

JUDICATURE ACT

R-023-2007

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SMALL CLAIMS RULES OF THE NUNAVUT COURT OF JUSTICE

The Commissioner, under section 59 of the *Judicature Act* and every enabling power, approves the attached *Small Claims Rules of the Nunavut Court of Justice*.

The judges of the Nunavut Court of Justice, with the approval of the Commissioner, under section 59 of the *Judicature Act* and every enabling power, make the annexed *Small Claims Rules of the Nunavut Court of Justice*.

Rule 1 – Purpose

Purpose

1.1. These Rules are intended to provide for the just determination of small claims, and shall be liberally construed to ensure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Rule 2 – Interpretation

Definitions

2.1. In these Rules,

"amount of the claim" does not include costs or court-ordered interest; (*montant de la réclamation*)

"claimant" means the person who files a Notice of Claim, and includes a person who is claiming by way of a Notice of Third Party Claim or Counterclaim; (*demandeur*)

"Court" means the Nunavut Court of Justice; (*Cour*)

"defendant" means a person against whom a claim, counterclaim or third party claim is made; (*défendeur*)

"party" means a person named in a form filed under these Rules or taking part in a proceeding under these Rules and includes the claimant, defendant and any third party; (*partie*)

"referee" means a person assigned by the senior judge to conduct mediation or a payment hearing; (*arbitre*)

"Reply" includes a reply to a Notice of Claim, Notice of Third Party Claim or Counterclaim; (*réponse*)

"representative" includes the Public Guardian appointed under the *Guardianship and Trusteeship Act*, a legal guardian or any other individual recognized by the Court as acting on behalf of a person; (*représentant*)

"service" means delivery of a document to the party or witness named on the document in the manner set out in these Rules. (*signification*)

Forms

2.2. The forms referred to in these Rules are the forms set out in Schedule B.

Rule 3 – Jurisdiction

Application of Rules

3.1. (1) These Rules apply to claims relating to the following matters:

- (a) debt;
- (b) damages;
- (c) recovery of goods or personal property;
- (d) relief from opposing claims for goods or personal property.

(2) These Rules apply to claims involving amounts equal to or less than \$20,000, excluding costs, expenses and court-ordered interest.

Non-application of Rules

3.2. These Rules do not apply to claims that involve a question relating to any of the following matters:

- (a) an interest in real property, including a tenancy agreement;
- (b) insolvency or bankruptcy;
- (c) probate;
- (d) family law;
- (e) libel or slander;
- (f) malicious prosecution or false imprisonment.

Rule 4 – Language

Use of language in proceedings

4.1. (1) The language of the proceedings is the language used in the Notice of Claim (Form 1), unless the Court orders otherwise.

(2) A party may file any form in English, French, Inuktitut or Inuinnaqtun and may use any of these languages in the proceedings.

(3) A party who wishes to use or a witness who wishes to testify in an official language other than English shall give the Clerk at least 10 clear days' notice, in writing, of that intention.

(4) If a party uses Inuktitut or Inuinnaqtun in any of Forms 1 to 4, the Clerk shall arrange for the Form to be translated into English or French.

Using language not understood by another party

4.2. If a party files a form in a language that he or she knows or has reason to believe is not understood by another party, this must be indicated on the form.

Receiving documents in unfamiliar language

- 4.3.** (1) If a party receives any of Forms 1 to 4 written in a language that he or she does not understand, he or she must contact the Clerk
- (a) within 25 days after receipt where the party lives or carries on business in Nunavut; or
 - (b) within 30 days after receipt where the party neither lives nor carries on business in Nunavut.

(2) If a party receives any other form or document in a language that he or she does not understand, he or she must contact the Clerk within seven days after receipt.

Time limits

4.4. (1) The calculation of the time limit for taking any action in response to the receipt of a document is suspended when a party contacts the Clerk in accordance with Rule 4.3 and states that he or she does not understand the language of a document, and shall remain suspended until the Clerk directs it to be revived.

- (2) If the calculation of the prescribed time limit is suspended, the Clerk shall
- (a) notify all the parties of the suspension and the reason for it; and
 - (b) notify all the parties when the calculation of the time limit is revived.

Rule 5 – Making a Claim

Making a claim

- 5.1.** (1) To make a claim, a person must
- (a) complete a Notice of Claim (Form 1);
 - (b) file the Notice of Claim (Form 1) at the Court; and
 - (c) pay the prescribed fee.

(2) A claimant must specify the amount of the claim, which amount may include general damages.

If a claim is for more than \$20,000

- 5.2.** If the amount of the claim exceeds \$20,000, the claimant may
- (a) make a claim in the amount of \$20,000 in the Court using these Rules, and abandon the amount of the claim exceeding \$20,000; or
 - (b) make a claim in the Court using the Rules of the Nunavut Court of Justice.

Meaning of abandoning part of a claim

5.3. If a claimant abandons part of a claim, he or she agrees to waive the right to claim the abandoned amount in any other action, unless the Court orders otherwise.

Rule 6 – Replying to a Claim

Replying to a claim

- 6.1.** Within 30 days after service of a Notice of Claim, Notice of Third Party Claim or Counterclaim, a defendant must
- (a) complete a Reply (Form 2); and
 - (b) file the Reply (Form 2) at the Court.

Serving the Reply

6.2. Once a Reply is filed at the Court, the Clerk shall arrange for a copy of the Reply to be served on the parties at the address for service provided.

Defendant's options

6.3. (1) A defendant may, using the Reply (Form 2), do one or more of the following:

- (a) admit all the claim and pay the full amount owing, including the prescribed court fees, to the claimant;
- (b) admit all the claim and propose a payment schedule of the full amount owing, including the prescribed court fees;
- (c) deny all or part of the claim, and state the reasons why;
- (d) make a counterclaim against the claimant;
- (e) make a third party claim.

