rules of Court as to the practice and procedure in the Queen's Bench shall apply to proceedings under the above mentioned Acts. R. 434.

Appointment to hear application

435 To obtain an appointment to hear an application for leave to commence an action under *The Land Contracts (Actions) Act,* the applicant must show by affidavit:

(a) the name of the proposed plaintiff and defendant and the nature of their interest;

(b) the nature and extent of the relief sought by the proposed plaintiff.

Such appointment may be in Form 51. R. 435.

Claim

436(1) The claim in all actions commenced under this part shall be in Form 52 except as otherwise provided in this part.

Contents of

(2) It shall not be necessary in such claim to allege any of the terms, covenants or conditions expressed or implied in the mortgage, or in any agreement for the extension of time for payment under the said mortgage or varying the terms or conditions thereof, or of any other fact to any greater extent than is indicated in the said Form 52 and all terms, covenants, conditions and allegations necessary to support the plaintiff's claim under the said mortgage or any agreement relating thereto shall be deemed to have been duly pleaded.

Defendants

(2A) All persons who appear from the records of the proper Land Titles Office to have an interest in the equity of redemption shall be named as defendants. Gaz. Oct. 25/91. New.

Demand for particulars, Stay until ordered

(3) A defendant shall be entitled at any time by notice in writing to demand particulars of the amount claimed by the plaintiff, and the plaintiff shall within three days from the receipt of such notice, deliver to such defendant a statement of account setting forth full particulars of the amount claimed by him, or mail such statement to the said defendant by registered mail to the address given by the defendant in his said notice; and if the plaintiff fails to comply with such demand, the said defendant may, without delivering any defence to the Statement of Claim, apply, to the court for an order staying the action as against him, until such demand be complied with, and the court may grant such order on such terms as to costs or otherwise as may be just.

Service of Statement of Claim

(4) Any statement of claim in any action commenced under this part, may be served upon any of the defendants, other than the defendant who was the registered owner of the mortgaged premises at the time of the issue of the Statement of Claim, and those defendants against whom judgment for the recovery of money is claimed, by forwarding to such defendants by registered mail, a true copy thereof, and such service shall be deemed sufficient, if a post office confirmation of delivery to the person to be served is produced as an exhibit to the affidavit of service. Such affidavit of service shall be in Form 53. R. 436. Amend. Gaz. Dec. 13, 2002.

Service on parties interested

437 The court shall upon the application for order *nisi,* direct all such persons as appear from the material before it to have acquired any lien, charge or incumbrance upon the mortgaged land, or to have otherwise become interested in the subject matter of the action subsequent to the issue of the Statement of Claim, to be served with a copy of the order *nisi* by registered mail. R. 437.

Certificate by local registrar

437A(1) The local registrar may, on request by the plaintiff, search the court record and file a certificate of search in Form 54A as proof that no payment has been made to the credit of the action.

Certificate of lawyer

(2) The plaintiff's lawyer may file a certificate of lawyer in Form 54B as proof that no payment has been made to the office of the plaintiff's lawyer to the credit of the action. R. 437A. Gaz. Oct. 25/91. New.

Determination of amount due

438(1) Upon application for order *nisi* the court shall determine the amount due under the mortgage or under any agreement for the extension of time for payment thereof or varying the terms and conditions thereof, and for that purpose may make any order for reference for the purpose of taking the accounts which may be necessary, and shall fix a time within which the defendant or defendants may redeem the mortgage which order shall be in Form 55.

Anticipated rents and profits

(2) In determining the amount due and required to redeem, the plaintiff may estimate the amount of and give credit for anticipated rents and profits to be derived from the land in question before the expiration of the period of redemption and if the amount actually received does not exceed the amount so anticipated it shall not be necessary by reason of such rents and profits having been received to reopen the account and fix a new period of redemption.

Change of account after order

(3) Except as provided in Subrules (2), (4) and (5) hereof where the state of the accounts ascertained by a judgment or order under this rule is changed before the date fixed for redemption the plaintiff may apply *ex parte* or upon notice, as the court may determine, to fix the amount to be paid in lieu of the amount previously ascertained and upon such application the court may fix a new period of redemption.

Notice of credit given after order *nisi*

(4) Where the day appointed for payment by any order *nisi* under this rule has not arrived and the state of the account has been changed by payment or otherwise, the plaintiff may give notice, by registered mail if no defence has been delivered, to the party by whom the money is payable that he gives him credit for a sum certain to be named in the notice and that he claims that there remains due in respect of such mortgage a sum certain to be named in such notice.

Final order without new period of redemption

(5) Where such notice of credit has been given, if the sums named therein appear proper to be allowed and paid, the final order may be granted without fixing a new period of redemption, but the party, to whom the notice is given may apply to the court, to fix by reference or otherwise, the amounts proper to be allowed and paid instead of the amounts mentioned in such notice.

Payments after redemption period

(6) Where after the expiration of the period of redemption but before order absolute is made, the plaintiff shall receive any money by, way of rents and profits of the land in question, the court may make the final order without fixing a new period of redemption. R. 438.

Immediate possession in order *nisi*

439(1) If in any action commenced under this part the plaintiff shall in his statement of claim ask for immediate possession of the land in question, the court may upon the application for order *nisi* direct that the plaintiff shall have immediate possession of such land.

After order *nisi*

(2) If an order for possession is not made upon the application for order, *nisi* the court may at any time after the order *nisi* has been made and before the expiration of the period fixed for redemption, upon the application of the plaintiff and upon such notice, if any, as the court may direct, make an order that the plaintiff shall have immediate possession of such land. R. 439.

Actions in respect to agreements for sale of land

440 All of the provisions of this part applicable to mortgage actions shall apply *mutatis mutandis* to actions by vendors, or their personal representatives or assignees, for specific performance or cancellation of agreements for the sale of land, or for sale or possession of the land sold under any such agreement, or for such other relief as may be granted under the provisions of any such agreement, save that the claim in all such actions shall be in Form 54. R. 440.

PART THIRTY-EIGHT

MOTIONS AND APPLICATIONS

I NOTICE OF MOTION

Court motions, chamber applications

441(1) All applications both in court and in chambers shall be by notice of motion except where otherwise specially provided.

When by notice of motion

(2) Where under any statute an application may be made to the court or to a judge, such application shall be made by notice of motion unless the statute or the rules otherwise provide.

Order *ex parte* if delay injurious

(3) The court or a judge, if satisfied that delay caused by proceedings in the ordinary way would or might entail an irreparable or serious mischief, may make an order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the court or a judge may think just; and any party affected by such order may move to set it aside or to vary it.

Evidence of pleadings

(4) In all applications and motions any pleading on file in the office of the local registrar may be used and taken as *prima facie* evidence of such pleading. R. 441.

Procedure on *ex parte*

441A *Ex parte* applications shall be by memorandum setting forth:

(a) the special provision authorizing the *ex parte* application;

(b) the relief sought;

(c) a statement that none of the opposite parties is, to the knowledge of the applicant, represented by legal counsel; or, setting out the name of legal counsel representing any opposite parties; and

(d) citations of the authorities relied upon, namely:

(i) chapters and section numbers of statutes;

(ii) rules numbers; and

(iii) complete citations of cases with designation of relevant passages. R. 441A. Gaz. Nov. 3/2000. New.

Contents of Notice of Motion

441B Every Notice of Motion shall set forth:

(a) the precise relief sought;

(b) the grounds to be argued, including a reference to any statutory provision or rule to be relied on; and

(c) a list of the documentary evidence to be used at the hearing of the motion. R. 441B. Gaz. Nov. 13/87. New.

Chamber sittings

442(1) Regular sittings for the transaction of business and the hearing of applications and motions which may be heard in chambers shall be held at such times and places as may be designated by the Chief Justice and as published in *The Saskatchewan Gazette*.

Exception with leave

(2) With leave of the court motions or applications may be heard at any other time or place.

(3) **Repealed.** Dec. 92.

Where application brought

(4) An application within a proceeding shall be brought at the judicial centre where the proceeding is commenced or pending, if weekly chamber sittings are held at that judicial centre or, with leave of the court, may be brought at any other judicial centre. R. 442.

Applications or motions in chambers

443 All applications or motions by these rules or by statute authorized to be made to the court, shall, except motions made at or during the trial of any action, issue or other proceeding be made to a judge in chambers. R. 443.

(The next rule is Rule 445)

Chamber motions

445 Motions may be made returnable before and heard by a judge sitting in chambers on any of the days fixed for that purpose. Where any such day so fixed falls on a legal holiday or where a motion has been made returnable on a day on which a judge does not sit, motions will stand adjourned to the next day following on which a judge sits. R. 445.

Grounds to be stated in certain cases, Service of affidavits

446(1) Every notice of motion to set aside, remit, or enforce an award or for committal, shall state in general terms the grounds of the application, and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

Grounds of irregularity to be stated

(2) When an application is made to set aside any proceeding for irregularity, the several objections intended to be insisted upon shall be stated in the notice of motion. R. 446.

Motions, length of notice

447 Unless the court gives special leave *ex parte* to the contrary, there must be at least three days between the service of a notice of motion and the day named in the notice for hearing the motion. R. 447.

Service of notice of motion before defence

448 The plaintiff may without leave serve any notice of motion upon any defendant along with the Statement of Claim, or at any time after service thereof. R. 448.

Court may direct application to be turned into motion for judgment

449 When it is made to appear to the court on the hearing of any application which may be pending before the court that it will be conducive to the ends of justice to permit it, the court may direct any application to be turned into a motion for judgment, or hearing of the cause or matter and thereupon the court may make such order, as to the time and manner of giving the evidence in the cause or matter, and with respect to the further prosecution thereof as the circumstances of the case may require; and upon the hearing it shall be discretionary with the court either to pronounce a judgment or make such order as the court deems expedient. R. 449.

Form of notice

450 A notice of motion shall be in Form 47 and shall be addressed to all the persons on whom it is to be served. R. 450.

II ORIGINATING NOTICE

Proceedings by originating notice

451 Where under any statute, proceedings are authorized to be commenced by originating summons or by chamber summons, such proceedings may be commenced by notice to be called an originating notice, as hereinafter set out. R. 451.

452 The following proceedings may be commenced by originating notice:

Construction of instruments

(a) applications by any person claiming to be interested under a deed, will or other written instrument for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested;

New trustee

(b) applications for the appointment of a new trustee with or without a vesting, or other consequential order;

Vesting order

(c) applications for a vesting order or other order consequential on the appointment of a new trustee, whether the appointment is made by the court or out of court;

Trusts, administration, etc.

(d) applications by the executors or administrators of a deceased person, or the sureties for administrators, or the trustees under any deed or instrument, or any of them, or any person claiming to be interested in the relief sought as creditor, devisee, legatee or next of kin of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment or otherwise, under such creditor or other person as aforesaid, for such relief of the nature or kind following as may by the notice be specified, and as the circumstances of the case may require, or for the determination of any of the following questions or matters:

(i) the administration of the estate of the deceased;

(ii) the administration of the trust;

(iii) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or *cestui que trust*;

(iv) the ascertainment of any class of creditors, legatee, devisee, next of kin, or others;

(v) the furnishing and vouching of any particular accounts by executors, administrators or trustees;

(vi) the payment into court of any money in the hands of the executors, administrators or trustees;

(vii) directing the executors, administrators or trustees to do or abstain from doing any particular act in their character as executors, administrators or trustees;

(viii) the approval of any sale, purchase, leave, compromise or other transaction;

(ix) the determination of any question arising in the administration of the estate or trust;

Staying actions pending performance of trusts

(x) an order that no action be brought, or that all actions and proceedings pending against trustees, executors or administrators be stayed for such period, as to the court may seem necessary or expedient, in order that sufficient time be allowed to such trustee, executor or administrator for the performance of the trusts imposed upon him:

Interference with discretion of trustee

provided that the proceedings under this rule shall not interfere with, or control, any power or discretion vested in any executor, administrator or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

Form of originating notice

453 An originating notice shall be in Form 48 and a copy thereof shall before service be filed in the office of the local registrar and the local registrar shall indicate upon the originating notice the date of filing such copy, and countersign and seal the originating notice. R. 453.

Time of service

454 Unless otherwise ordered there shall be at least 11 days between the service of an originating notice and the day for hearing. R. 454.

Power of court

455 All the rules applicable to proceedings commenced by a Statement of Claim shall apply *mutatis mutandis* to proceedings commenced by originating notice and the court may upon any originating notice pronounce such judgment and make such orders as the case may require, including orders vesting such property in such person or persons as may be found or declared entitled thereto, for such estate or interest as may be requisite, and may deal with questions of priority and questions of fact that may arise, and for that purpose order any issue to be tried and grant such relief as the parties may be entitled to, in the same manner and to the same extent as if the action had been commenced by Statement of Claim. R. 455.

Parties

456 The persons to be served with an originating notice shall be such persons as would be the proper defendants to an action for the like relief as that specified by the notice, and the notice shall be served upon such other persons as the court may direct. R. 456.

Special directions

457 The court may give any special directions touching the carriage or execution of the judgment or order, or the service thereof, upon persons not parties as may be just. R. 457.

Administration not to be ordered if questions otherwise determinable

458 It shall not be obligatory on the court to pronounce or make a judgment or order, whether on notice or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order. R. 458.

Powers of court if administration of trust accounts not rendered

459 Upon an application for administration or execution of trust, by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the court may, in addition to the powers already existing:

(a) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done, they may be made to pay the costs of the proceedings;

(b) when necessary to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order, without leave of the court. R. 459.

III GENERALLY

Adjournment by consent

460(1) The hearing of any motion or application shall on consent of the parties be adjourned from time to time to any subsequent chamber day by the local registrar for the judicial centre at which the said motion or application is to be heard upon filing with the said local registrar a memorandum requesting such adjournment, signed by the parties or by the solicitors for the parties or their agents without the appearance of counsel; provided that the local registrar may accept an oral consent to such an adjournment.

***Ex parte* application, consent order**

(2) It shall not be necessary for a party to appear in chambers on an application *ex parte* or where the consent in writing of each party is filed unless he is required to appear by the court. Where a party is required to appear, the local registrar shall notify the party or his lawyer of the date and time set for the hearing. R. 460.

Telephone application

460A(1)(a) Any application which could be made in chambers may be made before a judge by telephone.

(b) Each party to the application and the local registrar must be parties to the telephone conversation with the presiding judge.

(c) Where counsel appearing on the conference telephone application are located at a judicial centre, they shall make the application from the office of the local registrar at the judicial centre.

(d) All material normally filed in support of an application shall be filed in the usual way. If requested by the parties or the judge, the material or part thereof will be forwarded to the judge to be available for the hearing.

(e) The local registrar will have before him all the material filed other than that which has been sent to the judge.

(f) The judge who hears an application under this rule may, where it appears that personal attendance of counsel is desirable, direct that the application be heard or completed in chambers with the personal attendance of counsel.

Emergent conditions

(2) Where emergent conditions exist a judge may dispense with meeting any of the requirements of these directions, save the direction that a local registrar must be a party to the telephone call. R. 460A, Am. Gaz. Dec. 11/98.

Copies provided

460B Except for *ex parte* matters, where any brief, submission or like material is filed, a copy of the same shall be provided to all interested parties before or concurrent with the filing. R. 460B

Adjournment of hearing by court

461 The hearing of any motion or application may, from time to time, be adjourned upon such terms (if any) as the court shall think fit. R. 461.

Proceeding failing by non-attendance of party

462 When a proceeding in chambers fails by reason of the non-attendance of any party and the court does not think it expedient to proceed *ex parte,* the court may order such an amount for costs (if any) as it shall think reasonable to be paid to the party attending by the absent party, or by his solicitor personally. R. 462.

Applications may include several matters, Adjournment into court and into chambers

463 In every cause or matter where any party thereto makes any application at chambers he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the court; and upon the hearing of such application, it shall be lawful for the court to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the court thinks fit, be adjourned from chambers into court, or from court into chambers. R. 463.

(The next rule is Rule 465)

Deadline for filing

465 The deadline for filing material to be used on a chambers application is:

(a) 4:00 p.m. Thursday for Monday chambers;

(b) 4:00 p.m. Friday for Tuesday chambers;

(c) 4:00 p.m. Monday for Wednesday chambers;

(d) 4:00 p.m. Tuesday for Thursday chambers; and

(e) 4:00 p.m. Wednesday for Friday chambers. R. 465. Gaz. Dec.5/86. New.

(The next rule is Rule 467)

IV ORDERS

Form of order

467(1) An order shall be in Form 49. It shall be sealed and shall state the name of the judge by whom it is made and a copy thereof shall be left with the officer by whom it is issued.

Date of orders

(2) Every order, if and when drawn up, shall be dated the day of the week, month and year on which the same was made, unless the court shall otherwise direct, and shall take effect accordingly.

Endorsement on *ex parte* order

(2a) Where an order is issued pursuant to an *ex parte* application, it shall be drawn with the following endorsement appearing below the line indicated on the form for the signature of the Chamber Clerk:

Take notice that every order made without notice to the respondent or a person affected by the order, except where such order is consented to by the respondent or a person affected by the order, or is otherwise authorized by law, *may* be set aside or varied on application to the court. You should consult your solicitor as to your rights. Gaz. Nov. 13/87. New.

Liberty to apply

(3) It shall not be necessary in any judgment or order to reserve liberty to apply, but any party may apply to the court from time to time as he may be advised. R. 467.

Chamber clerk

468 A chamber clerk shall attend all chambers whenever held at any judicial centre. The chamber clerk shall keep a minute of all proceedings in chambers, and of all orders granted. Such orders shall be settled by the chamber clerk, under the direction of the judge, and shall be prepared by the applicant or his lawyer, and shall be signed by such clerk and sealed with the seal of the court, and shall thereupon be deemed to be issued. R. 468.

Duty to notify solicitors of decision

469 On all reserved motions and applications, the chamber clerk or the local registrar, as the case may be, shall, immediately upon decision being given, notify the solicitors concerned or their agents. R. 469.

Enforcing return of writ or order by sheriff

470 No order shall issue for the return of any writ, or to bring in the body of any person ordered to be committed; but a notice from the person issuing the writ, or obtaining the order for committal (if not represented by a solicitor), or by his solicitor calling upon the sheriff to return such writ or to bring in the body within 10 days, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff. R. 470.

(The next rule is Rule 472)

Consent to discharge of order

472 On consent of all parties interested the court may set aside, vary, or discharge any order made by it. R. 472.

Certain orders need not be drawn up

473(1) Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceedings or doing any act or giving leave:

(a) for the issue of any writ or commencement of any proceeding;

(b) for the amendment of any writ or pleading;

(c) for the filing of any document;

(d) for any act to be done by any officer of the court other than a barrister and solicitor; or

(e) to stay proceedings until the hearing of a notice of motion, petition or originating notice;

it shall not be necessary to draw up such order unless the court shall otherwise direct; but the production of a note or memorandum of such order signed by a judge, local registrar or chamber clerk shall be sufficient authority for such enlargement of time, issue, amendment, filing, stay of proceedings or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule.

(2) The solicitor of the person on whose application such order is made shall forthwith give notice in writing thereof to such person (if any) as would, if this rule had not been made, have been required to be served with such order.

(3) If an order is issued which under this rule is unnecessary, the assessment officer shall not allow the costs of that order. R. 473. Amend. Gaz. Dec. 13, 2002.

PART THIRTY-NINE

APPEAL FROM PROVINCIAL COURT

Appeal by motion

474 An appeal from an order or decision of a provincial court judge to a judge in chambers shall be by notice of motion stating briefly the grounds of appeal returnable within 30 days after the decision complained of, or such further time as may be allowed by a judge. The notice of appeal shall be served on all parties directly affected but it shall not be necessary to serve parties who have not appeared in the action or proceeding unless otherwise ordered. Where service is not required the notice of appeal shall be filed with the local registrar within the time limited for appealing or such further time as may be allowed by a judge. R. 474.

Appeal not a stay

475 Unless otherwise provided, an appeal from a provincial court judge's decision shall be no stay of proceedings unless a judge so orders. R. 475.

Evidence

476 An appeal from a provincial court judge's decision may be heard in chambers or in court, and, unless otherwise provided in the statute pursuant to which the appeal is taken:

(a) if a judge considers that it would not be prejudicial to either party to do so he may dispense with production of the evidence, if any, submitted to the provincial court judge; and

(b) the judge appealed to may receive further evidence, by oral examination, affidavit, or otherwise as he may allow, or may hold a hearing *de novo*. R. 476.

PART FORTY

SIMPLIFIED PROCEDURE

Application of Rules

477(1) The simplified procedure set out in this Part does not apply to:

(a) family law proceedings, other than a family property action wherein the only relief claimed is a division of family property; or

(b) actions under *The Builders' Lien Act*;

(c) class actions; or

(d) actions when the trial is before a jury.

(2) The simplified procedure set out in this Part applies to actions commenced before the effective date of this Part if the parties file a consent, or if the plaintiff amends the statement of claim in accordance with subrule 481(1).

(3) Except where otherwise provided in this Part, the general rules of practice and procedure in the court apply to an action under this Part. Gaz. Jan 11/2008 New.

