

The Small Claims Act, 1997

being

Chapter S-50.11* of the *Statutes of Saskatchewan, 1997* (effective February 16, 1998) as amended by the *Statutes of Saskatchewan, 1998, c.P-30.11; 2004, c.16; 2005, c.29; 2006, c.31; 2010, c.32; 2011, c.14; and 2015, c.9.*

***NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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Schedule

CHAPTER S-50.11

An Act respecting Small Claims and making consequential amendments to other Acts

Short title

1 This Act may be cited as *The Small Claims Act, 1997*.

Interpretation

2 In this Act:

“**clerk**” means a clerk of the Provincial Court appointed pursuant to *The Court Officials Act, 1984*; («*greffier*»)

“**counterclaim**” includes a set-off; («*demande reconventionnelle*»)

“**court**” means the Provincial Court of Saskatchewan continued pursuant to *The Provincial Court Act, 1998*; («*tribunal*»)

“**defendant**” means a person to whom a summons issued pursuant to section 7 or 7.1 is directed; («*défendeur*»)

“**judge**” means, except where the context otherwise requires:

(a) a judge appointed pursuant to *The Provincial Court Act, 1998* but does not include a judge of the Court of Queen’s Bench acting as a judge of the court by virtue of his or her office; or

(b) a justice of the peace appointed pursuant to *The Justices of the Peace Act, 1988*; («*juge* »)

“**monetary limit**” is the amount prescribed for the purposes of subsection 3(7) as the monetary limit; («*limite pécuniaire*»)

“**plaintiff**” means a person who has a claim to which this Act applies and who applies pursuant to subsection 6(1) to have a summons issued; («*demandeur*»)

“**prescribed**” means prescribed in the regulations; («*version anglaise seulement*»)

“**summons**” means a summons issued or to be issued pursuant to this Act; («*assignation*»)

“**third party**” means a person to whom a notice of third party claim is directed; («*mis en cause*»)

“**third party claimant**” means a defendant to a claim or a plaintiff who has been served with a notice of counterclaim who applies pursuant to subsection 13(2) for a notice of third party claim. («*auteur de la mise en cause*»)

1997, c.S-50.11, s.2; 1998, c.P-30.11, s.69; 2005, c.29, s.3; 2010, c.32, s.3; 2011, c.14, s.2.

What this Act applies to

3(1) Subject to subsection (7), this Act applies, whether or not the Crown is a party to the action, to any claim or counterclaim for:

- (a) debt or damages;
- (b) recovery of personal property;
- (c) specific performance or rescission of an agreement relating to personal property or services; or
- (d) relief from opposing claims to personal property.

(2) Subject to subsections (3), (4) and (7) but notwithstanding clause 2(o) of *The Saskatchewan Insurance Act*, actions by or against an insurer may be brought pursuant to this Act in any situation where there is a disagreement between the insured and the insurer.

(3) If the contract of insurance or *The Saskatchewan Insurance Act* requires an appraisal before there can be any recovery, the procedures for an appraisal set out in the contract or *The Saskatchewan Insurance Act*, including, where applicable, submission to an umpire, must be completed before an action may be brought.

(4) If the contract of insurance or *The Saskatchewan Insurance Act* allows but does not require an appraisal, an action may be brought whether or not the procedures for an appraisal set out in the contract or *The Saskatchewan Insurance Act* have been completed.

(5) For the purposes of subsection (3), “**requires an appraisal**” includes a situation in which a contract of insurance or *The Saskatchewan Insurance Act* provides an insured or an insurer with the right to require an appraisal and the insured or insurer has exercised that right.

(6) Subject to subsection (7) but notwithstanding section 61 of *The Automobile Accident Insurance Act*, an action to recover benefits or insurance money may be brought pursuant to this Act.

(7) The maximum amount that may be claimed or the maximum value of the personal property or services with respect to which relief may be sought is the amount prescribed as the monetary limit.

(8) In determining whether a claim or counterclaim exceeds the monetary limit, the amount or value is to be calculated without taking into consideration interest or costs.

(9) This Act does not apply to a claim for libel, slander, malicious arrest, malicious prosecution or false imprisonment.

1997, c.S-50.11, s.3.

Choice of proceedings

4 A person may proceed in any other manner authorized by law rather than proceeding pursuant to this Act.

1997, c.S-50.11, s.4.

Division of claims prohibited

5(1) No person shall divide a claim or counterclaim that exceeds the monetary limit into two or more claims or counterclaims.

(2) Subject to section 32, if a claim or counterclaim exceeds the monetary limit, the person making the claim or counterclaim may abandon that part of the claim or counterclaim that is in excess of the monetary limit.

1997, c.S-50.11, s.5; 2005, c.29, s.4.