(2) A defendant who wishes to make a counterclaim or a third party claim must

- (a) complete a Counterclaim (Form 3) or Notice of Third Party Claim (Form 4); and
- (b) file the Counterclaim (Form 3) or Notice of Third Party Claim (Form 4) at the Court.

(3) If the amount of the counterclaim or third party claim exceeds \$20,000, the party making the counterclaim or third party claim may

- (a) make a claim in the amount of \$20,000 in the Court using these Rules, and abandon the amount of the counterclaim or third party claim exceeding \$20,000;
- (b) apply to the Court to have the claim and counterclaim or third party claim heard in the Court using the Rules of the Nunavut Court of Justice; or
- (c) apply to the Court to have only the counterclaim or third party claim heard in the Court using the Rules of the Nunavut Court of Justice.

(4) If a claimant abandons part of a counterclaim or third party claim, he or she agrees to waive the right to claim the abandoned amount in any other action, unless the Court orders otherwise.

Options of other defendants

6.4. (1) A defendant to a counterclaim may do any of the things set out in Rule 6.3, except make a counterclaim under paragraph 6.3(1)(d), in accordance with that Rule.

(2) A defendant to a third party claim may do any of the things set out in Rule 6.3, in accordance with that Rule.

Mediation respecting terms of payment

6.5. (1) If the defendant admits all or most of the claim, the defendant may request the Clerk to schedule mediation respecting settlement of the claim and the terms of payment.

(2) If the defendant admits all the claim and proposes a payment schedule that is not acceptable to the claimant, the claimant may request the Clerk to schedule mediation respecting the terms of payment.

(3) The mediation referred to in subrule (1) or (2) shall be conducted in accordance with Rule 11, with such modifications as the circumstances may require.

(4) If the parties reach an agreement during mediation under this Rule,

- (a) the parties shall complete a Settlement Agreement (Form 7); and
- (b) the referee shall file the Settlement Agreement (Form 7) at the Court.

(5) If the defendant does not comply with the terms of the Settlement Agreement (Form 7), the claimant may, without notice to the defendant, apply to the Court for summary judgment in accordance with the terms of the Settlement Agreement (Form 7).

Rule 7 – Changing or Withdrawing a Document

Making changes to a document

- 7.1.** (1) To make changes to a filed document, a party must
- (a) file a copy of the amended document at the Court; and
 - (b) arrange for a copy of the amended document to be immediately served, in accordance with Rule 9.1 or 9.2, as the case may be, on every party.
- (2) Changes to a filed document may be made
- (a) at any time before all the Replies have been filed; or
 - (b) at any time after all the Replies have been filed, with the Court's permission.
- (3) All changes to a filed document must be underlined in red, initialled and dated, and, if the changes are the result of a Court order, must refer to the order.

Responding to changes

- 7.2.** A party who is served with an amended Notice of Claim, Notice of Third Party Claim, Counterclaim or Reply or other document may
- (a) respond to the amended document by filing his or her own amended document in accordance with Rule 7.2; or
 - (b) rely on any document that has already been filed.

Withdrawing a claim or reply

- 7.3.** (1) A party may, at any time, withdraw a Notice of Claim, Notice of Third Party Claim, Counterclaim or Reply.
- (2) A party who wishes to withdraw a Notice of Claim, Notice of Third Party Claim, Counterclaim or Reply must
- (a) complete a Notice of Discontinuance/Withdrawal (Form 5);
 - (b) file the Notice of Discontinuance/Withdrawal (Form 5) at the Court; and
 - (c) arrange for a copy of the Notice of Discontinuance/Withdrawal (Form 5) to be immediately served on every party.

Costs

- 7.4.** A party may apply, by filing a Notice of Motion (Form 9), to the Court for an award of costs against the party who files a Notice of Discontinuance/Withdrawal.

Rule 8 - Filing

Filing by fax

- 8.1.** (1) A party may file any document, other than a Notice of Claim or Notice of Third Party Claim, by faxing a legible version, and, unless required by the Clerk, the original of the faxed document need not be filed.

(2) In exceptional circumstances, a party may file a Notice of Claim or Notice of Third Party Claim by faxing a legible version if all the following conditions are met:

- (a) the Clerk consents;
- (b) the original of the faxed document is filed as soon as practicable after the fax is received.

Deemed filing

8.2. Filing of a document after 4 pm is deemed to have been effected on the next clear day.

Rule 9 – Service

Serving a Notice of Claim

9.1. A Notice of Claim or Notice of Third Party Claim shall be served in Nunavut personally by the Sheriff or his or her delegate, unless the Court orders otherwise.

Serving other documents

9.2. Any document, other than a Notice of Claim or Notice of Third Party Claim, may be served on a party by

- (a) mailing a copy of it by ordinary mail to the party's last known address;
- (b) delivery to the address for service provided; or
- (c) any manner that the person to be served has indicated is acceptable, including registered mail, fax or email.

If a Notice of Claim or Notice of Third Party Claim cannot be served

9.3. (1) If a Notice of Claim or Notice of Third Party Claim cannot be served for any reason including incomplete or incorrect information, the Sheriff shall immediately notify the claimant.

(2) Once notified by the Sheriff that a Notice of Claim or Notice of Third Party Claim cannot be served, the claimant may

- (a) abandon the claim;
- (b) provide more detailed information in writing to the Sheriff; or
- (c) apply to the Court for an alternate method of service.

(3) If the claimant does not provide the Sheriff with additional information within one year after being notified that the Notice of Claim or Notice of Third Party Claim cannot be served, the claim expires without notice to the claimant, unless the Court orders otherwise.

Alternate service

9.4. (1) If it appears to the Court that it is impractical for any reason to effect personal service, the Court, on application, may

- (a) make an order for substituted service; or
- (b) where the Court considers it to be necessary in the interests of justice, dispense with service.

