

## CONSOLIDATION

*Federal Courts Rules*,  
SOR/98-106, amended by SOR/2002-417; SOR/2004-283.

**Note:** This consolidation has been prepared for convenience of reference only and has no official sanction.

### RULES FOR REGULATING THE PRACTICE AND PROCEDURE IN THE FEDERAL COURT OF APPEAL AND THE FEDERAL COURT

#### SHORT TITLE

Short title

1. These Rules may be cited as the *Federal Courts Rules*. SOR/2004-283, s. 2.

#### PART 1 APPLICATION AND INTERPRETATION

Application

1.1(1)

1. (1) These Rules apply to all proceedings in the Federal Court of Appeal and the Federal Court unless otherwise provided by or under an Act of Parliament.

Inconsistency with Act

1.1(2)

(2) In the event of any inconsistency between these Rules and an Act of Parliament or a regulation made under such an Act, that Act or regulation prevails to the extent of the inconsistency.

SOR/2004-283, s. 2.

#### INTERPRETATION

Definitions

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2. The following definitions apply in these Rules.

"Act" « Loi »

"Act" means the *Federal Courts Act*. (Loi)

"action" « action »

"action" means a proceeding referred to in rule 169. (action)

"address for service" « adresse aux fins de signification »

"address for service" means

(a) in respect of a party who has no solicitor of record,

(i) the address shown on the last document filed by the party that indicates an address in Canada, or

(ii) where the party is the Crown or the Attorney General of Canada, the office of the Deputy Attorney General of Canada in Ottawa; and

(b) in respect of a party who has a solicitor of record, the address of the solicitor of record shown on the last filed document that indicates an address. (adresse aux fins de signification)

"Administrator" « administrateur »

"Administrator" means the Chief Administrator appointed under section 5 of the Courts Administration Service Act, or a person acting on his or her behalf. (administrateur)

"Admiralty action" « action en matière d'amirauté »

"Admiralty action" means an action in which the Court exercises jurisdiction under section 22 of the Act. (action en matière d'amirauté)

"appeal" « appel »

"appeal" means a proceeding referred to in rule 335. (appel)

"applicant" « demandeur »

"applicant" means a party bringing an application. (demandeur)

"application" « demande »

"application" means a proceeding referred to in rule 300. (demande)

"assessment officer" « officier taxateur »

"assessment officer" means an officer of the Registry designated by an order of the Court, a judge or a prothonotary, and includes, in respect of a reference, the referee presiding in the reference. (officier taxateur)

"business day" « jour ouvrable »

"business day" means a day that is not a holiday. (jour ouvrable)

"case management judge" « juge responsable de la gestion de l'instance »

"case management judge" means a judge assigned under paragraph 383(a) or rule 383.1 and includes a prothonotary assigned under paragraph 383(b). (juge responsable de la gestion de l'instance)

"certified copy" « copie certifiée conforme »

"certified copy", in respect of a document in the custody of the Registry, means a copy of the document certified by an officer of the Registry. (copie certifiée conforme)

"Christmas recess" « vacances judiciaires de Noël »

"Christmas recess" means the period beginning on December 21 in a year and ending on January 7 in the following year. (vacances judiciaires de Noël)

"Court" « Cour »

"Court" means, as the circumstances require,

(a) the Federal Court of Appeal, including, in respect of a motion, a single judge of that court; or

(b) the Federal Court, including a prothonotary acting within the jurisdiction conferred under these Rules.

(Cour)

"Court file" « dossier de la Cour »

"Court file" means the file maintained pursuant to rule 23 or 24. (dossier de la Cour)

"dispute resolution conference" « conférence de règlement des litiges »

"dispute resolution conference" means a conference ordered under rule 386. (conférence de règlement des litiges)

"filed" « déposé »

"filed", in respect of a document, means accepted for filing under rule 72. (déposé)

"garnishee" « tiers saisi »

"garnishee" means a person in respect of whom an order attaching a debt to a judgment debtor has been made under rule 449. (tiers saisi)

"Hague Convention" « Convention de La Haye »

"Hague Convention" means the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters signed at The Hague on November 15, 1965. (Convention de La Haye)

"hearing" « audience »

"hearing" includes a conference held under these Rules. (audience)

"holiday" « jour férié »

"holiday" means a Saturday, Sunday or any other day defined as a holiday in subsection 35(1) of the Interpretation Act. (jour férié)

"intervener" « intervenant »

"intervener" means a person who has been granted status as an intervener under rule 109. (intervenant)

"issued" « délivré »

"issued" means

- (a) in respect of an originating document, dated, signed, sealed with the seal of the Court and assigned a Court file number by the Administrator; and
- (b) in respect of any other document, dated, signed and sealed with the seal of the Court by the Administrator. (délivré)

"local office" « bureau local »

"local office" means an office of the Registry of the Court established by the Administrator other than the principal office. (bureau local)

"motion" « requête »

"motion" means a request to the Court under, or to enforce, these Rules. (requête)

"oath" « serment »

"oath" includes a solemn affirmation within the meaning of subsection 14(1) of the Canada Evidence Act. (serment)

"order" « ordonnance »

"order" includes

- (a) a judgment;
- (b) a decision or other disposition of a tribunal; and
- (c) a determination of a reference under section 18.3 of the Act. (ordonnance)

"originating document" « acte introductif d'instance »

"originating document" means a document referred to in rule 63. (acte introductif d'instance)

"party" « parties »

"party" means

- (a) in respect of an action, a plaintiff, defendant or third party;
- (b) in respect of an application,
  - (i) where a tribunal brings a reference under section 18.3 of the Act, a person who becomes a party in accordance with rule 323,
  - (ii) where the Attorney General of Canada brings a reference under section 18.3 of the Act, the Attorney General of Canada and any other person who becomes a party in accordance with rule 323, and
  - (iii) in any other case, an applicant or respondent;
- (c) in respect of an appeal, an appellant or respondent; and
- (d) in respect of a motion, the person bringing the motion or a respondent thereto. (parties)

"person" « personne »

"person" includes a tribunal, an unincorporated association and a partnership. (personne)

"plaintiff" « demandeur »

"plaintiff"

- (a) except in the case of a class action, includes a person on whose behalf an action is commenced; and
- (b) in the case of a class action, means
  - (i) in respect of the common questions of law or fact, the representative plaintiff, and
  - (ii) in respect of individual questions, the member to whom those questions apply.

"pleading" « acte de procédure »

"pleading" means a document in a proceeding in which a claim is initiated, defined, defended or answered. (acte de procédure)

"principal office" « bureau principal »

"principal office" means the head office of the Registry of the Court established by the Administrator. (Bureau principal)

"referee" « arbitre »

"referee" means a person to whom a matter has been referred under rule 153. (arbitre)

"Registry" « greffe »

"Registry" [ Repealed, SOR/2004-283, s. 3 ]

"sheriff" « shérif »

"sheriff" includes a marshal, peace officer or other person to whom a writ, warrant or other process is directed and, in the Province of Quebec, a member of the Ordre professionnel des huissiers de justice du Québec. (shérif)

"simplified action" « action simplifiée »

"simplified action" means an action referred to in rule 292. (action simplifiée)

"solicitor" « avocat »

"solicitor" means a person referred to in subsection 11(3) of the Act. (avocat)

"solicitor of record" « avocat inscrit au dossier »

"solicitor of record" means a solicitor determined under rule 123. (avocat inscrit au dossier)

"specially managed proceeding" « instance à gestion spéciale »

"specially managed proceeding" means a proceeding managed in accordance with rules 383 to 385. (instance à gestion spéciale)

"statement of claim" « déclaration »

"statement of claim" means a document by which an action is commenced. (déclaration)

"summer recess" « vacances judiciaires d'été »

"summer recess" means the months of July and August in each year. (vacances judiciaires d'été)

"swear" Version anglaise seulement

"swear", in respect of an oath, includes affirm. (Version anglaise seulement)

"third party" « tierce partie »

"third party" includes a fourth or subsequent party. (tierce partie)

"tribunal" Version anglaise seulement

"tribunal" has the same meaning as "federal board, commission or other tribunal" in the Act. (Version anglaise seulement)

"unincorporated association" « association sans personnalité morale »

"unincorporated association" means an organization of two or more persons, other than a partnership, that operates under a common name for a common purpose or undertaking. (association sans personnalité morale)

"writ of execution" « bref d'exécution »

"writ of execution" includes a writ of seizure and sale, a writ of possession, a writ of delivery and a writ of sequestration, and any further writ in aid thereof. (bref d'exécution)

SOR/2002-414, s. 1;SOR/2004-283, s. 3.

#### General principle

3

3. These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.

#### Matters not provided for

4

4. On motion, the Court may provide for any procedural matter not provided for in these Rules or in an Act of Parliament by analogy to these Rules or by reference to the practice of the superior court of the province to which the subject-matter of the proceeding most closely relates.

#### Forms

5

5. Where these Rules require that a form be used, the form may incorporate any variations that the circumstances require.

## COMPUTATION, EXTENSION AND ABRIDGEMENT OF TIME

## Interpretation Act

6(1)

6. (1) Subject to subsections (2) and (3), the computation of time under these Rules, or under an order of the Court, is governed by sections 26 to 30 of the Interpretation Act.

## Period of less than seven days

6(2)

(2) Where a period of less than seven days is provided for in these Rules or fixed by an order of the Court, a day that is a holiday shall not be included in computing the period.

## Christmas recess

6(3)

(3) Unless otherwise directed by the Court, a day that falls within the Christmas recess shall not be included in the computation of time under these Rules for filing, amending or serving a document.

## Extension by consent

7(1)

7. (1) Subject to subsections (2) and (3), a period provided by these Rules may be extended once by filing the consent in writing of all parties.

## Limitation

7(2)

(2) An extension of a period under subsection (1) shall not exceed one half of the period sought to be extended.

## Exception

7(3)

(3) No extension may be made on consent of the parties in respect of a period fixed by an order of the Court or under subsection 203(1), 304(1) or 339(1).

## Extension or abridgement

8(1)

8. (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.

## When motion may be brought

8(2)

(2) A motion for an extension of time may be brought before or after the end of the period sought to be extended.

## Motions for extension in Federal Court of Appeal

8(3)

(3) Unless the Court directs otherwise, a motion to the Federal Court of Appeal for an extension of time shall be brought in accordance with rule 369. SOR/2004-283, s.32.

## PART 2

## ADMINISTRATION OF THE COURT

## OFFICERS OF THE COURT

## Designation of Administrator

9(1)

9. (1) [ Repealed, SOR/2004-283, s. 4.]

## Duties of Administrator

9(2)

(2) [ Repealed, SOR/2004-283, s. 4.]

## Acting Administrator

9(3)

(3) [ Repealed, SOR/2004-283, s. 4.]

## Judicial Administrators

10(1)

10. (1) [ Repealed, SOR/2004-283, s. 4. ]

Duties of Judicial Administrators

10(2)

(2) [ Repealed, SOR/2004-283, s. 4.]

Revocation of designation

11(1)

11. (1) [ Repealed, SOR/2004-283, s. 4.]

Continuation

11(2)

(2) [ Repealed, SOR/2004-283, s. 4.]

Court registrars

12(1)

12. (1) The Administrator shall arrange that there be in attendance at every sitting of the Court a duly qualified person to act as court registrar for the sitting, who shall, subject to the direction of the Court,

- (a) make all arrangements necessary to conduct the sitting in an orderly, efficient and dignified manner;
- (b) keep a record of every material event that transpires during the sitting;
- (c) keep and be responsible for all books and records of the Court used at the sitting; and
- (d) keep and be responsible for all exhibits filed during the sitting and mark them, record them and indicate by whom they were filed.

Other officers of the Court

12(2)

(2) The Administrator shall arrange for the attendance at every sitting of the Court of all persons who are necessary for the proper conduct of the Court at the sitting. SOR/2002-417, s. 2.

### COURT SEALS

Court seals

13(1)

13. (1)The seal of each court — the Federal Court of Appeal and the Federal Court — shall be approved by its Chief Justice and shall be kept in the principal office.

Facsimiles of seal

13(2)

(2)The Chief Justice of each court may authorize one or more facsimiles of the seal of their court to be kept at the Registry. SOR/2004-283, s. 5.

### REGISTRY

Registry functions

14

14. Registry functions may be performed by an officer of the Registry at any place and at any time.

Hours of operation

15(1)

15. (1)The Registry shall be open for business on every day except holidays from 9:00 a.m. until 5:00 p.m., unless otherwise directed by the Administrator, following consultation with the Chief Justice of each court.

Special hours of operation

15(2)

(2) The Registry shall also be open at such other times as may be required for the proper judicial functioning of the Court. SOR/2004-283, s. 6.

Recommendation boxes

16

16. To provide the public with an opportunity to make comments regarding the administration or rules of the Court, two small locked boxes — one for the Federal Court of Appeal and one for the Federal Court — shall be maintained in every office of the Registry, located and constructed so that members of the public can conveniently insert envelopes into them and identified by a sign indicating

(a) "RECOMMENDATIONS FOR THE FEDERAL COURT OF APPEAL" or "RECOMMENDATIONS FOR THE FEDERAL COURT", as the case may be;

(b) that recommendations are invited for amendments to the *Federal Courts Rules* and improvements in the administration of the Court; and

(c) that every recommendation will be sent unopened directly to the Chief Justice of the court in question. SOR/2004-283, s. 6.

#### Local offices

17

17. In addition to the principal office in Ottawa established under section 14 of the Act, offices of the Court are hereby continued in Calgary, Charlottetown, Edmonton, Fredericton, Halifax, Montreal, Quebec City, Regina, Saint John, Saskatoon, St. John's, Toronto, Vancouver, Whitehorse, Winnipeg and Yellowknife.

#### Requests and requisitions

18

18. A request or requisition to the Administrator under these Rules shall be made in Form 18.

### FEES

#### Registry fees

19

19. A party shall pay to the Registry for a service or procedure set out in Tariff A the fees set out in that Tariff.

#### Sheriff's fees

20(1)

20. (1) Subject to subsection (2), a sheriff is entitled to the fees for service and disbursements set out in Tariff A.

#### Modification by Court

20(2)

(2) On motion, the Court may increase or decrease the fee payable to a sheriff on execution.

### COURT RECORDS

#### Books and records

21

21. The Administrator shall keep, in the National Capital Region, all books and records necessary for recording the proceedings of the Court and shall enter therein all orders, directions, foreign judgments ordered to be registered, pleadings and other documents filed in proceedings.

#### Caveat register

22(1)

22. (1) The Administrator shall keep in the Registry a caveat register, in which all caveats, withdrawals of caveats and orders affecting caveats shall be entered.

#### Entry of caveat

22(2)

(2) On the filing of a caveat under subsection 493(1), (2) or (3), the Administrator shall enter the caveat in the caveat register.

#### Court files

23(1)

23. (1) The Administrator shall maintain a file in the National Capital Region in respect of every proceeding in the Court, in which shall be kept, stamped with the date and time of filing and bound permanently in the order of filing,

- (a) every document filed under these Rules, an order of the Court or an Act of Parliament, other than affidavits or other material filed in support of a motion or as evidence at trial;
- (b) all correspondence between a party and the Registry;
- (c) all orders;
- (d) copies of all writs issued in the proceeding; and
- (e) such other documents relating to the proceeding as the Court may direct.

#### Annexes

##### 23(2)

(2) An annex to the Court file shall be maintained in respect of every proceeding in the Court, in which shall be kept

- (a) all affidavits;
- (b) all exhibits; and
- (c) all other documents and material in the custody of the Court or the Registry that are not required under subsection (1) to be kept in the Court file.

#### Files for notices of motion

##### 24(1)

24. (1) Where, in respect of an action, application or appeal that has not yet been commenced, a notice of motion for an extension of time, for leave to appeal or for any other order under a statute, rule or other enactment is filed, the notice of motion, any affidavits filed in respect thereof and any order made pursuant to the motion shall be kept in Court files maintained for notices of motion of that category.

#### Copies on file

##### 24(2)

(2) Where a proceeding referred to in subsection (1) is subsequently commenced, a copy of the order and related material referred to in that subsection shall be placed in the Court file maintained for the proceeding.

#### Transmission of documents filed in local office

##### 25

25. A document filed in a local office shall be transmitted forthwith by the Administrator to the principal office of the Registry and a certified copy of all such documents shall be kept at the local office and transmitted to any other local office where a copy is required for the business of the Court.

#### Inspection of files

##### 26(1)

26. (1) Where the necessary facilities are available, any person may, with supervision and without interfering with the business of the Court, inspect a Court file or annex.

#### Removal of documents from file

##### 26(2)

(2) Nothing shall be removed from a Court file or annex except

- (a) under an order of the Court;
- (b) by an officer of the Registry acting in the course of his or her duties; or
- (c) in accordance with rule 26.1.

SOR/2002-417, s. 3.

#### Removal of files

##### 26(3)

(3) Unless otherwise ordered by the Court, no Court file or annex to a Court file shall be removed from the Registry by any person other than

- (a) a judge, prothonotary or referee; or
- (b) an officer of the Registry acting in the course of his or her duties.

#### Definition

##### 26.1(1)

26.1 (1) In this rule, "appeal" includes an appeal of an order of a prothonotary, an application for leave to appeal and an appeal to the Supreme Court of Canada.



## Removal of exhibits from file

26.1(2)

(2) Subject to subsection (4), exhibits put into evidence shall remain in the Court file either

(a) until the time for an appeal has expired, if no appeal has been taken, or

(b) until the appeal is disposed of, if an appeal has been taken.

## Return of exhibits

26.1(3)

(3) On the expiry of the time for appeal or on the disposition of the appeal, the Administrator shall return the exhibits to the respective solicitors or the parties who put the exhibits in evidence.

## Return on consent

26.1(4)

(4) At any time following judgment, on requisition by the solicitor or party who put an exhibit in evidence or the person who produced it and on the filing of the consent of all parties, the Administrator shall return the exhibit to the person making the requisition. SOR/2002-417, s. 4.

## UNCLAIMED EXHIBITS

## Directions

27(1)

27. (1) If exhibits are not returnable to a party, solicitor or person or have not been claimed by a party, solicitor or person within one year after the expiry of the time for appeal or the disposition of the appeal referred to in subsection 26.1(3), the Administrator may seek directions from the Court as to their disposition.

## Disposal of exhibits

27(2)

(2) The Court may, at the request of the Administrator, order that any exhibits not claimed by, or returnable to, a party, solicitor or other person be vested in Her Majesty in right of Canada or be destroyed. SOR/2002-417, s. 5.

## HEARINGS

## Sitting of Court

28

28. The Court may sit at any time and at any place.

## Public hearings

29(1)

29. (1) Subject to subsection (2) and rule 30, hearings of the Court, other than pre-trial or dispute resolution conferences, shall be open and accessible to the public.

## Hearing in camera

29(2)

(2) On motion, the Court may direct that all or part of a proceeding be heard in camera if it is satisfied that the hearing should not be open to the public.

## Orders out of court

30(1)

30. (1) A judge or prothonotary who is not sitting in court may make an order on a motion if

(a) the judge or prothonotary is satisfied that all parties affected have consented thereto;

(b) the motion was brought in accordance with rule 369; or

(c) for any other reason the judge or prothonotary considers that the order can be made without a hearing without prejudice to any party.

## Variance

30(2)

(2) On motion, the Court may set aside or vary an order made under paragraph (1)(a) on the ground that a party did not consent to it.

Interpreter

31

31. A request by a party under the Official Languages Act for an interpreter at a hearing shall be made in writing and be sent to the Administrator as soon as is practicable before the hearing begins.

Remote conferencing

32

32. The Court may order that a hearing be conducted in whole or in part by means of a telephone conference call, video-conference or any other form of electronic communication.

Technological assistance

33

33. The Court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

General Sittings of Federal Court

34(1)

34. (1) General Sittings of the Federal Court for the hearing of motions shall be held, except during the Christmas or summer recess or on a holiday,

(a) at Ottawa, every Tuesday and Thursday;

(b) at Montreal, Toronto and Vancouver, every Monday; and

(c) in every province other than Ontario, Quebec and British Columbia, at least once per month, on a day and in a place fixed by the Chief Justice of the Federal Court.

Cancellation

34(2)

(2) General Sittings may be cancelled by the Chief Justice of the Federal Court if no notice of a motion to be presented at the Sittings has been filed

(a) in Ottawa, Montreal, Toronto or Vancouver, at least two days before the day of the Sittings; and

(b) in any other place, at least one week before the day of the Sittings.

Summer recess

34(3)

(3) General Sittings during the summer recess will be announced by the Chief Justice of the Federal Court before June 15 each year. SOR/2004-283, ss. 33 and 34.

Hearing dates

35(1)

35. (1) Subject to rule 298 and paragraph 385(1)(b), motions that can conveniently be heard at the General Sittings of the Federal Court may be made returnable accordingly.

Special hearing dates

35(2)

(2) A request may be made informally to the Judicial Administrator of the Federal Court of Appeal or the Federal Court, as the case may be, for an appointment of a special time and place

(a) for sittings of the Federal Court of Appeal or of a judge of that court to hear a motion; or

(b) for sittings of a judge of the Federal Court or of a prothonotary to hear a motion that is likely to be lengthy or a motion to be heard other than at General Sittings. SOR/2004-283, ss.7and 33.

Adjournment

36(1)

36. (1) A hearing may be adjourned by the Court from time to time on such terms as the Court considers just.

Adjournment to fixed day

36(2)

(2) Where a hearing is adjourned to a fixed day, a party who appeared at the hearing is deemed to have had notice of the

adjournment.

Notice dispensed with  
36(3)

(3) Where a party has failed to appear at a hearing, that party need not be served with notice of an adjournment of the hearing.

Failure to give notice  
37

37. Where at a hearing the Court considers that any person to whom notice of the hearing has not been given ought to have had such notice, the Court may adjourn the hearing or dismiss the proceeding or motion.

Absence of party  
38

38. Where a party fails to appear at a hearing, the Court may proceed in the absence of the party if the Court is satisfied that notice of the hearing was given to that party in accordance with these Rules.

Inability to continue  
39

39. If a judge or referee of the Federal Court of Appeal or a Judge, prothonotary or referee of the Federal Court is for any reason unable to continue in a proceeding or to render a judgment that has been reserved, the Chief Justice of the court in question may order that the proceeding be reheard or retried, on any terms that the Chief Justice considers just. SOR/2004-283, s. 8.

Rota of Judges for Vancouver  
40(1)

40. (1) On or before July 1 in each year, the Chief Justice of the Federal Court shall, in consultation with the other judges of that court, establish a rota of judges for Vancouver for the twelve months commencing on September 1 of that year, excluding the Christmas recess.

Powers of Chief Justice of the Federal Court  
40(2)

(2) The Chief Justice of the Federal Court may make changes to the Vancouver rota, including the substitution of one judge for another during all or part of the judge's period of assignment.

Responsibilities of judges  
40(3)

(3) A judge assigned to Vancouver shall reside in Vancouver for the period of the assignment and hold sittings and otherwise transact the judicial business of the Federal Court in Vancouver and in such other places as may be required.

Assignment period  
40(4)

(4) Except with a judge's consent, the Chief Justice of the Federal Court shall not  
 (a) assign the judge to Vancouver for a period exceeding two months; or  
 (b) reassign the judge to Vancouver for a second assignment within two months after the end of the first.  
 SOR/2004-283, ss. 9, 33 and 34.

## SUMMONING OF WITNESSES OR OTHER PERSONS

Subpoena for witness  
41(1)

41. (1) Subject to subsection (4), on receipt of a written request, the Administrator shall issue, in Form 41, a subpoena for the attendance of a witness or the production of a document or other material in a proceeding.

Issuance in blank  
41(2)

(2) A subpoena may be issued in blank and completed by a solicitor or party.

Multiple names  
41(3)

(3) Any number of names may be included in one subpoena.

Where leave required

41(4)

(4) No subpoena shall be issued without leave of the Court

- (a) for the production of an original record or of an original document, if the record or document may be proven by a copy in accordance with an Act of Parliament or of the legislature of a province;
- (b) to compel the appearance of a witness who resides more than 800 km from the place where the witness will be required to attend under the subpoena; or
- (c) to compel the attendance of a witness at a hearing other than a trial or a reference under rule 153.

Ex parte motion

41(5)

(5) Leave may be granted under subsection (4) on an ex parte motion.

Personal service of subpoena

42

42. No witness is required to attend under a subpoena unless the subpoena has been personally served on the witness in accordance with paragraph 128(1)(a) and witness fees and travel expenses have been paid or tendered to the witness in the amount set out in Tariff A. SOR/2002-417, s. 6.

Witness fees

43

43. Where a witness is required under these Rules to attend a proceeding other than pursuant to a subpoena, the witness is entitled to witness fees and travel expenses in the amount set out in Tariff A.

Proof of service

44

44. [ Repealed, SOR/2002- 417, s. 7.]

Compelling attendance of detainee

45

45. On motion, the Court may make an order in Form 45 requiring that any person who is in the custody of a prison or penitentiary be brought before the Court.

Failure to obey

46

46. Where a witness who is required to attend at a hearing fails to do so, on motion, the Court may, by a warrant in Form 46, order that the witness be apprehended anywhere in Canada, brought before the Court and

- (a) detained in custody until the witness's presence is no longer required; or
- (b) released on a recognizance, with or without sureties, on condition that the witness attend to give evidence.

PART 3

RULES APPLICABLE TO ALL PROCEEDINGS

GENERAL

*Powers*

Court's discretionary powers

47(1)

47. (1) Unless otherwise provided in these Rules, the discretionary powers of the Court under these Rules may be exercised by the Court of its own initiative or on motion.

Exercise of powers on motion

47(2)

(2) Where these Rules provide that powers of the Court are to be exercised on motion, they may be exercised only on the bringing of a motion.

Powers of Associate Chief Justice

48

48. [Repealed, SOR/2004-283, s. 10.]

Transfer of proceeding

49

49. If a proceeding has been commenced in the Federal Court of Appeal or the Federal Court, a judge of that court may order that the proceeding be transferred to the other court.

SOR/2004-283, s.10.

Prothonotaries

50(1)

50. (1) A prothonotary may hear, and make any necessary orders relating to, any motion under these Rules other than a motion
- (a) in respect of which these Rules or an Act of Parliament has expressly conferred jurisdiction on a judge;
  - (b) in the Federal Court of Appeal;
  - (c) for summary judgment other than
    - (i) in an action referred to in subsection (2), or
    - (ii) in respect of a claim referred to in subsection (3);
  - (d) to hold a person in contempt at a hearing referred to in paragraph 467(1)(a);
  - (e) for an injunction;
  - (f) relating to the liberty of a person;
  - (g) to stay, set aside or vary an order of a judge, other than an order made under paragraph 385(a), (b) or (c);
  - (h) to stay execution of an order of a judge;
  - (i) to appoint a receiver;
  - (j) for an interim order under section 18.2 of the Act;
  - (k) to appeal the findings of a referee under rule 163; or
  - (l) for the certification of an action as a class action.

Actions not over \$50,000

50(2)

(2) A prothonotary may hear an action exclusively for monetary relief, or an action in rem claiming monetary relief, in which no amount claimed by a party exceeds \$50,000 exclusive of interest and costs.

Class actions

50(3)

(3) A prothonotary may hear a claim in respect of one or more individual questions in a class action in which the amount claimed by the member of the class does not exceed \$50,000 exclusive of interest and costs.

SOR/2002-417, s. 8; SOR/2004-283, s. 32.

#### *Appeals of Prothonotaries' Orders*

Appeal

51(1)

51. (1) An order of a prothonotary may be appealed by a motion to a judge of the Federal Court.

Service of appeal

51(2)

(2) Notice of a motion under subsection (1) shall be

- (a) served within 10 days after the day on which the order under appeal was made and at least four days before the day fixed for hearing the motion; and
- (b) filed not later than two days before the day fixed for the hearing of the motion. SOR/2004-283, s.33.

#### *Assessors*

Role of assessor

52(1)

52. (1) The Court may call on an assessor

- (a) to assist the Court in understanding technical evidence; or
- (b) to provide a written opinion in a proceeding.

Fees and disbursements

52(2)

(2) An order made under subsection (1) shall provide for payment of the fees and disbursements of the assessor.

Communications with assessor

52(3)

(3) All communications between the Court and an assessor shall be in open court.

Form and content of question

52(4)

(4) Before requesting a written opinion from an assessor, the Court shall allow the parties to make submissions in respect of the form and content of the question to be asked.

Answer by assessor

52(5)

(5) Before judgment is rendered, the Court shall provide the parties with the questions asked of, and any opinion given by, an assessor and give them an opportunity to make submissions thereon.

Expert witnesses

52(6)

(6) A party may call an expert witness to testify notwithstanding that an assessor has been called on under subsection (1).

*Orders and Directions*

Orders on terms

53(1)

53. (1) In making an order under these Rules, the Court may impose such conditions and give such directions as it considers just.

Other orders

53(2)

(2) Where these Rules provide that the Court may make an order of a specified nature, the Court may make any other order that it considers just.

Motion for directions

54

54. A person may at any time bring a motion for directions concerning the procedure to be followed under these Rules.

*Varying Rules and Dispensing with Compliance*

Varying rule and to dispensing with compliance

55

55. In special circumstances, in a proceeding, the Court may vary a rule or dispense with compliance with a rule. SOR/2004-283, s. 11.

*Failure to Comply with Rules*

Effect of non-compliance

56

56. Non-compliance with any of these Rules does not render a proceeding, a step in a proceeding or an order void, but instead constitutes an irregularity, which may be addressed under rules 58 to 60.

Wrong originating document

57

57. An originating document shall not be set aside only on the ground that a different originating document should have been used.

## Motion to attack irregularity

58(1)

58. (1) A party may by motion challenge any step taken by another party for non-compliance with these Rules.

## When motion to be brought

58(2)

(2) A motion under subsection (1) shall be brought as soon as practicable after the moving party obtains knowledge of the irregularity.

## Orders on motion

59

59. Subject to rule 57, where, on a motion brought under rule 58, the Court finds that a party has not complied with these Rules, the Court may, by order,

- (a) dismiss the motion, where the motion was not brought within a sufficient time after the moving party became aware of the irregularity to avoid prejudice to the respondent in the motion;
- (b) grant any amendments required to address the irregularity; or
- (c) set aside the proceeding, in whole or in part.

## Non-compliance with Rules or gap in case

60

60. At any time before judgment is given in a proceeding, the Court may draw the attention of a party to any gap in the proof of its case or to any non-compliance with these Rules and permit the party to remedy it on such conditions as the Court considers just.

## COMMENCEMENT OF PROCEEDINGS

*Manner of Bringing Proceeding*

## Actions

61(1)

61. (1) Subject to subsection (4), a proceeding referred to in rule 169 shall be brought as an action.

## Applications

61(2)

(2) Subject to subsection (4), a proceeding referred to in rule 300 shall be brought as an application.

## Appeals

61(3)

(3) A proceeding referred to in rule 335 shall be brought as an appeal.

## Exception

61(4)

(4) Where by or under an Act of Parliament a person is given the option of bringing a proceeding referred to in rule 169 or 300 as either an action or an application, the person may commence the proceeding as an action or as an application.

*Originating documents*

## Commencement of proceedings

62(1)

62. (1) Subject to subsection (2), all actions, applications or appeals shall be commenced by the issuance of an originating document.

## Exception

62(2)

(2) A counterclaim or third party claim in an action brought only against persons who are already parties to the action shall be commenced by the service and filing of the counterclaim or third party claim.

## Types of originating documents

63(1)

63. (1) Unless otherwise provided by or under an Act of Parliament, the originating document for the commencement of
- (a) an action, including an appeal by way of an action, is a statement of claim;
  - (b) a counterclaim against a person who is not yet a party to the action is a statement of defence and counterclaim;
  - (c) a third party claim against a person who is not yet a party to the action is a third party claim;
  - (d) an application is a notice of application; and
  - (e) an appeal is a notice of appeal.

Other originating documents

63(2)

(2) Where by or under an Act of Parliament a proceeding is to be commenced by way of a document different from the originating document required under these Rules, the rules applicable to the originating document apply in respect of that document.

Declaratory relief available

64

64. No proceeding is subject to challenge on the ground that only a declaratory order is sought, and the Court may make a binding declaration of right in a proceeding whether or not any consequential relief is or can be claimed.

COURT DOCUMENTS

*Form*

Format of documents on paper

65

65. A document prepared for use in a proceeding shall be printed, typewritten or reproduced legibly, on good quality white or off-white paper measuring 21.5 cm by 28 cm (8½ in. by 11 in.),

- (a) in respect of a document other than a book of authorities, on one side of the paper only;
- (b) in a type not smaller than 12 point;
- (c) with top and bottom margins of not less than 2.5 cm and left and right margins of not less than 3.5 cm; and
- (d) with no more than 30 lines per page, exclusive of headings. SOR/2004-283, s. 12.

Heading

66(1)

66. (1) The first page of a document prepared for use in a proceeding shall have a heading in Form 66 that sets out

- (a) the name of the court and the Court file number; and
- (b) the style of cause in accordance with rule 67.

Content of document

66(2)

(2) A document prepared for use in a proceeding shall contain

- (a) the title of the document;
- (b) its date; and
- (c) the name, address, telephone number and fax number of the solicitor filing the document or, where a party is not represented by a solicitor, the party's name, an address for service in Canada, a telephone number and any fax number.

Signature

66(3)

(3) A document prepared for use in a proceeding shall be signed by the solicitor or party filing it.

SOR/2004-283, s. 36.

Style of cause in originating document

67(1)

67. (1) An originating document shall contain a style of cause that sets out the names of all parties and the capacity of any party that is not acting in its personal capacity.

Style of cause in action

67(2)



(2) The style of cause in an action shall name each party commencing the action as a plaintiff and each adverse party as a defendant.

#### Style of cause in application

67(3)

(3) The style of cause in an application shall name each party commencing the application as an applicant and each adverse party as a respondent and state any legislative provision or rule under which the application is made.

#### Style of cause in appeal

67(4)

(4) The style of cause in an appeal shall name each party bringing the appeal as an appellant and each adverse party as a respondent.

#### Short style of cause

67(5)

(5) In a document other than an originating document or order, where there are more than two parties to the proceeding, a short style of cause may be used, showing the names of the first party on each side followed by the expression "and others".

#### Motions prior to commencement of proceeding

67(6)

(6) Subsections (1) to (4) apply, with such modifications as are required, to a motion brought prior to the commencement of an action, application or appeal.

#### Language of documents

68(1)

68. (1) Subject to subsection (2), all documents required under these Rules to be filed in a proceeding shall be in English or French or be accompanied by a translation in English or French and an affidavit attesting to the accuracy of the translation.

#### Language of pleadings, etc.

68(2)

(2) All pleadings, memoranda of fact and law and written representations on motions shall be in English or French.

#### Notice of constitutional question

69

69. A notice of a constitutional question referred to in section 57 of the Act shall be in Form 69.

#### Memorandum of fact and law

70(1)

70. (1) A memorandum of fact and law shall contain, in consecutively numbered paragraphs,

- (a) a concise statement of fact, as Part I of the memorandum;
- (b) a statement of the points in issue, as Part II of the memorandum;
- (c) a concise statement of submissions, as Part III of the memorandum;
- (d) a concise statement of the order sought, including any order concerning costs, as Part IV of the memorandum;
- (e) a list of the authorities to be referred to, as Part V of the memorandum;
- (f) in a proceeding other than an appeal, the provisions of any statutes or regulations cited or relied on that have not been reproduced in another party's memorandum, as Appendix A to the memorandum; and
- (g) in a proceeding other than an appeal, a book of the authorities to be referred to that have not been included in another party's book of authorities, as Appendix B to the memorandum.

#### Enactments in both official languages

70(2)

(2) Extracts of federal statutes and regulations in Appendix A to a memorandum of fact and law shall be reproduced in both official languages.

#### Appendices

70(3)

(3) Appendices to a memorandum of fact and law may be bound separately from the rest of the memorandum.

#### Length

70(4)

(4) Unless otherwise ordered by the Court, a memorandum of fact and law, exclusive of Part V and appendices, shall not exceed 30 pages in length. SOR/2002-417, s. 9.

*Filing of Documents*

How documents may be submitted

71(1)

71. (1) A document may be submitted for filing by being

- (a) delivered to the Registry;
- (b) mailed to the Registry; or
- (c) subject to subsection (2), transmitted to the Registry by fax.

Limit on documents filed by fax

71(2)

(2) The following documents may not be filed by fax without the consent of the Administrator:

- (a) a motion record, application record, trial record, appeal book or book of authorities; or
- (b) any other document that is longer than 20 pages.

Fax cover page

71(3)

(3) A document that is submitted for filing by fax shall include a cover page in Form 71.

Reception by Registry

71(4)

(4) A document is not considered to have been submitted until

- (a) it is received by the Registry and dated by the Administrator; and
- (b) where a fee for its issuance or filing is payable under Tariff A, the fee is paid.

Irregular documents

72(1)

72. (1) Where a document is submitted for filing, the Administrator shall

- (a) accept the document for filing; or
- (b) where the Administrator is of the opinion that the document is not in the form required by these Rules or that other conditions precedent to its filing have not been fulfilled, refer the document without delay to a judge or prothonotary.

Acceptance, rejection or conditional filing

72(2)

(2) On receipt of a document referred under paragraph (1)(b), the judge or prothonotary may direct the Administrator to

- (a) accept or reject the document; or
- (b) accept the document subject to conditions as to the making of any corrections or the fulfilling of any conditions precedent.

Deemed time of filing

72(3)

(3) A document that is accepted for filing shall be considered to have been filed at the time the document was submitted for filing, unless the Court orders otherwise.

Proof of service

73

73. No document required to be served, other than an originating document, shall be filed without proof that it has been served within the time and in the manner provided for by these Rules.

Removal of documents improperly filed

74(1)

74. (1) Subject to subsection (2), the Court may, at any time, order that a document that is not filed in accordance with these Rules or pursuant to an order of the Court or an Act of Parliament be removed from the Court file.

Opportunity for interested parties to be heard

74(2)

(2) An order may be made of the Court's own initiative under subsection (1) only if all interested parties have been given an opportunity to be heard.

#### *Amendments*

Amendments with leave

75(1)

75. (1) Subject to subsection (2) and rule 76, the Court may, on motion, at any time, allow a party to amend a document, on such terms as will protect the rights of all parties.

Limitation

75(2)

(2) No amendment shall be allowed under subsection (1) during or after a hearing unless

- (a) the purpose is to make the document accord with the issues at the hearing;
- (b) a new hearing is ordered; or
- (c) the other parties are given an opportunity for any preparation necessary to meet any new or amended allegations.

Leave to amend

76

76. With leave of the Court, an amendment may be made

- (a) to correct the name of a party, if the Court is satisfied that the mistake sought to be corrected was not such as to cause a reasonable doubt as to the identity of the party, or
- (b) to alter the capacity in which a party is bringing a proceeding, if the party could have commenced the proceeding in its altered capacity at the date of commencement of the proceeding, unless to do so would result in prejudice to a party that would not be compensable by costs or an adjournment.

Amendment after expiration of limitation period

77

77. The Court may allow an amendment under rule 76 notwithstanding the expiration of a relevant period of limitation that had not expired at the date of commencement of the proceeding.

Effect of amendment

78

78. Unless the Court orders otherwise, where these Rules provide for doing an act or taking a step in a proceeding within a prescribed period after the service or filing of a document and that document is subsequently amended in accordance with these Rules, the period shall be calculated from the day of service or filing of the amended document, as the case may be.

Manner of amending

79(1)

79. (1) A filed document may be amended

- (a) where the amendment does not require the insertion of more than 10 words in any one page, by writing the amendment on the document, serving a copy of the amended document on all other parties and filing proof of service thereof; and
- (b) in any other case, by serving and filing an amended document in which the amendments are underlined.

Citation of rule or order

79(2)

(2) An amendment made under subsection (1) shall indicate the rule or Court order under which the amendment is made.

### AFFIDAVIT EVIDENCE AND EXAMINATIONS

#### *Affidavits*

Form of affidavits

80(1)

80. (1) Affidavits shall be drawn in the first person, in Form 80A.

