

JUDICATURE ACT

**OFFICIAL CONSOLIDATION OF THE RULES OF THE SUPREME COURT  
OF THE NORTHWEST TERRITORIES**

C.R.Nu., R-010-96

*(Consolidation date: July 1, 2021)*

**Note: despite the title, these are Rules of the Nunavut Court of Justice**

**R-010-96**  
**AS AMENDED BY**  
R-024-96

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

c.	means "chapter".
CIF	means "comes into force".
NIF	means "not in force".
s.	means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
Sch.	means "schedule".

### *Citation of Acts*

R.S.N.W.T. 1988,c.D-22	means Chapter D-22 of the <i>Revised Statutes of the Northwest Territories, 1988</i> .
R.S.N.W.T. 1988,c.10(Supp.)	means Chapter 10 of the Supplement to the <i>Revised Statutes of the Northwest Territories, 1988</i> . (Note: The Supplement is in three volumes.)
S.N.W.T. 1996,c.26	means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
S.Nu. 2002,c.14	means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

### *Citation of Regulations and other Statutory Instruments*

R.R.N.W.T. 1990,c.A-1	means Chapter A-1 of the <i>Revised Regulations of the Northwest Territories, 1990</i> .
R-005-98	means the regulation registered as R-005-98 in 1998. (Note: This is a Northwest Territories regulation if it is made before April 1, 1999, and a Nunavut regulation if it is made on or after April 1, 1999 and before January 1, 2000.)
R-012-2003	means the regulation registered as R-012-2003 in 2003. (Note: This is a Nunavut regulation made on or after January 1, 2000.)
SI-005-98	means the instrument registered as SI-005-98 in 1998. (Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.)
SI-012-2003	means the instrument registered as SI-012-2003 in 2003. (Note: This is a Nunavut statutory instrument made on or after January 1, 2000.)

## **RULES OF THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

### **PART 1 INTERPRETATION**

#### Definitions

1. In these rules,

"action" includes any issue directed to be tried; (*action*)

"address for service" means the street and mailing addresses of a residence, office or other place of business in Nunavut; (*domicile élu*)

"conduct money" means, subject to rule 652, the actual costs of attendance for the person to be examined, including transportation and accommodation costs, but not including a fee; (*frais de déplacement*)

"counterclaim" means a pleading by which a defendant makes against the plaintiff or against the plaintiff and others such claim as he or she may have made by statement of claim in an independent action; (*demande reconventionnelle*)

"Court" means the Nunavut Court of Justice and includes a judge; (*tribunal*)

"defence to counterclaim" means a pleading by which a plaintiff answers a counterclaim; (*défense reconventionnelle*)

"deliver", in respect of a pleading, means file and serve; (*remettre*)

"joinder of issue" means a pleading by which a party joins issue on the previous pleading of an opposite party other than a statement of claim, a counterclaim or a third party notice; (*contestation liée*)

"judge" means a judge of the Nunavut Court of Justice; (*judge*)

"judgment creditor" means a party that is entitled to receive payment under or enforce a judgment or an order; (*créancier judiciaire*)

"judgment debtor" means a party that is required to make payment under a judgment or an order or against whom a judgment or an order is enforced; (*débiteur judiciaire*)

"liquidated demand" means

- (a) a claim for a specific sum payable under an express or implied contract for the payment of a sum of money that is not in the nature of a penalty or unliquidated damages and the amount of

- which is fixed by the terms of the contract or can be ascertained by calculation only or on the taking of an account between the plaintiff and the defendant, or
- (b) a claim for a specific sum of money, whether or not in the nature of a penalty or damages recoverable under a statute that contains an express provision that the sum sued for may be recovered as a liquidated demand or as liquidated damages; (*demande d'une somme déterminée*)

"mandatory order" means mandamus as used in section 41 of the *Judicature Act*; (*ordonnance de faire*)

"originating document" means a statement of claim or other document by which an action is commenced; (*acte introductif d'instance*)

"originating notice" means a pleading by which an applicant commences an action; (*avis introductive d'instance*)

"petition" means a pleading by which a petitioner commences an action; (*requête*)

"pleading" means a written statement delivered by a party to another party; (*acte de procédure*)

"procedure book" includes any form of record authorized by the Court for use by the Clerk; (*registre des procédures*)

"Public Trustee" means the Public Trustee appointed under the *Public Trustee Act*; (*curateur public*)

"receiver" includes a manager appointed by or under an order of the Court; (*séquestre*)

"reply" means a pleading by which a plaintiff answers a statement of defence; (*réponse*)

"reply to defence to counterclaim" means a pleading by which a defendant answers a defence to counterclaim; (*réponse reconventionnelle*)

"solicitor" means a barrister and solicitor; (*avocat*)

"statement of claim" means a pleading by which a plaintiff commences an action; (*déclaration*)

"statement of defence" means a pleading by which a defendant answers a statement of claim; (*défense*)

"telecopier" means a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunication system.  
(*télécopieur*)

#### Application

2. These rules apply to actions commenced and proceedings taken in the Court.

#### Object

3. The object of these rules is to secure the just, speedy and inexpensive determination of every proceeding.

#### Exercise of right where procedure not set out

4. Where provision for exercising a certain right is not included in these rules, the Clerk, on the advice of a judge, or the Court may specify a procedure not inconsistent with these rules or any statute that shall be adopted for exercising the right.

#### Reference to provisions

5. A reference in these rules to a subrule is a reference to the subrule of the rule in which the reference occurs.

#### Forms

6. (1) The forms contained in Schedule B shall be used with such modifications as the circumstances require.

(2) Where these rules require that a certain form be used for a pleading, order or other instrument, it is sufficient if the pleading, order or other instrument is in substantial compliance with the appropriate form.

## PART 2 AUDIENCE BEFORE THE COURT

#### Representation in Court

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

(2) Unless otherwise ordered by the Court, a party that is a corporation shall be represented by a solicitor.

(3) Any party other than one referred to in subrule (1) or (2) may act in person or be represented by a solicitor.

(4) Notwithstanding subrules (1) and (2), the Court may grant audience to any individual where it considers it appropriate in the interests of justice.

PART 3  
FORM AND COMMENCEMENT OF CIVIL PROCEEDINGS

Commencement

Commencement of proceeding

**8.** (1) Except as otherwise provided, an action shall be commenced by statement of claim in Form 1.

(2) An action may be commenced by originating notice where permitted by statute or by these rules.

(3) An action may be commenced by petition in Form 2 where required by statute.

(4) Where a petition is required to be served, the plaintiff shall serve it together with a copy of each affidavit in support of it 10 days before the day named for the hearing of the petition.

Issuance of originating document

**9.** When an originating document is filed with the Clerk, the Clerk shall issue it by signing it and sealing it with the seal of the Court.

Endorsements

**10.** (1) An originating document must

- (a) bear the date of the day on which it is issued;
- (b) be numbered by the Clerk with a court file number; and
- (c) show that it is issued from the office of the Court at Iqaluit or such other office as may be designated by the Court as a process issuing office.

(2) All documents in a proceeding filed after the originating document shall be endorsed with the same court file number as that given to the originating document under subrule (1)(b).

(3) The Clerk shall make a note in the appropriate procedure book, under the court file number assigned to a proceeding, of all documents filed in the proceeding.

Issuance by telephone or telecopier

**11.** (1) Where the main office of a solicitor is not located at or within 15 km of Iqaluit, an action may be commenced as follows:

- (a) the solicitor may, by telephone or telecopier, notify the Clerk at Iqaluit of the full names of the parties to the action and the type of claim to be made and the Clerk shall record the information in the appropriate procedure book and inform the solicitor of the court file number;

- (b) the solicitor shall, on the day the court file number is assigned, endorse the number on the originating document and certify, on the originating document, that it was issued by telephone or telecopier by the Clerk;
- (c) the solicitor shall, not later than the day after the day the court file number is assigned, file with the Clerk or mail to the Clerk by registered mail the original pleading together with any fees payable.

(2) When the requirements of subrule (1) are met, the day the court file number is assigned shall be deemed to be the day on which the originating document was issued.

(3) When the Clerk receives the original document, he or she shall compare it to the information recorded in the procedure book and,

- (a) if it is in conformity with the information in the procedure book and was filed or mailed as required by subrule (1), the Clerk shall sign it and seal it with the seal of the Court; or
- (b) if it does not conform to the information recorded in the procedure book or was not filed or mailed as required by subrule (1), the Clerk shall attach to the pleading a memorandum to that effect and shall forthwith notify the solicitor who filed the pleading and no further step in the proceeding may be taken by the party commencing the action without leave of the Court.

(4) The Clerk may refuse to issue an originating document under this rule for a solicitor who is in default of payment of any fee or charge payable to the Clerk.

(5) A judge may at any time instruct the Clerk to refuse to issue originating documents by telephone or telecopier for a solicitor designated by the judge.

#### Lost document

**12.** Where a statement of claim or other document has been lost, the Clerk, on being satisfied of the loss and of the correctness of a copy of the lost document, may seal the copy with the seal of the Court, and the copy may then be used in lieu of the original.

#### Currency and renewal

**13.** (1) A statement of claim is in force for 12 months beginning on the date of its issue, but if for any sufficient reason a defendant has not been served, the statement of claim may, before or after its expiration, be renewed by order for six months and may, before or after the expiration of the renewed statement of claim, be further renewed from time to time as the Court may order.

(2) On the filing of an order made under subrule (1), the Clerk shall mark the statement of claim with a memorandum, signed by the Clerk and sealed with the seal of the Court, stating:

"Renewed for the period of six months beginning on (*month, day, year*) by order of .....

(3) A statement of claim renewed under this rule remains in force and may be relied on to prevent the operation of any statute limiting the time for commencement of an action and for all other purposes from the date the original statement of claim was issued.

(4) All copies of a renewed statement of claim for service after the renewal must bear a copy of the memorandum made under subrule (2).

#### Commencement of proceeding without authority of solicitor

**14.** (1) A solicitor whose name is endorsed on an originating document shall, on receipt of a written demand made by or on behalf of any person who has been served with the originating document, declare, forthwith and in writing, whether the proceeding has been commenced by or with the authority of the solicitor.

(2) A solicitor who fails to comply with a demand made under subrule (1) may be held in civil contempt.

(3) Where a solicitor answers a demand made under subrule (1) in the affirmative, the Court may direct the solicitor to disclose the occupation and residence of the plaintiff or party on whose behalf the solicitor is acting.

(4) Where, in response to a demand made under subrule (1), a solicitor declares that the proceeding was not commenced by or with the authority of the solicitor, the Court may on application stay or dismiss the proceeding.

#### Formal Requirements of Pleadings

##### Information to be included in pleading

**15.** Subject to the provisions in these rules respecting counterclaims, a pleading must contain

- (a) the name of the Court and the judicial centre, if any, in which the action was commenced and the court file number given to the action;
- (b) a style of cause setting out the full names of the plaintiff and of the defendant (but not their residences or occupations) and the capacity in which the plaintiff sues or the defendant is sued, if it is a representative capacity;
- (c) the name of the pleading;
- (d) an address for service of the party; and

- (e) at the conclusion of the pleading, the name, address and signature of the party, solicitor or agent for the solicitor delivering the pleading and the date it is signed.

Statements to be included in statement of claim

**16.** (1) A statement of claim and all copies of it that are served must have endorsed on or attached to the statement of claim the following information:

- (a) where the statement of claim is delivered by a solicitor for the plaintiff, a statement to that effect and the solicitor's name and address for service;
- (b) where the statement of claim is delivered by a solicitor as agent for another solicitor, a statement to that effect, the solicitor's name and address and the agent's name and address for service;
- (c) where the statement of claim is delivered by the plaintiff, a statement to that effect and the plaintiff's address for service;
- (d) the plaintiff's residence;
- (e) the defendant's residence in so far as it is known to the plaintiff.

(2) The plaintiff shall, in a statement of claim, propose a place at which the Court holds sittings as the place where the action shall be tried.

(3) A statement of claim, and all copies of it that are served, must have attached to the front of it a page entitled notice to defendant in Form 3.

Filing by solicitor

**17.** (1) No pleadings may be issued or filed by a solicitor who is not an active member of the Law Society of Nunavut within the meaning of the *Legal Profession Act*.

(2) A pleading issued or filed under this rule shall be signed by a solicitor who is an active member as referred to in subrule (1).

Originating document other than statement of claim

**18.** Where a proceeding is commenced otherwise than by statement of claim or a counterclaim is made against a person not a party to the action, subrule 16(1) applies with such modifications as the circumstances require to the originating document or counterclaim, as the case may be.

Information in statement of defence or appearance

**19.** A statement of defence or an appearance and all copies of the statement or appearance that are served must have at the end of or endorsed on the statement or appearance the following information:

- (a) the name of the person who filed the statement or appearance and whether it is filed by the defendant or by a solicitor on behalf of the defendant or an agent for the solicitor;
- (b) the defendant's residence;
- (c) the defendant's address for service.

#### Failure to give address for service

**20.** Where a party fails to give an address for service or gives an address that the Court, on an application that may be made *ex parte*, declares to be a fictitious or illusory address, the party is not entitled to be served with any pleading or other proceeding in the action, but any such pleading or other proceeding may be set aside by the Court on the application of the party if it considers it just to do so.

### PART 4 ORIGINATING NOTICE

#### Originating summons

**21.** Where, under an enactment, a proceeding may be taken by originating summons, the proceeding may be taken by an originating notice as set out in these rules.

#### Commencement by originating notice

**22.** A proceeding may be commenced by originating notice in the following cases:

- (a) a proceeding to recover possession of land;
- (b) an application for the appointment of a new trustee, with or without a vesting or other consequential order;
- (c) an application for a vesting or other consequential order on the appointment of a new trustee whether the appointment has been made in Court or out of Court;
- (d) a proceeding relating to land
  - (i) for the declaration of a beneficial interest in or a charge on land and of the character and extent of the interest or charge,
  - (ii) for a declaration setting the priority as between interests or charges, notwithstanding any entry in a registration system or the registration or filing of any instrument, or
  - (iii) for an order cancelling a certificate of title or making a title subject to an interest or charge;
- (e) a proceeding where, under an enactment or these rules, provision is made for the proceeding to be taken by originating notice;
- (f) a proceeding for the determination of a question where there are no material facts in dispute and the rights of the parties depend on the construction of a written instrument, an enactment or an order in council and for a declaration of the rights of the persons interested;
- (g) a proceeding for the opinion, advice or direction of a judge under the *Trustee Act*;
- (h) a proceeding to fix the compensation of a trustee;
- (i) an application for the approval of an arrangement for the variation of a trust;
- (j) a proceeding to compel partition of land;
- (k) a proceeding in respect of which an enactment gives the Court or a judge authority to issue a certificate, give a direction or make an

- order otherwise than in the course of an action, where no procedure for application is established;
- (l) an application respecting support for a spouse, child or other dependant or for custody of, access to or guardianship for a child and matrimonial causes other than divorce;
  - (m) a proceeding in which the person against whom relief is sought is unknown or unascertained;
  - (n) a proceeding in which there is no person against whom relief is sought;
  - (o) an application or proceeding in respect of any other matter where it is unlikely that there will be any substantial dispute of fact.

#### Content

**23.** (1) An originating notice must be in Form 4 with such modifications as the circumstances require having regard to the nature of the application.

(2) An originating notice must include one of the following, as appropriate in the circumstances:

- (a) statement of the questions on which the applicant seeks the determination or direction of the Court;
- (b) a concise statement of the nature of the claim made and of the relief or remedy claimed in the proceeding with sufficient particulars to identify the cause of action for which the applicant claims that relief or remedy.

#### Service

**24.** The applicant on an originating notice shall serve a copy of the originating notice and a copy of each affidavit in support of the notice 10 days before the day named in the notice for hearing of the application.

#### Directions

**25.** Where an originating notice is issued, the Court may from time to time give such directions as it considers necessary, including directions as to persons to be served with the originating notice whether those persons are or are not parties.

#### Oral evidence

**26.** The Court may, on the return of the originating notice, permit evidence to be given orally.

#### Summary disposition

**27.** On an application, the Court may summarily dispose of the questions arising on an application, make such order as the nature of the case requires and give such directions as it considers proper for the trial of any question arising on the application.

PART 5  
SERVICE OF DOCUMENTS

Manner of service

**28.** (1) A document required by these rules to be served need not be served personally unless personal service is expressly required by these rules or by order of the Court.

(2) Service may be effected on any day including Sunday.

Originating document

**29.** Subject to subrule 31(1), an originating document shall be served personally.

Personal service on individual, corporation, firm

**30.** (1) Personal service is effected on an individual by leaving with the individual a true copy of the document to be served.

(2) Where a person being served personally so requests, he or she shall be shown a certified copy of the document being served.

(3) Personal service of a document is effected on a body corporate in the manner provided by statute or, where the manner of service is not provided by statute,

- (a) in the case of a body corporate other than a municipal corporation
  - (i) by leaving a true copy of the document with an officer or director of the body corporate or person in charge of any office or place of business of the body corporate,
  - (ii) by leaving a true copy of the document at, or by sending it by registered mail addressed to, the registered or head office of the body corporate, or
  - (iii) where the body corporate has its registered or head office outside Nunavut, by leaving a true copy of the document with, or by sending it by registered mail addressed to, the attorney for service for the body corporate; or
- (b) in the case of a municipal corporation by leaving a true copy of the document at, or by sending it by registered mail addressed to, the principal office of the corporation or to the senior administrative officer of the corporation.

(4) Subject to subrule (5), where persons are sued as partners in the name of their firm, personal service of a document is effected on the firm

- (a) by leaving a true copy of the document to be served with one or more of the partners;
- (b) by leaving a true copy of the document to be served with any person at the principal place of business of the firm within the jurisdiction who appears to have management or control of the partnership business there; or

- (c) by leaving a true copy of the document to be served at, or by sending it by registered mail addressed to, the address for service in Nunavut, where the firm is an extra-territorial limited partnership as defined in the *Partnership Act*.

(5) Where a partnership, to the knowledge of the plaintiff, has been dissolved before the action against the firm was commenced, a true copy of the document shall be served on every person sought to be made liable.

- (6) Personal service of a document is effected on an association
  - (a) by leaving a true copy of it with an officer of the association; or
  - (b) by sending a true copy of it by registered mail addressed to an officer of the association at the address of the officer.

Solicitor's undertaking to appear or file response

**31.** (1) Personal service of an originating document is not required when the opposite party, by his or her solicitor, accepts service and undertakes, by the solicitor's endorsement on the document, to appear or to file a statement of defence or appearance.

(2) Where a solicitor fails to comply with an undertaking made under subrule (1), the Court may, on the application of the plaintiff, order that the opposite party be noted in default, issue final judgment or make an order for the assessment of damages or otherwise as the plaintiff may be entitled to.

Action against minor respecting property

**32.** (1) Where an action is in respect of property in which a minor is interested,

- (a) the minor shall be served by serving the guardian *ad litem* or the guardian of the minor's estate, where one has been appointed; and
- (b) the Public Trustee shall be served in accordance with section 4 of the *Public Trustee Act*.

(2) Where an action is brought for the recovery of possession of real or personal property actually in the possession of a minor, in addition to service in accordance with subrules (1) and (2), the minor shall be served in the same manner as if he or she were an adult.

Action against minor

**33.** (1) In an action other than one referred to in rule 32, a minor may be served in the same manner as if he or she were an adult, but the Court may order that, in addition, service be made on or notice be given to any other person with a view to the protection of the minor's interest.

(2) Where a person appears to be a minor, a copy of the document shall also be served on the person's parent or guardian or on the individual having care and custody of the person.

Action against person incapable of managing financial affairs

**34.** (1) A person who has been found to be incapable of managing his or her financial affairs shall be served by serving the committee of the person's estate or such other person as the Court directs.

(2) A person alleged to be incapable of managing his or her financial affairs shall be served by serving such person as the Court directs.

Service on agent in the jurisdiction

**35.** Where the defendant is out of the jurisdiction but has an agent, manager, office manager or other representative resident and carrying on the defendant's business within the jurisdiction and the cause of action arose in respect of that business, service made on the agent, manager, office manager or other representative is good service on the defendant.

Where contract provides for service

**36.** (1) Where the Court has jurisdiction in an action or other proceeding in respect of a contract and, in the contract, the parties have agreed on a place for service, a mode of service or a person on whom service can be effected, service of any document in the action or proceeding may be made in accordance with the contract and, notwithstanding anything in this Part, service when so made is good service.

(2) Subrule (1) does not apply where service is to be effected out of the jurisdiction.

(3) No contractual stipulation as to service of a document invalidates service of a document that would otherwise be valid.

Service by registered mail

**37.** (1) A document not required to be served personally may be served by registered mail.

(2) This rule does not apply to service on a person who has been found to be incapable of managing his or her own financial affairs or a minor.

Substitutional service, dispensing with service

**38.** (1) Where personal service of a document is required by these rules and it appears to the Court that it is impractical for any reason to effect prompt personal service of the document, the Court may make an order

- (a) for substitutional service of it; or
- (b) dispensing with service.

(2) An application for an order for substitutional service must be supported by an affidavit setting out why prompt personal service is impractical and proposing an alternative mode of service which, in the opinion of the deponent, will or is likely to be effective.

(3) Service of a document in accordance with an order for substitutional service is good personal service.

(4) Where service has been effected pursuant to an order for substitutional service, judgment in default of defence shall not be entered except by leave of the Court.

(5) In the case of a missing person as defined in the *Public Trustee Act*, the Public Trustee shall be served in any event.

#### Filing of response by defendant or respondent

**39.** Where an originating document has not been duly served on a defendant or respondent but the defendant or respondent unconditionally files a defence or an appearance or other response, the originating document shall be deemed to have been personally served on the date the defence, appearance or other response is filed.

#### Service by telecopier

**40.** (1) In this rule,

"telecopier telephone number" means a seven-digit number plus any applicable area or international codes that appears with the word "fax" or with any reference to a telecopier in, attached to or on a letter enclosing a pleading or notice that is served or given under these rules by or on behalf of the party to be served or that party's solicitor or solicitor's agent.

(2) A document not required to be served personally may, in accordance with this rule, be served by means of a telecopier

- (a) on a solicitor or a solicitor's agent;
- (b) at an address for service; or
- (c) at the telecopier telephone number of a receiving telecopier.

(3) Service of a document by means of a telecopier is effected where the document is sent by a telecopier and received and printed by a receiving telecopier at

- (a) the office of the solicitor or the solicitor's agent;
- (b) the address for service; or
- (c) the telecopier telephone number of a receiving telecopier.

#### Address for service furnished

**41.** (1) Where an address for service is furnished by a party, a document not required to be served personally shall be deemed to be sufficiently served on the party if a true copy of the document is left at that address.

(2) Where an address for service is furnished by a defendant in an appearance, a document not required to be served personally shall be deemed to be sufficiently served on the defendant,

- (a) where a true copy of it is left at that address, on the day it is left; or
- (b) where a true copy of it is sent by registered mail to that address, on the expiration of 10 days after the day on which it is mailed.

#### Verification where admission

**42.** An admission or acceptance of service of a document on a party's solicitor or the solicitor's agent need not be verified by affidavit.

#### Service on solicitor

**43.** A document that is served after an originating document has been served and is required to be served personally on the party affected by the document may be served on the party's solicitor or the solicitor's agent.

#### Application to set aside

**44.** A defendant, before delivering a defence or an appearance, may apply to the Court to set aside the service of the statement of claim on him or her or on his or her solicitor under rule 31, to discharge or set aside the order authorizing such service or to set aside the statement of claim, on the ground of irregularity or otherwise, and the application shall not be deemed to be a submission to the jurisdiction of the Court.

#### Service on office of solicitor

**45.** Where, at the time of attendance to serve a document, the office of the solicitor for the party on whom the service is sought to be made is closed or no one is in attendance at the office for receiving documents served, service of the document may be effected by mailing it at any time during the same day, addressed to the solicitor at his or her office by registered mail postage prepaid, and the service shall be deemed to have been effected at the time of the attendance for that purpose at the office of the solicitor.

#### Service on judgment creditor respecting foreclosure or sale

**46.** In an action for foreclosure or sale by a mortgagee or other person having a charge on real property in which a judgment creditor of the mortgagor or of the person whose property is liable to the charge is required to be served, service on the judgment creditor is not necessary if service is effected on his or her solicitor in the action in which the judgment has been recovered.

## PART 6 SERVICE OUT OF THE JURISDICTION

#### Service out of jurisdiction without order

**47.** (1) Service of an originating document on a defendant out of the jurisdiction may be effected without order where

- (a) the whole subject-matter of the action is land situate in the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to lands so situate;

- (b) an act, deed, will, contract, obligation or liability affecting land or hereditaments situate in the jurisdiction is sought to be construed, rectified, set aside or enforced in the action;
- (c) relief is sought against a person domiciled or ordinarily resident in the jurisdiction;
- (d) the proceeding is for the administration of the estate of a person who died domiciled in the jurisdiction or for any relief or remedy that might be obtained in such a proceeding;
- (e) the proceeding is for the execution, with respect to property situate in the jurisdiction, of the trusts of a written instrument that ought to be executed according to the law of Nunavut and of which the person to be served is a trustee or the proceeding is for any relief or remedy that might be obtained in such a proceeding;
- (f) the proceeding is to enforce, rescind, resolve, annul or otherwise affect a contract or to recover damages or obtain any other relief in respect of a breach of contract, where
  - (i) the contract was made in the jurisdiction,
  - (ii) the contract was made by or through an agent trading or residing in the jurisdiction on behalf of a principal trading or residing out of the jurisdiction,
  - (iii) the contract, by its terms or by implication, is governed by the law of Nunavut, or
  - (iv) the parties to the contract agree that the courts of Nunavut shall have jurisdiction to entertain any action in respect of the contract;
- (g) the action is in respect of a breach committed in the jurisdiction of a contract made in or out of the jurisdiction, whether or not the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed in the jurisdiction;
- (h) the action is founded on a tort committed in the jurisdiction;
- (i) in the action, an injunction is sought ordering a defendant to do or refrain from doing anything in the jurisdiction or a nuisance in the jurisdiction is sought to be prevented or removed, whether or not damages are also sought in respect of the action;
- (j) a person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served in the jurisdiction;
- (k) the action is by a mortgagee of property other than land that is situate in the jurisdiction who seeks the sale of the property, the foreclosure of the mortgage or delivery by the mortgagor of possession of the property and not solely an order for the payment of moneys due under the mortgage;
- (l) the action is brought by a mortgagor of property, other than land, situated in the jurisdiction, who seeks redemption of the mortgage,

- reconveyance of the property or delivery by the mortgagee of possession of the property and not a personal judgment;
- (m) the proceeding is founded on a judgment of any court of Nunavut;
  - (n) the proceeding is a matrimonial cause or is in respect of support for a spouse, child or other dependant or for custody of, access to or guardianship for a child; or
  - (o) the proceeding is an action brought under the *Carriage by Air Act* (Canada).

(2) A statement of claim served out of the jurisdiction without leave shall state specifically on which of the grounds set out in subrule (1) it is claimed that service is permitted under this rule.

#### Leave to serve out of jurisdiction

**48.** (1) In any case to which rule 47 does not apply, the Court may grant leave to serve an originating document out of the jurisdiction where it is established, to the satisfaction of the Court, that the defendant has assets in the jurisdiction that may be rendered liable for the satisfaction of any judgment or order pronounced in the proceeding.

(2) Where leave is granted under subrule (1) and no defence is filed, no judgment shall be entered except by leave of the Court.

#### Application for and order granting leave

**49.** (1) An application for leave to serve any document out of the jurisdiction must be supported by affidavit or other evidence

- (a) stating that, in the belief of the deponent, the applicant has a reasonable cause of action;
- (b) showing in what place or country the person to be served is or probably may be found; and
- (c) giving the grounds on which the application is made.

(2) In granting an order allowing service out of the jurisdiction, a judge shall limit the time within which the pleading may be answered or opposed, having regard to the place where service is to be effected.

(3) An application under subrule (1) may be made *ex parte*.

#### Service pursuant to Convention

**50.** (1) In this rule,

"Central Authority" means the Central Authority within the meaning of the Convention; (*Autorité centrale*)

"certificate" means the certificate referred to in the Convention; (*attestation*)

"Convention" means the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, November 15, 1965, 20 U.S.T. 361, T.I.A.S. 6638, 658 U.N.T.S. 163; (*Convention*)

"internal law" means the internal law within the meaning of the Convention; (*droit interne*)

"receiving jurisdiction" means the State to which a document is forwarded for service under the Convention. (*jurisdiction d'accueil*)

(2) Where service out of the jurisdiction is permitted under rule 47 or 48 and the place where service is to be effected is out of Canada, the document may be served pursuant to the Convention, in which case service shall be effected in accordance with the internal law of the receiving jurisdiction unless the Court otherwise directs.

- (3) Where a document or notice is served under subrule (2),
- (a) a certificate respecting service issued by the Central Authority of the receiving jurisdiction, or any authority designated by it for the purpose, is sufficient proof of service; and
  - (b) a judgment entered on default of defence may be set aside only under rule 171.

Setting aside issue or service of originating document

**51.** Application may be made by a defendant or respondent to set aside an originating document served out of the jurisdiction without entering a defence or an appearance and, on the application, if it appears to the Court that the action should not have been commenced under this Part, the Court shall set aside the issue and service of the originating document so far as the defendant or respondent is concerned and may order the plaintiff or applicant to pay the costs of the defendant or respondent.

## PART 7 PARTIES AND JOINDER OF CAUSES OF ACTION

### General

Several causes united

**52.** Subject to the other provisions of this Part, a plaintiff may unite several causes of action in the same action.

Claim by trustee

**53.** A claim by a trustee in bankruptcy shall not, except by leave of the Court, be joined with a claim by the trustee in any other capacity.

Both spouses

**54.** A claim by or against both spouses may be joined with a claim by or against either of them.

#### Claim by executor or administrator

**55.** A claim by or against an executor or administrator may be joined with a claim by or against the executor or administrator personally if the personal claim is alleged to have arisen with reference to the estate represented by the executor or administrator in the action.

#### Claims by one or more plaintiffs against one or more defendants

**56.** Claims by one or more plaintiffs against one or more defendants in respect of or arising out of the same transaction or occurrence or out of the same series of transactions or occurrences may be joined in the same action

- (a) whether the plaintiffs claim to be entitled to relief jointly or separately or in the alternative;
- (b) whether the defendants are sought to be charged jointly or separately or in the alternative; or
- (c) whether or not the relief or remedy against the several defendants is the same.

#### Order to try separately

**57.** If several causes of action are misjoined or cannot conveniently be disposed of in one action, the Court may order any of them to be tried separately and may make all necessary directions.

#### Misjoinder or nonjoinder of parties

**58.** (1) No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the Court may in every cause or matter deal with the matter in controversy so far as the rights and interests of the parties actually before it are affected.

(2) Where an action has been commenced in the name of the wrong person as plaintiff or where it is doubtful whether an action has been commenced in the name of the right plaintiff, the Court may order any other person to be added or substituted as plaintiff with or without terms in order to determine the real matter in dispute.

(3) The Court may, on the application of a party or its own motion, order, with or without terms, that

- (a) the name of a party improperly joined be struck out; or
- (b) a person be added who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court to adjudicate on and settle all the questions involved in the cause or matter or to protect the rights or interests of any person or class of persons interested under the plaintiff or defendant.

(4) No person may be added or substituted as a plaintiff or as the next friend of a plaintiff without the person's consent in writing first being filed.

(5) Where a person is improperly or unnecessarily joined as a plaintiff and a defendant has set up a counterclaim against the person, the defendant may establish his or her counterclaim against the parties other than the person notwithstanding the misjoinder or any proceedings consequent on the misjoinder.

(6) The Court may order a person who is not a party to an action to be added as a defendant and give all necessary directions where it is satisfied by the person that the person

- (a) has an interest in the subject-matter or result of the action; and
- (b) should be allowed to defend the action or any issue in the action.

(7) An application to add, strike out or substitute a plaintiff or defendant may be made at any stage of the proceeding.

#### Defendant added or substituted

**59.** (1) Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered, amend the statement of claim in such manner as the joining of the defendant requires and serve the amended statement of claim on that defendant.

(2) A defendant added or substituted has, unless otherwise ordered, the same time to deliver a statement of defence as if he or she had been named as a defendant when the proceeding commenced and the proceeding as against the defendant shall be deemed to begin when he or she was added or substituted.

#### Want of parties

**60.** Where it appears that an action is defective for want of parties, the Court may render judgment saving the rights of any person who is not a party.

#### Waste, protection of property

**61.** In an action for prevention of waste or in any other action for the protection of property, a person may sue on behalf of himself or herself and all other persons having the same or a similar interest.

#### Common interest

**62.** Where numerous persons have a common interest in the subject of an intended action, one or more of those persons may sue or be sued or may be authorized by the Court to defend on behalf of or for the benefit of all.

#### Parties where trustee, executor, administrator

**63.** (1) A trustee, executor or administrator may sue on behalf of or be sued as representing the property or estate of which he or she is trustee or representative without joining any of the persons beneficially interested in the property or estate and shall be considered to represent such persons but the Court may, at any stage of the proceeding, order any such person to be made a party either in addition to or in lieu of the existing parties.

(2) Where a plaintiff sues or a defendant is sued in a representative capacity, the statement of claim must show in the capacity in which the plaintiff or defendant sues or is sued, as the case may be.

#### Judgment or order where beneficial

**64.** A judgment or order for the execution of a trust or the administration of an estate may be obtained without interest making a person interested in the trust or estate, other than the trustee, executor or administrator, a party to the proceeding.

#### Judgment or order against one beneficiary

**65.** A trustee, an executor or an administrator entitled to a judgment or order for the execution of a trust or the administration of an estate may have the judgment or order against any one legatee, devisee, next of kin or beneficiary.

#### Joinder of defendants

**66.** (1) Subject to subrule (2), all persons against whom a right to relief in respect of or arising out of the same transaction or occurrence or series of transactions or occurrences is alleged to exist, whether jointly, severally or in the alternative, may be joined in one action as defendants where, if separate actions were brought against those persons, any common question of law or fact would arise.

(2) Where it appears that joinder under subrule (1) may embarrass or delay the trial or action, the Court may order separate trials and make such other order as it considers expedient.

(3) In an action where a defendant has been joined, the Court may give judgment against such defendant as may be found to be liable according to and to the extent of the defendant's liability.

#### Interest of defendant

**67.** Where there are two or more defendants, it is not necessary that each defendant be interested in respect of all the relief prayed for or every cause of action included in a proceeding against him or her, but the Court may make whatever order appears just to prevent a defendant from being embarrassed or put to expense as a result of a requirement to attend any proceeding in which he or she may have no interest.

#### Where contract or negotiable instrument

**68.** A plaintiff may join in the same action

- (a) all or any of the parties alleged to be severally or jointly, or jointly and severally, liable on or in respect of a contract; or
- (b) all or any of the parties to a negotiable instrument.

#### Surety

**69.** A surety for the performance of any term of a contract may be made a party to an action on the contract.

#### Appointment of personal representative

**70.** (1) In an action or proceeding, where it appears that a deceased person who was interested in the matters in question in the action or proceeding has no personal representative, the Court may

- (a) proceed in the absence of a person representing the deceased person's estate; or
- (b) appoint a person to represent the deceased person's estate for the purposes of the action or proceeding notwithstanding that
  - (i) there may be active duties to be performed by the person so appointed,
  - (ii) a claim is made for administration of the estate, or
  - (iii) the person so appointed may represent an interest adverse to another party to the action or proceeding.

(2) An order made under subrule (1) and any order consequent on that order bind the estate of the deceased person in the same manner as if the personal representative of the deceased person were a party to the action or proceeding.

(3) Moneys payable to an estate under a judgment in an action in which the estate is represented by an administrator *ad litem* shall be paid into court and shall be paid out to the executor or administrator of the estate when letters probate or letters of administration have issued or as the Court may direct.

#### Appointment of representative

**71.** (1) In a proceeding in respect of the administration of the estate of a deceased person, property subject to a trust or the construction of a written instrument, including a statute, the Court may, if it is satisfied that it is expedient to do so, appoint one or more persons to represent a person, including an unborn person who is or may be interested or a class of persons that is or may be interested, whether presently or for a future, contingent or unascertained interest, in or affected by the proceeding where

- (a) the person, the class or a member of the class cannot be ascertained or cannot readily be ascertained;
- (b) the person, the class or a member of the class, though ascertained, cannot be found; or
- (c) it appears to the Court, having regard to the circumstances including the amount of money or value of property involved and the degree of difficulty of the point to be determined, expedient to exercise the power for the purpose of saving expense, though the person or the class or the members of the class can be ascertained and found.

(2) Where a person is or persons are appointed under subrule (1), any judgment given or order made by the Court when the person is or persons are before the Court is binding on the person or class represented by the person or persons so appointed.

Adjudication where parties not joined

**72.** Where not all the persons interested in property are before it, the Court may, if it considers it expedient, adjudicate on the questions arising between those persons who are before it without joining as parties other persons interested in the property.

Approval of compromise where interested persons not joined

**73.** (1) Where a compromise is proposed in a proceeding concerning a trust or an estate and some of the persons interested in the compromise are not parties to the proceeding but there are other persons having the same interest who are before the Court and who assent to the compromise, the Court may, if satisfied that the compromise will be for the benefit of the persons who are not parties and to require service on those persons would cause unreasonable expense or delay, approve the compromise and order that it is binding on the persons who are not parties.

(2) Where an order is made under subrule (1) to bind a person who is not a party, that person is bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

Where action continued

**74.** An action may be continued by or against a person to or on whom an estate, an interest or a title has devolved or to whom it has been transferred where the estate, interest or title devolves or is transferred

- (a) by reason of death, if the cause of action survives;
- (b) by assignment or conveyance; or
- (c) by operation of law.

When no abatement by death

**75.** Whether or not a cause of action survives, where a party has died after all the evidence has been heard but before judgment has been entered, there is no abatement by the death and judgment may be entered notwithstanding the death.

Adding party or changing capacity after change in interest

**76.** (1) Where a change or transmission of interest or liability has taken place or where, because an interested person comes into existence after the commencement of an action, it becomes necessary or desirable that a person not already a party should be made a party or that a person already a party should be made a party in another capacity, the Court may, on an application made on notice or *ex parte*, order that the proceeding be carried on between the continuing parties and the new party or the party in a new capacity, as the case may be.

(2) Where an order is made under subrule (1), a copy of the order with a notice in Form 5 endorsed on it shall be served on the continuing parties or their solicitors and on the new party or the party in the new capacity, as the case may be.

(3) A person served with a copy of an order under subrule (2) may apply to the Court to discharge or vary the order at any time within 10 days after the day it is served.

(4) Where a person served with a copy of an order under subrule (2) is under disability and has no committee, guardian of his or her estate or guardian *ad litem*, the time within which an application may be made to the Court to discharge or vary the order is 10 days after the day a committee, guardian or guardian *ad litem* is appointed and served with the order and, until that period has expired, the order has no effect against the person under disability.

Order to compel where plaintiff has died

**77.** (1) Where a plaintiff has died and a proceeding may be continued, the Court may, on the application of a defendant made on notice, make an order to compel the person entitled to proceed with the action to proceed according to these rules within such time as the Court orders, in default of which the action shall stand dismissed for want of prosecution.

(2) Where an action stands dismissed under subrule (1), the Court may make an order for payment of costs and the order may be enforced against the goods and lands that are included in the estate of the deceased plaintiff.

#### Parties Under Disability

Minor suing

**78.** A minor may sue or counterclaim by his or her next friend.

Minor defending

**79.** (1) A minor must defend by his or her guardian *ad litem*, unless the Court orders otherwise.

(2) The Court may appoint a guardian *ad litem* where it appears to be in the interest of a minor who is a defendant in an action.

Person incapable of managing financial affairs

**80.** A person who has been found to be incapable of managing his or her financial affairs, but who is not a mentally incompetent person as defined in the *Public Trustee Act*, may

- (a) sue or counterclaim by his or her guardian, committee or next friend; and
- (b) defend by his or her committee or guardian or, where there is no committee or guardian, by a guardian *ad litem* appointed by the Court.

Mentally incompetent person

**81.** Subject to the *Public Trustee Act*, a mentally incompetent person as defined in that Act may

- (a) sue or counterclaim by his or her committee; and
- (b) defend by his or her committee or guardian or, where there is no committee or guardian, by a guardian *ad litem* appointed by the Court.

#### Written authority of next friend

**82.** Unless the Court orders otherwise, before the name of a person is used as next friend in a proceeding, the person shall sign a written authority in Form 6 directed to the solicitor for that purpose and the authority shall be filed with the Clerk.

#### Appointment where served with judgment or order

**83.** Where a person who has been found to be incapable of managing his or her financial affairs, but who is not a mentally incompetent person as defined in the *Public Trustee Act*, or a minor has been served with a judgment or order and is not represented, the Court may appoint a guardian *ad litem* for the minor or person.

#### Duty of guardian *ad litem*

**84.** A guardian *ad litem* shall, as necessary for the protection of the interests of the person who has been found incapable of managing his or her financial affairs or the minor for whom he or she is guardian,

- (a) promptly attend to those interests;
- (b) take all proceedings in respect of those interests; and
- (c) communicate with all proper persons and parties, including the father, the mother and the guardian of the estate of the person who has been found incapable of managing his or her financial affairs or the minor if there is one, and the person with whom or under whose care the minor or person is.

#### Consent to mode of taking evidence or to procedure

**85.** In any action or proceeding to which a person under disability is a party, the next friend, guardian or committee may, with the approval of the Court, consent to any mode of taking evidence or to any procedure and the consent has the same effect as if the party were under no disability and had so consented.

#### Continuing proceeding against party

**86.** Where a party who is a minor attains the age of majority or a party otherwise ceases to be under disability, any party to the action or proceeding may apply to the Court for an order that the action or proceeding be continued by or against the party who was a minor or under disability in that party's own name and, once such an order is made, the proceeding shall be styled accordingly.

#### Removal or substitution of next friend or guardian

**87.** Where the Court considers it to be in the interests of a party under disability, the Court may remove or substitute the party's next friend, guardian, guardian *ad litem* or other representation on such terms and conditions as it considers just.

Approval for settlement, compromise or consent judgment

**88.** (1) Where a claim is made by or on behalf of a person under disability, no settlement or compromise, in respect of the person's claim is binding on the person unless the settlement or compromise is approved by the Court.

(2) Where, before a proceeding is commenced, an agreement is reached for the settlement or compromise of a claim of or against a person under disability, the Court may, on application, approve the agreement.

(3) Judgment may be obtained on consent against a person under disability only with the approval of the Court.

(4) Unless the Court orders otherwise, notice of an application or motion for the approval of the Court under this rule shall be given to the Public Trustee appointed under the *Public Trustee Act*.

Actions By or Against Firms

May sue in name of firm, obtaining names of partners

**89.** (1) Subject to any other enactment, where two or more persons claim to be entitled or are alleged to be liable as partners in respect of a cause of action and carry on business within the jurisdiction, they may sue or be sued in the name of the firm of which they were members when the cause of action arose.

(2) A defence by persons sued as partners in the name of their firm must be in the name of the firm but any member of the firm is at liberty to defend in his or her own name apart from the firm and all subsequent proceedings shall continue in the name of the firm.

(3) A defendant to an action brought by partners in the name of their firm or a plaintiff in an action against partners in the name of their firm may serve on the firm a notice requiring the firm to furnish a written statement of the names and addresses of the persons who were partners when the cause of action arose.

(4) Where a firm does not comply with a notice served under subrule (3), the Court may, on application, order that the statement be furnished and that it be verified on oath or in such other manner as may be specified by the Court.

(5) Where an application is made under subrule (4) by a defendant, the Court may order that the action be stayed.

(6) Where an application is made under subrule (4) by a plaintiff, the Court may make such order as it considers just.

(7) Where, in an action by a firm, the firm has furnished a statement in accordance with subrule (3) or the Court has made an order under subrule (4), the

proceeding shall continue in the name of the firm with the same consequences as would have ensued if the persons whose names were furnished had been named as plaintiffs.

Where person denies being partner

**90.** (1) Where, in an action against a firm, the statement of claim is served on a person as a partner under subrule 30(4), that person, if he or she denies that he or she was a partner or liable as a partner at any material time, may enter a defence to the action stating that he or she does so as a person served as a partner in the defendant firm but denies that he or she was a partner or liable at any material time.

(2) Where a defence has been entered in accordance with this rule, the firm may not be noted in default.

Individual using business name

**91.** An individual carrying on business within the jurisdiction who uses as a business name a name or designation other than his or her own name may be sued in the business name as if it were the name of a firm.

#### Amicus Curiae

*Amicus curiae*

**92.** With leave of the Court, a person may intervene in a proceeding, without becoming a party to the proceeding, as *amicus curiae* for the purpose of rendering assistance to the Court by way of argument or by presentation of evidence, on such terms as to costs or otherwise as the Court may impose.

### PART 8 PLEADINGS

#### Service and Time for Delivery of Pleadings

Time for delivery of defence, appearance

**93.** (1) A defendant must deliver his or her appearance or statement of defence within the following periods of time commencing the day after the day on which the defendant is served with the statement of claim:

- (a) where the defendant is served within the jurisdiction, 25 days;
- (b) where the defendant is served out of the jurisdiction without leave, 30 days;
- (c) where the defendant is served out of the jurisdiction with leave, within such time as is fixed by the order permitting such service.

(2) Where a defendant files an appearance in accordance with subrule (1), the time limited for the delivery of a statement of defence under subrule (1) is extended by 10 days.

(3) The Court may, on an application that may be made *ex parte*, order the time set out in subrule (1)(b) or (c) to be shortened.

(4) An appearance must be in Form 7.

#### Time for delivery of other pleadings

**94.** (1) A party served with a pleading must deliver his or her pleading in answer, other than a defence, a defence to counterclaim by a person not a party to the action and a defence to a third party notice, within 15 days after the day on which the party is served with the pleading to be answered.

(2) A defendant who is required to serve a copy of the counterclaim made by him or her on any person who, before service, is a party to the action shall do so before the expiry of the period within which the defendant must serve on the plaintiff the defence to which the counterclaim is added.

(3) A person served with a counterclaim has the same time for the delivery of a defence to counterclaim or an appearance as if the counterclaim were a statement of claim.

### Counterclaim

#### Counterclaim, set-off

**95.** (1) A defendant may, by way of counterclaim against the plaintiff's claim or cause of action, set up any claim or cause of action either against the plaintiff alone or against one or more of several plaintiffs or against the plaintiff and another person whether the other person is a party to the action or not.

(2) A matter that might be pleaded by way of setoff must, if it is desired to set the same up in any action, be pleaded by way of counterclaim.

(3) A counterclaim has the same effect as a cross-action so as to enable the Court to pronounce a final judgment in the same action both on the original claim or cause of action and on the counterclaim.

(4) The counterclaim must be conjoined and pleaded with the statement of defence, if any.

(5) A defence to counterclaim must be conjoined and pleaded with the reply, if any.

(6) A counterclaim or statement of defence and counterclaim must be in Form 8.

(7) The style of cause, as set out in the originating document, must be used, without alteration except by order of the Court, on a counterclaim.

Counterclaim against person not a party

**96.** (1) Where a defendant joins a person as a party against whom he or she makes a counterclaim, the defendant shall add the person's name to the style of cause of the action and serve on the person a copy of the counterclaim.

(2) A person on whom a copy of a counterclaim is served under this rule, if he or she is not already a party to the action, becomes a party to it as from the time of service with the same rights in respect of his or her defence to the counterclaim and otherwise as if he or she had been sued in the ordinary way by the defendant making the counterclaim.

Order to exclude or try separately

**97.** Where a counterclaim cannot be conveniently disposed of in the same action as the original claim, the Court may order the counterclaim to be excluded or tried separately or make such other order as it considers expedient.

Where action dismissed

**98.** A counterclaim may proceed notwithstanding that the action of the plaintiff is stayed, discontinued or dismissed.

Judgment for balance

**99.** Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance.

Counterclaim without defence

**100.** Where a defendant does not dispute the plaintiff's claim and sets up no defence to it but sets up a counterclaim, the Court may stay proceedings respecting the plaintiff's claim, with or without terms, until the counterclaim is disposed of.

Joinder of Issue

Where party may join issue

**101.** A party, in his or her pleading, may expressly join issue on the next preceding pleading but may not join issue on a statement of claim, counterclaim or third party notice.

Facts deemed denied

**102.** Every material fact in a pleading on which issue is joined shall be deemed to have been denied except those facts that are expressly stated to be admitted.

No pleading after reply

**103.** No pleading, other than a joinder of issue, may be filed subsequent to a reply or a reply to defence to counterclaim except by leave of the Court.

#### Implied joinder

**104.** Where no reply or joinder of issue is delivered, there shall be an implied joinder of issue 15 days after the day the statement of defence or defence to counterclaim is delivered.

### Close of Pleadings

#### Pleadings closed

**105.** Pleadings are closed when issue is joined.

### Contents of Pleadings

#### Statement of material facts

**106.** A pleading must contain only a statement in a summary form of the material facts on which the party pleading relies for his or her claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

#### Numbering, numbers

**107.** (1) A pleading must be divided into paragraphs numbered consecutively.

(2) In a pleading, a day in a month, a year, a sum or a number must be expressed in figures and not words.

#### Effect of document, purport of conversation

**108.** The effect of a document or the purport of a conversation referred to in a pleading must, if material, be briefly stated and the precise words of the document or conversation need not be stated except in so far as those words are themselves material.

#### Where fact need not be pled

**109.** A party need not plead a fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in a pleading.

#### Condition precedent

**110.** A statement of the performance or occurrence of all conditions precedent necessary for the case of a plaintiff or defendant shall be implied in his or her pleading and, when any party intends to contest the performance of a condition precedent, the party shall specify the condition and its non-performance.

#### Pleading specifically

**111.** A party shall, in any pleading subsequent to a statement of claim, specifically plead performance, release, payment, statute of limitation, statute of frauds, fraud, any fact showing illegality or any matter

- (a) that the party alleges makes a claim or defence of the opposite party not maintainable;

- (b) that, if not specifically pleaded, might take the opposite party by surprise; or
- (c) that raises an issue of fact not arising out of the preceding pleading.

#### Matter arising after action commenced

**112.** (1) A party may plead any matter that arises after the commencement of an action except that, if by reason of the new matter it becomes necessary to amend a pleading already delivered by the party, the amendment may only be made with the leave of the Court.

(2) No pleading may, except by way of amendment, raise a new ground of claim or contain an allegation of fact inconsistent with the previous pleadings of the party pleading it.

(3) Where a defendant alleges a ground of defence that arises after the commencement of an action, the plaintiff may deliver an admission of that defence and either party may apply to a judge to dispose of the costs of the action or such portion of the costs as pertains to the defence so confessed.

