

Appendix A: Infants as Parties to Actions

Introduction

<u>Supreme Court Civil Rule 20-2</u> sets out a number of special requirements which must be followed when dealing with infants or a person under a legal disability. <u>Supreme Court Civil Rule 7-2(8)</u> applies to Examinations for Discovery of Guardians and Infants and <u>23-4(16)</u> applies to monies paid into court for infants. <u>Supreme Court Civil Rule12-5(50)</u> deals with Discovery Evidence of a person under a disability and <u>23-4(14)</u> deals with monies paid into court for someone under a Disability. See Appendix D for the <u>Supreme Court Rules</u> which are applicable in Small Claims proceedings.

Definitions

Infant: a person who is under 19 years of age

Litigation Guardian: the parent or legal guardian of the infant, or an adult willing to act as the litigation guardian for the infant

Starting the Claim

e infant must start a claim through his or her litigation guardian. Before the name of a person is used in a proceeding as a litigation guardian, that person's consent, signed by the person or his or her lawyer, must be filed, unless the person:

- a. has been appointed by the court; or
- b. is the litigation guardian under section 35 (1) of the <u>Representation Agreement Act</u> of a party to that proceeding.

The litigation guardian, or their lawyer, may use Consent to Act as Litigation Guardian and Certificate of Fitness form (SCL 807).

Unless a committee has been appointed, the lawyer for a person under disability, before acting in a proceeding, must, unless subrule (9) applies, file a certificate that he or she knows or believes that

- a. the person to whom the certificate relates is an infant or mentally incompetent person, giving the grounds of that knowledge or belief, and if the person to whom the certificate relates is a mentally incompetent person, that a committee has not been appointed for the person; and
- b. the proposed litigation guardian of the person under disability has no interest in the proceeding adverse to that person.

The lawyer for a person who, under section 35 (1) of the <u>Representation Agreement Act</u>, has a litigation guardian must, before acting in a proceeding to which the person is a party, file a certificate certifying that lawyer knows or believes that:

a. the person has entered into a representation agreement;

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- b. the litigation guardian is a representative under that representation agreement and is authorized under section 7 (1) (d) of the <u>Representation Agreement Act</u> in relation to the proceeding; and
- c. the litigation guardian has no interest in the proceeding adverse to the person.

The Notice of Claim may be filed without the Consent and Certificate, but the registrar should not allow any action, such as a default order, to take place until it is filed.

If the infant does not have an adult person willing to assist with the case, the infant should contact the Guardianship and Trust Management Services for Children and Youth of the Office of the Public Trustee at: Telephone: 604 775-3480.

The wording on the Notice of Claim should look like, "The claim is started in the name of "______, an infant by his [or her] litigation guardian ______."

If the infant's case is not successful in court, no order for costs is usually made against the litigation guardian.

The litigation guardian may, on the infant's behalf, join the action at any time before judgment. However, if the infant sues without a litigation guardian, any judgment obtained is invalid. The defendant may apply to have the judgment set aside and recover costs. If an action is taken to execute a judgment, the infant may be held personally liable.

If the claim is for personal injury, the litigation guardian may not abandon part of the claim to bring it into the jurisdiction of the Small Claims Court, without the consent of the Public Trustee. [Small Claims Rule 1(4.1)]

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Infant as Defendant

If a claimant wants to make a claim against an infant, the infant should be named as the defendant on the Notice of Claim as, "______, an infant." The litigation guardian should also be specified, if known.

Note: If the defendant is an infant, there may be substantial legal problems on which legal advice should be sought.

Role of the Litigation Guardian

Unless a rule otherwise provides, anything that is required or authorized by the *Supreme Court Civil Rules* to be done by or invoked against a party under disability must be done on the party's behalf by his or her litigation guardian, or be invoked against the party by invoking the same against the party's litigation guardian [*Supreme Court Civil Rule* 20-2(3)]

Serving the Notice of Claim

The Notice of Claim should always be served on the guardian. If the infant lives away from home, and the infant's parents live outside the province, the claimant can apply for an alternate method of service. Alternate service is made on:

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- the infant, or
- an adult who cares for the infant, or
- the public trustee

If the notice is served on the infant without an order, it is invalid. However, if the infant replies to the claim, it will be accepted as valid.

Replying to the Claim

If the infant wishes to reply to the claim within 14 days, the litigation guardian must file a reply on the infant's behalf. The litigation guardian must also file a Consent to Act as Litigation Guardian and Certificate of Fitness (SCL 807).

Settlements

The litigation guardian, who makes a claim on behalf of an infant, may not settle the claim without the consent of the Public Trustee. [Section 40, *Infants Act* and *Small Claims Rule* 17(19)].

Default Orders

Even after the 14-day reply period has passed, a default order cannot be filed automatically. The claimant must first:

- apply for a court order appointing a litigation guardian (the public trustee may be appointed if necessary) [Supreme Court Civil Rule 20-2(16)]].
- apply to the court to serve the default order [Supreme Court Civil Rule 20-2(14)].

The application for permission to deliver the order must be served on the guardian at least 10 days before the hearing of the application. [*Supreme Court Civil Rule* 20-2(15)].

The Trial

If the claim is for personal injury, the litigation guardian for the claimant must act through a solicitor unless the litigation guardian is the Public Trustee. [*Supreme Court Civil Rule* 20-2(4) and *Small Claims Rule* 17 (19)].

If the judge decides against the infant, the litigation guardian is not liable for costs.

An infant who defends an action unsuccessfully, without disclosing that he or she is an infant and without a litigation guardian, may not be entitled to have the judgment set aside.

If it becomes clear during the trial that the defendant is an infant, the judge may appoint a consenting parent or guardian as litigation guardian. The judge may allow the litigation guardian to give verbal evidence regarding the infancy and lack of adverse interest.

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Infant Becomes Adult

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When a person involved in a Small Claims proceeding becomes the age of majority, the person may file an affidavit confirming the attainment of the age of majority.

[<u>Supreme Court Civil Rule 20-2(12)</u>]. The affidavit is prescribed as <u>Form 78</u> in the Supreme Court Civil Ru and the party may prepare their own or obtain a copy from the court registry (back of <u>SCL 807</u>). If the affidavit is sworn/affirmed by registry staff, the affidavit fee is charged.

Once the affidavit is filed, a copy of it must be provided to each party involved in the case. [Supreme Court Civil Rule 20-2(12)]

After the affidavit is filed the party assumes conduct of the case for the rest of the proceedings and the style of cause must no longer refer to a litigation guardian. [Supreme Court Rule 6(10.2)].

Obtaining Consent From The Public Trustee

The consent of the Public Trustee is required if the litigation guardian wants to bring the action in Provincial Court where the claim is potentially more than \$25,000 or where the litigation guardian wishes to settle a claim on behalf of an infant.

For both situations consent may be obtained by writing to the Office of the Public Trustee at the following address:

Services to Children Section Office of the Public Trustee 700-808 West Hastings Street Vancouver, British Columbia V6C 3L3

To obtain consent from the Public Trustee for an action to be brought in Provincial Court where the potential claim exceeds \$25,000, the litigation guardian must provide full details of the claim, including all medical documentation and information on liability. The litigation guardian must explain why he/she thinks the infant's recovery is properly limited to an amount of \$25,000 or less. This must be done before the claim is filed in the Small Claims registry, because if the Office of the Public Trustee does not agree with the litigation guardian the claim must be started in the Supreme Court.

If the Public Trustee agrees with the request for consent to file in Small Claims, the Public Trustee will provide the litigation guardian with a letter that must be filed at the time the Small Claims action is filed.

Consent to Settlement

To obtain permission to settle a claim, the litigation guardian must provide full details of the claim, including all medical documentation and information on liability and provide an explanation of why the litigation guardian has agreed to the settlement. In addition, the litigation guardian must provide an executed Guardian Settlement Agreement to evidence agreement between the parties. If the Public Trustee consents to the settlement, the Public Trustee will sign the agreement and affix a seal.

Settlement offers may be made informally between the parties, or under <u>Rule 10.1 of the Small Claims</u> <u>Rules</u>. If the Public Trustee does not support the settlement after reviewing it the case must proceed to trial.

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Appendix B: Reciprocal Enforcement of Judgments

Introduction

Judgments from some other provinces and countries may be enforced in British Columbia and vice versa. [COEA, Part 2]

Participating Provinces and Countries

The Court Order Enforcement Act contains a list of reciprocating jurisdictions. The list includes all Canadian provinces and territories except Quebec. It also includes some states in the United States, some countries of Europe and most areas of Australia.

Registering a Foreign Judgment in B.C.

A creditor who wants to enforce a judgment from outside B.C. has two options. If the debtor resides in B.C., the creditor can start a new Small Claims action. Alternatively, the creditor may apply to the Supreme Court for permission to begin enforcement proceedings in that court. Creditors should be advised to make inquiries at the Supreme Court for information about the procedures to follow.

Once the judgment is registered, it is treated as though it were a Supreme Court of British Columbia judgment and may be enforced. All enforcement proceedings take place in Supreme Court.

Registering Orders For Payment Outside B.C.

Enforcement of an order for payment made in the B.C. Small Claims Court in one of the reciprocating jurisdictions should follow similar procedures. However, the creditor should contact a court registry in the reciprocating jurisdiction to find out their requirements.

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Appendix C: Authorized Signature Regulation

B.C. Reg. 57/91 M38/91 Deposited February 21, 1991

Small Claims Act

Authorized Signature Regulation

Interpretation

1. In this regulation

"Act" means the Small Claims Act;

"Rules" means the Small Claims Rules, B.C. Reg. 478/90.

Registrar may authorize others to sign documents

- 2. A registrar of the Provincial Court may authorize anyone employed in a registry of that court to sign any of the following for the registrar:
 - a. a default order under Rule 6(4);
 - b. a consent order under Rule 16(1);
 - c. an order under <u>Rule 16(2);</u>
 - d. an order for seizure and sale;
 - e. a notice or summons under the Rules;
 - f. a certificate of any matter of record under the Act or Rules.

[Provisions of the *Small Claims Act* relevant to the enactment of this regulation: section 20(3)]

Queens Printer for British Columbia Victoria, 1991

April 15/91

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Appendix D: Applicable Supreme Court Rules

There are only a few Supreme Court Rules which apply to proceedings under the *Small Claims Act*. These are identified in <u>Small Claims Rule 17(18)</u> and include the following Supreme Court Civil Rules:

- a. Rule 10-1 [Detention, Preservation and Recovery of Property];
- b. Rule 10-3 [Interpleader];
- c. Rule 13-2 (4) (only as to writs of delivery) and (7) [Enforcement of Orders];
- d. Rule 20-2 [Persons Under Disability], except Rule 20-2 (4);
- e. Rule 20-2 (4) (only as to personal injury cases).

[en. B.C. Reg. 146/2010, s. 1.]

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1.1 About the Manual

Purpose

This manual is intended to:

- provide a reference on policy, practice and procedure for the Small Claims clerk
- serve as a training aid for Court Services employees

Distribution

The manual is available to Court Services staff on the intranet site.

Content

Chapter 1 describes the manual and gives an overview of the Small Claims Court process.

Chapters 2 - 12 elaborate on each phase of a Small Claims action, and are arranged as follows:

- Chapter 2 Making a Claim and Filing an Order
- <u>Chapter 3</u> Serving the Notice of Claim
- <u>Chapter 4</u> Garnishing Orders and Recovery of Goods Before Judgment
- Chapter 5 Reply
- Chapter 6 Changes to Documents
- Chapter 7 Applications to the Court
- <u>Chapter 8</u> Default Orders
- Chapter 9 Mediation, Settlement Conferences and Offers to Settle
- <u>Chapter 10</u> Trials and Witnesses
- <u>Chapter 11</u> Enforcement and Non-Compliance
- Chapter 12 Appeals
- Chapter 13 contains the Forms used in Small Claims actions.

The following appendices are provided:

- Appendix A Infants as Parties to Actions
- <u>Appendix B</u> Reciprocal Enforcement of Judgments
- <u>Appendix C</u> Authorized Signature Regulation
- Appendix D Supreme Court Rules (applicable to Small Claims proceedings)
- Appendix E Small Claims Act

Future Amendments

vised text in amendents is highlighted.

Use of the Manual

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This manual has been designed for quick and easy use as a reference tool. Familiarize yourself with the Table of Contents and use it as a guide to the manual. It will tell you what is in the manual and where it is located. Instructions are also available on using the html style manual.

Each chapter contains the following sections:

- introduction
- legal commentary
- process
- forms
- flowchart

Use the process and flowchart sections together; they are keyed to one another by number. The flowchart shows the steps in the process graphically.

An <u>index of forms</u> at the front of the forms chapter will help you locate forms. If you are not familiar with a particular form or need more information to complete it, read the form notes. New employees should read the Background Information for each form as well.

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1.2 Overview of Small Claims Court

Introduction

The Small Claims Court is a court in which a person can bring an action without using a lawyer. Lawyer participation is discouraged by not allowing solicitor's fees as part of the costs awarded. The jurisdiction of the Small Claims Court is \$25,000 which means that no claim exceeding \$25,000 is allowed. Actions for libel or slander are not allowed. In Small Claims court, all documents, except the Notice of Claim or Reply can be filed by fax [Rule 17(17)]. All hearings, except the trial or a hearing where sworn evidence may be required, may be held by phone if the registrar grants permission. [Rule 17(16) and (16.1)].

Starting a Claim

An action is started when the claimant (person with the claim) files a Notice of Claim and pays the required fee. The notice is served on the defendant (person being sued).

Some actions are started by filing an order or judgment in the Small Claims court to make use of the available enforcement options to collect an outstanding debt. These might include an order of restitution made in a Criminal court or an unpaid fine order owing to a municipality, a province or the federal government. There may be a fee to file the order in the Small Claims court.

plying to a Claim

Once served, a defendant who resides in British Columbia has fourteen days to respond to the notice. The defendant may respond by paying the full amount to the claimant, by reaching some other agreement with the claimant, by filing a reply and paying the required fee, or by ignoring the claim. If the defendant does not reply to the claim and no agreement is reached between the parties, the claimant can request a default order.

If the claim is for debt, the registrar will sign the default order. This order can be enforced immediately. If the claim is not for debt, the registrar sets a date for a hearing before a judge.

Mediation

Mediation is a collaborative process in which two or more people meet and attempt, with the assistance of a mediator, to resolve their dispute. Mediation is an informal process, however, the mediator does structure the discussion to help parties negotiate a settlement.

The Court Mediation Program for claims up to \$10,000, excluding *Motor Vehicle Act* cases, provides mediation services for some small claims disputes including construction cases or any case among the first number of replies filed (<u>Schedule D</u>). In addition, any party, who is not a person under disability, with a claim up to \$10,000, excluding *Motor Vehicle Act* cases, may choose mediation by filing a *Notice to Mediate*. Cases can also be referred by a judge.

For claims between \$10,000 and \$25,000 including personal injury and motor vehicle related actions a party can choose mediation, after at least one reply has been filed, by applying for mediation and delivering to all

parties named in a proceeding a Notice to Mediate.

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Settlement Conference

If the defendant disputes the claim, the defendant and claimant must attend a settlement conference unless the case is a motor vehicle accident case and only liability for property damage is disputed [Rule 7(2)]. The settlement conference is a meeting between the claimant, defendant and a judge. The purpose of the settlement conference is to try to settle the claim before it goes to trial. The motor vehicle accident cases where only liability for property damage is being disputed will go directly to trial and do not require a settlement conference.

Trial

If a claim cannot be completely resolved at the settlement conference, a trial date is set at that time. After the trial is held, the judge may award judgment to either the claimant or the defendant, or dismiss the claim.

Enforcement

Once an order for payment is awarded, the creditor (person in whose favour the claim was decided) can attempt to enforce the judgment in various ways. The creditor can request a payment hearing to set or confirm the terms of payment or a default hearing to deal with those instances where a payment schedule in ot being followed. Where there is no payment schedule in place a garnishing order can be issued against any money due to the debtor by another party such as his/her bank account or wages. An order of seizure and sale can be issued against the debtor's goods directing the court bailiff to seize and sell the debtor's goods. If the debtor owns land, the creditor can register a certificate of judgment against it.

If the judge feels that the debtor has failed to obey a payment order without sufficient reason, the judge may order the debtor imprisoned for up to twenty days.

Appeal

A party who is dissatisfied with an order of the Small Claims court allowing or dismissing an action may appeal to the Supreme Court nearest to where the order being appealed was made.

If the party wants to dispute an order other than one allowing or dismissing an action, the party should be advised to proceed under the *Judicial Review Procedures Act* in the Supreme Court. Judicial Review is not an appeal. It is a limited review to ensure that correct and fair procedures have been followed. The review does not concern itself with the appropriateness of the result, but looks at the process to ensure that the persons involved have been accorded fair treatment.

Rules

Small Claims court has its own rules and procedures which are less formal and less complicated than in Supreme Court. There are only a few Supreme Court rules that are used in Small Claims court [See Rule (18)].

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Forms

ny of the forms used in Small Claims court are prescribed in <u>Schedule B of the Small Claims Rules</u> and contain instructions for completion. These forms have been prepared in "plain language" and a number of them have a "fly-sheet" attached which provides more detailed information about the form. The forms are intended to make the process simpler for both the claimant and the defendant. Prescribed forms are also intended to make processing of documents simpler for court staff.

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Court Officers

The Small Claims registry has a registrar as the main court officer and there may be a deputy registrar or other signing officers available. The Attorney General may appoint a person to be a registrar of the Provincial Court according to section 20(1) of the *Small Claims Act*. Requests for appointments are submitted to Court Services Headquarters. Section 22(f) of the *Interpretation Act* allows a deputy registrar to be appointed to assist the registrar.

The powers and duties of the registrar and the deputy registrar are set out in the <u>Small Claims Rules</u>. Registrars may refer a matter to a judge even though they have the power to deal with the matter. Registrars may also consult the Administrative Judge in their area if they require assistance.

A registrar may authorize anyone employed in a registry of the Provincial Court to sign a number of uments for the registrar. These documents are specified in the *Authorized Signature Regulation* of the *Small Claims Act*. (See <u>Appendix C</u>).

Registry staff should take note that they are in no way authorize by this manual to practice law or dispense legal advice.

Access to Files

Access to small claims files may be sought by various individuals, including judiciary, case participants and transcript typists, as well as search company representatives. Access is unrestricted, except when a sealing order has been made by a judge.

Members of the public may have access to the court file at the registry where the case is being heard and may access specific court documents through CSO. They may also have access to case information through CSO or at a public inquiry terminal at the registry where the case is being heard.

There is no automatic right of the public and media to access exhibits in Small Claims matters. Access may be sought by application to the Presiding Judge or to the Administrative Judge (if there is no judge seized of the matter) of the Court in the location where the proceedings are or were held. Exhibits must be removed from a file prior to being searched.

Procedures regarding access to DARS audio can be found on the intranet under Records Access Policies or 'he Criminal Case Processing Manual under Records Access Policy and Procedures.

A search fee, as set out in the Fee Schedule of the Small Claims Rules, is applicable for a search of a

record of a proceeding, except a search by a party or the party's solicitor. If they request photocopies be made of any documents, the copy fee is charged. The judiciary and the transcript typist are also not charged for searches or copies of documents requested.

Many court locations have bulk search agreements in place with search companies such as credit reporting companies. These companies generally search new filings and the registries try to accommodate them by arranging an area for them to review the files.

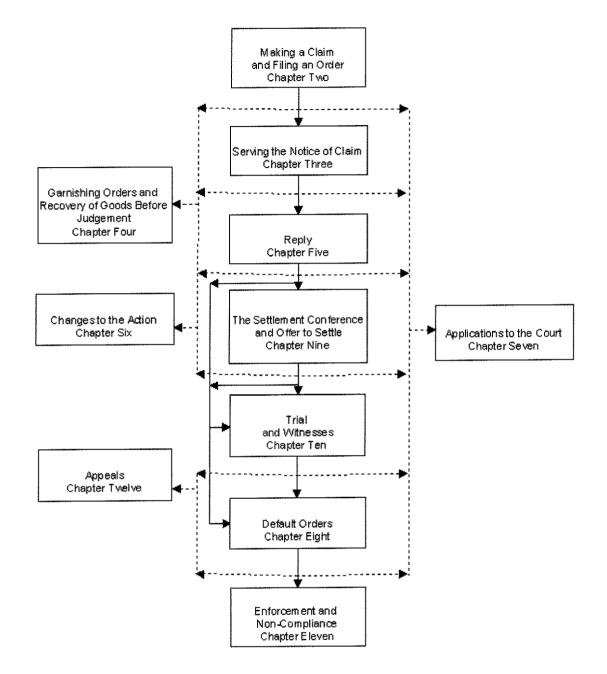
If a registry receives a request for a bulk search agreement to be set up, the manager should contact Court Services Headquarters for assistance. If an agreement is made to search more than one location, the manager must ensure a copy of the agreement is provided to the applicable Regional Director for any other locations included in the agreement.

See flowchart

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1.2 Overview of Small Claims Court



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10.1 Trials and Witnesses

Introduction

This section outlines the trial procedure.

If the claim cannot be completely resolved at the settlement conference, a trial date is set at that time. At the trial, the judge may award judgment to either the claimant or the defendant, dismiss the claim, or make any other appropriate order.

Legal Commentary

Scheduling the Trial

Motor vehicle accident cases where only liability for property damage is disputed will go directly to trial without a settlement conference. Usually the trial date is set at the end of the settlement conference in the presence of the parties. After consulting with the litigants, the judge determines the amount of time to be reserved for the trial, and may give further directions regarding the trial, such as:

- production of documents
- a recommended method of hearing evidence
- any evidence that need not be heard at the trial

Normally, it is not necessary to issue a Notice of Trial (SCL034) since the parties are present at the settlement conference. However, if the judge proceeds with the settlement conference in the absence of a party, the registrar must send out notice of the trial date unless the judge orders otherwise. [Rule 7(18)]. Where there has not been a settlement conference, a Notice of Trial must also be sent.

Location of the Trial

The trial will be held at the place where the settlement conference was held unless a judge orders otherwise. [Rule 7(19)]. Where no settlement conference has been held, the trial will be held at the location where the Notice of Claim was filed. If a party wants to change the location of the trial, the party may make an application. (See <u>Chapter 7</u>, Applications to the Court.)

Who May Represent the Parties

A party may be represented in court by a lawyer or articled student or:

- if the party is a **company**, by a director, officer or authorized employee of the company
- if the party is a partnership, by a partner or authorized employee
- if the party is using a **business name**, by the owner of the business or any authorized employee [Rule 17(20)]
- If a party is a litigation guardian, who made a claim for personal injury on behalf of

someone under 19 years of age, he or she must act by a solicitor and may not settle the claim without the consent of the public trustee. [Rule 17(19)].

Audio Recording in Small Claims Court

Small Claims Court is a court of record for Provincial Court proceedings and Small Claims trials and payment hearings will be recorded. Settlement conferences will not be recorded, unless the presiding judge directs the clerk to do so.

The clerk will maintain log notes of the proceedings to assist contract transcribers with the production of the transcript.

The proceedings should be logged using the Trial/Hearing Log forms (SCL 022 and SCL 022A) which have been produced specifically for Small Claims.

Transcript requests are made to authorized transcription firms. A list of authorized transcription firms is maintained by Court Services Headquarters and periodically distributed to each region. Litigants may request transcripts to be produced for trials where audio tapes exist.

In an effort to ensure transcripts from Small Claims trials are accurate, the Chief Judge has directed that all draft transcripts of the reasons be forwarded to the presiding judge in order that an accuracy check may be made if the judge so desires. The contract transcriber will provide the judge with the transcript of the reasons for review prior to submitting it to the ordering party.

No tapes are to be released to parties. Tapes are to be made available to the Judge or Chief Judge if required by them. If a party requests to listen to the tapes, they should be advised to order a transcript. If a party feels the transcript is not accurate, they should be advised to contact the transcription company manager and request the transcript be tape checked.

All Small Claims tapes are to be stored and indexed by staff in a manner similar to other Provincial Court tapes.

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Evidence

The judge can conduct a formal or informal trial, as long as evidence is given under oath or affirmation. The judge can hear evidence by examination and cross-examination, or by allowing the parties to state their cases and respond to each other in a more informal way. [Rule 10(1) and (2)].

If a party calls an expert witness, a summary of the expert's evidence must be served on all other parties at least 30 days before the expert is called. A judge may grant permission to dispense with service. The same rules for service apply if a party wants to introduce an expert's report instead of calling the expert. [Rule 10(3) and (4)].

If a party wants another party's expert to testify at trial, the other party must be served at least fourteen days before the trial date with a notice requiring the expert to attend. If a judge

determines that the expert was called unnecessarily, the party calling the expert may be ordered to pay the expert's expenses. [Rule 10(6) and (7)].

Multiple Claims

A judge may decide to hear multiple claims all at the same time. If more than one claimant has filed a notice of claim against the same defendant or defendants **with respect to the same event**, or if one claimant has filed notices of claim against more than one defendant **with respect to the same event**, the judge may hear, at one time, evidence that relates to all the claims. The judge may apply that evidence to all the claims and make a decision in each of the claims even though the total monetary outcome of all the claims (not including interest and expenses) is likely to exceed \$25,000. [Rule 7.1(4)].

Transfer of Claim to Supreme Court

If at a trial the judge is satisfied the monetary outcome of the claim (not including interest and expenses) may exceed \$25,000, the judge must transfer the claim to the Supreme Court. [Rule 7.1(1)]. However the claimant may choose to abandon the amount over \$25,000 so that the trial may continue in the Provincial Court . [Rule 7.1(2)].

Even though the case is set for trial, the claimant or the defendant may apply at any time to a judge to have the case transferred to the Supreme Court. The application is submitted on an Application to a Judge Form 17 (SCL 017) and requires a hearing.

In those situations where a claimant had previously abandoned part of the claim, and the claim is subsequently transferred to the Supreme Court, the claimant may then sue for the whole amount. [Rule 1(7)].

When a judge decides a file will be transferred to the Supreme Court, the order is endorsed on the trial record/order on the Application to a Judge and signed by the judge. No other order needs to be prepared. The registry will forward the entire contents of the small claims file, retaining only a copy of the settlement conference record or the application to a judge showing the transfer order in the file folder. If any funds had been paid into court before judgment on the claim, they should be transferred to the Supreme Court along with the file.

Once the file is received at the Supreme Court it is entered into the civil cases system. There is no filing fee required but any subsequent procedures are subject to the Supreme Court Rules and Supreme Court Fee Schedule.

Adjournment

Some claims which have been set down for trial are not heard but adjourned. A trial can be adjourned to a specified date, to a date set by the registrar, or without setting a date. [Rule17 (5)].

A party must make an application to a judge to postpone or adjourn a trial. [Rule 16(6)(a) and (k.1)]. The party must complete an application using Form 17 (SCL 017) and file it at the

registry where the court file is held. [Rule 16(7)]. The registry will set a hearing date for the application and the applicant will have to serve the other party at least 7 days before the hearing date.

At the hearing the trial will only be postponed or adjourned if the judge is satisfied that the postponement or adjournment is unavoidable and an injustice will result to one of the parties if the trial proceeds. [Rule 17(5.1)].

Adjournments should be done well in advance of the trial date to allow the court time to be used for other cases waiting for trial dates to be set. Failure to do so may result in the applicant having to pay a trial resetting fee.

A fee for adjourning a trial will be required under the following conditions ([Rule 17 (5.2)]):

- 1. the trial date had been set,
- 2. notification had been sent to the party at least 45 days before the trial date,
- 3. the application to adjourn the case is being made within 30 days of the set trial date, and
- 4. the adjournment has been granted.

The fee is set out in the Fee Schedule for Small Claims.

The fee must be paid within 14 days of obtaining the adjournment or according to the time limit set by the registrar who may set a longer period. [Rule 17 (5.3)]. When the fee has been paid, the case is set on the trial list. The clerk then prepares and sends a Notice of Trial to all parties.

If the party who has been granted the adjournment does not pay the fee within the 14 days and no extension has been granted by the registrar under $\underline{\text{Rule } 17(5.3)(b)}$, then the other party can apply to a judge under $\underline{\text{Rule } 17(5.4)}$. A judge has several options against the party who fails to pay the required fee for resetting the trial. The judge may dismiss a claim, (if the party is the claimant), strike out a reply, counterclaim or a third party notice and make a payment order, (if the party is a defendant), or make any other order the judge thinks is fair. [Rule 17 (5.4)].

If A Party Does Not Appear

If the defendant or third party does not attend the trial personally or send a representative, the judge may:

- · allow the claim and make a payment order, or
- make any other order that the judge feels is appropriate [Rule 10(9)]

If the **claimant** does not appear personally or send a representative, the judge may dismiss the claim. [Rule 10(10)].

(See 10.2 Witnesses in this chapter)

Judge's Decision

If the judge decides that one party must pay money to another party, the judge makes a payment order at the end of the trial. After making a payment order, the judge must ask

whether the debtor requires time to pay. If the debtor asks for time to pay, the judge must ask whether the creditor agrees with the debtor's proposal. [Rules 11(1),(2) and (3)].

If the creditor agrees, the judge may order a payment schedule requiring the debt to be paid by a set date or by instalments. As long as the debtor makes payments according to the payment schedule, the creditor may not take any other steps to collect the debt. [Rule 11(4) and (6)].

If the creditor does not agree, the judge may still make a payment schedule or order a payment hearing. [Rule 11(5)]. The creditor may not take any other steps to collect the debt until after the hearing. [Rule 11(8)]. If no order is made, the debt is payable immediately. [Rule 11(7)].

Judge's Decision After the Trial

The judge must give a decision either:

- orally in court at the end of the trial or on a later date, or
- in writing [Rule 10(11)]

If the decision is to be given orally at a later date, the registrar must notify the parties of the date. [Rule 10(12)].

If a decision is provided later in writing, the registry will:

- immediately file the judge's written decision by stamping the original (the 40 day appeal period begins on the day after the date the judge's written decision is filed).
- make the appropriate number of copies of the judges' written decision and forward a copy of the filed judgment to the judge,
- notify the parties by mailing a copy to each party involved.

A judge's written decision is effective on the date it is filed at the registry. [Rule 10(13)].

Offer to Settle

After the judge has given a final decision on the amount to be awarded, a party may disclose any offer to settle that had been made, but not accepted. [Rule 10.1(11)]. The party would then provide the court with a copy of the Offer To Settle Form 18 (SCL 803) which had been served on the other party and a completed Certificate of Service in Form 4 (SCL 004F).

The party must retain these forms in his or her own possession, and they should not be placed on the court file until the party may disclose the offer to the judge. This is to ensure the judge does not become aware of the offer until after the final decision has been made on the amount to be awarded. If a person insists on filing an offer to settle, the document may be filed, but it should be placed in an envelope labelled, "Offer to Settle" with the file number and put in the court file.

If an offer to settle made by a defendant was not accepted by a claimant, the trial judge may

order the claimant to pay the defendant a penalty if the amount awarded at trial, including interest and expenses, is equal to or less than the defendant's offer. [Rule 10.1(5)].

If an offer to settle made by a claimant was not accepted by a defendant, the trial judge may order the defendant to pay the claimant a penalty if the amount awarded at trial, including interest and expenses, is equal to or more than the claimant's offer. [Rule 10.1(6)].

The amount of the penalty may be **up to 20%** of the amount of the offer to settle and is in addition to any other expenses or penalties. [Rule 10.1(7)].

When deciding the amount of the penalty, the judge must consider:

- the difference between the amount awarded at trial and the amount of the offer
- the interest of the parties in proceeding to trial to determine the credibility of witnesses or a point of law, and
- the time when the offer was made. [Rule 10.1(8)].

If the judge's decision was given at a later date in writing, without the parties in attendance, the party that would like to disclose the offer to the judge should contact the other party and ask them to agree to appear before the trial judge on a date arranged by the court registry. If the other party is unwilling to attend voluntarily, an application to a judge may be completed and the matter would be set down before the trial judge so that the applicant can disclose the offer to the court. [Rule 16(6)(0)].

Preparing and Filing the Order

The results of the court appearance are entered on the Trial Record/Order (SCL 023) by the court clerk. The form is used to note appearances by the parties, any warrants that may have been ordered, the reason for any adjournment, a payment order made by the judge, any payment schedule or any other order made by the court. If more room is needed to record the terms and conditions of the order the Additional Page form SCL 029 should be used. Copies are provided to the parties as the record of the proceedings.

If the judge makes an order following a trial and the order is not complied with, the successful party need not prepare a separate payment order. The successful party may take enforcement proceedings through the court on the order recorded on the Trial Record/Order.

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10.1 Trials and Witnesses

Process

1. Trial date is set at settlement conference Background

If the claim is not resolved at the settlement conference, a trial date is set at that time.

Where no settlement conference is required a trial date is set and a notice of trial is sent to the parties.

2. Do all parties attend trial? Consideration

If YES, go to 6.

If NO, go to 3.

3. Does the judge continue the trial? Consideration

If YES, go to 6.

If NO, go to 4 or 5.

4. Judge decides in favour of attending party Procedure

If the defendant does not attend, the judge may allow the claim and make a payment order against the defendant.

If the claimant does not attend, the judge may dismiss the claim.

The clerk endorses the judge's order on the trial record/order and provides a copy to the parties.

5. Judge makes any other appropriate order Procedure

The judge can:

- adjourn the trial and award costs
- order any funds paid into court from a garnishing order before judgment, to be paid out
- make any other order the judge feels is appropriate, including a payment order

The clerk endorses the judge's order on the trial record/order and provides a copy to the parties.

6. Judge hears evidence and makes order Procedure

The judge may award judgment to either the claimant or the defendant or dismiss the claim. If the claim is dismissed, the claimant cannot begin the action again.

If the debtor asks for time to pay and the claimant agrees, the judge may order a payment schedule. If the claimant does not agree, the judge may order a payment schedule or a payment hearing or make no order.

If an offer to settle had been rejected, the judge may add a penalty to the awarded amount.

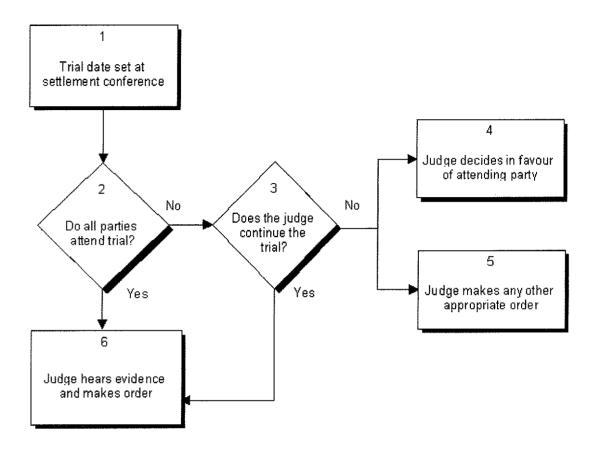
The clerk endorses the judge's order on the trial record/order and provides copies to the parties.

See flowchart

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10.1 Trials and Witnesses



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10.2 Witnesses

Introduction

This section outlines the procedure for summoning a witness to trial.

Any party who requires a witness to prove a claim may issue a summons to the witness after the trial date is set.

A summons is not necessary if the party is certain that the witness will attend voluntarily. [Rule 9(3)] The party must offer the witness money for reasonable estimated travelling expenses. [Rule 9(2)]

The witness must attend court at the stated time, bringing any evidence specified in the summons. The witness can apply to the judge for an order cancelling the summons. The judge can issue a warrant for the arrest of a witness who fails to appear in court. [Rule 9(4) to (7)]

Legal Commentary

Serving a Summons to Witness

The party who requires the witness must complete a Summons to Witness using Form 8 (SCL 008). The summons must be served on the witness at least seven days before the witness is required to appear in court. Any adult person can serve the summons, or service can be performed by sending it by ordinary mail. [Rule 9(1) and 18(12)]

The party must offer reasonable estimated travelling expenses (i.e., round trip bus fare) when serving the witness. If travel costs are not offered, the judge may refuse to issue a warrant for the arrest of a witness who fails to appear. [Rule 9(2)]

If the witness does not attend court, the judge will not issue a warrant for the arrest of the witness without proof of service. The judge may require that a Certificate of Service in Form 4 (SCL 004F) be filed, or may hear oral evidence of service. If a certificate of service is filed, it should state the travel costs offered along with the summons. [Rule 9(7)]

Expert Witnesses

A party may not call an expert to give evidence of the expert's opinion unless

- the party serves a summary of the expert's evidence on all other parties at least 30 days before the expert is called to give evidence, or
- a judge grants permission [Rule 10(3)]

Instead of calling an expert to give evidence, a party may introduce a report stating opinions of an expert, if:

- the party serves a copy of the report on all other parties at least 30 days before the report is introduced, or
- a judge grants permission [Rule 10(4)]

A statement of qualifications in an expert's report is proof that the expert has those qualifications unless

there is evidence to the contrary. [Rule 10(5)]

A party receiving another party's expert report may serve on the other party, at least 14 days before the trial date, a notice requiring the expert to attend the trial for cross-examination. [Rule 10(6)]

If a judge determines that calling another party's expert was unnecessary, the judge may order the party who required the expert to attend to pay the expert's expenses. [Rule 10(7)]

Repair estimates and estimates of the value of property are not considered to be expert evidence but must be served on all other parties at least 14 days before the trial. [Rule 10(8)]

Cancelling a Summons to Witness

A person summoned as a witness may apply to a judge to have the summons cancelled. [Rule 9(5)] The witness must prepare an Application to a Judge using Form 17 (SCL 017), and file it at the court registry. [Rule 16(7)] The registry will set a date for the hearing of the application and the witness must serve it on the party who filed the Summons to Witness. The application must be filed and served at least seven days before the hearing date. In urgent cases, the witness may make the application without notice if a registrar allows it. [Rule 16(10)]

(See Chapter 7, Applications to the Court.)

At the application hearing, a judge may cancel the summons if the judge feels:

- that the person is not needed as a witness
- that it would be a hardship for the person to attend court

When cancelling a Summons to Witness, the judge may make any other order the judge thinks is fair, including changing the date of the trial or hearing. [Rule 9(6)]

If the Witness Does Not Obey the Summons

The judge can issue a Warrant of Arrest in Form 9 (SCL 009) for a witness who fails to appear in court. [Rule 9(7)] The judge must be satisfied that:

- the summons was properly served on the witness
- the party offered the witness reasonable travelling costs, if applicable
- the presence of the witness is required

If the judge is not satisfied that the witness is required, the judge may refuse to issue a warrant and may order that the trial continue.

If the judge feels that the trial cannot continue without the witness, the judge may direct the registrar to set a new trial (or continuation) date. The judge may adjourn the case to a specific date or adjourn the trial generally and order notices to be issued when a new date is set.

Notice of Arrest

When a judge issues a warrant for the arrest of a witness, the witness will receive a notice advising him or her of the warrant before it is executed. [Rule14(1)]. The witness will have an opportunity to appear voluntarily to avoid being arrested. [Rule 9(8)].

The registry sends the Notice of Warrant of Arrest copy to the witness by regular mail. The witness has 21

days to contact the registry and arrange a voluntary court appearance. (14 days mail + 7 days witness reply = 21 days) The registry will hold the warrant during this period.

Where the registrar has attempted to serve a notice of arrest by mail but has been unable to effect service, usually because it has been returned, the notice of arrest will be sent to the Sheriff's office for service.

If the Sheriffs are unable to serve the notice of arrest, they will prepare an affidavit of attempted service and return it to the registry along with the notice. The registrar will then seek direction from the judge as to whether an alternate method of service should be used.

If the witness attends voluntarily, the judge or justice of the peace cancels the warrant and orders the witness to appear on the new trial date. The appearance and adjournment are recorded on the Order Following An Appearance on a Warrant form (SCL 811) and a copy is given to the witness. If the witness fails to attend on the new date, a further warrant may be issued.

If the witness receives the notice of arrest and does not attend voluntarily to deal with the warrant, the registrar will forward the warrant to the Sheriff's office for execution seven days after it was served.

Arrest of a Witness

A witness that does not contact the registry in response to the notice of arrest, may be arrested by a Sheriff or a peace officer.

If the witness is arrested, the judge or justice of the peace may:

- order the release of the witness, with or without conditions, and order the witness to appear on the new trial date, or
- order the detention of the witness until his or her presence is no longer required. [Rule 9(9)].

The appearance and adjournment are recorded on the Order Following An Appearance on a Warrant form (SCL 811) and a copy is given to the witness. If the witness is ordered detained, the judge's order is endorsed on this form in the "other" area and a copy of the order is provided to the correctional centre or lockup as the order for detention with the returnable date included.

See Chapter 11.7 Warrants of Arrest for more information.

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10.2 Witnesses

Process

1. Party wants a witness summoned Background

Any party who wants someone to attend court as a witness may obtain a Summons to Witness form from the registry. It is not necessary to file a Summons to Witness.

2. Party serves summons on witness Procedure

The party is responsible for serving the summons on the witness. Service by mail is presumed to be completed 14 days after the document was mailed. The summons must be served at least seven days before the witness is required to attend court. The party must offer the witness money for reasonable travelling expenses at this time.

The Certificate of Service should be available if the witness does not appear.

3. Does the witness want to cancel the summons? Consideration

If YES, go to 4.

If NO, <u>go to 6</u>.

4. Witness applies for cancellation Procedure

The witness must:

- complete an Application to a Judge form with a date obtained from the registry
- serve the application on the party who served the summons (with seven days notice if possible)
- appear before a judge.

5. Is the application granted? Consideration

If YES, end of witness process.

If NO, go to 6.

6. Does witness attend the trial? Consideration

If YES, end of witness process.

If NO, go to 7.

7. Does the judge issue a warrant? Consideration

Before issuing a warrant, the judge must be satisfied that:

• the summons was served on the witness

- the party offered the witness reasonable travelling costs
- the presence of the witness is required

If YES, go to 8.

If NO, end of witness process.

8. Notice of Warrant of Arrest issued by registry Procedure

The registry sends the Notice of Warrant of Arrest copy to the witness by regular mail. The witness has 21 days to contact the registry and arrange a voluntary court appearance. (14 days mail + 7 days witness reply = 21 days) The sheriff will not execute the warrant during this period.

Note: See section <u>11.7</u> of this manual for more detailed information.

9. Does the witness make a voluntary appearance? Consideration

If YES, go to 10.

If NO, go to 11.

10. Witness appears voluntarily before a judge or justice of the peace Procedure

The judge or justice of the peace cancels the warrant and orders the witness to appear on the new trial date. If the witness fails to attend on the new date, a further warrant may be issued.

The appearance and adjournment are recorded on the Order Following an Appearance on a Warrant and the witness is given a copy.

11. The Sheriff arrests and brings the witness before a judge or justice of the peace Procedure

The judge may:

- order the release of the witness, with or without conditions, and order the witness to appear on the new trial date, or
- order the detention of the witness until his or her presence is no longer required.

The clerk:

- endorses the appearance and adjournment on an Order Following an Appearance on a Warrant
- gives the witness a copy.
- if the witness is detained, makes a copy of the order for the correctional centre or lockup.

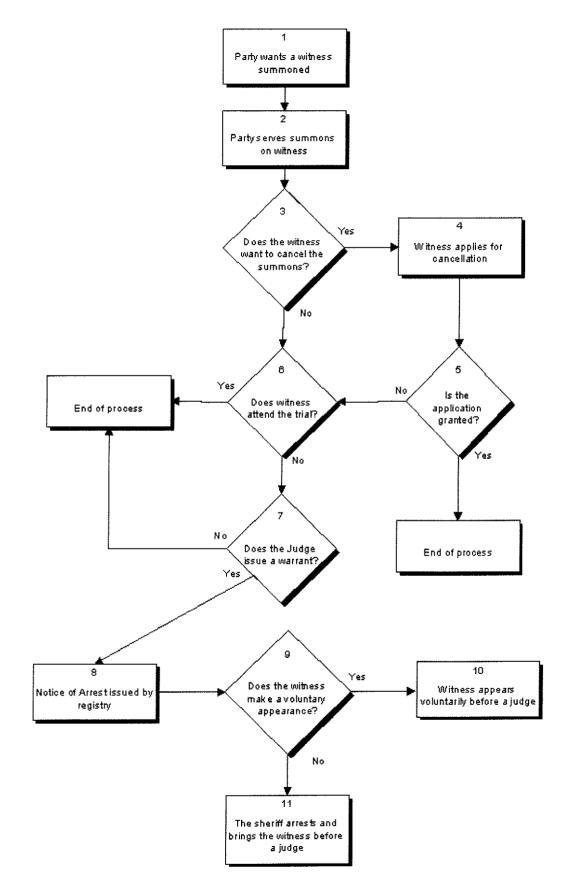
See flowchart

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10.2 Witnesses



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11.1 Orders and Payment Schedules

Introduction

This chapter outlines the type of orders that may be enforced, the provisions for making payment schedules, the options available to a creditor for enforcing a judgment and the options available to a judge where a person fails to comply with a judicial order.