(2) A party may apply for substituted service or the dispensing of service by filing a Notice of Motion (Form 9).

Deemed service

9.5. The Court may order that a document is deemed to have been served if, in the opinion of the Court, the document came to the attention of the person to be served without having been served by a method that meets the requirements of these Rules.

Service outside Nunavut

9.6. A document may be served on a party outside Nunavut in accordance with the Rules of the Nunavut Court of Justice.

Proof of service

9.7. Service of a document may be proved in any of the following ways:

- (a) where service is by the Sheriff or his or her delegate, by a Certificate of Service (Form 6) filed at the Court;
- (b) where service is by any other person, by oral testimony or by a Certificate of Service (Form 6) filed at the Court.

Rule 10 – Multiple and complex claims

Multiple claims

10.1. (1) If there are multiple claims with respect to the same event, the Court, on its own motion or on application, may

- (a) hear the evidence that relates to the separate claims together;
- (b) apply the evidence to each of the claims; and
- (c) make a decision in each of the claims.

(2) If there are multiple claims with respect to the same event, the Court may try all the claims together, even though the total amount of all the claims is likely to exceed \$20,000.

Complex claims

10.2. If it appears that a counterclaim or third party claim may unduly complicate or prolong the trial of the main claim, the Court, on its own motion or on application, may

- (a) order separate trials and direct the counterclaim or third party claim to be heard using
 - (i) these Rules, or
 - (ii) the Rules of the Nunavut Court of Justice; or
- (b) order the claim and counterclaim or third party claim to be heard using the Rules of the Nunavut Court of Justice

and make any order necessary to facilitate its order.

Transfer

10.3. The Court, on its own motion or on application, may order a matter to be heard using the Rules of the Nunavut Court of Justice and may make any order necessary to facilitate the transfer if

- (a) a claim, counterclaim, third party claim or reply raises a constitutional issue; or
- (b) a counterclaim, third party claim or reply involves a matter to which these Rules do not apply.

Transfer and abandonment

10.4. If a matter is ordered to be transferred under Rule 10.2 or 10.3 and a party had abandoned a portion of his or her claim or counterclaim before the matter was transferred, the Court may, on application, allow the abandonment to be withdrawn.

Rule 11 – Aqqusiurniq/Mediation

Definition

11.1. In this Rule, "aqqusiuqti/mediator" means a judge or referee assigned by the senior judge to conduct mediation.

Mandatory mediation

11.2. (1) Every party shall attend mediation before trial unless the Court exempts the party under Rule 11.4.

(2) Mediation shall be for a maximum of three hours, unless the parties agree otherwise.

(3) If the claimant fails without reasonable excuse to attend mediation, the Court may dismiss the claim or make any other order it considers just.

(4) If the defendant fails without reasonable excuse to attend mediation, the Court may make a default judgment or make any other order it considers just.

Mediation session

11.3. (1) Within a reasonable period after all the Replies have been filed, the Clerk shall, in consultation with the aqqusi uqti/mediator, schedule a mediation session, and shall send a notice to the address for service provided informing the parties of

- (a) the assignment of a aqqusi uqti/mediator; and
- (b) the time and place of the mediation session.

(2) The Clerk shall inform the parties of any costs associated with the mediation session.

(3) A party may challenge the appointment of the assigned aqqusi uqti/mediator by contacting the Clerk and explaining in writing the reasons for the challenge.

(4) A mediation session shall take place within a reasonable period, and in any event, not more than 90 days after the notice of assignment of an aqqusi uqti/mediator was sent.

Exemption

11.4. (1) The Court may exempt, on such terms as it considers appropriate, the parties from attending mediation if

- (a) the Court is satisfied, on a request in writing, that the proceedings should continue because the dispute involves only legal issues;
- (b) a mediation session does not take place within 90 days after the notice of the assignment of an aqqusi uqti/mediator was sent; or
- (c) it is in the interests of justice to do so.

(2) If the Court exempts the parties from attending mediation, the Clerk shall schedule the matter for trial.

Purpose of mediation

11.5. (1) The primary purpose of mediation is to facilitate settlement of the claim.

(2) The secondary purposes of mediation, where settlement of the claim is not possible, are as follows:

- (a) to resolve or narrow the issues in the claim;
- (b) to expedite the disposition of the claim;
- (c) to assist the parties in effective preparation for trial;
- (d) to encourage full disclosure between the parties of the relevant facts and evidence;
- (e) to enable the Court to make any order necessary to facilitate the progress of the claim.

Conduct of mediation

11.6. The *aqquasiuqti*/mediator may conduct the mediation in a manner the *aqquasiuqti*/mediator considers appropriate in the circumstances to effect a just, expeditious and inexpensive settlement of the claim.

Recommendations

11.7. The *aqquasiuqti*/mediator may make recommendations to the parties on any matter relating to the settlement or conduct of the claim.

Conduct during mediation

11.8. (1) During mediation, each party shall openly and frankly discuss the issues involved in the claim.

(2) At the first mediation session, each party shall bring and provide to the other parties copies of all relevant documents and reports, including a copy of any document that is intended to be relied on at trial, a copy of any expert report and an initial list of potential witnesses.

(3) All matters discussed or disclosed in mediation are confidential and are not admissible in any proceeding, unless the parties agree otherwise.

(4) All matters discussed or disclosed in mediation are made without prejudice, unless the parties agree otherwise.

Settling the claim

11.9. (1) If the parties reach a settlement during mediation,

- (a) the parties shall complete a Settlement Agreement (Form 7); and
- (b) the *aqquasiuqti*/mediator shall file the Settlement Agreement (Form 7) at the Court.

(2) If a party does not comply with the terms of the Settlement Agreement (Form 7), the other party may, without notice to the non-complying party, apply to the Court for summary judgment in accordance with the terms of the Settlement Agreement (Form 7).