Affidavit by blind or illiterate person

80(2)

(2) Where an affidavit is made by a deponent who is blind or illiterate, the person before whom the affidavit is sworn shall certify that the affidavit was read to the deponent and that the deponent appeared to understand it.

Affidavit by deponent who does not understand an official language

80(2.1)

(2.1) Where an affidavit is written in an official language for a deponent who does not understand that official language, the affidavit shall

(a) be translated orally for the deponent in the language of the deponent by a competent and independent interpreter who has taken an oath, in Form 80B, as to the performance of his or her duties; and

(b) contain a jurat in Form 80C.

Exhibits

80(3)

(3) Where an affidavit refers to an exhibit, the exhibit shall be accurately identified by an endorsement on the exhibit or on a certificate attached to it, signed by the person before whom the affidavit is sworn. SOR/2002-417, s. 10.

Content of affidavits

81(1)

81. (1) Affidavits shall be confined to facts within the personal knowledge of the deponent, except on motions in which statements as to the deponent's belief, with the grounds therefor, may be included.

Affidavits on belief

81(2)

(2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.

Use of solicitor's affidavit

82

82. Except with leave of the Court, a solicitor shall not both depose to an affidavit and present argument to the Court based on that affidavit.

Cross-examination on affidavits

83

83. A party to a motion or application may cross-examine the deponent of an affidavit served by an adverse party to the motion or application.

When cross-examination may be made

84(1)

84. (1) A party seeking to cross-examine the deponent of an affidavit filed in a motion or application shall not do so until the party has served on all other parties every affidavit on which the party intends to rely in the motion or application, except with the consent of all other parties or with leave of the Court.

Filing of affidavit after cross-examination

84(2)

(2) A party who has cross-examined the deponent of an affidavit filed in a motion or application may not subsequently file an affidavit in that motion or application, except with the consent of all other parties or with leave of the Court.

Due diligence

85

85. A party who intends to cross-examine the deponent of an affidavit shall do so with due diligence.

Transcript of cross-examination on affidavit

86

86. Unless the Court orders otherwise, a party who conducts a cross-examination on an affidavit shall order and pay for a transcript thereof and send a copy to each other party.

*Examinations out of Court*

General

Definition of "examination"

87

87. In rules 88 to 100, "examination" means

- (a) an examination for discovery;
- (b) the taking of evidence out of court for use at trial;
- (c) a cross-examination on an affidavit; or
- (d) an examination in aid of execution.

Manner of examination

88(1)

88. (1) Subject to rules 234 and 296, an examination may be conducted orally or in writing.

Electronic communications

88(2)

(2) The Court may order that an examination out of court be recorded by video recording or conducted by video-conference or any other form of electronic communication.

Oral Examinations

Oral examination

89(1)

89. (1) A party requesting an oral examination shall pay the fees and disbursements related to recording the examination in accordance with Tariff A.

Examination in Canada

89(2)

(2) An oral examination that takes place in Canada shall be recorded by a person authorized to record examinations for discovery under the practice and procedure of a superior court in Canada.

Examination outside Canada

89(3)

(3) An oral examination that takes place in a jurisdiction outside Canada shall be recorded by a person authorized to record

- (a) court proceedings in that jurisdiction; or
- (b) examinations for discovery under the practice and procedure of a superior court in Canada, if the parties consent.

Examination to be recorded

89(4)

(4) A person who records an oral examination shall record it word for word, including any comment made by a solicitor, other than statements that the attending parties agree to exclude from the record.

Place of oral examination

90(1)

90. (1) Where a person to be examined on an oral examination resides in Canada and the person and the parties cannot agree on where to conduct the oral examination, it shall be conducted in the place closest to the person's residence where a superior court sits.

Person residing outside Canada

90(2)

(2) Where a person to be examined on an oral examination resides outside Canada, the time, place, manner and expenses of the oral examination shall be as agreed on by the person and the parties or, on motion, as ordered by the Court.

Travel expenses

90(3)

(3) No person is required to attend an oral examination unless reasonable travel expenses have been paid or tendered to the person.

## Direction to attend

91(1)

91. (1) A party who intends to conduct an oral examination shall serve a direction to attend, in Form 91, on the person to be examined and a copy thereof on every other party.

## Production for inspection at examination

91(2)

(2) A direction to attend may direct the person to be examined to produce for inspection at the examination

- (a) in respect of an examination for discovery, all documents and other material in the possession, power or control of the party on behalf of whom the person is being examined that are relevant to the matters in issue in the action;
- (b) in respect of the taking of evidence for use at trial, all documents and other material in that person's possession, power or control that are relevant to the matters in issue in the action;
- (c) in respect of a cross-examination on an affidavit, all documents and other material in that person's possession, power or control that are relevant to the application or motion; and
- (d) in respect of an examination in aid of execution, all documents and other material in that person's possession, power or control that are relevant to the person's ability to satisfy the judgment.

## Service of direction to attend

91(3)

(3) A direction to attend an oral examination shall be served

- (a) where the person to be examined is an adverse party, at least six days before the day of the proposed examination;
- (b) where the person to be examined is not a party to the proceeding, at least 10 days before the day of the proposed examination; or
- (c) where the person is to be cross-examined on an affidavit filed in support of a motion, at least 24 hours before the hearing of the motion.

## Swearing

92

92. A person to be examined on an oral examination shall be sworn before being examined.

## Examining party to provide interpreter

93(1)

93. (1) Where a person to be examined on an oral examination understands neither French nor English or is deaf or mute, the examining party shall arrange for the attendance and pay the fees and disbursements of an independent and competent person to accurately interpret everything said during the examination, other than statements that the attending parties agree to exclude from the record.

## Administrator to provide interpreter

93(2)

(2) Where an interpreter is required because the examining party wishes to conduct an oral examination for discovery in one official language and the person to be examined wishes to be examined in the other official language, on the request of the examining party made at least six days before the examination, the Administrator shall arrange for the attendance and pay the fees and disbursements of an independent and competent interpreter.

## Oath of interpreter

93(3)

(3) Before aiding in the examination of a witness, an interpreter shall take an oath, in Form 93, as to the performance of his or her duties.

## Production of documents on examination

94(1)

94. (1) Subject to subsection (2), a person who is to be examined on an oral examination or the party on whose behalf that person is being examined shall produce for inspection at the examination all documents and other material requested in the direction to attend that are within that person's or party's possession and control, other than any documents for which privilege has been claimed or for which relief from production has been granted under rule 230.

## Relief from production

94(2)

(2) On motion, the Court may order that a person to be examined or the party on whose behalf that person is being examined be

relieved from the requirement to produce for inspection any document or other material requested in a direction to attend, if the Court is of the opinion that the document or other material requested is irrelevant or, by reason of its nature or the number of documents or amount of material requested, it would be unduly onerous to require the person or party to produce it.

#### Objections

95(1)

95. (1) A person who objects to a question that is asked in an oral examination shall briefly state the grounds for the objection for the record.

#### Preliminary answer

95(2)

(2) A person may answer a question that was objected to in an oral examination subject to the right to have the propriety of the question determined, on motion, before the answer is used at trial.

#### Improper conduct

96(1)

96. (1) A person being examined may adjourn an oral examination and bring a motion for directions if the person believes that he or she is being subjected to an excessive number of questions or to improper questions, or that the examination is being conducted in bad faith or in an abusive manner.

#### Adjournment to seek directions

96(2)

(2) A person conducting an oral examination may adjourn the examination and bring a motion for directions if the person believes answers to questions being provided are evasive or if the person being examined fails to produce a document or other material requested under rule 94.

#### Sanctions

96(3)

(3) On a motion under subsection (1) or (2), the Court may sanction, through costs, a person whose conduct necessitated the motion or a person who unnecessarily adjourned the examination.

#### Failure to attend or misconduct

97

97. Where a person fails to attend an oral examination or refuses to take an oath, answer a proper question, produce a document or other material required to be produced or comply with an order made under rule 96, the Court may

- (a) order the person to attend or re-attend, as the case may be, at his or her own expense;
- (b) order the person to answer a question that was improperly objected to and any proper question arising from the answer;
- (c) strike all or part of the person's evidence, including an affidavit made by the person;
- (d) dismiss the proceeding or give judgment by default, as the case may be; or
- (e) order the person or the party on whose behalf the person is being examined to pay the costs of the examination.

#### Contempt order

98

98. A person who does not comply with an order made under rule 96 or 97 may be found in contempt.

#### Written Examinations

##### Written examination

99(1)

99. (1) A party who intends to examine a person by way of a written examination shall serve a list of concise, separately numbered questions in Form 99A for the person to answer.

##### Objections

99(2)

(2) A person who objects to a question in a written examination may bring a motion to have the question struck out.

##### Answers to written examination

99(3)

(3) A person examined by way of a written examination shall answer by way of an affidavit.

Service of answers

99(4)

(4) An affidavit referred to in subsection (3) shall be in Form 99B and be served on every other party within 30 days after service of the written examination under subsection (1).

Application of oral examination rules

100

100. Rules 94, 95, 97 and 98 apply to written examinations, with such modifications as are necessary.

## JOINDER, INTERVENTION AND PARTIES

### *Joinder*

Joinder of claims

101(1)

101. (1) Subject to rule 302, a party to a proceeding may request relief against another party to the same proceeding in respect of more than one claim.

Separate capacity

101(2)

(2) A party may request relief in a separate capacity in respect of different claims in a single proceeding.

Interest in all relief not essential

101(3)

(3) Not all parties to a proceeding need have an interest in all relief claimed in the proceeding.

Multiple persons joined as parties

102

102. Two or more persons who are represented by the same solicitor may join in one proceeding as plaintiffs, applicants or appellants where

(a) if separate proceedings were brought by each of them, a common question of law or fact would arise in all of the proceedings; or

(b) the relief claimed, whether joint, several or alternative, arises from substantially the same facts or matter.

Misjoinder and nonjoinder

103(1)

103. (1) No proceeding shall be defeated by reason of the misjoinder or nonjoinder of a person or party.

Issues to be determined

103(2)

(2) In a proceeding in which a proper person or party has not been joined, the Court shall determine the issues in dispute so far as they affect the rights and interests of the persons who are parties to the proceeding.

Order for joinder or relief against joinder

104(1)

104. (1) At any time, the Court may

(a) order that a person who is not a proper or necessary party shall cease to be a party; or

(b) order that a person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined be added as a party, but no person shall be added as a plaintiff or applicant without his or her consent, signified in writing or in such other manner as the Court may order.

Directions



104(2)

(2) An order made under subsection (1) shall contain directions as to amendment of the originating document and any other pleadings.

#### Consolidation of proceedings

105

105. The Court may order, in respect of two or more proceedings,

- (a) that they be consolidated, heard together or heard one immediately after the other;
- (b) that one proceeding be stayed until another proceeding is determined; or
- (c) that one of the proceedings be asserted as a counterclaim or cross-appeal in another proceeding.

#### Separate determination of claims and issues

106

106. Where the hearing of two or more claims or parties in a single proceeding would cause undue complication or delay or would prejudice a party, the Court may order that

- (a) claims against one or more parties be pursued separately;
- (b) one or more claims be pursued separately;
- (c) a party be compensated for, or relieved from, attending any part of the proceeding in which the party does not have an interest; or
- (d) the proceeding against a party be stayed on condition that the party is bound by any findings against another party.

#### Separate determination of issues

107(1)

107. (1) The Court may, at any time, order the trial of an issue or that issues in a proceeding be determined separately.

#### Court may stipulate procedure

107(2)

(2) In an order under subsection (1), the Court may give directions regarding the procedures to be followed, including those applicable to examinations for discovery and the discovery of documents.

### *Interpleader*

#### Interpleader

108(1)

108. (1) Where two or more persons make conflicting claims against another person in respect of property in the possession of that person and that person

- (a) claims no interest in the property, and
  - (b) is willing to deposit the property with the Court or dispose of it as the Court directs,
- that person may bring an ex parte motion for directions as to how the claims are to be decided.

#### Directions

108(2)

(2) On a motion under subsection (1), the Court shall give directions regarding

- (a) notice to be given to possible claimants and advertising for claimants;
- (b) the time within which claimants shall be required to file their claims; and
- (c) the procedure to be followed in determining the rights of the claimants.

### *Intervention*

#### Leave to intervene

109(1)

109. (1) The Court may, on motion, grant leave to any person to intervene in a proceeding.

#### Contents of notice of motion

109(2)

(2) Notice of a motion under subsection (1) shall

- (a) set out the full name and address of the proposed intervener and of any solicitor acting for the proposed intervener;

and

(b) describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.

#### Directions

109(3)

(3) In granting a motion under subsection (1), the Court shall give directions regarding

(a) the service of documents; and

(b) the role of the intervener, including costs, rights of appeal and any other matters relating to the procedure to be followed by the intervener.

#### *Questions of General Importance*

#### Notice to Attorney General

110

110. Where a question of general importance is raised in a proceeding, other than a question referred to in section 57 of the Act,

(a) any party may serve notice of the question on the Attorney General of Canada and any attorney general of a province who may be interested;

(b) the Court may direct the Administrator to bring the proceeding to the attention of the Attorney General of Canada and any attorney general of a province who may be interested; and

(c) the Attorney General of Canada and the attorney general of a province may apply for leave to intervene.

#### *Parties*

#### Unincorporated associations

111

111. A proceeding may be brought by or against an unincorporated association in the name of the association.

#### Partnerships

111.1

111.1 A proceeding by or against two or more persons as partners may be brought in the name of the partnership. SOR/2002-417, s. 11.

#### Sole proprietorships

111.2

111.2 A proceeding by or against a person carrying on business as a sole proprietor may be brought in the name of the sole proprietorship. SOR/2002-417, s. 11.

#### Estates and trusts

112(1)

112. (1) A proceeding may be brought by or against the trustees, executors or administrators of an estate or trust without joining the beneficiaries of the estate or trust.

#### Order binding on beneficiaries

112(2)

(2) Unless the Court orders otherwise, beneficiaries of an estate or trust are bound by an order against the estate or trust.

#### Where deceased has no representative

113(1)

113. (1) Where a party to a proceeding is deceased and the estate of the deceased is not represented, the Court may appoint a person to represent the estate of the deceased or order that the proceeding continue without representation of the estate.

#### Notice

113(2)

(2) Before making an order under subsection (1), the Court may require that notice be given to all persons who have an interest in the estate of the deceased.

#### Representative proceedings

114

114. [Repealed, SOR/2002- 417, s. 12.]

#### Appointment of representatives

115(1)

115. (1) The Court may appoint one or more persons to represent
- (a) unborn or unascertained persons who may have a present, future, contingent or other interest in a proceeding; or
  - (b) a person under a legal disability against or by whom a proceeding is brought.

#### Who may be appointed

115(2)

- (2) The Court may appoint as a representative under subsection (1)
- (a) a person who has already been appointed as such a representative under the laws of a province; or
  - (b) a person eligible to act as a representative in the jurisdiction in which the person to be represented is domiciled.

#### Order binding on represented person

115(3)

- (3) Unless the Court orders otherwise, a person for whom a representative is appointed under subsection (1) is bound by any order made in the proceeding.

### *Transmission of Interest*

#### Proceeding not to terminate

116

116. A proceeding is not terminated only by reason that a party to a proceeding dies or becomes bankrupt or, in the case of a corporation, ceases to exist.

#### Assignment, transmission or devolution of interest or liability

117(1)

117. (1) Subject to subsection (2), where an interest of a party in, or the liability of a party under, a proceeding is assigned or transmitted to, or devolves upon, another person, the other person may, after serving and filing a notice and affidavit setting out the basis for the assignment, transmission or devolution, carry on the proceeding.

#### Objection to person continuing

117(2)

(2) If a party to a proceeding objects to its continuance by a person referred to in subsection (1), the person seeking to continue the proceeding shall bring a motion for an order to be substituted for the original party.

#### Court may give directions

117(3)

(3) In an order given under subsection (2), the Court may give directions as to the further conduct of the proceeding.

#### Failure to continue

118

118. Where an interest of a party in, or the liability of a party under, a proceeding has been assigned or transmitted to, or devolves upon, a person and that person has not, within 30 days, served a notice and affidavit referred to in subsection 117(1) or obtained an order under subsection 117(2), any other party to the proceeding may bring a motion for default judgment or to have the proceeding dismissed.

## REPRESENTATION OF PARTIES

### *General*

#### Individuals

119

119. Subject to rule 121, an individual may act in person or be represented by a solicitor in a proceeding.

#### Corporations or unincorporated associations

120

120. A corporation, partnership or unincorporated association shall be represented by a solicitor in all proceedings, unless the

Court in special circumstances grants leave to it to be represented by an officer, partner or member, as the case may be.

Parties under legal disability or acting in representative capacity

121

121. Unless the Court in special circumstances orders otherwise, a party who is under a legal disability or who acts or seeks to act in a representative capacity, including in a class action, shall be represented by a solicitor. SOR/2002-417, s. 13.

Rights and obligations of party acting in person

122

122. Subject to paragraphs 152(2)(a) and 146(1)(b), unless the Court orders otherwise, a party not represented by a solicitor or a person authorized under rule 120 to represent a party shall do everything required, and may do anything permitted, to be done by a solicitor under these Rules.

*Solicitor of Record*

Deemed solicitor of record

123

123. Where a party takes a step in a proceeding by filing or serving a document signed by a solicitor, that solicitor is the solicitor of record for the party.

Notice of change or removal of solicitor

124

124. A party may change or remove its solicitor of record or appoint a solicitor of record by serving and filing a notice in Form 124A, 124B or 124C, as the case may be.

Motion for removal of solicitor of record

125(1)

125. (1) Where a solicitor of record ceases to act for a party and the party has not changed its solicitor of record in accordance with rule 124, the Court may, on a motion of the solicitor, order that the solicitor be removed from the record.

Manner of service

125(2)

(2) A notice of motion under subsection (1) shall be served on the party formerly represented by the solicitor

(a) by personal service; or

(b) where personal service cannot practicably be effected,

(i) by mailing the notice of motion to the party at the party's last known address, or

(ii) if no mailing address of the party is known, by depositing the notice of motion at the Registry office where the proceeding was initiated.

Order to be served

125(3)

(3) An order made under subsection (1) removing a solicitor of record of a party shall be served on the party in the manner set out in subsection (2) and on all other parties to the proceeding.

Proof of service

125(4)

(4) An order under subsection (1) does not take effect until proof of its service has been filed.

Solicitor of record ceasing to act

126

126. A party is deemed not to be represented by a solicitor if the party does not appoint a new solicitor after its solicitor of record

(a) dies; or

(b) ceases to act for the party because of

(i) appointment to a public office incompatible with the solicitor's profession,

(ii) suspension or disbarment as a solicitor, or

(iii) an order made under rule 125.

*Personal Service*

Service of originating documents

127(1)

127. (1) Service of originating documents 127. (1) Subject to subsection (2), an originating document that has been issued, other than in an appeal from the Federal Court to the Federal Court of Appeal or an ex parte application under rule 327, shall be served personally in a manner set out in rules 128 to 133.

Exception

127(2)

(2) A party who has already participated in the proceeding need not be personally served under subsection (1). SOR/2004-283, s. 13.

Personal service on individual

128(1)

128. (1) Personal service of a document on an individual, other than an individual under a legal disability, is effected

- (a) by leaving the document with the individual;
- (b) by leaving the document with an adult person residing at the individual's place of residence, and mailing a copy of the document to the individual at that address;
- (c) where the individual is carrying on a business in Canada, other than a partnership, in a name or style other than the individual's own name, by leaving the document with the person apparently having control or management of the business at any place where the business is carried on in Canada;
- (d) by mailing the document to the individual's last known address, accompanied by an acknowledgement of receipt form in Form 128, if the individual signs and returns the acknowledgement of receipt card or signs a post office receipt;
- (e) by mailing the document by registered mail to the individual's last known address, if the individual signs a post office receipt; or
- (f) in any other manner provided by an Act of Parliament applicable to the proceeding.

Effective day of service

128(2)

(2) Service under paragraph (1)(b) is effective on the tenth day after the copy is mailed.

Effective day of service

128(3)

(3) Service under paragraph (1)(d) or (e) is effective on the day of receipt indicated on the acknowledgement of receipt form or post office receipt, as the case may be.

Personal service on individual under legal disability

129

129. Personal service of a document on an individual under a legal disability is effected by serving the individual in such a manner as the Court may order, having regard to the manner in which the interests of the person will be best protected.

Personal service on corporation

130(1)

130. (1) Subject to subsection (2), personal service of a document on a corporation is effected

- (a) by leaving the document
  - (i) with an officer or director of the corporation or a person employed by the corporation as legal counsel, or
  - (ii) with the person apparently in charge, at the time of the service, of the head office or of the branch or agency in Canada where the service is effected;
- (b) in the manner provided by any Act of Parliament applicable to the proceeding; or
- (c) in the manner provided for service on a corporation in proceedings before a superior court in the province in which the service is being effected.

Personal service on municipal corporation

130(2)

(2) Personal service of a document on a municipal corporation is effected by leaving the document with the chief executive officer or legal counsel of the municipality.

Personal service on partnership

131

131. Personal service of a document on a partnership is effected by leaving the document with
- (a) where the partnership is a limited partnership, a general partner; and
  - (b) in any other case, a partner or the person who has the control or management of the partnership business at its principal place of business in Canada.

Personal service on sole proprietorship

131.1

131.1 Personal service of a document on a sole proprietorship is effected by leaving the document with

- (a) the sole proprietor; or
- (b) the person apparently in charge, at the time of the service, of the place of business of the sole proprietorship in Canada where the service is effected. SOR/2002-417, s. 14.

Personal service on unincorporated association

132

132. Personal service of a document on an unincorporated association is effected by leaving the document with

- (a) an officer of the association; or
- (b) the person who has the control or management of the affairs of the association at any office or premises occupied by the association.

Personal service of originating document on the Crown

133(1)

133. (1) Personal service of an originating document on the Crown, the Attorney General of Canada or any other minister of the Crown is effected by filing the originating document and two copies of it in the Registry.

Copy to Deputy Attorney General

133(2)

(2) The Administrator shall forthwith transmit a certified copy of an originating document filed under subsection (1)

- (a) where it was filed at the principal office of the Registry, to the office of the Deputy Attorney General of Canada in Ottawa; and
- (b) where it was filed at a local office, to the Director of the regional office of the Department of Justice referred to in subsection 4(2) of the Crown Liability and Proceedings (Provincial Court) Regulations.

When service is effective

133(3)

(3) Service under subsection (1) is effective at the time the document is filed.

Acceptance of service by solicitor

134

134. Personal service of a document on a party may be effected by the acceptance of service by the party's solicitor.

Deemed personal service on a person outside Canada

135

135. Where a person

- (a) is resident outside Canada and, in the ordinary course of business, enters into contracts or business transactions in Canada in connection with which the person regularly makes use of the services of a person resident in Canada, and
  - (b) made use of such services in connection with a contract or business transaction,
- in a proceeding arising out of the contract or transaction, personal service of a document on the person resident outside Canada is effected by personally serving the person resident in Canada.

Substituted service or dispensing with service

136(1)

136. (1) Where service of a document that is required to be served personally cannot practicably be effected, the Court may order substitutional service or dispense with service.

Motion may be made ex parte

136(2)

(2) A motion for an order under subsection (1) may be made ex parte.

## Order to be served

136(3)

(3) A document served by substitutional service shall make reference to the order that authorized the substitutional service.

*Service outside Canada*

## Service outside Canada

137(1)

137. (1) Subject to subsection (2), a document to be personally served outside Canada may be served in the manner set out in rules 127 to 136 or in the manner prescribed by the law of the jurisdiction in which service is to be effected.

## Hague Convention

137(2)

(2) Where service is to be effected in a contracting state to the Hague Convention, service shall be as provided by the Convention.

## Proof of service

137(3)

(3) Service of documents outside Canada may be proven

- (a) in the manner set out in rule 146;
- (b) in the manner provided by the law of the jurisdiction in which service was effected; or
- (c) in accordance with the Hague Convention, if service is effected in a contracting state.

*Non-personal Service*

## Service of document other than originating document

138

138. Unless otherwise provided in these Rules, a document that is not an originating document need not be served personally.

## Service on other parties

139

139. Documents required to be served by other than personal service shall be served, subject to subsection 36(3) and rule 145, on all other parties in the manner set out in rule 140.

## Non-personal service

140(1)

140. (1) Service on a party of a document that is not required to be personally served may be effected by personal service or

- (a) by leaving the document at the party's address for service;
- (b) by mailing the document to the party's address for service;
- (c) by delivering the document by courier to the party's address for service;
- (d) by transmitting the document by fax
  - (i) where the party has a solicitor of record, to the solicitor of record, and
  - (ii) where the party has no solicitor of record, to the party; or
- (e) in such other manner as the Court may on motion order.

## Where no address for service

140(2)

(2) Where a party has no address for service at the time of service, a document that is not required to be personally served may be served by leaving the document at, or sending it by registered mail or courier to,

- (a) where the party is an individual, the party's usual or last known address; or
- (b) where the party is an unincorporated body, a group of persons or a corporation, the principal or last known address of the body or group.

## Where no known address

140(3)

(3) Where a party has no known address at the time of service, a document that is not required to be personally served may be served by depositing the document at the office of the Registry where the proceeding was initiated.

## Fax cover page

140(4)

(4) A document that is served by fax shall include a cover page in Form 140.

Effective date of service by ordinary mail

141(1)

141. (1) Service of a document by ordinary mail is effective on the tenth day after it was mailed.

Effective date of service by registered mail or courier

141(2)

(2) Service of a document by registered mail or courier is effective on the day of receipt indicated on the post office or courier receipt, as the case may be.

Filing before service effective

142

142. Where a document is served by ordinary mail, it may be filed before the day on which service is effective.

Service by fax

143

143. The following documents may not be served by fax without the consent of the recipient:

- (a) a motion record, application record, trial record, appeal book or book of authorities; or
- (b) any other document that is longer than 20 pages.

### *General*

Service at any time

144(1)

144. (1) Service of a document under these Rules may be effected at any time.

Service after 5:00 p.m.

144(2)

(2) A document, other than an originating document or a warrant, that is served on a holiday or after 5:00 p.m. at the recipient's local time is deemed to be served at 9:00 a.m. on the next business day.

Where no further service required

145

145. Subject to subsection 207(2), where a person has been served with an originating document and

- (a) has not filed a notice of appearance or a defence within the time set out in these Rules, or
- (b) has no address for service,

no further documents in the proceeding need be served on the person prior to final judgment unless the Court orders otherwise.

Proof of service

146(1)

146. (1) Service of a document may be proven

- (a) by an affidavit of service in Form 146A or, where the service is effected in the Province of Quebec, by a certificate of service of a sheriff, bailiff or other authorized person in accordance with the Code of Civil Procedure of the Province of Quebec;
- (b) in respect of a document not required to be personally served, by a certificate by a solicitor in Form 146B;
- (c) where a document was served under paragraph 140(1)(a) by leaving it at the office of a solicitor, by an acknowledgement of service signed and dated by the solicitor or by someone employed by the solicitor; or
- (d) where a document was served under rule 134, by an acceptance of service signed and dated by the solicitor.

Signature of agent of solicitor

146(2)

(2) Where an acknowledgement of service under paragraph (1)(c) is signed by a person on behalf of a solicitor, the person shall sign his or her own name as agent for the solicitor.

Validating service

147

147. Where a document has been served in a manner not authorized by these Rules or by an order of the Court, the Court may



consider the document to have been validly served if it is satisfied that the document came to the notice of the person to be served or that it would have come to that person's notice except for the person's avoidance of service.

Where document does not reach person served

148

148. On the motion of a party who did not have notice of a served document or did not obtain notice of it at the time of service, the Court may set aside the consequences of default or grant an extension of time or an adjournment, notwithstanding that the party was served with the document in accordance with these Rules.

## PAYMENTS

Payments into court

149(1)

149. (1) A person who pays money into court shall deliver to the Registry

- (a) a bill of exchange drawn on a bank, trust company, credit union or caisse populaire or any other bill of exchange authorized by order of the Court, payable to the order of the Receiver General; and
- (b) three copies of a tender of payment into court in Form 149.

Effective date of payment

149(2)

(2) Payment into court by a bill of exchange that is paid on presentation for payment is effective on the day on which it was delivered to the Registry.

Receipt for payment

149(3)

(3) Where a bill of exchange is paid, the Administrator shall endorse or acknowledge receipt on a copy of the tender of payment into court and return it to the person who made the payment.

Payment out of court

150

150. Where an order has been made by the Court for payment out of court of money that is in the Consolidated Revenue Fund, a requisition shall be made by the Administrator to the Receiver General for an instrument for the amount to be paid out.

## FILING OF CONFIDENTIAL MATERIAL

Motion for order of confidentiality

151(1)

151. (1) On motion, the Court may order that material to be filed shall be treated as confidential.

Demonstrated need for confidentiality

151(2)

(2) Before making an order under subsection (1), the Court must be satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings.

Marking of confidential material

152(1)

152. (1) Where the material is required by law to be treated confidentially or where the Court orders that material be treated confidentially, a party who files the material shall separate and clearly mark it as confidential, identifying the legislative provision or the Court order under which it is required to be treated as confidential.

Access to confidential material

152(2)

(2) Unless otherwise ordered by the Court,

- (a) only a solicitor of record, or a solicitor assisting in the proceeding, who is not a party is entitled to have access to confidential material;
- (b) confidential material shall be given to a solicitor of record for a party only if the solicitor gives a written undertaking to the Court that he or she will
  - (i) not disclose its content except to solicitors assisting in the proceeding or to the Court in the course of argument,

- (ii) not permit it to be reproduced in whole or in part, and
- (iii) destroy the material and any notes on its content and file a certificate of their destruction or deliver the material and notes as ordered by the Court, when the material and notes are no longer required for the proceeding or the solicitor ceases to be solicitor of record;
- (c) only one copy of any confidential material shall be given to the solicitor of record for each party; and
- (d) no confidential material or any information derived therefrom shall be disclosed to the public.

#### Order to continue

152(3)

(3) An order made under subsection (1) continues in effect until the Court orders otherwise, including for the duration of any appeal of the proceeding and after final judgment.

### REFERENCES

#### Order for reference

153(1)

153. (1) The Court may, for the purpose of making an inquiry and report, refer any question of fact in a proceeding to a judge or other person designated by the Chief Justice of the court before which the proceeding is pending.

#### Directions on reference

153(2)

(2) Notwithstanding rules 155 to 160, the Court may at any time give directions regarding the conduct of a reference. SOR/2004-283, s. 14.

#### Stay of related proceedings

154

154. Where a reference is made under rule 153, on motion, the Court may stay any proceeding related to the reference, including a proceeding that has previously been stayed, for a period of not more than six months.

#### Requisition to fix time and place of reference

155(1)

155. (1) On a reference made under rule 153, the referee shall, on the requisition of a party, fix a time and place for the hearing of the reference.

#### Documents to be provided to referee

155(2)

(2) A party who makes a requisition under subsection (1) shall provide the referee with a statement of the issues and copies of the pleadings and order of reference.

#### Conduct of reference

156

156. Unless the Court orders otherwise, a referee shall adopt the simplest, least expensive and most expeditious manner of conducting the reference.

#### Order for examination or production

157

157. A referee may order that parties be examined for discovery and order the production for inspection and copying by a party of any document or other material relevant to a matter in issue, at the time and place and in the manner set out in the order.

#### Attendance of witnesses

158(1)

158. (1) The attendance of witnesses to give evidence at a reference shall be enforced by subpoena.

#### Recording of evidence on reference

158(2)

(2) The testimony of a witness at a reference shall be recorded.

#### Powers of referee

159(1)

159. (1) Subject to subsection (2), a referee shall have the same power and authority in matters of practice and procedure as would a judge of the Court presiding at the trial of an action.

#### Limitation

159(2)

(2) A referee shall not commit a person to prison or enforce an order for attachment.

#### Referral of question to Court

160(1)

160. (1) A referee may, before the conclusion of a reference or by a report on the reference, submit any question for determination by the Court.

#### Response to referral

160(2)

(2) On receipt of a submission under subsection (1), the Court may

- (a) require any explanations or reasons from the referee; or
- (b) remit the matter, or any part thereof, for further inquiry to the same or another referee.

#### Referee's report

161(1)

161. (1) The report of a referee shall include the findings of the referee in the same form as an order of the Court.

#### Filing of report

161(2)

(2) The report of a referee, the record of any evidence taken at the hearing of the reference and any exhibits or other documents provided to the referee shall be filed as soon as possible after the report is signed.

#### Notice of report

161(3)

(3) On the filing of a report of a referee, the Administrator shall forthwith send a copy of it to all parties by registered mail.

#### Report of referee who is a judge

162

162. The report of a referee who is a judge is final and becomes a judgment of the Court when it is filed.

#### Appeal of referee's findings

163(1)

163. (1) A party may appeal the findings of a report of a referee who is not a judge on motion to the court that ordered the reference.

#### Service of appeal

163(2)

(2) Notice of a motion under subsection (1) shall be served and filed within 30 days after filing of the report of a referee and at least 10 days before the day fixed for hearing of the motion.

#### Powers of Court on appeal

163(3)

(3) On an appeal under subsection (1), the Court may confirm, vary or reverse the findings of the report and deliver judgment or refer it back to the referee, or to another referee, for further inquiry and report. SOR/2004-283, s. 15.

#### Report final if not appealed

164(1)

164. (1) The report of a referee who is not a judge that is not appealed becomes final 30 days after it is filed.

#### Final report deemed judgment of Court

164(2)

(2) A report of a referee, once final, becomes a judgment of the Court.

## SUMMARY DISPOSITION

## Discontinuances

165

165. A party may discontinue all or part of a proceeding by serving and filing a notice of discontinuance.

## Notice of discontinuance

166

166. A party shall file a declaration of settlement or a notice of discontinuance in Form 166 in a proceeding that has been concluded other than by a judgment or discontinuance on consent.

## Dismissal for delay

167

167. The Court may, at any time, on the motion of a party who is not in default of any requirement of these Rules, dismiss a proceeding or impose other sanctions on the ground that there has been undue delay by a plaintiff, applicant or appellant in prosecuting the proceeding.

## Dismissal where continuation impossible

168

168. Where following an order of the Court it is not possible to continue a proceeding, the Court may dismiss the proceeding.

## PART 4

## ACTIONS

## APPLICATION OF THIS PART

## Application

169

169. This Part applies to all proceedings that are not applications or appeals, including

- (a) references under section 18 of the Citizenship Act;
- (b) applications under subsection 33(1) of the Marine Liability Act; and
- (c) any other proceedings required or permitted by or under an Act of Parliament to be brought as an action.

SOR/2004-283, s 37.

## Rules applicable to counterclaims and third parties

170

170. Except as provided in rules 189 to 199, the rules in this Part applicable to plaintiffs and defendants apply, with such modifications as are necessary, to parties bringing or defending counterclaims and third party claims.

## PLEADINGS IN AN ACTION

*General*

## Pleadings

171

171. The following pleadings may be filed:

- (a) in respect of an action,
  - (i) a statement of claim, in Form 171A,
  - (ii) a statement of defence, in Form 171B, and
  - (iii) a reply, in Form 171C;
- (b) in respect of a counterclaim,
  - (i) a counterclaim, in Form 171D or 171E,,
  - (ii) a defence to counterclaim, in Form 171F, and
  - (iii) a reply to a defence to counterclaim, in Form 171G; and
- (c) in respect of a third party claim,
  - (i) a third party claim, in Form 171H or 171I,

- (ii) a third party defence, in Form 171J, and
- (iii) a reply to a third party defence, in Form 171K.

#### Pleading after a reply

172

172. No pleading may be filed after a reply without leave of the Court.

#### Form of pleadings

173(1)

173. (1) Pleadings shall be divided into consecutively numbered paragraphs.

#### Allegations set out separately

173(2)

(2) Every allegation in a pleading shall, as far as is practicable, be set out in a separate paragraph.

#### Material facts

174

174. Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

#### Pleading law

175

175. A party may raise any point of law in a pleading.

#### Conditions precedent

176(1)

176. (1) The performance or occurrence of a condition precedent to the assertion of a claim or defence need not be pleaded.

#### Contesting condition precedent

176(2)

(2) The non-performance or non-occurrence of a condition precedent shall be pleaded.

#### Documents or conversations

177

177. A pleading shall briefly describe any document or conversation referred to in the pleading, but need not set out the exact words of the document or conversation unless the words are themselves material.

#### Alternative claims or defences

178

178. A party may plead claims or defences in the alternative.

#### Subsequent facts

179

179. A party may plead a fact that occurs after the commencement of an action, even though the fact gives rise to a new claim or defence.

#### Inconsistent pleading

180

180. A party may plead an allegation of fact, or raise a new ground of claim in a pleading, that is inconsistent with a previous pleading only if the party amends the previous pleading accordingly.

#### Particulars

181

181. A pleading shall contain particulars of every allegation contained therein, including

- (a) particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and
- (b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.

#### Further and better particulars

181(2)

(2) On motion, the Court may order a party to serve and file further and better particulars of any allegation in its pleading.

### *Statements of Claim*

Claims to be specified

182

182. Every statement of claim, counterclaim and third party claim shall specify

- (a) the nature of any damages claimed;
- (b) where monetary relief is claimed, whether the amount claimed, exclusive of interest and costs, exceeds \$50,000;
- (c) the value of any property sought to be recovered;
- (d) any other specific relief being claimed, other than costs; and
- (e) whether the action is being proceeded with as a simplified action.

### *Subsequent Pleadings*

Admissions

183

183. In a defence or subsequent pleading, a party shall

- (a) admit every allegation of material fact in the pleadings of every adverse party that is not disputed;
- (b) where it is intended to prove a version of facts that differs from that relied on by an adverse party, plead that version of the facts; and
- (c) plead any matter or fact that
  - (i) might defeat a claim or defence of an adverse party, or
  - (ii) might take an adverse party by surprise if it were not pleaded.

Deemed denial

184(1)

184. (1) All allegations of fact in a pleading that are not admitted are deemed to be denied.

Proof not required

184(2)

(2) Unless denied by an adverse party, it is not necessary that a party prove

- (a) its right to claim in a representative capacity; or
- (b) its constitution as a partnership, association or corporation.

Effect of denial

185

185. Where a party alleges an agreement in a pleading, a bare denial of the agreement pleaded by another party shall be construed only as a denial of the making of the agreement or of the facts from which such an agreement may be implied and not as a denial of the legality or legal sufficiency of the agreement.

Set-off

186

186. Where a claim to a sum of money, including a sum that is not ascertained, is relied on as a defence to all or part of a claim made by an adverse party, it may be included in a defence as a set-off against the claim, whether or not it is also added as a counterclaim.

Judgment for balance

187

187. Where judgments in an action and in a counterclaim are given at the same time, the Court may set off the amount of one award against the other, without prejudice as to costs.

Defence of tender

188

188. Subject to section 31.2 of the Crown Liability and Proceedings Act, a defence of tender before action may not be pleaded unless the defendant has paid into court the amount alleged to have been tendered.

### *Counterclaims*

When available

189(1)

189. (1) A defendant who claims to be entitled to relief against a plaintiff may make a counterclaim instead of bringing a separate action.

Statement of defence and counterclaim

189(2)

(2) A counterclaim shall be included in the same document as the statement of defence.

Style of cause

189(3)

(3) A statement of defence and counterclaim shall contain a second style of cause identifying the plaintiff by counterclaim and the defendants to the counterclaim.

Counterclaim may proceed independently

190

190. A counterclaim may be proceeded with notwithstanding that judgment is given in the action or that the action is stayed or discontinued.

Counterclaim against person not already a party

191(1)

191. (1) Where a defendant who counterclaims alleges that a person who is not a party to the action is liable to the defendant along with the plaintiff in respect of the subject-matter of the counterclaim, the defendant may join that person as a defendant to the counterclaim.

When counterclaim to be issued

191(2)

(2) Where a defendant adds a person who is not already a party as a defendant to a counterclaim, the defendant's statement of defence and counterclaim shall be

- (a) issued within the time set out in rule 204 for the service and filing of a statement of defence; and
- (b) served on the person and on the other parties within 30 days after it is issued.