#### Alternative claims or defences

**113.** Notwithstanding anything else in these rules, a party may plead claims or defences, as the case may be, in the alternative.

#### Point of law

**114.** A party may, in a pleading, raise any point of law.

#### Alleging malice or fraud

**115.** Where it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of a person, it is sufficient to allege it as a fact without setting out the circumstances from which it is to be inferred.

#### Alleging notice

**116.** Where it is material to allege notice to a person of a fact, matter or thing, it is sufficient to allege the notice as a fact, unless the form or the precise terms of the notice or the circumstances from which the notice is to be inferred are material.

#### Particulars to be pled

**117.** Where the party pleading relies on a misrepresentation, fraud, a breach of trust, wilful default or undue influence, particulars must be stated in the pleading.

#### Particulars in separate document

**118.** Where it is necessary to give particulars of a debt, expenses or damages and those particulars exceed 200 words, they may be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been delivered and if so, when, or whether the document is being served with the pleading.

#### Demand for better statement or further particulars

**119.** (1) A party to an action or proceeding may, at any time before the action or proceeding is set down for trial, deliver to any other party a notice requiring that the other party provide a further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in a pleading.

(2) The notice referred to in subrule (1) must clearly state the particulars required.

(3) The party on whom a notice is served under subrule (1) shall, within 15 days after the day the notice is served, deliver to the party who served the notice a statement as required by the notice.

(4) Where a party serving a notice under subrule (1) is a defendant who has not delivered a statement of defence to the plaintiff's claim or amended claim or is a plaintiff who has not replied to the defendant's statement of defence or counterclaim, that party has the same length of time for pleading after delivery of the particulars that he or she had left when the notice was delivered.

(5) Where a party defaults in delivering particulars in accordance with this rule or the particulars delivered are not satisfactory to the party requiring them, the party requiring the particulars may apply to the Court for an order requiring the other party to give particulars as desired or for further or better particulars and, on the application, the Court may order delivery of particulars on such terms as to costs or otherwise as it considers just.

#### Silence not admission

**120.** Subject to rule 125 and except as otherwise provided in these rules, where a pleading is silent as to any allegation contained in the previous pleading of the opposite party, it shall not be construed as an admission of the truth of the allegation.

#### Costs and other relief

**121.** In a pleading, costs need not be claimed and it is not necessary to ask for general or other relief, both of which may be given to the same extent as if they had been asked for.

#### Where defendant proposes to prove different version

**122.** (1) Where the defendant proposes at trial to disprove all or part of the case set up by the plaintiff by proving a different version of the transaction or occurrence or series of transactions or occurrences alleged by the plaintiff in support of all or part of the plaintiff's cause of action, a mere denial of the allegation or silence in the defendant's pleading with respect to the allegation is not sufficient, but the defendant shall set up his or her version in his or her defence.

(2) This rule applies to a defence to counterclaim.

### Incorporation

**123.** Unless the incorporation of a corporate party is specifically denied, it is not necessary to prove it.

### Contract, promise or agreement alleged

**124.** Where a contract, promise or agreement is alleged in a pleading, a bare denial of it or silence with respect to it in the opposite party's pleading shall be construed only as a denial in fact of the express contract, promise or agreement alleged or of the matters of fact from which it may be implied by law, and not as a denial of the legality or sufficiency in law of the contract, promise or agreement.

### Specific denial re money demand, bill of exchange

**125.** Where an action involves any of the following claims, a party shall specifically deny any material allegation of fact made in support of the claim of the opposite party that the party disputes:

- (a) a claim for a debt or liquidated demand in money, including the order, contract, delivery or amount claimed in a claim for goods bargained and sold or sold and delivered or the receipt of money in a claim for money had and received;
- (b) a claim on a bill of exchange, promissory note or cheque, including the making, drawing, endorsing, accepting, presenting or dishonouring of a bill, note or cheque.

### Denial must answer point of substance

**126.** Where a party in a pleading denies an allegation of fact in the previous pleading of the opposite party, the denial shall not be evasive but shall answer the point of substance.

### Denial of representative capacity

**127.** Where a party wishes to deny the right of another party to claim as executor or as trustee, whether for the benefit of creditors or otherwise, or in any representative or other capacity or to deny the alleged constitution of a partnership that party shall deny it specifically.

### Costs where fact ought to have been admitted

**128.** Where the Court is of the opinion that any allegation of fact that was denied or not admitted ought to have been admitted, the Court may make an order with respect to any extra costs occasioned because they were denied or not admitted.

## Striking Out and Amendment of Pleadings

### Court may strike out or amend

**129.** (1) The Court may, at any stage of a proceeding, order that

- (a) any pleading in the action be struck out or amended, on the ground that

- (i) it discloses no cause of action or defence, as the case may be,
  - (ii) it is scandalous, frivolous or vexatious,
  - (iii) it may prejudice, embarrass or delay the fair trial of the action, or
  - (iv) it is otherwise an abuse of the process of the Court; and
- (b) the action be stayed or dismissed or judgment be entered accordingly.

(2) No evidence is admissible on an application under subrule (1)(a)(i).

(3) This rule applies with such modifications as the circumstances require to an originating notice and a petition.

#### Amendment without leave

**130.** (1) A party may, without leave of the Court, amend a pleading of the party once at any time before the pleadings are closed and, where the party does so, he or she shall deliver the amended pleading to the opposite party.

- (2) Where an amended statement of claim is delivered,
- (a) the defendant, if he or she has already delivered a defence, may amend his or her defence; and
  - (b) the period for delivering a defence, if not already delivered, or an amended defence is 10 days after the day the amended statement of claim is delivered.
- (3) Where an amended defence is served on the plaintiff by the defendant,
- (a) the plaintiff, if he or she has already delivered a reply, may amend his or her reply; and
  - (b) the period for delivering a reply, if not already delivered, or an amended reply is 10 days after the day the amended defence is delivered.

(4) In this rule, where a party is entitled to deliver an amended defence to an amended statement of claim, the party may, in lieu of delivering an amended defence, deliver a new defence to the amended statement of claim and, where the party is entitled to deliver an amended reply, he or she may, in lieu of delivering an amended reply, deliver a new reply to the amended statement of defence.

(5) In this rule, a reference to a defence or a reply includes a reference to a counterclaim, a defence to counterclaim and third party proceedings.

(6) Where an amended counterclaim is served by a defendant on a party other than the plaintiff against whom the counterclaim is made, subrule (2) applies as if

- (a) the counterclaim were a statement of claim;

- (b) the party were the plaintiff; and
- (c) the party against whom the counterclaim is made were a defendant.

(7) Where a party has pleaded in answer to a pleading that is subsequently amended and served on the party, if that party does not amend his or her pleading under this rule, he or she shall be taken to rely on it in answer to the amended pleading.

#### Application for disallowance

**131.** Where a party has amended a pleading under rule 130, the opposite party may, within 15 days after the day the amended pleading is delivered to him or her, apply to the Court to disallow the amendment or any part of the amendment and the Court may disallow it or allow it subject to terms as to costs or otherwise as it considers just.

#### Amendment without order

**132.** A party may amend his or her pleadings at any time without order on filing the written consent of the opposite party or the solicitor of the opposite party.

#### Amendment with leave

**133.** The Court may, at any stage of the proceeding, allow a party to alter or amend his or her pleadings for the purpose of determining the real question in issue between the parties in such manner and on such terms as the Court considers just.

#### Amendment of defect or error

**134.** The Court may, at any time and on terms as to costs or otherwise as it considers just, amend a defect or error in a pleading and make all necessary amendments to the pleading for the purpose of determining the real question in issue between the parties.

#### Expiry of order

**135.** Where a party who has obtained an order granting leave to amend a pleading does not amend it in accordance with the order within the time limited for that purpose by the order or, if no time is limited by the order, within 15 days after the day the order is made, the order granting leave to amend becomes inoperative on the expiration of the time limited or of the 15 days, as the case may be, unless the time is extended by the Court.

#### Manner of making amendment

- 136.** (1) A pleading shall be amended
- (a) by endorsing the alterations on the copies of the pleading that were filed or by interleaving additions on paper with the copies filed, if necessary, except that where the amendments require the insertion of more than 20 words in any one place or are so numerous or of such a nature that making them in the copies filed would render them difficult or inconvenient to read, by filing a reprint or fresh copy of the pleading as amended; and
  - (b) by serving a copy of the amended pleading on the appropriate party.

(2) Where an amendment is made by endorsing the alteration on copies of the pleading, it shall be written or underlined in ink of a different colour from that used in the pleading.

(3) Where an amendment is made by filing a reprint or fresh copy of the pleading as amended, the amendments shall be underlined.

#### Endorsement

**137.** Where a pleading is amended, it shall be marked by the Clerk with the date the amendment is made and of the order or consent, if any, under which it is amended, in the following manner:

"Amended (*month, day, year*) (*add, if such is the case: under order (or consent) dated (month, day, year)*)".

#### Time for delivery

**138.** The amended pleading shall be delivered within the time allowed for amending it.

#### Amendment at trial

**139.** (1) Where an amendment is directed or allowed at trial, it is not necessary to issue an order allowing it.

(2) An amendment made at trial, unless otherwise directed, shall be made without delay in the record.

#### Amendment of record or other document

**140.** Where the Court directs that an amendment be made to a record of the Court or a filed document, other than a pleading, no physical alteration of the record or document may be made, but the Clerk shall make a note of the amendment in the margin or other convenient place on the record or document.

#### Costs

**141.** The costs, if any, occasioned by an amendment shall be borne by the party making it unless the Court otherwise orders.

## PART 9 THIRD PARTY PROCEDURE

#### Third party notice

**142.** (1) A defendant may serve a third party notice on any person, whether or not the person is already a party to the action, where the defendant claims against that person that

- (a) he or she is entitled to contribution or indemnity;
- (b) he or she is entitled to any relief or remedy that is related to or connected with the original subject matter of the action and that is

- substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) any question or issue relating to or connected with the original subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined, not only as between the plaintiff and the defendant, but also as between the plaintiff and the defendant and the third party, or between any of them.

(2) A third party notice must be in Form 9 and must state the nature and grounds of the claim.

(3) A third party notice shall, unless the Court otherwise orders, be filed with the Clerk before the earlier of the following:

- (a) the time the defendant is noted in default or has judgment entered against him or her;
- (b) six months after the defendant files a defence or appearance.

(4) A third party notice shall be sealed with the seal of the Court and served, with a copy of the statement of claim, within 30 days after the day the third party notice is filed.

#### Service

**143.** A copy of any third party notice and any pleadings in the third party proceeding shall be served on the plaintiff's solicitor within 30 days after the filing of the notice.

#### Setting notice aside

**144.** A third party, at any time before he or she defends, or the plaintiff, at any time after service of a third party notice, may move to set the third party notice aside.

#### Claim of third party

**145.** A person served with a third party notice may, in the same manner as a defendant, serve any other person against whom he or she claims with a notice to that effect and all provisions of these rules respecting third parties apply, with such modifications as the circumstances require, to any person served with the notice.

#### Application of rules 47 to 50

**146.** Rules 47 to 50 apply to service of a third party notice outside Nunavut.

#### Defence deemed admission of liability

**147.** (1) A third party must deliver a statement of defence or an appearance within 25 days after the day the third party notice is served on him or her.

(2) Where a third party files an appearance, the time limited for the delivery of a statement of defence under subrule (1) is extended by 10 days.

(3) A third party may, by statement of defence, dispute the defendant's liability to the plaintiff or the third party's liability to the defendant or both.

(4) A third party who does not dispute the liability of the defendant to the plaintiff shall be deemed to admit the validity of any judgment granted in the action against the defendant, whether obtained by consent or otherwise.

(5) A third party who does not dispute his or her liability to the defendant shall be deemed to admit liability to the extent claimed in the third party notice.

#### Late filing

**148.** Notwithstanding rule 47, a third party may, before he or she has been noted in default, deliver a statement of defence or an appearance.

#### Default

**149.** By filing a written direction in Form 10, a party who issued a third party notice may require the Clerk to note the third party in default where

- (a) the third party fails to deliver a statement of defence or an appearance within the time limited by subrule 147(1) or, where an appearance is filed, the third party fails to deliver a statement of defence within the time limited by subrule 147(2); and
- (b) no statement of defence has been filed in respect of the third party at the time the written direction is filed.

#### Defence after noting in default

**150.** The Court, on the application of a third party who has been noted in default, may allow the third party to deliver an appearance or a statement of defence to the third party notice.

#### Judgment against third party where default judgment against defendant

**151.** (1) Where a third party fails to defend and the defendant who gave the third party notice suffers judgment by default, the defendant may, at any time before or after satisfaction of the judgment, apply to the Court for judgment against the third party to the extent claimed in the third party notice.

(2) An application under subrule (1) may be made *ex parte* where the third party has not filed an appearance.

(3) Where a defendant applies for judgment under subrule (1), the judge hearing the application may

- (a) on proof of the defendant's claim by affidavit or otherwise, give judgment or direct an accounting; or
- (b) set the matter over for a hearing on notice, which notice shall be given to the third party in the manner directed by the Court.

(4) The Court may set aside or vary a judgment against a third party given under subrule (3) on such terms as it considers just.

#### Judgment against third party

**152.** (1) Where a third party fails to defend and the plaintiff obtains a judgment other than by default, the Court may, at or after the trial of the action or, if the action is decided other than by trial, at any time after judgment, give such judgment as the nature of the case requires for the defendant against the third party.

(2) Unless leave is given, execution shall not issue on a judgment given under this rule until the judgment against the defendant has been satisfied.

#### Party to the action

**153.** (1) A third party who has delivered a statement of defence shall be considered for all purposes to be a party to the action and shall be entitled

- (a) to be served with all subsequent pleadings and proceedings in the action; and
- (b) to production of documents from and examination for discovery of all other parties to the action with whom the pleadings disclose the party has an issue.

(2) An issue between a third party and any other party shall be tried as part of the action but if it appears that the plaintiff may be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which the plaintiff is not concerned, the Court may, on the application of any party, give any direction it considers necessary.

#### Variation, rescission of order

**154.** An order made under rule 153 may be varied or rescinded at any time.

#### Delay to plaintiff

**155.** A plaintiff shall not be prejudiced or unnecessarily delayed by reason of questions between a defendant and a third party that do not concern the plaintiff and the Court shall give all such directions, on terms or otherwise, as may be necessary to prevent an unnecessary delay where it can be done without injustice to the defendant.

#### Where counterclaim

**156.** Where a counterclaim is made by a defendant, this Part applies to the counterclaim as if

- (a) the subject-matter of the counterclaim were the original subject-matter of the action; and
- (b) the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

PART 10  
CROSS-CLAIMS

Contribution, indemnity

**157.** (1) In this rule,

"cross-claim" means a notice of claim for contribution or indemnity.

(2) Where a defendant claims against a codefendant that the defendant is entitled to contribution or indemnity by reason of the *Contributory Negligence Act*, the defendant shall file and serve on the codefendant a cross-claim.

(3) A cross-claim must be in Form 11 and shall be served on

- (a) the co-defendant, together with the defendant's statement of defence, within 15 days after the day the statement of defence is filed; and
- (b) all other parties to the action.

(4) Unless otherwise ordered, no pleadings are required to support a cross-claim.

(5) A cross-claim shall be determined at the trial of the action.

PART 11  
PROCEDURES ON DEFAULT

Where no notice required

**158.** Except as otherwise provided by these rules or ordered by the Court, a defendant who fails to defend or file an appearance is not entitled to notice of any subsequent proceedings in the action.

Late filing

**159.** Notwithstanding subrule 93(1) or (2), a defendant may, before he or she has been noted in default or judgment has been given against him or her, deliver a statement of defence or an appearance.

Noting in default

**160.** By filing a written direction in Form 10, a plaintiff may require the Clerk to note a defendant in default where

- (a) the defendant fails to deliver a statement of defence or an appearance within the time limited by subrule 93(1) or, if an appearance is filed, the defendant fails to deliver a statement of defence within the time limited by subrule 93(2); and
- (b) no statement of defence has been filed in respect of the defendant at the time the written direction is filed.

#### Claim for debt or liquidated demand

**161.** (1) Where a statement of claim includes a claim, with or without interest, for a debt or a liquidated demand, whether as debt or damages, and a defendant fails to defend as to the debt or demand, or any part of the debt or demand, the plaintiff may enter judgment against the defendant for a sum not exceeding the amount in respect of which there is no defence and costs, together with such interest as is justified by the statement of claim.

(2) Rule 165 does not apply to a proceeding under subrule (1).

(3) A plaintiff may, after entering judgment against a defendant under subrule (1), proceed with the action against any other defendant and in respect of any other claim.

(4) Where interest is claimed in a proceeding under subrule (1) by way of damages, whether under statute or otherwise, judgment for the interest may be entered only by leave of the Court and the Court may direct that the interest claim be determined on an assessment set down under subrule 167(1).

(5) Where a defendant fails to defend or file an appearance in an action on a bond for non-performance of a covenant or an agreement contained in a deed, an indenture or a writing, the plaintiff may not enter judgment under subrule (1) but shall proceed

- (a) by way of assessment set down under subrule 167(1) on the breaches alleged in the statement of claim; and
- (b) in respect of any further breach that occurs, by serving on the defendant notice of the further breach.

#### Claim for recovery of goods or land

**162.** (1) Where a statement of claim includes a claim for the recovery of goods or land and a defendant fails to deliver a defence to that claim, the plaintiff may enter judgment against the defendant for the recovery of the goods or land, or such part of the goods or land as has not been the subject of a defence, and for costs.

(2) A plaintiff may, after entering the judgment against a defendant under subrule (1), proceed with the action against any other defendant and in respect of any other claim.

#### Affidavit on default

**163.** Judgment on default shall not be entered against a defendant unless an affidavit is filed on behalf of the plaintiff

- (a) proving due service on the defendant of the originating document; or
- (b) to which is attached as an exhibit a copy of the originating document, endorsed by the defendant's solicitor with an undertaking to file a statement of defence or an appearance or to appear on the defendant's behalf.

Judgment against person incapable of managing financial affairs, minor

**164.** Judgment shall not be entered against a person who has been found to be incapable of managing his or her financial affairs or a minor on default except by leave of the Court.

Where appearance

**165.** Where a defendant delivers an appearance, the plaintiff may proceed against the defendant as if he or she failed to defend, except that

- (a) the defendant is, unless otherwise ordered, entitled to notice of all subsequent proceedings, including noting in default, against him or her; and
- (b) judgment may be obtained only on application to the Court with notice to the defendant.

Where defence struck out

**166.** Where an order is made striking out the defence of a defendant, the plaintiff may proceed against the defendant as if he or she had failed to defend or deliver an appearance.

Application for judgment, assessment

**167.** (1) Where a defendant has been noted in default, the plaintiff may

- (a) apply to the Court for judgment against the defendant; or
- (b) set the matter down for assessment.

(2) An application under subrule (1)(a) may be made *ex parte* where the defendant has not filed an appearance.

(3) Where a plaintiff applies for judgment under subrule (1)(a), the judge hearing the application may

- (a) on proof of the plaintiff's claim by affidavit or otherwise, give judgment or direct an accounting; or
- (b) set the matter over for a hearing on notice, which notice shall be given to the defendant in the manner directed by the Court.

Where some defendants served

**168.** Where in an action there are several defendants of whom one or more have been served and one or more have not, the Court may order, on payment of costs or otherwise as it may consider just, the defendant or defendants not served struck out and allow the plaintiff to proceed with the action against the defendant or defendants served.

Where some defendants defend

**169.** (1) Where in an action there are several defendants and some only have defended or filed an appearance, the plaintiff may

- (a) proceed to trial against those who have defended; or
- (b) apply to the Court, on notice to the defendants who have defended or filed an appearance, for judgment against the other defendants.

(2) At a trial or on an application under subrule (1), the Court may give judgment or direct an assessment of damages against those defendants against whom the plaintiff is entitled to judgment or an assessment of damages, as the case may be, without prejudice to the right of the plaintiff to proceed with the action against the other defendants.

#### Amendment of judgment

**170.** On an application to set aside a judgment entered under this Part, the Court, if satisfied that the judgment was entered, by inadvertence, for an amount in excess of that to which the plaintiff is entitled on his or her pleadings or by order of the Court, may direct that the judgment be amended as may be necessary and on terms as to costs or otherwise.

#### Order of Court

**171.** The Court may, on such terms as it considers just, set aside or vary a judgment entered on default of defence or pursuant to an order obtained *ex parte* or permit a defence to be filed by a party who has been noted in default.

#### Where counterclaim

**172.** Where a defendant sets up a counterclaim in an action to which this Part applies, the plaintiff may not issue execution or a garnishee summons without leave of the Court.

#### Default on counterclaim

**173.** This Part applies to a counterclaim as if the counterclaim were a separate action, except that neither a garnishee summons nor execution shall issue against any plaintiff in the original action without leave of the Court.

## PART 12 SUMMARY JUDGMENT

#### Application by plaintiff

**174.** (1) A plaintiff may, after a defendant has delivered a statement of defence, apply with supporting affidavits or other evidence for summary judgment against the defendant on all or part of the claim in the statement of claim.

(2) The plaintiff may, on an application made *ex parte*, seek leave to serve a notice of motion for summary judgment on a defendant with the statement of claim and the Court may grant the leave where special urgency is shown, subject to such directions as it considers just.

#### Application by defendant

**175.** A defendant may, after delivering a statement of defence, apply with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim.

#### Response to application

**176.** (1) In response to the affidavit material or other evidence supporting an application for summary judgment, the respondent may not rest on the mere allegations or denials in his or her pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

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

(3) Where the Court is satisfied that the only genuine issue is the amount to which the applicant is entitled, the Court may order a trial of that issue or grant judgment with a reference or an accounting to determine the amount.

(4) Where the Court is satisfied that the only genuine issue is a question of law, the Court may determine the question and grant judgment accordingly.

#### Application of Part 31

**177.** The rules respecting special chambers applications in Part 31 apply to an application for summary judgment.

#### Plaintiff may proceed against other defendants

**178.** Judgment given to a plaintiff under this Part is without prejudice to the right of the plaintiff to proceed against any other defendant, and a plaintiff who obtains judgment on a claim or part of a claim under this Part may proceed with the action in respect of any other claim.

#### Orders where judgment refused or granted in part

**179.** (1) Where summary judgment is refused or is granted only in part, the Court may make such directions or impose such terms as it considers just for the further conduct of the trial, including an order

- (a) for payment into court of all or part of the claim;
- (b) for security for costs;
- (c) limiting the nature and scope of discovery;
- (d) specifying the issues to be tried;
- (e) specifying material facts not in dispute; and
- (f) setting the matter for trial within a specified period of time.

(2) Where a party fails to comply with a direction or term set by the Court under subrule (1), the Court, on the application of the opposite party, may dismiss the action, strike out the statement of defence or make such other order as it considers just.

#### Costs consequences

**180.** (1) Subject to subrule (2), where the applicant obtains no relief on an application for summary judgment, the Court may fix the respondent's costs on the application on a solicitor and client basis and order the applicant to pay the costs forthwith.

(2) The Court may decline to fix and order costs under subrule (1) where it is satisfied that the making of an application, although unsuccessful, was nevertheless reasonable.

(3) Where it appears to the Court that a party to an application for summary judgment has acted in bad faith or primarily for the purpose of delay, the Court shall fix the costs of the application on a solicitor and client basis and order the party to pay them forthwith.

#### Judgment or order on course of proceeding or action

**181.** At any stage of a proceeding or action, the Court may, on application, give any judgment or order to which the applicant may be entitled where

- (a) admissions of fact have been made on the pleadings or otherwise; or
- (b) the only evidence consists of documents and such affidavits as are sufficient to prove their execution or identity.

#### Direction

**182.** The Court may direct any application to be turned into an application for judgment.

#### Stay of execution

**183.** Where it appears that the enforcement of a summary judgment ought to be stayed pending the determination of any other issue in the action or a counterclaim, cross-claim or third party claim, the Court may order the judgment be stayed on such terms as it considers just.

#### Application of Part

**184.** This Part applies, with such modification as the circumstances require, to a counterclaim, cross-claim or third party claim.

## PART 13 PAYMENT INTO COURT AND OFFERS TO SETTLE

#### Deemed offer of compromise

**185.** Notice of payment into court or an offer to settle under this Part shall, to the extent of the cause or causes of action specified, be deemed to be an offer of compromise made without prejudice, and shall not be deemed an admission, unless the notice expressly states otherwise.

#### Use of Part not to be disclosed in Court

**186.** Except in an action to which is pleaded a defence of tender before action or in respect of which a sum of money has been paid into court under section 5 of the *Defamation Act*, no statement that a party has employed this Part in respect of a payment into court or an offer to settle shall be

- (a) inserted in a pleading or made to the judge or jury at trial until all questions of liability and the quantum of debt or damages have been decided; or
- (b) made to the judge on appeal, until all questions except those relating to costs have been decided.

#### Application to counterclaim, cross-claim, third party claim

**187.** This Part applies, with such modifications as the circumstances may require, to a counterclaim, a crossclaim, a third party claim and an appeal.

#### Payment into Court

##### Where defence of tender

**188.** (1) Where a defence of tender before the commencement of an action or a proceeding is pleaded, the defence may not be delivered or relied on unless the sum of money alleged to have been tendered is paid into court when the defence is filed and notice of the payment is served on the plaintiff.

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

(3) The plaintiff may accept money paid under subrule (1) in satisfaction of the claim or claims to which it relates by serving on the defendant and filing, with proof of service, a notice of acceptance.

(4) Where the plaintiff accepts money paid under subrule (1) in satisfaction of all claims made in the action, the defendant may, unless otherwise ordered, have his or her costs taxed under Part 50 on a party and party basis and the amount of costs shall be paid to the defendant out of the money in court and the balance shall be paid to the plaintiff.

##### Payment in satisfaction of claim

**189.** (1) A defendant may, at any time before the commencement of the trial, pay into court a sum of money in satisfaction of the claim against him or her or, where there is more than one claim, in satisfaction of any of them.

(2) Where money is paid into court under subrule (1), the defendant shall, within 15 days after the payment into court, serve on the plaintiff a notice in writing specifying the claim or claims in respect of which payment is made and the sum paid in respect of each claim.

(3) Money may be paid into court under subrule (1) by one or more of several defendants sued jointly or by one or more defendants on notice to the other defendant or defendants.

(4) Where a counterclaim has been made by a defendant, the defendant may offer to surrender the counterclaim or to surrender the counterclaim and pay into court a sum of money in satisfaction of the claim or claims against the defendant.

#### Acceptance of money, offer

**190.** (1) Where money is paid into court under rule 189, the plaintiff may accept the whole sum or any one or more of the sums specified to have been paid in respect of a certain claim or claims together with an offer to surrender a counterclaim, if such an offer has been made, in satisfaction of a claim or claims in respect of which the money was paid by giving notice to that effect to the Clerk and to all other parties to the action at any time before the commencement of trial and while the money remains in court.

(2) The Clerk, on receiving notice of acceptance from the plaintiff, shall pay the money in court to the plaintiff or the plaintiff's solicitor and, on payment, proceedings in the action or in respect of the specified claim or claims, as the case may be, are stayed.

(3) Where all the plaintiff's claims have been satisfied by acceptance under subrule (1) or where the plaintiff gives notice that he or she abandons all remaining claims, the plaintiff may have the costs incurred by the plaintiff to the time of the payment into court taxed under Part 50 and, if those costs are not paid within 10 days after taxation, the plaintiff may enter judgment against the defendant for them.

#### Repayment where money not accepted

**191.** If the whole of the money in court is not accepted by the plaintiff within 45 days after the day on which the plaintiff is served with notice of payment in, the defendant is entitled to receive payment of any money remaining in court, unless the Court otherwise orders and the Clerk shall, on written direction from the defendant, repay any money remaining in court to the defendant.

#### Costs

**192.** Where money is paid into court under subrule 189(1) in respect of a claim and the plaintiff does not recover at trial a sum, including the amount payable pursuant to a counterclaim that would have been surrendered, greater than the amount paid in, the plaintiff is entitled to party and party costs to the day on which notice of the payment was served on the plaintiff and the defendant who made the payment is entitled to solicitor and client costs from that day.

### Offers to Settle

#### Who may make offer

**193.** A party to an action or a proceeding may serve on any other party an offer to settle any one or more of the claims between them in the action or proceeding.

#### Form and time of offer

**194.** (1) An offer to settle may be made at any time before the commencement of the trial or hearing.

(2) An offer to settle shall be in writing.

#### Application of costs consequences

**195.** Where an offer to settle is made less than 10 days before the day on which the trial or hearing is commenced, the costs consequences set out in rule 201 do not apply unless the offer to settle is accepted before the commencement of the trial or hearing.

#### Withdrawal of offer

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

(2) Where an offer to settle specifies a period of time within which, or a day by which, it may be accepted and it is not accepted or withdrawn within that time or by that day, it shall be deemed to have been withdrawn when the time expires or on the day specified.

(3) The costs consequences set out in rule 201 do not apply to an offer to settle that has been withdrawn in accordance with subrule (1) or (2) before the commencement of the trial or hearing.

#### Acceptance of offer

**197.** (1) An offer to settle may be accepted by serving a notice of acceptance on the party who made the offer before it is withdrawn or the Court disposes of the claim in respect of which it is made.

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

(3) Where a party to whom an offer to settle is made rejects the offer or responds with a counter-offer that is not accepted, the party may accept the original offer to settle unless it has been withdrawn or the Court has disposed of the claim in respect of which it is made.

(4) An offer by a plaintiff to settle a claim in return for payment of money by a defendant may include a term that the defendant pay the money into Court or to a trustee and the defendant may accept the offer only by paying the money in accordance with the offer and serving on the plaintiff notice of the payment.

(5) Where a defendant offers to pay money to the plaintiff in settlement of a claim, the plaintiff may accept the offer on the condition that the defendant pay the money into Court or to a trustee and, where the offer is so accepted and the defendant fails to pay the money in accordance with the acceptance, the plaintiff may proceed under rule 200.

(6) Where an accepted offer to settle does not provide for the disposition of costs, the plaintiff is entitled,

- (a) if the offer was made by the defendant, to the plaintiff's costs assessed to the day on which the plaintiff was served with the offer; or
- (b) if the offer was made by the plaintiff, to the plaintiff's costs assessed to the day on which the plaintiff was served with the notice of acceptance of offer.

(7) The Court may incorporate any terms of an accepted offer in a judgment.

#### Proceedings stayed

**198.** On service of a notice of acceptance of offer on the party who made the offer, all proceedings or actions with respect to matters specified in the notice are stayed except for the purpose of obtaining a judgment under this Part and the enforcement of any such judgment.

#### Party under disability

**199.** A party under disability may make, withdraw or accept an offer to settle, but no acceptance of an offer made by the party and no acceptance by the party of an offer made by another party is binding on the party under disability until the settlement has been approved by the Court.

#### Failure to comply with settlement

**200.** Where a party to an accepted offer to settle fails to comply with the terms of the offer, the opposite party may

- (a) apply to a judge for judgment in the terms of the accepted offer and the judge may grant judgment accordingly;
- (b) continue the proceeding or action as if there had been no accepted offer to settle; or
- (c) apply to have the proceeding dismissed, where the defaulting party is a plaintiff, or apply to have the defence to the proceeding struck out, where the defaulting party is a defendant.

#### Costs

**201.** (1) A plaintiff who makes an offer to settle at least 10 days before the commencement of the hearing is entitled to party and party costs to the day on which the offer to settle was served and solicitor and client costs from that day where

- (a) the offer to settle is not withdrawn, does not expire before the commencement of the hearing and is not accepted by the defendant; and
- (b) the plaintiff obtains a judgment on terms as favourable as or more favourable than the offer to settle.

(2) Where a defendant makes an offer to settle at least 10 days before the commencement of the hearing, the plaintiff is entitled to party and party costs to the day on which the offer was served and the defendant is entitled to solicitor and client costs from that day if

- (a) the offer to settle is not withdrawn, does not expire before the commencement of the hearing and is not accepted by the plaintiff; and
- (b) the plaintiff obtains a judgment on terms as favourable as or less favourable than the terms of the offer to settle.

Where rules 200 and 201 do not apply

**202.** Except as provided in rule 197, rules 200 and 201 do not apply to an offer that incorporates a term or condition that could not have been included in any judgment in the proceeding.

Where two or more defendants

**203.** Where there are two or more defendants, the plaintiff may offer to settle with any defendant and any defendant may offer to settle with the plaintiff, but where the defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a claim and rights of contribution or indemnity may exist between the defendants, the costs consequences set out in rule 201 do not apply to the offer to settle unless,

- (a) in the case of an offer made by the plaintiff, the offer is made to all the defendants and is an offer to settle the claim against all the defendants; or
- (b) in the case of an offer made to the plaintiff,
  - (i) the offer is an offer to settle the plaintiff's claim against all the defendants and to pay the costs of any defendant who does not join in making the offer, or
  - (ii) the offer is made by all the defendants and is an offer to settle the plaintiff's claim against all the defendants and, by the terms of the offer, the defendants are made jointly and severally liable to the plaintiff for the whole amount of the offer.

Offer to contribute

**204.** (1) Where two or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a claim, any defendant may make to any other defendant an offer to contribute toward a settlement of the claim.

(2) The Court may take an offer to contribute into account in determining whether a defendant should be ordered

- (a) to pay the costs of the defendant who made the offer; or
- (b) to indemnify the defendant who made the offer for any costs he or she is liable to pay to the plaintiff.

(3) Rules 196 and 197 apply, with such modifications as the circumstances require, to an offer to contribute.

## Pre-judgment Interest and Costs

### Effect of prejudgment interest

**205.** Where an amount awarded by a judgment, or any part of the amount, is subject to pre-judgment interest, the Court shall, when determining whether a sum paid into court is greater than the judgment or an offer to settle is more or less favourable than the judgment, as the case may be, calculate the value of the judgment together with pre-judgment interest as at the date the notice of the payment or the offer, as the case may be, was served.

### Discretion of Court

**206.** (1) Notwithstanding the costs consequences set out in rules 192 and 201, the Court may make any order or disposition with respect to costs that it determines to be in the interests of justice in the circumstances of the case.

(2) Nothing in this Part prevents the Court from fixing the amount of any costs.

## Other Payments in Court

### Payment into Court under *Trustee Act*

**207.** (1) An application for leave to pay into court under the *Trustee Act*, or a payment into court under the *Trustee Act* where no application for leave is required, must be accompanied by an affidavit of the trustee or one of the trustees setting out

- (a) a short description of the trust and of the instrument creating it or of the circumstances under which it arose;
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court and their addresses so far as is known to the trustee; and
- (c) an address for service.

(2) Notice of the application or of the payment into court, as the case may be, shall be given to such person and in such manner as the Court directs.

### Recovery of money on behalf of person incapable of managing financial affairs

**208.** The Court may order that money recovered on behalf of a person who has been found to be incapable of managing his or her financial affairs be paid into court and any sum so paid and any interest on the sum is

- (a) subject to such orders as the Court may from time to time make concerning them; and
- (b) may be invested or paid out of court or transferred to such persons to be held and applied for such purposes and in such manner as the Court directs.

### Where estate entitled to money in Court

**209.** Where the estate of a deceased person who died intestate is entitled to a fund or to a share of a fund in court not exceeding \$5,000 and it is proved to the satisfaction of the

Court that no administration has been taken out and that the value of the assets of the estate, including the amount in court to which the estate is entitled, does not exceed \$5,000, the Court may direct that the amount in court be paid or transferred to any person beneficially entitled to it.

#### Administration of Money Paid into Court

##### Payment into court

**210.** (1) Money paid into court under this Part shall be paid to the Clerk with a notice indicating the court file number, the style of cause of the proceeding or action and the claim or claims in respect of which the payment is made.

(2) The Clerk shall give a receipt for money paid under this Part and shall, unless otherwise ordered, deposit the money in a trust account to the credit of the proceedings in a chartered bank in Iqaluit.

(3) A person who pays money into court under this Part is entitled to credit for the payment as of the day on which it is paid into court.

(4) Money paid into court shall be paid out only under an order of the Court, unless these rules otherwise provide.

##### Administration of accounts

**211.** (1) The Clerk shall be in charge of trust accounts opened under rule 210.

(2) The Clerk shall establish a record of account for each trust account and enter in the record of account

- (a) every sum of money paid into court and by whom and under what authority it was paid; and
- (b) every sum of money paid out and to whom and under what authority it was paid.

(3) Money shall be paid out of court only by cheque signed and countersigned by such persons as may from time to time be designated for that purpose by the Clerk.

(4) No order shall be made for payment out and, where an order is not required, no cheque shall be countersigned under subrule (3) without the production of a certificate of the Clerk that the money required for the payment is in court.

(5) No money shall be paid out of court to a person other than the person entitled to the payment or that person's solicitor, except on the written authority of the person entitled to the payment or as the Court may direct.

(6) The interest earned on money in court, or in respect of a portion of the money, shall be paid to the person entitled to payment of the money or portion of the money.

Authorized investment

**212.** All money under the control and subject to the order of the Court may be invested in the public funds of Canada or of a province, in deposit certificates of a chartered bank or in such other class of securities as the Court may from time to time authorize.

Closing of account

**213.** (1) Where the balance remaining in an account to the credit of any proceeding does not exceed \$100 and two years have elapsed since the money in the account has been paid out of court, the account shall be closed and the balance shall be transferred to the Consolidated Revenue Fund, but the transfer does not prejudice the right of any person entitled to the balance to obtain payment.

(2) An account to the credit of a proceeding shall be closed and the amount in it transferred to the Consolidated Revenue Fund, where 10 years have elapsed after the last payment into court in the proceeding, but the transfer does not prejudice the right of any person entitled to the balance to obtain payment.

PART 14  
ADVANCE PAYMENTS

Where payment constitutes relief

**214.** Where a defendant makes a payment to a plaintiff who is or alleges to be entitled to recover from the defendant, the payment constitutes, to the extent of the payment, a release of any claim that the plaintiff or the plaintiff's personal representative or any person claiming through or under the plaintiff may have against the defendant.

Defendant may demand release

**215.** Nothing in this Part precludes the defendant making the payment from demanding, as a condition precedent to payment, a release from the plaintiff or the plaintiff's personal representative or any other person to the extent of the payment.

When Court to consider payment

**216.** The Court shall adjudicate on the matter first without reference to a payment made under rule 214 but, in giving judgment, the payment shall be taken into account and the plaintiff shall only be entitled to judgment for the difference, if any, between the amount the Court would award had the payment not been made and the amount of the payment.

Disclosure of payment

**217.** The fact of any payment shall not be disclosed to the judge or jury until after judgment, but shall be disclosed before formal entry of the judgment.

PART 15  
DISCOVERY OF DOCUMENTS

Interpretation

**218.** (1) In this Part,

"document" includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device.

(2) A document shall be deemed to be in a party's power if that party is entitled to obtain the original document or a copy of it and the party seeking it is not so entitled.

Documents to be disclosed

**219.** Every document relating to any matter in issue in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in this Part, whether or not privilege is claimed in respect of the document.

Parties for the purposes of discovery

**220.** A person for whose benefit an action is prosecuted or defended, or the assignor of a chose in action on which an action is brought, shall be regarded as a party to the action for the purposes of discovery of documents.

Statement as to documents

**221.** (1) A party to an action shall, within 30 days after the close of pleadings, file a statement as to the documents that are or have been in the party's possession, control or power and that relate to any matter in issue in the action.

(2) The statement must

- (a) be in Form 12;
- (b) set out the following information:
  - (i) the documents in the possession, control or power of the party that the party is ready and willing to produce, excluding the pleadings and proceedings in the action;
  - (ii) the documents that have been, but are not at the time of making the statement, in the possession, control or power of the party, the nature of those documents, when they were last in the party's possession, custody or control and where they are likely to be found;
  - (iii) the documents in the possession, control or power of the party that the party objects to produce, the general nature of those documents (which shall be identified with reasonable certainty) and the specific grounds on which the party objects to production; and

- (c) be endorsed with a notice stating
  - (i) the day and time when the documents the party does not object to produce may be inspected, which shall not be later than 15 days after the day the statement is served; and
  - (ii) the place where the documents the party does not object to produce may be inspected, which shall be the address for service of the party making the statement unless otherwise ordered.

(3) Notwithstanding subrule (2)(c)(ii), bank books or other books of account, or books in constant use for the purpose of a business, may be produced at their usual place of custody.

(4) Where a party has no documents to disclose or that should be disclosed, the statement shall so state.

(5) The statement shall be signed by the solicitor of the person making discovery or, where the party appears personally, by the party making discovery.

(6) A copy of the statement shall be served, within the time limited for filing, on each of the other parties to the action.

#### Insurance policy

**222.** (1) A party shall disclose and, if requested, produce for inspection any insurance policy under which an insurer may be liable

- (a) to satisfy all or part of a judgment in the action; or
- (b) to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment.

(2) No information concerning an insurance policy referred to in subrule (1) is admissible in evidence unless it is relevant to an issue in the action.

#### Supplementary statement as to documents

**223.** Where a party, after filing and serving a statement as to documents, comes into possession or control of or obtains power over a document that relates to a matter in issue in the action and that is not privileged or discovers that the statement is inaccurate or incomplete, the party shall forthwith file and serve a supplementary statement as to documents specifying the extent to which the statement requires modification and disclosing any additional document.

#### Copies of documents

**224.** A party may, at his or her expense, make or obtain copies of a document disclosed in another party's statement as to documents that the other party does not object to produce.

#### Notice to produce

**225.** (1) A party to a proceeding may at any time, by written notice in Form 13, give notice to any other party to produce for inspection any document referred to in the party's pleadings, affidavits or statements as to documents.

(2) A party served with a notice under subrule (1) shall, within five days after the day the notice is served, give to the party requiring production written notice in Form 14 of the day and time when, and place where, the documents may be inspected.

(3) The day for inspection set out in a notice to inspect shall be no later than 15 days after the day the notice to produce documents is served, unless otherwise agreed to by the parties.

(4) Bank books or other books of account, or books in constant use for the purpose of any business, may be produced at their usual place of custody.

(5) The party requiring production may, at his or her expense, make copies of any document produced for inspection.

#### Application for more information

**226.** (1) The Court may, on the application of a party seeking production from another party, order that the other party

- (a) make production of documents, where the other party neglected or refused to make discovery or production of documents in accordance with this Part;
- (b) file a further or better statement as to documents, where the other party filed or served a statement as to documents that is incomplete or defective; or
- (c) produce a document for inspection to determine if a claim for privilege is valid, where the other party made a claim for privilege in respect of a document.

(2) Where, on an application under subrule (1), privilege is claimed in respect of a document, the Court may inspect the document for the purpose of deciding the validity of the claim for privilege and consider all relevant evidence adduced that tends to establish or destroy the claim for privilege.

(3) On an application under subrule (1), the Court may permit cross-examination under oath of a party on a statement as to documents or any further statement as to documents.

#### Business books

**227.** (1) Where an application is made to inspect a business book, the Court may, instead of ordering inspection of the book, order that a copy of any entries in the book be furnished and proved by the affidavit of a person who has verified the copy by comparison with the entries in the book.

(2) The affidavit referred to in subrule (1) shall state whether or not there are in the original book any erasures, interlineations or alterations and, if so, what they are.

(3) Notwithstanding that a copy of entries in a book has been supplied in accordance with an order made under subrule (1), the Court may order inspection of the book from which the copy was made.

#### Admissions

**228.** (1) The disclosure or production of a document for inspection shall not be taken as an admission of its relevance or admissibility.

(2) Subject to subrule (3) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a statement as to documents is served shall, unless the Court otherwise orders, be deemed to admit that

- (a) a document described in the statement as an original document was printed, written, signed or executed as it purports to have been;
- (b) a document described in the statement as a copy is a true copy; and
- (c) where a document purports to be a copy of a letter, the original letter was dispatched to the addressee and received.

(3) A party on whom a statement as to documents is served may, within 30 days after the day the statement was served, serve on the party whose statement it is a notice stating that the authenticity or receipt or dispatch of a document specified in the statement is not admitted and it must be proved at the trial.

(4) A party who serves a notice under subrule (3) shall not be deemed to make any admission referred to in subrule (2) in respect of the document referred to in the notice.

#### Production at examination and trial

**229.** All documents listed in a party's statement as to documents that are not privileged and all documents previously produced for inspection by the party shall, without notice or order and unless the parties agree otherwise, be taken to and produced at

- (a) the examination for discovery of the party or of a person on behalf or in place of or in addition to the party; and
- (b) the trial of the action.

#### Document not previously disclosed or produced

**230.** (1) At the trial of an action or a hearing in a proceeding, a party may not put in evidence on its behalf any document that has not been disclosed or produced previously unless the party satisfies the Court that there is a reasonable excuse for not making disclosure or production of it previously.

(2) The Court may allow a document to be put in evidence on such terms as to costs or otherwise as it considers fit.

#### Document in possession of third party

**231.** (1) Where a document is in the possession of a third person who is not a party to the action and there is reason to believe that the document is relevant to a material issue in the action and it is not privileged, the Court may, on the application of any party, order the production of the document at such time and place as the Court directs.

(2) An application under subrule (1) shall be made on notice to every other party and to the person who has possession of the document sought to be produced.

(3) Where privilege is claimed for a document referred to in subrule (1), or where the Court is uncertain of the relevance of or necessity for discovery of the document, the Court may inspect the document to determine the issue.

(4) The Court may give directions respecting the preparation of a certified copy of a document referred to in subrule (1) and the certified copy may be used for all purposes in place of the original.

(5) The person producing a document is entitled to recover any costs incurred as a result of an application under this rule, unless the Court orders otherwise.

(6) The costs of an application under this rule shall be borne by the party making the application but, if it appears to the Court after the application is made that production of the document has materially advanced the action or resulted in a saving of expense, the Court may award the whole or part of the costs to the party making the application.

#### Impounding of document

**232.** A document produced to the Court may be ordered to be impounded and, where so ordered, shall not be inspected by any person except by leave of the Court.

#### Failure to comply

**233.** (1) Where a party fails to comply with an order for production or inspection, the party is liable to be held in civil contempt.

(2) A solicitor who is served with an order under rule 226 against a party for discovery or inspection and who neglects, without reasonable excuse, to give notice of the order to his or her client, is liable to be held in civil contempt.

PART 16  
EXAMINATION FOR DISCOVERY

Definitions

**234.** In this Part,

"examiner" means the Clerk or such other person as may be appointed by the Court;  
(*examineur*)

"interrogatories" means the examination by written questions and answers referred to in  
subrule 236(1). (*interrogatoire écrit*)

Right to examine

**235.** A party to an action may, before trial, examine for discovery any other party  
adverse in interest.

Form of examination

**236.** (1) Subject to subrule (2), an examination for discovery may take the form of an  
oral examination or, at the option of the examining party, an examination by written  
questions and answers, but the examining party is not entitled to subject a person to both  
forms of examination except with leave of the Court.

(2) Where more than one party is entitled to examine a person, the examination  
for discovery shall take the form of an oral examination, unless all the parties entitled to  
examine the person agree otherwise.

One examination

**237.** (1) A party may be examined for discovery only once unless otherwise ordered by  
the Court or permitted by this Part.

(2) An examination for discovery may be adjourned from time to time.

Where corporation examined

**238.** (1) Where a corporation is to be examined for discovery, the examining party  
may examine an officer, director or employee on behalf of the corporation who is chosen  
by the corporation, but the Court, on application of the examining party before the  
examination, may order that another officer, director or employee may be examined on  
behalf of the corporation.

(2) Where an officer, director or employee of a corporation has been examined,  
no other officer, director or employee of the corporation may be examined without leave  
of the Court or the agreement of the parties.

Auditor

**239.** An auditor who is or has been engaged by a party shall, for the purposes of this  
Part, be deemed to be an employee of the party, but an auditor engaged solely for the

purposes of the action shall not be deemed to be an employee in respect of that engagement.

#### Examination of partnership, sole proprietorship

**240.** (1) Where an action is brought by or against a partnership in the firm name, each person who was, or is alleged to have been, a partner at the material time may be examined on behalf of the partnership.

(2) Where an action is brought by or against a sole proprietorship in the business name, the person who was the sole proprietor at the material time may be examined.

#### Where party under disability

**241.** (1) Where an action is brought by or against a person under disability, the examining party may examine

- (a) the guardian *ad litem* or committee in place of the person under disability; or
- (b) the person under disability if he or she is competent to give evidence.

(2) Notwithstanding subrule (1)(a), where the guardian *ad litem* or committee is the Public Trustee, he or she may be examined only with leave of the Court.

#### Where assignee is a party

**242.** Where an action is brought by or against an assignee, the assignor may be examined in addition to the assignee.

#### Where trustee in bankruptcy is a party

**243.** Where an action is brought by or against a trustee of the estate of a bankrupt, the bankrupt may be examined in addition to the trustee.

#### Where nominal party

**244.** Where an action is brought or defended for the immediate benefit of a person who is not a party, the person may be examined in addition to the party bringing or defending the action, as the case may be.

#### Party noted in default

**245.** A party who has been noted in default may be examined for discovery.

#### Limits on right of discovery

**246.** Where a party is entitled to examine for discovery more than one person or multiple parties who are in the same interest and the Court is satisfied that multiple examinations would be oppressive, vexatious or unnecessary, the Court may impose such limits on the right of discovery as it considers just.

#### When examination can be held

**247.** (1) A party who seeks to examine a plaintiff for discovery may do so only after delivering a statement of defence and, unless the parties agree otherwise, a statement as to documents.

(2) A party who seeks to examine a defendant for discovery may do so only after the defendant has delivered a statement of defence and, unless the parties agree otherwise, the examining party has delivered a statement as to documents.

#### Service of appointment

**248.** (1) A person entitled to examine another party or person may procure an appointment for the examination from the Clerk or from such other person as the Court may appoint.

(2) Written notice of the appointment in Form 15 shall be served on and conduct money shall be provided to

- (a) the party or person to be examined five days before the day appointed for the examination; or
- (b) the solicitor of record of the party to be examined 20 days before the day appointed for the examination, unless the Court otherwise directs.

(3) A notice of appointment that is served on the person or party to be examined shall also be served on his or her solicitor of record, if any, at least five days before the day appointed for the examination.

(4) Where the notice of appointment is served and conduct money provided in accordance with this rule, the party or person to be examined, shall attend for and submit to examination.

(5) When an appointment has been served on a solicitor under subrule (2)(b), the solicitor

- (a) shall promptly communicate the appointment to the person required to attend;
- (b) shall not apply the conduct money to any debt due to the solicitor or any other person;
- (c) shall not pay out the conduct money other than for the actual travel expenses of the person to be examined on the person's actual attendance at the examination; and
- (d) shall, where the person to be examined does not attend for examination, pay the conduct money to the person from whom it was received, unless the Court otherwise orders.

#### Examiner

**249.** (1) Subject to rule 722, an examination for discovery shall take place before an examiner.

(2) The examiner may give directions respecting the conduct of the examination.