If mediation is unsuccessful

11.10. (1) If settlement of the claim is not possible, the *aqquasiuqti*/mediator shall prepare a memorandum to be placed in the court file, addressing any or all the following issues:

- (a) any matter agreed on by the parties;
- (b) the issues that remain in dispute;
- (c) the location of the trial;
- (d) the need for an interpreter or the translation of a document;

- (e) any potential witness to be called, and the possibility that a witness' testimony will be given by telephone or videoconference;
- (f) the failure without reasonable excuse of a party to attend mediation or to bring all relevant documents and reports;
- (g) any other relevant issue.

(2) The aqquisiuqti/mediator shall prepare the memorandum referred to in subrule (1) in consultation with all parties who attended the mediation session.

(3) On receipt of a memorandum prepared by the aqquisiuqti/mediator, the Clerk shall schedule the matter for trial.

Power to impose costs

11.11. The Court may impose costs on a party who, after being notified of the assignment of a aqquisiuqti/mediator and the time and place of a mediation session,

- (a) fails without reasonable excuse to attend; or
- (b) fails without reasonable excuse to bring all relevant documents and reports.

Limit on presiding judge

11.12. A judge who conducts the mediation shall not preside at the trial of the claim, unless the parties consent in writing.

Rule 12 – Default and Assessment Hearings

If defendant does not reply

12.1. (1) If a defendant does not file a Reply within 30 days from the date of service of Notice of the Claim, a claimant may request the Clerk to note the defendant in default and,

- (a) if the claim is for a debt or a specific sum of money fixed by the terms of a contract, to enter default judgment in the amount claimed;
- (b) if the claim is for the recovery of goods or personal property or relief from opposing claims for goods or personal property, to enter default judgment in accordance with the claim; or
- (c) if the claim is for damages where the amount depends on the circumstances, to schedule an assessment hearing.

(2) After noting a defendant in default, the Clerk shall,

- (a) if the claim is for a debt or a specific sum of money fixed by the terms of a contract, enter judgment in the amount claimed and prepare a Certificate of Judgment (Default) (Form 11B);
- (b) if the claim is for the recovery of goods or personal property or relief from opposing claims for goods or personal property, enter judgment in accordance with the claim and prepare a Certificate of Judgment (Default) (Form 11B); or
- (c) if the claim is for damages where the amount depends on the circumstances, schedule an assessment hearing.

(3) If the Clerk enters judgement under paragraph (2)(a) or (b), the Clerk shall arrange for each of the parties to be served, in accordance with Rule 9.2, with

- (a) a copy of the Certificate of Judgment (Default) (Form 11B); and
- (b) a notice informing the defendant of the possibility of applying to set aside the entering of default judgment.

(4) The defendant to a counterclaim may not be noted in default, without the Court's permission.

Liability not an issue

12.2. Once a defendant has been noted in default, the claimant is not required to prove liability.

No notice

12.3. A defendant who has been noted in default is not entitled to notice of any further steps taken in the proceedings.

Power of Court

12.4. At the assessment hearing, the Court may

- (a) order the defendant to pay the amount the Court considers appropriate, including costs, expenses and interest; and
- (b) make any other order the Court considers appropriate.

If a claimant does not attend hearing

12.5. If a claimant does not appear at the time set for the assessment hearing, the Court may adjourn the hearing or dismiss the claim.

Setting aside notice of default

12.6. (1) A defendant who has been noted in default may apply, by filing a Notice of Motion (Form 9), to set aside the noting of default or subsequent judgment.

(2) A defendant applying to set aside the noting of default or subsequent judgment must establish each of the following:

- (a) a meritorious defence to the claim;
- (b) a reasonable explanation for the default;
- (c) that the motion to set aside the noting of default or subsequent judgment was filed as soon as practicable in all the circumstances.

(3) The Court may, on such terms as it considers just, set aside or vary the noting of default against a defendant or subsequent judgment.

Rule 13 – Offer to Settle

Offer to settle

13.1. (1) A party may, at least 10 clear days before trial, serve on any other party a written offer to settle a claim.

(2) A party may, at any time between 10 clear days before trial and before the judge's final decision, serve on any other party a written offer to settle a claim, but Rule 13.6 does not apply to it.

(3) The party making the offer to settle shall

- (a) complete an Offer to Settle (Form 8A); and
- (b) file a copy of the Offer to Settle (Form 8A) at the Court.

Scope of offer to settle

13.2. An Offer to Settle need not be confined to money.

Accepting offer to settle

13.3. (1) An Offer to Settle may be accepted by delivering a written acceptance of the offer to the party who made it, at any time before it is withdrawn or expires or before the judge makes his or her final decision.

(2) A copy of the acceptance of the Offer to Settle must be immediately filed at the Court by the claimant, regardless of who made the Offer to Settle.

Withdrawing offer to settle

13.4. (1) An Offer to Settle may be withdrawn at any time before another party delivers a written acceptance of the offer.

(2) The party who wishes to withdraw an Offer to Settle must

- (a) complete a Notice of Withdrawal of Offer to Settle (Form 8B);
- (b) file a copy of the Notice of Withdrawal of Offer to Settle (Form 8B) at the Court; and
- (c) arrange for a copy of the Notice of Withdrawal of Offer to Settle (Form 8B) to be served, in accordance with Rule 9.2, on every party who was served with the Offer to Settle.

Breaching accepted offer to settle

13.5. If a party does not comply with the terms of an accepted Offer to Settle, the other party may, without notice to the non-complying party, apply to the Court for summary judgment in accordance with the terms of the accepted Offer to Settle.

Effect of not accepting offer to settle

13.6. (1) If the claimant makes a written Offer to Settle that is not accepted by the defendant, and if the claimant obtains a judgment as favourable or more favourable than the terms of the offer, the Court may award costs to the claimant.