Defence to counterclaim

192(1)

192. (1) A defendant to a counterclaim who is already a party to the action shall defend the counterclaim by serving and filing a defence to counterclaim within 30 days after service of the statement of defence and counterclaim.

Reply and defence to counterclaim

192(2)

(2) A reply and a defence to counterclaim by a plaintiff against whom a counterclaim has been made shall be included in the same document.

### *Third Party Claims*

Availability as of right

193

193. A defendant may commence a third party claim against a co-defendant, or against a person who is not a party to the action, who the defendant claims is or may be liable to the defendant for all or part of the plaintiff's claim.

Where leave of Court required

194

194. With leave of the Court, a defendant may commence a third party claim against a co-defendant, or against another person who is not a defendant to the action, who the defendant claims

- (a) is or may be liable to the defendant for relief, other than that referred to in rule 193, relating to the subject-matter of the action; or
- (b) should be bound by the determination of an issue between the plaintiff and the defendant.

Time for third party claim

195

195. A third party claim against a co-defendant shall be served and filed within 10 days after the filing of the statement of defence.

#### Third party claim against non-defendant

196(1)

196. (1) A third party claim against a person who is not already a party to the action shall be  
 (a) issued within the time set out in rule 204 for the service and filing of a statement of defence; and  
 (b) served within 30 days after it is issued.

#### Copy of pleadings

196(2)

(2) A third party claim served on a person who is not already a party to the action shall be accompanied by a copy of all pleadings filed in the action.

#### Time for defence to third party claim

197(1)

197. (1) A third party shall defend the plaintiff's claim against the defendant by filing a statement of defence within the time set out in rule 204.

#### Rights and obligations of third party

197(2)

(2) A third party defending the plaintiff's claim against the defendant has the same procedural rights and obligations in the action as the defendant, including those in respect of discovery, trial and appeal.

#### Hearing of third party claim

198(1)

198. (1) Unless the Court orders otherwise, a third party claim shall be heard and decided as part of the action from which it arose.

#### Questions of third party liability

198(2)

(2) The Court may order the question of liability as between the third party and the defendant to be tried in such a manner, at or after the trial of the action, as is set out in the order.

#### Order binding on third party

199(1)

199. (1) A third party is bound by any order or determination made in an action between the plaintiff and the defendant who made the third party claim, whether or not the third party defended the plaintiff's claim.

#### Consequences of default of third party defence

199(2)

(2) A third party who defends neither the third party claim nor the plaintiff's claim is deemed to admit  
 (a) the validity of any judgment obtained by the plaintiff against the defendant, including a judgment obtained by consent; and  
 (b) the third party's liability to contribute or indemnify to the extent specified in the third party claim.

#### Leave required to enforce default judgment

199(3)

(3) A judgment against a third party referred to in subsection (2) shall not be enforced without leave of the Court.

### *Amendment of Pleadings*

#### Amendment as of right

200

200. Notwithstanding rules 75 and 76, a party may, without leave, amend any of its pleadings at any time before another party has pleaded thereto or on the filing of the written consent of the other parties.

#### Amendment to add new cause of action

201

201. An amendment may be made under rule 76 notwithstanding that the effect of the amendment will be to add or substitute a new cause of action, if the new cause of action arises out of substantially the same facts as a cause of action in respect of which



the party seeking the amendment has already claimed relief in the action.

*Close of Pleadings*

Close of pleadings

202

202. Pleadings are closed

- (a) where a statement of defence has not been filed within the period set out in rule 204, on the expiration of that period;
- (b) on the filing of a reply; or
- (c) on the expiration of the time for filing a reply.

*Time for Service of Pleadings*

Statement of claim

203(1)

203. (1) A statement of claim shall be served within 60 days after it is issued.

Proof of service

203(2)

(2) Proof of service of a statement of claim shall be filed within the time set out in rule 204 for the service and filing of a statement of defence.

Defence

204

204. A defendant shall defend an action by serving and filing a statement of defence within

- (a) 30 days after service of the statement of claim, if the defendant is served in Canada;
- (b) 40 days after service of the statement of claim, if the defendant is served in the United States; and
- (c) 60 days after service of the statement of claim, if the defendant is served outside Canada and the United States.

Reply

205

205. A plaintiff's reply to a statement of defence shall be served and filed within 10 days after service of the statement of defence.

Documents referred to in pleadings

206

206. A copy of every document referred to in a pleading shall be served with the pleading or within 10 days after service of the pleading, unless

- (a) the party being served waives its right to the copy; or
- (b) the Court orders otherwise.

Service of counterclaim where no new party added

207(1)

207. (1) Where a counterclaim is brought against a plaintiff only, or against only a plaintiff and another party to the action, the statement of defence and counterclaim shall be served and filed within the time set out in rule 204.

Exception

207(2)

(2) Where a defendant to a counterclaim who is also a defendant in the action has failed to file a statement of defence in the action, that defendant shall be served personally with a statement of defence and counterclaim.

PRELIMINARY OBJECTIONS

Motion to object

208

208. A party who has been served with a statement of claim and who brings a motion to object to

- (a) any irregularity in the commencement of the action,
- (b) the service of the statement of claim,
- (c) the Court as not being a convenient forum, or
- (d) the jurisdiction of the Court,

does not thereby attorn to the jurisdiction of the Court.

## Solicitor of record

209

209. A solicitor appearing for a party bringing a motion referred to in rule 208 shall be considered to be the solicitor of record of the party and the address indicated for the solicitor on the notice of motion or other documents is the address for service of the party.

## DEFAULT PROCEEDINGS

## Motion for default judgment

210(1)

210. (1) Where a defendant fails to serve and file a statement of defence within the time set out in rule 204 or any other time fixed by an order of the Court, the plaintiff may bring a motion for judgment against the defendant on the statement of claim.

## Motion in writing

210(2)

(2) Subject to section 25 of the Crown Liability and Proceedings Act, a motion under subsection (1) may be brought ex parte and in accordance with rule 369.

## Affidavit evidence

210(3)

(3) A motion under subsection (1) shall be supported by affidavit evidence.

## Disposition of motion

210(4)

(4) On a motion under subsection (1), the Court may

- (a) grant judgment;
- (b) dismiss the action; or
- (c) order that the action proceed to trial and that the plaintiff prove its case in such a manner as the Court may direct.

## Service pursuant to order for substitutional service

211

211. Judgment shall not be given against a defendant who is in default where service of the statement of claim was effected pursuant to an order for substitutional service, unless the Court is satisfied that it is just to do so having regard to all the circumstances.

## Service pursuant to Hague Convention

212(1)

212. (1) Where a statement of claim was sent abroad for service on a defendant in a contracting state to the Hague Convention and the defendant has not filed a defence, judgment shall not be given under rule 210 unless the Court is satisfied that

- (a) the statement of claim was
  - (i) served by a method prescribed by the law of the state in which service was made, or
  - (ii) delivered to the defendant or to the defendant's residence by another method provided for in the Hague Convention; and
- (b) the defendant has had sufficient time after the service or delivery to file a defence.

## Judgment

212(2)

(2) Notwithstanding subsection (1), the Court may give judgment under rule 210 if

- (a) the statement of claim was sent by a method provided for in the Hague Convention;
- (b) a period of not less than six months, or such longer period as the Court considers adequate in the circumstances, has elapsed since the day on which the statement of claim was sent; and
- (c) no certificate under article 6 of the Hague Convention was received, and every reasonable effort was made to obtain such a certificate through the competent authorities of the state to which the statement of claim was sent.

## Interlocutory injunction or mandamus

212(3)

(3) This rule does not preclude the Court from making an order under rule 373 before service of the statement of claim.

## SUMMARY JUDGMENT

## Where available to plaintiff

213(1)

213. (1) A plaintiff may, after the defendant has filed a defence, or earlier with leave of the Court, and at any time before the time and place for trial are fixed, bring a motion for summary judgment on all or part of the claim set out in the statement of claim.

## Where available to defendant

213(2)

(2) A defendant may, after serving and filing a defence and at any time before the time and place for trial are fixed, bring a motion for summary judgment dismissing all or part of the claim set out in the statement of claim.

## Obligations of moving party

214(1)

214. (1) A party may bring a motion for summary judgment in an action by serving and filing a notice of motion and motion record at least 20 days before the day set out in the notice for the hearing of the motion.

## Obligations of responding party

214(2)

(2) A party served with a motion for summary judgment shall serve and file a respondent's motion record not later than 10 days before the day set out in the notice of motion for the hearing of the motion.

## Mere denial

215

215. A response to a motion for summary judgment shall not rest merely on allegations or denials of the pleadings of the moving party, but must set out specific facts showing that there is a genuine issue for trial.

## Where no genuine issue for trial

216(1)

216. (1) Where on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

## Genuine issue of amount or question of law

216(2)

(2) Where on a motion for summary judgment the Court is satisfied that the only genuine issue is

- (a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or
- (b) a question of law, the Court may determine the question and grant summary judgment accordingly.

## Summary judgment

216(3)

(3) Where on a motion for summary judgment the Court decides that there is a genuine issue with respect to a claim or defence, the Court may nevertheless grant summary judgment in favour of any party, either on an issue or generally, if the Court is able on the whole of the evidence to find the facts necessary to decide the questions of fact and law.

## Where motion dismissed

216(4)

(4) Where a motion for summary judgment is dismissed in whole or in part, the Court may order the action, or the issues in the action not disposed of by summary judgment, to proceed to trial in the usual way or order that the action be conducted as a specially managed proceeding.

## Effect of summary judgment

217

217. A plaintiff who obtains summary judgment under these Rules may proceed against the same defendant for any other relief and against any other defendant for the same or any other relief.

## Powers of Court

218

218. Where summary judgment is refused or is granted only in part, the Court may make an order specifying which material facts

are not in dispute and defining the issues to be tried, including an order

- (a) for payment into court of all or part of the claim;
- (b) for security for costs; or
- (c) limiting the nature and scope of the examination for discovery to matters not covered by the affidavits filed on the motion for summary judgment or by any cross-examination on them and providing for their use at trial in the same manner as an examination for discovery.

Stay of execution

219

219. In making an order for summary judgment, the Court may order that enforcement of the summary judgment be stayed pending the determination of any other issue in the action or in a counterclaim or third party claim.

#### QUESTIONS OF LAW

Preliminary determination of question of law or admissibility

220(1)

220. (1) A party may bring a motion before trial to request that the Court determine
- (a) a question of law that may be relevant to an action;
  - (b) a question as to the admissibility of any document, exhibit or other evidence; or
  - (c) questions stated by the parties in the form of a special case before, or in lieu of, the trial of the action.

Contents of determination

220(2)

- (2) Where, on a motion under subsection (1), the Court orders that a question be determined, it shall
- (a) give directions as to the case on which the question shall be argued;
  - (b) fix time limits for the filing and service of motion records by the parties; and
  - (c) fix a time and place for argument of the question.

Determination final

220(3)

(3) A determination of a question referred to in subsection (1) is final and conclusive for the purposes of the action, subject to being varied on appeal.

#### STRIKING OUT PLEADINGS

Motion to strike

221(1)

221. (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

- (a) discloses no reasonable cause of action or defence, as the case may be,
- (b) is immaterial or redundant,
- (c) is scandalous, frivolous or vexatious,
- (d) may prejudice or delay the fair trial of the action,
- (e) constitutes a departure from a previous pleading, or
- (f) is otherwise an abuse of the process of the Court,

and may order the action be dismissed or judgment entered accordingly.

Evidence

221(2)

(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).

#### DISCOVERY AND INSPECTION

##### *Discovery of Documents*

Definition of "document"

222(1)

222. (1) In rules 223 to 232 and 295, "document" includes an audio recording, video recording, film, photograph, chart, graph, map,

plan, survey, book of account, computer diskette and any other device on which information is recorded or stored.

#### Interpretation

222(2)

(2) For the purposes of rules 223 to 232 and 295, a document of a party is relevant if the party intends to rely on it or if the document tends to adversely affect the party's case or to support another party's case.

#### Time for service of affidavit of documents

223(1)

223. (1) Every party shall serve an affidavit of documents on every other party within 30 days after the close of pleadings.

#### Contents

223(2)

(2) An affidavit of documents shall be in Form 223 and shall contain

- (a) separate lists and descriptions of all relevant documents that
  - (i) are in the possession, power or control of the party and for which no privilege is claimed,
  - (ii) are or were in the possession, power or control of the party and for which privilege is claimed,
  - (iii) were but are no longer in the possession, power or control of the party and for which no privilege is claimed, and
  - (iv) the party believes are in the possession, power or control of a person who is not a party to the action;
- (b) a statement of the grounds for each claim of privilege in respect of a document;
- (c) a description of how the party lost possession, power or control of any document and its current location, as far as the party can determine;
- (d) the identity of each person referred to in subparagraph (a)(iv), including the person's name and address, if known;
- (e) a statement that the party is not aware of any relevant document, other than those that are listed in the affidavit or are or were in the possession, power or control of another party to the action; and
- (f) an indication of the time and place at which the documents referred to in subparagraph (a)(i) may be inspected.

#### Document within party's power or control

223(3)

(3) For the purposes of subsection (2), a document shall be considered to be within a party's power or control if

- (a) the party is entitled to obtain the original document or a copy of it; and
- (b) no adverse party is so entitled.

#### Bundle of documents

223(4)

(4) A party may treat a bundle of documents as a single document for the purposes of an affidavit of documents if

- (a) the documents are all of the same nature; and
- (b) the bundle is described in sufficient detail to enable another party to clearly ascertain its contents.

#### Deponent of affidavit of documents

224(1)

224. (1) The deponent of an affidavit of documents shall be

- (a) where the party is an individual who is not under a legal disability, the party;
- (b) where the party is an individual under a legal disability, a person appointed under rule 115;
- (c) where the party is a corporation or an unincorporated association, an authorized representative of the corporation or association; or
- (d) where the party is the Crown, an authorized representative of the Crown.

#### Obligations of deponent

224(2)

(2) The deponent of an affidavit of documents shall, before making the affidavit, become informed by making reasonable inquiries of any present or former officer, servant, agent or employee of the party, including any who are outside Canada, who might reasonably be expected to have knowledge relating to any matter in question in the action.

#### Obligations of solicitor

224(3)

(3) The solicitor of record for a party shall

- (a) explain to the deponent of an affidavit of documents the necessity of making full disclosure under rule 223 and the

possible consequences of failing to do so; and

(b) certify on the affidavit of documents or on a document attached to it that those explanations have been given.

#### Order for disclosure

225

225. On motion, the Court may order a party to disclose in an affidavit of documents all relevant documents that are in the possession, power or control of

(a) where the party is an individual, any corporation that is controlled directly or indirectly by the party; or

(b) where the party is a corporation,

(i) any corporation that is controlled directly or indirectly by the party,

(ii) any corporation or individual that directly or indirectly controls the party, or

(iii) any corporation that is controlled directly or indirectly by a person who also directly or indirectly controls the party.

#### Need for continuing disclosure

226(1)

226. (1) A party who becomes aware that its affidavit of documents is inaccurate or deficient shall, without delay, serve a supplementary affidavit of documents correcting the inaccuracy or deficiency.

#### Exception

226(2)

(2) A document produced and marked as an exhibit on an examination need not be included in a supplementary affidavit of documents.

#### Sanctions

227

227. On motion, where the Court is satisfied that an affidavit of documents is inaccurate or deficient, the Court may inspect any document that may be relevant and may order that

(a) the deponent of the affidavit be cross-examined;

(b) an accurate or complete affidavit be served and filed;

(c) all or part of the pleadings of the party on behalf of whom the affidavit was made be struck out; or

(d) that the party on behalf of whom the affidavit was made pay costs.

#### Inspection of documents

228(1)

228. (1) Subject to rule 230, a party who has served an affidavit of documents on another party shall, during business hours, allow the other party to inspect and, where practicable, to copy any document referred to in the affidavit that is not privileged, if the document is

(a) in the possession of the party; or

(b) in the power or control of the party and the other party requests that it be made available because the other party cannot otherwise inspect or copy it.

#### Copies of documents

228(2)

(2) A party who has served an affidavit of documents on another party shall, at the request of the other party, deliver to the other party a copy of any document referred to in subsection (1), if the other party pays the cost of the copies and of their delivery.

#### Order for production and inspection

229

229. On motion, the Court may order the production for inspection and copying by a party of any document referred to in subsection 228(1), at a time and place and in a manner set out in the order.

#### Relief from production

230

230. On motion, the Court may relieve a party from production for inspection of any document, having regard to

(a) the issues in the case and the order in which they are likely to be resolved; and

(b) whether it would be unduly onerous to require the person to produce the document.

#### Disclosure or production not admission

231

231. The disclosure of a document or its production for inspection does not constitute an admission of its authenticity or admissibility in the action.

Undisclosed or privileged document

232(1)

232. (1) Unless the Court orders otherwise or discovery of documents has been waived by the parties, no document shall be used in evidence unless it has been

- (a) disclosed on a party's affidavit of documents as a document for which no privilege has been claimed;
- (b) produced for inspection by a party, or a person examined on behalf of one of the parties, on or subsequent to examinations for discovery; or
- (c) produced by a witness who is not, in the opinion of the Court, under control of the party.

Exception

232(2)

(2) Subsection (1) does not apply to a document that is used solely as a foundation for, or as a part of a question in, cross-examination or re-examination.

Production from non-party with leave

233(1)

233. (1) On motion, the Court may order the production of any document that is in the possession of a person who is not a party to the action, if the document is relevant and its production could be compelled at trial.

Personal service on non-party

233(2)

(2) Notice of a motion for an order under subsection (1) shall be personally served on the person who is in possession of the document.

Preparation of certified copy

233(3)

(3) The Court may, in an order under subsection (1), give directions for the preparation of a certified copy of the document to be used instead of the original.

#### *Examinations for Discovery*

Both oral and written examination

234(1)

234. (1) A party may conduct an examination for discovery by way of both an oral and a written examination only with leave of the Court or with the consent of the person being examined and all other parties entitled to examine that person.

Oral examination by two or more parties

234(2)

(2) Where two or more parties are entitled to examine a person, the examination for discovery shall be by way of an oral examination, except with leave of the Court or with the consent of the person being examined and all other parties entitled to examine that person.

Single examination

235

235. Except with leave of the Court, a party may examine for discovery any adverse party only once.

When examination may be initiated

236(1)

236. (1) Subject to subsection (2), a party may examine an adverse party for discovery only if

- (a) the pleadings are closed and the examining party has served its affidavit of documents;
- (b) the pleadings are closed and the adverse party consents to the examination being conducted before the examining party has served its affidavit of documents; or
- (c) the adverse party is in default of serving and filing its pleadings and leave of the Court has been obtained.

Examination by defendant

236(2)

(2) Subject to subsection (3), a defendant may examine a plaintiff at any time after the statement of claim is filed.

## Multiple defendants

236(3)

(3) Where two or more defendants are represented by the same solicitor, none of them may examine the plaintiff before filing a defence unless all of them examine the plaintiff at the same time.

## Representative selected

237(1)

237. (1) A corporation, partnership or unincorporated association that is to be examined for discovery shall select a representative to be examined on its behalf.

## Examination of Crown

237(2)

(2) Where the Crown is to be examined for discovery, the Attorney General of Canada shall select a representative to be examined on its behalf.

## Order for substitution

237(3)

(3) The Court may, on the motion of a party entitled to examine a person selected under subsection (1) or (2), order that some other person be examined.

## Examination of assignee

237(4)

(4) Where an assignee is a party to an action, the assignor may also be examined for discovery.

## Examination of trustee in bankruptcy

237(5)

(5) Where a trustee in bankruptcy is a party to an action, the bankrupt may also be examined for discovery.

## Examination of party under legal disability

237(6)

(6) Where a party intends to examine for discovery a person appointed under rule 121 to act on behalf of a person under legal disability, with leave of the Court, the party may also examine the person under disability.

## Examination of nominal party

237(7)

(7) Where a party intends to examine for discovery a person bringing or defending an action on behalf of another person who is not a party, with leave of the Court, the party may also examine that other person.

## Examination of non-parties with leave

238(1)

238. (1) A party to an action may bring a motion for leave to examine for discovery any person not a party to the action, other than an expert witness for a party, who might have information on an issue in the action.

## Personal service on non-party

238(2)

(2) On a motion under subsection (1), the notice of motion shall be served on the other parties and personally served on the person to be examined.

## Where Court may grant leave

238(3)

(3) The Court may, on a motion under subsection (1), grant leave to examine a person and determine the time and manner of conducting the examination, if it is satisfied that

- (a) the person may have information on an issue in the action;
- (b) the party has been unable to obtain the information informally from the person or from another source by any other reasonable means;
- (c) it would be unfair not to allow the party an opportunity to question the person before trial; and
- (d) the questioning will not cause undue delay, inconvenience or expense to the person or to the other parties.

## Expenses of person examined

239(1)



239. (1) Unless the Court orders otherwise, a party who is granted leave to examine a person under rule 238 shall pay to the person
- (a) at least 10 days before the day of the examination, an amount sufficient to cover reasonable travel expenses; and
  - (b) within 10 days after the examination, an amount sufficient to cover any reasonable travel expenses in excess of the initial payment.

Assistance of solicitor

239(2)

- (2) A person being examined under rule 238 is entitled to be assisted by a solicitor.

Costs of solicitor

239(3)

- (3) On motion, the Court may, in special circumstances, order that the costs of a solicitor assisting a person to be examined under rule 238 be included in the amounts paid under subsection (1).

Questioning by other parties

239(4)

- (4) A person being examined under rule 238 may also be questioned by any other party.

Cross-examination or hearsay

239(5)

- (5) A person being examined under rule 238 shall not be cross-examined and shall not be required to give hearsay evidence.

Use as evidence at trial

239(6)

- (6) The testimony of a person who was examined under rule 238 shall not be used as evidence at trial but, if the person is a witness at trial, it may be used in cross-examination in the same manner as any written statement of a witness.

Scope of examination

240

240. A person being examined for discovery shall answer, to the best of the person's knowledge, information and belief, any question that

- (a) is relevant to any unadmitted allegation of fact in a pleading filed by the party being examined or by the examining party; or
- (b) concerns the name or address of any person, other than an expert witness, who might reasonably be expected to have knowledge relating to a matter in question in the action.

Obligation to inform self

241

241. Subject to paragraph 242(1)(d), a person who is to be examined for discovery, other than a person examined under rule 238, shall, before the examination, become informed by making inquiries of any present or former officer, servant, agent or employee of the party, including any who are outside Canada, who might be expected to have knowledge relating to any matter in question in the action.

Objections permitted

242(1)

242. (1) A person may object to a question asked in an examination for discovery on the ground that

- (a) the answer is privileged;
- (b) the question is not relevant to any unadmitted allegation of fact in a pleading filed by the party being examined or by the examining party;
- (c) the question is unreasonable or unnecessary; or
- (d) it would be unduly onerous to require the person to make the inquiries referred to in rule 241.

Objections not permitted

242(2)

(2) A person other than a person examined under rule 238 may not object to a question asked in an examination for discovery on the ground that

- (a) the answer would be evidence or hearsay;
- (b) the question constitutes cross-examination.

## Limit on examination

243

243. On motion, the Court may limit an examination for discovery that it considers to be oppressive, vexatious or unnecessary.

## Examined party to be better informed

244(1)

244. (1) Where a person being examined for discovery, other than a person examined under rule 238, is unable to answer a question, the examining party may require the person to become better informed and may conclude the examination, subject to obtaining answers to any remaining questions.

## Further answers

244(2)

(2) A person being examined who is required to become better informed shall provide the information sought by the examining party by submitting to a continuation of the oral examination for discovery in respect of the information or, where the parties agree, by providing the information in writing.

## Information deemed part of examination

244(3)

(3) Information provided under subsection (2) is deemed to be part of the examination for discovery.

## Inaccurate or deficient answer

245(1)

245. (1) A person who was examined for discovery and who discovers that the answer to a question in the examination is no longer correct or complete shall, without delay, provide the examining party with the corrected or completed information in writing.

## Further examination

245(2)

(2) An examining party may require a person providing information under subsection (1) to continue the examination for discovery in respect of that information.

## Corrections deemed part of examination

245(3)

(3) Information provided under subsection (1) is deemed to be part of the examination for discovery.

## Answer by solicitor

246(1)

246. (1) The solicitor of a person being examined for discovery orally may answer a question on behalf of the person during the examination, unless the examining party objects.

## Deemed answer of person examined

246(2)

(2) An answer given by a solicitor under subsection (1) is deemed to be the answer of the person being examined for discovery.

## Divided discovery

247

247. Where

- (a) an order was made under rule 153 that an issue of fact be the subject of a reference after trial, or
  - (b) an order was made under rule 107 that an issue in the action be determined separately,
- any subsequent examination for discovery or inspection of documents shall not extend to that issue, unless otherwise ordered by the Court.

## Undisclosed information inadmissible at trial

248

248. Where a party examined for discovery, or a person examined for discovery on behalf of a party, has refused, on the ground of privilege or for any other reason, to answer a proper question and has not subsequently answered the question, the party may not introduce the information sought by the question at trial without leave of the Court.

*Inspection of Property*

## Order for inspection

249(1)

249. (1) On motion, where the Court is satisfied that it is necessary or expedient for the purpose of obtaining information or evidence in full, the Court may order, in respect of any property that is the subject-matter of an action or as to which a question may arise therein, that

- (a) a sample be taken of the property;
- (b) an inspection be made of the property; or
- (c) an experiment be tried on or with the property.

Entry on land or building

249(2)

(2) An order made under subsection (1) may authorize a person to enter any land or building where the property is located for the purpose of enabling the order to be carried out.

Personal service on non-party

249(3)

(3) Where a motion is brought under subsection (1) for an order in respect of property that is in the possession of a person who is not a party to the action, that person shall be personally served with notice of the motion.

#### *Medical Examination of Parties*

Order for medical examination

250(1)

250. (1) In an action for damages for personal injuries, the Court may, on motion, order the injured person to submit to a medical examination at a place and by a medical practitioner appointed by the Court.

Who may attend examination

250(2)

(2) A person who is required to undergo a medical examination under this rule is entitled to have a solicitor, medical advisor or person appointed under rule 115, or all of them, present at the examination, but no other person, other than the person being examined and the medical practitioner authorized to conduct the examination, shall be present during the examination, except with leave of the Court or with the consent of the parties.

Scope of examination

250(3)

(3) A medical practitioner who is examining a person under this rule may, in connection with that examination, ask the person any question that may be relevant to the purpose of the examination, and any statement made by the person during such an examination is admissible in evidence.

Sanctions for plaintiff's failure to comply

250(4)

(4) If a plaintiff fails, without reasonable excuse, to comply with an order under subsection (1) or to answer any questions referred to in subsection (3), the Court may dismiss the action.

Further medical examination

251

251. On motion, the Court may order further medical examinations in accordance with rule 250, on such terms as it considers just.

Medical report

252(1)

252. (1) After conducting a medical examination under rule 250, the medical practitioner shall prepare a written report setting out his or her observations, the results of any tests made and his or her conclusions, diagnosis and prognosis and forthwith provide the report to the party who obtained the order.

Service of medical report

252(2)

(2) A party who obtains an order under rule 250 shall forthwith serve the report obtained pursuant to it on every other party.

Report confidential

252(3)

(3) Every person who receives a medical report under this rule shall treat it as confidential and use it only for the purposes of the action.

Medical practitioner as witness

253

253. Unless the Court orders otherwise, a medical practitioner who has made an examination under an order made under subsection 250(1) may, subject to rule 279, be called as a witness at trial.

Costs of medical examination

254

254. The Court may order that a party seeking an order under subsection 250(1) or rule 251 pay to the person to be examined or to a representative of the person appointed under rule 115 all necessary expenses of attending the examination.

## ADMISSIONS

Request to admit fact or document

255

255. A party may, after pleadings have been closed, request that another party admit a fact or the authenticity of a document by serving a request to admit, in Form 255, on that party.

Effect of request to admit

256

256. A party who is served with a request to admit is deemed to admit a fact or the authenticity of a document set out in the request to admit unless that party serves a response to the request in Form 256 within 20 days after its service and denies the admission, setting out the grounds for the denial.

## PRE-TRIAL

### *Settlement Discussions*

Settlement discussions

257

257. Within 60 days after the close of pleadings, the solicitors for the parties shall discuss the possibility of settling any or all of the issues in the action and of bringing a motion to refer any unsettled issues to a dispute resolution conference.

### *Pre-trial Conferences*

Requisition for pre-trial conference

258(1)

258. (1) After the close of pleadings, a party who is not in default under these Rules or under an order of the Court and who is ready for trial may serve and file a requisition for a pre-trial conference, accompanied by a pre-trial conference memorandum.

Contents of requisition

258(2)

(2) A requisition for a pre-trial conference shall be in Form 258 and include a certification by the solicitor of record that

- (a) all examinations for discovery that the party intends to conduct have been completed; and
- (b) settlement discussions have taken place in accordance with rule 257.

Contents of pre-trial conference memorandum

258(3)

(3) A pre-trial conference memorandum shall contain

- (a) a concise statement of the nature of the proceeding;
- (b) any admissions of the party;
- (c) the factual and legal contentions of the party; and
- (d) a statement of the issues to be determined at trial.

Documents

258(4)

(4) A pre-trial conference memorandum shall be accompanied by a copy of all documents that are intended to be used at trial that may be of assistance in settling the action.

## Time and place for pre-trial conference

259

259. On the filing of a requisition for a pre-trial conference, the Court shall fix a time, not more than 60 days thereafter, and place for the pre-trial conference.

## Participation at pre-trial conference

260

260. Unless the Court directs otherwise, the solicitors of record for the parties and the parties or their authorized representatives shall participate in a pre-trial conference.

## Notice of pre-trial conference

261

261. The Administrator shall serve a notice of pre-trial conference, in Form 261, on the parties at least 30 days before the date fixed for the conference.

## Pre-trial conference memoranda

262

262. Every party, other than the party who filed the requisition for a pre-trial conference, shall serve and file a pre-trial conference memorandum at least seven days before the date fixed for the conference.

## Scope of pre-trial conference

263

263. Participants at a pre-trial conference must be prepared to address

- (a) the possibility of settlement of any or all of the issues in the action and of referring any unsettled issues to a dispute resolution conference;
- (b) simplification of the issues in the action;
- (c) definition of any issues requiring the evidence of expert witnesses;
- (d) the possibility of obtaining admissions that may facilitate the trial;
- (e) the issue of liability;
- (f) the amount of damages, where damages are claimed;
- (g) the estimated duration of the trial;
- (h) the advisability of having the Court appoint an assessor;
- (i) the advisability of a reference;
- (j) suitable dates for a trial;
- (k) the necessity for interpreters or simultaneous interpretation at the trial;
- (l) whether a notice of a constitutional question needs to be served under section 57 of the Act;
- (m) the content of the trial record; and
- (n) any other matter that may promote the timely and just disposition of the action. SOR/2002-417, s. 15.

## Assignment of trial date

264

264. A judge or prothonotary who conducts a pre-trial conference shall fix the place of trial and assign a date for trial at the earliest practicable date after the pre-trial conference.

## Order

265

265. At a pre-trial conference,

- (a) a judge may make any order respecting the conduct of the action; and
- (b) a prothonotary may make any order respecting the conduct of the action other than an order under a motion referred to in any of paragraphs 50(1)(a) to (i).

## Pre-trial judge not to preside at trial

266

266. A judge or prothonotary who conducts a pre-trial conference in an action shall not preside at the trial of the action unless all parties consent.

## No disclosure to the Court

267

267. No communication shall be made to a judge or prothonotary presiding at a trial or hearing, or on a motion or reference in an

action, with respect to any statement made at a pre-trial conference, except as may be permitted in an order made at the conclusion of the pre-trial conference or as consented to by the parties.

### *Trial Record*

#### Trial record

268

268. The plaintiff, or any other party so directed by the Court at a pre-trial conference, shall serve and file a trial record not later than 40 days before the date fixed for trial.

#### Content of trial record

269

269. A trial record shall contain the pleadings, any particulars, all orders and directions respecting the trial and any other filed document that is necessary for the conduct of the trial.

### *Trial Management Conference*

#### Scope of trial management conference

270

270. Notwithstanding rule 266, a judge or prothonotary before whom an action has been set down for trial may, without being disqualified from presiding at the trial, hold a conference, either before or during the trial, to consider any matter that may assist in the just and timely disposition of the action.

### *Taking of Trial Evidence out of Court*

#### Evidence taken out of court

271(1)

271. (1) On motion, the Court may order the examination for trial of a person out of court.

#### Considerations

271(2)

- (2) In making an order under subsection (1), the Court may consider
- (a) the expected absence of the person at the time of trial;
  - (b) the age or any infirmity of the person;
  - (c) the distance the person resides from the place of trial; and
  - (d) the expense of having the person attend at trial.

#### Directions regarding taking evidence before trial

271(3)

(3) In an order under subsection (1), or on the subsequent motion of a party, the Court may give directions regarding the time, place, manner and costs of the examination, notice to be given to the person being examined and to other parties, the attendance of witnesses and the production of requested documents or material.

#### Further examination

271(4)

(4) On motion, the Court may order the further examination, before the Court or before a person designated by the Court, of any witness examined under subsection (1), and if such an examination is not conducted, the Court may refuse to admit the evidence of that witness.

### Commission for examination outside Canada

272(1)

272. (1) Where an examination under rule 271 is to be made outside Canada, the Court may order the issuance of a commission under the seal of the Court, letters rogatory, a letter of request or any other document necessary for the examination in Form 272A, 272B or 272C, as the case may be.

#### Examination outside Canada

272(2)

(2) A person authorized under subsection (1) to take the examination of a witness in a jurisdiction outside Canada shall, unless the parties agree otherwise or the Court orders otherwise, take the examination in a manner that is binding on the witness under the law of that jurisdiction.

## Use of evidence at trial

273

273. Unless the Court orders otherwise, evidence obtained on an examination under subsection 271(1) or (4) may, without further proof, be used in evidence by any party.

## TRIAL PROCEDURE

*General*

## Order of presentation

274(1)

274. (1) Subject to subsection (2), at the trial of an action, unless the Court directs otherwise,

(a) the plaintiff shall make an opening address and then adduce evidence;

(b) when the plaintiff's evidence is concluded, the defendant shall make an opening address and then adduce evidence; and

(c) when the defendant's evidence is concluded, the plaintiff may adduce reply evidence.

## Multiple parties

274(2)

(2) Where the Court has made an order permitting two or more plaintiffs to put in separate cases, or where more than one defendant is separately represented, the order of presentation shall be as directed by the Court.

## Directions re proof or evidence

275

275. The Court may give directions at trial concerning the method of proving a fact or of adducing evidence.

## Exhibits

276

276. All exhibits adduced in evidence shall be marked and numbered.

## Inspection by Court

277

277. The Court may, in the presence of solicitors for the parties, inspect any place or thing in respect of which a question may arise at trial.

## Order of argument

278(1)

278. (1) Unless the Court directs otherwise, the parties shall be heard in argument, after all parties have been given full opportunity to put in their respective cases, in the order in which they adduced evidence.

## Right of reply

278(2)

(2) A party shall have a right of reply to the arguments of adverse parties and, if the party raises a new point of law, an adverse party may answer on that point.

*Expert Witnesses*

## Where expert may testify

279

279. Unless the Court orders otherwise, no evidence in chief of an expert witness is admissible at the trial of an action in respect of any issue unless

(a) the issue has been defined by the pleadings or in an order made under rule 265;

(b) an affidavit, or a statement in writing signed by the expert witness and accompanied by a solicitor's certificate, that sets out in full the proposed evidence, has been served on all other parties at least 60 days before the commencement of the trial; and

(c) the expert witness is available at the trial for cross-examination.

## Tendering of expert evidence at trial

280(1)

280. (1) Evidence in chief of an expert witness may be tendered at trial by
- (a) the reading into evidence by the witness of all or part of an affidavit or statement served under paragraph 279(b);
  - (b) testimony by the witness explaining any of the content of an affidavit or statement that has been read into evidence; and
  - (c) with leave of the Court, other testimony by the witness.

Affidavit taken as read

280(2)

- (2) With leave of the Court and the consent of all parties, all or part of an affidavit or statement served under paragraph 279(b) may be taken as read into evidence by the witness.

Prohibition on pre-trial cross-examination

280(3)

- (3) Except with leave of the Court, there shall be no cross-examination before trial on an affidavit or statement served under paragraph 279(b).

Admissibility of rebuttal evidence

281

281. Except with leave of the Court, no expert evidence to rebut evidence in an affidavit or statement served under paragraph 279(b) is admissible unless an affidavit, or a statement in writing signed by the expert witness and accompanied by a solicitor's certificate, setting out the rebuttal evidence has been served on all other parties at least 30 days before the commencement of the trial.

### *Evidence at Trial*

Examination of witnesses

282(1)

282. (1) Unless the Court orders otherwise, witnesses at trial shall be examined orally and in open court.

Witnesses to testify under oath

282(2)

- (2) All witnesses shall testify under oath.

Interpreter

283

283. Rule 93 applies, with such modifications as are necessary, to the use of an interpreter at trial.

Failure to appear

284(1)

284. (1) Where on the day of a trial, a party who intends to call witnesses does not produce them or justify their absence, the Court may declare the party's proof closed.

Adjournment

284(2)

- (2) Subject to subsection (3), where a party demonstrates due diligence and the Court is satisfied that an absent witness is necessary and that the absence of the witness is not due to any contrivance on the party's part, the Court may adjourn the hearing.

Avoidance of adjournment

284(3)

- (3) An adverse party may require a party seeking an adjournment under subsection (2) to declare, or to produce some other person to declare, under oath the facts that, in the opinion of the party seeking the adjournment, the defaulting witness would have stated, and may avoid the adjournment by admitting the truth of those facts or that the witness would have stated those facts.

Proof by affidavit

285

285. The Court may, at any time, order that any fact be proven by affidavit or that the affidavit of a witness be read at trial.



## Order re giving evidence

286

286. The Court may, before trial, order that evidence of any fact be given at the trial in such a manner as may be specified in the order, including

- (a) by statement on oath of information or belief;
- (b) by the production of documents or other material;
- (c) by the production of copies of documents; or
- (d) in the case of a fact that is or was a matter of common knowledge either generally or in a particular district, by the production of a specified publication containing a statement of that fact.

*Demonstrative Evidence*

## Admissibility

287

287. Except with leave of the Court, no plan, photograph, model or other demonstrative evidence prepared or obtained for use at trial is admissible in evidence at trial, other than in the course of cross-examination, unless at least 30 days before the commencement of the trial all other parties have been given an opportunity to inspect it and consent to its admission without further proof.

*Use of Examination for Discovery at Trial*

## Reading in examination at trial

288

288. A party may introduce as its own evidence at trial any part of its examination for discovery of an adverse party or of a person examined on behalf of an adverse party, whether or not the adverse party or person has already testified.

## Qualifying answers

289

289. The Court may order a party who uses part of an examination for discovery as its own evidence to introduce into evidence any other part of the examination for discovery that the Court considers is so related that it ought not to be omitted.

## Unavailability of deponent

290

290. The Court may permit a party to use all or part of an examination for discovery of a person, other than a person examined under rule 238, as evidence at trial if

- (a) the person is unable to testify at the trial because of his or her illness, infirmity or death or because the person cannot be compelled to attend; and
- (b) his or her evidence cannot be obtained on commission.

## Use of examination to impeach credibility at trial

291

291. A party may use any part of its examination for discovery of a person as evidence to impeach the credibility of that person as a witness at trial only if the party first puts to the person the questions asked in that part of the examination.

## SIMPLIFIED ACTION

## Where mandatory

292

292. Unless the Court orders otherwise, rules 294 to 299 apply to any action in which

- (a) each claim is exclusively for monetary relief in an amount not exceeding \$50,000, exclusive of interest and costs;
- (b) in respect of an action in rem claiming monetary relief, no amount claimed, exclusive of interest and costs, exceeds \$50,000;
- (c) the parties agree that the action is to be conducted as a simplified action; or
- (d) on motion, the Court orders that the action be conducted as a simplified action.

## Cost consequences of improper avoidance of procedure

293

293. The Court may award costs against any party, including a party who is successful in an action, who it finds has exaggerated a claim, including a counterclaim or third party claim, merely to avoid the operation of rules 292 and 294 to 299.