The chapter includes the following enforcement options:

- Payment Hearings
- Default Hearings
- Garnishing Orders
- Orders for Seizure and Sale
- Certificates of Judgment

Types of Orders

There are several ways in which a creditor might receive a judgment against a debtor that may be enforced in the Provincial Court.

Examples of these judgments include the results of:

- a small claims action, or
- a deemed conviction for an offence under a municipal, provincial or federal statute, or
- an order of restitution following a criminal conviction, or
- an outstanding debt owed to the province for non-payment of loans or fees
- a hearing by an arbitrator or a registrar under the Residential Tenancy Act

(See <u>Chapter 2</u> for more information on filing Orders.)

The majority of the orders being enforced are orders made in a small claims action. An order might be made at any stage of the process in the action and is made under the Rule applicable to that stage of the process. Enforcement options are considered when the debtor fails to comply with the terms of the order.

As per the <u>2005 Practice Direction</u>, Payday Loan debt cases are to be assigned exclusively to a Provincial Court Judge when the matters or applications relate to:

- 1. default order or judgement
- 2. enforcement proceedings
- 3. payment out of funds held by the court

Small Claims Orders

Generally, there are three kinds of orders referred to in the Small Claims Rules that may be

made to require the payment of money - **consent orders, default orders and payment orders.** Once the order has been made, it is prepared in a specific form and filed with the registry. If the debtor fails to comply with the terms of the order, the creditor may take steps to enforce the order.

Consent Orders

At any stage of the action, if all the parties consent to settle the claim, they may prepare an order and application, or use the Consent form (SCL 021) available from the registry, and apply to the registrar to make the order under <u>Rule 16(1)</u>. (See <u>Chapter 5 Reply</u> for more information on Consent Orders.)

If the order is not complied with, the creditor may choose one of the enforcement options and commence proceedings.

Agreements

An agreement regarding the claim may be reached at a settlement conference and may be written up immediately on an Agreement form (SCL 028) under <u>Rule 7(20)</u>. It is not appropriate for Court Services staff to sign agreements as a witness.

If a party does not comply with the recorded terms of the agreement, it is cancelled and to start enforcement proceedings the creditor must file an Affidavit of Non-compliance (SCL 808) and a Payment Order (SCL 010). Once the payment order is filed, the creditor may choose one of the options for enforcement. [Rule 7(16)].

Тор

Default Orders

A registrar may issue a Default Order (SCL 005) under $\underline{\text{Rule } 6(4)}$ if a claimant asks to the have the order issued because the defendant did not file a reply to a claim which was for a debt, within the allowable time. If the claim is for something other than a debt, and no reply has been filed, the claimant must ask a judge to issue the default order under $\underline{\text{Rule } 6(10)}$. The judge must hold a hearing to set the amount of the judgment and the terms of the order.

A judge may also issue a default order under $\underline{\text{Rule } 6(2)}$ when no reply is filed to a counterclaim or a third party notice.

For matters relating to Payday loan debt cases, please refer to the 2005 Practice Direction.

Once the default order is filed, the creditor may choose one of the options for collecting the debt. [Rule 6(12)]. (See <u>Chapter 8</u> for more information about Default Orders.)

Payment Orders

A Payment Order may be made under $\underline{\text{Rule } 3(6)}$ if a defendant admits to a claim and the claimant accepts the admission in full settlement of the claim before a settlement conference is heard. The claimant prepares the payment order using Form 10 (SCL 010) using the terms of

the admission and files it at the registry. The Registrar makes the payment order pursuant to Rule 11(10) without a hearing.

If the debtor does not comply with the terms, the creditor may choose one of the options for enforcing payment. [Rule 11(11)].

A Payment Order may also be made under Rule 4 (3.2) if a claimant admits to a counterclaim, and the defendant accepts the admission in full settlement of the claim before a settlement conference is heard. The defendant prepares the payment order and follows the same procedures as noted above for the claimant to file and enforce the order.

A judge may make a Payment Order under <u>Rule 7(14)(c)</u> in the terms agreed to by the parties at a settlement conference. The creditor would rely on the order recorded on the Settlement Conference Record (SCL 018) in the court file, and does not need to prepare a separate payment order.

A payment order made at a settlement conference is enforced using <u>Rule 11</u> (Payment of the Judgment) as though the order was made following a trial. [Rule 7(16)].

If a party does not attend a settlement conference, the judge may make a Payment Order under $\underline{\text{Rule 7(17)}}$ in default of their appearance, which is recorded on the Settlement Conference Record (SCL 018). As in the previous situation, the creditor does not need to prepare a separate order to commence enforcement proceedings under $\underline{\text{Rule 11}}$.

At a trial if a defendant or third party does not attend the judge may make a payment order against either of them under <u>Rule10(9)</u>. The creditor would rely on the payment order recorded on the Trial Record/Order (SCL 023) to commence enforcement proceedings under <u>Rule 11</u>.

Prior to the trial being heard, if the parties settle the claim by filing an Offer to Settle and an Acceptance of Offer under <u>Rule10.1</u>, the Acceptance of Offer (SCL 805) becomes a payment order under <u>Rule 10.1(4)</u>. If the debtor does not comply with the terms of the offer, the creditor may start enforcement proceedings under <u>Rule 11</u>.

At the end of a trial if a judge decides that one party must pay money to another party, the judge must make a Payment Order under $\frac{\text{Rule } 11(1)}{\text{Rule } 11(1)}$.

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Payment Schedules

Payment schedules that set out how and when the payment order will be paid, may be made by a registrar, a justice of the peace or a judge.

If a payment schedule is proposed by a defendant in a reply (or by a claimant in a reply to a counterclaim) and is accepted by the claimant (or a defendant who is a claimant by counterclaim), the **registrar** may make a payment order under <u>Rule 11(10)(a)</u>, and an order establishing the payment schedule under <u>Rule 11(10)(b)</u>.

If the claimant does not accept the proposed payment schedule, the claimant may ask under

<u>Rule 12(2)(a)</u> for a payment hearing to have the judge or justice of the peace set the payment schedule. After the hearing the payment schedule may be ordered by a **judge or a justice of the peace** under <u>Rule 12(13)</u>.

If the defendant includes in a reply a request for a payment schedule to be set by the court, the case is set for a settlement conference to have the **judge** make a payment order and set the payment schedule under $\underline{\text{Rule } 11(4)}$ if the claimant agrees. If the claimant does not agree, the judge may make the payment schedule under $\underline{\text{Rule } 11(5)}(b)$ or adjourn the matter to a payment hearing.

If a **judge** makes a Payment Order at a settlement conference under $\underline{\text{Rule 7(14)(c)}}$, the provisions of $\underline{\text{Rule 11}}$ apply as if the order had been made under $\underline{\text{Rule 11(1)}}$ after a trial. Therefore, once the order is made after the settlement conference or the trial, the judge must determine if the parties can agree on a payment schedule. [Rule 11(2-5)].

If the creditor does not agree with the proposal, the judge may still order a payment schedule under Rule 11(5)(b), or order a payment hearing to be held.

The creditor or the debtor may apply to a judge to change or cancel terms in a payment schedule. [Rule 17(3)].

Time Limits For Enforcement

There are some restrictions in the Provincial Court Small Claims Rules that prohibit the use of the enforcement options at particular times. These include:

- the creditor may not take any other steps to collect the debt as long as the debtor is paying according to the schedule [Rule11(6)].
- if a judge orders a payment hearing, the creditor may not take any other steps to collect the payment until after the payment hearing [Rule 11(8)].
- an order for seizure and sale expires after 12 months, but a new one may be issued [Rule 11(13)].
- a creditor who files a summons to a payment hearing, may not take any other steps to collect payment until the hearing is over or the summons is withdrawn [Rule 11(17)].
- a creditor who has an order for seizure and sale outstanding, may not ask for a payment hearing without the permission of a judge [Rule 12(4)].

The *Limitation Act* sets the time limit for how long a creditor can enforce an order. Generally, a person may not use any form of enforcement after the expiration of 10 years from the date on which the judgment was made. [*Limitation Act* Sec.7]. However, there are exceptions noted in the *Limitation Act* and the creditor may wish to seek legal advice before proceeding with the enforcement.

There is no authority to extend the time limit to enforce a judgment. Upon the expiration of the time limit the judgment is extinguished. However, since there exists a right at common law to sue on a judgment, the judgment creditor may choose to commence a new action on the judgment **before** the expiration of the limitation period.

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http://portal.ag.gov.bc.ca/portal/page/portal/CSB_Home/document_repository/public/ma... 2014-12-11

December 2014



THE PROVINCIAL COURT OF BRITISH COLUMBIA

Practice Direction

Pursuant to Small Claims Act, section 17

To:Managers, Provincial Court Small Claims RegistriesAnd To:Provincial Court Judiciary

Re: Enforcement proceedings in pay-day loan cases

The Honourable Judge J.G. Cohen issued reasons for judgment on December 16, 2004 in *A OK Payday Loans Inc. v. Watt*, 2004 BCPC 0467. In light of that decision, and pursuant to section 11(1) of the *Provincial Court Act*, the following applications or matters in relation to pay-day loans debt cases are assigned exclusively to Provincial Court Judges until further notice:

- 1. default order or judgment
- 2. enforcement proceedings
- 3. payment out of funds held by the court

Any issues related to whether a specific case is included in this assignment are to be referred to a Provincial Court Judge for that determination as well.

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Carol Baird Ellan Chief Judge

January 18, 2005

11.2 Payment Hearings

Introduction

This section outlines the procedure for arranging a payment hearing.

A payment hearing is a hearing held before a judge or justice of the peace to assess the debtor's ability to pay and to determine how the debtor will pay the judgment.

Such a hearing can be requested:

- by the debtor to set up a payment schedule after an order is made, to prevent immediate enforcement or to alter an existing payment schedule to reflect a change in circumstances.
- by the judge after a settlement conference or trial
- by the creditor after an order is made

Legal Commentary

Payment Hearing Requested by Debtor

After Trial or Settlement Conference

After a payment order is made, the debtor may want to set up a payment schedule to avoid immediate enforcement, requiring payment of the full amount. To ask for a payment hearing, the debtor must complete Form 13 Notice of a Payment Hearing (SCL 013) and file it in the registry. [Rule 12(10)].

The registrar sets a date and issues the notice of a payment hearing. The debtor must serve the notice on the creditor at least seven days before the date set for the payment hearing. [Rule 12(11)].

The registrar must set hearing dates to allow adequate time for service and the seven days' notice.

Payment Hearing Ordered by Judge

If the judge decides that one party must pay money to another party, the judge must make a payment order at the end of the trial. [Rule 11(1)]. After making the payment order, the judge must ask if the debtor needs time to pay. The judge asks the debtor to suggest a payment method, then asks whether the creditor agrees with the suggestion. [Rule 11(2)-(3)].

If the creditor agrees, the judge orders a payment schedule in the terms agreed to and no payment hearing is held. [Rule11(4)].

If the creditor does not agree to the proposal, the judge may:

- order a payment schedule
- make no order
- order a payment hearing [Rule 11(5) and (7)].

The judge may order that the payment hearing be held:

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- immediately following the settlement conference or trial
- at a future date

No notices are sent to the parties because the judge adjourns the case directly to the date for a payment hearing. The judge may instruct the debtor to complete a Statement of Finances (SCL024) and to bring various documents to the hearing to support that statement or to prove their financial position. [Rule 12(9)].

The creditor may not take any enforcement steps until after the payment hearing has been held. [Rule 11(8)]

If no order is made, the debt is payable immediately and other enforcement steps can be taken.

The creditor can take any of the following steps:

- ask for an Order for Seizure and Sale [Rule 11(11)(a)]
- request a payment hearing [Rule 11(11)(b)]
- ask for a garnishing order [Rule 11(11)(c)]
- request a default hearing (if the debtor defaults on the payment schedule) [Rule 11(11)(d)]
- any other enforcement steps [Rule 11(11)(e)]

Payment Hearing Requested by Creditor

The payment hearing provides the creditor with information about the debtor's financial arrangements.

To arrange a payment hearing, the creditor must complete and file a Form 12 Summons to a Payment Hearing (SCL 012) in the registry. [Rule 12(3)]. The creditor must personally serve the person named in the summons by leaving the summons with the person at least seven days before the date of the payment hearing. [Rule 12(7)]. Service must be proven by an Affidavit of Service which is included on the back of the service copy of the form package.

If the debtor has moved out of the province, the summons may still be issued, but the creditor should be advised that it cannot be served outside of the province. If the creditor believes the person may be returning to the province for a some reason during a specific time, the registrar should try to schedule the hearing date to allow the person to be served and to appear at court during that time.

If there is an outstanding Order for Seizure and Sale, the creditor must make an application to a judge (SCL 017) for permission to have a payment hearing. The registrar may not issue a summons for a payment hearing without the permission of a judge. [Rule 12(4)].

The summons may order the debtor to bring documents related to the debtor's ability to pay, to the payment hearing. [Rule12(9)]. These documents might include a completed Statement of Finances form (SCL 024) which could be served on the debtor along with the summons.

Who May Be Summoned

If the debtor is an individual, the summons is issued against the debtor.

If the debtor is a company, the summons is issued against an officer, director, or employee of the company.

If the debtor is a partnership, the summons is issued against a partner.

The summons may be cancelled if the person is not the right person to give information on the debtor and the person makes an application to a judge (SCL 017) to cancel the summons. [Rule 12(8)].

Serving the Summons

The creditor must ensure the summons is personally served on the person named in the summons. Service is done by leaving the summons with the person at least seven days before the payment hearing date. [Rule 12(7)]. It is not necessary for the creditor to provide travelling expenses to the debtor.

An Affidavit of Service will be required if the person summoned does not appear and the creditor asks for a warrant. An Affidavit of Service is printed on the back of the service copy of the summons.

The summons may only be served in the Province of British Columbia.

Location of the Hearing

A payment hearing may be held at a different place from where the settlement hearing was held if:

- the creditor files a certified true copy of the payment order or the default order, and an affidavit stating the amount of the debt in the new registry [Rule 17(8)(b)], and
- the registry is closer to where the debtor lives or carries on business [Rule 17(8)(a)]

The creditor would ask the original registry to provide the certified true copy and the applicable fee would be charged. There is no pre-printed form available for the affidavit stating the amount of the outstanding debt, and therefore the creditor would have to prepare their own form of affidavit. An affidavit is a sworn/affirmed document and if the creditor requests that the affidavit be sworn/affirmed at the registry the applicable fee would be charged.

When the creditor files the certified true copy at the new registry, the filing fee for filing a copy of an order from another registry of the court would be charged.

Once the hearing has been concluded, a copy of the Application Record/Order (SCL 026) with the results of the hearing, should be sent to the originating court registry.

What Happens at the Hearing

The court and the creditor can question the debtor about the debtor's ability to pay the amount owing, including questions on the debtor's employment, income, bank accounts, goods owned, etc.

The court may hear evidence from the debtor about any of the following:

- the debtor's income and assets
- · debts owed to and by the debtor
- any assets that the debtor has disposed of since the claim arose
- the means that the debtor has of paying the judgment, now or in the future [Rule 12(12)].

Sometimes during the hearing the financial documents that the debtor (or someone else) brought to court are marked as exhibits for the hearing. Once the hearing is concluded, these exhibits should be returned immediately to the debtor or the person who submitted them. There is no appeal period applicable to a payment hearing and therefore, the exhibits should not be retained by the court.

The results of the payment hearing are recorded on the Application Record/Order form SCL 026. Once the form is completed copies are provided to the parties.

Failure to Appear

If the creditor fails to appear, the judge or justice of the peace may decide to:

- · hold the hearing
- · cancel the hearing
- postpone the hearing [Rule 12(14)].

If the hearing is postponed, the registrar should issue a notice of the new date to the creditor.

If the debtor fails to appear, and if the creditor asks, the judge or justice of the peace may issue a Warrant of Arrest in Form 9 (SCL 009) for the debtor. The court must be satisfied that the debtor was either properly served with a summons or was ordered by a judge or a justice of the peace to attend. [Rule12(15)].

When the debtor appears before the court, either voluntarily or under arrest, the judge or justice of the peace may order the person to attend on another date. [Rule 14(5)]. The payment hearing is rescheduled and the creditor notified. If the debtor fails to attend again, a judge or a justice of the peace may issue a warrant for the immediate arrest of the debtor. (See Rule 14, Warrants for Arrest for Not Attending Court.)

Further Enforcement

The creditor may not take any further enforcement action if the debtor is making payments as ordered. [Rule 11(6)]. If the creditor wants to take further enforcement action or to change the amount of the payments, the creditor may apply to a judge to cancel or change the payment schedule. [Rule 17(3)]. (See <u>Chapter 7</u>, <u>Applications to the Court</u>.)

If the debtor does not make the payments as ordered, all of the money still owing is due immediately, and the creditor may take further enforcement action. [Rule 11(14)].

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11.2 Payment Hearings

Process

1. Who requests the payment hearing? Consideration

If CREDITOR, go to 2.

If DEBTOR, go to 5.

If JUDGE, go to 8.

2. Registrar ensures application qualifies Procedure

The creditor:

- completes the summons to a payment hearing form and asks for a date to be set
- indicates on the summons if any specific documents are to be brought to the hearing, such as a statement of finances

The registrar must:

- pull the file
- check to see if there is an enforceable order
- check to see if there is an outstanding order for seizure and sale

3. Registrar sets date and issues summons Procedure

The registrar must:

- · insert the hearing date on the summons
- provide the creditor with a statement of finances form
- date stamp all copies of the summons
- file the original
- · return the remaining copies of the summons to the creditor for service on the person named

The creditor must serve the person named in the summons by leaving (or arranging to leave) the summons with the person at least seven days before the date of the hearing.

4. The creditor serves summons Procedure

<u>Go to 8</u>.

5. Registrar sets date Procedure

The debtor completes the notice of payment hearing form.

The registrar must:

- insert the hearing date on the notice
- date stamp all copies of the notice
- file the original
- return the remaining copies of the notice to the debtor for service on the creditor

The debtor serves the notice on the creditor at least seven days before the hearing.

6. Does the debtor attend the hearing? Consideration

If YES, go to 11.

If NO, go to 7.

7. Application removed from court list Procedure

If the debtor does not attend, the application is struck off the court list. The creditor may continue to enforce the payment order.

8. Does the judge want to hold the payment hearing now or set it for a later date? Consideration

If NOW, <u>go to 11</u>.

If LATER, go to 9.

9. Does the debtor attend the payment hearing? Consideration

If YES, go to 11.

If NO, go to 10.

10. Warrant issued and debtor arrested Procedure

The debtor or person summoned appears voluntarily or is arrested and brought before the court (see <u>Failure</u> to <u>Appear</u>). A new date for a payment hearing is scheduled. The judge or justice of the peace:

- releases the person to appear on the new date, or
- detains the person in custody

The registrar notifies the creditor of the new date.

11. Payment hearing held Procedure

At a payment hearing, evidence may be heard about any of the following:

- income and assets of the debtor
- debts owed to and by the debtor
- any assets that the debtor has disposed of since the claim arose
- the means the debtor has, or may have in the future, of paying the amount owed [Rule 12(12)]

12. Payment schedule ordered Procedure

The judge may order a payment schedule specifying the date by which the debts must be paid, or the

amount of instalments and the frequency of payment.

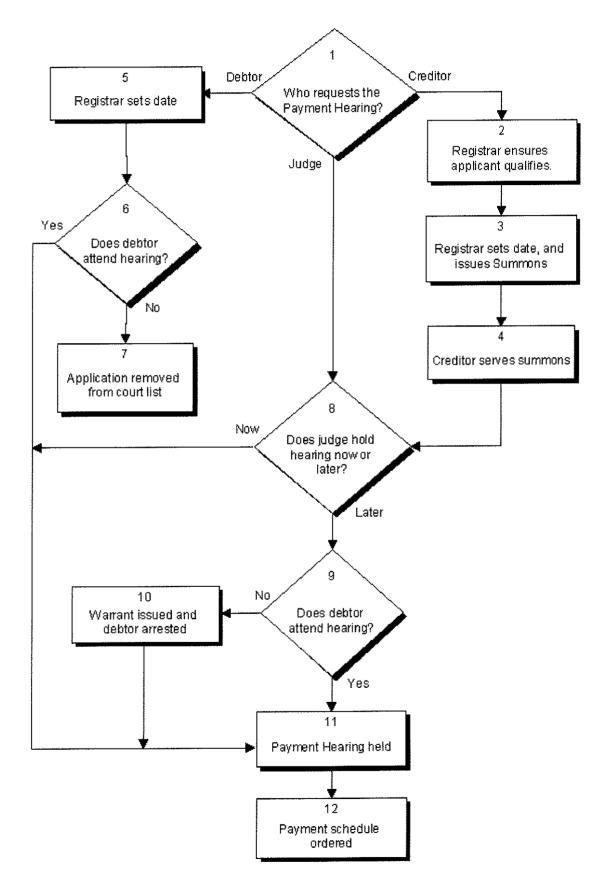
The clerk records the results of the hearing on the Application Record/Order and provides copies to the parties.

See flowchart

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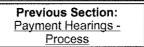
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11.2 Payment Hearings



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11.3 Default Hearing

Introduction

This section outlines the procedure for arranging a default hearing.

If the debtor does not make payments as ordered in the payment schedule, the creditor may ask that the debtor be summoned before a judge to explain why.

Legal Commentary

Arranging a Default Hearing

To arrange a default hearing, the creditor must complete Form 14 Summons to a Default Hearing (SCL 014) and submit it to the registrar. [Rule 13(2)]. The creditor forwards the summons to the sheriff or court bailiff for service. There is a Sheriff Services fee as set out in Schedule A of the Small Claims Fees for the serving of this summons which is paid when the summons is issued.

Location of the Hearing

A default hearing may be held at a different place from where the court file is if:

- the creditor files a certified true copy of the payment order or the default order, and an affidavit stating the amount of the debt in the new registry [Rule 17(8)(b)], and
- the registry is closer to where the debtor lives or carries on business [Rule 17(8)(a)]

The creditor would ask the original registry to provide the certified true copy and the applicable fee would be charged. There is no pre-printed form available for the affidavit stating the amount of the outstanding debt, and therefore the creditor would have to prepare their own form of affidavit. An affidavit is a sworn/affirmed document and if the creditor requests that the affidavit be sworn/affirmed at the registry the applicable fee would be charged.

When the creditor files the certified true copy at the new registry, the filing fee for filing a copy of an order from another registry of the court would be charged.

Once the hearing has been concluded, a copy of the Application Record/Order (SCL 026) with the results of the hearing, should be sent to the originating court registry.

Who May Be Summoned

If the debtor is an individual, the summons is issued against the debtor.

If the debtor is a company, the summons is issued against an officer, director or employee of the company.

If the debtor is a partnership, the summons is issued against a partner. [Rule 13(4)].

The summons may require the person who is served to bring to the hearing any records or other things that the creditor requests be included on the summons. [Rule 13(6)].

Serving the Summons

The summons must be personally served by a court bailiff or sheriff at least seven days before the default hearing date. [Rule 13(5)]. It is not necessary for the creditor to provide travelling expenses to the debtor.

After the debtor has been served, the sheriff completes the Affidavit of Service on the back of the service copy of the summons and returns it to the registry. The service copy is placed in the court file so that it is available for the judge at the default hearing if the person does not appear.

What Happens at the Hearing

The judge asks the debtor why the debtor did not make the payments as ordered. At the end of the hearing, the judge may:

- · confirm the terms of the payment schedule
- change the terms of the payment schedule [Rule 13(7)]
- issue a Warrant of Imprisonment in Form 15 (SCL 802) for the debtor for not more than twenty days if the judge feels that the debtor's explanation, or lack of explanation, why the payment schedule has not been obeyed amounts to contempt of court. [Rule 13(8)]

Sometimes during the hearing the records or other things that the debtor (or someone else) brought to court are marked as exhibits for the hearing. Once the hearing is concluded, these exhibits should be returned immediately to the debtor or the person who submitted them. There is no appeal period applicable to a default hearing and therefore, the exhibits should not be retained by the court.

The results of the default hearing are recorded on the Application Record/Order form SCL 026. Once the form is completed copies are provided to the parties.

Failure to Appear

If the debtor fails to appear, and if the creditor asks, the judge may issue a Warrant of Arrest in Form 9 (SCL 009) for the debtor. The judge must be satisfied that the debtor was either properly served with a summons or was ordered by a judge to attend.

When the debtor appears before the court, either voluntarily or under arrest, the default hearing is rescheduled and the creditor notified. (See <u>section 11.7</u>, Warrants for Arrest and Imprisonment.)

Further Enforcement

If the judge confirms or changes the payment schedule, the creditor may not take any further enforcement action as long as the debtor is making payments as ordered. If the creditor wishes to take further enforcement action or to change the amount of the payments, the creditor may apply to cancel or change the payment schedule. (See <u>Chapter 7</u>, <u>Applications to the Court</u>.)

If the debtor fails to make a payment as ordered, all the money still owing is due immediately, and the creditor may take further enforcement action. [Rule 11(14)]. The creditor may have the debtor summoned back to court for another default hearing or may ask for other enforcement procedures. A warrant of imprisonment for not more than 20 days may be issued.

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11.3 Default Hearing

Process

1. Creditor requests a default hearing Background

The creditor must file a summons form with the registry.

2. Registrar sets date and issues summons Procedure

The registrar must:

- schedule a default hearing
- · insert the date on the summons
- collect the service fee (if served by sheriff)
- issue the summons
- return copies of the summons to the creditor to be forwarded to the sheriff or court bailiff for service

3. Does the sheriff or court bailiff serve the summons? Consideration

If YES, go to 4.

If NO, end of process.

4. Does the debtor attend the default hearing? Consideration

If YES, go to 6.

If NO, go to 5.

5. Warrant is issued and debtor may be arrested Procedure

The debtor appears voluntarily or involuntarily before the court.

6. A default hearing is held Procedure

The debtor must explain why payment has not been made as ordered.

7. An order is made Procedure

The judge may:

- confirm or change the terms of the payment schedule. If this applies, go to 8.
- issue a warrant for the imprisonment of the debtor. If this applies, go to 9.

8. Does the debtor make the payments as ordered? Consideration

If YES, end of process.

If NO, go to 9.

9. The creditor takes further enforcement action Procedure

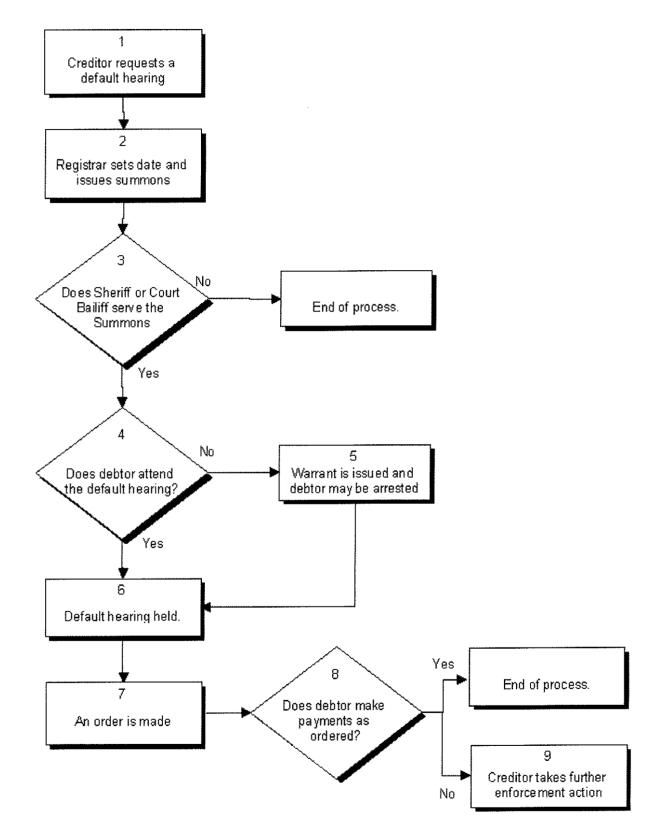
See flowchart

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11.3 Default Hearing



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11.4 Garnishing Orders

Introduction

This section outlines the procedure for issuing a Garnishing Order after Judgment, under the *Court Order Enforcement Act* (COEA).

A garnishing order attaches money owed to the defendant by a third party. The third party is called a "garnishee." Bank accounts and money owed under a contract are commonly garnished. A portion of the debtor's wages may also be attached. (See <u>Chapter 4 for</u> <u>Garnishing Orders Before Judgment</u>).

For applications and matters relating to Payday loan debt cases, please refer to the 2005 Practice Direction.

Legal Commentary

Applying for a Garnishing Order

To apply for a Garnishing Order the creditor or a representative must submit two forms to the registrar:

- a Garnishing Order After Judgment (COEA Schedule 1, Form D)
- an Affidavit in Support of a Garnishing Order After Judgment (COEA Schedule 1, Form B)

The forms for both the affidavit and the order are prescribed forms by the *Court Order Enforcement Act* and the applicant may use the preprinted forms, PSC 014 and PSC 013, available from the court registry, or produce their own.

The affidavit is used as evidence when making the order. The affidavit includes the following information:

- the amount awarded in the payment order
- the amount still owing
- the name and address of the garnishee

The creditor must swear/affirm the affidavit before a commissioner. If there are any errors in the affidavit, the person who prepared the affidavit (known as the deponent) must:

- · return to the same commissioner to have the changes initialled, or
- swear/affirm a new one

All deletions must be initialled.

If the registrar is satisfied with the affidavit, the registrar:

- signs the garnishing order
- · date stamps all copies of the order and affidavit
- retains the original on file
- · returns copies to the creditor for service

The person applying for the Garnishing Order must also pay the fee for having the order issued, and if the affidavit is sworn/affirmed by the registrar, the affidavit fee is also applicable.

Note: Garnishing orders cannot be issued for funds held in trust by the court.

Multiple Defendants and Garnishees

More than one garnishee or defendant can be named in one order [COEA s. 26]. (See <u>Chapter</u> <u>4</u>, <u>Garnishing Order Before Judgment</u>.)

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Correct Name of Garnishee

It is vital that the correct name of the garnishee appear on the garnishing order or the garnishee may legitimately refuse to honour it. (See <u>Chapter 4</u>, <u>Garnishing Order Before</u> <u>Judgment</u>.)

Expenses Allowed on a Garnishing Order After Judgment

The registrar must decide which expenses are allowed on a garnishing order. The registrar inserts the amount of expenses allowed on the garnishing order as "cost of attachment proceedings." [COEA s. 10].

The registrar must estimate the cost of the garnishing process, which might include:

- the fee for issuing the order as set in the Fee Schedule
- the fee for swearing/affirming the affidavit in support of the order
- the expenses for serving the garnishing order on the garnishee
- the expenses for serving the garnishing order and Notice of Payment Out on the debtor
- the fee for swearing/affirming the Affidavits of Service

Each registrar usually sets standard amounts of expenses allowed.

If there are multiple defendants or garnishees to be served, or if the cost of service is expected to be higher than usual, additional expenses may be allowed.

If the creditor is successful in attaching funds and having them paid out of court, the creditor is entitled to recover the costs of the garnishing process. If the creditor takes further enforcement action, the creditor may include the costs of this garnishing order in the amount still owing.

If the garnishing order is not successful, the registrar must decide whether to allow the costs

when issuing further enforcement action.

- **Example:** If it appears that the creditor went on a "fishing expedition" and served garnishing orders at ten different banks, the registrar might not allow them.
- **Example:** If a creditor must serve four garnishing orders on the debtor's employer before one is successful, the registrar might allow some or all of those costs.

Provincial Government Employees

If the debtor is a provincial public servant, the garnishing order should be addressed to "Her Majesty the Queen in Right of the Province of British Columbia", or "The Crown in the Right of the Province of British Columbia". [COEA s. 6]. The creditor should also include the government department in the order. The creditor may wish to obtain confirmation of employment by sending a request by fax to Chips Payroll Accounting (250) 356 -1612.

The Legal Encumbrance Section, Ministry of Finance & Corporate Relations, Province of British Columbia, is responsible for processing garnishee orders served on the Province of British Columbia - with the exception of Crown Corporations, (such as Insurance Corporation of BC) and several program payment areas (including Ambulance Services, Liquor Distribution Services, Medical Services Commission, or the Superannuation Commission).

It is a central function providing assistance to all ministries' payroll and account payable services. It is not involved in garnishing bank accounts nor creating, issuing, and serving legal documents on behalf of revenue producing ministries and their collection departments.

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Service

Garnishing orders against provincial government employees may be served in person or by registered mail (COEA s. 9(4)) at the following address:

Legal Encumbrance Section Office of the Comptroller General Ministry of Finance Room 019, 617 Government Street Victoria, BC V8W 9V1

The Legal Encumbrance Section may be served by fax where the creditor has received consent to serve by fax following an application to the registrar or a judge [COEA s. 9(5)]. See <u>Alternate Methods of Service</u> in this section for more information. The garnishing order is faxed along with a covering letter or fax cover sheet to:

Legal Encumbrance Section

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Office of the Comptroller General Ministry of Finance Room 019, 617 Government Street Victoria, BC Fax number: (250) 387-3364

The creditor requires confirmation of receipt of the fax from the Legal Encumbrance Section to be able to complete an Affidavit of Service. The fax cover letter or sheet used by the creditor must include a contact name and fax number for the confirmation to be returned.

Service by fax is preferred by the Legal Encumbrance Section due to the difficulties they encounter with payroll cut-off dates and electronic deposits, but they do require the fax be followed up with the original order mailed to them at:

Ministry of Finance, Legal Encumbrance Section PO Box 9413, Stn Prov Govt, Victoria, BC, V8W 9V1

Creditors requiring further information may contact a Legal Encumbrance Officer by mail at the above address, by fax at (250) 387-3364, or by telephone at (250) 387-3156 or (250) 387-3241.

Federal Government Employees Canadian Forces Members

Procedures for garnishing orders against Canadian Forces members are established under Chapter 207 of the Queens Regulations and Orders. A *Notice of Intention to Garnishee* (PSC 801) and supporting affidavit (PSC 800) must be served at least 30 days **before** the garnishing order is served. The creditor should attach a copy of the judgment or document showing his or her right as a creditor to the supporting affidavit.

There is no need for the creditor to file the Notice of Intention to Garnishee and the supporting affidavit with the court registry.

The creditor must serve along with the garnishing order, a certified copy of the judgment or order.

The Notice of Intention to Garnishee and the garnishing order must be served on the commanding officer of the judgment debtor.



Civilian Employees

There are special prócedures to be followed under the *Garnishment, Attachment and Pension Diversion Act* (GAPDA) for federal government employees. Employees of the federal government include civil servants, senators, members of Parliament, judges, members of the R.C.M.P., or employees of some Crown corporations. These corporations are listed in s. 6 of the *GAPDA Regulations* as follows:

- Canada Post Corporation
- Canadian Dairy Commission
- Canadian Film Development Corporation
- Canadian Livestock Feed Board
- Royal Canadian Mint

If the creditor is uncertain whether a specific department is subject to the provisions of the GAPDA, the creditor should contact the Garnishment Registry at (604) 666-2061 for advice.

Subject to Division 1 of GAPDA and its Regulations, Her Majesty is bound by provincial garnishment law in respect of salaries and remuneration payable to federal employees [GAPDA s. 5]. However, if there is an inconsistency between GAPDA and the provincial garnishment law, the provincial law is overridden to the extent of the inconsistency [GAPDA s. 27].

The creditor prepares the Affidavit in Support of a Garnishing Order After Judgment and the Garnishing Order identifying the garnishee as "Her Majesty the Queen in right of Canada" only. The government department should not be included on the garnishing order.

A federal form called a Garnishment Application must be prepared by the creditor and served along with the Garnishing Order After Judgment **and** a copy of the judgment or order [GAPDA s. 6(1)]. The style of the form is prescribed in s. 3 of the Regulations. Note that **it is not necessary** to serve the Affidavit in Support of a Garnishing Order After Judgment on the Garnishment Registry.

A printed version of the form has been prepared by Court Services and the creditor may obtain a copy of the form from the court registry. The copy is made from a preprinted Form Master (SCL 816), or the creditor can obtain a bilingual form from the Garnishment Registry of the Department of Justice.

A Garnishing Order for service on the Crown is valid for 30 days from the day it is issued [GAPDA s. 6(2)] and the service of the documents is binding on the Crown 15 days after the documents are served on the Garnishment Registry [GAPDA s. 6(1)]. However, when the funds are actually attached is determined by the provisions of section 8 of the Act. It typically takes 6 to 8 weeks from the date of service before any funds are actually attached. After the funds are attached, it may take up to an additional 15 days for the funds to be paid into court. Subsequent Garnishing Orders can still be served before funds are attached from the first Garnishing Order, as long as they meet the requirements of GAPDA and are not served in the same pay period as the previous Garnishing Order.

Service of these documents must be made at the place specified in the Regulations [GAPDA s. 7(1)]. For British Columbia this address is:

Attn: Garnishment Registry Department of Justice Vancouver Regional Office Suite 900 - 840 Howe Street Vancouver, B.C. V6Z 2S9 Section 7(2) of the Act sets out the method of service on Her Majesty. The creditor can serve the documents by registered mail [COEA s. 9(4) and GAPDA s. 7(2)] or by hand. If registered mail is used, the documents are deemed to be served on the day they are received at the address specified in the Regulations.

When the Garnishment Registry receives all the documents required under s. 6(1) of GAPDA, a letter acknowledging receipt is sent to the creditor. This letter may be used as an attachment to the Affidavit of Service when proof of service is required. If a creditor does not serve all the documents required under s. 6(1) of the GAPDA, the Garnishment Registry has the discretion to contact the creditor and request the missing document(s) or return the documents to the creditor with a cover letter. In this situation, the date of service of the Garnishing Order is the date when **all** documents required under s. 6(1) are served on Her Majesty.

An Application form and a copy of the judgment or order must be served with each subsequent Garnishing Order that is served on Her Majesty [GAPDA s. 6(1)].

Тор

Attaching Wages

If the garnishing order is against a debtor's wages, the supporting affidavit must be sworn/affirmed within seven days of the pay date [COEA s. 3(1)] or the employer may legitimately refuse to honour the order. The order must be served on the employer within the seven day period and before the pay date.

The garnishing order attaches any wages which might be due to the employee during that seven day period. A new garnishing order must be issued after the seven day period expires, to continue to attach the employee's wages until the debt is satisfied.

Where wages are attached, 70% of the wages are exempt from attachment. The debtor must be left with:

- at least \$100.00 per month if the defendant has no dependents
- at least \$200.00 per month if the defendant has dependents
- or a proportionate amount for a shorter period of time.

The garnishee may pay into court a maximum of 30% of the debtor's pay, up to the total amount owing. The calculation is based on the employee's **net** pay [COEA s. 1 - definition of "wages"].

Variation of Exemption

The creditor or the debtor may apply for an increase or reduction in the amount of wages that are exempt from attachment. The largest exemption that can be applied for is 90% of wages due. The smallest exemption must still leave \$200.00 per month for a debtor with dependents or \$100.00 per month for a debtor without dependents. [COEA s. 4(4)].

The application must be made to a judge. [COEA s. 4(1)]. The applicant completes an Application to a Judge (SCL 017) (or prepares their own form of application) and submits it to

the registry to request the hearing. The hearing must take place within seven days of the request for the hearing. The registrar must notify the garnishee, the debtor and the creditor of the hearing date, and the notices must be sent out within three days of the request for the hearing. [COEA s. 4(2)].

An order made on an application for variation may be appealed to the Supreme Court within fourteen days after the date of the order. [COEA s. 4(5)].

Service of Garnishing Order

The creditor is responsible for serving the garnishing order. Any adult person may serve it. The creditor may choose to hire a private process server.

The garnishee may be served by registered mail or personally. The usual practice is to serve the garnishee first (so that the debtor does not arrange for removal of the funds being garnished).

The debtor should be served "at once" [COEA s. 9(2)], and this may be done as personal service or by registered mail. [COEA s.9(4)].

Note: If the debtor is a company, the service provisions of the *Business Corporations Act* (section 9(1)) apply and if the debtor is a partnership, section 25 of the *Court Order Enforcement Act* applies.

It is not necessary to serve the debtor if the garnishing order will not be successful. The creditor can usually find out at the time the order is served on the garnishee whether funds will be remitted to the court.

If funds are paid into court, the creditor must file an Affidavit of Service (to prove the debtor was served) in the registry before an order for payment out can be made [COEA s. 9(3)]. The affidavit of service is printed on the back of the garnishing order form and if it is sworn/affirmed at the registry, the applicable fee would be charged. It is not necessary to file an affidavit of service on the garnishee except when the creditor is requesting a Garnishing Order Absolute.

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Alternate Methods of Service

If it is not possible to serve a defendant or a garnishee, the creditor may ask a judge or the registrar for permission to serve the garnishing order in another way [COEA s. 9(5)].

The procedure for making the application is the same as for an application for an alternate method of service of the Notice of Claim. (See <u>Chapter 3</u>, <u>Serving the Notice of Claim</u>.) The registrar may require the creditor to prepare an application form for the file, or may hear the application orally. The applicant may wish to use an Application to a Registrar form (SCL 016) or may prepare their own form of application. The registrar may prepare an order to be served along with the garnishing order, or may endorse the order on the original and copies of the

garnishing order itself.

The registrar may also allow the creditor a longer time period for serving the debtor, and must make an endorsement on the order to this effect [COEA s. 9(2)].

The registrar may refer the application to a judge and the applicant should prepare an Application to a Judge form (SCL 017) or prepare their own form of application. In some court locations a judge hears all of these applications.

Garnishee's Responsibility

If the garnishing order is **not for wages**, from the time service is made on the garnishee, the garnishee is bound by the order to attach the debts, obligations or liabilities owing, payable or accruing due to the defendant that are in his/her hands at the time of the order being served. [COEA s. 9(1)].

If the garnishing order is **for wages**, the order is good for any wages to be paid within seven days from the time the affidavit is sworn/affirmed. [COEA s. 3(1)]. This could mean more than one attachment could be made under the garnishing order, but only during that seven day period.

The garnishee must send the attached funds to the court registry indicated on the order. The funds will be held in trust until there is an order for payment out or the case is resolved.

If the debtor is concerned that the garnishee erred by sending more funds than the total amount of the garnishing order, the onus is on the debtor to contest the application for payment out.

Garnishee Disputes Liability

The garnishee is required to either:

- · pay the funds into court, or
- dispute the order.

The `Notice to Garnishee' on the Garnishing Order After Judgment form tells the garnishee to file a dispute note at once if the garnishee disputes his or her liability. This should be done by using an Application to a Judge so that a hearing can be set to determine the dispute. [COEA s. 16]. This would likely occur if the garnishee has funds, but suggests they belong to some third person. The judge may order the third person to appear at the hearing to state their claim on the funds. [COEA s. 17].

If the garnishee does not hold any funds for the defendant, then they usually return a letter to the registry indicating they hold no funds in that person's name.

Example: The garnishee might say that the debtor did not earn any wages that month, or that the name of the garnishee is shown incorrectly on the order.

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Garnishing Order (Absolute)

If the garnishee fails to pay funds into court and does not dispute the order, or if the creditor is not satisfied with the garnishee's explanation, the creditor may make an application for a Garnishing Order (Absolute) [COEA s. 11]. This application requests that the garnishee appear in court to explain why the order was not obeyed.

To apply for a Garnishing Order Absolute, the creditor must file an Application to a Judge and serve it on the garnishee. It is not necessary to serve the debtor.

If the garnishee does not appear or if the judge is not satisfied that there was a valid reason not to comply with the order, the judge may make an order that the garnishee pay into court the entire amount due on the garnishing order plus costs. This payment is due from the garnishee, and not from the debtor. This means that the garnishee becomes personally liable for the amount of the judgment and costs. If payment is not made, the creditor may take execution proceedings against the garnishee just as if the garnishee were a debtor.

The *Court Order Enforcement Act* has a prescribed form for the Garnishing Order (Absolute) (COEA Schedule 1, Form E), and the applicant must produce their own form if the judge makes the order. No preprinted form is available from the registry.

Application to Release a Garnishing Order

The debtor may apply to a registrar or judge to **release the garnishing order** and return the funds. [COEA s. 5(1)].