Availability of simplified procedure

478(1) The simplified procedure shall be used in an action where the plaintiff's claim is exclusively for:

(a) an amount of $50,000 or less, exclusive of interest and costs;

(b) real or personal property the fair market value of which at the date of commencement of the action is $50,000 or less; or

(c) both an amount of money and real or personal property the total value of which at the date of commencement of the action is $50,000 or less, exclusive of interest and costs, having regard to the fair market value of the property at that date.

(2) Subject to Rules 479 and 480, the simplified procedure may be used in any other action at the option of the plaintiff.

(3) The statement of claim shall state that the action is being brought under Part Forty of *The Queen's Bench Rules*.

(4) Except for a joint claim, where there is more than one plaintiff, the simplified procedure shall be used if each plaintiff's claim, considered separately, meets the requirements of subrule (1). Gaz. Jan 11/2008 New.

Where defendant objects

479(1) Where the plaintiff's claim does not comply with subrule 478(1), the defendant may object to proceeding under this Part by so stating in the statement of defence.

(2) Where the defendant objects to the action continuing under the simplified procedure, the action shall nevertheless continue under this Part if the plaintiff abandons the claims that are other than or in excess of the claims referred to in subrule 478(1).

(3) Where the defendant objects to the action continuing under the simplified procedure and the plaintiff does not abandon all the claims that do not meet the requirements of subrule 478(1), the action shall continue under the general procedure.

(4) Any claim for relief abandoned under this rule shall not be the subject of any further proceedings.

(5) Where an action is continued under the general procedure pursuant to this rule, the plaintiff shall, within seven days, deliver to all parties and file a notice stating that the action and any related proceedings are continued under the general procedure. Gaz. Jan 11/2008 New.

Counterclaim, crossclaim and third party claim

480(1) Where a defendant in an action under this Part counterclaims, crossclaims, or claims against a third party, the main action and the counterclaim, crossclaim or third party claim remain under this Part if:

(a) the counterclaim, crossclaim or third party claim meets the requirements of subrule 478(1);

(b) the defendant to the counterclaim, crossclaim, or third party claim does not object to proceeding under this Part in the defence to that claim; or

(c) the defendant making the claim abandons any claim that does not meet the requirements of subrule 478(1).

(2) Any claim for relief abandoned under this rule shall not be the subject of any further proceedings.

(3) Where a defendant in an action under this Part counterclaims, crossclaims or claims against a third party and subrule (1) does not apply, the main action and the counterclaim, crossclaim or third party claim shall proceed under the general procedure.

(4) The foregoing rules shall apply when a third party delivers a statement of defence to the main action.

(5) Where an action is continued under the general procedure pursuant to this rule, the defendant shall, within seven days, deliver to all parties and file a notice stating that the action and any related proceedings are continued under the general procedure. Gaz. Jan 11/2008 New.

Amending to simplified procedure

481(1) Where an action is commenced under the general procedure or all parties consent, the plaintiff may amend the statement of claim to continue the action under this Part if the amended claim meets the requirements of subrule 478(1).

(2) Where an action is commenced under this Part or all parties consent but the action comes under the general procedure because of a counterclaim, crossclaim or third party claim, the defendant asserting the claim may amend it to continue the action under this Part if the amended claim meets the requirements of subrule 478(1).

(3) The amended pleading shall state that the action was previously under the general procedure and has been continued under Part Forty of *The Queen's Bench Rules*.

(4) Regardless of the outcome of the action, when a claim has been commenced under the general procedure that could have been, but was not, commenced under this Part, and the claimant has amended a pleading to continue the action under this Part, the claimant shall pay to the opposing party double those costs of the opposing party that:

(a) were incurred to the date of the amendment; and

(b) would not have been incurred if the claim had initially been commenced under this Part. Gaz. Jan 11/2008 New.

Amending out of simplified procedure

482(1) Where an action is commenced under this Part and an amended claim does not meet the requirements of subrule 478(1), the simplified procedure is not available in the action unless all parties file a consent.

(2) If no consent is filed, the amended pleading shall state that the action was commenced under this Part and has been continued under the general procedure. Gaz. Jan 11/2008 New.

Continuing under general procedure

483(1) On application by any party or on the court's own motion, the court may order that a proceeding commenced under this Part be continued under the general procedure.

(2) When a demand for jury is served in a proceeding commenced under this Part, the action shall be continued under the general procedure.

(3) Where an action is ordered continued under the general procedure pursuant to subrule (1) or (2):

(a) the pleadings shall be amended to state that the action was commenced under this Part and has been continued under the general procedure by order of the court; and

(b) the court may give directions for the purpose of expediting the procedure.

(4) Where an action is ordered continued under the general procedure and a party had abandoned a part of his or her claim or counterclaim before the order was made, the court may allow the abandonment to be withdrawn. Gaz. Jan 11/2008 New.

Affidavit of documents and witnesses

484(1) An affidavit of documents and witnesses shall be in Form 484, and shall:

(a) disclose to the full extent of the party's knowledge, information and belief, all documents relating to any matter in issue in the action that are or have been in the party's possession, control or power; and

(b) include a list of the names and addresses of persons who might reasonably be expected to have knowledge of transactions or occurrences in issue in the action.

(2) Within 30 days after attending a mediation session or of receipt of an exemption from the requirement to attend a mediation session, the plaintiff shall serve and file an affidavit of documents and witnesses.

(3) Within 30 days after service of the plaintiff's affidavit of documents and witnesses, the defendant shall serve and file an affidavit of documents and witnesses.

(4) Where a party is represented by a lawyer, the lawyer shall certify on the affidavit that he or she has explained to the deponent the necessity of making full disclosure of all documents relating to any matter in issue in the action.

(5) At the trial of the action, a party shall not rely on the evidence of a person whose name has not been disclosed in the party's affidavit of documents and witnesses, or any supplementary affidavit of documents, unless otherwise ordered by the court.

(6) Where a party neglects or refuses to disclose a document or the name of a potential witness in an affidavit of documents or a supplementary affidavit, as required by this rule, the court may:

(a) dismiss the action, if the party is a plaintiff;

(b) strike out the statement of defence, if the party is a defendant; or

(c) make such order, as to costs or otherwise, as is just.

(7) The rules under Part Twenty relating to a statement as to documents apply to an affidavit of documents and witnesses, except as modified by the rules of this Part. Gaz. Jan 11/2008 New.

Examination for discovery, etc., not permitted

485 Examinations for discovery, cross-examination of a deponent on an affidavit and examination of a witness on a motion are not permitted in an action under this Part, unless otherwise ordered. Gaz. Jan 11/2008 New.

Filing of affidavit evidence

486(1) The plaintiff shall serve and file any affidavits, notices of expert witnesses and materials the plaintiff intends to rely on for disposition of the action.

(2) Within 60 days after service of the plaintiff's supporting affidavits and materials, the defendant shall serve and file any affidavits, notices of expert witnesses and materials the defendant intends to rely on for disposition of the action.

(3) Within 30 days after service of the defendant's supporting affidavits and materials, the plaintiff may serve and file affidavits in reply to contradict or qualify any new facts or issues raised by the defendant's affidavits.

(4) A party shall serve and file with the party's affidavit a written report setting out the name, address and qualifications of any expert witness the party intends to rely on for the disposition of the action.

(5) Where a witness named in any party's affidavit of documents and witnesses is not the deponent of any affidavit filed pursuant to subrules (1) to (3), a party may make a written request that the witness provide an affidavit within 15 days after receipt of the request.

(6) An affidavit received in response to a written request pursuant to subrule (5) shall be served on all other parties and filed within seven days after receipt of the affidavit.

(7) Where the witness referred to in Subrule (5) has neglected or refused to provide an affidavit within 15 days after receipt of a written request to do so, the witness may be subpoenaed in accordance with the rules of court to give oral evidence at the simplified trial. Gaz. Jan 11/2008 New.

Extensions of time

487 A time period provided by the rules in this Part may be extended with the consent of all the parties, or order of the court. Gaz. Jan 11/2008 New.

Affidavits generally

488 The parties may file affidavits as provided in Rule 486 or in response to a written request made by an opposing party, and no additional affidavits may be filed without leave of the court. Gaz. Jan 11/2008 New.

Pre-trial conference

489(1) The parties may request a pre-trial conference by filing with the local registrar a joint request for pre-trial conference in Form 489, which must be signed by all the parties.

(2) A joint request for pre-trial conference shall be filed within 15 days after the filing of the plaintiff's affidavit in reply or after the expiry of time limited for the plaintiff to file an affidavit in reply.

(3) A pre-trial conference shall not be held under this Part without the consent of all the parties.

(4) A pre-trial conference under this Part shall be set down for a required time not to exceed one-half day.

(5) A pre-trial brief filed under this Part shall not exceed five pages in length.

(6) The rules under Part Seventeen relating to a pre-trial conference apply with necessary modifications as required by the rules of this Part. Gaz. Jan 11/2008 New.

Request for trial date

490 A party may apply for a trial date by serving and filing with the local registrar a request for a date for simplified trial in Form 490. Gaz. Jan 11/2008 New.

Motion for summary judgment

491(1) A party may apply for summary judgment, by notice of motion, at any time prior to a date set for a simplified trial.

(2) The applicant shall serve the notice of motion on all parties at least 15 days before the return date of the motion, and file it with proof of service.

(3) The affidavits and materials filed in the action pursuant to Rule 486 shall be deemed to be the documentary evidence filed in support of the motion for summary judgment and no additional affidavits or materials shall be filed except with leave of the court. Gaz. Jan 11/2008 New.

Summary judgment

492(1) On an application for summary judgment the presiding judge shall grant judgment in whole or in part or dismiss the action unless:

(a) the judge is unable to decide the issues in the action in the absence of cross-examination on the affidavits; or

(b) it would be otherwise unjust to decide the issues on the motion.

(2) On an application for summary judgment, if the judge does not grant judgment under subrule (1), the presiding judge may:

(a) dismiss the action;

(b) order a simplified trial;

(c) order a trial in accordance with the general procedure;

(d) grant judgment on some issues and order a simplified or general trial on the issues in the action not disposed of by the summary judgment;

(e) order a *viva voce* hearing;

(f) make any other order the court deems appropriate. Gaz. Jan 11/2008 New.

Evidence

493(1) A party who intends to cross-examine the deponent of an affidavit at the simplified trial shall, at least 15 days before the date of the simplified trial, give notice of that intention to the party who filed the affidavit. The party who filed the affidavit shall arrange for the deponent's attendance at the simplified trial.

(2) Witnesses who reside outside the province who are required to attend at the simplified trial may be allowed to testify by telephone:

(a) by consent of the parties, unless otherwise ordered by the court; or

(b) by order of the court.

(3) A witness named in the opposing party's affidavit of documents and witnesses may be subpoenaed in accordance with the rules of court to give oral evidence at the simplified trial, provided that a written request has been made to the opposing party that the witness provide an affidavit, and no affidavit has been received within 15 days of the request.

(4) An expert witness must be qualified before the affidavit of that expert witness may stand as the evidence in chief of the expert witness. Gaz. Jan 11/2008 New.

Procedure at simplified trial

494(1) At a trial under this Part the procedure shall, unless otherwise ordered by the presiding judge, be as follows:

(a) every affidavit filed by a party shall stand as the evidence in chief of the witness concerned;

(b) a party who is adverse in interest may cross-examine a witness or the deponent of any affidavit served by the plaintiff;

(c) the plaintiff may re-examine, for not more than 15 minutes, any deponent or witness who is cross-examined;

(d) upon completion of the cross-examination and re-examination of the plaintiff's deponents and witnesses, a party who is adverse in interest may cross-examine a witness or the deponent on any affidavit served by a defendant;

(e) the defendant may re-examine, for not more than 15 minutes, any witness or deponent who is cross-examined;

(f) upon completion of any cross-examinations and re-examinations of the defendant's witnesses and deponents, the plaintiff may, with leave of the presiding judge, present any proper reply evidence;

(g) all cross-examinations by any party shall not exceed 90 minutes;

(h) all re-examinations by any party shall not exceed 45 minutes;

(i) each party may make oral argument for not more than 30 minutes.

(2) The presiding judge may extend any time provided in subrule (1). Gaz. Jan 11/2008 New.

Failure to comply

495 Where a party fails to take a step within the time fixed by the rules in this Part or by order, the court may:

(a) order the party to take the step by a fixed date, failing which the court may:

(i) dismiss the action, if the party is a plaintiff;

(ii) strike out the statement of defence, if the party is a defendant; or

(b) make such order, as to costs or otherwise, as is just. Gaz. Jan 11/2008 New.

Costs where judgment does not exceed $50,000

496(1) Unless the action was under this Part at the time of the trial, or the court is satisfied that it was reasonable for the plaintiff to have commenced and continued the action under the general procedure, the plaintiff shall not be entitled to any costs and may also be ordered to pay all or part of the defendant's costs, when the plaintiff obtains a judgment for:

(a) an amount of $50,000 or less, exclusive of interest and costs;

(b) real or personal property whose fair market value at the date of commencement of the action was $50,000 or less; or

(c) both an amount of money and real or personal property whose total value is $50,000 or less, exclusive of interest and costs, having regard to the fair market value of the property at the date of commencement of the action.

(2) Subrule (1) applies notwithstanding any offer by the plaintiff to settle.

(3) Subrule (1) does not apply if the simplified procedure became unavailable because of a counterclaim, crossclaim or third party claim.

(4) In an action in which the claim is for real and personal property, if the defendant objected to proceeding under this Part on the grounds that the property's fair market value exceeded $50,000 at the date the action was commenced and the court finds the value did not exceed that amount at that date, the defendant shall pay double the costs incurred by the plaintiff that would not have been incurred if the action had remained under this Part.

(5) This rule applies, with necessary modifications, to counterclaims, crossclaims or third party claims. Gaz. Jan 11/2008 New.

(The next part is Part Forty-One and the next rule is Rule 511)

PART FORTY-ONE

DEPENDENT ADULTS

Application of Rules

511 This Part applies to applications made pursuant to *The Adult Guardianship and Co-decision-making Act*. R. 511. Gaz. Oct. 25/91. New. Amend. Mar. 31, 2006.

(The next rule is Rule 513)

Venue

513 All proceedings under this Part shall be taken at the Judicial centre nearest to:

(a) the location of the property, or some of the property, of the alleged dependent adult; or

(b) where the alleged dependent adult resides. Gaz. Oct. 25/91. New. R. 513.

Evidence

514 The court may hear an application under this Part on oral or affidavit evidence or otherwise as the judge conducting the hearing may direct. Gaz. Oct. 25/91. New. R. 514.

(The next rule is Rule 525)

PART FORTY-TWO

FUNDS IN COURT

Investment of funds in court

525 Cash under the control of or subject to the order of the court may be invested in Dominion or Provincial Government securities upon order of the court. R. 525.

Conversion of securities, Application for

526 Notice of every application for the purpose of the conversion of any such securities shall be served upon the trustees thereof, if any, and upon such other persons, if any, as the court may direct. R. 526.

Moneys to be paid into chartered bank or credit union

527(1) Subject to Rule 527A, all moneys required to be paid into court shall be paid into such chartered bank or credit union as may from time to time be designated for the purpose by the Minister of Finance, the same to be placed to the credit or a special account of the court at the judicial centre at which such moneys have been paid, styled "Special Account", each deposit to reap the benefit of such rate of interest as the bank or credit union in which the deposit is made may agree to allow, to be from time to time added to the principal. 1981 Am. Gaz. Dec. 5/86, Oct. 25/91.

Transfer to other bank or credit union

(2) Upon the Minister of Finance directing that moneys so deposited in any bank or credit union be transferred to some other chartered bank or credit union the local registrar shall issue a cheque payable to the order of the bank or credit union so designated for the amount on deposit with the accrued interest thereon, less the amount of any outstanding cheques, and such cheque shall be countersigned as mentioned in the next following subrule. 1981, Am. Gaz. Oct. 25/91.

Cheques signed by appointed persons

(3) No moneys paid into court shall be withdrawn from the bank or credit union in which the same are deposited unless the cheque for withdrawal of the same is signed by two persons appointed from time to time for that purpose by the Department of Justice. R. 527. 1981. Am. Gaz. Dec. 5/86, Oct. 25/91.

Limitation on interest

527A(1) Interest on money paid into court will not be payable when the sum paid into court is:

(a) $1,000 or less; and

(b) on deposit for 30 days or less.

Reckoning of days on deposit

(2) For the purposes of Subrule (1), days on deposit shall be reckoned by including the day the sum is deposited in the bank and excluding the day of the payment out of court. R. 527A. Gaz. Dec. 5/86. New; Am. Gaz. Dec. 9/94.

Payment out in small intestate estates

528 Where the estate of a deceased person who has died intestate is entitled to a fund, or to a share of a fund in court, not exceeding $1,000 and it is proved to the satisfaction of the court that no administration has been taken out to such deceased person, and that his assets do not exceed the value of $1,000 including the amount of the fund or share to which the estate of such deceased person is entitled, the court may direct that such fund or share of a fund shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would be entitled to take out administration to the estate of such deceased person. R. 528.

Certificate of local registrar

528A Where application is made for payment out of money paid into court pursuant to a garnishee summons, proof that it has not been suggested by the garnishee or any other person claiming to be interested, that the money paid in belongs to a third person or that a third person has a lien or charge upon it may be made by filing the certificate of the local registrar in Form 60B. R. 528A. Gaz. Oct. 25/91. New.

PART FORTY-THREE

TIME

"Month" means calendar month

529 Where by these rules, or by any judgment or order, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document, which is part of any legal procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed. R. 529.

Exclusion of Sundays, etc.

530 Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, the days on which the offices are closed shall not be reckoned in the computation of such limited time. R. 530.

Numbers of days; how computed

531 In any case in which any particular number of days, not expressed to be clear days, is prescribed by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last; and where days are expressed to be clear days the first and the last shall be excluded. R. 531.

Time expiring on Sunday, etc.

532 Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open. R. 532.

533 **Repealed.** Gaz. Dec. 13, 2002.

Power of court to enlarge or abridge time

534(1) The court may enlarge or abridge the time appointed by these rules or fixed by any order for doing any act or taking any proceeding, on any terms that the justice of the case may require.

(2) An enlargement of time may be ordered notwithstanding that the application is not made until after the expiration of the time appointed or allowed.

(3) The costs of an application to enlarge the time for doing any act or taking any proceeding shall be borne by the party making the application. R. 534. Gaz. Dec. 13, 2002. New.

535 **Repealed.** Gaz. Dec. 13, 2002.

Notice after one year delay

536 In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed and upon the expiry of the said period of one month from the service upon all parties of such notice any party to such cause or matter may thereafter proceed without further notice, provided that such proceeding is taken within one year of the date of such service. A notice of motion on which no order has been made shall not, but a request for a pre-trial conference or for a trial, shall be deemed a proceeding within this rule. This rule shall not apply to any defendant who has not appeared:

provided, however, that a defendant shall not be required to give such notice before making an application to dismiss an action for want of prosecution. R. 536. Am. Gaz. May 15/87.

(The next part is Part Forty-Six and the next rule is Rule 537)

PART FORTY-SIX

COSTS

DIVISION 1

SECURITY FOR COSTS

Security for costs in the discretion of the court

537(1) Subject to the express provisions of any statute or regulation, and notwithstanding any other rule, the court

(a) has discretion respecting security for costs; and

(b) may order security for costs against any party to a proceeding, including a party who is ordinarily resident in Saskatchewan.

(2) The court has discretion to determine the amount and form of security for costs. R. 537. Gaz. Dec. 13, 2002. New.

Where an order for security for costs may be made

538(1) In exercising its discretion under rule 537, the court may consider any relevant matter, including the following factors that may support the granting of an order for security for costs:

(a) the party is ordinarily resident outside Saskatchewan;

(b) the party is involved in another pending proceeding for essentially the same cause;

(c) the party has failed to pay costs as ordered in the same or another proceeding;

(d) the party is:

(i) a corporation, an unincorporated entity or a nominal party; and

(ii) there is good reason to believe that the party would have insufficient assets in Canada to pay the costs of other parties to the proceeding if ordered to do so; and

(e) there is good reason to believe that:

(i) the pleadings or position of the party in the proceeding are without merit, and

(ii) the party would have insufficient assets in Canada to pay the costs of other parties to the proceeding if ordered to do so.

(2) In this rule and in rule 539, **"party"** means the party against whom an order for security for costs is sought. R. 538. Gaz. Dec. 13, 2002. New.

Where an order for security for costs may be denied

539 In exercising its discretion under rule 537, the court may consider any relevant matter, including the following factors that may support the denial of an order for security for costs:

(a) the party has disclosed sufficient assets in Canada that would be available to pay the costs of other parties to the proceeding if ordered to do so;

(b) the party has demonstrated impecuniousness;

(c) there is good reason to believe that the pleadings or position of the party in the proceeding have merit; and

(d) the delay in bringing the application for security for costs has prejudiced the party. R. 539. Gaz. Dec. 13, 2002. New.

Declaration of residence

540(1) Within three days after receipt of a written demand from any other party to the proceeding, a party shall serve and file a written declaration as to where that party is ordinarily resident.

