

SMALL CLAIMS COURT RULES

SUMMARY OF CONTENTS

Rule	1.	Interpretation
Rule	2.	Non-Compliance with the Rules
Rule	3.	Time
Rule	4.	Parties Under Disability
Rule	5.	Partners and Sole Proprietorships
Rule	6.	Forum and Jurisdiction
Rule	7.	Commencement of Proceedings
Rule	8.	Service
Rule	9.	Defence
Rule	10.	Defendant's Claim
Rule	11.	Default Proceedings
Rule	12.	Amendment
Rule	13.	Pre-Trial Conference
Rule	14.	Offer to Settle
Rule	15.	Motions
Rule	16.	Notice of Trial
Rule	17.	Trial
Rule	18.	Evidence at Trial
Rule	19.	Costs
Rule	20.	Enforcement of Orders
Rule	21.	Referee

RULE 1 – INTERPRETATION

Citation

1.01 These rules may be cited as the Small Claims Court Rules.

Definitions

1.02 In these rules,

“**court**” means the Small Claims Court;

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

- (a) a minor,
- (b) mentally incapable within the meaning of Section 6 or 45 of the *Substitute Decisions Act*, 1992 in respect of an issue in the proceeding, whether the person or party has a guardian or not, or
- (c) an absentee within the meaning of the *Absentees Act*;

“**holiday**” means,

- (a) any Saturday or Sunday,
- (b) New Year's Day,
- (c) Good Friday,
- (d) Easter Monday,
- (e) Victoria Day,
- (f) Canada Day,
- (g) Civic Holiday,
- (h) Labour Day,
- (i) Thanksgiving Day

- (j) Remembrance Day,
- (k) Christmas Day,
- (l) Boxing Day, and
- (m) Any special holiday proclaimed by the Governor General or the Lieutenant Governor, and if New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and if Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday; **"order"** includes a judgement.

General Principle

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

Matters Not Provided For

1.03(2) If matters are not provided for in these rules, the practice shall be determined by analogy to them and the court may, at any stage in a proceeding, make any order that is just.

Orders on Terms

1.04 When making an order under these rules, the court may impose such terms and give such directions as are just.

Forms

1.05 (1) The forms prescribed by these rules shall be used where applicable and with such variations as the circumstances require.

General Heading

1.05(2) Every document in a proceeding, except a notice of garnishment and certificate of service, shall have a general heading in accordance with Form 1A.

RULE 2 – NON-COMPLIANCE WITH THE RULES

Effect of Non-Compliance

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

Court May Dispense With Compliance

2.02 If necessary in the interest of justice, the court may dispense with compliance with any rule at any time

RULE 3 – TIME

Computation

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

Powers of Court

3.02(1) The court may lengthen or shorten any time prescribed by these rules or an order, on such terms are just.

Consent

3.02(2) A time prescribed by these rules for serving or filing a document may be lengthened or shortened by the written consent of the parties.

RULE 4 – PARTIES UNDER DISABILITY

Plaintiff's Litigation Guardian

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

Exception

4.01(2) A minor may sue for any sum not exceeding \$500 as if he or she were of full age

Consent

4.01(3) A plaintiff's litigation guardian shall, at the time of filing a claim or as soon as possible afterwards, file with the clerk a consent (Form 4A) in which the litigation guardian:

- (a) states the nature of the disability;
- (b) in the case of a minor, states the minor's birth date;
- (c) sets out his or her relationship, if any, to the person under disability;
- (d) states that he or she has no interest in the proceeding contrary to that of the person under disability;
- (e) acknowledges that he or she is aware of his or her liability to pay personally any costs awarded against him or her or against the person under disability; and
- (f) states whether he or she is represented by a lawyer or agent and, if so, give that person's name and confirms that the person has written authority to act in the proceeding.

Defendant's Litigation Guardian

4.02(1) An action against a person under disability shall be defended by a litigation guardian.

4.02(2) A defendant's litigation guardian shall file with the defence a consent (Form 4B) in which the litigation guardian,

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

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

Who May Be Litigation Guardian

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

- 4.03(2) If the plaintiff or defendant,
- (a) is a minor, in a proceeding to which subrule 4.01 (2) does not apply
 - (i) the parent or person with lawful custody or another suitable person shall be the litigation guardian, or
 - (ii) If no such person is available and able to act, the Children's Lawyer shall be the litigation guardian;
 - (b) is mentally incapable and has a guardian with authority to act as litigation guardian to the proceeding, the guardian shall be the litigation guardian;
 - (c) is mentally incapable and does not have a guardian with authority to act as litigation guardian in the proceeding, but has an attorney under a power of attorney with that authority, the attorney shall be the litigation guardian;
 - (d) is mentally incapable and has neither a guardian with authority to act as litigation guardian in the proceeding nor an attorney under a power of attorney with that power;
 - (i) a suitable person who has no interest contrary to that of the incapable person may be the litigation guardian; or
 - (ii) if no such person is available and able to act, the Public Guardian and Trustee shall be the litigation guardian;
 - (e) is an absentee,
 - (i) the committee of his or her estate appointed under the Absentee's Act shall be the litigation guardian,
 - (ii) if there is no such committee, a suitable person who has no interest contrary to that of the absentee may be the litigation guardian, or
 - (iii) if no such person is available and able to act, the Public Guardian and Trustee shall be the litigation guardian;
 - (f) is a person in respect of whom an order was made under subsection 72 (1) or (2) or the Mental Health Act as it read before April 3, 1995, the Public Guardian and Trustee shall be the litigation guardian.

Duties of Litigation Guardian

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

Public Guardian and Trustee, Children's Lawyer

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

Power of Court

4.05 The court may remove or replace a litigation guardian at any time.

Setting Aside Judgement, etc.