## Style of cause

294

294. Every pleading in a simplified action shall be prefaced by the heading "Simplified Action".

## List of documents

295

295. A party to a simplified action may serve, in lieu of an affidavit of documents, a complete list of all the documents in the party's possession, power or control that are relevant to a matter in issue in the action.

## Limited examination for discovery

296

296. An examination for discovery in a simplified action shall be in writing only, and shall not exceed 50 questions.

## Motions for summary judgment

297

297. No motion for summary judgment may be brought in a simplified action.

## Motions prior to pre-trial conference

298(1)

298. (1) Subject to subsections (2) and (3), a motion in a simplified action shall be returnable only at a pre-trial conference conducted in accordance with rules 258 to 267.

## Exception

298(2)

(2) A motion may be brought, within the time set out in rule 204 for the service and filing of a statement of defence,  
(a) to object to the jurisdiction of the Court; or  
(b) to strike a statement of claim, on the ground that it discloses no reasonable cause of action.

## Exception

298(3)

(3) A motion may be brought at any time  
(a) to remove an action from the operation of rules 294 to 299;  
(b) for the release of arrested property in an action in rem; or  
(c) for a default judgment. SOR/2002-417, s. 16.

## Evidence-in-chief adduced by affidavit

299(1)

299. (1) In the trial of a simplified action, unless the Court directs otherwise, the evidence of each party shall be adduced by affidavit, which shall, subject to rules 279 and 281, be served and filed

- (a) in the case of evidence of a plaintiff, at least 20 days before the trial; and
- (b) in the case of evidence of a defendant, at least 10 days before the trial.

## Witness to be made available

299(2)

(2) Unless all adverse parties agree otherwise, a witness whose affidavit evidence is tendered at trial shall be made available for cross-examination at trial.

## Reply evidence

299(3)

(3) Subject to rule 281, reply evidence, including that of an expert witness, may be provided orally at trial.

*Application*

Rules in respect of actions apply

299.1

299.1 Except to the extent that they are incompatible with rules 299.12 to 299.42, the rules applicable to actions apply to class actions. SOR/2002-417, s. 17.

*Judicial Review*

Application

299.11

299.11 Rules 299.1 and 299.12 to 299.42 also apply to an application for judicial review that is to be treated and proceeded with as an action under subsection 18.4(2) of the Act.

SOR/2002- 417, s. 17.

*Commencement*

By member

299.12(1)

299.12 (1) A member of a class of persons may commence an action on behalf of the members of that class.

*Statement of claim*

299.12(2)

(2) The statement of claim in an action commenced by a member of a class of persons on behalf of the members of that class shall be prefaced by the heading "Proposed Class Action".

Motion for certification of action

299.12(3)

(3) A member who commences an action on behalf of a class of persons shall bring a motion for the certification of the action as a class action and the appointment of the member as representative plaintiff.

Who may be representative

299.12(4)

(4) The representative of a class shall be a person who may act as a plaintiff under these Rules.

SOR/2002-417, s. 17.

*Certification during Proceeding*

By defendant

299.13

299.13 A defendant to an action may, at any time, bring a motion for the certification of the action as a class action and the appointment of a representative plaintiff. SOR/2002-417, s. 17.

Counterclaims

299.14

299.14 If a defendant to a class action makes a counterclaim against the class, the counterclaim may not proceed unless the counterclaim is certified as a class action. SOR/2002-417, s. 17.

Defendant class action

299.15

299.15 A party to an action against two or more defendants may, at any time, bring a motion for the certification of the action as a class action and the appointment of a representative defendant. SOR/2002-417, s. 17.

Necessary modifications **S** rule 299.13 class action

299.16(1)

299.16 (1) Rule 299.18 applies, with the necessary modifications, to the certification of an action as a class action referred to in rule 299.13.

Necessary modifications **S** counterclaim and defendant class action

299.16(2)

(2) Rules 299.12 to 299.15 and 299.17 to 299.42 apply, with the necessary modifications, to a counterclaim referred to in rule 299.14 or other action referred to in rule 299.15.

SOR/2002- 417, s. 17.

*Motion for Certification*

## Time of service and filing

299.17(1)

299.17 (1) A notice of motion for the certification of an action as a class action and the affidavit in support of that motion shall be served and filed at least 14 days before the day set out in the notice for the hearing of the motion.

## When notice is returnable

299.17(2)

(2) The notice of motion shall be made returnable no later than 90 days after the later of

- (a) the day on which the last statement of defence was filed, and
- (b) the day on which, under rule 204, the last statement of defence is required to be served and filed.

## Affidavit in response

299.17(3)

(3) A person who serves and files an affidavit in response to a notice of motion and affidavit shall serve and file the affidavit in response at least five days before the day set out in the notice for the hearing of the motion.

## Content of affidavit

299.17(4)

(4) A person filing an affidavit under subsection (1) or (3) shall

- (a) set out in the affidavit the material facts on which the person intends to rely at the hearing of the motion;
- (b) swear that the person knows of no fact material to the motion that has not been disclosed in the person's affidavit; and
- (c) provide, to the best of the person's knowledge, the number of members in the proposed class.

SOR/2002-417, s. 17.

*Certification*

## Conditions

299.18(1)

299.18 (1) Subject to subsection (3), a judge shall certify an action as a class action if

- (a) the pleadings disclose a reasonable cause of action;
- (b) there is an identifiable class of two or more persons;
- (c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;
- (d) a class action is the preferable procedure for the fair and efficient resolution of the common questions of law or fact; and
- (e) there is a representative plaintiff who
  - (i) would fairly and adequately represent the interests of the class,
  - (ii) has prepared a plan for the action that sets out a workable method of advancing the action on behalf of the class and of notifying class members how the proceeding is progressing,
  - (iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and
  - (iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff and the representative plaintiff's solicitor.

## Matters to be considered

299.18(2)

(2) All relevant matters shall be considered in a determination of whether a class action is the preferable procedure for the fair and efficient resolution of the common questions of law or fact, including whether

- (a) questions of law or fact common to the members of the class predominate over any questions affecting only

individual members;

- (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate actions;
- (c) the class action would involve claims that are or have been the subject of any other action;
- (d) other means of resolving the claims are less practical or less efficient; and
- (e) the administration of the class action would create greater difficulties than those likely to be experienced if relief were sought by other means.

#### Subclasses

299.18(3)

(3) If the judge determines that a class includes a subclass whose members have claims that raise common questions of law or fact not shared by all the class members so that the protection of the interests of the subclass members requires that they be separately represented, the judge shall not certify the action as a class action unless there is a representative plaintiff who

- (a) would fairly and adequately represent the interests of the subclass;
- (b) has prepared a plan for the action that sets out a workable method of advancing the action on behalf of the subclass and of notifying subclass members how the proceeding is progressing;
- (c) does not have, on the common questions of law or fact for the subclass, an interest that is in conflict with the interests of other subclass members; and
- (d) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff and the representative plaintiff's solicitor.

SOR/2002-417, s. 17.

#### Contents of order

299.19(1)

299.19 (1) An order certifying an action as a class action shall

- (a) describe the class;
- (b) state the name of the representative plaintiff;
- (c) state the nature of the claims made on behalf of the class;
- (d) state the relief claimed by or from the class;
- (e) set out the common questions of law or fact for the class; and
- (f) specify the time and manner for members to opt out of the class action.

#### Subclasses

299.19(2)

(2) If the judge determines that a class includes a subclass whose members have claims that raise common questions of law or fact not shared by all class members so that the protection of the interests of the subclass members requires that they be separately represented, the order certifying the action as a class action shall include the information referred to in subsection (1) in respect of the subclass. SOR/2002-417, s. 17.

#### Grounds that may not be relied on

299.2

299.2 A judge shall not refuse to certify an action as a class action solely on one or more of the following grounds:

- (a) the relief claimed includes a claim for damages that would require an individual assessment after a determination of the common questions of law or fact;
- (b) the relief claimed relates to separate contracts involving different class members;
- (c) different remedies are sought for different class members;

(d) the number of class members or the identity of each class member is not known; or

(e) the class includes a subclass whose members have claims that raise common questions of law or fact not shared by all class members.

SOR/2002-417, s. 17.

#### Amendment and decertification

299.21

299.21 A judge may, on motion, amend an order certifying an action as a class action or, if the conditions for certification are no longer satisfied with respect to the class action, decertify the action. SOR/2002-417, s. 17.

#### Continuation of action

299.22

299.22 If a judge refuses to certify an action as a class action or decertifies an action as a class action, the judge may permit the action to continue as one or more actions and, for that purpose, the judge may make any appropriate order. SOR/2002-417, s. 17.

### *Opting Out and Exclusion*

#### Voluntary

299.23(1)

299.23 (1) A member of a class involved in a class action may opt out of the action in the manner and within the time specified in the order certifying the action as a class action.

#### Automatic

299.23(2)

(2) A member of a class is excluded from the class if the member does not, before the expiry of the time for opting out specified in the order certifying the action as a class action, discontinue an action brought by the member that raises the common questions of law or fact set out in the order certifying the action as a class action. SOR/2002-417, s. 17.

### *Discovery*

#### Leave to examine others

299.24(1)

299.24 (1) A party in a class action may examine a class member, other than the representative plaintiff, for discovery only on leave granted by the Court.

#### Examination of other class members

299.24(2)

(2) A party in a class action may examine class members for discovery only after the examination of the representative plaintiff.

#### Considerations

299.24(3)

(3) In deciding whether to grant leave to examine class members, the Court shall consider all relevant matters, including

- (a) the stage of the class action and the issues to be determined at that stage;
- (b) the presence of subclasses;
- (c) the necessity of an examination in view of the claims or defences of the party seeking leave;
- (d) the approximate monetary value of any individual claims; and
- (e) whether examination could result in undue annoyance, burden or expense for the class members sought to be examined.

#### Application of sanctions

299.24(4)

(4) A class member is subject to the same sanctions under these Rules as a party for failure to submit to an examination.

SOR/2002-417, s. 17.

### *Participation*

By class members

299.25(1)

299.25 (1) To ensure the fair and adequate representation of the interests of a class or any subclass, the Court may, at any time in a class action, permit one or more class members to participate in the proceeding.

Directions

299.25(2)

(2) When permitting a class member to participate in the proceeding, the Court shall give directions regarding the role of the participant, including costs and matters relating to the procedures to be followed. SOR/2002-417, s. 17.

### *Judgments*

Separate judgments

299.26(1)

299.26 (1) A judge may give a single judgment in respect of the common questions of law or fact and separate judgments in respect of any other questions.

Content

299.26(2)

(2) A judgment on questions of law or fact that are common to a class or subclass shall

- (a) set out the common questions of law or fact;
- (b) name or describe the class or subclass members to the extent possible;
- (c) state the nature of the claims asserted on behalf of the class or subclass; and
- (d) specify the relief granted.

SOR/2002-417, s. 17.

Common questions

299.27(1)

299.27 (1) A judgment on questions of law or fact that are common to a class or subclass binds every member of the class or subclass who has not opted out of or been excluded from the class action, but only to the extent that the judgment determines common questions of law or fact that

- (a) are set out in the order certifying the action as a class action;
- (b) relate to claims described in that order; and
- (c) relate to relief sought by the class or subclass as stated in that order.

Subsequent actions

299.27(2)

(2) A judgment on common questions of law or fact of a class or subclass does not bind a party to the class action in any subsequent action between the party and a person who opted out of or had been excluded from the class action. SOR/2002-417, s. 17.

Individual questions

299.28(1)

299.28 (1) If a judge determines common questions of law or fact in favour of a class or subclass and determines that there are questions that are applicable only to certain individual members of the class or subclass, the judge may

- (a) order that the individual questions be determined in further hearings;

(b) appoint one or more persons to evaluate the individual questions and report back to the judge; or

(c) direct that the individual questions be determined in any other manner.

The judge may give directions relating to the procedures to be followed.

#### Who may preside

299.28(2)

(2) For the purposes of paragraph (1)(a), the judge who determined the common questions of law or fact, another judge or, in the case of a claim referred to in subsection 50(3), a prothonotary may preside over the hearings of the individual questions.

#### Time for making claims

299.28(3)

(3) When a judge determines that there are questions that are applicable only to certain individual members of the class or subclass, the judge shall set a time within which individual members are required to make claims in respect of the individual questions. SOR/2002-417, s. 17.

#### Defendant's liability

299.29

299.29 If, after determining common questions of law or fact in favour of a class or subclass, a judge determines that the defendant's liability to individual class members cannot be determined without proof by those individual class members, rule 299.28 applies to the determination of the defendant's liability to those class members. SOR/2002-417, s. 17.

#### Assessment of monetary relief

299.3(1)

299.3 (1) A judge may make any order in respect of the assessment of monetary relief, including aggregate assessments, due to the class or subclass.

#### Distribution of monetary relief

299.3(2)

(2) A judge may make any order in respect of the distribution of monetary relief, including regarding an undistributed portion of an award due to a class or subclass or its members.

#### Special modes of proof

299.3(3)

(3) For the purposes of this rule, a judge may order any special modes of proof.

SOR/2002-417, s. 17.

### *Settlements*

#### Approval

299.31

299.31 A settlement of a class action does not take effect unless approved by a judge and, when approved, binds every member of the class or subclass, as the case may be, who has not opted out of or been excluded from the class action. SOR/2002-417, s. 17.

### *Discontinuance*

#### Approval

299.32

299.32 The discontinuance of an action commenced by a member of a class of persons on behalf of the members of that class does not take effect unless approved by a judge.

SOR/2002-417, s. 17.

### *Appeals*



#### Individual questions

299.33(1)

299.33 (1) A class member may appeal any order determining or dismissing the member's claim in respect of one or more individual questions.

#### Representative plaintiff failing to appeal

299.33(2)

(2) If a representative plaintiff does not appeal an order or appeals and later files a notice of discontinuance of the appeal, any member of the class for which the representative plaintiff had been appointed may apply for leave to exercise the right of appeal of the representative plaintiff within 30 days after

(a) the expiry of the appeal period available to the representative plaintiff, if the representative plaintiff does not appeal; or

(b) the day the notice of discontinuance was filed, if the representative plaintiff appeals but files a notice of discontinuance of the appeal.

SOR/2002-417, s. 17.

#### *Notices*

#### Who gives notice

299.34(1)

299.34 (1) Notice that an action has been certified as a class action shall be given by the representative plaintiff to the class members in accordance with this rule.

#### Dispensation

299.34(2)

(2) A judge may dispense with notice having regard to the factors set out in subsection (3).

#### Factors

299.34(3)

(3) A judge shall order when and by what means notice is to be given having regard to

(a) the cost of giving notice;

(b) the nature of the relief sought;

(c) the size of the individual claims of the class members;

(d) the number of class members;

(e) the presence of subclasses;

(f) whether some or all of the class members are likely to opt out of the class action; and

(g) the places of residence of class members.

#### How given

299.34(4)

(4) The order may provide that notice be given by

(a) personal delivery;

(b) mail;

(c) posting, advertising, publishing or leaflets;

(d) individually notifying a sample group within the class; or

(e) any other appropriate means or combination of appropriate means.

#### Content of notice

299.34(5)

(5) Notice under this rule shall

(a) describe the action, including the names and addresses of the representative plaintiffs and the relief sought;

(b) state the manner in which and the time within which a class member may opt out of the action;

(c) describe the possible financial consequences of the action to the members of the class and subclass;

(d) summarize any agreements respecting fees and disbursements

(i) between the representative plaintiff and the representative plaintiff's solicitor, and

(ii) if the recipient of the notice is a member of a subclass, between the representative plaintiff for that subclass and that representative plaintiff's solicitor;

(e) describe any counterclaim being asserted by or against the class or any subclass, including the relief sought in the counterclaim;

(f) state that the judgment on the common questions of law or fact for the class, whether favourable or not, will bind all class members who do not opt out of the action;

(g) state that the judgment on the common questions of law or fact for a subclass, whether favourable or not, will bind all subclass members who do not opt out of the action;

(h) describe the right, if any, of members of the class or subclass to participate in the action; and

(i) give an address to which class members may direct inquiries about the action.

#### Information about contributions

299.34(6)

(6) With leave of the judge, notice under this rule may include a solicitation of contributions from members of the class or subclass to assist in paying the fees and disbursements of the solicitor of record. SOR/2002-417, s. 17.

#### Notice of determination of common questions

299.35

299.35 If, in a class action, common questions of law or fact are determined in favour of the class or a subclass, the representative plaintiff for the class or subclass shall give notice to the members of the class or subclass in accordance with the directions of a judge in respect of the contents of the notice and the means of giving notice. SOR/2002-417, s. 17.

#### Settlement

299.36

299.36 Notice that an offer to settle has been made or that a settlement has been approved under rule 299.31 shall be given by the representative plaintiff to the members of the class or subclass in accordance with the directions of a judge in respect of the contents of the notice and the means of giving notice. SOR/2002-417, s. 17.

#### Notice to others

299.37(1)

299.37 (1) A judge may, at any time, order any party to give any notice that the judge considers necessary to protect the interests of any class member or party or to ensure the fair conduct of the proceeding.

#### Application of subsections 299.34(3) and (4)

299.37(2)

(2) Subsections 299.34(3) and (4) apply to a notice given under this rule. SOR/2002-417, s. 17.

#### Order

299.38

299.38 A judge may order any party to give a notice that another party is required to give under rules 299.34 to 299.37. SOR/2002-417, s. 17.

Prior approval of notices

299.39

299.39 Notices referred to in rules 299.34 to 299.37 shall not be given unless they have been approved by a judge. SOR/2002-417, s. 17.

Expenses

299.4

299.4 The judge has full discretionary power over the amount and allocation of expenses in respect of notices and may determine who is to pay those expenses. SOR/2002-417, s. 17.

### *Costs*

No costs

299.41(1)

299.41 (1) Subject to subsections (2) and (3), no costs may be awarded to any party to a motion for certification of an action as a class action, to a class action or to an appeal arising from a class action at any stage of the motion, class action or appeal.

Exception

299.41(2)

(2) Costs may be awarded against a party referred to in subsection (1) at any time if

- (a) the conduct of the party tended to unnecessarily lengthen the duration of the proceeding;
- (b) any step in the proceeding by the party was improper, vexatious or unnecessary or was taken through negligence, mistake or excessive caution; or
- (c) there are exceptional circumstances that make it unjust to deprive the successful party of costs.

Individual claims

299.41(3)

(3) The Court has full discretion to award costs with respect to the determination of the individual claims of members of a class. SOR/2002-417, s. 17.

Approval of payments

299.42

299.42 No payments, including indirect payments, shall be made to a solicitor from the proceeds recovered in a class action unless they are approved by a judge. SOR/2002-417, s. 17.

## PART 5

### APPLICATIONS

#### APPLICATION OF THIS PART

Application

300

300. This Part applies to

- (a) applications for judicial review of administrative action, including applications under section 18.1 or 28 of the Act, unless the Court directs under subsection 18.4(2) of the Act that the application be treated and proceeded with as an action;
- (b) proceedings required or permitted by or under an Act of Parliament to be brought by application, motion, originating notice of motion, originating summons or petition or to be determined in a summary way, other than applications under subsection 33(1) of the Marine Liability Act;
- (c) appeals under subsection 14(5) of the Citizenship Act;

- (d) appeals under section 56 of the Trade-marks Act;
- (e) references from a tribunal under rule 320;
- (f) requests under the Commercial Arbitration Code brought pursuant to subsection 324(1);
- (g) proceedings transferred to the Court under subsection 3(3) or 5(3) of the Divorce Act; and
- (h) applications for registration, recognition or enforcement of a foreign judgment brought under rules 327 to 334. SOR/2002-417, s. 18(E); SOR/2004-283, s. 37.

## GENERAL

### Contents of application

301

301. An application shall be commenced by a notice of application in Form 301, setting out
- (a) the name of the court to which the application is addressed;
  - (b) the names of the applicant and respondent;
  - (c) where the application is an application for judicial review,
    - (i) the tribunal in respect of which the application is made, and
    - (ii) the date and details of any order in respect of which judicial review is sought and the date on which it was first communicated to the applicant;
  - (d) a precise statement of the relief sought;
  - (e) a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on; and
  - (f) a list of the documentary evidence to be used at the hearing of the application.

SOR/2004-283, s 36.

### Limited to single order

302

302. Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.

### Respondents

303(1)

303. (1) Subject to subsection (2), an applicant shall name as a respondent every person
- (a) directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought; or
  - (b) required to be named as a party under an Act of Parliament pursuant to which the application is brought.

### Application for judicial review

303(2)

- (2) Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the Attorney General of Canada as a respondent.

### Substitution for Attorney General

303(3)

- (3) On a motion by the Attorney General of Canada, where the Court is satisfied that the Attorney General is unable or unwilling to act as a respondent after having been named under subsection (2), the Court may substitute another person or body, including the tribunal in respect of which the application is made, as a respondent in the place of the Attorney General of Canada.

### Service of notice of application

304(1)

304. (1) Unless the Court directs otherwise, within 10 days after the issuance of a notice of application, the applicant shall serve it on
- (a) all respondents;
  - (b) in respect of an application for judicial review or an application appealing the order of a tribunal,
    - (i) in respect of an application other than one relating to a decision of a visa officer, the tribunal in respect of which the application is brought,
    - (ii) any other person who participated in the proceeding before the tribunal in respect of which the application is made, and
    - (iii) the Attorney General of Canada;
  - (c) where the application is made under the Access to Information Act, Part 1 of the Personal Information Protection and

Electronic Documents Act, the Privacy Act or the Official Languages Act, the Commissioner named for the purposes of that Act; and

(d) any other person required to be served under an Act of Parliament pursuant to which the application is brought.

#### Motion for directions as to service

304(2)

(2) Where there is any uncertainty as to who are the appropriate persons to be served with a notice of application, the applicant may bring an ex parte motion for directions to the Court.

#### Proof of service

304(3)

(3) Proof of service of a notice of application shall be filed within 10 days after service of the notice of application. SOR/2004-283, s. 16.

#### Notice of appearance

305

305. A respondent who intends to oppose an application shall, within 10 days after being served with a notice of application, serve and file a notice of appearance in Form 305.

#### Applicant's affidavits

306

306. Within 30 days after issuance of a notice of application, an applicant shall serve and file its supporting affidavits and documentary exhibits.

#### Respondent's affidavits

307

307. Within 30 days after service of the applicant's affidavits, a respondent shall serve and file any supporting affidavits and documentary exhibits.

#### Cross-examinations

308

308. Cross-examination on affidavits must be completed by all parties within 20 days after the filing of the respondent's affidavits or the expiration of the time for doing so, whichever is earlier.

#### Applicant's record

309(1)

309. (1) An applicant shall, within 20 days after completion of all parties' cross-examinations or the expiration of the time for doing so, whichever is earlier,

(a) serve the applicant's record; and

(b) file

(i) where the application is brought in the Federal Court, three copies of the applicant's record, and

(ii) where the application is brought in the Federal Court of Appeal, five copies of the applicant's record.

#### Contents of applicant's record

309(2)

(2) An applicant's record shall contain, on consecutively numbered pages and in the following order,

(a) a table of contents giving the nature and date of each document in the record;

(b) the notice of application;

(c) any order in respect of which the application is made;

(d) each supporting affidavit and documentary exhibit;

(e) the transcript of any cross-examination on affidavits that the applicant has conducted;

(f) the portions of any transcript of oral evidence before a tribunal that are to be used by the applicant at the hearing;

(g) a description of any physical exhibits to be used by the applicant at the hearing; and

(h) the applicant's memorandum of fact and law. SOR/2004-283, ss. 32 and 33.

#### Respondent's record

310(1)

310. (1) A respondent to an application shall, within 20 days after service of the applicant's record,

(a) serve the respondent's record; and

## (b) file

- (i) where the application is brought in the Federal Court, three copies of the respondent's record, and
- (ii) where the application is brought in the Federal Court of Appeal, five copies of the respondent's record.

## Contents of respondent's record

## 310(2)

- (2) The record of a respondent shall contain, on consecutively numbered pages and in the following order,
- (a) a table of contents giving the nature and date of each document in the record;
  - (b) each supporting affidavit and documentary exhibit;
  - (c) the transcript of any cross-examination on affidavits that the respondent has conducted;
  - (d) the portions of any transcript of oral evidence before a tribunal that are to be used by the respondent at the hearing;
  - (e) a description of any physical exhibits to be used by the respondent at the hearing; and
  - (f) the respondent's memorandum of fact and law. SOR/2004-283, ss. 32 and 33.

## Preparation by Registry

## 311(1)

311. (1) On motion, the Court may order the Administrator to prepare a record on a party's behalf.

## Documents to be provided

## 311(2)

(2) A party bringing a motion for an order under subsection (1) shall provide the Administrator with the documents referred to in subsection 309(2) or 310(2), as the case may be.

## Additional steps

## 312

312. With leave of the Court, a party may
- (a) file affidavits additional to those provided for in rules 306 and 307;
  - (b) conduct cross-examinations on affidavits additional to those provided for in rule 308; or
  - (c) file a supplementary record.

## Requirement to file additional material

## 313

313. Where the Court considers that the application records of the parties are incomplete, the Court may order that other material, including any portion of a transcript, be filed.

## Requisition for hearing

## 314(1)

314. (1) An applicant shall, within 10 days after service of the respondent's record or the expiration of the time for doing so, whichever is earlier, serve and file a requisition, in Form 314, requesting that a date be set for the hearing of the application.

## Contents of requisition

## 314(2)

- (2) A requisition referred to in subsection (1) shall
- (a) include a statement that the requirements of subsection 309(1) have been satisfied and that any notice required under section 57 of the Act has been given;
  - (b) set out the place at which the hearing should be held;
  - (c) set out the maximum number of hours or days required for the hearing;
  - (d) list any dates within the following 90 days on which the parties are not available for a hearing;
  - (e) set out the name, address, telephone number and fax number of the solicitor for every party to the application or, where a party is not represented by a solicitor, the person's name, address, telephone number and any fax number; and
  - (f) indicate whether the hearing will be in English or French, or partly in English and partly in French.

## Pre-hearing conference

## 315

315. The Court may order that a conference be held in accordance with rules 258 to 267, with such modifications as are necessary.

Testimony regarding issue of fact

316

316. On motion, the Court may, in special circumstances, authorize a witness to testify in court in relation to an issue of fact raised in an application.

#### MATERIAL IN THE POSSESSION OF A TRIBUNAL

Material from tribunal

317(1)

317. (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

Request in notice of application

317(2)

(2) An applicant may include a request under subsection (1) in its notice of application.

Service of request

317(3)

(3) If an applicant does not include a request under subsection (1) in its notice of application, the applicant shall serve the request on the other parties. SOR/2002-417, s. 19.

Material to be transmitted

318(1)

318. (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit  
 (a) a certified copy of the requested material to the Registry and to the party making the request; or  
 (b) where the material cannot be reproduced, the original material to the Registry.

Objection by tribunal

318(2)

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

Directions as to procedure

318(3)

(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).

Order

318(4)

(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

Return of material

319

319. Unless the Court directs otherwise, after an application has been heard, the Administrator shall return to a tribunal any original material received from it under rule 318.

#### REFERENCES FROM A TRIBUNAL

Definition of "reference"

320(1)

320. (1) In rules 321 to 323, "reference" means a reference to the Court made by a tribunal or by the Attorney General of Canada under section 18.3 of the Act.

Procedures on applications apply

320(2)

(2) Subject to rules 321 to 323, rules 309 to 311 apply to references.

## Notice of application on reference

321

321. A notice of application in respect of a reference shall set out
- (a) the name of the court to which the application is addressed;
  - (b) the name of the applicant; and
  - (c) the question being referred. SOR/2004-283, s. 36.

## Directions on reference

322

322. Where the Attorney General of Canada or a tribunal makes a reference, the Attorney General or tribunal shall bring an ex parte motion for directions as to
- (a) which persons shall be given notice of the reference;
  - (b) the material that will constitute the case to be determined on the reference;
  - (c) the preparation, filing and service of copies of the material;
  - (d) the preparation, filing and service of memoranda of fact and law;
  - (e) the procedure for the hearing of the reference;
  - (f) the time and place for the hearing of the reference; and
  - (g) the role, if any, of the tribunal in question.

## Notice of intention to become party

323

323. Any of the following persons may become a party to a reference by serving and filing a notice of intention to participate in Form 323:
- (a) the Attorney General of Canada;
  - (b) the attorney general of a province, for the purpose of adducing evidence or making submissions to the Court under subsection 57(4) of the Act; and
  - (c) a person who participated in the proceeding before the tribunal in respect of which the reference is made.

## COMMERCIAL ARBITRATIONS

## Notice of application

324(1)

324. (1) Subject to subsection (2), a request under the Commercial Arbitration Code, set out in the schedule to the Commercial Arbitration Act, shall be brought by a notice of application.

## Exception

324(2)

- (2) Where the subject matter of an arbitration to which a request under the Code relates is already the subject matter of a proceeding before the Court, the request may be brought as a motion in that proceeding.

## Affidavit

324(3)

- (3) An affidavit in support of a notice of application under subsection (1) or a motion under subsection (2) shall be accompanied by a copy of the parties' arbitration agreement and state
- (a) all material facts;
  - (b) unless the request is brought pursuant to article 8(1) or 9 of the Code, that the arbitration to which the request relates is governed by Canadian law or has been, is being or will be held within the jurisdiction of the Court; and
  - (c) where the request is brought pursuant to article 27 of the Code, the nature of the evidence to be obtained, the name and address of any person to be heard as a witness and the subject-matter of any testimony required from that person, and describe any document to be produced or property to be inspected.

## DIVORCE PROCEEDINGS

## Procedure of province to apply

325(1)

325. (1) Unless the Court orders otherwise, where the Court makes a direction pursuant to subsection 3(3) or 5(3) of the Divorce Act, the rules made under section 25 of that Act for the province specified in the direction pursuant to subsection 23(2) of that Act shall apply to the conduct of the proceeding in the Court, with such modifications as the circumstances require.



Motion for modification of rules

325(2)

(2) A party to a proceeding referred to in subsection (1) may at any time, by motion, request a modification to the rules referred to in that subsection.

## FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Definitions

326

326. The following definitions apply to rules 327 to 334.

"arbitration agreement" « convention d'arbitrage »

"arbitration agreement" means an agreement in writing as defined in article II of the convention set out in the schedule to the United Nations Foreign Arbitral Awards Convention Act or an arbitration agreement as defined in Article 7 of the Commercial Arbitration Code, set out in the schedule to the Commercial Arbitration Act. (convention d'arbitrage)

"foreign judgment" « jugement étranger »

"foreign judgment" means a judgment or arbitral award that may be registered in a court in Canada in accordance with

- (a) sections 63 to 71 of the Marine Liability Act;
- (b) the Canada-United Kingdom Civil and Commercial Judgments Convention Act;
- (c) the United Nations Foreign Arbitral Awards Convention Act; or
- (d) articles 35 and 36 of the Commercial Arbitration Code, set out in the schedule to the Commercial Arbitration Act. (jugement étranger) SOR/2004-283, s.39.

Form of application

327

327. An application for registration, recognition or enforcement of a foreign judgment shall be in Form 327.

Ex parte application

328(1)

328. (1) An application under rule 327 may be brought ex parte.

Directions regarding service

328(2)

(2) On an ex parte application under subsection (1), the Court may direct that notice of the application be served on the foreign judgment debtor and may give such directions respecting the manner of service as it considers just.

Affidavit

329(1)

329. (1) An affidavit filed in an application under rule 327 shall be accompanied by an exemplified or certified copy of the foreign judgment and a copy of any arbitration agreement pursuant to which the judgment was awarded and state

- (a) that the foreign judgment was not fully satisfied as at the filing of the application;
- (b) whether the foreign judgment debtor appeared in the original proceeding;
- (c) an address in Canada for service on the foreign judgment creditor;
- (d) the name and usual or last known address of the foreign judgment debtor;
- (e) whether interest has accrued on the amount payable under the foreign judgment in accordance with the law of the state of the originating court or arbitral tribunal and, if interest has accrued, the rate of interest, the day from which it is payable, the amount due at the time of the filing of the application and, where applicable, the day on which interest ceases to accrue;
- (f) the rate of exchange into Canadian currency prevailing on the day on which the foreign judgment was rendered, as ascertained from a chartered bank in Canada;
- (g) that, having made careful and full inquiries, the applicant knows of no impediment to registration, recognition or enforcement of the foreign judgment; and
- (h) that the foreign judgment is executory, that no appeal or other form of judicial review is pending and that any time

prescribed for the making of an appeal or application for judicial review has expired.

#### Affidavit of service

329(2)

(2) Where a foreign judgment debtor did not appear in the original proceeding, an affidavit referred to in subsection (1) shall be accompanied by an affidavit of service on the foreign judgment debtor of the document instituting the original proceedings.

#### Other evidence

330

330. The Court may accept evidence on an application under rule 327 other than affidavit evidence.

#### Amounts in Canadian currency

331

331. Unless the Court orders otherwise, an amount payable under a foreign judgment shall be converted into the equivalent amount in Canadian currency on the basis of the rate of exchange, ascertained from a chartered bank in Canada, that was prevailing on the day on which the foreign judgment was rendered.

#### Interest

332(1)

332. (1) Any interest on an amount payable under a foreign judgment that has accrued to the day of registration of the foreign judgment shall be added to the amount payable under the foreign judgment.

#### Interest

332(2)

(2) Unless the Court orders otherwise, an amount payable under a foreign judgment registered pursuant to an application under rule 327 bears interest from the day of registration at the rate set out in section 3 of the Interest Act.

#### Service of order for registration

333

333. Unless the Court orders otherwise, a foreign judgment creditor who obtains an order for registration of a foreign judgment shall personally serve the order on the foreign judgment debtor, together with a translation thereof in the language of the foreign judgment and an affidavit attesting to its accuracy.

#### Execution

334

334. Unless the Court orders otherwise, execution shall not be issued on a foreign judgment registered pursuant to an application under rule 327 until proof of service of the order for registration has been filed.

## PART 6

### APPEALS

#### APPLICATION OF THIS PART

#### Application

335

335. This Part applies to

- (a) appeals to the Federal Court of Appeal from the Federal Court, including appeals from interlocutory orders;
- (b) appeals to the Federal Court of Appeal from the Tax Court of Canada under subsections 27(1.1) and (1.2) of the Act; and
- (c) appeals to the Court under an Act of Parliament, unless otherwise indicated in that Act or these Rules. SOR/2004-283, s. 17.

### GENERAL

#### *Interpretation*

#### Definition of "first instance"

336

336. In this Part, "first instance" means a proceeding in the Federal Court, the Tax Court of Canada or the tribunal whose order is being appealed. SOR/2004-283, s.33.

### *Commencement of Appeal*

#### Content of general notice of appeal

337

337. Content of general notice of appeal 337. An appeal, other than an appeal from a final judgment of the Tax Court of Canada under subsection 27(1.2) of the Act, shall be commenced by a notice of appeal, in Form 337, setting out

- (a) the name of the court to which the appeal is taken;
- (b) the names of the parties;
- (c) a precise statement of the relief sought;
- (d) a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on;
- (e) the name of the court or tribunal appealed from;
- (f) the date and details of the order under appeal; and
- (g) the place proposed for the hearing of the appeal. SOR/2004-283, ss. 18 and 36.

#### Content of notice of appeal — certain judgments of Tax Court of Canada

337.1

337.1 An appeal from a final judgment of the Tax Court of Canada under subsection 27(1.2) of the Act shall be commenced by a notice of appeal, in Form 337.1, setting out

- (a) the names of the parties;
- (b) a precise statement of the relief sought;
- (c) a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on;
- (d) the date and details of the final judgment under appeal; and
- (e) the place proposed for the hearing of the appeal. SOR/2004-283, s. 19.

#### Persons to be included as respondents

338(1)

338. (1) Unless the Court orders otherwise, an appellant shall include as a respondent in an appeal

- (a) every party in the first instance who is adverse in interest to the appellant in the appeal;
  - (b) any other person required to be named as a party by an Act of Parliament pursuant to which the appeal is brought;
- and
- (c) where there are no persons that are included under paragraph (a) or (b), the Attorney General of Canada.

#### Substitution for Attorney General

338(2)

(2) On a motion by the Attorney General of Canada, where the Court is satisfied that the Attorney General is unable or unwilling to act as a respondent in an appeal, the Court may substitute another person or body, including a tribunal whose order is being appealed, as a respondent in the place of the Attorney General of Canada.

#### Service of notice of appeal

339(1)

339. (1) Unless the Court directs otherwise or an Act of Parliament authorizing the appeal provides otherwise, within 10 days after the issuance of a notice of appeal, the appellant shall serve it on

- (a) all respondents;
- (b) in the case of an appeal of an order of a tribunal,
  - (i) the Attorney General of Canada, and
  - (ii) the tribunal or its chief executive officer;
- (c) any person who is not a party and who participated in the first instance; and
- (d) any other person directly affected by the appeal.

#### Proof of service

339(2)

(2) Proof of service of a notice of appeal shall be filed within 10 days after the notice of appeal is served.

## Solicitor of record and address for service

340

340. In an appeal from the Federal Court to the Federal Court of Appeal, the solicitor of record and the address for service of a party on the appeal shall be the same as they were in the first instance.

SOR/2004-283, s. 20.

## Appearance or cross-appeal

341(1)

341. (1) A respondent who intends to participate in an appeal shall, within 10 days after service of the notice of appeal, serve and file

(a) a notice of appearance in Form 341A; or

(b) where the respondent seeks a different disposition of the order appealed from, a notice of cross-appeal in Form 341B.

## Content of notice of cross-appeal

341(2)

(2) A notice of cross-appeal shall set out

(a) a precise statement of the relief sought; and

(b) a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on.

## Leave for late cross-appeal

341(3)

(3) Where a respondent has not filed a notice of cross-appeal under subsection (1), the cross-appeal may not be heard without leave of the Court.

## Consolidation of appeals

342(1)

342. (1) Unless the Court orders otherwise, where more than one party appeals from an order, all appeals shall be consolidated.

## Directions

342(2)

(2) The Court may give directions as to the procedure to be followed in a consolidation under subsection (1).

*Appeal Books*

## Agreement re appeal book

343(1)

343. (1) Within 30 days after the filing of a notice of appeal, the parties shall agree in writing as to the documents, exhibits and transcripts to be included in the appeal book and shall file that agreement.

## Limitation

343(2)

(2) The parties shall include in an appeal book only such documents, exhibits and transcripts as are required to dispose of the issues on appeal.

## Motion to determine content of appeal book

343(3)

(3) If no agreement is reached within the period referred to in subsection (1), the appellant shall, within 10 days after the expiration of that period, serve and file a notice of motion under rule 369 to request that the Court determine the content of the appeal book.

## Order for transcripts or reproductions

343(4)

(4) Where a transcript or the reproduction of exhibits is required, the appellant shall order it and shall file proof of the order within 10 days after filing an agreement under subsection (1) or obtaining an order under subsection (3).

## Preparation of appeal book

343(5)

(5) The appeal book shall be prepared by the appellant forthwith unless, on the motion of the appellant, the Court orders the Administrator to prepare an appeal book on the appellant's behalf from documents provided by the appellant.

## Content of appeal book

344(1)

344. (1) An appeal book shall have a grey cover and contain, on consecutively numbered pages and in the following order,
- (a) a table of contents describing each document;
  - (b) the notice of appeal and any notice of cross-appeal;
  - (c) the order appealed from, as signed and entered, and any reasons therefor;
  - (d) the originating document, any other pleadings and any other document in the first instance that defines the issues in the appeal;
  - (e) subject to subsection (2), all documents, exhibits and transcripts agreed on under subsection 343(1) or ordered to be included on a motion under subsection 343(3);
  - (f) any order made in respect of the conduct of the appeal;
  - (g) any other document relevant to the appeal;
  - (h) an agreement reached under subsection 343(1) as to the contents of the appeal book or an order made under subsection 343(3); and
  - (i) a certificate in Form 344, signed by the appellant's solicitor, stating that the contents of the appeal book are complete and legible.

## Transcripts separate

344(2)

- (2) Transcripts may be reproduced in a separate document.