(2) The court may strike out the pleadings of a party who fails to comply with a demand under subrule (1) or may prevent such party from taking any further step in the proceeding until the demand has been complied with. R. 540. Gaz. Dec. 13, 2002. New.

Application procedure

541(1) A party may apply for an order for security for costs against another party at any time.

(2) A party applying for an order shall serve the application on all other parties to the proceeding.

(3) An application for security for costs shall be supported by an affidavit of the party applying for the order or agent of that party that:

(a) alleges the party applying for the order has a good claim or defence on the merits, as the case may be; and

(b) specifies the nature of that claim or defence. R. 541. Gaz. Dec. 13, 2002. New.

Form of order

542(1) An order for security for costs shall be in Form 542.

(2) An order for security for costs shall specify:

(a) the amount and form of the security;

(b) the time within which the security is to be given; and

(c) how and by whom the security is to be held.

(3) If the security is a bond, it shall be given to the party who has obtained the order for security for costs unless the court otherwise directs. R. 542. Gaz. Dec. 13, 2002. New.

Security may be given in stages and varied

543(1) The court may order that security for costs be given in stages as costs are incurred.

(2) On an application brought at any time, the court may increase or decrease the amount of security for costs. R. 543. Gaz. Dec. 13, 2002. New.

Effect of order: stay of proceedings, default & payment out

544(1) Unless otherwise ordered by the court, an order for security for costs stays any further steps in the proceeding by the party ordered to provide security for costs, other than an appeal of the order, until the order has been complied with.

(2) A party who complies with an order for security for costs shall immediately give notice of compliance to all other parties to the proceeding.

(3) A party who obtains an order for security for costs may apply for an order:

(a) striking out the pleadings of a party who fails to comply with the order; or

(b) where the court has ordered there should not be a stay pursuant to subrule (1), staying any further step in the proceeding until the order for security for costs has been complied with.

(4) Security for costs that has been paid into court may be paid out in accordance with the terms of a court order. R. 544. Gaz. Dec. 13, 2002. New.

DIVISION 2

AWARDING AND FIXING OF COSTS BY THE COURT

A. Discretion Generally

Discretion of court

545(1) Subject to the express provisions of any statute or regulation, and notwithstanding any other rule, the court has discretion respecting the costs of and incidental to a proceeding or a step in a proceeding, and may make any direction or order respecting costs that it considers appropriate.

(2) The court in exercising its discretion as to costs may determine:

(a) by whom costs are to be paid, which may include a successful party;

(b) to whom costs are to be paid;

(c) the amount of costs;

(d) the date by which costs are to be paid; and

(e) the fund or estate or portion thereof out of which costs are to be paid.

(3) In awarding costs the court may:

(a) fix all or part of the costs with or without reference to the Tariff;

(b) award a lump sum instead of or in addition to any assessed costs;

(c) award or refuse costs in respect of a particular issue or step in a proceeding;

(d) award assessed costs up to or from a particular step in a proceeding;

(e) award all or part of the costs to be assessed as a multiple or a proportion of any column of the Tariff;

(f) award costs to one or more parties on one scale, and to another party or other parties on the same or another scale;

(g) direct whether or not any costs are to be set off;

(h) make any other order it considers appropriate.

(4) In exercising its discretion as to costs, the court may consider:

(a) the result of the proceeding;

(b) the amounts claimed and the amounts recovered;

(c) the importance of the issues;

(d) the complexity of the proceedings;

(e) the apportionment of liability;

(f) any written offer to settle, or any written offer to contribute;

(g) the conduct of any party that tended to shorten or to unnecessarily lengthen the proceeding;

(h) a party's denial of or refusal to admit anything that should have been admitted;

(i) whether any step in the proceeding was improper, vexatious or unnecessary;

(j) whether any step in the proceeding was taken through negligence, mistake or excessive caution;

(k) whether a party commenced separate proceedings for claims that should have been made in one proceeding or whether a party unnecessarily separated his or her defence from that of another party; and

(l) any other matter it considers relevant. R. 545. Gaz. Dec. 13, 2002. New.

Time for dealing with costs

546(1) The court may make a direction or order as to costs at any stage of the proceedings.

(2) Any direction or order as to costs may be made after entry of judgment unless it is inconsistent with the express provisions of the entered judgment. R. 546. Gaz. Dec. 13, 2002. New.

Where proceeding dismissed for want of jurisdiction

547 Where a proceeding is dismissed for want of jurisdiction, or transferred to another state pursuant to *The Court Jurisdiction and Proceedings Transfer Act*, the court retains jurisdiction over the costs of that proceeding up to the time of the dismissal or transfer. R. 547. Gaz. Dec. 13, 2002. New.

Directions to assessment officer

548 Where costs are to be assessed, the court may give directions to the assessment officer in respect of any matter referred to in these rules. R. 548. Gaz. Dec. 13, 2002. New.

B. Discretion in Special Cases

Costs of a litigation guardian

549 Where the court appoints a litigation guardian of a person under disability, the court may:

(a) direct that the costs incurred in the performance of the duties of the litigation guardian are to be paid:

(i) by the parties or one or more of the parties; or

(ii) out of any fund in court in which the person under disability has an interest; and

(b) give directions for the payment or allowance of costs that the court considers just. R. 549. Gaz. Dec. 13, 2002. New.

Costs against a lawyer

550(1) Where the court considers that a lawyer for a party has caused costs to be incurred improperly or without reasonable cause, or has caused costs to be wasted through delay, neglect or some other fault, the court may do any one or more of the following:

(a) order that the lawyer indemnify his or her client for all or part of any costs that the client has been ordered to pay to another party;

(b) order that the lawyer be personally liable for all or part of any costs that his or her client has been ordered to pay to another party;

(c) make any other order it considers appropriate.

(2) An order under subrule (1) may be made by the court on its own motion or on the motion of any party to the proceeding.

(3) No order under subrule (1) shall be made against a lawyer unless the lawyer has been given an opportunity to be heard.

(4) The court may order that notice be given to the lawyer's client in a manner specified by the court of:

(a) an order against a lawyer made under subrule (1); or

(b) a hearing pursuant to subrule (3). R. 550. Gaz. Dec. 13, 2002. New.

C. Costs Provisions that Apply Unless Otherwise Ordered

Costs rules apply unless court orders otherwise

551 Any express provision in the rules of court respecting costs, including rules 552 to 554, shall apply unless the court orders otherwise in the exercise of its discretion mentioned in subrule 545(1). R. 551. Gaz. Dec. 13, 2002. New.

Costs follow the event

552(1) The costs of a proceeding shall follow the event.

(2) Notwithstanding subrule (1), trustees, personal representatives or mortgagees who have acted reasonably in instituting, carrying on or resisting any proceedings shall retain their entitlement to costs out of a particular fund or estate. R. 552. Gaz. Dec. 13, 2002. New.

Costs in interlocutory proceedings

553(1) The costs of any interlocutory motion or application:

(a) shall follow the outcome of the motion or application;

(b) shall be assessed on the same scale as the general costs of the action or proceeding; and

(c) are not payable until final determination of the action or proceeding.

(2) No *ex parte* order shall contain any directions as to costs. R. 553. Gaz. Dec. 13, 2002. New.

Costs on appeal

554(1) The costs of an appeal, and of the proceeding appealed from, shall follow the event of the appeal.

(2) The costs of an appeal that does not finally dispose of the matter shall not be assessed or payable until the final determination of the action or proceeding in the court appealed from. R. 554. Gaz. Dec. 13, 2002. New.

DIVISION 3
ASSESSMENT OF COSTS

A. In General

Definitions

555(1) In these rules, **"assessment officer"** means, subject to subrule (2), the local registrar for the judicial centre in which the proceeding was commenced or, where the proceeding has been transferred to another judicial centre, the local registrar for that judicial centre.

(2) At a judicial centre where the sheriff is also the local registrar, the assessment officer for the assessment of sheriff's costs shall be a local registrar from another judicial centre.

(3) Unless the context otherwise requires, a reference in a statute or regulation:

(a) to **"tax"**, **"taxing"**, **"taxed"** or **"taxation"**, used in connection with the costs of a proceeding, is deemed to be a reference to **"assess"**, **"assessing"**, **"assessed"** or **"assessment"**; and

(b) to **"taxing officer"** is deemed to be a reference to **"assessment officer"**. R. 555. Gaz. Dec. 13, 2002. New.

How costs are to be assessed

556(1) Where a party is entitled to the costs of all or part of a proceeding and the costs have not been fixed by the court, they shall be assessed in accordance with the rules in this Division and any directions given by the court.

(2) Costs shall be assessed by an assessment officer. R. 556. Gaz. Dec. 13, 2002. New.

B. Assessment Procedure

Time for assessment of costs

557 Unless provided otherwise by rule or an order of the court, costs may be assessed at any time after:

(a) the judgment or order entitling a party to costs has been entered or issued, or

(b) an action is dismissed with costs or a motion is refused with costs. R. 557. Gaz. Dec. 13, 2002. New.

Assessment at instance of party entitled

558(1) A party entitled to costs may obtain a Notice of Appointment for Assessment of Costs on filing with the assessment officer:

(a) a bill of costs; and

(b) an affidavit of disbursements, where required by subrule 563(3).

(2) A Notice of Appointment for Assessment of Costs shall be in Form 558.

(3) In every bill of costs:

(a) the lawyer's fees shall be entered in a separate column from the disbursements; and

(b) every column shall be totalled before the bill is filed with the assessment officer.

(4) The affidavit of disbursements shall:

(a) clearly set forth how the amount of any witness fees claimed is calculated;

(b) where a claim is made for a witness who was not called at trial, clearly state the nature of the evidence the witness was expected to give and the reason the witness was not called;

(c) where a claim is made for transportation, state the mode of transportation, by whom it was provided, and whether any other witness travelled in the same vehicle; and

(d) exhibit any receipts proving actual payment of the sums claimed.

(5) The Notice of Appointment for Assessment of Costs, the bill of costs, and any affidavit of disbursements shall be served on every party interested in the assessment:

(a) at least 14 days before the date fixed for the assessment; or

(b) at any earlier date that the assessment officer may direct.

(6) If a party has served or been served with a Notice of Appointment for Assessment of Costs and fails to attend, the assessment officer may proceed with the assessment in that party's absence upon proof of service of the documents mentioned in subrule (5) by or on that party. R. 558. Gaz. Dec. 13, 2002. New.

Assessment at instance of party liable

559(1) Where a party entitled to costs fails or refuses to file or serve a bill of costs for assessment within a reasonable time, any party liable to pay the costs, or any party whose costs depend on the determination of another party's costs, may obtain a Notice to Deliver a Bill of Costs for Assessment on filing proof of:

(a) a written demand for the assessment made to the party entitled to costs; and

(b) the failure or refusal to file or serve the bill of costs by the party entitled to costs.

(2) The Notice to Deliver a Bill of Costs for Assessment shall be in Form 559.

(3) The Notice to Deliver a Bill of Costs for Assessment shall be served on every party interested in the assessment at least 28 days before the date fixed for assessment.

(4) The party entitled to costs shall file and serve a copy of the bill of costs and any affidavit of disbursements on every party interested in the assessment at least 14 days before the date fixed for assessment.

(5) Where the party entitled to costs fails to file and serve a bill of costs for assessment as provided in subrule (3), the assessment officer may:

(a) assess the costs of that party;

(b) disallow any or all costs of that party; or

(c) defer the assessment of that party's costs.

(6) If a party has served or been served with a Notice to Deliver a Bill of Costs for Assessment and fails to attend, the assessment officer may proceed with the assessment in that party's absence upon proof of service of the notice by or on that party. R. 559. Gaz. Dec. 13, 2002. New.

Power and authority of assessment officer

560(1) On an assessment of costs, the assessment officer may:

(a) take evidence by affidavit or administer oaths and examine witnesses, as the assessment officer considers it to be appropriate;

(b) require production of books, papers and documents;

(c) require notice of the assessment to be given to all persons who may be interested in the assessment or in the fund or estate out of which costs are payable;

(d) give any directions and perform any duties that the assessment officer considers are necessary for the conduct of an assessment; and

(e) refer a matter requiring the court's direction to the court.

(2) Where parties are liable to pay costs to each other, the assessment officer may:

(a) adjust the costs by way of set-off;

(b) delay the allowance of costs a party is entitled to receive until that party has paid or tendered the costs that the party is liable to pay; or

(c) certify the costs to be paid by each party and direct payment of those costs.

(3) The assessment officer may award the costs of an assessment to any party and may fix those costs. R. 560. Gaz. Dec. 13, 2002. New.

Certificate of assessment

561(1) On the conclusion of an assessment of costs, the assessment officer shall certify the amount of costs assessed and allowed by:

(a) endorsing a certificate on the bill of costs filed; or

(b) filing a Certificate of Assessment of Costs.

(2) A Certificate of Assessment of Costs shall be in Form 561.

(3) If requested to do so by a party interested in the assessment, the assessment officer shall provide written reasons for the decision.

(4) Where a party specifically objects to items on the assessment before the assessment officer, the assessment officer shall note those objections in the certificate.

(5) On certification of the amount of costs as provided in subrule (1), the party entitled to costs shall notify all parties interested in the assessment of costs who did not appear at the assessment of the result of the assessment.

(6) Notice to a party under subrule (5) may be made by ordinary mail addressed to the party's last known address.

(7) Subject to a review under rule 567 and to the terms contained in the certificate or in the judgment or order under which the assessment was made, a certificate of costs is final and conclusive as to the amount of costs specified.

(8) Payment of costs in the amount certified by the assessment officer may be enforced in the same manner as a judgment of the court. R. 561. Gaz. Dec. 13, 2002. New.

Assessment procedure in certain cases

562(1) Where a proceeding is settled on the basis that any party is to pay or recover costs and the amount of costs is not determined by the settlement, then on the filing of a consent signed by the party agreeing to pay the costs, the costs shall be assessed on application of any party as provided in this Division.

(2) On signing a default judgment the local registrar may, without an appointment, fix the costs to which the plaintiff is entitled against the defendant in default and certify the costs by entering the amount allowed on the judgment.

(3) Where a bill of costs is consented to by a lawyer on behalf of the party liable to pay the costs, the assessment officer may, without an appointment and without further consideration, certify the costs by endorsing the bill of costs. R. 562. Gaz. Dec. 13, 2002. New.

C. Assessment of Party and Party Costs

Assessment in accordance with Tariff

563(1) Where costs are to be assessed, the assessment officer shall assess and allow:

(a) fees in accordance with the appropriate column of the applicable table in Tariff Schedule I, together with all necessary and proper disbursements;

(b) disbursements for fees paid to the court as prescribed by regulation and set out in Tariff Schedule II, VI or VII, as may be applicable;

(c) disbursements for fees paid to sheriffs as prescribed by regulation and set out in Tariff Schedule III, VI or VII, as may be applicable;

(d) disbursements for fees paid to witnesses, interpreters, and parties appearing as witnesses on examination for discovery or cross-examination on an affidavit in accordance with Tariff Schedule IV "A";

(e) disbursements for fees paid to jurors as prescribed by regulation and set out in Tariff Schedule IV "B";

(f) disbursements for fees paid to court reporters as prescribed by regulation and set out in Tariff Schedule V.

(2) No fees, disbursements or charges other than those set out in subrule (1), and no variation in the amounts set out in the tariff referred to in subrule (1)(d), shall be assessed or allowed unless the court orders otherwise:

(a) on the determination of the proceeding; or

(b) on an application to the trial judge made on notice to the other parties.

(3) No disbursements other than fees paid to the court shall be assessed or allowed unless it is established by affidavit that the disbursement was made or that the party is liable for the disbursement.

(4) Where tax is payable by a party in respect of legal services or disbursements, the assessment officer shall allow an additional amount equal to the tax payable on the legal services or disbursements as assessed. R. 563. Gaz. Dec. 13, 2002. New.

Assessment of fees in accordance with Tariff

564(1) The assessment of fees pursuant to clause 563(1)(a):

(a) shall be in the discretion of the assessment officer; and

(b) shall be assessed according to the appropriate column of the applicable table of Tariff Schedule I, depending on the amount involved.

(2) The amount involved shall be determined:

(a) as against the plaintiff, by the amount claimed; or

(b) as against the defendant, by the amount of the judgment.

(3) Where relief other than or in addition to the payment of money is given by a judgment or order, or where judgment is given for a defendant in a proceeding in which relief other than or in addition to the payment of money is sought, fees shall be assessed according to the higher of:

(a) column 3 of Tariff Schedule I "B"; or

(b) the column that would apply if the non-monetary relief had not been given or sought.

(4) Each item in the Tariff Schedule is deemed to include all necessary or reasonable services taken or had for the purpose of fully completing the step referred to in such item, and if any step has only been partially completed a proportionate part of the charge may be allowed.

(5) Where the amount involved is as set out in the third and fourth columns of Tariff Schedule I "B", the assessment officer may allow the lawyer for the party entitled to costs increased fees as may be just and reasonable, in an amount up to double that set out in the appropriate column.

(6) Where steps taken by a lawyer have expedited the proceedings, saved costs or settled the proceeding, the assessment officer in his or her discretion may make an allowance therefor.

(7) Notwithstanding subrule 563 (2), where a lawyer has performed services which are not provided for by the tariff, either expressly or by necessary implication, the assessment officer may give such allowance for that service as the assessment officer considers is fair and reasonable.

(8) Where the assessment officer has exercised his or her discretion to give an allowance pursuant to subrules (5), (6) or (7), an application to review the assessment of costs may be made pursuant to rule 567. R. 564. Gaz. Dec. 13, 2002. New.

Solicitor and client costs

565 Where the court awards costs as between solicitor and client, such costs shall be assessed by the judge awarding the costs. R. 565. Gaz. Dec. 13, 2002. New.

Factors to be considered on assessment

566(1) In assessing costs, an assessment officer is bound by any direction given by the court.

(2) Unless otherwise ordered by the court, in assessing costs the assessment officer is bound by any express provision in the rules of court respecting costs.

(3) In assessing costs, the assessment officer shall allow those fees and disbursements that the assessment officer considers were proper or reasonably necessary to conduct the proceeding.

(4) In exercising his or her discretion under this Division, the assessment officer shall consider all of the circumstances, including the factors referred to in subrule 545(4). R. 566. Gaz. Dec. 13, 2002. New.

D. Review of Assessment

Review of assessment

567(1) A person with a pecuniary interest in the result of an assessment of costs who is dissatisfied with an assessment may apply to the court for a review of the assessment of costs.

(2) An application pursuant to this rule shall be made within 14 days after the date of the assessment.

(3) A review of the assessment of costs:

(a) shall be limited to items that have been objected to before the assessment officer; and

(b) may include items in which the assessment officer exercised discretion.

(4) An application for review of an assessment of costs shall be brought by filing a Notice of Motion for review and serving it on every other party.

(5) A Notice of Motion for review shall specify any item objected to and the grounds of the objection.

(6) Unless the court otherwise orders, a review of assessment of costs shall be:

(a) limited to the items and grounds specified in the Notice of Motion; and

(b) heard on the evidence presented before the assessment officer.

(7) On a review of an assessment of costs, the court may:

(a) review any discretion exercised by the assessment officer; and

(b) grant such order, including the costs of review and assessment, that the court considers just. R. 567. Gaz. Dec. 13, 2002. New.

E. Assessment under *The Legal Profession Act, 1990*

Assessment of lawyer's bill of costs

568 On the assessment of a lawyer's bill of costs pursuant to *The Legal Profession Act, 1990*:

(a) the assessment officer in exercising his or her discretion to determine a fair and reasonable amount shall consider the factors set out in item 1 in the *Commentary* to *Chapter XI: Fees* of the *Code of Professional Conduct*; and

(b) the rules in this Division apply except where they are inconsistent with that Act. R. 568. Gaz. Dec. 13, 2002. New.

PART FORTY-SEVEN

PROCEEDINGS BY AND AGAINST NEEDY PERSONS

Definition

569 Any person resident in the province obtaining a certificate under these rules (hereinafter called the "needy person") shall be admitted to take or defend or be a party to any legal proceedings in the court as a needy person on the terms and conditions mentioned in these rules. R. 569.

Certificate

570 A certificate under these rules means a certificate issued by The Saskatchewan Legal Aid Commission certifying:

(1) that the needy person named therein is in indigent circumstances;

(2) that such person has reasonable grounds for taking or defending or being a party to proceedings;

(3) the name and address of the solicitor who has been nominated and has consented to conduct the proceedings on behalf of the needy person (hereinafter called the "conducting solicitor"); and

(4) that there are reasonable and proper grounds for believing that the applicant may recover under execution, or obtain other substantial benefit or remedy under any judgment or order which may be made in the proceedings. R. 570.

Filing certificate

571 Before taking any other step in the proceedings the conducting solicitor shall file the certificate in the office of the local registrar at the judicial centre at which the matter is proceeding or intended to proceed. R. 571.

Acceptance for filing

572 Every certificate under these rules complying on the face of it with the requirements thereof and purporting to be signed as provided therein shall be accepted by the local registrar for the purpose of filing. R. 572.

Memo of filing

573 On the filing of the certificate there shall be issued to the conducting solicitor a memorandum of such filing bearing the stamp of the office where the certificate is filed, and in all subsequent proceedings the production of the memorandum shall be sufficient evidence that a certificate in accordance with these rules has been duly filed. R. 573.