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

Settlement Requires Court's Approval

4.07 No settlement of a claim made by or against a person under disability is binding on the person without the approval of the court.

Money to be Paid into Court

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

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

RULE 5 – PARTNERSHIPS AND SOLE PROPRIETORSHIPS

Partnerships

5.01 A proceeding by or against two or more persons as partners may be commenced using the firm name of the partnership.

Defence

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

Notice to Alleged Partner

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

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

Disclosure of Partners

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

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

Enforcement or Order

5.05(1) An order against a partnership using the firm name may be enforced against the partnership's property.

5.05(2) An order against a partnership using the firm name may also be enforced, if the order or a subsequent order so provides, against any person who was served as provided in rule 5.03 and who,

- (a) under that rule, is deemed to have been a partner at the material time;
- (b) has admitted being a partner at that time; or
- (c) has been adjudged to have been a partner at that time.

Against Person Not Served as Alleged Partner

5.05(3) If, after an order has been made against a partnership using the firm name, the party obtaining it claims to be entitled to enforce it against any person alleged to be a partner other than a person who was served as provided in rule 4.03, the party may move before a judge for leave to do so; the judge may grant leave if the person's liability as a partner is not disputed or, if disputed, after the liability has been determined in such manner as the judge directs.

Sole Proprietorships

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

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

FULE 6 – FORUM AND JURISDICTION

6.01(1) An action shall be commenced and tried,
(a) in the territorial division,
(i) in which the cause of action arose, or
(ii) in which the defendant or, if there are several defendants, in which any one of them resides or carries on business;
(b) at the court's place of sitting that is nearest to the place where the defendant or, if there are several defendants, where any one of them resides or carries on business.

6.01(2) If the court is satisfied that the balance of convenience substantially favours holding the trial of an action at another place than those described in subrule (1), the court may order that the action be tried at that other place.

6.02 A cause of action shall not be divided into two or more actions for the purpose of bringing it within the court's jurisdiction.

6.03 If, when an action is called for trial, the trial judge finds that the territorial division where he or she sits is not the proper place of trial, the action shall be tried in a place described in subclause 6.01(1)(a)(i) or clause 6.01(1)(b), unless the judge orders otherwise under subrule 6.01(2).

RULE 7 – COMMENCEMENT OF PROCEEDINGS

Plaintiff's Claim

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

Contents of Claim

7.01(2) A claim shall contain, in concise and non-technical language, the following information:

1. The full names of the parties to the proceeding and, if relevant, the capacity in which they sue or are sued.
2. The nature of the claim with reasonable certainty and detail including the date, place and nature of the occurrences on which the claim is based.
3. The amount of the claim and the relief requested.
4. The name, address and telephone number and fax number if any, of the lawyer or agent representing the plaintiff or, if the plaintiff is unrepresented, the plaintiff's address and telephone number, and fax number if any.
5. The address where the plaintiff believes the defendant may be served.

If Claim Based on Document

7.02 If the plaintiff's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the claim, unless it is lost or is unavailable for some other reason, in which case the claim shall state the reason why the document is not attached.

Issuing Claim

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

7.03(2) The original of the claim shall remain in the court file and the copies shall be given to the plaintiff for service on the defendant.

RULE 8 – SERVICE

Service of Particular Documents

Plaintiff's or Defendant's Claim

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

Time for Service of Claim

8.01(2) A claim shall be served within six months of the date it is issued, by the court may extend the time for service before or after the six months has elapsed.

Defence

8.01(3) A defence shall be served by the clerk, by mail or by fax.

Notice of Default Judgement

8.01(4) A notice of default judgement (Form 11A) shall be served by the clerk, by mail, on all parties named in the claim.

Summons to Witness

8.01(5) A summons to witness (Form 18A) shall be served personally by the party who requires the presence of the witness, or by the party's lawyer or agent; at the time of service, attendance money in accordance with the tariff shall be paid or tendered to the witness.

Notice of Garnishment

8.01(6) A notice of garnishment (Form 20E) shall be served by the creditor,
(a) on the debtor, by mail, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03; and
(b) on the garnishee, by mail, personally as provided in rule 8.02 or by alternative to personal service as provided in rule 8.03.

Notice of Judgement Debtor Examination

8.01(7) A notice of examination of a judgement debtor (Form 20H) may be serviced by the creditor by mail, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

8.01(8) The notice shall be served at least 30 days before the date fixed for the examination.

Notice of Contempt Hearing

8.01(9) A notice of a contempt hearing (Form 20I) shall be served by the creditor on the debtor personally as provided in rule 8.02.

Other Documents

8.01(10) A document not referred to in subrules (1) to (9) may be served by mail, by fax, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise.

Personal Service

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

Individual

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

Municipality

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

Corporation

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

Board or Commission

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

Person Outside Ontario Carrying on Business in Ontario

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

Crown in Right of Canada

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

Crown in Right of Ontario

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

Absentee

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

Minor

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

Mentally Incapable Person

- (j) On a mentally incapable person,
 - (i) if there is a guardian or an attorney acting under a validated power of attorney for personal care with authority to act in the proceeding, by leaving a copy of the document with the guardian or attorney
 - (ii) if there is no guardian or attorney acting under a validated power of attorney for personal care with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, by leaving a copy of the document with the attorney and leaving an additional copy with the person,

- (iii) If there is neither a guardian nor an attorney with authority to act in the proceeding, by leaving a copy of the document bearing the person's name and address with the Public Guardian and Trustee and leaving an additional copy with the person;

Partnership

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

Sole Proprietorship

- (l) On a sole proprietorship, by leaving a copy of the document with the sole proprietor or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business.

Alternative to Personal Service

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

At Place of Residence

8.03(2) If an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving a copy in a sealed envelope addressed to the person at the place of residence with anyone who appears to be an adult member of the same household; and
- (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

Corporation

8.03(3) Where the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address.