(3) Any direction of the examiner is subject to appeal to the Court and the examiner shall, on request, certify under his or her hand the matter raised and the direction given in respect of it.

#### Person outside Nunavut

**250.** A party or person who is liable to be examined for discovery under these rules and who is not in Nunavut may be examined before such person and at such place as the Court may order or as the parties agree.

#### Scope of examination

**251.** (1) A person who is examined for discovery shall answer, to the best of his or her knowledge, information and belief, any proper question relating to any matter in issue in the action and no question may be objected to on the ground that

- (a) the information sought is evidence;
- (b) the question constitutes cross-examination, unless the question is directed solely to the credibility of the witness; or
- (c) the question constitutes cross-examination on the statement as to documents of the party being examined.

(2) In order to comply with subrule (1), the person being examined shall inform himself or herself and the examination may be adjourned for that purpose.

(3) Unless the Court orders otherwise, a party may, on an examination for discovery, obtain disclosure of the names and addresses of persons who might reasonably be expected to have knowledge of transactions or occurrences in issue in the action.

(4) Where a person who is examined for discovery fails to answer or answers insufficiently, the Court may order the person to answer or to answer further and may give such other directions as it considers just.

#### Findings, etc. of expert

**252.** (1) Subject to subrule (2), a party may, on an examination for discovery, obtain disclosure of the findings, opinions and conclusions of an expert engaged by or on behalf of the party being examined that relate to a matter in issue in the action and of the expert's name and address.

(2) A party being examined need not disclose the information or the name and address of an expert where that party undertakes not to call the expert as a witness at the trial.

#### Disclosure of insurance policy

**253.** (1) A party may, on an examination for discovery, obtain disclosure of

- (a) the existence and contents of any insurance policy under which an insurer may be liable to satisfy all or part of a judgment in the action or to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment; and
- (b) the amount of money available under the policy and any conditions affecting its availability.

(2) No information concerning an insurance policy is admissible in evidence unless it is relevant to an issue in the action.

#### Surveillance report or film

**254.** Where a party has in its possession, control or power a report or film respecting the surveillance of another party, the party who was the subject of the surveillance is entitled to obtain, on an examination for discovery, disclosure of the date, place and subject matter of the surveillance, as well as particulars of the observations, whether or not there is a claim for privilege on the production of the report or film.

#### Leave to withhold information

**255.** Where information may become relevant only after the determination of an issue in an action and the disclosure of the information before the issue is determined would seriously prejudice a party, the Court, on the party's application, may grant leave to withhold the information until after the issue has been determined.

#### Exhibits

**256.** (1) An exhibit marked on an examination for discovery need not be filed and may be produced at the trial of the action without notice.

(2) An examiner shall, at the request of the examining solicitor, cause a copy of or extract from an exhibit marked on an examination for discovery to be made and attached to the transcript of the examination and the copy or extract may be used in the same way as the original.

#### Objections

**257.** (1) Where a person under examination objects to a question, the question so put and the objection to it shall be taken down by the examiner.

(2) The validity of an objection shall be decided by the Court and the costs of and occasioned by the objection are in the discretion of the Court.

#### Answers by solicitor

**258.** Questions on an oral examination for discovery shall be answered by the person being examined but, where there is no objection, the question may be answered by the person's solicitor and the answer shall be deemed to be the answer of the person being examined unless, before the conclusion of the examination, the person repudiates, contradicts or qualifies the answer.

#### Examination by own solicitor

**259.** A person examined for discovery may be reexamined by the person's own solicitor in relation to any matter on which the person was examined for purposes of explanation or clarification only.

#### Information discovered after examination

**260.** (1) Where a party has been examined for discovery or a person has been examined for discovery on behalf of, in place of or in addition to the party and the party subsequently discovers that the answer to a question on the examination was incorrect or incomplete when made or is no longer correct and complete, the party shall forthwith provide the information in writing to every other party.

- (2) Where a party provides information under subrule (1),
- (a) the information shall be treated at a hearing as if it formed part of the original examination of the person examined; and
  - (b) any party adverse in interest may require that the information be verified by affidavit by the party or be subject to further examination for discovery.

(3) Where a party has failed to comply with subrule (1) or a requirement under subrule (2)(b) and the information subsequently discovered

- (a) is favourable to the party's case, the party may not introduce the information at the trial, except with leave of the trial judge; or
- (b) is not favourable to the party's case, the Court may make such order as it considers just.

#### Undertakings

**261.** Where a party undertakes at an examination for discovery to obtain information needed to answer a question, the answer shall be provided in a timely manner and rule 260 applies to the answer provided.

#### Transcripts

**262.** (1) Unless otherwise agreed by the parties or ordered by the Court, an examination for discovery shall be transcribed by a court reporter or, where a court reporter is not available, by a shorthand writer approved by the parties and shall be taken down by question and answer.

(2) A copy of the transcript taken in accordance with subrule (1) and certified by the court reporter or shorthand writer to be a true and correct transcription of his or her notes is admissible in evidence as a transcript of the examination for discovery without proof of the signature of the court reporter or shorthand writer, as the case may be.

(3) The court reporter or shorthand writer shall deliver copies of the transcripts directly to the parties to the proceeding or their solicitors.

(4) A transcript need not be filed with the Court but shall be filed by a party who intends to use any part of the transcript at the trial of the action.

#### Interrogatories

**263.** (1) Where a party desires to conduct an examination for discovery by way of interrogatories, the party shall serve on the party to be examined written interrogatories in Form 16.

(2) A party served with written interrogatories shall, within 30 days after the party is served, deliver written answers under oath in Form 17.

(3) The provisions of this Part relating to oral examinations apply to interrogatories with such modifications as the circumstances require.

#### Filing of interrogatories

**264.** Interrogatories need not be filed before service but shall be filed by a party who intends to use any part of the interrogatories at the trial of the action.

#### Further examination

**265.** The Court may order a further examination, either orally or by way of interrogatories, on such terms as to costs or otherwise as the Court may consider necessary.

#### Use of examination at trial

**266.** (1) At the trial of an action, a party may read into evidence, as part of the party's case against a party adverse in interest, any part of the evidence given on an examination for discovery of the party adverse in interest or, unless the trial judge orders otherwise, a person examined for discovery on behalf of, in place of or in addition to the party adverse in interest, if the evidence is otherwise admissible, whether the party or person has already given evidence or not.

(2) The evidence given on an examination for discovery may be used for the purpose of impeaching the testimony of the deponent as a witness in the same manner as any previous inconsistent statement of that witness.

(3) Where only part of the evidence given on an examination for discovery is read into or used in evidence, the trial judge, at the request of a party adverse in interest, may direct the introduction of any other part of the evidence that qualifies or explains the part first read or used.

(4) Where a party reads into evidence as part of the party's case evidence given on an examination for discovery of a party adverse in interest, or of a person examined for discovery on behalf of, in place of or in addition to a party adverse in interest, the party may rebut that evidence by introducing any other admissible evidence.

(5) Evidence given on an examination for discovery of a party under disability may be read into or used in evidence at the trial only with leave of the trial judge.

Use of examination at trial where witness unavailable or refusing to answer

**267.** (1) A party may, with leave of the trial judge, read into evidence all or part of the evidence given by a person on examination for discovery as the evidence of the person examined, to the extent that it would be admissible if the person were testifying in Court, where the person examined for discovery

- (a) has died;
- (b) is unable to testify because of infirmity or illness;
- (c) cannot be compelled to attend at the trial for any reason the Court considers sufficient; or
- (d) refuses to take an oath or make an affirmation or to answer any proper question.

(2) In deciding whether to grant leave under subrule (1), the trial judge shall consider

- (a) the extent to which the person was crossexamined on the examination for discovery;
- (b) the importance of the evidence in the proceeding;
- (c) the general principle that evidence should be presented orally in court; and
- (d) any other factor the trial judge considers relevant.

Use of examination in subsequent action

**268.** Where an action has been discontinued or dismissed and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, the evidence given on an examination for discovery taken in the discontinued or dismissed action may, with leave of the trial judge, be read into or used in evidence at the trial of the subsequent action as if it had been taken in the subsequent action.

Videotaped examination

**269.** (1) On consent of the parties or by order of the Court, an oral examination for discovery may be recorded by videotape or other similar means and the videotape or other recording may be filed for the use of the Court with a transcript.

(2) Rules 266 to 268 apply to evidence recorded by videotape and reduced to writing in a transcript.

Examinations of third persons

**270.** (1) The Court may grant leave, on such terms respecting costs and other matters as it considers just, to examine for discovery any person not a party to the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation, where the Court determines there is reason to believe the person has information relevant to a material issue in the action.

- (2) An order under subrule (1) shall not be made unless the Court is satisfied that
- (a) the applicant has been unable to obtain the information from any other person who the applicant is entitled to examine for discovery, or from the person he or she seeks to examine;
  - (b) it would be unfair to require the applicant to proceed to trial without having the opportunity to examine the person; and
  - (c) the examination will not
    - (i) unduly delay the commencement of the trial of the action,
    - (ii) entail unreasonable expense for other parties, or
    - (iii) result in unfairness to the person who the applicant seeks to examine.

(3) A party who examines a person orally under this rule shall, unless the Court orders otherwise, serve every other party with a copy of a transcript of the evidence free of charge.

(4) A party who examines a person by way of interrogatories under this rule shall, unless the Court orders otherwise, serve every other party with a copy of the written questions and answers received free of charge.

(5) The evidence of a person examined under this rule may not be read into evidence at trial except for the purpose of impeaching the testimony of the person where he or she testifies at trial and, in that respect, it may be used in the same manner as any previous inconsistent statement by that witness.

## PART 17 MEDICAL EXAMINATION

"health practitioner" defined

**271.** In this Part,

"health practitioner" means a person licensed to practice medicine or dentistry in any jurisdiction or a person certified or registered as a psychologist in any jurisdiction.

Order for examination

**272.** (1) Where the physical or mental condition of a party to a proceeding is in question, the Court, on application, may order the party to undergo a physical or mental examination by one or more health practitioners.

(2) Where the question of a party's physical or mental condition is first raised by another party, an order under this rule may not be made unless the allegation is relevant to a material issue in the proceeding and there is good reason to believe that there is substance to the allegation.

#### Contents of order

**273.** An order may specify the time, place, purpose and scope of the examination and must name the health practitioner or practitioners by whom the examination is to be conducted.

#### Further examination

**274.** The Court may order a second examination or further examinations on such terms respecting costs and other matters as it considers just.

#### Expense of examination

**275.** An examination shall be at the expense of the party seeking it unless the Court orders otherwise.

#### Examination

**276.** (1) Unless the Court orders otherwise, a party to be examined shall provide, at least seven days before the examination, to the party who obtained the order for examination a copy of any hospital record or other medical document relating to the mental or physical condition in question that is in the possession, control or power of the party to be examined, other than a document made in preparation for contemplated or pending litigation and for no other purpose.

(2) The party to be examined may nominate a health practitioner to be present during the examination.

(3) The health practitioner conducting the examination may ask, and the party examined shall answer, questions relevant to the examination and the answers given are admissible in evidence.

#### Report

**277.** (1) After conducting an examination, the examining health practitioner shall prepare a written report setting out his or her observations, the results of any tests made and his or her conclusions, diagnosis and prognosis and shall forthwith provide a copy of the report to the party who obtained the order for the examination.

(2) The party who obtained the order for the examination shall forthwith serve a copy of the written report of the health practitioner on every other party to the proceeding.

## PART 18 EXPERTS

#### Court expert

**278.** (1) In this rule,

"court expert" means an expert appointed under subrule (2).

(2) In any case where independent technical evidence would appear to be required, including the evidence of an independent health practitioner, the Court, on its own motion or on the application of any party, may appoint a person agreed on by the parties, or failing such agreement, nominated by the Court, as an independent expert for the purposes of a proceeding.

(3) The question or the instructions submitted to or given to a court expert shall be the question or instructions agreed on by the parties or, failing such agreement, settled by the Court.

(4) The Court may make further and other directions respecting how the instructions are to be carried out by the court expert, including directions respecting experiments and tests.

(5) A court expert shall prepare a report in accordance with the directions and instructions of the Court.

(6) The report of the court expert shall be in writing, verified by affidavit, and shall be admitted as evidence at the trial and given such weight as the Court considers fit.

(7) On the filing of the report of the court expert, the Clerk shall forward copies of it to the parties or their solicitors.

(8) Any party may, within 14 days after receipt of a copy of the report or within such other time as the Court directs, apply for leave to examine the court expert on the report and the Court, on the application, may order the cross-examination of the court expert prior to the trial, at the trial or both prior to and at the trial.

(9) Subject to the ultimate determination by the trial judge, the fees and expenses of a court expert shall be paid in the first instance by the opposing parties in equal portions at such time as the Court directs.

(10) The appointment of a court expert does not prevent the parties from calling their own experts at the trial.

#### Disclosure of expert opinions

**279.** (1) A party intending to call an expert witness at a hearing or trial, shall, not less than 90 days before the hearing or trial commences, serve on every other party to the proceeding or action a copy of a statement signed by the expert setting out the expert's name, qualifications, opinion and the facts relied on to support the opinion.

(2) A party on whom a statement has been served under subrule (1) who intends to call an expert witness in rebuttal to any matter mentioned in the statement shall, not more than 45 days after service of the statement, serve on every other party to the proceeding or action a copy of a statement signed by the expert setting out the expert's name, qualifications, opinion and the facts relied on to support the opinion.

(3) Where subrule (1) or (2) has not been complied with, a party may not call the expert witness to testify without leave of the Court.

*Evidence Act*

**280.** A party intending to offer in evidence at trial a report by an expert witness must comply with section 12 of the *Evidence Act*.

PART 19  
CASE MANAGEMENT CONFERENCES

Definitions

**281.** In this Part,

"case management" means the duties described in this Part in respect of an action or proceeding before it reaches trial. (*gestion des dossiers judiciaires*)

"conference judge" means a judge designated under rule 282; (*juge en conférence*)

Designation of judge

**282.** The Chief Justice or senior administrative judge may designate

- (a) a specific judge to have responsibility for case management in respect of an action or proceeding; and
- (b) a specific judge, in addition to or as a substitute for a judge designated under subrule (a), to have responsibility for case management in respect of an action or proceeding.

Direction respecting conference

**283.** The Court, on the application of a party or on its own motion, at any stage of an action or proceeding, may direct counsel for the parties and any parties to appear before a judge for a conference or conferences before trial for such purposes as

- (a) expediting the disposition of the action;
- (b) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (c) discouraging wasteful pre-trial activities;
- (d) improving the conduct of the trial through more thorough preparation; and
- (e) facilitating the settlement of the case.

Powers of conference judge

**284.** (1) The conference judge may consider and take action with respect to

- (a) the possibility of settlement of all or any of the issues in the action or proceeding;
- (b) the formulation and simplification of the issues;
- (c) the necessity or desirability of amendments to pleadings;

- (d) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof, agreements regarding the authenticity of documents and advance rulings from the Court on the admissibility of evidence;
  - (e) the possible use of extra-judicial procedures to resolve the dispute;
  - (f) the disposition of pending applications;
  - (g) the need for adopting special procedures for managing a potentially difficult or protracted action or proceeding that may involve complex issues, multiple parties, difficult legal questions or unusual problems with proof;
  - (h) the question of liability;
  - (i) the amount of damages, where damages are claimed;
  - (j) the advisability of directing a reference or the trial of an issue;
  - (k) the advisability of appointing a court expert;
  - (l) the date for trial; and
  - (m) any other matter that may aid in the disposition of the matter.
- (2) The conference judge may
- (a) adjourn a conference from time to time;
  - (b) set a plan or schedule for the completion of any steps by a party or parties in preparation for trial;
  - (c) direct the parties to attend a mini-trial;
  - (d) direct that experts who may have been retained by the parties confer, on a without prejudice basis, to determine those matters on which they agree and to identify those matters on which they do not agree;
  - (e) direct that all interlocutory applications be brought before the conference judge;
  - (f) order the parties to file any documents or written briefs for the use of a conference; and
  - (g) make any other order giving directions as may seem necessary or advisable with respect to the conduct of the proceeding.

#### Duties of solicitor

**285.** Unless otherwise ordered, the solicitor representing a party at the conference shall be the solicitor who will represent the party at the trial and that solicitor shall, before the trial, obtain instructions from the party regarding the solicitor's authority to make admissions and agreements in respect of all matters that the solicitor reasonably anticipates will be discussed at the conference.

#### Order reciting action taken

**286.** The conference judge may make an order reciting the action taken at a conference and that order shall control the subsequent course of the action unless modified by a subsequent order.

#### Costs

**287.** The conference judge may make an order for costs but, in the absence of an order, the costs of a conference are in the discretion of the trial judge.

#### Failure to obey order, attend or prepare for conference

**288.** If a party or party's solicitor fails to obey an order made under rule 283, 284, 286 or 287, no one appears on behalf of a party at a conference, a party or party's solicitor is substantially unprepared to participate in a conference or a party or party's solicitor fails to participate in good faith in a conference, the conference judge, on application or on his or her own motion,

- (a) may make such order with respect to the failure as the judge considers just, including any order in the nature of civil contempt; and
- (b) shall, in lieu of or in addition to any other order, require the party or the party's solicitor or both to pay any reasonable expenses incurred because of any noncompliance with this Part, unless the conference judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

#### Telephone or other communication

**289.** The conference judge may direct that all or part of a conference be held by telephone or by closed-circuit or satellite television communications.

#### Conference judge not seized

**290.** The judge who presides at a conference or who otherwise has responsibility for case management in respect of an action or proceeding is not seized of the action or proceeding and the trial may be heard by that judge or any other judge.

#### Trial judge may hold conference

**291.** The trial judge may hold meetings after the conference, before or during trial, as may assist the judge in the disposition of the action or proceeding.

#### Mini-trial

**292.** (1) Where the conference judge directs that the parties attend a mini-trial, the parties shall attend before a judge *in camera* and the judge shall, after hearing submissions, give a non-binding advisory opinion on the probable outcome of the trial or any issue to be determined at trial.

(2) The proceedings of the mini-trial and any advisory opinion given shall not be disclosed to the trial judge except with the consent of all parties.

(3) The judge who conducts the mini-trial in respect of an action or proceeding may not be the trial judge.

PART 20  
ADMISSIONS

Admission in pleading

**293.** A party to an action or proceeding may, in a pleading or otherwise in writing, admit the truth of the whole or any part of the case of any other party.

Notice to admit facts

**294.** (1) A party may, by written notice, call on any other party to admit, for the purpose of an action or proceeding, any specific fact mentioned in the notice, including any fact in respect of a document.

(2) Each matter for which an admission is requested shall be deemed to be admitted unless, within 30 days after service of the notice or within such other time as the Court or the party requesting the admission may allow, the other party serves on the party requesting the admission a statement

- (a) denying specifically the matter for which an admission is requested;
- (b) setting out in detail the reasons why the matter cannot be admitted;
- (c) setting out any limitation or qualification on an admission; or
- (d) setting out objections on the ground that the requested admission is privileged or irrelevant, or that the request is otherwise improper in whole or in part.

(3) A denial by a party shall fairly meet the substance of the requested admission and, where only a part of a matter for which an admission is requested is denied, the party shall specify so much of it as is admitted and deny only the remainder.

(4) Where a party refuses to make a requested admission and the matter for which the admission was requested is proved at the trial, the cost of proving the matter shall be paid by the party who refused to make the admission, whatever the result of the cause, unless the Court finds that the refusal was reasonable.

(5) The Court may, at any time, allow a party to amend or withdraw an admission on such terms as it considers just.

(6) An admission made under this rule shall be deemed to be made only for the purposes of the particular proceeding and not as an admission to be used against the party on any other occasion.

(7) The Court may, at any time, set aside a notice as being improper or unnecessary and, where a notice includes an improper or unnecessary matter, the Court may direct that all costs occasioned by the inclusion shall be borne by the party giving the notice.

#### Proof of admission

**295.** A written admission that purports to be made on behalf of a party and signed by the party or by the solicitor of the party by whom or on whose behalf it purports to be made is admissible in evidence without proof of the signature and, in the absence of evidence to the contrary, is proof of the signature.

#### Admission of law

**296.** An admission of law by a party is not binding and may be withdrawn at any time.

### PART 21 SPECIAL CASE

#### Stating special case

**297.** (1) The parties to an action or a proceeding may concur in stating a question of law in the form of a special case for the opinion of the Court.

(2) Where the Court is satisfied that the determination of the question may dispose of all or part of the proceeding, substantially shorten the hearing or result in a substantial saving of costs, the Court may hear and determine the special case.

#### Direction on question of law

**298.** Where in an action or proceeding it appears to the Court that it would be convenient to have a question of law decided before any evidence is given or any question or issue of fact is tried or before any reference is made to a referee, the Court may

- (a) make an order accordingly;
- (b) direct the question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court may consider expedient; and
- (c) stay all further proceedings that the decision of the question of law may render unnecessary.

#### Procedure

**299.** (1) A special case shall

- (a) set out concisely the material facts, as agreed to by the parties, that are necessary to enable the Court to determine the question stated;
- (b) refer to and include a copy of any documents that are necessary to determine the question; and
- (c) set out the relief sought, as agreed on by the parties, on the determination of the question of law.

(2) A special case must be signed by the solicitors for the parties.

(3) On the filing of a special case, the Clerk shall, according to the practice of the Court, set a day and time for the hearing.

(4) The parties may agree to submit the special case for determination strictly on the written material filed and, in that event, no hearing may be set for oral argument unless the Court directs it.

#### Summary of argument to be delivered

**300.** Each party shall deliver, no later than 48 hours before the hearing of a special case, a concise summary of the argument to be advanced by the party at the hearing and the facts and law to be relied on by the party.

#### Hearing and determination

**301.** (1) The Court may draw from the facts and documents referred to in a special case any reasonable inference, whether of fact or law, that might have been drawn from the facts or documents if proved at trial.

(2) On the determination of the special case, the Court may make an order or grant judgment as required.

#### Agreement re payment

**302.** (1) The parties to a special case may enter into an agreement in writing that, on the Court giving judgment in the affirmative or negative on a question of law raised by the special case, a sum of money, fixed by the parties or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one party to another party, either with or without costs of the cause or matter.

(2) Where an agreement is entered into under subrule (1), the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs as the case may be, and execution may issue on the judgment forthwith, unless otherwise agreed or stayed on appeal.

## PART 22 POINTS OF LAW AND DEFINITION OF ISSUES

#### Hearing of point of law

**303.** (1) Where a point of law has been raised by the pleadings, it may, by leave of the Court, be set down for hearing at any time before trial.

(2) Where a point of law is not set down for hearing under subrule (1), it shall be disposed of at trial.

#### Orders

**304.** (1) The Court may

- (a) order any question or issue arising in a proceeding whether of fact or law or partly fact and partly law to be tried before, at or after the trial;

- (b) give direction as to the manner in which the question or issue is to be stated; and
- (c) direct any pending application to be stayed until the question or issue has been determined.

(2) Where it appears to the Court that the decision in the question or issue separately tried substantially disposes of the action or proceeding or renders the trial of further issues unnecessary, it may dismiss the action or proceeding or make such other order or give such other judgment as it considers proper.

#### Definition of the facts

**305.** Where it appears to the Court that the pleadings do not sufficiently define the issues of fact, it may

- (a) direct the parties to prepare a statement of issues or may settle the issues to be tried; and
- (b) give directions for the trial of the issues.

#### Delay of discovery or inspection

**306.** The Court may order that discovery or inspection of any kind as to one or more issues be delayed until the determination of another issue or other issues and may make the necessary directions consequent on its order.

#### Trial by different modes

**307.** The Court may order that different questions of fact in an action or proceeding be tried by different modes.

## PART 23 DISCONTINUANCE AND WITHDRAWAL

#### Definitions

**308.** In this Part,

"defendant" means a defendant, a defendant-by-counterclaim, a respondent or a respondent to third party proceedings; (*défendeur*)

"plaintiff" means a plaintiff, a plaintiff-by-counterclaim, a petitioner or a claimant in third party proceedings. (*demandeur*)

#### When discontinuance available

**309.** (1) A plaintiff may discontinue all or part of a proceeding against a defendant

- (a) at any time before entry for trial, by serving on all parties who have been served with the originating document a notice of discontinuance and filing the notice with proof of service;
- (b) after entry for trial, with leave of the Court; or
- (c) at any time, by filing the consent in writing of all parties.

(2) Notwithstanding subrule (1), where a party to a proceeding is under disability, the proceeding may be discontinued by or against that party only with leave of the Court.

#### Not a defence

**310.** The discontinuance of all or part of a proceeding is not a defence to a subsequent action or proceeding, unless the order giving leave to discontinue or the consent filed by the parties provides otherwise.

#### Effect on counterclaim, cross-claim, third party claim

**311.** (1) Where a proceeding is discontinued against a defendant who has counterclaimed, the defendant may, within 30 days after service of the discontinuance, deliver to the plaintiff a notice of election to proceed with the counterclaim and, if the defendant fails to do so, the counterclaim shall be deemed to be discontinued without costs.

(2) Where a proceeding is discontinued against a defendant who has made a cross-claim against another defendant or a third party claim, the cross-claim or the third party claim shall be deemed to be dismissed with costs 30 days after the discontinuance unless the Court orders otherwise during the 30 day period.

#### Costs

**312.** (1) Unless the Court orders otherwise or a proceeding is discontinued on the consent of all parties, where a plaintiff discontinues a proceeding, the defendant is entitled to the costs of the proceeding and, where the defendant has made a cross-claim or a third party claim that is deemed to be dismissed under subrule 311(2), the defendant is entitled to recover from the plaintiff

- (a) the costs payable under that rule; and
- (b) the defendant's own costs of the third party claim.

(2) A defendant wishing to recover costs under subrule (1) shall, within 30 days after service of the notice of discontinuance,

- (a) serve on the party required to pay the costs a notice of intention to tax; and
- (b) file the notice of intention with the Clerk.

#### Judgment for costs

**313.** A defendant may enter judgment for any costs to which he or she is entitled under rule 312 if the costs are not paid within seven days after taxation.

#### Subsequent proceeding before costs paid

**314.** Where a subsequent proceeding is brought before the costs are paid in respect of a discontinued proceeding for the same or substantially the same cause of action, the Court may order a stay of the subsequent proceeding until the costs have been paid.

#### Withdrawal of discontinuance

**315.** The Court may, in the interest of justice, allow a party to withdraw a discontinuance.

#### Withdrawal of defence

**316.** (1) A defendant may at any time before trial withdraw all or part of the statement of defence with respect to a plaintiff by delivering to all parties a notice of withdrawal of defence.

(2) Where a defendant withdraws the whole of the statement of defence, the defendant shall be deemed to be noted in default.

#### Where leave or consent required to withdraw

**317.** Where the defendant has counterclaimed, crossclaimed or made a third party claim and he or she seeks to withdraw an admission in the statement of defence, the withdrawal may be made only on consent of all parties or with leave of the Court.

### PART 24 CONSOLIDATION OF ACTIONS

#### Order respecting actions, examinations for discovery

**318.** (1) Where there are two or more actions or proceedings that have a common question of law or fact or arise out of the same transaction or series of transactions or where, for any other reason, it is desirable to make an order under this rule, the Court may order

- (a) the actions or proceedings be consolidated or be tried at the same time or one immediately after another; or
- (b) any of the actions or proceedings to be stayed until after the determination of any other of them.

(2) On application by any party, the Court may order that examinations for discovery in two or more actions or proceedings be held before they may be consolidated or be held one immediately after another, notwithstanding that the actions or proceedings have not been consolidated.

### PART 25 ENTRY FOR TRIAL

#### Certificate of readiness

**319.** (1) The parties to an action may enter the action for trial by filing a certificate of readiness in Form 18 or such other form as may be approved by the Court.

(2) An undefended action may be entered for trial by filing a certificate of readiness signed by the solicitor for the plaintiff.

(3) Where the parties do not agree to the filing of a certificate of readiness, any party may, by notice of motion supported by a certificate of readiness, apply for an order that the action be entered for trial.

(4) On the filing of a certificate of readiness or an order made under subrule (3), the Clerk shall enter the action on a list of actions to be heard and the action may not be withdrawn from the list except by

- (a) the filing of a notice of discontinuance;
- (b) the filing of a memorandum signed by all counsel stating that the action has been settled; or
- (c) leave of the Court.

#### Further proceedings after certificate filed

**320.** (1) Except by leave of the Court or with the consent of all parties, a party who has filed a certificate of readiness or order shall not initiate or continue

- (a) any interlocutory proceeding; or
- (b) any form of discovery.

(2) Where all parties to an action agree to set the action down for trial but all interlocutory proceedings or discoveries have not been completed, the Court may, on application, set the action down for trial on the undertakings of the parties to complete the proceedings or discoveries before trial.

(3) The Court may, on application, set an action down for trial on such terms as it considers appropriate where all interlocutory proceedings or discoveries have not been completed.

#### Place of trial

**321.** Subject to any statutory provision and unless the Court on the application of any party otherwise orders, an action commenced by statement of claim shall be tried at the place named in the statement of claim.

#### Record

**322.** (1) The party entering an action for trial shall, at the time of entry, file a record for the use of the trial judge at trial containing copies of the pleadings and the particulars, if any.

(2) Only those pleadings that relate to substantive issues in the trial shall be included in the record.

#### Service of certificate and record

**323.** A party who has entered an action for trial shall, within five days after the day the action is entered, serve a copy of the certificate of readiness and the record on every other party.

#### Trial date

**324.** (1) Under the direction of the Court, the Clerk shall prepare and publish a trial list as soon as practicable before the opening of a sitting of the Court.

(2) After publication of the trial date, any application to adjourn the trial shall be by motion supported by such material as the Court may require.

(3) No adjournment shall be allowed by a judge by reason only of the consent of the parties.

#### Trial brief

**325.** (1) Where an action has been entered for trial, each party shall, on or before the tenth day before the trial, file with the Clerk one copy of a trial brief for the use of the trial judge and one copy for every other party to the action.

(2) A trial brief must contain a summary of the facts, issues and the law.

(3) The Clerk shall provide a copy of a party's trial brief to every other party on the later of

- (a) the filing of the other party's trial brief; or
- (b) the filing of the party's trial brief.

#### Summary of evidence

**326.** (1) In this rule,

"evidence summary" means a written summary of oral evidence to be given by a witness.

(2) Where an action has been entered for trial, each party shall, on or before the tenth day before the trial, serve on every other party an evidence summary in respect of each witness intended to be called on any issues of fact to be decided at the trial.

(3) Subject to subrule (4), the intended witness shall sign the evidence summary and verify the truth of its contents.

(4) Where for any extraordinary reason a party is unable to provide an evidence summary in respect of a witness or to obtain the signature of a witness on an evidence summary, the party shall provide to every other party a written explanation of the reason the signed evidence summary cannot be provided, an outline setting out what the party expects the witness' evidence to be and a certificate stating that, to the best of the party's knowledge, the outline fairly sets out the evidence the party expects the witness to be able to give at trial.

(5) Where a party is represented by a solicitor, the solicitor shall sign the certificate referred to in subrule (4).

(6) Where a party calls a witness in respect of whom no evidence summary has been provided, or where an explanation and outline has been provided under subrule (4) but the explanation is not satisfactory or the outline does not fairly represent the evidence given by the witness, the Court may, if satisfied that any party adverse in interest has been prejudiced by the nonproduction of an evidence summary in respect of a witness, adjourn the trial on such terms and conditions, including any terms as to costs, as the trial judge considers just under the circumstances.

(7) This rule does not apply to the evidence to be given by an expert witness to whom Part 18 applies.

## PART 26 DELAY IN PROSECUTION OF ACTION

Application for dismissal or directions

**327.** (1) A party may at any time apply to the Court for a determination that there has been delay on the part of another party in an action or proceeding and, where the Court so determines, the Court

- (a) may, with or without terms, dismiss the action or proceeding for want of prosecution or give directions for the speedy determination of the action or proceeding; or
- (b) shall dismiss so much of the action or proceeding as relates to the applicant, where for five or more years no step has been taken that materially advances the action or proceeding.

(2) On an application under this rule, an affidavit containing statements as to the belief of the deponent with the source and grounds of the belief may be admitted.

(3) Where the Court does not dismiss the action or proceeding for want of prosecution, the Court

- (a) shall establish terms or give directions that, in the opinion of the Court, are sufficient to substantially remedy any nontrivial prejudice caused, or prevent any non-trivial prejudice that may be caused, to any adverse party by reason of the delay; and
- (b) may establish terms or give directions that, in the opinion of the Court, will prevent further delay in the action or proceeding.

(4) Where, in determining an application under this rule, the Court finds that the delay in action or proceeding is inordinate and inexcusable, that delay shall be *prima facie* evidence of serious prejudice to the party bringing the application.

(5) Rule 713 does not apply to the time periods referred to in subrule (1)(b).

(6) Where there is a cross action, counterclaim or plea of set-off, this rule shall be applied with such terms as the Court considers necessary to prevent serious injustice.

#### Examples of prejudice

**328.** For purposes of an application under rule 327, prejudice to an opposite party caused by delay is not restricted to procedural or evidentiary difficulty and includes

- (a) substantive prejudice;
- (b) fading memory of witnesses;
- (c) unavailability of records;
- (d) increased difficulty in enforcing an ultimate judgment;
- (e) increased difficulty in securing and enforcing contribution or indemnity from others; and
- (f) interest expenses or income lost.

#### Terms and directions

**329.** The Court may grant an order under this Part subject to such terms or directions as it considers appropriate and in particular, may make an order

- (a) awarding solicitor-client costs;
- (b) restricting or forbidding discovery or other interlocutory proceedings by the party delaying;
- (c) requiring the compulsory admission of facts relating to the prejudice caused by the delay;
- (d) modifying the types or effect of evidence that may or may not be used at trial to prove some or all facts;
- (e) amending pleadings;
- (f) enlarging or abridging substantive or procedural time periods that would otherwise apply;
- (g) denying costs for tardy steps;
- (h) directing that costs are payable personally by a solicitor;
- (i) requiring security for costs; and
- (j) giving directions respecting case management under Part 19.

#### Agreement respecting application of Part

**330.** (1) Two or more parties to an action or proceeding may by express agreement exclude or vary, in whole or in part, the application of any portion of this Part in relation to themselves.

(2) The parties to an agreement referred to in subrule (1) must give written notice of the agreement to all the other parties to the action or proceeding, including parties to a counterclaim or to a third- or fourth-party proceeding.

## PART 27 TRIAL

#### Mode of trial

**331.** Unless an action is to be tried by jury under subsection 2(1) of the *Jury Act*, it shall be tried by a judge without a jury.

#### Nonappearance of defendant

**332.** Where the plaintiff appears when an action is called for trial and the defendant does not, the plaintiff may prove the claim.

#### Nonappearance of plaintiff

**333.** Where the defendant appears when an action is called for trial and the plaintiff does not, the defendant is entitled to judgment dismissing the action if there is no counterclaim or may prove the counterclaim if there is one.

#### Exclusion of witnesses

**334.** The trial judge may

- (a) order a witness, whether a party or not, excluded from the courtroom until the witness is called to give evidence;
- (b) direct a witness, after he or she has given evidence, not to communicate with any other witness before the other witness gives evidence; and
- (c) exclude the testimony of a witness or party where there is improper communication.

#### Address to jury

**335.** (1) Where an action is tried by a jury, the party who first introduces his or her case may open the case to the jury and, at the close of the case,

- (a) if the opposite party announces an intention not to adduce further evidence, the first party may address the jury a second time for the purpose of summing up the evidence and the opposite party may reply to the address; or
- (b) if the opposite party announces an intention to adduce further evidence, the opposite party may open his or her case to the jury and adduce evidence and, at the close of his or her case, address the jury a second time for the purpose of summing up the evidence and the first party may reply to the address.

(2) A defendant who claims a remedy as against a co-defendant may address the jury after the co-defendant addresses, or is given the opportunity to address, the jury.

(3) Where a party is represented by a solicitor, the right conferred by this rule shall be exercised by the solicitor.

#### Address to judge

**336.** Unless the Court otherwise orders, where an action is tried by judge alone, the solicitor for the party with the onus of proof may first address the Court and may reply to the address of the opposite party.

#### Inspection by jury

**337.** A party to an action being tried by a jury may apply to the Court for an order for the inspection by the jury of any real or personal property, inspection of which may be material to the proper determination of the question in dispute.

#### Inspection by judge

**338.** The judge by whom an action is tried, with or without a jury, or before whom an action is brought by way of appeal may inspect any property or thing in respect of which a question arises in the action.

#### Disallowance of questions

**339.** A judge may disallow any questions put in cross-examination of a party or other witness that appear to the judge to be vexatious or not relevant to an issue in the action.

#### Adjournment of trial

**340.** (1) A judge may postpone or adjourn a trial to such time and place and on such terms as the judge thinks fit.

(2) A judge may adjourn a trial or an issue in the trial for further consideration and at or after trial may direct judgment to be entered without an application for judgment.

#### Interruptions

**341.** While a trial is continuing, including while it is under consideration by the trial judge, it shall carry on to final judgment and may not be interrupted or adjourned for an interlocutory application or appeal.

#### Removal of case from jury

**342.** (1) In addition to the power to dispense with a jury under subsection 2(2) of the *Jury Act*, the Court, with the consent of all parties, may

- (a) continue a trial without a jury; or
- (b) conduct a retrial without a jury.

(2) Where, by reason of the misconduct of a party or the party's solicitor, the jury has been prejudiced to such an extent that the trial judge removes the case from the jury, the Court may

- (a) continue the trial without a jury; or
- (b) declare a mistrial and direct that the action be retried.

#### Omission to prove fact or document

**343.** (1) Where, through accident or mistake or other cause, a party omits or fails to prove a fact or document material to the case and

- (a) the case is being tried by judge alone, the Court may proceed with the trial subject to the fact or document being afterwards proved at the time the Court directs and subject to such conditions as to costs or otherwise as the Court may impose; or

- (b) the case is tried by a jury, the judge
  - (i) may adjourn the jury sittings and require the attendance of the jury on a date to be fixed by the judge, on such terms as to costs as the judge considers just under the circumstances; or
  - (ii) may, if satisfied that the fact or document is such that formal proof of it could not be seriously controverted, direct the jury to return a verdict as if the fact or document had been proved.

(2) Where a verdict is returned under subrule (1)(b)(ii), it takes effect on the fact or document being afterwards proved before the judge alone or, if not so proved, judgment shall be entered for the opposite party unless the Court otherwise directs.

#### Assessment of damages

**344.** Damages in respect of a continuing cause of action shall be assessed to the time of the assessment.

#### Where action for damages before jury

**345.** In an action for damages for personal injury before a jury, the Court

- (a) may give guidance to the jury on the amount of damages and the parties may make submissions to the jury on the amount of damages; and
- (b) may, after hearing the award of the jury, substitute its own assessment of the damages where the Court considers the award of the jury to be inappropriate or unjust.

#### Motion for dismissal

**346.** At the close of the plaintiff's case, the defendant may, without being called on to elect whether to call evidence, move for dismissal of the action on the ground that, on the facts and the law, no case has been made out.

#### Disagreement of jury

**347.** Where the jury disagrees, the action may be retried at the same sittings or at any subsequent sittings as the Court may direct.

#### Where judgment cannot be entered on jury's findings

**348.** (1) Where a jury is directed to answer questions, and answers some but not all, or where the answers are conflicting so that judgment cannot be entered on those findings, the action shall be retried at the same sittings or any subsequent sittings as the Court may direct.

(2) Where the answers of a jury entitle either party to judgment as to some but not all the causes of action, the judge may direct judgment to be entered on the causes of action as to which the answers are sufficient, and the issues on the remaining causes of action shall then be retried as on a disagreement.

Notes of the Clerk

- 349.** The Clerk present at a hearing or trial shall
- (a) make a note in a procedure book, to be kept for the purpose, of the time the hearing or trial commences and the time it terminates on each day the hearing or trial takes place, and of the names of the solicitors present at, and of the witnesses sworn for, the hearing or trial, for communication to the taxing officer, if required;
  - (b) enter in the procedure book the findings of fact or other matters that the judge directs be entered and the directions, if any, of the judge as to judgment; and
  - (c) number and mark each exhibit filed on a hearing or trial and enter into the procedure book a list of the exhibits, briefly describing each exhibit and stating by whom it was put in.

PART 28  
EVIDENCE

Evidence in Court Oral examination in court

**350.** In the absence of an agreement between the parties and subject to these rules, the *Evidence Act* and any other applicable statute or regulation respecting evidence, a fact required to be proved at the trial of an action by the evidence of a witness shall be proved by the examination of the witness orally and in open court.

Evidence by affidavit

- 351.** (1) The Court may, at or before the trial, order that
- (a) any fact or facts may be proved by affidavit, subject to subrule (2);
  - (b) the affidavit of a witness may be read at the trial; or
  - (c) a witness, whose attendance for some sufficient cause ought to be dispensed with, be examined before an examiner to be appointed by the Court.

(2) An order shall not be made under subrule (1) where a party *bona fide* desires the production of a witness for cross-examination and the witness can be produced.

Telephone or other evidence

**352.** (1) The Court may order that the testimony of a witness taken orally by telephone or by an audio-visual method approved by the Court is admissible in evidence where

- (a) the parties consent; or
- (b) the Court considers it necessary for the ends of justice.

(2) Where the taking of evidence by telephone is or becomes unsatisfactory or where the personal attendance of the witness is desirable, the presiding judge may

- (a) refuse to hear or continue to hear the witness' evidence;

- (b) receive or reject any evidence of the witness that has been heard; and
- (c) make such order or give such directions, including directions as to costs, as the judge considers appropriate.

(3) Unless otherwise ordered, a copy of each report, memorandum or other written material to which a witness intends to refer shall be disclosed to the opposite party.

(4) Telephone or other charges relating to evidence taken under this rule shall be paid in the first instance by the party on whose behalf the witness is called and, unless otherwise ordered, may be claimed as a proper disbursement in the proceeding.

#### Use in subsequent proceeding

**353.** Evidence taken at trial may be used in a subsequent proceeding in the same cause or matter.

#### Reading in evidence from former proceeding

**354.** Subject to the rules of evidence, evidence taken in another proceeding may be read at trial without order

- (a) on an *ex parte* application where leave of the Court is obtained at the time the application is made; and
- (b) in any other type of proceeding, where the party desiring to use the evidence gives five days notice to the other parties of his or her intention to read the evidence.

#### Copy of filed document as evidence

**355.** A person wishing to produce to the Court a pleading or other proceeding filed in an office of the Court shall produce a copy certified by the officer in whose custody the pleading or other proceeding is and the copy is admissible in evidence to the same extent that the original would be admissible without proof of the officer's signature.

#### Evidence of payment or default

**356.** Where money is directed to be paid into a deposit-taking institution, the certificate of the manager, assistant manager, agent, accountant or other like officer of the institution at the place where the money is made payable certifying the payment or default in payment is sufficient proof of the payment or default.

### Evidence Taken Out of Court

#### Examination out of court

**357.** (1) By consent of the parties or by order of the Court, a person may be examined on oath before trial, before a court reporter or any other person the Court may direct, and the transcript of evidence may be tendered as evidence at the trial.

- (2) In exercising its discretion to order that a person be examined under subrule (1), the Court shall take into account
- (a) the convenience of the person;
  - (b) the possibility that the person may be unavailable to testify at the trial by reason of death, infirmity, sickness or absence;
  - (c) the possibility that the person will be beyond the jurisdiction of the Court at the time of the trial; and
  - (d) the expense of bringing the person to the trial.

(3) A person to be examined under this rule shall bring to the examination any document in his or her possession, control or power relating to the matters in issue in the action.

(4) An examination under this rule shall take place at such place and in such manner as the Court may order having regard to the following:

- (a) the location of the witness;
- (b) the availability of a court reporter;
- (c) the nature of the evidence;
- (d) the manner of taking the oath;
- (e) the location of the parties and their counsel;
- (f) whether the evidence will be videotaped;
- (g) whether an interpreter will be required;
- (h) the possibility of presenting evidence at the trial by satellite transmission or other electronic means;
- (i) any other matter the Court considers appropriate.

(5) As far as is practical, this rule applies also to the examination of a person residing outside Nunavut.

#### Form of order

**358.** (1) Where a person to be examined under rule 357 is outside Nunavut and is willing to testify, the order must be in Form 19 and the instructions to the examiner appointed in the order must be in Form 20.

(2) Where a person to be examined under rule 357 is outside Nunavut and is unwilling to testify, or if for any other reason the assistance of a foreign court is necessary, the order must be in Form 21 and the letter of request referred to in the order must be in Form 22.

#### Delivery of letter of request

**359.** (1) Where an order is made in respect of a person referred to in subrule 358(2), the party who obtained the order shall send to the Deputy Minister of Foreign Affairs of Canada, or to the Deputy Attorney General for Nunavut if the evidence is to be taken in Canada,

- (a) two certified copies of the letter of request;
- (b) the interrogatories to be put to the witness;

- (c) a list of the names, addresses and telephone numbers of the solicitors or agents of the parties, both in Nunavut and in the jurisdiction in which the evidence is to be taken; and
- (d) a translation, into the appropriate language of the jurisdiction where the examination is to take place, of the letter of request and the interrogatories, which translation bears the certificate of the translator
  - (i) stating that it is a true translation, and
  - (ii) setting out the translator's full name, address and qualifications to produce the translation.

(2) The solicitor for the party obtaining the order shall file with the Deputy Minister of Foreign Affairs of Canada or the Deputy Attorney General for Nunavut as the case may be, an undertaking to be personally responsible for all the charges and expenses incurred by the Deputy Minister or the Deputy Attorney General, as the case may be, in respect of the letter of request and to pay the charges and expenses on receiving notification of the amount due.

#### Examination

**360.** (1) At an examination under rule 357, the examining party shall examine the witness and the witness is subject to cross-examination and re-examination.

(2) Where an objection is made to a question put to a witness in an examination under rule 357, the question and the objection shall be taken down by the court reporter or other person before whom the person is examined.

(3) The Court may determine the validity of an objection made under subrule (2) and may order the witness to submit to further examination.

#### Use of evidence at trial

**361.** (1) A witness whose evidence is taken under rule 357 shall not be called to give evidence at the trial except with leave of the trial judge.

(2) Use of evidence taken under rule 357 is subject to any ruling by the trial judge respecting its admissibility.

(3) The transcript, videotape or other recording of the evidence taken may be filed with the Court at the trial and need not be read or played at the trial unless a party or the trial judge requires it.

#### Perpetuating Testimony

#### Preservation of evidence

**362.** A person who, under the circumstances alleged by the person to exist, would become entitled on the happening of a future event to an estate or interest in property, the right or claim to which cannot be brought to trial or hearing before the happening of the

event, may apply by originating notice for an order to perpetuate any testimony that may be required to establish the right or claim by examination under rule 357.

## PART 29 COMPELLING ATTENDANCE OF WITNESSES

### Calling the opposite party

**363.** (1) A party who desires to call an opposite party as a witness at trial shall serve, at least five days before the trial commences, the opposite party and his or her solicitor with a notice to attend the trial and conduct money.

(2) Where the opposite party does not attend on the notice, the Court may pronounce judgment against that party or postpone the trial of the action.

### Notice to witness to attend

**364.** (1) A party who desires to call a person as a witness at a hearing or the trial of an action or proceeding may serve the witness with a notice to attend the hearing, trial or proceeding in Form 23, stating the time and place at which the witness is required to attend and the documents, if any, that the witness is required to produce.

(2) A notice to attend is not effective unless at the time of service the witness is paid conduct money.

### Apprehension of witness

**365.** (1) The Court may, by its warrant directed to a sheriff or other officer of the Court or to any peace officer, cause a witness who fails to attend or remain in attendance in accordance with the requirements of a notice to attend to be apprehended anywhere in Nunavut, and forthwith be brought before the Court and be detained in custody as the Court may order until his or her presence as a witness is no longer required or, in the discretion of the Court, be released on a recognizance, with or without sureties, conditioned for his or her appearance to give evidence, on proof to the satisfaction of the Court

- (a) of the service of the notice to attend on, and payment of conduct money to, the witness; and
- (b) that the presence of the witness is material to the ends of justice.

(2) The service of a notice to attend and payment of conduct money may be proved by an affidavit.

### Production for examination

**366.** (1) The Court may order the sheriff, jailer or other officer having the custody of a prisoner to produce the prisoner for an examination authorized by these rules.

(2) An order under this rule may be in Form 24.

PART 30  
AFFIDAVITS

Form of affidavit

**367.** (1) An affidavit shall be entitled in an action or proceeding or intended action or proceeding and shall be drawn up in the first person, stating the deponent's full name, occupation and place of residence.

(2) An affidavit shall be divided into paragraphs numbered consecutively, each paragraph being, as far as possible, confined to a distinct portion of the subject matter.

(3) A date, sum or other number may be expressed in an affidavit in figures and not in words.

(4) Where an affidavit is filed by a party who has not filed a pleading in the action or proceeding, the affidavit must set out an address for service of the party.

Swearing of affidavit

**368.** (1) An affidavit shall be signed by the deponent and the jurat shall be signed by the person before whom the affidavit is sworn.

(2) The name of the person before whom the affidavit is sworn shall be printed below the signature on the jurat.

(3) An affidavit may be sworn before the solicitor who prepared the affidavit or before any person in the solicitor's office authorized to administer oaths.

(4) An affidavit is not invalid or otherwise improper by reason only that it was sworn before the action or proceeding was commenced.

Information in jurat

**369.** The date when and the place where the affidavit is taken shall be set out in the jurat.

Where two or more deponents

**370.** In an affidavit made by two or more deponents, the names of the persons making the affidavit shall be inserted in the jurat, but if the affidavit of all the deponents is taken at one time by the same officer, it is sufficient to state in the jurat that it was sworn by both, or all, of the "above named" deponents.

Where deponent illiterate or blind

**371.** (1) Where it appears to an officer administering an oath that the deponent is illiterate or blind, the officer shall certify in the jurat that

(a) the affidavit was read in the officer's presence to the deponent;

- (b) the deponent indicated that he or she understood it; and
- (c) the deponent made his or her signature or mark in the officer's presence.

(2) An affidavit of an illiterate or blind person shall not be used in evidence without the certificate referred to in subrule (1) unless the Court is otherwise satisfied that it was read to the deponent and that the deponent understood it.

#### Where deponent does not understand English

**372.** Where it appears to an officer taking an affidavit that the deponent does not understand the English language,

- (a) a competent interpreter shall be sworn to faithfully interpret the contents of the affidavit, and the interpreter shall interpret the entire contents of the affidavit and the oath to the deponent; and
- (b) the officer shall in the jurat certify that, in his or her belief, the affidavit was faithfully interpreted to the deponent by the sworn interpreter and that the deponent understood it.