## Service and filing of appeal book

345

345. Within 30 days after filing an agreement under subsection 343(1) or obtaining an order under subsection 343(3), an appellant shall serve the appeal book and file

- (a) where the appeal is brought in the Federal Court, three copies of it; and
- (b) where the appeal is brought in the Federal Court of Appeal, five copies of it. SOR/2004-283, ss. 32 and 33.

*Memoranda*

## Appellant's memorandum

346(1)

346. (1) Within 30 days after filing an appeal book, the appellant shall serve and file a memorandum of fact and law.

## Respondent's memorandum

346(2)

(2) Within 30 days after service of the appellant's memorandum of fact and law, the respondent shall serve and file the respondent's memorandum of fact and law.

## Where cross-appeal filed

346(3)

- (3) Where a respondent has served a notice of cross-appeal under rule 341,
- (a) the respondent shall serve and file a memorandum of fact and law as appellant by cross-appeal, as part of the respondent's memorandum of fact and law, within the time set out in subsection (2); and
  - (b) the appellant shall serve and file a memorandum of fact and law as respondent to cross-appeal, within 30 days after service of the respondent's memorandum of fact and law.

## Colour of memorandum

346(4)

- (4) The cover of a memorandum of fact and law
- (a) of an appellant shall be beige;
  - (b) of a respondent shall be green; and
  - (c) of an intervener shall be blue.

## Number of memoranda to be filed

346(5)

(5) Memoranda of fact and law shall be filed in the same number as are appeal books.

*Requisition for Hearing*

Requisition for hearing

347(1)

347. (1) Within 20 days after service of the respondent's memorandum of fact and law or 20 days after the expiration of the time for service of the respondent's memorandum of fact and law, whichever is the earlier, an appellant shall serve and file a requisition in Form 347 requesting that a date be set for the hearing of the appeal.

Default by appellant

347(2)

(2) Where an appellant fails to comply with subsection (1), a respondent may, in lieu of bringing a motion under rule 167, serve and file a requisition in Form 347 to request that a date be set for the hearing of the appeal.

Content of requisition

347(3)

(3) A requisition referred to in subsection (1) shall

- (a) include a statement that the requirements of subsections 346(1) and (5) have been satisfied and that any notice required under section 57 of the Act has been given;
- (b) set out the location at which the hearing should be held;
- (c) set out the maximum number of hours or days required for the hearing;
- (d) list any dates within the following 90 days on which the parties are not available for a hearing;
- (e) set out the name, address, telephone number and fax number of the solicitor for every party to the appeal or, where a party is not represented by a solicitor, the person's name, address, telephone number and any fax number; and
- (f) indicate whether the hearing will be in English or French, or partly in English and partly in French.

SOR/2002-417, s. 20(E).

*Book of Authorities*

Joint book of authorities

348(1)

348. (1) Subject to subsection (2), at least 30 days before the hearing date, the parties shall file

- (a) where the appeal is brought in the Federal Court, three copies of a joint book of statutes, regulations and authorities;
- or
- (b) where the appeal is brought in the Federal Court of Appeal, five copies of a joint book of statutes, regulations and authorities.

Separate books

348(2)

(2) If the parties cannot agree on a joint book of statutes, regulations and authorities, they shall file separate books in lieu thereof, without reproducing documents included in the book of another party.

Enactments in both official languages

348(3)

(3) Extracts of federal statutes and regulations in a book of statutes, regulations and authorities shall be reproduced in both official languages.

Colour of cover

348(4)

(4) The cover of a book of statutes, regulations and authorities shall be

- (a) where the book is filed jointly, burgundy; and
- (b) where the book is filed separately, the same colour as the filing party's memorandum of fact and law.

SOR/2004-283, ss. 32 and 33.

CONSENT TO REVERSAL OR VARIATION OF JUDGMENT

Consent to reversal or variation of judgment

349(1)

349. (1) A respondent may consent to the reversal or variation of an order appealed from by serving and filing a notice to that effect.

Judgment on consent

349(2)

(2) The Court may pronounce judgment in accordance with a notice filed under subsection (1) if the resultant judgment is one that could have been given on consent.

#### MATERIAL IN THE POSSESSION OF A TRIBUNAL

Material in possession of a tribunal

350

350. Rules 317 to 319 apply to appeals and motions for leave to appeal, with such modifications as are necessary.

#### NEW EVIDENCE ON APPEAL

New evidence on appeal

351

351. In special circumstances, the Court may grant leave to a party to present evidence on a question of fact.

#### MOTIONS FOR LEAVE TO APPEAL

Leave to appeal

352(1)

352. (1) Unless the Court orders otherwise, where leave to appeal is required, it shall be obtained on a motion brought in writing.

Respondents and service

352(2)

(2) On a motion under subsection (1) the moving party shall name as respondents all persons referred to in rule 338 and personally serve all persons referred to in rule 339.

Motion record

353(1)

353. (1) A person bringing a motion under rule 352 shall serve the motion record and, unless the Court orders otherwise, file three copies thereof.

Content of motion record

353(2)

(2) A motion record referred to in subsection (1) shall contain, on consecutively numbered pages and in the following order,

- (a) the order in respect of which leave to appeal is sought;
- (b) the pleadings and any other material that is necessary for the hearing of the motion;
- (c) an affidavit that sets out any facts relied on in the motion that do not appear on the Court file; and
- (d) a memorandum of fact and law.

Respondent's memorandum of fact and law

354

354. A respondent to a motion for leave to appeal shall serve a memorandum of fact and law and any supporting affidavits and, unless the Court orders otherwise, file three copies thereof not later than 20 days after service of the motion record.

Reply

355

355. A party bringing a motion for leave to appeal shall serve any reply to the memorandum of fact and law of a respondent and, unless the Court orders otherwise, file three copies thereof not later than 10 days after service thereof.

Disposition of motion

356

356. On the filing of a reply under rule 355 or the expiration of the period allowed for a reply, the Court may dispose in writing of a motion for leave to appeal.

#### LEAVE TO APPEAL TO THE SUPREME COURT OF CANADA

## Motion for leave to appeal to Supreme Court

357(1)

357. (1) Notwithstanding rule 352, where a judgment of the Federal Court of Appeal is delivered from the bench, a motion under section 37.1 of the Supreme Court Act for leave to appeal from the judgment to the Supreme Court of Canada may be made at the time the judgment is delivered and without prior notice.

## Grounds for motion for leave

357(2)

(2) A motion for leave to appeal under section 37.1 of the Supreme Court Act shall, unless the Court permits otherwise, be argued on the case, and on the reasons for judgment, from which leave to appeal is sought.

## Number of judges

357(3)

(3) A motion for leave to appeal under section 37.1 of the Supreme Court Act shall be heard before not fewer than three judges, who need not be the judges who heard the matter under appeal.

SOR/2004-283, ss. 21(F) and 32.

## PART 7

## MOTIONS

## Application

358

358. This Part applies to motions other than motions for leave to appeal under Part 6.

## Notice of motion

359

359. Except with leave of the Court, a motion shall be initiated by a notice of motion, in Form 359, setting out

- (a) in respect of a motion other than one made under rule 369, the time, place and estimated duration of the hearing of the motion;
- (b) the relief sought;
- (c) the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on; and
- (d) a list of the documents or other material to be used at the hearing of the motion.

## Hearing date for motions

360

360. No notice of motion may be filed unless it is expressly made returnable

- (a) at sittings fixed under rule 34;
- (b) at a time and place appointed under subsection 35(2); or
- (c) in writing, under rule 369.

## Service on ex parte motion

361

361. Notwithstanding rules 362, 364, 367 and 370, a party bringing an ex parte motion need not comply with the service requirements set out in those rules.

## Service and filing of notice

362(1)

362. (1) Subject to subsection (2), on a motion other than a motion under rule 369, a notice of motion and any affidavit required under rule 363 shall be served and filed at least two days before the day set out in the notice for the hearing of the motion.

## Motion on less than two days notice

362(2)

(2) The Court may hear a motion referred to in subsection (1) on less than two days notice

- (a) where the motion is made on notice, if all parties consent; or
- (b) in any case, if the moving party satisfies the Court of the urgency of the motion.



## Evidence on motion

363

363. A party to a motion shall set out in an affidavit any facts to be relied on by that party in the motion that do not appear on the Court file. SOR/2002-417, s. 21(F).

## Motion record

364(1)

364. (1) Unless the Court orders otherwise, a person bringing a motion shall serve a motion record and file three copies thereof.

## Contents of motion record

364(2)

(2) A moving party's motion record shall contain, on consecutively numbered pages arranged in the following order,

- (a) a table of contents;
- (b) the notice of motion;
- (c) all affidavits and other material served by the moving party for use on the motion;
- (d) subject to rule 368, the portions of any transcripts on which the moving party intends to rely;
- (e) subject to rule 366, written representations; and
- (f) any other filed material that is necessary for the hearing of the motion.

## Service and filing of motion record

364(3)

(3) Subject to subsections 51(2), 163(1) and 214(1), on a motion other than a motion under rule 369, the motion record shall be served and filed at least two days before the day set out in the notice of motion for the hearing of the motion.

## Respondent's motion record

365(1)

365. (1) Subject to subsections 214(2) and 369(2), a respondent to a motion shall serve a respondent's motion record and file three copies of it not later than 2:00 p.m. on the last business day before the hearing of the motion.

## Contents of motion record

365(2)

(2) The motion record of a respondent to a motion shall contain, on consecutively numbered pages and in the following order,

- (a) a table of contents;
- (b) all affidavits and other material to be used by the respondent on the motion that is not included in the moving party's motion record;
- (c) subject to rule 368, the portions of any transcripts on which the respondent intends to rely;
- (d) subject to rule 366, written representations; and
- (e) any other filed material not contained in the moving party's motion record that is necessary for the hearing of the motion.

## Where memorandum of fact and law required

366

366. On a motion for summary judgment, for an interlocutory injunction, for the determination of a question of law, for the certification of an action as a class action or where the Court so orders, a motion record shall contain a memorandum of fact and law instead of written representations.

SOR/2002-417, s. 22.

## Documents filed as part of motion record

367

367. A notice of motion or any affidavit required to be filed by a party to a motion may be served and filed as part of the party's motion record and need not be served and filed separately.

## Transcripts of cross-examinations

368

368. Transcripts of all cross-examinations on affidavits on a motion shall be filed before the hearing of the motion.

## Motions in writing

369(1)

369. (1) A party may, in a notice of motion, request that the motion be decided on the basis of written representations.

Request for oral hearing

369(2)

(2) A respondent to a motion brought in accordance with subsection (1) shall serve and file a respondent's record within 10 days after being served under rule 364 and, if the respondent objects to disposition of the motion in writing, indicate in its written representations or memorandum of fact and law the reasons why the motion should not be disposed of in writing.

Reply

369(3)

(3) A moving party may serve and file written representations in reply within four days after being served with a respondent's record under subsection (2).

Disposition of motion

369(4)

(4) On the filing of a reply under subsection (3) or on the expiration of the period allowed for a reply, the Court may dispose of a motion in writing or fix a time and place for an oral hearing of the motion.

Abandonment of motion

370(1)

370. (1) A party who brings a motion may abandon it by serving and filing a notice of abandonment in Form 370.

Deemed abandonment

370(2)

(2) Where a moving party fails to appear at the hearing of a motion without serving and filing a notice of abandonment, it is deemed to have abandoned the motion.

Testimony regarding issue of fact

371

371. On motion, the Court may, in special circumstances, authorize a witness to testify in court in relation to an issue of fact raised on a motion.

PART 8

PRESERVATION OF RIGHTS IN PROCEEDINGS

GENERAL

Motion before proceeding commenced

372(1)

372. (1) A motion under this Part may not be brought before the commencement of a proceeding except in a case of urgency.

Undertaking to commence proceeding

372(2)

(2) A party bringing a motion before the commencement of a proceeding shall undertake to commence the proceeding within the time fixed by the Court.

INTERIM AND INTERLOCUTORY INJUNCTIONS

Availability

373(1)

373. (1) On motion, a judge may grant an interlocutory injunction.

Undertaking to abide by order

373(2)

(2) Unless a judge orders otherwise, a party bringing a motion for an interlocutory injunction shall undertake to abide by any order concerning damages caused by the granting or extension of the injunction.

Expedited hearing

373(3)

(3) Where it appears to a judge that the issues in a motion for an interlocutory injunction should be decided by an expedited

hearing of the proceeding, the judge may make an order under rule 385.

#### Evidence at hearing

373(4)

(4) A judge may order that any evidence submitted at the hearing of a motion for an interlocutory injunction shall be considered as evidence submitted at the hearing of the proceeding.

#### Interim injunction

374(1)

374. (1) A judge may grant an interim injunction on an ex parte motion for a period of not more than 14 days where the judge is satisfied

- (a) in a case of urgency, that no notice is possible; or
- (b) that to give notice would defeat the purpose of the motion.

#### Extension

374(2)

(2) A motion to extend an interim injunction that was granted on an ex parte motion may be brought only on notice to every party affected by the injunction, unless the moving party can demonstrate that a party has been evading service or that there are other sufficient reasons to extend the interim injunction without notice to the party.

#### Limitation

374(3)

(3) Where a motion to extend an interim injunction under subsection (2) is brought ex parte, the extension may be granted for a further period of not more than 14 days.

### APPOINTMENT OF A RECEIVER

#### Motion to appoint receiver

375(1)

375. (1) On motion, a judge may appoint a receiver in any proceeding.

#### Remuneration and security

375(2)

(2) An order under subsection (1) shall set out the remuneration to be paid to, and the amount of security to be given by, the receiver.

#### Approval of receiver's accounts

376

376. A receiver appointed under rule 375 shall, by motion to the Court, seek approval of the receiver's accounts on an annual basis.

### PRESERVATION OF PROPERTY

#### Motion for order in respect of property

377(1)

377. (1) On motion, the Court may make an order for the custody or preservation of property that is, or will be, the subject-matter of a proceeding or as to which a question may arise therein.

#### Interim order

377(2)

(2) Rule 374 applies to interim orders for the custody or preservation of property referred to in subsection (1), with such modifications as the circumstances require.

#### Order to identify property

378(1)

378. (1) An order under subsection 377(1) shall

- (a) identify the property to be kept or preserved;

- (b) state where, by whom, for how long and at whose cost the property is to be kept or preserved; and
- (c) if the property is to be insured, state at whose expense it shall be insured.

#### Scope of order

378(2)

(2) An order under subsection 377(1) shall be directed solely to the protection of the property in question.

#### Sale of perishable or deteriorating property

379

379. Where any property, other than real property or immovables, that is the subject-matter of a proceeding or the subject of a question that may arise in a proceeding

- (a) is of a perishable nature,
- (b) is likely to deteriorate if kept, or
- (c) should for any other reason be sold without delay,

on motion, the Court may order the sale of the property, in such a manner and on such conditions as may be specified in the order.

## PART 9

### CASE MANAGEMENT AND DISPUTE RESOLUTION SERVICES

#### CASE MANAGEMENT

##### *Status Review*

#### Status review

380(1)

380. (1) Subject to subsection (3), where

- (a) in an action,
    - (i) 180 days have elapsed since the issuance of the statement of claim and pleadings are not closed, or
    - (ii) 360 days have elapsed since the issuance of the statement of claim and no party has filed a requisition for a pre-trial conference under rule 258, or
  - (b) in an application or appeal, 180 days have elapsed since the issuance of the notice of application or appeal and no requisition for a hearing date has been filed,
- the Court shall fix a time and date for a status review.

#### Review to be in writing

380(2)

(2) Unless the Court directs otherwise, a status review shall be conducted on the basis of written representations.

#### Exception

380(3)

(3) Subsection (1) does not apply to a specially managed proceeding. SOR/98-106, s. 380; err.(F), Vol. 132, No. 12.

#### Notice of status review

381

381. The Administrator shall serve a notice of status review, in Form 381, on the parties at least 10 days before the day fixed for the review.

#### By whom status review conducted

382(1)

382. (1) A status review shall be conducted by a judge or prothonotary assigned for that purpose.

#### Powers of Court on status review

382(2)

(2) At a status review, the Court may

- (a) require a plaintiff, applicant or appellant to show cause why the proceeding should not be dismissed for delay and, if it is not satisfied that the proceeding should continue, dismiss the proceeding;
- (b) require a defendant or respondent to show cause why default judgment should not be entered and, if it is not satisfied that the proceeding should continue, grant judgment in favour of the plaintiff, applicant or appellant or order the plaintiff,

applicant or appellant to proceed to prove entitlement to the judgment claimed; or  
 (c) if it is satisfied that the proceeding should continue, order that it continue as a specially managed proceeding and make an order under rule 385.

### *Specially Managed Proceedings*

Case management judges — Federal Court  
 383

383. The Chief Justice of the Federal Court may assign  
 (a) one or more judges to act as a case management judge in a proceeding;  
 (b) a prothonotary to act as a case management judge in a proceeding referred to in subsection 50(2); or  
 (c) a prothonotary to assist in the management of a proceeding in the Federal Court other than a proceeding referred to in subsection 50(2). SOR/2004-283, s. 22.

Case management judges — Federal Court of Appeal  
 383.1

383.1 The Chief Justice of the Federal Court of Appeal may assign one or more judges to act as a case management judge in a proceeding. SOR/2004-283, s. 23.

Motion to request special management  
 384

384. A party to a proceeding may at any time bring a motion to have the proceeding managed as a specially managed proceeding.

Class actions  
 384.1

384.1 An action commenced by a member of a class of persons on behalf of the members of that class shall be conducted as a specially managed proceeding. SOR/2002-417, s. 23.

Powers of case management judge  
 385(1)

385. (1) A case management judge or a prothonotary assigned under paragraph 383(c) shall deal with all matters that arise prior to the trial or hearing of a specially managed proceeding and may  
 (a) give any directions that are necessary for the just, most expeditious and least expensive determination of the proceeding on its merits;  
 (b) notwithstanding any period provided for in these Rules, fix the period for completion of subsequent steps in the proceeding;  
 (c) fix and conduct any dispute resolution or pre-trial conferences that he or she considers necessary; and  
 (d) subject to subsection 50(1), hear and determine all motions arising prior to the assignment of a hearing date.

Order for status review  
 385(2)

(2) A case management judge or a prothonotary assigned under paragraph 383(c) may, at any time, order that a status review be held in accordance with rule 382.

Order to cease special management  
 385(3)

(3) A case management judge or a prothonotary assigned under paragraph 383(c) may order that a proceeding, other than a class action, cease to be conducted as a specially managed proceeding, in which case the periods set out in these Rules for taking any subsequent steps will apply.  
 SOR/2002-417, s. 24.

### DISPUTE RESOLUTION SERVICES

Order for dispute resolution conference  
 386(1)

386. (1) The Court may order that a proceeding, or any issue in a proceeding, be referred to a dispute resolution conference, to be conducted in accordance with rules 387 to 389 and any directions set out in the order.

## Time limit for dispute resolution conference

386(2)

(2) Unless the Court orders otherwise, a dispute resolution conference shall be completed within 30 days.

## Interpretation

387

387. A dispute resolution conference shall be conducted by a case management judge or prothonotary assigned under paragraph 383(c), who may

- (a) conduct a mediation, to assist the parties by meeting with them together or separately to encourage and facilitate discussion between them in an attempt to reach a mutually acceptable resolution of the dispute;
- (b) conduct an early neutral evaluation of a proceeding, to evaluate the relative strengths and weaknesses of the positions advanced by the parties and render a non-binding opinion as to the probable outcome of the proceeding; or
- (c) conduct a mini-trial, presiding over presentation by counsel for the parties of their best case and rendering a non-binding opinion as to the probable outcome of the proceeding.

## Confidentiality

388

388. Discussions in a dispute resolution conference and documents prepared for the purposes of such a conference are confidential and shall not be disclosed.

## Notice of settlement

389(1)

389. (1) Where a settlement of all or part of a proceeding is reached at a dispute resolution conference,

- (a) it shall be reduced to writing and signed by the parties or their solicitors; and
- (b) a notice of settlement in Form 389 shall be filed within 10 days after the settlement is reached.

## Report of partial settlement

389(2)

(2) Where a settlement of only part of a proceeding is reached at a dispute resolution conference, the case management judge shall make an order setting out the issues that have not been resolved and giving such directions as he or she considers necessary for their adjudication.

## Notice of failure to settle

389(3)

(3) Where no settlement can be reached at a dispute resolution conference, the case management judge shall record that fact on the Court file.

## Stay of proceedings

390

390. On motion, a case management judge or a prothonotary assigned under paragraph 383(c) may, by order, stay a proceeding, including a proceeding that has previously been stayed, for a period of not more than six months, on the ground that the parties have undertaken to refer the subject-matter of the proceeding to an alternative means of dispute resolution, other than a dispute resolution conference referred to in rule 386.

## Case management judge not to preside at hearing

391

391. A case management judge who conducts a dispute resolution conference in an action, application or appeal shall not preside at the hearing thereof unless all parties consent.

## PART 10

## ORDERS

## Disposition of hearing

392(1)

392. (1) The Court may dispose of any matter that is the subject-matter of a hearing by signing an order.

## Effective time of order

392(2)

(2) Unless it provides otherwise, an order is effective from the time that it is endorsed in writing and signed by the presiding judge or prothonotary or, in the case of an order given orally from the bench in circumstances that render it impracticable to endorse a written copy of the order, at the time it is made.

#### Reasons

393

393. The Court may deliver reasons for judgment

- (a) orally from the bench at the conclusion of the hearing of a proceeding; or
- (b) after having reserved judgment at the conclusion of a hearing, by depositing in the Registry written reasons, signed by the judge or prothonotary who delivered them.

#### Drafting of order

394(1)

394. (1) Where the Court gives reasons, it may direct one of the parties to prepare for endorsement a draft order to implement the Court's conclusion, approved as to form and content by the other parties or, where the parties cannot agree on the form and content of the order, to bring a motion for judgment in accordance with rule 369.

#### Pronouncement of judgment

394(2)

(2) On the return of a motion under subsection (1), the Court shall settle the terms of and pronounce the judgment, which shall be endorsed in writing and signed by the presiding judge or prothonotary.

#### Copies to be sent

395

395. Subject to subsection 36(3), a copy of every order made and of any reasons given other than in open court shall be sent by the Administrator forthwith by registered mail to all parties.

#### Recording of orders

396

396. Every order shall be recorded by the Administrator forthwith after it is made.

#### Motion to reconsider

397(1)

397. (1) Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court, as constituted at the time the order was made, reconsider its terms on the ground that

- (a) the order does not accord with any reasons given for it; or
- (b) a matter that should have been dealt with has been overlooked or accidentally omitted.

#### Mistakes

397(2)

(2) Clerical mistakes, errors or omissions in an order may at any time be corrected by the Court.

#### Stay of order

398(1)

398. (1) On the motion of a person against whom an order has been made,

- (a) where the order has not been appealed, the court that made the order may order that it be stayed; or
- (b) where a notice of appeal of the order has been issued, a judge of the court that is to hear the appeal may order that it be stayed.

#### Conditions

398(2)

(2) As a condition to granting a stay under subsection (1), a judge may require that the appellant

- (a) provide security for costs; and
- (b) do anything required to ensure that the order will be complied with when the stay is lifted.

#### Setting aside of stay

398(3)

(3) A judge of the court that is to hear an appeal of an order that has been stayed pending appeal may set aside the stay if the judge is satisfied that the party who sought the stay is not expeditiously proceeding with the appeal or that for any other reason the order should no longer be stayed.

SOR/2004-283, s. 40.

Setting aside or variance

399(1)

399. (1) On motion, the Court may set aside or vary an order that was made

(a) ex parte; or

(b) in the absence of a party who failed to appear by accident or mistake or by reason of insufficient notice of the proceeding,

if the party against whom the order is made discloses a prima facie case why the order should not have been made.

Setting aside or variance

399(2)

(2) On motion, the Court may set aside or vary an order

(a) by reason of a matter that arose or was discovered subsequent to the making of the order; or

(b) where the order was obtained by fraud.

Effect of order

399(3)

(3) Unless the Court orders otherwise, the setting aside or variance of an order under subsection (1) or (2) does not affect the validity or character of anything done or not done before the order was set aside or varied.

## PART 11

### COSTS

#### AWARDING OF COSTS BETWEEN PARTIES

Discretionary powers of Court

400(1)

400. (1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid. SOR/2002-417, s. 25(F).

Crown

400(2)

(2) Costs may be awarded to or against the Crown.

Factors in awarding costs

400(3)

(3) In exercising its discretion under subsection (1), the Court may consider

(a) the result of the proceeding;

(b) the amounts claimed and the amounts recovered;

(c) the importance and complexity of the issues;

(d) the apportionment of liability;

(e) any written offer to settle;

(f) any offer to contribute made under rule 421;

(g) the amount of work;

(h) whether the public interest in having the proceeding litigated justifies a particular award of costs;

(i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding;

(j) the failure by a party to admit anything that should have been admitted or to serve a request to admit;

(k) whether any step in the proceeding was

(i) improper, vexatious or unnecessary, or

(ii) taken through negligence, mistake or excessive caution;

(l) whether more than one set of costs should be allowed, where two or more parties were represented by different solicitors or were represented by the same solicitor but separated their defence unnecessarily;

(m) whether two or more parties, represented by the same solicitor, initiated separate proceedings unnecessarily;

(n) whether a party who was successful in an action exaggerated a claim, including a counterclaim or third party claim, to avoid the operation of rules 292 to 299; and

(o) any other matter that it considers relevant.



#### Tariff B

400(4)

(4) The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.

#### Directions re assessment

400(5)

(5) Where the Court orders that costs be assessed in accordance with Tariff B, the Court may direct that the assessment be performed under a specific column or combination of columns of the table to that Tariff.

#### Further discretion of Court

400(6)

(6) Notwithstanding any other provision of these Rules, the Court may

- (a) award or refuse costs in respect of a particular issue or step in a proceeding;
- (b) award assessed costs or a percentage of assessed costs up to and including a specified step in a proceeding;
- (c) award all or part of costs on a solicitor-and-client basis; or
- (d) award costs against a successful party.

#### Award and payment of costs

400(7)

(7) Costs shall be awarded to the party who is entitled to receive the costs and not to the party's solicitor, but they may be paid to the party's solicitor in trust. SOR/2002-417, s. 25(F).

#### Costs of motion

401(1)

401. (1) The Court may award costs of a motion in an amount fixed by the Court.

#### Costs payable forthwith

401(2)

(2) Where the Court is satisfied that a motion should not have been brought or opposed, the Court shall order that the costs of the motion be payable forthwith.

#### Costs of discontinuance or abandonment

402

402. Unless otherwise ordered by the Court or agreed by the parties, a party against whom an action, application or appeal has been discontinued or against whom a motion has been abandoned is entitled to costs forthwith, which may be assessed and the payment of which may be enforced as if judgment for the amount of the costs had been given in favour of that party.

#### Motion for directions

403(1)

403. (1) A party may request that directions be given to the assessment officer respecting any matter referred to in rule 400,

- (a) by serving and filing a notice of motion within 30 days after judgment has been pronounced; or
- (b) in a motion for judgment under subsection 394(2).

#### Motion after judgment

403(2)

(2) A motion may be brought under paragraph (1)(a) whether or not the judgment included an order concerning costs.

#### Same judge or prothonotary

403(3)

(3) A motion under paragraph (1)(a) shall be brought before the judge or prothonotary who signed the judgment.

#### Liability of solicitor for costs

404(1)

404. (1) Where costs in a proceeding are incurred improperly or without reasonable cause or are wasted by undue delay or other misconduct or default, the Court may make an order against any solicitor whom it considers to be responsible, whether personally or through a servant or agent,

- (a) directing the solicitor personally pay the costs of a party to the proceeding; or
- (b) disallowing the costs between the solicitor and the solicitor's client.

Show cause by solicitor

404(2)

(2) No order under subsection (1) shall be made against a solicitor unless the solicitor has been given an opportunity to be heard.

Notice to client

404(3)

(3) The Court may order that notice of an order against a solicitor made under subsection (1) be given to the solicitor's client in a manner specified by the Court.

ASSESSMENT OF COSTS

Assessment by assessment officer

405

405. Costs shall be assessed by an assessment officer.

Obtaining appointment

406(1)

406. (1) A party who is entitled to costs may obtain a notice of appointment for assessment by filing a bill of costs and a copy of the order or other document giving rise to the party's entitlement to costs.

Notice of appointment

406(2)

(2) A notice of appointment for assessment and the bill of costs to be assessed shall be served on every other interested party at least 10 days before the date fixed for the assessment.

Assessment according to Tariff B

407

407. Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.

Directions

408(1)

408. (1) An assessment officer may direct the production of books and documents and give directions for the conduct of an assessment.

Set-off of costs

408(2)

(2) Where parties are liable to pay costs to each other, an assessment officer may adjust those costs by way of set-off.

Costs of assessment

408(3)

(3) An assessment officer may assess and allow, or refuse to allow, the costs of an assessment to either party.

Factors in assessing costs

409

409. In assessing costs, an assessment officer may consider the factors referred to in subsection 400(3).

Costs of amendment

410(1)

410. (1) Unless the Court orders otherwise, the costs occasioned by an amendment to a pleading made without leave shall be borne by the party making the amendment.

Costs of motion to extend time

410(2)

(2) Unless the Court orders otherwise, the costs of a motion for an extension of time shall be borne by the party bringing the motion.

Costs of abandoned motion

411

411. The costs of a motion that is abandoned or deemed to be abandoned may be assessed on the filing of
- (a) the notice of motion, together with an affidavit stating that the notice was not filed within the prescribed time or that the moving party did not appear at the hearing of the motion; or
  - (b) where a notice of abandonment was served, the notice of abandonment.

Costs of discontinued proceeding

412

412. The costs of a proceeding that is discontinued may be assessed on the filing of the notice of discontinuance.

Accounts of solicitor for Crown

413(1)

413. (1) Where requested by the Attorney General of Canada, a prothonotary shall assess any costs payable by the Crown to a solicitor acting for the Crown in a proceeding.

Existing rights

413(2)

- (2) Subsection (1) shall not be construed so as to prejudice any rights between a solicitor and a client in respect of the recovery of the solicitor's costs in any competent court.

Review of assessment

414

414. A party who is dissatisfied with an assessment of an assessment officer who is not a judge may, within 10 days after the assessment, serve and file a notice of motion to request that a judge of the Federal Court review the award of costs.

SOR/2004-283, s. 33.

## SECURITY FOR COSTS

Application

415

415. Rules 416 to 418 apply, with such modifications as are necessary, to parties bringing and defending counterclaims and third party claims, to applicants and respondents in an application and to appellants and respondents in an appeal.

Where security available

416(1)

416. (1) Where, on the motion of a defendant, it appears to the Court that
- (a) the plaintiff is ordinarily resident outside Canada,
  - (b) the plaintiff is a corporation, an unincorporated association or a nominal plaintiff and there is reason to believe that the plaintiff would have insufficient assets in Canada available to pay the costs of the defendant if ordered to do so,
  - (c) the plaintiff has not provided an address in the statement of claim, or has provided an incorrect address therein, and has not satisfied the Court that the omission or misstatement was made innocently and without intention to deceive,
  - (d) the plaintiff has changed address during the course of the proceeding with a view to evading the consequences of the litigation,
  - (e) the plaintiff has another proceeding for the same relief pending elsewhere,
  - (f) the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part,
  - (g) there is reason to believe that the action is frivolous and vexatious and the plaintiff would have insufficient assets in Canada available to pay the costs of the defendant, if ordered to do so, or
  - (h) an Act of Parliament entitles the defendant to security for costs,
- the Court may order the plaintiff to give security for the defendant's costs.

Staging

416(2)

- (2) The Court may order that security for the costs of a defendant be given in stages, as costs are incurred.

Further steps

416(3)

- (3) Unless the Court orders otherwise, until the security required by an order under subsection (1) or (2) has been given, the plaintiff may not take any further step in the action, other than an appeal from that order.

## Party temporarily resident in Canada

416(4)

(4) A party ordinarily resident outside Canada may be ordered to give security for costs, notwithstanding that the party may be temporarily resident in Canada.

## Voluntary payment into court

416(5)

(5) In the absence of an order under subsection (1), a plaintiff may, at any time after filing a statement of claim, pay an amount into court as security for the defendant's costs and give notice of the payment to the defendant.

## Increase in security

416(6)

(6) The Court may, on the motion of a defendant, order a plaintiff who has paid an amount into court under subsection (5) to pay in an additional amount as security for the defendant's costs.

## Grounds for refusing security

417

417. The Court may refuse to order that security for costs be given under any of paragraphs 416(1)(a) to (g) if a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit.

## How security to be given

418

418. Where a person is required under these Rules or an Act of Parliament to give security for costs or for any other purpose, unless otherwise ordered by the Court or required by that Act, the person may do so

- (a) by paying the required amount into court; or
- (b) by filing a bond for the required amount that has been approved by an order of the Court.

## OFFER TO SETTLE

## Application to other proceedings

419

419. Rules 420 and 421 apply, with such modifications as are necessary, to parties bringing and defending counterclaims and third party claims, to applicants and respondents in an application and to appellants and respondents in an appeal.

## Consequences of failure to accept plaintiff's offer

420(1)

420. (1) Unless otherwise ordered by the Court, where a plaintiff makes a written offer to settle that is not revoked, and obtains a judgment as favourable or more favourable than the terms of the offer to settle, the plaintiff shall be entitled to party-and-party costs to the date of service of the offer and double such costs, excluding disbursements, after that date.

## Consequences of failure to accept defendant's offer

420(2)

- (2) Unless otherwise ordered by the Court, where a defendant makes a written offer to settle that is not revoked,
- (a) if the plaintiff obtains a judgment less favourable than the terms of the offer to settle, the plaintiff shall be entitled to party-and-party costs to the date of service of the offer and the defendant shall be entitled to double such costs, excluding disbursements, from that date to the date of judgment; or
  - (b) if the plaintiff fails to obtain judgment, the defendant shall be entitled to party-and-party costs to the date of the service of the offer and to double such costs, excluding disbursements, from that date to the date of judgment.

## Offer to contribute

421

421. Subsection 420(2) applies to a third party, or to one of two or more defendants who are alleged to be jointly and severally liable to the plaintiff in respect of a claim, who makes a written offer to other defendants or third parties to contribute toward a settlement of the claim.

## Disclosure of offer to Court

422

422. No communication respecting an offer to settle or offer to contribute shall be made to the Court, other than to a case management judge or prothonotary assigned under rule 383(c) or to a judge or prothonotary at a pre-trial conference, until all

questions of liability and the relief to be granted, other than costs, have been determined.

## PART 12

### ENFORCEMENT OF ORDERS

#### GENERAL

##### Where brought

423

423. All matters relating to the enforcement of orders shall be brought before the Federal Court.

SOR/2004-283, s. 33.

##### Enforcement of order of tribunal

424(1)

424. (1) Where under an Act of Parliament the Court is authorized to enforce an order of a tribunal and no other procedure is required by or under that Act, the order may be enforced under this Part.

##### Filing of order

424(2)

(2) An order referred to in subsection (1) shall be filed together with a certificate from the tribunal, or an affidavit of a person authorized to file such an order, attesting to the authenticity of the order.

##### Enforcement of order for payment of money

425

425. An order for the payment of money may be enforced by

- (a) a writ of seizure and sale in Form 425A;
- (b) garnishment proceedings;
- (c) a charging order;
- (d) the appointment of a receiver; and
- (e) in respect of a person referred to in rule 429, a writ of sequestration in Form 425B.

##### Examination of judgment debtor

426

426. A person who has obtained an order for the payment of money may conduct an oral examination of the judgment debtor or, if the judgment debtor is a body corporate, of an officer thereof, as to the assets of the judgment debtor.

##### Possession of land

427(1)

427. (1) An order for possession of real property or immovables may be enforced by

- (a) a writ of possession, in Form 427; and
- (b) in respect of a person referred to in rule 429, an order of committal or a writ of sequestration, or both.

##### Limitation

427(2)

(2) A writ of possession shall be issued only if the Court is satisfied that every person in possession of the whole or any part of the real property or immovables has received notice sufficient to enable the person to apply to the Court for any relief to which the person may be entitled.

##### Delivery of personal property and movables

428(1)

428. (1) An order for the delivery of personal property or movables that does not give the person against whom the order is made the alternative of paying an amount equal to the value of the personal property or movables may be enforced by

- (a) a writ of delivery to recover the personal property or movables, in Form 428; and
- (b) in respect of a person referred to in rule 429, an order of committal or a writ of sequestration, or both.

##### Delivery of personal property or movables or amount equal to value

428(2)

(2) An order for the delivery of personal property or movables or the payment of an amount equal to their value may be enforced by

- (a) a writ of delivery to recover the personal property or movables or an amount equal to their value, in Form 428; and
- (b) in respect of a person referred to in rule 429, a writ of sequestration.

Writ of sequestration and order of committal

429(1)

429. (1) Where a person who is required by an order to perform an act within a specified time refuses or neglects to do so within that time, or where a person disobeys an order to abstain from doing an act, the order may, with the leave of the Court, be enforced by

- (a) a writ of sequestration against the property of the person;
- (b) where the person is a corporation, a writ of sequestration against the property of any director or officer of the corporation; and
- (c) subject to subsection (2), in respect of an order other than for payment of money, an order of committal against the person or, where the person is a body corporate, against any director or officer of the corporation.

Limitation

429(2)

(2) Where under an order requiring the delivery of personal property or movables a person who is liable to execution has the alternative of paying an amount equal to the value of the personal property or movables, the order shall not be enforced by an order of committal.

Personal service required

430

430. Unless the Court orders otherwise, an order shall not be enforced against a person under rule 429 unless the order has been personally served on the person.

Performance by other person

431

431. Where a person does not comply with an order to perform an act, without prejudice to the powers of the Court to punish the person for contempt, on motion, the Court may order that

- (a) the required act be performed by the person by whom the order was obtained or by another person appointed by the Court; and
- (b) the non-complying person pay the costs incurred in the performance of the act, ascertained in such a manner as the Court may direct, and that a writ of execution be issued against the non-complying person for those costs.

Non-performance of condition precedent

432

432. Where a person who is entitled to relief under an order subject to the fulfilment of a condition fails to fulfil that condition, the person is deemed to have abandoned the benefit of the order and, unless the Court orders otherwise, any other interested person may take any step that is warranted by the order or that might have been taken if the order had not been made.

## WRITS OF EXECUTION

Requisition for writ of execution

433(1)

433. (1) Subject to subsection (2) and rules 434 and 435, a person entitled to execution may obtain a writ of execution by filing a requisition for its issuance.

When writ may be issued

433(2)

(2) A writ of execution shall be issued only if, at the time a requisition therefor is filed, any period specified in the order for the payment of money or for the doing of an act required under the order has expired.

Endorsement on writ

433(3)

(3) A writ of execution for the recovery of money shall be endorsed with a direction to the sheriff to levy

- (a) the amount of money due and payable that is sought to be recovered;

- (b) any interest thereon that is sought to be recovered, from the date of the order; and
- (c) any sheriff's fees and costs of execution.

#### Limitation on issuance

434(1)

434. (1) A writ of execution to enforce an order shall not be issued without the leave of the Court if

- (a) six or more years have elapsed since the date of the order;
- (b) a change has taken place, by death or otherwise, in the persons entitled or liable to execution under the order;
- (c) under the order a person is entitled to relief subject to the fulfilment of a condition that is alleged to have been fulfilled; or
- (d) any personal property or movables sought to be seized under the writ are in the possession of a receiver appointed by the Court or of a sequestrator.

#### Period of validity of order

434(2)

(2) An order granting leave under subsection (1) expires one year after it is made.

#### Leave to issue writ in aid

435

435. A writ of execution in aid of another writ of execution shall not be issued without the leave of the Court.

#### Ex parte motion for leave to issue writ

436

436. A motion for leave to issue a writ of execution under subsection 434(1) or rule 435 may be made ex parte.

#### Period of validity of writ

437(1)

437. (1) A writ of execution is valid for six years after its date of issuance.

#### Extension of validity of writ

437(2)

(2) On motion, where a writ has not been wholly executed, the Court may, before the writ would otherwise expire, order that the validity of the writ, including a writ the validity of which has previously been extended, be extended for a further period of six years.