When Effective

8.03(4) Service made under subrule (2) or (3) is effective on the fifth day after the document is mailed.

Acceptance of Service by Lawyer

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

8.03(6) By accepting service the lawyer is deemed to represent to the court that he or she has the client's authority to accept service.

Service of Claim by Mail to Last Known Address

8.03(7) Service of a plaintiff's claim or defendant's claim may be made by sending a copy of it by mail, in an envelope showing the sender's return address, to the last known address of the person to be served.

8.03(8) Service under subrule (7) is deemed to have been effected on the 20th day after the date of mailing if an affidavit of service (Form 8B),

- (a) indicates that the deponent believes the address to which the claim is sent to be the last known address of the person to be served, and states the reasons for the belief;
- (b) indicates that the claim has not been returned to the deponent; and

- (c) indicates that the deponent has no reason to believe that the person to be served did not receive the claim

8.03(9) The affidavit of service shall not be completed before the day referred to in subsection (8).

Substituted Service

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

Service Outside Ontario

8.05 Where the defendant is outside Ontario, the court may allow as costs of the action the costs reasonably incurred in effecting service of the claim on the defendant there.

Proof of Service

8.06 The following constitute proof of service of a document:

1. If the document was served by a bailiff or bailiff's officer, a certificate of service (Form 8A) endorsed on a copy of the document.
2. In all other cases, an affidavit of service (Form 8B) made by the person effecting the service.

Service by Mail

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

- (a) on file with the court, if the document is to be served by the clerk;
- (b) known to the sender, if the document is to be served by any other person.

When Effective

8.07(2) Service of a document by mail is deemed to be effective on the fifth day following the date of mailing

Exception

8.07(3) Subrule (2) does not apply when a claim is served by mail under subrule 8.03 (7).

Service by Fax

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

- (a) on the day of transmission, if transmission takes place before 5 p.m. on a day that is not a holiday;
- (b) on the next day that is not a holiday, in any other case.

8.08(2) A document containing 16 or more pages, including the cover page and the backsheets, may be served by fax only between 5 p.m. and 8 a.m. the following day, unless the party to be served consents in advance.

Failure to Receive Document

8.09 A person who has been served or who is deemed to have been served with a document in accordance with these rules is nevertheless entitled to show, on a motion to set aside the consequences of default, on a motion for an extension of time or in support of a request for an adjournment, that the document,

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

RULE 9 – DEFENCE

Defence

9.01(1) A defendant who wishes to dispute a plaintiff's claim shall file with a defence (Form 9A), with the claim, a defence (Form 9A) with a copy for every plaintiff, with the clerk within 20 days of being served with the claim.

9.01(2) On receiving the defence, the clerk shall serve it as described in subrule 8.01(3).

Contents of Defence

9.02 A defence shall contain the following information:

1. The reasons why the defendant disputes the plaintiff's claim, expressed in concise non-technical language with a reasonable amount of detail.
2. The defendant's name, address and telephone number, and fax number if any.
3. If the defendant is represented by a lawyer or agent, that person's name, address and telephone number, and fax number if any.

If Defence Based on Document

9.02(2) If the defence is based in whole or in part on a document, a copy of the document shall be attached to each copy of the defence, unless it is lost or is unavailable for some other reason, in which case the defence shall state the reason why the document is not attached.

Admission of Liability and Proposal of Terms of Payment

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

Where No Dispute

9.03(2) If the plaintiff does not dispute the proposal within the 20-day period referred to in subsection(3),

- (a) the defendant shall make payment in accordance with the proposal as if it were a court order;
- (b) in case of failure to make payment in accordance with the proposal, the clerk shall sign judgement for the unpaid balance of the undisputed amount on the filing of an affidavit by the plaintiff swearing to the default and stating the amount paid and the unpaid balance

Dispute

9.03(3) The plaintiff may dispute the proposal within 20 days after service of the defence by filing with the clerk and serving on the defendant a request for a hearing (Form 9B) before a referee or other person appointed by the court.

9.03(4) The clerk shall fix a time for the hearing, allowing for a reasonable notice period after the date the request is served, and serve a notice of hearing on the parties.

Order

9.03(5) On the hearing, the referee or other person may make an order (Form 9C) as to terms of payment by the defendant.

Failure to Appear, Default Judgement

9.03(6) If the defendant does not appear at the hearing, the clerk may sign default judgement against the defendant for the part of the claim that has been admitted and shall mail a notice of default judgement (Form 11A) to the defendant immediately.

Failure to Make Payments

9.03(7) Unless the referee or other person specifies otherwise in the order as to terms of payments, if the defendant fails to make payment in accordance with the order, the clerk shall sign judgement for the unpaid balance on the filing of an affidavit by the plaintiff swearing to the default and stating the amount paid and the unpaid balance.

RULE 10 – DEFENDANT’S CLAIM

Defendant’s Claim

10.01(1) A defendant may make a claim,

- (a) against the plaintiff,
- (b) against any other person,
 - (i) arising out of the transaction or occurrence relied upon by the plaintiff, or
 - (ii) related to the plaintiff’s claim; or
- (c) against the plaintiff and against another person in accordance with clause (b).

10.01(2) The defendant’s claim shall be in Form 10A and may be issued when a defence is filed or at any time afterwards before trial or default judgement.

Copies

10.01(3) The defendant shall provide a copy of the claim to the court

Contents of Claim

10.01(4) The claim shall contain the following information:

- 1. The names of the parties to the plaintiff’s claim and to the defendant’s claim and, if relevant, the capacity in which they sue or are sued.
- 2. The nature of the claim, expressed in concise non-technical language with a reasonable amount of detail, including the date, place and nature of the occurrences on which the claim is based.
- 3. The amount of the claim and the relief requested.
- 4. The defendant’s name, address and telephone number, and fax number if any.
- 5. If the defendant is represented by a lawyer or agent, that person’s name, address and telephone number, and fax number if any.
- 6. The address where the defendant believes each person against whom the claim is made may be served.