#### Contents of affidavit

**373.** (1) Subject to subrule (3), a deponent may state in an affidavit only what the deponent would be permitted to state in evidence as a witness in court.

(2) In an action or proceeding to which a corporation is a party, any affidavit required by these rules to be made by a corporate party may be made by an officer, servant or agent of the corporation who has knowledge of the facts to be deposed to and the officer, servant or agent shall state in the affidavit that he or she has that knowledge.

(3) An affidavit may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit.

#### Irregularity in form

**374.** An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in its form.

#### Scandalous or irrelevant matter

**375.** The Court may order to be struck out of any affidavit any matter that is scandalous, irrelevant or otherwise oppressive.

#### Changes in affidavit

**376.** Where there is an interlineation, alteration or erasure in the body or jurat of an affidavit, the affidavit shall not be used without leave of the Court unless the interlineation, alteration or erasure is authenticated by the initials of the officer who took the affidavit.

Exhibit to affidavit

**377.** (1) Any document to be used in conjunction with an affidavit shall be an exhibit to the affidavit.

(2) An exhibit to an affidavit shall be identified by a certificate of the person before whom the affidavit is sworn.

Exhibit not annexed to affidavit

**378.** Unless the Court otherwise orders, where a properly marked exhibit is referred to in a filed affidavit and is not annexed to the affidavit, the exhibit need not be filed but shall be produced on the hearing of the application.

Use of copy received by telecopier

**379.** (1) A copy of an affidavit received by a telecopier may be filed in place of the original and used in evidence with leave of a judge on the written undertaking of the solicitor of the party who filed the copy to file the original as soon as possible.

(2) Where a copy of an affidavit is used under subrule (1), a judge may give the directions he or she considers necessary, including a direction delaying the entry of a formal order until the original affidavit has been filed.

Use of affidavit throughout proceedings

**380.** An affidavit that has been made and filed in an action or proceeding may be referred to and used at any stage of the proceedings in an application in chambers.

Cross-examination

**381.** (1) A person who has made an affidavit filed by a party in an action or proceeding may be cross-examined on the affidavit by any party adverse in interest without an order of the Court.

(2) The person to be cross-examined may be required to attend in the same manner as a party to be examined for discovery.

(3) The rules that apply to examination for discovery of a party apply, with such modifications as the circumstances may require, to cross-examination on an affidavit.

(4) The party conducting a cross-examination on an affidavit shall cause a transcript of the cross-examination to be filed unless the filing is dispensed with by the Court.

(5) The right to cross-examine shall be exercised with reasonable diligence, and the Court may refuse an adjournment of any application or proceeding for the purpose of cross-examination where the party seeking the adjournment has failed to act with reasonable diligence.

(6) The Court may impose such terms and give such directions for the conduct of cross-examination as will promote the just and efficient determination of the proceedings.

## PART 31 MOTIONS AND APPLICATIONS

### Application

**382.** (1) An application in an action or a proceeding or in an intended action or proceeding shall be made by motion.

(2) Notice of a motion must be in Form 25 and filed with the Clerk and, unless the Court otherwise orders, served on all interested parties.

(3) An application shall be supported by affidavit evidence, new or previously made and read in the same proceeding, as to all the facts on which it is based that do not appear from the record.

(4) A notice of motion shall contain a list of the affidavits to be used in support of the application.

(5) A notice of motion must state the particulars of the order sought and the grounds to be argued including a reference to a provision in any statute or regulation or these rules to be relied on.

### Time for service and filing

**383.** (1) A notice of motion and any supporting affidavit may be served before it is filed.

(2) The notice of motion and any affidavit to be relied on in support of an application that has not already been served shall be served no less than five clear days before the return date of the application.

(3) An affidavit to be relied on in opposition to an application shall be served no less than three clear days before the return date of the application.

(4) A supplementary affidavit that is limited in its contents to responding to issues raised by the opposing party's affidavit and that does not raise any new issues shall be served no less than 48 hours before the return date of the application.

(5) A notice of motion and any supporting affidavit that has not already been filed shall be filed not less than two clear days before the return date of the application.

### Service of notice of motion with or after claim

**384.** The plaintiff may, without leave, serve a notice of motion on a defendant with the statement of claim or at any time after service of the statement of claim.

#### Application to set aside for irregularity

**385.** Where an application is made to set aside a proceeding for irregularity, the objections to the proceeding shall be specifically stated in the notice of motion.

#### Application heard on chambers date

**386.** Except as provided in these rules, an application or hearing, other than the trial of an action or a special chambers application, shall be disposed of by a judge in chambers on a regularly scheduled chambers date or at such times as may be set in accordance with the practice of the Court.

#### Special chambers application

**387.** (1) A special chambers application is, for the purposes of these rules, a matter to be heard in chambers that is contested and likely to take longer than 30 minutes.

(2) A special chambers date shall be obtained from the Clerk who, on being satisfied that the solicitors for all interested parties are available, shall, in accordance with the practice of the Court, fix a date and time for the hearing of the application.

(3) Where a notice of motion has been served in respect of an application that is adjourned to a special chambers date, the applicant's solicitor shall forthwith serve all interested parties with written notice of the date and the time and place at which the application is to be heard.

(4) Where a notice of motion has not been served in respect of a special chambers application, the applicant's solicitor shall, on being informed of the special chambers date for the application, forthwith file a notice of motion returnable on the date and serve all interested parties with the notice of motion.

#### Agreement in writing

**388.** Where all parties agree, the Court may, on such terms as it considers just, direct that argument on an application be presented in writing rather than on the personal appearance of parties or the solicitors for the parties.

#### Telephone application

**389.** (1) With consent of all parties and with leave of the judge, an application may be made by telephone to a judge in chambers.

(2) A judge who hears an application under this rule may, where it appears that the personal attendance of the solicitors for the parties is desirable, direct that the application be heard or completed in chambers with the personal attendance of the solicitors.

#### Filing of memorandum of authorities for regular chambers date

**390.** Unless otherwise ordered, the solicitor for each party on an application to be heard on a regularly scheduled chambers date shall, not less than 48 hours before the

hearing, file and serve a memorandum setting out the cases, statutory provisions and any other authorities the solicitor intends to rely on at the hearing.

#### Pre-hearing briefs for special chambers application

**391.** (1) Unless otherwise ordered, the solicitor for each party on a special chambers application shall prepare a pre-hearing brief containing

- (a) a succinct outline of the argument the party intends to make;
- (b) a concise statement of the principles of law that are relied on; and
- (c) a citation of relevant cases, statutory provisions and any other authorities.

(2) The pre-hearing brief of an applicant shall be filed with the Clerk and served on the solicitors for each opposing party at least five days before the hearing.

(3) The pre-hearing brief of a respondent shall be filed with the Clerk and served on the solicitors for each opposing party at least three days before the hearing.

#### Withdrawal of application on consent

**392.** (1) An application set down for hearing on a regularly scheduled chambers date may be withdrawn from the chambers list with the consent of all parties without their appearance in chambers for that purpose by filing a notice of withdrawal in Form 26 that

- (a) is signed by the solicitors for all parties or a solicitor on behalf of all parties;
- (b) indicates whether the application is withdrawn entirely or adjourned to a later specified regularly scheduled chambers date or *sine die* and subject to further notice.

(2) A notice of withdrawal shall be filed at least two days before the day the application is set down to be heard.

(3) The Clerk shall remove from the list an application withdrawn under subrule (1) on the filing of a notice of withdrawal.

#### Adjournment or cancellation of special chambers application

**393.** (1) A request for an adjournment or cancellation of a special chambers date with the consent of all parties shall be made to the Clerk at least five days before the hearing date.

(2) On the request for an adjournment of a special chambers date, the Clerk shall provide, in accordance with the practice of the Court, another date for the hearing if required and the solicitor for the party seeking the adjournment shall file a notice setting out the disposition of the request and notify all other parties of the disposition.

(3) A request for an adjournment or cancellation of a special chambers date that is opposed or that is made later than five days before the hearing shall be set down for a

regularly scheduled chambers date or dealt with by conference telephone call or a private meeting with all solicitors and a judge.

#### Costs on adjournment

**394.** (1) Unless otherwise ordered, there shall be no costs awarded for the adjournment of an application on consent under rule 392.

(2) The costs of an application that is adjourned to a special chambers date may be disposed of by the judge hearing the application on the special chambers date.

(3) A judge, on an application for an adjournment other than one referred to in subrule (1) or (2), may assess costs against the party requesting the adjournment in a lump sum to be fixed by the judge hearing the adjourned application or otherwise as that judge considers appropriate.

#### Consequences of late or no filing

**395.** (1) A judge in chambers on a regularly scheduled chambers date may strike an application from the chambers list or may assess costs against a party or the party's solicitor where there is a failure to file an affidavit, or a memorandum as referred to in rule 390, within the time limits set out in these rules and the judge is satisfied that there is no reasonable excuse for the omission.

(2) Where the applicant or respondent fails to submit a pre-hearing brief or files the pre-hearing brief late for a special chambers date, a judge in chambers on a regularly scheduled chambers date may cancel the hearing or assess costs against the defaulting party or the party's solicitor.

#### Where further notice required

**396.** Where, on the hearing of an application, it appears that any person to whom notice has not been given ought to have had notice, the Court may either dismiss the application or adjourn the hearing of the application in order that notice may be given.

#### Failure to appear on application

**397.** A party who has failed to appear on an application through accident or mistake or because of insufficient notice may move to rescind or vary an order made on the application within 10 days after the day the order comes to his or her notice or within such further time as the Court may allow, whether the order has been acted on by the party to whom it was granted or not.

#### *Ex parte* order

**398.** (1) The Court may make an order *ex parte* where it is satisfied no notice is necessary or that the delay caused by proceeding by notice of motion might entail serious mischief or injustice.

(2) A party who has obtained an *ex parte* order shall serve the order together with the affidavits on which it was granted on all parties of record and on such other persons as the Court may direct.

- (3) On an *ex parte* application, a judge in chambers may
- (a) direct that notice be given to any person who should have notice; and
  - (b) limit the duration of the order and give leave to the applicant to apply for an extension by notice of motion on notice to the opposite party.

(4) A person affected by an *ex parte* order may apply to set it aside on notice to the party to whom the order was granted.

(5) An *ex parte* application for an order, fiat, or consent order without personal appearance shall be accompanied by supporting affidavits or other supporting material and a memorandum to the judge containing the following:

- (a) a reference to the specific relief sought, including the relevant rule or provision in any statute or regulation that is relied on;
- (b) a reference to the affidavit or other material filed in support of the application;
- (c) a reference to the nature of the order sought with a draft of the proposed order annexed to the memorandum;
- (d) any other particular point that the solicitor wishes to bring to the attention of the Court, including a reference to any particular case or cases that may be applicable to the application.

#### Setting aside, varying or discharging order

**399.** (1) An order may be set aside, varied or discharged on notice by the judge who granted it.

(2) On consent of all interested parties, the Court may set aside, vary or discharge an order.

(3) Where an order specifically provides that a party may apply to set aside, vary or discharge the order, with or without conditions, any judge of the Court may set aside, vary or discharge it.

#### Formal order

**400.** (1) A formal order giving effect to a decision made by a judge in chambers must be in Form 27, must state the name of the judge by whom it was made and shall be sealed by the Clerk.

(2) A formal order shall be dated with the date on which it was made and, unless the Court otherwise directs, takes effect accordingly.

Where litigant appears personally

**401.** The Court or a judge in chambers may waive or vary any requirement of this Part where a litigant appears personally.

## PART 32 JUDGMENTS

Judgment by motion

**402.** Judgment may be obtained on application, except where it is otherwise provided.

Judgment in trial by jury

**403.** On an application for judgment in a trial by judge and jury, the Court may draw all inferences of fact not inconsistent with the findings of the jury and, where the Court is satisfied that it has before it all the materials necessary for finally determining the questions in dispute or any of them or for awarding any relief sought, may

- (a) give judgment accordingly; or
- (b) direct issues or questions to be tried or accounts and inquiries to be taken, if it is of the opinion that there is not sufficient material before it to enable it to give judgment.

Judgment or order by consent

**404.** (1) Where a defendant, by his or her solicitor, has filed a statement of defence or an appearance, no judgment or order shall be made by consent unless the consent of the defendant is given by his or her solicitor.

(2) Where a defendant has not filed a statement of defence or an appearance or has filed a statement of defence or an appearance in person or by a solicitor who has ceased to act, no judgment or order shall be made by consent unless the written consent of the defendant, with an affidavit of execution annexed to it, is filed in respect of the application for judgment or order.

Trial of some issues, determination of some facts

**405.** Where a judge has ordered issues to be tried or issues or questions of fact to be determined and some only of the issues have been tried or determined or the questions of fact have been determined, a party may apply, on notice, for judgment or for a postponement or for other directions where the party considers that the result of the trial or determination

- (a) renders the trial or determination of the other issues or questions unnecessary; or
- (b) renders it desirable that the trial or determination of the other issues or questions should be postponed.

Drafting of judgment or order

**406.** A judgment or an order in an action or proceeding shall be drafted by the solicitor for the successful party and be divided into convenient paragraphs numbered consecutively.

Form and contents of judgment, order

**407.** (1) A judgment or an order shall show the day of the week and the date on which it was pronounced, the name of the judge making it and the date of entry.

(2) A judgment shall, where the circumstances permit, be in Form 28, 29, 30, 31, 32, 33 or 34 whichever is applicable.

(3) A judgment or an order takes effect from the day on which it is pronounced unless otherwise directed by the Court.

Liberty to apply

**408.** It is not necessary in a judgment or an order to reserve liberty to apply to the Court in respect of any matter dealt with in the judgment or order and a party may apply to the Court from time to time as the party considers appropriate.

When other judge may act on matter

**409.** Where a judge dies or ceases to be a judge of the Court or where for any other reason it is impossible or inconvenient for a judge to act in a matter of which he or she is ordinarily seized, any other judge may act in the matter.

Time for complying with order

**410.** A judgment or an order made in an action or a proceeding that requires a person to do a particular act other than pay money, shall state the period of time, or the period of time after service of the judgment or order on the person, within which the act is to be done or the date by which the act is to be done.

Settling of judgment, order

**411.** (1) A judgment or an order of a judge shall be settled by the Clerk.

(2) Where proposed minutes of a judgment or an order have been prepared, the Clerk may issue an appointment for settling the minutes.

(3) A copy of the proposed minutes shall be served with a copy of the appointment.

- (4) At a hearing to settle minutes of a judgment or an order the Clerk may,
- (a) where a party does not attend pursuant to the appointment served, proceed to settle the minutes without the attendance of that party; or
  - (b) as the Clerk considers appropriate, adjourn the hearing from time to time on terms as to costs or otherwise.

(5) The minutes of a judgment or an order as settled by the Clerk may be varied by the Court on the application of either party.

Signing of judgment, order

**412.** (1) A judgment or an order of the Court shall, unless otherwise ordered, be signed by the Clerk.

(2) An order made by a judge in chambers may be signed by the judge in chambers or by the Clerk.

Delay

**413.** Where a judgment or an order, other than one given in an *ex parte* proceeding, is not signed within a reasonable time, it shall not be signed subsequently except on notice, unless the form of judgment or order is approved by the opposing solicitor.

Signing on filing or production

**414.** Where judgment may be signed on the filing of an affidavit or production of a document, the Clerk shall examine the affidavit filed or document produced and shall, if it is regular and contains all that is required by law, sign judgment accordingly.

Judgment pursuant to order, certificate

**415.** Where judgment may be signed pursuant to an order or certificate, the production of the order or certificate is a sufficient authority to the Clerk to sign judgment in accordance with the order or certificate on any condition specified in the order or certificate.

Entry of judgment, order

**416.** (1) A judgment or an order shall be entered by filing it with the Clerk, who shall make a note of the entry and the date of the entry at the foot of the judgment or order.

(2) On the entry of a judgment or order, the Clerk with whom it is entered shall, without additional charge, certify a copy of the judgment or order for the party entering it.

(3) A certified copy of a judgment or an order under the seal of the Court shall be received for all purposes and has the same force and effect as the original judgment or order.

(4) An order directing or giving leave for the doing of an act by an officer of the Court other than a solicitor need not be entered unless the Court so directs and the production of a note or memorandum signed by a judge is sufficient authority for the act.

Delay

**417.** No judgment or order shall be entered more than one year after its pronouncement except by leave of the Court, to be obtained on notice.

Where condition not complied with

**418.** Where a judgment or an order is obtained on a condition and the condition is not complied with, the judgment or order shall be deemed to have been waived or abandoned

to the extent that it is beneficial to the person who obtained it and, unless the Court otherwise directs, any person interested in the matter on the breach or non-performance of the condition may either take such proceedings as the judgment or order warrants or such proceedings as might have been taken if the judgment or order had not been made.

#### Further directions

**419.** Where, after a judgment or an order has been entered, it appears that further direction is necessary to ensure to a party the relief to which that party is entitled, the Court may make such further or other order and give such further or other relief as the nature of the case requires, if the further or other relief does not require a variation of the original judgment or order as to any matter decided by it.

#### Judgment or order directing account or inquiry

**420.** (1) Where a judgment or an order is made directing an account of a debt, claim or liability or an inquiry for heirs, next of kin or other unascertained persons, all persons who do not prove their claims within the time that maybe fixed by the Court for that purpose shall be excluded from the benefit of the judgment or order unless otherwise ordered.

(2) The Court may direct that notice of the time fixed under subrule (1) be given by publication or notice in any specified manner but, where such a direction is not given, no notice is required.

#### Judgment by default

**421.** (1) A judgment by default, whether by reason of non-appearance, non-delivery of defence or noncompliance with these rules or an order of the Court, may be set aside or varied by the Court on such terms as to costs or otherwise as the Court considers fit.

(2) An application to set aside or vary a judgment by default shall be made with reasonable diligence.

#### New judgment where judgment remains unsatisfied

**422.** (1) Where a judgment or any part of a judgment remains unsatisfied, a judgment creditor, at any time before proceedings under the judgment would be barred by the *Limitation of Actions Act*, may serve on the judgment debtor a notice of motion requiring the judgment debtor to appear before a judge in chambers and show cause why the judgment creditor should not have a new judgment for the amount remaining due and unpaid on the original judgment.

(2) A proceeding under subrule (1) shall be deemed an action on a judgment or an order of the Court.

(3) Rule 713 does not apply to a proceeding under subrule (1).

(4) The notice of motion for a proceeding under subrule (1) shall issue in the original cause or matter and shall be served on the judgment debtor in the same manner as a statement of claim at least 15 days before its return date.

(5) Where, on the return of an application brought under subrule (1), the judgment debtor does not appear and the Court is satisfied as to service of the notice of motion and as to the amount still due and unpaid under the original judgment, the Court may grant the judgment creditor leave to enter a new judgment for the amount still due and may allow costs.

(6) On the entry of a new judgment under subrule (5), the judgment creditor may take any steps available to enforce the judgment, including the issuance of a new writ of execution.

(7) Where, on the return of an application brought under subrule (1), the judgment debtor appears and disputes the judgment creditor's claim in whole or in part, the Court may give directions for the trial of an issue with or without pleadings as the circumstances of the case require and give all necessary directions.

#### Memorandum of satisfaction

**423.** (1) A memorandum of satisfaction of judgment shall be entered by the Clerk in the procedure book

- (a) on the filing of a consent to the satisfaction signed by the person entitled to the benefit of the judgment, with an affidavit of execution annexed to it, or signed by his or her solicitor of record; or
- (b) on the order of the Court.

(2) An order of the Court referred to in subrule (1)(b) shall be obtained on notice and on such proof of satisfaction as the Court requires.

#### Fiat

**424.** (1) A fiat made by a judge shall be recorded in the office of the Clerk and the Clerk shall enter it in the procedure book.

(2) A fiat may be endorsed on a document already filed or required to be filed in Court.

#### Notice of filing of reasons, issuance of fiat

**425.** Where a judge files reasons for judgment in a proceeding or issues a fiat, the Clerk shall forthwith notify the solicitors of the parties to the action of the fact and enter a memorandum of the notification in the procedure book.

Mistakes in judgment, order

**426.** A clerical mistake in a judgment or an order or an error in a judgment or an order arising from an accident, a slip or an omission, may at any time be corrected by the Court on application.

PART 33  
ACCOUNTS AND INQUIRIES

Generally

Direction to take account, make inquiry

**427.** The Court may, at any stage in an action, direct that any necessary account be taken or inquiry be made.

Undue delay in prosecution of account or inquiry

**428.** Where it appears to the Court that there is undue delay in the prosecution of an account or inquiry, the Court may

- (a) require the party having the conduct of the proceeding or any other party to explain the delay; and
- (b) make such order as the circumstances require for staying or expediting the proceeding or for the conduct of the proceeding and for costs.

Accounts

Order to take account

**429.** Where the Court orders an account to be taken, it may give directions with respect to the manner in which it is to be taken.

Instructions Conduct of account

**430.** (1) Where the Court has ordered an account to be taken, the accounting party shall make out his or her account and, unless the Court otherwise directs, verify it by an affidavit to which the account must be exhibited.

(2) The accounting party shall file the account with the Court unless the order for the taking of an account otherwise directs.

(3) A copy of an affidavit that has been filed, including the account attached as an exhibit, shall be furnished to the opposite party within five days after the filing.

(4) The Court may direct that receipts or other documents be produced at the office of the solicitor of the accounting party or at any other convenient place and that the opposite party and his or her solicitor may examine and make copies of them.

Charge beyond what is admitted as received

**431.** A party seeking to charge an accounting party beyond what has been admitted by the account to have been received shall give notice of the excess charge to the accounting party, stating the amount sought to be charged and the particulars of it.

### Inquiries

Appointment of referee

**432.** Where a question or an issue of fact arises in an action, the Court may appoint a referee for inquiry and report and the Court may give such directions to the referee as it considers fit.

Conduct of inquiry

**433.** (1) A referee may, subject to the order of the Court, hold an inquiry at or adjourn it to any convenient place.

(2) A proceeding before a referee shall, as nearly as possible, be conducted in the same manner as a similar proceeding would be conducted before a judge.

Report of referee

**434.** (1) The referee shall make his or her report to the Court and serve copies of the report on the parties to the reference.

(2) After the referee has made his or her report, an application may be made to the Court, on 10 days notice to all parties to the reference, to accept or to vary the report or remit the whole or any part of the question or issue of fact.

- (3) On the return of an application made under subrule (2), the Court may
- (a) adopt the report in whole or in part;
  - (b) vary the report;
  - (c) require an explanation from the referee;
  - (d) remit the whole or any part of the question or issue of fact referred to the referee for further consideration by the same or any other referee; or
  - (e) decide the question or issue of fact referred to the referee either with or without additional evidence.

## PART 34 PRESERVATION OF RIGHTS PENDING LITIGATION

### Interim Recovery of Personal Property

Order for replevin

**435.** The Court may make an order in the nature of replevin for the delivery of personal property to a plaintiff who, in an action brought for the recovery of personal

property, claims, whether alone or with any other claim, that the property was unlawfully taken or is unlawfully detained.

#### Property previously seized

**436.** Property seized pursuant to any process by a Sheriff or other officer charged with the execution of the process may not be the subject of any order for the recovery of personal property made under rule 435.

#### Application for order

**437.** (1) An application for an order for the recovery of personal property maybe made at any time after issuance of the statement of claim.

(2) An application under subrule (1) shall be supported by the affidavit of the plaintiff, or of an agent of the plaintiff who can swear positively as to the facts, setting out

- (a) a description of the property sufficient to make it readily identifiable;
- (b) the value of the property;
- (c) that the plaintiff is the owner or lawfully entitled to possession of the property;
- (d) that the property was unlawfully taken from the possession of the plaintiff or is unlawfully detained by the defendant;
- (e) the facts and circumstances giving rise to the unlawful possession; taking or detention; and
- (f) a statement that the property was taken under colour of distress for rent or damage feasant, as the case may be, if the property was distrained for rent or damage feasant.

(3) The notice of motion for an application made under subrule (1), and the affidavit in support, shall be served on the defendant unless the Court is satisfied that there is reason to believe that the defendant may improperly attempt to prevent recovery of possession of the property or that for any other sufficient reason the order should be made without notice.

#### Form of order

**438.** An order for the recovery of personal property must be in Form 35, contain a description of the property sufficient to make it readily identifiable and state the value of the property.

#### Bond and sureties

**439.** (1) Before executing an order, the Sheriff shall obtain from the plaintiff a bond, with sufficient sureties, in Form 36 in double the value of the property as stated in the order.

(2) A bond is assignable to the defendant by the Sheriff endorsing his or her name on it and, by such endorsement, the defendant is entitled to bring an action on the bond in the defendant's own name against the person who executed it.

(3) It shall be a condition of a bond provided under this rule that the plaintiff prosecute the action to a conclusion without delay and return the property to the defendant if ordered to do so and pay such damages, costs and expenses as the defendant sustains by reason of the issue of the order should the plaintiff fail to recover judgment.

(4) In place of a bond, the plaintiff may pay into court as security an amount double the value of the property as stated in the order.

#### Release of security

**440.** Security furnished pursuant to an order for recovery of personal property made under rule 435 may be released on the filing of the written consent of the parties or by order of the Court.

#### Service of order

**441.** (1) The Sheriff shall serve an order made under rule 435 on the defendant when he property or any part of it is recovered or as soon after the recovery as is possible.

(2) Where the Sheriff is unable to comply with an order made under rule 435 or considers that it is dangerous to do so, the Sheriff may seek directions from the Court.

#### Sheriff's report

**442.** (1) The Sheriff shall, without delay after attempting to enforce the order and in any event within 10 days after the order is served, report to the plaintiff and the Court on what property has been recovered and, where the Sheriff has failed to recover possession of all or part of the property, on what property has not been recovered and the reason for failing to recover it.

(2) Where the Sheriff reports that the defendant has prevented the recovery of all or part of the property, the Court may make an order

- (a) directing the Sheriff to take any other personal property of the defendant, to the value of the property that the Sheriff was prevented from recovering, and give it to the plaintiff; and
- (b) directing the plaintiff to hold the substituted property until the defendant surrenders to the plaintiff the property that the Sheriff was prevented from recovering.

#### Where defendant may retain property

**443.** (1) Except in the case of distress or damage feasant, the defendant has the right to retain possession of the property described in the order if the defendant gives a bond, with sufficient sureties, in Form 37 or pays into court security in double the value of the property as stated in the order.

(2) On the request of the plaintiff, the Sheriff shall assign a bond given under subrule (1) to the plaintiff by endorsement in Form 38 and, by such endorsement, the plaintiff is entitled to bring action on the bond in the plaintiff's name against the several parties who executed the bond.

#### Court's powers

**444.** The Court, on application, may discharge, vary or modify an order for the recovery of personal property, stay proceedings in respect of the recovery or grant any other relief with respect to the recovery.

### Interlocutory Injunction or Mandatory Order

#### Application

**445.** A party to a pending or intended proceeding may apply for an interlocutory injunction or a mandatory order.

#### Time for order, extension

**446.** (1) An application under rule 445 may be made without notice, but any order granted on the application shall be limited in its application to a period not exceeding 10 days.

(2) Where an interlocutory injunction or a mandatory order is granted on an application without notice, an application to extend the injunction or mandatory order may be made only once

- (a) on notice to every party affected by the order: or
- (b) without notice to a party, where the judge is satisfied that, because the party has been evading service or because there are other exceptional circumstances, the injunction or mandatory order ought to be extended.

(3) An extension may be granted on an application without notice under subrule (2)(b) for a further period not exceeding 10 days.

#### Undertaking respecting damages

**447.** On an application for an interlocutory injunction or a mandatory order, the applicant shall, unless the Court orders otherwise, undertake to abide by any order respecting damages that the Court may make if it ultimately appears to the Court that the granting of the order has caused damage to the respondent for which the applicant ought to compensate the respondent.

## Receiver

"receiver" defined

**448.** In rules 449 to 453,

"receiver" means a receiver or receiver and manager.

Appointment of receiver

**449.** An application for the appointment of a receiver under section 41 of the *Judicature Act* may be made by motion in a pending or intended proceeding.

Contents, form of order

**450.** (1) The Court, in an order appointing a receiver, shall

- (a) name the person appointed;
- (b) specify the amount and terms of the security, if any, to be furnished by the receiver for the proper performance of the receiver's duties;
- (c) state whether the receiver is also appointed as manager and, if necessary, define the scope of the receiver's managerial powers; and
- (d) give directions and impose such terms as it considers just.

(2) An order appointing the receiver must be in Form 39 or 40.

Accounts

**451.** A receiver shall, unless otherwise ordered, file accounts with and pass them before the Court.

Directions

**452.** A receiver may apply to the Court for directions on any matter arising in the course of receivership.

Discharge

**453.** A receiver may be discharged only by order of the Court.

## Interpleader

Definitions

**454.** In rules 455 to 467,

"applicant" means a person seeking relief on an application for an interpleader order; (*requérant*)

"claimant" means a person who makes an adverse claim to property that is the subject of an application for an interpleader order; (*demandeur*)

"property" means personal property, money, a chose in action or a debt. (*biens*)

Where relief granted

**455.** Relief by way of interpleader may be granted where the applicant is under liability for any property for or in respect of which there are two or more claimants.

Application for order

**456.** (1) Where no proceeding has been commenced in respect of the property in question, a person seeking an interpleader order shall make an application to a judge naming all the claimants as respondents and shall, in the notice of motion, require the claimants to attend the hearing to substantiate their claims.

(2) Where a proceeding has been commenced in respect of the property in question, a person seeking an interpleader order shall make an application in the proceeding to the Court on notice to all the claimants and shall, in the notice of motion, require the claimants to attend the hearing to substantiate their claims.

- (3) An application under subrule (1) or (2) shall be supported by an affidavit
- (a) identifying the property in question;
  - (b) containing the names and addresses of all claimants to the property of whom the deponent has knowledge; and
  - (c) stating that the applicant
    - (i) claims no beneficial interest in the property, other than a lien for costs, fees or expenses;
    - (ii) does not collude with any of the claimants; and
    - (iii) is willing to deposit the property with the Court or dispose of it as the Court directs.

Where applicant is defendant

**457.** Where the applicant is a defendant in an action respecting the property in question, application for relief may be made at any time after service of the statement of claim on the defendant and, on the application, the Court may stay all further proceedings in the action.

Relief Court may grant

- 458.** (1) Where all claimants appear on the return of the application for interpleader, the Court may
- (a) order that any claimant be made a defendant in an action already commenced in respect of the property in question in lieu of or in addition to the applicant;
  - (b) dispose of the merits of their claims in a summary manner, having regard to the value of the property in question;
  - (c) decide the question without directing the trial of an issue or order that a special case be stated for the opinion of the Court, where the question is one of law and the facts are not in dispute; or

- (d) direct that an issue between the claimants be stated and tried and direct which of the claimants is to be plaintiff and which is to be defendant.

(2) Where an issue is directed to be tried, the Court may give such directions as may be necessary for the expedient determination of the issue.

Where claimant does not appear, comply with order

**459.** Where a claimant does not appear on the application after having been served with notice or, having appeared, neglects or refuses to comply with an order made on or after the appearance, the Court may make an order declaring the claimant and all persons claiming under the claimant to be barred in respect of the claim of the claimant as against the applicant and all persons claiming under the applicant, but such an order does not affect the rights of the claimants as among themselves.

Orders on hearing

**460.** On the hearing of an application for an interpleader order, the Court may

- (a) order the applicant to deposit the property in question with an officer of the Court, sell it as the Court directs or, in the case of money, pay it into court to await the outcome of a specified proceeding;
- (b) declare that, on compliance with an order under subrule (a), the liability of the applicant in respect of the property in question or its proceeds is extinguished;
- (c) order that the costs of the applicant or any liens or other charges be paid out of the property in question or its proceeds; and
- (d) make such other order as it considers just.

Application by Sheriff

**461.** (1) The Sheriff or any officer charged with the execution of process by or under the authority of the Court may make an application for an interpleader order in respect of property taken or intended to be taken in the execution of any process where the Sheriff or other officer has received a claim in respect of the property by a person other than the person against whom the process issued.

(2) The Sheriff or other officer may apply for the relief although a bond or other security was given to the Sheriff before the seizure by the execution creditor or other person authorizing or requesting the seizure.

Where more than one execution

**462.** (1) Where a Sheriff has more than one execution against the same property, the Sheriff shall not make a separate application in each case, but may make one application and may make all the execution creditors parties to the application.

(2) Where there are executions from different courts against the same property whether on behalf of the same plaintiff or of different plaintiffs, the application for

interpleader shall be made to the Nunavut Court of Justice and the Court shall dispose of the whole matter as if all the executions against the property had been issued from it.

#### Claim to property seized or repossessed by Sheriff

**463.** (1) A claim made to or in respect of any property that was taken in execution by the Sheriff, or that the Sheriff has seized or repossessed under a chattel mortgage or other document creating a charge on the property or giving a right to repossess it, or to the proceeds of any such property, shall be in writing.

(2) The claimant shall give an address for service in the notice of claim made under subrule (1).

(3) On the receipt of a claim made under subrule (1), the Sheriff shall forthwith give, by registered mail, notice of receipt in writing to the execution creditor or, if the seizure or repossession has been effected by extrajudicial process, to the party authorizing the seizure or repossession.

(4) The execution creditor or the other person authorizing the seizure or repossession shall, within 25 days after the mailing of the notice required under subrule (3), give to the Sheriff notice in writing that he or she admits or disputes the claim.

(5) Where the execution creditor or other person authorizing the seizure or repossession admits the title of the claimant and gives notice in accordance with subrule (4), he or she is liable to the Sheriff only for the fees and expenses incurred before the receipt of the notice admitting the claim.

(6) Where the Sheriff receives a notice from an execution creditor or other person under subrule (4) admitting a claim made under this rule or does not receive a response within the time limited by subrule (4), the Sheriff shall give up possession of the property claimed and may apply to the Court for an order restraining anyone from bringing an action against the Sheriff for or in respect of the Sheriff's having taken possession of the property.

#### Where claimant entitled to property by way of security

**464.** Where property has been seized in execution by a Sheriff and a claimant alleges that he or she is entitled, under a bill of sale or otherwise, to the property by way of security for debt, the Court may

- (a) order a sale and direct the application of the proceeds of the sale in discharge of the amount due the claimant, if the amount is not disputed; or
- (b) order that sufficient money to answer the claim be paid into court pending trial of the claim.

#### Court's powers

**465.** On an application by a Sheriff or other officer, the Court may exercise any of the powers set out in rules 458 to 460.

#### Sheriff's costs

**466.** (1) Where an issue is directed to be tried, the Court may order any party to pay forthwith the costs that have been incurred by the Sheriff in consequence of the adverse claims to the property.

(2) The Sheriff's costs are a first charge on the property that is found in the issue to be subject to the execution or other process and, in addition to and without prejudice to that charge, the Sheriff may, after the Court directs an issue to be tried, tax those costs.

(3) Where the Sheriff taxes his or her costs under subrule (2), the Sheriff may serve a copy of the certificate of taxation on each of the parties to the issue and the party who has been awarded costs on the issue shall tax, as part of his or her costs in the cause, the Sheriff's costs as set out in the certificate and, on receipt of payment of the Sheriff's costs, shall pay the proper sum to the Sheriff for those costs unless the Sheriff has been previously paid.

(4) Where after the service of a certificate of taxation the party succeeding on the issue has not been awarded costs or neglects or refuses to collect the Sheriff's costs, the Sheriff may obtain an order requiring that party to pay them.

(5) Where a proceeding is settled between the parties to it, the party by whom the execution was issued shall pay the Sheriff's costs.

#### Order respecting payment to Sheriff

**467.** (1) Where, after seizure, an issue is directed to be tried and the property seized remains in the custody of the Sheriff pending the trial of the issue, the Court may make an order requiring payment to the Sheriff of a certain sum for services provided by the Sheriff in respect of the custody of property.

(2) Where an order for payment is made under subrule (1), the Sheriff has a lien on the property for payment of the sum set out in the order in the event the issue is decided against the claimant and to the extent to which the issue is so decided.

### Preservation and Inspection of Property

#### Interim order

**468.** An interim order for the custody or preservation of property may be made by the Court with or without notice as the Court may direct.

#### Dispute respecting title to property

**469.** Where there is a dispute respecting the title to property, the Court may

- (a) make an order for the preservation or interim custody of the property;
- (b) order that the amount in dispute be paid into court or otherwise secured; or
- (c) order the sale of the property and the payment of the proceeds into court.

Order for detention or preservation of property

**470.** (1) The Court may, on the application of a party to a proceeding and on such terms as the Court considers just,

- (a) make an order for the detention or preservation of any property or thing that is the subject of the proceeding or that may be evidence on an issue arising in the proceeding;
- (b) make an order for the inspection of the property or thing referred to in subrule (a) by any of the parties or their agents; and
- (c) permit the property or thing referred to in subrule (a) to be photographed.

(2) For the purpose of enforcing an order made under subrule (1), the Court may authorize

- (a) a person to enter on any land or into any building in the possession of a party to the proceeding; or
- (b) any sample to be taken, observation to be made or experiment to be tried that may be necessary or expedient for the purpose of obtaining full information or evidence.

(3) No order may be made under this rule for the detention or preservation of property, or any part of property, that prejudices a party in the conduct of a business, profession, trade or calling, unless full compensation is paid by the applicant to the prejudiced party before the order is issued.

Where title not disputed

**471.** (1) Where in a proceeding a party from whom the recovery of personal property is claimed does not dispute the title of the party making the claim, but claims the right to retain the property as security for a debt, the Court may order the party claiming recovery of the property to pay a certain amount into court or pay or otherwise give security for the debt and such further sum for interest and costs as the Court may direct.

(2) The affidavit in support of an application for an order under subrule (1) must disclose the name of every person asserting a claim to possession of the property of whom the party claiming recovery has knowledge and every such person shall be served with notice of the application.

(3) On compliance with an order made under subrule (1), the property shall be given to the party claiming recovery and the money in court or the security given shall remain in court pending the outcome of the proceeding.

#### Right to specific fund

**472.** Where the right of a party to a specific fund is in question, the Court may order the fund to be paid into court or otherwise secured on such terms as it considers just.

#### Stop Order

##### Application for stop order

**473.** (1) A person who claims to be entitled to money paid or to be paid into, or securities held or to be held in court for the benefit of another person may apply to the Court for a stop order and, on the application, the Court may make a stop order directing that the money or securities shall not be dealt with except on notice to the applicant.

(2) An application may be made under subrule (1) by motion without notice in a proceeding or, where there is no proceeding pending, by originating notice without notice.

(3) On an application for a stop order, the applicant shall, unless the Court orders otherwise, undertake to abide by any order respecting damages that the Court may make if it ultimately appears to the Court that the granting of the stop order has caused damage to any person for which the applicant ought to compensate the person.

##### Service of order

**474.** A copy of a stop order shall be served by the applicant forthwith on all persons who may be interested in the money or securities subject to the order.

##### Payment out of court

**475.** A person who has obtained a stop order under rule 473 may make an application on notice to all interested persons for an order for payment out of court of the money or securities subject to the order.

### PART 35 CERTIFICATES OF PENDING LITIGATION

#### Issuance of certificate of pending litigation

**476.** (1) Where an action is commenced in which an interest or estate in land is in question, the Clerk may issue a certificate of pending litigation in Form 41.

(2) A party who seeks a certificate of pending litigation shall include, in the pleading that commences the action, a claim for it with a description of the land in question sufficient, for the purpose of registration in a land titles office, to identify the land.

#### Service of certificate

**477.** A certificate of pending litigation shall be served with the originating document in the action.

Setting aside certificate, discharging registration of certificate

**478.** (1) A person affected by the issuance or registration of a certificate of pending litigation may apply to the Court, on notice, for an order setting aside the certificate or discharging the registration of the certificate.

(2) On an application under subrule (1), the Court may make such order as it considers just, including giving directions for the summary determination of any issue relating to the issuance or registration of the certificate.

Setting aside certificate

**479.** The Clerk shall issue, without an order, a certificate setting aside a certificate of pending litigation on the discontinuance of the action in which the certificate was issued.

Where Part does not apply

**480.** This Part does not apply to an action for foreclosure or sale on a registered mortgage or for enforcement of a lien under the *Mechanics Lien Act* or the *Miners Lien Act*.

PART 36  
ENFORCEMENT OF JUDGMENTS AND ORDERS

Generally

Enforcement of order

**481.** An order of the Court may be enforced against all parties and persons bound by it in the same manner as a judgment and to the same effect.

Enforcement by person not a party

**482.** (1) A person not a party to a proceeding who obtains an order or in whose favour an order is made is entitled to enforce obedience to the order by the same process the person would be entitled to use if he or she were a party.

(2) A person not a party to a proceeding against whom obedience to a judgment or an order may be enforced is liable to the same process for enforcing obedience to the judgment or order that the person would be liable to if he or she were a party.

Judgment for payment into court

**483.** A judgment for the payment of money into court may be enforced by any mode by which a judgment for the payment of money to a person may be enforced.

Payment to guardian, next friend or committee not valid discharge

**484.** No payment to a guardian, next friend or committee of moneys due to the minor or person of unsound mind or to a person having conduct of an action or a proceeding on behalf of a class, otherwise than for costs of the action or proceeding, is a valid discharge as against the minor or person of unsound mind or the class, as the case may be.

## Writ of Execution

### When writ may be issued

**485.** (1) Except as otherwise provided in these rules or in any other enactment, a judgment creditor is entitled immediately on judgment to issue one or more writs of execution.

(2) Notwithstanding subrule (1), where judgment must be paid within a period mentioned in the judgment, a writ shall not be issued until after the expiration of the period.

(3) The Court may, at or after the time judgment is given, stay execution or remove or extend any stay already granted.

### Conditional judgment

**486.** Where a party is by a judgment entitled to relief subject to or on the fulfilment of a condition or contingency, the party may, on the fulfilment of the condition or contingency, apply for leave to issue execution.

### Writ issues against goods and lands

**487.** A writ of execution shall be issued against both the goods and lands of the debtor.

### Separate writs

**488.** On a judgment for the recovery of land and money, whether for costs or otherwise, there may be either one writ or separate writs of execution for the recovery of possession and for the money at the election of the party entitled to recover them.

### Issuance of execution

**489.** As between the original parties to a judgment or an order, execution may issue at any time during the period within which the judgment or order is in force.

### Change in parties

**490.** Where a change has taken place by death or otherwise in the parties entitled or liable to execution, the Court, on application by the party entitled to execution, may

- (a) give leave to issue execution accordingly or to amend any execution already issued; or
- (b) order that any issue or question necessary to determine the rights of the parties be tried in any way in which a question in an action may be tried.

### Preparation of writ

**491.** A writ of execution shall be prepared by the party seeking it and signed by the Clerk.

Date of writ

**492.** A writ of execution must bear the date of the day on which it is issued.

Endorsements on writ

**493.** (1) A writ of execution shall be endorsed with the name and address of the solicitor issuing it and, if the solicitor issues it as agent for another solicitor, the name and address of the other solicitor.

(2) Where a party is not represented by a solicitor of record, the writ shall be endorsed with a memorandum stating that it has been issued by the plaintiff or defendant in person and his or her address.

Directions on writ

**494.** (1) A writ of execution for the recovery of money shall be endorsed with a direction to the Sheriff or other officer or person to whom the writ is directed

- (a) to levy the money due and payable under the judgment;
- (b) stating the amount of the judgment; and
- (c) to levy interest on the amount of the judgment, if sought to be recovered, at the rate provided by law from the time when the judgment was entered.

(2) Where there is an agreement between the parties that a higher rate of interest shall be secured by the judgment, the endorsement may be to levy at the rate so agreed.

Endorsement on writ where payment into court

**495.** A writ of execution for the levying of moneys directed to be paid into court shall be endorsed by the Clerk with the following notice:

"All moneys paid under this execution, other than for costs, are to be paid into court by the Sheriff."

Form of writ

**496.** A writ of execution for recovery of money must be in Form 42 with such variations as circumstances require.

Life of writ

**497.** Unless otherwise provided by statute and except for the purposes of that statute, a writ of execution remains in force so long as the judgment on which it is issued remains in force.

Renewal of writ

**498.** Where a writ of execution is required by statute to be renewed, a writ or renewed writ may, at any time while the judgment on which it was issued remains in force, be

renewed and the renewal shall be effected by a mark in the margin or at the foot with a memorandum signed by the Clerk to the following effect:

"Renewed from (*month, day, year*)."

#### Endorsement of Sheriff

**499.** The Sheriff shall, on receipt of a writ of execution or renewal of a writ of execution, endorse on it the year, month, day, hour and minute it was received.

#### Levying of costs and interest

**500.** (1) On an execution there may be levied, in addition to the sum recovered under the judgment, the fees and expenses of execution and interest on the amount recovered.

(2) When it is filed with the Sheriff, a certificate of the amount of any costs of or subsequent to judgment payable by the judgment debtor to the judgment creditor is a sufficient authority to the Sheriff to levy those costs and interest under the writ, where the original writ of execution is endorsed with a direction to so levy.

#### Record of returns

**501.** The Sheriff to whom a writ is directed shall keep a record of all returns to the writ and shall give a certificate of those returns when demanded.

#### Call for return

**502.** A party entitled to call for the return of a writ of execution may make a demand in writing on the Sheriff for it, and the Sheriff shall make a return to the writ within six days after the demand is made.

#### Filing of certificate of return

**503.** (1) On making a return under rule 502, the Sheriff shall file a certificate of return in the office from which the writ is issued and, on receipt of the certificate, the Clerk shall endorse on the certificate the day and hour of the filing.

(2) Where the Sheriff fails to make the return required under rule 502, the Court may hold the Sheriff in civil contempt or make such order as it considers just.

### Writ of Possession

#### Writ of possession

**504.** (1) A judgment or an order for the recovery or delivery of possession of land may be enforced by a writ of possession.

(2) Where by a judgment or an order any person named in the judgment or order is directed to deliver up possession of land to some other person either on a date specified in the judgment or order or within a specified period of time after the person served with the judgment or order, the person enforcing the judgment or order is entitled to issue a

writ of possession without any further order for that purpose on filing an affidavit showing service of the judgment or order and that it has not been obeyed.

(3) Except as provided in subrule (2), no writ of possession shall issue except on order of the Court.

(4) A writ of possession must be in Form 43.

### Writ of Delivery

Writ of delivery

**505.** (1) Where a judgment directs the recovery of specific property other than land or money, a writ of delivery may issue directing the Sheriff to cause the property to be delivered in accordance with the judgment.

(2) A writ of delivery must be in Form 44.

(3) Where the specific property is not delivered in accordance with a writ of delivery, the Court may, to enforce obedience to the judgment, order that the Sheriff take goods and chattels of the judgment debtor, to a value double that of the property in question, to be held until further order of the Court.

### Writ of Sequestration

Writ of sequestration

**506.** (1) In addition to or in lieu of an application that a disobedient party be held in civil contempt, a judgment may by leave of the Court be enforced by a writ of sequestration.

(2) A writ of sequestration must be in Form 45 and, unless otherwise ordered, directed to the Sheriff.

Enforcement of judgment against corporation

**507.** Where a judgment against a corporation is wilfully disobeyed it may be enforced by any or all of the following procedures:

- (a) by leave of the Court, by a writ of sequestration against the corporation's property;
- (b) by an order of the Court holding in civil contempt the directors or officers of the corporation or any of them;
- (c) by leave of the Court, by a writ of sequestration against the property of the directors or officers or any of them.

## Mandatory Orders and Injunctions

Direction that required act be done

**508.** (1) Where a mandatory order, injunction or judgment for the specific performance of a contract is not complied with or where a judgment requires a person to do any act other than pay money and the person fails to do it, the Court, in addition to or in lieu of holding the disobedient party in civil contempt, may direct that the act required to be done be done, so far as practicable, at the cost of the disobedient party by

- (a) the party by whom the judgment has been obtained; or
- (b) some other person appointed by the Court.

(2) When the act required to be done is done, the expenses incurred may be ascertained in such manner as the Court directs and execution may issue for the amount so ascertained and for costs.

### Enforcing a Judgment or an Order Against a Firm

Execution against firm property

**509.** Where a judgment is given or an order is made against a firm, execution to enforce the judgment or order may issue against any property of the firm within the jurisdiction.

Execution against partner

**510.** (1) Where a judgment is given or an order is made against a firm, execution to enforce the judgment or order may, subject to subrule (2), issue against any person who

- (a) entered a defence in the action as a partner;
- (b) having been served as a partner with the statement of claim failed to enter a defence in the action; or
- (c) was adjudged to be a partner.

(2) A judgment given or an order made against a firm does not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the statement of claim was issued and execution to enforce a judgment given or an order made against a firm may not issue against such a member of the firm unless that person

- (a) entered a defence in the action as a partner;
- (b) was served within the jurisdiction with the statement of claim as a partner; or
- (c) was, with the leave of the Court, served out of the jurisdiction with the statement of claim as a partner.

(3) Where a party who has obtained a judgment or an order against a firm claims that a person is liable to satisfy the judgment or order as a member of the firm and subrules (1) and (2) do not apply in respect of that person, the party may apply, by notice of motion to be served personally on the person, to the Court for leave to issue execution against the person.

(4) Where the person against whom an application under subrule (3) is made does not dispute liability, the Court may give leave to issue execution against that person.

(5) Where the person against whom an application under subrule (3) is made disputes liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

(6) On an application under this rule, the Court may give such directions as it considers necessary, including directions as to the taking of accounts and the making of inquiries.

Where execution shall not issue

**511.** Except with leave of the Court, execution shall not issue to enforce a judgment given or an order made in

- (a) an action by or against a firm in the name of the firm against or by a member of the firm; or
- (b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common.

#### Discovery in Aid of Execution

Examination

**512.** (1) Where a writ of execution has been issued against the property of a judgment debtor, the judgment creditor may, without order, examine the judgment debtor on oath as to

- (a) the property and means the judgment debtor had
  - (i) when the debt or liability that was the subject of the proceeding in which judgment was obtained was incurred, or
  - (ii) at the time the proceeding in which the costs were awarded was commenced, in the case of a judgment for costs only;
- (b) the property and means the judgment debtor has that may be used to discharge the judgment;
- (c) any disposal of property made since contracting the debt or incurring the liability or, in the case of a judgment for costs only, since the proceeding was commenced; and
- (d) the debts that are owing to the judgment debtor.

(2) No further examination shall be had without an order until the expiration of one year from the close of the preceding examination.

(3) A judgment creditor may, on order of the Court, examine an employee or a former employee of the judgment debtor with respect to any matter about which the judgment debtor may be examined under subrule (1).