Application for summons

6(1) Any person who has a claim to which this Act applies and who wishes to proceed pursuant to this Act may apply to a clerk to have a summons issued.

(2) A person applying to a clerk shall:

- (a) provide the clerk with the details of the person's claim; and
- (b) produce for inspection by the clerk any documents in the person's possession relating to the claim.

(3) Unless otherwise directed by the judge with respect to a specific claim, the clerk shall assist the plaintiff in preparing a concise written statement of the claim.

(4) The plaintiff or the plaintiff's lawyer shall sign the written statement of the claim.

(5) The clerk shall provide the written statement of the claim to a judge.

1997, c.S-50.11, s.6; 2005, c.29, s.5.

Issuing a summons

7(1) If the judge is satisfied that the plaintiff may have a valid claim, the judge shall issue a summons that:

- (a) is directed to the person or persons against whom the claim is made;
- (b) states the time of the case management conference or time of the trial and the court location that the judge considers appropriate.

(2) For the purposes of deciding which court location is appropriate, the judge shall consider the following factors:

- (a) any agreement between the parties respecting the location of the case management conference or the trial;
- (b) the place where the claim arose;
- (c) the place where the defendant resides;
- (d) the place where the plaintiff resides.

(3) The judge may refuse to issue a summons if the judge considers that it is not in the interest of one or more of the parties to proceed with the claim pursuant to this Act.

(3.1) The judge may refuse to issue a summons if the judge considers that the claim of the plaintiff:

- (a) is without reasonable grounds;
- (b) discloses no triable issue; or
- (c) is frivolous, vexatious or an abuse of the court's process.

(4) Where a judge refuses to issue a summons, that refusal does not prevent a plaintiff from proceeding in the Court of Queen's Bench or in any other manner authorized by law.

1997, c.S-50.11, s.7; 2005, c.29, s.6.

Case management conference

7.1(1) Subject to subsections (2) and 10(3.1), before a trial date is set, a case management conference must be held at the time and place set out in the summons.

(2) If the judge is of the view that a case management conference would not be beneficial, the judge may issue a summons setting the trial date.

(3) All parties to the action:

- (a) must attend the case management conference and have authority to settle the claim; and
- (b) may be accompanied by a lawyer or agent.

(4) Each party to the action must bring to the case management conference all relevant documents.

(5) If a case management conference cannot be conducted properly because a party is not prepared for it, a judge may order that party to pay the reasonable expenses of the other party or parties, other than lawyer-related costs.

(6) A judge in a case management conference may attempt to settle any issues in dispute.

(7) If settlement attempts pursuant to subsection (6) have not resolved the dispute, a judge in a case management conference may do any of the following:

- (a) decide any issues that do not require evidence;
- (b) make any other appropriate order according to terms agreed to by the parties;
- (c) set a trial date and location, if a trial is necessary;
- (d) discuss any evidence that will be required and the procedure that will be followed if a trial is necessary;
- (e) order the defendant to prepare a statement of defence;
- (f) order a party to:
 - (i) give another party copies of documents by a set date; or
 - (ii) allow another party to inspect and copy documents by a set date;

- (g) order a party to permit a person chosen by another party to examine any item or property;
 - (h) adjourn the case management conference from time to time;
 - (i) make any order for the just, timely and inexpensive resolution of the action.
- (8) If a party does not comply with an order mentioned in subsection (7), a judge may at any time do one or more of the following:
- (a) adjourn a case management conference and order that party to pay all reasonable expenses incurred by any other parties as a result of the adjournment, other than lawyer-related costs;
 - (b) order a trial to proceed without permitting that party to produce as evidence any information, document or records withheld as a result of the non-compliance;
 - (c) dismiss the claim, counterclaim, reply or third party notice, as the case may be.
- (9) A judge may do one or both of the following:
- (a) make any appropriate order against a party who does not attend a case management conference;
 - (b) give judgment without hearing evidence in the absence of:
 - (i) a plaintiff; or
 - (ii) any other party who does not attend a case management conference if proof of service of the summons or the notice of third party claim, as the case may be, on that party is filed.
- (10) If a matter is to proceed to trial, the judge shall prepare a case management conference report.
- (11) If the matter proceeds to trial, no communication shall be made to the trial judge as to the proceedings at the case management conference except as disclosed in the case management conference report prepared pursuant to subsection (10).
- (12) Subject to an order of a judge pursuant to subsection (7), the following are not admissible as evidence in any civil, administrative, regulatory or summary conviction proceeding, except with the written consent of all parties to an action who participated in a case management conference:
- (a) evidence directly arising from anything said in the course of the case management conference;
 - (b) anything said in the course of the case management conference;
 - (c) any oral or written admission or communication made in the course of the case management conference.