(2) If the defendant makes a written Offer to Settle that is not accepted by the claimant, and if the claimant obtains a judgment as favourable or less favourable than the terms of the offer, the Court may award costs to the defendant.

Rule 14 – Motions

Making a motion

14.1. Unless the Court orders otherwise, to make a motion, a party must

- (a) complete a Notice of Motion (Form 9); and
- (b) file the Notice of Motion (Form 9), together with an affidavit containing any supporting document, at the Court.

Service of the motion

14.2. The Notice of Motion and the affidavit containing any supporting document must be served, in accordance with Rule 9.2, by the party making the motion on every other party at least 10 clear days before the date set for the hearing of the motion.

Rule 15 – Evidence

No examination of evidence before trial

15.1. No pre-trial examination of documents or discovery of witnesses is permitted without the Court's permission.

Summoning a witness

15.2. (1) To require a person to appear as a witness for trial, a party must

- (a) complete a Notice to Appear as a Witness (Form 10);
- (b) file the Notice to Appear as a Witness (Form 10) at the Court; and
- (c) arrange for a copy of the Notice to Appear as a Witness (Form 10) to be served, in accordance with Rule 9.2, on the proposed witness.

(2) A party requiring a person who does not live in the community where the trial will be conducted to appear as a witness at the trial must

- (a) arrange for the admission of the witness' testimony by telephone or videoconference; or
- (b) provide or pay the costs of transportation to and accommodation in the community where the trial will be conducted.

(3) A party who required, in accordance with subrule (1), a person to appear as a witness at trial may seek an adjournment and institute civil contempt proceedings against the person if he or she, without reasonable excuse, refuses or fails to appear.

(4) Unless the Court orders otherwise, a party shall not obtain an adjournment based on the unavailability of a witness if the party did not require the person to appear as a witness, in accordance with subrule (1).

Oral evidence to be sworn

15.3. All oral evidence must be given under oath or on affirmation.

Limit on documents

15.4. A document is admissible at trial only if it was brought to mediation, unless the Court orders otherwise.

Limit on expert evidence

15.5. An expert report or testimony from an expert witness is not admissible at trial, unless the Court orders otherwise.

Rule 16 – The Trial

Location of trial

16.1. The trial must be conducted in the community proposed by the claimant, unless the Court orders otherwise.

Conduct of trial

16.2. The Court may conduct the trial in a manner the Court considers appropriate in the circumstances to effect a just, expeditious and inexpensive determination of the claim.

If a party does not attend trial

16.3. (1) If a claimant does not attend the trial, the Court may do one or more of the following:

- (a) adjourn the trial;
- (b) dismiss the claim;
- (c) proceed with the trial of any counterclaim;
- (d) make any other order the Court considers appropriate.

(2) If a defendant or third party does not attend the trial, the Court may do one or more of the following:

- (a) adjourn the trial;
- (b) grant judgment in the amount claimed or a lesser amount;
- (c) conduct an assessment hearing;
- (d) dismiss the counterclaim or third party claim;
- (e) make any other order the Court considers appropriate.

Adjournments

16.4. The Court may adjourn a trial on the terms it considers just, including an award of costs as compensation for inconvenience and expense.

Judgment

16.5. After hearing the evidence, the judge shall make a decision and give reasons

- (a) orally in court, at the end of the trial or on a later date; or
- (b) in writing within a reasonable period after the end of the trial.

Certificate of judgment

16.6. (1) After the judge makes a decision and gives reasons, the Clerk shall prepare a Certificate of Judgment (Form 11A).

- (2) The Clerk shall arrange for each of the parties to be served, in accordance with Rule 9.2, with
- (a) a copy of any written reasons;
 - (b) a copy of the Certificate of Judgment (Form 11A); and
 - (c) a notice stating that
 - (i) any aggrieved party may appeal the judgment, in accordance with the *Judicature Act* and the Rules of the Court of Appeal Respecting Civil Appeals, registered under the *Statutory Instruments Act* (Northwest Territories) as regulation numbered R-142-91, as duplicated for Nunavut by section 29 of the *Nunavut Act*, within 30 days after the date of service; and
 - (ii) the Court of Appeal's permission to appeal is necessary if the amount of the claim being appealed is less than \$1,000.

Rule 17 – Enforcement

Definitions

17.1. In this Rule,

"creditor" means a person who has obtained a judgment against another person; (*créancier*)

"debtor" means a person against whom a judgment has been issued. (*débiteur*)

Applying for a payment hearing

17.2. (1) Once judgment has been granted, a creditor or debtor may request the Clerk to schedule a payment hearing.

- (2) To request a payment hearing, a creditor or debtor must
- (a) complete a Notice to Attend Payment Hearing (Form 12); and
 - (b) file the Notice to Attend Payment Hearing (Form 12) at the Court.

(3) Within a reasonable period after the Notice to Attend Payment Hearing has been filed, the Clerk shall, in consultation with the referee, schedule a payment hearing.

(4) If the Clerk schedules a payment hearing, the party seeking the payment hearing shall arrange for a copy of the Notice to Attend Payment Hearing (Form 12) to be served, in accordance with Rule 9.2, on the other party at least 10 clear days before the date set for the payment hearing.

Purpose of a payment hearing

17.3. The purposes of a payment hearing are

- (a) to determine the financial position of the debtor; and
- (b) to establish a reasonable payment schedule.

Conduct of the payment hearing

17.4. (1) At the payment hearing, the creditor may examine the debtor in relation to

- (a) the debtor's income and property, including amounts owed to the debtor;
- (b) the debtor's debts;
- (c) the debtor's disposal of any property either before or after the judgment was granted;
- (d) the debtor's present and future means to satisfy the judgment; and
- (e) any other relevant matter.