If claim Based on Document

10.01(5) If the claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the claim, unless it is lost or is unavailable for some other reason, in which case the claim shall state the reason why the document is not attached.

Insurance

10.01(6) On receiving the claim, the clerk shall immediately issue it by dating, signing and sealing it, shall assign it the same court file number as the plaintiff’s claim and shall place the original in the court file.

Service

10.02 A defendant’s claim shall be served by the defendant on every person against whom it is made, in accordance with subrules 8.01 (1) and (2).

Defence to Defendant's Claim

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

10.03(2) On receiving the defence to a defendant's claim, the clerk shall place the original in the court file and shall serve a copy on each party in accordance with subrule 8.01 (3).

Defendant's Claim to be Tried with Main Action

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

Exception

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

Rights of Third Party

10.04(3) If the defendant alleges, in a defendant's claim, that a third party is liable to the defendant for all or part of the plaintiff's claim in the action, the third party may at the trial contest the defendant's liability to the plaintiff.

Application of Rules to Defendant's Claim

10.05(1) These rules apply, with necessary modifications, to a defendant's claim as if it were a plaintiff's claim, and to defence to a defendant's claim as if it were a defence to a plaintiff's claim

Exception

10.05(2) However, when a person against whom a defendant's claim is made is noted in default, judgement against that person may be obtained only in accordance with rule 11.03.

RULE 11 – DEFAULT PROCEEDINGS

Noting Defendant in Default

11.01(1) If a defendant fails to file a defence with the clerk within the prescribed time, the clerk may, when proof is filed that the claim was served within the territorial division, note the defendant in default.

Service Outside Territorial Division

11.01(2) If all the defendants have been served outside the court's territorial division, the clerk shall not note any defendant in default until it is proved by an affidavit submitted to the clerk, or by evidence presented before the judge, that the action was properly brought in that territorial division.

Default Judgement, Plaintiff's Claim

11.02(1) If a defendant has been noted in default, the clerk may enter judgement in respect of a claim against the defendant for a debt or liquidated demand in money, including interest if claimed.

Partial Defence

11.02(2) If a defence is filed in respect of part only of a claim to which subrule (1) applies, the clerk may note the party against whom the claim was made in default and enter default judgement in respect of the part for which no defence was filed.

11.02(3) Entry of judgement under this rule does not affect the plaintiff's right to proceed on the remainder of the claim or against any other defendant for all or part of the claim.

Notice of Default Judgement

11.02(4) A notice of default judgement (Form 11A) shall be served in accordance with subrule 8.01(4).

Default Judgement, Defendant's claim

11.03 If a party against whom a defendant's claim is made has been noted in default, judgement may be obtained against the party only at trial or on motion.

Trial When Defendant Noted in Default

11.04(1) If a defendant has been noted in default, the plaintiff shall proceed to trial in respect of any claim other than one referred to in subrule 11.02(1), and the clerk shall, after noting the defendant in default, fix a trial date and, send a notice of trial (Form 16A) to the plaintiff and any defendant who has filed a defence.

11.04(2) At the trial, the plaintiff is not required to prove liability against a defendant noted in default, but is required to prove the amount of the claim.

Consequences of Noting in Default

11.05(1) A defendant who has been noted in default shall not file a defence or take any other step in the proceeding, except bringing a motion under subrule 11.06(1), without leave of the court or the plaintiff's consent.

11.05(2) Any step in the proceeding may be taken without the consent of a defendant who has been noted in default, the defendant is not entitled to notice of any step in the proceeding and need not be served with any other document.

11.05(3) Subrule (2) prevails over every other provision of these rules except rule 12.01 (amendment of claim or defence).

Setting Aside Noting of Default or Entry of Default Judgement

11.06(1) On the motion of a party in default, the court may set aside the noting of default or entry of default judgement against the party on such terms as are just.

11.06(2) If the written consent of the parties is filed, the clerk may set aside the noting of default or the entry of a default judgement.

RULE 12 – AMENDMENT

Right to Amend

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

Service

12.01(2) The amended document, shall be served by the party making the amendment on all parties, including any parties in default, in accordance with subrule 8.01 (10).

Time

12.01(3) Filing and service of the amended document shall take place at least 30 days before the trial, unless the court, on motion, allows a shorter notice period.

Service on Added Party

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

Striking Out or Amending Claim or Defence

12.02(1) The court may strike out or amend a claim or defence or anything in a claim or defence on the ground that it,

- (a) discloses no reasonable cause of action or defence, as the case may be;
- (b) is scandalous, frivolous or vexatious;
- (c) may prejudice, embarrass or delay the fair trial of the action; or
- (d) is otherwise an abuse of the court's process

12.02(2) The court may order the action to be stayed or dismissed or judgement to be entered accordingly, or may impose such terms as are just.

RULE 13 – PRE-TRIAL CONFERENCES

Request For Pre-Trial Conference

13.01(1) A party may request a pre-trial conference by filing a request for pre-trial conference (Form 13A) with the clerk.

13.01(2) The court may, before or at the trial, in response to a request for pre-trial conference or on the court's own initiative, direct that a pre-trial conference be held before a judge or another person designated by the court.

13.01(3) The clerk shall fix a time and place for the pre-trial conference and serve a notice of pre-trial conference on the parties.

Failure to Attend

13.01(4) The court may impose appropriate sanctions, by way of costs or otherwise, for the balance of a party who has received a notice of pre-trial conference to attend the pre-trial conference.