Serving a summons

- 8(1)** A copy of the summons must be served on the defendant at least 10 days before the case management conference date or trial date stated in the summons.
- (2) Where a summons has not been served and there is not enough time before the trial date stated in the summons to comply with subsection (1), a judge may set a new case management conference date or trial date.
- (3) Where a new trial date is set, the summons must be amended to reflect the new case management conference date or trial date.

1997, c.S-50.11, s.8; 2005, c.29, s.8.

Changing location of case management conference or trial

- 9(1)** After issuing a summons, a judge may change the location of the case management conference or trial to any other court location if:
- (a) all parties to the action consent; or
 - (b) the judge is of the opinion that another court location would be appropriate based on information provided by one of the parties.
- (2) Where a judge changes the location of the case management conference or trial as a result of information provided pursuant to subsection (1), the clerk shall issue an amended summons and provide it to the party who provided the information.
- (3) The party to whom the amended summons is issued shall serve the other parties to the action with copies of the amended summons at least seven days before the case management conference or trial date stated in the amended summons.

1997, c.S-50.11, s.9; 2005, c.29, s.9.

Transfer from Court of Queen's Bench

- 10(1)** An action in the Court of Queen's Bench may be transferred to the court by the local registrar with the consent of all parties filed with the Court of Queen's Bench before the trial begins if this Act applies to that claim.
- (2) Where an action is transferred, the local registrar shall forward to the clerk at the court location agreed to by the parties all documents in the possession of the Court of Queen's Bench respecting the matter.
- (3) When the clerk receives the documents, the clerk shall advise the parties to the action of the time and date of the trial or case management conference, as the case may be.
- (3.1) If an action is transferred, and prior to its transfer, the parties had not participated in a settlement pre-trial conference pursuant to *The Queen's Bench Act, 1998*, section 7.1 of this Act applies with any necessary modification, to the case management conference procedure.
- (4) An action transferred from the Court of Queen's Bench is deemed to have been commenced in the court on the day it was commenced in the Court of Queen's Bench.

1997, c.S-50.11, s.10; 2005, c.29, s.10.

Transfer to Court of Queen's Bench

- 11(1)** With the consent of the parties or where a claim, counterclaim, defence or third party claim involves a matter to which this Act does not apply, a judge may order that the matter be transferred to the Court of Queen's Bench.
- (2) Where a matter is ordered to be transferred, the clerk, after the prescribed fees are paid, shall forward to the local registrar of the Court of Queen's Bench:
- (a) the record of any evidence in the form in which it was taken; and
 - (b) all documents and exhibits in the possession of the court respecting the matter.
- (3) Where a matter is transferred to the Court of Queen's Bench, that court, on application by a party, may:
- (a) give directions for continuation of the matter to completion; or
 - (b) order that the matter be recommenced.
- (4) If a matter is transferred to the Court of Queen's Bench and a party had abandoned a portion of his or her claim, counterclaim or third party claim before it was transferred, the Court of Queen's Bench, on application by the party, may allow the abandonment to be withdrawn.
- (5) Subject to an order pursuant to subsection (3), a matter transferred to the Court of Queen's Bench is deemed to have been commenced in the Court of Queen's Bench on the day on which the summons was issued.

1997, c.S-50.11, s.11.

Counterclaims

- 12(1)** Any defendant who has been served with a summons may serve a notice of counterclaim on the plaintiff.
- (1.1) The notice of counterclaim mentioned in subsection (1) must be served three days before the case management conference or the trial.
- (2) Where the defendant has served a notice of counterclaim on the plaintiff, the defendant shall file it with the court.
- (3) Instead of serving a notice of counterclaim on the plaintiff, a defendant may raise a counterclaim orally at the case management conference or the trial.
- (4) If a defendant raises a counterclaim orally pursuant to subsection (3) and the judge is of the opinion that the plaintiff is taken by surprise, the judge may:
- (a) adjourn the case management conference or trial, as the case may be; and
 - (b) order the defendant to file the counterclaim with the court by a specified date.

1997, c.S-50.11, s.12; 2005, c.29, s.11.

Third party claims

13(1) Where a defendant to a claim or a plaintiff who has been served with a notice of counterclaim believes that he or she may be entitled to recover all or part of a judgment from a person who is not a party to the claim or counterclaim, the defendant or plaintiff may make a third party claim against that person.

(2) A third party claimant shall apply to the clerk at the court location named in the summons for a notice of third party claim.

(3) The clerk shall assist the third party claimant in preparing a concise written statement of the third party claim.

(4) After it has been signed by the third party claimant or the third party claimant's lawyer, the clerk shall provide the written statement of the third party claim to a judge.

(5) If the judge is satisfied that the third party claimant may have a valid third party claim, the judge shall issue a notice of third party claim.

(5.1) The judge may refuse to issue a notice of third party claim if the judge considers that the third party claim:

- (a) is without reasonable grounds;
- (b) discloses no triable issue; or
- (c) is frivolous, vexatious or an abuse of the court's process.