(2) The payment hearing must be conducted before a referee and must be recorded.

(3) The evidence presented at the payment hearing must be given under oath or on affirmation, which shall be administered by the referee.

(4) The referee may make recommendations to the parties on any matter relating to the satisfaction of the judgment.

Payment Agreement

17.5. (1) If the parties agree on the terms of the satisfaction of the judgment during the payment hearing,

- (a) the parties shall complete a Payment Agreement (Form 13); and
- (b) the referee shall file the Payment Agreement (Form 13) at the Court.

(2) The creditor may not take any further steps to enforce the judgment against the debtor, without the Court's permission, if payments are being made in accordance with the Payment Agreement.

(3) If the debtor fails to comply with any term of a Payment Agreement, unless the parties agree or the Court orders otherwise, the Payment Agreement immediately terminates and the creditor may take any step to enforce the amount of the judgment outstanding.

Enforcement

17.6. In addition to any other method of enforcement provided by law, a judgment for the payment or recovery of money may be enforced in accordance with the Rules of the Nunavut Court of Justice, including

- (a) garnishment; and
- (b) seizure and sale of personal property or land.

Rule 18 – Costs and Expenses

Costs

18.1. (1) The Court may, in its discretion, award the costs it considers appropriate to a maximum of 10% of the amount of the claim, and in exercising its discretion, the Court may consider

- (a) success at trial; and
- (b) the conduct of the parties in the proceedings, including the following:
 - (i) the failure without reasonable excuse of a party to attend mediation or bring and provide to the other parties all relevant documents and reports,
 - (ii) the non-acceptance by a party of an Offer to Settle pursuant to Rule 13.6.

(2) In addition to the costs mentioned in subrule (1), the Court may award costs in the amounts and for the steps set out in Schedule A.

Limits on costs

18.2. No solicitor client costs may be awarded.

Expenses

18.3. In addition to the costs mentioned in Rule 18.1, the Court may award costs to a successful party for the reasonable expenses actually incurred by the party.

Rule 19 – Time

Clear days

19.1. In calculating time under these Rules or an order, in addition to the provisions in the *Interpretation Act*, where the time period is expressed to be in "clear days",

- (a) the first and the last days shall not be counted; and
- (b) a holiday shall not be counted.

Consent

19.2. The period prescribed by these Rules or an order for filing, amending or serving a notice of claim or other document may be extended or shortened by consent, in writing, of all the parties.

Rule 20 – Parties under Disability

Person under a legal disability

20.1. A person under a legal disability shall commence or defend a claim by means of a representative.

Appointing a representative

20.2. If it appears to the Court that a defendant is a person under a legal disability and that the person does not have a representative, the Court shall appoint a representative.

No noting in default

20.3. A person under a legal disability cannot be noted in default without the Court's permission.

Power to set aside noting in default

20.4. The Court may set aside or vary, on such terms as the Court considers appropriate, the noting of default against a person under a legal disability, and may set aside any steps that have been taken to obtain or enforce judgment.

Settlement

20.5. A settlement of a claim involving a person under a legal disability is of no effect unless the Court approves it.

Rule 21 – General

Matters not provided for

21.1. Where a matter is not provided for in these Rules, the practice shall be determined by analogy to the Rules of the Nunavut Court of Justice.

Power to dispense with compliance

21.2. (1) The Court may, on its motion or on application, dispense with compliance with any Rule where the Court considers it to be in the interests of justice.

(2) The Court may, on application, extend or shorten any period of time prescribed by these Rules.

Power to amend documents

21.3. The Court may, on its motion or on application, strike out or vary all or any part of a Notice of Claim, Notice of Third Party Claim, Counterclaim, Reply or Notice of Motion on the grounds that it

- (a) discloses no reasonable cause of action or defence;
- (b) is irrelevant;
- (c) may prejudice or delay the trial of the claim; or
- (d) is frivolous or vexatious or otherwise an abuse of the Court's process.

Forms

21.4. The forms prescribed by these Rules must be used where applicable, unless the Court orders otherwise.

Participation

21.5. (1) A party may appear at any stage of the proceedings either in person, including appearing by telephone or videoconference, or by representative, or both.

(2) Despite subrule (1), a party shall attend mediation in person, including appearing by telephone or videoconference.

(3) A party who wishes to appear at any stage of the proceedings by telephone or videoconference must

- (a) complete a Notice to Appear by Telephone (Form 14); and
- (b) file the Notice to Appear by Telephone (Form 14) at the Court.

Rule 22 – Transitional

22.1. These Rules apply only to proceedings commenced after these Rules come into force.

Rule 23 – Coming into Force

23.1. These Rules come into force on the later of September 1, 2007 and the day on which they are registered with the Registrar of Regulations.

SCHEDULE A

(Subrule 18.1(2))

COSTS

Maximum allowable costs for a successful motion	\$100
Maximum allowable costs for a motion to set aside default judgment	\$100

Form 2
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

REPLY

File No. _____

FROM (DEFENDANT) (Please print)

Name		Home phone No.
Address <small>Community</small>		Work phone No.
Postal Code	Email address	Fax No.
Address for Service		

TO (CLAIMANT) (Please print)

Name		Home phone No.
Address <small>Community</small>		Work phone No.
Postal Code	Email address	Fax No.

AND TO (ADDITIONAL DEFENDANT) (Please print)

Name		Home phone No.
Address <small>Community</small>		Work phone No.
Postal Code	Email address	Fax No.

Fill in Part A OR Part B

PART A: I AGREE WITH THE CLAIM

I have read the Notice of Claim.

I ADMIT ALL OR MOST OF THE CLAIM AND

- (a) I attach my payment for the full amount of the claim, payable to the claimant;
- (b) I will make the following payments directly to the claimant on the following dates*:
 \$ _____ on _____ (day, month, year);
 \$ _____ on _____ (day, month, year);
 (Use additional sheet of paper if necessary)
- (c) I request mediation respecting the settlement and payment of the claim.