#### Conditions for execution of extended writ

437(3)

(3) Before execution of a writ the validity of which has been extended by an order under subsection (2),

- (a) the writ shall be endorsed with a notice setting out the date on which the order was made; or
- (b) the moving party shall serve a certified copy of the order on the sheriff to whom the writ is directed.

#### Effect of extended writ

437(4)

(4) A writ the validity of which has been extended under subsection (2) continues without interruption.

#### Advance or security required

438

438. Before executing a writ of execution, a sheriff to whom the writ is directed may require the person at whose instance it was issued to make an advance, or to give security, sufficient to cover the costs of execution.

#### Notice to sheriff

439(1)

439. (1) A person at whose instance a writ of execution is issued may serve a notice on the sheriff to whom the writ is directed requiring the sheriff, within such time as may be specified in the notice, to endorse on the writ a statement of the manner in which the sheriff has executed it and to send a copy of the statement to the person.

#### Order to sheriff to comply

## 439(2)

(2) Where a sheriff fails to comply with a notice served under subsection (1), the person by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.

## Directions from Court

## 439(3)

(3) A sheriff may seek directions from the Court concerning any issue not addressed by these Rules that arises from the enforcement of an order.

## Multiple writs for single order

## 440

440. Writs of execution of different types may be issued to enforce a single order, where the terms of the order so require.

## Leave to issue writ of sequestration

## 441(1)

441. (1) No writ of sequestration shall be issued without leave of a judge.

## Personal service of notice

## 441(2)

(2) Notice of a motion for leave to issue a writ of sequestration shall be personally served on the person against whose property it is sought to issue the writ.

## Multiple writs of seizure and sale

## 442(1)

442. (1) A person who is entitled to enforce an order by a writ of seizure and sale may request the issuance of two or more such writs directed to the sheriffs of different geographical areas, either at the same time or at different times, to enforce the order, but no greater total amount shall be levied under all such writs than would be authorized to be levied under a single writ.

## Different geographical areas

## 442(2)

(2) Where a person requests the issuance of two or more writs of seizure and sale directed to sheriffs of different geographical areas to enforce the same order, the person shall inform each sheriff of the issuance of the other writ or writs.

## Second writ where sum unascertained

## 443

443. Where the payment of an ascertained sum of money and an unascertained sum of money or costs is ordered, if, at the time when the ascertained sum becomes payable, the unascertained sum or costs have not been assessed, the person who is entitled to enforce the order may request the issuance of a writ of seizure and sale to enforce payment of the ascertained sum and, after the unascertained sum or costs have been assessed, may request the issuance of a second writ to enforce payment thereof.

## Order under \$200

## 444

444. Where an order for payment of less than \$200 does not entitle the plaintiff to costs against the person against whom a writ of seizure and sale to enforce the order is issued, the writ may not authorize the sheriff to whom it is directed to levy any fees or costs of execution.

## Sale of interest in property

## 445

445. Any interest of a judgment debtor in property may be sold under a writ of seizure and sale.

## Sale of real property or immoveables

## 446

446. Real property or immoveables shall not be sold under a writ of seizure and sale within a shorter period than that provided for by the laws of the province in which the real property or immoveables are situated or any longer period ordered by the Court.

## Property bound by writ

## 447

447. Property is bound for the purpose of execution of an order as of the date of the delivery to the sheriff of a writ of seizure and sale.



Laws of province apply

448

448. In seizing, advertising for sale or selling property, a sheriff shall, except as otherwise provided in the writ or in these Rules, follow the laws applicable to the execution of similar writs issued by a superior court of the province in which the property was seized.

## GARNISHMENT PROCEEDINGS

Garnishment

449(1)

449. (1) Subject to rules 452 and 456, on the ex parte motion of a judgment creditor, the Court may order

(a) that

(i) a debt owing or accruing from a person in Canada to a judgment debtor, or

(ii) a debt owing or accruing from a person outside Canada to a judgment debtor, where the debt is one for which the person might be sued in Canada by the judgment debtor,

be attached to answer the judgment debt; and

(b) that the person attend, at a specified time and place, to show cause why the person should not pay to the judgment creditor the debt or any lesser amount sufficient to satisfy the judgment.

Service of show cause order

449(2)

(2) An order to show cause made under subsection (1) shall be served, at least seven days before the time appointed for showing cause,

(a) on the garnishee personally; and

(b) unless the Court directs otherwise, on the judgment debtor.

Debts bound as of time of service

449(3)

(3) Subject to rule 452, an order under subsection (1) binds the debts attached as of the time of service of the order.

Payment into court by garnishee

450

450. A garnishee may admit liability and pay into court a debt due to a judgment debtor, or as much thereof as is sufficient to satisfy the judgment, notice of which shall be given to the judgment creditor.

Garnishment order

451(1)

451. (1) Where a garnishee has not made a payment into court under rule 450 and does not dispute the debt claimed to be due to the judgment debtor, or does not appear pursuant to a show cause order made under subsection 449(1), on motion, the Court may make an order for payment to the judgment creditor or payment into court of the debt.

Order for future payment

451(2)

(2) Where a debt owed to a judgment debtor is not payable at the time an order is sought under subsection 449(1), an order may be made for payment of the debt to the judgment creditor under subsection (1) as at the time the debt becomes payable.

Enforcement of garnishment order

451(3)

(3) An order under subsection (1) may be enforced in the same manner as any other order for the payment of money.

Exemption from seizure

452

452. Where a debt due or accruing to a judgment debtor is in respect of wages or salary, no portion thereof that is exempt from seizure or attachment under the law of the province where the debt is payable shall be attached under an order made under rule 449.

Summary determination of liability

453

453. Where a garnishee disputes liability to pay a debt claimed to be due or accruing to the judgment debtor, the Court may summarily determine any question of liability of the garnishee or order that it be determined in such a manner as the Court may

direct.

#### Discharge of liability

454

454. A payment made under rule 450 by a garnishee or in compliance with an order under rule 449, and any execution levied against a garnishee under such an order, constitutes a valid discharge of the garnishee's liability to the judgment debtor to the extent of the amount paid or levied, notwithstanding that the attachment is later set aside or that the order from which it arose is later reversed.

#### Order for other person to attend

455(1)

455. (1) If, on a motion under rule 449, it is brought to the notice of the Court that a person other than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien on it, the Court may order the person to attend before the Court and state the nature of his or her claim.

#### Determination of validity of claim

455(2)

(2) After hearing a person who attends before the Court under an order made under subsection (1), the Court may summarily determine the questions at issue between the claimants or order that it be determined in such a manner as the Court may direct.

#### Payment of money in court

456(1)

456. (1) Where money is standing to the credit of a judgment debtor in court, the judgment creditor shall not bring a motion under rule 449 in respect of the money, but may bring a motion for an order that the money, or a lesser amount sufficient to satisfy the order sought to be enforced and the costs of the motion, be paid to the judgment creditor.

#### Limitation

456(2)

(2) Money to which a motion under subsection (1) relates shall not be paid out of court until after the determination of the motion.

#### Service of notice of motion

456(3)

(3) Unless the Court directs otherwise, notice of a motion under subsection (1) shall be served on the judgment debtor and filed at least seven days before the day fixed for the hearing of the motion.

#### Costs of motion

457

457. The costs of a motion under rule 449 or 456 and of any related proceedings shall, unless the Court directs otherwise, be retained by the judgment creditor out of the money recovered under the order and in priority to the judgment debt.

## CHARGING ORDERS

#### Order for interim charge and show cause

458(1)

458. (1) On the ex parte motion of a judgment creditor, the Court may, for the purpose of enforcing an order for the payment of an ascertained sum of money,

- (a) make an order imposing an interim charge for securing payment of that sum and any interest thereon
  - (i) on real property or immoveables, or on an interest in real property or immoveables, of a judgment debtor, in Form 458A, or
  - (ii) on any interest to which the judgment debtor is beneficially entitled in any shares, bonds or other securities specified in the order, in Form 458B; and
- (b) order the judgment debtor to show cause, at a specified time and place, why the charge should not be made absolute.

#### Service of show cause order

458(2)

(2) Unless the Court directs otherwise, an order made under subsection (1) shall be served on the judgment debtor and, where

the order relates to property referred to in subparagraph (1)(a)(ii), on the corporation, government or other person or entity by whom the securities were issued, at least seven days before the time appointed for the hearing.

#### Show cause hearing

459(1)

459. (1) At a show cause hearing referred to in paragraph 458(1)(b), the Court shall make the interim charge absolute, in Form 459, or discharge it.

#### Enforcement of charging order

459(2)

(2) A charge made absolute has the same effect, and is enforceable in the same manner, as a charge made by the judgment debtor.

#### Disposition by judgment debtor

460

460. No disposition by a judgment debtor of an interest in property subject to an interim or absolute charge under rule 458 or 459 is valid against the judgment creditor.

#### Transfer of securities prohibited

461(1)

461. (1) Unless the Court orders otherwise, no person or entity on whom an order was served under subsection 458(2) shall permit the transfer of any security specified in the order or pay to any person a dividend or any interest payable thereon.

#### Liability of transferor

461(2)

(2) If, after service of an order under rule 458, a person or entity on whom it was served makes a transfer or payment prohibited by subsection (1), the person or entity shall be liable to pay to the judgment creditor an amount equal to the value of the security transferred or the amount of the payment made, as the case may be, or as much of it as is sufficient to satisfy the judgment debt.

#### Discharge or variance of charging order

462

462. The Court may, on the motion of a judgment debtor or any other person with an interest in property subject to an interim or absolute charge under rule 458 or 459, at any time, discharge or vary the charging order on such terms as to costs as it considers just.

#### Charge on interest in money paid into court

463(1)

463. (1) On motion, the Court may, for the purpose of enforcing an order for the payment of an ascertained sum of money, by order, impose a charge for securing payment of the amount due under the order, and of any interest thereon, on any interest to which the judgment debtor is beneficially entitled in any money paid into court that is identified in the order.

#### Application of rules re other charging orders

463(2)

(2) Subsection 458(1) and rules 460 and 462 apply, with such modifications as are necessary, to an order made under this rule.

#### Ancillary or incidental injunction

464

464. On motion, a judge may grant an injunction ancillary or incidental to a charging order under rule 458 or appoint a receiver to enforce a charge imposed by such an order.

#### Order prohibiting dealing with funds

465(1)

465. (1) The Court, on the motion of a person

- (a) who has a mortgage or charge on the interest of another person in money paid into court,
- (b) to whom such an interest has been assigned, or
- (c) who is a judgment creditor of a person entitled to such an interest,

may make an order prohibiting the transfer, delivery, payment or other dealing with all or any part of the money, or any income thereon, without prior notice to the moving party.

Service of notice of motion

465(2)

(2) Notice of a motion under subsection (1) shall be served on every person whose interest may be affected by the order sought.

Costs

465(3)

(3) On a motion under subsection (1), the Court may order the moving party to pay the costs of any party or of any other person interested in the money in question.

## CONTEMPT ORDERS

Contempt

466

466. Subject to rule 467, a person is guilty of contempt of Court who

- (a) at a hearing fails to maintain a respectful attitude, remain silent or refrain from showing approval or disapproval of the proceeding;
- (b) disobeys a process or order of the Court;
- (c) acts in such a way as to interfere with the orderly administration of justice, or to impair the authority or dignity of the Court;
- (d) is an officer of the Court and fails to perform his or her duty; or
- (e) is a sheriff or bailiff and does not execute a writ forthwith or does not make a return thereof or, in executing it, infringes a rule the contravention of which renders the sheriff or bailiff liable to a penalty.

Right to a hearing

467(1)

467. (1) Subject to rule 468, before a person may be found in contempt of Court, the person alleged to be in contempt shall be served with an order, made on the motion of a person who has an interest in the proceeding or at the Court's own initiative, requiring the person alleged to be in contempt

- (a) to appear before a judge at a time and place stipulated in the order;
- (b) to be prepared to hear proof of the act with which the person is charged, which shall be described in the order with sufficient particularity to enable the person to know the nature of the case against the person; and
- (c) to be prepared to present any defence that the person may have.

Ex parte motion

467(2)

(2) A motion for an order under subsection (1) may be made ex parte.

Burden of proof

467(3)

(3) An order may be made under subsection (1) if the Court is satisfied that there is a prima facie case that contempt has been committed.

Service of contempt order

467(4)

(4) An order under subsection (1) shall be personally served, together with any supporting documents, unless otherwise ordered by the Court.

Contempt in presence of a judge

468

468. In a case of urgency, a person may be found in contempt of Court for an act committed in the presence of a judge and condemned at once, if the person has been called on to justify his or her behaviour.

Burden of proof

469

469. A finding of contempt shall be based on proof beyond a reasonable doubt.

## Evidence to be oral

470(1)

470. (1) Unless the Court directs otherwise, evidence on a motion for a contempt order, other than an order under subsection 467(1), shall be oral.

## Testimony not compellable

470(2)

(2) A person alleged to be in contempt may not be compelled to testify.

## Assistance of Attorney General

471

471. Where the Court considers it necessary, it may request the assistance of the Attorney General of Canada in relation to any proceedings for contempt.

## Penalty

472

472. Where a person is found to be in contempt, a judge may order that

- (a) the person be imprisoned for a period of less than five years or until the person complies with the order;
- (b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;
- (c) the person pay a fine;
- (d) the person do or refrain from doing any act;
- (e) in respect of a person referred to in rule 429, the person's property be sequestered; and
- (f) the person pay costs.

## PROCESS OF THE COURT

## To whom process may be issued

473(1)

473. (1) Where there is no sheriff or a sheriff is unable or unwilling to act, a process, including a warrant for arrest of property under rule 481, may be issued to any person to whom a process of a superior court of the province in which the process is to be executed could be issued.

## Execution of process

473(2)

(2) Where a process is issued to a sheriff, it may, at the sheriff's direction, be executed by a person authorized under provincial law to execute the process of a superior court of the province in which the process is to be executed.

## Certificate of judgment

474(1)

474. (1) Where an order made against the Crown for the payment of money for costs or otherwise is executory and

- (a) where no appeal of the order has been instituted, the time allowed by law for an appeal from the order has expired, or
  - (b) where there has been an appeal from the order, the order has been affirmed or varied on appeal,
- the Administrator shall issue a certificate of judgment accordingly.

## Delivery of certificate

474(2)

(2) A certificate issued under subsection (1) shall be transmitted by the Administrator to the office of the Deputy Attorney General of Canada.

## PART 13

## ADMIRALTY ACTIONS

## APPLICATION OF THIS PART

## Application

475(1)

475. (1) This Part applies to Admiralty actions.

Application of other rules

475(2)

(2) Except to the extent that they are inconsistent with this Part, the rules applicable to other actions apply to Admiralty actions.

## DEFINITIONS

Definition of "designated officer"

476

476. In this Part, "designated officer" means an officer of the Registry designated by an order of the Court.

## ACTIONS *IN REM* AND *IN PERSONAM*

Types of admiralty actions

477(1)

477. (1) Admiralty actions may be in rem or in personam, or both.

Style of cause of action in rem

477(2)

(2) The style of cause of an action in rem shall be in Form 477.

Style of cause of action in personam

477(3)

(3) The style of cause of an action in personam shall be as provided for in subsection 67(2).

Defendants in action in rem

477(4)

(4) In an action in rem, a plaintiff shall include as a defendant the owners and all others interested in the subject-matter of the action.

Action against more than one ship

478

478. In an action against more than one ship in accordance with subsection 43(8) of the Act, each ship shall be named as a defendant in the statement of claim.

Service of statement of claim

479(1)

479. (1) Subject to subsection (2), the statement of claim in an action in rem shall be served

- (a) in respect of a ship or cargo or other property on board a ship, by attaching a certified copy of the statement of claim to some conspicuous part of the ship;
- (b) in respect of cargo or other property that is not on board a ship, by attaching a certified copy of the statement of claim to the cargo or property;
- (c) in respect of freight,
  - (i) if the cargo in respect of which the freight is owing is on board a ship, by attaching a certified copy of the statement of claim to a conspicuous part of the ship,
  - (ii) if the cargo in respect of which the freight is owing is not on board a ship, by attaching a certified copy of the statement of claim to the cargo, or
  - (iii) if monies payable for the freight are in the possession of a person, by personal service of the statement of claim on that person; and
- (d) in respect of any proceeds paid into court in another proceeding, by filing a certified copy of the statement of claim in that proceeding.

Alternate service of statement of claim

479(2)

(2) If access cannot be obtained to property in respect of which a statement of claim is to be served under subsection (1), the statement of claim may be served personally on a person who appears to be in charge of the property.

Defence of action in rem

480(1)

480. (1) An action in rem against a ship or other thing named as a defendant in the action may be defended only by a person who claims to be the owner of the ship or thing or to be otherwise interested therein.

Interest to be pleaded

480(2)

(2) A defence filed by a person referred to in subsection (1) shall disclose the interest that the person claims in the ship or thing.

## ARREST OF PROPERTY

Warrant for the arrest of property

481(1)

481. (1) A designated officer may issue a warrant for the arrest of property in an action in rem, in Form 481, at any time after the filing of a statement of claim.

Affidavit

481(2)

(2) A party seeking a warrant under subsection (1) shall file an affidavit, entitled "Affidavit to Lead Warrant", stating

(a) the name, address and occupation of the party;

(b) the nature of the claim and the basis for invoking the in rem jurisdiction of the Court;

(c) that the claim has not been satisfied;

(d) the nature of the property to be arrested and, where the property is a ship, the name and nationality of the ship and the port to which it belongs; and

(e) where, pursuant to subsection 43(8) of the Act, the warrant is sought against a ship that is not the subject of the action, that the deponent has reasonable grounds to believe that the ship against which the warrant is sought is beneficially owned by the person who is the owner of the ship that is the subject of the action.

Service

482(1)

482. (1) A warrant issued under subsection 481(1), the Affidavit to Lead Warrant and the statement of claim in the action shall be served together by a sheriff in the manner set out in rule 479, whereupon the property subject to the warrant is deemed to be arrested.

Proof of service

482(2)

(2) Proof of service of the documents referred to in subsection (1) shall be filed forthwith after the documents are served.

Possession and responsibility

483(1)

483. (1) Subject to subsection (2), possession of, and responsibility for, property arrested under subsection 482(1) does not vest in the sheriff but continues in the person in possession of the property immediately before the arrest.

Order for possession of arrested property

483(2)

(2) The Court may order a sheriff to take possession of arrested property on condition that a party assume responsibility for any costs or fees incurred or payable in carrying out the order and give security satisfactory to the Court for the payment thereof.

Prohibition against moving arrested property

484

484. No property arrested under a warrant shall be moved without leave of the Court or the consent of all parties and caveators.

## BAIL

Release of arrested property

485

485. On motion, the Court may fix the amount of bail to be given for the release of arrested property.

Form of bail

486(1)

486. (1) Unless the parties agree otherwise, bail shall consist of

- (a) the guaranty of a bank;
- (b) the bond of a surety company licensed to do business in Canada or to furnish security bonds in the part of Canada where the bond is executed, in Form 486A; or
- (c) a bail bond in Form 486A.

Notice of bail

486(2)

(2) A party who intends to give bail in the form of a bond referred to in paragraph (1)(b) or (c) shall serve and file a notice of bail, in Form 486B, at least 24 hours before filing the bond.

Notice of objection to bail

486(3)

(3) An adverse party or caveator who is not satisfied with the sufficiency of a bond set out in a notice of bail shall serve and file a notice of objection in Form 486C.

Sufficiency of bail bond

486(4)

(4) Any question as to the form of bail or the sufficiency of a surety may be determined by a designated officer or referred by that officer to the Court.

#### RELEASE FROM ARREST

Release of arrested property

487(1)

487. (1) Unless a caveat has been filed under subsection 493(2), a designated officer may issue a release of arrested property in Form 487

(a) on payment into court of

- (i) the amount claimed,
- (ii) the appraised value of the property arrested, or
- (iii) where cargo is arrested for freight only, the amount of the freight, verified by affidavit;

(b) if bail has been given in an amount fixed under rule 485 and in accordance with subsections 486(1) and (2) and no objection under subsection 486(3) is outstanding;

(c) on the consent in writing of the party at whose instance the property was arrested; or

(d) on the discontinuance or dismissal of the action in respect of which the property was arrested.

Referral to judge or prothonotary

487(2)

(2) Where a release is sought under subsection (1), a designated officer may refer the matter to a judge or prothonotary.

Release at any time

488(1)

488. (1) On motion, the Court may, at any time, order the release of arrested property.

Release of ship

488(2)

(2) Where, pursuant to subsection 43(8) of the Act, a ship that is not the subject of an action has been arrested, any owner or other person interested in the ship may bring a motion to the Court for the release of the ship, and if it is found that the ship is not beneficially owned by the person who is the owner of the ship that is the subject of the action, the Court shall order its release without the taking of bail.

Release of ship without bail

488(3)

(3) Where on a motion under subsection (2) the Court is satisfied that the action in which the ship has been arrested is for a claim referred to in any of paragraphs 22(2)(a) to (c) of the Act, the Court may order the release of the ship without the taking of bail.

Release from arrest



489

489. Property shall be released from arrest on service of a release on the sheriff and payment of all fees and costs of the sheriff in respect of the arrest or custody of the property.

#### SALE OF ARRESTED PROPERTY

##### Disposition of arrested property

490(1)

490. (1) On motion, the Court may order, in respect of property under arrest, that
- (a) the property be appraised and sold, or sold without appraisal, by public auction or private contract;
  - (b) the property be advertised for sale in accordance with such directions as may be set out in the order, which may include a direction that
    - (i) offers to purchase be under seal and addressed to the sheriff,
    - (ii) offers to purchase all be opened at the same time in open court, that the parties be notified of that time and that the sale be made pursuant to an order of the Court made at that time or after the parties have had an opportunity to be heard,
    - (iii) the sale not necessarily be to the highest or any other bidder, or
    - (iv) after the opening of the offers and after hearing from the parties, if it is doubtful that a fair price has been offered, the amount of the highest offer be communicated to the other persons who made offers or to some other class of persons or that other steps be taken to obtain a higher offer;
  - (c) the property be sold without advertisement;
  - (d) an agent be employed to sell the property, subject to such conditions as are stipulated in the order or subject to subsequent approval by the Court, on such terms as to compensation of the agent as may be stipulated in the order;
  - (e) any steps be taken for the safety and preservation of the property;
  - (f) where the property is deteriorating in value, it be sold forthwith;
  - (g) where the property is on board a ship, it be removed or discharged;
  - (h) where the property is perishable, it be disposed of on such terms as the Court may order; or
  - (i) the property be inspected in accordance with rule 249.

##### Commission

490(2)

(2) The appraisal or sale of property under arrest shall be effected under the authority of a commission addressed to the sheriff in Form 490.

##### Sale free from liens

490(3)

(3) Property sold under subsection (1) is free of any liens under Canadian maritime law.

##### Execution of commission

490(4)

- (4) As soon as possible after the execution of a commission referred to in subsection (2), the sheriff shall
- (a) file the commission with a return setting out the manner in which it was executed;
  - (b) pay into court the proceeds of the sale; and
  - (c) file the sheriff's accounts and vouchers in support thereof.

##### Sheriff's accounts

490(5)

(5) An assessment officer shall assess the sheriff's accounts and report the amount that the assessment officer considers should be allowed.

##### Assessment

490(6)

(6) Any party or caveator who is interested in the proceeds of sale referred to in subsection (4) may be heard on an assessment under subsection (5).

##### Review of assessment

490(7)

(7) On motion, the Court may review an assessment done under subsection (5).

#### Payment out of money paid into court

491

491. On a motion for payment out of any money paid into court under subsection 490(4), the Court may

- (a) determine the rights of all claimants thereto;
- (b) order payment of all or part of the money to any claimant; and
- (c) order immediate payment of any fees or costs of the sheriff in connection with the arrest, custody, appraisal or sale of property, including expenses incurred in maintaining the property between the time of arrest and the sale of the property.

#### Directions

492(1)

492. (1) The Court may, in making an order under rule 490 or 491 or at any time thereafter, give directions as to

- (a) notice to be given to possible claimants to the proceeds of sale;
- (b) advertising for other such claimants;
- (c) the time within which claimants must file their claims; and
- (d) the procedure to be followed in determining the rights of the parties.

#### Claims barred

492(2)

(2) A claim that is not made within the time limited and in the manner prescribed by an order of the Court under subsection (1) is barred, and the Court may proceed to determine other claims and distribute the money among the parties entitled thereto without reference to any claim so barred.

### CAVEATS

#### Caveat warrant

493(1)

493. (1) A person who desires to prevent the arrest of property shall serve and file a caveat warrant in Form 493A undertaking to give, within three days after being required to do so, bail in respect of any action that has been, or may be, brought against the property.

#### Caveat release

493(2)

(2) A person who desires to prevent the release of any property under arrest shall serve and file a caveat release in Form 493B.

#### Caveat payment

493(3)

(3) A person who desires to prevent the payment of money out of court shall serve and file a caveat payment in Form 493C.

#### Service of caveat

493(4)

(4) A caveat under subsection (1), (2) or (3) shall be served on all parties and caveators.

#### Caveat by non-party

493(5)

(5) Where a person filing a caveat under this rule is not a party to the action, the caveat shall state the person's name and provide an address for service.

#### Liability of person requesting warrant

494(1)

494. (1) A person at whose instance a warrant is issued for the arrest of property in respect of which there is a caveat warrant outstanding is liable to payment of all resulting costs and damages, unless the person can satisfy the Court that the person should not be liable therefor.

#### Liability of party requesting caveat

494(2)

(2) A person who files a caveat release or caveat payment is liable to payment of all resulting costs and damages, unless the

person can satisfy the Court that the person should not be liable therefor.

Expiration of caveat

495(1)

495. (1) A caveat expires one year after the day on which it was filed.

Filing of new caveat

495(2)

(2) A new caveat may be served and filed before or after the expiration of an existing caveat.

Withdrawal of caveat

495(3)

(3) A person who has filed a caveat may withdraw it at any time by filing a notice in Form 495.

Setting aside of caveat

495(4)

(4) On motion, the Court may order that a caveat be set aside.

#### LIMITATION OF LIABILITY

Application under s. 33(1) of *Marine Liability Act*

496(1)

496. (1) A party bringing an application under subsection 33(1) of the *Marine Liability Act* shall bring it as an action against those claimants whose identity is known to the party.

Motion for directions re service

496(2)

(2) A party referred to in subsection (1) may bring an ex parte motion for directions respecting service on possible claimants where the number of possible claimants is large or the identity of all possible claimants is unknown to the party.

SOR/2004-283, s 37.

Motion to vary or add

497

497. A claimant who did not have notice of an action under subsection 496(1) may, within 10 days after obtaining notice of an order made under subsection 496(2), serve and file a notice of motion requesting to be added as a party to the action.

#### ACTIONS FOR COLLISION

Action for collision between ships

498(1)

498. (1) Unless otherwise ordered by the Court, in an action in respect of a collision between ships,

- (a) the statement of claim need not contain any more particulars concerning the collision than are necessary to identify it to the other parties;
- (b) the statement of defence need not contain any particulars concerning the collision;
- (c) a preliminary act shall accompany a statement of claim and a statement of defence or be filed within 10 days after the filing of the statement of claim or the statement of defence, as the case may be; and
- (d) a preliminary act shall be contained in a sealed envelope bearing the style of cause.

Preliminary act

498(2)

(2) A preliminary act shall state

- (a) the date of the collision;
- (b) the time of the collision at the location of the collision;
- (c) the location of the collision;
- (d) the names of the ships that collided;
- (e) in respect of the ship of the party filing the preliminary act,
  - (i) the name of the ship,
  - (ii) the port of registry of the ship,
  - (iii) the name of the master of the ship at time of the collision,

- (iv) the name and address of the person who was in command at the time of the collision and during the period immediately before the collision,
  - (v) the names and addresses of any persons keeping lookout at the time of the collision and during the period immediately before the collision,
  - (vi) the course of the ship or, if the ship was stationary, its heading, at the time when the other ship was first seen or immediately before any measures were taken with reference to the other ship's presence, whichever was the earlier,
  - (vii) the speed of the ship through the water at the time when the other ship was first seen or immediately before any measures were taken with reference to the other ship's presence, whichever was the earlier,
  - (viii) any alteration made to course after the time referred to in subparagraph (vi) or during the period immediately before the collision, and the time at which the alteration was made,
  - (ix) any alteration made to the speed of the ship after the time referred to in subparagraph (vii) or during the period immediately before the collision, and the time at which the alteration was made,
  - (x) any measure taken to avoid the collision, and the time at which the measure was taken,
  - (xi) any sound or visual signals given, and the time at which the signals were given, and
  - (xii) the lights carried by the ship and the lights it was showing at the time of the collision and during the period immediately before the collision;
- (f) in respect of every other ship involved in the collision,
- (i) the name of the ship,
  - (ii) the ship's distance and bearing at the time when its echo was first observed by radar by a person on the ship of the party filing the preliminary act,
  - (iii) the ship's distance, bearing and approximate heading when it was first seen by a person on the ship of the party filing the preliminary act,
  - (iv) the lights the ship was showing when it was first seen by a person on the ship of the party filing the preliminary act,
  - (v) the lights the ship was showing from the time referred to in subparagraph (iv) to the time of the collision,
  - (vi) any alteration made to the ship's course after it was first seen by a person on the ship of the party filing the preliminary act, and the time at which the alteration was made,
  - (vii) any alteration made to the ship's speed after it was first seen by a person on the ship of the party filing the preliminary act, and the time at which the alteration was made,
  - (viii) any measure that the ship took to avoid the collision, and the time at which the measure was taken,
  - (ix) any sound or visual signals given, and the time at which the signals were given, and
  - (x) any fault or default attributed to the ship;
- (g) the state of the weather at the time of the collision and during the period immediately before the collision;
- (h) the extent of visibility at the time of the collision and during the period immediately before the collision;
- (i) the state, direction and force of the tide, or of the current if the collision occurred in non-tidal waters, at the time of the collision and during the period immediately before the collision;
- (j) the direction and force of the wind at the time of the collision and during the period immediately before the collision;
- (k) the parts of each ship that first came into contact; and
- (l) the approximate angle, as illustrated by an appropriate sketch annexed to the preliminary act, between the ships at the moment of contact.

#### Form of preliminary act

498(3)

(3) The contents of a preliminary act shall be set out in parallel columns and, wherever possible, stated in numerical values.

#### Opening of envelopes containing preliminary acts

498(4)

(4) The Administrator shall open the envelopes containing the preliminary acts after the pleadings have been closed and all preliminary acts have been filed or, with the consent of all parties, at any other time.

#### Order to open envelopes containing preliminary acts

498(5)

(5) The Court may, on motion brought after all preliminary acts have been filed but before pleadings have been closed, order that the Administrator open the envelopes containing the preliminary acts.

#### Endorsement of preliminary act

498(6)

(6) On the opening of an envelope containing a preliminary act, the Administrator shall endorse the preliminary act with the date on which it was filed, the date on which the envelope was opened and the date on which any order was made, or consent filed, pursuant to which the envelope was opened.

Deemed part of statement of claim or defence

498(7)

(7) A preliminary act shall be read with and form a part of the statement of claim or statement of defence, as the case may be, as though it were a schedule thereto.

Security not required

499

499. Notwithstanding rule 416, a seaman suing for wages or for the loss of clothing and effects in a collision shall not be ordered to give security for costs.

Examination for discovery of plaintiff

500

500. Notwithstanding subsection 236(2), in an action in respect of a collision between ships, a defendant may examine the plaintiff for discovery only after filing a statement of defence and preliminary act.

## PART 14

### TRANSITIONAL, REPEAL AND COMING INTO FORCE

#### TRANSITIONAL

Ongoing proceedings

501(1)

501. (1) Subject to subsection (2), these Rules apply to all proceedings, including further steps taken in proceedings that were commenced before the coming into force of these Rules.

Order for exceptions

501(2)

(2) The Chief Justice of the Federal Court of Appeal or the Federal Court, as the case may be, may, by order, direct that rule 380 shall not apply to certain proceedings or classes of proceedings before their court that are pending on the coming into force of these Rules until a date or dates set out in the order. SOR/2004-283, s.24.

Officers of the Court continued

502(1)

502. (1) Every officer of the Court appointed under the Federal Court Rules prior to the coming into force of these Rules shall continue to act as if appointed under these Rules, until the appointment is revoked or another person is appointed in that officer's place.

Taxing officers continued as assessment officers

502(2)

(2) For the purposes of subsection (1), a reference in these Rules to an assessment officer shall be construed as a reference to a taxing officer appointed under the Federal Court Rules prior to the coming into force of these Rules.

503

503. [Repealed, SOR/2004-283, s. 25.]

#### COMING INTO FORCE

Coming into force

504

504. These Rules come into force on April 25, 1998.

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**FORM 18**

Rule 18

**REQUISITION — GENERAL***(General Heading — Use Form 66)***REQUISITION****TO THE ADMINISTRATOR**

I REQUIRE *(Choose appropriate option(s) and include all particulars necessary for the Administrator to act. Where what is sought is authorized by an order, refer to the order and attach a copy. Where an affidavit or other document must be filed with the requisition, refer to it and attach it.)*

**G** A certified copy of \_\_\_\_\_

*(identify document by nature and date)*

**G** A subpoena on behalf of \_\_\_\_\_

*(identify party on whose behalf subpoena is sought)*

**G** Other *(describe)* \_\_\_\_\_

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor or party)*

*(Name, address, telephone and fax number of  
solicitor of party)*

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## FORM 41

Rule 41

## SUBPOENA

*(General Heading — Use Form 66)**(Court Seal)*

## SUBPOENA

TO: *(Name and address of witness)*

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE IN COURT at the hearing of this proceeding on *(day)*, *(date)* at *(time)*, at *(place)*, and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things: *(Set out the nature and date of each document and the nature of thing and give particulars sufficient to identify each one.)*

ATTENDANCE MONEY for *(number of days)* day(s) of attendance is served with this subpoena, calculated in accordance with Tariff A of the *Federal Courts Rules*, as follows:

Attendance allowance of \$_____ daily	\$_____
Transportation allowance	\$_____
Overnight accommodations and meal allowance	\$_____
TOTAL	\$_____

If further attendance is required, you will be entitled to additional money.

IF YOU FAIL TO ATTEND OR REMAIN IN ATTENDANCE AS REQUIRED BY THIS SUBPOENA, A WARRANT MAY BE ISSUED FOR YOUR ARREST.

(Date)

Issued by: \_\_\_\_\_  
*(Registry Officer)*

Address of  
local office: \_\_\_\_\_

This subpoena was issued at the request of, and inquiries may be directed to:

*(Name, address, telephone and fax number of solicitor or party)*

**ORDER FOR ATTENDANCE OF PERSON IN CUSTODY***(Court File No.)**(General Heading — Use Form 66)***ORDER FOR ATTENDANCE OF PERSON IN CUSTODY**

TO THE OFFICERS OF *(name of penitentiary, correctional institution, etc.)*  
AND TO ALL POLICE OFFICERS:

WHEREAS it appears that the attendance of *(name)*, who is detained in custody, is necessary to this proceeding,

THIS COURT ORDERS that *(name)* be brought before this court on *(day)*, *(date)*, at *(time)*, at *(place)*, and that the said *(name)* be returned and readmitted immediately thereafter to the correctional institution or other facility from which the said *(name)* was brought.

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*Signature of Judge or Prothonotary*

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**FORM 46**

Rule 46

**WARRANT FOR ARREST (DEFAULTING WITNESS)***(General Heading — Use Form 66)***WARRANT FOR ARREST**

TO ALL POLICE OFFICERS  
AND TO OFFICERS OF ALL CORRECTIONAL INSTITUTIONS IN CANADA:

WHEREAS the witness (name), of (address), was served with a subpoena to give evidence at the hearing of this proceeding, and the proper attendance money was paid or tendered,

AND WHEREAS the witness failed to obey the summons, and I am satisfied that the evidence of the witness is material to this proceeding.

YOU ARE ORDERED TO ARREST and bring the witness (name) before this Court to give evidence in this proceeding, and if the Court is not then sitting or if the witness cannot be brought before the Court, to deliver him or her to a correctional institution or other secure facility to be admitted and detained there until the witness can be brought before the Court.

\_\_\_\_\_  
*(Signature of Judge)*

**FORM 66**

Rule 66

**GENERAL HEADING****ACTION***(Court File No.)***FEDERAL COURT***(where a simplified action under rule 292:****SIMPLIFIED ACTION)*****BETWEEN:***(Name)***Plaintiff**

and

*(Name)***Defendant***(Title of Document)**(Text of Document)*

---

**APPLICATION**

(Court File No.)

FEDERAL COURT (or *FEDERAL COURT OF APPEAL*)

BETWEEN:

(Name)

Applicant

and

(Name)

Respondent

APPLICATION UNDER (statutory provision or rule under which application is made)

(Title of Document)

(Text of Document)

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**APPEAL**

(Court File No.)

FEDERAL COURT OF APPEAL (or *FEDERAL COURT*)

BETWEEN:

(Name)

Appellant

and

(Name)

Respondent

(Title of Document)

(Text of Document)

---

**ORDER**

FEDERAL COURT (or *FEDERAL COURT OF APPEAL*)

(Name of judge  
or prothonotary)

(Date)

(Court seal)

(Style of cause)

(Title of Order)

(Text of Order)

---

**FORM 69**

Rule 69

**NOTICE OF CONSTITUTIONAL QUESTION***(General Heading — Use Form 66)***NOTICE OF CONSTITUTIONAL QUESTION**

The *(identify party)* intends to question the constitutional validity, applicability or effect *(state which)* of *(identify the particular legislative provision)*.

The question is to be argued on *(day)*, *(date)* at *(time)*, at *(place)*.

The following are the material facts giving rise to the constitutional question: *(Set out concisely the material facts that relate to the constitutional question. Where appropriate, attach pleadings or reasons for decision.)*

The following is the legal basis for the constitutional question: *(Set out concisely the legal basis for each constitutional question and identify the nature of the constitutional principles to be argued.)*

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor or party)*

*(Name, address, telephone and fax number of solicitor of party)*

TO: The Attorney General of Canada  
The Attorney General of *(each province)*

**FORM 71**

Rule 71

**FAX COVER PAGE****FAX COVER PAGE**

- 1.Name, address and telephone number of sender:
- 2.Date and time of transmission:
- 3.Total number of pages transmitted, including cover page:
- 4.Number of a fax machine at which documents may be received:
- 5.Name and telephone number of person to contact if problems occur in transmission:

**FORM 80A**

Rule 80

**AFFIDAVIT***(General Heading — Use Form 66)***AFFIDAVIT OF (Name)**

I, *(full name and occupation of deponent)*, of the *(City, Town, etc.)* of *(name)* in the *(County, Regional Municipality, etc.)* of *(name)*, SWEAR *(or AFFIRM)* THAT:

1. *(Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact.)*

Sworn *(or Affirmed)* before me at  
the *(City, Town, etc.)* of *(name)*  
in the *(County, Regional Municipality,*  
*etc.)* of *(name)* on *(date)*.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
*(or as the case may be)*

\_\_\_\_\_  
*(Signature of Deponent)*

SOR/2002-417, s. 26.

**FORM 80B**

Rule 80

**FORM OF OATH - INTERPRETER**

You swear *(or affirm)* that you understand the *(language of deponent)* and the language in which the affidavit is written and that you will faithfully translate orally the affidavit and the oath *(or affirmation)* for the deponent to the best of your skill and understanding. *(In an oath, conclude: So help you God.)*

SOR/2002-417, s. 27.

**FORM 80C**

Rule 80

**FORM OF JURAT WHERE DEPONENT IS SWORN BY INTERPRETATION**

Sworn *(or Affirmed)* before me at the *(City, Town, etc.)* of *(name)* in the *(Regional Municipality, etc.)* of *(name)* by the interpretation of *(name of interpreter)*, who had previously sworn *(affirmed)* that *(he or she)* was well acquainted with the *(name of deponent's language)* and *(name of official language in which affidavit is written)* and that *(he or she)* would faithfully interpret the said affidavit, on *(date)*.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
*(or as the case may be)*

\_\_\_\_\_  
*(Signature of Deponent)*

SOR/2002-417, s. 27.