If the registrar hears the application, it may be done informally. The registrar may require the defendant to complete an application and a statement of facts, or may deal with the application orally. It is recommended that the registrar keep notes of the application. All evidence must be taken under oath.

The registrar may refer the application to a judge, in which case an Application to a Judge (SCL 017) should be completed. In some court locations, the judge hears all of these applications.

The application may be made without notice to the creditor, but the creditor should be given notice of the application whenever possible.

The registrar may order the return of funds received on a garnishing order to the debtor if satisfied that it is a financial hardship for the debtor. If the registrar is not satisfied, the registrar should decline to cancel the order. The debtor may make an application to a judge or may appeal the registrar's decision. The registrar may also decide to return only some of the funds to the debtor.

If the registrar decides to return all or part of the funds to the debtor, the registrar must also make an order for payment by instalments [COEA s. 5(2)]. The registrar must draft and sign an order and mail or deliver a copy of it to the creditor and to the garnishee [COEA s. 5(5)]. The accounting clerk then prepares and mails a cheque to the debtor.

No further enforcement proceedings may be taken against the debtor without a judge's permission unless the debtor defaults on a payment for more than five days or a garnishing order is issued against the debtor on another court file [COEA s. 5(7)]. The creditor may appeal the registrar's decision or may make an application to a judge to vary the payment schedule.

Application to Vary an Instalment Order

The registrar or judge may **vary an instalment order** at any time if an application is filed by the judgment creditor or debtor, and if three days' notice of the application has been given in writing to the other party. [COEA s. 5(3)]. If there is no urgency, notice of the application should be served on the creditor. The debtor should try to give the creditor at least seven days' notice.

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Payment Out of Funds in Court

For applications and matters relating to Payday loan debt cases, please refer to the <u>2005</u> <u>Practice Direction</u>.

Funds may not be paid out of court until the creditor completes one of the following procedures:

- A. If the Order for Payment was made in default, the creditor may wait three months from the date the funds were paid into court and have the funds paid out on request.
- B. Whether the Order for Payment was by default or not, the creditor may:
 - o prepare and serve a Notice of Payment Out on the debtor. The Notice of Payment Out may be served either personally or by registered mail to the debtor's last known address [COEA s. 13(3)]. If served by registered mail, it is sufficient that the creditor is able to prove that the document was mailed to the last known address and it is not necessary to prove that it was received. A print-out of Canada Post's tracking history is sufficient to prove that it was mailed and a delivery confirmation is not required. If a tracking history is filed as proof of service and the mailed document was not signed for, the date of attempted delivery at the last known address is the date to use as a starting point for the 10 day calculation for payment out. This means that as per Rule 17 (10) the day after the date of attempted delivery is day 1. If a judge or registrar made an order permitting an alternate method of service of the garnishing order, the notice may be served in the same way without any further application [COEA s. 13(2)].
 - file an Affidavit of Service and the Notice of Payment Out. Ten days after the Notice of Payment has been served, the funds may be paid out on request of the creditor.
 - The creditor may prepare their own form for the notice of payment out or use the preprinted form Notice of Payment Out of Money Paid Into Court By Garnishee (PSC 024) available from the court registry. The preprinted form contains an Affidavit of Service on the back of the service copy of the form.
- C. If the creditor is able to reach an agreement with the debtor, the creditor can obtain and file the debtor's written consent for the funds to be paid out [COEA s. 13(4)]. The consent may be in any form, as long as it includes:
 - the file number

- the amount to be paid out
- who it is to be paid out to
- the debtor's signature

If payment out is made by consent, it is not necessary to file an Affidavit of Service.

- D. If unable to complete one of the three options above, the creditor should either:
 - apply to a registrar for permission to serve the documents in an alternate method, or
 - o apply to a judge for payment out.

Once the creditor has met the requirement for payment out, the registrar sends a request to the accounting clerk and a cheque is sent out. The cheque is made payable to the creditor. However, the cheque may be made out to the creditor's solicitor if the creditor's written consent is filed.

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Bankruptcies

Sec. 70(1) of the *Bankruptcy Act* states:

"Every receiving order and every assignment made in pursuance of the Act takes precedence over all judicial or other attachments, garnishments, certificates having the effect of judgments, judgments, certificates of judgment, judgments operating as hypothecs, executions or other process against the property of a bankrupt, except those that have been completely executed by payment to the creditor or his agent, and except the rights of a secured creditor."

Sec. 73(2) of Bankruptcy Act states:

"Where an assignment or a receiving order has been made, the sheriff or other officer of any court or any other person having seized property of the bankrupt under execution or attachment or any other process shall, on receiving a copy of the assignment or the receiving order certified by the trustee as a true copy thereof, forthwith deliver to the trustee all the property of the bankrupt in his hands."

Therefore, when a trustee in bankruptcy asks for any money paid into court to be paid to him/her, pay the money out to the trustee. Any disputes over distribution are subject to the *Bankruptcy Act* and an order of the Supreme Court.

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11.4 Garnishing Orders

Process

1. Creditor wants a garnishing order Background

The creditor obtains a Garnishing Order After Judgment form and Affidavit In Support of Garnishing Order After Judgment form.

2. Creditor returns completed forms to registry Procedure

The creditor has the affidavit sworn/affirmed before a commissioner and submits the forms to the registrar.

3. The registrar checks the documents Procedure

The registrar checks that:

- the affidavit contains:
 - o the name and address of the garnishee
 - o the amount of the payment order
 - the amount still owing
 - o if multiple debtors and/or garnishees, which funds are being attached for which debtor
- · the affidavit has been sworn/affirmed before a commissioner
- all changes and deletions have been initialled by the commissioner
- the names of the debtor and garnishee on the garnishing order match the names on the affidavit
- if previous garnishing orders have been issued, the amount owing reflects the costs of previous
 orders and any funds received into court

4. Registrar processes the order Procedure

The registrar:

- inserts the amount of costs allowed on the garnishing order
- signs the order
- · date stamps all copies of the order and affidavit
- files the original garnishing order and affidavit
- · returns copies of the garnishing order and affidavit to the creditor

5. Creditor arranges for service Procedure

The creditor may apply to the registrar for an alternate method of service if necessary. If the garnishing order is successful, an Affidavit of Service on the debtor must be filed.

6. Is payment received? Consideration

If YES, <u>go to 8</u>.

If NO, go to 7.

7. The creditor may apply for a Garnishing Order Absolute Procedure

The creditor may apply if the garnishee does not file a letter with the court indicating why the order was not honoured, or if the creditor is not satisfied with the garnishee's explanation. An Application to a Judge (SCL 017) is filed and served on the garnishee. On the hearing date, if the garnishee does not appear or does not satisfy the judge that there was a valid reason for not complying with the order, the judge may order that the garnishee be held personally liable for the amount of the order. The creditor may take enforcement action against the garnishee.

8. Debtor may apply for return of funds Procedure

The debtor may apply to cancel the garnishing order and return the funds. If the application is granted, the registrar must:

- make an order for payment by instalments
- file the order
- send copies of the order to all parties

9. Creditor takes steps to obtain payment out Procedure

Option A:	The creditor waits three months and makes a request for payment out. This applies only to default orders.
Option B:	The creditor serves a Notice of Payment Out on the debtor. The creditor files an Affidavit of Service and the Notice of Payment Out with the registry. The creditor may apply for payment out ten days after service of the notice on the debtor.
Option C:	The creditor obtains and files the debtor's written consent to payment out. No affidavits are required.
Option D:	The creditor applies to the court for an order for payment out.

10. Payment out Procedure

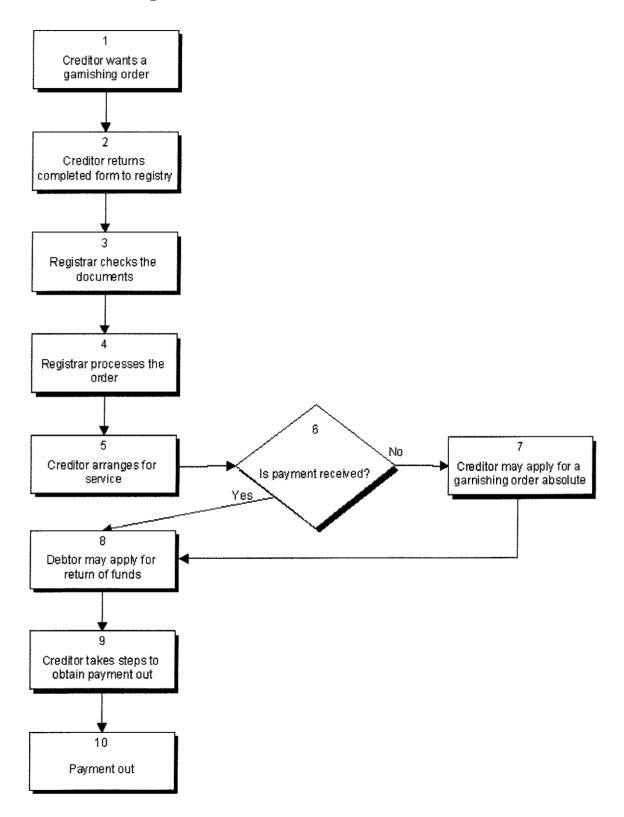
The registry sends a request to the accounting clerk. The accounting clerk prepares and mails a cheque to the creditor.

See flowchart

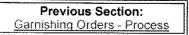
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September 2001

11.4 Garnishing Orders



September 2001



11.5 Order for Seizure and Sale

Introduction

This section outlines the procedure for issuing an Order for Seizure and Sale.

An Order for Seizure and Sale is a document that orders the court bailiff or sheriff to seize and sell the debtor's goods by auction, sealed bid, or other similar acceptable means, to pay the amount owing to the creditor.

For applications and matters relating to Payday loan debt cases, please refer to the 2005 Practice Direction.

Legal Commentary

When an Order May be Issued

An Order for Seizure and Sale is issued by the Provincial Court and is defined as a "writ of execution" under the *Court Order Enforcement Act.*

To issue an Order for Seizure and Sale the creditor would complete Form 11 (SCL 011) and deliver it to the registry for filing. [Rule 11(12)].

An Order for Seizure and Sale may be issued when there is a default or payment order on file and the debtor has not paid. The order may be issued:

- if there is no payment schedule immediately after the payment order is filed, or
- if the debtor defaults on a payment schedule. [Rule11(11) and (14)].

A creditor may also use the order for seizure and sale to collect money owing under an order made by another court or under any other enactment, that has been filed in the Small Claims court for enforcement. [COEA s.53].

No notice to the debtor is required.

An Order for Seizure and Sale is particularly useful when the creditor knows that the debtor has goods worth seizing. The costs of this procedure can be relatively high and the creditor risks paying these costs with no recovery if they do not find out first whether the debtor has personal property worth seizing.

Who Executes the Order

The Orders for Seizure and Sale are executed by court bailiffs, who are specifically authorized to execute these orders by a contract with the Ministry of Attorney General. The court bailiffs are contracted for specific areas of the province and only those court bailiffs named for an area may execute the Order For Seizure and Sale in that area.

A list of the contracted areas and the names of the court bailiffs is available in the registry. Some large areas n have more than one court bailiff under contract and the creditor may choose which firm to use from the list. Registry staff should not suggest to a creditor which court bailiff firm to use.

Each contract area has a contract administrator to oversee the operation of the contract. The contract

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administrators are Sheriffs and their names are attached to the list of court bailiffs available in the court registry. If any questions or concerns arise about the court bailiffs, registry staff should direct the person to the contract administrator and provide that person with the name, address and telephone number of the contract administrator.

The court bailiffs perform the same civil execution functions as the sheriffs once did, and in very rare situations the sheriffs may still execute these orders. Examples of such rare occurrences may include where the court directs the order to be executed by the sheriffs or where the court bailiff is the judgment debtor named in the order.

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What May Be Seized

First of all, certain goods belonging to the debtor **are** exempt from seizure, unless the debtor agrees to them being seized. [COEA s.71]. These include:

- necessary clothing of the debtor and the debtor's dependants
- medical and dental aids that are required by the debtor and the debtor's dependants.

Other goods belonging to the debtor **are exempt where the value of the goods does not exceed a prescribed amount** set out in the regulations, unless the debtor agrees to them being seized. These include:

- household furnishings and appliances
- one motor vehicle
- tools and other personal property that are used by the debtor to earn income from the debtor's occupation (excluding merchandise which forms part of stock and trade of a business)
- any personal property prescribed by the regulations

If the value of these items exceeds the prescribed amount of the exemption, the items may be seized and sold. Generally, once the goods are sold the funds are distributed in the following order:

- any secured creditor with a perfected interest in the property is paid,
- up to the prescribed amount of the exemption is then paid to the debtor
- the balance, if any, up to the amount of the actual fees and disbursements for enforcing the order is then paid to the court bailiff,
- the balance, if any, up to the total amount due to the creditor is then paid to the creditor who obtained the Order for Seizure and Sale, and
- any remaining balance is returned to the debtor.

Note: This distribution may vary, as priorities may be affected by an Order under the *Family Maintenance Enforcement Act.*

The debtor can make his or her selection of the goods to be exempted at the time of seizure or within 2 days after the seizure. [COEA s.73(2)].

In addition, an item may not be seized if it is owned jointly with someone else. This often means household goods, for example, cannot be seized. If there is an encumbrance against the item, such as a loan secured against an automobile, the court bailiff will only seize the car if the value is greater than the amount outstanding on the loan, plus the amount of amount prescribed in the regulation, plus the court bailiff's fees for time spent and such charges as towing, storing and advertising.

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The most commonly seized items are motor vehicles, boats, and shares, although any goods that are worth taking and are not part of the exemption, can be seized. If the debtor has few goods of any value, the Order for Seizure and Sale will probably be unsuccessful for the creditor.

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	Тор

Searches

The registry staff should:

- request that the creditor provide the court bailiff with information about seizable assets
- recommend that a motor vehicle search and a Personal Property Registry search be done

A motor vehicle search shows whether the debtor is the sole owner of any motor vehicle. To request a motor vehicle search, a creditor should send a copy of the judgment to:

I. C. B. C. - Vehicle Records Search 151 West Esplanade Street North Vancouver, British Columbia V7M 3H9

There is a fee for this service and the creditor should be advised to contact the Vehicle Records Unit at 661-2233 or 1-800-464-5050 for more information. Alternatively, the creditor may contact a legal search service, but the fees will be higher.

T ind out how much secured debt might be registered against a debtor's motor vehicle or other personal property, the creditor should be advised to contact the local Government Agent Office, the local Motor Licensing office or the following office:

Personal Property Registry Ministry of Finance PO Box 9431 STN PROV GOVT Victoria, British Columbia V8W 9V3 Telephone: (250) 356-8600

A fee is charged for each search.

These searches assist the court bailiff in performing the seizure. The extracts should be filed with the Order for Seizure and Sale. If no information on seizable assets is provided, the court bailiff will still attempt to execute the order, but will charge the creditor for time spent. If the order is unsuccessful, these fees may not be recoverable.

Deposit Required By Court Bailiff

Prior to engaging the services of a court bailiff, the creditor may wish to obtain an estimate of the costs of executing the Order for Seizure and Sale from the court bailiff. It is not unusual for the costs of executing one of these orders to exceed one thousand dollars.

There is no fee to issue the Order for Seizure and Sale, but when the creditor contacts the court bailiff to arrange to have the order executed, the creditor will be asked to provide a deposit to the court bailiff. (Some court bailiffs require a certified cheque.)

After the court bailiff has executed or tried to execute the Order for Seizure and Sale, any unused portion of the deposit will be refunded to the creditor.

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What the Court Bailiff Does

The court bailiff investigates which assets may be seized if this information has not already been provided by the creditor.

When attempting to seize the goods, the court bailiff will give the debtor an opportunity to pay the amount due instead.

If goods are seized, the court bailiff sells the goods by auction or by sealed bid. The proceeds from the sale are distributed in accordance with section 71.2 of the *Court Order Enforcement Act.*

The court bailiff returns the original Order for Seizure and Sale to the registry with an endorsement explaining the outcome. The endorsement shows:

- whether goods have been seized
- the costs incurred
- the amount recovered

An endorsement of "Nulla Bona" means that no money was recovered. "Satisfied" means that the full amount due has been collected.

The Order for Seizure and Sale remains in force for one year from the date of issue, but the creditor may ask the registrar to issue another one if it has expired. [Rule 11(13)].

Court Order Enforcement Exemption Regulation

Definition

1 In this regulation:

"Act" means the *Court Order Enforcement Act;* "maintenance debtor" has the same meaning as "debtor" in section 1 (1) of the *Family Maintenance Enforcement Act.*

Exemptions for personal property of debtor

- 2 For the purposes of section 71(1) of the Act, the prescribed amounts of exemption are as follows:
 - a. \$4,000 for household furnishings and appliances;
 - b. \$5,000 for one motor vehicle if the debtor is not a maintenance debtor;
 - c. \$2,000 for one motor vehicle if the debtor is a maintenance debtor;
 - d. \$10,000 for tools and other personal property of the debtor that are used by the debtor to earn income from the debtor's occupation.

Exemption for principal residence of debtor

3 For the purposes of section 71.1 (1) of the Act, the prescribed amount of equity is as follows:

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http://portal.ag.gov.bc.ca/portal/page/portal/CSB_Home/document_repository/public/manuals/small_claim... 2014-06-02

- a. \$12,000 if the debtor is a person whose principal residence is located within the boundaries of the Capital Regional District or the Greater Vancouver Regional District;
- b. \$9,000 if the debtor is a person whose principal residence is located outside the boundaries of the Capital Regional District or the Greater Vancouver Regional District.

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11.5 Order for Seizure and Sale

Process

1. Creditor requests an Order for Seizure and Sale Background

The creditor completes the form and returns it to the registry.

2. The registrar checks the Order for Seizure and Sale Procedure

The registrar checks that:

- the creditor is entitled to have the Order for Seizure and Sale issued
- the name of the debtor on the Order for Seizure and Sale is exactly the same as on the payment order

3. The registrar processes the Order for Seizure and Sale Procedure

The registrar:

- · adds any expenses allowed by the court
- inserts the total amount due to the creditor
- signs the Order for Seizure and Sale
- date stamps the original and all copies of the Order for Seizure and Sale
- sends the original Order for Seizure and Sale to an authorized court bailiff of the creditor's choice. The creditor is responsible for any cost for delivering the original order to the court bailiff.
- retains a copy of the Order for Seizure and Sale on file
- returns the remaining copies of the Order for Seizure and Sale to the creditor
- advises the creditor to review the list of authorized court bailiffs and to choose one for the area where the Order for Seizure and Sale will be executed
- advises the creditor to forward to the court bailiff:
 - o any instructions
 - o searches or other documents
 - o a copy of the payment order
- advises the creditor that the court bailiff will require a deposit (the court bailiff may require a certified cheque)
- enters the required information on the Writ/Order Issuance Log (SHS 832) for Civil Executions.

4. Court bailiff executes the Order for Seizure and Sale Procedure

5. Does the debtor pay immediately? Consideration

If YES, end of process.

If NO, go to 6.

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6. Are goods seized and sold? Consideration

If NO, go to 7.

If YES, go to 8.

7. Court bailiff returns unsuccessful Order for Seizure and Sale Procedure

The court bailiff:

- returns the Order for Seizure and Sale to the registry endorsed "Nulla Bona"
- refunds any unused portion of the deposit to the creditor

The creditor may take other enforcement action. The registrar decides whether to allow the creditor to recover the costs of the Order for Seizure and Sale.

8. Court bailiff returns successful Order for Seizure and Sale Procedure

The court bailiff:

- returns the Order for Seizure and Sale to the registry endorsed with the outcome
- disburses the proceeds of the sale

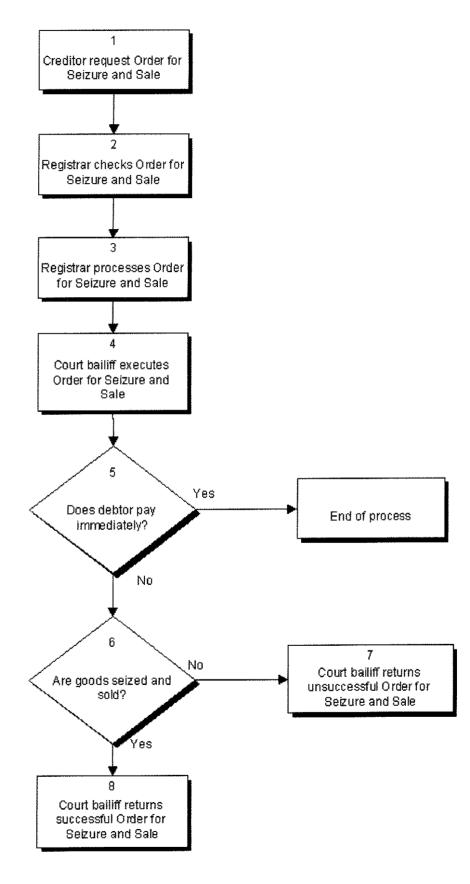
If only part of the debt was recovered, the creditor may take further enforcement action. The creditor may recover the costs of the Order for Seizure and Sale in further enforcement action.

See flowchart

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11.5 Order for Seizure and Sale



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1¹ 6 Certificate of Judgment

Introduction

The section outlines the procedure for registering a judgment against land. The creditor may register the judgment in the same manner as a charge against land owned by the debtor. [s.210 Land Title Act].

If the debtor owns land in British Columbia, the creditor can register a certified copy of the judgment or certificate of judgment in the Land Title Office. This procedure can be very effective since the debtor cannot normally sell or mortgage the land until the debt is paid. It is also one of the simpler and less costly procedures to enforce a judgment.

If the creditor does not know if the debtor owns land in British Columbia, a name search can be done at the Land Title Office for a fee.

For applications and matters relating to Payday loan debt cases, please refer to the 2005 Practice Direction.

Legal Commentary

Obtaining a Certificate

The creditor may request that the registrar issue a Certificate of the Judgment. A preprinted form (SCL 815) is available from the registry and has been prepared to include the Application form required by the Land Title . The fee for issuing the certificate is set out in <u>Fee Schedule of the Small Claims Rules</u>. The fee only covers the issuing of the Certificate and does not include any fees charged by the Land Title Office.

Use of this form is preferred by the Land Title Office because it combines the two required forms and reduces the amount of document handling, but there is a second option.

The creditor may ask the registrar to issue a certified true copy of the judgment which may be used as the Certificate of Judgment. [COEA s.88(4)]. Section 88(1) of the *Court Order Enforcement Act* allows the certified copy of the order to be used because it is included in the term "certificate of judgment".

A creditor who chooses to use this option, must pay the fee for the certification of the order and must prepare an application form to accompany the order. The application should be prepared according to Form 17 of the prescribed forms for the *Land Title Act Regulations*.

Registering the Certificate

The creditor takes the original certificate or a certified copy of the judgment with an application, to the Land Title Office in the district where the land is situated. The Land Title Office completes the necessary forms and charges a fee for registering the judgment against the title to the land. A lien may be registered against more than one property owned by the debtor by including the legal description of each property on the application.

Once the registration process has been completed, the creditor is provided with a copy of the document. This r may be used by the creditor to register the judgment against another property or to renew the registration. [UOEA s.88(5)].

The registration expires after two years, but may be renewed every two years before the registration expires,

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for up to 10 years from the date of the judgment.

To renew the registration, the creditor should provide their copy of the document and a new Application (Form 17 - *Land Title Act Regulations*) to the Land Title Office. A new certificate should not be prepared, and the creditor should tell the clerk at the Land Title Office that it is a renewal so that the creditor's priority is maintained.

If the two year period has expired, the creditor's priority will be lost and a new certificate of judgment will have to be obtained. If the creditor keeps the judgment registered for 10 years, there is a greater likelihood that the debtor will sell or remortgage the land and the creditor will be paid.

Once the registration process is complete the Registrar of the Land Title Office sends the debtor notice of the registration of the judgment against their property and a copy of the certificate of judgment, by registered mail. [COEA s. 89(2)].

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Joint Tenancy

When land is held in joint tenancy and only one of the tenants is a debtor, the judgment may still be registered against the land. However, if the debtor dies, the judgment is cancelled.

Application for Sale of Land

The creditor can apply to the Supreme Court to have the land sold once a judgment is registered against it. However, since this procedure is costly and complicated, it is rarely used to enforce Small Claims Court judgments. The creditor should seek legal advice if he or she wishes to make this application.

Cancelling the Registration

If the debtor satisfies the judgment, the debtor will want to remove the lien from the land. The creditor may also agree to remove or partially remove (i.e., from one property but not from others) a lien in anticipation of being paid after the land is sold.

The creditor may obtain the necessary information and form to have the land released, from the Land Title Office. The land title office will require a *Land Title Act* Form C signed by the creditor before a witness (such as a solicitor, notary public, or commissioner for taking affidavits) to provide satisfactory proof that the registered charge has been satisfied, surrendered, released or discharged in whole or in part. [s.216(1) LTA]. There is a fee for filing the discharge payable to the Land Title Office.

If the debtor wants to expedite the process, the debtor may obtain the form, complete it, have the creditor sign it before a witness, and deliver it to the Land Title Office for filing. The debtor cannot have the charge removed by producing a receipt or an acknowledgement of payment. Only the creditor can sign the application to remove the charge. If the creditor refuses to sign the discharge form, the debtor may apply to the Supreme Court for an order. This cannot be done by the Provincial court.

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11.6 Certificate of Judgment

Process

1. Creditor wants to register judgment against land Background

The creditor request a Certificate of Judgment (SCL 815) or a certified copy of the judgment form, from the registrar.

If it is a Certificate of Judgment, go to 2.

If it is a certified copy, go to 3.

2. Registrar checks and processes Certificate of Judgment Procedure

The clerk:

• makes a copy of the Form Master SCL 815 and gives it to the creditor to complete

The registrar:

- checks that the information on the certificate is correct and signs the certificate (names of parties, date and amounts of judgment)
- date stamps the original certificate
- collects the fee for issuing the certificate
- · makes a photocopy of the certificate for the file
- returns the original to the creditor

3. Registrar certifies a copy of the judgment Procedure

The clerk:

- makes a copy of the judgment order
- stamps the certification stamp on the copy and gives it to the registrar along with the original order

The registrar:

- signs the certification stamp
- collects the fee for certifying the copy as a true copy of the original
- gives the copy to the creditor and advises the creditor to prepare an Application to accompany the judgment

4. Creditor goes to the Land Title Office Procedure

The creditor takes the certificate or certified copy of the judgment and an application to the Land Title Office where the land is located.

The Land Title Office registers the judgment against the title to the land. The registration must be renewed

every two years before the expiry date.

5. Does the debtor pay the creditor? Consideration

If YES, go to 7.

If NO, go to 6.

6. The creditor takes other enforcement action Procedure

If the debtor does not pay, the creditor may take other enforcement action as well as registering judgment against the land.

7. The creditor has the registration cancelled Procedure

The creditor:

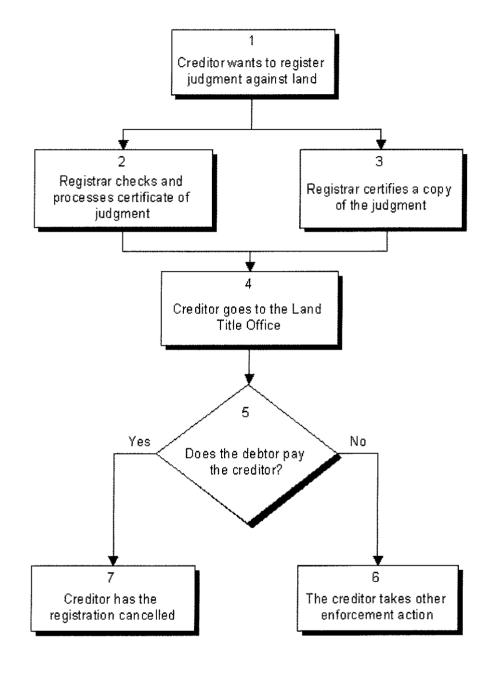
- goes to the Land Title Office to obtain a release form and prepares it,
- signs the form before a witness such as a solicitor, notary public, or commissioner for taking affidavits, and
- files it in the Land Title Office.

See flowchart

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September 2001

11.6 Certificate of Judgment



September 2001

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 Certificate of Judgment Process

11.7 Warrants of Arrests and Imprisonment

Introduction

This section outlines the procedure for issuing warrants of arrest and imprisonment.

A warrant may be issued for the arrest of any person who does not obey a summons to attend court or who does not attend as directed by a judge or registrar. When a judge or justice of the peace issues a warrant under the rules for the arrest of a debtor or a witness, the registrar must serve that person with a Notice of Warrant of Arrest.

Where a notice is required service of the notice is carried out by:

- leaving a copy of it with the party
- mailing a copy of it by registered mail to the party, or
- mailing a copy of it to the mailing address of the party. [Rule 18(12)]

Within 7 days of receiving the Notice, the person should arrange to appear voluntarily in court. After that time, the shariff executes the warrant. The warrant should be sent to the sheriff's office closest to where the person to be arrested resides.

Where the debtor has already been ordered to appear as a result of an earlier warrant a judge may order the immediate arrest of the person. The notice is not sent and the warrant is given directly to the sheriff for execution.

If a judge feels that the debtor has failed to obey an order for payment without sufficient reason, the judge may order the debtor imprisoned for up to twenty days. Imprisonment does not cancel the debt or the creditor's right to collect it. The judge may also order that a person be imprisoned for up to three days for contempt.

Small Claims Warrants are not placed on CPIC.

Legal Commentary

Issuing a Warrant of Arrest

A judge or justice of the peace may issue a Warrant of Arrest in Form 9 (SCL 009) for:

• a debtor who does not appear at a payment hearing when ordered to attend by a judge or a justice of the peace or when served with a summons. [Rule 12(15)]

A judge may issue a Warrant of Arrest (SCL 009) for:

- a debtor who does not appear at a default hearing when ordered to attend by a judge or when served with a summons. [Rule 13(9)].
- a witness who does not attend court as required by a summons or the order of a judge or

justice of the peace. [Rule 9(7)]



Notice of Arrest

When a judge or justice of the peace issues a warrant for the arrest of a person, that person will receive a notice advising him or her of the warrant before it is executed. [Rule 14(1)]. The person will have an opportunity to appear voluntarily to avoid being arrested. [Rule 14(2)].

The registrar must prepare the Warrant of Arrest form (SCL 009), which includes the Notice of Warrant of Arrest. When the warrant is prepared the Notice of Warrant of Arrest, which is part 4 of this form, is automatically created.

Service of the notice is carried out by:

- leaving a copy of it with the person
- mailing a copy of it by registered mail to the person and obtaining either a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered, or a print-out of the delivery confirmation made available on the Internet by Canada Post.
- mailing a copy of it to the mailing address of the person [Rule 13(12)]

Usually the registrar sends the Notice of Warrant of Arrest to the party or witness by regular mail. The person has 7 days from the date the Notice was served to contact the registrar and arrange to appear in court voluntarily. [Rule 14(3)]. Service by regular mail is presumed to be completed 14 days after the document was mailed, unless there is evidence to the contrary. [Rule 18(13)]. The registrar holds the warrant until 21 days have lapsed (14 days (mail) + 7 days (reply) = 21 days) and then forwards the warrant to the sheriff for execution. The warrant should be sent to the sheriff's office closest to where the person to be arrested resides.

Where the registrar has attempted to serve a notice of arrest by mail but has been unable to effect service, usually because it has been returned, the notice of arrest will be sent to the Sheriff's office for service. The warrant should be sent to the sheriff's office closest to where the person to be arrested resides.

If the Sheriffs are unable to serve the notice of arrest, they will prepare an affidavit of attempted service and return it to the originating registry along with the notice. The registrar will then seek direction from the judge as to whether an alternate method of service should be used.

If the person receives the notice of arrest and does not attend voluntarily to deal with the warrant, the registrar will forward the warrant to the Sheriff's office for execution seven days after it was served. The warrant should be sent to the sheriff's office closest to where the person to be arrested resides.

Voluntary Appearance

The person has seven days from the date the Notice of Arrest was served to contact the

registry and arrange a voluntary appearance. [Rule 14(3)]

If the person contacts the registry within the 7 days, the registry should immediately put the matter on the list.

If the person attends court voluntarily, the warrant is automatically cancelled. [Rule 14(6)].

The judge or justice of the peace may orders the person to appear on a new date. [Rule 14(5)]. The appearance and adjournment are recorded on the Order Following An Appearance on a Warrant form (SCL 811) and a copy is given to the party. The cancellation is also marked on the Warrant of Arrest to ensure the warrant is not executed at a later date.

To prevent Court Services from being sued for wrongful arrest, it is important for the clerk to notify the sheriff of the cancellation as soon as possible if the Warrant of Arrest had been forwarded to the sheriff. Confirmation of the cancellation would then be recorded on the warrant.

On the court date for the voluntary appearance, if the person does not appear, the warrant is considered still active, since it would only have been cancelled if the person attended. If the 21 days have elapsed, the warrant is forwarded to the sheriff. The warrant should be sent to the sheriff's office closest to where the person to be arrested resides.

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Warrant of Arrest - Immediate

If a person named in a warrant appears either voluntarily or under arrest and is ordered to appear on a another date and does not appear on that date a judge may issue a warrant for immediate arrest. [Rule 14(7)]. Only a judge has the power to do this. In this instance the warrant is given directly to the sheriff and no notice is sent. The warrant should be sent to the sheriff's office closest to where the person to be arrested resides. The warrant remains in effect for 12 months from the date of issue. [Rule 14(8)].

Arrest when no Judge is Available

Although sheriffs are to make every effort to execute warrants when the court is sitting, there may be occasions when the court is not sitting and people are arrested. If this happens the person arrested is to be brought before a justice of the peace who, will release the person to a date when the court is sitting.

The appearance and adjournment are recorded on the Order Following An Appearance on a Warrant form (SCL 811) and a copy is given to the person and a copy is sent to all other parties.

Court Appearance

When the person named in the warrant appears in court, either voluntarily or under arrest, the judge or justice of the peace may either:

- release the person to appear at a future date. or
- if the person is appearing before a judge, make whatever order the judge feels is appropriate, or
- detain the person, if a witness, until their presence is no longer required
- **Note:** If the witness is released, the witness will be ordered to attend court on the new trial date. Conditions of release may also be set.
- **Example:** the witness must contact the registrar seven days before the trial date to confirm that he or she will be attending.

The appearance and adjournment are recorded on the Order Following An Appearance on a Warrant form (SCL 811) and a copy is given to the person and a copy is sent to all other parties.

If the warrant has been sent to the sheriff and the person makes a voluntary appearance, the court clerk must make sure the warrant is recalled to ensure a wrongful arrest does not occur.

|--|

Warrant of Imprisonment - Failure to Obey an Order

If a debtor fails to keep a payment schedule or obey an order of the court, the creditor may summon the debtor to appear at a default hearing before the judge to give an explanation.

(See chapter 11.3, Default Hearings).

If the judge is not satisfied that the debtor had a valid reason for disobeying the order, the judge may order the debtor imprisoned for a period of not more than twenty days. [Rule13(8)].

Warrant of Imprisonment - Contempt

The judge may order a person to be imprisoned for **not more than three days**, if the person at a hearing before a judge refuses to:

- be sworn or affirmed or to answer a question
- produce a record or other evidence
- obey a direction of a judge, or
- repeatedly fails to attend court when summoned and does not provide adequate reasons for doing so. [Rule 19(1)].

If the person in contempt is the **claimant** or **applicant**, or their representative, the judge may dismiss the claim or application. [Rule 19(2)].

If the person in contempt is the defendant, or a **third party** or their representative, the judge may continue with the proceeding as if no reply was filed. [Rule 19(3)].

Arrest by Sheriff

The registry staff prepare a Warrant of Imprisonment Form 15 (SCL 802) and give it to the sheriff for execution. The warrant should be sent to the sheriff's office closest to where the person to be arrested resides.

A Warrant of Imprisonment authorizes the sheriff to arrest and immediately imprison the person. In most cases, the person is in the courtroom when the order for imprisonment is made. The person reports to the sheriff's office to be detained until the warrant can be prepared, or makes arrangements to attend later that day.

Sometimes, the sheriff may need to find the person to make the arrest. In this case, there is no need for the person to be brought before the court again. The person may be delivered directly to the correctional centre referred to in the warrant. [Rule 15(1)].

A Warrant of Imprisonment remains in force for twelve months from the date it is ordered, but at the end of that period it expires. [Rule 15(2)]. The warrant will remain in the sheriff's hands during that time while efforts are made to locate the person and it will not be placed on CPIC.

A person imprisoned for contempt may apply to a judge to be released, and the judge may order the person released with any conditions the judge feels are appropriate. [Rule 19(4)].

Imprisonment for contempt does not cancel the debt owed by the debtor and the creditor may taken any other steps to collect it. [Rule 15(7)].

Debtor May Pay

A debtor may pay the amount specified on the Warrant of Imprisonment to the registrar, sheriff, peace officer or warden who has custody of the person. [Rule 15(3)]. The money must be forwarded to the registrar for payment to the creditor named in the warrant of imprisonment. [Rule 15(6)].

If payment is accepted by the registrar before arrest, the registrar should immediately call the sheriff to cancel the warrant and follow up by preparing the cancellation notice on the copy of the warrant and sending a copy to the sheriff. The registrar must issue a receipt for the payment and then pay that amount to the creditor. [Rule 15(4)].

A sheriff, peace officer, or warden must release the person imprisoned under the warrant if the amount specified on the warrant of imprisonment is paid or the person shows a registrar's receipt for payment of the amount. [Rule 15(5)].

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11.7 Warrants of Arrests and Imprisonment

Process

1. Warrant for Arrest ordered Procedure

Warrant for Arrest is ordered:

- by a judge or justice of peace if the debtor doesn't appear at a payment hearing
- by a judge if the debtor does not appear at a default hearing
- by a judge if a witness does not appear

2. Warrant prepared Procedure

The clerk must:

- prepare the warrant
- have the warrant signed

3. Is the warrant for immediate arrest? Consideration

If YES, throw away the notice, go to 6.

If NO, go to 4.

4. Notice is sent Procedure

The registrar must send the person a notice by regular mail. The notice must be mailed the same day the warrant is prepared and diarized for 21 days.

5. Does the person respond within 21 days? Consideration

If YES, <u>go to 7</u>.

If NO, go to 6.

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6. Warrant executed Procedure

The warrant is forwarded to the sheriff for execution. The warrant should be sent to the sheriff's office closest to where the person to be arrested resides. Sheriff arrests and brings the person before a judge.

7. Person appears before a judge or justice of peace Procedure

The judge or justice of peace may:

- release the person to appear at a future date
- detain the person, if a witness, until he or sha is no longer required
- make whatever order the judge feels is appropriate

The clerk must:

- record the appearance and results on the Order Following an Appearance on a Warrant form
- provide copies to all the parties
- cancel the warrant if the party appears voluntarily

8. Does the person appear on the new court date? Consideration

If YES, go to 9.

If NO, go to 1 where judge will order a warrant for immediate arrest.

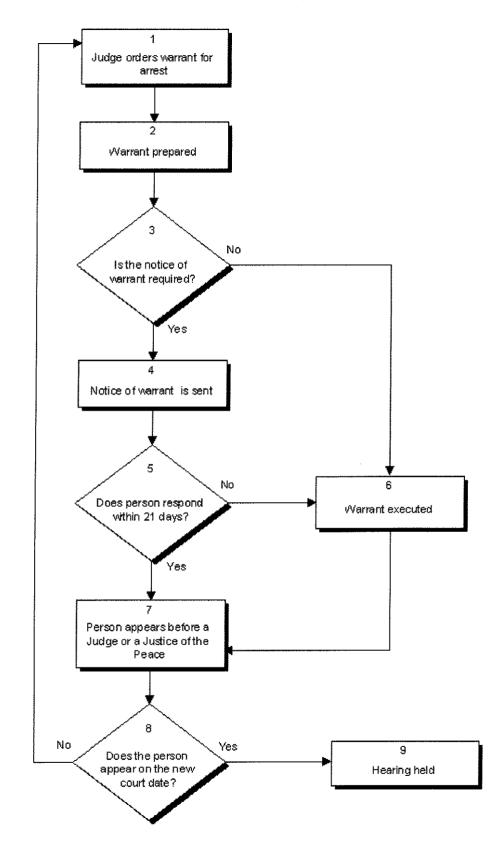
9. Hearing held Procedure

See flowchart

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11.7 Warrants of Arrests and Imprisonment



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For current practice see <u>Supreme Court Practice Direction</u> from Chief Justice Bauman dated July 1, 2010 for procedures.

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12.1 Appeals

Introduction

This section outlines the procedure for appealing a Small Claims order.

A party who is dissatisfied with an order of the Small Claims Provincial Court may appeal to the Supreme Court. An appeal is not a new or re-trial but a review of the original trial using transcripts of the original trial and a Statement of Argument. No new evidence may be presented without leave of the court.

Legal Commentary

The procedures for appeals are in the Small Claims Act (S.C.A.) (sections 5 to 15), <u>Supreme Court Civil</u> <u>Rule18-3</u> and the Standard Directions for Appeals from Provincial Court – Small Claims Act issued by the Chief Justice of the Supreme Court.

Right to Appeal

y party to a Small Claims proceeding may appeal an order allowing or dismissing a claim if that order was made by a Provincial Court judge after a trial, to the Supreme Court. [Sec. 5 S.C.A.].

If the party wants to dispute an order other than one allowing or dismissing an action after a trial, they should be advised to proceed under the *Judicial Review Procedures Act* in the Supreme Court. An application for judicial review is brought by petition to the Supreme Court. Judicial Review is not an appeal. It is a limited review to ensure that correct and fair procedures have been followed. The review does not concern itself with the appropriateness of the result, but looks at the process to ensure that the persons involved have been accorded fair treatment. (For more information see <u>Part 16 - Petition</u> in the Supreme Court Civil Manual).

Filing an Appeal

The appellant must complete the Notice of Appeal – Standard Directions (form 74) of the Supreme Court Civil Rules and file it along with a copy of the Standard Directions for Appeals from Provincial Court – Small Claims Act attached in the Supreme Court registry nearest to the Provincial Court where the decision being appealed was made within 40 days from the date the decision was given in Small Claims Court.

When filing the Notice of Appeal, they must pay into court the required fees and deposits. These include:

- a. \$200.00 to initiate a Supreme Court proceeding, plus;
- \$200.00 deposit as security for costs that the court may order if they lose or discontinue the appeal; and
- c. the amount of the judgment ordered by the Small Claims Court if the order being appealed required the payment of a sum of money. If they are unable to deposit the security for costs or the amount of

Notice of Appeal in the Small Claims Court registry

When the Notice of Appeal is received in the originating Small Claims Court, a photocopy of the notice is made and provided to the Provincial Court Judge named in the notice.

For civil matters the appellant is responsible for informing the lower court of the appeal, and whether any of the exhibits will be required. Most exhibits in civil matters are paper and copies are usually requested, leaving the original court to hold the exhibits until the appeal is concluded. For more information on transferring exhibits see the Exhibit Control Manual.

The file contents, except for the log notes, are removed from the Small Claims file folder and replaced with a copy of the notice. The contents, except for exhibits which need to be requested by the appellant, are forwarded to the Supreme Court.

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Time Limit

A party who wishes to file an appeal after the 40 days have passed must apply for an extension. The application is made at the Supreme Court. The application may be heard without notice to other parties unless the Supreme Court judge orders otherwise.

Time limits are set for numerous procedures by the Act, rules, and in standard directions. Any party to the appeal that requires an extension to comply with a requirement must apply to the Supreme Court for an order allowing the extension. [Sec. 15.S.C.A.].

Suspension of Enforcement

Once the security deposit is paid into court, any enforcement proceedings currently in progress in Small Claims court are suspended. [Sec. 9(1) S.C.A.]. If funds are being held in Small Claims court from a garnishing order, they must remain in trust at the Provincial Court. The Supreme Court registry should be notified. If the debtor has been served with a summons to attend a payment hearing, the parties must still attend.

Creditors who want to proceed with enforcement even though an appeal has been filed may apply to the Supreme Court for permission to proceed with enforcement. If permission is granted, the Supreme Court judge may attach conditions to the order. [Sec. 9(2) S.C.A.]. Enforcement proceedings would continue at the Provincial Court.

If the court bailiff is in the process of executing an Order for Seizure and Sale and is advised by the debtor that the claim has been appealed, the court bailiff should seek direction from the creditor or the Supreme Court.