(6) The third party claimant shall serve the third party and the other parties to the action with copies of the notice of third party claim at least 10 days before the case management conference date or trial date stated in the third party claim.

1997, c.S-50.11, s.13; 2005, c.29, s.12; 2010, c.32, s.5.

Fees

14(1) Every person who applies for a summons or notice of third party claim and every person who proposes to file any document respecting an action to which this Act applies, including a notice of counterclaim, shall pay the prescribed fee, if any, to the clerk.

(2) The court may refuse to issue a summons or notice of third party claim or to file any document if the prescribed fee, if any, is not paid.

1997, c.S-50.11, s.14.

Fee waivers

14.1 Any fee payable pursuant to this Act is subject to *The Fee Waiver Act*.

2015, c.9, s.4.

Serving documents

15(1) A summons issued pursuant to this Act must be served:

- (a) by personal service on the person required to be served with the summons;
- (b) by registered mail addressed to the person required to be served with the summons; or
- (c) in any manner mentioned in subsection (2) or (3).

(1.1) Subject to subsection (1), all documents required to be served by this Act may be served:

- (a) in any manner that permits the person serving the document to produce proof that it was received by the person to be served, including registered mail, certified mail, fax, courier and personal delivery; or
- (b) in any manner mentioned in subsection (2) or (3).

(2) A document may be served:

- (a) on an adult, by delivering a copy of the document to the person to be served;
- (b) on a minor, by delivering a copy of the document to the minor and the minor's father, mother or guardian or another adult with whom the minor resides;
- (c) on a municipality, by leaving a copy of the document with the mayor, reeve, clerk or secretary of the municipality or with a deputy of any of those persons;
- (d) on a Crown corporation, by sending a copy of the document by registered mail or certified mail to the chief executive officer of the Crown corporation or by personal service of a copy of the document on the chief executive officer of the Crown corporation;
- (e) on any corporation other than a corporation mentioned in clause (d):
 - (i) by leaving a copy of the document with any officer, director, agent or liquidator of the corporation or the clerk, manager, agent or other representative at, or in charge of, any office or any other place where the corporation carries on business in Saskatchewan; or
 - (ii) by mailing by registered mail or certified mail or delivering a copy of the document to the registered office of the corporation or to any attorney of the corporation appointed pursuant to section 268 of *The Business Corporations Act*;
- (f) on the Government of Saskatchewan, by leaving a copy of the document with:
 - (i) the Attorney General or the Deputy Attorney General; or
 - (ii) any barrister and solicitor who is designated by the Attorney General for the purposes of section 15 of *The Proceedings Against the Crown Act*.

(3) A document may be served on a person by leaving a copy with the person's lawyer if the lawyer accepts service by signing a copy of the document and indicating that he or she is the lawyer for that person.

(4) A document may be served outside Saskatchewan if the matter is one in which service outside Saskatchewan would be allowed without a court order if the action were commenced in the Court of Queen's Bench.

1997, c.S-50.11, s.15; 2010, c.32, s.6.

Proof of service

16(1) Service of a document may be proved:

- (a) where service is by personal service, by the oral testimony or affidavit of the person who served the document;
 - (b) where service is by registered mail, by filing with the court the post office acknowledgment of receipt card purporting to be signed by or on behalf of the addressee;
 - (c) where service is by certified mail, by filing with the court the post office proof of delivery card purporting to be signed by or on behalf of the addressee;
 - (d) where service is by fax, by filing with the court the transmission record or journal generated by the fax machine that indicates the date of transmission and that the transmission was successful;
 - (e) where service is by a sheriff, a deputy sheriff or a sheriff's bailiff, by filing a copy of the document endorsed with the certificate of service in the prescribed form; or
 - (f) where service is pursuant to subsection 15(3), by filing with the court a copy of the document endorsed with the acceptance of service by the lawyer.
- (2) Where service is by registered mail or certified mail, the post office acknowledgment of receipt or proof of delivery card purporting to be signed by or on behalf of the addressee is admissible, in the absence of evidence to the contrary, as proof of service without proof of the signature.

1997, c.S-50.11, s.16.

Date of service by mail

17(1) Where service is made by registered mail or certified mail, the document is deemed to have been served:

- (a) on the delivery date shown on the signed post office acknowledgment of receipt card or proof of delivery card; or
- (b) if the card mentioned in clause (a) is not dated, on the date the signed post office acknowledgment of receipt card or proof of delivery card is returned to the sender.

(2) Notwithstanding that a person is deemed to have been served pursuant to subsection (1), that person may prove that he or she was not served and, for that purpose may apply to a judge:

- (a) for an adjournment or for an extension of time; or
- (b) to have the judgment set aside in accordance with section 37.