Inadequate Preparation

13.01(5) If a person who attends a pre-trial conference is, in the opinion of the judge or designated person conducting the conference, so inadequately prepared as to frustrate the purposes of the conference, the court may award costs against that person.

Limit on Costs

13.01(6) Costs awarded under subrule (4) or (5) shall not exceed \$50 unless there are special circumstances.

Notice of Trial

13.01(7) At or after a pre-trial conference, the clerk shall provide the parties with a notice stating that the parties must request a trial date if the action is not disposed of within 30 days after the pre-trial conference, and pay the fee required for setting the action down for trial.

Purposes of Pre-Trial Conference

13.02(1) The purposes of a pre-trial conference are:

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

13.02(2) At the pre-trial conference, the parties or their representatives shall openly and frankly discuss the issues involved in the action.

Disclosure Restricted

13.02(3) Except as otherwise provided or with the consent of the parties, the matters discussed at the pre-trial conference shall not be disclosed.

Recommendations to Parties

13.03(1) The judge or designated person conducting the pre-trial conference may make recommendations to the parties on any matter relating to the conduct of the action, in order to fulfil the purposes of a pre-trial conference, including recommendations as to:

- (a) the formulations and simplification of issues in the action;
- (b) the elimination of claims or defences which appear to be unsupported, and
- (c) the admission of facts or documents without further proof.

Orders at Pre-Trial Conference

13.03(2) The judge conducting a pre-trial conference may make any order relating to the conduct of the action that the court could make.

13.03(3) Without limiting the generality of subrule (2), the judge may make,

- (a) an order for the joinder of parties;
- (b) an order amending or striking out a claim or defence under rule 12;
- (c) an order referring a matter to a referee under Rule 21; and
- (d) an order for costs under subrule 13.01(4) or (5).

13.03(4) If the pre-trial conference is conducted by a designated person, a judge may, on that persons' recommendation, make any order that could be made under subrule (2).

Memorandum

13.03(5) At the end of the pre-trial conference, the judge or designated person may prepare a memorandum summarising,

- (a) the issues remaining in dispute;
- (b) the matters agreed on by the parties;
- (c) any evidentiary matters that the judge or designated person considers relevant; and
- (d) information relating to the scheduling of the remaining steps in the proceeding.

13.03(6) The memorandum shall be filed with the clerk, and the clerk shall give the trial judge a copy

Judge Not to Preside At Trial

13.04 A judge who conducts a pre-trial conference in an action shall not preside at the trial of the action unless the parties consent in writing.

RULE 14 – OFFER TO SETTLE

14.01 A party may serve on any other party an offer to settle a claim on the terms specified in the offer.

Time For Making Offer

14.02 An offer to settle may be made at any time, but if it is made less than seven days before the hearing commences, the costs consequences referred to in rule 14.07 do not apply.

Withdrawal

14.03(1) An offer to settle may be withdrawn at any time before it is accepted by serving written notice of its withdrawal on the party to whom it was made.

Expiry When Court Disposes of Claim

14.03(2) An offer may not be accepted after the court disposes of the claim in respect of which the offer is made.

No Disclosure of Offer to Trial Judge

14.03 If an offer to settle is not accepted, no communication about it shall be made to the trial judge until all questions of liability and the relief to be granted, other than costs, have been determined.

Acceptance

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

Payment Into Court As Condition

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

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

Costs

14.05(4) If an accepted offer to settle does not deal with costs, the plaintiff is entitled,

- (a) in the case of an offer made by the defendant, to the plaintiff's disbursements accessed to the date the plaintiff was served with the offer;
- (b) in the case of an offer made by the plaintiff, to the plaintiff's disbursements accessed to the date that the notice of acceptance was served.

Failure to Comply With Accepted Offer

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

- (a) make a motion to the court for judgement in the terms of the accepted offer, or
- (b) continue the proceeding as if there had been no offer to settle.

Costs Consequences of Failure to Accept

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

- (1) The plaintiff obtains a judgement as favourable as or more favourable than the terms of the offer.
- (2) The offer was made at least seven days before the trial.
- (3) The offer was not withdrawn and did not expire before the trial.

14.07(2) When a defendant makes an offer to settle that is not accepted by the plaintiff, the court may award the defendant an amount not exceeding twice the costs awardable to a successful party from the date the offer was served, if the following conditions are met:

- (1) The plaintiff obtains a judgement as favourable as or less favourable than the terms of the offer.
- (2) The offer was made at least seven days before the trial.
- (3) The offer was not withdrawn and did not expire before the trial.

14.07(3) If an amount is awarded under subrule (1) or (2) to an unrepresented party, the court may also award the party an amount not exceeding \$300 as compensation for inconvenience and expense.

RULE 15 – MOTIONS

Notice of Motion

15.01(1) Unless the court orders otherwise, a motion shall be commenced by the filing of a notice of motion (Form 15A) and an affidavit (Form 15B).

15.01(2) A copy of the notice of motion and the affidavit shall be served at least seven days before the hearing date on every party who has filed a claim or defence

Costs

15.02(1) No costs are recoverable in respect of a motion, except that if the court is satisfied that a motion should not have been brought or opposed, or that the motion was necessary because of the party's default, the court may fix the costs of the motion and order that they be paid immediately.

15.02(2) If costs of a motion fixed by the court under subrule (1) shall not exceed \$50 unless there are special circumstances.

RULE 16 – NOTICE OF TRIAL

16.01(1) If a defence has been filed, the clerk shall fix a date for trial and serve a notice of trial (Form 16A) to each party who has filed a claim or defence.

16.01(2) If a pre-trial conference is to be conducted under Rule 13, subrule 13.01(7) applies instead of subrule (1) of the rule.