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[<u>_____</u>]

ving Notices

The Notice of Appeal, the Standard Directions for Appeals from Provincial Court – *Small Claims Act* and if applicable any order reducing the amount security for costs or the amount of judgment as stated in items "b & c" above must be served personally on each respondent to the proceedings. Service must be made within seven days after filing the Notice of Appeal.

Note: refer to Supreme Court Civil Rule 4 for the process for serving a document.

After serving the documents, an Affidavit of Personal Service (form 15) providing proof of service of the above stated documents must be filed within 14 days of the appeal being filed.

Order Transcripts

Pursuant to the Standard Directions the appellant must order and pay for a transcript of the oral evidence given at the hearing in the Small Claims Court and the reasons for judgement of the Small Claims Court. They must furnish proof of ordering the transcript within 14 days of filing your appeal.

Respondent Wishes To Oppose Appeal

If a respondent wishes to oppose the appeal and receive notice of the hearing date, he or she must:

- a. File a Notice of Interest (form 70) within 7 days after service of the Notice of Appeal
- J. Promptly serve a copy of the filed Notice of Interest on the appellant by ordinary service.

Setting a Hearing Date

Within 14 days of filing the Notice of Appeal the appellant must request a date for the hearing of the appeal from the Registrar and file a Notice of Hearing of Appeal (form 75). Then the appellant must serve a copy of the Notice of Hearing of Appeal to all persons who have filed a Notice of Interest (form 70) within seven days of filing the Notice of Hearing of Appeal.

Statement Of Argument

Within 45 days after filing the Notice of Appeal the appellant must file the Statement of Argument (in Schedule "A" attached to the Standard Directions) and serve by ordinary service one copy on each person who has filed a Notice of Interest.

Within 14 days before the hearing of the appeal, a person who has filed a Notice of Interest must file a Statement of Argument (in Schedule "B" attached to the Standard Directions) and serve by ordinary service a copy on the appellant.

The written argument(s) should set out:

- Issues on Appeal only those issues the appellant does not agree with should be noted in numbered paragraphs.
- Argument the appellant should note in numbered paragraphs a concise outline of the argument including the points of law or fact with a reference to the exhibit or page line of the transcript and the

- authorities in support of each point.
 - Nature of Order Sought the appellant should set out the order they want the court to make and include any special disposition as to costs and payment out of monies paid into court. Filing Transcripts

Within 45 days after filing the Notice of Appeal the appellant must file the original transcript and serve by ordinary service one copy on each person who has filed a Notice of Interest.

Appeal as New Trial

The Supreme Court may decide that the appeal should be heard as a new trial. [Sec. 12(b) S.C.A.]. If the court orders a new trial, the trial will be heard in the Supreme Court. A Notice of Trial (form 40) would be used for setting the date of the new trial in Supreme Court and the filing fee would be collected.

When the Supreme Court decides to hold a new trial a copy of the Notice of Trial should be sent to the Provincial Court, so that the Provincial Court is aware that the appeal will be a new trial.

For civil matters the appellant is responsible for informing the lower court of the appeal, and whether any of the exhibits will be required. Most exhibits in civil matters are paper and copies are usually requested, leaving the original court to hold the exhibits until the appeal is concluded. For more information on transferring exhibits see the *Exhibit Control Manual*.

When the Notice of Trial is received, the file contents, except for the log notes, are removed from the Small Claims file folder and replaced with a copy of the notice. The contents, except for exhibits which need to be requested by the appellant, are forwarded to the Supreme Court.

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Abandoning an Appeal

Once an appeal has been filed, the appellant may abandon the appeal at any time. This can be done by signing and filing a Notice of Abandonment of Appeal (Form 76) of the Supreme Court Rules. [Rule 18-3 (10)].

Once notice has been filed the appellant must serve each respondent with a copy of the Notice of Abandonment. The appellant or respondent may then make an application to the court for an order regarding the payment out of any funds held in court.

The Hearing

If the respondent does not pay the judgment, you must prepare the Supreme Court order and file it with the registry for entry. After the order is entered, you may file a copy in your Small Claims Court file at the Provincial Court for enforcement. If your appeal is unsuccessful, there is no appeal from an order made by the Supreme Court.

The hearing is a review of the original trial using the transcript. The appellant must be prepared to explain how the Provincial Court erred in interpreting the facts entered as evidence or in applying the law to the decision being appealed. This is done using the transcript and the Statement of Argument. If the appellant is

successful in the appeal, the Supreme Court Judge may allow the recovery of costs as part of the judgment.

new evidence may be presented at the appeal hearing without leave of the court. Orders made by the Supreme Court cannot be appealed. [Sec. 13(2) S.C.A.].

Enforcement

It is usually unnecessary to take further enforcement action following an appeal since the funds are often already in court. However, if further money is awarded and the debtor does not make voluntary payment, enforcement may be necessary.

The successful party must prepare a draft of the judge's order and file it with the Supreme Court registry. Once the order is filed, the Supreme Court registrar must send a copy of the order to the Small Claims registrar of the Provincial Court for filing. [Sec.14(1) S.C.A.]. The Small Claims Registrar must send a copy of the order to the Provincial Court judge who heard the case upon receiving the order from the Supreme Court.

The file contents (except the trial log notes and a copy of the order) should also be returned to the Small Claims originating court, because after the order is filed in the Small Claims registry, all subsequent proceedings will take place in the Provincial Court unless the Supreme Court orders otherwise. [Sec. 14(2) S.C.A.]. The order is enforced in Small Claims court as if it were an order made by the Provincial Court.

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January 2011

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"不好发"当己即将最辅数 COULDE 你听,想到……你好,你你能让她接近去

Effective Date: 2010/07/01

Number: PD - 21

Title:

Practice Direction

Standard Directions for Appeals from Provincial Court - Small Claims Act

Summary:

Section 5 of the *Small Claims Act* provides for an appeal to the Supreme Court from an order of the Provincial Court. Supreme Court Civil Rule 18-3 provides that a notice of appeal must include the standard set of directions in the form directed by the Chief Justice governing the conduct of the appeal. These are the standard directions governing the conduct of an appeal from the Provincial Court under section 5 of the *Small Claims Act*.

Direction:

Deposit

1. The appellant must deposit \$200 as security for costs as required under section 8(1) of the *Small Claims Act* before or at the time the Notice of Appeal is filed with the court, along with any amounts required under section 8(2), unless the court otherwise orders.

Documents to be filed and served

- 2. A Notice of Appeal in Form 74 must be filed with a copy of these directions attached.
- 3. After filing the Notice of Appeal, the appellant must:
 - a. serve the Notice of Appeal on the respondent(s) by personal service
 - b. order and pay for a copy of the transcript of:
 - i. the oral evidence given at the hearing in the Provincial Court
 - ii. the reasons for judgment of the Provincial Court.
- 4. It is not necessary for the appellant to serve the Notice of Appeal on the Provincial Court.

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- 5. If the respondent wishes to oppose the appeal and to receive notice of the hearing date, he or she must:
 - a. file a Notice of Interest in Form 70 within 7 days after service of the Notice of Appeal
 - b. promptly serve a copy of the filed Notice of Interest on the appellant by ordinary service.
- 6. Within 14 days after filing the Notice of Appeal, the appellant must:
 - a. file proof, satisfactory to the registrar, that
 - i. the Notice of Appeal has been served on the respondent(s)
 - ii. the required transcript has been ordered
 - b. request a date for the hearing of the appeal from the Registrar
 - c. file a Notice of Hearing in Form 75
 - d. serve, by ordinary service, a Notice of Hearing on any person who has filed a Notice of Interest.
- 7. Within 45 days after filing the Notice of Appeal, the appellant must:
 - a. file the original transcript with the court
 - b. serve, by ordinary service, a copy of the original transcript on any person who has filed a Notice of Interest
 - c. file a statement of argument in Schedule A , and
 - d. serve, by ordinary service, a copy of the statement of argument on any person who has filed a Notice of Interest.
- 8. Within 14 days before the hearing of the appeal, a person(s) who has filed a Notice of Interest must:
 - a. file a statement of argument in Schedule B , and
 - b. serve, by ordinary service, a copy on the appellant.

Appeal disposed of summarily

- 9. If the appellant fails to file the deposit or any proof or documents required under this direction, within the time limits prescribed by this direction, the respondent may apply for an order:
 - a. to dispose of the appeal summarily pursuant to Supreme Court Civil Rule 18-3(7), or
 - b. that the order under appeal is no longer suspended pursuant to section 9(2) of the Small Claims Act.

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New evidence

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10. No new evidence may be adduced at the appeal without leave of the court.

Robert J. Bauman Chief Justice

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No._____

Registry_____

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

AND:

APPELLANT

RESPONDENT

APPELLANT'S STATEMENT OF ARGUMENT

STATEMENT OF FACTS: The facts of this case are as follows:

(This section must consist of a clear statement, in numbered paragraphs, of the relevant facts of the case making reference for each fact to the reasons for judgment or to the page and line numbers of the transcript.)

ISSUES ON APPEAL: The appellant agrees with the order appealed from except as follows:

(This section must consist of a clear statement, in numbered paragraphs, that sets out in what respect the order appealed from is in error.)

ARGUMENT: The order appealed from is in error because:

(This section must set out, in numbered paragraphs, the argument why the order is alleged to be in error including the points of law or fact with a reference to the exhibit or page and line numbers of the transcript and the authorities in support of each point.)

NATURE OF ORDER SOUGHT:

(This section must set out the order the appellant wishes the court to make including any special order as to costs and payment out of monies paid into court pursuant to section 8 of the **Small Claims Act**).

Date:[dd/mmm/yyyy].....

Signature of filing part(ies) or counsel

.....[type or print name].....

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No._____ Registry_____

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

AND:

APPELLANT

RESPONDENT

RESPONDENT'S STATEMENT OF ARGUMENT

STATEMENT OF FACTS: The respondent's position with respect to the appellant's statement of facts is as follows:

(This section must consist of a clear statement, in numbered paragraphs, of the respondent's position with respect to the appellant's statement of facts together with a clear statement of any other facts that the respondent considers relevant making reference for each fact to the reasons for judgment or to the page and line numbers of the transcript.)

ISSUES ON APPEAL: The respondent's position with respect to the appellant's statement of the issues on the appeal is as follows:

(This section must consist of a statement, in numbered paragraphs, of the respondent's position with respect to the issues as stated by the appellant.)

ARGUMENT: The respondent disagrees with the appellant's argument because:

(This section must set out, in numbered paragraphs, the respondent's argument as to why the order sought by the appellant should not be made including the points of law or fact with a reference to the exhibit or page and lines of the transcript and the authorities in support of each point.)

NATURE OF ORDER SOUGHT:

(This section must set out the order the respondent wishes the court to make including any special order as to costs and payment out of monies paid into court pursuant to section 8 of the **Small Claims Act.**)

Date:[*dd/mmm/yyyy*].....

Signature of filing part(ies) or counsel

.....[type or print name].....

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12.1 Appeals

Process

1. Party wants to appeal an order Background

The clerk at the Small Claims registry supplies the party with:

• a Notice of Appeal form and the Small Claims Appeal Standard Directions package

2. Appellant files Notice of Appeal in Supreme Court registry Procedure

The appellant must file the completed notice with the Supreme Court registry within 40 days. If the time limit has passed, the appellant may apply to Supreme Court for an extension.

3. Appellant deposits funds with the registry Procedure

The appellant must pay:

- the filing fee for the Notice of Appeal
- \$200 security for costs
- any money the appellant is required to pay under the order being appealed

(The appellant may apply to have the amounts lowered.)

4. Appellant applies for a hearing date Procedure

The appellant must complete a Notice of Hearing of Appeal form and provide a time estimate for hearing the appeal.

The registrar must:

- set a hearing date (at least 21 days after the filing date and within six months)
- collect the filing fee for the Notice of Hearing of Appeal if the time estimate for the hearing exceeds two hours
- file the original notice
- return all copies to the appellant

5. Appellant files a copy of the Notice of Appeal in the Provincial Court Registry and serves documents *Procedure*

The appellant must:

- file a copy of the Notice of Appeal in the Provincial Court where the order being appealed was made, on the day the Notice of Appeal is filed in the Supreme Court,
- serve the Notice of Appeal, Notice of Hearing of Appeal and the Standard Directions on all parties to

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the appeal within seven days of filing the notice. (If the appellant is unable to serve the documents within the time limit, the appellant may apply for an extension.)

On receiving the Notice of Appeal in the Provincial Court, the clerk must:

- make a photocopy of the Notice of Appeal and forward it to the Provincial Court judge named in the notice
- remove the contents of the Small Claims file folder (except for the trial log notes) and replace them
 with a copy of the Notice of Appeal
- forward the file and any exhibits to the Supreme Court
- on request of counsel, transfer any exhibits to provincial court

(Note: If the same file is to be used in an integrated registry, the file number would be change to identify it as a Supreme Court file.)

<u>Top</u>

6. Appellant Orders Transcripts Procedure

The appellant must order the transcript from the transcriber within 14 days of filing the appeal and obtain proof of ordering.

7. Appellant files proof of service and transcript order Procedure

The appellant files:

- an affidavit of service of the documents
- · proof of ordering the transcript
- in the Supreme Court registry.

8. Appellant prepares Statement of Argument Procedure

The appellant:

- completes the Statement of Argument and files it at the Supreme Court registry
- makes copies of the Statement of Argument and delivers a copy to each party.

9. Appeal heard Procedure

Supreme Court hears the appeal and makes an order.

The party who won the appeal is responsible for:

- drafting the order,
- · submitting it to the other party for approval, and
- submitting it to the court for entry.

Funds may be paid out of court following the judge's order.

If a new trial was held in the Supreme Court:

- the clerk determines the amount of the trial hearing fee payable by the appellant.
- the appellant pays the trial hearing day fees.

The Small Claims Regisrar must send a copy of the order from the Supreme Court to the Provincial Court Judge who heard the case.

10. Is the claim satisfied? Consideration

If YES, end of process.

If NO, go to 11.

<u>Top</u>

11. Creditor wants to take further enforcement action Procedure

If the order is not obeyed, the party must prepare and file a draft order with the Supreme Court registry.

After the order is entered the Supreme Court registrar must:

- make a copy of the order for the Small Claims Court
- remove the contents of the Civil Documents file folder (except for the trial log notes) and replaces them
 with a copy of the Supreme Court order and a notation indicating which court the file was returned to
 for enforcement
- forward the order and the file to the originating Small Claims registry

(Note: If the same file had been used in an integrated registry, the file number would be changed back to the number for Small Claims.)

12. Order is enforced Procedure

Once the file is returned to the original Small Claims court along with a copy of the Supreme Court order, the clerk must:

- place the file contents back into the original file folder
- file the Supreme Court order and place it in the original Small Claims court file
- Once the order is filed in the original Small Claims court, the order is enforced as a Small Claims order.

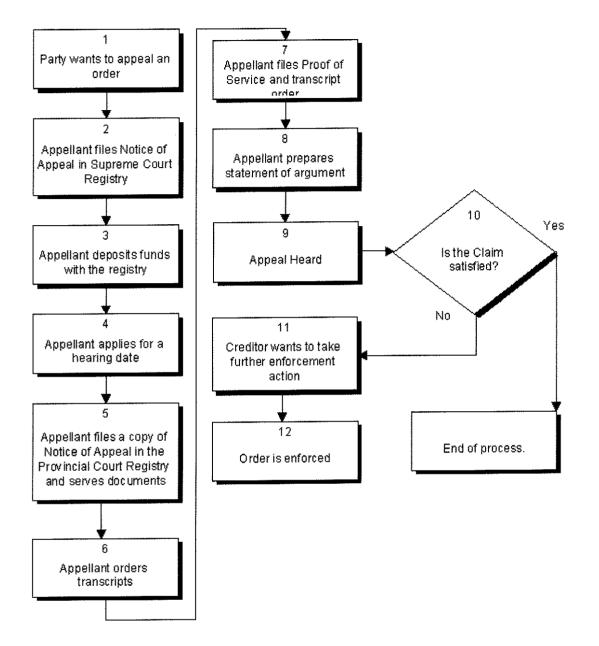
See flowchart

Next Section:	.	Small Claims Manual
. Forms	Тор	Home Page
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January 2011

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12.1 Appeals



September 2001

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Previous Section: Appeals - Process

Introduction

This section outlines the various forms used in Small Claims proceedings.

Many of the forms used in Small Claims court are prescribed in Schedule B of the <u>Small Claims Rules</u> and contain instructions for completion. These forms have been prepared in "plain language" and a number of them have a "fly-sheet" attached which provides more detailed information about the form. The forms are intended to make the process simpler for both the claimant and the defendant. Prescribed forms are also intended to make processing of documents simpler for court staff.

Legal Commentary

Use of Forms

The prescribed forms in Schedule B to the <u>Small Claims Rules</u> must be used and a registrar may refuse to accept any of these forms for filing if they are not the same as in the schedule or are completed incorrectly. [Rule 21(1) and (2)].

However, the registrar may exercise some discretion in allowing forms to be used that are not exact replicas of the prescribed form. Section 28 (1) of the *Interpretation Act of British Columbia* says:

If a form is prescribed by or under an enactment, deviations from it not affecting the substance or calculated to mislead, do not invalidate the form used.

Therefore, if a prescribed form has been amended by legislation and has not been changed substantially, the old printed versions of the form may be used, unless the registrar feels someone may be mislead or not fully informed by the wording. If it is feasible, the wording on the form may be changed to conform with the current wording.

All of the prescribed forms have been prepared by Court Services. Pre-printed forms are available from the Office Product Centre where there is sufficient demand for their use. Where forms are required only occasionally, registry staff can print a copy from the Court Services Branch Intranet Site.

Note: Small Claims forms are not yet available on the Internet.

The registry also has a large number of additional forms designed for use in Small Claims matters, including the forms prescribed under the *Court Order Enforcement Act*.

If a specific form is prescribed by some Act or statute, it is the party's responsibility to prepare the form in accordance with that authority. Court Services Branch has provided preprinted forms for the most commonly used forms in Small Claims proceedings. The provincial crest has been used on the forms printed by Court Services, but it is not included in the forms prescribed in the legislation and therefore does not have to appear on the forms.

Providing Forms to Users

Court Services will provide blank Small Claims forms to individual lay litigants, including small businesses which are not represented by lawyers, legal counsel, or other persons or companies performing this service for a fee.

Lawyers representing claimants or persons assisting claimants, who are "multiple-time" users or who require large volumes of prescribed forms must purchase forms from private legal stationary companies, or produce the forms in-house on wordprocessing equipment. On request, a sample of each form may be provided to these users by the court registry to use as the basis for producing their own forms.

Persons who produce their own forms on wordprocessing equipment must ensure all copies of the forms conform to the prescribed parts of the form in the Regulations, including the margin notes. It is their responsibility to provide accurate forms because registry staff are not able to check every page in detail. Registry personnel will check the court copy in detail, and will stamp and sign the remaining copies.

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June 2002

Previous Section: Forms - Introduction

Alphabetical List of Forms

Acceptance of Offer - <u>SCL 805</u> (Form 19 *)

Acknowledgement of Payment - SCL 800

Additional Page - SCL 029

Affidavit for Notice of Intention to Garnishee (Forces use only) - PSC 800

Affidavit in Support of Garnishing Order After Judgment - PSC 014

Affidavit in Support of Garnishing Order Before Action - SCL 806

Affidavit in Support of Garnishing Order Before Judgment - PSC 003

Affidavit of Attainment of Majority (back of SCL 807)

Affidavit of Non-Compliance - SCL 808

Affidavit of Service - SCL 004C

Affidavit of Service (back of GOAJ) - PSC 013

Affidavit of Service (back of GOBJ) - PSC 002

Affidavit to Cancel a Dismissal or Default Order - SCL 020

Agreement - SCL 028

Application (for use under the Local Government Act) (form only) - SCL 865

Application for Default Order / Notice of Hearing - SCL 005 (Form 5 *)

Application Record/Order - SCL 026

Application to a Judge - SCL 017 (Form 17 *)

Application to the Registrar - <u>SCL 016</u> (Form 16 *)

Certificate (Offence Act) - SCL 804

Certificate of Amounts Owing - <u>SCL840</u> (form only)

Certificate of Judgment - SCL 815

Certificate of Readiness - <u>SCL 007</u> (Form 7 *)

Certificate of Service - <u>SCL 004F</u> (Form 4 *)

Claim Letter - SCL 812

Consent Order - SCL 021

Consent to Adjourn Settlement Conference - SCL 829

Mediation Appointment Consent to Act as Litigation Guardian & Certificate of Fitness - <u>SCL</u> 807

Counterclaim Letter - SCL 814

Fee Declaration - SCL 833 (form only)

Garnishing Order (Absolute) - <u>SCL839</u> (form only)

Garnishing Order After Judgment - PSC 013

Garnishing Order Before Judgment - PSC 002

Garnishment Application - SCL 816

Mediation Agreement - <u>SCL 044</u> (form only)

Mediation Compensation Order - <u>SCL 827</u> (form only)

Notice of Claim - <u>SCL 001</u> (Form 1 *)

Notice of Intention to Garnishee (Forces use only) - PSC 801

Notice to Mediate for Claims Between \$10,000 and \$25,000 - SCL 832 (form only)

Notice to Mediate for Claims up to \$10,000 - SCL 040 (form only)

Notice of Mediation Session - SCL 826 (form only)

Notice of A Payment Hearing - <u>SCL 013</u> (Form 13 *)

Notice of Payment out - PSC 024

Notice of Settlement Conference - <u>SCL 006</u> (Form 6 *)

Notice of Trial - SCL 034

Notice of Withdrawal - SCL 019

Notice to the Claimant - SCL 025

Offer to Settle - <u>SCL 803</u> (Form 18 *)

Order - SCL 809

Order Following an Appearance on a Warrant - SCL 811

Order for Seizure and Sale - <u>SCL 011</u> (Form 11 <u>*</u>)

Payment Order - <u>SCL 010</u> (Form 10 *)

Reply - <u>SCL 002</u> (Form 2 <u>*</u>)

Reply Letter - SCL 813

Reply to Third Party Notice - SCL 801

Request for Judgment or For Dismissal - <u>SCL 042</u> (form only)

Result of Mediation - <u>SCL 043</u> (Form only)

Settlement Conference Record - SCL 018

Statement of Finances (front and back) - <u>SCL 024</u>

Summons to a Default Hearing - <u>SCL 014</u> (Form 14 *)

Summons to a Payment Hearing - <u>SCL 012</u> (Form 12 *)

Summons to Witness - <u>SCL 008</u> (Form 8 *)

Third Party Notice - SCL 003 (Form 3 *)

Trial/Hearing Log - Page 1 - SCL 022

Trial/Hearing Log - Page 2 - SCL 022A

Trial Information - SCL 810

Trial Record/Order - SCL 023

Trial Preparation Settlement Conference - Pre-Trial Orders - SCL 051 (form only)

Trial Statement - <u>SCL045</u> (form only)

Verification of Default - <u>SCL 834</u> (form only)

Verification of Non-Attendance - SCL 041 (form only)

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Warrant of Imprisonment (replaces SCL 015) - <u>SCL 802</u> (Form 15 *)

Warrant of Arrest / Notice of Warrant of Arrest - <u>SCL 009</u> (Form 9 *)

* Forms prescribed under the Court Rules Act and Small Claims Act.

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February 2012

In the case between:			
in the case between:			CLAIMANT(S)
NAME			
ADDRESS			
CITY, TOWN, MUNICIPALITY PROV.	POSTAL CODE	TEL. #	
and	POSTAL CODE	166.7	
			DEFENDANT(S)
NAME			
ADDRESS			
CITY, TOWN, MUNICIPALITY PROV.	POSTAL CODE	TEL. #	
NAME			THIRD PARTY
ADDRESS			
CITY, TOWN, MUNICIPALITY PROV.	POSTAL CODE	TEL. #	
ACCEPTANCE OF OFFER:			
The claimant(s) or defendant(s) or third party			
NAME			
accepts the offer to settle served on			
Dated			
at	Signature		
TIME LIMIT FOR ACCEPTANCE A party who receives an offer, has 28 days after being		REGISTRY USE ONLY	1
served with the offer, to accept the offer. No response will be			
considered a rejection.	Dated		
ACCEPTANCE OF OFFER			
To accept the offer to settle, the party must complete an			
Acceptance Of Offer (Form 19) and serve the other party			
within 28 days of being served with the offer.			
FILING OFFER AND ACCEPTANCE			
If a party served with an acceptance of offer files the offer and the acceptance in the registry, the acceptance becomes a			
payment order.			
	Cignoture		
	Signature		

FORM 4 SCL 004F 12/2006

CERTIFICATE OF SERVICE

30L 004F 12/2006				
Fill in:	I Ce	ertify	/ that	
your name;	I I			Ο
the name of the party or other person served;	ser	ved		Ĩ
the date service took	on			ת
place; the street address	at	Date		1
or location, city and province where service took place.	-			TIFIC
Name the documents that you served.	wit	h		Ă
	-			· mi
Tell how service took place by checking appropriate box(es) for:	-			0
ordinary mail and fill in the date mailed;	by		mailing a copy by ordinary mail to that person's address on	Т S
an individual;			leaving a copy of it with him or her.	m
			mailing a copy of it by registered mail to him or her.	
a company as defined			mailing a copy of it by registered mail to the registered office of the company.	
in the Business			leaving a copy of it \Box at the registered office of the company.	Ξ
Corporations Act;			at the place of business of the company, with a receptionist or a person who appears to manage or control the company's business there.	RVICE
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.	
an extraprovincial compar	ıy		mailing a copy of it by registered mail to the attorney shown in the corporate registry.	
as defined in the Business	5		leaving a copy of it with the attorney shown in the corporate registry.	
Corporations Act,			leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia. mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.	
a partnership;			mailing a copy of it by registered mail to a partner.	
			leaving a copy of it 🗌 with a partner.	
			 at the place of business of the partnership, with a person who appears to manage or control the partnership business there. 	
			with a receptionist who works at a place of business of the partnership.	
a municipal corporation, regional district or other local government body;			giving a copy to the clerk, deputy clerk or a similar official.	
a young person;			leaving a copy of the notice with the defendant's mother, father or guardian.	
a society as defined in the	;		mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.	
Society Act;			leaving a copy of it at the address for service on file with the Registrar of Companies.	
an extraprovincial society as defined in the Society			□ with a director, officer, receiver manager or liquidator of the society.	
Act (if no attorney has bee	en		mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.	
appointed, check one of the 2 preceding boxes for society);	а		leaving a copy of it with an attorney appointed under section 77 of the Society Act.	
			mailing a copy of it by registered mail to the registered office of the association.	
an unincorporated association or trade union	;		leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.	
a corporation incorporated outside British Columbia if			mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.	
it is not an extraprovincial company;			leaving a copy of it at a place of business or registered office of the corporation outside British Columbia with a receptionist or a person who appears to manage or control the corporation's business, or	
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation.	
alternate service method ordered by the Court.			(fill in any instructions given by a judge or registrar for service)	

NOTE: You must give proof of service by *REGISTERED MAIL* by attaching <u>one</u> of the following:

- 1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
- 2. a print-out of the delivery confirmation made available on the Internet by Canada Post (http://www.canadapost.ca).

COURT FILE NUMBER

REGISTRY

ACKNOWLEDGEMENT OF PAYMENT

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

CREDITOR / CLAIMANT

BETWEEN:	NAME	CREDITOR / CLAIMANT
AND:	NAME	DEBTOR / DEFENDANT
	I acknowledge payment of \$	in full (partial) satisfaction of the claim or judgment dated
	Signed this	, in the presence of
	NAME	
	ADDRESS	
	OCCUPATION	
	Signature of Witness	Signature of Party Receiving Payment
SCL 800 (01/97)		

ACKNOWL	EDGEMENT	OF PAYMENT
		••••••

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

COURT FILE NUMBER
REGISTRY

BETWEEN:		CREDITOR / CLAIMANT
AND:	NAME	DEBTOR / DEFENDANT
	I acknowledge payment of \$	in full (partial) satisfaction of the claim or judgment dated
	Signed this	, in the presence of
	NAME	
	ADDRESS	
	Signature of Witness	Signature of Party Receiving Payment
SCL 800 (01/97)		Page 109 JAG-2015-00066

	ADDITIONAL PAGE		REGISTRY FILE NUMBER:
	IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)	COURTROOM	REGISTRY LOCATION:
	 SETTLEMENT CONFERENCE RECORD TRIAL CONFERENCE RECORD APPLICATION RECORD/ORDER TRIAL RECORD/ORDER MEDIATION AGREEMENT OTHER 		Page of
	BEFORE JUDGE on Date	Cle	ərk
Set out terms and order.	CONTINUATION OF TERMS AND OTHER ORDERS:		
order.			
	Initials Initials Initials	In	itials
SCL 029 11/2007	1-COURT 2-CLAIMANT 3-DEFENDANT 4-D	EFENDAN	Page 110 [/THIRD.IRABO1X -00066

AFFIDAVIT FOR NOTICE OF INTENTION TO GARNISHEE

In th	e Provincial Court of British Columbia	
BET	WEEN	Judgment Creditor
AND)	Judgment Debtor
	(address)	
	above named Judgment Creditor (or the Solicitor acting for the a KE OATH AND SAY AS FOLLOWS:	bove-named creditor)
1.	By a Judgment of the Provincial Court of British Columbia (S	mall Claims Court) made in this action and dated
	it was ordered that the above-named Judgment Creditor sho the sum of \$	uld recover against the above-named Judgment Debtor
2.	The sum of \$ of the said Judgment remains u and is justly due and owing me.	inpaid as of the date of the swearing of this Affidavit
3.	Her Majesty, the Queen in Right of Canada located at is indebted to the Jugement Debtor in a sum which I am unal	
SWO	ORN or DECLARED before me at	British Columbia
Date	ed	
		DEPONENT
	A Commissioner for taking Affidavits within British Columbia	
	A Justice of the Peace in and for the Province of British Colum	pia.
	A Notary Public in and for the Province of British Columbia. (se	al)
	(Attach a legible copy of the Judgment or other d	ocument showing your right as a Creditor)

AFFIDAVIT IN SUPPORT OF GARNISHING ORDER AFTER JUDGMENT

Court	File	Number:

Registry Location:

In the Provincial Court of British Columbia (Small Claims Court)

Between:		, JUDGMENT CREDITOR
And: NAME		, JUDGMENT DEBTOR
		,00000000000000000000000000000000000000
I, <u>NAME</u>		
	CITY	PROVINCE
_		
make oath and say that:		
solemnly affirm that		
(1) I am the person entitled to enforce	the judgment or order re	ferred to in this affidavit.
Or		
(1) I am the solicitor for the person en Or	ititied to enforce the judgr	nent or order referred to in this affidavit.
	to enforce the judgment (or order referred to in this affidavit, and I am aware
of the facts referred to in this affida		of order referred to in this and avit, and rain aware
was found to be indebted to the ab	oove named Judgment Cr	in this action, the above named Judgment Debtor reditor for \$ and the whole still remains due, <i>as the case</i>
to NAME OF CREDITOR		
after making all just discounts.		
(3) That to the best of my information	and belief	
NAME		
ADDRESS	CITY	PROVINCE
DESCRIPTION OF GARNISHEE		
	obligation, or liable to the	Judgment Debtor, and that the said garnishee is in
Sworn/Affirmed before me on		
at		
British Columbia		

A Commissioner for taking Affidavits for British Columbia

Deponent

REGISTRY LOCATION

AFFIDAVIT IN SUPPORT OF GARNISHING ORDER BEFORE ACTION

In the Provincial Court of British Columbia (Small Claims Court)

NAME ADDRESS CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE ADDRESS CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE	TEL.#
ITY, TOWN, MUNICIPALITY PROV. POSTAL CODE nd IAME DDRESS	
nd AME DDRESS	
AME DDRESS	INTENDED DEFENDANT(S
DRESS	INTENDED DEFENDANT(
DRESS	
Y, TOWN, MUNICIPALITY PROV. POSTAL CODE	
	TEL. #
ake oath and say or solemnly affirm that:	
) (check appropriate box) 🗌 I am the above-named intended claimant, and a	am aware of the facts referred to in this affidavit.
Or I am the solicitor for the above-named intended clair	mant, and am aware of the facts referred to in this affidav
	mant, and an aware of the facts referred to in this amount
	nt, and am aware of the facts referred to in this affidav
) \Box I wish to commence an action against the above named intended defendation	ant for:
or the intended claimant wishes to commence an action against the above r	asmod intended defendant for:
	lamed intended delendant for.
(here state the nature of the intended action)	
B) That the actual amount of the debt, claim or demand in the cause of action is	\$ and that the sum is justly due and
owing by the intended defendant to the intended claimant after making all just	
) That to the best of my information and belief	
the garnishee, is indebted, under obligation or liable to the intended defendan	t and that the garnishee is in the jurisdiction of this
court, and the indebtedness, obligation or liability of the garnishee is not for sa	
the garnishee, is indebted, under obligation or liable to the intended defendant	

A Commissioner for Taking Affidavits for British Columbia

AFFIDAVIT IN SUPPORT OF GARNISHING ORDER BEFORE JUDGMENT

In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY LOCATION

IAME DDRESS				CLAIMANT(S)
DRESS				
TY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
nd AME				DEFENDANT(S)
DDRESS				(-7
CITY, TOWN, MUNICIPALITY	2201/		TEL. #	
	PROV.	POSTAL CODE	I EL. #	
NAME, ADDRESS AND OCCUPATION				
nake oath and say or solem	nly affirm that:			
1) (check appropriate box)	I am the above-named of	claimant.		
	or			
	I am the solicitor for the or	above-named claimant.		
		e-named claimant, and I a	m aware of the facts refe	rred to in this affidavit.
	3			
2) This action is pending, a	nd was commenced on DATE			
D) The neture of the serves	of action for which this action	is brought is		
3) The nature of the cause	of action for which this action	is brought is:		
		AME.		
	use of action the defendant $\underline{\mathbb{N}}$		liscounts and it is now jus	
	use of action the defendant $_^{M}$ aimant in the sum of \$		liscounts, and it is now jus	tly due and owing.
	aimant in the sum of \$		liscounts, and it is now jus	tly due and owing.
is justly indebted to the c	aimant in the sum of \$		liscounts, and it is now jus	tly due and owing.
is justly indebted to the c 5) That to the best of my in	aimant in the sum of \$		liscounts, and it is now jus	tly due and owing.
is justly indebted to the c 5) That to the best of my in	aimant in the sum of \$		liscounts, and it is now jus	tly due and owing.
is justly indebted to the c 5) That to the best of my in	aimant in the sum of \$		liscounts, and it is now jus	tly due and owing.
is justly indebted to the c 5) That to the best of my in	aimant in the sum of \$		liscounts, and it is now jus	
is justly indebted to the c 5) That to the best of my in NAME, ADDRESS AND DESCRIPTION	aimant in the sum of \$	after making all just o		, the garnishee,
is justly indebted to the c 5) That to the best of my in NAME, ADDRESS AND DESCRIPTION is indebted, under obliga	aimant in the sum of \$ formation and belief: OF THE GARNISHEE	after making all just o		, the garnishee,
is justly indebted to the c 5) That to the best of my in NAME, ADDRESS AND DESCRIPTION is indebted, under obliga	aimant in the sum of \$ formation and belief: OF THE GARNISHEE 	after making all just o		, the garnishee,
is justly indebted to the c 5) That to the best of my in NAME, ADDRESS AND DESCRIPTION is indebted, under obliga	aimant in the sum of \$ formation and belief: OF THE GARNISHEE 	after making all just o		, the garnishee,
is justly indebted to the c 5) That to the best of my in NAME, ADDRESS AND DESCRIPTION is indebted, under obliga	aimant in the sum of \$ formation and belief: OF THE GARNISHEE 	after making all just o		, the garnishee,
is justly indebted to the c 5) That to the best of my in NAME, ADDRESS AND DESCRIPTION is indebted, under obligation indebtedness, obligation	aimant in the sum of \$ formation and belief: OF THE GARNISHEE tion, or liable to the defendan , or liability of the garnishee is	after making all just o		, the garnishee,
 is justly indebted to the c That to the best of my in NAME, ADDRESS AND DESCRIPTION is indebted, under obligation indebtedness, obligation SWORN/AFFIRMED before Province of British Columbia 	aimant in the sum of \$ formation and belief: OF THE GARNISHEE tion, or liable to the defendan , or liability of the garnishee is	after making all just o		, the garnishee,
is justly indebted to the c 5) That to the best of my in NAME, ADDRESS AND DESCRIPTION is indebted, under obligation indebtedness, obligation	aimant in the sum of \$ formation and belief: OF THE GARNISHEE tion, or liable to the defendan , or liability of the garnishee is	after making all just o		, the garnishee, Court, and the

A Commissioner for Taking Affidavits for British Columbia

Consent to Act as Litigat	tion Guardian
and Certificate of Fitness	6

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (Small Claims Court)

REGISTRY LOCATION

ETWEE		JAME					CLAIMAN
		ADDRESS					
	- (CITY, TOWN, MUNICIPALITY		PROV.	POSTAL CODE	TEL. #	
ND:	_	NAME					DEFENDAN
	-	ADDRESS					
	(CITY, TOWN, MUNICIPALITY		PROV.	POSTAL CODE	TEL. #	
, <u>Name</u>							
of							
	h and say	or solemnly affirm as	follows:				
1.	THAT I	am	□ Mother	□ Legal Guardian	□ An adult willing	g to act as the litig	ation guardiar
2.	THAT th	e claimant is an infan	t.				
3.	THAT I	nave no interest in the	e matters in quest	ion in this action adverse	e to that of the said inf	ant.	
4.	THATI	am of the age of majo	rity, and reside in	the province of British C	olumbia.		
5.	THATI	am a fit and proper pe	erson to be litigation	on guardian of the said in	nfant Claimant.		
6.	THATI	agree to assist the inf	ant in this action.				
SWORN/	AFFIRME	D before me)			
at				[_			
LUCATION		ritish Columbia		(Signatu	re of Litigation Guardian	
in the Pro							

Signature of a Commissioner for taking Affidavits within the Province of British Columbia

Registry No.

Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (Small Claims Court)	ι.
BETWEEN:	CLAIMANT
AND:	DEFENDANT
AFFIDAVIT OF ATTAINMENT OF MAJORITY	
I,,,,,,,,	,
of,	
Province of British Columbia, MAKE OATH AND SAY (OR AFFIRM) AS FOLLOWS:	
1. I attained the age of majority on	
2. I am under no other legal disability.	
3. I intend to act in this action without a litigation guardian.	
Sworn/affirmed before me in the City of	British Columbia
ON Date	

A Commissioner for taking Affidavits within British Columbia

Deponent

AFFIDAVIT OF NON-COMPLIANCE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (Small Claims Court)

REGISTRY FILE NUMBER

REGISTRY LOCATION

IN THE CASE BETWEEN

Fill in the Registry File number and location.	NAME CLAIMANT(S)	
Copy the names and addresses of the claim-	ADDRESS	Ŧ
ant, defendant or third party.	CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE TEL. #	
	AND	DAV
	NAME DEFENDANT(S)	
	ADDRESS	C
	CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE TEL. #	T
	AND THIRD PARTY(S)	ZC
	NAME	Z
	ADDRESS	Ċ
	CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE TEL. #	Ċ
[I
	1	
	Of NAME OCCUPATION OCCUPATION	
	 make oath and say that solemnly affirm that 	OMPLIANCE
Attach this Affidavit to a completed "Payment Order"	1. I am the in this action and this is my <i>Affidavit</i> in support of the attached <i>Payment Order</i> .	
	2. An agreement was recorded at a Settlement conference on mediation	
What happened in this case? Explain.	 3. The Claimant Defendant Third Party Failed to comply with the recorded terms of the agreement by 	
Do not sign your affidavit until a commissioner for the	month day year signature of person filling out the affidavit	
taking of affidavits is present.		
A commissioner for	Sworn / Affirmed before me on	
taking affidavits will witness your signature	month day year at location where affidavit is swom	
	signature of commissioner for taking affidavits for British Columbia	

AFFIDAVIT OF SERVICE

Fill in:	name	e occupation	
your name and address;	of addre	tress	
		Make oath and say that:	
		Solemnly affirm that:	
the name of the party or other person served;	l serve	ved	K
the date service took place	on	ate	
the address or location service took place.	at		₹
Tell what was served. Check appropriate box.	with	 a copy of the "Summons to a Payment Hearing" attached. a copy to the "Summons to a Default Hearing" attached. 	OF S
Tell how service took place	by	 leaving a copy of it with him or her. as directed by the court by	
Do not sign your affida- vit until a commissioner for the taking affidavits is present.		signature of person who served the document	
	Swori	rn/affirmed before me on	
A commissioner for the taking of affidavits will witness your signature		date location where affidavit is sworn	
		signature of commissioner for taking affidavits for British Columbia	

GARNISHING ORDER (AFTER JUDGMENT) IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

IN THE PROVINCIAL COURT OF BRITISH COLUMBI (SMALL CLAIMS COURT)

REGISTRY LOCATION

Between	NAME	JUDGMENT CREDITOR
nd	NAME	JUDGMENT DEBTOR
nd	NAME	GARNISHEE
	Before	: Judge/Registrar
	On reading the affidavit of	: Judge/Registrar,
	I order that, except as otherwise ordered, all nishee (or garnishees or any of them) to the j Court. If any of the debts, obligations, and lia	debts, obligations, and liabilities owing, payable, or accruing due from the gar- judgment debtor be attached up to the total amount set out below and paid into bilities are owing, payable, or accruing due for wages, then only as much of them <i>ler Enforcement Act</i> are to be attached and paid into Court.
	DATED	
	To the Judgment Debtor: (name and address)	By the Court ()
		By the Court () To the Garnishee: (name and address)
	To the Judgment Debtor: (name and address)	
		Amount due on Judgment (or balance of it \$as the case may be):
		Cost of attachment proceedings:
		Total amount attached: \$
order, or if yo If you disput	Not pay into court at once the amount of your indebtedn ou do not dispute your liability, an order may be made your liability you should at once file a dispute note.	
includes wag		uing due at the time this order was served on you but, in the case of wages or salary, byment, become due and payable within 7 days after the day on which the affidavit first

NOTICE TO EMPLOYER

Section 27 of the *Court Order Enforcement Act* makes it an offence to dismiss or demote an employee or terminate a contract of employment of an employee merely because of the service of a garnishing order on the employer issued under this Act.

NOTICE TO JUDGMENT DEBTOR

To prevent further garnishment proceedings you may apply to the registrar or the court and, if considered just in all the circumstances, an order may be made releasing all or part of this garnishment and providing for payment of the judgement against you by instalments. Court address is:

1-REGISTRY 2-SERVICE COPY 3-JUDGMENT CREDITOR 4-JUDGMENT DEBTORADE

PSC 013 06/2014 COEA Form D (OPC# 7530854404) See reverse for additional information.

Part 1

Section 1 of the Court Order Enforcement Act defines "wages" as follows:

"wages" includes salary, commissions, and fees, and any other money payable by an employer to an employee for work or services performed in the course of employment of the employee; but it does not include deductions from wages made by an employer under an Act of the Legislature of any province or the Parliament of Canada.

Section 3(1), 3(4-8) of the *Court Order Enforcement Act* provides,

(1) In this section:

- "debt due" and "debts due" include debts, obligations and liabilities owing, payable or accruing due and wages that would in the ordinary course of employment become owing, payable or due within 7 days after the date on which an affidavit has been sworn under subsection (2) or subsection (3);
- "debts, obligations and liabilities", subject to this Act, does not include an obligation or liability not arising out of trust or contract, unless judgment has been recovered on it against the garnishee but does include, without limitation, all claims and demands of the defendant, judgment debtor, or person liable under the order for payment of money against the garnishee arising out of trusts or contract if the claims and demands could be made available under equitable execution.
- (4) An order must not be made under this Part for the attachment of a debt due to an employee for the employee's salary or wages before a judgment or order for the payment of money has been obtained against the employee in the proceeding.
- (5) Except as otherwise provided in the Part, 70% of any wages due by an employer to an employee is exempt from seizure or attachment under a garnishing order issued by a judge or registrar, but the amount of the exemption allowed under this subsection must not be less than
 - (a) in the case of a person without dependants, \$100 per month, or proportionately for a shorter period, and
 - (b) in the case of a person with one or more dependants, \$200 per month, or proportionately for a shorter period.
- (6) Subsection (5) (a) does not apply if the debt is contracted for board or lodging and subsection (5) (b) does not apply if
 - (a) the debt is contracted for board or lodging, and
 - (b) in the opinion of the judge or registrar, the exemption set out in subsection (5) (b) is not necessary for the support and maintenance of the debtor's dependants.
- (7) Despite any other provision of this Part, if the wages of a person are seized or attached under
 - (a) a court order for alimony or maintenance,
 - (b) a duly executed separation agreement, or
 - (c) an order under section 18 (2) of the Family Maintenance Enforcement Act,

the exemption allowed to that person is 50% of any wages due if the wages due do not exceed \$600 per month and 33 1/3% for wages in excess of \$600 per month but the amount of the exemption allowed under this subsection must not be less than \$100 per month, or proportionately for a shorter period.