**FORM 91**

Rule 91

**DIRECTION TO ATTEND***(General Heading — Use Form 66)***DIRECTION TO ATTEND**TO: *(name of person to be examined)*

YOU ARE REQUIRED TO ATTEND AN EXAMINATION (for discovery, in aid of execution, etc.) on behalf of *(identify party)* on *(day)*, *(date)* at *(time)* at the office of *(name, address and telephone number of examiner)*.

YOU ARE ALSO REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things: *(Set out the nature of each document and thing and give particulars sufficient to identify each one.)*

TRAVEL EXPENSES for *(number of days)* day(s) of attendance is served with this direction, calculated in accordance with Tariff A of the *Federal Courts Rules*, as follows:

Transportation allowance	\$ _____
Overnight accommodations and meal allowance	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>

If further attendance is required, you will be entitled to additional money.

THE EXAMINATION WILL BE CONDUCTED IN (IDENTIFY OFFICIAL LANGUAGE). If you prefer to be examined in the other official language, an interpreter may be required and you must immediately advise the solicitor for the party conducting the examination.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

INQUIRIES CONCERNING THIS DIRECTION may be directed to *(name and telephone number of contact person)*.

*(Date)*\_\_\_\_\_  
*(Signature of solicitor or party)**(Name, address, telephone and fax number of solicitor or examining party)*

SOR/2004-283, s. 35

**FORM 93**

Rule 93

**FORM OF OATH OR AFFIRMATION — INTERPRETER**

You swear *(or affirm)* that you understand the *(language of witness)* language and the language in which the examination is to be conducted and that you will truly interpret the oath *(or affirmation)* to the witness, all questions put to the witness and the answers of the witness, to the best of your skill and understanding. *(In an oath, conclude: So help you God.)*

**FORM 99A**

Rule 99

**WRITTEN EXAMINATION***(General Heading — Use Form 66)***WRITTEN EXAMINATION**TO: *(name of person required to answer the written examination)*

The *(identify examining party)* has chosen to examine the *(identify person to be examined)* for discovery *(or in aid of execution, etc.)*.

You are required to answer the questions in the schedule by affidavit in Form 99B prescribed by the *Federal Courts Rules*.

The affidavit containing the answers is to be served on all other parties within 30 days from the date on which these questions are served on you.

*(Date)*\_\_\_\_\_  
*(Signature of solicitor or party)**(Name, address, telephone and fax number of solicitor or examining party)***SCHEDULE***(Set out the questions concisely, each in a separate paragraph and numbered consecutively.)*

SOR/2004-283, s. 35

**FORM 99B**

Rule 99

**ANSWERS TO WRITTEN EXAMINATION***(General Heading — Use Form 66)*AFFIDAVIT OF *(Name)*

I, *(full name and occupation of deponent)*, of the *(City, Town, etc.)* of *(name)* in the *(County, Regional Municipality, etc.)* of *(name)* SWEAR *(or AFFIRM)* THAT the answers set out in Exhibit A to this affidavit to the questions dated *(date)* submitted by the *(identify examining party)* are true, to the best of my information, knowledge and belief:

Sworn *(or Affirmed)* before me at  
the *(City, Town, etc.)* of *(name)*  
in the *(County, Regional Municipality,*  
*etc.)* of *(name)* on *(date)*.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
*(or as the case may be)*\_\_\_\_\_  
*(Signature of Deponent)***EXHIBIT A***(Set out the answers to the questions concisely, each in a separate paragraph and numbered consecutively.)*

**FORM 124A**

Rule 124

**NOTICE OF CHANGE OF SOLICITOR***(General Heading — Use Form 66)***NOTICE OF CHANGE OF SOLICITOR**

The plaintiff *(or as the case may be)*, formerly represented by *(name of former solicitor)*, has appointed *(name of new solicitor)* as solicitor of record.

*(Date)*\_\_\_\_\_  
*(Signature of new solicitor)**(Name, address, telephone and fax number of new solicitor)*TO: *(Name and address of former solicitor)*AND TO: *(Names and addresses of other solicitors or parties)***FORM 124B**

Rule 124

**NOTICE OF APPOINTMENT OF SOLICITOR***(General Heading — Use Form 66)***NOTICE OF APPOINTMENT OF SOLICITOR**

The plaintiff *(or as the case may be)*, formerly acting in person, has appointed *(name)* as solicitor of record.

*(Date)*\_\_\_\_\_  
*(Signature of solicitor of record)**(Name, address, telephone and fax number of solicitor of record)*TO: *(Names and addresses of other solicitors or parties)***FORM 124C**

Rule 124

**NOTICE OF INTENTION TO ACT IN PERSON***(General Heading — Use Form 66)***NOTICE OF INTENTION TO ACT IN PERSON**

The plaintiff *(or as the case may be)*, formerly represented by *(name)* as solicitor of record, intends to act in person.

*(Date)*\_\_\_\_\_  
*(Signature of party acting in person)**(Name, address, telephone and fax number of party acting in person)*TO: *(Name and address of former solicitor of record)*AND TO: *(Names and addresses of other solicitors or parties)*

---

**FORM 128**

Rule 128

**ACKNOWLEDGMENT OF RECEIPT***(General Heading — Use Form 66)***ACKNOWLEDGEMENT OF RECEIPT**TO: *(full name)*You are served by mail with the documents enclosed with this card in accordance with the *Federal Courts Rules*.

You are required to sign the acknowledgment below and mail this card immediately after you receive it. If you fail to do so, the documents may be served on you in another manner and you may have to pay the costs of service.

**ACKNOWLEDGMENT OF RECEIPT**I ACKNOWLEDGE that I have received a copy of the following documents: *(To be completed in advance by the sender of the documents. Include sufficient particulars to identify each document.)**(Date)*\_\_\_\_\_  
*(Signature of person served)**(The reverse side of this card must bear the name and address of the sender and the required postage.)*SOR/2004-283, s. 35

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**FORM 140**

Rule 140

**FAX COVER PAGE****FAX COVER PAGE**

1. Name, address and telephone number of sender:
  2. Name of person on whom document served:
  3. Date and time of transmission:
  4. Total number of pages transmitted, including cover page:
  5. Number of a fax machine at which documents may be received:
  6. Name and telephone number of person to contact if problems occur in transmission:
-



**AFFIDAVIT OF SERVICE**

*(General Heading — Use Form 66)*

I, *(full name and occupation of deponent)*, of the *(City, Town, etc.)* of *(name)* in the *(County, Regional Municipality, etc.)* of *(name)*,  
SWEAR *(or AFFIRM)* THAT:

*(for personal service on an individual, corporation, etc.)*

1. On *(date)*, at *(time)*, I served *(identify person served)* with *(identify the document served)* leaving a copy with that person at *(address where service was made)*.

*(Where the Federal Courts Rules provide for personal service on a corporation, etc.,  
by leaving a copy of the document with another person, substitute:)*

by leaving a copy with *(identify and give the position or function of the person served)* at *(address where service was made)*.

2. I was able to identify the person by means of *(state the means by which the person's identity was ascertained)*.

*(for personal service by leaving a copy with an adult person in the same household)*

1. I served *(identify person served)* with *(identify the document served)* leaving a copy on *(date)*, at *(time)* with a person *(insert name if known)* who appeared to be an adult member of the same household in which *(identify person served)* is residing at *(address where service was made)*, and by sending a copy by regular mail *(or registered mail)* on *(date)* to *(identify person served)* at the same address.

2. I ascertained that the person was an adult member of the household by means of *(State how it was ascertained that the person was an adult member of the household.)*.

*(for personal service by mail)*

1. On *(date)*, at *(time)*, I sent to *(identify person served)* by registered/ordinary mail a copy of *(identify the document served)*.

2. On *(date)*, I received the attached acknowledgement of receipt card/post office receipt bearing a signature that purports to be the signature of *(identify person)*.

*(for service by mail on solicitor)*

I served *(identify party served)* with *(identify document served)* by sending a copy by registered/ordinary mail on *(date)* to *(name of solicitor)*, solicitor for the *(identify party)*.

*(for non-personal service by fax on a solicitor)*

I served *(identify party served)* with *(identify document served)* by sending a copy by fax on *(date)* to *(name of solicitor)*, solicitor for the *(identify party)*, at *(fax number)*.

*(for non-personal service by courier)*

1. I served *(identify party served)* with *(identify document served)* by sending a copy by *(name of courier)*, a courier to *(name of solicitor)*, solicitor for the *(identify party)*, at *(full address of place for delivery)*.

2. The copy was given to the courier on *(date)*.

*(for non-personal service on party acting in person)*

1. I served *(identify party served)* with *(identify document served)* by sending a copy by registered/ordinary mail/fax/courier on *(date)* to *(full mailing address/fax number)*, the last address for service provided by *(identify party)* *(or, where no such address has been provided:)* the last known address of *(identify party)*.

2. The copy was given to the courier on *(date)*.

Sworn *(or Affirmed)* before me at  
the *(City, Town, etc.)* of *(name)*  
in the *(County, Regional Municipality,  
etc.)* of *(name)* on *(date)*.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
*(or as the case may be)*

\_\_\_\_\_  
*(Signature of Deponent)*



**FORM 146B**

Rule 146

**SOLICITOR'S CERTIFICATE OF SERVICE**

*(If certificate is not endorsed directly on copy of document to be filed,  
insert General Heading — Use Form 66)*

**SOLICITOR'S CERTIFICATE OF SERVICE**

I, *(name of solicitor)*, Solicitor, certify that I caused the plaintiff *(or as the case may be)*, *(name of party served)* to be duly served with *(if enclosure "this document"; otherwise identify document served)* by *(method of service, including name of any person on behalf of whom the party was served)* on *(date of service)*.

\_\_\_\_\_  
*(Signature of Solicitor)*

**FORM 149**

Rule 149

**TENDER OF PAYMENT INTO COURT**

*(General Heading — Use Form 66)*

**TENDER OF PAYMENT INTO COURT**

*(To be presented to Registry in triplicate with certified cheque or other bill of exchange for money being paid in.)*

Pursuant to *(here insert reference to Court order, statutory provision or rule authorizing or requiring payment into court)*, the undersigned hereby tenders the attached certified cheque *(or other bill of exchange)* in the sum of *(amount)* Canadian currency, payable to the Receiver General for Canada as a payment into court for *(here insert purpose or object of payment into court)*.

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor or party)*

*(Name, address, telephone and fax number of  
solicitor or party)*

Receipt of the above certified cheque *(or other bill of exchange)* is acknowledged.

*(Date)*

\_\_\_\_\_  
*(Signature of Registry Officer)*

**FORM 166**

Rule 166

**NOTICE OF DISCONTINUANCE**

*(General Heading — Use Form 66)*

**NOTICE OF DISCONTINUANCE**

The plaintiff *(or as the case may be)* wholly discontinues this action *(or as the case may be)*.

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor or party filing notice)*

*(Name, address, telephone and fax number of  
solicitor or party filing notice)*

TO: *(Names and addresses of other solicitors or parties)*

## FORM 171A

Rule 171

## STATEMENT OF CLAIM

*(General Heading — Use Form 66)**(Court seal)*

## STATEMENT OF CLAIM

## TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

*(Date)*

Issued by: \_\_\_\_\_  
*(Registry Officer)*

Address of  
local office: \_\_\_\_\_

TO: *(Name and address of each defendant)*

*(Separate page)*

## CLAIM

1. The plaintiff claims: *(State here the precise relief claimed.)*

*(In consecutively numbered paragraphs, set out each allegation of material fact relied on to substantiate the claim.)*

The plaintiff proposes that this action be tried at *(place)*.

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor or plaintiff)*

*(Name, address, telephone and fax number of  
solicitor or plaintiff)*

**FORM 171B**

Rule 171

**STATEMENT OF DEFENCE***(General Heading — Use Form 66)***STATEMENT OF DEFENCE**

1. The defendant admits the allegations contained in paragraphs \_\_\_\_\_ of the statement of claim.
2. The defendant denies the allegations contained in paragraphs \_\_\_\_\_ of the statement of claim.
3. The defendant has no knowledge of the allegations contained in paragraphs \_\_\_\_\_ of the statement of claim.
4. *(Set out in separate, consecutively numbered paragraphs, each allegation of material fact relied on by way of defence.)*

*(Date)*\_\_\_\_\_  
*(Signature of solicitor or defendant)**(Name, address, telephone and fax number of solicitor or defendant)*TO: *(Name and address of plaintiff's solicitor or plaintiff)***FORM 171C**

Rule 171

**REPLY***(General Heading — Use Form 66)***REPLY**

1. The plaintiff admits the allegations contained in paragraphs \_\_\_\_\_ of the statement of defence.
2. The plaintiff denies the allegations contained in paragraphs \_\_\_\_\_ of the statement of defence.
3. The plaintiff has no knowledge of the allegations contained in paragraphs \_\_\_\_\_ of the statement of defence.
4. *(Set out in separate, consecutively numbered paragraphs, each allegation of material fact relied on by way of reply to the statement of defence.)*

*(Date)*\_\_\_\_\_  
*(Signature of solicitor or plaintiff)**(Name, address, telephone and fax number of solicitor or plaintiff)*TO: *(Name and address of defendant's solicitor or defendant)*

---

**FORM 171D**

Rule 171

**COUNTERCLAIM  
AGAINST PARTIES TO MAIN ACTION ONLY**

*(Include the counterclaim in the same document as the statement of defence and entitle the document STATEMENT OF DEFENCE AND COUNTERCLAIM. The counterclaim follows the last paragraph of the statement of defence.)*

**COUNTERCLAIM**

The defendant *(name if more than one defendant)* claims: *(State here the precise relief claimed.)*

*(Then set out, in separate, consecutively numbered paragraphs, each allegation of material fact relied on to substantiate the counterclaim. Continue the numbering sequence initiated in the statement of defence.)*

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor or defendant)*

*(Name, address, telephone and fax number of solicitor or defendant)*

TO: *(Names and addresses of other solicitors or parties)*

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## FORM 171E

Rule 171

**COUNTERCLAIM  
AGAINST PLAINTIFF AND PERSON NOT ALREADY PARTY  
TO THE MAIN ACTION**

*(General Heading — Use Form 66)*

*(Add a second title of proceeding, as follows:)*

*(Court seal)*

AND BETWEEN:

*(Name)*

Plaintiff by counterclaim

and

*(Name)*

Defendants to the counterclaim

STATEMENT OF DEFENCE AND COUNTERCLAIM

TO THE DEFENDANTS TO THE COUNTERCLAIM:

A LEGAL PROCEEDING has been commenced against you by way of a counterclaim in an action in this Court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or a solicitor acting for you must prepare a defence to counterclaim in Form 171F prescribed by the *Federal Courts Rules*, serve it on the plaintiff by counterclaim's solicitor, or where the plaintiff by counterclaim is self-represented, serve it on the plaintiff by counterclaim, and file it, with proof of service, WITHIN 30 DAYS after this statement of defence and counterclaim is served on you.

If you are not already a party to the main action and you are served in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is 60 days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (*telephone 613-992-4238*) or at any local office.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*(Date)*

Issued by: \_\_\_\_\_

*(Registry Officer)*

Address of  
local office: \_\_\_\_\_

TO: *(Name and address of solicitor or  
of defendant to counterclaim who is not already  
a party to the main action)*

AND TO: *(Names and addresses of other  
solicitors or parties)*

*(Separate page)*

STATEMENT OF DEFENCE

*(Set out statement of defence, in separate, consecutively numbered paragraphs.)*

COUNTERCLAIM

*(Set out counterclaim, continuing consecutive numbering of paragraphs.)*

\_\_\_\_\_  
*(Signature of solicitor or defendant)*





**FORM 171F**

Rule 171

**DEFENCE TO COUNTERCLAIM***(General Heading — Use Form 66, including second style of cause per Form 171E, if required)**(A plaintiff who files a reply in the main action must include the defence to counterclaim in the same document as the reply, entitled REPLY AND DEFENCE TO COUNTERCLAIM, in which the defence to counterclaim follows immediately after the last paragraph of the reply — see Form 171C, continuing the numbering sequence initiated in the reply.)***DEFENCE TO COUNTERCLAIM**

The defendant to the counterclaim admits the allegations contained in paragraphs \_\_\_\_ of the counterclaim.

The defendant to the counterclaim denies the allegations contained in paragraphs \_\_\_\_ of the counterclaim.

The defendant to the counterclaim has no knowledge of the allegations contained in paragraphs \_\_\_\_ of the counterclaim.

*(Set out in separate, consecutively numbered paragraphs, each allegation of material fact relied on by way of defence to the counterclaim.)**(Date)*\_\_\_\_\_  
*(Signature of solicitor or defendant to counterclaim)**(Name, address, telephone and fax number of solicitor or defendant to counterclaim)*TO: *(Name and address of other solicitors or parties)***FORM 171G**

Rule 171

**REPLY TO DEFENCE TO COUNTERCLAIM***(General Heading — Use Form 66, including second style of cause per Form 171E, if required)***REPLY TO DEFENCE TO COUNTERCLAIM**

1. The plaintiff by counterclaim admits the allegations contained in paragraphs \_\_\_\_ of the defence to counterclaim.

2. The plaintiff by counterclaim denies the allegations contained in paragraphs \_\_\_\_ of the defence to counterclaim.

3. The plaintiff by counterclaim has no knowledge of the allegations contained in paragraphs \_\_\_\_ of the defence to counterclaim.

4. *(Set out in separate, consecutively numbered paragraphs, each allegation of material fact relied on by way of reply to the defence to the counterclaim.)**(Date)*\_\_\_\_\_  
*(Signature of solicitor or plaintiff by counterclaim)**(Name, address, telephone and fax number of solicitor or plaintiff by counterclaim)*TO: *(Name and address of other solicitors or parties)*

**THIRD PARTY CLAIM  
AGAINST PERSON ALREADY PARTY TO THE ACTION**

*(General Heading — Use Form 66)*

*(Refer to the requirements of Rules 193 and 194 to determine whether third party claim may be served without first obtaining leave of the Court.)*

**THIRD PARTY CLAIM**

1. The defendant claims against the third party: *(State here precise relief claimed.)*

*(Set out in consecutively numbered paragraphs each allegation of material fact relied on to substantiate the third party claim.)*

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor or defendant)*

*(Name, address, telephone and fax number of  
solicitor or defendant)*

*TO: (Name and address of third party)*

---

**THIRD PARTY CLAIM  
AGAINST PERSON NOT ALREADY PARTY TO THE ACTION**

(Court File No.)

FEDERAL COURT

BETWEEN:

(Name)

Plaintiff

and

(Court seal)

(Name)

Defendant

and

(Name)

Third Party

(Refer to the requirements of Rules 193 and 194 of the Federal Courts Rules to determine whether third party claim may be issued without first obtaining leave of the Court.)

THIRD PARTY CLAIM

TO THE THIRD PARTY:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by way of a third party claim in an action in this Court.

The action was commenced by the plaintiff against the defendant for the relief claimed in the statement of claim served with this third party claim. The defendant has defended the action on the grounds set out in the statement of defence served with this third party claim. The defendant's claim against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS THIRD PARTY CLAIM, you or a solicitor acting for you are required to prepare a statement of defence in Form 171I prescribed by the *Federal Courts Rules*, serve it on the solicitors for the other parties, or, where a party does not have a solicitor, serve it on the party, and file it, with proof of service, at a local office of this Court, WITHIN THIRTY DAYS after this third party claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

YOU MAY ALSO DEFEND the action by the plaintiff against the defendant by serving and filing a statement of defence in Form 171B prescribed by the *Federal Courts Rules* within the time for serving and filing your third party defence.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date)

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of  
local office: \_\_\_\_\_

TO: (Name and address of third party)

(Separate page)

CLAIM

1. The defendant claims against the third party: (State here precise relief claimed.)

(Then set out in consecutively numbered paragraphs each allegation of material fact relied on to substantiate the third party claim.)

(Date)

\_\_\_\_\_  
(Signature of solicitor or defendant)

(Name, address, telephone and fax number of  
solicitor or defendant)



**FORM 171J**

Rule 171

**THIRD PARTY DEFENCE***(General Heading — Use Form 66, with style of cause in accordance with Form 171H)***THIRD PARTY DEFENCE**

1. The third party admits the allegations contained in paragraphs \_\_\_\_\_ of the third party claim.
2. The third party denies the allegations contained in paragraphs \_\_\_\_\_ of the third party claim.
3. The third party has no knowledge of the allegations contained in paragraphs \_\_\_\_\_ of the third party claim.
4. *(Set out in separate, consecutively numbered paragraphs, each allegation of material fact relied on by way of defence to the third party claim.)*

*(Date)*\_\_\_\_\_  
*(Signature of solicitor or third party)**(Name, address, telephone and fax number of solicitor or third party)*TO: *(Names and addresses of other solicitors or parties)***FORM 171K**

Rule 171

**REPLY TO THIRD PARTY DEFENCE***(General Heading — Use Form 66, with style of cause in accordance with Form 171I)***REPLY TO THIRD PARTY DEFENCE**

1. The defendant admits the allegations contained in paragraphs \_\_\_\_\_ of the third party defence.
2. The defendant denies the allegations contained in paragraphs \_\_\_\_\_ of the third party defence.
3. The defendant has no knowledge of the allegations contained in paragraphs \_\_\_\_\_ of the third party defence.
4. *(Set out in separate, consecutively numbered paragraphs, each allegation of material fact relied on by way of reply to the third party defence.)*

*(Date)*\_\_\_\_\_  
*(Signature of solicitor or third party)**(Name, address, telephone and fax number of solicitor or third party)*TO: *(Names and addresses of other solicitors or parties)*

**AFFIDAVIT OF DOCUMENTS***(General Heading — Use Form 66)***AFFIDAVIT OF DOCUMENTS**

I, *(full name and occupation of deponent)*, of the *(City, Town, etc.)* of *(name)* in the *(County, Regional Municipality, etc.)* of *(name)*, SWEAR *(or AFFIRM)* THAT:

1. I am the plaintiff *(or as the case may be)* in this action.

*(or)*

I have been authorized by the plaintiff *(or as the case may be)*, to make this affidavit.

2. I have conducted a diligent search of my/*(name of party's)* records and have made appropriate inquiries of others to inform myself in order to make this affidavit.

3. This affidavit discloses, to the full extent of my knowledge, information and belief, all of the documents relevant to any matter in issue in the action that are in my/*(name of party's)* possession, power or control, that were but are no longer in my/*(name of party's)* possession, power or control or that I believe are in the possession, power or control of a person who is not a party to the action.

4. I have listed and described in Schedule 1 all of the relevant documents, or bundles of relevant documents, that are in my/*(name of party's)* possession, power or control and for which no privilege is claimed.

5. I have listed and described in Schedule 2 all of the relevant documents, or bundles of relevant documents, that are or were in my/*(name of party's)* possession, power or control and for which privilege is claimed and have stated in that Schedule the grounds for each claim of privilege in respect of a document or bundle of documents.

6. I have listed and described in Schedule 3 all of the relevant documents, or bundles of relevant documents, that were but are no longer in my/*(name of party's)* possession, power or control and for which no privilege is claimed and have described in that Schedule how possession, power or control of any document or bundle of documents was lost and their current location, so far as I can determine.

7. I have listed and described in Schedule 4 all of the relevant documents, or bundles of relevant documents, that I believe are in the possession, power or control of a person who is not a party to the action and have described in that Schedule the identity of each such person, including the person's name and address, if known.

8. I am not aware of any other relevant document other than those that are listed in this affidavit or that are or were only in the possession, power or control of another party in the action.

Sworn *(or Affirmed)* before me at  
the *(City, Town, etc.)* of *(name)*  
in the *(County, Regional Municipality,*  
*etc.)* of *(name)* on *(date)*.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
*(or as the case may be)*

\_\_\_\_\_  
*(Signature of Deponent)*

**CERTIFICATE OF SOLICITOR**

I, *(full name of solicitor)*, certify that I have explained to the deponent of this affidavit of documents the necessity of making full disclosure under Rule 223 of the *Federal Courts Rules* and the possible consequences of failing to do so.

The documents listed in Schedule 1 to this affidavit may be inspected at *(address)* on *(dates)* at *(times)* or a place, date and time to be agreed upon.

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor)*

## SCHEDULE 1

The following are all of the relevant documents, or bundles of relevant documents, that are in my/(name of party's) possession, power or control and for which no privilege is claimed:

*(Number each document or bundle consecutively. Set out the nature and date of the document or bundle and other particulars sufficient to identify it.)*

## SCHEDULE 2

The following are all of the relevant documents, or bundles of relevant documents, that are or were in my/(name of party's) possession, power or control and for which privilege is claimed:

*(Include the grounds for claiming privilege for each document.)*

## SCHEDULE 3

The following are all of the relevant documents, or bundles of relevant documents, that were but are no longer in my/(name of party's) possession, power or control and for which no privilege is claimed:

*(Describe how possession, power or control over each document or bundle was lost, and give the current location of each of them.)*

## SCHEDULE 4

The following are all of the relevant documents, or bundles of relevant documents, that I believe are in the possession, power or control of a person who is not a party to the action:

*(Include the identity of each person, including the person's name and address, if known.)*

SOR/2002-417, s. 28(E);SOR/2004-283, s. 35

## FORM 255

Rule 255

## REQUEST TO ADMIT

*(General Heading — Use Form 66)*

## REQUEST TO ADMIT

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the truth of the following facts: *(Set out facts in consecutively numbered paragraphs.)*

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the authenticity of the following documents: *(Number each document and give particulars sufficient to identify each. Specify whether the document is an original or a copy.)*

Attached to this request is a copy of each of the documents referred to above. *(Where it is not practicable to attach a copy or where the party already has a copy, state which document is not attached and the reason for not attaching it.)*

YOU MUST RESPOND TO THIS REQUEST by serving a response to request to admit in Form 256 prescribed by the *Federal Courts Rules* WITHIN 20 DAYS after this request is served on you. If you fail to do so, you will be deemed to admit, for the purposes of this proceeding only, the truth of the facts and the authenticity of the documents set out above.

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor or party)*

*(Name, address, telephone and fax number of solicitor or party serving response to request)*

TO: *(Name and address of solicitor or party on whom request is served)*





**FORM 256**

Rule 256

**RESPONSE TO REQUEST TO ADMIT***(General Heading — Use Form 66)***RESPONSE TO REQUEST TO ADMIT**In response to the request to admit dated *(date)*, the *(party responding to the request)*:

1. Admits the truth of facts numbered: *(specify)*
2. Admits the authenticity of documents numbered: *(specify)*
3. Denies the truth of facts numbered: *(specify)*  
for the following reasons: *(Set out reasons for denying each fact.)*

4. Denies the authenticity of documents numbered: *(specify)*  
for the following reasons: *(Set out reasons for denying authenticity of each document.)*

*(Date)*\_\_\_\_\_  
*(Signature of solicitor or party)**(Name, address, telephone and fax number of  
solicitor or party serving request)*TO: *(Name and address of solicitor or  
party on whom request is served)***FORM 258**

Rule 258

**REQUISITION FOR PRE-TRIAL CONFERENCE***(General Heading — Use Form 66)***REQUISITION FOR PRE-TRIAL CONFERENCE**THE PLAINTIFF *(or DEFENDANT (if more than one (name)), or as the case may be)* REQUESTS that a date be set for a pre-trial conference in this action.THE PLAINTIFF *(or DEFENDANT or as the case may be)* CERTIFIES:

1. All examinations for discovery which the plaintiff *(or defendant or as the case may be)* intends to conduct are complete.
2. A settlement discussion under Rule 257 of the *Federal Courts Rules* was held on *(date)*.
3. The pre-trial conference should be held at *(place, or by teleconference, etc.)*.
4. The parties are available at any time except: *(List all dates within the next 60 days on which the parties are not available for a pre-trial conference.)*
5. The pre-trial conference will be in *(English or French, or partly in English and partly in French)*.

*(Date)*\_\_\_\_\_  
*(Signature of solicitor or party)**(Name, address, telephone and fax number of  
solicitor or party)*TO: *(Name and address of each solicitor or party served with requisition)*  
SOR/2004-283, s. 35

**NOTICE OF PRE-TRIAL CONFERENCE***(General Heading — Use Form 66)**(Court seal)***NOTICE OF PRE-TRIAL CONFERENCE****TO THE PARTIES AND THEIR SOLICITORS:**

PURSUANT TO the requisition filed by *(identify party)* on *(date)*, a pre-trial conference will be held on *(day)*, *(date)* at *(time)* at *(location)*.

ALL PARTIES OR THEIR AUTHORIZED REPRESENTATIVES must participate together with all solicitors of record, unless the Court directs otherwise.

A PRE-TRIAL CONFERENCE MEMORANDUM in accordance with subsection 258(3) of the *Federal Courts Rules* must be served and filed by each party no later than *(date)*.

**PARTICIPANTS MUST BE PREPARED TO ADDRESS**

- (a)* the possibility of settlement of any or all of the issues in the action and of referring any unsettled issues to a dispute resolution conference;
- (b)* simplification of the issues in the action;
- (c)* definition of any issues requiring the evidence of expert witnesses;
- (d)* the possibility of obtaining admissions that may facilitate the trial;
- (e)* the issue of liability;
- (f)* the amount of damages, where damages are claimed;
- (g)* the estimated duration of the trial;
- (h)* the advisability of having the Court appoint an expert to give testimony at the trial;
- (i)* the advisability of a reference;
- (j)* suitable dates for trial;
- (k)* the necessity for interpreters or simultaneous interpretation at the trial;
- (l)* whether a notice of constitutional question needs to be served under section 57 of the *Federal Courts Act*;
- (m)* the content of the trial record; and
- (n)* any other matter that may promote the timely and just disposition of the action.

YOU ARE REQUIRED TO CONFIRM YOUR ATTENDANCE, either in person or by teleconference, by telephoning:  
*(Name and telephone number)*

*(Date)*

Issued by: \_\_\_\_\_  
*(Registry Officer)*

Address of  
local office: \_\_\_\_\_

## FORM 272A

Rule 272

**ORDER FOR COMMISSION AND LETTER OF REQUEST***(General Heading — Use Form 66)*

## ORDER

1.THIS COURT ORDERS that the Administrator prepare and issue a commission naming *(name)*, of *(address)* as commissioner to take the evidence of the witness *(name of witness)*, in *(name of state or country)* for use at trial.

2.THIS COURT ORDERS that the Administrator prepare and issue a letter of request addressed to the judicial authorities of *(name of state or country)*, requesting the issuing of such process as is necessary to compel the witness to attend and be examined before the commissioner.

3.THIS COURT ORDERS that *(particulars of any directions given by the Court, including as to costs incidental to the commission)*.

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*(Signature of judge or prothonotary)*

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**FORM 272B**

Rule 272

**COMMISSION***(General Heading — Use Form 66)**(Court seal)***COMMISSION**TO: *(Name and address of commissioner)*

YOU HAVE BEEN APPOINTED A COMMISSIONER for the purpose of taking evidence in a proceeding now pending in this Court by order of the Court made on *(date)*, a copy of which is attached.

YOU ARE GIVEN FULL AUTHORITY to do all things necessary for taking the evidence mentioned in the order authorizing this commission.

You are to send to this Court a transcript of the evidence taken, together with this commission, forthwith after the transcript is completed.

In carrying out this commission, you are to follow the terms of the attached order and the instructions contained in this commission.

THIS COMMISSION is signed and sealed by order of the Court.

*(Date)*

Issued by: \_\_\_\_\_

*(Registry Officer)*Address of  
local office: \_\_\_\_\_

## INSTRUCTIONS TO COMMISSIONER

1. Before acting on this commission, you must take the oath (*or affirmation*) set out below. You may do so before any person authorized pursuant to subsection 54(2) of the *Federal Courts Act* to take affidavits or administer oaths outside of Canada.

I, (*name*) swear (*or affirm*) that I will, according to the best of my skill and knowledge, truly and faithfully and without partiality to any of the parties to this proceeding, take the evidence of every witness examined under this commission, and cause the evidence to be transcribed and forwarded to the Court. (*In an oath, conclude: So help me God.*)

Sworn (*or Affirmed*) before me at the (*City, Town, etc.*) of (*name*) in the (*State, Country, etc.*) of (*name*) on (*date*).

\_\_\_\_\_  
(*Signature and office of person before whom oath or affirmation is taken*)

\_\_\_\_\_  
(*Signature of Commissioner*)

2. The examining party is required to give the person to be examined at least 10 days notice of the examination and, where the order so provides, to pay attendance money to the person to be examined.

3. You must arrange to have the evidence before you recorded and transcribed. You are to administer the following oath (*or affirmation*) to the person who records and transcribes the evidence:

You swear (*or affirm*) that you will truly and faithfully record and transcribe all questions put to all witnesses and their answers in accordance with the directions of the commissioner. (*In an oath, conclude: So help you God.*)

On consent of the parties, or where the order for this commission provides for it, the examination may be recorded on videotape or other similar medium.

4. You are to administer the following oath (*or affirmation*) to each witness whose evidence is to be taken:

You swear (*or affirm*) that the evidence to be given by you touching the matters in question between the parties to this proceeding shall be the truth, the whole truth, and nothing but the truth. (*In an oath, conclude: So help you God.*)

5. Where a witness does not understand the language or is deaf or mute, the evidence of the witness must be given through an interpreter. You are to administer the following oath (*or affirmation*) to the interpreter:

You swear (*or affirm*) that you understand the (*language of witness*) language and the language in which the examination is to be conducted and that you will truly interpret the oath (*or affirmation*) to the witness, all questions put to the witness and the answers of the witness, to the best of your skill and understanding. (*In an oath, conclude: So help you God.*)

6. You are to attach to this commission the transcript of the evidence and the exhibits, and any videotape or other recording of the examination. You are to complete the certificate set out below, and mail this commission, the transcript, the exhibits and any videotape or other recording of the examination to the office of the Court where the commission was issued. You are to keep a copy of the transcript and, where practicable, a copy of the exhibits until the Court disposes of this proceeding. Forthwith after you mail this commission and the accompanying material to the Court, you are to notify the parties who appeared at the examination that you have done so.

## CERTIFICATE OF COMMISSIONER

I, (*name*), certify that:

1. I administered the proper oath (*or affirmation*) to the person who recorded and transcribed the evidence, to the witness the transcript of whose evidence is attached and to any interpreter through whom the evidence was given.

2. The evidence of the witness was properly taken.

3. The evidence of the witness was properly transcribed.

(*Date*)

Issued by: \_\_\_\_\_

(*Signature of Commissioner*)

## FORM 272C

Rule 272

## LETTER OF REQUEST

*(General Heading — Use Form 66)**(Court seal)*

## LETTER OF REQUEST

TO THE JUDICIAL AUTHORITIES OF *(name of state or country)*

A PROCEEDING IS PENDING IN THIS COURT between *(name)*, plaintiff *(or as the case may be)* and *(name)* defendant *(or as the case may be)*.

IT HAS BEEN SHOWN TO THIS COURT that it appears necessary for the purpose of justice that a witness residing in your jurisdiction be examined there.

THIS COURT HAS ISSUED A COMMISSION to *(name of commissioner)* of *(address of commissioner)*, providing for the examination of the witness *(name of witness)* of *(address of witness)*.

YOU ARE REQUESTED, in furtherance of justice, to cause *(name of witness)* to appear before the commissioner by the means ordinarily used in your jurisdiction, if necessary to secure attendance, and to answer questions under oath or affirmation *(where desired add:)* and to bring to and produce at the examination the following documents and things: *(Set out the nature and date of each document and thing and give particulars sufficient to identify each document and thing.)*

YOU ARE ALSO REQUESTED to permit the commissioner to conduct the examination of the witness in accordance with the *Federal Courts Rules* and the commission issued by this Court.

AND WHEN YOU REQUEST IT, the Federal Court *(or Federal Court of Appeal)* is ready and willing to do the same for you in a similar case.

THIS LETTER OF REQUEST is signed and sealed by order of the Court made on *(date)*.

*(Date)*

Issued by: \_\_\_\_\_

*(Registry Officer)*Address of  
local office: \_\_\_\_\_

SOR/2004-283, ss. 26 and 35.

## FORM 301

Rule 301

## NOTICE OF APPLICATION

*(General Heading — Use Form 66)**(Court seal)*

## NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at *(place where Federal Court of Appeal (or Federal Court) ordinarily sits)*.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa *(telephone 613-992-4238)* or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*(Date)*

Issued by: \_\_\_\_\_

*(Registry Officer)*Address of  
local office: \_\_\_\_\_

TO: *(Name and address of each respondent)*  
*(Name and address of every other person*  
*required to be served)*

*(Separate page)*

## APPLICATION

*(Where the application is an application for judicial review)*

This is an application for judicial review in respect of

*(Identify the tribunal.)**(Set out the date and details of the decision, order or other matter in respect of which judicial review is sought.)*The applicant makes application for: *(State the precise relief sought.)*The grounds for the application are: *(State the grounds to be argued, including any statutory provision or rule relied on.)*This application will be supported by the following material: *(List the supporting affidavits, including documentary exhibits, and the portions of transcripts to be used.)**(If the applicant wishes a tribunal to forward material to the Registry, add the following paragraph:)*The applicant requests *(name of the tribunal)* to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the *(tribunal)* to the applicant and to the Registry: *(Specify the particular material.)**(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or applicant)*  
*(Name, address, telephone and fax*  
*number of solicitor or applicant)*





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**FORM 305**

Rule 305

**NOTICE OF APPEARANCE — APPLICATION***(General Heading — Use Form 66)***NOTICE OF APPEARANCE**

The respondent intends to oppose this application.

*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or respondent)**(Name, address, telephone and fax number of  
solicitor or respondent)***TO:** *(Names and addresses of other solicitors  
or parties)*

---

**REQUISITION FOR HEARING — APPLICATION***(General Heading — Use Form 66)***REQUISITION FOR HEARING**

THE APPLICANT REQUESTS that a date be set for the hearing of this application.

THE APPLICANT CONFIRMS:

1. The requirements of subsection 309(1) of the *Federal Courts Rules* have been complied with.
2. A notice of constitutional question has been served in accordance with section 57 of the *Federal Courts Act*.

*(or)*

There is no requirement to serve a notice of constitutional question under section 57 of the *Federal Courts Act* in this application.

3. The hearing should be held at *(place)*.
4. The hearing should last no longer than *(number)* hours *(or days)*.
5. The representatives of all parties to the application are as follows:
  - (a)* on behalf of the applicant: *(name of solicitor or party if self-represented)*  
who can be reached at: *(address, telephone and fax numbers)*
  - (b)* on behalf of the respondent: *(name of solicitor or party if self-represented)*  
who can be reached at: *(address, telephone and fax numbers)*
  - (c)* on behalf of the intervener: *(name of solicitor or party if self-represented)*  
who can be reached at: *(address, telephone and fax numbers)*

*(If more than one applicant, respondent or intervener represented by different solicitors, list all.)*

6. The parties are available at any time except: *(List all dates within the next 90 days on which the parties are not available for a hearing.)*
7. The hearing will be in *(English or French, or partly in English and partly in French)*.

*(Date)*

Issued by: \_\_\_\_\_  
*(Signature of solicitor or applicant)*  
*(Name, address, telephone and fax number of solicitor or applicant)*

TO: *(Name and address of each solicitor or party served with requisition)*

SOR/2004-283, s. 35

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**FORM 323**

Rule 323

**NOTICE OF INTENTION TO PARTICIPATE***(General Heading — Use Form 66)***NOTICE OF INTENTION TO PARTICIPATE**

*(The Attorney General of (Canada or as may be) or name of person who participated before tribunal) intends to participate in this reference.*

*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or respondent)*

*(Name, address, telephone and fax number of solicitor or respondent)*

**TO:** *(Names and addresses of other solicitors or parties)*

---

**NOTICE OF APPLICATION FOR REGISTRATION OF FOREIGN JUDGMENT**

*(General Heading — Use Form 66)*

**NOTICE OF APPLICATION FOR REGISTRATION OF FOREIGN JUDGMENT**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant for registration and enforcement in Canada of a foreign judgment granted against *(name of respondent)* by *(name of court or tribunal)* in *(name of country or state)* on *(date)*. The claim made by the applicant appears on the following pages.