RULE 17 – TRIAL

Failure to Attend

17.01(1) If an action is called for trial and all the parties fail to attend, the trial judge may strike the action of the trial list.

17.01(2) If an action is called for trial and a party fails to attend, the trial judge may,

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

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

Setting Aside or Variation of Judgement

17.01(4) The court may set aside or vary, on such terms as are just, a judgement obtained against a party who failed to attend at the trial.

Adjournment

17.02 The court may postpone or adjourn a trial on such terms as are just, including the payment by one party to another of an amount as compensation for inconvenience and expense.

Inspection

17.03 The trial judge may, in the presence of the parties or their representative, inspect any real or personal property concerning which a question arises in the action.

Motion for New Trial

17.04(1) Within 30 days after the trial, a party may make a motion to the court for a new trial.

Order for New Trial or Entry of New Judgement

17.04(2) On the hearing of the motion, the court may,

- (a) if the party demonstrates that a condition referred to in subrule (3) is satisfied,
 - (i) grant a new trial, or
 - (ii) pronounce the judgement that ought to have been given at trial and order judgement to be entered accordingly; or
- (b) dismiss the motion.

17.04(3) The conditions referred to in clause (2) (a) are:

- (1) There was a purely arithmetical error in the determination of the amount of damages.
- (2) The party was, for a valid reason, unable to attend the first trial.
- (3) There is relevant evidence that could not reasonably have been expected to be available to the party at the time of the first trial.

RULE 18 – EVIDENCE AT TRIAL

Affidavit

18.01 At the trial of an undefended action, the plaintiff's case may be proved by affidavit unless the trial judge orders otherwise.

18.02(1) A written statement or document described in subrule (2) that has been served on all parties at least 14 days before the trial date shall be received in evidence, unless the trial judge orders otherwise.

18.02(2) Subrule (1) applies to the following written statements and documents:

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

Name, Telephone Number and an Address of Witness or Author

18.02(3) A party who serves on another party a written statement or document described in subrule (2) shall append to or include in the statement or document the name, telephone number and address for service of the witness or author.

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

Where Witness or Author is Summoned

18.02(5) A party who serves a summons to witness on a witness or author referred to in subrule (3) shall, at the time the summons is served, notify all other parties of the summons.

Summons to Witness

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

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

18.03(3) A summons to witness shall be served in accordance with subrule 8.01(5) and, at the same time, attendance money shall be paid or tendered to the witness in accordance with the tariff.

18.03(4) Service of a summons to witness and the payment or tender of attendance money may be proved by affidavit.

18.03(5) A summons to witness continues to have effect until the attendance of the witness is no longer required.

Failure to Attend or Remain in Attendance

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

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

Abuse of Power to Summon Witness

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

RULE 19 – COSTS

Disbursements

19.01(1) A successful party is entitled to have the party's disbursements, including any costs of effecting service paid by, as the unsuccessful party, unless the court orders otherwise.

19.01(2) The clerk shall assess the disbursements in accordance with the regulations made under the *Administration of Justice Act* and in accordance with subrule (3); the assessment is subject to review by the court.

19.01(3) The amount of disbursements assessed for effecting service shall not exceed \$20 for each person served.

Limit

19.01 Any power under the Rule to award costs is subject to section 29 of the *Courts of Justice Act*.

Preparation and Filing

19.02 The court may allow a successful party an amount not exceeding \$50 for preparation and filing of pleadings

Counsel Fee

19.04(1) If the amount claimed by a successful party exceeds \$500, exclusive of interest and costs, and the party is represented by a lawyer or student-at-law, the court may allow the party as a counsel fee at trial,

- (a) in the case of a lawyer, an amount not exceeding \$300;
- (b) in the case of a student-at-law, an amount not exceeding \$150.

Compensation for Inconvenience and Expense

19.05(1) The court may order an unsuccessful party to pay to a successful party an amount not exceeding \$300 as compensation for inconvenience and expense, if,

- (a) a successful party is unrepresented;
- (b) the amount claimed exceeds \$500, exclusive of interest and costs; and
- (c) the court is satisfied that the proceeding has been unduly complicated or prolonged by the unsuccessful party..

Enforcement Limited While Periodic Payment Order in Force

19.05(2) While an order for periodic payments is in force, no step to enforce the judgement may be taken or continued against the debtor by a creditor named in the order, except issuing a writ of seizure and sale of land and filing it with the sheriff.

Termination on Default

19.05(3) An order for periodic payment terminates immediately if the debtor is in default under it for 21 days.

RULE 20 – ENFORCEMENT OF ORDERS

Definitions

20.01 In rules 20.02 to 20.10.

“**Creditor**” means a person who is entitled to enforce an order for the payment or recovery of money;

”**Debtor**” means a person against whom an order for the payment or recovery of money may be enforced.

Power of Court

20.02 The court may,

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

General

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

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

Certificate of Judgement

20.04(1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor’s request, supported by an affidavit stating the amount still owing, issue a certificate of judgement (Form 20A) to the clerk of the territorial division specified by the creditor.

- 20.04(2) The certificate of judgement shall state,
- (a) the date of the order and the amount awarded;
 - (b) the rate of postjudgement interest payable; and
 - (c) the amount owing, including postjudgement interest.

Delivery of Personal Property

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

Seizure of Other Personal Property

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

20.05(3) The bailiff shall keep personal property seized under subrule (2) until the court makes a further order for its disposition.

Writ of Seizure and Sale of Personal Property

20.06(1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor's request, supported by an affidavit stating the amount still owing, issue to a bailiff a writ of seizure and sale of personal property (Form 20C) and the bailiff shall enforce the writ for the amount owing, postjudgement interest and the bailiff's fees and expenses.

Duration and Renewal

20.06(2) A writ of seizure and sale of personal property remains in force for six months after the date of its issue and for a further six months after each renewal.