1997, c.S-50.11, s.17.

Alternative method of service

18(1) If a judge is satisfied that it is impractical for any reason to serve a document in accordance with section 15, the judge may make an order setting out a method of service to be used in place of the methods described in section 15.

(2) A document is deemed to be properly served if it is served by the method stated in the order.

1997, c.S-50.11, s.18.

Deemed service

19(1) A summons is deemed to be served if the defendant takes any action or step to participate in the proceedings without having been served.

(2) A notice of third party claim is deemed to be served if the third party takes any action or step to participate in the proceedings without having been served.

(3) A judge may order that a document is deemed to have been served if, in the opinion of the judge, the document came to the attention of the person to be served without having been served by a method that meets the requirements of this Act.

1997, c.S-50.11, s.19.

Subpoenas

20(1) Any party may apply to have a judge or clerk issue a subpoena to compel a person to give evidence or a subpoena to compel a person to give evidence and bring documents directed to a witness.

(2) A subpoena must be served personally by delivering a copy of the subpoena, together with the prescribed witness fee, to the person named in the subpoena.

(3) A person who is served with a subpoena shall attend at the time and court location mentioned in the subpoena.

(4) A subpoena issued pursuant to subsection (1) has the same effect as a subpoena issued out of the Court of Queen's Bench, and any witness who does not attend in obedience to a subpoena is liable in the same manner as if the witness had disobeyed a subpoena issued out of that court.

1997, c.S-50.11, s.20; 2005, c.29, s.13.

Trials are public

21 Trials are to be open and accessible to the public to the extent that is conveniently possible in each case.

1997, c.S-50.11, s.21.

Trial and determination of action

- 22(1)** Every action is to be tried on the trial date set pursuant to this Act or on the date to which the trial has been adjourned.
- (2) A judge or clerk may adjourn a trial as may be required, and a judge may reserve judgment.
- (3) In a judgment, a judge may make any order that the judge considers appropriate.

1997, c.S-50.11, s.22; 2005, c.29, s.14.

Mediation

- 23(1)** This section applies only at the court locations designated in the regulations.
- (2) A judge at a court location mentioned in subsection (1) may, at any time, direct the parties to participate in a mediation session.
- (3) In a direction pursuant to subsection (2), the judge shall set out the procedures to be taken to discontinue the mediation and have the matter brought before the court if the mediator and the parties are unable to resolve the matter.
- (4) Unless all of the parties and the mediator consent in writing, the following types of evidence are not admissible in any civil, administrative, regulatory or summary conviction proceeding:
- (a) evidence directly arising from anything said in the course of mediation;
 - (b) evidence of anything said in the course of mediation;
 - (c) evidence of an admission or communication made in the course of mediation.
- (5) If any fees or expenses of a mediator are payable, a judge may:
- (a) direct the proportion of the mediator's fees and expenses that each party is to pay; or
 - (b) direct one party to pay all of the mediator's fees and expenses if the judge is satisfied that paying part of those fees and expenses would cause serious financial hardship to the other party.
- (6) No action lies or shall be instituted against a mediator for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by the mediator in the carrying out or supposed carrying out of:
- (a) any power or duty conferred by this section; or
 - (b) any direction made pursuant to this section.

1997, c.S-50.11, s.23; 2005, c.29, s.15; 2006, c.31, s.5.

Decision on written material

24(1) Notwithstanding any other provision of this Act, with the consent of the parties, a judge may decide a claim on the basis of written material filed with the court, whether or not the parties are present.

(2) Section 37 does not apply to a judgment granted pursuant to subsection (1).

1997, c.S-50.11, s.24.

Withdrawal

25 At any time before or during a trial, a plaintiff, defendant or third party claimant may:

- (a) withdraw his or her claim, counterclaim or third party claim; or
- (b) consent to judgment.

1997, c.S-50.11, s.25.

Failure to appear

26(1) A judge may:

- (a) adjourn a trial if a party does not appear at the trial;
- (b) give judgment without hearing evidence in the absence of a defendant who does not appear at a trial, where proof of service of the summons is filed;
- (c) give judgment without hearing evidence in the absence of a plaintiff who does not appear at a trial, where proof of service of the notice of counterclaim is filed;
- (d) give judgment without hearing evidence in the absence of a third party who does not appear at a trial, where proof of service of the notice of third party claim is filed; or
- (e) dismiss the claim of a party who does not appear at a trial.

(2) If a plaintiff, defendant or third party advises the clerk in advance of a trial that he or she does not intend to appear at the trial, the judge may give judgment against that party without requiring the attendance of the other parties on the date of the trial.

1997, c.S-50.11, s.26.

Oral evidence

27(1) If oral evidence is given at trial:

- (a) it is to be given under oath or affirmation; and
- (b) the parties and witnesses giving oral evidence are subject to cross-examination and re-examination.