Where judgment against corporation

**513.** (1) Where a judgment is against a corporation and a writ of execution has been issued against its property, the judgment creditor may, without order, examine any of the directors or officers of the corporation on oath as to

- (a) any amount unpaid on the stocks or shares held by shareholders of the corporation, and for that purpose may obtain the names and addresses of the shareholders and particulars of the stocks or shares held or owned by each and the amount paid on them;
- (b) the name, address or other pertinent information relating to any director or former director of the corporation;
- (c) any debts owing to the corporation;
- (d) the property of the corporation; and
- (e) any disposal of property made since contracting the debt or incurring the liability in respect of which the judgment was obtained or, in the case of a judgment for costs only, since the proceeding in which the costs were awarded was commenced.

(2) A judgment creditor may, on order of the Court, examine an employee or a former employee of a corporation with respect to any matter about which an officer or director of the corporation may be examined under subrule (1).

Where property transferred

**514.** (1) The Court may order a person to attend before a person named in the order and submit to examination under oath where the judgment debtor has transferred property that would have been exigible under execution in the hands of the judgment debtor to the person, or to the corporation of which the person is an officer or director,

- (a) since the liability or debt that was the subject of the proceeding in which the judgment was obtained was incurred; or
- (b) since the proceeding in which the costs were awarded was commenced if the judgment is for costs only.

(2) On an examination under subrule (1), the person examined may be questioned as to

- (a) any property of the judgment debtor that has been transferred;
- (b) any disposal of property made by the judgment debtor since the applicable time referred to in subrules (1)(a) and (b); and
- (c) any debts owing to the judgment debtor.

Where property in third party's possession

**515.** Where the Court is satisfied that there are reasonable grounds for believing that a person or corporation is in possession of any property of the judgment debtor exigible under execution, it may order the person or any officer or director of the corporation, as the case may be, to attend and submit for examination under oath, before the person named in the order, as to the property and means of the judgment debtor.

#### Appointment for examination

**516.** A judgment creditor wishing to examine a person who is liable to be examined shall, at least 48 hours before the time appointed for the examination, serve on the person an appointment signed by the person before whom the examination is to be held, or a copy of such appointment and, where the examination is to take place under an order, with a copy of the order.

#### Failure to attend or answer questions

**517.** (1) Where the judgment debtor or other person liable to be examined does not attend for the examination and does not allege a sufficient reason for not attending or attends but refuses to answer questions or does not make satisfactory answers respecting them, the person to be examined may be held in civil contempt.

(2) Where an officer or director of a corporation liable to be examined does not attend for the examination and does not allege a sufficient reason for not attending or attends but refuses to disclose matters in respect of which he or she is to be examined, the officer or director may be held in civil contempt.

#### Application to Court where difficulty arises

**518.** Where a difficulty arises in or about the execution or enforcement of a judgment, the judgment creditor may apply to the Court for an order requiring the attendance and examination of any party or person.

#### Costs

**519.** The costs of an examination in aid of execution are in the discretion of the Court.

#### Rules respecting discovery apply

**520.** The rules relating to examination for discovery apply with such modifications as the circumstances may require to examination authorized by this Part.

### Fraudulent Conveyance

#### Order for sale of transferred property

**521.** Where it is alleged that there has been a conveyance of property to delay, hinder or defraud a creditor, it is not necessary to commence an action to set aside the conveyance but the Court may, on the application of the judgment creditor served on the judgment debtor and on any person to whom it is alleged the property was conveyed, order that property or part of property be sold to realize the amount to be levied under execution.

### Equitable Execution

#### Application for order for sale of interest in land

**522.** (1) Where a judgment debtor has an interest in land that cannot be sold under legal process but that can be rendered available by proceedings for equitable execution by sale for satisfaction of the judgment, the Court may, on application served on such

persons as the Court may direct, order that the interest be sold to realize the amount to be levied under execution.

- (2) On the return of an application under this rule, the Court may
- (a) determine the matter summarily; or
  - (b) direct the trial of an issue to determine any question or questions.

(3) Pending the hearing of the application or trial of the issue, the Court may grant an interim injunction to prevent the transfer or disposition of the property or interest in the property or may appoint an interim receiver of the property.

### PART 37 GARNISHEE RULES

Garnishee before judgment

**523.** (1) In an action for a debt or liquidated demand, the Court may, on the application of the plaintiff made *ex parte*, grant leave to the plaintiff to require the Clerk to issue a garnishee summons before judgment in Form 46.

- (2) An application under subrule (1) must be supported by the affidavit of the plaintiff or the plaintiff's solicitor or agent
- (a) setting out the nature and amount of the claim against the defendant;
  - (b) stating that, to the best of the deponent's information and belief,
    - (i) the proposed garnishee is indebted to the defendant, or
    - (ii) if the moneys sought to be attached are wages and salary, the defendant was or is employed by the garnishee and where and in what capacity the defendant was or is so employed;
  - (c) stating that the proposed garnishee is within Nunavut and, where the garnishee has more than one office or place of business within Nunavut, the place at which or the office through which the indebtedness is alleged to be payable;
  - (d) setting out the facts establishing the cause of action;
  - (e) exhibiting the plaintiff's undertaking that if moneys are paid into court under a garnishee summons issued pursuant to leave granted on the application, the plaintiff will proceed with the action without delay; and
  - (f) establishing a reasonable possibility that the plaintiff will be unable to collect all or part of the claim or will be subjected to unreasonable delay in the collection of the claim unless permitted to issue the garnishee summons.

(3) On an application for leave to issue a garnishee summons before judgment, the affidavit required by subrule (2) shall not be considered insufficient merely because it was sworn before the commencement of the action.

(4) Subject to subrule (5), a garnishee summons to attach a debt due or accruing due to a person for or in respect of wages or salary shall not issue before judgment.

(5) Where the Court is satisfied that it will be conducive to the ends of justice, the Court may make an order on such terms as to costs or otherwise and subject to any undertaking that the Court considers just, permitting the issue of a garnishee summons before judgment in respect of wages and salary.

#### Garnishee after judgment

**524.** A person who has obtained a judgment or order for the payment of money may, without leave, require the Clerk to issue a garnishee summons in Form 47 by filing an affidavit

- (a) setting out the debt due or remaining due and unsatisfied under the judgment by the judgment debtor to the judgment creditor;
- (b) stating that, to the best of the deponent's information and belief,
  - (i) the proposed garnishee is indebted to the judgment debtor, or
  - (ii) if the moneys sought to be attached are wages and salary, the judgment debtor was or is employed by the garnishee and where and in what capacity the judgment debtor was or is so employed; and
- (c) stating that the proposed garnishee is within Nunavut and, where the garnishee has more than one office or place of business within Nunavut, the place at which or the office through which the indebtedness is alleged to be payable.

#### Contents of garnishee summons

**525.** (1) A garnishee summons issued under rule 523 or 524 shall include a statement listing the subsisting writs of execution against the judgment debtor.

(2) Where there are several defendants or judgment debtors named in an action, the garnishee summons shall clearly indicate the specific defendant or judgment debtor who is being garnished.

(3) A notice setting out the applicable exemptions under section 9 of the *Exemptions Act* shall be endorsed on a garnishee summons purporting to attach wages or salary.

#### Issuance of garnishee summons

**526.** On the filing of an order made under rule 523 or the filing of an affidavit under rule 524 and on compliance with subsection 6(1) of the *Creditors Relief Act*, the Clerk shall issue a garnishee summons.

#### Service of garnishee summons

**527.** (1) Subject to any statute providing for the garnishment of a specific debt, the rules respecting the service of a statement of claim apply to service of a garnishee summons.

(2) Where the garnishee has more than one office and it appears from the affidavit filed that money alleged to be due to the defendant or judgment debtor is or may be payable through some other office of the garnishee than that at which the garnishee summons is served, the person in charge of the office at which the garnishee summons is served shall forthwith notify the person in charge of the office at which money alleged to be due is or may be payable.

(3) Where notice is given under subrule (2), any money that is due and payable to the defendant or judgment debtor shall be deemed to have been attached and the garnishee summons shall be deemed to be served on the earlier of

- (a) the time the notice is actually received at the office at which the money is or may be payable; and
- (b) within 48 hours after the service of the garnishee summons.

(4) A copy of the garnishee summons shall be served on the defendant or judgment debtor, or his or her solicitor, not later than 20 days after payment into court.

#### Where assignment, etc. fraudulent

**528.** A debt shall be deemed to be due to the defendant or judgment debtor within the meaning of subsection 6(2) of the *Creditors Relief Act* although it has been assigned, charged or encumbered by the defendant or judgment debtor where the assignment, charge or encumbrance is fraudulent as against the plaintiff or judgment creditor, as the case may be.

#### When wages, salary deemed due

**529.** For the purpose of garnishment, wages or salary shall be deemed to accrue due from day to day, but no employer is, by these rules, compelled to pay wages or salary or any part of wages or salary otherwise than in accordance with the terms of the hiring.

#### Garnishee against firm

**530.** (1) A debt owing from a firm carrying on business within the jurisdiction may be attached, even though one or more members of the firm is resident out of the jurisdiction, where the garnishee summons is served within the jurisdiction on a person having the control or management of the partnership or on a member of the firm.

(2) An answer filed in accordance with rule 531 that disputes liability in the name of the firm is a sufficient answer.

#### Garnishee's duty to respond

**531.** (1) The garnishee shall, within 10 days after service of the garnishee summons on him or her,

- (a) pay into court the lesser of
  - (i) the money due to the defendant or judgment debtor, and
  - (ii) an amount sufficient to satisfy the claim and probable costs of the plaintiff or the judgment and the probable costs of the judgment creditor;
- (b) file answer, in duplicate, in the office of the Clerk disputing liability to the defendant or judgment debtor or claiming the debt is or may not be attachable;
- (c) file answer, in duplicate, in the office of the Clerk stating that the money is accruing due but is not yet payable and that it is to be payable at a specified future date or on the happening of a specific event; or
- (d) file answer, in duplicate, in the office of the Clerk stating that the debt attached belongs or may belong to a third person and stating the name and address of the third person so far as known to the garnishee.

(2) A garnishee disputing liability to the defendant or judgment debtor under subrule (1)(b) shall state the grounds on which liability is disputed or the grounds on which the debt is or may not be attachable.

(3) Where a garnishee files an answer under subrule (1)(c), the garnishee shall, on the specified future date or the happening of the specified event, pay into court the lesser of

- (a) the money accrued due at the time of service of the garnishee summons from the garnishee to the defendant or judgment debtor; and
- (b) an amount sufficient to satisfy the claim and probable costs of the plaintiff or the judgment and probable costs of the judgment creditor.

(4) Where a garnishee files an answer under subrule (1)(d), the garnishee shall,

- (a) unless the Court orders otherwise, pay into court with the answer the lesser of
  - (i) the debt attached, and
  - (ii) so much of the debt attached as is required to satisfy the claim and probable costs of the plaintiff or the judgment and probable costs of the judgment creditor; and
- (b) to the extent of his or her knowledge, state the circumstances of and grounds for the debt.

(5) The Court may fix the costs referred to in subrule (1)(a)(ii), (3)(b) or (4)(a)(ii) where they are disputed or uncertain.

### Exemptions

**532.** (1) Where the debt due to an employee is for wages or salary, section 9 of the *Exemptions Act* must be applied in calculating the amount to be paid pursuant to the garnishee summons.

(2) Where the amount of the applicable exemption or any portion of it is paid into court, the Clerk shall pay it out to the defendant or judgment debtor.

### Judgment against garnishee

**533.** (1) Where a garnishee does not pay money into court or file an answer in accordance with rule 531, the Court may, on notice to the garnishee, order that judgment be entered against the garnishee in such amount as the Court considers proper.

(2) Where the garnishee summons was issued before judgment, an order may not be made under subrule (1) until judgment has been entered against the defendant.

### Deduction for compensation

**534.** A garnishee paying money into court is entitled to deduct from the money paid \$10 as compensation, but where the debt due from the garnishee to the defendant or judgment debtor is larger than the sum of the amount attached by the garnishee summons and any exemption to which the defendant or judgment debtor is entitled, the garnishee shall deduct the compensation from the money remaining in his or her hands.

### Statement where wages and salary

**535.** Where a garnishee pays into court money due to an employee for wages or salary, the garnishee shall, at the same time, file with the Clerk a statement showing the period for which the wages or salary is due and the particulars of any payment made on account of wages or salary and any other deduction claimed from the wages or salary.

### Discharge to garnishee

**536.** Payment made by a garnishee or satisfaction of judgment against a garnishee is a valid discharge to the garnishee against the defendant or judgment debtor to the extent of the payment or satisfaction.

### Duties of Clerk

**537.** (1) On payment into court by the garnishee, the Clerk shall promptly notify the plaintiff or judgment creditor, or his or her solicitor, of the amount of the payment.

(2) On the filing of an answer by the garnishee, the Clerk shall promptly mail one copy of it to the plaintiff or judgment creditor or his or her solicitor.

### Application to set aside garnishee summons or for speedy determination

**538.** (1) The defendant or judgment debtor or any person claiming to be interested in the money attached by a garnishee summons may apply to the Court

(a) to set aside the garnishee summons;

- (b) for an order for the speedy determination of any question in the action or in the garnishee proceeding; or
  - (c) for such other order as the Court may consider just.
- (2) On an application under subrule (1), the Court may do any of the following:
- (a) summarily determine any question arising in the action or in the garnishee proceeding;
  - (b) direct the trial of an issue to determine any question arising in the action or in the garnishee proceeding;
  - (c) make such order for the payment of costs by any person as it considers just;
  - (d) make such other order as it considers just.
- R-024-96,s.1.

#### Setting aside for irregularity

**539.** No garnishee summons shall be set aside for irregularity unless, in the opinion of the Court, there has been a substantial non-compliance with these rules. R-024-96,s.1.

### PART 38 PROCESS AGAINST ABSCONDING DEBTORS

#### Application for writ of attachment

**540.** (1) Where a claim is made in an action for the recovery of an amount not less than \$5,000, the Court may, on an *ex parte* application, direct the Clerk to issue a writ of attachment in Form 48.

- (2) An application under subrule (1) must be supported by
- (a) an affidavit made by the plaintiff or, where there is more than one plaintiff, one of the plaintiffs or by an agent of the plaintiff or plaintiffs swearing positively to the facts establishing the debt and stating
    - (i) that there is reason to believe that the defendant
      - (A) is about to abscond or has absconded from Nunavut, leaving personal property liable to seizure under execution,
      - (B) has attempted to remove personal property out of Nunavut or to sell or dispose of personal property with intent to defraud creditors generally or the plaintiff in particular, or
      - (C) is concealed to avoid service of process,
    - (ii) the grounds for the belief, and
    - (iii) that the deponent truly believes that without the benefit of the attachment the plaintiff will lose the debt or sustain damage; and
  - (b) a further affidavit of one other person swearing that he or she is well acquainted with the defendant and stating

- (i) that he or she has good reason to believe that the defendant
  - (A) is about to abscond or has absconded,
  - (B) has attempted to remove property out of Nunavut,
  - (C) has attempted to sell or dispose of property, or
  - (D) keeps property concealed with intent to defraud creditors, and
- (ii) the grounds for the belief.

(3) The Sheriff shall execute a writ of attachment issued under subrule (1) according to its terms. R-024-96,s.1.

#### Order of the Court

**541.** On an application under rule 540, the Court may

- (a) waive the requirement for the affidavit referred to in subrule 540(2)(b); and
- (b) order the plaintiff to post a bond, provide sureties or deposit such other security as the Court considers appropriate before a writ of attachment is issued.

R-024-96,s.1.

#### Service of writ

**542.** (1) Where the debtor against whose effects a writ of attachment is issued can be found, a copy of the writ of attachment shall be served on the debtor at the time seizure is made under the writ or as soon after that as service can be effected.

(2) Where personal service cannot be effected on the debtor, a copy of the writ of attachment shall be left with an adult resident at the place where the seizure is made or, if no adult is resident there, posted in a conspicuous place on the premises.

#### Return of writ

**543.** Immediately after making a seizure pursuant to a writ of attachment, the Sheriff shall make a return of the writ and transmit to the Clerk the return, an inventory of the property seized, a statement of the estimated value of the property seized and an affidavit setting out the manner in which service of the writ was effected.

#### Sheriff to hold property

**544.** The Sheriff shall hold property seized under a writ of attachment until the plaintiff obtains judgment in the action and an execution on judgment is delivered to the Sheriff, unless the property is returned, redelivered or relinquished by the Sheriff under these rules or unless otherwise ordered.

#### Return of property

**545.** (1) The person from whose possession property is seized under a writ of attachment is entitled to have it returned on giving the Sheriff sufficient security equal to the estimated value, or paying into court an amount equal to the estimated value, of the property as set out in the Sheriff's return made under rule 543.

(2) Where a writ of attachment is issued and the plaintiff fails to recover judgment or delays in the prosecution of the action to judgment, the Court may order the redelivery of property seized under the writ to the person from whose possession it was taken, unless another writ of attachment or writ of execution against the defendant has been delivered to the Sheriff for execution.

#### Livestock, perishable goods

**546.** (1) Where livestock or a perishable good or chattel that by its nature cannot be safely kept or conveniently taken care of is taken under a writ of attachment, the Sheriff shall have it appraised and valued on oath by two competent persons.

(2) The plaintiff may request that the livestock, good or chattel seized be sold under subrule (3) and, on such a request, shall deposit with the Sheriff a bond payable to the defendant

- (a) executed by one or more persons whose sufficiency is approved of by the Sheriff in double the amount of the appraised value of the livestock, good or chattel to be sold; and
- (b) conditioned for the payment of the appraised value to the defendant, together with all costs and damages incurred by the seizure and sale if judgment is not obtained by the plaintiff against the defendant.

(3) Where the plaintiff makes a request in accordance with subrule (2), the Sheriff may sell livestock, a good or a chattel seized under subrule (1) at public auction to the highest bidder on not less than five days notice of the sale or, where the livestock, good or chattel is of a nature that would not allow delay, forthwith.

(4) The Sheriff shall hold the proceeds of a sale conducted under subrule (3) and the proceeds shall be dealt with in the same manner as any property seized under the attachment.

(5) Where the plaintiff, after receiving notice of the seizure, neglects or refuses to deposit the bond or offers a bond with sureties the Sheriff considers insufficient, the Sheriff, after the expiry of five days after the notice is given, is relieved from all liability to the plaintiff in respect of the livestock, good or chattel seized and the Sheriff shall forthwith restore the livestock, good or chattel to the person from whose possession it was seized.

#### Setting aside writ

**547.** A writ of attachment may be set aside where the Court is satisfied, on proof by affidavit, that the creditor who obtained the writ did not have reasonable cause to take the proceeding.

### Judgment

**548.** (1) An action in which a writ of attachment is issued shall proceed in the ordinary way, except that the plaintiff shall not have judgment against the defendant except by order of the Court.

(2) Where judgment is given for the plaintiff for an amount less than the amount of the debt set out in the affidavit on which the writ of attachment was issued, the Court may order that the plaintiff be deprived of costs, either wholly or in part, or that the plaintiff pay the defendant's costs, either wholly or in part.

## PART 39 ADMINISTRATION AND SIMILAR PROCEEDINGS

### "administration proceedings" defined

**549.** In this Part,

"administration proceeding" means a proceeding for the administration of the estate of a deceased person under the direction of the Court or for the execution of a trust under the direction of the Court.

### Questions to be determined

**550.** An application may be made to the Court by originating notice for the determination of any of the following questions:

- (a) a question arising in the administration of the estate of a deceased person or in the execution of a trust;
- (b) a question as to the composition of a class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of a deceased person or in any property subject to a trust;
- (c) a question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person, to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

### Relief that may be sought

**551.** An application may be made to the Court by originating notice for the following relief:

- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
- (b) an order requiring payment into court of money held by a person in his or her capacity as executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his or her capacity as executor, administrator or trustee;
- (d) an order approving a sale, purchase, compromise or other transaction by a person in his or her capacity as executor, administrator or trustee;

- (e) an order directing an act to be done in the administration of the estate of a deceased person or in the execution of a trust, where the act is one that the Court could order be done if the estate or trust were administered or executed under the direction of the Court.

#### Parties to proceeding

**552.** (1) Where an administration proceeding is taken, all the executors or administrators of the estate or trustees of the trust shall be parties to the proceeding and any executor, administrator or trustee who does not consent to being joined as an applicant in a proceeding brought by the executors, administrators or trustees shall be made a respondent.

(2) Where, in a proceeding for the administration of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person who is not a party to the proceeding, no party other than an executor or administrator of the estate is entitled to appear on behalf of the estate in any proceeding relating to that claim without the leave of the Court.

(3) In an application for leave to appear under subrule (2), the Court may direct or allow any party to appear either in addition to, or in substitution for, the executor or administrator on terms as to costs or otherwise.

#### Relief where misconduct

**553.** In an administration proceeding, the Court may make any order and grant any relief to which an applicant may be entitled by reason of breach of trust, wilful default or other misconduct of the respondent notwithstanding that the proceeding was brought by originating notice.

#### Discretion to give judgment, make order

**554.** A judgment need not be given and an order need not be made in an administration proceeding unless, in the opinion of the Court, the question at issue between the parties cannot properly be determined otherwise than under such a judgment or an order.

#### Proceeding brought by creditor respecting accounts

**555.** Where an administration proceeding is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust and the applicant alleges that no or insufficient accounts have been furnished by the executor, administrator or trustee, the Court may, in addition to any other power it has,

- (a) order that the administration proceeding be stayed for a period of time specified in the order and that the executor, administrator or trustee, within that period of time, furnish the applicant with proper accounts; and
- (b) if necessary to prevent proceedings by any other person claiming to be so entitled, give judgment or make an order for the administration of the estate to which the administration proceeding

relates and order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the Court.

#### Conduct of sale of property

**556.** Where an order is made for the sale of property vested in an executor, administrator or trustee, the executor, administrator or trustee shall have the conduct of the sale unless the Court otherwise orders.

#### Administration proceeding or sale of property

**557.** (1) This rule applies to an administration proceeding and to the sale of property of an estate or a trust.

(2) The Court may require that a person be made a party to a proceeding, may give the conduct of the proceeding or any part of the proceeding to any party and may make any necessary order to place any party on the same footing in regard to costs as other parties having a common interest with him or her in the matter in question.

(3) The Court may, when giving a judgment or making an order that affects the rights or interests of a person not a party to the proceeding or that directs an account to be taken or inquiry made, direct notice of the judgment or order to be served on any person interested in the estate or under the trust or in the property, as the case may be.

(4) A person served with notice of a judgment or order in accordance with subrule (3) is, subject to the other provisions of this rule, bound by the judgment or order to the same extent as he or she would have been if he or she had originally been made a party to the proceeding.

(5) The Court may direct that a notice of judgment or order in Form 49 be served personally or in such manner as the Court may specify on the person required to be served or, where it appears to the Court that it is impracticable to serve the notice on a person, it may dispense with service of the notice on that person.

(6) Where the Court dispenses with service of notice of a judgment or order on a person, it may also order that the person is bound by the judgment or order to the same extent as if he or she had been served with notice and the person is bound accordingly except where the judgment or order has been obtained by fraud or nondisclosure of material facts.

(7) A person served with notice of a judgment or order may, within 15 days after service, apply to the Court to discharge, vary or add to the judgment or order.

(8) A person served with notice of a judgment or order may, by written notice served on the plaintiff, require notice of the administration proceedings.

(9) A person served with notice of a judgment or order may attend the administration proceeding under which the judgment was given or order was made.

#### PART 40 SALES OF REAL ESTATE

##### Order for sale

**558.** Where, in a proceeding relating to real estate, the Court determines that it is necessary or expedient that the real estate or any part of the real estate be sold, the Court may order it to be sold and may

- (a) compel any party bound by the order and in possession of the real estate to deliver up possession to the purchaser or such other person as the Court may direct; or
- (b) compel any party bound by the order and in receipt of the rents and profits of the real estate to deliver up the receipts to the purchaser or such other person as the Court may direct.

##### Directions

**559.** In addition to any other power the Court has on ordering a sale, mortgage, partition or exchange of real estate, the Court may give directions as to how the sale, mortgage, partition or exchange shall be carried out.

##### Proceedings out of court

**560.** Where it appears that all persons interested are before the Court or bound by an order for sale, mortgage, partition or exchange of real estate, the Court may order the sale, mortgage, partition or exchange to be carried out by proceedings out of court, but any moneys produced by the proceedings shall be

- (a) paid into court or, where the Court so directs, to trustees; or
- (b) otherwise dealt with as the Court may direct.

##### Sale must be approved by Court

**561.** Where a judgment is given or an order made directing that property be sold, the sale shall not be made until it is approved by the Court.

#### PART 41 DISPOSITION OF MINOR'S PROPERTY

##### Application

**562.** (1) An application under paragraph section 51(1)(a) of the *Children's Law Act* for the sale, mortgage, lease or other disposition or encumbrance of a minor's interest in land shall be made to the Court by originating notice.

- (2) An application must be supported by affidavit evidence stating
  - (a) the nature and amount of personal property to which the minor is entitled;

- (b) the reasons the disposition or encumbrance requested is necessary or proper for the maintenance or education of the minor, is required in the minor's interest or will substantially promote the minor's interest;
- (c) the nature, value and annual profits of the land;
- (d) the status of occupation of the land to be disposed of or encumbered;
- (e) any amount sought for the maintenance or repair of land;
- (f) the relief desired; and
- (g) the circumstances sufficient to justify the order sought.

#### Consent of minor

**563.** (1) The consent of a minor who has attained the age of 12 years to the sale, mortgage, lease or other disposition or encumbrance shall be verified by the affidavit of a solicitor, stating that the consent was read to the minor and fully explained to and apparently understood by the minor.

(2) The consent and affidavit referred to in subrule (1) shall be filed with the Clerk.

(3) Where so directed by the Court, a minor shall be produced before the Court and examined apart as to his or her consent.

(4) Where a minor is outside Nunavut, the Court may direct inquiry as to the minor's consent in such manner as the Court considers proper.

#### *Viva voce* evidence

**564.** Witnesses on an application under this Part may be examined *viva voce* before the Court.

### PART 42

#### MENTALLY INCOMPETENT PERSONS AND PERSONS INCAPABLE OF MANAGING THEIR FINANCIAL AFFAIRS

#### Appointment of committee

**565.** (1) Unless the Court orders or a statute provides otherwise, a person may apply to the Court by originating notice for an order appointing the applicant or another person as a committee for a person under disability on the basis that

- (a) the person is a mentally incompetent person as defined in the *Public Trustee Act*;
- (b) the person is incapable of managing his or her financial affairs; or
- (c) the person is, through mental infirmity arising from disease, age or other cause or by reason of habitual drunkenness or the use of drugs, incapable of managing his or her affairs.

(2) An applicant shall file an affidavit in support of an application under subrule (1)

- (a) setting out the grounds for the appointment of the committee;
- (b) detailing the relationship or connection of the proposed committee to the person under disability;
- (c) confirming that the proposed committee consents to act as committee;
- (d) stating whether the proposed committee and the person under disability are ordinarily resident in Nunavut and, if not, where they are ordinarily resident;
- (e) stating the nature of the applicant's and the proposed committee's interest in the proceeding and in the estate of the person under disability, if any; and
- (f) setting out a description and the value of the property and estate of the person under disability, separating real and personal property.

#### Service

**566.** Unless the Court otherwise orders, the originating notice and affidavit in support of an application under rule 565 shall be served on

- (a) the person under disability;
- (b) the Public Trustee; and
- (c) the person in charge of the hospital or facility where the person under disability is residing if the person under disability is so residing.

#### Costs

**567.** The Court may order the costs, charges and expenses of and incidental to an application under rule 565 to be paid by the applicant, the party opposing the application or out of the estate, or partly by a party and partly out of the estate.

#### Accounting to Court

**568.** Unless the Court otherwise orders or a statute otherwise provides, a committee appointed under these rules, the *Public Trustee Act* or the *Mental Health Act* shall account to the Court within two years after the day the committee is appointed and within two years after each and every accounting.

#### Change to order of appointment

**569.** At any time, the committee, the person under disability or any interested person may apply to the Court for a review of the appointment of the committee and for an order revoking or amending the appointment or substituting another individual as the committee.

PART 43  
FORECLOSURE AND SPECIFIC PERFORMANCE ACTIONS

Definitions

**570.** In this Part,

"foreclosure action" means an action for foreclosure or an action for specific performance of an agreement for sale; (*action en forclusion*)

"order *nisi*" includes an order for specific performance. (*ordonnance provisoire*)

Application of Part

**571.** This Part applies to

- (a) specific performance of an agreement for sale; and
- (b) foreclosure of a mortgage on land, other than a mortgage or charge, whether specific or floating, created by a corporation and contained in a bond, a debenture or debenture stock of the corporation or in a trust deed or a like instrument securing a bond, a debenture or debenture stock of the corporation.

General rules apply

**572.** Except as provided in this Part, the general rules of procedure apply to a foreclosure action.

Statement of claim

**573.** A foreclosure action shall be brought by statement of claim in Form 50 or 58.

Subsequent encumbrancer where sale or foreclosure action

**574.** (1) A mortgagee suing for sale or foreclosure with or without other relief shall not make any subsequent encumbrancer a party to the action except for the purpose of obtaining possession of the mortgaged property.

(2) All subsequent encumbrancers shall be served with notice of the judgment and any order made in an action for sale or foreclosure.

(3) Within 25 days after service of the order *nisi* on a subsequent encumbrancer or such other time as may be ordered by the Court, the subsequent encumbrancer may apply to the Court to discharge, vary or add to an order *nisi*.

(4) A subsequent encumbrancer on whom an order *nisi* is served may, by written notice served on the plaintiff, require notice of the proceedings to which the order relates.

Subsequent encumbrancer where action for specific performance

**575.** (1) A vendor suing for specific performance with or without other relief shall not make an encumbrancer whose claim arose subsequent to the making of the agreement a party to the action, unless special relief is claimed against the encumbrancer.

(2) All subsequent encumbrancers shall be served with notice of the judgment and any order made in an action for specific performance.

(3) Within 25 days after service of the order *nisi* on a subsequent encumbrancer or such other time as may be ordered by the Court, the subsequent encumbrancer may apply to the Court to discharge, vary or add to an order *nisi*.

(4) A subsequent encumbrancer on whom an order *nisi* is served may, by written notice served on the plaintiff, require notice of the proceedings to which the order relates.

#### Notice of application

**576.** (1) Notice of an application in a foreclosure action is not required unless

- (a) an appearance has been filed by the defendant;
- (b) some special form of relief is being sought; or
- (c) the application is one for final foreclosure or for an order confirming sale.

(2) The plaintiff shall give notice to the defendant of an application for an order for foreclosure or for an order confirming sale by sending a copy of the notice by registered mail to the defendant at the address at which the statement of claim was served or at the address of the defendant last known to the plaintiff.

#### Service by posting notice

**577.** (1) Where service of a statement of claim on a defendant has been effected by advertising because the defendant could not be located and no statement of defence or appearance has been filed, a notice of motion for subsequent relief in the action shall be deemed to have been served on the defendant if, at least four days before the application is heard, notice is posted on the general notice board of the Court in a prominent public place or as otherwise directed by a judge.

(2) The contents of a notice to be posted under subrule (1) shall be determined by a judge on the *ex parte* application of the plaintiff.

(3) On the application for subsequent relief, the plaintiff shall file proof by way of affidavit that the notice was posted in accordance with this rule.

#### Emergency order

**578.** (1) Where a mortgaged premises is abandoned, the mortgagee may apply, *ex parte* and before effecting service of the statement of claim, for an order securing the premises on an emergency basis.

(2) A copy of an *ex parte* order made under subrule (1) shall be served on the defendant and all other encumbrancers, in the same manner as is required in these rules for service of a statement of claim.

(3) A defendant may apply, on 48 hours notice, to set aside or vary an *ex parte* order made under subrule (1).

Application for order *nisi*

**579.** (1) Where a defendant has not filed a statement of defence or an appearance, the plaintiff shall note the defendant in default before applying for an order *nisi*.

(2) An application for an order *nisi* must be accompanied by an affidavit of default in Form 51 or 59.

(3) An affidavit of value in Form 52 shall be filed with the Clerk before the application for an order *nisi* for sale is heard.

(4) An order *nisi* must be in Form 53 or 60.

Service of order *nisi*

**580.** (1) An order *nisi* shall be served on the defendant by mailing a copy of the order by registered mail to the defendant at the address at which the statement of claim was served or at the address of the defendant last known to the plaintiff.

(2) Each subsequent encumbrancer shall be served with a copy of the order *nisi* in the same manner as is required in these rules for service of a statement of claim or otherwise as a judge may direct.

Conveyance of title where action for specific performance

**581.** In an action in respect of an agreement for sale of land, the plaintiff shall either file with the Clerk the duplicate certificate of title to the land or otherwise satisfy the Court that title can be conveyed in accordance with the terms of the agreement.

Signing of order *nisi*

**582.** On the granting of an order *nisi*, the Clerk shall, before signing the order,

- (a) check the plaintiff's computation;
- (b) tax the costs; and
- (c) insert the correct amounts in the order.

Advertisement for sale of land

**583.** (1) Unless otherwise ordered by a judge, on the expiration of the period of redemption in the order *nisi*, the plaintiff shall, in the manner set out in subrule 580(1), give 10 days notice to the defendant of the plaintiff's intention to advertise the land for sale pursuant to the terms of the order unless the defendant applies to the Court for an order postponing the sale or for such other relief to which the defendant may be entitled.

(2) Where the defendant fails to apply to the Court before the expiration of the period of 10 days referred to in subrule (1), the plaintiff may, without further order, advertise the land for sale.

#### Directions

**584.** The Court may, in the order *nisi* or other-wise, give such directions as it considers fit for the purpose of effecting a sale, and may, in the order,

- (a) appoint the party or person who is to have the conduct of the sale;
- (b) fix the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, Sheriff's sale, tender or another manner;
- (c) fix a reserve or minimum price;
- (d) require payment of the purchase price into court or to trustees or other persons;
- (e) give directions for settling the particulars or conditions of sale;
- (f) give directions for obtaining evidence of the value of the property; and
- (g) fix the remuneration to be paid to the party or person having the conduct of the sale.

#### Publication of notice of sale

**585.** Unless otherwise ordered, notice of a sale shall be published once each week for two consecutive weeks in a newspaper having a general circulation in the area in which the land is located.

#### Report respecting sale

**586.** (1) Where a person other than the Clerk has conduct of a sale made under an order of the Court, the person shall prepare a report setting out the result of the sale and shall file it with the Clerk immediately after the sale.

(2) A report filed under subrule (1) shall be verified by affidavit.

#### Sale conducted by Clerk

**587.** (1) Where the Court directs that a sale be conducted by the Clerk, it shall be conducted by tender.

(2) Where one or more tenders have been filed with the Clerk, the plaintiff may, within 15 days after the day set for the receipt of tenders, apply for an order

- (a) accepting the highest or only tender;
- (b) directing the Clerk to return the deposits of all tenderers other than the highest tender;
- (c) confirming the sale to the highest tender and vesting title to the highest tenderer; and
- (d) providing for the disposition of any purchase moneys exceeding the amount claimed by the plaintiff.

#### Application for vesting order

**588.** (1) On conclusion of a sale, whether by tender or otherwise, the person having conduct of the sale, or the plaintiff in the case of a sale conducted by the Clerk, shall

apply for an order vesting title in the purchaser for registration in the appropriate land titles office.

(2) An application for a vesting order shall be made within 15 days after the conclusion of the sale or within such further time as the Court may allow.

#### Final orders

**589.** (1) An application for an order for foreclosure, order confirming sale and vesting order or order determining an agreement for sale must be supported by a final affidavit of default in Form 54.

(2) An order for sale, order for foreclosure, order confirming sale and vesting order and order determining an agreement for sale must be in Forms 55, 56, 57 and 61, respectively.

#### Costs

**590.** Unless otherwise ordered or where an agreement between the parties otherwise provides, costs as between parties in a foreclosure action shall be determined in accordance with Schedule A.

## PART 44 JUDICIAL REVIEW IN CIVIL MATTERS

#### Definitions

**591.** In this Part,

"person" includes a tribunal; (*personne*)

"tribunal" means a board, commission, tribunal or other body or person whose decision, act or omission is subject to judicial review, whether comprised of one person or of two or more persons acting together and whether or not styled by a collective title. (*tribunal administratif*)

#### Proceedings under this Part

**592.** (1) A proceeding under this Part shall be known as an application for judicial review.

(2) On an application for judicial review, the Court may grant any relief that the applicant would be entitled to in a proceeding for any one or more of the following remedies:

- (a) an order in the nature of mandamus, prohibition, *certiorari*, *quo warranto* or *habeas corpus*;
- (b) a declaration or injunction.

Rules applicable

**593.** Except as otherwise provided in this Part, the general rules, including the rules respecting originating notices in Part 4, apply to the matters under this Part.

Commencement

**594.** (1) An application for judicial review shall be commenced by originating notice.

(2) An originating notice taken under this Part shall include a concise statement of the grounds on which relief is claimed in the proceeding and the nature of the relief claimed.

Endorsement on originating notice

**595.** (1) An applicant shall cause to be endorsed on or annexed to the originating notice served on the person from whom return is required

- (a) a copy of rule 598; and
- (b) a notice to the following effect, adapted as may be necessary, addressed to the person from whose decision or act relief is claimed:

"You are required forthwith after service of this notice to return to the Clerk of the Nunavut Court of Justice at Iqaluit the judgment, order or decision (*or as the case may be*) to which this notice refers and reasons, if any, together with the process commencing the proceeding, the evidence and all exhibits filed, if any, and all things touching the matter as fully and entirely as they remain in your custody and power, together with this notice.

Date: .....

To: .....

.....  
Solicitor for the Applicant".

(2) All things required by subrule (1) to be returned to the Clerk shall, for the purpose of the application for judicial review, constitute part of the record.

Time for bringing application

**596.** (1) Unless otherwise provided by statute, where the relief sought in an application for judicial review is an order to set aside a decision or act, the originating notice shall be filed and served within 30 days after the decision or act to which it relates.

(2) Unless an enactment otherwise provides, the Court may extend the time for bringing an application for judicial review before or after the expiration of the 30 day time limit set out in subrule (1).

### Service of application

**597.** (1) The originating notice respecting an application for judicial review and the affidavits in support of it shall be served on

- (a) the tribunal in respect of whose decision, act or omission relief is claimed;
- (b) the Attorney General for Nunavut; and
- (c) every person directly affected by the proceeding.

(2) The Court may require that the originating notice respecting an application for judicial review and the affidavits in support of it be served on any person not previously served.

### Provision of record of tribunal

**598.** (1) On receiving an originating notice endorsed in accordance with rule 595, the person in respect of whose decision or act relief is claimed shall return forthwith to the Clerk

- (a) the judgment, order or decision, as the case may be;
- (b) the process commencing the proceeding;
- (c) the evidence and all exhibits filed, if any;
- (d) all things touching the matter;
- (e) the originating notice served on the person; and
- (f) a certificate in the following form:  
"Pursuant to the accompanying originating notice, I hereby return to the Honourable Nunavut Court of Justice the following papers and documents:
  - (a) the judgment, order or decision, as the case may be, and the reasons for it;
  - (b) the process commencing the proceeding;
  - (c) the evidence taken at the hearing and all exhibits filed;
  - (d) all other papers or documents touching the matter.

And I hereby certify to the Honourable Nunavut Court of Justice that I have enclosed in this return all the papers and documents in my custody relating to the matter set forth in the originating notice."

(2) The certificate required by subrule (1) has the same effect as a return to a writ of *certiorari*.

(3) Where the proceedings are not in the possession of the person required to transmit them, that person shall, in lieu of the certificate required by subrule (1), so state and explain the circumstances.

(4) Where the proceedings have not been received by the Clerk before the application for judicial review is heard, the Clerk shall return a certificate stating that fact.

(5) The Court may dispense with the return of the evidence or exhibits or part of the evidence or exhibits.

(6) Notwithstanding the requirements of this rule, the parties may agree on what constitutes the record for the purpose of the application for judicial review.

#### Declaration, injunction

**599.** (1) Before the Court may grant relief under this Part, it must be satisfied that the grounds that entitle the applicant to the relief have been established.

(2) The Court may make a declaration or grant an injunction where the Court considers that it is just and convenient to do so having regard to all the circumstances of the case including

- (a) the nature of the matter in respect of which relief, by an order in the nature of mandamus, prohibition, *certiorari* or *quo warranto*, is requested; and
- (b) the nature of the tribunal in respect of whose decision, act or omission relief may be granted by such order.

#### Setting aside decision or act

**600.** Where the applicant on an application for judicial review is entitled to a declaration that a decision or act is unauthorized or invalid, the Court may, instead of making a declaration, set aside the decision or act.

#### Direction to reconsider

**601.** (1) On an application for judicial review, the Court may direct the tribunal in respect of whose decision, act or omission relief is claimed to reconsider and determine the whole or any part of a matter to which the application for judicial review relates but, in respect of a decision, the Court may only direct a reconsideration and determination if the decision is set aside.

(2) Where the Court gives a direction under subrule (1), the Court may give such other directions as it considers appropriate.

#### Defects in form, technical irregularities

**602.** On an application for judicial review where the sole ground for relief established is a defect in form or a technical irregularity, if the Court finds that no substantial wrong or miscarriage of justice has occurred, the Court may refuse relief and, where a decision has been made, may make an order validating the decision, notwithstanding the defect, to have effect from such time and on such terms as the Court considers proper.

#### Parties to an application

**603.** (1) The Court may direct that any person be added or struck out as a party to an application for judicial review.

(2) The Attorney General for Nunavut is entitled as of right to be heard in person or by a solicitor on an application for judicial review.

(3) A person not served with an application for judicial review may show that he or she is affected by the proceeding and may, in the discretion of the Court, take part in the proceeding as though served.

#### Stay pending final determination

**604.** (1) Unless otherwise provided by statute, the Court may, if in its opinion it is necessary for the purpose of preserving the position of the applicant, stay the operation of the decision sought to be set aside pending final determination of the application for judicial review.

(2) No order shall be made under subrule (1) where, in the opinion of the Court, it would be detrimental either to the public interest or to public safety.

#### Direction to continue proceeding

**605.** (1) Where the relief claimed in a proceeding commenced by statement of claim or another procedure ought to be claimed on an application for judicial review, the Court, on application or on its own motion, may direct that the proceeding be continued as an application for judicial review.

(2) Where the relief claimed on an application for judicial review ought to be claimed in a proceeding commenced by statement of claim or another procedure, the Court, on application or on its own motion, may direct that the proceeding be continued under that other procedure.

(3) Where a direction is given under subrule (1) or (2), the Court may give such further directions as it considers necessary to cause the proceeding to conform to the procedure by which it is to be continued.

#### Costs

**606.** Costs under this Part are in the discretion of the Court.

## PART 45 SERVICE OF FOREIGN PROCESS

#### Request for service from foreign court or tribunal

**607.** Where, in respect of a matter pending before a court or tribunal of a foreign country, a letter of request from the court or tribunal for service on a person in Nunavut of any process or citation is transmitted to the Court, the following procedure applies:

- (a) service of the process or citation shall be effected by the Sheriff, a Sheriff's bailiff or an agent authorized by the Sheriff to serve the process or citation;
- (b) service shall be effected by delivering to the person to be served one copy of the process or citation and any required translation of the process or citation or may be effected in such other manner as is directed by the letter of request;
- (c) after service has been effected, the Sheriff shall return to the Clerk one copy of the process or citation, with an affidavit of service and particulars of any charges for the service;
- (d) the Clerk shall return to the court or tribunal that requested service the letter of request with the affidavit of service and shall certify, under the seal of the Court,
  - (i) the amount properly payable for service, and
  - (ii) that the affidavit of service is sufficient proof of service as required by the practice of the Court.

#### Translation of letter of request

- 608.** A letter of request for service shall be accompanied by
- (a) an English language translation of the letter, where the letter is in a language other than the English or French language; and
  - (b) two copies of the process or citation to be served and, where the process or citation is in a language other than the English or French language, an English language translation of it.

### PART 46

#### OBTAINING EVIDENCE FOR FOREIGN COURTS AND TRIBUNALS

##### Application

**609.** (1) The Court may, on an application made under subsection 72(1) of the *Evidence Act* or section 46 of the *Canada Evidence Act*, order the examination of a person with respect to a proceeding in a court or tribunal outside Nunavut.

(2) An application referred to in subrule (1) shall be made by motion and may be made *ex parte* unless the Court directs otherwise.

##### Examiner

**610.** (1) On an application for an examination referred to in rule 609, the Court may appoint as the examiner any fit and proper person nominated by the applicant or any other person the Court considers fit and qualified to conduct the examination.

(2) The examination shall be conducted before the examiner who may, subject to any direction of the Court, give directions as to the time, place and manner of the examination.

Form

**611.** An order for an examination made under rule 609 may be in Form 62.

Transcription of evidence

**612.** Unless otherwise ordered, the evidence taken on an examination under this Part shall be transcribed in accordance with the rules governing examinations for discovery.

Delivery of evidence

**613.** (1) After the examination, a copy of the transcribed evidence shall be delivered to the Clerk.

(2) The Clerk, on receiving a copy of the transcribed evidence, shall append to it a certificate in Form 63 and shall transmit the evidence and certificate with the order of the Court made under rule 609 to the proper officer of the requesting court or tribunal.

Application to set aside order

**614.** (1) The person to be examined may apply, on notice, to set aside an order made under rule 609.

(2) An application to set aside an order shall be made within 10 days after service of the order.

PART 47  
PRACTICE AND PROCEDURE UNDER THE  
RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT

Definitions

**616.** In this Part,

"Act" means the *Reciprocal Enforcement of Judgments Act*; (*Loi*)

"judgment", "judgment creditor", "judgment debtor" and "original court" have the meanings assigned to them by the Act. (*créancier judiciaire, débiteur judiciaire, jugement tribunal d'origine*)

*Ex parte* application

**617.** (1) An *ex parte* application made under subsection 2(3) of the Act may be made without commencing the proceeding by petition, originating notice, statement of claim or any other originating document.

Interpretation

**615.** Nothing in this Part shall be construed as preventing the taking of evidence for use outside Nunavut in accordance with an order of any court or tribunal with the consent of the person examined.

(2) An *ex parte* application made under subsection 2(3) of the Act shall include a memorandum setting out with particularity the relief sought, the material filed in support of the application and the cases, statutory provisions and any other authorities relied on.

#### Application by notice of motion

**618.** Where subsection 2(3) of the Act does not apply, notice of the application to register a judgment shall be given to the judgment debtor by notice of motion.

#### Style of cause

**619.** A pleading under this Part shall have a style of cause in the following form:

"In the Nunavut Court of Justice;  
In the matter of the *Reciprocal Enforcement of Judgments Act* and in the matter of a judgment of (*describe court*) obtained by (*describe the cause or matter*) and dated (*month, day, year*)".

#### Supporting materials

**620.** An application under section 2 of the Act, whether *ex parte* or by notice of motion, shall be supported by affidavit evidence containing, *inter alia*, the following:

- (a) a reference to the action in the original court with a certified copy of the judgment annexed as an exhibit;
- (b) a certified copy of the taxed bill of costs annexed as an exhibit, if the certified copy of the judgment does not include a reference to the taxed costs;
- (c) the place of service on the judgment debtor of process in the original action and a copy of the original affidavit of service annexed as an exhibit to the affidavit;
- (d) information indicating where the judgment debtor is presently residing and working or carrying on business;
- (e) a statement, if such is the case, that no appeal or other proceeding to set aside the judgment has been taken by the judgment debtor and that the time in which such an appeal or other proceeding may be taken has elapsed;
- (f) a statement that the judgment is still in full force and effect in the original jurisdiction and particulars of the full amount presently outstanding.

#### Form of order

**621.** An order giving leave to register a judgment must be in Form 64.

#### Notice of registration

**622.** A notice of registration to be served on a judgment debtor under subsection 6(1) of the Act shall contain full particulars of the registered judgment and of the order for registration and shall state

- (a) the name of the judgment creditor, or of the judgment creditor's solicitor or agent, on whom any notice issued by the judgment

- debtor may be served and the place where such notice may be served; and
- (b) that the judgment debtor, within one month after receiving notice of the registration, may apply to the Court to have the registration set aside on any of the grounds mentioned in subsection 2(4) of the Act.

#### Application to set aside registration

**623.** An application to have the registration of a judgment set aside shall be made by notice of motion.

#### Writ of execution

**624.** Where a writ of execution is issued on a judgment registered under the Act, the writ shall be varied by striking out "by a judgment of this Court in this action dated (*month, day, year*) and by substituting "by a judgment of (*describe court in which judgment was obtained*) dated (*insert month, day and year*) which judgment has been registered in this court under the *Reciprocal Enforcement of Judgments Act*".

### PART 48 RECIPROCAL ENFORCEMENT OF UNITED KINGDOM JUDGMENTS

#### Definitions

**625.** In this Part,

"Act" means the *Reciprocal Enforcement of Judgments (Canada-U.K.) Act*; (*Loi*)

"Convention" means the Convention set out in the Schedule to the Act; (*Convention*)

"judgment" means a judgment to which the Convention applies. (*jugement*)

#### Application

**626.** (1) An application under the Act, whether *ex parte* or on notice, for registration of a judgment granted by a court in the United Kingdom must be in Form 65.

(2) An application on notice must be accompanied by an originating notice in Form 4.

#### Style of cause

**627.** A pleading under this Part must have a style of cause in the following form:  
"In the Nunavut Court of Justice; In the matter of the *Reciprocal Enforcement of Judgments (Canada-U.K.) Act* and in the matter of a judgment of (*describe court*) dated (*insert month, day and year*)".

#### Affidavit

**628.** (1) The application must be supported by an affidavit that  
(a) confirms the statements contained in the application;

- (b) has exhibited to it
  - (i) the judgment or a certified copy of the judgment,
  - (ii) proof of the notice given to the defendant in the original proceeding, and
  - (iii) a certificate respecting appeal proceedings required by subsection 5(2) of the Act;
- (c) sets out any additional facts necessary to establish that the applicant is entitled to register and enforce the judgment.

(2) The affidavit required by this rule may contain statements of the deponent's information and belief, where the source of the information and the fact of the belief are specified in the affidavit.

#### Notice of registration

**629.** A notice of registration served on a judgment debtor under subsection 6(1) of the Act shall contain full particulars of the registered judgment and shall state

- (a) the name of the judgment creditor, or of the judgment creditor's solicitor or agent, on whom any notice issued by the judgment debtor may be served and the place where such notice may be served; and
- (b) that the judgment debtor, within one month after receiving notice of registration, may apply to the Court to have the registration set aside on any ground established by the Convention or the Act.

## PART 49 SECURITY FOR COSTS

#### Definitions

**630.** (1) In this Part,

"defendant" means a defendant, a defendant-by-counterclaim or a respondent; (*défendeur*)

"plaintiff" means a plaintiff, a plaintiff-by-counterclaim, an applicant or a petitioner. (*demandeur*)

#### Deemed plaintiff

(2) A party to a garnishee, interpleader or other proceeding, including a third party proceeding, who seeks relief in an application made under this Part shall be deemed to be the plaintiff for the purposes of the application.