20.06(3) A writ of seizure and sale of personal property may be renewed before its expiration by filing with the clerk a request to renew it.

20.06(4) A writ of seizure and sale of personal property shall show the creditor's name, address and telephone number and the name, address and telephone number of the creditor's lawyer or agent, if any.

Inventory of Property Seized

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

Sale of Personal Property

20.06(6) Personal property seized under a writ of seizure and sale of personal property shall not be sold by the bailiff unless notice of the time and place of sale has been,

- (a) Mailed to the creditor at the address shown on the writ or the creditor's lawyer or agent and to the debtor at the debtor's last known address, at least 14 days before the sale; and
- (b) Advertised in a manner that is likely to bring it to the attention of the public.

Writ of Seizure and Sale of Land

20.07(1) If an order for the payment or recovery of money is unsatisfied, the clerk shall at the creditor's request, supported by an affidavit stating the amount still owing, issue to the sheriff specified by the creditor a writ of seizure and sale of land (Form 20D).

20.07(2) A writ of seizure and sale of land issued under subrule (1) has the same force and effect and may be renewed or withdrawn in the same manner as a writ of seizure and sale issued under rule 60 of the rules of Civil Procedure.

Garnishment

20.08(1) A creditor may enforce an order for the payment or recovery of money by garnishment of debts payable to the debtor by other persons.

Joint Debts Garnishable

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

Obtaining Notice of Garnishment

20.08(3) A creditor who seeks to enforce an order by garnishment shall file with the clerk in the territorial division in which the debtor resides or carries on business,

- (a) an affidavit stating,
 - (i) the date of the order and the amount awarded,
 - (ii) the territorial division in which the order was made,
 - (iii) the rate of postjudgement interest payable,
 - (iv) the total amount of any payments received since the order was granted,
 - (v) the amount owing, including postjudgement interest,
 - (vi) the name and address of each person to whom a notice of garnishment is to be directed,
 - (vii) that the creditor's belief that those persons are or will become indebted to the debtor, and the grounds for the belief, and
 - (viii) any particulars of the debts as are known to the creditor; and
- (b) a certificate of judgement (Form 20A), if the order was made in another territorial division.

20.08(4) On the filing of the material required by subrule (3), the clerk shall issue notices of garnishment (Form 20E) naming as garnishees the persons named in the affidavit.

20.08(5) A notice of garnishment issued under subrule (4) shall name only one debtor and only one garnishee.

Service of Notice of Garnishment

20.08(6) A notice of garnishment shall be served by the creditor in accordance with subrule 8.01(6).

Garnishee Liable From Time of Service

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

20.08(8) For the purpose of subrule (7), a debt of the garnishee to the debtor includes,

- (a) a debt payable at the time the notice of garnishment is served; and
- (b) a debt payable (whether absolutely or on the fulfilment of a condition) within 24 months after the notice is served.

Payment by Garnishee to Clerk

20.08(9) A garnishee who admits owing a debt to the debtor shall pay it to the clerk in the manner prescribed by the notice of garnishment, subject to section 7 of the *Wages Act*.

Equal Distribution Among Creditors

20.08(10) If the clerk has issued notices of garnishment in respect of a debtor at the request of more than one creditor and receives payment under any of the notices of garnishment, he or she shall distribute the payment equally among the creditors who have filed a request for garnishment and are not paid in full.

Disputing Garnishment

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

20.08(12) Subrule (11) applies to a garnishee who,
(a) wishes to dispute the garnishment for any reason; or
(b) pays to the clerk less than the amount set out in the notice of garnishment as owing by the garnishee to the debtor, because the debt is owed to the debtor and to one or more co-owners or for any other reason.

Service on Creditor and Debtor

20.08(13) If the garnishee's statement indicates that the debt is owed to the debtor and to one or more co-owners, the garnishee shall also serve copies of the statement on the creditor and the debtor.

Notice to Co-Owner or Debt

20.08(14) A creditor who is served with a garnishee's statement under subrule (13) shall forthwith send to the co-owners of the debt, in accordance with rule 8.01 (10), a notice to co-owner of debt (Form 20G) and a copy of the garnishee's statement.

Garnishment Hearing

20.08(15) At the request of a creditor, debtor, garnishee, co-owner of the debt or any other interested person, the court may,
(a) if it is alleged that the garnishee's debt to the debtor has been assigned or encumbered, order the assignee or encumbrancer to appear and state the nature and particulars of the claim;
(b) determine the rights and liabilities of the garnishee, any co-owner of the debt, the debtor and any assignee or encumbrancer;
(c) vary or suspend periodic payments under a notice of garnishment; or
(d) determine any other matter in relation to a notice of garnishment.

Time to Request Hearing

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

Enforcement Against Garnishee

20.08(17) If the garnishee does not pay to the clerk the amount set out in the notice of garnishment and does not send a garnishee's statement, the creditor is entitled to an order against the garnishee for payment of the amount set out in the notice, unless the court orders otherwise.

Payment to Person Other Than Clerk

20.08(18) If, after service of a notice of garnishment, the garnishee pays a debt attached by the notice to a person other than the clerk, the garnishee remains liable to pay the debt in accordance with the notice.

Effect of Payment to Clerk

20.08(19) Payment of a debt by a garnishee in accordance with a notice of garnishment is a valid discharge of the debt as between the garnishee and the debtor and any co-owner of the debt, to the extent of the payment.

20.08(20) Unless a hearing has been requested under subrule (15), the clerk shall, when proof is filed that the notice of garnishment was served on the debtor, distribute to a creditor payments received under a notice of garnishment as they are received.