(8) The definition of "debts, obligations and liabilities" in subsection (1) applies to the use of that expression or the use of any of the words composing it in an order made under this section.

Part 1

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 - (1) In this section:
 - "debt due" and "debts due" include debts, obligations and liabilities owing, payable or accruing due and wages that would in the ordinary course of employment become owing, payable or due within 7 days after the date on which an affidavit has been sworn under subsection (2) or subsection (3);
 - "debts, obligations and liabilities", subject to this Act, does not include an obligation or liability not arising out of trust or contract, unless judgment has been recovered on it against the garnishee but does include, without limitation, all claims and demands of the defendant, judgment debtor, or person liable under the order for payment of money against the garnishee arising out of trusts or contract if the claims and demands could be made available under equitable execution.
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 - (b) in the opinion of the judge or registrar, the exemption set out in subsection (5) (b) is not necessary for the support and maintenance of the debtor's dependants.
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 - (a) a court order for alimony or maintenance,
 - (b) a duly executed separation agreement, or
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AFFIDAVIT OF SERVICE

(8) The definition of "debts, obligations and liabilities" in subsection (1) applies to the use of that expression or the use of any of the words composing it in an order made under this section.

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Fill in:	name		occupation	
your name and address	of addres	35		
		Make oath and say that:		
		Solemnly affirm that:		
the name of the party or other person served;	I serve	d		
the date service took place;	on date			
the address or location service took place.	at			
	with a	copy of this document.		
Tell how service took place. Check appropriate box.	by	address: Attached to this Affidavit is a copy, produced by fax or othe was delivered.	the person named above, at the above address, being the last known post offices erwise, of the signature obtained by Canada Post at the time the Garnishing Or ry made available on the Internet by Canada Post	
	Sworn	/affirmed before me on	signature of person who served the document	
Do not sign the affidavit until you are with the commissioner for taking affidavits. A commissioner for the taking of affidavits will witness your signature PSC 013 06/2014 COEA Form D (OPC# 7530854404)	date	at [location where affidavit is swom signature of commissioner for taking affidavits for British Columbia Page 121 JAG-2015-00066	

AFFIDAVIT OF SERVICE

GARNISHING ORDER BEFORE JUDGMENT

Court File No.:

In the Provincial Court of British Columbia (Small Claims Court)

Between	, CLAIMANT
And	, DEFENDANT
And	, GARNISHEE
On reading the affidavit of address	occupation
sworn on date obligation, or liability of the garnishee(s) is not for wages or sa payable, or accruing due from the above-named garnishee (or g other than for wages or salary, be attached to the total amount	garnishees or any of them) to the above-named defendant(s)
Dated date	
	By the court ()
To the Defendant(s): <pre>name and address</pre>	To the Garnishee:
Amount due: Cost of attachment proceedings: Total amount attached:	\$\$\$
When making payment into court, court file number must be quoted and made payable to Minister of Finance, Mail to:	Name and address of issuing party (if required)
NOTICE TO G If you do not pay into Court at once, the amount of your indebt you for the payment of the full amount with costs. If you dispute your liability, you should at once file a dispute no NOTICE TO D	edness to the defendant, an order may be made against ote.
You may apply to the registrar or the court, and, if considered releasing all or part of this garnishment.	just in all the circumstances, an order may be made

AFFIDAVIT OF SERVICE

Fill in: your name	name occupation of address	
	 Make oath and say that: Solemnly affirm that: 	FIDAV
the name of the party or other person served;	I served	
the date service took place;	on	
the address or location service took place.	at	С
what documents were served	with <u>a copy of the Garnishing Order</u>	л С
	by \Box leaving a copy of it with him or her	T D
and how service took place	known post office address: Attached to this Affidavit is:	VICE
A commissioner for taking of affidavits will witness your signature. Do not sign the affidavit until you are with the	Sworn/affirmed before me on	
commissioner.	date at	

signature of commissioner for taking affidavits

AFFIDAVIT TO CANCEL A DISMISSAL OR DEFAULT ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

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date location where affidavit is sworn	See your signature		
		date location where affidavit is sworn	

1-COURT COPY 2-APPLICANT COPY 3-OTHER PARTY 4-SERVICE COPY

AGREEMENT IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

BETWEEN: Fill in the file number, court location and names, copying them	NAME ADDRESS						CLAIMANT(S)	AGI
from the notice of claim.	CITY, TOWN, MUNICIPALITY					TEL. #		Я
			PROV.	PC	OSTAL CODE			E
AND:	ADDRESS						DEFENDANT(S)	Ζ
								Π
	CITY, TOWN, MUNICIPALITY					TEL. #		Z
	NAME		PROV.	PC	OSTAL CODE			
AND:	ADDRESS					DEFENDA	NT/THIRD PARTY	
	CITY, TOWN, MUNICIPALITY			DC		TEL. #		
			PROV.	PC	OSTAL CODE			
TERMS: Fill in the terms of the	THE PARTIES HAVE C	ONSENTED TO T	HE FOLL	OWING AC	REEMENT:			
agreement.								
Set out all the condi- tions agreed on.								
Show the full amount of any money to be paid.								
If payments are to								
be made, set out the date(s) and amount(s) of the payment(s).								
or the payment(s).								
Failure to comply with								
the agreement: If a party does not com- ply with the recorded								
terms, the agreement is cancelled and the claim-								
ant may file an affidavit of non-compliance and								
a payment order.								
								
		folder and				defendent.		
Everyone involved in the case signs the	signature o	f claimant			signature of	detendant		
agreement.		f claimant			signature of defen	dant / third party		
	signature o	i Gaimant			Signature of defen	aant / timu party		
Today's date								
	date						Page 125	
SCL 028 02/2007	1-COUR	C 2-CLAIMANT	3-DEFE	NDANT	4-DEFENDA	NT/THIRD	20RF-00066	

APPLICATION

In the Provincial Court of British Columbia (For use for Applications under the Local Government Act and Vancouver Charter) REGISTRY FILE NUMBER

REGISTRY LOCATION

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REMINDER: A judicial recount must be completed by the end of 13 days after the close of general voting	
REMINDER: A judicial recount must be completed by the end of 13 days after the close of general voting	
REMINDER: A judicial recount must be completed by the end of 13 days after the close of general voting	
REMINDER: A judicial recount must be completed by the end of 13 days after the close of general voting	
].
Data	
Date	
Applicant Lawyer for applicant	
CCL 865 11/2011 PRINT NAME PAGE JAG-2015-	ge 126

APPLICATION FOR DEFAULT ORDER



PROVINCIAL COURT OF BRITISH COLUMBIA

APPLYING FOR A DEFAULT ORDER

Step 1

COMPLETE the APPLICATION FOR DEFAULT ORDER. To complete this form, use a typewriter or print clearly. There are 4 copies, so be sure all copies are legible.

Step 2

FILE the APPLICATION by taking it and a completed Certificate of Service for the NOTICE OF CLAIM to the court registry. There is a filing fee for this application. The staff will examine the Certificate to make sure the NOTICE OF CLAIM has been properly served. Then they will look at your NOTICE OF CLAIM to see if a hearing is required. If you are applying for a default order as a result of a defendant not attending a mediation session you must file the Verification of Non-Attendance you received at the media-



tion session.

Step 3

If no hearing is required, you will be asked to fill out the Default Order section at the bottom of the form and your order can be signed immediately.

If a hearing is required, the registry staff will set a date for you to appear before a judge. At this hearing, the judge will decide the amount of your claim or, if the claim is not for money, the terms of the appropriate order. You should bring to the hearing any supporting documents or evidence you wish the judge to consider. After reviewing the evidence, the judge will make an order which you will put in the DEFAULT ORDER section on the form.



Step 4

When the DEFAULT ORDER is completed, file a copy in the registry, and then you will be able to enforce your order. For more help there is a booklet called "Getting Results". REGISTRY FILE NUMBER

What is the registry file number and location shown on the Notice of Claim?

Are you sure the name(s) you used here are the same as the ones used on the Notice of Claim? It is important to use the correct name(s) or the order may not be enforceable.

THE REGISTRY STAFF WILL FILL IN THIS SECTION BEFORE YOU GO ON TO FILL OUT THE DEFAULT ORDER.

After a Default Order is made or a date is set for a hearing, the defendant may not file a Reply without the permission of a judge.

DEFAULT ORDER

If an order has been made for the payment of money, fill out the amounts on the right side of the Default Order.

If the judge's order includes any other terms, record those terms in the lines on the left.

When you have completed the form, take it to the Registry to be checked, signed and stamped.

WHAT EXPENSES MAY BE CLAIMED?

If you have any expenses that were not included on your Notice of Claim, bring any evidence of those costs and be sure to ask the judge or registrar to include them in your order.

WHAT INTEREST MAY BE CLAIMED?

If you claimed daily interest from the date of filing of your Notice of Claim, you may now show any amount which might have accumulated since the date of filing to today's date.

If no interest was claimed originally you are entitled to interest in accordance with the Court Order Interest Act.

The registry staff can supply you with tables to calculate the interest.

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APPLICATION FOR DEFAULT ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

Fill in the names, copying them from the Notice of Claim.	In the case b	etween:			CL	AIMANT(S)	
	and						
					DEF	ENDANT(S)	
he registry staff will I in this section.	□ No hearing	is required as the claim is fo	r a debt.				
	At the hear	s required before a Judge of ring, the Judge will determine n appropriate order.					
		WILL BE HELD ON					
		date	at	time	e am / pm	or as soon after time as the cou schedule allows	rt
		at					
				court location			
		If you cannot attend at the	end this hearing please r time set for the default l				
II in this section. no court appearance as required, the terms the order will be ose requested on your otice of Claim.	As has not fil has not att has not Verification of	ed a Reply and the claimant l rended a mediation session and attended a mediation ses f Default (under Rule 7.3),	I the claimant has filed a V ssion or \Box signed a Fe	erification	n of Non-Atte		Rule 7.2 or 7.4),
you appeared in court, e judge will have told		ORDERS THE DEFENDAN			\$		amount of claim granted by court
what the terms of order are.	AND			+	\$		expenses
he judge ordered me other terms, add ese in this section.				- +	\$		interest
				=	\$		AMOUNT
				- +	\$		Filing Fee
				=	\$		TOTAL AMOUNT
nis will be signed and ated by the court		date				by the court	
	THE DEF	ENDANT IS ORDERED T		TERMS	OF THE C		
FORM 5					•••••••		DIATELY.

APPLICATION FOR DEFAULT ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

	In the case between:		(CLAIMANT(S)		
	and					
			DE	FENDANT(S)		
ou did not file a Reply ithin the time limit nd the claimant has						
otained this Default rder against you.	No hearing was required as the claim was for a debt. or					
this section is filled in, e claimant has opeared before a idge of the Provincial ourt who determined	A hearing is required before a Judge of the Provincial Court, bec At the hearing, the Judge will determine the amount the claimant terms of an appropriate order.					
e amount the claimant entitled to, or made	A HEARING WAS HELD ON]
y other order below.	date	tim	e am / pm	or as soon afte time as the con schedule allow	r this urt s.	
	at					
		court location	1			
	DEFAULT ORDER					
	As					
is is the order of the urt.	has not filed a Reply and the claimant has proved the defendan has not attended a mediation session and the claimant has filed a V					
	\Box has not \Box attended a mediation session or \Box signed a Fe			and the claimar		
	Verification of Default (under Rule 7.3), THIS COURT ORDERS THE DEFENDANT TO:					
	PAY DIRECTLY TO THE CLAIMANT THE SUM OF AND		\$		amount of claim granted by court	
		+	\$		expenses	
		- +	\$		interest	
			-			
		=	\$		AMOUNT	
		- +	\$		Filing Fee	
			\$		TOTAL AMOUNT	
			·	I		
	date			by the court		
FORM 5	THE DEFENDANT IS ORDERED TO CARRY OUT THE	TERMS	OF THE	ORDER IMM	EDIATELY.	
SCL 005 10/2007 (OPC 7530854509)	L			defenda	age 130	-

APPLICATION FOR DEFAULT ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

me and address of person or business	CI	LAIMANT(S)
u want to apply for an ler against.	and DEF	ENDANT(S)
eck with the Court gistry staff before ng out the rest of the m.	No hearing is required as the claim is for a debt.	
	A hearing is required before a Judge of the Provincial Court, because the claim is no At the hearing, the Judge will determine the amount the claimant is entitled to (if any terms of an appropriate order.	
thearing has been , your claim will be sessed by the court. Judge will consider ur claim and you may questioned about w you arrived at the iount. Any support- documents you wish count to consider build be brought to the aring.	A HEARING WILL BE HELD ON date at	
	If you do not attend at the time set for the default hearing, the Judge n	
arded? o court appearance s required, the terms he order will be se requested on your	As	vith the Notice of Claim,
arded? court appearance required, the terms ne order will be se requested on your ice of Claim. bu appeared in court,	As	vith the Notice of Claim, endance (under Rule 7.2 or 7.4
arded? arequired, the terms the order will be se requested on your ice of Claim. bu appeared in court, judge will have told what the terms of	As	vith the Notice of Claim, endance (under Rule 7.2 or 7.4 nd the claimant has filed a
arded? b court appearance required, the terms he order will be se requested on your ice of Claim. bu appeared in court, judge will have told what the terms of order are. e judge ordered he other terms, add	As	vith the Notice of Claim, endance (under Rule 7.2 or 7.4 nd the claimant has filed a
arded? b court appearance required, the terms he order will be se requested on your ice of Claim. bu appeared in court, judge will have told what the terms of order are. e judge ordered he other terms, add	As	vith the Notice of Claim, endance (under Rule 7.2 or 7.4 nd the claimant has filed a
at have you been arded? o court appearance s required, the terms he order will be se requested on your tice of Claim. ou appeared in court, judge will have told u what the terms of order are. ne judge ordered ne other terms, add se in this section.	As	vith the Notice of Claim, endance (under Rule 7.2 or 7.4 nd the claimant has filed a
arded? b court appearance s required, the terms he order will be se requested on your ice of Claim. bu appeared in court, judge will have told what the terms of order are. he judge ordered he other terms, add	As	vith the Notice of Claim, endance (under Rule 7.2 or 7.4 nd the claimant has filed a

NOTICE OF HEARING

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

то:	In the case between: CLAIMANT(S)	
	and DEFENDANT(S)	
	 No hearing is required as the claim is for a debt. or A hearing is required before a Judge of the Provincial Court, because the claim is not for a debt. At the hearing, the Judge will determine the amount the claimant is entitled to (if any), and other terms of an appropriate order. 	
At the hearing, a Judge will consider your claim and you may be questioned about how you arrived at the claim. You should bring any supporting documents or exhibits you wish the court to consider.	A HEARING WILL BE HELD ON date at	
	oourt location If you cannot attend this hearing please notify the Court Registry. If you do not attend at the time set for the default hearing, the Judge may cancel it.	

WHAT IF YOU DO NOT ATTEND?

If you do not attend at the time set for the default hearing, the Judge may cancel it, but the claimant may ask the registrar to reschedule the hearing.

WHAT WILL HAPPEN AT THE HEARING?

The purpose of the hearing is to allow the judge to determine

- (a) the amount the claimant is entitled to, if the claim is for money,
 - and
- (b) the terms of the appropriate order, in any other case.

For more information, there are booklets called "Getting Ready for Court" and "Getting Results".

APPLICATION RECORD/ORDER In the Provincial Court of British Columbia

l	n	the	F	Prov	incia	al	Cou	rt o	of I	Briti	sh	Co	lun	۱k
((S	mal		Clai	ms	С	ourt)							

REGISTRY FILE NUMBER:

COURTROOM REGISTRY LOCATION:

Before Judge		on date	clerk
In the case between			CLAIMANT(S)
and			DEFENDANT(S)
Appearances	Claimant(s) PA NA PA NA Counsel/representative	Defendant(s) PA NA PA NA	Defendant(s)/Third Party PA NA PA NA
Applications	 Default Payment Order Cancel Default Payment Order Other: (please specify) 	 Cancel Dismissal Order Cancel Garnishing Order/Releation 	ase Funds in Court
Order:	By Consent Dismissed	□ Not Heard □ Cancelled	Granted
Adjourned:	□ For	on	, at am / pm
Order:			
		See attachment for	continuation of order
Enforcement	Summons to Payment Hearing	Summons to Default Hearing	Notice of Payment Hearing
	Payment Schedule	By Court	By Consent
Order:			
		See attachment for	continuation of order
Warrants:	Warrant of Arrest		
	□ Warrant of Immediate Arrest	Name of person to be arrested/	imprisoned
	□ Warrant of Imprisonment for	days per section	

Signature of a Judge/Justice of the Peace in and for the Province of British Columbia

AN APPLICATION TO A JUDGE

Step 1

COMPLETE the APPLICATION. To complete the form, use a typewriter or print clearly. There are 4 copies, so be sure that all copies are legible.

\bigvee

Step 2

FILE the APPLICATION. The hearing will be at the Court and the registry staff will tell you the date. They will check your form and after it is accepted, apply the registry stamp.

\bigvee

Step 3

SERVE a copy of the application on each of the parties in your case at least 7 days before the hearing date. If you choose to use ordinary mail, you will have to put the summons in the mail at least 21 days before the hearing date. REGISTRY FILE NUMBER

What is the registry file number and location shown on the Notice of Claim?

APPLICATION TO A JUDGE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

Fill in the names of the parties, copying	In the case between:	CLAIMANT(S)
them from the Notice of Claim. Also, fill in the registry file number shown on the Notice of Claim.	and	DEFENDANT(S)
FROM: Fill in the name, ad- dress and telephone	NAME ADDRESS	
number of the applicant.	CITY, TOWN, MUNICIPALITY British Columbia PROV. POSTAL CODE	TEL.#
The registry staff will tell you the date of the hearing.	An application will be made to the court	or as soon after this
	ona	at time as the court
	at	time am / pm schedule allows.
Give details of the order you are asking for.	for the following order:	تو س
Give the facts you wish	The facts on which the application is based are as follows:	
the court to consider and then sign the Ap- plication.		
This will be completed	I certify these facts are true	SIGNATURE OF APPLICANT
by the court.		
		cour
		court copy
		by the Court
FORM 17		

APPLICATION TO A JUDGE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

	In the case between: CLAIMANT(<u>s)</u> Þ
	and DEFENDANT(
FROM: The person named as "applicant" will be ask-	NAME APPLICAN	
ing the court to make this order.	CITY, TOWN, MUNICIPALITY BROV. POSTAL CODE	_ 2
	An application will be made to the court	TO
	On at time as the court schedule allows.	ر م
	at	JUDG
	for the following order:	G M
	The facts on which the application is based are as follows:	
	I certify these facts are true.	
	The Court orders that	
		othe
		other party's copy
		ty's c
		go

FORM 17 SCL 017 06/2007 OPC# 7530854520

other page 136

by the Court

APPLICATION TO A JUDGE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

<form><form></form></form>		In the case between:			CLAIMANT(S)
<form></form>		and			 DEFENDANT(S)
ADDRESS Image: prov Prov Prov Prov Prov Prov Prov Prov Prov Prov Prov Prov </th <th>FROM:</th> <th>NAME</th> <th>SERVICE COP</th> <th></th> <th></th>	FROM:	NAME	SERVICE COP		
<u>Procession</u> <u>Procession</u> <u>Procession</u> <u>Procession</u> <u>Procession</u> <u>An application will be made to the court <u>onatrestractors</u> <u>atrestractors</u> <u>or as constant the schedule allows</u> <u>or as constant the court orders that <u>ourteason</u> <u>Incertify these facts are true. <u>Destructors that The Court orders that <u>Incertify these facts are true. <u>Destructors that </u> </u></u></u></u></u>	nom.	ADDRESS			
An application will be made to the court on					
<pre> at</pre>		An application will be ma			-
The facts on which the application is based are as follows:		on			or as soon after this time as the court
The facts on which the application is based are as follows:					
The facts on which the application is based are as follows:		for the following order:	at	court location	
I certify these facts are true					ľ
I certify these facts are true					
I certify these facts are true					
I certify these facts are true					
I certify these facts are true		The facts on which the a	polication is based are as follow		
The Court orders that			pplication is based are as follow	vs.	
The Court orders that					
The Court orders that					
The Court orders that					
The Court orders that					
The Court orders that			I certify these facts are tru	le.	
		The Court orders that	-	SIGNA	FURE OF APPLICANT
SERVICE COPY					
SERVICE COPY					
SERVICE COPY					
SERVICE COPY					
			SERVICE () OPY	
by the Court				by the Court	

CERTIFICATE OF SERVICE

Fill in: your name;	l ce	ertify	/ that	0
the name of the party or	ser	ved		Т
other person served; the date service took		veu		ת
place;	on	Date		Ĩ
the street address or location, city and	at			- =
province where service				<u> </u>
took place. Name the documents that you served.	wit	h		TIFICAT
	-			- 7
Tell how service took place by checking appropriate box(es) for:	-			0
ordinary mail and fill in the date mailed;	by		mailing a copy by ordinary mail to that person's address on	
an individual;			leaving a copy of it with him or her.	SE
			mailing a copy of it by registered mail to him or her.	ERVICE
a company as defined			mailing a copy of it by registered mail to the registered office of the company.	\leq
in the Business			leaving a copy of it \Box at the registered office of the company.	Ξ
Corporations Act;			at the place of business of the company, with a receptionist or a person who appears to manage or control the company's business there.	Щ
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.	
an extraprovincial compar	ıy		mailing a copy of it by registered mail to the attorney shown in the corporate registry.	
as defined in the Business Corporations Act;	5		leaving a copy of it with the attorney shown in the corporate registry.	
Colporations Act,			leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia. mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.	
a partnership;			mailing a copy of it by registered mail to a partner.	
			leaving a copy of it 🗌 with a partner.	
			at the place of business of the partnership, with a person who appears to manage or control the partnership business there.	
			with a receptionist who works at a place of business of the partnership.	
a municipal corporation, regional district or other local government body;			giving a copy to the clerk, deputy clerk or a similar official.	
a young person;			leaving a copy of the notice with the defendant's mother, father or guardian.	
a society as defined in the)		mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.	
Society Act;			leaving a copy of it at the address for service on file with the Registrar of Companies.	
an extraprovincial society as defined in the <i>Society</i>			□ with a director, officer, receiver manager or liquidator of the society.	
Act (if no attorney has bee	en		mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.	
appointed, check one of the 2 preceding boxes for society);	а		leaving a copy of it with an attorney appointed under section 77 of the Society Act.	
			mailing a copy of it by registered mail to the registered office of the association.	
an unincorporated association or trade union	;		leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.	
a corporation incorporated			mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.	
outside British Columbia if it is not an extraprovincial			leaving a copy of it at a place of business or registered office of the corporation outside British Columbia with a receptionist or a person who appears to manage or control the corporation's business, or	
company;			 with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation. 	
alternate service method ordered by the Court.			(fill in any instructions given by a judge or registrar for service)	

NOTE: You must give proof of service by *REGISTERED MAIL* by attaching <u>one</u> of the following:

- 1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
- 2. a print-out of the delivery confirmation made available on the Internet by Canada Post (http://www.canadapost.ca).

Signature of person who served the document

APPLICATION TO A JUDGE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

Fill in the names of the parties, copying	In the case between:			CLAIMANT(S)
them from the Notice of Claim. Also, fill in the registry file number shown on the Notice of	and			DEFENDANT(S)
Claim.				
FROM: Fill in the name, ad-	NAME ADDRESS			APPLICANT
dress and telephone number of the applicant.	CITY, TOWN, MUNICIPALITY	British Columbia	a TEL.#	
The registry staff will tell you the date of the hearing.	An application will be made	PROV. PO	STAL CODE	
	on		atam	or as soon after this time as the court schedule allows.
		at		/ pm schedule allows.
Give details of the order you are asking for.	for the following order:		court location	
Give the facts you wish	The facts on which the appli	cation is based are as	follows:	
the court to consider and then sign the Ap- plication.				
F				
		I certify these facts	are true.	
This will be completed by the court.	The Court orders that	-	SIGNATU	RE OF APPLICANT
			by the Court	
FORM 17				Page 139

SCL 017 06/2007 OPC# 7530854520

JAG-2613-66089

APPLICATION TO THE REGISTRAR



PROVINCIAL COURT OF BRITISH COLUMBIA

APPLICATION TO THE REGISTRAR

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

Fill in the names of
the parties, copying
them from the Notice
of Claim. Also, fill in
the registry file number
shown on the Notice of
Claim.

In the case between:

FRO

Fill in the names of the parties, copying			CLAIMANT(S	≥∠
them from the Notice of Claim. Also, fill in the registry file number shown on the Notice of Claim.	and		DEFENDANT(S	
FROM:	NAME			Ď
Fill in the name, ad- dress and telephone	ADDRESS			
number of the applicant.	CITY, TOWN, MUNICIPALITY		TEL. #	Ž
Check the appropriate	PROV.		POSTAL CODE	
box.	The applicant asks for an order			Ö
	□ renewing a claim;		permitting service of a notice of claim outside B.C.;	<u> </u>
	renewing a third party notice;		exempting the applicant from paying fees;	1
	postponing a settlement conference;		permitting a hearing to be conducted by telephone;	I
	 extending the time for filing a certificate of readiness; other: 		permitting another method of service;	Ш
If the other box is checked, give the details of the order you are asking for.				
Give the facts you wish the registrar to consider and sign the Application.	The facts on which this application is based are as	follo	ows:	TRAR
				- - -
	L cortify these facts a			_

I certify these facts are true.

		-	SIGNATURE OF APPLICANT	
This will be completed by the court.	The Court orders that			
by the court.	The Court orders that			
	date	by the reg	gistrar	

Page 141 1-COURT REGISTRY 2-APPLICANT 3-OTHER PARTY JAG-2015-00066

APPLICATION TO THE REGISTRAR

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

Fill in the names of
the parties, copying
them from the Notice
of Claim. Also, fill in
the registry file number
shown on the Notice of
Claim.

In the case between:

FROM

Fill in the names of the parties, copying	CLAIMANT(S)				
them from the Notice of Claim. Also, fill in the registry file number shown on the Notice of Claim.	and	DEFENDANT(S)			
FROM:	NAME				
Fill in the name, ad- dress and telephone	ADDRESS				
number of the applicant.	CITY, TOWN, MUNICIPALITY	TEL. #			
	PROV.	POSTAL CODE			
Check the appropriate	The applicant asks for an order				
box.	renewing a claim;	\Box permitting service of a notice of claim outside B.C.;			
	renewing a third party notice;	\Box exempting the applicant from paying fees;			
	 postponing a settlement conference; 	permitting a hearing to be conducted by telephone;			
	 extending the time for filing a certificate of readiness other: 				
If the other box is					
checked, give the details of the order you					
are asking for.					
Give the facts you wish		as follows:			
the registrar to consider					
and sign the Application.					

I certify these facts are true.

	-	SIGN	ATURE OF APPLICANT
This will be completed by the court.	The Court orders that		
	date	by the registrar	

FORM 16 SCL 016 11/2006 (OPC# 7530854519)

Page 142 1-COURT REGISTRY 2-APPLICANT 3-OTHER PARTY JAG-2015-00066

APPLICATION TO THE REGISTRAR

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

American and DEFENDANT(3) Defendant(3) Defendant(4) Defen		In the case between:	CLAIMANT(S)			
The facts on which this application is based are as follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which this application is based are the follows: The facts on which the facts on whi		and	DEFENDANT(S)			
ADDRESS CITY. TOWA, TEL. # THE applicant asks for an order The applicant asks for an order The applicant asks for an order The renewing a claim; Tenewing a third party notice; The applicant from paying fees; The postponing a settlement conference; The actending the time for filing a certificate of readiness; The facts on which this application is based are as follows: The facts on which this application is based are as follows: The facts on which this application is based are true. The facts are true.						
MUNICIPALITY PROV. POSTAL CODE The applicant asks for an order	OM:					
The applicant asks for an order permitting service of a notice of claim outside B.C. renewing a third party notice; exempting the applicant from paying fees; postponing a settlement conference; permitting a hearing to be conducted by telephone extending the time for filing a certificate of readiness; permitting another method of service; other: other:			TEL. #			
renewing a claim; renewing a third party notice; postponing a settlement conference; postponing a settlement conference; postponing the time for filing a certificate of readiness; permitting another method of service; other: The facts on which this application is based are as follows: I certify these facts are true.			POSTAL CODE			
renewing a third party notice; postponing a settlement conference; permitting a hearing to be conducted by telephone extending the time for filing a certificate of readiness; other: The facts on which this application is based are as follows: I certify these facts are true.			\Box permitting service of a notice of claim outside B.C.:			
postponing a settlement conference; extending the time for filing a certificate of readiness; other: The facts on which this application is based are as follows: I certify these facts are true.						
extending the time for filing a certificate of readiness; other: other: The facts on which this application is based are as follows: I certify these facts are true.						
The facts on which this application is based are as follows:						
L certify these facts are true.						
L certify these facts are true.						
L certify these facts are true.						
L certify these facts are true.						
SIGNATURE OF APPLICANT		The facts on which this application is based are as	follows:			
SIGNATURE OF APPLICANT						
SIGNATURE OF APPLICANT						
SIGNATURE OF APPLICANT						
SIGNATURE OF APPLICANT						
SIGNATURE OF APPLICANT						
SIGNATURE OF APPLICANT						
SIGNATURE OF APPLICANT						
The Court orders that						
		The Court orders that				

In the Provincial Court of British Columbia (Small Claims Court)

Registry File Number:

Registry Location:

Tel#

Postal code

JUDGMENT CREDITOR BETWEEN: JUDGMENT DEBTOR AND: CERTIFICATE (Section 82(6) of the Offence Act) I, _____ Print Name _____, having been designated to file certificates under Section 82(6) of the Offence Act, hereby certify that: _____(the "Debtor"), having an address at 1. Offender's Name

City, town, municipality

Address

Prov.

was convicted or deemed convicted of an offence or offences in accordance with an enactment of the Province of British Columbia. As a result of the convictions(s), the Debtor is required to pay the fine(s) listed below.

The Debtor has failed to pay all or part of the fine(s) so that, as of the date of this Certificate, the amounts contained 2. within columns 4 and 5 are due and owing.

		1	2	3	4	5
		Date of Conviction	Amount of	Date Fine	Amount of Fine	Interest Payable
		or Deemed	Fine	was Payable	remaining unpaid	on Fine
		Conviction			as of the date of	Remaining Unpaid *
					this Certificate	
		(dd/mm/yy)	(\$)	(dd/mm/yy)	(\$)	(\$)
	Ticket#					
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
(Add more rows as required on additional pages)				TOTAL		

*The amount of interest payable under Section 82.1 of the Offence Act with respect to the unpaid amount of the fine.

Signed at _____, British Columbia, on _____

Signature

Title

Address

CERTIFICATE OF AMOUNTS OWING

In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY FILE NUMBER

REGISTRY LOCATION

BYLAW NOTICE CREDITOR

AND:

NAME

BYLAW NOTICE DEBTOR

CERTIFICATE

(Section 26(3) of the Local Government Bylaw Notice Enforcement Act)

I, ______ having been designated to file certificates under section 26 (3) of the Local Government Bylaw Notice Enforcement Act, hereby certifiy that:

BETWEEN:

1.	PERSONAL OR CORPORATE NAME	(the "Debtor"), having an address at
	ADDRESS	
	MUNICIPALITY (CITY, TOWN, ETC.)	PROVINCE
	POSTAL CODE	TEL. #

has incurred a debt arising from a bylaw notice adjudication determination or default that is due and payable in accordance with the Local Government Bylaw Notice Enforcement Act. As a result of the determination or default, the Debtor is required to pay the amounts listed below.

 The Debtor has failed to pay all or part of the penalty so that, as of the date of this Certificate, the amounts contained within column 3 became due and payable on the dates indicated in column 2, for the reasons provided in the section of the Local Government Bylaw Notice Enforcement Act referred to in column 1.

	1 Authority for Adjudication Determination or Default (section)	2 Date of Adjudication Determination or Default (dd/mm/yy)	3 Amount (\$)
Penalty			
Late Payment Surcharge			
Adjudication Cost Recovery Fee			
		Total	

3. The attached copy of Bylaw Notice # ______ forms part of this certificate; the certificate is not complete unless a copy of the bylaw notice is attached.

Signed at ____

, British Columbia, on _____

SIGNATURE

TITLE

ADDRESS

APPLICATION

REGISTRATION

(OR RENEWAL) OF A JUDGMENT

	DO NOT WRITE ABOVE THIS I	INE, FOR LAND TITLE USE ONLY	
Nature of Interest:	CHARGE (JUDGMENT)	Herewith fee of \$	
Parcel Identifier(s) and Leo	gal Description(s):		
Full name and postal addre	ess of judgment debtor		
NAME		-	
STREET		Full name, address, telephone number of person presentin application:	וg
СІТҮ	POSTAL CODE	- NAME	
		STREET	
Full name and postal addre	ess of judgment creditor	CITY POSTAL CODE	
NAME		- TELEPHONE	
STREET		-	
CITY	POSTAL CODE	Signature of Applicant, or Solicitor or Authorized Agent	
	OF JUDGMENT JRT OF BRITISH COLUMBIA	REGISTRY LOCATION	
AND:			
AND.		, JUDGMENT DEBTC	<i>)</i> n
I, the undersigned, Registrar	of the Provincial Court (Small Claims	Division) do hereby certify that the Creditor obtained	
Judgment against the Debt	tor in the above-mentioned action, for	or the sum of \$	
Dated DAY MC	ONTH YEAR		
at <u>CITY</u>			
British Columbia			
		Registrar	
		Page 146	

Certificate of Readiness In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY FILE NUMBER

REGISTRY LOCATION

CLAIMANT(S)

DEFENDANT(S)

In the case between: Fill in the registry file Name number shown on the Notice of Claim. Fill in the names of the parties, copying and them from the Notice of Claim. Name

FROM Fill in the

FROM:	Name			CLAIMANT
Fill in the name,	Address			
address and telephone number of the claimant	City, Town, Municipality		Prov.	
who is filing the	Postal Code	Tel. #		
certificate.				

I am claiming damages for personal injuries and am ready to discuss settlement of my entire claim.

I attach all medical reports and all records of expenses or losses incurred or expected.

Fill in the date and sign here.

Date

Signature of claimant

Certificate of Readiness

Certificate of Readiness

In the Provincial Court of British Columbia (Small Claims Court)

I am claiming damages for personal injuries and am ready to discuss settlement of my entire claim.

Tel. #

I attach all medical reports and all records of expenses or losses incurred or expected.

Date

Signature of claimant

FROM:

Postal Code

Certificate of Readiness

In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY FILE NUMBER

Name	CLAIMANT
and	
Name SED	HGE-GOPY DEFENDANT(
Name Address	CLAIMAI

I am claiming damages for personal injuries and am ready to discuss settlement of my entire claim.

Tel. #

I attach all medical reports and all records of expenses or losses incurred or expected.

Date	Signature of claimant
	RVICE COPY

FROM:

Postal Code

FORM 4 SCL 004F 08/2006

CERTIFICATE OF SERVICE

Fill in: your name;	l ce I	-	y that	C
the name of the party or	ser			m
other person served; the date service took	on			
place;		Date		RTIFIC
the street address or location, city and	at			
province where service took place.				Ë
Name the documents	wit	h		\mathbf{O}
that you served.				
Tell how service took place by checking appropriate box(es) for:				
ordinary mail and fill in the date mailed;	by		mailing a copy by ordinary mail to that person's address on	Т S
an individual;			leaving a copy of it with him or her.	m
			mailing a copy of it by registered mail to him or her.	ד
				2
a company as defined in the <i>Business</i>			mailing a copy of it by registered mail to the registered office of the company.	VIC
Corporations Act;			leaving a copy of it at the registered office of the company. at the place of business of the company, with a receptionist or a person who appears to	C
			manage or control the company's business there.	Π
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.	
an extraprovincial compar as defined in the Business			mailing a copy of it by registered mail to the attorney shown in the corporate registry.	
Corporations Act;	5		leaving a copy of it with the attorney shown in the corporate registry. leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia.	
			mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.	
a partnership;			mailing a copy of it by registered mail to a partner.	
- p			leaving a copy of it \Box with a partner.	
			at the place of business of the partnership, with a person who appears to manage or control the	
			partnership business there.	
			with a receptionist who works at a place of business of the partnership.	
a municipal corporation, regional district or other local government body;			giving a copy to the clerk, deputy clerk or a similar official.	
a young person;			leaving a copy of the notice with the defendant's mother, father or guardian.	
		_		
a society as defined in the <i>Society Act</i> ;			mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.	
y ,			leaving a copy of it at the address for service on file with the Registrar of Companies. with a director, officer, receiver manager or liquidator of the society.	
an extraprovincial society as defined in the Society				
Act (if no attorney has bee	ən		mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.	
appointed, check one of the 2 preceding boxes for	2		leaving a copy of it with an attorney appointed under section 77 of the Society Act.	
society);	a			
an unincorporated			mailing a copy of it by registered mail to the registered office of the association.	
association or trade union	ı;		leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.	
a corporation incorporated	d		mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.	
outside British Columbia i	f		leaving a copy of it \Box at a place of business or registered office of the corporation outside British Columbia with a	
it is not an extraprovincial company;		-	receptionist or a person who appears to manage or control the corporation's business, or	
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation.	
alternate service method ordered by the Court.			(fill in any instructions given by a judge or registrar for service)	

NOTE: You must give proof of service by REGISTERED MAIL by attaching one of the following:

- 1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
- 2. a print-out of the delivery confirmation made available on the Internet by Canada Post (http://www.canadapost.ca).

Signature of person who served the document

Certificate of Readiness

In the Provincial Court of British Columbia (Small Claims Court)

I am claiming damages for personal injuries and am ready to discuss settlement of my entire claim.

Tel. #

I attach all medical reports and all records of expenses or losses incurred or expected.

Date

Signature of claimant

FROM:

Postal Code

FORM 4 SCL 004F 08/2006

CERTIFICATE OF SERVICE

Fill in: your name;	l ce I	-	y that	C
the name of the party or	ser			m
other person served; the date service took	on			
place;		Date		RTIFIC
the street address or location, city and	at			
province where service took place.				Ë
Name the documents	wit	h		\mathbf{O}
that you served.				
Tell how service took place by checking appropriate box(es) for:				
ordinary mail and fill in the date mailed;	by		mailing a copy by ordinary mail to that person's address on	Т S
an individual;			leaving a copy of it with him or her.	m
			mailing a copy of it by registered mail to him or her.	ד
				2
a company as defined in the <i>Business</i>			mailing a copy of it by registered mail to the registered office of the company.	VIC
Corporations Act;			leaving a copy of it at the registered office of the company. at the place of business of the company, with a receptionist or a person who appears to	C
			manage or control the company's business there.	Π
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.	
an extraprovincial compar as defined in the Business			mailing a copy of it by registered mail to the attorney shown in the corporate registry.	
Corporations Act;	5		leaving a copy of it with the attorney shown in the corporate registry. leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia.	
			mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.	
a partnership;			mailing a copy of it by registered mail to a partner.	
- p			leaving a copy of it \Box with a partner.	
			at the place of business of the partnership, with a person who appears to manage or control the	
			partnership business there.	
			with a receptionist who works at a place of business of the partnership.	
a municipal corporation, regional district or other local government body;			giving a copy to the clerk, deputy clerk or a similar official.	
a young person;			leaving a copy of the notice with the defendant's mother, father or guardian.	
		_		
a society as defined in the <i>Society Act</i> ;			mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.	
y ,			leaving a copy of it at the address for service on file with the Registrar of Companies. with a director, officer, receiver manager or liquidator of the society.	
an extraprovincial society as defined in the Society				
Act (if no attorney has bee	ən		mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.	
appointed, check one of the 2 preceding boxes for	2		leaving a copy of it with an attorney appointed under section 77 of the Society Act.	
society);	a			
an unincorporated			mailing a copy of it by registered mail to the registered office of the association.	
association or trade union	ı;		leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.	
a corporation incorporated	d		mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.	
outside British Columbia i	f		leaving a copy of it \Box at a place of business or registered office of the corporation outside British Columbia with a	
it is not an extraprovincial company;		-	receptionist or a person who appears to manage or control the corporation's business, or	
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation.	
alternate service method ordered by the Court.			(fill in any instructions given by a judge or registrar for service)	

NOTE: You must give proof of service by REGISTERED MAIL by attaching one of the following:

- 1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
- 2. a print-out of the delivery confirmation made available on the Internet by Canada Post (http://www.canadapost.ca).

Signature of person who served the document

DATE: _____

TO:

Your notice of claim has been received by the court registr filing of a notice of claim was insufficient/not enclosed following fee is required:					
For claims up to and including \$3,000	\$100				
For claims over \$3,000	\$156				
The filing fee must be paid in full before your notice of	f claim can be filed.				
The fee may be paid by cash, cheque or money order made payable to the Minister of Finance. Robson Square Provincial Court also accepts INTERAC payments.					
If you win your case you may recover this fee from the other party. Anyone who cannot af- ford the fee may apply to the registrar to be exempted from paying the fee.					
Our address is:					



DATE:

TO:

Your notice of claim has been received by the court registry. Unfortunately, the fee for the filing of a notice of claim was insufficient/not enclosed. Effective May 1st, 1998 the following fee is required:								
For claims up to and including \$3,000 \$100								
For claims over \$3,000 \$156								
The filing fee must be paid in full before your notice of cla	m can be filed.							
The fee may be paid by cash, cheque or money order made payable to the Minister of Finance. Robson Square Provincial Court also accepts INTERAC payments.								
If you win your case you may recover this fee from the other party. Anyone who cannot afford the fee may apply to the registrar to be exempted from paying the fee.								
Our address is:								

REGISTRY FILE NUMBER

CONSENT ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

BETWEEN: Fill in the file number, court location and	ADDRESS			
names, copying them from the notice of claim.	CITY, TOWN,		TEL. #	2
	MUNICIPALITY	PROV.	POSTAL CODE	
AND:	ADDRESS			DEFENDANT(S)
	CITY, TOWN, MUNICIPALITY	PROV.	TEL. # POSTAL CODE	
		PROV.	POSTAL CODE	2
	APPLICATION		The applicant asks the registrar for	an order
FROM: Fill in the name of the	NAME PARTY		_ in the terms set out in the <i>Consent</i>	Order 🗾
applicant			_ ALL parties have given their consent a	and have signed below.
	Date			
			signature of applicant	
TEDMO.	CONSENT ORDER			
TERMS: Fill in the terms of the				
agreement you have reached.				
Be sure you set out all the conditions agreed				
on.				
Be careful to show the full amount of any				
money to be paid. If you have agreed on				
Interest be sure the amount of interest and				
how it is to be calcu- lated is shown.				
If you have agreed pay- ments are to be made,				
set out the date(s) and amount(s) of the				
payment(s).				
Specify what will hap- pen if a payment is				
missed.				
Fill in today's date and				
sign the agreement				
Be sure everyone in- volved in the case signs	date		signature of claimant	
the order.	date		signature of defendant	
			- orginature or defendalit	
Once the order is signed by all the parties				
take the order to the court registry to be				
signed by the registrar and filed.	date		signature of registrar	
SCL 021 02/2007	1-CO	URT COPY 2-CLAIM	ANT'S COPY 3-DEFENDANT'S CO	Page 155 AC¥ 2015-00066

Consent to Adjourn Settlement Conference

In the Provincial Court of British Columbia (Small Claims Court)

In the case betw					
in the case betw	veen:				CLAIMANT(S)
NAME					CLAIMANT(3)
ADDRESS					
CITY, TOWN, MUNICIPALIT	Y	PROV	POSTAL CODE	TEL. #	
and					
NAME					DEFENDANT(S)
ADDRESS					
CITY, TOWN, MUNICIPALIT	Y	PROV	POSTAL CODE	TEL. #	
					THIRD PARTY
NAME					
ADDRESS					
CITY, TOWN, MUNICIPALIT					
CITY, TOWN, MUNICIPALIT	Ŷ	PROV	7. POSTAL CODE	TEL. #	
All parties in the	e above named	l action consent to	adjourn the settlement con	ference currently set for	
(date)		at (time)	to:	ext available date/ generally, etc.)	
(2010)		(, , , , , , , , , , , , , , , , , , ,	
Claimant(s): N	Name:		Signature:		Date:
			O'rea a transi		Data
ľ	vame:		Signature:		Date:
Defendant(s): N	Name:		Signature:		Date:
١	Name:		Signature:		Date:
Third Party: N	Name:		Signature:		Date:

Information for All Parties; Adjourning a Settlement Conference

If you are attempting to adjourn a scheduled settlement conference the following steps **must** be taken:

- 1. You must contact the other party/parties personally by phone, mail or fax, and ask if they will consent to an adjournment of the scheduled settlement conference.
- 2. If they agree to the adjournment you must get the consent of all parties in writing. You may use the consent form at the top of this form if you wish.
- 3. If they do not agree to the adjournment you must complete an Application to the Registrar (SCL 016) at least 7 days before the date set for the settlement conference. The Application asks the Registrar for an adjournment. When completing the form you must include all of the following:
 - a) A detailed reason for the adjournment request.
 - b) Whether you contacted the other party/parties. If not, state the reason why.
 - c) When and how you contacted the other party/parties and who you spoke to.
 - d) Their response i.e. they would not consent.