THIS APPLICATION is made ex parte pursuant to Rule 328 of the *Federal Courts Rules* and, unless the Court orders otherwise, will be disposed of in writing and without notice to the respondent.

*(Date)*

Issued by: \_\_\_\_\_  
*(Registry Officer)*

Address of  
local office: \_\_\_\_\_

**APPLICATION**

1. The applicant applies under: *(indicate which of the following statutory provisions applies)*

*(a)* sections 63 to 71 of the Marine Liability Act;

*(b)* the Canada-United Kingdom Civil and Commercial Judgments Convention Act;

*(c)* the United Nations Foreign Arbitral Awards Convention Act; or

*(d)* Articles 35 and 36 of the Commercial Arbitration Code, set out in the schedule to the Commercial Arbitration Act

for registration of a foreign judgment granted against *(name of respondent)* by *(name of court or tribunal)* in *(name of country or state)* on *(date)*.

2. The grounds for the application are:

*(a)* The judgment is one to which *(specify statutory provision selected above)* applies.

*(b)* *(specify statutory provision selected above)* do(es) not preclude registration of the judgment.

*(c)* The respondent appeared *(or did not appear)* before the *(name of court or tribunal)* that granted the judgment. *(If the respondent did not appear, explain why registration is nevertheless permitted.)*

3. The following documentary evidence is relied on in support of this application:

*(a)* an exemplified or certified copy of the foreign judgment;

*(b)* a copy *(of any arbitration agreement pursuant to which the judgment was made)*; and

*(c)* the affidavit of *(name)* *(see requirements of Rule 329 of the Federal Courts Rules)*.

4. The respondent in this application resides at *(address)*.

*(Date)*

Issued by: \_\_\_\_\_  
*(Signature of solicitor or applicant)*  
*(Name, address, telephone and fax number of solicitor or applicant)*

## FORM 337

Rule 337

## NOTICE OF APPEAL

*(General Heading — Use Form 66)**(Court seal)*

## NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at *(place where Federal Court of Appeal (or Federal Court) ordinarily sits)*.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (*telephone 613-992-4238*) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*(Date)*
 Issued by: \_\_\_\_\_  
*(Registry Officer)*

 Address of  
 local office: \_\_\_\_\_

TO: *(Name and address of each respondent)*  
*(Name and address of every other person  
 required to be served)*

*(Separate page)*

## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal (*or Federal Court*) from the order of *(name of judge, officer or tribunal)* dated *(date)* by which *(details of order under appeal)*.

THE APPELLANT ASKS that *(the relief sought)*.

THE GROUNDS OF APPEAL are as follows: *(Set out the grounds of appeal, including a reference to any statutory provision or rule to be relied on.)*

*(If the appellant wishes a tribunal to forward material to the Registry, add the following paragraph:)*

The appellant requests *(name of the tribunal)* to send a certified copy of the following material that is not in the possession of the appellant but is in the possession of the *(board, commission or tribunal, as the case may be)* to the appellant and to the Registry: *(Specify the particular material.)*

*(Date)*
 Issued by: \_\_\_\_\_  
*(Signature of solicitor or appellant)*  
*(Name, address, telephone and fax  
 number of solicitor or appellant)*

**FORM 337.1**

Rule 337.1

**NOTICE OF APPEAL***(Court File No.)*

## FEDERAL COURT OF APPEAL

BETWEEN:

*(Name)*

Appellant

and

*(Name)*

Respondent

*(Court seal)*

## NOTICE OF APPEAL

*(pursuant to subsection 27(1.2) of the Federal Courts Act)*

## TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at *(place where Federal Court of Appeal ordinarily sits)*.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the court and other necessary information may be obtained on request to the Administrator of this court at Ottawa *(telephone 613-996-6795)* or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*(Date)*

Issued by: \_\_\_\_\_

*(Registry Officer)*Address of  
local office: \_\_\_\_\_

TO: *(Name and address of each respondent)*  
*(Name and address of every other person required to be served)*

*(Separate page)*

## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of the Tax Court of Canada dated *(date)* by which *(details of judgment under appeal)*.

THE APPELLANT ASKS that *(the relief sought)*.

THE GROUNDS OF APPEAL are as follows: *(Set out the grounds of appeal, including those grounds set out in subsection 27(1.3) of the Federal Courts Act, reproduced below, which apply to the appeal. Also include a reference to any other statutory provision or rule to be relied on.)*

*(Subsection 27(1.3) provides as follows:*

27(1.3) The only grounds for an appeal under subsection (1.2) are that the Tax Court of Canada

*(a)* acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

*(b)* failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

*(c)* erred in law in making a decision or an order, whether or not the error appears on the face of the record;

*(d)* based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

*(e)* acted, or failed to act, by reason of fraud or perjured evidence; or

*(f)* acted in any other way that was contrary to law.)

*(If the appellant wishes the Tax Court of Canada to forward material to the Registry, add the following paragraph:)*

The appellant requests that the Tax Court of Canada send a certified copy of the following material that is not in the possession of the appellant but is in the possession of that court to the appellant and to the Registry: *(Specify the particular material.)*

*(Date)*

\_\_\_\_\_  
*(Signature of solicitor or appellant)*

SOR/2004-283, s. 27.

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**FORM 341A**

Rule 341

**NOTICE OF APPEARANCE — APPEAL***(General Heading — Use Form 66)***NOTICE OF APPEARANCE**

The respondent intends to participate in this appeal.

*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or respondent)**(Name, address, telephone and fax number of solicitor or respondent)*TO: *(Names and addresses of other solicitors or parties)***FORM 341B**

Rule 341

**NOTICE OF CROSS-APPEAL***(General Heading — Use Form 66)***NOTICE OF CROSS-APPEAL**

THE RESPONDENT CROSS-APPEALS in this appeal and asks that the order be set aside and judgment granted as follows *(or "that the order be varied as follows", or as the case may be): (Set out the relief sought.)*

THE GROUNDS FOR THIS CROSS-APPEAL are as follows: *(Set out the grounds of appeal, including a reference to any statutory provision or rule to be relied on.)*

*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or respondent)**(Name, address, telephone and fax number of solicitor or respondent)*TO: *(Name and address of appellant's solicitor or appellant)***FORM 344**

Rule 344

**CERTIFICATE OF COMPLETENESS OF APPEAL BOOK***(General Heading — Use Form 66)***CERTIFICATE OF COMPLETENESS OF APPEAL BOOK**

I, *(name)*, solicitor for the appellant *(or appellant)*, certify that the contents of the appeal book in this appeal are complete and legible.

*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or appellant)**(Name, address, telephone and fax number of solicitor or appellant)*



## FORM 347

Rule 347

**REQUISITION FOR HEARING — APPEAL***(General Heading — Use Form 66)*

## REQUISITION FOR HEARING

THE APPELLANT *(or RESPONDENT, as the case may be)* REQUESTS that a date be set for the hearing of this appeal.

THE APPELLANT *(or RESPONDENT, as the case may be)* CONFIRMS THAT:

1. The requirements of subsections 346(1) and (5) of the *Federal Courts Rules* have been complied with.
2. A notice of constitutional question has been served in accordance with section 57 of the *Federal Courts Act*

*(or)*

There is no requirement to serve a notice of constitutional question under section 57 of the *Federal Courts Act* in this appeal.

3. The hearing should be held at *(place)*.
4. The hearing should last no longer than *(number)* hours *(or days)*.
5. The representatives of all parties to the appeal are as follows:
  - (a)* on behalf of the appellant: *(name of solicitor or party if self-represented)* who can be reached at: *(address, telephone and fax numbers)*
  - (b)* on behalf of the respondent: *(name of solicitor or party if self-represented)* who can be reached at: *(address, telephone and fax numbers)*
  - (c)* on behalf of the intervener: *(name of solicitor or party if self-represented)* who can be reached at: *(address, telephone and fax numbers)*

*(If more than one appellant, respondent or intervener represented by different solicitors, list all.)*
6. The parties are available at any time except: *(List all dates within the next 90 days on which the parties are not available for a hearing.)*
7. The hearing will be in *(English or French, or partly in English and partly in French)*.

*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or respondent)*

*(Name, address, telephone and fax numbers of solicitor or party)*

TO: *(Names and addresses of other solicitors or parties)*

**FORM 359**

Rule 359

**NOTICE OF MOTION***(General Heading — Use Form 66)***NOTICE OF MOTION***(Motion to be heard orally)*

TAKE NOTICE THAT *(name of party)* will make a motion to the Court on *(day)*, *(date)*, at *(time)* or as soon thereafter as the motion can be heard, at *(place)*.

*(Motion in writing)*

TAKE NOTICE THAT *(name of party)* will make a motion to the Court in writing under Rule 369 of the *Federal Courts Rules*.

THE MOTION IS FOR *(the precise relief sought)*.

THE GROUNDS FOR THE MOTION ARE *(the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on)*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion *(affidavits or other documentary evidence to be relied on)*.

*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or party)**(Name, address, telephone and fax number of solicitor or party)*

TO: *(Name and address of responding party's solicitor or responding party)*

SOR/2004-283, s. 35

**FORM 370**

Rule 370

**NOTICE OF ABANDONMENT***(General Heading — Use Form 66)***NOTICE OF ABANDONMENT***(Motion to be heard orally)*

The plaintiff *(or as the case may be)* wholly abandons the motion returnable *(date)*.

*(Motion in writing)*

The plaintiff *(or as the case may be)* wholly abandons the motion in writing served and filed *(date)*.

*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or party)**(Name, address, telephone and fax number of solicitor or party)*

TO: *(Name and address of each solicitor or party served with the notice of motion)*

**FORM 381**

Rule 381

**NOTICE OF STATUS REVIEW****ACTION***(General Heading — Use Form 66)***NOTICE OF STATUS REVIEW**

TO THE PARTIES AND THEIR SOLICITORS:

MORE THAN 180 DAYS HAVE ELAPSED since the filing of the statement of claim in this action and, according to the records of the Court, pleadings are not closed.

*(or)*

MORE THAN 360 DAYS HAVE ELAPSED since the filing of the statement of claim in this action and, according to the records of this Court, no requisition for a pre-trial conference has been filed.

THE PLAINTIFF *(OR DEFENDANT)* IS REQUIRED TO SHOW CAUSE by written submissions, to be served and filed no later than *(day), (date)*, why this action should not be dismissed for delay *(if defendant, why default judgment should not be entered)*.

*(or)*

THE PLAINTIFF *(OR DEFENDANT)* IS REQUIRED TO APPEAR before the Court at *(place)* on *(day), (date)* at *(time)* to show cause why this action should not be dismissed for delay *(if defendant, why default judgment should not be entered)*.

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*(Signature of judge or prothonotary)*

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**APPLICATION OR APPEAL***(General Heading — Use Form 66)***NOTICE OF STATUS REVIEW**

TO THE PARTIES AND THEIR SOLICITORS:

MORE THAN 180 DAYS HAVE ELAPSED since the filing of the notice of application *(or appeal)* in this application *(or appeal)* and, according to the records of the Court, no requisition for a hearing has been filed.

THE APPLICANT *(OR APPELLANT)* IS REQUIRED TO SHOW CAUSE by written submissions, to be served and filed no later than *(day), (date)*, why this application *(or appeal)* should not be dismissed for delay.

*(or)*

THE RESPONDENT IS REQUIRED TO SHOW CAUSE by written submission, to be served and filed no later than *(day), (date)*, why default judgment should not be entered.

*(or)*

THE PLAINTIFF *(OR APPELLANT)* IS REQUIRED TO APPEAR before the Court at *(place)* on *(day), (date)* at *(time)* to show cause why this application *(or appeal)* should not be dismissed for delay.

*(or)*

THE RESPONDENT IS REQUIRED TO APPEAR before the Court at *(place)* on *(day), (date)* at *(time)* to show cause why default judgment should not be entered.

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*(Signature of judge or prothonotary)*

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**FORM 389**

Rule 389

**NOTICE OF SETTLEMENT***(General Heading — Use Form 66)***NOTICE OF SETTLEMENT**

TO THE ADMINISTRATOR:

TAKE NOTICE THAT the parties have settled this proceeding *(or the following issues in this proceeding:)*.*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or plaintiff (or appellant))**(Name, address, telephone and fax number of solicitor or plaintiff (or appellant))**(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or defendant (or respondent))**(Name, address, telephone and fax number of solicitor or defendant (or respondent))***FORM 425A**

Rule 425

**WRIT OF SEIZURE AND SALE***(General Heading — Use Form 66)**(Court seal)***WRIT OF SEIZURE AND SALE**To the Sheriff of the *(County, Regional Municipality, etc. of name)*, or as the case may be:)Under an order of this Court made on *(date)*, in favour of *(identify party)*YOU ARE DIRECTED to seize and sell the real property or immoveables and the personal property or movables within your jurisdiction of *(full name of individual or corporation, etc.)* and to realize from the seizure the following sums:*(a)* \$\_\_\_\_\_ and interest at \_\_\_\_\_ per cent per year commencing on *(date)*;*(b)* \$\_\_\_\_\_ for costs together with interest at \_\_\_\_\_ per cent per year commencing on *(date)*; and*(c)* your fees and expenses in enforcing this writ.

YOU ARE DIRECTED to pay out the proceeds according to law and to report on the execution of this writ if required by the party or solicitor who filed it.

*(Date)*

Issued by: \_\_\_\_\_

*(Registry Officer)*

Address of

local office: \_\_\_\_\_

This writ was issued at the request of, and inquiries may be directed to:

*(Name, address, telephone and fax number of solicitor or party filing writ)*

**FORM 425B**

Rule 425

**WRIT OF SEQUESTRATION***(General Heading — Use Form 66)**(Court seal)***WRIT OF SEQUESTRATION**To the Sheriff of the *(County, Regional Municipality, etc. of (name), or as the case may be)*:

Under an order of this Court made on *(date)*, on the motion of *(name of party who obtained order)*, YOU ARE DIRECTED to take possession of and hold the following property in your jurisdiction of *(name of person against whom order was made)*: *(Set out a description of the property.)*

AND YOU ARE DIRECTED to collect and hold any income from the property until further order of this Court.

*(Date)*

Issued by: \_\_\_\_\_

*(Registry Officer)*Address of  
local office: \_\_\_\_\_

This writ was issued at the request of, and inquiries may be directed to:

*(Name, address, telephone and fax number  
of solicitor or party filing writ)*

**FORM 427**

Rule 427

**WRIT OF POSSESSION***(General Heading — Use Form 66)**(Court seal)***WRIT OF POSSESSION**To the Sheriff of the *(County, Regional Municipality, etc. of (name), or as the case may be)*:

Under an order of this Court made on *(date)*, in favour of *(name of party who obtained order)*, YOU ARE DIRECTED to enter and take possession of the following immoveables or real property and premises in your jurisdiction: *(Set out a description of the immoveables or real property and premises.)*

AND YOU ARE DIRECTED to give possession of the above immoveables or real property and premises without delay to *(name of party who obtained order)*.

*(Date)*

Issued by: \_\_\_\_\_

*(Registry Officer)*Address of  
local office: \_\_\_\_\_

This writ was issued at the request of, and inquiries may be directed to:

*(Name, address, telephone and fax number  
of solicitor or party filing writ)*

**FORM 428**

Rule 428

**WRIT OF DELIVERY***(General Heading — Use Form 66)**(Court seal)***WRIT OF DELIVERY**To the Sheriff of the *(County, Regional Municipality, etc. of (name))*, or as the case may be):

Under an order of this Court made on *(date)*, YOU ARE DIRECTED to seize from *(name of party)* and to deliver without delay to *(name of party who obtained order)* the following personal property or movables: *(Set out a description of the property to be delivered.)*

*(Date)*

Issued by: \_\_\_\_\_

*(Registry Officer)*

Address of

local office: \_\_\_\_\_

This writ was issued at the request of, and inquiries may be directed to:

*(Name, address, telephone and fax number  
of solicitor or party filing writ)*

**FORM 458A**

Rule 458

**INTERIM CHARGING ORDER — REAL PROPERTY***(General Heading — Use Form 66)***ORDER**

WHEREAS by a judgment *(or order)* made on *(date)* the defendant *(or as the case may be)* was ordered to pay to the plaintiff *(or as the case may be)* the sum of  $\$(amount)$  and  $\$(amount)$  in costs;

WHEREAS the sum of  $\$(amount)$  remains due and unpaid;

AND WHEREAS the defendant *(or as the case may be)* has real property or immoveables, or an interest in the real property or immoveables more particularly described in the Schedule to this order:

IT IS ORDERED that unless sufficient reasons to the contrary are shown before the *(date)* at *(time)*, when this matter will be further considered by the Court at *(place)*, the defendant's *(or as the case may be)* real property or immoveable, or interest in the real property or immoveables shall, and it is ordered that in the meantime it does, stand charged with the payment of  $\$(amount)$  including any interest due on the judgment *(or order)* together with the costs of this motion.

\_\_\_\_\_  
*(Signature of judge or prothonotary)*

**SCHEDULE**

*(Describe with full particulars the relevant real property or immoveable, or interest therein.)*

**FORM 458B**

Rule 458

**INTERIM CHARGING ORDER — SECURITIES***(General Heading - Use Form 66)***ORDER**

WHEREAS by a judgment *(or order)* made on *(date)* the defendant *(or as the case may be)* was ordered to pay to the plaintiff *(or as the case may be)* the sum of  $\$(amount)$  and  $\$(amount)$  in costs;

WHEREAS that the sum of  $\$(amount)$  remains due and unpaid;

AND WHEREAS the defendant *(or as the case may be)* has an interest in the securities more particularly described in the Schedule to this order;

IT IS ORDERED that unless sufficient reasons to the contrary are shown before the *(date)* at *(time)*, when this matter will be further considered by the Court at *(place)*, the defendant's *(or as the case may be)* interest in the securities shall, and it is ordered that in the meantime it does, stand charged with the payment of  $\$(amount)$  including any interest due on the judgment *(or order)* together with the costs of this motion.

\_\_\_\_\_  
*(Signature of judge or prothonotary)*

**SCHEDULE**

*(Describe, with full particulars, the relevant shares, bonds or other securities, stating their full title, their value and the name in which they stand and whether the beneficial interest charged is in the securities only or in the dividends or interest as well.)*

**FORM 459**

Rule 459

**CHARGING ORDER ABSOLUTE***(General Heading — Use Form 66)***ORDER**

IT IS ORDERED that the interest of the defendant *(or as the case may be)* *(name)* in the asset specified in the Schedule to this order stands charged with the payment of  $\$(amount)$ , the amount due from the defendant *(or as the case may be)* to the plaintiff *(or as the case may be)* pursuant to a judgment *(or order)* of this Court dated *(date)*, together with any interest due on the judgment *(or order)* together with the costs of this motion *(in the amount of  $\$(amount)$ , or to be assessed)* which costs are to be added to the judgment debt.

\_\_\_\_\_  
*(Signature of judge or prothonotary)*

**SCHEDULE**

*(As in Form 458A or 458B)*

**FORM 477**

Rule 477

**STYLE OF CAUSE — ACTION IN REM**

*(Court File No.)*

FEDERAL COURT

ADMIRALTY ACTION IN REM

BETWEEN:

*(Name)*

Plaintiff

and

The owners and all others interested in  
The Ship *(name)*

*(or)*

The owners and all others interested in  
The Ship *(name)* and freight

*(or)*

The owners and all others interested in  
The Ship *(name)* and her cargo and freight

*(or if the action is against cargo only)*

The cargo ex The Ship *(name)*

*(or if the action is against the proceeds realized by the sale of the ship or cargo)*

The proceeds of the sale of The Ship *(name)*

*(or)*

The proceeds of the sale of the cargo of The Ship *(name)*,  
*(or as the case may be)*

Defendants

**FORM 481**

Rule 481

**WARRANT**

*(General Heading — Use Form 477)*

*(Court seal)*

**WARRANT**

TO the Sheriff of the *(County, Regional Municipality, etc. of (name))*, or as the case may be):

YOU ARE DIRECTED to arrest the ship *(name)*, *(or her cargo, or as the case may be)* and to keep the same under arrest until further order of this Court.

*(Date)*

Issued by: \_\_\_\_\_  
*(Designated Officer)*

Address of  
local office: \_\_\_\_\_

This writ was issued at the request of, and inquiries may be directed to:

*(Name, address, telephone and fax number of  
solicitor or party)*



**FORM 486A**

Rule 486

**BAIL BOND***(General Heading — Use Form 477)***BAIL BOND**

I, *(full name and occupation of deponent)*, of the *(City, Town, etc.)* of *(name)* in the *(County, Regional Municipality, etc.)* of *(name)*, SWEAR (or AFFIRM) THAT:

1. I submit myself to the jurisdiction of this Court and consent that if *(insert name of party for whom bail is to be given, and state whether plaintiff or defendant, or as the case may be)* do(es) not pay what may be adjudged against them *(or as the case may be)* in this action, with costs, or do(es) not pay any sum due to be paid under any agreement by which the action is settled before judgment and which is filed in this Court, execution may issue against me, my executors or administrators, or my personal property or movables, for the amount unpaid or an amount of  $\$(amount)$ , whichever is the lesser.

*(Add where bond given by an individual:)*

2. I have a net worth of more than the sum of  $\$(state amount in which bail is to be given)$  after payment of all my debts, as shown by the financial statement attached as Appendix A hereto.

Sworn *(or Affirmed)* before me at the *(City, Town, etc)* of *(name)* in the *(County, Regional Municipality, etc.)* of *(name)* on *(date)*.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
*(or as the case may be)*

\_\_\_\_\_  
*(Signature of Surety)*

**FORM 486B**

Rule 486

**NOTICE OF BAIL***(General Heading — Use Form 477)***NOTICE OF BAIL**

TAKE NOTICE that bail has been offered in the sum of  $\$(amount)$  on behalf of the *(insert name of party on whose behalf bail is to be given, and state whether plaintiff or defendant, or as the case may be)* to answer judgment in this action by *(name of surety)*, as shown on the guaranty or bail bond attached hereto.

AND TAKE NOTICE that unless a notice of objection to bail in Form 486C of the *Federal Courts Rules* is served and filed within 24 hours, bail will be given as provided in the attached document, and a request will be made to release the arrested property in accordance with rule 487 of those Rules.

*(Date)*

Issued by: \_\_\_\_\_  
*(Signature of solicitor or party)*

*(Name, address, telephone and fax number of solicitor or party)*

TO: *(Name, address, telephone and fax number of solicitor or party on whom notice is served)*

**FORM 486C**

Rule 486

**NOTICE OF OBJECTION TO BAIL**

*(General Heading — Use Form 477)*

**NOTICE OF OBJECTION TO BAIL**

TAKE NOTICE that the plaintiff *(or as the case may be) (name)* objects to the bail given by *(name of surety)* on behalf of the defendant *(or as the case may be) (name)* in this action.

The grounds for this objection are: *(Set out grounds.)*

*(Date)*

Issued by: \_\_\_\_\_

*(Signature of solicitor or party)*

*(Name, address, telephone and fax number of solicitor or party)*

TO: *(Name, address, telephone and fax number of solicitor or party on whom notice is served)*

**FORM 487**

Rule 487

**RELEASE**

*(General Heading — Use Form 477)*

**RELEASE**

TO the Sheriff of the *(County, Regional Municipality, etc. of (name), or as the case may be)*:

WHEREAS by warrant issued *(date)* you were directed to arrest the ship *(name) (or her cargo, etc. or as the case may be)* and to keep the same under arrest until further order of this Court,

YOU ARE NOW DIRECTED to release the said ship *(name), (or her cargo, or as the case may be)* from the arrest effected by virtue of that warrant.

*(Date)*

Issued by: \_\_\_\_\_

*(Designated Officer)*

Address of local office: \_\_\_\_\_

This release was issued at the request of, and inquiries may be directed to:

*(Name, address, telephone and fax number of solicitor or party)*

## FORM 490

Rule 490

## COMMISSION OF APPRAISAL OR SALE

*(General Heading — Use Form 477)**(Court seal)*

## COMMISSION OF APPRAISAL

*(or SALE, or APPRAISAL AND SALE, as the case may be)*TO the Sheriff of the *(County, Regional Municipality, etc. of (name), or as the case may be)*:

WHEREAS this Court has ordered that the ship *(name), (or her cargo or as the case may be)* be appraised *(and/or sold)*,  
*(where appraisal only:)*

## YOU ARE DIRECTED

*(a)* to make a written inventory of the *(ship or cargo, etc., as the case may be)* and to choose one or more qualified persons and to swear that person or persons to appraise the *(ship or cargo, etc., as the case may be)* according to its true value; and

*(b)* upon a certificate of that value having been reduced into writing, and signed by you and by the appraiser(s), to file the certificate in the Registry of this Court together with this commission.

*(where sale only:)*

YOU ARE DIRECTED to cause the ship *(name), (or her cargo or as the case may be)* to be sold at public auction for the highest price that can be obtained for it.

*(where appraisal and sale:)*

## YOU ARE DIRECTED

*(a)* to make a written inventory of the *(ship or cargo, etc., as the case may be)* and to choose one or more qualified persons and to swear that person or persons to appraise the said ship *(name), (or her cargo or as the case may be)* according to the true value thereof; and

*(b)* upon a certificate of such value having been reduced into writing, and signed by yourself and by the appraiser(s), to cause the ship *(her cargo or as the case may be)* to be sold by *(public auction or private sale)* for the highest price that can be obtained for it, but no less than the appraised value unless the Court orders otherwise.

YOU ARE FURTHER DIRECTED, as soon as the sale has been completed, to pay the proceeds thereof into Court and to file the certificate of appraisement and an account of the sale signed by you, together with this commission.

*(Add any other conditions ordered by the Court.)**(Date)*

Issued by: \_\_\_\_\_  
*(Designated Officer)*

Address of  
 local office: \_\_\_\_\_

This commission was issued at the request of, and inquiries may be directed to:

*(Name, address, telephone and fax  
 number of solicitor or party)*

**FORM 493A**

Rule 493

**CAVEAT WARRANT***(General Heading — Use Form 477)***CAVEAT WARRANT**

TAKE NOTICE THAT I, *(full name and address)* apply for a caveat against the issue of any warrant for the arrest of the ship *(name)* *(or description of other property)* without notice first being given to me.

AND I UNDERTAKE, within three days after being required to do so, to give bail in this or any other action or counterclaim against that ship *(or other property)* in this Court in the sum of  $\$(amount)$ , or to pay that sum into Court.

MY ADDRESS FOR SERVICE AND TELEPHONE NUMBER are: *(address and telephone number)*

*(Date)*\_\_\_\_\_  
*(Signature)***FORM 493B**

Rule 493

**CAVEAT RELEASE***(General Heading — Use Form 477)***CAVEAT RELEASE**

TAKE NOTICE THAT I, *(full name and address)*, apply for a caveat against the release of the ship *(name)* *(or description of other property)*, now under arrest pursuant to a warrant issued *(date)* without notice first being given to me.

*(If person applying for caveat is not a party to the action, add:)*

MY ADDRESS FOR SERVICE is: *(address)*

*(Date)*\_\_\_\_\_  
*(Signature)***FORM 493C**

Rule 493

**CAVEAT PAYMENT***(General Heading — Use Form 477)***CAVEAT PAYMENT**

TAKE NOTICE THAT I, *(full name and address)*, apply for a caveat against the payment of any money out of the proceeds of the sale of the ship *(name)* *(or description of other property)*, now remaining in Court, without notice first being given to me.

*(If person applying for caveat is not a party to the action, add:)*

MY ADDRESS FOR SERVICE is: *(address)*

*(Date)*\_\_\_\_\_  
*(Signature)*

## FORM 495

Rule 495

## NOTICE OF WITHDRAWAL OF CAVEAT

*(General Heading — Use Form 477)*

## NOTICE OF WITHDRAWAL OF CAVEAT

TAKE NOTICE THAT I, *(full name and address)*, withdraw the caveat *(warrant or release or payment)* filed by me in this action *(or as the case may be)* on *(date)*.

*(Date)*\_\_\_\_\_  
*(Signature)*

## TARIFF A

*(Rules 19, 20, 42, 43, 71 and 89)*

## COURT FEES

## REGISTRY FEES

Fees payable on issuance

1(1)

1. (1) A party shall pay the following fees for the issuance of

<i>(a)</i> a statement of claim	
<i>(i)</i> under section 48 of the <i>Federal Courts Act</i>	\$2
<i>(ii)</i> in a simplified action or in an appeal that proceeds by way of action	\$50
<i>(iii)</i> in any other action	\$150
<i>(b)</i> a statement of defence and counterclaim adding a party	
<i>(i)</i> in a simplified action	\$50
<i>(ii)</i> in any other action	\$150
<i>(c)</i> a third or subsequent party claim	
<i>(i)</i> in a simplified action	\$50
<i>(ii)</i> in any other action	\$150
<i>(d)</i> a notice of application	\$50
<i>(e)</i> a notice of appeal, other than appeals of prothonotaries' and referees' orders	\$50
<i>(f)</i> a subpoena	
<i>(i)</i> in a simplified action	\$15
<i>(ii)</i> in any other proceeding	\$30
<i>(g)</i> a writ of execution	
<i>(i)</i> in respect of a judgment in a simplified action	\$15
<i>(ii)</i> in respect of a judgment in any other proceeding	\$30

Fees payable on filing

1(2)

(2) A party shall pay the following fees for the filing of

<i>(a)</i> a notice of motion for an extension of time to commence a proceeding	\$20
<i>(b)</i> a notice of motion for leave to commence a proceeding	\$30
<i>(c)</i> a notice of motion for summary judgment	
<i>(i)</i> in an appeal that proceeds by way of action	\$100
<i>(ii)</i> in any other action	\$300
<i>(d)</i> a requisition for a pre-trial conference	
<i>(i)</i> in a simplified action or an appeal that proceeds by way of action	\$100
<i>(ii)</i> in any other action	\$300
<i>(e)</i> a notice of motion under rule 155 to fix the time and place for the hearing of a reference	
<i>(i)</i> in a simplified action or in an appeal that proceeds by way of action	\$50
<i>(ii)</i> in any other action	\$150
<i>(f)</i> a requisition for a hearing date in an application or appeal in the Federal Court	\$50
<i>(g)</i> a caveat warrant, caveat release or caveat payment	\$20

(h) an order of a tribunal under rule 424 in the case of a party other than the Crown \$20

(i) the first document, in each separate claim, after the Court has ordered, pursuant to paragraph 106(a), that claims against one or more parties be pursued separately (*plaintiff* only \_\_\_\_\_) \$150.00

Fees payable for copies

1(3)

(3) A party requesting photocopies of documents from the Registry shall pay \$0.40 per page. SOR/2002-417, s. 29(E).

Fees payable for trial or hearing

2

2. Where a trial or hearing in the Federal Court lasts more than three days, each party who participated at the trial or hearing shall pay a fee determined by applying the formula

$[(A \times B) + C] / D$

where

A is

(a) in respect of the hearing of a reference ordered under rule 153, \$75, and

(b) in respect of any other trial or hearing, \$150;

B is the number of days of trial or hearing in excess of three;

C is one-half the amount payable by the Administrator to a court reporter in respect of the portion of the trial or hearing conducted after the first three days; and

D is the number of parties who participated at the trial or hearing.

#### WITNESSES

Witness fees

3(1)

3. (1) Subject to subsection (2), a witness is entitled to be paid by the party who arranged for or subpoenaed his or her attendance \$20 per day plus reasonable travel expenses, or the amount permitted in similar circumstances in the superior court of the province where the witness appears, whichever is the greater.

Expert witness

3(2)

(2) Where a witness, other than a party, is an expert witness, the daily rate referred to in subsection (1) shall be \$100.

Additional costs to witness

3(3)

(3) A party may pay a witness, in lieu of the amount to which the witness is entitled under subsection (1) or (2), a greater amount equal to the expense or any loss incurred by the witness in attending a proceeding.

Amount established by contract

3(4)

(4) In lieu of the amounts to which an expert witness is entitled under subsections (1) and (2), a party may pay the expert witness a greater amount established by contract for his or her services in preparing to give evidence and giving evidence.

#### COURT OFFICERS

Services of court officers

4

4. Subject to section 5, the amount payable for the services of a sheriff or of a person referred to in subsection 89(2) shall be the amount permitted for similar services by the tariff of the superior court of the province in which the services were rendered.

Sheriff's services where no tariff provided

5

5. Where the practice of the superior court of the province in which a writ was executed does not provide for sheriff's fees realizable on execution, the following fees and disbursements are payable to a sheriff on execution:

(a) on the amount recovered up to and including \$1,000, five per cent of that amount;

(b) on the amount recovered in excess of \$1,000 and up to and including \$4,000, two and one-half per cent of that amount;

(c) on the amount recovered in excess of \$4,000, one and one-half per cent of that amount; and

(d) mileage in respect of seizure and sale and all reasonable and necessary disbursements incurred in the care and removal of property.

SOR/2004-283, ss. 29 and 33.



**TARIFF B**  
(Rules 400 and 407)

**COUNSEL FEES AND DISBURSEMENTS ALLOWABLE ON ASSESSMENT**

Bill of costs

1(1)

1. (1) A party seeking an assessment of costs in accordance with this Tariff shall prepare and file a bill of costs.

Content of bill of costs

1(2)

(2) A bill of costs shall indicate the assessable service, the column and the number of units sought in accordance with the table to this Tariff and, where the service is based on a number of hours, shall indicate the number of hours claimed and be supported by evidence thereof.

Disbursements

1(3)

(3) A bill of costs shall include disbursements, including

(a) payments to witnesses under Tariff A; and

(b) any service, sales, use or consumption taxes paid or payable on counsel fees or disbursements allowed under this Tariff.

Evidence of disbursements

1(4)

(4) No disbursement, other than fees paid to the Registry, shall be assessed or allowed under this Tariff unless it is reasonable and it is established by affidavit or by the solicitor appearing on the assessment that the disbursement was made or is payable by the party.

Calculation

2(1)

2. (1) On an assessment, the assessment officer shall determine assessable costs by applying the formula

$$A \times B + C$$

where

A is

(a) the number of units allocated to each assessable service, or

(b) where the service is based on a number of hours, the number of units allocated to that service multiplied by the number of hours;

B is the unit value as established in section 3 and adjusted in accordance with section 4; and

C is the amount of assessable disbursements.

Fractional amounts

2(2)

(2) On an assessment, an assessment officer shall not allocate to a service a number of units that includes a fraction.

Unit value

3

3. The unit value as at January 1, 1998 is \$100.

Adjustment of unit value

4(1)

4. (1) On April 1 in each year, the Chief Justices of the Court of Appeal and the Federal Court, in consultation with one another, shall adjust the unit value by multiplying it by the amount determined by the formula

$$A/B \times 100$$

where

A is the Consumer Price Index for all items for Canada, as published by Statistics Canada under the authority of the Statistics Act, in respect of December of the preceding year; and

B is the Consumer Price Index for all items for Canada, as published by Statistics Canada under the authority of the Statistics Act, in respect of December 1994.

Rounding of result

4(2)

(2) Where a calculation under subsection (1) results in an amount that is not evenly divisible by 10, the resulting amount shall be



- (a) where it is less than 100, rounded to the next higher amount that is evenly divisible by 10; and  
 (b) where it is greater than 100, rounded to the next lower amount that is evenly divisible by 10.

Communication of adjusted unit value

4(3)

(3) The Chief Justices shall without delay communicate adjustments to the unit value made under subsection (1) to their respective courts and to their assessment officers.

**TABLE**

Item	Assessable Service	Number of Units				
		Column I	Column II	Column III	Column IV	Column V
<b>A. Originating documents and Other Pleadings</b>						
1.	Preparation and filing of originating documents, other than a notice of appeal to the Federal Court of Appeal, and application records.	1 - 3	2 - 5	4 - 7	5 - 9	7 - 13
2.	Preparation and filing of all defences, replies, counterclaims or respondents' records and materials.	1 - 3	2 - 5	4 - 7	5 - 9	7 - 13
3.	Amendment of documents, where the amendment is necessitated by a new or amended originating document, pleading, notice or affidavit of another party.	1 - 2	1 - 4	2 - 6	3 - 7	4 - 8
<b>B. Motions</b>						
4.	Preparation and filing of an uncontested motion, including all materials.	1 - 2	1 - 3	2 - 4	2 - 5	2 - 6
5.	Preparation and filing of a contested motion, including materials and responses thereto.	1 - 3	2 - 5	3 - 7	4 - 9	5 - 11
6.	Appearance on a motion, per hour.	1	1 - 2	1 - 3	1 - 4	1 - 5
<b>C. Discovery and Examinations</b>						
7.	Discovery of documents, including listing, affidavit and inspection.	1 - 2	1 - 3	2 - 5	3 - 9	5 - 11
8.	Preparation for an examination, including examinations for discovery, on affidavits, and in aid of execution.	1 - 2	1 - 3	2 - 5	4 - 8	7 - 11
9.	Attending on examinations, per hour.	0 - 1	0 - 2	0 - 3	0 - 4	0 - 5
<b>D. Pre-Trial and Pre-Hearing Procedures</b>						
10.	Preparation for conference, including memorandum.	1 - 2	2 - 5	3 - 6	4 - 8	7 - 11
11.	Attendance at conference, per hour.	1	1 - 2	1 - 3	1 - 4	1 - 5
12.	12	1	1 - 2	1 - 3	1 - 4	1 - 5
13.	Counsel fee:					

	(a) preparation for trial or hearing, whether or not the trial or hearing proceeds, including correspondence, preparation of witnesses, issuance of subpoenas and other services not otherwise particularized in this Tariff; and	1	1 - 2	2 - 5	3 - 9	4 - 11
	(b) preparation for trial or hearing, per day in Court after the first day.	1	1	2 - 3	2 - 6	3 - 8
	E. Trial or Hearing					
14.	Counsel fee:					
	(a) to first counsel, per hour in Court; and	1	1 - 2	2 - 3	2 - 4	3 - 5
	(b) to second counsel, where Court directs, 50% of the amount calculated under paragraph (a).					
15.	Preparation and filing of written argument, where requested or permitted by the Court.	1 - 3	2 - 5	3 - 7	4 - 9	5 - 11
	F. Appeals to the Federal Court of Appeal					
16.	Counsel fee:					
	(a) motion for leave to appeal and all services prior to the hearing thereof; and	1 - 3	2 - 5	4 - 7	5 - 9	7 - 13
	(b) on an oral hearing of the motion for leave to appeal, per hour.	1	1	1	1	1 - 2
17.	Preparation, filing and service of notice of appeal.	1	1	1	1	1
18.	Preparation of appeal book.	1	1	1	1 - 2	1 - 3
19.	Memorandum of fact and law.	1 - 3	2 - 5	4 - 7	5 - 9	7 - 13
20.	Requisition for hearing.	1	1	1	1	1
21.	Counsel fee:					
	(a) on a motion, including preparation, service and written representations or memorandum of fact and law; and	1	1 - 2	2 - 3	2 - 4	3 - 5
	(b) on the oral hearing of a motion, per hour.	1 - 2	1 - 3	2 - 4	2 - 5	2 - 6
22.	Counsel fee on hearing of appeal:					
	(a) to first counsel, per hour; and	1	1 - 2	2 - 3	2 - 4	3 - 5
	(b) to second counsel, where Court directs, 50% of the amount calculated under paragraph (a).					

## G. Miscellaneous

23.	Attendance on a reference, an accounting or other like procedure not otherwise provided for in this Tariff, per hour.	1	1 - 2	1 - 3	2 - 4	2 - 5
24.	Travel by counsel to attend a trial, hearing, motion, examination or analogous procedure, at the discretion of the Court.	1	1 - 3	1 - 5	1 - 7	1 - 9
25.	Services after judgment not otherwise specified.	1	1	1	1	1
26.	Assessment of costs.	1 - 2	1 - 4	2 - 6	3 - 7	5 - 10
27.	Such other services as may be allowed by the assessment officer or ordered by the Court.	1	1 - 2	1 - 3	1 - 4	1 - 5
28.	Services in a province by students-at-law, law clerks or paralegals that are of a nature that the law society of that province authorizes them to render, 50% of the amount that would be calculated for a solicitor.					

SOR/2004-283, ss. 30, 31 and 32.