Solicitor not to accept fees

574(1) Unless the court shall otherwise order the needy person shall not be required to pay costs to any other party and, except as provided by these rules, no solicitor or counsel shall take or agree to take or seek to obtain any payment, fee, profit or reward for the conduct of the proceedings or for out-of-pocket or office expenses and any solicitor or counsel so doing shall be guilty of contempt of court.

Payment, effect of

(2) If any such payment, fee, profit or award shall be made, given or promised, the certificate may be ordered to be taken off the file in which case the needy person shall not thereafter have the benefit of the certificate, unless otherwise ordered.

Disbursements

(3) The Commission may from time to time allow such payments of money to be made by the needy person to the conducting solicitor in respect of out-of-pocket expenses (not including office expenses) as they may consider just.

Matrimonial causes

(4) The Commission may require a needy person in a matrimonial cause or in any other proceedings where in the opinion of the Commission the special circumstances so require to deposit with them, or as they shall direct, in order to cover the out-of-pocket expenses of the conducting solicitor any sum of money and if such deposit shall in relation to the proceedings be found insufficient such further sum as the Commission may direct. Every sum deposited shall be utilized by the Commission only for the payment to the conducting solicitor of any out-of-pocket expenses (not including office expenses) properly incurred in relation to the proceedings and any surplus shall be repaid to the needy person. R. 574.

Discharge of certificate

575(1) The court may at any time (and whether or not any application be made by the Law Society or by any person for that purpose) discharge the certificate and direct it to be taken off the file, and the needy person shall not thereafter have the benefit of the certificate, unless otherwise ordered.

(2) The Commission may discharge the certificate any time before it has been filed, whether or not any application be made for its discharge. R. 575.

Discontinuance or settlement

576(1) No needy person nor any solicitor conducting the proceedings for him shall discontinue, settle or compromise such proceedings without the leave of the court or of the Commission.

(2) No needy person shall discharge any solicitor or counsel without the leave of the court or the Commission.

Solicitor withdrawing

(3) No solicitor or counsel acting for a needy person shall be at liberty to discontinue his assistance unless he satisfies the court or the Commission that there is a reasonable ground for so discontinuing. R. 576.

Increased means to be reported

577(1) If and whenever the needy person (or in matrimonial causes when the wife is the needy person, she or her husband) becomes possessed of means beyond those stated in the application for a certificate, the needy person shall at once report the matter to the conducting solicitor or to the Commission.

Solicitor to report

(2) When such fact comes to the notice of the conducting solicitor, whether by means of such report or otherwise, he shall forthwith report it in writing to the Commission. R. 577.

Recovery of costs by judgment

578(1) In any case where a needy person recovers judgment:

(a) the court may order costs to be paid by the opposite party;

(b) the costs under clause (a) shall be assessed as in an ordinary action;

(c) the assessment officer shall assess and allow all customary disbursements for court fees, court reporter's fees, sheriff's fees or any other fee or charge under any statute in force in Saskatchewan that would be necessarily incurred in the conduct of the proceedings, otherwise than under this part, as if those costs had been disbursed; and

(d) in the event of recovery of the amounts referred to in clause (c) under such judgment the amounts or *pro rata* shares of the amounts shall, on the judgment being made, be paid to the persons entitled to them.

(2) In the event of a needy person recovering on a judgment against any other party or parties to the proceedings:

(a) the conducting solicitor is entitled to his or her assessed solicitor's fees and disbursements out of the moneys so recovered; and

(b) where the needy person recovers any real or personal property, the court may grant a charging order in favour of the conducting solicitor for the assessed amount.

Allowance to solicitor following settlement

(3) In the event of the recovery of money or property by the conducting solicitor on behalf of such needy person without proceedings or on the settlement of any proceedings before trial or other final disposition the Commission or the court may, on the application of the conducting solicitor, allow him out of such money or property such collection or other fees as may seem proper. R. 578. Amend. Gaz. Dec. 13, 2002.

Solicitor to sign proceedings

579 Every notice of motion, summons or petition on behalf of a needy person (except an application for the discharge of the conducting solicitor) shall be signed by the conducting solicitor, and it shall be the duty of the conducting solicitor to take care that no application be made without reasonable cause. R. 579.

Security for costs; issue of certificate following order

580 In any case where an order for security for costs has been made against a person applying for a certificate as a needy person, such certificate shall not be granted until after two days' notice to the party who has obtained the order for security for costs or his solicitor, and such party or his solicitor shall have the right to be heard on the application for such certificate. If such certificate is then granted the filing of the certificate shall supersede any previous order obtained by any other party for security for costs as against the needy person, and no order for security for costs shall thereafter issue against the needy person unless with the leave of the court. R. 580.

Appeal

581 There shall be no appeal as a needy person by anyone admitted to take, or defend, or be a party to any legal proceedings under these rules without leave of the court or of the judge before whom the matter is heard, or of the court or judge to whom the appeal is taken. R. 581.

Stay of proceedings

582 Nothing in these rules shall operate as a stay of any proceedings unless so ordered by the court. R. 582.

(The next rule is Rule 584)

PART FORTY-EIGHT

FAMILY LAW PROCEEDINGS

DIVISION I

Interpretation, Application and Transitional

Interpretation

584 In this Part:

"corollary relief proceeding" means a corollary relief proceeding as defined in section 2 of the *Divorce Act* (Canada);

"divorce proceeding" means a divorce proceeding as defined in section 2 of the *Divorce Act* (Canada);

"document commencing a family law proceeding" means:

(a) a Petition;

(b) an Application for Variation; or

(c) a Notice of Motion commencing a corollary relief proceeding;

"family law proceeding" means a family law proceeding as defined in section 2 of *The Queen's Bench Act, 1998*;

"financial statement" means a Financial Statement in the form prescribed in rule 609;

"guidelines" means the *Federal Child Support Guidelines* established pursuant to section 26.1 of the *Divorce Act* (Canada) and adopted by *The Family Maintenance Act, 1997;*

"motion" includes application;

"property claim" means a claim pursuant or with respect to:

(a) *The Family Property Act*; or

(b) the division of property between spouses, former spouses or persons who have lived together as spouses;

"property statement" means a Property Statement in the form prescribed in rule 609;

"support" includes maintenance;

"trial" includes a hearing;

"uncontested family law proceeding" means a family law proceeding in which:

(a) the respondent has failed to serve and file an Answer;

(b) the Answer or Answer and Counter-petition has been withdrawn or struck out; or

(c) each party to the proceeding has endorsed his or her consent on the draft judgment or order, either:

(i) personally, with an affidavit of execution; or

(ii) by his or her lawyer;

"vary" or **"variation"** includes rescind and suspend, or rescission and suspension. Gaz. Nov. 3/2000. New; Amend. Gaz. Dec. 14, 2001.

Application and transitional

585(1) This Part applies to family law proceedings.

(2) Unless provided otherwise by statute or by the rules in this Part, the general procedure and practice of the court shall be adopted and applied, with necessary modification, in a family law proceeding.

(3) The court, having due regard for the proper administration of justice, shall conduct all family law proceedings as informally as the circumstances of the case permit.

(4) A party may vary a form prescribed by this Part as the circumstances of the family law proceeding may require.

(5) This Part applies to family law proceedings commenced before, on or after the day when this Part takes effect.

(6) If a family law proceeding was started before this Part takes effect, the court may, on motion, order that the proceeding or a step in the proceeding be carried on under the rules that applied before this Part took effect. Gaz. Nov. 3/2000. New.

DIVISION II
General Matters

Private hearings

586 Any family law proceeding may be heard in private at the discretion of the court. Gaz. Nov. 3/2000. New.

Access to court records

587(1) No person other than a party, a party's lawyer or a person authorized by a party or by a party's lawyer may have access to:

(a) the court record, including documents, exhibits and transcripts, respecting a family law proceeding; or

(b) a support or separation agreement filed in the court.

(2) Prior to granting a person authorized by a party or by a party's lawyer access to the court record, the local registrar may require that person to sign an undertaking to keep the information obtained from the court record in confidence.

(3) Any other person seeking access to court records or agreements shall make an *ex parte* application to the court, and the court may grant access to the court records or agreements, subject to any legislative provisions allowing or restricting access.

(4) Before granting access to court records or agreements, the court may require that:

(a) the parties to the family law proceeding be given notice of the application; and

(b) a hearing be held. Gaz. Nov. 3/2000. New.

Confidentiality

588(1) Any person who has access to documents obtained pursuant to the financial disclosure provisions of this Part or to evidence obtained under discovery or to the court record:

(a) shall keep the documents, evidence and any information obtained from them or from the court record in confidence; and

(b) may only use the documents, evidence and information for the purposes of the family law proceeding in which the document or evidence was obtained or to which the court record relates.

(2) Subrule (1) does not apply where:

(a) the person who disclosed the document or gave the evidence consents;

(b) the document is referred to or the evidence is given in open court;

(c) the document or evidence is used to impeach the testimony of a witness in another proceeding; or

(d) the document or evidence is used in a later proceeding between the same parties or their successors, if the proceeding in which the document or evidence was obtained was withdrawn or dismissed.

(3) Notwithstanding subrule (1), the court may, on motion, give a person permission to disclose documents or evidence, or information obtained from them or from the court record, if the interests of justice outweigh any harm that would result:

(a) to the person who provided the documents or evidence; or

(b) to the parties to the family law proceeding.

(4) Use of documents, evidence, or information obtained from them or from the court record, in a manner contrary to this rule is contempt of court, unless an order has been obtained pursuant to subrule (3). Gaz. Nov. 3/2000. New.

Commencing a family law proceeding – Petition

589 (1) Unless provided otherwise by statute or by the rules in this Part, every proceeding under this Part shall be commenced by the issue of a Petition in Form 589.

(2) The Petition shall be signed and sealed by the local registrar and shall thereupon be deemed to be issued and shall bear the date on which it was issued.

(3) The original Petition shall be filed with the local registrar at the time of issuing.

(4) Where the petitioner is represented by a lawyer, there shall be endorsed on a Petition commencing:

(a) a divorce proceeding, a statement signed by the lawyer certifying that he or she has complied with section 9 of the *Divorce Act* (Canada);

(b) a proceeding pursuant to *The Children's Law Act, 1997*, a statement signed by the lawyer certifying that he or she has complied with subsection 11(1) of that Act; and

(c) a proceeding pursuant to *The Family Maintenance Act, 1997*, a statement signed by the lawyer certifying that he or she has complied with subsection 16(1) of that Act. Gaz. Nov. 3/2000. New.

Proof of marriage

590(1) Where a family law proceeding is for divorce, judicial separation or nullity of a marriage, the party shall file with his or her Petition a certificate of the marriage or of registration of the marriage.

(2) Notwithstanding subrule (1), where relief is urgently required, on *ex parte* application the court may permit a Petition to be issued without filing a certificate of the marriage or of registration of the marriage if the petitioner files an undertaking to file that certificate within a time specified by the court.

(3) Where it is impossible or impractical to obtain a certificate of the marriage or of the registration of the marriage, the petitioner may apply *ex parte* for an order dispensing with production of that certificate. Gaz. Nov. 3/2000. New.

Joinder, raises all issues

591(1) A claim for relief under this Part, including a claim under the *Divorce Act* (Canada), may be joined with a claim for any other relief that may be sought under this Part whether as additional relief or in the alternative.

(2) The court, on motion, may direct that a claim which, on its own, would not be the subject-matter of a family law proceeding may be continued in a family law proceeding if the claim is related to or connected with any relief sought in that proceeding.

(3) Unless the court determines otherwise, a Petition has the effect of raising all issues concerning or in any way relating to the matters for which relief is specifically sought notwithstanding that an issue is not specifically referred to in the Petition, and the court may make any judgment or order that the justice of the case may require. Gaz. Nov. 3/2000. New.

Parties

592(1) The party commencing the family law proceeding shall be called the petitioner and the opposite party shall be called the respondent.

(2) The description of the parties in the style of cause:

(a) shall remain the same in any subsequent pleadings, on a motion within the family law proceeding or a motion to vary an order; and

(b) shall not be amended or added to because of any other pleadings or motions that may be filed.

(3) A person alleged to have committed adultery with a party shall not be named in the Petition or any other document, unless the court orders otherwise on an application which may be made *ex parte*.

(4) The court at any time may:

(a) order that a person who may have an interest in the matters in issue be served with notice of the family law proceedings with or without adding that person as a party; and

(b) give directions respecting the manner of service on that person and the conduct of the family law proceeding.

(5) A minor may commence, continue or defend a family law proceeding as if of full age.
Gaz. Nov. 3/2000. New.

Venue, transfer of family law proceedings

593(1) A party may commence a family law proceeding at any judicial centre.

(2) Notwithstanding subrule (1), a party shall commence a corollary relief proceeding or a variation proceeding:

(a) at the judicial centre where the divorce or the order sought to be varied was granted; or

(b) at any judicial centre:

(i) with leave of the court; or

(ii) where the divorce or the order sought to be varied was not granted in Saskatchewan.

(3) The court may direct that a family law proceeding be transferred to any other judicial centre:

(a) with the consent of the parties;

(b) by reason of the balance of convenience, including the convenience of witnesses; or

(c) for the purpose of being heard with another proceeding before the court.

(4) Except by consent of the parties or leave of the court, no motion to transfer a family law proceeding shall be brought before the Answer has been served and filed.

(5) Where an order directing the transfer of a family law proceeding is consented to by the parties, the local registrar may:

(a) issue the order without referring it to a judge; or

(b) refer the order to a judge. Gaz. Nov. 3/2000. New.

Service

594(1) Service of a document commencing a family law proceeding shall be effected:

(a) by personal service; or

(b) where the document is not a petition for divorce, by leaving a copy with the lawyer of the person required to be served, but only if the lawyer signs an Acknowledgment of Service in Form 3.

(2) Personal service of a petition for divorce shall be effected by a person other than the petitioner.

(3) Any document other than a document commencing a family law proceeding may be served by ordinary mail.

(4) Where service has been effected by ordinary mail:

(a) the document is deemed to have been served on the seventh day following the date of mailing;

(b) the court may direct further or other service; and

(c) unless ordered otherwise, no relief will be granted unless the court is satisfied that the person required to be served received the document.

(5) For the purposes of clause (4)(c), it is not necessary to satisfy the court that the person received the document where the document has been mailed to an address for service provided by that person.

(6) Where a minor is a party to a family law proceeding, the minor may be served as if of full age.

(7) Repealed. Gaz. Dec. 13, 2002. Gaz. Nov. 3/2000. New; Amend. Gaz. Dec. 13, 2002.

Proof of service

595(1) Proof of service may be made:

(a) in Form 595A where personal service is effected; or

(b) in Form 595B where service is effected by ordinary mail.

(2) Every affidavit of service of a Petition shall, so far as possible, state the postal address of the person served.

(3) Where the person effecting service is unable of his or her own knowledge to state a postal address of the person served, a statement in the affidavit of service as to the belief of the person effecting service respecting the postal address and the grounds of that belief may be admitted.

(4) An Acknowledgment of Service in Form 3, signed by the person to be served and returned to the party effecting service, may be filed as proof of service. Gaz. Nov. 3/2000. New; Amend. Gaz. Dec. 13, 2002.

Time for service

596 A Petition shall be served:

(a) within six months of the date of its issue; or

(b) within any further time that the court may allow on an *ex parte* application made before or after the expiration of the time for service. Gaz. Nov. 3/2000. New.

Answer

597(1) Unless ordered otherwise, a respondent who wishes to oppose a claim made in the Petition shall serve and file an Answer in Form 597A:

(a) within 30 days after service of the Petition in Canada or in the United States of America; or

(b) within 60 days after service of the Petition outside Canada or the United States of America.

(2) Notwithstanding subrule (1), an Answer may be served and filed at any time before the family law proceeding is noted for default.

(3) A respondent who intends to oppose the family law proceeding may serve and file a Notice of Intent to Answer in Form 597B within the time prescribed for service of the Answer.

(4) On serving and filing a Notice of Intent to Answer, the respondent is entitled to an additional 10 days within which to serve and file an Answer. Gaz. Nov. 3/2000. New.

Counter-petition

598(1) A respondent who claims any relief against the petitioner, other than dismissal of the proceeding, with or without costs, shall claim that relief by serving and filing a counter-petition.

(2) An answer and a counter-petition shall be in one document in Form 598 entitled Answer and Counter-petition.

(3) A respondent may commence a counter-petition by serving an Answer and Counter-petition on the petitioner and filing it in the court within the time prescribed for service of an Answer.

(4) Except as modified in this rule, the rules of this Part relating to a petition apply to a counter-petition. Gaz. Nov. 3/2000. New.

Demand for Notice

599(1) A respondent who does not oppose the claims made in the Petition may serve and file a Demand for Notice in Form 599.

(2) The petitioner may proceed against a respondent who has served and filed a Demand for Notice as if that respondent had failed to serve and file an Answer, but shall serve on that respondent notice of all subsequent pleadings and proceedings. Gaz. Nov. 3/2000. New.

Reply

600 Where allegations in the Answer require further pleading, the petitioner shall serve and file a Reply in Form 600 within eight days of service of the Answer. Gaz. Nov. 3/2000. New.

Noting of default

601(1) Where a respondent fails to serve and file an Answer within the prescribed time, the petitioner may, on filing proof of service of the Petition, require the local registrar to note the default of that respondent.

(2) After default has been noted, the respondent shall not serve and file an Answer without:

(a) the consent of the petitioner; or

(b) leave of the court. Gaz. Nov. 3/2000. New.

Motions

602(1) For the purposes of this Part, the notice of a motion:

(a) claiming substantive relief or interim relief shall be in Form 602 entitled Notice of Motion (Family Law Proceeding);

(b) claiming variation of relief shall be in Form 632 entitled Application for Variation; and

(c) made for purely procedural matters shall be in Form 47 entitled Notice of Motion.

(2) Where a motion claiming substantive relief, interim relief, or variation of relief is made on notice, the party bringing the motion shall:

(a) serve with the notice of the motion a copy of each affidavit on which the party intends to rely at the hearing; and

(b) file the notice of the motion and supporting affidavits with proof of service 14 days before the date set for hearing the motion.

(3) Notwithstanding subrule (2), where:

(a) a motion claims support or variation of spousal support, there shall be at least 37 days between the date of service of the document commencing the family law proceeding and the date set for hearing the motion; or

(b) a motion claims variation of child support, there shall be at least 37 days between the date set for hearing the motion and:

(i) the date that written notice was given pursuant to subsection 25(1) of the guidelines; or

(ii) the date of service of the Application for Variation.

(4) In motions made for purely procedural matters:

(a) there shall be at least three days between the service of the notice of motion and the date set for hearing the motion; and

(b) the provisions of this rule regarding affidavits do not apply.

(5) If all parties consent to an earlier date for hearing the motion, the motion may be heard on the earlier date.

(6) An *ex parte* application for leave to abridge the time for service of a motion shall be brought before service of the notice of the motion, and any order that is obtained shall be served with the notice of the motion.

(7) A party who wishes to oppose a claim made in the motion shall:

(a) serve a copy of each affidavit on which that party intends to rely at the hearing on every other party to the motion; and

(b) file the affidavits with proof of service at least seven days before the date set for hearing the motion.

(8) The party bringing the motion may then serve an affidavit replying only to any new matters raised by the opposite party, and file the affidavit with proof of service at least two clear days before the date set for hearing the motion.

(9) No additional affidavits may be relied on without leave of the court.

(10) An affidavit filed in contravention of this rule may be struck and costs awarded against the party filing it.

(11) Where any new matters are raised by the party bringing the motion in the affidavit in reply without the leave of the court:

(a) those matters may be disregarded; and

(b) costs may be awarded against the party filing the affidavit.

(12) Where there is or may be a dispute as to the facts on the hearing of a motion, a judge may, before or on the hearing:

(a) order that the motion be heard on oral evidence, either alone or with any other form of evidence; and

(b) give directions relating to pre-hearing procedure and the conduct of the proceeding. Gaz. Nov. 3/2000. New.

Affidavit evidence

603(1) An affidavit shall be confined to the statement of facts within the personal knowledge of the person signing the affidavit, except where this rule provides otherwise.

(2) An affidavit shall not contain argument or speculation.

(3) An affidavit may, in special circumstances, contain information that the person learned from someone else if:

(a) the motion on which the affidavit will be used is for an interim order, or for a matter which will not determine the final outcome of the family law proceeding; and

(b) the source of the information is identified by name, the affidavit states that the person signing it believes the information is true, and the circumstances that justify the use of information learned from someone else are stated.

(4) Where an affidavit does not comply with this rule, the court may:

(a) strike out all or part of that affidavit; and

(b) award costs against the party filing the affidavit or that party's lawyer.

(5) Where an affidavit contains material that is irrelevant or that may delay the trial or make it difficult to have a fair trial, or that is unnecessary or an abuse of the court process, the court may, on motion by a party or on its own motion:

(a) strike out all or part of that affidavit; and

(b) award double costs against the party filing the affidavit.

(6) Where an affidavit or part of an affidavit has been struck under this rule, an opposing party who has filed an affidavit in response to the offending material may be awarded double costs of filing that affidavit. R. 603. Gaz. Nov. 3/2000. New; Amend. Gaz. Dec. 13, 2002.