The Registrar will only consider those applications where the applicant has made reference to everything stated above. Please note that the Registrar is not bound to automatically grant all applications for adjournments. However, if your application is granted you may be required to serve a copy of the Registrar's order on the other party/parties.

REGISTRY FILE NUMBER

Consent to Act as Litigat	tion Guardian
and Certificate of Fitness	6

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (Small Claims Court)

REGISTRY LOCATION

AND:	NAME ADDRESS CITY, TOWN, MUNICIPALITY					
	CITY, TOWN, MUNICIPALITY					
	CITY, TOWN, MUNICIPALITY		2201/		TCI #	
AND.			PROV.	POSTAL CODE	TEL. #	DEFENDANT
	NAME ADDRESS					
	CITY, TOWN, MUNICIPALITY		PROV.	POSTAL CODE	TEL.#	
I,						
of						
Address	and say or solemnly affirm as fo	llowe				
	THAT I am \Box Father of the claimant in this action.	☐ Mother	🗆 Legal Guardian	☐ An adult willing	to act as the litig	ation guardian
2. 1	THAT the claimant is an infant.					
3. 1	THAT I have no interest in the r	matters in question	on in this action adverse	to that of the said infa	ant.	
4.	THAT I am of the age of majori	ty, and reside in	the province of British C	olumbia.		
5. 7	THAT I am a fit and proper pers	son to be litigatio	n guardian of the said in	fant Claimant.		
6. 1	THAT I agree to assist the infar	nt in this action.				
	FIRMED before me					
at in the Provir	nce of British Columbia		} _	Signature	e of Litigation Guardian	
ON			J			

Signature of a Commissioner for taking Affidavits within the Province of British Columbia

Registry No.

Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (Small Claims Court)	L
BETWEEN:	CLAIMANT
AND:	DEFENDANT
AFFIDAVIT OF ATTAINMENT OF MAJORITY	
I,, ,, Occupation	,
of,	
Province of British Columbia, MAKE OATH AND SAY (OR AFFIRM) AS FOLLOWS:	
1. I attained the age of majority on	
2. I am under no other legal disability.	
3. I intend to act in this action without a litigation guardian.	
Sworn/affirmed before me in the City of	British Columbia
ON Date	

A Commissioner for taking Affidavits within British Columbia

Deponent

TO:

DEFENDANT(S)

Your reply to the notice of claim for the file number shown above has been received by the court registry. Unfortunately, the fee for filing the counterclaim was not enclosed. Effective May 1st, 1998, the following fee is required: Counterclaims up to and including \$3,000 \$100 Counterclaims over \$3,000 \$156 The fee must be paid before your counterclaim can be filed. You may want to pay the fee in person at the registry. The fee may be paid by **cash**, cheque, or money order made payable to the Minister of Finance. Robson Square Provincial Court also accepts INTERAC payments. If you mail the fee, please show the file number on you cheque or money order. Anyone who cannot afford the fee may apply to the registrar to be exempted from paying the fee. Our address is:

Fee Declaration

In the Provincial Court of British Columbia (Small Claims Court)

Fill in the registry file number and location as shown on the Notice of	NAME(S)	CASE BETWEEN		
Claim.	NAME(S)			Õ
Fill in the names of the parties, copying them from the Notice of Claim and the Third Party				Declaration
Notice, if applicable.	NAME(S)			
				tio
	AND		DEFENDAN	IT / THIRD PARTY
	NAME(S)			
	WHEREA	NS:		
	(a)	we, or our representatives, are participating in Between \$10,000 and \$25,000.	a mediation session under Rule 7.3, Media	ation for Claims
Fill in the name	(b)	the mediator will be	of	, B.C.
and address of the mediator.				
Fill in the costs of the	(c)	the cost of the mediation services will be	for a completed mediation s	ession, or will be
mediation session.		calculated at \$ per hour plus r	necessary disbursements, or will be calcula	ted as follows:
Indicate how the costs are to be paid.	WE WILL 1. OR 2.	, subject to any agreement reached during medi in equal shares as follows:	ation, pay the cost of the mediation service	25:
Fill in today's date and sign the notice.		E THIS DECLARATION under Rule 7.3, Mediati		
			Party (or party's solicitor)	
			Party (or party's solicitor)	

REGISTRY FILE NUMBER

GARNISHING ORDER (ABSOLUTE) In the Provincial Court of British Columbia

In the Provincial Court of British Columb (Small Claims Court)

REGISTRY LOCATION

Between	Plaintiff (or Judgment Creditor, or as the case may be)
And	Defendant (or Judgment Debtor, or as the case may be)
And	Garnishee
	NAME
	On reading the affidavit of, filed on,
	and the order made by, (Judge/Registrar)
	at, whereby it was ordered that all debts,
	obligations and liabilities owing, payable or accruing due from the above named garnishee [or as the case
	may be] to answer [continue as in attaching order and refer to any other material used on the motion], and on
	hearing and
	[or
	having been duly served with notice of this motion and not having appeared, or as the case may be],
	I order that the above named garnishee [or as the case may be] at once [or on] pay to the
	plaintiff [or as the case may be] \$ due [or payable, or on that day to become due or payable] from

the garnishee [or as the case may be] to the defendant [or as the case may be].

(Add any directions as to costs or otherwise.)

Date _____

COEA - Form E SCL 839 11/2011 By the Court (

GARNISHMENT APPLICATION

SCHEDULE (SECTION 3) APPLICATION UNDER PART 1 OF THI **DIVERSION ACT AND SECTION 3 OF**

SC	CHEDULE (SECTION 3)			R	egistry Loc	ation			
	PLICATION UNDER PART 1 OF THE GARNIS				•				
DI	VERSION ACT AND SECTION 3 OF THE GARI	NISHMENT AND ATTACHMEN	T REGL	JLATIONS –					
	copy of the judgment or order against the de rved with this application at the place specif								
PA	RT 1 - DEBTOR'S INFORMATION - Please provide 1	the following information concern	ing the o	debtor.					
1.	Debtor's name (Given names, surname)		2.	Date of Birth (if know	/n)	ΥY	Ν	ММ	
2	March was a set bus as use a shekara a	Destal series		O a static summer as a Mis-	10	- 1)			

Court File

1. Debtor's name (Given names, surname)	-		2.	Date of Birth (i	f known)	YY	MM	DD
3. Most recent known address	Postal code		4.	Social Insuran	ce No. (Option	onal)		
Check one of the items from items 5 to 12								
5. Debtor is employed in a department/Crown corporation:								
(a) Name of department/Crown corporation								
(b) Branch/Division where employed (if known)								
(c) Place of employment (full address)								
(d) Personal record identifier (optional)								
(e) Personnel office address (if known)								
6. Debtor is a senator or an employee of a senator or an employee of the Senate	7. [a member or an r an employee o			nons	
8. Debtor is a member of the staff of the Library of Parliament	nt 9.	Debto	r rec	eives salary or r	emuneratior	n from a	court	
10. Debtor receives salary or remuneration from the Department of Justice	11. [a member of a M o Section 39 of t				
12. Debtor is a judge to whom the <i>Judges Act</i> applies	\rightarrow			· · · · · · · · · · · ·				
12 Occupation profession ist classification or title of debtor	(if known)		Name	of court to which the			ation of that col	irt.
13. Occupation, profession, job classification or title of debtor	(If known)			14. Telephone Home	no. (if knowi	Work		
15. The money payable to the debtor is payable as	Salary			Remuneration				
16. The Debtor is a contractor (excluding corporations)								
(a) Name of contracting department/Crown corporation/Set	nate/House of Comm	ons/L brar	y of I	Parliament				
(b) Address								
(c) Project name								
17. Please provide any other information which might aid in identif	ying the debtor.							
PART 2 - SUMMONS INFORMATION - Please provide the follow	wing information co	ncerning	the	unpaid debt.				
18. Name of court that has issued the garnishee summons	19. 0	Court Loca	tion	(City & Province)			
Check item 20 or 21, as applicable, and fill in	1							
20. Judgment or order is for maintenance or support								
Periodic support payment due: Weekly	Bi-weekly	Monthly	ý	Annual	y \$_			
Arrears due up to application date (including interest and costs	5)				\$			
21. Judgment or order is for a debt other than maintenance o	r support							
Unpaid amount owing, including interest and costs to date					\$			
PART 3 - DECLARATION								
Correspondence requested in: English	Francais							
I declare that the information given in this application is true and is for the purpose of applying for garnishment of federal monies in ac with Part 1 of the <i>Garnishment, Attachment and Pension Diversion</i>	cordance		Signa	ture of applicant			Date	
Name of Applicant (in block letters)					Telephone	No.		
Mailing address of applicant					Postal cod		je 162	
SCL 816 05/97					JA	G-2015-		

MEDIATION AGREEMENT

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

REGISTRY LOCATION

Page _____ of _____

Fill in the registry file number and location as shown on the Notice of	IN THE CASE BETWEEN	CLAIMANT(S)
Claim. Fill in the name of the	Name	
parties, copying them from the Notice of Claim and the Third Party		
Notice, if applicable.	AND	DEFENDANT(S)
	Name	
		T
	AND	
	Name	
	Mediation was held on or between	and
	Date Date Date Date Date Date Date Date	All issues Some issues
	☐ This Mediation Agreement may be filed with the court.	
		vith the court only in support of an Affidavit of Non-Compliance.
Set out the terms of		
the agreement.		
	or See attached agreement	
The agreement must contain an	The agreement contains payment terms.	
enforcement clause.	The agreement contains other terms, enforceable by a sp	pecified amount of liquidated damages.
	\Box The agreement contains other terms, for which no amount	nt of liquidated damages was specified.
	Signature of claimant	Signature of defendant
All parties to the agreement must sign		
this form.	Print Name:	Print Name:
	Signature of claimant	Signature of defendant / third party
	Print Name:	Print Name:
To day da data	Dated:	
Today's date.	5400	

REGISTRY FILE NUMBER

MEDIATION COMPENSATION ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

In the case between

Fill in the name(s), address(es) and phone number(s) of the parties. Include a third party if one was named. Be careful to name the parties correctly.

DRESS			CLAIMANT(S)
Y, TOWN,		TEL. #	
JNICIPALITY	PROV.	POSTAL CODE	
AME			DEFENDANT(S)
DDRESS			DEFENDANT(5)
TY, TOWN,		TEL. #	
IUNICIPALITY			
Ind	PROV.	POSTAL CODE	
NAME			THIRD PARTY
ADDRESS			
		TEL. #	
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As the terms of a mediation and a mediation and a mediation agreement to esta	agreement have not been blish an amount of dama AT:	POSTAL CODE	of such non-compliance.

If the judge has ordered payment of money, fill in the name of the party	THIS COURT ORDERS THAT:
ordered to pay and the name of the party the money is to be paid to.	TO PAY DIRECTLY TO NAME \$
	TOTAL AMOUNT OF ORDER
Check the appropriate box	immediately, or
If the judge has ordered payment by installments or before a fixed date, say what amounts are to be paid and when.	in accordance with the following payment schedule
Has the judge ordered something other than the payment of money?	THIS COURT ORDERS
	+ \$
This will be signed and dated by the court.	date by the court
FORM 26 SCL 827 07/2008	For more information about enforcement proceedings there is a booklet called "Getting Results" Page 164 1-COURT 2-DEBTOR 3-CREDITOR JAG-2015-00066

NOTICE OF CLAIM



PROVINCIAL COURT OF BRITISH COLUMBIA



MAKING A CLAIM

Step 1

COMPLETE the NOTICE OF CLAIM. To complete the form, use a typewriter or print clearly and firmly. There are 5 copies, so be sure all copies are legible. If you accessed this form from the Ministry of Justice website, you may also complete it at the computer and then print it. For more help there is a booklet called "Making a Claim".

Step 2

FILE the NOTICE OF CLAIM by taking or mailing it to the small claims registry. If you are making a claim against a company or a society, you must attach a printout of a company search showing the most recent address of the registered office of the company or society on file with the Registrar of Companies. The fee for filing is \$100 for claims up to and including \$3,000, or \$156 for claims over \$3,000. The staff will check the form and, when it is accepted for filing, apply the registry stamp, add on filing and service fees, and assign a file number. Then they will return the copies you need for your records and for serving on the defendant.

Step 3

SERVE each defendant named in the NO-TICE OF CLAIM with a copy of the document and a blank copy of the REPLY form. The purpose is to be sure the defendants know they are being sued, and what the case is about. For more help with service there is a booklet called "Serving Documents".

AND THEN if the defendants file a reply, the court registry will send you a copy, and set a date for a settlement conference. If no Reply is filed at the court registry within the time limit on the NOTICE OF CLAIM, you may apply for a DEFAULT ORDER. You will have to file a certificate of service to prove the NOTICE OF CLAIM has been served.

FROM:

You must be sure that the address you give is correct because this is where the registry will send any further notices or information to you. If your address changes at any time please notify the small claims registry and all parties to the lawsuit.

TO:

Are you sure you have used the proper name? If you wish to sue a company or a society, you can get the legal name from the printout of the company search

Is there more than one defendant? If so, put both names (side by side) in the space given. Are you sure the claim(s) are a result of the same transaction or event?

WHAT HAPPENED?

You do not need to tell everything about your case here. You must tell just enough to let the defendant know what the case is about. Keep your description brief. You will have a full opportunity to present all the facts and provide supporting documents at a settlement conference or trial.

WHERE? WHEN?

A notice of claim must be filed at the small claims registry nearest to where

a) the defendant lives or carries on business, OR

b) where the transaction or event that resulted in the claim took place.

If the case is about a breach of contract (overdue credit account for example), tell where the contract was made or account opened or where the payments were to be made or sent.

HOW MUCH?

If your claim is made up of several parts, separate them here and show the amount you are claiming for each part.

For example:

- а Amount owing on unpaid invoice \$\$\$\$\$\$\$\$\$ b
 - Interest under the contract \$\$\$\$\$\$\$\$\$

The defendant might agree with part of your claim if you show its separate parts.

The most you may claim in Provincial Court of British Columbia (Small Claims Court) is \$25,000.00, including the amount of money claimed AND the value of any goods or services claimed. This does not include interest and expenses.

If your claim is for more than \$25,000.00 and you wish to file in this court, just say in this section "I am abandoning the amount over \$25,000.00". Otherwise, you should file your claim in Supreme Court. If you choose to abandon part of your claim you cannot sue for that part later.

Are you asking for something besides money (eg. recovery of goods)? If so, fill that in and show the value but do not add the dollar amount for that part to the Total Claimed.

REGISTRY FILE NUMBER

REGISTRY LOCATION

FROM:	NAME		CLAIN	<u>AANT(S)</u>
Fill in the name, ad-	ADDRESS			C
dress and telephone number of the person(s)				
or business(es) making	CITY, TOWN, MUNICIPALITY	TEL. #		_
the claim.		AL CODE		C
TO	NAME		DEEEN	
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dress and telephone number of the person(s)				——Ť
or business(es) the	CITY, TOWN, _MUNICIPALITY	TEL.#		
claim is against.		AL CODE		C
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HAPPENED?				
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claim.				
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	Claim" and check this box. A copy of th			
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REGISTRY FILE NUMBER

REGISTRY LOCATION

FROM:	NAME		CLAIN	IANT(S)
This person has made a claim against you in	ADDRESS			
Small Claims Court.				
	CITY, TOWN, MUNICIPALITY	TEL. #		
		TAL CODE		
TO:	NAME		DEFEND	DANT(S)
	ADDRESS			
	CITY, TOWN, MUNICIPALITY	TEL. #		
	PROV. POST	TAL CODE		
WHAT				
HAPPENED?				
This is what the claimant				
says led to the claim.				
WHERE? This is where the claiman says it happened.	CITY, TOWN, MUNICIPALITY This is when the clai ant says it happened			
HOW	•		I	1 1
MUCH?	_a		i i	
This is what the claim-			\$	
ant is asking for.	_ab		\$	
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	b c d	TOTAL	\$ \$ \$	
	b C d e TIME LIMIT FOR A DEFENDANT TO REPLY The defendant must complete and file the attached reply within 14 days from being served with this notice, unless the defendant settles this claim directly with		\$ \$ \$	
	b C d e TIME LIMIT FOR A DEFENDANT TO REPLY The defendant must complete and file the attached reply within 14 days from being served with this notice, unless the defendant settles this claim directly with the claimant. If the defendant does not reply, a court order may be made against	TOTAL + FILING FEES	\$ \$ \$	
	b c d e IIME LIMIT FOR A DEFENDANT TO REPLY The defendant must complete and file the attached reply within 14 days from being served with this notice, unless the defendant settles this claim directly with the claimant. If the defendant does not reply, a court order may be made against the defendant without any further notice to the defendant. Then the defendant	TOTAL	\$ \$ \$	
	b C d e TIME LIMIT FOR A DEFENDANT TO REPLY The defendant must complete and file the attached reply within 14 days from being served with this notice, unless the defendant settles this claim directly with the claimant. If the defendant does not reply, a court order may be made against	TOTAL + FILING FEES + SERVICE FEES	\$ \$ \$	
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defendarits Age2da5150068py

FORM 1 SCL 001 12/2006 (OPC 7530854501)

REGISTRY FILE NUMBER

REGISTRY LOCATION

FROM.	NAME		CLAIMANT/S	
FROM: This person has made	ADDRESS		CLAIMANT(S	
a claim against you in Small Claims Court.				
ontai olamis oourt.	CITY, TOWN, MUNICIPALITY	TEL. #		
		AL CODE		_ C
TO:	ADDRESS		DEFENDANT(S	<u>,</u> П
	ADDRESS			
	CITY, TOWN,	TEL. #		- 1
	MUNICIPALITY PROV. POST	AL CODE		
WHAT				
HAPPENED?				
This is what the claim-				-3
ant says led to the				
claim.				
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	☐ If this box is checked the "what happene	d section" is continued on a anot	ner page. Be sure vou have be	en
	given a copy of it.		,	
WHERE?	CITY, TOWN, MUNICIPALITY This is when the clai	m-		
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says it happened.				
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	the claimant. If the defendant does not reply, a court order may be made against the defendant without any further notice to the defendant. Then the defendant	+ SERVICE FEES		- ene
	will have to pay the amount claimed plus interest and further expenses.			detendant's
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FORM 1 SCL 001 12/2006 (OPC 7530854501)

REGISTRY FILE NUMBER

REGISTRY LOCATION

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	ADDRESS			C
	CITY, TOWN,			— т
	MUNICIPALITY	TEL. #		C
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HAPPENED?				
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	given a copy of it. WHEN?			
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	the claimant. If the defendant does not reply, a court order may be made against			
	the defendant without any further notice to the defendant. Then the defendant will have to pay the amount claimed plus interest and further expenses.	+ SERVICE FEES	 	
			· ^	
	The Court Address for filing documents is:	= TOTAL CLAIMED	$\mathbf{\Phi}$	
			□ OTHER THAN D	DEBT



FORM 4 SCL 004F 08/2006

CERTIFICATE OF SERVICE

Fill in: your name;	l ce I	-	y that	C
the name of the party or	ser			m
other person served; the date service took	on			
place;		Date		RTIFIC
the street address or location, city and	at			
province where service took place.				Ë
Name the documents	wit	h		\mathbf{O}
that you served.				
Tell how service took place by checking appropriate box(es) for:				П О
ordinary mail and fill in the date mailed;	by		mailing a copy by ordinary mail to that person's address on	Т S
an individual;			leaving a copy of it with him or her.	
			mailing a copy of it by registered mail to him or her.	ER
				2
a company as defined in the <i>Business</i>			mailing a copy of it by registered mail to the registered office of the company.	VIC
Corporations Act;			leaving a copy of it at the registered office of the company. at the place of business of the company, with a receptionist or a person who appears to	C
			manage or control the company's business there.	Π
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.	
an extraprovincial compar as defined in the <i>Business</i>			mailing a copy of it by registered mail to the attorney shown in the corporate registry.	
Corporations Act;	5		leaving a copy of it with the attorney shown in the corporate registry. leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia.	
			mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.	
a partnership;			mailing a copy of it by registered mail to a partner.	
			leaving a copy of it \Box with a partner.	
			at the place of business of the partnership, with a person who appears to manage or control the	
			partnership business there.	
			with a receptionist who works at a place of business of the partnership.	
a municipal corporation, regional district or other local government body;			giving a copy to the clerk, deputy clerk or a similar official.	
a young person;			leaving a copy of the notice with the defendant's mother, father or guardian.	
a society as defined in the Society Act;	9		mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.	
y ,			leaving a copy of it at the address for service on file with the Registrar of Companies. with a director, officer, receiver manager or liquidator of the society.	
an extraprovincial society as defined in the Society				
Act (if no attorney has bee	ən		mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.	
appointed, check one of the 2 preceding boxes for	-		leaving a copy of it with an attorney appointed under section 77 of the Society Act.	
society);	a			
an unincorporated			mailing a copy of it by registered mail to the registered office of the association.	
association or trade union	ı;		leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.	
a corporation incorporated	d		mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.	
outside British Columbia i	f		leaving a copy of it a place of business or registered office of the corporation outside British Columbia with a	
it is not an extraprovincial company;			receptionist or a person who appears to manage or control the corporation's business, or	
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation.	
alternate service method ordered by the Court.			(fill in any instructions given by a judge or registrar for service)	

NOTE: You must give proof of service by *REGISTERED MAIL* by attaching <u>one</u> of the following:

- 1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
- 2. a print-out of the delivery confirmation made available on the Internet by Canada Post (http://www.canadapost.ca).

Signature of person who served the document

REGISTRY FILE NUMBER

REGISTRY LOCATION

FROM:	ADDRESS		CLAIMA	NT(S)
Fill in the name, ad- dress and telephone				C
number of the person(s)				
or business(es) making	CITY, TOWN, _MUNICIPALITY	TEL. #		
the claim.		TAL CODE		(
TO	NAME		DEFEND	
TO:			DEFENDA	NI(S)
Fill in the name, ad-	ADDRESS			(
dress and telephone				
number of the person(s) or business(es) the	CITY, TOWN,	TEL. #		
claim is against.	MUNICIPALITY PROV. POS	TAL CODE		(
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WHAT				
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Tell what led to the				
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WHERE? Tell where this hap- pened.				
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Tell where this happened.	Claim" and check this box. A copy of the WHEN? CITY, TOWN, MUNICIPALITY PROV. Tell when this happened.		each copy of the Notice	e of Claim
Tell where this hap- pened.	Claim" and check this box. A copy of the WHEN? CITY, TOWN, MUNICIPALITY PROV. PROV. Tell when this happened.			e of Claim
Tell where this happened.	Claim" and check this box. A copy of the WHEN? CITY, TOWN, MUNICIPALITY PROV. Tell when this happened.		each copy of the Notice	e of Claim
Tell where this happened.	Claim" and check this box. A copy of the WHEN? CITY, TOWN, MUNICIPALITY PROV. PROV. Tell when this happened.		each copy of the Notice	e of Claim
Tell where this happened. HOW MUCH? Tell what is being claimed from the defendant(s). If the	CITY, TOWN, MUNICIPALITY PROV. CITY, TOWN, MUNICIPALITY PROV. CITY, TOWN, MUNICIPALITY Tell when this happened. b		each copy of the Notice	e of Claim
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Tell where this hap- pened. HOW MUCH? Tell what is being claimed from the defendant(s). If the claim is made up of several parts, separate them here and show the amount for each part. Add these amounts and	CITY, TOWN, MUNICIPALITY PROV. CITY, TOWN, MUNICIPALITY PROV. Tell when this happened. Tell when this happened. C C C C C C C C C C C C C	TOTAL	s	e of Claim
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Tell where this hap- pened. HOW MUCH? Tell what is being claimed from the defendant(s). If the claim is made up of several parts, separate them here and show the amount for each part. Add these amounts and	Claim" and check this box. A copy of th WHEN? Tell when this happened. PROV. Tell when this happened. Till the tell of	te attached page must accompany	s s s s s s s s s s s s s s s s s s s	e of Claim

INSTRUCTION SHEET: NOTICE OF INTENTION TO GARNISHEE

The Notice of Intention to Garnishee and the Affidavit for Notice of Intention to Garnishee must be served on the commanding officer of the debtor at least 30 days <u>before</u> the Garnishing Order After Judgment is served.

A copy of the Order, Judgment or other document evidencing the right of the Creditor to issue a garnishing order or other process by way of attachment must accompany the Notice and prescribed Affidavit.

PSC 801 12/2006

NOTICE OF INTENTION TO GARNISHEE

Under Chapter 207 of the Queen's Regulations and	d Orders				
ATTENTION: DEPARTMENT OF NATIONAL DEFENCE					
TAKE NOTICE that the undersigned intends to service within the next 30 days after service of this notice to	÷	· · · ·			
1. FULL NAME OF DEBTOR	2. LAST KNOWN ADDRESS OF DEBTO	OR			
3. DEBTOR'S PLACE OF EMPLOYMENT:					
4. IS THE UNPAID DEBT UNDER THE JUDGMENT OR ORDER ATTACHED HE SUPPORT OR OTHER DEBT YES NO	RETO A MAINTENANCE,	5. AMOUNT OF DEBT REMAINING UNPAID C	OR TO BE PAID PERIODICALLY IS:		
6. THE NAME AND LOCATION OF THE COURT THAT HAS ISSUED OR WILL E	BE ISSUING THE GARNISHEE SUMMO	NS:			
NAME:	LOCATION:				
7. DOES THE GARNISHEE SUMMONS HAVE OR WILL THE GARNISHEE SUM	MONS HAVE CONTINUING EFFECT:	VES	NO		
8. THE FOLLOWING INFORMATION MAY BE PROVIDED:					
1. IS THE MONEY WHICH IS PAYABLE TO THE DEBTOR PAYABLE	E AS:				
a) SALARY YES NO	b) REMUNERATION	YES NO			
IF YES, IS THE MONEY PAYABLE IN RESPECT OF THE PERFOF	RMANCE OF SERVICES?				
2. OCCUPATION, PROFESSION, JOB CLASSIFICATION OR TITLE C	OF THE DEBTOR				
3. TELEPHONE NUMBER OF DEBTOR: AT THE DEBTOR'S PLACE	OF RESIDENCE AND THE DEBTOR'S	PLACE OF EMPLOYMENT			
RESIDENCE:	EMPLOYMENT:				
4. STREET ADDRESS OF THE DEBTOR'S PLACE OF EMPLOYMEN	IT:				
DATE:					
ADDRESS OF UNDERSIGNED:		PHONE NO:			
(ATTENTION):		SIGNATURE:			
(FILE REFERENCE):		NAME:			

Party (or party's solicitor)

Notice to	Mediate	for	Claims	Between
\$10,000 a	nd \$25,0	00		

In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY FILE NUMBER

REGISTRY LOCATION

Fill in the registry file number and location as shown on the Notice of Claim. IN THE CASE BETWEEN NAME

ADDRESS

Fill in the names of the parties, copying them from the Notice of Clain and the Third Party Notice, if applicable.

parties, copying them from the Notice of Claim and the Third Party Notice, if applicable.	CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL.#	
Notice, il applicable.	AND				
	NAME				DEFENDANT(S)
	ADDRESS				
	CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
	AND			DEEE	NDANT / THIRD PARTY
	NAME			DEFE	
	ADDRESS				
	CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL.#	
Fill in the names of the parties you are delivering this	То:				
notice to.	TAKE NOTICE that this proce \$10,000 and \$25,000.	eeding is to be mediated in acco	ordance with Rule 7.3	3, Mediation fo	r Claims Between
	-	en exempted from attending the 4 days after delivery of this Notic		nust jointly app	point a mutually
	Otherwise, any of those parti mediator.	es may apply to the Mediate BC	Society or a roster	organization fc	r appointment of a
Fill in today's date and sign the notice.	Dated at	, Bri	tish Columbia, on		, 20

Fill in the name and role of the party filling out this notice.

Party delivering this Notice:

Notice to Mediate for Claims up to \$10,000 In the Provincial Court of British Columbia

In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY FILE NUMBER

Fill in the registry file number and location as shown on the Notice of Claim.

Fill in the name of the parties, copying them from the Notice of Clain and the Third Party Notice, if applicable.

IN THE CASE BETWEEN				CLAIMANT(S)
NAME				
ADDRESS				
CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
AND				
NAME				DEFENDANT(S)
ADDRESS				
CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
AND				
NAME			DEFE	NDANT / THIRD PARTY
ADDRESS				
CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
o: The Provincial Court (Smal	I Claims) Registry			
TAKE NOTICE THAT the				
Claimant				
Defendant				
Third Party				
wishes this claim to be med	iated in accordance with Rule	72		
		, , . _		

For information on mediation, contact the Court Mediation Program at (604) 684-1300 or toll free at 1-877-656-1300

Today's date

Dated _

signature of person filing the Notice to Mediate for Claims up to \$10,000

Print name _

1-COURT 2-APPLICANT 3-COURT MEDIATION PROGRAM JAG-2015-00066

NOTICE OF MEDIATION SESSION

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

In the case between:	
	Claimant(s)
and:	
	Defendant(s)
and:	
	Third Party
A mediation session will be held on:	
date at	
at	

The mediation session is scheduled for 2 hours.

Who must attend?

All parties served with a Notice of Mediation Session must attend the mediation session. Individuals are not permitted to send a representative in their place. Parties who are not individuals are required to send a representative who is familiar with all facts relevant to the dispute and who has the authority to settle the claim. Each party or representative may be accompanied by a lawyer or an articled student. Witnesses are not required at the mediation session. Parties should bring an interpreter if required.

What should the parties bring?

Each party or representative must bring to the mediation session all relevant documents – including any written contracts, invoices, reports, estimates or photographs.

What is the purpose of the mediation session?

The main purpose of the mediation is to provide the parties with an early opportunity to resolve their dispute with the assistance of a neutral and unbiased mediator.

Is it possible to change the date of the mediation session?

The date of the mediation session may be changed in certain limited circumstances: see Rule 7.2 (11) and (12) and Rule 7.4 (18) to (20).

What happens if someone does not attend?

If a claimant does not attend the mediation session, the registrar may, on the request of another party, dismiss the claim. If a defendant does not attend, a default order may be made against that defendant.

Notice mailed on:

by the court

NOTICE OF PAYMENT HEARING



PROVINCIAL COURT OF BRITISH COLUMBIA

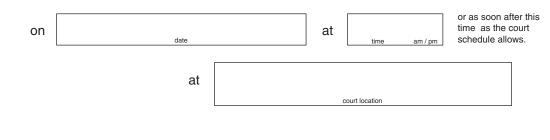
REGISTRY FILE NUMBER

NOTICE OF A PAYMENT HEARING

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

TO: Fill in the name, ad-	NAME ADDRESS			CREDITOR
dress and telephone number of the person you are notifying about the payment hearing.	CITY, TOWN, MUNICIPALITY	PROV.	TI POSTAL CODE	EL. #
FROM: Fill in the name, ad-	NAME			DEBTOR
dress and telephone number of the debtor who is requesting the payment hearing.	CITY, TOWN, MUNICIPALITY	PROV.	TI POSTAL CODE	EL. #

A payment hearing will be held in the Provincial Court of British Columbia



What happens at the payment hearing?

Evidence may be heard about any of the following:

- a) the income and assets of the debtor;
- b) the debts owed to and by the debtor;
- c) any assets that the debtor has disposed of since the claim arose;
- d) the means that the debtor has, or may have in the future, of paying the amount owed.

The Judge or Justice of the Peace may order a payment schedule specifying

- a) the date by which the debt must be paid, or
- b) the amounts and dates of installments.

What happens if a creditor does not attend the payment hearing?

The Judge or Justice of the Peace may hold the hearing, cancel it or postpone it.

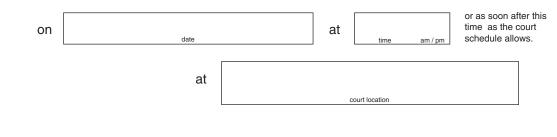
REGISTRY FILE NUMBER

NOTICE OF A PAYMENT HEARING

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

TO:	NAME			CREDITOR
	ADDRESS			
	CITY, TOWN, MUNICIPALITY		TEL. #	
		PROV.	POSTAL CODE	
	NAME			
FROM:				DEBTOR
	ADDRESS			
	CITY, TOWN, MUNICIPALITY		TEL. #	
		PROV.	POSTAL CODE	

A payment hearing will be held in the Provincial Court of British Columbia



What happens at the payment hearing?

Evidence may be heard about any of the following:

- a) the income and assets of the debtor;
- b) the debts owed to and by the debtor;
- c) any assets that the debtor has disposed of since the claim arose;
- d) the means that the debtor has, or may have in the future, of paying the amount owed.

The Judge or Justice of the Peace may order a payment schedule specifying

- a) the date by which the debt must be paid, or
- b) the amounts and dates of installments.

What happens if a creditor does not attend the payment hearing?

The Judge or Justice of the Peace may hold the hearing, cancel it or postpone it.

If you do not plan to attend, you should let the registry know that by letter.

FORM 13 SCL 013 02/2007 (OPC #7530854517)

NOTICE OF A PAYMENT HEARING

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

то:	NAME	CREDITOR
-	ADDRESS	
	CITY, TOWN, TEL. #	
	PROV. POSTAL CODE	
FROM:	NAME	DEBTOR
	ADDRESS	
	CITY, TOWN, TEL.#	
	PROV. POSTAL CODE SERVICE COPY	
	A payment hearing will be held in the Provincial Court of British Columbi	а
	on date at ime am/pr	or as soon after this time as the court schedule allows.
	at	

What happens at the payment hearing?

Evidence may be heard about any of the following:

- a) the income and assets of the debtor;
- b) the debts owed to and by the debtor;
- c) any assets that the debtor has disposed of since the claim arose;
- d) the means that the debtor has, or may have in the future, of paying the amount owed.

court location

The Judge or Justice of the Peace may order a payment schedule specifying

- a) the date by which the debt must be paid, or
- b) the amounts and dates of installments.

What happens if a creditor does not attend the payment hearing?

The Judge or Justice of the Peace may hold the hearing, cancel it or postpone it.



CERTIFICATE OF SERVICE

Fill in: your name;	I certify that					
the name of the party or	ser	ved		- C M		
other person served; the date service took	on			Σ		
place;		Date				
the street address or location, city and province where service took place.	at			TIFIC		
Name the documents that you served.	wit	h		ĔĂ		
Tell how service took place by checking appropriate box(es) for:	-					
ordinary mail and fill in the date mailed;	by		mailing a copy by ordinary mail to that person's address on	л С		
an individual;			leaving a copy of it with him or her. mailing a copy of it by registered mail to him or her.	FR		
a company as defined			mailing a copy of it by registered mail to the registered office of the company.	\leq		
in the Business Corporations Act;			 leaving a copy of it at the registered office of the company. at the place of business of the company, with a receptionist or a person who appears to manage or control the company's business there. with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company. 	VICE		
an extraprovincial compan as defined in the <i>Business</i> <i>Corporations Act</i> ,			mailing a copy of it by registered mail to the attorney shown in the corporate registry. leaving a copy of it with the attorney shown in the corporate registry. leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia. mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.			
a partnership;			 mailing a copy of it by registered mail to a partner. leaving a copy of it with a partner. at the place of business of the partnership, with a person who appears to manage or control the partnership business there. with a receptionist who works at a place of business of the partnership. 			
a municipal corporation, regional district or other local government body;			giving a copy to the clerk, deputy clerk or a similar official.			
a young person;			leaving a copy of the notice with the defendant's mother, father or guardian.			
a society as defined in the Society Act;	•		 mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies. leaving a copy of it at the address for service on file with the Registrar of Companies. with a director, officer, receiver manager or liquidator of the society. 			
an extraprovincial society as defined in the <i>Society</i> <i>Act</i> (if no attorney has been applied aback and after	en		mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.			
appointed, check one of the 2 preceding boxes for society);	а		leaving a copy of it with an attorney appointed under section 77 of the Society Act.			
an unincorporated			mailing a copy of it by registered mail to the registered office of the association.			
association or trade union	;		leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.			
a corporation incorporated outside British Columbia if it is not an extraprovincial company;			 mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia. leaving a copy of it at a place of business or registered office of the corporation outside British Columbia with a receptionist or a person who appears to manage or control the corporation's business, or with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation. 			
alternate service method ordered by the Court.			(fill in any instructions given by a judge or registrar for service)			

NOTE: You must give proof of service by *REGISTERED MAIL* by attaching <u>one</u> of the following:

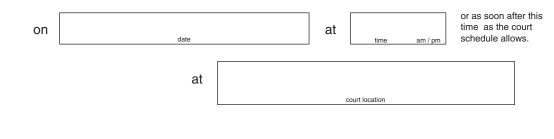
- 1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
- 2. a print-out of the delivery confirmation made available on the Internet by Canada Post (http://www.canadapost.ca).

NOTICE OF A PAYMENT HEARING

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

TO:	NAME			CREDITOR
	ADDRESS			
	CITY, TOWN, MUNICIPALITY		TE	L. #
		PROV.	POSTAL CODE	
FROM:	NAME			DEBTOR
	ADDRESS			
	CITY, TOWN, MUNICIPALITY		TE	L. #
		PROV.	POSTAL CODE	

A payment hearing will be held in the Provincial Court of British Columbia



What happens at the payment hearing?

Evidence may be heard about any of the following:

- a) the income and assets of the debtor;
- b) the debts owed to and by the debtor;
- c) any assets that the debtor has disposed of since the claim arose;
- d) the means that the debtor has, or may have in the future, of paying the amount owed.

The Judge or Justice of the Peace may order a payment schedule specifying

- a) the date by which the debt must be paid, or
- b) the amounts and dates of installments.

What happens if a creditor does not attend the payment hearing?

The Judge or Justice of the Peace may hold the hearing, cancel it or postpone it.

NOTICE OF PAYMENT OUT OF MONEY PAID INTO COURT BY GARNISHEE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

In the case between	NAME	JUDGMENT CREDITOR
and	NAME	JUDGMENT DEBTOR
	TAKE NOTICE that under the Court Order	<i>r Enforcement Act</i> , the sum of
	\$ paid into the Court by t	he Garnishee under the order issued
	on	, will be paid out to the Judgment Creditor or his solicitor ten days
	DATE	before the day on which the ten days expires, you file with the
	court notice of your intention to dispute the	
	Dated	
		Signature of Judgment Creditor
		PRINT NAME
	ADDRESS OF COURT]
(Name	, address & telephone no. of Judgment Creditor)	To the above-named Judgment Debtor: (name, address & telephone no.)

AFFIDAVIT OF SERVICE

Fill in:	name occupation
your name and address;	of address
	□ Make oath and say that:
	Solemnly affirm that:
the name of the party or other person served;	I served
the date service took place;	on
the address or location service took place.	at
service took place.	with a copy of this document.
	T
Tell how service took place. Check appropriate box.	by leaving a copy of it with him or her. mailing a copy by registered mail to the person named above, at the above address, being the last known post office address: Attached to this Affidavit is: a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the Notice of Payment Out of Money Paid into Court by Garnishee was delivered. a print-out of the tracking history made available on the Internet by Canada Post as directed by the court by
	Sworn/affirmed before me on
Do not sign the affidavit until you are with the commissioner for taking affidavits.	date at
A commissioner for the taking of affidavits will witness your signature.	signature of commissioner for taking affidavits for British Columbia

NOTICE OF SETTLEMENT CONFERENCE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

In the case between:	CLAIMANT(S)
and	DEFENDANT(S)
and	THIRD PARTY
A settlement conference will be held on	year at Imme or as soon after this time as the court schedule allows.
at	

court location

Who must attend?

All parties must attend the settlement conference and have authority to settle the claim, and may be accompanied by a lawyer or articled student, except the defendant need not attend if

- (a) the claim results from a motor vehicle accident,
- (b) the defendant is disputing the amount of the claim but not liability, and
- (c) a person appointed by the Insurance Corporation of British Columbia attends instead of the defendant.

What should the parties bring?

Each party to a claim must bring to the settlement conference all relevant documents and reports.

What is the purpose of the settlement conference?

- There are two main purposes for a settlement conference
 - (a) to encourage settlement of the case, and
 - (b) if settlement is not possible, to help the parties prepare their cases for trial.

What happens if someone does not attend?

The judge may dismiss the claim or make a payment order or other appropriate order against a party who does not attend a settlement conference.

day	month	year	by the court

Note:

For more information there is a booklet available from the court registry called "Getting Ready for Court"

NOTICE OF TRIAL

In the Provincial Court of British Columbia (Small Claims Court)

Registry File Number:

Registry Location:

In the case between:	CLAIMANT(S)	NOTICE
and	DEFENDANT(S)	E OF TR
and	THIRD PARTY	TRIAL
A trial will be held on: Date at at at British Columbia	n. or as soon after this time as the court schedule allows.	
 How evidence will be heard at a trial A judge may conduct a trial without complying with the formal rules of procedure and evidence, (a) ask the parties to explain their cases, to respond to each other and to call witnesses, of (b) receive evidence in any other way the judge thinks is appropriate. 		
 What should the parties bring? Each party to a claim must bring to the trial all relevant documents and reports including those the jiii is a defendant does not attend If a defendant or third party does not attend the trial, either personally or by a representative, the jii (a) allow the claim, (b) make a payment order or other appropriate order against that defendant or third party. 	udge may	
 (c) dismiss the counterclaim (if any) If a claimant does not attend If a claimant does not attend the trial, either personally or by a representative, the judge may dism 	niss the claim.	
Adjourning a trial A party may make an application to a judge to request a postponement or adjournment of the tri make the application.		
Fee to adjourn a trial A party who applies for an adjournment less than 30 days before the trial date must pay a fee it must be paid within 14 days after the adjournment or within a longer period of time set by the re		
 Failure to pay the fee If a party fails to pay the fee to adjourn a trial, a judge may (a) dismiss the claim if that party is the claimant, (b) strike out the reply, counterclaim or third party notice and make a payment order if that (c) make any order the judge thinks is fair. 	at party is a defendant, or	
Dated By the Court		
Note: For more information there is a booklet called "Getting Rea	dy For Court".	

1-COURT 2-CLAIMANT 3-DEFENDANT 4-THIRD PARTY

NOTICE OF WITHDRAWAL

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

Fill in the name of the claimant(s) in the case	In the case between: CLAIMANT(S)
Fill in the name of the defendant(s) in the case	and DEFENDANT(S)
Fill in the name of the third party in the case	and THIRD PARTY
Indicate what you are withdrawing.	I
Fill in the date and sign the notice.	Date Signature Print Full Name

Filing the Notice

A party who withdraws a Claim, Counterclaim, Reply or Third Party Notice must file a copy of the notice at the registry where the case has been filed before the party(s) are served.