(2) The judge shall ensure that a recording is made of the oral evidence given at trial.

1997, c.S-50.11, s.27; 2005, c.29, s.16.

Telephone evidence

28(1) A judge may order that the oral evidence of any witness may be taken by telephone where:

- (a) the parties consent; or
 - (b) in the opinion of the judge, it is necessary to ensure a fair hearing.
- (2) Where taking evidence by telephone is or becomes unsatisfactory or the personal attendance of the witness is desirable, the judge may:
- (a) refuse to hear or to continue hearing that evidence;
 - (b) receive or reject the evidence that has been heard; and
 - (c) make any order, including an order respecting costs, that the judge considers appropriate.
- (3) Unless the judge orders otherwise, the party who intends to call a witness whose oral evidence is to be taken by telephone shall file with the court, before the trial, all written material to which the witness intends to refer.
- (4) The party on whose behalf a witness is called shall pay all of the telephone charges of calling that witness.

1997, c.S-50.11, s.28.

Admission of evidence

28.1 If a judge considers the evidence to be credible and trustworthy, the judge may admit as evidence any oral or written testimony or report.

2010, c.32, s.7.

Representation by lawyer or agent

29 The parties may be represented at trial by lawyers or agents.

1997, c.S-50.11, s.29.

Voluntary appearance

30(1) The parties to a claim to which this Act applies may appear voluntarily before a judge.

- (2) Where the parties voluntarily appear before a judge, the judge shall set a date for a trial or a case management conference.
- (3) At the trial or case management conference, the judge may proceed without requiring a summons to be issued.
- (4) The provisions of this Act that govern a trial or case management conference where a summons has been issued, or that govern a judgment or order given by a judge in a trial or case management conference where a summons has been issued, apply also to a trial or case management conference pursuant to this section.

1997, c.S-50.11, s.30; 2005, c.29, s.17.

Costs

31 A judge may at any time, in any proceeding before the court, award costs, other than lawyer-related costs, on such terms and conditions as the judge considers appropriate, including:

- (a) the prescribed fee for issuing a summons or a third party claim;
- (b) costs incurred to effect service;
- (c) fees paid to a witness pursuant to section 20; and
- (d) telephone charges incurred pursuant to section 28.

1997, c.S-50.11, s.31; 2005, c.29, s.18.

Counterclaim

32(1) A counterclaim is to be applied in satisfaction of any claim established by the plaintiff, to the extent of the amount established.

(2) If the counterclaim established exceeds the amount of the plaintiff's claim, the defendant is entitled to have judgment entered for the excess in an amount not more than the monetary limit.

(3) Where the counterclaim established exceeds the plaintiff's claim by more than the amount of the monetary limit, the defendant may set off the amount of the plaintiff's claim but is not entitled to judgment for the excess unless the defendant abandons the portion of the counterclaim that will reduce the excess to the amount of the monetary limit.

(4) Where a defendant does not abandon the portion of the counterclaim that will reduce the excess to the amount of the monetary limit, the defendant may sue for the difference in the Court of Queen's Bench.

(5) Where the counterclaim established is less than the established amount of the plaintiff's claim, the plaintiff is entitled to judgment for the difference.

1997, c.S-50.11, s.32; 2005, c.29, s.19.

Certificate of judgment

33(1) When a matter has been resolved at a case management conference or a judgment has been rendered at a trial, a judge shall cause a certificate of judgment to be prepared and certified by the clerk or the judge.

(2) The clerk shall send to each of the parties:

- (a) a copy of the certificate of judgment; and
- (b) a notice stating that any aggrieved party may appeal the judgment within 30 days after the date of the judgment.

(3) The date of the judgment is the date on which the certificate of judgment is issued.

1997, c.S-50.11, s.33; 2005, c.29, s.20.

Powers of judge re judgment

34(1) Where a judge orders one party to pay money to or take any action respecting another party, the judge may include in the judgment a timetable for complying with that judgment.

(2) If a judgment does not include a timetable for complying with it, any party may apply to the court for a summons to establish a timetable for compliance with the judgment.

(3) Any party may apply to the court for a summons to amend a timetable for compliance with a judgment.

(4) A timetable for compliance with a judgment may:

- (a) state that the judgment debtor is to comply with the judgment immediately;
- (b) set a date by which the judgment is to be complied with;
- (c) where compliance involves the payment of money, set out a schedule for payment by instalments; or
- (d) contain any other provision respecting the timetable that the judge considers appropriate.

1997, c.S-50.11, s.34.

Registration of judgment

35(1) The successful party to the action may file the certificate of judgment in the office of the local registrar of the Court of Queen's Bench at the judicial centre nearest to the place where the trial was held.