*If a payment is not made, the Claimant may obtain judgment against you without further notice to you.

PART B: I DO NOT AGREE WITH THE CLAIM

Explain why you deny all or most of the claim. (Use additional sheet of paper if necessary)

COUNTERCLAIM OR THIRD PARTY CLAIM:

- I HAVE MY OWN CLAIM AGAINST THE CLAIMANT. (It is attached as Form 3.)
- I HAVE A CLAIM AGAINST SOMEONE ELSE FOR THE PAYMENT OF THIS CLAIM OR FOR A MATTER RELATING TO THIS CLAIM. (It is attached as Form 4.)

The Claimant understands the language of this reply.** Yes No Unknown
 ** If the claimant does not understand the language of this reply, this may delay the proceedings.

Signature of Defendant _____

Date _____

Form 5
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

**NOTICE OF WITHDRAWAL/
DISCONTINUANCE**

File No. _____

BETWEEN:

CLAIMANT

DEFENDANT

(THIRD PARTY)

I _____ **WITHDRAW:**
 Claimant Defendant Third party

- the claim, and it will not proceed further.*
- the reply, and the claim is no longer being defended.
- the counterclaim, and it will not proceed further.
- the reply to the counterclaim, and that part of the claim is no longer being defended.
- the third party claim, and it will not proceed further.
- the reply to the third party claim, and that part of the claim is no longer being defended.

**Withdrawing a claim does not affect any counterclaim.*

The party to be served with this notice understands the language of this notice.**

Yes No Unknown

*** If the other parties do not understand the language of this notice, this may delay the discontinuance/withdrawal.*

Signature

Date

Form 6
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

CERTIFICATE OF SERVICE

File No. _____

BETWEEN:

CLAIMANT

DEFENDANT

(THIRD PARTY)

I _____ (name) certify that I served:

the Claimant the Defendant the Third party

on _____, _____ with the following document(s):
(Day, month, year)

- Notice of Claim/Counterclaim/Third Party Claim
- Reply/Third Party Reply
- Notice of Motion
- Offer to Settle
- OTHER _____

By:

mailing it to this address:

sending it by registered mail to this address:

fax at this number _____

email at this address _____

leaving a copy with _____ at this address:

Signature

Date

Form 7

IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

SETTLEMENT AGREEMENT

File No. _____

BETWEEN:

CLAIMANT

DEFENDANT

(THIRD PARTY)

THE PARTIES AGREE:

_____ shall pay _____
(The Defendant) (the Claimant)

\$ _____ plus \$ _____ in costs as full and final settlement;

and/or

(Other terms)

Payment shall be made on the following dates and in the following amounts:

AMOUNT	DATE

Use additional sheet if necessary.

IT IS FURTHER AGREED BETWEEN THE PARTIES that in the event that either party defaults on the terms of this settlement, the other party may obtain judgment without further notice to the defaulting party.

Signature of Witness Date

Signature of Claimant Date

Name and address of Witness (print):

Signature of Defendant Date

Signature of Third party Date

Form 8A
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

OFFER TO SETTLE

File No. _____

BETWEEN:

CLAIMANT

DEFENDANT

(THIRD PARTY)

OFFER

I, _____, offer to settle this claim on the following terms:
 Claimant Defendant Third party

This offer is good until: judgment **OR** _____
(day, month, year)

The other parties understand the language of this offer.* Yes No Unknown
* If the other parties do not understand the language of this offer, this may delay settlement of the claim.

Signature

Date

<p>TO ALL OTHER PARTIES</p> <p>IF THIS OFFER IS NOT ACCEPTED, THE MATTER PROCEEDS TO TRIAL. IF, AT THE END OF THE TRIAL, THE PARTY MAKING THIS OFFER IS AWARDED AN AMOUNT THAT IS EQUAL TO OR LESS THAN THE AMOUNT OFFERED ON THIS DOCUMENT, HE OR SHE MAY ASK THE COURT FOR A PENALTY AGAINST YOU.</p>
--

ACCEPTANCE OF OFFER

I, _____, ACCEPT THIS OFFER TO SETTLE.
 Claimant Defendant Third party

Signature

Date

<p>ON ACCEPTANCE, THIS FORM MUST BE FILED WITH THE COURT BY THE CLAIMANT.</p>
--

Form 8B
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

**NOTICE OF WITHDRAWAL OF
OFFER TO SETTLE**

File No. _____

BETWEEN:

CLAIMANT

DEFENDANT

(THIRD PARTY)

I, _____, withdraw the offer to settle this claim.
 Claimant Defendant Third party

The other parties understands the language of this notice.* Yes No Unknown
** If the other parties do not understand the language of this notice, this may delay the withdrawal.*

Signature

Date

Form 10
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

**NOTICE TO APPEAR
AS A WITNESS**

File No. _____

BETWEEN:

CLAIMANT

DEFENDANT

(THIRD PARTY)

TO _____
(WITNESS)
OF _____
A SMALL CLAIM HAS BEEN FILED AND
YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE IN COURT.

YOU MUST ATTEND THE TRIAL ON _____, 20____,
(Day, month)

AT _____ A.M. P.M.

AT _____ IN _____
(Address) (Community)

AND REMAIN UNTIL YOUR ATTENDANCE IS NOT LONGER REQUIRED.