#### Demand respecting residency

**631.** (1) The solicitor for the plaintiff in an action or proceeding shall, forthwith on receipt of a demand in writing from any person who has been served with the originating document, declare in writing whether the plaintiff is ordinarily resident in Nunavut.

(2) Where the solicitor for the plaintiff fails to respond to a demand referred to in subrule (1), the Court may order that the proceeding be stayed or dismissed.

#### Application

**632.** (1) An application for security for costs may be made at any time after service of the originating document and shall be supported by an affidavit of the defendant, or an agent of the defendant who can speak positively as to the facts, alleging that there is a good defence to the proceeding on the merits and specifying the nature of the defence.

(2) An application for security for costs shall be made on notice to the plaintiff and every other defendant who has appeared on the record of the proceeding.

#### Order

**633.** (1) The Court, on the application of a defendant in a proceeding, may make such order for security for costs as it considers just where it appears that

- (a) the plaintiff is ordinarily resident outside Nunavut;
- (b) the plaintiff has another proceeding for the same relief pending;
- (c) the plaintiff has failed to pay costs as ordered in the same or another proceeding;
- (d) the plaintiff brings the proceeding on behalf of a class or an association, or is a nominal plaintiff, and there is good reason to believe that the plaintiff has insufficient assets in Nunavut to pay costs;
- (e) there is good reason to believe that the proceeding is frivolous or vexatious and that the plaintiff has insufficient assets in Nunavut to pay costs; or
- (f) a statute entitles the defendant to security for costs.

(2) Notwithstanding subrule (1), the Court may order any party to a proceeding to furnish security for costs where the Court has a discretion to impose terms as a condition of granting relief and, where such an order is made, rule 635 applies with such necessary modifications as the circumstances require.

#### Ground for refusal

**634.** The Court may refuse to order security for costs where

- (a) it appears on the application that the plaintiff is possessed of sufficient assets within the jurisdiction that will be available for the defendant's costs; or
- (b) the application for security is not made within a reasonable time.

#### Contents of order

**635.** (1) Unless it otherwise provides, an order for security for costs must

- (a) require the plaintiff to furnish such security as the Court directs within such time as may be specified in the order;
- (b) state that, until the security is furnished, all further steps in the proceeding are stayed; and

- (c) state that in default of the security being furnished within the time allowed the proceeding is dismissed without further order.

(2) Notwithstanding subrule (1)(b), an order for security for costs may provide for security to be furnished in different amounts at different steps of the proceeding, in which case each further step in the proceeding is stayed until the security is furnished for the step as ordered.

#### Bond

**636.** Where the security is furnished by bond, it shall, unless the Court otherwise directs, be furnished to the party or person requiring the security.

#### Notice of compliance

**637.** Where the plaintiff gives the security required by an order, the plaintiff shall forthwith give notice of compliance with the order to the defendant who obtained the order and to all other parties to the proceeding.

#### Amount

**638.** The Court may increase or decrease the amount of security required from time to time.

#### Where residence established

**639.** Where the plaintiff establishes a residence in Nunavut after an order for security for costs has been made, the Court may, on application, set aside the order.

#### Pay out of security

**640.** Money paid into court as security for costs may be paid out, and a bond given as security for costs may be delivered up for cancellation, by order or, where the party for whose benefit the security was ordered consents in writing, without order.

## PART 50 COSTS

### General

#### "costs" defined

**641.** In this Part,

"costs" include all reasonable and proper expenses that a party has paid or become liable to pay for the purpose of carrying on or appearing as a party to a proceeding, including

- (a) the charges of a solicitor,
- (b) the charges of an accountant, an engineer, a medical practitioner or any other expert for attendance to give evidence and, where the Court so directs, the charges of such an expert for an investigation and inquiry or assisting in the conduct of a trial,
- (c) the charges of a legal agent,

- (d) expenses for the preparation of a plan, model or copy of a document,
- (e) the fees payable to the Clerk, the Sheriff, a court reporter, or an interpreter, and
- (f) witness fees and conduct money for a witness in respect of the attendance of the witness at trial and on any examination.

#### Taxing officer

**642.** The Clerk shall act as the taxing officer under this Part.

#### Awarding and Scale of Costs

##### General rules

**643.** (1) Notwithstanding anything else in this Part, the Court has discretion as to awarding of the costs of the parties, including third parties, to an action or a proceeding, the amount of costs and the party by whom or the fund or estate out of which the costs are to be paid, and the Court may

- (a) award a gross sum in lieu of, or in addition to, any taxed costs;
- (b) allow costs to be taxed to one or more parties on one scale and to another or other parties on the same or another scale; or
- (c) direct whether or not any costs are to be set off.

(2) Where no order of costs is made in an action or proceeding the costs follow the event.

(3) Costs may be dealt with at any stage of an action or a proceeding before the entry of judgment.

##### Costs payable by solicitor

**644.** In a proper case, the Court may order a solicitor who has acted for a party to an action or a proceeding to pay any of the costs of the action or proceeding.

##### Costs of guardian *ad litem*

**645.** Where the Court appoints a solicitor to be guardian *ad litem* of a person found to be incapable of managing his or her financial affairs or a minor, the Court may direct that the costs incurred in the performance of the duties of the guardian are to be borne and paid by the parties or one or more of the parties to the action or proceeding in which the appointment is made or out of any fund in court in which the person or the minor may be interested and may give directions for the repayment or allowance of costs as the Court considers just and the circumstances of the case may require.

##### Where assistance granted under legal aid plan

**646.** Where a party has been granted assistance under the *Legal Services Act* or any other legal aid plan, the Court shall not take into consideration the fact that the party is receiving legal aid when considering an award of costs for or against that party.

#### Setoff for damages or costs

**647.** The Court may allow a setoff for damages or costs between parties to an action or proceeding notwithstanding that a solicitor may have a lien for costs in the action or proceeding.

#### Amount of costs

**648.** (1) Unless otherwise ordered, the costs of a solicitor shall be determined by the taxing officer, but shall not exceed the relevant amounts set out in Schedule A.

(2) Each item in Schedule A includes all instructions, documents, attendances, letters and other services necessary or convenient to be taken, prepared, made, written, read, performed or had for the purpose of fully completing the step referred to or implied in the item, and if any step was begun but only partially completed an appropriate proportion of the relevant amount in Schedule A maybe allowed.

(3) Subject to subrule (4) where an examination of a witness or party before trial or in aid of execution takes place elsewhere than at the place of residence of the solicitor and the solicitor's attendance on the examination is shown to be reasonably necessary, in addition to the applicable fees set out in Schedule A, the solicitor's proper travelling and living expenses are also recoverable.

(4) The proper travelling and living expenses of a solicitor who does not reside in Nunavut are recoverable under subrule (3) only where, in the opinion of the Court,

- (a) the expertise required to perform the particular service was not available from those solicitors resident in Nunavut; or
- (b) conflicts of interest prevented solicitors resident in Nunavut from acting in the matter.

(5) Where a service has been performed by a solicitor in a proceeding that is not provided for in Schedule A, either expressly or by implication, such allowance for costs maybe made for the service as the Court sees fit.

(6) The column of Schedule A to be used for the calculation of costs shall be determined, as against the plaintiff, by the amount claimed or, as against the defendant, by the amount of the judgment.

(7) Unless otherwise ordered, where by a judgment or order relief other than or in addition to the payment of money is given or where judgment is given for a defendant in an action in which relief other than or in addition to the payment of money is sought, the costs shall be taxed according to the higher of

- (a) Column 2 of Schedule A; and
- (b) the scale that would apply if the other relief had not been given or sought.

(8) A party entitled to costs may calculate and add to his or her bill of costs the applicable rate of goods and services tax under the *Excise Tax Act* (Canada), or any similar value-added tax imposed by any authority that applies to a solicitor's account.

#### Costs on interlocutory proceeding

**649.** Unless otherwise ordered, the costs of an interlocutory proceeding, whether *ex parte* or otherwise, are costs in the cause and shall be taxed on the same scale as the general costs of the action.

#### Costs of appeal

**650.** On an appeal of an order or judgment, the scale of costs of the appeal and, where the order or judgment so provides, of the proceedings in the court below shall be as directed by the judgment in the appeal or, in default of direction, shall be the same as that applicable to the order or judgment appealed from.

#### Costs where settlement

**651.** (1) Where an action or proceeding is settled, the parties may, by the settlement, agree that any costs payable may be taxed under any one of the columns in Schedule A and, on application, the costs shall be taxed in accordance with the settlement.

(2) Where an action or proceeding is settled on the basis that a party to it is to pay or recover costs and the amount of costs is not determined by the settlement, the taxing officer, on the filing of a memorandum of the settlement or a consent signed by the party agreeing to pay the costs and on application of any party, shall tax the costs as if an order had been made for taxation.

#### Conduct money

**652.** (1) Where a person is provided with conduct money before attendance at an examination, the person is entitled to receive as costs such additional sum as may be determined to be payable on the completion of his or her attendance.

(2) The taxing officer, on an application made *ex parte* by a party who is permitted or compelled to pay or tender conduct money, may fix the amount of the conduct money before attendance at an examination and, on the actual attendance of the person to whom the conduct money is payable, the taxing officer may adjust the amount.

### Solicitor's Compensation

#### Costs of solicitor

**653.** A solicitor is entitled to such compensation as appears reasonable to be paid by the client for the services performed, having regard to

- (a) the nature, importance and urgency of the matters involved;
- (b) the circumstances and interest of the person by whom the costs are payable;
- (c) the fund out of which the costs are payable;
- (d) the general conduct and costs of the proceeding;

- (e) the skill, labour and responsibility involved; and
- (f) all other relevant circumstances, including, to the extent authorized in these rules, the contingencies involved.

#### Subject to taxation

**654.** The charges of a solicitor for services performed by the solicitor are, notwithstanding any agreement to the contrary, subject to taxation as provided by this Part.

#### Advance payment

**655.** A solicitor may obtain payment in advance or take security for future fees, charges or disbursements, but this does not limit any person's right to taxation.

#### Agreement on amount of charges

**656.** A solicitor may make an agreement with his or her client respecting the amount and manner of payment of the whole or any part of past or future services, fees, charges or disbursements in respect of business done or to be done by the solicitor, either by a gross sum or by commission or percentage or by salary or otherwise and either at the same or at a greater or lesser rate than the rate at which the solicitor would otherwise be entitled to be remunerated on taxation.

#### "contingency agreement" defined

**657.** In rules 658 to 663,

"contingency agreement" means an agreement under which a solicitor's compensation is to be dependent or contingent, in whole or in part, on the successful accomplishment or disposition of the subject matter.

#### Contents and form of contingency agreement

**658.** (1) A contingency agreement shall be evidenced in writing and signed by the client or the client's authorized agent in that behalf.

- (2) The memorandum evidencing a contingency agreement shall state
  - (a) the name and address of each client;
  - (b) the name and address of the solicitor;
  - (c) the nature of the claim;
  - (d) the contingency on which compensation is to be paid and whether and to what extent the client is to be liable to pay compensation otherwise than from amounts collected by the solicitor;
  - (e) that reasonable contingent compensation is to be paid for the services and the maximum amount or rate that the compensation is not to exceed after deduction of all reasonable and proper disbursements; and
  - (f) a statement to the following effect:  
"This agreement maybe reviewed by the Clerk of the Nunavut Court of Justice at the client's request and may at the instance of

either the Clerk or the client be further reviewed by a Judge of the Nunavut Court of Justice and either the Clerk or the Judge may vary, modify or disallow the agreement."

#### Filing of memorandum

**659.** (1) Within 15 days after it is signed, a copy of the memorandum referred to in subrule 658(2) shall be filed with the Clerk.

(2) The Clerk shall file the memorandum separately from any proceeding and, unless the Court otherwise orders, it shall not be available for inspection by, and its content shall not be communicated to, any person other than the Court on a taxation or the client, the solicitor or the taxing officer.

#### Where agreement invalid or not filed

**660.** Where a contingency agreement does not comply with rule 658 or is not filed under subrule 659(1), the solicitor is, on the successful completion or disposition of the subject matter, entitled only to such compensation as would have been payable in the absence of the agreement and without regard to the contingency.

#### Review of contingency agreement

**661.** (1) A contingency agreement may, at any time after its making until the expiry of one year after the last day on which the solicitor has received the fee or any part of it, be reviewed by the Clerk at the instance of the client, and the procedure for the review shall be that applicable on the taxation of a solicitor and client bill of costs.

(2) At any time while a contingency agreement is before the Clerk for review or within 15 days after the Clerk has given a decision on the review, the Clerk may, and on the request of the client or the solicitor shall, refer the agreement to the Court, and, on such referral, the Clerk shall transmit all material to a judge, secure an appointment for the review and notify the solicitor and client of the appointed time.

(3) A judge who reviews an agreement has the powers that the Clerk has on the taxation of a solicitor and client bill of costs.

(4) In addition to any other powers the Clerk or judge may have, the Clerk or the judge has the power on review to approve the contingency agreement or vary, modify or disallow the contingency agreement.

(5) Where a contingency agreement is disallowed under subrule (4), the amount payable to the solicitor shall be determined in accordance with rule 653.

#### Provisions in agreement that are void or of no effect

**662.** (1) Any provision in an agreement respecting solicitor's compensation that purports to relieve a solicitor from liability for negligence or any other liability to which he or she might be subject as a solicitor is void.

(2) Any provision in an agreement respecting solicitor's compensation that purports to provide that a proceeding cannot be abandoned, discontinued or settled without the consent of the solicitor is void.

(3) Notwithstanding anything in an agreement to the contrary, a client may change his or her solicitor before the conclusion of the retainer.

Where solicitor ceases to act

**663.** (1) Where a solicitor dies, becomes incapable of acting before his or her retainer has been completely performed or where a client changes or discharges his or her solicitor before the conclusion of the retainer, an application may be made by or on behalf of any party to the taxing officer to determine the amount due in respect of the services rendered under the retainer and, subject to subrule (2), the taxing officer shall have regard to the terms of any agreement between the parties in determining the amount due.

(2) In a determination of the amount due under subrule (1), where there is a contingency agreement,

- (a) the taxing officer has, on an application under subrule (1), the powers under rule 661 and may refuse any compensation; and
- (b) no moneys in respect of the agreement are payable until the successful disposition or completion of the subject-matter.

(3) Where a client personally settles any matter that is the subject of a contingency agreement without changing or discharging his or her solicitor, the client shall be deemed to have discharged the solicitor within the meaning of this rule.

(4) Where a client discontinues or abandons any matter that is the subject of a contingency agreement without changing or discharging his or her solicitor, the solicitor may apply to tax his or her costs against the client and, on taxation, the taxing officer has the powers under rule 661 and may, if the taxing officer finds the discontinuance or abandonment to be unreasonable, allow the solicitor reasonable compensation for the solicitor's services.

(5) Payment of the amount allowed by the taxing officer under this rule may be enforced in the same manner as if the solicitor had completely performed the retainer, except that where there is a contingency agreement, payment may only be enforced after successful completion or disposition of the subject matter, and then only with the leave of the Court.

Solicitor who is also in representative capacity

**664.** A solicitor who is a guardian, committee, mortgagee, executor, administrator or trustee is entitled as against the estate, fund or mortgaged property, as the case may be, to make the same charges for services performed as a solicitor for or in connection with the estate, fund or mortgaged property as might have been payable out of the estate or fund, or be chargeable against the mortgaged property, had the solicitor been employed by

some other person acting as guardian, committee, mortgage, executor, administrator or trustee.

Costs payable by person interested in estate, etc.

**665.** (1) Where costs are payable by a person interested in an estate, a trust fund or mortgaged property, the costs shall not be payable out of or chargeable against the estate, trust fund or mortgaged property unless

- (a) they have been taxed;
- (b) the interested person is of full legal capacity and has consented to the payment; or
- (c) the Court has fixed the amount of and directed the payment or charge.

(2) This rule does not apply to funds in a client's trust account within the meaning of the *Legal Profession Act*.

Lien or charge on property recovered

**666.** (1) The Court may, on the application of a solicitor, declare that the solicitor has a lien or charge against property that has been recovered or preserved as a result of the solicitor's efforts in a proceeding prosecuted or defended by the solicitor, for fees and disbursements in the proceeding and may make such order or orders as the Court may consider just for raising the payment for the fees and disbursements out of the property.

(2) No act or thing defeats a lien or charge arising under subrule (1) unless the property has been disposed of to a bona fide purchaser for value without notice.

(3) No order shall be made under this rule where the right of the solicitor to recover payment of fees and disbursements is barred by statute.

Action for fees and disbursements

**667.** (1) An action for fees and disbursements owing to a solicitor may be brought, but no judgment shall be entered on default and no costs of the action shall be allowed except on the order of the Court.

(2) The Court may direct taxation of the costs in an action for fees and disbursements owing to a solicitor.

### Taxation of Costs Generally

Powers of taxing officer

**668.** (1) On a taxation, the taxing officer may

- (a) take evidence either by affidavit or *viva voce* on oath;
- (b) direct the production of books, papers and documents;
- (c) require notice of the taxation to be given to all persons who may be interested in the taxation or in the fund or estate out of which the costs are payable;

- (d) give directions as to the manner of service of any notice of taxation;
- (e) require any party or person to be represented by a separate solicitor; and
- (f) unless expressly restricted by the Court, enlarge or abridge the time fixed by any rule or order for a proceeding before the taxing officer.

(2) An application to enlarge the time fixed by any rule or order under subrule (1) may be made after the expiration of the time fixed.

#### Costs of taxation

**669.** The taxing officer may allow or disallow the costs of a taxation proceeding and fix the amount of costs, but on the taxation of a solicitor and client bill of costs

- (a) costs shall not be allowed against the client on a taxation at the client's instance unless the taxing officer is of the opinion that the client has acted unreasonably in applying for taxation; and
- (b) costs shall not be allowed against the client on a taxation at the instance of the solicitor except by leave of the Court.

#### Appointment for taxation

**670.** (1) A person entitled to tax costs or require costs to be taxed shall secure an appointment for the taxation from the taxing officer and shall deposit with the taxing officer a copy of the proposed bill of costs and, if there are disbursements, an affidavit verifying the disbursements.

(2) In a bill of costs deposited for taxation, the charges of a solicitor shall be distinguished from disbursements, and every column of a bill shall be totalled in the bill of costs deposited under subrule (1).

#### Service

**671.** A copy of the appointment for taxation, with the bill of costs and affidavit verifying disbursements, if any, shall be served on every person interested in the taxation at least five days before the time fixed for the taxation.

#### Failure to attend taxation

**672.** Where a person who has been served with an appointment for taxation fails to attend, the taxing officer may proceed with the taxation in the person's absence on proof that the appointment and any other documents required to be served were duly served.

#### Reference to Court

**673.** The taxing officer may refer a question arising on a taxation to the Court for determination.

Refusal to allow costs

**674.** (1) The taxing officer may refuse to allow costs that the taxing officer determines are excessive having regard to the circumstances of the matter, including its nature and the interests and amounts involved.

(2) The taxing officer may refuse to allow the costs of all or any part of a proceeding that was

- (a) improper, vexatious, prolix or unnecessary; or
- (b) taken through negligence or mistake.

(3) Notwithstanding anything else in this rule, a bill of costs that is consented to by a solicitor on behalf of the party responsible for payment of the costs shall be taxed and allowed without alteration or further consideration.

Certification

**675.** (1) On a taxation, the taxing officer shall certify the amount of the costs taxed for and against each party or person, may give such interim certificates as the taxing officer considers convenient or necessary and may certify any special circumstances.

(2) Subject to appeal and any terms contained in a certificate given on taxation or in an order under which the taxation was made, a certificate given on taxation is final and conclusive as to the amounts mentioned in the certificate against all persons who received notice of the taxation.

Taxation Between Party and Party

Proceeding by person other than payee

**676.** (1) A proceeding under this rule may be instituted by a person liable to pay costs or by a person whose costs depend on the determination of any other person's costs.

(2) On service of an appointment for taxation on a party entitled to costs or a party entitled to set off other costs against the amount of the bill to be taxed or a party required to bring in a bill of any other costs for the purpose of ascertaining the amount of the bill to be taxed, the party shall file a bill of costs for taxation by the appointed time.

(3) Where a party who is required to file a bill of costs fails to do so, the taxing officer may tax the costs of any other party, and may

- (a) allow the defaulting party a nominal or other sum for costs;
- (b) direct that the defaulting party forfeit the right to any costs; or
- (c) defer the taxation of the defaulting party's costs.

Where party has not appeared

**677.** Where a party against whom costs are to be taxed has not appeared in the proceeding, costs may be taxed *ex parte*.

#### Timing of taxation

**678.** (1) No costs shall be taxed until after the judgment or order allowing the costs has been signed, entered or otherwise perfected.

(2) Costs may be taxed notwithstanding a stay of proceedings, unless the stay expressly applies to the taxation.

#### Deduction or set-off

**679.** Where, in a proceeding, a party liable to pay costs is also entitled to receive costs, the taxing officer may, notwithstanding any lien or charge a solicitor may have for costs,

- (a) adjust the amount payable by way of deduction or set-off; or
- (b) delay the allowance of costs to one of the parties until the party has paid or tendered any costs for which that party is liable.

#### Proof of disbursements

**680.** (1) No disbursements other than fees paid to the Clerk, the Sheriff, a court interpreter or court reporter shall be allowed unless verified by affidavit.

(2) Where disbursements include an amount payable as witness fees, the affidavit verifying the disbursements shall state how the amount of the witness fees claimed is calculated.

### Taxation of Solicitor and Client Bill of Costs

#### "client" defined

**681.** In rules 682 to 692,

"client" includes a person from whom a solicitor has demanded payment for costs, a party who may be liable for costs and a person who, not being chargeable as a principal party, is liable to pay or has paid a solicitor and client bill of costs or part of a solicitor and client bill of costs.

#### Application

**682.** (1) An application to the Court by a solicitor or client under this Part shall be by notice of motion.

(2) A reference or application to the taxing officer shall be by appointment obtained from the taxing officer and the taxing officer shall give notice of the appointment to the parties.

#### Style of cause

**683.** An application for taxation or for the delivery of a bill of costs or for the delivery up of a deed, document or paper must have a style of cause in the following form:

"In the Nunavut Court of Justice;  
In the matter of ....., barrister and solicitor, and ....., client."

#### Solicitor to file bill

**684.** (1) On service of an appointment for taxation on a solicitor, the solicitor shall file a bill of costs for taxation by the appointed time.

(2) A solicitor who fails to file a bill of costs under subrule (1) forfeits the right to costs, unless the taxing officer otherwise directs.

(3) Where a solicitor fails to file a bill of costs, the Court may, on the application of the client or the taxing officer and on notice to the solicitor, order the solicitor to repay the whole or any part of any moneys paid to or retained by the solicitor on account of the costs, and the order may be enforced as an order of the Court.

#### Bill to be signed

**685.** A bill of costs to be taxed shall be signed by the solicitor or by a member of the firm claiming the costs.

#### Information in bill of costs

**686.** (1) A bill of costs shall contain a reasonable statement or description of the services rendered, showing the charge or charges for the services and a detailed statement of the disbursements.

(2) The taxing officer may order further details of the services and charges in a bill of costs, including the work done, time spent, moneys collected and expended and any other information that the taxing officer requires for a complete understanding of the bill.

#### Where costs subject to agreement

**687.** (1) Where the costs claimed are the subject of an agreement other than an agreement referred to in rule 657, a copy of the agreement if it is in writing, or a memorandum of the agreement if it is not in writing, shall be filed with the taxing officer.

(2) The taxing officer shall allow costs payable under an agreement referred to in subrule (1) to the extent that they are fair and reasonable in the circumstances, and may allow or disallow such costs, in whole or in part, irrespective of whether they have been paid or not.

#### Bill of costs consented to by client

**688.** A bill of costs that is consented to by the client, with proof of independent legal advice given to the client, shall be taxed and allowed without alteration or further consideration.

#### Where bill not subject to taxation

**689.** Unless the Court orders otherwise, no bill of costs is subject to taxation

- (a) after judgment has been obtained in an action for the costs;
- (b) where it remains unpaid one year after the date of delivery of it;

- (c) on the expiry of six months after the day the services were completed or the bill was delivered, whichever is later, if it was fully paid before the completion of the services for which it was rendered; or
- (d) on the expiry of six months after the day the bill is delivered if it was fully paid following the completion of the services.

#### May not tax again

**690.** Unless the Court orders otherwise, a taxing officer may not tax a bill of costs that has been previously taxed.

#### Order for delivery up of document

**691.** Notwithstanding any lien a solicitor may have in respect of a file, the Court may, on the application of a client, order the solicitor to deliver up any deed, document or paper of the client in the possession, custody or power of the solicitor or the solicitor's assignee or representative.

#### Enforcement of payment

**692.** (1) Where the Court has ordered the delivery of a taxable bill of costs or the taxation of a bill of costs, it may provide that the bill is to be paid on taxation, in which case it becomes a judgment of the Court on taxation.

(2) On taxation, payment of a bill of costs other than one referred to in subrule (1) may be enforced on the order of the Court, which order may be obtained on notice.

### Appeals from Taxation

#### Appeal

**693.** (1) A person having a pecuniary interest in the result of a taxation may, not later than 15 days after receiving notice of a certification on taxation, appeal the taxation.

(2) An appeal may be made to a judge in chambers by filing with the Clerk a notice of appeal, returnable within 30 days from filing.

(3) A notice of appeal shall specify the items objected to, the grounds of the objection and the date the appeal will be heard.

(4) A notice of appeal shall be served on all parties directly affected by the appeal not less than 10 days before the date set for the hearing of the appeal.

#### Conduct of appeal

**694.** Unless otherwise ordered, an appeal from taxation shall be confined to the items and grounds specified and shall be heard on the evidence before the taxing officer.

#### Powers of Court

**695.** (1) On an appeal from taxation, the Court may exercise all the powers of the taxing officer under this Part and may review any discretion exercised by the taxing officer as fully as if the taxation had been made by the Court in the first instance.

(2) The Court may make such order as to costs of the appeal and taxation as it considers fit.

#### Amendment of writ of execution

**696.** Where a writ of execution has been issued for costs that are reduced on appeal, the writ of execution shall be returned to the Clerk for amendment in accordance with the order made on the appeal.

#### Repayment of costs

**697.** Where the amount originally taxed by the taxing officer has been paid and after payment is reduced on appeal, the Court may order the return of the excess by the party who received it and

- (a) the order may be enforced as an order of the Court; or
- (b) if the costs have been paid to a solicitor, the Court may order the solicitor to return the excess and if the solicitor fails to do so, he or she may be found guilty of civil contempt.

### PART 51 CHANGE OF REPRESENTATION

#### Notice of change of representation

**698.** (1) A party may change solicitors by filing and serving a notice of the change, but until the notice is so filed and served the former solicitor shall be considered the solicitor on the record for the party.

(2) A party acting in person who desires to be represented by a solicitor may file and serve a notice to that effect.

(3) A party represented by a solicitor who desires to act in person may file and serve a notice to that effect, but until notice is so filed and served the former solicitor shall be considered the solicitor on the record for the party.

(4) A party whose solicitor has died, has ceased to be engaged in the practice of law or has filed a notice of ceasing to act shall file and serve a notice of change of solicitor or notice that he or she intends to act in person.

(5) A notice given under this rule must include an address for service.

(6) A notice given under this rule shall be served on all parties other than those who have been noted in default or against whom default judgment has been entered and, where the notice is given under subrule (1) or (3), on the former solicitor.

(7) A party giving notice under this rule may do so by his or her solicitor.

#### Ceasing to act

**699.** (1) Subject to rule 700, a solicitor on the record for a party who desires to cease to act for a party may do so by

- (a) serving a written notice of intention to cease acting on the client and on all parties, except those who have been noted in default or against whom a default judgment has been entered; and
- (b) filing proof of the required service.

(2) A notice given under subrule (1) must

- (a) contain the last known address of the client; and
- (b) be endorsed with a statement to the party who the solicitor is ceasing to represent to the following effect:

"You are hereby notified that on the expiry of 10 days after the filing of proof of service of this document the undersigned will no longer be your solicitor of record and you will not be entitled to be served with any pleadings or notice of other proceedings in the action unless a further address for service is filed and served in accordance with the Rules of the Nunavut Court of Justice.

*(Signature of Solicitor)".*

(3) On the expiry of 10 days after the filing of proof of service of a notice of intention to cease acting,

- (a) no document relating to the proceeding may be served on the solicitor at the solicitor's address for service; and
- (b) any other party may, unless the party has filed a notice under rule 698, effect service of a document by mailing it to the party at the last known address contained in the notice by prepaid registered mail endorsed with a statement to the following effect:

"This document is served by mail as no new solicitor has been appointed by you."

#### Order removing solicitor from record

**700.** (1) Where the party for whom a solicitor is acting is under disability or in an action where a trial date has been set by the Court, a solicitor on the record for a party shall act as and remain the solicitor for his or her client until an order removing the solicitor from the record has been entered and served on the client and every other party, and proof of service has been filed.

(2) An order removing a solicitor from the record may be made on the application of the solicitor on notice to his or her client and every other party to the action.

Directions respecting service or dispensation of service

**701.** (1) Where a solicitor for a party dies or ceases to be engaged in the practice of law and no notice has been given by the party under rule 698, any other party may apply *ex parte* to the Court for directions as to service of all or any documents.

(2) On application under subrule (1), the Court may direct the way in which service is to be effected or may dispense with service.

(3) A direction or dispensation of service under subrule (2) ceases to have effect when a notice is given under rule 698.

Commencement of proceeding without authority of client

**702.** (1) Where a solicitor has commenced a proceeding without the authority of his or her client, the Court may, on application, stay or dismiss the proceeding and order the solicitor to personally pay the costs of the proceeding.

(2) Where a proceeding is stayed under subrule (1), no further step may be taken without leave of the Court.

PART 52  
CIVIL CONTEMPT

Declaration

**703.** (1) The Court may, on its own motion or on application, declare that any person is in civil contempt.

(2) The Court may order any person to appear before it, or may order any person to be taken into custody and brought before it, to show cause why the person should not be held in civil contempt.

Civil contempt

**704.** A person is in civil contempt who

- (a) fails, without adequate excuse, to obey an order of the Court, other than an order for the payment of money;
- (b) fails, without adequate excuse, to obey a notice served on him or her requiring attendance as witness or to attend for examination for discovery in accordance with an appointment served on him or her or to comply with any notice or order for production of documents served on him or her;
- (c) refuses to be sworn or to affirm or to answer proper questions as a witness in an action or a proceeding or on examination for discovery;
- (d) fails, without adequate excuse, to perform and observe the terms of an undertaking given to the Court;

- (e) being a solicitor, fails, without adequate excuse, to file a statement of defence or an appearance in accordance with his or her written undertaking to do so; or
- (f) has done or failed to do any act or thing that by these rules or by a statute of Nunavut constitutes contempt of court or civil contempt.

#### Penalties

**705.** (1) A person in civil contempt is liable to any one or more of the following:

- (a) an indefinite term of imprisonment until he or she has purged the contempt;
- (b) a fixed term of imprisonment for not more than one year;
- (c) a fine of up to \$5,000 and, in default of payment of the fine, to a fixed term of imprisonment for not more than one year or, where the person is a corporation, a fine of up to \$50,000;
- (d) where the person is a party to an action or proceeding,
  - (i) to have his or her pleadings or part of the pleadings struck out,
  - (ii) to have the action or proceeding stayed,
  - (iii) to have the action or proceeding dismissed or judgment entered against him or her, or
  - (iv) to be prohibited from introducing in evidence any designated document, thing or testimony.

(2) The Court may also order any person in civil contempt to pay any other person such costs and expenses as the Court considers proper.

(3) The Court may waive the imposition of any sanction or suspend any punishment where a person held in civil contempt has purged his or her contempt.

(4) The judge by whom any sanction has been imposed for civil contempt under this rule may, on such notice as the judge may direct, vary or remit the sanction.

#### Corporation

**706.** Where a corporation is in contempt, the Court may also make an order under rule 705 against an officer or a director of the corporation.

#### Warrant of committal

**707.** An order under rule 705 for imprisonment may be enforced by the issue of a warrant of committal in Form 66.

### PART 53 NON-COMPLIANCE AND IRREGULARITIES

#### Act or proceeding may be set aside

**708.** Unless the Court directs otherwise, non-compliance with these rules does not render an act or a proceeding void, but the Court may set aside for irregularity the act or

proceeding either wholly or in part, amend the proceeding or otherwise deal with the act or proceeding.

#### Application

**709.** (1) An application to set aside any act or proceeding for irregularity shall be made within a reasonable time.

(2) The Court shall not allow an application under subrule (1) where the applicant has taken a fresh step after acquiring knowledge of the irregularity.

#### Improperly commenced action

**710.** Where an action or proceeding is improperly commenced by statement of claim, originating notice or petition, the pleading may be treated as an irregularity and the action or proceeding may be continued on such terms and subject to such conditions as the Court may impose.

#### Defect of form

**711.** No pleading or other proceeding shall be defeated on the ground of an alleged defect of form.

## PART 54 TIME

#### Computation of time

**712.** In the computation of time under these rules or under an order, in addition to the rules and other provisions in the *Legislation Act*, the following rules apply unless a contrary intention appears:

- (a) where any period of less than seven days is specified, a holiday other than Sunday shall not be counted but Saturday and Sunday shall;
- (b) service of a document, other than an originating document, made after 5 p.m. or at any time on a Saturday or holiday shall be deemed to have been made on the next day that is not a Saturday or holiday.

#### Abridgment or enlargement of time

**713.** (1) The Court may enlarge or abridge the time appointed by these rules or fixed by an order for doing any act or taking any proceeding on such terms as the Court considers just, unless there is an express provision in the rule or order that this rule does not apply.

(2) Under subrule (1), the Court may enlarge the time appointed in a rule or order before or after the expiration of the time appointed.

(3) The time for delivering, amending or filing a pleading or other document may be enlarged by the consent of the parties without application to the Court.

Decision of jury

**714.** The taking of the decision of a jury, and any proceeding incidental to such a decision, is not invalid by reason only that it is done on a holiday.

PART 55  
OFFICERS AND OFFICES

Officers of the Court

**715.** The Clerk, deputy clerks, the Sheriff, deputy sheriffs and court reporters are officers of the Court.

Personnel Office of the Clerk

**716.** There shall be an office of the Clerk at Iqaluit and at any other centre that may be designated.

Where officer ill or absent

**717.** (1) Where an officer to whom a special duty is assigned is absent or ill, the duty shall be performed by another officer or person who is designated for that purpose by the Court.

(2) Subject to subrule (1), the Clerk or a deputy clerk may, where he or she is or intends to be absent from the office, designate a person to act in his or her stead.

Duties of Clerk

**718.** (1) The Clerk, in addition to any other duty that the Clerk may be required by law to perform, shall

- (a) receive, file and have the custody of all pleadings, petitions, reports, transcribed evidence, affidavits, bonds and other papers in every action and proceeding in the Court and make or cause to be made entries respecting the receipt, filing or custody of such papers in the proper books;
- (b) amend pleadings, enter notes of default in pleadings and give certificates respecting the amendment or default;
- (c) have the care and custody of all documents required or ordered to be deposited for safekeeping or otherwise under an order of the Court or a statute and make or cause to be made entries respecting the care and custody in proper books;
- (d) issue writs of execution and other process under judgments or orders;
- (e) certify proceedings, examine and authenticate office copies of pleadings and other proceedings, prepare, sign and issue certificates for registration, receive commissions and attend the opening of them;

- (f) sign, issue and enter judgments required to be signed by the Clerk, issue and enter orders pronounced and have the custody of judgment and order books;
- (g) set down actions for trial, applications, motions, appeals, special cases and other business coming before the Court;
- (h) attend with records, exhibits and papers on the Court;
- (i) attend in court and perform such duties as are required by the presiding judge;
- (j) keep an account or accounts of all fines, fees and moneys payable to or paid to the Clerk or into and out of court in proper books;
- (k) tax costs and act as examiner or referee when required; and
- (l) keep such books as are required by these rules or by any statute or regulation and do and perform all such other acts and duties as may be required of the Clerk by the Court or by law.

#### Duties of Clerk in Chambers

**719.** (1) The Clerk shall act as clerk in chambers, attend all sittings of a judge in chambers and enter in the proper book a complete record of all proceedings.

(2) The Clerk shall settle and sign all orders and settle and issue all judgments made by a judge in chambers.

#### Attendance to transact business

**720.** (1) Unless otherwise provided by these rules or an order of the Court, business shall be transacted in an office of the Court only on the personal attendance of the party on whose behalf the business is to be transacted, the solicitor of the party, the clerk or agent of the solicitor or the clerk of the solicitor's agent.

(2) The Clerk may issue a summons or originating document, file a defence or any other document, make any necessary search, note a defendant in default, enter a default judgment, tax costs in a default judgment, issue execution or perform any other *ex parte* transaction of a like nature where the necessary documents are forwarded to the Clerk with filing instructions by a solicitor.

(3) A document forwarded under subrule (2) must be fully complete with a blank only for insertion of the date and must be accompanied by a fully addressed envelope for the return of the document that is prepaid if the envelope is to be returned by mail.

(4) Subject to rule 379, a document, other than an originating document or a document that is to be issued by the Clerk, may be filed with the Clerk by

- (a) sending it to the Clerk by means of a telecopier; and
- (b) delivering or mailing to the Clerk the original document with any fees payable and, if the document is to be returned by mail, a prepaid self-addressed envelope.

(5) The Clerk may refuse to file a document under subrule (4) for a solicitor who is in default of payment of any fee or charge payable to the Clerk.

(6) A judge may at any time instruct the Clerk to refuse to file documents sent by telecopier for a solicitor designated by a judge.

#### Duties of court reporter

**721.** A court reporter shall perform such duties as may be required under these rules or assigned by the Court, and in addition to any other duties that the court reporter may be required by law to perform, shall

- (a) attend on the Court when required for a proceeding and take down a full and complete record of the proceeding;
- (b) attend when required and take down any oral examination made under oath under these rules;
- (c) keep in safe custody all notes of a proceeding or an examination taken by him or her; and
- (d) faithfully transcribe all notes of a proceeding or an examination taken by him or her and deliver a copy of the transcript as required by these rules or the Court.

#### Duties of court reporter on examination

**722.** Where a court reporter attends on and takes down an oral examination made under oath under these rules, it is not necessary for the examiner, commissioner or Clerk to be present at the examination and the court reporter has power to perform the duties of the examiner, commissioner or Clerk and, in particular but not so as to limit the foregoing, may administer oaths, take affidavits, receive affirmations and mark exhibits.

#### Correction of transcript

**723.** A transcript of a judgment, an order or a ruling made orally by a judge, whether sitting in court or in chambers, shall be submitted in draft form to the judge for correction as to form and expression before it is certified by the court reporter.

#### Admissibility of transcript

**724.** A transcript of notes taken by a court reporter in the course of his or her official duties is, when certified by the court reporter to be a true and faithful transcript, admissible in evidence as a transcript of the examination or evidence without proof of the signature of the court reporter.

#### Fees, costs and expenses payable in respect of execution

**725.** (1) On the settlement of an execution, either in whole or in part, by payment, levy or otherwise or on the withdrawal, stay or setting aside of an execution, the Sheriff or other officer claiming fees, poundage, incidental expenses or remuneration that have not been taxed shall, after being required by any party interested, deliver a copy of the bill of costs to any interested party within five days after receiving a request for it from the party.

(2) A taxing officer may tax the bill of a Sheriff or other officer where an interested party secures an appointment for taxation of the bill of costs and serves the appointment on the Sheriff or other officer.

(3) Where a bill of costs of a Sheriff or other officer is subject to taxation under subrule (2), the Sheriff or other officer shall not, without taxation, collect any fees, costs, poundage or incidental expenses and, on tender of the amount taxed, no fees, costs, poundage or incidental expenses in respect of proceedings subsequently taken shall be allowed to the Sheriff or other officer.

(4) The taxing officer shall

- (a) tax a bill of costs on payment or tender of the appropriate fees; and
- (b) give, where requested, a certificate of the taxation and the amount taxed.

(5) A party dissatisfied with a taxation may appeal the taxation to a judge under rule 693.

#### Fees for services

**726.** Fees shall be paid for services performed by an officer of the Court under these rules in accordance with any regulations respecting fees for such services.

## PART 56 SITTINGS OF THE COURT

#### Sittings

**727.** (1) The Court shall appoint the days on which and places at which sittings for the trial of actions will be held.

(2) Sittings in chambers shall be held at the times and places that the Court appoints.

#### Adjournment - general

**728.** A sitting either in court or in chambers may be adjourned from time to time and from place to place.

#### Adjournment from chambers to court

**729.** A judge may adjourn the hearing of an application or a petition from chambers into court or from court into chambers.

#### Where judge is not available

**730.** Where, because of illness or another cause, there is no judge present at the time and place appointed for a sitting for a trial of an action or in chambers, the Clerk may adjourn the action or proceeding as the Clerk considers necessary or as directed by a judge.

## PART 57 DOCUMENTS

### Size and form of document

**731.** (1) Unless otherwise ordered or provided in these rules, a document to be filed with the Clerk must be printed, typewritten or reproduced legibly on one side of good quality paper not exceeding 21.5 cm in width by 28 cm in length, with a margin of 3.1 cm on the left-hand side and a minimum 3.7 cm at lower edge.

(2) A document prepared for use in court shall be typed with a minimum line and a half spacing.

### Information to be included in document

**732.** (1) A document filed in an action or a proceeding must contain

- (a) the name and location of the Court;
- (b) the court file number;
- (c) the style of cause;
- (d) the title of the document;
- (e) the date of the document; and
- (f) the name of the party or solicitor delivering the document.

(2) Where any information required by subrule (1) is set out on the first page of the document, it need not be repeated on any subsequent page.

### Acceptance where document does not conform

**733.** The Clerk may, under special circumstances, accept a document that does not conform with this Part.

## PART 58 EXHIBITS

### Filing of exhibits

**734.** (1) An exhibit filed on a hearing or trial must be dated, numbered and marked to indicate the parties involved, whose property they are and by whom they are filed.

(2) The Clerk shall enter in a procedure book a list of each exhibit, briefly describing the exhibit and stating by whom it was filed.

### Return of exhibits

**735.** (1) An exhibit at a trial may be delivered to the party whose property it is,

- (a) at any time after judgment, without an order on the consent of the opposite party; or
- (b) at any time after the time for appeal has expired if no notice of appeal has been given, by order on notice to the opposite party.

(2) Where an application for the return of an exhibit has not been made within two years after the last day of trial or, if an appeal has been taken, within two years after the conclusion of the appeal, the Clerk may serve notice on the solicitors for the parties stating that unless such an application is made within three months after the notice is sent, the Clerk will destroy or otherwise dispose of the exhibit.

(3) Subject to subrule (4), unless an application is made for the return of an exhibit in accordance with subrule (2), the Clerk may, on the order of a judge made *ex parte* or on motion, destroy or otherwise dispose of the exhibit.

(4) Where it is made to appear to the Court that service of a notice under subrule (2) cannot be affected, the Court may order substitutional service or may dispense with service.

#### PART 59 TRANSITIONAL, REPEAL AND COMING INTO FORCE

##### Transitional

**736.** (1) Subject to subrule (2), these rules apply to all proceedings, whether commenced before or after these rules come into force.

(2) Where a proceeding has been commenced before these rules come into force, the Court may order, subject to such terms as the Court considers just, that the proceeding or a step in the proceeding be conducted under the rules of court that governed the matter immediately before these rules came into force.

##### Note

**The following provision has been deleted for the purposes of this consolidation: s.737 (Repeal)**

##### Coming into force

**738.** These rules come into force April 1, 1996.

SCHEDULE A

(Subrule 648(1))

BARRISTER AND SOLICITOR COSTS IN CIVIL ACTIONS

	COLUMN 1 Not exceeding \$5,000	COLUMN 2 Over \$5,000 but not exceeding \$15,000	COLUMN 3 Over \$15,000 but not exceeding \$35,000	COLUMN 4 Over \$35,000 but not exceeding \$75,000	COLUMN 5 Over \$75,000 but not exceeding \$150,000	COLUMN 6 Over \$150,000
<b>PLEADINGS AND OTHER DOCUMENTS</b>						
1. Commencement of proceeding by statement of claim, petition, originating notice, notice of motion or notice of appeal	\$200	\$250	\$325	\$375	\$475	\$650
2. Service of any pleading, appointment or notice required by the rules or any applicable Act	\$35	\$35	\$35	\$35	\$35	\$35
3. Filing a defence or answer including a defence to counterclaim	\$200	\$250	\$325	\$375	\$475	\$675
4. Filing counter-claim or counter-petition	\$200	\$250	\$325	\$375	\$475	\$675
5. Preparation and filing of a reply, if necessary	\$75	\$75	\$100	\$100	\$125	\$150
6. Filing third (or additional) party notice	\$200	\$250	\$325	\$375	\$475	\$675
7. Filing notice of cross-claim	\$50	\$50	\$100	\$100	\$150	\$250
8. Preparation and service of demand for particulars	\$100	\$125	\$175	\$200	\$225	\$250

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9. Amendment of pleadings, where taxable	\$30	\$40	\$80	\$100	\$120	\$150
10. Payment into court and offers to settle, including notice of the payment or offer	\$125	\$175	\$250	\$300	\$375	\$400
11. Acceptance of payment into court or offer to settle, including notice of the acceptance	\$125	\$175	\$250	\$300	\$375	\$400
12. Preparation and filing of certificate of readiness	\$125	\$225	\$350	\$450	\$575	\$750
13. Filing of certificate of pending litigation	\$25	\$25	\$50	\$50	\$75	\$100

	COLUMN 1 Not exceeding \$5,000	COLUMN 2 Over \$5,000 but not exceeding \$15,000	COLUMN 3 Over \$15,000 but not exceeding \$35,000	COLUMN 4 Over \$35,000 but not exceeding \$75,000	COLUMN 5 Over \$75,000 but not exceeding \$150,000	COLUMN 6 Over \$150,000
<b>DISCOVERY</b>						
The second or additional one-half day fee shall be pro-rated to the extent that a full one-half day of two and one-half hours is not occupied in the examination.						
14. Preparation, filing and service of statement as to documents	\$150	\$200	\$275	\$375	\$500	\$650
15. Preparation and service of notice to produce or inspect documents	\$75	\$75	\$75	\$100	\$100	\$100
16. Preparation of interrogatories	\$60	\$80	\$120	\$160	\$220	\$300
17. Preparation of answers to interrogatories	\$60	\$80	\$120	\$160	\$220	\$300
18. Arranging for examinations for discovery or in aid of execution or cross-examination on affidavits, whether by appointment or otherwise	\$20	\$30	\$40	\$50	\$60	\$70
19. Preparation for examination for discovery	\$125	\$175	\$250	\$325	\$450	\$600

	COLUMN 1 Not exceeding \$5,000	COLUMN 2 Over \$5,000 but not exceeding \$15,000	COLUMN 3 Over \$15,000 but not exceeding \$35,000	COLUMN 4 Over \$35,000 but not exceeding \$75,000	COLUMN 5 Over \$75,000 but not exceeding \$150,000	COLUMN 6 Over \$150,000
20. Conducting examination or cross-examination of parties or witnesses before trial or in aid of execution						
a) for full one-half day or portion thereof	\$100	\$150	\$200	\$250	\$300	\$350
b) for each additional one-half day	\$75	\$125	\$150	\$200	\$250	\$300
Note: The second or additional one-half day fee shall be pro-rated to the extent that a full one-half day of 2 1/2 hours is not occupied in the examination.						
21. Attending on examination or cross-examination of a party or witness by an opposite party	\$75	\$125	\$150	\$200	\$250	\$300

Note: The second or additional one-half day fee shall be pro-rated to the extent that a full one-half day of 2 1/2 hours is not occupied in the examination.

	COLUMN 1 Not exceeding \$5,000	COLUMN 2 Over \$5,000 but not exceeding \$15,000	COLUMN 3 Over \$15,000 but not exceeding \$35,000	COLUMN 4 Over \$35,000 but not exceeding \$75,000	COLUMN 5 Over \$75,000 but not exceeding \$150,000	COLUMN 6 Over \$150,000
<b>TRIAL</b>						
22. Speaking to the trial list (to be awarded only once)	\$20	\$20	\$40	\$40	\$60	\$60
23. Attendance at pre-trial conference, including preparation, except in matrimonial cases (per one-half day or any portion thereof)	\$75	\$125	\$175	\$200	\$250	\$300
24. Preparation, filing and service of notice to admit or admission of facts	\$40	\$60	\$120	\$170	\$220	\$340
25. Preparation for trial after filing of certificate of readiness:						
a) where not more than two witnesses are examined or their evidence briefed on behalf of the party taxing costs	\$100	\$150	\$275	\$375	\$500	\$850
b) for each witness in excess of two examined or the witness' evidence briefed on behalf of the party taxing costs (to be increased at the discretion of the Court)	\$20	\$40	\$80	\$120	\$160	\$200
26. Preparation, filing and service of trial brief	\$200	\$300	\$400	\$500	\$650	\$800

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27. Adjournment of trial, where opposed						
a) prior to 14 days before prospective trial date	\$100	\$150	\$200	\$250	\$300	\$350
b) within 14 days of prospective date	\$200	\$300	\$400	\$500	\$600	\$700
28. Counsel fee at trial for full one-half day or portion thereof						
a) to first counsel	\$125	\$180	\$280	\$340	\$420	\$660
b) to second counsel (where allowed by the Court)		\$90	\$140	\$170	\$210	\$330
Note: Any further one-half day fee shall be pro-rated to the extent that a full one-half day of 2 1/2 hours is not occupied.						
29. Submission of written argument at the request of the Court (to be increased at the discretion of the Court)	\$200	\$300	\$400	\$500	\$650	\$800
30. Attendance on references where attendance approved or directed by judge (per hour or fraction thereof)	\$30	\$40	\$50	\$60	\$70	\$80
31. Attendance taking accounts or making or verifying computations under a judge's order or reference where no examination of witnesses is necessary (per hour or fraction thereof)	\$30	\$40	\$50	\$60	\$70	\$80
32. Preparation of bill of costs	\$30	\$50	\$70	\$100	\$120	\$140

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	COLUMN 1 Not exceeding \$5,000	COLUMN 2 Over \$5,000 but not exceeding \$15,000	COLUMN 3 Over \$15,000 but not exceeding \$35,000	COLUMN 4 Over \$35,000 but not exceeding \$75,000	COLUMN 5 Over \$75,000 but not exceeding \$150,000	COLUMN 6 Over \$150,000
33. Taxation of bill of costs where necessary but unopposed	\$30	\$30	\$30	\$50	\$50	\$50
34. Taxation of bill of costs were opposed, to the successful party	\$60	\$60	\$60	\$100	\$100	\$100
	COLUMN 1 Not exceeding \$5,000	COLUMN 2 Over \$5,000 but not exceeding \$15,000	COLUMN 3 Over \$15,000 but not exceeding \$35,000	COLUMN 4 Over \$35,000 but not exceeding \$75,000	COLUMN 5 Over \$75,000 but not exceeding \$150,000	COLUMN 6 Over \$150,000
<b>APPLICATIONS AND MOTIONS</b>						
35. Complex						
a) opposed	\$200	\$250	\$325	\$375	\$450	\$550
b) unopposed or ex parte	\$150	\$200	\$250	\$300	\$350	\$400
36. Simple application or motion						
a) opposed	\$150	\$200	\$250	\$300	\$350	\$400
b) unopposed or ex parte	\$100	\$150	\$200	\$250	\$300	\$350
37. Consent order						
a) where a complex application or motion has been filed and the parties subsequently agree to the filing of a consent order	\$75	\$100	\$125	\$150	\$175	\$200
b) where a simple application or motion has been filed and the parties subsequently agree to the filing of a consent order	\$50	\$50	\$50	\$75	\$75	\$75

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	COLUMN 1 Not exceeding \$5,000	COLUMN 2 Over \$5,000 but not exceeding \$15,000	COLUMN 3 Over \$15,000 but not exceeding \$35,000	COLUMN 4 Over \$35,000 but not exceeding \$75,000	COLUMN 5 Over \$75,000 but not exceeding \$150,000	COLUMN 6 Over \$150,000
38. Adjournment of application or motion (where allowed by Court)	\$75	\$75	\$75	\$100	\$100	\$100
39. Application for a mandatory order or in the nature of mandamus, prohibition, <i>certiorari</i> , <i>habeas corpus</i> or <i>quo warranto</i> : to be taxed as counsel fee at trial						

Note: On any motion or application the Applicant shall indicate in the body of the notice of motion whether it is made in respect of item 37(a) or (b). A motion may be considered complex where more than the usual amount of preparation is required in order to properly present either the evidence or the law or both to the Court.