(2) A certificate of judgment filed pursuant to subsection (1) is admissible in evidence as proof of the judgment without proof of the signature of the clerk or judge.

(3) Subject to subsections (4) and 37(5), the local registrar of the Court of Queen's Bench, on receipt of a certificate of judgment pursuant to subsection (1), shall enter the certificate as a judgment of the Court of Queen's Bench, and that judgment may be enforced as a judgment of that court.

(4) A local registrar of the Court of Queen's Bench shall not enter a certificate of judgment unless satisfied that the time for appealing an order has elapsed and an appeal has not been filed respecting that judgment.

1997, c.S-50.11, s.35; 2010, c.32, s.8.

Enforcement of judgment

36(1) Subject to an order made pursuant to subsection 34(3), a judgment creditor may not take any steps to enforce the judgment as long as the judgment debtor is complying with the terms of the judgment.

- (2) If a judgment debtor fails to comply with the terms of the judgment:
- (a) the balance of money required to be paid becomes due immediately if the judgment required the payment of money;
 - (b) any action to be taken by the judgment debtor is to take place immediately; and
 - (c) the judgment creditor may enforce the judgment.

1997, c.S-50.11, s.36.

Setting aside judgment

37(1) Subject to subsection (2), if there has been no appeal from a judgment pursuant to this Act, any party to the action may, within 90 days after the date of judgment, apply to the court for a summons to set aside the judgment and rehear the matter if:

- (a) the party applying to set aside the judgment did not appear at:
 - (i) the case management conference at which the judge gave judgment; or
 - (ii) the trial at which the judge gave judgment;
 - (b) the party applying to set aside the judgment submits an affidavit setting out:
 - (i) the party's reasons for not appearing; and
 - (ii) if the party is a defendant or a third party, that the party has a valid defence to the claim or third party claim, as the case may be, made against him or her; and
 - (c) in the opinion of the judge:
 - (i) the party applying to set aside the judgment has a reasonable excuse for not appearing; and
 - (ii) if the party is a defendant or a third party, the party has a valid defence to the claim or third party claim, as the case may be.
- (2) The court may, in exceptional circumstances, allow an application to be made pursuant to subsection (1) after the expiry of 90 days from the date of judgment.
- (3) For the purposes of subclause (1)(c)(ii), the defence is not valid if the judge considers that the defence:
- (a) is without reasonable grounds;
 - (b) discloses no triable issue; or
 - (c) is frivolous, vexatious or an abuse of the court's process.

(4) On the return date of a summons issued pursuant to subsection (1), the judge may set aside the judgment on any terms as to costs that the judge considers appropriate and give any directions that the judge considers necessary respecting the rehearing of the matter.

(5) If the judgment is set aside pursuant to subsection (4), any certificate of judgment that is entered pursuant to subsection 35(3) is vacated.

2010, c.32, s.9.

Claim against personal representative

38 When a claim is established against a personal representative of a deceased person, the judgment binds only the assets of the estate in the hands of the personal representative.

1997, c.S-50.11, s.38.

Appeal to Queen's Bench

39(1) A party may appeal a judgment made pursuant to this Act to the Court of Queen's Bench within 30 days after the date of judgment, or within any further time, not exceeding 150 days, that the Court of Queen's Bench may allow.

(2) An appeal is commenced by filing with the local registrar of the Court of Queen's Bench at the judicial centre nearest to the place where the trial was held:

- (a) a notice of appeal;
- (b) proof of service of the notice of appeal on the opposite party or the party's lawyer;
- (c) a copy of the certificate of judgment; and
- (d) a copy of the request for a transcript of the proceedings.

(3) A notice of appeal must set out the grounds of the appeal, and:

- (a) where the appeal is by a defendant who did not serve and file a notice of counterclaim before trial, must set out briefly the details of the defendant's defence and of any counterclaim; and
- (b) where the appeal is by a third party, must set out briefly the details of the third party's defence.

(4) Subject to subsection (9), the appellant shall file with the local registrar at the judicial centre mentioned in subsection (2) a transcript of the evidence heard by the judge.

(5) Where the transcript mentioned in subsection (4) is not filed within six months after the day on which the notice of appeal is filed, the appeal is deemed to be dismissed unless an order extending the time for filing the transcript is made before the expiration of the six-month period by a judge of the Court of Queen's Bench on an application by the appellant.

(6) If a judge of the Court of Queen's Bench extends the time for filing the transcript pursuant to subsection (5) and the transcript is not filed before the expiration of that extended period, the appeal is deemed to be dismissed.

(7) On receipt of the transcript, the local registrar of the Court of Queen's Bench shall enter the appeal for hearing at the judicial centre where the appeal is filed.

(8) When an appeal is filed pursuant to this section, execution of the judgment and all other proceedings in the action are stayed until the appeal is determined unless a judge or a judge of the Court of Queen's Bench orders otherwise.