YOU MUST ALSO bring the following documents and things to the trial: *(set out the nature and date of each document or thing with enough detail to identify it).*

TO THE WITNESS:
IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS REQUIRED BY THIS NOTICE,
YOU MAY BE FOUND IN CONTEMPT OF COURT.
IF YOU ARE UNABLE TO ATTEND COURT AT THE TIME WRITTEN ABOVE, YOU MUST
IMMEDIATELY CONTACT THE NUNAVUT COURT OF JUSTICE. YOU MAY APPEAR BY TELEPHONE

The Witness understands the language of this notice.** Yes No Unknown

** If the Witness does not understand the language of this notice, this may delay the proceedings.

Signature

Date

Form 11A
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

CERTIFICATE OF JUDGMENT

File No. _____

BETWEEN:

CLAIMANT

DEFENDANT

(THIRD PARTY)

This claim having been tried before the Honourable Justice _____ in _____ without a jury on _____, 20__, in the presence of the Claimant and the Defendant(s) (and the Third Party), the Court did decide, upon hearing the evidence that was presented by and on behalf of the parties, that the Claimant is entitled to recover from the Defendant the sum of \$ _____ (and _____).
(add where appropriate)

IT IS ADJUDGED that the Defendant(s) pay to the Claimant the sum of \$ _____ plus costs (and _____).
(add where appropriate)

This judgment bears interest at the rate of _____ % per year.
this ____ day of _____, 20__

Clerk of the Nunavut Court of Justice

TO ALL PARTIES
YOU MAY APPEAL THE JUDGMENT, WITHIN 30 DAYS AFTER THE DATE OF SERVICE OF THIS CERTIFICATE, IN ACCORDANCE WITH THE *JUDICATURE ACT* AND THE RULES OF THE COURT OF APPEAL RESPECTING CIVIL APPEALS.

The costs have been taxed and allowed at \$ _____ on _____, 20__.

Claim: \$ _____
Costs: \$ _____
TOTAL: \$ _____

Clerk of the Nunavut Court of Justice

Entered this _____ day of _____, 20__

Clerk of the Nunavut Court of Justice

Form 11B
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

CERTIFICATE OF JUDGMENT
(DEFAULT)

File No. _____

BETWEEN:

CLAIMANT

DEFENDANT

(THIRD PARTY)

The Notice of Claim having been properly served on the defendant(s), the defendant(s) having not filed a Reply, and the defendant(s) having been noted in default in _____ on _____, 20__.

IT IS ADJUDGED that the Defendant(s)

pay to the Claimant the sum of \$ _____ plus costs

(and _____).
(add where appropriate)

This judgment bears interest at the rate of _____ % per year.

this ____ day of _____, 20__ _____
Clerk of the Nunavut Court of Justice

TO ALL PARTIES

YOU MAY APPLY TO TRY TO SET ASIDE THE NOTING OF DEFAULT AND THE JUDGMENT, WITHIN 30 DAYS AFTER THE DATE OF SERVICE OF THIS CERTIFICATE, IN ACCORDANCE WITH THE SMALL CLAIMS RULES.

The costs have been taxed and allowed at \$ _____ on _____, 20__.

Claim: \$ _____

Costs: \$ _____

TOTAL: \$ _____

Clerk of the Nunavut Court of Justice

Entered this _____ day of _____, 20__

Clerk of the Nunavut Court of Justice

Form 12
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

**NOTICE TO ATTEND
PAYMENT HEARING**

File No. _____

BETWEEN:

CLAIMANT/CREDITOR

DEFENDANT/DEBTOR

(THIRD PARTY)

TO _____
(DEBTOR)
OF _____
A JUDGMENT HAS BEEN MADE AGAINST YOU

**YOU MUST ATTEND A PAYMENT HEARING
AND YOU WILL BE QUESTIONED ABOUT YOUR FINANCIAL STATUS.**

YOU MUST ALSO bring the following documents and things to the payment hearing: *(set out the nature and date of each document or thing with enough detail to identify it).*

The Debtor understands the language of this notice.** Yes No Unknown
** *If the debtor does not understand the language of this notice, this may delay the proceedings.*

Signature _____

Date _____

TO THE DEBTOR
IF YOU FAIL TO ATTEND, ANSWER QUESTIONS OR BRING THE DOCUMENTS LISTED ABOVE,
THE JUDGEMENT WILL BE ENFORCED AGAINST YOU.

TO BE COMPLETED BY COURT STAFF	THE PAYMENT HEARING WILL BE HELD ON _____, 20____ <small>(day, month)</small>
	AT _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
	AT _____ in _____ <small>(Address) (Community)</small>

NOTICE

**IF YOU DO NOT UNDERSTAND THE LANGUAGE OF THIS DOCUMENT,
YOU MUST CONTACT THE CLERK OF THE NUNAVUT COURT OF JUSTICE.**

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AVIS

**SI VOUS NE COMPRENEZ PAS LA LANGUE DU PRÉSENT DOCUMENT,
VOUS DEVEZ EN FAIRE MENTION AU GREFFIER DE LA COUR DE JUSTICE DU NUNAVUT.**

Form 14
IN THE NUNAVUT COURT OF JUSTICE — SMALL CLAIMS

**NOTICE TO APPEAR
BY TELEPHONE**

File No. _____

BETWEEN:

CLAIMANT

DEFENDANT

(THIRD PARTY)

Trial Date: _____, 20____, AT _____ A.M. P.M.
(Day, month)

Location of Trial: _____ IN _____
(Address) (Community)

Person requesting to appear by phone: _____

Telephone number at which you can be reached _____

Describe reason for wanting to appear by telephone:

TO PERSON REQUESTING TO APPEAR BY PHONE
YOU MUST BE AVAILABLE AT THE TELEPHONE NUMBER PROVIDED FROM 10:00 AM IQALUIT TIME
ON THE TRIAL DATE UNTIL YOU RECEIVE A CALL FROM THE CLERK.
IF YOU ARE NOT AVAILABLE WHEN YOU ARE CALLED, THE TRIAL MAY PROCEED IN YOUR ABSENCE.
COSTS MAY BE ORDERED AGAINST YOU IF YOU ARE NOT AVAILABLE.

Signature

Date

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