Setting down for trial, pre-trial conference required

604 Where an Answer has been served and filed, the local registrar shall not assign a date for trial of a family law proceeding until a pre-trial conference has been held, and the provisions of Part Seventeen apply to the setting down for trial of a family law proceeding. Gaz. Nov. 3/2000. New.

Evidence

605(1) The court may try an issue on oral or affidavit evidence or otherwise as the judge conducting the trial may direct.

(2) The court may admit a document purporting to be proof of marriage in a foreign jurisdiction as *prima facie* proof of the marriage.

(3) No party to a family law proceeding shall refuse to answer a question tending to show that he or she has committed adultery where the adultery has been pleaded and is relevant to the proceeding.

(4) Each Financial Statement, Property Statement and response to a Notice to Answer Written Questions may be used by the other party as though it were an examination for discovery, and all or any part of the statement or response may be admitted in evidence, saving all just exceptions. Gaz. Nov. 3/2000. New.

Uncontested family law proceeding – General

606(1) Where a Demand for Notice has been served in an uncontested family law proceeding, the petitioner shall serve and file a Notice of Application for Judgment in Form 606A before applying for judgment.

(2) In an uncontested family law proceeding, any information or evidence required to enable the court to perform its duties, and the evidence required to prove the claim, shall be presented by affidavit, unless the court orders otherwise.

(3) The court may order that the evidence and information in an uncontested family law proceeding be presented orally at a hearing.

(4) In an uncontested family law proceeding, where the evidence and information are to be presented by affidavit, the judge may:

(a) grant a judgment without an appearance by any party or the lawyer for any party; or

(b) direct that any party or the lawyer for any party appear or that oral evidence be presented at a hearing.

(5) Where a petitioner applies for judgment in an uncontested family law proceeding, the petitioner shall file and the local registrar shall place before the court:

(a) an Application for Judgment in Form 606B requesting that the proceeding be determined on the basis of affidavit evidence;

(b) evidence to satisfy the court that the respondent actually received a copy of the Petition or evidence that the Petition was served in accordance with an order of the court;

(c) an Affidavit of Petitioner in Form 606C setting forth:

(i) particulars of the grounds on which the claim is based, and evidence to support the claim;

(ii) confirmation that all the facts and information contained in the Petition continue to remain true and accurate, with corrections or subsequent changes noted; and

(iii) where costs are claimed, particulars of the amount and basis for the claim; and

(d) any other affidavits or supporting materials that may be required in the family law proceeding.

(6) The costs of an application for judgment in an uncontested family law proceeding shall be assessed as a complex *ex parte* application. Gaz. Nov. 3/2000. New; Amend. Gaz. Dec. 13, 2002.

Judgments and orders

607(1) Subject to rule 626, where a petitioner claims relief under more than one statute, one judgment shall issue with respect to all relief.

(2) Where relief is granted on a claim made under a Saskatchewan statute, that statute shall be referred to in the judgment.

(3) An application for a judgment or order to be made by consent shall be accompanied by:

(a) the consent of the lawyer of each party who is represented by a lawyer; and

(b) the written consent of each party who is acting in person, or of a respondent who has not appeared, with an affidavit of execution of that consent. Gaz. Nov. 3/2000. New.

Costs

608(1) Costs are in the discretion of the court, and except as modified by this rule, the provisions of Part Forty-Six apply to the costs of a family law proceeding.

(2) There is a presumption that a successful party is entitled to the costs of a family law proceeding or a step in a family law proceeding.

(3) Notwithstanding subrule (2), a successful party who has behaved unreasonably or has acted in bad faith during a family law proceeding:

(a) may be deprived of all or part of the party's own costs; or

(b) may be ordered to pay all or part of the unsuccessful party's costs.

(4) In deciding whether a party has behaved reasonably or unreasonably or in bad faith, the court may examine:

(a) the party's behaviour in relation to the nature, importance and urgency of the issues from the time they arose;

(b) any conduct of the party which tended to lengthen unnecessarily the duration of the family law proceeding;

(c) whether any step in the family law proceeding was improper, vexatious or unnecessary;

(d) the party's denial or refusal to admit anything that should have been admitted;

(e) whether the party made an offer to settle;

(f) the reasonableness of any offer to settle the party made; and

(g) any offer to settle the party withdrew or failed to accept.

(5) If success in a family law proceeding or a step in a family law proceeding is divided, the court may apportion costs as appropriate.

(6) The court may order costs against a party if the party:

(a) does not appear at a step in the family law proceeding;

(b) appears but is not properly prepared to deal with the issues at that step; or

(c) appears but has failed to make the disclosure required before that step.

(7) After each step in the family law proceeding, the judge who dealt with that step may, in a summary manner:

(a) decide, who, if anyone, is entitled to costs;

(b) set the amount of costs; and

(c) specify a date by which payment shall be made.

(8) Offers to settle referred to in this rule do not include offers made during a pre-trial conference but do include:

(a) offers made before the commencement of a family law proceeding; and

(b) offers made pursuant to the provisions of Part Fourteen A of these rules. Gaz. Nov. 3/2000. New.

DIVISION III
Financial Disclosure

Certain forms prescribed

609 For the purposes of this Part:

(a) a Financial Statement shall be in Form 609A;

(b) a Property Statement shall be in Form 609B; and

(c) a Notice to File Income Information shall be in Form 640B. Gaz. Nov. 3/2000. New.

When statements required

610(1) If a Petition contains:

(a) a claim for support, the petitioner shall serve and file a Financial Statement;

(b) a property claim, the petitioner shall serve and file a Property Statement.

(2) For the purposes of subrule (1), the petitioner shall serve and file the required statement:

(a) with the Petition; or

(b) within 10 days of issue of the Petition and prior to bringing any motion for interim relief.

(3) If a counter-petition or notice of a motion contains:

(a) a claim for support, or for variation of support, the party making the claim shall serve and file a Financial Statement with the Answer and Counter-petition or the notice of the motion;

(b) a property claim, the party making the claim shall serve and file a Property Statement with the Answer and Counter-petition or the notice of the motion.

(4) Where relief is urgently required, the court on *ex parte* application may permit a motion for interim relief to be brought before a Financial Statement or Property Statement is filed if the court receives from the party bringing the motion for interim relief an undertaking to serve and file the required statement within a time specified by the court.

(5) The party against whom the claim is made shall serve and file:

(a) a Financial Statement, where the claim is for support, or for variation of support;

(b) a Property Statement, where there is a property claim.

(6) The statements mentioned in subrule (5) shall be served and filed:

(a) within the time for serving and filing an Answer, Reply or affidavit in response to the motion; and

(b) whether or not the party against whom the claim is made is serving an Answer, Reply or affidavit in response to the motion. Gaz. Nov. 3/2000. New.

When statements not required

611(1) Parties to a claim for spousal or parental support, or to a property claim, do not need to serve and file financial statements or property statements if:

(a) the parties have agreed on the relief to be granted; and

(b) the parties have filed a Waiver of Financial and Property Statements in Form 611A.

(2) Parties to a consent motion for child support or for variation of child support do not need to serve and file financial statements if the parties have filed with the court:

(a) an Agreement as to Child Support in Form 611B:

(i) endorsed by each party either by his or her lawyer, or personally with an affidavit of execution;

(ii) agreeing on the amount to be paid for child support; and

(iii) agreeing on the annual income of each party who would be required to provide income information under the guidelines; and

(b) a copy of the most recent personal income tax return filed by the payor (and by the payee, if shared or split custody), along with a copy of the most recent income tax assessment or re-assessment, or an affidavit explaining why the documents are not available and providing evidence to satisfy the court that the amount of income of the payor and child support agreed to by the parties is reasonable; and

(c) where special or extraordinary expenses are to be shared or where the amount agreed to differs from the table amount set out in the Federal Child Support Guidelines, a copy of the most recent personal income tax return filed by the recipient along with a copy of the most recent income tax assessment or re-assessment, or an affidavit explaining why the documents are not available and providing evidence to satisfy the court of the amount of income of the recipient.

(3) Parties to a divorce proceeding where there are children, but no claim is made for child support, shall produce at a trial or shall exhibit to an affidavit in support of a motion:

(a) all income information of the parties required by the guidelines; or

(b) an Agreement as to Child Support in Form 611B and the following documents:

(i) a copy of the most recent personal income tax return filed by the payor (and by the payee, if shared or split custody), along with a copy of the most recent income tax assessment or re-assessment, or an affidavit explaining why the documents are not available and providing evidence to satisfy the court that the amount of income of the payor and child support agreed to by the parties is reasonable; and

(ii) where special or extraordinary expenses are to be shared or where the amount agreed to differs from the table amount set out in the Federal Child Support Guidelines, a copy of the most recent personal income tax return filed by the recipient along with a copy of the most recent income tax assessment or re-assessment, or an affidavit explaining why the documents are not available and providing evidence to satisfy the court of the amount of income of the recipient

(4) Where the only financial claim by a party is for child support in the table amount under the guidelines, that party is not required to serve and file a Financial Statement with the document making the claim. Gaz. Nov. 3/2000. New; Gaz. Jan. 11/2008. Amend.

Child support – income information

612 The provisions of rule 640, including the requirements for disclosure on income information, apply to a claim for child support or variation of child support. Gaz. Nov. 3/2000. New.

Financial statements in custody proceedings

613(1) Parties to a claim for custody of or access to a child, where no claim is made for support, do not need to serve and file financial statements.

(2) Notwithstanding subrule (1), the court may:

(a) order that the parties serve and file financial statements within a time specified by the court; and

(b) give directions for further financial disclosure that may be appropriate. Gaz. Nov. 3/2000. New.

Joint petition or motion

614 Parties to a Petition or motion brought jointly by the spouses or former spouses under the *Divorce Act* (Canada) shall file the following documents with the Petition or motion as if the family law proceeding was not brought jointly:

(a) a Financial Statement of each co-petitioner or co-applicant, together with the income information required by the guidelines;

(b) an Agreement as to Child Support in Form 611B, and the documents referred to in that form; or

(c) where there are no children for whom support might be ordered, a Waiver of Financial and Property Statements in Form 611A. Gaz. Nov. 3/2000. New.

Documents that require filing of statements

615 Unless ordered otherwise, the local registrar shall not accept an Answer, Answer and Counter-petition, Reply, notice of a motion or affidavit in response to a motion for filing without a Financial Statement or Property Statement where these rules require the document to be filed with a Financial Statement or Property Statement. Gaz. Nov. 3/2000. New.

Notice to Disclose

616(1) In a family law proceeding where financial statements or property statements are required under this Division, a party may once without leave, and at any other time with leave of the court or written consent of the opposite party, serve and file a Notice to Disclose in Form 616.

(2) On being served with a Notice to Disclose pursuant to subrule (1), the opposite party shall serve and file the information requested within 30 days after service of that notice.

(3) Where the opposite party objects to disclosing any of the information requested in a Notice to Disclose, that party shall:

(a) make the objection in writing, setting out the reason for the objection; and

(b) serve the objection, together with the information which that party does not object to disclosing, within the time for service set out in subrule (2). Gaz. Nov. 3/2000. New.

Notice to Reply to Written Questions

617(1) In a family law proceeding where financial or property statements are required under this Division, a party may once without leave, and at any other time with leave of the court or written consent of the opposite party, serve and file a Notice to Reply to Written Questions in Form 617, setting out a maximum of 15 questions relating to financial or property information.

(2) On being served with a Notice to Reply to Written Questions pursuant to subrule (1), the opposite party shall answer the questions in the form of an affidavit served and filed within 30 days after service of that notice.

(3) Where the opposite party objects to answering a question asked in a Notice to Reply to Written Questions, that party shall:

(a) make the objection in writing, setting out the reason for the objection; and

(b) serve the objection, together with the affidavit answering those questions which that party does not object to answering, within the time for service set out in subrule (2). Gaz. Nov. 3/2000. New.

Application for directions

618(1) Where the response to a Notice to Disclose or a Notice to Reply to Written Questions is not satisfactory, the party seeking disclosure may apply to the court for an order directing further or better disclosure.

(2) Where an objection has been made pursuant to rules 616 or 617, either party may apply to the court to decide the validity of that objection. Gaz. Nov. 3/2000. New.

Order where failure to disclose

619(1) If a party has not served and filed a Financial Statement or a Property Statement as required by this Division, or a response to a Notice to File Income Information, a Notice to Disclose, or a Notice to Reply to Written Questions served on him or her, on motion the court may make an order:

(a) where child support is in issue, drawing an adverse inference against that party and imputing income to that party in the amount that the court considers appropriate;

(b) directing payment of support in the amount that the court considers appropriate;

(c) directing that the party serve and file within a specified time:

(i) the Financial Statement or Property Statement;

(ii) the income information requested in a Notice to File Income Information;

(iii) the financial or property information requested in a Notice to Disclose;

(iv) the answers requested in a Notice to Reply to Written Questions;

(d) granting any other remedy requested;

(e) awarding costs, including costs up to an amount that fully compensates the other party for all costs incurred in the proceedings.

(2) Where a party seeks an immediate order if the opposite party does not respond to a Notice to File Income Information, a Notice to Disclose or a Notice to Reply to Written Questions, that document shall include a notice of motion for an order pursuant to subrule (1). Gaz. Nov. 3/2000. New.

Correcting and updating

620(1) If, during the course of a family law proceeding, a party discovers that information in the party's Financial Statement or Property Statement or in a response the party gave to a Notice to File Income Information, a Notice to Disclose or a Notice to Reply to Written Questions was incorrect or incomplete when made, or that there has been a material change in the information provided, the party shall immediately serve on every other party to the claim and file:

(a) the correct information or a new statement containing the correct information; and

(b) any documents substantiating the information.

(2) Each party shall update the information in any Financial Statement or Property Statement that is more than 60 days old by serving and filing:

(a) a new Financial Statement or Property Statement; or

(b) an affidavit stating that the information in the last statement has not changed and is still true.

(3) The new Financial Statement or Property Statement or the affidavit mentioned in subrule (2) shall be filed:

(a) at least seven days before a hearing of a motion or before a trial; or

(b) at least 10 days before a pre-trial conference. Gaz. Nov. 3/2000. New.

Disclosure by non-parties

621(1) Where the court makes a determination of undue hardship under section 10 of the guidelines, the court may order any of the following persons residing with a party to serve and file a Financial Statement with Part 1 of that statement completed:

(a) a person who has a legal duty to support the party or whom the party has a legal duty to support;

(b) a person who shares living expenses with the party or from whom the party otherwise receives an economic benefit as a result of living with that person; or

(c) a child whom the party or the person described in clause (a) or (b) has a legal duty to support.

(2) For the purposes of subrule (1), the income tax information attached to the Financial Statement need only be for the most recent taxation year.

(3) Where a party has not made satisfactory disclosure after service of an order to serve and file a Financial Statement or Property Statement, after service of an order to respond to a Notice to File Income Information, a Notice to Disclose or a Notice to Reply to Written Questions or as may have been further directed by the court, the court may:

(a) order a person other than a party, including a corporation or government institution, to provide information in that person's custody or control that may be relevant to the issues before the court; and

(b) give any directions that may be appropriate.

(4) A party seeking an order under subrule (1) or (3) shall satisfy the court that:

(a) the party seeking the order has been unable to obtain the information by more informal methods;

(b) it would be unfair to require that party to proceed to trial without the information; and

(c) the disclosure requested:

(i) will not unduly delay the progress of the family law proceeding;

(ii) will not entail unreasonable expense for any person;

(iii) will not result in unfairness to the person from whom disclosure is sought; or

(iv) is not otherwise prohibited by law.

(5) A person served with an order granted under subrule (1) or (3) shall, within 30 days after service:

(a) provide a written statement to the requesting party detailing the information requested; or

(b) bring a motion for exemption from providing any or all of the requested information.

(6) An order granted under subrule (1) or (3) shall contain a notice to the person ordered to provide the information, in the following form:

"Take notice that you must, within 30 days after service of this order on you:

(a) provide a written statement to the requesting party detailing the information requested; or

(b) bring a motion for exemption from providing any or all of the requested information.

If you fail to do so within the time given, the party seeking disclosure may apply on notice to the court for an order to examine you for discovery, or for any other appropriate order requested.**"**

(7) The costs of providing the information requested and the costs of a motion under this rule are in the discretion of the court, and the court may order that the costs be paid in favour of or against:

(a) either of the parties to the family law proceeding; or

(b) the person ordered to provide information. Gaz. Nov. 3/2000. New.

Failure to obey order respecting disclosure

622 If a party does not obey an order made pursuant to this Division, the court may:

(a) dismiss that party's family law proceeding;

(b) strike out any document filed by that party;

(c) make a contempt order against that party;

(d) order that any information that should have appeared on a financial statement or property statement may not be used by that party at the motion or trial;

(e) make any other appropriate order, including those orders that may be made under rule 619. Gaz. Nov. 3/2000. New.

DIVISION IV
Proceedings under the *Divorce Act*

Written notification from central registry required

623 The court shall not grant a judgment for divorce:

(a) until a written notification issued from the central registry of divorce proceedings pursuant to the *Central Registry of Divorce Proceedings Regulations* under the *Divorce Act* (Canada) has been filed indicating that no other divorce proceedings are pending; or

(b) unless the court is satisfied that there is no prior pending divorce proceeding. Gaz. Nov. 3/2000. New.

Uncontested family law proceeding – divorce

624(1) Where a petitioner applies for judgment in an uncontested divorce proceeding, in addition to the material required to be filed under subrule 606(5), the petitioner shall also file:

(a) the Affidavit of Petitioner in Form 606C, which shall set forth, in addition to the contents required under clause 606(5)(c):

(i) if no certificate of the marriage or of registration of the marriage has been filed, sufficient particulars to prove the marriage;

(ii) evidence to satisfy the court that there is no possibility of reconciliation of the spouses;

(iii) evidence to satisfy the court that there has been no collusion;

(iv) the information about arrangements for the support of any children of the marriage required by the *Divorce Act* (Canada);

(v) the income and financial information required by the rules in this Part;

(vi) where a divorce is sought on the basis of separation, evidence that the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding;

(vii) where a divorce is sought on the basis of adultery or cruelty, evidence that there has been no condonation or connivance on the part of the petitioner with respect to the act or conduct complained of;

(viii) where a divorce is sought on the basis of cruelty, evidence that the conduct of the respondent spouse has rendered continued cohabitation intolerable;

(ix) where a spousal support order is sought, evidence of the condition, means, needs and other circumstances of each spouse;

(x) where a custody or access order is sought, evidence of the condition, means, needs and other circumstances of the child;

(xi) where the Petition is for custody, evidence of the willingness of the person seeking custody to facilitate contact with each parent;

(xii) the existence of a written agreement between the spouses, with a copy of the agreement exhibited where it is relevant to the relief claimed;

(xiii) the existence of a previous court order between the spouses, with a copy of the order exhibited;

(xiv) where no address for service of the respondent has been provided by the respondent or given in the affidavit of service, evidence to satisfy the court of the present address of the respondent or evidence to satisfy the court that service of the judgment on the respondent should be dispensed with; and

(xv) any other information necessary for the court to grant the divorce;

(b) where a divorce is sought on the basis of adultery:

(i) an Affidavit of Respondent, admitting adultery, in Form 624, with sufficient particulars to prove the adultery; or

(ii) any other evidence that may satisfy the court that the respondent has committed adultery;

(c) any other supporting materials and affidavits that may be necessary or desirable;

(d) a draft Judgment in Form 626;

(e) where child support is claimed, a draft child support order;

(f) a draft Certificate of Divorce in Form 627 completed to the extent possible; and

(g) four envelopes, approximately four inches by nine inches:

(i) two of which are addressed to the respondent at the address given in the Affidavit of Service of the Petition, or any other address that may satisfy the court that a copy of the judgment will reach the respondent, unless ordered otherwise; and

(ii) two of which are addressed to the petitioner at the address for service provided by the petitioner.

(2) Where a petitioner does not apply for judgment in an uncontested divorce proceeding based on separation, the respondent may apply by Notice of Application for Judgment in Form 606A, and, if the respondent does so, the respondent shall file with that notice:

(a) an Application for Judgment in Form 606B requesting that the action be determined on the basis of affidavit evidence;

(b) an affidavit of the respondent which shall be in Form 606C with any necessary modifications and which shall also comply with the requirements of clause (1)(a) of this rule; and

(c) any other affidavits or supporting materials that may be required in the proceeding. Gaz. Nov. 3/2000. New.

Joint divorce proceeding

625(1) A divorce proceeding may be commenced jointly by the spouses where the facts establishing the breakdown of the marriage and the relief claimed are not in dispute.

(2) Where a divorce proceeding has been commenced jointly, the spouses shall be called co-petitioners, and the Petition:

(a) need not include the notice to respondent;

(b) shall be signed by the co-petitioners;

(c) shall be signed and sealed by the local registrar following the signatures of the co-petitioners;

(d) need not be served on either of the co-petitioners; and

(e) need not be noted for default.