	COLUMN 1 Not exceeding \$5,000	COLUMN 2 Over \$5,000 but not exceeding \$15,000	COLUMN 3 Over \$15,000 but not exceeding \$35,000	COLUMN 4 Over \$35,000 but not exceeding \$75,000	COLUMN 5 Over \$75,000 but not exceeding \$150,000	COLUMN 6 Over \$150,000
<b>MISCELLANEOUS MATTERS IN LIEU OF TRIAL OR SUBSEQUENT TO TRIAL</b>						
40. Settlement of action:						
a) before discoveries	\$75	\$100	\$150	\$175	\$225	\$300
b) after discoveries	\$150	\$200	\$300	\$350	\$450	\$600
41. Noting in default or entry of default judgment	\$50	\$50	\$50	\$50	\$50	\$50
42. Entry of order or judgment after contest	\$75	\$75	\$125	\$125	\$150	\$200
43. Issuance of writ of execution and each renewal of the writ	\$30	\$40	\$50	\$50	\$60	\$70
44. Preparation and service of garnishee summons	\$35	\$45	\$55	\$65	\$75	\$85
45. (1) Instructions for and preparation of all papers leading to seizure under judicial process	\$30	\$40	\$50	\$50	\$60	\$70
(2) Application for entry of and filing order for sale after seizure under judicial process	\$50	\$75	\$125	\$150	\$175	\$200
46. (1) Instructions for and preparation of all papers leading to seizure under extra-judicial process	\$75	\$75	\$75	\$75	\$75	\$75

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	COLUMN 1 Not exceeding \$5,000	COLUMN 2 Over \$5,000 but not exceeding \$15,000	COLUMN 3 Over \$15,000 but not exceeding \$35,000	COLUMN 4 Over \$35,000 but not exceeding \$75,000	COLUMN 5 Over \$75,000 but not exceeding \$150,000	COLUMN 6 Over \$150,000
(2) Application to the Court in connection with sale under extra-judicial process and for doing every act, matter or thing subsequent to seizure (one fee only allowable)	\$125	\$175	\$250	\$300	\$350	\$400
47. Effecting sale of lands under order or judgment (exclusive of attendance at sale whether abortive or not)	\$75	\$125	\$175	\$175	\$200	\$225
GENERAL						
48. Correspondence necessarily relating to a proceeding or an action	\$100	\$125	\$200	\$250	\$325	\$450

SCHEDULE B

FORM 1

*(Subrule 8(1))*

STATEMENT OF CLAIM

**IN THE NUNAVUT COURT OF JUSTICE**

**BETWEEN:**

\_\_\_\_\_

**Plaintiff(s)**

**- and -**

\_\_\_\_\_

**Defendant(s)**

**STATEMENT OF CLAIM**

*(Set out the statements of fact relied on for claim in numbered paragraphs)*

The Plaintiff proposes that this action be tried at \_\_\_\_\_.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_  
*(community) (month) (day)*

and delivered by \_\_\_\_\_, solicitor *(or agent)*

for \_\_\_\_\_ *(or the Plaintiff)*,

whose address for service is \_\_\_\_\_.

\_\_\_\_\_  
*(Signature of solicitor, plaintiff or agent)*

Court File No. \_\_\_\_\_, 20\_\_\_\_\_

**IN THE NUNAVUT COURT OF JUSTICE**

**BETWEEN:**

\_\_\_\_\_  
**Plaintiff(s)**

**- and -**

\_\_\_\_\_  
**Defendant(s)**

**STATEMENT OF CLAIM**

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This Statement of Claim is filed by:

\_\_\_\_\_  
*(plaintiff, solicitor for the plaintiff or agent for a solicitor)*

Whose address for service is:

\_\_\_\_\_

Plaintiff's residence is:

\_\_\_\_\_

Defendant's residence is:

\_\_\_\_\_

FORM 2

(Subrule 8(3))

PETITION

**IN THE NUNAVUT COURT OF JUSTICE**

**IN THE MATTER of** *(state Act or other statute)*; \_\_\_\_\_

**IN THE MATTER of** *(state the person in respect of whom or the corporation, the estate or other entity in respect of which the petition is made)*

**BETWEEN:**

\_\_\_\_\_ **Plaintiff(s)**

**- and -**

\_\_\_\_\_ **Defendant(s)**

**PETITION**

TAKE NOTICE that the Petitioner hereby applies to the Nunavut Court of Justice for *(state the relief sought and the rules or other enactment relied on)*;

AND FURTHER TAKE NOTICE that the hearing in this matter will be before the presiding Judge in

Chambers at \_\_\_\_\_ in \_\_\_\_\_, Nunavut,  
*(street address or name of building) (community)*

on \_\_\_\_\_ day, \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ a.m. (or p.m.) or so soon after  
*(month) (day)*

that time as counsel may be heard;

AND FURTHER TAKE NOTICE that in support of this Petition will be read the affidavit (or affidavits) of \_\_\_\_\_, copies of which are served with this Petition.  
*(state names)*

**FACTS**

The facts on which this Petition is based are as follows:

*(Set out briefly the relevant facts in numbered paragraphs)*

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_  
*(community) (month) (day)*

and delivered by \_\_\_\_\_, solicitor *(or agent)*

for \_\_\_\_\_ *(or the Petitioner)*, whose address for service is

\_\_\_\_\_.

\_\_\_\_\_  
*(Signature of solicitor, agent or petitioner)*

ISSUED out of the office of the Clerk of the Nunavut Court of Justice, at

\_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
*(community) (month) (day)*

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice *(Seal)*

TO: \_\_\_\_\_  
*(Insert name and address of each person to be served)*

FORM 3

(Subrule 16(3))

NOTICE TO DEFENDANT

IN THE NUNAVUT COURT OF JUSTICE

**BETWEEN:**

\_\_\_\_\_ **Plaintiff(s)**

- and -

\_\_\_\_\_ **Defendant(s)**

**NOTICE TO THE DEFENDANT(S)**

1. You are hereby notified that the Plaintiff (*or* Plaintiffs) may enter judgment against you in accordance with the attached Statement of Claim, or such judgment as may be granted under the *Rules of the Supreme Court of the Northwest Territories*, without further notice to you unless within \_\_\_\_\_ (*insert the period of time prescribed by the Rules or by any order fixing the time for defence*) after service of the Statement of Claim on you, you cause to be filed in the office of the Clerk of the Nunavut Court of Justice either:

- (a) a Statement of Defence, or
- (b) an Appearance,

and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Plaintiff or the Plaintiff's lawyer.

2. The attached Statement of Claim is to be served within 12 months from the day on which it is issued.

3. Every Defendant should consult his or her lawyer, or refer to the *Rules of the Supreme Court of the Northwest Territories*, to determine his or her rights.

The attached Statement of Claim is hereby issued out of the office of the Clerk of the Nunavut Court of Justice

at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_  
(community) (month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice (Seal)

FORM 4

(Subrules 23(1) and 626(2))

ORIGINATING NOTICE

IN THE NUNAVUT COURT OF JUSTICE

**BETWEEN:**

\_\_\_\_\_ **Plaintiff(s)**

- and -

\_\_\_\_\_ **Defendant(s)**

**ORIGINATING NOTICE**

\_\_\_\_\_

TAKE NOTICE that a motion will be made on behalf of \_\_\_\_\_  
(name of applicant)  
of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, for an order that:  
(community) (territory or province) (occupation)

*(Set out a concise statement of the claim made and of the relief or remedy claimed with sufficient particulars to identify the cause of action for which the applicant claims that relief or remedy*

OR

*a statement of the questions on which the applicant seeks the determination or direction of the Court.)*

AND FURTHER TAKE NOTICE that the motion will be before the presiding Judge in Chambers at  
\_\_\_\_\_ in \_\_\_\_\_, Nunavut,  
(street address or name of building) (community)  
on \_\_\_\_\_ day, \_\_\_\_\_, 20\_\_\_\_ at a.m. (or p.m.) or so soon after that time as counsel may be heard;  
(month) (day)

AND FURTHER TAKE NOTICE that in support of the application will be read the affidavit (or affidavits)  
of \_\_\_\_\_, copies of which are served with this Originating Notice.  
(state names)

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_  
(community) (month) (day)

and taken out by \_\_\_\_\_, solicitor (*or agent*)

for \_\_\_\_\_ (*or the Applicant*),

whose address for service is \_\_\_\_\_.

\_\_\_\_\_  
(*Signature of solicitor, applicant or agent*)

ISSUED out of the office of the Clerk of the Nunavut Court of Justice,

at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_\_.  
(*community*) (month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice (*Seal*)

TO: \_\_\_\_\_  
(*Insert name and address of each person to be served*)

*Note: The following must be endorsed on the left side of the backer to the Originating Notice:*

**NOTICE TO RESPONDENT(S):**

You are hereby notified that the Applicant (*or Applicants*) may enter judgment in accordance with this Notice, or such judgment as the Applicant may be entitled to in accordance with the practice of the Nunavut Court of Justice, without any further notice to you unless you or your agent or solicitor appear at the place and on the date and time specified.

FORM 5

*(Subrule 76(2))*

ENDORSEMENT ON ORDER TO CARRY ON PROCEEDINGS

**NOTICE**

TAKE NOTICE that if you desire to seek to have this order discharged or varied you must apply to the Nunavut Court of Justice for that purpose within 10 days after the service of this Notice on you (*or* within 10 days after the appointment for you of a guardian *ad litem*). The Statement of Claim in this action is filed in the office of the Clerk of the Nunavut Court of Justice at \_\_\_\_\_, Nunavut.  
*(community)*

\_\_\_\_\_  
*(Signature of solicitor)*

TO: *(Insert name and address of each person to be served)*

*Note: This notice is to be endorsed on copies of an order respecting the carrying on of proceedings served under rule 76.*

FORM 6

(Rule 82)

AUTHORITY OF NEXT FRIEND  
IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

AUTHORITY OF NEXT FRIEND

I, \_\_\_\_\_, of \_\_\_\_\_,  
Nunavut, \_\_\_\_\_ hereby authorize \_\_\_\_\_,  
(community)  
(occupation)

Barristers and Solicitors, of \_\_\_\_\_, Nunavut, to use my name as next friend of the  
(community)

Plaintiff \_\_\_\_\_, a minor, in an action in the Nunavut Court of Justice,  
against the Defendant \_\_\_\_\_.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
(community) (month) (day)

SIGNED by \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )  
\_\_\_\_\_ )  
(Signature of witness) (Signature of next friend)

CANADA )  
NUNAVUT )  
TO WIT: )

I, \_\_\_\_\_, of \_\_\_\_\_, Nunavut,  
(community)

\_\_\_\_\_, MAKE OATH AND SAY AS FOLLOWS:  
(occupation)

1. I was personally present and did see \_\_\_\_\_, named in the above (or attached) Authority of Next Friend, duly sign and execute the Authority of Next Friend for the purposes named in it.
2. The Authority of Next Friend was executed at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_\_, and I am the subscribing witness to its execution.  
(community) (month) (day)
3. I know the said \_\_\_\_\_ and he (or she) is in my belief of the full age of 19 years.

SWORN BEFORE ME at \_\_\_\_\_ )  
(community) )  
Nunavut, on \_\_\_\_\_, 20\_\_\_\_\_) )  
(month) (day) )  
)  
)  
)  
)

\_\_\_\_\_  
(Signature of deponent)

*Note: This affidavit must be signed before a person authorized to take affidavits by the Evidence Act.*

FORM 7

*(Subrule 93(4))*

APPEARANCE

**IN THE NUNAVUT COURT OF JUSTICE**

*(Style of cause)*

**APPEARANCE**

Enter an appearance on behalf of:

\_\_\_\_\_  
*(Defendant's name)*

\_\_\_\_\_  
*(Defendant's address)*

\_\_\_\_\_  
*(Defendant's address for service)*

DATED on \_\_\_\_\_, 20\_\_\_\_.  
*(month) (day)*

\_\_\_\_\_  
*(Signature of defendant's solicitor or defendant)*

FORM 8

(Subrule 95(6))

STATEMENT OF DEFENCE AND COUNTERCLAIM

IN THE NUNAVUT COURT OF JUSTICE

**BETWEEN:**

\_\_\_\_\_ **Plaintiff(s)**

- and -

\_\_\_\_\_ **Defendant(s)**

STATEMENT OF DEFENCE AND COUNTERCLAIM

**DEFENCE**

1. )
2. ) *(State particulars of defence)*
3. )
4. )

**COUNTERCLAIM**

5. )
6. ) *(State particulars of claim)*
7. )

And the defendant counterclaims:

- (a) )
- (b) ) *(Prayer for relief should be in same form as prayer in a Statement of Claim)*
- (c) )

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_\_,  
*(community) (month) (day)*

and delivered by \_\_\_\_\_, solicitor *(or agent)*

for \_\_\_\_\_ *(or the Defendant)*,

whose address for service is \_\_\_\_\_.

\_\_\_\_\_  
*(Signature of solicitor, agent or defendant)*

*Note: The parties are to be referred to as the plaintiff and the defendant, as used in the originating style of cause, throughout this pleading.*

FORM 9

(Subrule 142(2))

THIRD PARTY NOTICE

IN THE NUNAVUT COURT OF JUSTICE

**BETWEEN:**

\_\_\_\_\_ **Plaintiff(s)**

- and -

\_\_\_\_\_ **Defendant(s)**

- and -

\_\_\_\_\_ **Third Party**

\_\_\_\_\_ **THIRD PARTY NOTICE** \_\_\_\_\_

TAKE NOTICE that this action has been brought by the Plaintiff against the Defendant. In it the Plaintiff claims against the Defendant (*here state the nature of the Plaintiff's claim*), as appears from the Statement of Claim (*or* Originating Notice), a copy of which is served with this Third Party Notice.

The Defendant claims against you (*here state the nature and grounds of the claim against the Third Party*).

AND FURTHER TAKE NOTICE that the Defendant may enter judgment against you in accordance with this Third Party Notice, or such judgment as may be granted under the *Rules of the Supreme Court of the Northwest Territories*, without further notice to you unless within \_\_\_\_\_ (*insert the period of time prescribed by the Rules or by any order fixing the time for defence, in the latter case adding the following words: "being the period prescribed by Order dated \_\_\_\_\_, 20\_\_*) after service of this Notice on you, excluding the day of service, you caused to be filed in the office of the Clerk of the Nunavut Court of Justice, either:

- (a) a Statement of Defence, or
- (b) an Appearance,

and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Defendant or the Defendant's lawyer.

AND FURTHER TAKE NOTICE that if you wish to dispute the Plaintiff's claim as against the Defendant or the Defendant's claim as against you, you must cause to be filed and served a Statement of Defence;

AND FINALLY TAKE NOTICE that if you do not dispute the liability of the Defendant to the Plaintiff, you will be deemed to admit the validity of any judgment that may be obtained against the Defendant, and if you do not dispute your liability to the Defendant, you shall be deemed to admit your liability to the Defendant to the extent claimed in this Third Party Notice.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_,  
*(community)* *(month)* *(day)*

and delivered by \_\_\_\_\_ solicitor (*or agent*) for \_\_\_\_\_  
(*or the Third Party*), whose address for service is \_\_\_\_\_.

\_\_\_\_\_  
*(Signature of solicitor, agent or third party)*

ISSUED out of the office of the Clerk of the Nunavut Court of Justice at \_\_\_\_\_, Nunavut,  
*(community)*  
on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 10

*(Rules 149 and 160)*

DIRECTION TO CLERK

**IN THE NUNAVUT COURT OF JUSTICE**

*(Style of cause)*

**DIRECTION**

TO THE CLERK OF THE COURT:

You are hereby required to note the Defendant *(or Third Party)* in default for failure to deliver a Statement of Defence *(or Appearance)* within the time provided by the *Rules of the Supreme Court of the Northwest Territories*.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_.

*(community) (month) (day)*

\_\_\_\_\_  
*(Signature of solicitor or party)*

FORM 11

*(Subrule 157(3))*

CROSS-CLAIM

**IN THE NUNAVUT COURT OF JUSTICE**

*(Style of cause)*

**NOTICE OF CROSS-CLAIM**

TAKE NOTICE that the Defendant, \_\_\_\_\_, hereby claims contribution or indemnity from you on the grounds set out in the Statement of Defence served with this Notice.

DATED \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
*(community) (month) (day)*

\_\_\_\_\_  
*(Name of solicitor or defendant)*

TO: \_\_\_\_\_  
*(Insert name of co-defendant or co-defendants against whom claim is made)*

FORM 12

*(Subrule 221(2)(a))*

STATEMENT AS TO DOCUMENTS

**IN THE NUNAVUT COURT OF JUSTICE**

*(Style of cause)*

**STATEMENT AS TO DOCUMENTS**

1. The above-named \_\_\_\_\_ has in his (*or her or its*) possession, control or power the documents relating to the matters in question in this suit set out in the first and second parts of the first schedule to this Statement.

2. The said \_\_\_\_\_ objects to produce the documents set out in the second part of the first schedule to this Statement on the following grounds:

\_\_\_\_\_.

3. The said \_\_\_\_\_ has had, but has not now, in his (*or her or its*) possession, control or power the documents relating to the matters in question in this suit set out in the second schedule to this Statement.

4. The documents mentioned in paragraph 3 were last in the possession or power of the said

\_\_\_\_\_ on \_\_\_\_\_.

5. *(Here state the nature of the documents mentioned in paragraph 3, what has become of them and in whose possession, control or power they now are.)*

6. According to the best of my knowledge and belief, the said \_\_\_\_\_ has not now and has never had in his (*or her or its*) possession, control or power, or in the possession, control or power of any person on his (*or her or its*) behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document or any other document whatsoever relating to the matters in question in this suit or in which any entry has been made relative to such matters, other than and except the documents set out in the first and second schedules to this Statement.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.

*(community) (month) (day)*

\_\_\_\_\_  
*(Signature of solicitor or party)*

TO: \_\_\_\_\_  
*(Insert name of party to whom the Statement will be given)*

*Notes:*

- 1. No reference need be made to the pleadings or other proceedings in the action.*
- 2. It is not necessary to itemize each letter but it is sufficient to say, for instance, "Copies of letters from the plaintiff to the defendant, dated .....".*
- 3. In the second schedule it is not necessary to refer to the originals of letters, copies of which are referred to in the first schedule, other than in general terms.*

FORM 13

*(Subrule 225(1))*

NOTICE TO PRODUCE DOCUMENTS

**IN THE NUNAVUT COURT OF JUSTICE**

*(Style of cause)*

**NOTICE TO PRODUCE DOCUMENTS**

TAKE NOTICE that the Plaintiff *(or* Defendant) requires you to produce for his *(or* her *or* its) inspection the following documents referred to in your Statement of Claim *(or* Statement of Defence, Affidavit or Statement as to Documents),

dated \_\_\_\_\_, 20 \_\_\_\_ :  
*(month) (day)*

*(Describe the documents required)*

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20 \_\_\_\_.  
*(community) (month) (day)*

\_\_\_\_\_  
*(Signature of solicitor or party)*

TO: \_\_\_\_\_  
*(Insert name and address of the person to be served)*

FORM 14

*(Subrule 225(2))*

NOTICE TO INSPECT DOCUMENTS  
IN THE NUNAVUT COURT OF JUSTICE

*(Style of cause)*

**NOTICE TO INSPECT DOCUMENTS**

TAKE NOTICE that you may inspect the documents mentioned in your notice of \_\_\_\_\_,  
*(month) (day)*  
20\_\_\_\_\_*(add if necessary: except the deed numbered \_\_\_\_\_ in that notice), at \_\_\_\_\_*  
*(place of inspection)*  
on \_\_\_\_\_, 20\_\_\_\_\_ *between the hours of \_\_\_\_\_ a.m. (or p.m.) and \_\_\_\_\_ a.m. (or p.m.).*  
*(month) (day)*

*OR*

TAKE NOTICE that the Plaintiff *(or Defendant)* objects to allowing you inspection of the documents  
mentioned in your notice of \_\_\_\_\_, 20\_\_\_\_\_ *on the ground that: (state the ground).*  
*(month) (day)*

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_\_.  
*(community) (month) (day)*

\_\_\_\_\_  
*(Signature of solicitor or party)*

TO: \_\_\_\_\_  
*(Insert name and address of the person to be served)*

FORM 15

*(Subrule 248(2))*

NOTICE OF APPOINTMENT

**IN THE NUNAVUT COURT OF JUSTICE**

*(Style of cause)*

**NOTICE OF APPOINTMENT FOR EXAMINATION**

TAKE NOTICE that the Clerk of the Nunavut Court of Justice has set an appointment

for examination at \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ a.m. *(or p.m.)*  
*(place of examination) (month) (day)*

at which place and time \_\_\_\_\_ is required to attend for the purpose of  
*(name of person to be examined)*

being examined.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
*(community) (month) (day)*

\_\_\_\_\_  
*(Signature of solicitor or party)*

TO: -----  
*(Insert name of party or person to be examined)*

FORM 16

(Subrule 263(1))

INTERROGATORIES

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

INTERROGATORIES

IT IS HEREBY REQUIRED that the following interrogatories be answered by you (or any officer or agent competent to testify on your behalf who knows the facts about which the inquiry is made) and that the answers be served on the Plaintiff (or Defendant) within \_\_\_\_\_ days after the day these interrogatories are served on you:

- 1. Did you.....? )
- 2. Did you not.....? )
- 3. (a) Were you....? )
- (b) If no... )
- Were you not.....? )

*Set out the interrogatories in the form of concise questions. Each interrogatory must be set out in a separate paragraph and numbered consecutively.*

*(Note: Where served on two or more persons, state which of the interrogatories each person is required to answer, for example:*

The defendant C.D. is required to answer all the interrogatories (or the interrogatories numbered\_\_\_\_\_).

The defendant E.F. is required to answer the interrogatories numbered\_\_\_\_\_.

G.H., a director of the Defendant X Co. Ltd., is required to answer the interrogatories numbered\_\_\_\_\_.)

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20 \_\_\_\_.  
(community) (month) (day)

\_\_\_\_\_  
(Signature of solicitor or party)

TO: \_\_\_\_\_  
(Insert name and address of person to be served or of the person's solicitor)

FORM 17

(Subrule 263(2))

ANSWERS TO INTERROGATORIES  
IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

ANSWERS TO INTERROGATORIES

In an answer to the interrogatories served by the Plaintiff (or Defendant), dated \_\_\_\_\_, 20\_\_\_\_.  
(month) (day)

I, \_\_\_\_\_, make oath and say as follows:  
(name of deponent)

- 1. I am the Plaintiff (or Defendant, or officer or agent of the Plaintiff or Defendant duly authorized to make this affidavit on his (or her or its) behalf).
- 2. As to the (first) interrogatory, I say (state answer based on knowledge).
- 3. As to the (second) interrogatory, I say that I have no personal knowledge of any of the matters referred to, but to the best of my knowledge, information and belief after making proper inquiries I say that (state answer based on inquiries).
- 4. As to the (third) interrogatory, I say that to the best of my knowledge, information and belief I am unable to answer it. I do not know and cannot ascertain whether \_\_\_\_\_.
- 5. As to the (fourth) interrogatory, I object to answering this interrogatory on the grounds that (state the grounds of objection).

SWORN BEFORE ME at \_\_\_\_\_,  
(community)

Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
(month) (day)

\_\_\_\_\_  
(Signature of deponent)

TO: \_\_\_\_\_  
(Insert name and address of person or persons to be served)

Note: This affidavit must be signed before a person authorized to take affidavits by the Evidence Act.

FORM 18

*(Subrule 319(1))*

CERTIFICATE OF READINESS  
IN THE NUNAVUT COURT OF JUSTICE

*(Style of cause)*

**CERTIFICATE OF READINESS**

We, the solicitors for the parties, each certify that:

1. All pleadings, discoveries, interlocutory proceedings and expert examinations that each of us intends to do or have done have been completed and filed.
2. All undertakings to each other have been performed.
3. All of us and our clients are ready to proceed to trial.
4. No one of us will initiate any pleadings, discoveries or interlocutory proceedings after the filing of this Certificate without leave of the Court.

We, the solicitors for the parties, each state as follows:

1. The nature of the action is \_\_\_\_\_.
2. The relief claimed by plaintiff is \_\_\_\_\_.
3. There is (*or is not*) a counterclaim for \_\_\_\_\_.
4. There are (*or are not*) other parties as follows:  
\_\_\_\_\_  
\_\_\_\_\_.

5. We have considered together the possibility of admitting the facts and no admission is possible (*or admission have been made and filed with the Clerk*).

6. Expert reports have (*or have not*) been obtained.

*If expert reports have been obtained, add the following information:*

- (1) How many expert reports have been obtained?
- (2) By whom?
- (3) Concerning?

(4) Have copies been given to other party?

- (a) Yes \_\_\_\_\_  
(b) No \_\_\_\_\_

(5) Have copies been filed for the Court's use?

- (a) Yes \_\_\_\_\_  
(b) No \_\_\_\_\_

7. The issues in dispute are:

- (1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_

8. We expect to call witnesses as follows:

	<u>Ordinary</u>	<u>Expert</u>
Plaintiff	_____	_____
Defendant	_____	_____
Others	_____	_____

9. The duration of the trial will be:

Plaintiff's case \_\_\_\_\_ days

Defendant's case \_\_\_\_\_ days

TOTAL TRIAL TIME \_\_\_\_\_ days

10. We further certify and do certify that this case can be ready to be tried on \_\_\_\_\_, 20\_\_.  
(month) (day)  
at 10 a.m. at \_\_\_\_\_, in Nunavut.  
(community)

11. The solicitor for each of the parties will be:

	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
Plaintiff	_____	_____	_____
Defendant	_____	_____	_____
Third and Other Parties	_____	_____	_____

\_\_\_\_\_  
(Solicitor for Plaintiff)

\_\_\_\_\_  
(Solicitor for Defendant)

\_\_\_\_\_  
(Solicitor for Third Party *or* other party, if either is applicable)

FORM 19

(Subrule 358(1))

ORDER FOR EXAMINATION OF PERSONS OUTSIDE THE JURISDICTION  
IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

ORDER

BEFORE THE HONOURABLE \_\_\_\_\_ ) \_\_\_\_\_, Nunavut,  
\_\_\_\_\_ ) (community)  
\_\_\_\_\_ ) this day of \_\_\_\_\_, 20\_\_\_\_.

UPON THE APPLICATION of \_\_\_\_\_, coming before me on  
\_\_\_\_\_, 20\_\_\_\_, and upon hearing \_\_\_\_\_, counsel for:  
(month) (day)

THIS COURT ORDERS that \_\_\_\_\_, of \_\_\_\_\_, is  
appointed an examiner for the purpose of taking the examination, cross-examination and re-examination orally,  
on oath or affirmation, of (insert names and places of residence of persons to be examined on behalf of the  
party), and of any other person who the solicitors or agents of the parties mutually request the examiner in  
writing to examine, at \_\_\_\_\_ in \_\_\_\_\_;  
(name of the province, state or country)

AND FURTHER ORDERS that the solicitor for the applicant give to the solicitor of each of the parties  
\_\_\_\_ days notice in writing of the date on which the solicitor proposes to send this order to the examiner for  
execution, and that \_\_\_\_\_ days after delivery of the notice, the solicitors for the parties respectively exchange the  
names of their solicitors or agents at \_\_\_\_\_, to which solicitors or agents notice relating  
to the examination of the persons may be sent;

AND FURTHER ORDERS that \_\_\_\_\_ days notice before the examination of any person shall be  
given by the examiner to the solicitor or agent of each of the parties and to each person to be examined unless the  
notice is waived;

AND FURTHER ORDERS that the examination be conducted in accordance with the enclosed  
instructions, with such modifications as the circumstances may require;

AND FURTHER ORDERS that the transcript of the examinations with any document referred to in it, or  
a certified copy of or extract from the document, be sent forthwith by the examiner to the Clerk of the Nunavut  
Court of Justice at \_\_\_\_\_, Nunavut, who shall deliver a copy of the transcript  
(community)  
and any documents to the applicant and provide copies of the transcript and any documents to any other party on  
request.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 20

(Subrule 358(1))

INSTRUCTIONS TO EXAMINER

TO \_\_\_\_\_:  
*[Insert name and address]*

You have been appointed Examiner to take the evidence on oath or affirmation of: \_\_\_\_\_.

A copy of the order appointing you is attached. The law of Nunavut will apply to the taking of this evidence.

The party wishing to examine \_\_\_\_\_ before you is required to serve him (or her) with a subpoena and tender the proper fees not less than \_\_\_\_\_ days before the date you fix for the examination.

The witness and any interpreter must be sworn in accordance with the forms of oath set out below.

After the examination has been held and the evidence transcribed and the transcript of the evidence certified by you as correct, you are to send the transcript and other document referred to in the transcript, or a certified copy or extract of the document, by registered mail to the Clerk of the Nunavut Court of Justice,

\_\_\_\_\_, Nunavut.  
*(address)*

FORM OF OATH (OR AFFIRMATION) OF WITNESS

Do you swear that the evidence that you will give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help you God?

OR

Do you affirm that the evidence that you will give in these proceedings shall be the truth, the whole truth, and nothing but the truth?

FORM OF INTERPRETERS OATH

Will you truly, faithfully, and without partiality to any party in this proceeding, and to the best of your ability, interpret and translate any oath or affirmation that will be administered and all questions that may be asked of any witness and his or her answers, so help you God?

DATED AT \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_.  
*(community) (month) (day)*

\_\_\_\_\_  
*(Signature of party or party's solicitor)*

FORM 21

(Subrule 358(2))

ORDER FOR ISSUE OF A LETTER OF REQUEST  
TO JUDICIAL AUTHORITY OF ANOTHER JURISDICTION

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

ORDER

BEFORE THE HONOURABLE \_\_\_\_\_ ) \_\_\_\_\_, Nunavut,  
 ) (community)  
 ) this day of \_\_\_\_\_, 20\_\_\_\_.  
 )

UPON THE APPLICATION OF \_\_\_\_\_, coming on  
before me on \_\_\_\_\_, 20\_\_\_\_, and upon hearing \_\_\_\_\_, counsel for the  
applicant, and \_\_\_\_\_, counsel for \_\_\_\_\_.

THIS COURT ORDERS that the attached letter of request be issued;

AND FURTHER ORDERS that the Clerk, on receipt of the transcript taken pursuant to the letter of  
request and any document referred to in the transcript, or any certified copy or extract of a document, shall  
deliver them to the applicant and provide copies of them to any other party on request.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 22

(Subrule 358(2))

LETTER OF REQUEST FOR EXAMINATION OF WITNESS OUT OF JURISDICTION

TO the judicial authority of \_\_\_\_\_ in the \_\_\_\_\_:

WHEREAS this proceeding is now pending in the Nunavut Court of Justice in which

the plaintiff claims \_\_\_\_\_;

AND WHEREAS it appears to me that it is necessary for the purposes of justice and for the due determination of the matters in question between the parties that the following persons should be examined under oath or affirmation relating to those matters, namely:

\_\_\_\_\_, of \_\_\_\_\_,

and

\_\_\_\_\_, of \_\_\_\_\_,

and such other persons as the solicitors or agents of the parties shall mutually request you in writing to examine, and it appears that persons are residents within your jurisdiction;

NOW I, \_\_\_\_\_, a Judge of the Nunavut Court of Justice, hereby request that, for the assistance of this Court, you summon the solicitors or agents of the parties and the witnesses to be examined, to attend at such time and place as you appoint, either before you or before such other person as according to your procedure is competent to take the examination of witnesses, and that you cause the witnesses to be examined orally or by written interrogatories relating to the matters in question in the presence of the solicitors or agents of the parties or such solicitors or agents who, on due notice given, attend the examination;

AND I FURTHER REQUEST that you permit the solicitor or agent of any party present to examine any witness called by the solicitor or agent and the solicitor or agent of any opposing party to cross-examine the witness and the solicitor or agent of the party calling the witness to re-examine the witness;

AND I FURTHER REQUEST that you cause the evidence of each witness to be recorded verbatim, and any document produced on the examination to be marked for identification, and that you authenticate the transcript of evidence taken on the examination and any document referred to in the transcript, or certified copy or extract of a document referred to in the transcript, by the seal of your tribunal or in such other way as is in accordance with your procedure, and that you return the same with any written interrogatories and a note of the charges and expenses payable in respect of the execution of this request to the Deputy Minister of Foreign Affairs of Canada, at Ottawa, Canada (*or, if the judicial authority to whom the letter is addressed is in Canada, to the Deputy Attorney General for Nunavut, Iqaluit, Nunavut*), for transmission to the Clerk of the Nunavut Court of Justice at

\_\_\_\_\_, Nunavut.  
(community)

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
(community) (month) (day)

\_\_\_\_\_  
Judge of the Nunavut Court of Justice

FORM 23

(Subrule 364(1))

NOTICE TO ATTEND AT HEARING  
IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

NOTICE TO WITNESS TO ATTEND

TO (Insert name and address of witness):

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE IN COURT at the hearing of this

proceeding on \_\_\_\_\_ day, \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ a.m. (or p.m.),

at \_\_\_\_\_, Nunavut  
(street address or name of building) (community)

and, if the hearing is adjourned, to attend on the day to which it is adjourned and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following

documents and things: (set out the nature and date of each document and give particulars sufficient to identify each document and thing).

CONDUCT MONEY for \_\_\_\_\_ day (or days) of attendance is served with this Notice, calculated as follows:

Attendance Allowance of \$ _____ daily	\$ _____
Travel Allowance	\$ _____
Overnight Accommodation	\$ _____
Meal Allowance	\$ _____

**TOTAL: \$ \_\_\_\_\_**

If further attendance is required, you will be entitled to additional conduct money.

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS REQUIRED BY THIS NOTICE, A WARRANT MAY BE ISSUED FOR YOUR ARREST.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20 \_\_\_\_.  
(community) (month) (day)

\_\_\_\_\_  
(Signature of party's solicitor)

Inquiries may be directed to: \_\_\_\_\_  
(Insert name, address and telephone number of party or solicitor giving Notice)

FORM 24

(Subrule 366(2))

ORDER TO PRODUCE PRISONER  
IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**ORDER**

BEFORE THE HONOURABLE \_\_\_\_\_ ) \_\_\_\_\_, Nunavut,  
\_\_\_\_\_ ) (community)  
\_\_\_\_\_ ) this day of \_\_\_\_\_, 20\_\_\_\_.  
IN CHAMBERS )  
\_\_\_\_\_ )

UPON THE APPLICATION of \_\_\_\_\_, counsel on behalf of \_\_\_\_\_;

AND UPON hearing \_\_\_\_\_, counsel on behalf of \_\_\_\_\_;

AND UPON having read (*here set out all material used in support of application*), all filed;

IT IS ORDERED that the sheriff (*or jailer or other officer*) who has custody of \_\_\_\_\_  
(name of prisoner)

at \_\_\_\_\_ in Nunavut have on \_\_\_\_\_ day, \_\_\_\_\_, 20\_\_\_\_  
(name of prison and community) (month) (day)

at \_\_\_\_\_ a.m. (*or p.m.*), the body of \_\_\_\_\_, a prisoner in his (*or her*) custody,  
attend then and there to testify and give evidence in this action on behalf of the Plaintiff (*or Defendant or other party*) and continuing from day to day with his (*or her*) attendance until he (*or she*) is no longer required as a witness, when he (*or she*) shall be taken back without delay to the said prison and there detained until he (*or she*) is discharged by due course of law.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 25

(Subrule 382(2))

NOTICE OF MOTION

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

NOTICE OF MOTION

TAKE NOTICE that an application will be made to the presiding judge in Court (or in Chambers)

at \_\_\_\_\_ in \_\_\_\_\_, Nunavut, on \_\_\_\_\_ day, \_\_\_\_\_,  
(address or name of building) (community) (month) (day)

20\_\_ at \_\_\_\_\_ a.m. (or p.m.) or so soon after that time as counsel may be heard on behalf of the Plaintiff (or Defendant) for an order that (state the relief sought, the rule or enactment relied on and the grounds for the relief).

AND FURTHER TAKE NOTICE that in support of this application will be read (set out all affidavits and materials to be used).

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_.  
(community) (month) (day)

\_\_\_\_\_  
(Signature of solicitor or party)

TO: \_\_\_\_\_  
(Insert name and address of person to be served)

FORM 26

(Subrule 392(1))

NOTICE OF WITHDRAWAL  
IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**NOTICE OF WITHDRAWAL**

TO THE CLERK OF THE COURT:

You are required to withdraw from the Chambers List for \_\_\_\_\_, 20\_\_\_\_,  
(month) (day)

this matter, which is listed as number \_\_\_\_\_, on the following terms:

To be relisted for hearing in Chambers on \_\_\_\_\_, 20\_\_\_\_.  
(month) (day)

OR

*Sine die*, but subject to be heard in Chambers on due notice.

**BY CONSENT OF ALL PARTIES CONCERNED.**

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
(community) (month) (day)

\_\_\_\_\_  
Solicitor, on behalf of all parties concerned

FORM 27

(Subrule 400(1))

ORDER OF CHAMBERS JUDGE  
IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**ORDER**

**ORDER**

BEFORE THE HONOURABLE \_\_\_\_\_ ) \_\_\_\_\_, Nunavut,  
\_\_\_\_\_ ) (community)  
\_\_\_\_\_ ) this day of \_\_\_\_\_, 20\_\_\_\_.  
IN CHAMBERS )

UPON THE APPLICATION of \_\_\_\_\_  
(name of party)

and upon hearing \_\_\_\_\_, counsel on behalf of the Applicant (or Respondent or both),  
(name of solicitor)

AND UPON having read (set out all the materials used on the application), all filed;

IT IS ORDERED AS FOLLOWS:

1. \_\_\_\_\_  
(State terms of order made in concise paragraphs)
2. \_\_\_\_\_
3. \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice  
(or Chambers Judge)

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 28

(Subrule 407(2))

JUDGMENT IN DEFAULT OF DEFENCE - LIQUIDATED DEMAND

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**JUDGMENT**

\_\_\_\_ day, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The Defendant \_\_\_\_\_ not having delivered a defence or appearance;

IT IS THIS DAY ADJUDGED that the Plaintiff recover against the said Defendant \$ \_\_\_\_\_ and costs to be taxed.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

The above costs have been taxed and allowed at \$ \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_.  
(month) (day)

Claim: \$ \_\_\_\_\_

Costs: \$ \_\_\_\_\_

TOTAL: \$ \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 29

*(Subrule 407(2))*

JUDGMENT IN DEFAULT OF DEFENCE - RECOVERY OF LAND

IN THE NUNAVUT COURT OF JUSTICE

*(Style of cause)*

**JUDGMENT**

\_\_\_\_ day, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The Defendant \_\_\_\_\_ not having delivered a defence or appearance;

IT IS THISDAY ADJUDGED that the Plaintiff recover possession of the land (*or* goods) described in the Statement

of Claim as \_\_\_\_\_ and costs to be taxed.

*(description of land or goods)*

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

The above costs have been taxed and allowed at \$ \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_.  
*(month) (day)*

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 30

(Subrule 407(2))

JUDGMENT AFTER TRIAL BY JUDGE ALONE  
IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**JUDGMENT**

\_\_\_\_ day, the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

This action having been tried before the Honourable \_\_\_\_\_, without a jury,

on \_\_\_\_\_, 20 \_\_\_\_  
(month) (day)

in the presence of counsel for the Plaintiff and Defendant (*or as the case may be*) upon hearing the evidence adduced on behalf of the Plaintiff and Defendant (*or as the case may be*) the Court did order that the Plaintiff should recover from the Defendant (*set out the amount or as the case may be*) (*or if judgment reserved: that this action should stand over for judgment and this action coming on this day for judgment*);

IT IS THIS DAY ADJUDGED that the Plaintiff do recover from the Defendant \$ \_\_\_\_\_ and costs to be taxed (*or as the case may be*).

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

The above costs have been taxed and allowed at \$ \_\_\_\_\_ on \_\_\_\_\_, 20 \_\_\_\_.  
(month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 31

(Subrule 407(2))

JUDGMENT AFTER TRIAL BY JUDGE WITH JURY

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**JUDGMENT**

\_\_\_\_ day, the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

This action having been tried before the Honourable \_\_\_\_\_, with a jury,  
on \_\_\_\_\_, 20 \_\_\_\_  
(month) (day)

in the presence of counsel for the Plaintiff and Defendant (*or as the case may be*) upon hearing the evidence adduced for the Plaintiff and Defendant (*or as the case may be*), the jury having answered the following questions in the following manner: (*here set out in order the questions submitted to the jury and their answers to the questions*);

And the Honourable \_\_\_\_\_ having ordered that judgment be entered for the plaintiff for the sum of \$ \_\_\_\_\_ and costs;

IT IS THIS DAY ADJUDGED that the Plaintiff do recover from the Defendant the sum of \$ \_\_\_\_\_ and costs to be taxed.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

The above costs have been taxed and allowed at \$ \_\_\_\_\_ on \_\_\_\_\_, 20 \_\_\_\_.  
(month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 32

(Subrule 407(2))

JUDGMENT IN COURT FOR AMOUNT TO BE ASSESSED

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**JUDGMENT**

\_\_\_\_ day, the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

This action having been tried before the Honourable \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_  
(month) (day)

in the presence of counsel for the Plaintiff and Defendant (*or as the case may be*), upon hearing the evidence adduced on behalf of the Plaintiff and Defendant (*or as the case may be*), the Court did order that judgment be entered for the Plaintiff for such amount as shall be found due by \_\_\_\_\_ on assessment for damages (*or as the case may be*);

IT IS THIS DAY ADJUDGED that the Plaintiff recover against the Defendant such amount as shall be found due by \_\_\_\_\_, 20 \_\_\_\_ on assessment for damages (*or as the case may be*) and costs to be taxed.  
(month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

The Honourable \_\_\_\_\_ having found the amount due to the Plaintiff under this judgment at \$ \_\_\_\_\_, it is adjudged that the Plaintiff recover against the Defendant the said sum of \$ \_\_\_\_\_ and costs to be taxed.

The above costs have been taxed and allowed at \$ \_\_\_\_\_ on \_\_\_\_\_, 20 \_\_\_\_.  
(month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 33

(Subrule 407(2))

JUDGMENT PURSUANT TO AN ORDER

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**JUDGMENT**

\_\_\_\_ day, the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Pursuant to the Order of the Honourable \_\_\_\_\_ (or as the case may be)

dated \_\_\_\_\_, 20 \_\_\_\_\_,  
(month) (day)

it was ordered that the Plaintiff do recover judgment against the Defendant for the sum of \$ \_\_\_\_\_ and costs to be taxed;

IT IS THIS DAY ADJUDGED that the Plaintiff do recover from the Defendant the sum of \$ \_\_\_\_\_ and costs to be taxed.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

The above costs have been taxed and allowed at \$ \_\_\_\_\_ on \_\_\_\_\_, 20 \_\_\_\_.  
(month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 34

*(Subrule 407(2))*

JUDGMENT FOR COSTS AFTER  
ACCEPTANCE OF MONEY PAID  
INTO COURT

**IN THE NUNAVUT COURT OF JUSTICE**

*(Style of cause)*

**JUDGMENT**

\_\_\_\_ day, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The Defendant having paid into court in this action the sum of \$ \_\_\_\_\_ in satisfaction of the Plaintiff's claim, and the Plaintiff having by notice dated \_\_\_\_\_, 20\_\_\_\_  
*(month) (day)*

accepted that sum in satisfaction of the Plaintiff's entire cause of action, and the Plaintiff's costs in this action having been taxed and allowed at the sum of \$ \_\_\_\_\_ and the Defendant not having paid those costs within 10 days after the taxation;

IT IS THIS DAY ADJUDGED that the Plaintiff recover against the Defendant \$ \_\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 35

(Rule 438)

INTERIM ORDER FOR THE RECOVERY OF PERSONAL PROPERTY

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**ORDER**

BEFORE THE HONOURABLE

) in \_\_\_\_\_, Nunavut

) (community)

)

) this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

)

UPON the application of the Plaintiff for an order directing the Sheriff to seize certain property that is alleged to be in the unlawful possession of the Defendant;

AND UPON reading the affidavit of the Plaintiff and hearing the submissions of counsel;

IT IS HEREBY ORDERED that:

1. the Sheriff forthwith cause to be returned to the Plaintiff the following property (*describe property to be seized*):

which the Plaintiff alleges to be of the value of \$ \_\_\_\_\_.

2. (*Set out any further directions*)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 36

(Subrule 439(1))

BOND - INTERIM RECOVERY OF PERSONAL PROPERTY

(Style of cause)

**BOND**

WE, \_\_\_\_\_ and \_\_\_\_\_,  
(name of Plaintiff) (name of Surety)

jointly and severally bind ourselves and our successors to \_\_\_\_\_, the Sheriff  
of Nunavut, in the sum of \$ \_\_\_\_\_ if \_\_\_\_\_  
(name of Plaintiff)

fails to return \_\_\_\_\_ to \_\_\_\_\_  
(describe property) (party from whom property seized)

without delay when ordered to do so, and to pay any damages and costs that \_\_\_\_\_  
(party from whom property seized)

has sustained by reason of the interim order for recovery of possession of the property.

It is a condition of this obligation that \_\_\_\_\_ shall prosecute this action without delay.  
(name of the Plaintiff)

Dated at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
(community) (month) (day)

Signed in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Plaintiff (seal)

Signed in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety (seal)

FORM 37

(Subrule 443(1))

BOND TO RETAIN POSSESSION OF PROPERTY

(Style of cause)

**BOND**

WE, \_\_\_\_\_ and \_\_\_\_\_,  
*(name of Defendant)* *(name of Surety)*

jointly and severally bind ourselves and our successors to \_\_\_\_\_, the Sheriff  
of Nunavut, in the sum of \$ \_\_\_\_\_ if \_\_\_\_\_  
*(name of Plaintiff)*

fails to return \_\_\_\_\_ to \_\_\_\_\_  
*(describe property)* *(party from whom property seized)*

without delay when ordered to do so, and to pay any judgment that \_\_\_\_\_  
*(name of Plaintiff)*  
has obtained against the Defendant.

Dated at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
*(community)* *(month)* *(day)*

Signed in the presence of:

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Defendant (seal)*

Signed in the presence of:

\_\_\_\_\_  
*Witness*

\_\_\_\_\_  
*Surety (seal)*

FORM 38

(Subrule 443(2))

**FORM OF ASSIGNMENT**

At the request of \_\_\_\_\_, the Plaintiff in this action,  
(name of Plaintiff)

I, \_\_\_\_\_, Sheriff of Nunavut, hereby assign over this Bond To Retain  
Possession of Property to \_\_\_\_\_, pursuant to the *Rules of the Supreme  
(name of Plaintiff)*  
*Court of the Northwest Territories.*

Dated at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
(community) (month) (day)

SIGNED, SEALED AND DELIVERED )  
in the presence of: )  
)  
)

\_\_\_\_\_  
Sheriff of Nunavut (Seal of Office)





2. *If no security ordered continue:*

AND IT IS FURTHER ORDERED that the Receiver (*or* Receiver and Manager) shall not receive more than the amount of the judgment and costs in dispute (*or as the case may be*) without leave of the Court.

*If security ordered continue:*

AND IT IS FURTHER ORDERED that the Receiver (*or* Receiver and Manager) do furnish security to the satisfaction of the Court for the due and proper performance of his or her duties as Receiver (*or* Receiver and Manager (*add, if necessary:* and for the due and proper performance of the duties of such agent or agents as the Receiver (*or* Receiver and Manager) may appoint), by (*state the amount, form and manner of giving security*).

3. AND IT IS FURTHER ORDERED that the Defendant (*or* Respondent) do forthwith deliver to the Receiver (*or* Receiver and Manager) all the \_\_\_\_\_.  
(*describe the property*)

4. AND IT IS FURTHER ORDERED that the Defendant (*or* Respondent) and all persons in occupation of the \_\_\_\_\_ shall become tenants of the Receiver (*or* Receiver and Manager) and pay their rent in arrears and growing rents to the Receiver (*or* Receiver and Manager).  
(*describe property*)

5. AND IT IS FURTHER ORDERED that the Receiver (*or* Receiver and Manager) have liberty to apply all moneys received by him or her in respect of the rents and profits as follows:

Firstly, (*state, for example:* in payment of any repairs, to the cost of preservation, completion and management of the described property, in payment of solicitors' costs, legal or other expenses incurred by the Receiver (*or* Receiver and Manager)).

Secondly, (*state, for example:* in payment of any instalment of interest due or to accrue due, together with any instalment of principal, in payment of taxes).

Thirdly, (*state any other payment to which the rents and profits are to be applied*).

6. AND IT IS FURTHER ORDERED that the Receiver (*or* Receiver and Manager) do from time to time pass the accounts as this Court may on application direct.