Claim, Counterclaim, Reply or Third Party Notice may be withdrawn

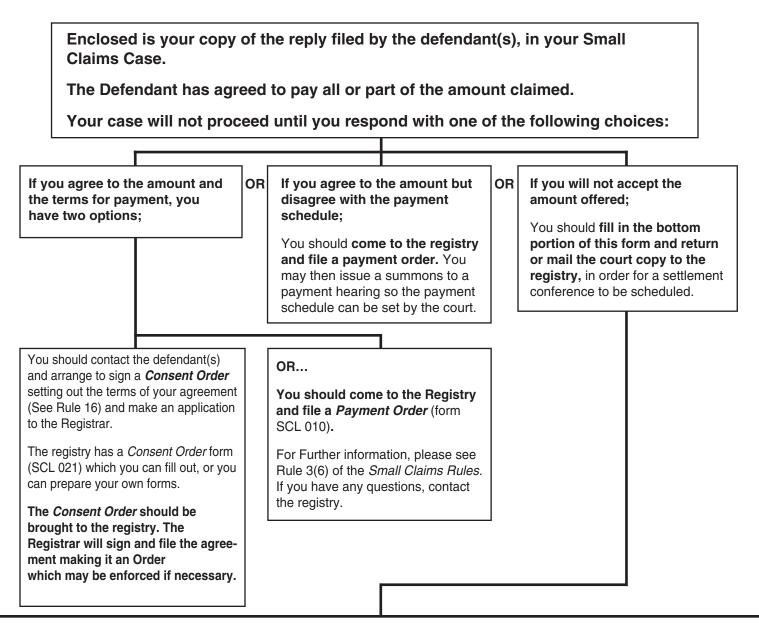
A party may withdraw a Claim, Counterclaim, Reply or Third Party Notice at any time.

Notifying the other parties

A party who withdraws a Claim, Counterclaim, Reply or Third Party Notice must promptly serve notice of this on all parties who were served with the Claim, Counterclaim, Reply or Third Party Notice.

The effect of withdrawing

A party who withdraws a Claim, Counterclaim, Reply or Third Party Notice may not at any time proceed with it or file another notice with respect to the Claim, Counterclaim, Reply or Third Party Notice without the permission of a judge (see Rule 16(7)).



Fill in the Registry File number and location at the top of this page

REPLY

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (Small Claims Court)

Copy the name of the claimant and defendant from the Notice of Claim.	BETWEEN:	CLAIMANT(S)
	AND:	
		DEFENDANT(S)

I will not accept the amount the defendant has agreed to pay in the reply. Please schedule a settlement conference in this case.

Sign and date the form and return or mail the court copy to:

Registry Address

Signature of claimant

Please print your name

OFFER TO SETTLE

In the Provincial Court of British Columbia (Small Claims Court)

	ę
CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE TEL # and DEFENDANT(S) TAME	π
and DEFENDANT(S) THAVE ADDRESS THY TOWN, MUNICIPALITY PROV. POSTAL CODE TEL + THIRD PARTY THAVE ADDRESS OFFER TO SETTLE: The claimant(s) or defendant(s) or third party TAVE OFFER TO SETTLE: The claimant(s) or defendant(s) or third party TAVE offer to settle this claim(s) in the following terms:	m
and DEFENDANT(S) NAME ADDRESS CITY. TOWN. MUNICIPALITY PROV. POSTAL CODE TEL * THIRD PARTY THANE ADDRESS CITY. TOWN. MUNICIPALITY PROV. POSTAL CODE TEL * OFFER TO SETTLE: The claimant(s) or defendant(s) or third party MANE OFFER TO SETTLE: The claimant(s) or defendant(s) or third party MANE CITY. Town. MUNICIPALITY PROV. POSTAL CODE TEL * Description CITY. Town. MUNICIPALITY PROV. POSTAL CODE TEL * CITY. TOWN. MUNICIPALITY PROV. POS	J
TAME DEFENDANT(S) TAME THIRD PARTY TAME THIRD PARTY TAME THIRD PARTY TAME THIRD PARTY TOPESS THIRD PARTY TOPESS THIRD PARTY TOPESS THIRD PARTY TAME THIRD PARTY TAME THIRD PARTY TOPESS Tel.* OFFER TO SETTLE: The claimant(s) or third party The claimant(s) or defendant(s) or third party Tel.* The claimant(s) or defendant(s) in the following terms:	-
NMME ADDRESS CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE TEL # THIRD PARTY NAME ADDRESS CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE TEL # OFFER TO SETTLE: The claimant(s) or defendant(s) or third party NAME	
ADDRESS	0
CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE TEL # TAME THIRD PARTY TACHESS	S
NAME THIRD PARTY TADRESS	Ē
NAME THIRD PARTY TADRESS	-
NAME ADDRESS CITY, TOWA, MUNICIPALITY PROV. POSTAL CODE TL # OFFER TO SETTLE: The claimant(s) or defendant(s) or third party NAME offer to settle this claim(s) in the following terms:	-
ADDRESS CITY, TOWN, MUNICIPALITY PROV. POSTAL CODE TEL # OFFER TO SETTLE: The claimant(s) or defendant(s) or third party TWAME Offer to settle this claim(s) in the following terms:	
CITY. TOWN, MUNICIPALITY PROV. POSTAL CODE TEL.# OFFER TO SETTLE: The claimant(s) or defendant(s) or third party Image: Comparison of the comp	Ш
OFFER TO SETTLE: The claimant(s) or defendant(s) or third party NAME offer to settle this claim(s) in the following terms:	
OFFER TO SETTLE: The claimant(s) or defendant(s) or third party NAME offer to settle this claim(s) in the following terms:	
The claimant(s) or defendant(s) or third party NAME offer to settle this claim(s) in the following terms: Dated	
The claimant(s) or defendant(s) or third party NAME offer to settle this claim(s) in the following terms: Dated	
TAME offer to settle this claim(s) in the following terms:	
offer to settle this claim(s) in the following terms:	
offer to settle this claim(s) in the following terms:	
Dated	
at	
TIME LIMIT FOR AN OFFER EXPIRY DATE OF OFFER An offer to settle may be made up to 30 days after the conclusion of a settlement conference or mediation session, or later if permitted by a judge. EXPIRY DATE OF OFFER	
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An offer to settle may be made up to 30 days after the conclusion of a settlement conference or mediation session, or later if permitted by a judge.	
of a settlement conference or mediation session, or later if permitted by a judge.	
permitted by a judge.	
A party who receives an offer has 28 days after being served with the	
offer to accept the offer. No response will be considered a rejection.	
ACCEPTANCE OF OFFER Dated	
To accept the offer to settle, the party must complete an	
Acceptance of Offer (Form 19) and serve the other party	
within 28 days of being served with the offer.	
FILING OFFER AND ACCEPTANCE	
If a party served with an acceptance of offer files the offer and the	
acceptance in the registry, the acceptance becomes a payment order.	
NOTICE OF PENALTY	
A trial judge may order a party to pay a penalty if the offer to settle Signature	
has been rejected. A penalty is in addition to any other expenses and	
may be up to 20% of the amount of the offer to settle.	
THE COURT ADDRESS FOR FILING DOCUMENTS IS:	

FORM 4 SCL 004F 12/2006

CERTIFICATE OF SERVICE

30L 004F 12/2006				
Fill in:	I Ce	ertify	/ that	
your name;	I I			Ο
the name of the party or other person served;	ser	ved		Ĩ
the date service took	on			ת
place; the street address	at	Date		1
or location, city and province where service took place.	-			TIFIC
Name the documents that you served.	wit	h		Ă
	-			· mi
Tell how service took place by checking appropriate box(es) for:	-			0
ordinary mail and fill in the date mailed;	by		mailing a copy by ordinary mail to that person's address on	Т S
an individual;			leaving a copy of it with him or her.	m
			mailing a copy of it by registered mail to him or her.	
a company as defined			mailing a copy of it by registered mail to the registered office of the company.	\leq
in the Business			leaving a copy of it \Box at the registered office of the company.	Ξ
Corporations Act;			at the place of business of the company, with a receptionist or a person who appears to manage or control the company's business there.	RVICE
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.	
an extraprovincial compar	ıy		mailing a copy of it by registered mail to the attorney shown in the corporate registry.	
as defined in the Business	5		leaving a copy of it with the attorney shown in the corporate registry.	
Corporations Act,			leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia. mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.	
a partnership;			mailing a copy of it by registered mail to a partner.	
			leaving a copy of it 🗌 with a partner.	
			 at the place of business of the partnership, with a person who appears to manage or control the partnership business there. 	
			with a receptionist who works at a place of business of the partnership.	
a municipal corporation, regional district or other local government body;			giving a copy to the clerk, deputy clerk or a similar official.	
a young person;			leaving a copy of the notice with the defendant's mother, father or guardian.	
a society as defined in the	•		mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.	
Society Act;			leaving a copy of it at the address for service on file with the Registrar of Companies.	
an extraprovincial society as defined in the Society			□ with a director, officer, receiver manager or liquidator of the society.	
Act (if no attorney has bee	en		mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.	
appointed, check one of the 2 preceding boxes for society);	а		leaving a copy of it with an attorney appointed under section 77 of the Society Act.	
an unincorporated			mailing a copy of it by registered mail to the registered office of the association.	
association or trade union	;		leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.	
a corporation incorporated outside British Columbia if			mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.	
it is not an extraprovincial company;			leaving a copy of it at a place of business or registered office of the corporation outside British Columbia with a receptionist or a person who appears to manage or control the corporation's business, or	
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation.	
alternate service method ordered by the Court.			(fill in any instructions given by a judge or registrar for service)	

NOTE: You must give proof of service by *REGISTERED MAIL* by attaching <u>one</u> of the following:

- 1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
- 2. a print-out of the delivery confirmation made available on the Internet by Canada Post (http://www.canadapost.ca).

ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (Small Claims Court)

REGISTRY FILE NUMBER

REGISTRY LOCATION

Fill in the names of the parties in the case.	In the case between		
	and		
	and		THIRD PARTY
Fill in the name of the judge, justice of the peace or registrar.	The following order was made by	judge, justice of the peace or registrar	of the
Tell when the order was made.	Provincial Court of British Columbia	t on month dayyear	
Tell what the judge, justice of the peace or registrar ordered.			

Take the order to the Court Registry for filing.

The order is enforceable when it is signed by the Court.

Provide copies to all parties

month

day

year

by the court

ORDER FOLLOWING AN APPEARANCE ON A WARRANT

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (Small Claims Court)

REGISTRY LOCATION

				CREDITOR
AME DDRESS				
ITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
				DEBTOF
ME				
DDRESS				
TY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
EFORE				
-				
dge/Justice of the Peace		On		
		, the _{The Party}		
ne of Party		The Party		
ppearing	on a Warrant of	issued on Date		
voluntarily in lawful custody	Arrest	ł		
	Imprisonment			
IIS COURT ORDERS:				
the person be released	fellowing conditions.			
the person comply with the	tollowing conditions:			
the person attend court on	Date	British Colu	m. umbia	
at Address		, Bhiish Coid	lindia	
other				
and the 🗌 Warrant of Ar	rest is	s 🗌 cancelled		
	imediate Arrest	\square executed		
\Box Warrant of Im	prisonment			
R □ The Warrant of Arrest/Imm	adiata Arraat/Impricanmar	t is aspeclled since:		
_				
	the full amount to the cou			
☐ The creditor has rec	eived payment in full and f	iled the attached Acknow	ledgement of Payment in	Full.
The parties have file	d the attached Consent Pa	ayment Schedule.		
	uested cancellation of the	Warrant (attached).		
			ned).	
The creditor has req	Bankruptcy by the debtor I	has been received (attach		
The creditor has req	Bankruptcy by the debtor	has been received (attach		
The creditor has req	Bankruptcy by the debtor	nas been received (attach		
The creditor has req	Bankruptcy by the debtor		Judicial Justice of the Peace, or Just	

Creditor notified _

ORDER FOR SEIZURE AND SALE



PROVINCIAL COURT OF BRITISH COLUMBIA

ORDER FOR SEIZURE AND SALE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

Fill in the name, ad- dress and telephone number of the person	NAME				
	ADDRESS				
who is named as the					~
creditor in the Payment or Default Order.	CITY, TOWN, MUNICIPALITY			TEL. #	
		PROV.	POSTAL CODE		
Fill in the name, ad- dress and telephone	NAME				DEBTOR
number of the person	ADDRESS				Ţ
who is named as the					0
debtor in the Payment or Default Order.	CITY, TOWN, MUNICIPALITY			TEL. #	ת
		PROV.	POSTAL CODE		S
					ň
	To the sheriff or court bailiff:				
					N

You are ordered to seize any goods of the debtor named in the attached order that are not exempted from seizure under the Court Order Enforcement Act, and to sell them by public auction, sealed bid or any other similar method in order to realize your fees and disbursements for enforcing this order and the TOTAL AMOUNT DUE TO THE **CREDITOR** calculated as follows:

	(a)	Total Amount of Payment or Default Order		\$	
	(b)	Less any payments to the creditor	_	\$	
			=	\$	
If claiming interest,	(c)	Plus interest calculated to the date this order is issued	+	\$	
attach a sheet showing your calculations	 (d) Plus enforcement expenses allowed by the Court to the date this order is issued TOTAL 	+	\$		
			=	\$	
If you want to be al- lowed expenses under	(e)	Plus any expenses allowed by the Court in relation to this order	+	\$	
line (e), submit them to the registrar. They might include search fees at the motor vehi- cle or personal property		TOTAL AMOUNT DUE TO THE CREDITOR at the date this order is issued	=	\$ _	

- From the proceeds of sale deduct and pay the amounts payable to secured creditors and the debtor under section 71.2 of the Court Order Enforcement Act.
 - Then deduct from the balance your actual fees and disbursements for enforcing this order.
- From the balance, pay to the creditor the total amount due to the creditor.
- Then pay any balance remaining after that to the debtor.

Attach a copy of the payment or default order you are enforcing.

registry.

A copy of the payment or default order is attached.

4.4	
date	by the court

This order remains in force for one year after the date it was issued by the Court.

What is exempt from seizure?

The Court Order Enforcement Act sets out the personal goods of the debtor which, at the option of the debtor, are exempt from seizure (See the back of this form for a list of exemptions).

NOTE: Only Court Bailiffs specifically authorized by the Ministry of Justice may execute this Order and seize goods. The Court Bailiff may not seize anything that the debtor owns jointly with someone else

URE AND SALI

Debtors may choose any goods which they would like to exempt from seizure and sale up to the maximum allowable amount within each category (see chart below). **Debtors are also allowed to retain all necessary clothing and required medical aids.**

Bailiffs must inform debtors of their exemption rights under the *Court Order Enforcement Act* when they first visit the debtor's home. The debtor then has two days to choose which goods he or she would like to be exempt from seizure.

Exemption Category A. Personal property of debtor	Maximum Amount Allowable
Household goods	\$4,000
Tools of the trade	\$10,000
Motor vehicle	\$5,000
Motor vehicle – if the debt is for child maintenance arrears	\$2,000
B. Principal residence of debtor	
Equity in a home – if the debtor's principal residence is in the Capital Regional District or the Greater Vancouver Regional District	\$12,000
Equity in a home – elsewhere in British Columbia	\$9,000

This information is presented as an aid to understanding your right to claim an exemption under the legislation. It is not intended to replace the need to consult the Act or the regulations. If there is any conflict between the legislation and this information, the legislation shall prevail.

ORDER FOR SEIZURE AND SALE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

NAME			
ADDRESS]
			C
CITY, TOWN, MUNICIPALITY		TEL. #	ř
	PROV.	POSTAL CODE	<u>'</u>
NAME			DEBTOR
ADDRESS			T
			C
CITY, TOWN, MUNICIPALITY		TEL. #	, I I I I I I I I I I I I I I I I I I I
	PROV.	POSTAL CODE	

To the sheriff or court bailiff:

You are ordered to seize any goods of the debtor named in the attached order that are not exempted from seizure under the *Court Order Enforcement Act*, and to sell them by public auction, sealed bid or any other similar method in order to realize your fees and disbursements for enforcing this order and the **TOTAL AMOUNT DUE TO THE CREDITOR** calculated as follows:

(a)	Total Amount of Payment or Default Order		\$
(b)	Less any payments to the creditor	-	\$
		=	\$
(c)	Plus interest calculated to the date this order is issued	+	\$
(d)	Plus enforcement expenses allowed by the Court to the date	+	\$
	this order is issued TOTAL	=	\$
(e)	Plus any expenses allowed by the Court in relation to this order	+	\$
	TOTAL AMOUNT DUE TO THE CREDITOR at the date this order is issued	=	\$

- From the proceeds of sale deduct and pay the amounts payable to secured creditors and the debtor under section 71.2 of the *Court Order Enforcement Act.*
- Then deduct from the balance your actual fees and disbursements for enforcing this order.
- From the balance, pay to the creditor the total amount due to the creditor.
- Then pay any balance remaining after that to the debtor.

A copy of the payment or default order is attached.

Issued on:	
date	by the court

This order remains in force for one year after the date it was issued by the Court.

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NOTE: Only Court Bailiffs specifically authorized by the Ministry of Justice may execute this Order and seize goods. The Court Bailiff may not seize anything that the debtor owns jointly with someone else

sheriff / court bailiff copy

ORDER FOR SEIZURE AND SALE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

NAME			
ADDRESS]
			C
CITY, TOWN, MUNICIPALITY		TEL. #	ř
	PROV.	POSTAL CODE	<u>'</u>
NAME			DEBTOR
ADDRESS			T
			C
CITY, TOWN, MUNICIPALITY		TEL. #	, I I I I I I I I I I I I I I I I I I I
	PROV.	POSTAL CODE	

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(b)	Less any payments to the creditor	—	\$
		=	\$
(c)	Plus interest calculated to the date this order is issued	+	\$
(d)	Plus enforcement expenses allowed by the Court to the date	+	\$
	this order is issued TOTAL	=	\$
(e)	Plus any expenses allowed by the Court in relation to this order	+	\$
	TOTAL AMOUNT DUE TO THE CREDITOR at the date this order is issued	=	\$

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Issued on:	
date	by the court

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debtor's copy

ORDER FOR SEIZURE AND SALE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

NAME			
ADDRESS]
			C
CITY, TOWN, MUNICIPALITY		TEL. #	ř
	PROV.	POSTAL CODE	<u>'</u>
NAME			DEBTOR
ADDRESS			T
			C
CITY, TOWN, MUNICIPALITY		TEL. #	, I I I I I I I I I I I I I I I I I I I
	PROV.	POSTAL CODE	

To the sheriff or court bailiff:

You are ordered to seize any goods of the debtor named in the attached order that are not exempted from seizure under the *Court Order Enforcement Act*, and to sell them by public auction, sealed bid or any other similar method in order to realize your fees and disbursements for enforcing this order and the **TOTAL AMOUNT DUE TO THE CREDITOR** calculated as follows:

(a)	Total Amount of Payment or Default Order		\$
(b)	Less any payments to the creditor	—	\$
		=	\$
(c)	Plus interest calculated to the date this order is issued	+	\$
(d)	Plus enforcement expenses allowed by the Court to the date	+	\$
	this order is issued TOTAL	=	\$
(e)	Plus any expenses allowed by the Court in relation to this order	+	\$
	TOTAL AMOUNT DUE TO THE CREDITOR at the date this order is issued	=	\$

- From the proceeds of sale deduct and pay the amounts payable to secured creditors and the debtor under section 71.2 of the *Court Order Enforcement Act.*
- Then deduct from the balance your actual fees and disbursements for enforcing this order.
- From the balance, pay to the creditor the total amount due to the creditor.
- Then pay any balance remaining after that to the debtor.

A copy of the payment or default order is attached.

Issued on:	
date	by the court

This order remains in force for one year after the date it was issued by the Court.

What is exempt from seizure?

The *Court Order Enforcement Act* sets out the personal goods of the debtor which, at the option of the debtor, are exempt from seizure (See the back of this form for a list of exemptions).

NOTE: Only Court Bailiffs specifically authorized by the Ministry of Justice may execute this Order and seize goods. The Court Bailiff may not seize anything that the debtor owns jointly with someone else

court copy

ORDER FOR SEIZURE AND SALE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

Fill in the name, ad-	NAME				
dress and telephone number of the person	ADDRESS				ਸ਼
who is named as the					ñ
creditor in the Payment or Default Order.	CITY, TOWN, MUNICIPALITY		١	TEL. #	Ĕ
		PROV.	POSTAL CODE		
Fill in the name, ad-	NAME				
dress and telephone number of the person who is named as the	ADDRESS				<u> </u>
					0
debtor in the Payment or Default Order.	CITY, TOWN, MUNICIPALITY		١	TEL. #	Л
		PROV.	POSTAL CODE		S
	To the sheriff or court bailiff:				<u>m</u>
					N

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	(a)	Total Amount of Payment or Default Order		\$	
	(b)	Less any payments to the creditor	—	\$	
			=	\$	
If claiming interest,	(c)	Plus interest calculated to the date this order is issued	+	\$	
attach a sheet showing your calculations	(d)	Plus enforcement expenses allowed by the Court to the date	+	\$	
		this order is issued TOTAL	=	\$	
If you want to be al- lowed expenses under	(e)	Plus any expenses allowed by the Court in relation to this order	+	\$	
line (e), submit them to the registrar. They might include search fees at the motor vehi-		TOTAL AMOUNT DUE TO THE CREDITOR at the date this order is issued	=	\$	
attach a sheet showing your calculations If you want to be al- lowed expenses under line (e), submit them to the registrar. They might include search	(d)	Plus enforcement expenses allowed by the Court to the date this order is issued TOTAL Plus any expenses allowed by the Court in relation to this order TOTAL AMOUNT DUE TO THE CREDITOR	+ = +	\$ \$ \$]]]

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- From the balance, pay to the creditor the total amount due to the creditor.
- Then pay any balance remaining after that to the debtor.

Attach a copy of the payment or default order you are enforcing.

registry.

A copy of the payment or default order is attached.

Issued on:

date	by the court

This order remains in force for one year after the date it was issued by the Court.

What is exempt from seizure?

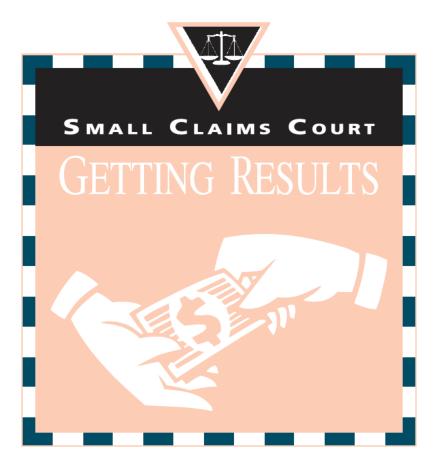
The Court Order Enforcement Act sets out the personal goods of the debtor which, at the option of the debtor, are exempt from seizure (See the back of this form for a list of exemptions).

NOTE: Only Court Bailiffs specifically authorized by the Ministry of Justice may execute this Order and seize goods. The Court Bailiff may not seize anything that the debtor owns jointly with someone else



creditor's copy

PAYMENT ORDER



PROVINCIAL COURT OF BRITISH COLUMBIA

PAYMENT ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

REGISTRY LOCATION

In the case between

Fill in the name(s),	NAME				CLAIMANT(S)
address(es) and phone number(s) of the par-	ADDRESS				;
ties. Include a third party if one was named.	CITY, TOWN,			TEL. #	DEFENDANT(S)
Be careful to name the parties correctly.	MUNICIPALITY and	PROV.	POSTAL CODE		
parties correctly.	NAME				DEFENDANT(S)
	ADDRESS				
	CITY, TOWN,			TEL. #	(
	MUNICIPALITY	PROV.	POSTAL CODE		
	NAME				
	ADDRESS				[
	CITY, TOWN,			TEL. #	
	MUNICIPALITY	PROV.	POSTAL CODE		
	On				
Check the appropriate	at a 🗌 Settlement Conference, wh	iere			failed to appear
box	Payment Hearing Trial Conference				
If the judge, justice of the	 ☐ Trial Conference or ☐ By Agreement 				
peace or registrar has or-					
dered payment of money, fill in the name of the					
party ordered to pay and the name of the party the					
money is to be paid to.					
			\$		Amount ordered by the
					Judge
			+ \$		Expenses allowed
			+ \$		Interest
Check the appropri-			= \$		TOTAL AMOUNT OF PAYMENT ORDER
ate box	\Box immediately, or		- φ		
If the judge, justice of the peace or registrar	in accordance with the following pa	ayment schedule			
has ordered payment by installments or before					
a fixed date, say what amounts are to be paid					
and when.					
Has the judge, justice of the peace or registrar	THIS COURT ORDERS				
ordered something other than the payment					
of money?					
				. •	any expenses allowed
				+ \$	any expenses allowed
This will be signed and	Γ				
dated by the court.			L Maria -		
	For more information about enforcement		by the court	Getting Popult	c"
FORM 10	i or more information about enforcemen	it proceedings there is		Gennig Mesull	
SCL 010 09/2008					JAG-2015-00066

PAYMENT ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

In the case between

AME				CLAIMANT(S)
DRESS				• •
TY, TOWN,			TEL. #	
	PROV.	POSTAL CODE		
AME				DEFENDANT(S)
DDRESS				\-/
ITY, TOWN,			TEL. #	
/UNICIPALITY	PROV.	POSTAL CODE	1 E L. #	
NAME				
ADDRESS				THIRD PARTY
CITY, TOWN, MUNICIPALITY			TEL. #	
DATE	PROV.	POSTAL CODE		
	NAME			< 11 . 1 .
at a Settlement Conference, whe	ere			failed to appear
Payment Hearing Trial Conference				
or By Agreement				
				Amount ordered by the
		\$		Judge
		I		
		+ \$ _		Expenses allowed
		+ \$		Interest
		'		
		^		TOTAL AMOUNT
immediately, or		— = \$		OF PAYMENT ORDER
		_		
\Box in accordance with the following pay	ment schedule			
THIS COURT ORDERS				
		-	⊦\$	
			т	any expenses allowed
] [
date] [by the court		

FORM 10 SCL 010 09/2008

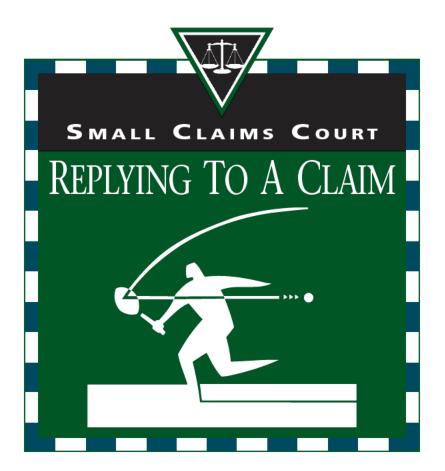
PAYMENT ORDER IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

REGISTRY LOCATION

In the case between

Fill in the name(s),	NAME				CLAIMANT(S)
address(es) and phone number(s) of the par-	ADDRESS				
ties. Include a third	CITY, TOWN,			TEL. #	
party if one was named. Be careful to name the	MUNICIPALITY	PROV.	POSTAL CODE		
parties correctly.	and NAME				DEFENDANT(S)
	ADDRESS				DEFENDANT(S)
	CITY, TOWN,			TEL. #	r
	MUNICIPALITY	PROV.	POSTAL CODE		
	and NAME				
	ADDRESS				
	CITY, TOWN,				
	MUNICIPALITY	PROV.	POSTAL CODE	TEL.#	
	On DATE	11100.	TOOTAL OODL		
	at a Settlement Conference, where	NAME			failed to appear
te box	□ Payment Hearing				
	Trial Conference				
the judge, justice of the eace or registrar has or-					
ered payment of money,	THIS COURT ORDERED NAME				
I in the name of the arty ordered to pay and					
e name of the party the oney is to be paid to.					
					Amount ordered by the
			\$		Amount ordered by the Judge
			+ \$		Expenses allowed
			+ \$		Interest
					TOTAL AMOUNT
Check the appropriate ox.			— = \$	5	OF PAYMENT ORDER
	immediately, or				
the judge, justice of ne peace or registrar	in accordance with the following payme	nt schedule			
as ordered payment by					
istallments or before fixed date, say what					
mounts are to be paid nd when.					
iu when.					
las the judge, justice	THIS COURT ORDERS				
f the peace or registrar rdered something					
her than the payment money?					
				+ \$	
				• •	any expenses allowed
his will be signed and					
lated by the court.	date		by the court		
	For more information about enforcement pro	ceedings there is a		l "Gettina Resuli	ts"
FORM 10 SCL 010 09/2008					Creditors 00669



PROVINCIAL COURT OF BRITISH COLUMBIA

REPLYING TO A CLAIM OR A COUNTERCLAIM

What are a defendant's options? (Rule 3(1))

A defendant who receives a notice of claim may do any one or more of the following:

- (a) pay the amount claimed directly to the claimant and ask the claimant to withdraw the claim;
- (b) admit all or part of the claim;
- (c) admit all or part of the claim and propose a payment schedule;
- (d) oppose all or part of the claim by listing reasons why the claim is opposed;
- (e) make a counterclaim against the claimant.

Step 1

COMPLETE THE REPLY. To complete the form, use a typewriter or print clearly. There are 3 copies, so be sure all copies are legible. ****NOTE:** This form can be completed online using the Filing Assistant https://www.courtservicesonline. gov.bc.ca. For more help there are booklets called "What is Small Claims" and "Replying to a Claim".



FILE the REPLY by taking or mailing it to the court registry at the address shown on the NOTICE OF CLAIM. The fee for filing is \$26 for claims up to and including \$3,000, and \$50 for claims over \$3,000 unless you have agreed to pay the full claim.

If you have set out a counterclaim there will be an additional fee of \$100 if your counterclaim is up to and including \$3,000 or \$156 if the counterclaim is over \$3,000. The staff will check your form and if it is in order accept it for filing. The REPLY must be filed in the registry within the time limit shown on the NOTICE OF CLAIM.



THEN the court will send a copy of your Reply to the claimant and in most cases set a date for a settlement conference. You will receive a notice telling you the date and place of the conference. Some cases will go directly to trial and you will receive a notice telling you the date and place.

Step 4

When the date is set, you can prepare for the conference or trial. For more help there is a booklet called "Getting Ready for Court".

REGISTRY FILE NUMBER

What is the registry file number and location shown on the Notice of Claim?

> Check appropriate box for replying to a claim or a counterclaim.

FROM:

This is where you identify the defendant who is filing this Reply. Give an address where notices and other information about the claim can be sent to you. If this address changes at any time be sure to notify the court registry.

DISPUTE

Here you must list the reasons why you oppose the claim. You do not need to tell everything about your case here. You must tell just enough to indicate to the claimant and the court what parts of the claim you dispute, and why. Look at the "How Much" section of the Notice of Claim. If the claim has more than one part - a, b, c, and so on - then you should reply to each part separately, using the same letters. If there is anything in the Notice of Claim that you agree with, be sure to include that here.

AGREEMENT WITH THE CLAIM

If you admit all or part of the claim, and if you are proposing a payment schedule, try to make it a reasonable one. If the claimant agrees with your proposal, you may file a consent order, or the claimant may file a consent order or a payment order. If the claimant agrees to the amount but not the terms for the payment, the claimant may request a payment hearing to ask the Court to set the payment schedule. You will be asked about your financial circumstances and expected to provide supporting documents.

COUNTERCLAIM

b

If you have a counterclaim, you must tell just enough to let the claimant know what your counterclaim is about. A Claimant may not include a counterclaim when replying to a counterclaim.

If your counterclaim is made up of several parts, separate them here and show the amount you are claiming for each part. For example:

a Amount owing on unpaid invoice

Interest under the contract

\$\$\$\$\$\$\$\$\$ \$\$\$\$\$\$\$\$\$

The claimant might agree with part of your counterclaim if you show its separate parts.

The most you may claim in Provincial Court of British Columbia (Small Claims Court) is \$25,000.00, including the amount of money claimed AND the value of any goods or services claimed. This does not include interest and expenses.

If your counterclaim is for more than \$25,000.00 and you wish to file in this court just say in this section "I am abandoning the amount over \$25,000.00". Otherwise, you should file your claim in Supreme Court. If you choose to abandon part of your claim you cannot sue for that part later.

Are you asking for something besides money (eg. recovery of goods)? If so fill that in and show the value, but do not add the dollar amount for that part to the Total Claimed.

For more help on your counterclaim there is a booklet called "Making a Claim". Page 206 JAG-2015-00066

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT) 🗌 To a Claim

To a Counterclaim

TO:	NAME				CLAIMANT(S)
Copy the name,	ADDRESS				Ш
address and telephone number of the claimant					ס
from the Notice of	CITY, TOWN, MUNICIPALITY			TEL. #	
Claim.		PROV.	POSTAL CODE		≺
FROM:	NAME				DEFENDANT
Fill in the name, address and telephone	ADDRESS				
number of the					
defendant filing this	CITY, TOWN, MUNICIPALITY			TEL. #	
reply.		PROV.	POSTAL CODE		
DISPUTE:	а				
Using the "HOW MUCH" section of the					
Notice of Claim as a					
guide, tell why you	_b				
guide, tell why you disagree with each part (a - e). If you agree with parts of the claim say so.					
say so.	C				
	al				
	d				
	е				
	<u> </u>				
AGREEMENT				agree to p	av \$
	L could make the following payments:				

lf part of what is claimed, make a proposal.

I could make the following payments: (GIVE DATES AND AMOUNTS)

COUNTERCLAIM (YOU SHOULD ONLY FILL OUT THIS PART OF THE FORM IF YOU WISH TO MAKE A CLAIM AGAINST THE CLAIMANT) (THIS PART IS NOT TO BE USED WHEN REPLYING TO A COUNTERCLAIM)

WHAT HAPPENED? _

Briefly tell what has led to your counterclaim.

HO\

Tell w claim count than each each then amou total.

W MUCH? what you are	a	\$	
ning. If your nterclaim has more one part, separate part and fill in nindividual amount,	b	\$	
add the individual ounts to make the	C	\$	
	TOTAL	\$	court copy
	+ FILING FEES	\$	y
	= TOTAL CLAIMED	\$	
FORM 2 SCL 002 01/2008 (OPC 7530854502)	ىل	Page 207	

REGISTRY LOCATION

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT) 🗌 To a Claim

To a Counterclaim

REGISTRY	FILE	NUMBER

REGISTRY LOCATION

TO:

	M
FROM:	N
This is the defendant	A
who has made this	_
Reply. If you have	_
named more than one	CI
defendant, their Replies	M
will be separate.	
DISPUTE:	
This is how the	
defendant disagrees	
with your claim(s). The	
Court will set a date for	
a settlement conference	

TO:	NAME				
	ADDRESS				Π
					ν
	CITY, TOWN, MUNICIPALITY			TEL. #	厂
		PROV.	POSTAL CODE		≺
FROM:	NAME				DEFENDANT
This is the defendant who has made this	ADDRESS				
Reply. If you have					
named more than one	CITY, TOWN, MUNICIPALITY			TEL. #	
defendant, their Replies will be separate.		PROV.	POSTAL CODE		
DISPUTE:	а				
This is how the	_м				
defendant disagrees with your claim(s). The					
Court will set a date for	b				
a settlement conference					
or in some cases a trial and notify you.					
and notify your	С				
	d				
	_u				
	•				
	_e				

AGREEMENT WITH THE CLAIM: 1 (NAME)

If this is filled in, the
defendant has agreed
to pay this amount
and is proposing this
payment schedule.

I could make the following payments:

COUNTERCLAIM

WHAT HAPPENED2

f this part is filled in, the defendant has made a claim against you. This is what the defendant says ed to the claim against you. If you dispute the sounterclaim you must ile a separate Reply.			
HOW MUCH? This is what the defendant is claiming.	a	\$	
This counterclaim will be heard at the same ime as your claim.	b	\$	
	c	\$	
	TOTAL	\$	claimant's
	+ FILING FEES	\$'s copy
FORM 2	= TOTAL CLAIMED	\$ Page 208	
0.01 000 01/0000		Page ./18	

agree to pay \$

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT) 🗌 To a Claim

To a Counterclaim

TO:	NAME				CLAIMANT(S)
Copy the name, address and telephone	ADDRESS				_ _
number of the claimant					Ρ
from the Notice of Claim.	CITY, TOWN, MUNICIPALITY			TEL. #	厂
		PROV.	POSTAL CODE		≺
FROM:	NAME				DEFENDANT
Fill in the name, address and telephone	ADDRESS				
number of the					
defendant filing this reply.	CITY, TOWN, MUNICIPALITY			TEL. #	
		PROV.	POSTAL CODE		
DISPUTE:	а				
Using the "HOW MUCH" section of the					
Notice of Claim as a	ь.				
guide, tell why you disagree with each part	b				
(a - e). If you agree					
with parts of the claim say so.	С				
	d				
	е				
AGREEMENT If you agree to pay all or	WITH THE CLAIM:			agree to pa	ay \$
part of what is claimed,	I could make the following pa	yments:			
make a proposal.					
		FILL OUT THIS PART OF THE FO	ORM IF YOU WISH TO MAK		THE CLAIMANT)
		O BE USED WHEN REPLYING TO			
WHAT HAPPENED?					
Briefly tell what has led					
to your counterclaim.					
					1 1
HOW MUCH?	а			\$	

Tell what claiming. I counterclai than one part a each part a each indiv then add tl amounts to total.

W MUCH? what you are	_ a	\$;
ning. If your nterclaim has more one part, separate part and fill in nindividual amount,	b	\$ 	
add the individual ounts to make the	C	\$	defe
	TOTAL	\$	defendant's
	+ FILING FEES	\$	сору
	= TOTAL CLAIMED	\$	
FORM 2 SCL 002 01/2008 (OPC 7530854502)	df	Page 209 Agendaribadoopy	_

REGISTRY FILE NUMBER

REGISTRY LOCATION

DATE:

TO:

DEFENDANT(S)

Your reply to the notice of claim for the file number shown above has been received by the court registry. Unfortunately, **the fee for the filing of a reply was not enclosed.**

The fee must be paid before your reply can be filed. The filing fee is \$26 for claims up to and including \$3,000 and \$50 for claims over \$3,000.

If the time limit for filing expires the claimant may ask for a order against you. The Small Claims Rules about replying to a claim (in part) are as follows:

Rule 3 Replying To a Claim

Time for replying

(4) If a notice of claim is served on a defendant, the reply must be filed

- (a) within 14 days after service if the defendant was served in British Columbia or within 30 days after service if the defendant was served outside British Columbia, and
- (b) before the registrar has made a default order or set a date for a hearing.

To make sure your reply is filed in time you may want to pay the fee in person at the registry. The fee may be paid by cash, certified cheque, or money order made payable to the **Minister of Finance.** If you mail the fee **please show the file number** on your cheque or money order.

Anyone who cannot afford the fee may apply to the registrar to be exempted from paying the fee.

Our address is:

EPLY TO THIRD PARTY NOTICE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

_ agree to pay \$___

TO:					DEFENDANT 🔳
Copy the name, ad-	NAME				Z
dress and telephone number of the defend-	ADDRESS				
ant from the Third Party					ř
Notice:	CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
FROM:					THIRD PARTY
Fill in the name, ad- dress and telephone	NAME				
number of the third party filing this reply.	ADDRESS				
	CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	_
	NAME				
	ADDRESS				U
	CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	PA
DISPUTE:	a				R
Using the "HOW MUCH" section of the					≺
Third Party Notice as a guide, tell why you	b				Z
disagree with each part (a - e). If you agree					
with parts of the claim say so.	_ C				
	d				
	e				

AGREEMENT WITH THE CLAIM: I, NAME

part of what is claimed, make a proposal.

If you agree to pay all or I could make the following payments: (GIVE DATES AND AMOUNTS)

- 1. Complete the REPLY. To complete the form, use a typewriter or print clearly. For more help there is a booklet called "Replying to a Claim".
- 2. File the REPLY by taking or mailing it to the court registry at the address shown on the NOTICE OF CLAIM. The fee for filing is \$26 for claims up to and including \$3,000 and \$50 for claims over \$3,000 unless you have agreed to pay all of the claim. The staff will check your form and if it is in order accept it for filing. The REPLY must be filed in the registry within the time limit shown on the Third Party Notice.
- 3. Then the court will send a copy of your Reply to the other parties and in most cases set a date for a settlement conference. You will receive a notice telling you the date and place of the conference. Some cases will go directly to trial and you will receive a notice telling you the date and place.
- 4. When the date is set, you can prepare for the conference or trial. For more help there is a booklet called "Getting Ready for Court".
- 5. If the defendant agrees with your proposal, you may file a consent order.

REQUEST FOR JUDGMENT OR FOR DISMISSAL IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT) REGISTRY FILE NUMBER

REGISTRY LOCATION

Fill in the registry file number and location as shown on the Notice of Claim.	IN THE CASE BETWEEN				
Fill in the name of the parties, copying them from the Notice of Claim and the Third Party	ADDRESS CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
Notice, if applicable.	AND				
	NAME				T T
	ADDRESS				
	CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
	AND				
	NAME				
	ADDRESS				
	CITY, TOWN, MUNICIPALITY	PROV.	POSTAL CODE	TEL. #	
Indicate what you are asking for.	The applicant asks for:				
and a grant	\square an order dismissing the claim becau	se the claimant did not		e mediation session Fee Declaration	
			-		FOR
	\Box a default order because the defenda		he mediation s Fee Declarati		
	and the claim is for debt				20
	🗌 o doto for o booring bofore o judgo k	accurate defendant	did not 🗌 of	tend the mediation	
	\Box a date for a hearing before a judge b	because the defendant		gn the Fee Declarat	tion
	and the claim is not for debt			-	session ion
				signature of applicant	
Print your name and	Dated	Print Na	amo.		
indicate your role in the case.			anne		
		🗌 Clai	mant		
			endant		
This will be completed by the court.	The Court orders that				
					[
Today's date	date		by the re	gistrar	

RESULT OF MEDIATION FORM

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT) REGISTRY FILE NUMBER

Fill in the registry file number and location as shown on the Notice of Claim. Name

Fill in the name of the parties, copying them from the Notice of Claim and the Third Party Notice, if applicable.

AND

Name

AND

		_	

DEFENDANT(S)

CLAIMANT(S)

THIRD PARTY

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Me	ediatic	n was	s conducted on or between and Date		
		1.	The parties settled all issues in mediation.		
		2.	The parties settled some issues in mediation.		
		3.	The parties did not settle any issues in mediation.		
		4.	One or more parties did not attend mediation, and a Verification of Non-Attendance (Rule 7.2 or 7.4) or a Verification of Default (Rule 7.3) was completed.		
		5.	The parties attended mediation, but did not enter into an Agreement to Mediate.		
A	ND, if	you c	hecked #1 or #2 above, check one of the following:		
		6.	The parties entered into a mediation agreement that may be filed with the court.		
	7. The parties entered into a mediation agreement that is confidential and that may be filed with the court only in support of an Affidavit of Non-Compliance.				
			Mediator (signature)		

Mediator (print full name)

Settlement Conference Record

In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY FILE NUMBER:

COURTROOM REGISTRY LOCATION:

BEFORE JUDGE		on			clerk
APPEARANCES			day month	year	
		AA	Counsel/represent	tative	
F		NA			
		NA			
 Defendant(s)		NA	Counsel/represent	tative	
		NA			
Defendant(s)/Third party(s)			Counsel/represent	tative	
	[PA				
		<u> </u>	٦		
SETTLEMENT BY CONSENT PAYMENT ORDE See attached Agreement By Default	R		DISMISSA		R Rule 7(17) (no appearance by claimant Rule 7(14)(i) er discussion with the parties and review of the
For \$ To Claimant Defendation	ant		day month		d documents, the
+% per annum calculated	d fro	om			ismissed because it;
+ Expenses to be assessed		to			is without reasonable grounds
= TOTAL by the registrar					discloses no triable issue is frivolous or
Payment Immediate Schedule					is an abuse of the court's process
Terms/other orders: (if more space is required add page and ch	neck	c bo	x 🗌)		
· · · · · · · · · · · · · · · · · · ·			/		
ADJOURNMENT for a Application/referral to Cou	urt		Trial		Payment Hearing
on day month year at		tin	ne am		
or Date to be fixed by registr	γ (I	not	tice to be se	ent to all	parties).
Number of witnesses Claimant Defer	•			Expert	. ,
Estimated time required Hours					
Agreed facts and outstanding issues: (if more space is require	nd au	dd r	ado and cho	ck box]
Agreed facts and outstanding issues. (In more space is require	ua	uu j	Jage and the]/
DOCUMENT EXCHANGE ORDER	od i	n th	o attachad		
The parties must exchange a copy of all documents lister all relevant docum				os, maps o	or similar material
by date and bring 2 copies				-	
All parties must exchange any case law they intend to use by				ppearan	
					—
		-1.4-			
Each party must provide each other party with the name, address			elephone numb	per and a s	unimary of evidence of all withesses the party
intends to call as a witness at trial, including any expert witness by	date			L	
Claimant's signature Defendant's signature				Juc	lge's signature
What happens if someone does not attend? The judge may dismiss the claim or make a payment order or other appro	opria	te o	rder against a r	barty who d	oes not attend a settlement conference.

1-COURT 2-CLAIMANT 3-DEFENDANT 4-TRIAL COORDINATOR Page 214 JAG-2015-00066

I, _

state:

(STRIKE OUT ANYTHING THAT DOES NOT APPLY TO YOU AND INITIAL.)