(3) A spouse who wishes to withdraw from a joint Petition for divorce shall:

(a) serve and file a Notice of Withdrawal of Joint Petition in Form 625; and

(b) if that spouse wishes to oppose the claim for divorce or other relief claimed, or wishes to claim other relief, serve and file an Answer or Answer and Counter-petition at the time of serving and filing the Notice of Withdrawal of Pleading.

(4) Where co-petitioners apply for judgment in a divorce proceeding, they shall file and the local registrar shall place before the court the materials required under subrule 606(5) and subrule 624(1), with any necessary modification. Gaz. Nov. 3/2000. New.

Judgment of divorce

626(1) A judgment in a divorce proceeding shall be in Form 626.

(2) Where the court makes an order granting child support, a separate formal order embodying the child support shall be issued.

(3) Where a claim for divorce is made together with one or more other claims, the court may:

(a) grant a divorce and direct that a judgment of divorce alone be entered; and

(b) either:

(i) adjourn the hearing of the other claims; or

(ii) give judgment on the other claims.

(4) Unless ordered otherwise, in uncontested divorce proceedings, the local registrar shall immediately forward to each of the parties, by ordinary mail:

(a) a copy of the judgment granting a divorce; and

(b) a copy of the child support order, if any. Gaz. Nov. 3/2000. New.

Certificate of divorce

627(1) A Certificate of Divorce, stating that a divorce dissolved the marriage of the parties as of a specified date, shall be in Form 627.

(2) The local registrar shall issue a Certificate of Divorce, on request of either party, on or after the day on which the judgment granting the divorce takes effect, where:

(a) the local registrar is satisfied that no appeal, or motion to extend time to appeal, has been instituted within that time or, if instituted, that it has been abandoned or dismissed; or

(b) the spouses have signed and filed with the local registrar an undertaking that no appeal from the judgment will be taken, or if any appeal has been taken, that it has been abandoned.

(3) In uncontested divorce proceedings, the local registrar shall complete the Certificate of Divorce and mail a copy to each of the parties immediately on the divorce judgment taking effect. Gaz. Nov. 3/2000. New.

Registration of order

628(1) Where a support order, custody or access order, variation order or interim support or custody order has been made under the *Divorce Act* (Canada), the registration of that order pursuant to subsection 20(3) of that Act shall be effected by filing a certified copy of the order in the office of the court, at any judicial centre, with a written request that it be registered.

(2) Where a divorce proceeding is transferred under section 6 of the *Divorce Act* (Canada) to the court from a court outside Saskatchewan, the transfer shall be effected by filing certified copies of all pleadings and orders made in the proceeding.

(3) On filing of the materials mentioned in subrule (2), the divorce proceeding shall then be carried forward as if it had been commenced under these rules. Gaz. Nov. 3/2000. New.

Notice of appeal

629 The appellant shall file a copy of the notice of appeal from a judgment granting a divorce, or a copy of an order extending the time for appeal, with the local registrar in the office in which the judgment granting the divorce was entered. Gaz. Nov. 3/2000. New.

Local registrar to forward forms

630 The local registrar in the office in which the proceedings were commenced shall complete the forms required by the *Central Registry of Divorce Proceedings Regulations* under the *Divorce Act* (Canada) and forward them to the central registry of divorce proceedings at Ottawa as required by those regulations. Gaz. Nov. 3/2000. New.

Corollary relief proceeding

631(1) A former spouse who wishes to commence a corollary relief proceeding shall do so by Notice of Motion (Family Law Proceeding) in Form 602.

(2) Where both former spouses jointly commence a corollary relief proceeding:

(a) the Notice of Motion shall be signed by both of them;

(b) the Notice of Motion need not be served on either of them; and

(c) the judgment granting the divorce shall be exhibited to their joint affidavit. Gaz. Nov. 3/2000. New.

DIVISION V
Variation of Orders

Commencement – Application for Variation

632(1) A person who wishes to commence an application for variation of a custody, access, or support order shall do so by making an Application for Variation in Form 632.

(2) Where the party against whom a variation proceeding is brought is ordinarily resident outside Saskatchewan, the application may be made *ex parte*. Gaz. Nov. 3/2000. New.

Affidavit in support

633 An affidavit in support of an application for variation shall set out:

(a) the place where the parties and the children ordinarily reside;

(b) the name and birth date of every child of each of the parties in the custody or care of either of them;

(c) whether a party has married or begun living with another person;

(d) details of current custody and access arrangements;

(e) details of current support arrangements, including details of any unpaid support;

(f) details of the current financial circumstances of the parties, with a Financial Statement completed by the party applying for variation where required by Division III;

(g) details of the variation asked for and of the changed circumstances that are grounds for a variation of the order or agreement;

(h) details of any efforts made to mediate or settle the issues and of any assessment report on custody or access; and

(i) in a motion to vary a support order or agreement, whether the support was assigned and any details of the assignment known to the party asking for the variation. Gaz. Nov. 3/2000. New.

Copies of documents required

634(1) A certified copy of the following shall be filed in support of an application for variation:

(a) any existing order that deals with custody, access or support; and

(b) where the order sought to be varied was granted in a divorce proceeding by a court outside Saskatchewan, the original pleadings.

(2) A copy of any existing agreement that deals with custody, access or support shall be exhibited to the affidavit in support of an application for variation.

(3) For the purposes of this rule, a document that has previously been filed with the court need not be filed or exhibited to the affidavit in support of the application if the affidavit identifies the document, states that document is in the court file, and states the date the order was made or the document was filed. Gaz. Nov. 3/2000. New.

Other provisions apply

635(1) The provisions for financial disclosure in Division III apply to an application for variation.

(2) The provisions of rule 640 apply to an application for variation of child support.

(3) The provisions of rule 631(2) respecting joint motions apply to an application for variation of corollary relief order under the *Divorce Act* (Canada), with any necessary modification. Gaz. Nov. 3/2000. New.

Local registrar to forward order – *Divorce Act* (Canada)

636 Where the court varies, other than provisionally, a corollary relief order made under the *Divorce Act* (Canada) by a court outside Saskatchewan, the local registrar shall forward a certified copy of the variation order to:

(a) the court that made the original order; and

(b) any other court that has varied the original order. Gaz. Nov. 3/2000. New.

DIVISION VI
Children

Children must be named

637 A Petition, Answer and Counter-petition or a notice of a motion claiming divorce, custody, access or child support shall:

(a) set out the name and birth date of every child of the petitioner or the respondent in the custody or care of either of them and whether or not any relief is claimed with respect to that child; or

(b) include a statement that there are no children of the parties who are in the custody or care of either of them. Gaz. Nov. 3/2000. New.

Discovery only by leave

638 A party may be examined for discovery touching on matters of custody of or access to a child only by leave of the court. Gaz. Nov. 3/2000. New.

Custody and access assessments

639(1) In this rule, **"custody and access assessment"** means the preparation of a report for the assistance of the court respecting the custody of, access to or welfare of children.

(2) On a motion by a party or on the judge's own motion, a judge may adjourn a family law proceeding and order a custody and access assessment.

(3) Where the parties consent, a motion for an order for a custody and access assessment may be made by filing a Joint Request for Custody and Access Assessment in Form 639A.

(4) Where one of the parties refuses to join in a joint request, the party seeking an order directing a custody and access assessment may apply *ex parte* for an order authorizing an expedited pre-trial conference by filing a Request for Expedited Pre-trial in Form 639B.

(5) The expedited pre-trial conference shall be scheduled within 30 days of the order authorizing it and shall be for the sole purpose of determining if a custody and access assessment is warranted.

(6) Pre-trial briefs shall not be required for an expedited pre-trial conference under this rule.

(7) The party seeking an order directing a custody and access assessment shall:

(a) serve the Request for Expedited Pre-trial on the other party, along with the order authorizing the expedited pre-trial conference; and

(b) file proof of service of those documents at least 15 days before the date scheduled for the expedited pre-trial conference.

(8) An order directing a custody and access assessment may include the amount of any charge for the report that each party is required to pay.

(9) The local registrar shall, immediately on its issue, send the order for a custody and access assessment, accompanied by Custody and Access Assessment Instructions in Form 639C, to the person ordered to prepare the report.

(10) On an *ex parte* application, a judge may order that a person who prepares a custody and access assessment report be called as a witness, and the petitioner shall arrange for the attendance of the witness.

(11) A witness ordered to be called pursuant to subrule (10) is:

(a) subject to cross-examination by any party; and

(b) deemed not to be a witness of any party. Gaz. Nov. 3/2000. New.

Child support – required documents

640(1) **Repealed.** Gaz. Jan. 11/2008.

(2) If a Petition, Answer and Counter-petition or notice of a motion contains a claim for child support, or for variation of child support:

(a) the party making the claim shall serve and file:

(i) a Notice to File Income Information in Form 640B with the document asserting the claim; and

(ii) where the income information of the party making the claim is required by the guidelines, that income information;

(b) the party against whom the claim is made shall serve and file a Notice to File Income Information with the document in response to the claim where:

(i) that response raises an issue that requires the party making the claim to file income information pursuant to the guidelines; or

(ii) the party making the claim has not previously served and filed the income information required by the guidelines;

(c) the party served with a Notice to File Income Information shall serve and file the income information requested in the notice within:

(i) 30 days after service if the party resides in Canada or the United States of America; or

(ii) 60 days after service if the party resides outside Canada or the United States of America.

(3) If a notice of a motion contains a claim for variation of a support order or agreement, any required income information previously disclosed and filed with the court need not be filed again, if a document is filed identifying the income information, stating that it is in the court file, and stating the date it was filed with the court.

(4) Where there is a claim for child support, the local registrar shall not accept a party's Financial Statement for filing unless:

(a) copies of the party's income tax returns and notices of assessment are attached as the form requires, except where a copy is identified as already in the court file;

(b) a statement from the Canada Customs and Revenue Agency that the party has not filed any income tax returns is attached;

(c) the party's signed Canada Customs and Revenue Agency Consent in Form 640C for disclosure of the party's income tax returns and notices of assessment, is attached; or

(d) the Financial Statement contains a declaration that the party is not required to file an income tax return by reason of the *Indian Act* (Canada).

(5) **Repealed.** Gaz. Jan. 11/2008.

(6) **Repealed.** Gaz. Jan. 11/2008.

(7) **Repealed.** Gaz. Jan. 11/2008.

(8) The party claiming child support or variation of child support shall include the following in the document asserting the claim:

(a) whether child support is sought in accordance with the table amount determined under the guidelines;

(b) whether the party claims:

(i) there is a child the age of majority or over;

(ii) the income of the payor is over $150,000.00;

(iii) the payor stands in the place of a parent for a child;

(iv) there is split custody, each party having custody of one or more children; or

(v) there is shared custody of a child;

(c) whether a claim for undue hardship is being advanced; or

(d) whether special or extraordinary expenses are sought, the child to whom the expense relates and the particulars of the expense and amount claimed.

(9) If the party opposing the claim asserts a claim listed in clause (8)(b), (c) or (d), that party shall give written notice of the claim by serving and filing the written notice in accordance with the time limits prescribed for serving and filing a response to the claim.

(10) An order for child support or variation of child support shall include the following information:

(a) the name and birth date of each child to whom the order relates;

(b) the income of any party whose income is used to determine the amount of the child support order;

(c) the table amount determined under the guidelines for the number of children to whom the order relates;

(d) for a child the age of majority or over, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each party to contribute to the support of the child;

(e) the particulars of any special or extraordinary expense described in subsection 7(1) of the guidelines, the child to whom the expense relates, and the amount of the expense or, where that amount cannot be determined, the proportion to be paid in relation to the expense; and

(f) the date on which the lump sum or first payment is payable and the day of the month or other time period on which all subsequent payments are to be made. Gaz. Nov. 3/2000. New; Gaz. Jan. 11/2008 Amend.

Application to appoint mediator

641(1) An application to appoint a mediator shall be by Notice of Motion (Family Law Proceeding) in Form 602.

(2) The Notice of Motion shall set forth the name and address of a proposed mediator.

(3) The affidavit filed in support of the motion shall include:

(a) the address and telephone numbers of the parties and the mediator;

(b) details of the mediator's experience and qualifications, or the mediator's curriculum vitae, exhibited to the affidavit;

(c) a copy of the mediator's form of agreement, exhibited to the affidavit;

(d) details of the fees and expenses to be charged by the mediator, unless this information is contained in the mediation agreement; and

(e) the consent of the mediator to act, exhibited to the affidavit.

(4) If the other party opposes the appointment, that party shall:

(a) submit the name of an alternative to the proposed mediator; and

(b) file an affidavit containing the information prescribed by subrule (3).

(5) An order appointing a mediator shall include:

(a) a requirement that the parties attend the initial mediation session at a date to be set by the mediator;

(b) the amount of the mediator's fees and expenses that each party is required to pay;

(c) a requirement that a fixed portion of the mediator's fees be paid by a date to be set by the mediator;

(d) a requirement that the mediator report to the court in writing the outcome of the mediation by the date specified pursuant to clause (e);

(e) a date to which the motion shall be adjourned, not to exceed 45 days other than in exceptional circumstances; and

(f) the names, addresses and telephone numbers of the parties, the mediator and lawyer for each party.

(6) The local registrar shall, immediately on its issue, send a copy of a mediation order to the mediator.

(7) The report of the mediator shall set out:

(a) whether agreement was reached;

(b) why mediation did not commence if that is the case; or

(c) whether mediation should continue.

(8) All communications in the course of mediation are privileged and shall not be admitted as evidence in any proceeding, except with the written consent of:

(a) all parties to the proceeding in which the mediator was appointed; and

(b) the mediator. Gaz. Nov. 3/2000. New.

DIVISION VII
Certain Uncontested Family Law Proceedings

Judicial separation or nullity of marriage

642 Where a petitioner applies for judgment in an uncontested family law proceeding for judicial separation or nullity of marriage, in addition to the contents required under clause 606(5)(c), the Affidavit of Petitioner in Form 606C shall also set forth:

(a) if no certificate of the marriage or of registration of the marriage has been filed, sufficient particulars to prove the marriage;

(b) where the Petition is for judicial separation, evidence that:

(i) there has not been collusion, condonation or connivance within the meaning of section 104 of *The Queen's Bench Act, 1998*; and

(ii) either spouse has been ordinarily resident in Saskatchewan for at least one year immediately preceding the commencement of the action;

(c) where the Petition is for nullity of marriage, evidence that there has been no collusion or connivance between the parties. Gaz. Nov. 3/2000. New.

Under *The Children's Law Act, 1997*

643 Where a petitioner applies for judgment in an uncontested family law proceeding under *The Children's Law Act, 1997*, in addition to the material required to be filed under subrule 606(5), the petitioner shall also file:

(a) the Affidavit of Petitioner in Form 606C, which shall set forth, in addition to the contents required under clause 606(5)(c):

(i) where the petitioner is not a parent, evidence to satisfy the court that the petitioner has a sufficient interest;

(ii) where the Petition is for custody, evidence of the willingness of the person seeking custody to facilitate contact with each parent;

(iii) where the Petition is for custody or access, evidence of the quality of the relationship that the child has with the petitioner, the personality, character and emotional needs of the child, the capacity of the petitioner to act as legal custodian of the child or to care for the child during the times that the child is in the petitioner's care, and the wishes of the child, having regard to the age and maturity of the child;

(iv) where the Petition is for custody, evidence of the physical, psychological, social and economic needs of the child, the home environment proposed to be provided for the child, and the plans that the petitioner has for the future of the child;

(v) where the Petition is for the appointment of a guardian of the property of a child, evidence of the ability of the proposed guardian to manage that property, the merits of the plan indicated by the proposed guardian for the care and management of the property, the personal relationship between the proposed guardian and the child, the wishes of the parents of the child, and the views, if any, of the Public Guardian and Trustee; and

(vi) the existence of any written agreement, deed, will, or previous court order applicable to the order sought, with a copy exhibited; and

(b) where the Petition is for the appointment of a guardian of the property of a child who is 12 years of age or older, the consent of the child. Gaz. Nov. 3/2000. New. Amend. Mar. 31, 2006.

Under *The Family Maintenance Act, 1997*

644 Where a petitioner applies for judgment in an uncontested family law proceeding under *The Family Maintenance Act, 1997*, in addition to the contents required under clause 606(5)(c), the Affidavit of Petitioner in Form 606C shall also set forth:

(a) the age and the physical and mental health of the spouses;

(b) the length of time the spouses cohabited and the measures available for the dependant spouse to become financially independent and the length of time and cost involved to enable the dependent spouse to take those measures;

(c) the legal obligation of either spouse to provide maintenance for any other person;

(d) the income and financial information required by the rules in this Part; and

(e) the existence of any written agreement or previous court order applicable to the order sought, with a copy exhibited. Gaz. Nov. 3/2000. New.

DIVISION VIII
Enforcement under *The Enforcement of Maintenance Orders Act, 1997*

Enforcement of judgments and orders

645(1) A judgment or order for support or maintenance granted in a family law proceeding may be enforced in accordance with the provisions of *The Enforcement of Maintenance Orders Act, 1997*.

(2) Where a receiver is appointed pursuant to that Act, the terms and conditions of the appointment shall be set out in the order appointing the receiver. Gaz. Nov. 3/2000. New.

DIVISION IX
Reciprocal Support Orders

Interpretation of Division

646 In this Division:

"Act" means *The Reciprocal Enforcement of Maintenance Orders Act, 1996*;

"applicant" includes:

(a) a claimant as defined in section 2 of the Act;

(b) a respondent who makes an application for variation pursuant to section 8 of the Act; and

(c) a former spouse who makes an application for variation pursuant to section 18 of the *Divorce Act* (Canada);

"final order" means a final order as defined in section 2 of the Act;

"minister" means:

(a) the minister as defined in section 2 of the Act; or

(b) in the case of a proceeding brought under the *Divorce Act* (Canada), the Attorney General for Saskatchewan;

"provisional order" means:

(a) a provisional order as defined in section 2 of the Act; or

(b) in the case of a proceeding brought under the *Divorce Act* (Canada), a provisional order for variation made under section 18 of the *Divorce Act* (Canada). Gaz. Nov. 3/2000. New.

Application of Division

647 This Division applies to family law proceedings under:

(a) the Act; and

(b) sections 18 and 19 of the *Divorce Act* (Canada). Gaz. Nov. 3/2000. New.

Translation of documents

648(1) Where it is required that a translation of a document be delivered to a court outside Saskatchewan, the minister shall file:

(a) the translation;

(b) a request that the translation be approved; and

(c) a draft certificate that is also translated.

(2) The local registrar shall endorse on the translated document or append to it a certificate to the following effect:

"This translation has been approved by _____ at
(*name of court*)
the Judicial Centre of _____ , Saskatchewan,
this_____ day of _____ , 2 _____".

Gaz. Nov. 3/2000. New.

Registration of final orders

649(1) On receipt of a certified copy of a final order made by a court outside Saskatchewan, or on receipt of a written request to register a final order made in Saskatchewan, the local registrar shall enter particulars of the order in the usual manner and endorse on it the following certificate:

"This order has been registered in the _____at
(*name of court*)
the Judicial Centre of _____, Saskatchewan,
this _____ day of _____ , 2 _____ , pursuant to s.3 of *The Reciprocal Enforcement of Maintenance Orders Act, 1996*".

(2) On motion, the court may set aside the registration of a final order on the basis that the order:

(a) was obtained by fraud or error; or

(b) was not a final order. Gaz. Nov. 3/2000. New.

Provisional order made in Saskatchewan

650(1) An applicant who wishes to commence an application for a provisional order shall do so by filing the documents required:

(a) by these rules; or

(b) by the statute under which the applicant claims entitlement to support or variation of support.

(2) An application under this rule may be made without notice.

(3) An application for a provisional order shall be accompanied by a statement giving any available information respecting the identification, location, income and assets of the other party.

(4) The local registrar shall endorse a certificate at the end of a provisional order, stating the order is made provisionally and has no legal effect until confirmed.

(5) Where the court makes a provisional order, the local registrar, or the applicant or his or her lawyer, shall send to the minister:

(a) the documents filed in accordance with subrules (1) and (3);

(b) a certified or sworn document setting out or summarizing the evidence given to the court;

(c) three certified copies of the provisional order; and

(d) where the provisional order is not made pursuant to the *Divorce Act* (Canada), a copy of the enactments under which the alleged maintenance obligation arises.

(6) Where a court outside Saskatchewan remits any matter back to the court for further evidence:

(a) the local registrar shall give to the applicant a Notice of Taking of Further Evidence in Form 650; and

(b) the matter may be brought before any judge of the court.

(7) Where the court receives further evidence under this rule, the local registrar shall forward to the court outside Saskatchewan that remitted the matter back:

(a) a certified or sworn document setting out or summarizing the evidence; and

(b) any recommendations that the court considers appropriate.

(8) Where confirmation of a provisional order made in Saskatchewan pursuant to the Act is denied by a court in a reciprocating state, on motion made by the applicant within six months from the denial of the confirmation, the court may reopen the matter and receive further evidence. Gaz. Nov. 3/2000. New.

Confirmation of provisional order made outside Saskatchewan

651(1) On receipt of a provisional order for confirmation in Saskatchewan, the local registrar or the minister shall serve on the person against whom the order has been made:

(a) a Notice of Confirmation Hearing in Form 651A;

(b) a copy of the documents received from the court outside Saskatchewan that made the provisional order; and

(c) Parts 1 to 5 of an uncompleted Financial Statement in Form 609A.