7. AND IT IS FURTHER ORDERED that the balance remaining in the hands of the Receiver (*or* Receiver and Manager), after making the payments listed in paragraph 5, shall be paid into court to the credit of this action subject to further order.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 41

*(Subrule 476(1))*

CERTIFICATE OF PENDING LITIGATION

**IN THE NUNAVUT COURT OF JUSTICE**

*(Style of cause)*

**CERTIFICATE OF PENDING LITIGATION**

I CERTIFY that in this proceeding an interest in the following land is in question *(set out description of the land sufficient for registration)*:

This Certificate is issued this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at  
\_\_\_\_\_, Nunavut.  
*(community)*

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 42

(Rule 496)

WRIT OF EXECUTION

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

WRIT OF EXECUTION

**CHARLES THE THIRD, by the Grace of God, of the United Kingdom, Canada and his other  
Realms and Territories, KING, Head of the Commonwealth, Defender of the Faith.**

**To the Sheriff of Nunavut,**

**GREETINGS:**

WE COMMAND YOU that of the goods or lands of \_\_\_\_\_ in Nunavut you  
cause to be made:

- (a) \$ \_\_\_\_\_, which the Plaintiff (*or as the case may be*) lately by a judgment of this Court  
in this action dated \_\_\_\_\_, 20 \_\_\_\_\_ recovered against the  
Defendant; (month) (day)
- (b) \$ \_\_\_\_\_ for costs taxed to the Plaintiff (*or as the case may be*) in respect of the  
judgment;
- (c) Interest at the legal rate on the sums set out in paragraphs (a) and (b) from the day the  
judgment was entered; and,
- (d) The amount of any costs subsequent to the judgment, certified to be payable by the  
execution debtor to the execution creditor, and in respect of which this writ is endorsed  
with a direction to levy in accordance with subrule 494(1) of the *Rules of the Supreme  
Court of the Northwest Territories*, together with interest on that amount at the rate set  
out in paragraph (c) from the date of the certificate;

AND THAT YOU MAKE a return to this writ when you are required to do so.

ISSUED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20 \_\_\_\_\_.  
(community) (month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

To be endorsed on the back of the writ of execution: (community)

TO THE SHERIFF:

LEVY the sum of \$\_\_\_\_\_ being the debt or damages, and the sum of \$\_\_\_\_\_ being the taxed costs, and interest \_\_\_\_\_% per annum on both sums from \_\_\_\_\_, 20\_\_ and the sum of \$\_\_\_\_\_ for this writ;

AND in the event only of the moneys being made of the lands of the execution debtor, for the additional costs of that execution, the further sum of \$\_\_\_\_\_;

AND levy, in addition, the amount of costs subsequent to judgment certified to be payable by the execution debtor to the execution creditor \$\_\_\_\_\_.

(Set out any other charges here)

To the best of the knowledge, information and belief of the execution creditor, the name in full of the execution debtor is \_\_\_\_\_, the execution debtor's occupation is \_\_\_\_\_, and the execution debtor's residence is \_\_\_\_\_.

TO THE REGISTRAR OF THE LAND TITLES OFFICE FOR THE \_\_\_\_\_: (registration district)

I certify that the within copy is a true copy of a writ of execution against lands together with all endorsements on it, which writ is now in my hands to be executed and was issued out of the Nunavut Court of Justice and received by me at \_\_\_\_\_ (a.m. / p.m.) on \_\_\_\_\_, 20\_\_.

Dated at \_\_\_\_\_, Nunavut (community)

on \_\_\_\_\_, 20\_\_ (day) (month).

\_\_\_\_\_  
Sheriff for Nunavut

OFFICE NO. \_\_\_\_\_

Court File No.:

Plaintiff(s)

- and -

Defendant(s)

WRIT OF EXECUTION

This writ is issued by \_\_\_\_\_ in \_\_\_\_\_, (community) Nunavut.

(Where issued by a solicitor, add:

Solicitor for the Judgment Creditor, whose address for service is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_).



FORM 44

(Subrule 505(2))

WRIT OF DELIVERY

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**WRIT OF DELIVERY**

**CHARLES THE THIRD, by the Grace of God, of the United Kingdom, Canada and his other  
Realms and Territories, KING, Head of the Commonwealth, Defender of the Faith.**

**To the Sheriff of the Nunavut,**

**GREETING:**

WHEREAS by a judgment dated \_\_\_\_\_, 20\_\_\_\_\_, it was adjudged that  
the Defendant \_\_\_\_\_ deliver to the Plaintiff \_\_\_\_\_ the  
following goods:  
(*describe the goods as in the judgment*).

YOU ARE COMMANDED forthwith to cause the described goods to be delivered to \_\_\_\_\_.  
(*name of Plaintiff*)

AND YOU ARE ALSO COMMANDED forthwith to seize and sell at public auction or tender for the  
best price available sufficient of the goods and chattels of \_\_\_\_\_ to realize your costs,  
fees and expenses for executing this writ and, if required, to make appear to this Court in what manner you  
shall have executed this writ immediately after the execution together with this writ.

ISSUED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_\_.  
(*community*) (month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

*To be endorsed on the writ:*

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_ (*add, if necessary: agent for*  
\_\_\_\_\_  
of \_\_\_\_\_), solicitor for the Plaintiff \_\_\_\_\_ who resides at \_\_\_\_\_.  
(*name of Plaintiff*)

The Defendant's occupation is \_\_\_\_\_ and the Defendant resides at \_\_\_\_\_.

FORM 45

(Subrule 506(2))

WRIT OF SEQUESTRATION

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

WRIT OF SEQUESTRATION

**CHARLES THE THIRD, by the Grace of God, of the United Kingdom, Canada and his other  
Realms and Territories, KING, Head of the Commonwealth, Defender of the Faith.**

To the Sheriff of the Nunavut,

**GREETING:**

WHEREAS by a judgment dated \_\_\_\_\_, 20\_\_\_\_ it was adjudged that the  
Defendant \_\_\_\_\_, should:  
(month) (day)  
(name of Defendant)

(set out the applicable terms of judgment);

YOU ARE AUTHORIZED AND COMMANDED forthwith to enter on and take possession of all the  
real and personal estate of \_\_\_\_\_ and to collect and receive the rents and profits of his (or her  
(name of Defendant)  
or its) real and personal estate and keep the same under sequestration in your hands until the \_\_\_\_\_  
(name of Defendant)  
shall satisfy you that he (or she or it) has complied with the judgment attached to this writ and has paid your  
costs, fees and expenses for executing this writ.

ISSUED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
(community) (month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

To be endorsed on the writ:

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_ (add, if necessary: agent for  
\_\_\_\_\_ of \_\_\_\_\_), solicitor for the Plaintiff \_\_\_\_\_ who resides at  
(name of Plaintiff)  
\_\_\_\_\_.

The Defendant's occupation is \_\_\_\_\_ and the Defendant resides at \_\_\_\_\_.

FORM 46

(Subrule 523(1))

GARNISHEE SUMMONS BEFORE JUDGMENT  
IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

\_\_\_\_\_  
Judgment Creditor

- and -

\_\_\_\_\_  
Judgment Debtor

- and -

\_\_\_\_\_  
Garnishee

**GARNISHEE SUMMONS**

TO THE ABOVE NAMED GARNISHEE:

YOU ARE HEREBY NOTIFIED that an action has been commenced in this Court by the issue of a Statement of Claim in which the Plaintiff claims of the Defendant the sum of \$\_\_\_\_\_ and that leave has been obtained to issue a garnishee summons before a judgment. It is alleged on affidavit filed that you are in debted to the Defendant \_\_\_\_\_.  
(name of Defendant)

YOU ARE HEREBY NOTIFIED that, within 10 days after the service of this garnishee summons on you,

YOU ARE REQUIRED to:

- a) pay into this Court the lesser of
  - i) the money due from you to the Defendant on the day this garnishee summons is served on you; or
  - ii) such portion of the money due from you to the Defendant as is sufficient to satisfy the claim and the probable costs of the Plaintiff, being the sum of \_\_\_\_\_ \$;

OR

- b) file answer, in duplicate, in the office of the Clerk of this Court disputing liability to the Defendant or claiming the debt is or may not be attachable and stating the grounds on which your answer is based;

OR

- c) file an answer, in duplicate, in the office of the Clerk of this Court stating that the money is accruing due but is not yet payable and that it is to be payable at a future date or on the happening of a specified event, AND on the specified future date or on the happening of the specified future event, you are required to pay into this Court the amount required under paragraph (a);



FORM 47

(Rule 524)

GARNISHEE SUMMONS AFTER JUDGMENT  
IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

\_\_\_\_\_  
Judgment Creditor

- and -

\_\_\_\_\_  
Judgment Debtor

- and -

\_\_\_\_\_  
Garnishee

**GARNISHEE SUMMONS**

TO THE ABOVE NAMED GARNISHEE:

YOU ARE HEREBY NOTIFIED that the Judgment Creditor has recovered a judgment in this Court against the

Judgment Debtor for \$\_\_\_\_\_ inclusive of costs, of which \$\_\_\_\_\_ remains payable. It is alleged on affidavit filed that you are indebted to the Judgment Debtor.

YOU ARE HEREBY NOTIFIED that, within 10 days after the service of this garnishee summons on you, YOU ARE REQUIRED to:

- (a) pay into this Court the lesser of
  - a. the money due from you to the Judgment Debtor on the day this garnishee summons is served on you; or
  - b. such portion of the money due from you to the Judgment Debtor as is sufficient to satisfy the claim and the probable costs of the Judgment Creditor, being the sum of \$\_\_\_\_\_.

*OR*

- (b) file answer, in duplicate, in the office of the Clerk of this Court disputing liability to the Judgment Debtor or claiming the debt is or may not be attachable and stating the grounds on which your answer is based;

*OR*

- (c) file an answer, in duplicate, in the office of the Clerk of this Court stating that the money is accruing due but is not yet payable and that it is to be payable at a future date or on the happening of a specified event, AND on the specified future date or on the happening of the specified future event, you are required to pay into this Court the amount required under paragraph (a);

*OR*

- (d) file an answer, in duplicate, in the office of the Clerk of this Court stating that the debt attached belongs or may belong to a third party and stating the name and address of the third party so far as is known to you and stating, to the extent of your knowledge, the circumstances of and grounds for the debt, AND you are required, unless the Court orders otherwise, to pay into this Court the amount required under paragraph (a) as if the debt was payable to the Judgment Debtor.

IF THE MONEY DUE FROM YOU TO THE JUDGMENT DEBTOR IS FOR WAGES OR SALARY, you are also required to:

- (a) file with the Clerk at the same time a statement showing the period for which the wages are or salary is due and the particulars of any payment made on account of the wages or salary and any deduction claimed from the wages or salary;
- (b) deduct from the amount paid into this Court the exemption applicable under subrule 532(1), which is endorsed on or attached to this garnishee summons.

ISSUED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
*(community)* *(month) (day)*

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 48

(Subrule 540(1))

WRIT OF ATTACHMENT

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

WRIT OF ATTACHMENT

**CHARLES THE THIRD, by the Grace of God, of the United Kingdom Canada and his other Realms and Territories, KING, Head of the Commonwealth, Defender of the Faith.**

**To the Sheriff of Nunavut,**

**GREETINGS:**

YOU ARE COMMANDED to attach, seize and safely keep all the personal estate, credits and effects together with all evidences of title, debts, books and book accounts or other documents, vouchers or papers belonging to the estate, credits and effects or otherwise of the Defendant \_\_\_\_\_ to secure and satisfy the Plaintiff the sum of \$ \_\_\_\_\_ with costs of the action and to satisfy the debt and demand of such other creditors of the Defendant \_\_\_\_\_ as shall prosecute their claims to judgment and lodge executions with you, the Sheriff, within the time allowed by the *Creditors Relief Act* to entitle them to share in the distribution of the proceeds.

AND YOU ARE FURTHER COMMANDED that so soon as you shall have executed this writ you do return the same with an affidavit of service and a certificate of your action under it.

ISSUED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.

(community)

(month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 49  
(Subrule 557(5))

NOTICE OF JUDGMENT OR ORDER

IN THE NUNAVUT COURT OF JUSTICE

*(Style of cause)*

**NOTICE OF JUDGMENT (OR ORDER)**

TO: *(Insert name and address of person to be served)*

TAKE NOTICE that a Judgment (*or* Order) of this Court was given (*or* made) on \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached to this Notice.

AND ALSO TAKE NOTICE that from the time of service of this Notice you, (*or* \_\_\_\_\_, a minor, *or* \_\_\_\_\_, a person of unsound mind) will be bound by the Judgment (*or* Order) to the same extent as you (*or* he *or* she) would have been if you (*or* he *or* she) had originally been made a party.

AND ALSO TAKE NOTICE that you (*or* the minor *or* the person of unsound mind) may, within 15 days after the service of this notice on you, apply to the Nunavut Court of Justice to discharge, vary or add to the Judgment (*or* Order), and also that you (*or* the minor *or* the person of unsound mind) may be written notice served on the Plaintiff, require notice of and attend the proceedings under which the Judgment (*or* Order) was made (*or* given).

ISSUED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
*(community)* *(month)* *(day)*

\_\_\_\_\_  
Solicitors for the Plaintiff

FORM 50

(Rule 573)

STATEMENT OF CLAIM - FORECLOSURE

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

\_\_\_\_\_

Plaintiff

- and -

\_\_\_\_\_

Defendant

**STATEMENT OF CLAIM**

1. By a Memorandum of Mortgage (*or* Mortgage) made under the *Land Titles Act* dated \_\_\_\_\_, 20\_\_\_\_, and registered in the Land Titles Office for the \_\_\_\_\_,  
(month) (day) (name of registration district)  
as instrument number \_\_\_\_\_, the Defendant \_\_\_\_\_, mortgaged to the Plaintiff the following lands, namely:

(Set out full legal description of the mortgaged lands)

2. By the Memorandum of Mortgage (*or* Mortgage) the Defendant \_\_\_\_\_ covenanted to pay the principal sum as follows:

(Set out terms of repayment)

3. By the Memorandum of Mortgage (*or* Mortgage) the Defendant \_\_\_\_\_ covenanted to pay the interest to the Mortgagee on the said sum at the rate of \_\_\_\_\_% per annum on the days and times and in the manner mentioned in the Mortgage.

4. By the Memorandum of Mortgage (*or* Mortgage) it is provided that on default of payment of the principal or interest or any moneys secured by the Mortgage, the whole principal shall become payable.

5. By the Memorandum of Mortgage (*or* Mortgage) the Mortgagor covenanted with the Mortgagee to pay all liens, taxes, rates, charges, and encumbrances on the said lands that may fall due to be unpaid and also to insure the buildings on the said land against damage by fire, in default of all or any of which the Mortgagee should have the Defendant \_\_\_\_\_ mortgaged to the Plaintiff the following lands, namely:

6. Default has been made in payment of the principal sum, in payment of the interest and in payment of the taxes and fire insurance premiums pursuant to the terms of the Mortgage.

7. The Plaintiff says that the default of the Defendant has not been due to causes beyond the Defendant's control and that, having regard to the Defendant's ability to pay and the value of the Plaintiff's security, the period of redemption in the judgment in this action should be shortened to less than \_\_\_\_\_.

8. There is owing to the Plaintiff on the Mortgage the sum of \$ \_\_\_\_\_ according to the following particulars:

9. The Plaintiff proposes that this action shall be tried at \_\_\_\_\_, Nunavut.  
(community)

WHEREFORE THE PLAINTIFF CLAIMS:

- (a) a declaration as to the amount owing under the Mortgage with interest according to the terms of the Mortgage and in default of payment sale or foreclosure and possession of the said lands;
- (b) an Order for Possession;
- (c) an Order for the Appointment of a Receiver;
- (d) such other relief as the nature of the case may require and to this Honourable Court may seem meet;
- (e) an order shortening the period of redemption to less than as the Court may direct;
- (f) the costs of this action.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_, and  
(community) (month) (day)  
delivered by \_\_\_\_\_, solicitor (or agent) for \_\_\_\_\_ (or the  
Plaintiff), whose address for service is \_\_\_\_\_.

\_\_\_\_\_  
*Signature of solicitor, Plaintiff or agent*

*Note: Affix "Notice to the Defendant(s)" as required by subrule 16(3).*

FORM 51

(Subrule 579(2))

AFFIDAVIT OF DEFAULT - FORECLOSURE  
IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**AFFIDAVIT OF DEFAULT**

I, \_\_\_\_\_, of \_\_\_\_\_ Nunavut,  
\_\_\_\_\_ (community)  
\_\_\_\_\_ of the Plaintiff, make oath and say as follows:

1. I am the \_\_\_\_\_ of the Plaintiff \_\_\_\_\_ and as such have a personal knowledge of the matters deposed to in this affidavit except where stated to be on information or belief.
2. By a Memorandum of Mortgage (*or* Mortgage) made under the *Land Titles Act* dated \_\_\_\_\_, \_\_\_\_\_ (month) (day) 20\_\_\_\_, a copy of which is attached to and marked Exhibit "A" to this affidavit, the Defendant mortgaged to the Plaintiff the lands in question in this action to secure payment of the sum of \$ \_\_\_\_\_ with interest as provided in the Memorandum of Mortgage (*or* Mortgage).
3. The said sum of \$ \_\_\_\_\_ was actually advanced by the Plaintiff to the Defendant \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_ (month) (day)
4. By the Memorandum of Mortgage (*or* Mortgage) the Defendant \_\_\_\_\_ covenanted to pay interest to the Plaintiff on the said sum at the rate of \_\_\_\_\_% per annum on the days and times and in the manner mentioned in the Mortgage.
5. By the Memorandum of Mortgage (*or* Mortgage) it is provided that on default of payment the principal or interest or any other moneys secured by the Mortgage, the whole principal shall become payable.
6. By the Memorandum of Mortgage (*or* Mortgage) the Mortgagor covenanted with the Mortgagee to pay all liens, taxes, rates, charges and encumbrances on the said lands that may fall due or be unpaid and also to insure the buildings on the said lands against damage by fire, in default of all or any of which the Mortgagee should have the right to do the same and add to the Mortgage all costs and expenses incurred by the Mortgagee in that regard and in respect of any proceeding taken to realize the moneys secured by the Mortgage.
7. The Plaintiff says that the default of the Defendant has not been due to causes beyond the Defendant's control and that, having regard to the Defendant's ability to pay and the value of the Plaintiff's security, the period of redemption in the judgment in this action should be shortened to less than \_\_\_\_\_.
8. Default has been made in payment of the principal sum, in payment of the interest and in payment of the taxes and fire insurance premiums pursuant to the terms of the Mortgage.
9. There is now justly and truly owing to the Plaintiff under and by virtue of the Mortgage the sum of \$ \_\_\_\_\_ as shown by the account attached to and marked as Exhibit "B" to this affidavit.



FORM 52

(Subrule 579(3))

AFFIDAVIT OF VALUE - FORECLOSURE OR SPECIFIC PERFORMANCE OF AGREEMENT FOR SALE

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

AFFIDAVIT OF VALUE

I, \_\_\_\_\_, of \_\_\_\_\_ Nunavut,  
(community)

make oath and say as follows:

1. I have resided and carried on business at \_\_\_\_\_, Nunavut for \_\_\_\_\_ years,  
(community)  
and during that time have had consideration experience in real estate transactions.
2. On \_\_\_\_\_, 2\_\_\_\_, I made a careful personal inspection of the lands in question in  
(month) (day)  
this action, namely \_\_\_\_\_.  
(describe lands)
3. I have, to the best of my knowledge and belief, in the paper now produced and shown to me and marked Exhibit "A" to this affidavit, set out full and true particulars of the state, conditions and value of the said lands and the improvements situate on the said lands.
4. I have not now and have never had any interest in the said lands or in any other aspect of this action except as appraiser for the Plaintiff in connection with the inspection and valuation made by me mentioned above.

SWORN BEFORE ME at \_\_\_\_\_, )  
(community) )  
)  
Nunavut, on \_\_\_\_\_, 20\_\_\_\_ )  
(month) (day) )  
)  
)

\_\_\_\_\_  
(Signature of deponent)

Note: This affidavit must be signed before a person authorized to take affidavits by the Evidence Act.

FORM 53

(Subrule 579(4))

ORDER NISI - FORECLOSURE

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

ORDER NISI

BEFORE THE HONOURABLE \_\_\_\_\_ ) in \_\_\_\_\_, Nunavut  
 \_\_\_\_\_ ) (community)  
 \_\_\_\_\_ )  
 \_\_\_\_\_ ) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 \_\_\_\_\_ )  
 IN CHAMBERS \_\_\_\_\_ )

UPON THE APPLICATION of the Plaintiff, and upon reading the Statement of Claim, evidence of service of the Statement of Claim, the affidavits of \_\_\_\_\_, certified copies of the certificates of title to the lands in question in this action and a General Registry Certificate, and upon hearing Counsel for the Plaintiff;

AND it appearing that the Plaintiff is mortgagee of the lands in question in this action under and by virtue of a Memorandum of Mortgage dated \_\_\_\_\_, 20\_\_\_\_;  
 (month) (day)

1. IT IS ADJUDGED that there is due and owing under the Mortgage as at \_\_\_\_\_, 20\_\_\_\_  
 (month) (day)  
 the amount of \$\_\_\_\_\_, being the sum of \$\_\_\_\_\_ for principal, \$\_\_\_\_\_ for other charges, \$\_\_\_\_\_ for interest on the principal and other charges, and \$\_\_\_\_\_ for the Plaintiff's taxed costs, and that the amount shall be realized by a sale of the mortgaged lands, in default of which foreclosure may be ordered as provided in this Order.

2. AND on payment by the Defendant or anyone entitled to do so to the Plaintiff or into court to the credit of this action within \_\_\_\_\_ after the date of the service of this Order on the Defendant and other persons required to be served, or after that period but before the Plaintiff obtains a final order for foreclosure, of the said amount of \$\_\_\_\_\_ and subsequent costs, together with any other sum that the Plaintiff must pay to protect the Plaintiff's security, with interest on any such sum from the date of payment and on said judgment at the rate of \_\_\_\_\_% per annum, IT IS ORDERED that the Plaintiff do execute and deliver to the person so paying or from whom the said amount is received, at that person's expense, a discharge or transfer, as the case requires, of the Mortgage and deliver up all documents relating to the mortgaged premises, namely:

(Set out full legal description of the mortgaged lands).

3. IT IS FURTHER ORDERED that on default of payment of the sums required by this Order, the mortgaged premises shall be offered for sale by tender on the terms set out in the advertisement and subject to the directions for advertising as approved by me and filed in Court, and that all tenders received be submitted to this Court for approval.

4. AND IT IS FURTHER ORDERED that service of this Order on the Defendant may be effected by mailing a copy of the Order in fully prepared registered envelopes addressed as follows:

\_\_\_\_\_.

5. AND IT IS FURTHER ORDERED that all subsequent encumbrancers be served with a copy of this Order pursuant to subrule 580(2) of the *Rules of the Supreme Court of the Northwest Territories*.

6. AND IT IS FURTHER ORDERED that any party interested shall have liberty to apply from time to time as that party may be advised.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

*The following must be endorsed on the left side of the backer to the Order Nisi.*

**NOTICE TO SUBSEQUENT ENCUMBRANCERS**

TAKE NOTICE first that from the time of service of this Order,

- (a) you will be bound by the proceedings in this action in the same manner as if you had been originally made a party unless you, within days after the service of this Order, apply to the Nunavut Court of Justice to discharge, vary or add to the Order; and
- (b) you may, on service on the Plaintiff of a notice of your desire to do so, attend the proceedings to which the Order relates.

FORM 54

(Subrule 589(1))

FINAL AFFIDAVIT OF DEFAULT - FORECLOSURE  
OR SPECIFIC PERFORMANCE OF AGREEMENT FOR SALE

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

FINAL AFFIDAVIT OF DEFAULT

I, \_\_\_\_\_, of \_\_\_\_\_ Nunavut,  
(community)

make oath and say as follows:

1. I am the \_\_\_\_\_ of the Plaintiff and have a personal knowledge of the matters deposed to in this affidavit except where stated to be on information or belief.

2. There is due to the Plaintiff, under and by virtue of the judgment in this action dated \_\_\_\_\_, 20\_\_\_\_, the amount of \$\_\_\_\_\_, being the sum of \$\_\_\_\_\_, the amount found due to  
(month) (day)  
the Plaintiff in respect of the mortgage (or agreement for sale), dated \_\_\_\_\_, 20\_\_\_\_, as  
(month) (day)  
described in the pleadings, and costs and \$\_\_\_\_\_ for interest on the sum of \$\_\_\_\_\_ from  
(month) (day), 20\_\_\_\_, to \_\_\_\_\_, 20\_\_\_\_, at the rate of \_\_\_\_\_ %  
(month) (day) per annum.

3. Speaking positively for myself and to the best of my knowledge, information and belief as to other persons, I further say that the Plaintiff has not, nor has any person or persons by the Plaintiff's order or for the Plaintiff's use, received any sum of money for or on account of the said sum or interest, or any part of the sum or interest or any security or satisfaction whatsoever for the principal money and interest respectively (add, if necessary: save and except the following):

4. The Plaintiff is not now and since the date of the Mortgage (or Agreement) never has been, nor has any person by the Plaintiff's order or to my knowledge or belief for the Plaintiff's use been in occupation of the said lands or any part of the said lands, or in receipt of the rents and profits, or any part of the rents and profits, of the said lands.

SWORN BEFORE ME at \_\_\_\_\_, )  
(community) )  
)  
Nunavut, on \_\_\_\_\_, 20\_\_\_\_ )  
(month) (day) )  
)  
)

\_\_\_\_\_  
(Signature of deponent)

Note: This affidavit must be signed before a person authorized to take affidavits by the Evidence Act.

FORM 55

(Subrule 589(2))

ORDER FOR SALE

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

BEFORE THE HONOURABLE \_\_\_\_\_ ) in \_\_\_\_\_, Nunavut  
 \_\_\_\_\_ ) (community)  
 \_\_\_\_\_ )  
 \_\_\_\_\_ ) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 \_\_\_\_\_ )  
 IN CHAMBERS \_\_\_\_\_ )

UPON THE APPLICATION of the Plaintiff, and upon reading the Order made by the Honourable  
 \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_ and evidence of service of the Order  
 \_\_\_\_\_ (month) (day)  
 and upon hearing Counsel for the Plaintiff;

AND it appearing that the Defendant has failed to redeem the land in question in this action in  
 compliance with the Order of the Honourable \_\_\_\_\_;

1. IT IS HEREBY ORDERED that the mortgaged premises shall be offered for sale by tender on the terms set out in the advertisement and subject to the directions for advertising as approved by me and filed in Court, and that all tenders received be submitted to this Court for approval.
2. AND IT IS FURTHER ORDERED that in the event that the said sale is abortive, then the Plaintiff may apply for foreclosure.
3. AND IT IS FURTHER ORDERED that service of this Order on the Defendant may be effected by mailing a copy of the Order in fully prepaid registered envelopes addressed as follows: \_\_\_\_\_.
4. AND IT IS FURTHER ORDERED that all subsequent encumbrancers be served with a copy of this Order pursuant to subrule 580(2) of the *Rules of the Supreme Court of the Northwest Territories*.
5. AND IT IS FURTHER ORDERED that any party interested shall have the liberty to apply from time to time as that party may be advised.

\_\_\_\_\_  
 Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Clerk of the Nunavut Court of Justice

FORM 56

(Subrule 589(2))

ORDER FOR FORECLOSURE

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

ORDER FOR FORECLOSURE

BEFORE THE HONOURABLE

) in \_\_\_\_\_, Nunavut

) (community)

)

) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

)

IN CHAMBERS

)

UPON THE APPLICATION of the Plaintiff and upon reading the Order for Sale made in this action, dated \_\_\_\_\_, 20\_\_\_\_, the advertisement and directions for advertising, the statement of upset price and the affidavits of \_\_\_\_\_ and the exhibits referred to the affidavits;

AND IT APPEARING that, since the date of the Order for Sale, no money has been paid pursuant to the terms of the Order, the lands were duly advertised and offered for sale and the sale proved abortive, and upon hearing Counsel for the Plaintiff;

1. IT IS ORDERED that the Defendant do stand absolutely debarred and foreclosed of and from all his (or her or its) estate, right, title, interest and equity of redemption in the lands in question in this action, namely:

(Set out full legal description of mortgaged lands)

2. AND IT IS FURTHER ORDERED that the said lands be and the same are hereby vested in \_\_\_\_\_ for all the estate, right, title, interest and equity of redemption of the Defendant in and to the said lands.

3. AND IT IS FURTHER ORDERED that the Registrar of the Land Titles Office in the \_\_\_\_\_, (registration district) do cancel Certificate of Title No. \_\_\_\_\_ to the said lands and do issue a new certificate of title to the lands in question in the name of \_\_\_\_\_ free from the Plaintiff's mortgage and all subsequent encumbrances except the following:

(add, if necessary list encumbrances):

4. AND IT IS FURTHER ORDERED that the Defendant do within \_\_\_\_\_ days after the service of this Order deliver up to the Plaintiff, or to a person appointed by the Plaintiff, possession of the said lands or such part of the said lands as may be in possession of the Defendant.

AND IT IS FURTHER ORDERED that in default of possession being delivered up as required in this Order, a writ of possession do issue without further order.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 57

(Subrule 589(2))

ORDER CONFIRMING SALE AND VESTING ORDER

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

ORDER CONFIRMING SALE AND VESTING ORDER

BEFORE THE HONOURABLE

) in \_\_\_\_\_, Nunavut

) (community)

)

\_\_\_\_\_

) this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

)

IN CHAMBERS

)

UPON THE APPLICATION of the Plaintiff, and upon reading the Order for Sale made in this action, dated \_\_\_\_\_, 20\_\_\_\_, the advertisement and the directions for advertising and upon (month) (day) proof of publication and compliance with the directions for advertising as fixed by this Honourable Court;

AND IT APPEARING that a tender of \$ \_\_\_\_\_ has been submitted by \_\_\_\_\_, upon hearing what was alleged by Counsel for the Plaintiff (no one appearing for the Defendant) and upon hearing what was alleged by Counsel for \_\_\_\_\_;

1. IT IS HEREBY ORDERED that the tender submitted by \_\_\_\_\_ of \_\_\_\_\_ in the sum of \$ \_\_\_\_\_ for the purchase of the lands in question in this action, be approved and accepted.

2. AND IT IS FURTHER ORDERED that on paying into court the balance of the tender price, be entitled to enter into possession of the lands that are subject matter of the sale.

3. AND IT IS FURTHER ORDERED that the Clerk of the Nunavut Court of Justice do distribute the proceeds of the sale as follows:

4. AND IT IS FURTHER ORDERED that the Registrar of the Land Titles Office,  
\_\_\_\_\_, do cancel Certificate of Title No. \_\_\_\_\_ covering the following  
(registration district)  
lands:

(Set out full legal description of mortgaged lands)

and that the Registrar issue a new Certificate of Title covering the said lands in the name of  
\_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_,  
(mailing address) (community) (territory or province)  
free and clear of the Plaintiff's mortgage and all subsequent encumbrances (add, if necessary: except the  
following: list encumbrances).

5. AND IT IS FURTHER ORDERED that any interest of \_\_\_\_\_ in  
the said lands is hereby extinguished.

6. AND IT IS FURTHER ORDERED that the Plaintiff do recover from the Defendant costs in this  
action to be payable forthwith after the taxation of them, to be added to the amount of the claim under  
the Mortgage and paid as set out above.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 58

(Rule 573)

STATEMENT OF CLAIM - SPECIFIC PERFORMANCE OF AGREEMENT FOR SALE

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

\_\_\_\_\_ Plaintiff

- and -

\_\_\_\_\_ Defendant

STATEMENT OF CLAIM

1. By an Agreement in writing dated \_\_\_\_\_, 20\_\_\_\_, and made between \_\_\_\_\_, Plaintiff, and \_\_\_\_\_, Defendant, the Plaintiff, \_\_\_\_\_, agree to sell and the Defendant, \_\_\_\_\_, agreed to purchase the following lands, namely:

*(Set out full legal description of lands)*

together with all the privileges and appurtenances belonging to the lands, and subject to the exceptions, reservations and conditions as mentioned in the agreement, for the sum of \$ \_\_\_\_\_, payable as follows:

*(Set out terms of repayment)*

2. In the Agreement \_\_\_\_\_ covenanted with the Plaintiff to pay the sum of money mentioned in the Agreement, with interest at the rate of \_\_\_\_\_% per annum on the days and times and in the manner mentioned in the Agreement.

3. In the Agreement the Defendant covenanted to pay and discharge all taxes, rates and assessments rated and charged on the said lands from and after \_\_\_\_\_, 20\_\_\_\_, and also to insure the buildings on the said lands against damage by fire and the crops against damage by hail, in default of which the Plaintiff should have the right to do the same and add to the Agreement all costs and expenses incurred by the Plaintiff in that regard and in respect of any proceeding taken to realize the moneys payable under the Agreement.

4. The Agreement also provided that if default should be made in payment of principal or interest or any part of principal or interest, at the option of the Plaintiff, the whole of the purchase money should become due and payable as if the time mentioned in the Agreement for payment of the money had fully come and expired, and the Plaintiff hereby exercises that option.

5. Default has been made in payment of the principal sum, in payment of the interest and in payment of taxes and insurance premiums payable pursuant to the terms of the Agreement.

6. There is due and owing by the Defendant to the Plaintiff under the Agreement the sum of \$ \_\_\_\_\_ according to the following particulars: \_\_\_\_\_.

7. The Agreement further provided that unless the payments due under it are punctually made, the Defendant should be deemed to have deliberately repudiated and abandoned the Agreement and the Plaintiff should be at liberty to determine or cancel the Agreement, or to re-enter on and to resell the said lands, and that all payments made on account before determination or cancellation of the Agreement should be retained by the Plaintiff as and by way of liquidated damages.

8. The said payments have not been punctually made, and the Plaintiff accordingly by this action is determining the Agreement and says that by reason of the determination the Plaintiff is entitled to retain as liquidated damages all payments made on account of the Agreement.

9. The Plaintiff says that the default of the Defendant has not been made due to causes beyond the Defendant's control and that, having regard to the Defendant's ability to pay and the value of the Plaintiff's security, the period of redemption in the judgment in this action should be shortened to less than \_\_\_\_\_.

10. The Plaintiff is the registered owner of the said lands and now is and has been always ready and willing and in a position to grant title to the Defendant to the said lands.

11. The plaintiff proposes that this action shall be tried at \_\_\_\_\_, Nunavut.  
(community)

WHEREFORE THE PLAINTIFF CLAIMS:

- (a) a declaration as to the amount owing under the Agreement with interest according to the terms of the Agreement;
- (b) in default payment of the said amount, sale of the said lands;
- (c) in the event of an abortive sale, determination of the Agreement and forfeiture of the moneys paid on account of the Agreement, and possession of the said lands;
- (d) a vendor's lien on the said lands for the amount found due under the judgment and costs;
- (e) appointment of a receiver;
- (f) immediate possession of the said lands;
- (g) such other relief as the nature of the case may require and to this Honourable Court may seem meet;
- (h) an Order shortening the period of redemption to \_\_\_\_\_ or such other period as the Court may direct;
- (i) the costs of this action.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_  
(community) (month) (day)

and delivered by \_\_\_\_\_, solicitor (or agent) for \_\_\_\_\_ (or the Plaintiff), whose address for service is \_\_\_\_\_.

\_\_\_\_\_  
*Signature of solicitor, Plaintiff or agent*

(Note: Affix "Notice to the Defendant(s)" as required by subrule 16(3))

FORM 59

(Subrule 579(2))

AFFIDAVIT OF DEFAULT - SPECIFIC PERFORMANCE OF AGREEMENT FOR SALE

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

**AFFIDAVIT OF DEFAULT**

I, \_\_\_\_\_, of \_\_\_\_\_, Nunavut, make oath and say as follows:  
(community)

1. I am the \_\_\_\_\_ of the Plaintiff \_\_\_\_\_ and as such have a personal knowledge of the matters deposed to in this affidavit except where stated to be on information and belief.

2. By an Agreement in writing dated \_\_\_\_\_, 20\_\_\_\_, and made between \_\_\_\_\_ (month) (day) \_\_\_\_\_, Plaintiff, and \_\_\_\_\_, Defendant, a copy of which is attached to and marked Exhibit "A" to this affidavit, the Plaintiff agreed to sell and the Defendant agreed to purchase the following lands, namely:

(Describe lands)

for the sum of \$ \_\_\_\_\_ payable as follows:

(Set out terms of repayment)

3. In the Agreement \_\_\_\_\_ covenanted with the Plaintiff to pay the sums of money mentioned in the Agreement with interest at the rate of \_\_\_\_\_% on the days and times and in the manner mentioned in the Agreement.

4. In the Agreement the Defendant covenanted to pay and discharge all taxes, rates and assessments rated and charged \_\_\_\_\_ on the said lands from and after \_\_\_\_\_, 20\_\_\_\_, and

(month) (day)

also to insure the buildings on the said lands against damage by fire and the crops against damage by hail, in default of which the Plaintiff should have the right to do the same and add to the Agreement all costs and expenses incurred by the Plaintiff in that regard and in respect of any proceeding taken to realize the moneys payable under the Agreement.

5. The Agreement also provided that if default should be made in payment of principal or interest or any part of principal or interest, at the option of the Plaintiff, the whole of the purchase money should become due and payable as if the time mentioned in the Agreement for payment of the money had fully come and expired, and the Plaintiff hereby exercises that option.

6. Default has been made in payment of the principal sum, in payment of the interest and in payment of taxes and insurance premiums payable pursuant to the terms of the Agreement.

7. There is now due and owing by the Defendant to the Plaintiff under the Agreement the sum of \_\_\_\_\_ \$ as shown on the statement attached to and marked as Exhibit "B" to this affidavit.



FORM 60

(Subrule 579(4))

ORDER NISI-  
SPECIFIC PERFORMANCE OF AGREEMENT FORSALE

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

ORDER NISI

BEFORE THE HONOURABLE \_\_\_\_\_ ) in \_\_\_\_\_, Nunavut  
 \_\_\_\_\_ ) (community)  
 \_\_\_\_\_ )  
 \_\_\_\_\_ ) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 \_\_\_\_\_ )  
 IN CHAMBERS \_\_\_\_\_ )

UPON THE APPLICATION of the Plaintiff, and upon reading the Statement of Claim, evidence of service of the Statement of Claim, the affidavits of \_\_\_\_\_, the certificates of title to the lands in question in this action and a General Registry Certificate, and upon hearing Counsel for the Plaintiff;

AND IT APPEARING that by Agreement dated \_\_\_\_\_, 20\_\_\_\_, the Plaintiff  
 \_\_\_\_\_ (month) (day)  
 sold the said lands to \_\_\_\_\_;

AND IT APPEARING that the said lands are vested in the Plaintiff and that the Plaintiff has a good title to the said lands as registered owner of an estate in fee simple in possession;

1. IT IS ADJUDGED that there is due and owing under the Agreement as at \_\_\_\_\_, (month) (day) 20\_\_\_\_, the amount of \$ \_\_\_\_\_, being the sum of \$ \_\_\_\_\_ for principal, \$ \_\_\_\_\_ for other charges, \$ \_\_\_\_\_ for interest on the principal and other charges and \$ \_\_\_\_\_ for the Plaintiff's taxed costs.

2. AND IT IS DECLARED that the Plaintiff is entitled to and has a lien upon the interest of the Defendant \_\_\_\_\_ in the said lands in the sum of \$ \_\_\_\_\_, with subsequent interest on that sum at the rate of \_\_\_\_\_% per annum, together with any subsequent costs, with liberty to the Plaintiff to apply to enforce the lien.

3. AND on payment by the Defendant or anyone entitled so to do to the Plaintiff or into court to the credit of this action within \_\_\_\_\_ after the service of this Order on the Defendant and other persons required to be served, or after that period but before the Plaintiff obtains a final order for determination, of the said amount of \$ \_\_\_\_\_ and subsequent costs, together with any other sum that the Plaintiff shall pay to protect the Plaintiff's security, with interest on any such sum from the date of payment and on said judgment at the rate of \_\_\_\_\_% per annum, IT IS ORDERED that, the Plaintiff do execute and deliver to the person so paying, at that person's expense, a transfer or other conveyance (to be settled by a judge in case of dispute) of the lands described in the pleadings sufficient to pass the lands free of all encumbrances except such as shall have been made or

suffered by the Defendant, and also to deliver to the person so paying or deposit in the Land Titles Office for  
\_\_\_\_\_ the duplicate certificate of title to the said lands, namely:  
*(registration district)*

*(Set out full legal description of lands)*

4. AND IT IS FURTHER ORDERED that on default of payment of the sums as required by this Order, the said lands shall be offered for sale by tender on the terms set out in the advertisement and subject to the directions for advertising as approved by me and filed in Court and that all tenders received to be submitted to this Court for approval.
5. AND IT IS FURTHER ORDERED that if the sale is abortive, the Plaintiff may apply for determination of the Agreement.
6. AND IT IS FURTHER ORDERED that the Defendant is not entitled to the return of any moneys paid under the Agreement and that the Plaintiff is entitled to retain those moneys as liquidated damages.
7. AND IT IS FURTHER ORDERED that service of this Order on the Defendant may be effected by mailing a copy of the Order in a fully prepaid registered envelope addressed as follows: \_\_\_\_\_.
8. AND IT IS FURTHER ORDERED that all subsequent encumbrancers be served with a copy of this Order pursuant to subrule 580(2) of the *Rules of the Supreme Court of the Northwest Territories*.
9. AND IT IS FURTHER ORDERED that any party interested shall have liberty to apply from time to time as that party may be advised.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

*The following must be endorsed on the left side of the backer to the Order Nisi:*

**NOTICE TO SUBSEQUENT ENCUMBRANCERS**

TAKE NOTICE first that from the time of service of this Order,

- (a) you will be bound by the proceedings in this action in the same manner as if you had been originally made a party unless you, within days after the service of this Order, apply to the Nunavut Court of Justice to discharge, vary or add to the Order; and
- (b) you may, on service on the Plaintiff of a notice of your desire to do so, attend the proceedings to which the Order relates.

FORM 61

(Subrule 589(2))

ORDER DETERMINING AGREEMENT FOR SALE

IN THE NUNAVUT COURT OF JUSTICE

(Style of cause)

ORDER DETERMINING AGREEMENT FOR SALE

BEFORE THE HONOURABLE \_\_\_\_\_ ) in \_\_\_\_\_, Nunavut  
 \_\_\_\_\_ ) (community)  
 \_\_\_\_\_ )  
 \_\_\_\_\_ ) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 \_\_\_\_\_ )  
 IN CHAMBERS \_\_\_\_\_ )

UPON APPLICATION of the Plaintiff, and upon reading the Order for Sale made in this action, dated \_\_\_\_\_, 20\_\_\_\_, the advertisement and the directions for advertising, the statement (month) (day) of upset price and the affidavits of \_\_\_\_\_ and the exhibits to in the affidavits;

AND IT APPEARING that since, the date of the Order for Sale, no money has been paid pursuant to the terms of the Order, the lands were duly advertised and offered for sale and the sale proved abortive, and upon hearing Counsel for the Plaintiff;

1. IT IS ORDERED that the Agreement in question in this action made between the Plaintiff and the Defendant \_\_\_\_\_ be and the same is hereby determined and at an end.
2. AND IT IS FURTHER ORDERED that the Defendant do stand absolutely debarred and foreclosed of and from all his (or her or its) estate, right, title and interest under the Agreement in and to the said lands in question in this action, namely:

(Set out full legal description of lands)

3. AND IT IS FURTHER ORDERED that the Defendant do within \_\_\_\_\_ days after the service of this Order deliver up to the Plaintiff, or to a person appointed by the Plaintiff, possession of the said lands or such part of the said lands as may be in possession of the Defendant.

4. AND IT IS FURTHER ORDERED that in default of possession being delivered up as required by this Order a writ of possession do issue without further order.

\_\_\_\_\_  
 Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Clerk of the Nunavut Court of Justice

FORM 62

(Rule 611)

ORDER FOR EXAMINATION IN RESPECT OF FOREIGN PROCEEDING

IN THE NUNAVUT COURT OF JUSTICE

IN THE MATTER of a civil proceeding now pending  
before \_\_\_\_\_ styled as follows:

(description of foreign court or tribunal)

(Style of cause)

BEFORE THE HONOURABLE \_\_\_\_\_ ) in \_\_\_\_\_, Nunavut  
 ) (community)  
 )  
 ) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 )  
 )  
IN CHAMBERS )

ORDER

UPON reading the affidavit (if any) of \_\_\_\_\_ and the certificate of \_\_\_\_\_ that a proceeding is pending in the \_\_\_\_\_ in \_\_\_\_\_  
(description of foreign court or tribunal) (name of foreign country)  
and that such court is desirous of obtaining the testimony of \_\_\_\_\_;  
(names of witnesses)

1. IT IS ORDERED that \_\_\_\_\_ do attend before \_\_\_\_\_  
(name and address of examiner)  
who is hereby appointed examiner herein, at \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_,  
(place appointed for examination) (month) (day)  
at \_\_\_\_\_ a.m. (or p.m.), or such other day and time as the examiner may appoint, and do there submit to an examination on oath or affirmation relating to the matters in question (add, if required: and do then and there produce \_\_\_\_\_.  
(description of documents required to be produced)

2. AND IT IS FURTHER ORDERED that the examiner do cause the evidence of the witness to be transcribed according to the rules and practice of this Court pertaining to examinations for discovery (or as may be otherwise directed), and when transcribed do transmit the evidence together with this Order, to the Clerk of the Court, at \_\_\_\_\_, Nunavut for transmission to the proper officer of  
(community)  
the \_\_\_\_\_ desiring the evidence of such witness.  
(description of foreign court or tribunal)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 63

*(Subrule 613(2))*

CERTIFICATE OF EVIDENCE TAKEN FOR FOREIGN COURT OR TRIBUNAL

**CERTIFICATE**

I, \_\_\_\_\_, Clerk of the Nunavut Court of Justice, hereby certify the following documents annexed to this Certificate:

- (a) the original order of the Nunavut Court of Justice dated \_\_\_\_\_, 20\_\_\_\_  
*(month) (day)*  
made in the matter of a civil proceeding pending before \_\_\_\_\_  
*(description of foreign court or tribunal)*  
directing the examination of a certain person to be taken before \_\_\_\_\_; and,
- (b) a transcript of the evidence taken pursuant to the Order.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
*(community) (month) (day)*

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 64

(Rule 621)

ORDER GRANTING LEAVE TO REGISTER FOREIGN JUDGMENT UNDER THE RECIPROCAL  
ENFORCEMENT OF JUDGMENTS ACT

IN THE NUNAVUT COURT OF JUSTICE

IN THE MATTER of the *Reciprocal Enforcement of Judgments Act* and  
in the matter of a judgment of \_\_\_\_\_

obtained by \_\_\_\_\_ and dated \_\_\_\_\_, 20\_\_\_\_  
(describe cause or matter) (month) (day)  
(describe court)

(Style of cause)

ORDER

BEFORE THE HONOURABLE \_\_\_\_\_ ) in \_\_\_\_\_, Nunavut  
\_\_\_\_\_ ) (community)  
\_\_\_\_\_ )  
\_\_\_\_\_ ) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

UPON THE APPLICATION of \_\_\_\_\_ coming before me on  
\_\_\_\_\_, 20\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_,  
(month) (day)  
and upon hearing \_\_\_\_\_, Counsel for the Applicant, and \_\_\_\_\_,  
Counsel for the Respondent;

THIS COURT ORDERS that the judgment dated \_\_\_\_\_, 20\_\_\_\_,  
(month) (day)  
of \_\_\_\_\_ whereby it was adjudged that \_\_\_\_\_ recover  
(name of court) (name and address of judgment creditor)  
from \_\_\_\_\_ the sum of \$ \_\_\_\_\_ for debt (or as the case may be) and \$ \_\_\_\_\_ for  
(judgment debtor)  
costs, be registered in this Court.

Add if order obtained ex parte:

THIS COURT FURTHER ORDERS that \_\_\_\_\_ may apply to set aside the registration  
(name of judgment debtor)  
within one month after he (or she or it) has notice of it.

Add paragraph on costs, where required.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice

FORM 65

(Subrule 626(1))

APPLICATION FOR REGISTRATION OF UNITED KINGDOM JUDGMENT

IN THE NUNAVUT COURT OF JUSTICE

IN THE MATTER of the *Reciprocal Enforcement of Judgments (Canada – U.K.) Act*  
and in the matter of a judgment of \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_  
(describe court) (month) (day)

(Style of cause)

APPLICATION

1. The applicant applies under the *Reciprocal Enforcement of Judgments (Canada-U.K.) Act* for registration of the following judgment of a court in the United Kingdom:

- (a) Name of court:
- (b) Name of Plaintiff (or Applicant):
- (c) Name of Defendant (or Respondent):
- (d) Date of judgment:
- (e) The amount awarded, in the currency of the judgment, in favour of each Plaintiff (or Applicant) and against each Defendant (or Respondent) is as follows:

Judgment in favour:	Judgment against:	Amount of judgment	Amount awarded for costs:
_____	_____	_____	_____

(f) Post-judgment interest is payable under the judgment at \_\_\_\_\_% per annum, commencing on \_\_\_\_\_, 20 on \_\_\_\_\_

(principal amount)

(g) The amount unpaid, in the currency of the judgment, to each Plaintiff (or Applicant) and by each Defendant (or Respondent) is as follows:

<u>Payable to:</u>	<u>Payable by:</u>	<u>Amount unpaid on judgment including interest:</u>	<u>Amount unpaid on award of costs, including interest:</u>
_____	_____	_____	_____



FORM 66

(Rule 707)

WARRANT FOR COMMITTAL FOR CONTEMPT

IN THE NUNAVUT COURT OF JUSTICE

WARRANT FOR COMMITTAL FOR CONTEMPT

TO the Peace Officers in Nunavut and the keeper of any common jail in Nunavut:

WHEREAS \_\_\_\_\_ of \_\_\_\_\_, hereinafter  
called the Offender, was on \_\_\_\_\_, 20\_\_\_\_ held to be in contempt of court;  
(month) (day)

AND WHEREAS it was adjudged that the Offender be imprisoned as punishment for the contempt;

YOU ARE HEREBY COMMANDED to arrest the Offender, if necessary, and to take and convey the  
Offender to \_\_\_\_\_ at \_\_\_\_\_ and deliver the Offender  
to the keeper thereof, who is hereby commanded to receive the Offender into custody and to imprison him (*or*  
her) for the term of \_\_\_\_\_, and this is a sufficient warrant for so doing.

DATED at \_\_\_\_\_, Nunavut, on \_\_\_\_\_, 20\_\_\_\_.  
(community) (month) (day)

\_\_\_\_\_  
Clerk of the Nunavut Court of Justice