Payment if Debt Jointly Owned

20.08(21) If a payment of a debt owed to the debtor and one or more co-owners has been made to the clerk, no request for a garnishment hearing is made and the time for doing so under subrule (16) has expired, the creditor may file with the clerk, within 30 days after that expiry,

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

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

20.08(23) If the creditor does not file the material referred to in subrule (21) the sheriff shall return the money to the garnishee.

Consolidation Order

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

20.09(2) The debtor shall file with the motion an affidavit stating,

- (a) the names and addresses of the creditors who have obtained an order for the payment of money against the debtor;
- (b) the amount owed to each creditor;
- (c) the amount of the debtor's income from all sources, identifying them; and
- (d) the debtor's current financial obligations and any other relevant facts.

Notice of Motion

20.09(3) Notice of the motion and a copy of the affidavit shall be served on each of the creditors mentioned in the affidavit, at least seven days before the hearing date.

Contents of Consolidation Order

20.09(4) At the hearing of the motion, the court may make a consolidation order setting out,

- (a) a list of unsatisfied orders for the payment of money against the debtor, including in each case the date, court and amount and the amount unpaid;
- (b) the amounts to be paid into court by the debtor under the consolidation order, and
- (c) the times of the payments.

20.09(5) The total of the amounts to be paid into court by the debtor under a consolidation order shall not exceed the portion of the debtor's income that is subject to seizure or garnishment under section 7 of the *Wages Act*.

Creditor May Make Submissions

20.09(6) At the hearing of the motion, a creditor may make submissions as to the amount and times of payment.

Further Orders Obtained After Consolidation Order

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

20.09(8) A consolidation order terminates immediately if an order for the payment of money is obtained against the debtor for a debt incurred after the date of the consolidation order.

Enforcement Limited While Consolidation Order in Force

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

Termination on Default

20.09(10) A consolidation order terminates immediately if the debtor is in default under it for 21 days.

Effect of Termination

20.09(11) If a consolidation order terminates under subrule (8) or (10), the clerk shall notify the creditors named in the consolidation order, by mail, and no further consolidation order shall be made in respect of the debtor for one year after the date of termination.

Equal Distribution Among Creditors

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

20.09(13) The clerk shall distribute the money paid into the consolidation account at least once every six months.

Examination of Debtor

20.10(1) If there is default under an order for the payment or recovery of money, the clerk of the territorial division where the debtor or other person to be examined resides or carries on business shall, at the creditor's request, issue a notice of examination (Form 20 (11)) directed to the debtor or other person.

20.10(2) The creditor's request shall be accompanied by,

- (a) an affidavit setting out,
 - (i) the date of the order and the amount awarded,
 - (ii) the territorial division in which the order was made,
 - (iii) the rate of postjudgement interest payable,
 - (iv) the total amount of any payments received since the order was granted, and
 - (v) the amount owing, including postjudgement interest; and
- (b) a certificate of judgement (Form 20A), if the order was made in another territorial jurisdiction.

Service of Notice of Examination

20.10(3) The notice of examination shall be served in accordance with subrules 8.01(7) and (8).

20.10(4) The debtor, any other persons to be examined and any witnesses whose evidence the court considers necessary may be examined in relation to,

- (a) the reason for nonpayment;
- (b) the debtor's income and property;
- (c) the debts owed to and by the debtor;
- (d) the disposal the debtor has made of any property either before or after the order was made;
- (e) the debtor's present, past and future means to satisfy the order;
- (f) whether the debtor intends to obey the order or has any reason for not doing so; and
- (g) any other matter pertinent to the enforcement of the order.

Who May Be Examined

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

Examinations Private

20.10(6) The examination shall be held in the absence of the public, unless the court orders otherwise.

Orders As to Payment

20.10(7) After the examination or with the debtor's written consent, the court may make an order as to payment.

Enforcement Limited While Order as to Payment in Force

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

Contempt Hearing

20.10(9) The court may find a person on whom a notice of examination has been served to be in contempt of court, and may order that he or she attend before the court for a contempt hearing, if the person,

- (a) fails to attend as required by the notice of examination, and the court is satisfied that the failure to attend is wilful; or
- (b) attends and refuses to answer questions.

Notice of Contempt Hearing

20.10(10) When an order for a contempt hearing is made under subrule (9), a notice (Form 201) setting out the time, date and place of the hearing shall be,

- (a) mailed to the creditor; and
- (b) served on the person by the creditor in accordance with subrule 8.01(9).

Powers of Court at Contempt Hearing

20.10(11) At the contempt hearing, the court may,

- (a) order that the person attend at an examination under this rule;
- (b) make an order as to payment; or
- (c) order that the person be jailed for period not exceeding 40 days.

Warrant of Committal

20.10(12) If an order is made under clause (11) (c), the clerk shall issue a warrant of committal (form 20J) directed to all police officers in Ontario.

20.10(13) the warrant authorizes any police officer in Ontario to take the debtor or other person named in the warrant and deliver him or her to the nearest correctional institution.

20.10(14) The warrant remains in force for 12 months after its date of issue and may be renewed by order of the court made on the creditor's motion, for 12 months at each renewal.

Discharge

20.10(15) The person shall be discharged from custody on the order of the court or when the time prescribed in the warrant expires, whichever is earlier.

RULE 21 – REFEREE

21.01(1) A referee shall assist the court by performing the advisory duties and functions that it directs.

21.01(2) Without limiting the generality of subrule (1), if the court so directs, a referee shall conduct pre-trial conferences under Rule 13 and examinations under rule 20.10 (examination of debtor).

21.01(3) Except under subrule 9.03(5) (order as to terms of payment), a referee shall not make a final decision in any matter referred to him or her but shall report his or her findings and recommendations to the court.

22. Regulations 201 of the Revised Regulations of Ontario, 1990 and Ontario Regulations 732/92, 66/95 and 132/96 are revoked.

23. This Regulation comes into force on September 1, 1998.