(2) The court may make an interim order for support where:

(a) the matter is remitted back to the court outside Saskatchewan that made the provisional order for further evidence; or

(b) the matter is adjourned because the law of the reciprocating state was not pleaded.

(3) Where the court has requested further evidence on a confirmation hearing and that evidence has been received, the local registrar or the minister shall serve the following on the persons concerned:

(a) a Notice of Continuation of Hearing in Form 651B; and

(b) a copy of the documents sent by the court outside Saskatchewan.

(4) An order confirming or otherwise dealing with a provisional order may be in Form 651C.

(5) In a proceeding under the *Divorce Act* (Canada), an order confirming or otherwise dealing with a provisional order for child support, including an interim order, shall be in accordance with the guidelines.

(6) Where the court makes an order refusing to confirm or varying a provisional order for support, the court shall provide written reasons for its decision:

(a) to the minister; and

(b) where the provisional order was made under the *Divorce Act* (Canada), to the court that made the provisional order.

(7) Where an order is made confirming a provisional order, with or without variation, the local registrar or the minister shall file the order in the court.

(8) On completion of the confirmation hearing under section 19 of the *Divorce Act* (Canada), the local registrar shall forward a certified copy of the order:

(a) to the minister;

(b) to the court that made the provisional order; and

(c) to the court that made the support order, where it is not the court that made the provisional order. Gaz. Nov. 3/2000. New.

DIVISION X
Proceedings under *The International Child Abduction Act, 1996*

652 In this Division:

"Act" means *The International Child Abduction Act, 1996*;

"applicant" includes any person, institution or other body claiming that a child has been removed or retained in breach of custody rights;

"Central Authority" means a Central Authority designated under article 6 of the convention;

"contracting state" means a state signatory to the convention;

"convention" means the Convention on the Civil Aspects of International Child Abduction, a copy of which is set out in the Schedule to the Act.

653(1) This Division applies to family law proceedings under the Act and the convention.

(2) Unless provided otherwise by the Act or the convention or by the rules in this Division, the provisions of this Part and the general procedure and practice of the court shall be adopted and applied, with necessary modification, in a family law proceeding under this Division.

654 An applicant who wishes to commence a family law proceeding under this Division shall do so by Notice of Motion (Family Law Proceedings) in Form 602.

655 An affidavit in support of a motion made under this Division shall set out:

(a) information concerning the identity of the applicant, the child and the person or persons alleged to have removed or retained the child;

(b) the date of birth of the child;

(c) evidence of where the child was habitually resident before coming to Saskatchewan;

(d) the circumstances under which the child came to be in Saskatchewan;

(e) the grounds on which the applicant's claim for return of the child is based, including the circumstances of the alleged wrongful removal or retention; and

(f) all available information relating to the whereabouts of the child and the identity of the person in whose care the child is presumed to be.

656 The following shall also be filed in support of a motion made under this Division:

(a) a certified copy of any relevant judicial decision or agreement pertaining to either or both of custody and access to the child;

(b) when any person is arguing that the law of another jurisdiction applies or is relevant to the application, an affidavit of law from the Central Authority or other person approved by the court;

(c) any other relevant fact or document.

657(1) A party bringing a motion under this Division shall serve the motion and the supporting documents on:

(a) the person in Saskatchewan who has the child in his or her care; and

(b) the Central Authority for Saskatchewan.

(2) Service shall be effected in accordance with the provisions of this Part relating to the service of a notice of motion commencing a family law proceeding claiming substantive relief, except that the party shall file the motion and supporting material with proof of service seven days before the date set for hearing the motion.

658 An application under this Division shall be dealt with expeditiously and, except in extraordinary circumstances, a decision shall be rendered within six weeks of the commencement of an application.

659 If the presiding judge considers it necessary, the presiding judge may:

(a) establish time lines for the filing and service of materials and set a date for the hearing of an application under this Division;

(b) permit any party to an application under this Division to appear by way of telephone or video conference where appropriate;

(c) adjourn the proceeding and order a Children's Voice Report;

(d) initiate direct communication with either or both of the Central Authority and a judge of the contracting state where the child habitually resides subject to the following:

(i) the communication is to be limited to logistical issues and the exchange of information;

(ii) the parties to the application shall be entitled to be present during the communication and to participate as directed by the judge;

(iii) a record of the communication shall be kept by the local registrar;

(iv) the record of communication is to be confirmed in writing by both judges or by the judge and the individual representing the Central Authority of the contracting state.

660(1) Costs are in the discretion of the court, and except as modified by this Rule, the provisions of Part Forty-Six and of this Part apply to the costs of an application under this Division.

(2) The court may order costs including, but not limited to:

(a) costs incurred for legal representation;

(b) costs incurred to locate the child; and

(c) costs associated with the return of the child.

New. Gaz. Sep. 3, 2010

PART FORTY-NINE

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Repealed. Gaz. Nov. 3/2000.

(The next part is Part Fifty-One and the next rule is Rule 662)

PART FIFTY-ONE

MISCELLANEOUS

Vexatious proceedings

662 Where on an application by or with the consent in writing of the Attorney General, the court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings against the same person or against different persons, the court may order that no proceedings shall, without leave of the Court, be instituted in the Court of Queen's Bench by such person. The court may require that the local registrar at each judicial centre be notified of such order. R. 662.

Mechanical recording devices

663 Except as provided by *The Recording of Evidence by Sound Recording Machine Act* or any order issued thereunder, no person shall record by any device, machine or system the proceedings of any court or chambers without leave of the presiding judge. R. 663.

PART FIFTY-TWO

JUDICIAL REVIEW

Commencement

664(1) An application for judicial review by way of *mandamus*, prohibition, *quo warranto, certiorari* or to quash proceedings may be commenced by notice of motion.

Joinder of remedies

(2) In an application for judicial review, other than a proceeding to which the *Criminal Code* applies, an applicant may claim:

(a) a declaration as collateral or alternate relief; or

(b) an injunction or damages as collateral relief;

and the court may grant such relief if it considers that having regard to all the circumstances of the case it would be just and convenient to do so.

Grounds and relief to be stated

(3) Every application shall state the grounds on which it is made and the relief sought. R. 664.

Sufficient interest required

665(1) An application may be made by any person having such interest as the court considers sufficient in the matter to which the application relates.

Consent of Attorney General

(2) In any event, an application may be made or continued with the fiat or consent of the Attorney General, a copy of which shall be filed and served on every party to the proceeding. R. 665.

Style of cause

666(1) The person making the application shall be shown only as the applicant in the style of cause.

Collective title

(2) Any two or more persons who, acting together, exercise power under a collective title may be named as a respondent under such title. R. 666.

Persons to be served

667(1) Each person interested or likely to be affected by the application shall be served with the notice of motion and all material in support of the application.

Service on Attorney General

(2) The Attorney General or his designate:

(a) shall be served in any case where he would appear to have an interest, and

(b) may be served by registered mail.

Adjournment, directions for service

(3) The court, if of the opinion that any person ought to have been served, may adjourn the hearing on such terms, if any, as it may direct, and may give directions for service on such person. R. 667. Amend. Gaz. Dec. 13, 2002.

Interim orders

668(1) The court may make such interim orders as it sees fit, including orders preserving the status quo or the position of the parties, and may extend, modify or set aside any such orders.

Application not a stay

(2) An application for judicial review shall not constitute a stay of the proceedings to which the application relates, but the court may grant a stay of such proceedings on application made for that purpose.

Short or oral notice

(3) An interim order may be granted *ex parte* or on such notice, including short or notice given orally, as the court may direct. R. 668.

Endorsement on application for *certiorari*

669(1) Where an application is made for an order by way of *certiorari* or to quash proceedings, a notice to the following effect, adapted as may be necessary and addressed to the court, tribunal or other authority shall be endorsed in or on the notice of motion:

"You are required by the rules of court forthwith to return to the local registrar of this court at the Court House (address in full) Saskatchewan, the conviction, order, decision, (or as the case may be) and the reasons therefor, together with the process commencing the proceeding, and the warrant, if any, issued thereon."

Record

(2) All things required by Subrule (1) to be returned to the local registrar shall be deemed to be part of the record.

Return and certification

(3) On receiving a notice of motion so endorsed, the court, tribunal or other authority shall return forthwith to the court the conviction, order, decision, (or as the case may be) and reasons therefor together with the process commencing the proceeding, with a certificate in the following form:

"Pursuant to notice in these proceedings I herewith return to this Honourable Court the following papers and documents, that is to say,

(1) the conviction, order or decision (or, as the case may be) and the reasons therefor;

(2) the process commencing the proceeding and the warrant issued thereon;

and I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody or power to be returned to this Honourable Court pursuant to the notice." (Name, set out legibly, and signature.)

Copies permitted with return

(4) Unless otherwise ordered, compliance with Subrule (3) may be made with respect to any paper or document:

(a) by sending a copy of the paper or document if the copy is not less legible than the original; and

(b) by endorsing on or attaching to each such copy a certificate as follows:

"I certify that this paper (or document) is a true copy of the original, that the copy is not less legible than the original, and that copy contains every matter or thing set forth in or shown by the original." (Name, set out legibly, and signature.)

Documents not in possession

(5) If the papers and documents, or any of them, are not in the possession of the person required to transmit them, he shall so state and explain the circumstances.

Effect of return

(6) The return and certificate as set forth in this rule shall have the same effect as a return to a writ of *certiorari*. R. 669.

Substitution or addition of parties

670(1) With leave of the court, a party may be substituted or added at any stage of the proceedings.

Amendment of application

(2) The court may at any time, on such terms and conditions as the court thinks fit, permit a party to alter or amend the application or file additional material for the purpose of determining the real questions or issues raised by the application.

Notice of amendment

(3) Where the applicant intends to apply to amend the application or to file further material, he shall, unless otherwise ordered, give notice of his intention to do so to every party to the proceedings. R. 670.

Order for production of material, evidence

671(1) The court may order a person having custody or control of any material or evidence in any proceeding, to produce at or before the hearing:

(a) the whole or any part of the record of that proceeding, or a copy thereof; or

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

Expense of transcription

(2) Unless otherwise ordered, where compliance with the order would require a transcription of evidence or unusual expense, no transcription shall be required or expense incurred unless the proper fees therefor have been paid. R. 671.

Intervention

672 Any person who desires to be heard in opposition to or in support of the application and who appears to have such interest as the court considers sufficient in the matter, may be heard, with leave of the court, on such conditions as the court considers appropriate, notwithstanding that he has not been served or named as a party. R. 672.

Order, not writ, shall issue

673 No writ of *mandamus,* prohibition, *certiorari* or *quo warranto* shall be issued, but all necessary directions shall be by order. R. 673.

Court may remit with directions

674 Where the court is satisfied that there are grounds for quashing or declaring void a decision to which the application relates, the court, in addition to granting such relief, may remit the matter to the court, tribunal or other authority concerned with the direction to rehear it or to reconsider it and reach a decision according to law. R. 674.

Delay in making application

675 Subject to any statutory provision limiting the time in which an application for judicial review may be made, where there has been undue delay in making an application, the court may refuse to grant any relief sought if the order would be likely to cause substantial hardship to or substantially prejudice the rights of any person or would be detrimental to good administration. R. 675. Am. Gaz. Dec. 9/94.

Rules adopted under *Criminal Code*

676 These rules are adopted, with necessary modification, as rules in applications to which the provisions of the *Criminal Code* apply. R. 676.

PART FIFTY-THREE

HABEAS CORPUS

Commencement

677 Proceedings for a writ of *habeas corpus* may be commenced by application to the court by notice of motion which may be in Form 82 or, with leave of the court, by application *ex parte*. R. 677.

Habeas corpus ad subjiciendum

678(1) A writ of *habeas corpus ad subjiciendum* to have the validity of the detention of any person determined may be in Form 83.

Who may apply

(2) Any person is entitled to bring proceedings, on his own behalf or on behalf of any other person, to obtain a writ of *habeas corpus ad subjiciendum,* and the court may determine which of the applicant or the subject of the application shall have the carriage of the proceedings.

May seek *certiorari-in-aid*

(3) An application under this rule may include *certiorari-in-aid* for the purpose of:

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

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

Bail on return of motion or writ

(4) On the return of the motion or writ the person detained may apply to be admitted to bail and unless he is otherwise required to be detained the court may admit him to bail until the validity of his detention has been determined.

Order for further detention

(5) Where an application is made under this rule, the court may, without determining the validity of the detention, make an order for the further detention of the person and authorize or direct that the head of the institution in which he is detained, or any other person, take such steps or do any other thing that, in the opinion of the court, will be just.

Discharge

(6) On the argument of a motion for a writ of *habeas corpus ad subjiciendum* the court may grant an order for the person's discharge, and such order shall be a sufficient warrant to any jailer or other person for his discharge. An order of discharge may be in Form 84. R. 678.

Writ or order

679(1) A writ of *habeas corpus* need not be issued but all necessary provisions may be given by judgment or order which may be in Form 85.

(2) A writ or order shall be signed by:

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

(b) a judge of the court. R. 679.

Contents of return

680(1) The return shall contain a statement supported by copies of all documents showing the causes of the person's detention.

Amendment

(2) The return may be amended or another substituted therefor by leave of the court. R. 680.

Enforcement by committal for contempt

681 If a writ or order of *habeas corpus* be disobeyed, application may be made, on proof of service of the writ or order, for summary committal for contempt, or by separate proceedings for that purpose. R. 681.

Rules apply to other *habeas corpus*

682 These rules apply with necessary modification to any *habeas corpus* for which these rules do not specifically provide. R. 682.

Directions on hearing

683 Where a hearing or trial of any issue is ordered on an application for an order or for committal for contempt, the court may give such directions and fix such terms and conditions as may be appropriate. R. 683.

When fees payable

684 Unless otherwise ordered, where the detention is by the Crown or one of its servants or agents, or a peace officer, no fee shall be payable to the local registrar for filing or hearing an application under this part or for issuing a writ or an order for *habeas corpus* or a discharge. R. 684.

Rules adopted under *Criminal Code*

685 These rules are adopted, with necessary modification, as rules in applications to which the provisions of the *Criminal Code* apply. R. 685.

PART FIFTY-FOUR

HAGUE CONVENTION ON SERVICE ABROAD

686 Repealed. Gaz. Dec. 13, 2002.

687 Repealed. Gaz. Dec. 13, 2002.

PART FIFTY-FIVE

PROBATE AND ADMINISTRATION OF ESTATES

I APPLICATION AND INTERPRETATION

Application

688(1) This part applies to proceedings for probate and administration of estates.

(2) Unless provided otherwise by statute or by the rules in this part, the general procedure and practice of the court shall be adopted and applied, with any necessary modification, in a proceeding under this part. R. 688.

Interpretation

689 In these rules unless the context otherwise requires:

(a) **Repealed.** Gaz. Mar. 14, 2008.

(b) **"dependent adult"** means adult as defined in *The Adult Guardianship and Co-decision-making Act*, or dependent adult as defined in clause 2(l)(c.l) of *The Public Guardian and Trustee Act*;

(c) **"grant"** includes letters probate, letters of administration, letters of administration with will annexed, letters of administration *de bonis non*, or other documents of a similar nature and the resealing of any of these;

(d) **"personal representative"** includes executors and administrators;

(e) **"property guardian"** means property guardian as defined in *The Adult Guardianship and Co-decision-making Act*;

(f) **"trust company"** means a trust corporation as defined in *The Trust and Loan Corporations Act*. R. 689. Amend. Mar. 31, 2006; Amend. Gaz. Mar. 14, 2008

II COURT ADMINISTRATION

Notice of application

690(1) The notice of application for grant required by section 5 of *The Administration of Estates Act* shall be in duplicate, in Form 89.

(2) In a judicial centre where chambers is not held weekly the local registrar is authorized to give the required notice of application for grant by telephone, and Form 89 shall be endorsed with the words "By Telephone". R. 690. Am. Gaz. Jan. 28/2000.

Registrar to be notified

691(1) Where an applicant renounces subsequently to notice of application for grant to the registrar, or any alteration is subsequently made in the grant, the local registrar shall immediately notify the registrar.

(2) If an application for grant is dismissed, abandoned, or for any other reason not proceeded with, the local registrar shall notify the registrar. R. 691.

Scope of Form 90

692(1) Every certificate issued by the registrar under sections 5 and 6 of *The Administration of Estates Act* shall be in Form 90.

(2) The local registrar on receipt of a certificate in Form 90 from the registrar shall promptly lay the application for grant before the court.

(3) Where the notice of application for grant has been given by telephone pursuant to Rule 690(2), the local registrar shall immediately lay the application for grant before the court; and on return of Form 90 from the registrar shall report any discrepancies to the judge who directed issue of the grant. R. 692. Am. Gaz. Jan. 28/2000.

Signing and sealing of grant

693(1) A grant shall be signed by the local registrar and sealed with the seal of the court, and shall bear the date of issue thereof, and a copy of the will, if any, annexed to a grant shall be authenticated by the signature of the local registrar and the seal of the court.

(2) A grant shall be in Form 91, 92, 93 or 94 as may be applicable.

(3) On issue of a grant, the local registrar shall give notice to the registrar in Form 95. R. 693.

Form 96 certificate

694 On the request of the applicant, where the local registrar is satisfied that no person under the age of eighteen (18) years is interested in the estate of the deceased, the local registrar shall provide the applicant with a certificate in Form 96 together with the grant. R. 694. New. Gaz. Mar. 14, 2008

Local registrar's duties re: wills

695(1) A will of a living person deposited for safekeeping in the office of a local registrar shall be enclosed in an envelope and sealed and the envelope shall be endorsed, "This envelope contains the last will and testament (*or as the case may be*) dated (*state date of paper enclosed*) of (*name and address of testator*) whereof (*names and addresses of executors*) are the executors", and the endorsement shall be signed by the person depositing the will.

(2) The local registrar shall number each envelope and record the names of the testator and the person depositing the will, the number and the date of deposit.

(3) The local registrar in whose office a will is so deposited shall issue a certificate in Form 97, a copy of which shall be delivered to the person depositing the will, and the original shall be sent forthwith to the registrar.

(4) A will deposited for safekeeping shall not be removed from the office of a local registrar except by the testator in person or, after the testator's death, by the executor or by order of the court, nor shall the seals of the covering envelope be broken while it is in the custody of the local registrar without leave.

(5) When a will deposited for safekeeping is removed from the office of the local registrar, the local registrar shall notify the registrar of the name and address of the person by whom it was removed, and the registrar shall record the fact. R. 695.

Form 90 information

696 Each certificate in Form 90 shall show whether the deceased person has deposited for safekeeping any will or other testamentary paper in the office of a local registrar. R. 695.

III PROOFS LEADING TO GRANT

A. Proof of Death

Proof of death

697 Where the applicant is unable to file direct evidence of death and there is evidence from which death may be presumed, the court may give leave to swear to the death, on application *ex parte* or on such notice as the court may require. R. 697.

B. Applications for Grant in General

Applications for grant in general

698 An application for grant shall be in Form 98, 99, 100, 112, 114 or 115. R. 698.

General requirements

699(1) An application for grant shall set out:

(a) the name and address and relationship to the deceased of every person entitled to share in the deceased's estate;

(b) the age and marital status of the deceased at death; and

(c) that the applicant is of the full age of 18 years, is a trust company, or is the Public Guardian and Trustee.

(2) Where a person under the age of eighteen (18) years or dependent adult is interested in the estate or may have a claim under *The Dependants' Relief Act, 1996* or *The Family Property Act*, the application for grant shall so state and there shall be filed with the application for grant a notice to the Public Guardian and Trustee or the property guardian, as the case may be, in duplicate, in Form 101, and where the deceased is not survived by a person under the age of eighteen (18) years or dependent adult the application for grant shall so state. R. 699. Amend. Gaz. Dec. 14, 2001. Amend. Mar. 31, 2006. Amend. Gaz. Mar. 14, 2008

Signature

700 An application for grant shall be signed by the applicant and verified and exhibited to the affidavit of the applicant which shall be in Form 102, 103, 113, 115 or 116. R. 700.

Filing requirements

701(1) An applicant shall file with an application for grant a statement in Form 104 showing all the real and personal property of the deceased at the time of death. The statement shall be verified by and exhibited to the affidavit of the applicant.

(2) On an application for a second grant in Saskatchewan, the statement shall be limited to the property then unadministered or to be administered in Saskatchewan at its value at the time of the application for grant. R. 701.

702 Repealed. Gaz. Mar. 31, 2006.

Special circumstances

703 An application for grant under section 17 of *The Administration of Estates Act* shall set out the insolvency of the estate or other special circumstances on which the applicant relies. R. 703.

C. Grants of Probate

Grants of probate

704(1) Where the deceased died leaving a will, the persons entitled to apply for a grant of probate or administration with will annexed are the following in order of priority:

(a) executors;

(b) residuary beneficiaries in trust;

(c) residuary beneficiaries for life;

(d) ultimate residuary beneficiaries, or, where the residue is not wholly disposed of, the person entitled upon an intestacy;

(e) executors and administrators of persons mentioned in clause (d);

(f) beneficiaries and creditors;

(g) contingent residuary beneficiaries, contingent beneficiaries and persons having no interest in the estate who would have been entitled to a grant if the deceased had died wholly intestate;

(h) the official administrator. Amended. Gaz. Sep. 3, 2010

(2) Where an executor does not apply for a grant, the executor shall renounce in Form 105.