(9) Where a judge of the Court of Queen's Bench is satisfied that a transcript cannot be provided for the appeal, the judge, on application by the appellant, may:

- (a) order that the matter be returned to the court for a new trial; or
- (b) make any other order that the judge considers appropriate.

1997, c.S-50.11, s.39; 2005, c.29, s.21.

Form of appeal

40 An appeal pursuant to this Act is to take the form of an appeal on the record.

1997, c.S-50.11, s.40.

Records from trial

41 On being notified by the local registrar of the Court of Queen's Bench that an appeal has been filed pursuant to section 39, the clerk shall ensure that the following are delivered to the local registrar:

- (a) the summons, if any;
- (b) the notice of counterclaim, if any;
- (c) the third party claim, if any;
- (d) any exhibits entered at the trial;
- (e) the statement of defence, if any.

1997, c.S-50.11, s.41; 2005, c.29, s.22.

Disposal of exhibits

41.1 The chief judge as defined in *The Provincial Court Act, 1998* may direct the disposal of any exhibits in the possession or control of the court after the expiry of the appeal period.

2005, c.29, s.23.

Order on appeal

42 A judge of the Court of Queen's Bench, on hearing an appeal pursuant to section 39, may:

- (a) allow the appeal and give the judgment that the trial judge should have given;
- (b) dismiss the appeal; or
- (c) order that the action be returned to the court for a new trial.

1997, c.S-50.11, s.42.

Costs on appeal

43 A judge of the Court of Queen's Bench may grant to a successful party the costs of the appeal calculated in accordance with the prescribed tariff.

1997, c.S-50.11, s.43.

Entry as Queen's Bench judgment

44(1) The judgment of the judge hearing the appeal is to be entered as a judgment of the Court of Queen's Bench and may be enforced as a judgment of that court.

(2) The local registrar of the Court of Queen's Bench shall forward a copy of the judgment of the Court of Queen's Bench to the trial judge.

1997, c.S-50.11, s.44.

Appeal to Court of Appeal

45 The judgment of the judge hearing the appeal is subject to appeal to the Court of Appeal on a question of law, with leave of a judge of that court.

1997, c.S-50.11, s.45.

46 Repealed. 2004, c.16, s.8.

Procedural informality

47 No proceedings pursuant to this Act are to be considered invalid for informality if there has been substantial compliance with this Act.

1997, c.S-50.11, s.47.

Register

48 The clerk or judge shall keep a register and enter in that register:

- (a) the names of the parties to every action;
- (b) the details of every judgment rendered;
- (c) all dates relevant to every action or judgment;
- (c.1) the dollar amount of the judgment, if any; and
- (d) any other details that the clerk or judge considers relevant.

1997, c.S-50.11, s.48; 2005, c.29, s.24.

Authority of clerks

49 A clerk has the authority to:

- (a) issue subpoenas;
- (b) certify certificates of judgment; and
- (c) adjourn any cause or matter.

1997, c.S-50.11, s.49.

Immunity

49.1 No action or proceeding lies or shall be instituted against a clerk if that person is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out of any responsibility imposed by this Act or the regulations.

2005, c.29, s.25.

Where a different judge issued summons

50 Where a judge has issued a summons or a third party claim, any other judge has the same powers respecting the matter as if that judge had issued the summons or third party claim.

1997, c.S-50.11, s.50.

Regulations

51 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) for the purposes of subsection 3(7):
 - (i) prescribing a monetary limit; or
 - (ii) dividing Saskatchewan into different areas or places and prescribing different monetary limits applicable to different areas or places;
- (c) governing procedures in the court;
- (d) prescribing the form of any document required for the purposes of this Act;
- (e) prescribing the fees where fees are authorized by this Act;
- (e.1) prescribing the terms and conditions pursuant to which a fee authorized by this Act may be waived in whole or in part;
- (f) fixing the costs, or prescribing a tariff of costs, where costs are authorized to be fixed or prescribed by this Act;

- (g) designating court locations for the purposes of section 23;
- (h) prescribing any matter or thing required or authorized by this Act to be prescribed;
- (i) respecting any matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

1997, c.S-50.11, s.51; 2005, c.29, s.26.

52 Dispensed. This section makes consequential amendments to another Act. The amendments have been incorporated into the corresponding Act.

Transitional

53 Any proceedings commenced pursuant to *The Small Claims Act*, as that Act existed on the day before the coming into force of this Act, but not completed before the coming into force of this section are continued pursuant to this Act, and are to be dealt with as if they had been commenced pursuant to this Act.

1997, c.S-50.11, s.53.

54 to 56 Dispensed. These sections make consequential amendments to other Acts. The amendments have been incorporated into the corresponding Acts.