(3) Where a will appoints an executor whose right to act is subordinate to another, the executor shall state in the application for grant that the executor having a prior right has renounced, or has died, or as the case may be. R. 704.

Grant re: Testamentary Document

705 A testamentary document in respect of which a grant is sought shall be exhibited to the affidavit of the applicant. R. 705.

Grant of Probate application

706(1) An application for grant of probate shall show:

(a) that at the time of the execution of the will the deceased was of the age of majority; or was or had been married, or was or had been cohabiting in a spousal relationship; or was a member of the armed forces in actual service; or was a seaman or mariner at sea or in the course of a voyage;

(b) that the deceased, after execution of the will, did not marry or cohabit in a spousal relationship continuously for two years; or that the will was made in contemplation of marriage or in contemplation of entering into a spousal relationship;

(c) that neither witness is a beneficiary named in the will or a spouse of a beneficiary, or if so, that the will is sufficiently attested without the attestation of any such person or that no attestation is neccessary; and

(d) that after making the will and before the death of the testator, the marriage of the testator was not terminated by a final judgment of divorce, nor was it found to be void or declared a nullity by a court in a proceeding in which the testator was a party; nor did the testator, and his or her spouse, who are not legally married, cease to cohabit in a spousal relationship for at least 24 months.

(2) Where, after the making of a will and before the death of the testator, the marriage of the testator is terminated by a final judgment of divorce or is found to be void or is declared a nullity by a court in a proceeding to which the testator was a party, or the testator, and his or her spouse, who are not legally married, ceased to cohabit in a spousal relationship for at least 24 months and it is alleged that, under subsection 19(1) of *The Wills Act, 1996*, a devise, bequest, appointment or power is revoked, or the will is to be construed as if the spouse had predeceased the testator, the applicant shall give particulars thereof, and unless otherwise ordered, file proof of service of the application for grant and the allegations on the person named in the will as a spouse. R. 706. Amend. Gaz. Dec. 14, 2001.

707(1) The execution of a will must be proved by one of the subscribing witnesses by an affidavit in Form 107 that is sworn or affirmed by the witness at any time after the will is signed.

(2) Where no affidavit can be obtained from a subscribing witness, the execution of the will may be established by affidavit of the handwriting and signatures of the witnesses or of the testator, or both, or by affidavit from any other person present at the execution of the will.

(3) Where a will is deposited in the local registrar's office accompanied by the affidavit of execution of each subscribing witness and by a statutory declaration of the lawyer by whom the will was drawn setting forth that the will was executed on a specified date, the affidavits of execution shall be *prima facie* proof of the execution of the will.

(4) Where a will was signed by some person other than the testator, in the presence of, and by the direction of the testator, an affidavit setting forth the full circumstances under which the will was so signed shall be filed in support of the application for grant.

(5) Proof of execution of a holograph will shall be in Form 108.

(6) Where a will contains any alteration, interlineation, erasures or omissions, an affidavit of plight and condition in Form 109 shall be filed in support of the application for grant.

(7) In every case, the court may require additional or other proof of execution of a will, or may require proof in solemn form. R. 707.

Other documents

708 If a will contains a reference to, or if an applicant has any knowledge of, any paper, deed, memorandum, or other document that raises a question whether it forms a constituent part of the will, that deed, paper, memorandum, or other document shall be produced, and if not produced, its non-production must be accounted for. R. 708.

Proof of last will

709 Where a grant is sought of a will that is lost or destroyed, proof thereof shall be made as the court may require. R. 709.

710(1) Where a grant is sought of a will written in a language other than English, there shall be filed with the will an English translation of the will and an affidavit in Form 110 verifying the translation.

(2) A copy of the English translation together with a copy of the will in its original form shall be attached to the grant.R. 710.

D. Grants of Administration

Grants of administration

711 An application for grant of administration with will annexed shall also comply with the applicable rules relating to grants of probate. R. 711.

Priority of right

712 Where the deceased died intestate, the persons entitled to apply for a grant of administration are the following in order of priority:

(a) spouse;

(b) children;

(c) grandchildren and other issue of deceased taking *per stirpes*;

(d) parents;

(e) siblings;

(g) nephews and nieces;

(h) next of kin of equal degree of consanguinity;

(i) creditors;

(j) the official administrator. Amended. Gaz. Sep. 3, 2010; Amended. Gaz. Mar. 25, 2011.

Application for administration

713(1) The application for administration shall show that the applicant:

(a) has a beneficial interest in the property to be administered;

(b) is attorney for a person having a beneficial interest;

(c) is a person the court may consider fit in the circumstances of section 17 of *The Administration of Estates Act*; or

(d) is the Official Administrator or the Public Guardian and Trustee.

(2) On the making of a grant, live interests will be preferred to dead interests; and, in the case of conflicting claims, the nearer interest will be preferred to the more remote, unless the court otherwise orders.

(3) A grant of administration shall be made to a person resident within Saskatchewan in preference to a person having equal right residing outside Saskatchewan unless the court otherwise orders. R. 713. Am. Gaz. Jan. 28/2000. Amended. Mar. 31, 2006.

Conditions

714(1) No grant of administration shall be made to any person unless all persons with a prior or equal right have been cleared off by renunciation or by an order of the court.

(2) Where it is sought to join, with a person entitled to a grant, a person not equally or next entitled, all persons with a prior or equal right must be cleared off by renunciation.

(3) The renunciation shall be in Form 105 or 106.

(4) Where persons with a prior or equal right have not renounced or where there is a contest over the right to administration, application shall be made to the court by notice of motion, served on those having a prior or equal right, showing the applicant's claim and stating that in the event of non-attendance of the person served such order will be made as the judge deems proper; on the return date of the motion the judge may hear the persons present and summarily determine to whom the grant shall be made. R. 714.

Same

715 No grant of administration shall be made to more than three persons unless the court otherwise orders. R. 715.

Power of attorney

716(1) Where a person is entitled to apply for a grant of administration and has not renounced but desires a grant to be made to an attorney on his or her behalf, such person shall execute a power of attorney in Form 111 appointing an attorney to apply for and obtain a grant.

(2) The application for grant by an attorney made under this rule shall be in Form 112.

(3) An affidavit verifying an application for grant made under this rule shall be in Form 113. R. 716.

Grant of letters of administration *de bonis non*

717(1) Where the administrator of an estate has died leaving part of the estate unadministered, an application may be made for a grant of letters of administration *de bonis non* to complete the administration of the estate.

(2) Where the executor of an estate has died intestate and there are no other executors to carry on the administration of the estate or where the administrator with the will annexed of an estate has died leaving part of the estate unadministered, an application may be made for a grant of administration *de bonis non* with the will annexed to complete the administration of the estate.

(3) An application for administration *de bonis non* shall be made by filing an application in Form 114.

(4) An affidavit verifying an application for grant made under this rule shall be in Form 115.

(5) The original grant shall be surrendered with the application or if the original has been lost, a court certified copy of the grant shall be filed. R. 717.

Search

718 On an application for grant of administration it shall be shown by affidavit that search for a will has been made in all places where the deceased usually kept papers and had depositories. R. 718.

Bond

719(1) The bond to be given on an application for grant of administration and the necessary affidavits of justification and execution shall be in Form 116, or such other form as the court may approve.

(2) The bond to be given shall be in a penalty of double the value of the estate calculated in accordance with subsection 21(3) of *The Administration of Estates Act*, unless otherwise ordered, or where the bond is given by a guarantee company, a bond equal to the value of the estate, calculated as aforesaid, may be accepted.

(3) The sureties to a bond, other than a guarantee company, shall make an affidavit of justification, and the net value of the property of which the several sureties swear they are possessed shall in the aggregate equal the amount of the penalty of the bond.

(4) In estimating the value of the property of which any surety to such a bond claims to possess, such value shall be determined after deducting debts owed, the value of statutory exemptions from seizure and any other sums for which such person is already surety.

(5) The court may require a surety to a bond to file a sworn statement of assets and liabilities or to appear before the court for examination and may, after such statement is filed, or examination held, refuse or accept such surety.

(6) No surety, other than a guarantee company, shall be accepted unless such surety is permanently resident in Saskatchewan and has real or personal property in Saskatchewan exigible under execution to the amount of the bond.

(7) No lawyer shall be surety to a bond.

(8) No registrar, local registrar or employee of their respective offices shall be surety to a bond. R. 719. Am. Gaz. Jan. 28/2000.

Dispensation sought

720(1) Where it is sought to dispense with a bond, there shall be included in the affidavit information revealing that:

(a) the creditors and all persons who are or may be beneficially interested in the estate consent in writing; or

(b) there are no debts for which the estate is or may be liable, and

(i) the value of the estate does not exceed $25,000; or

(ii) the administrator is the sole beneficiary; or

(iii) all persons who are or may be beneficially interested in the estate consent in writing. Amended. Gaz. Sep. 3, 2010

(2) Where a person under the age of eighteen (18) years is or may be beneficially interested in the estate, the written consent of the Public Guardian and Trustee shall be filed.

(3) Where a dependent adult is or may be beneficially interested in the estate, the written consent of the Public Guardian and Trustee or property guardian, as the case may be, shall be filed. R. 720. Amend. Mar. 31, 2006. Amend. Gaz. Mar. 14, 2008.

E. International Wills

International wills

721 A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator if it is made and executed according to the rules contained in the *Convention Providing a Uniform Law on The Form of an International Will* as set out in the schedule to *The Wills Act.* R. 721.

F. Resealing Foreign Grants

Resealing foreign grants

722(1) An application to reseal a foreign grant shall be in Form 117 verified by affidavit in Form 118, and shall comply with the rules relating to probate or administration, as the case may be.

(2) Where the will affects immovable property, including real property and a leasehold or other interest in land in Saskatchewan, it shall be shown that the manner of making, the validity and effect of the will is in accordance with the law of Saskatchewan; the manner of making may be proved by an affidavit or a certified copy of the affidavit filed in the original application.

(3) With an application for grant under this rule there shall be filed the original foreign grant, or a copy thereof certified by the issuing court. An additional copy thereof certified by the issuing court, or a notarial copy, shall be exhibited to the affidavit of the applicant. R. 722.

G. Ancillary Grants

Ancillary grants

723(1) An application for an ancillary grant shall comply with all the rules relating to probate or administration, as the case may be.

(2) A certified copy of the original foreign grant shall be exhibited to the affidavit of the applicant.

(3) If the application is for a grant ancillary to a grant issued by a court named in section 38 of *The Administration of Estates Act*, the affidavit of the applicant shall show why the foreign grant ought not to be resealed. R. 723. Am. Gaz. Jan. 28/2000.

H. Applications for Small Estates or in Special Circumstances

Applications for small estates or in special circumstances

724(1) An application for an order under section 9 of *The Administration of Estates Act* may be made *ex parte*, or on such notice as the court may require.

(2) The application and the supporting affidavit shall be in Form 119.

(3) All receipts for payment or other dispositions of the property of the deceased made by the person named in the order of the court shall be filed in the office of the local registrar of the judicial centre at which the order was made. R. 724. Am. Gaz. Jan. 28/2000.

IV CONTENTIOUS BUSINESS

A. Intervention

Intervention

725(1) Any person interested in an estate may intervene by filing a notice in Form 120 and an affidavit showing the nature of the interest.

(2) An intervener shall serve a copy of the notice and affidavit on the applicant for a grant and other persons affected thereby, as soon as reasonably possible after filing.

(3) Notice of all subsequent proceedings shall be served on the intervenor and any other persons affected by the intervention. R.725. Am. Gaz. Dec 11/98.

B. Caveats

Caveats

726(1) At any time before a grant is issued or resealed, any person intending to oppose it may file a caveat with the registrar or a local registrar at any judicial centre.

(2) The caveat shall be in Form 121 and shall set out the nature of the caveator's claim and the grounds upon which a grant is opposed. R. 726.

Filing caveat

727(1) On the filing of a caveat the local registrar shall notify the registrar by telephone; if it appears from the records of the registrar that an application for grant has been filed, and Form 90 has been sent, the registrar shall notify the local registrar by telephone.

(2) All notices given under this rule shall be confirmed by letter enclosing a copy of the caveat. R. 727.

Withdrawal of caveat

728(1) A caveat may be withdrawn or vacated by order.

(2) A caveat shall lapse after the expiration of three months from the day on which it is filed unless it is extended by an order which may be made *ex parte*. R. 728.

Issuance of grant

729 No grant shall issue until the caveat has lapsed, is withdrawn, or is vacated by order. R. 729.

Notification of applicant and caveator

730 Where an application for grant is made and a caveat has been filed or is filed at any time before a grant is issued, the local registrar shall notify the applicant and the caveator. R. 730.

Application for resolution

731 The applicant or the caveator may, after receiving notice from the local registrar, apply by notice of motion to the court at the judicial centre at which the application for grant is filed for a resolution of the matter in issue. R. 731.

C. Compelling Production of Will

Compelling production of will

732 Where an executor fails to file a will for probate within 60 days after the death of the testator, any person interested in the estate may serve a notice of motion on the executor to appear and produce the said will, and accept, or refuse the probate and execution thereof, or show cause why letters of administration with will annexed should not be granted to the applicant or such other person as may be deemed to be legally entitled to such grant and willing to accept the same. R. 732.

Same

733 Where it is suggested that a testamentary document is in the custody of any person, a notice of motion may be served on that person to appear and produce such document and show why the same should not be deposited with the local registrar, or state under oath that no such document is or has been in his possession or control, and furnish any information in his possession as to its whereabouts. R. 733.

D. Motions and Applications

Motions and applications

734 A person who is or may be interested in the estate of a deceased person may give notice for the will to be proven in solemn form. R. 734.

Revoking a grant

735 A person interested in an estate who seeks to revoke a grant may apply at the judicial centre at which the grant was made, or to which the estate has been transferred, by notice of motion to be served on the personal representative to show cause why the grant should not be revoked. A judge may order that pending the disposition of the application nothing be done under the grant without leave. R. 735.

V ACCOUNTS

A. Advertising for Creditors

Advertising for creditors

736 Notice to creditors under the provisions of section 32 of *The Administration of Estates Act* shall be in Form 122. R. 736.

B. Passing of Accounts

Passing of accounts

737(1) A personal representative may file accounts with the local registrar at any time for passing.

(2) Subject to Rule 744 a personal representative shall file the accounts for passing:

(a) when the administration of the estate has been completed;

(b) within two years after the issue of the grant unless such time be extended by order;

(c) when the personal representative desires to be discharged; or

(d) when an administrator desires to substitute security other than that furnished when the grant was made, or by subsequent order, or to have the amount of the security reduced. R. 737.

Failure to file

738(1) Where a personal representative fails to file the accounts as required by Rule 737, any person interested in the estate may serve the personal representative with notice requiring filing of the accounts within 30 days.

(2) Where a personal representative does not file accounts after being served with notice, the person serving the notice may apply by notice of motion for an order compelling filing of the accounts.

(3) A person interested in the estate may at any time apply for an order requiring a personal representative to file accounts where it is alleged by affidavit that a personal representative is negligent or is wasting the estate.

(4) On the return of such notice of motion the court may order that the personal representative file the accounts within a time to be stated. R. 738.

Verification

739(1) The accounts to be filed shall be verified by the affidavit of each personal representative in Form 123 and shall contain a true and perfect inventory of the property of the deceased and shall include:

(a) an account showing the assets and liabilities of the deceased at date of death;

(b) an account showing all receipts and disbursements including the amount distributed to each beneficiary;

(c) an account of all property remaining on hand and all liabilities remaining unpaid;

(d) a statement setting out the manner in which it is proposed to distribute the remaining assets, including the proposed amount of compensation claimed by the personal representative, the amount of lawyers' fees, and the amounts proposed to be distributed to each beneficiary of the estate in full discharge; and

(e) such further accounts or information as may be necessary or as may be required by the examining officer or the court.

(2) Where principal and interest are dealt with separately by the will, or where more than one trust is created by the will, the account shall be divided so as to show separately each trust, and to show separately receipts and disbursements in respect of principal and income in respect of each trust.

(3) Where a personal representative has invested or re-invested trust funds the account shall show separately, particulars of:

(a) all moneys so invested or re-invested from time to time;

(b) all moneys received by way of repayment or realizations upon such investments in whole or in part;

(c) the balance and particulars of all investments remaining on hand. R. 739.

Examination of accounts

740 Within 30 days of filing the accounts the personal representative shall apply *ex parte* for an appointment for the examination of the accounts, and the court may:

(a) designate the local registrar or other person as the examining officer;

(b) give directions respecting the persons to be served with the appointment, the accounts and the affidavit verifying the accounts; and

(c) authorize the examining officer to fix a time and place for the examination of the accounts, and to adjourn the examination from time to time. R. 740.

741(1) Any person interested in the estate and appearing at the examination of the accounts may require the examining officer to refer any disputed item to the court for a ruling and direction, or the examining officer may of his own motion refer any item in doubt or dispute to the court for a ruling and direction.

(2) Where a disputed item is referred to the court, the court may fix a time and place for the hearing and determination of the matter in dispute and give directions as to the service of notice of such hearing. R. 741.

742 On completion of the examination the examining officer shall file a certificate in Form 124. R. 742.

743 On the filing of the certificate, the personal representative or any other person interested in the estate may apply for an order allowing and passing the accounts, and, unless otherwise ordered, notice shall be served on all persons served with the appointment. R. 743.

C. Discharge Without Passing Accounts

Discharge without passing accounts

744 A personal representative desiring to be discharged without passing accounts may apply *ex parte* on filing a release or a consent from each beneficiary and proof that all debts are paid. The relief sought on such application may include the fixing of compensation to the personal representative, costs, cancellation of security, or other business necessary to wind up the estate. R. 744.

VI FEES AND COSTS

Fees and costs

745(1) In this Rule and in Schedule I 'C' of the Tariff:

"core services" means:

(a) receiving instructions from the personal representative;

(b) reviewing a will or *The Intestate Succession Act, 1996* with the personal representative;

(c) providing a copy of the will to each beneficiary;

(d) obtaining details about the deceased and the deceased's property and debts;

(e) attending to obtaining the grant from the court;

(f) advertising for creditors;

(g) transmitting all estate assets to the personal representative and subsequently transferring them to each beneficiary;

(h) dealing with the Public Guardian and Trustee if required;

(i) generally advising the personal representative about estate matters;

(j) dealing with ordinary attendances and correspondence for the core services;

"non-core services or other services" includes but is not limited to the following:

(a) with respect to estate administration, doing all or any of the following:

(i) determining who will apply for a grant in intestate estates;

(ii) locating beneficiaries;

(iii) locating assets in an intestacy or testate situation;

(iv) obtaining a bond for the purposes of Rule 719;

(v) determining whether joint property is an estate asset;

(vi) making court applications, including for matters such as substantial compliance, interpretation or contentious business;

(vii) dealing with distribution issues respecting personal belongings;

(viii) paying bills and dealing with creditors;

(ix) dealing with property in joint tenancy;

(x) dealing with life insurance claims where the beneficiary is not the estate;

(xi) dealing with pensions and investments where the beneficiary is not the estate;

(xii) handling receipts and disbursements through trust accounts;

(xiii) dealing with property management;

(xiv) acting for the estate in the sale of estate property;

(xv) gathering information and dealing with accounts respecting terminal income tax returns, trust returns and goods and services taxes;

(xvi) attending to preparation or filing of tax returns;

(xvii) obtaining tax clearance certificates;

(xviii) corresponding with and attending on beneficiaries;

(xix) preparing personal representative accounts for approval by the beneficiaries;

(xx) preparing and obtaining beneficiaries' releases;

(b) with respect to passing of accounts:

(i) preparing an affidavit of the personal representative;

(ii) applying *ex parte* for an appointment for passing accounts and serving the appointment;

(iii) appearing on appointment date to speak to the application;

(iv) attending before the examining officer;

(v) setting and serving the appointment date;

(vi) appearing on the appointment date to speak to matters in dispute and to the order allowing and passing accounts;

(vii) issuing and serving the order allowing and passing accounts.

(2) The lawyer retained by the personal representative is entitled to payment for providing core services to the personal representative or the estate as follows:

(a) as a percentage as set out in Schedule I 'C' of the tariff; or

(b) any lesser fee than that provided for in clause (a) that is agreed to by the lawyer and the personal representative.

(3) Before being retained by the personal representative, the lawyer shall advise the personal representative in writing of the lawyer's method of billing for non-core services or other services to the personal representative or the estate, based on one or more of the following:

(a) a percentage of the value of the estate;

(b) at a specified hourly rate;

(c) as a fixed fee;

(d) a combination of the methods set out in clauses (a), (b) and (c).

(4) When presented with the lawyer's bill of fees and disbursements, a personal representative may proceed to have the account assessed pursuant to *The Legal Profession Act, 1990* and these rules**"**. Gaz. Jan. 6/2012. New.