- 1. I am married / single / other (specify):
- 2. I support and maintain (specify number):
 - Children under 18

other dependants

3. Listed below is an accurate "Statement of Finances" of my household.

MONTHLY INCOME		MONTHLY EXPENSES				
Net Salary	\$	Rent	\$			
Commissions	\$	Mortgage	\$			
Tips and Gratuities	\$	Property Taxes	\$			
Unemployment Insurance	\$	Utilities (heat & light)	\$			
		Phone	\$			
Pension	\$	Cablevision	\$			
Investments	\$	House/Tenant Insurance	\$			
Rentals	\$	Life Insurance	\$			
Business Income	\$	Food	\$			
		Restaurant Meals	\$			
Child Tax Benefit	\$	Sundries & Personal Grooming	\$			
Maintenance (if any)	\$	Clothing	\$			
Workers' Compensation	\$	Laundry & Dry Cleaning	\$			
Monthly Income of Spouse/Common-		Motor Vehicle (lease or loan)	\$			
Law Spouse living with me	\$ \$ \$	(license, insurance, fuel & service)	\$			
Income of Children (if any)		Transportation (public)	\$			
Other		Newspapers & Subscriptions	\$			
	Ť	Entertainment	\$			
SUB-TOTAL	\$	Alcohol & Tobacco	\$			
Income Assistance	\$	Gifts	\$			
A. INCOME TOTAL	\$	Church & Charities	\$			
		Maintenance Payments	\$			
		Child Care & Babysittting	\$			
		School Expenses/Children's Activities, Lessons	\$			
		Other	\$			
		B. EXPENSES TOTAL	\$			

MONTHLY DEBTS		VALUE OF ASSETS					
Credit Card(s): (please specify)		Real Estate Equity					
	\$	Market Value	\$				
	\$	Mortgage Balance	\$				
	\$						
Bank or Finance Company: (please spec	cify)	Automobile Equity					
	\$	Make and Year					
	\$	Market Value	\$				
	\$	Loan Balance	\$				
Department Store(s): (please specify)							
	\$	Bank or Other Account (include RRSP's)	\$				
	\$	Stocks & Bonds	\$				
	\$	Life Insurance	\$				
Other:		Money owing to you	\$				
	\$	Name of Debtor					
	\$						
	\$	Personal Property	\$				
		Cash	\$				
C DEBT PAYMENT TOTAL	\$	Other	\$				
If you need more space for any item o attach an extra sheet and sign it.	on this Statement,	A. INCOME TOTAL	\$				
		B. EXPENSES TOTAL -	\$				
Date:		SUB-TOTAL =	\$				
Signed		C. DEBT PAYMENT TOTAL -	\$				
Signed:		BALANCE =	\$				

Copies of this form:

If you have been summonsed to court, bring the original of this *Financial Statement* and two copies to court to be filed. One copy is for you and the other is for the other party.

Reminder:

Be sure to bring any documents specifically required by a summons you may have received.

If there are no documents mentioned on the summons, you should bring the following items to support your Statement of Finances:

- Copies of your last 2 years' Income Tax Returns and T-4 slips
- If you are not employed, recent proof of the source and amount of your income (such as your 3 most recent Employment Insurance benefit statements)
- copies of your last 2 months utility bills for hydro, telephone and cable
- copies of your last 6 monthly bank statements for all bank accounts
- copies of any mortgage or rent agreements and receipts for the last 6 months
- any other documents you feel are important to establish your financial situation

SUMMONS TO A DEFAULT HEARING



PROVINCIAL COURT OF BRITISH COLUMBIA

SUMMONS TO A DEFAULT HEARING IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

0:	NAME ADDRESS	
hat is the name and Idress of the person		
ou are requiring to	CITY, TOWN,	TEL. #
ome to court?	_MUNICIPALITY PROV.	POSTAL CODE
	Because the debtor has not obeyed the payment sch	
	are summoned to a default hearing in the case betwee	
py the names of all		CREDITOR
arties in the case as nown on the Payment		
rder.	and	
		DEBTOR
I in the date, time and ace of the hearing.	You are required to attend the Provincial Court of Br	itish Columbia
	27	or as soon after this time as the court
	ON month	at time as the court schedule allows.
	at	
	at	court location
		court location
t what you want the rson to bring.	You are required to bring the following records and o	other things:
Ū		
ttach a copy of the	I certify that the debtor named in the attached order has not o	beved the payment schedule in the order.
ayment Order.		
ill in the date and sign		
ere.	month	signature of creditor
	(a) Total Amount of Payment Order	\$
	(b) Less any payments to the creditor	- \$
	(c) Amount remaining due	= \$
claiming interest,	(d) Interest (calculated to the date below)	+ \$
now your calculation.	(e) Creditor's expenses allowed by the Court	
ttach an extra sheet if ecessary.		
occoury!	Amount Due to the creditor Total	= \$
	 What happens at a default hearing? At a default hearing, the judge may a) confirm the terms of a payment schedule or other of b) change the terms of a payment schedule or other of to the debtor and the creditor. The judge may also issue a warrant for the imprisonment of a) the debtor has not obeyed a payment schedule, ar b) the debtor's explanation, or failure to give an explanation been obeyed is considered by the judge to amount to 	order in any manner that the judge thinks is fair of the debtor, if nd anation, of why the payment schedule has not
	been obeyed is considered by the judge to amount to	
	What happens if you do not attend?	

The judge may issue a warrant for your arrest.

FORM 14 SCL 014 05/2007 (OPC# 7530854518)

by the court

SUMMONS TO A DEFAULT HEARING IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

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	-							
CITY, TO MUNICIP						TEL. #		
		PRO			OSTAL CODE			
	use the debtor has ummoned to a defa				in the a	attached	order, you	
ale 5		aut nearing in the		, ,,,				CREDITOR
and								DEBTOR
								DEBION
You a	are required to atte	end the Provincial (Court of Brit	ish C	olumbi	a		
]	or as soon after	this
	on	month		at	time	am / pm	time as the cour schedule allows	
					unie	ani / pin		
		at						
		a			court location			
You a	are required to brin	ng the following rea	ords and ot	her t	hings:			
l cert	ify that the debtor nam	ned in the attached orc	er has not obe	eyed t	he paym	ent schec	lule in the order	r.
l cert	ify that the debtor nam	ned in the attached orc	er has not obe	eyed t	he paym	ent schec	lule in the order	r.
l cert	ify that the debtor nam		er has not obe	eyed t			lule in the order	r.
l cert	ify that the debtor nam	ned in the attached orc	er has not obe	eyed t		ent schec	lule in the order	r.
		month	er has not obe	eyed t			lule in the order	r.
(a) ⁻	Total Amount of Paym	month ent Order	er has not obe	eyed t			lule in the order	r.
(a) ⁻ (b) I	Total Amount of Payme	month ent Order the creditor	er has not obe	-	signa		lule in the order	r.
(a) (b) l (c) <i>/</i>	Total Amount of Paym Less any payments to Amount remaining due	ent Order the creditor	er has not obe	-		ture of creditor		r.
(a) ⁻ (b) I (c) <i>A</i> (d) I	Total Amount of Paym Less any payments to Amount remaining due nterest (calculated to t	month ent Order the creditor the date below)	er has not obe	- = +	signa \$ \$ \$	ture of creditor		r.
(a)	Total Amount of Payme Less any payments to Amount remaining due nterest (calculated to to Creditor's expenses all	month ent Order the creditor the date below) lowed by the Court		- = + +	signa \$ \$ \$ \$	ture of creditor		r.
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(a) - (b) l (c) / (d) l (e) (/ / What	Total Amount of Payme Less any payments to Amount remaining due nterest (calculated to the Creditor's expenses all Amount Due to the cre thappens at a defa t a default hearing, the	month ent Order the creditor the date below) lowed by the Court ditor ult hearing? e judge may	Total	- = + +	signa \$	ture of creditor		r.
(a) - (b) l (c) / (d) l (e) (/ / What	Total Amount of Paym Less any payments to Amount remaining due nterest (calculated to the Creditor's expenses all Amount Due to the cre thappens at a defa t a default hearing, the a) confirm the term	month ent Order the creditor the date below) lowed by the Court ditor ult hearing? e judge may ns of a payment sched	Total ule or other or	- = + + =	signa \$ \$ \$ \$ \$ \$ \$	ture of creditor		
(a) - (b) l (c) / (d) l (e) (/ / What	Total Amount of Payme Less any payments to Amount remaining due nterest (calculated to the Creditor's expenses all Amount Due to the cre thappens at a defa t a default hearing, the a) confirm the term b) change the term	month ent Order the creditor the date below) lowed by the Court ditor ult hearing? e judge may ns of a payment sched ns of a payment sched	Total ule or other or	- = + + =	signa \$ \$ \$ \$ \$ \$ \$	ture of creditor		
(a) - (b) l (c) / (d) l (e) (/ / What A	Total Amount of Payme Less any payments to Amount remaining due nterest (calculated to the Creditor's expenses all Amount Due to the cre thappens at a defa t a default hearing, the a) confirm the term b) change the term to the debtor and the he judge may also issue	month ent Order the creditor the date below) lowed by the Court ditor Pult hearing? a judge may ns of a payment sched ns of a payment sched ne creditor. ue a warrant for the im	Total ule or other or ule or other or prisonment of	- = + + = oder, co oder in the d	\$ \$	ture of creditor		
(a) - (b) l (c) / (d) l (e) (/ / What A	Total Amount of Payme Less any payments to Amount remaining due nterest (calculated to the Creditor's expenses all Amount Due to the credit Amount Due to the credit t a default hearing, the a) confirm the term b) change the term to the debtor and the he judge may also issue a) the debtor has redit	month ent Order the creditor the date below) lowed by the Court ditor cult hearing? e judge may ns of a payment sched ns of a payment sched ne creditor.	Total ule or other or ule or other or prisonment of schedule, and	- = + + = rder, c rder in the d	\$ \$	ture of creditor	he judge thinks	s is fair

What happens if you do not attend? The judge may issue a warrant for your arrest.

ebtor copy

month

by the court Page 219 JAG-2015-00066

SUMMONS TO A DEFAULT HEARING IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

Bec	CIPALITY	PROV			TE POSTAL CODE	L. #	
are	ause the debtor has no summoned to a defaul	ot obeyed the pa	ayment sch			ed order, you	CREDI
	Ó	<u>JEINIVI (S</u>		715			
and							DEB
Υοι	are required to attend	I the Provincial C	Court of Bri	tish	Columbia		
	on	month		at	time am / p	or as soon after time as the co schedule allow	urt
		at					
		aı			court location		
Υοι	are required to bring	the following rec	cords and o	other	things:		
		U U			U		
l ce	ertify that the debtor named	l in the attached ord	ler has not ob	beyed	I the payment scl	nedule in the orde	er.
						tor	
		month			signature of cred		
(a)	Total Amount of Payment				signature of cred		
(a) (b)	Total Amount of Payment Less any payments to the	t Order		-	\$		
	-	t Order		- =	signature of cred		
(b)	Less any payments to the	t Order e creditor		- = +	\$\$		
(b) (c)	Less any payments to the Amount remaining due	t Order e creditor e date below)			\$ \$ \$		
(b) (c) (d)	Less any payments to the Amount remaining due Interest (calculated to the	t Order e creditor e date below) ved by the Court	Total	+	\$\$ \$\$ \$\$		
(b) (c) (d) (e)	Less any payments to the Amount remaining due Interest (calculated to the Creditor's expenses allow Amount Due to the creditor	t Order e creditor e date below) ved by the Court or	Total	+ +	\$\$ \$\$ \$\$		
(b) (c) (d) (e)	Less any payments to the Amount remaining due Interest (calculated to the Creditor's expenses allow Amount Due to the creditor	t Order e creditor e date below) ved by the Court or t hearing?	Total	+ +	\$\$ \$\$ \$\$		
(b) (c) (d) (e)	Less any payments to the Amount remaining due Interest (calculated to the Creditor's expenses allow Amount Due to the creditor at happens at a default At a default hearing, the ju	t Order e creditor e date below) ved by the Court or t hearing? idge may		+ + =	\$\$ \$ \$ \$ \$ \$		
(b) (c) (d) (e)	Less any payments to the Amount remaining due Interest (calculated to the Creditor's expenses allow Amount Due to the creditor at happens at a default At a default hearing, the ju a) confirm the ter b) change the term	t Order e creditor e date below) ved by the Court or t hearing? idge may		+ + =	\$\$ \$ \$ \$ \$ \$		ks is fair
(b) (c) (d) (e)	Less any payments to the Amount remaining due Interest (calculated to the Creditor's expenses allow Amount Due to the creditor at happens at a default At a default hearing, the ju a) confirm the term b) change the term to the debtor and the debtor	t Order e creditor e date below) ved by the Court or t hearing? idge may		+ + =	\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$ any manner th		ks is fair
(b) (c) (d) (e)	Less any payments to the Amount remaining due Interest (calculated to the Creditor's expenses allow Amount Due to the creditor at happens at a default At a default hearing, the ju a) confirm the teres b) change the teres to the debtor and the of The judge may also issue	t Order e creditor e date below) ved by the Court or t hearing? idge may idge may		+ + = D aer	\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$\$ any manner th		<s fair<="" is="" td=""></s>
(b) (c) (d) (e)	Less any payments to the Amount remaining due Interest (calculated to the Creditor's expenses allow Amount Due to the creditor at happens at a default At a default hearing, the ju a) confirm the term b) change the term to the debtor and the debtor	t Order e creditor e date below) ved by the Court or t hearing? idge may indge may i	prisonment o schedule, an give an explai	+ + = Der of the d nation	\$\$ \$\$	at the judge think	

month

AFFIDAVIT OF SERVICE

Fill in:	nar	ne	occupation	
your name and address;	of a	ddress		
		Ma	ake oath and say that:	
		Sc	plemnly affirm that:	≓
the name of the party or other person served;	l sei	ved _		— X
the date service took place	on	date		FIDAVIT
the address or location service took place.	at _	aato		_ - -
Tell what was served. Check appropriate box.	with		a copy of the "Summons to a Payment Hearing" attached. a copy to the "Summons to a Default Hearing" attached.	OF SER
Tell how service took place	by		leaving a copy of it with him or her. as directed by the court by	
Do not sign your affida- vit until a commissioner for the taking affidavits is present.			signature of person who served the document	
	Swo	orn/aff	irmed before me on	
A commissioner for the taking of affidavits will witness your signature			date location where affidavit is sworn	
			signature of commissioner for taking affidavits for British Columbia	

SUMMONS TO A DEFAULT HEARING IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

то:	NAME
What is the name and	ADDRESS
address of the person you are requiring to	
come to court?	CITY, TOWN, TEL. # MUNICIPALITY PROV. POSTAL CODE
	CITY, TOWN, TEL. # MUNICIPALITY PROV. POSTAL CODE Because the debtor has not obeyed the payment schedule in the attached order, you are summoned to a default hearing in the case between:
	are summoned to a default hearing in the case between:
Copy the names of all	CREDITOR
parties in the case as shown on the Payment	
Order.	and
	DEBTOR
Fill in the date, time and	You are required to attend the Brovingial Court of British Columbia
place of the hearing.	You are required to attend the Provincial Court of British Columbia
	on or as soon after this time as the court
	On time as the court schedule allows.
	on at at or as soon after this time as the court time as the court schedule allows.
	at
	court location
	[
List what you want the person to bring.	You are required to bring the following records and other things:
poloon to bring.	
Attach a copy of the Payment Order.	I certify that the debtor named in the attached order has not obeyed the payment schedule in the order.
r dyment order.	
Fill in the date and sign	
here.	month signature of creditor
	(a) Total Amount of Payment Order \$
	(b) Less any payments to the creditor - \$
	(c) Amount remaining due = \$
	(d) Interest (calculated to the date below) + \$
	(e) Creditor's expenses allowed by the Court + \$
	Amount Due to the creditor Total = \$
	What happana at a default heaving?
	What happens at a default hearing? At a default hearing, the judge may
	a) confirm the terms of a payment schedule or other order, or
	b) change the terms of a payment schedule or other order in any manner that the judge thinks is fair
	to the debtor and the creditor.
	The judge may also issue a warrant for the imprisonment of the debtor, if a) the debtor has not obeyed a payment schedule, and

b) the debtor's explanation, or failure to give an explanation, of why the payment schedule has not been obeyed is considered by the judge to amount to contempt of court.

What happens if you do not attend?

The judge may issue a warrant for your arrest.

FORM 14 SCL 014 05/2007 (OPC# 7530854518) month

creditor copy

SUMMONS TO A PAYMENT HEARING



PROVINCIAL COURT OF BRITISH COLUMBIA

TO SUMMON A PERSON TO A PAYMENT HEARING

Step 1

COMPLETE the SUMMONS TO A PAYMENT HEARING. To complete the form, use a typewriter or print clearly. There are 4 copies, so be sure all copies are legible. For more help there are booklets called "Getting Ready for Court" and "Getting Results".

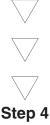
V Step 2

FILE the SUMMONS TO A PAYMENT HEARING by taking it to the Small Claims Court Registry. The staff will tell you the hearing date. Then they will check your form and when it is accepted for filing, apply the registry stamp and return the copies so the person named can be served.

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Step 3

PERSONALLY SERVE the party named in the summons with a copy of the summons at least 7 days before the hearing date. The purpose of "Service" is to make sure the person knows about the requirement to come to court. You should bring your completed affidavit of service to court with you. For more help with service there is a booklet called "Serving Documents".



AND THEN the person named must appear on the hearing date. If the person does not appear, a warrant for arrest of the person may be issued.

REGISTRY FILE NUMBER

What is the registry file number and location shown on the Notice of Claim?

You can require the person to bring records and other things that relate to:

- a) the income and assets of the debtor;
- b) the debts owed to and by the debtor;
- c) any assets that the debtor has disposed of since the claim arose;
- d) the means that the debtor has, or may have in the future, of paying the amount owed.

REGISTRY LOCATION

SUMMONS TO A PAYMENT HEARING IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

то:	NAME
Fill in the name, ad-	ADDRESS
dress and telephone number of the person	CITY, TOWN, TEL #
you are requiring to come to court.	CITY, TOWN, TEL. # MUNICIPALITY PROV. POSTAL CODE
come to court.	You have been summoned to a payment hearing in the case between:
Copy the names of all	CREDITOR_
parties in the case as	
shown on the Payment or Default Order.	and
	DEBTOR
	You are required to attend the Provincial Court of British Columbia
Fill in the date, time and	
place of the hearing.	or as soon after this
	date at time as the court schedule allows.
	at
	court location
	Courtocation
	You are required to bring the following records and other things:
List what you want the	
person to bring to court.	
If claiming Interest, show your calculation.	(a) Total Amount of Payment Order \$
Attach an extra sheet if	(b) Less any payments to the creditor - \$
necessary.	 (c) Amount remaining due = \$ (d) Interest (calculated to the date below) + \$
	(e) Creditor's expenses allowed by the Court + \$ Amount Due to the creditor Total = \$
	What happens at the payment hearing?
	Evidence may be heard about any of the following:
	a) the income and assets of the debtor;
	b) the debts owed to and by the debtor;
	c) any assets that the debtor has disposed of since the claim arose;d) the means that the debtor has, or may have in the future, of paying the amount owed.
	u) the means that the debtor has, or may have in the future, or paying the amount owed.
	Can the summons be cancelled?
	Any person who is served with a Summons to a Payment Hearing may apply to a judge who may
	a) cancel the summons if the person is not the right person to provide information on behalf of the debtor, and
	b) direct the registrar to issue a new summons to someone who is the right person to provide the information.
	What happons if the person summaned does not strend?
	What happens if the person summoned does not attend? If the creditor asks, a warrant for the arrest of the person may be issued.
	i ale signal delle, a warrant for the artoct of the percent may be found.

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date

by the court Page 225 JAG-2015-00066

SUMMONS TO A PAYMENT HEARING IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

	TOWN,	TEL. #
MUN	CIPALITY PROV.	POSTAL CODE
Yo	u have been summoned to a payment hearing i	in the case between:
		CREDITOR
an	ł	
		DEBTOR
Yo	u are required to attend the Provincial Court of	British Columbia
		at or as soon after this time as the court
	date	time am / pm schedule allows.
	at	
		court location
	Total Amount of Payment Order \$	
(b)	Less any payments to the creditor - \$	<u> </u>
(b) (c)	Less any payments to the creditor - \$ Amount remaining due = \$	3
(b) (c) (d)	Less any payments to the creditor-\$Amount remaining due=\$Interest (calculated to the date below)+\$	5 5
(b) (c) (d)	Less any payments to the creditor - \$ Amount remaining due = \$	
(b) (c) (d) (e)	Less any payments to the creditor-\$Amount remaining due=\$Interest (calculated to the date below)+\$Creditor's expenses allowed by the Court+\$	ce the claim arose;

If the creditor asks, a warrant for the arrest of the person may be issued.

date	

SUMMONS TO A PAYMENT HEARING IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

CITY, TOWN MUNICIPALI						TEL. #		
Vou bo	ve been summor		ROV.					
rouna				in the cas	e betweet		CREDITOR	
	<u> SERV</u>	1 <u>GE (G(</u>))PY/					
and							DEPTOP	
							DEBTOR	
You ar	e required to atte	nd the Provincia	I Court o	f British C	olumbia			
	-						or as soon after	thic
		date		at			time as the cou schedule allows	ırt
		uate			time	am / pm		
		at						
				c	ourt location			
You ar	e required to brin	g the following r	records a	nd other t	hings:			
(a) Tota	I Amount of Paymer	nt Order						
	I Amount of Paymer			\$				
(b) Les	s any payments to th			\$ \$ \$				
(b) Les (c) Am	s any payments to th ount remaining due	ne creditor	- :	\$ \$ \$				
(b) Les (c) Am (d) Inte	s any payments to th ount remaining due rest (calculated to th	ne creditor ne date below)	- : = : + :	\$				
(b) Les (c) Am (d) Inte (e) Cre	s any payments to th ount remaining due	ne creditor le date below) wed by the Court	- : = : + :	\$ \$ 				
 (b) Les (c) Am (d) Inte (e) Cre Am 	s any payments to th ount remaining due rest (calculated to th ditor's expenses allo ount Due to the cred	ne creditor ne date below) wed by the Court itor Total	- : = : + :	\$ \$ 				
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(b) Les (c) Am (d) Inte (e) Cre Am What h	s any payments to the pount remaining due rest (calculated to the ditor's expenses allo pount Due to the cred appens at the par dence may be heard	te creditor te date below) wed by the Court itor Total yment hearing? about any of the fo assets of the debto	- : + : = !	6 6 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7				
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(b) Les (c) Am (d) Inte (e) Cre Am What h Evid	s any payments to the bount remaining due rest (calculated to the ditor's expenses allo bount Due to the cred appens at the par dence may be heard a) the income and b) State and c) any assets that the d) the means that the e summons be cal	ne creditor te date below) wed by the Court itor Total yment hearing? about any of the fo assets of the debto the debtor has dispu- he debtor has, or m incelled?		\$ 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5			t owed.	
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(b) Les (c) Am (d) Inte (e) Cre Am What h Evid	s any payments to the bount remaining due rest (calculated to the ditor's expenses allo bount Due to the cred appens at the par dence may be heard a) the income and b) the income and c) arry assets that t d) the means that t e summons be cal may apply to a judg	ne creditor ne date below) wed by the Court itor Total yment hearing? about any of the for assets of the debtor the debtor has dispu- the debtor has, or m incelled? je who may nons if you are not f		ce the claim the future,	of paying th vide informa	ation on b	ehalf of the c	
 (b) Les (c) Am (d) Inte (e) Cre Am What h Evid 	s any payments to the bount remaining due rest (calculated to the ditor's expenses allo bount Due to the cred appens at the par dence may be heard a) the income and b) c) any assets that the c) any assets that the d) the means that the e summons be can may apply to a judg a) cancel the summ	ne creditor le date below) wed by the Court itor Total yment hearing? about any of the fo assets of the debto the debtor has dispu- he debtor has, or m ancelled? Je who may nons if you are not f ar to issue a new su		ce the claim the future,	of paying th vide informa	ation on b	ehalf of the c	

date

FORM 12 SCL 012 05/2007 (OPC# 7530854516)

by the court

Page 227. JAG-2015-00080

AFFIDAVIT OF SERVICE

Fill in:	name		occupation	
your name and address;	of addre	ess		\triangleright
			ike oath and say that: lemnly affirm that:	
the name of the party or other person served;	l serve			FIDA
the date service took place				2
the address or location service took place.	at			TIN
Tell what was served. Check appropriate box.	with			OF SEF
Tell how service took place	by		as directed by the court by	RVICE
Do not sign your affida- vit until a commissioner for the taking affidavits is present.			signature of person who served the document	
	Sworr	n/aff	irmed before me on	
A commissioner for the taking of affidavits will witness your signature			date location where affidavit is sworn	
			signature of commissioner for taking affidavits for British Columbia	

REGISTRY LOCATION

SUMMONS TO A PAYMENT HEARING IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

0:	NAME
l in the name, ad- ess and telephone	ADDRESS
mber of the person	CITY, TOWN, TEL. #
u are requiring to me to court.	MUNICIPALITY PROV. POSTAL CODE
	You have been summoned to a payment hearing in the case between:
py the names of all	
rties in the case as	CREDITOR
own on the Payment Default Order.	and
	DEBTOR
in the date, time and	You are required to attend the Provincial Court of British Columbia
ace of the hearing.	or as soon after this
	at time as the court
	date time am / pm schedule allows.
	at
	court location
	You are required to bring the following records and other things:
t what you want the	
rson to bring to court.	
	(a) Tatal Amount of Doumont Order
	(a) Total Amount of Payment Order \$
	(c) Amount remaining due = \$
	(d) Interest (calculated to the date below) + \$
	(e) Creditor's expenses allowed by the Court + \$
	Amount Due to the creditor $Total = $
	What happens at the payment hearing?
	Evidence may be heard about any of the following:
	a) the income and assets of the debtor;
	b) the debts owed to and by the debtor;
	c) any assets that the debtor has disposed of since the claim arose.
	c) any assets that the debtor has disposed of since the claim arose;d) the means that the debtor has, or may have in the future, of paying the amount owed.

b) direct the registrar to issue a new summons to someone who is the right person to provide the information.

What happens if the person summoned does not attend?

If the creditor asks, a warrant for the arrest of the person may be issued.

creditor copy

date	

by the court JAGE

SUMMONS TO WITNESS



PROVINCIAL COURT OF BRITISH COLUMBIA

TO SUMMON A WITNESS

You do not need to issue a summons if a witness will appear voluntarily.

V Step 1

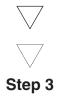
COMPLETE the SUMMONS TO A WITNESS. To complete the form, use a typewriter or print clearly. If you accessed this form from the Ministry of Justice website, you may also complete it at the computer, and then print it. There are 3 copies, so be sure all copies are legible. For more help there is a booklet called "Getting Ready for Court".



SERVE the witness with the summons at least 7 days before the court date. If you choose to use ordinary mail, you will have to put the summons in the mail at least 21 days before the hearing date.

The purpose of "Service" is to make sure the witness knows about the requirement to come to court. You should bring your completed certificate of service to court with you.

For more help with service there is a booklet called "Serving Documents".



AND THEN the witness must appear on the date set unless a judge has cancelled the summons. If a witness does not appear, the judge may issue a warrant for the arrest of the witness. If you want the witness to bring some specific records (invoices for example), list them here so the witness will know what is required.

What is the registry file number and location shown on the Notice of Claim?

The amount you provide for travelling expenses must be enough to enable the witness to get to court. This could mean busfare. The money must be delivered with the summons.

SUMMONS TO WITNESS IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

TO:	NAME
Fill in the name and ad-	ADDRESS
dress of the person you are requiring to come	CITY, TOWN, TEL #
to court.	MUNICIPALITY
50014	PROV. POSTAL CODE
FROM:	You have been summoned as a witness by
Fill in the name of the party who requires the	
witness to attend.	
	In the case between:
Copy the names of all	
parties in the case as	CLAIMANT(S)
shown on the Notice of Claim.	and
	DEFENDANT(S)
Fill in the date and	You are required to attend the Provincial Court of British Columbia
place of the hearing.	·
	or as soon after this
	On date date date date date date date date
	at
	You are required to bring the following records and other things:
If you want the witness to bring to court any	
records or other things	
list them here.	
	What must you do if you are served with a summons?
	You must a) attend court at the time and place stated on the summons, and
	b) bring to court any records and other things required by the summons.
	Can the summons be cancelled?
	If you are not needed as a witness or it would be a hardship for you to attend court, a judge may cance
	the summons.
	What happens if you do not attend?
	A judge may issue a warrant for your arrest.

SUMMONS TO WITNESS

Sign and date your summons.

travelling expenses.

You must provide the

witness with reasonable The amount of \$

FORM 8 SCL 008 11/2006 date

signature of person issuing summons

is attached for use as travelling expenses to enable you to come to the Court.

originator 232 JAG-2015-00066

SUMMONS TO WITNESS IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

	MUNICIPALITY		PROV	000711	TEL. #			
is the person requires you to	You have been summ		PROV. Iess by	POSTAL	CODE			
attend court to provide nformation relating to a awsuit. These are the parties in he case.	In the case between:				C	CLAIMANT(S)		
	and				DE	EFENDANT(S)		
	You are required to a	ttend the Provi	ncial Court c	of British C	columbia			
	on	date		at	time am / pm	or as soon after this time as the court schedule allows.		
		at			court location			
	You are required to b	ring the followi	ing records a	and other t	hings:			
	You are required to b	ring the follow	ing records a	and other t	hings:			
	You are required to b	ring the followi	ing records a	and other t	hings:			
	What must you do if y You must a) attend court	you are served at the time and pla	with a sumn	nons?	s, and			
	What must you do if y You must a) attend court	you are served at the time and pla t any records and cancelled?	with a sumn ace stated on th other things re	nons? he summons quired by the	s, and e summons.	a judge may cancel		
	What must you do if y You must a) attend court b) bring to court Can the summons be If you are not needed	you are served at the time and pla t any records and cancelled? d as a witness or i do not attend?	with a summ ace stated on the other things re t would be a ha	nons? he summons quired by the	s, and e summons.	a judge may cancel		

SUMMONS TO WITNESS IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

	ADDRESS
	CITY, TOWN, TEL. # MUNICIPALITY
0.4	PROV. POSTAL CODE
OM:	You have been summoned as a witness by
	SERVICE (COPY
	In the case between:
	CLAIMANT(S)
	and
	DEFENDANT(S)
	You are required to attend the Provincial Court of British Columbia
	on at or as soon after this time as the court
	date time am / pm schedule allows.
	at
	SERVICE_COPY
	SERVICE_COPY
	SERVICE COIPY
	SERVICE COPY
	You must a) attend court at the time and place stated on the summons, and
	You must
	You must a) attend court at the time and place stated on the summons, and
	You must a) attend court at the time and place stated on the summons, and b) bring to court any records and other things required by the summons. Can the summons be cancelled? If you are not needed as a witness or it would be a hardship for you to attend court, a judge may cancel
	You must a) attend court at the time and place stated on the summons, and b) bring to court any records and other things required by the summons. Can the summons be cancelled?
	 You must a) attend court at the time and place stated on the summons, and b) bring to court any records and other things required by the summons. Can the summons be cancelled? If you are not needed as a witness or it would be a hardship for you to attend court, a judge may cancel the summons.
	You must a) attend court at the time and place stated on the summons, and b) bring to court any records and other things required by the summons. Can the summons be cancelled? If you are not needed as a witness or it would be a hardship for you to attend court, a judge may cancel
	 You must a) attend court at the time and place stated on the summons, and b) bring to court any records and other things required by the summons. Can the summons be cancelled? If you are not needed as a witness or it would be a hardship for you to attend court, a judge may cancel the summons. What happens if you do not attend?
	 You must a) attend court at the time and place stated on the summons, and b) bring to court any records and other things required by the summons. Can the summons be cancelled? If you are not needed as a witness or it would be a hardship for you to attend court, a judge may cancel the summons. What happens if you do not attend? A judge may issue a warrant for your arrest.
	 You must a) attend court at the time and place stated on the summons, and b) bring to court any records and other things required by the summons. Can the summons be cancelled? If you are not needed as a witness or it would be a hardship for you to attend court, a judge may cancel the summons. What happens if you do not attend?
	 You must a) attend court at the time and place stated on the summons, and b) bring to court any records and other things required by the summons. Can the summons be cancelled? If you are not needed as a witness or it would be a hardship for you to attend court, a judge may cancel the summons. What happens if you do not attend? A judge may issue a warrant for your arrest.

service copy

FORM 8 SCL 008 11/2006

signature of person issuing summons .Page 234 JAG-2015-00066

FORM 4 SCL 004F 08/2006

CERTIFICATE OF SERVICE

30L 004F 00/2006				
Fill in:	I CE	ertify	/ that	
your name;	I I			Ο
the name of the party or other person served;	ser	ved		m
other person served; the date service took place;	on			ת
the street address	at	Date		
or location, city and province where service took place.	ut _			TIFIC
Name the documents	wit	h _		2
that you served.	-			T
Tell how service took	-			Π
place by checking appropriate box(es) for:	-			0
ordinary mail and fill in the date mailed;	by		mailing a copy by ordinary mail to that person's address on	
an individual;			leaving a copy of it with him or her.	SE
			mailing a copy of it by registered mail to him or her.	Щ
a company as defined			mailing a copy of it by registered mail to the registered office of the company.	RVICE
in the Business Corporations Act;			leaving a copy of it at the registered office of the company.	Ω
, ,			at the place of business of the company, with a receptionist or a person who appears to	m
			manage or control the company's business there.with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.	
an extraprovincial compar	ıy		mailing a copy of it by registered mail to the attorney shown in the corporate registry.	
as defined in the Business	5		leaving a copy of it with the attorney shown in the corporate registry.	
Corporations Act;			leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia.	
			mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.	
a partnership;			mailing a copy of it by registered mail to a partner.	
			leaving a copy of it \Box with a partner.	
			at the place of business of the partnership, with a person who appears to manage or control the	
			partnership business there.	
			with a receptionist who works at a place of business of the partnership.	
a municipal corporation, regional district or other			giving a copy to the clerk, deputy clerk or a similar official.	
local government body;				
a young person;			leaving a copy of the notice with the defendant's mother, father or guardian.	
a society as defined in the)		mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.	
Society Act;			leaving a copy of it at the address for service on file with the Registrar of Companies.	
an extraprovincial society			□ with a director, officer, receiver manager or liquidator of the society.	
as defined in the <i>Society</i> Act (if no attorney has bee	en		mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.	
appointed, check one of the 2 preceding boxes for	а		leaving a copy of it with an attorney appointed under section 77 of the Society Act.	
society);			mailing a convert it has wanted wail to the wanted office of the according	
an unincorporated			mailing a copy of it by registered mail to the registered office of the association. leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.	
association or trade union	;		המשיווש מ נסףץ טרת שונה מה טוונכר טר נווב מססטנומוטה טר, וה נווב נמשב טר מ נומטב טוווטה, שונה מ טעשוובסה מעצרונ	
a corporation incorporated			mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.	
outside British Columbia if it is not an extraprovincial			leaving a copy of it 🛛 at a place of business or registered office of the corporation outside British Columbia with a	
company;			receptionist or a person who appears to manage or control the corporation's business, or	
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation.	
alternate service method ordered by the Court.			(fill in any instructions given by a judge or registrar for service)	

NOTE: You must give proof of service by *REGISTERED MAIL* by attaching <u>one</u> of the following:

- 1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
- 2. a print-out of the delivery confirmation made available on the Internet by Canada Post (http://www.canadapost.ca).

ADDING A THIRD PARTY TO A CLAIM Step 1

COMPLETE the THIRD PARTY NOTICE. To complete the form, use a typewriter or print clearly. There are 5 copies, so be sure all copies are legible. For more help there are booklets called "Making a Claim" and "Replying to a Claim".

Step 2

FILE the THIRD PARTY NOTICE by taking or mailing it to the Court Registry. The fee for filing a THIRD PARTY NOTICE is \$25. If you are making a claim against a company or a society, you must attach a printout of a company search showing the most recent address of the registered office of the company on file with the Registrar of Companies. The staff will check your form and, when it is accepted for filing, apply the registry stamp. Then they will return the copies you need for your records and for serving on the third party.

Step 3

SERVE the third party with

- · a copy of the third party notice
- a blank reply to a third party notice form
- a copy of the notice of claim
- a copy of the reply to the notice of claim
- a copy of the notice of settlement conference or trial, if one has been issued.

The purpose is to be sure the third party knows about the lawsuit.

Within 30 days of serving the third party, file a certificate of service, to prove the third party has been served with the notice. For more help with service there is a booklet called "Serving Documents".



AND THEN, if the third party files a reply, the court registry will send everyone a copy of the reply, and set a date for a settlement conference. If no reply is filed at the court registry within the time limit on the THIRD PARTY NOTICE, you may apply to a judge for an order against the third party.

REGISTRY FILE NUMBER

What is the registry file number and location shown on the Notice of Claim?

TO:

Are you sure you have used the proper name? If you wish to add a company or a society as a third party, you can get the legal name from the printout of the company search.

WHAT HAPPENED?

You do not need to tell everything about your case here. You must tell just enough to let the third party know why you believe they should pay part or all of the claim against you. Keep your description brief. You will have a full opportunity to present all the facts and provide supporting documents at a settlement conference or trial.

HOW MUCH?

If your claim is made up of several parts, separate them here and show the amount you are claiming for each part. For example:

Amount owing on upaid invoice а b Interest under the contract

\$\$\$\$\$\$\$\$ \$\$\$\$\$\$\$\$

The third party might agree with part of your claim if you show its separate parts.

IMPORTANT NOTICE

The THIRD PARTY NOTICE will expire if the Certificate of Service is not filed within 30 days of the notice being filed at the registry.

THIRD PARTY NOTICE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

то:	NAME	THIRD PA	RTY	-
Fill in the name, ad-	ADDRESS			HIRD
dress and telephone				
number of the person or	CITY, TOWN,	TEL. #		דב
business the defendant	MUNICIPALITY			
thinks should pay all or part of the claim against the defendant.	PROV. POSTAL	CODE		Ρ
FROM:	NAME	DEFEND	ANT_	ARTY
Fill in the name, ad-	ADDRESS			Ĩ
dress and telephone number of the defend-				
ant who is adding the	CITY, TOWN,	TEL. #		
third party.	MUNICIPALITY PROV. POSTAL	CODE		Z
				NOTIC
Copy the name, ad- dress and telephone	NAME	CLAIM	IANT_	
number of the claimant	ADDRESS			Ш
from the notice of claim.				
	CITY, TOWN, MUNICIPALITY	TEL. #		
	PROV. POSTAL	CODE		
WHAT				
HAPPENED?				
Tell what happened to				
make you think the third				
party should pay all or part of the claim.				
part of the blaim.				
	If you need more space to describe what happened, attach another pag- tice" and check this box. A copy of the attached page must accompany			
	ace and check this box. A copy of the attached page must accompany	each copy of the finite		1 1
HOW MUCH?	<u>a</u>			
Tell what you are claim- ing from the third party.			\$	<u> </u>
If the claim is made			1	
up of several parts,	b		l	I I
separate them here and show the amount for			``\$	
each part. Add these				
amounts and fill in the	С		I	1 1
total claimed.			- • \$	
			י י ף ו	
			l	I I
	d		1	
			\$	
		TOTAL	\$	1 I
	TIME LIMIT FOR THE THIRD PARTY		L	6
	If the third party does not settle directly with the claimant and the defendant or file	+ FILING FEES	1	i i fi
	a reply within 14 days from being served with this notice, a court order may be		L	court copy
	made against the third party. Then the third party will have to pay the amount	+ SERVICE FEES	1	
	claimed plus interest and further expenses.		I 	
		TOTA: 0:	¢	1 1
	The Court Address for filing documents is:	= TOTAL CLAIMED	\$	
				DEBT

FORM 3 SCL 003 02/2007 (OPC 7530854503)

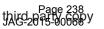


THIRD PARTY NOTICE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

REGISTRY LOCATION

TO:	NAME ADDRESS	THIRD PA	ARTY	Ę
	ADDRESS			HIRD
	CITY, TOWN, MUNICIPALITY	TEL. #		머
	The defendant named below is being sued by the claimant . The defendant think the claim and is including you in the case as third party .		urt of) PARTY
FROM:	NAME	DEFEND	DANT	
	ADDRESS			F
	CITY, TOWN, MUNICIPALITY	TEL. #		
	PROV. POSTAL	CODE		NO
	NAME ADDRESS	CLAIM	IANT	NOTIC
	CITY, TOWN,	TEL. #		П
	MUNICIPALITY PROV. POSTAI	CODE		
WHAT HAPPENED? This is why the defend- ant in this case thinks you are responsible for all or part of the claim.				
Details of the claim against the defendant and the defendant's re- ply are in the enclosed documents.				
HOW MUCH? This is what the defend- ant claims from you.	 If this box is checked the "what happened" section is continued on and copy of it. a 	ther page. Be sure you	have been given a	
	b			
			\$	
	_ C			1
			\$	
	ما			1
	d			1
		TOTAL	\$	
	TIME LIMIT FOR THE THIRD PARTY If you do not settle directly with the claimant and the defendant or file a reply within 14 down from being approximative accurate address and accurate the settle accurate the	+ FILING FEES		
	14 days from being served with this notice, a court order may be made against you . Then you will have to pay the amount claimed plus interest and further expenses.	+ SERVICE FEES		
	The Court Address for filing documents is:	= TOTAL CLAIMED	\$	
			DEBTOTHER THAN DEE	с Эт



THIRD PARTY NOTICE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

0:	NAME ADDRESS	THIRD P	ARTY	
	CITY, TOWN, MUNICIPALITY PROV. POSTAL	TEL. #		
ROM:	ADDRESS SEPARACECOPY	DEFENI	DANT	
	CITY, TOWN, MUNICIPALITY PROV. POSTAL	TEL. #		
	NAME ADDRESS	CLAI	MANT	
	CITY, TOWN, MUNICIPALITY PROV. POSTAL	TEL. #		
/HAT APPENED?				
	If this box is checked the "what happened" section is continued on anot copy of it.	ther page. Be sure you	ı have been given	a
OW MUCH	copy of it.	ther page. Be sure you	1 1	a
OW MUCH	copy of it.	ther page. Be sure you	\$	a
OW MUCH	copy of it. 2 _a b		1 1	a
OM MUCH,	copy of it.		\$	a 1 1 1 1 1 1 1 1 1 1 1 1 1
OW MUCH	copy of it. 2		\$	a 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
OW MUCH	copy of it.	TOTAL		a 1 1 1 1 1 1 1 1 1 1 1 1 1
OW MUCH,	copy of it.		\$ \$ \$ \$	a



CERTIFICATE OF SERVICE

Fill in: your name;	l ce	ertify	that	ဂ
the name of the party or		n e al		
other person served;	ser	vea		Щ
the date service took place;	on			קר
the street address or location, city and	at	Date		TIFIC.
province where service took place.	wit	h		Ö
Name the documents that you served.				P
Tell how service took place by checking appropriate box(es) for:	-			
ordinary mail and fill in the date mailed;	by		mailing a copy by ordinary mail to that person's address on	т S
an individual;			leaving a copy of it with him or her.	Π
a company as defined			mailing a copy of it by registered mail to the registered office of the company.	<
in the Business			leaving a copy of it at the registered office of the company.	5
Corporations Act;			manage of control the company's business there.	RVICE
			with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.	
an extraprovincial compan			mailing a copy of it by registered mail to the attorney shown in the corporate registry.	
as defined in the Business Corporations Act;	3		leaving a copy of it with the attorney shown in the corporate registry.	
			leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia. mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.	
a partnership;			mailing a copy of it by registered mail to a partner.	
			leaving a copy of it	
			partnership business there.	
a municipal corporation,			with a receptionist who works at a place of business of the partnership.	
regional district or other local government body;			giving a copy to the clerk, deputy clerk or a similar official.	
a young person;			leaving a copy of the notice with the defendant's mother, father or guardian.	
a society as defined in the			mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.	
Society Act;			leaving a copy of it at the address for service on file with the Registrar of Companies.	
an extraprovincial society			with a director, officer, receiver manager or liquidator of the society.	
as defined in the Society				
Act (if no attorney has bee appointed, check one of	n		mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.	
the 2 preceding boxes for society);	а		leaving a copy of it with an attorney appointed under section 77 of the Society Act.	
			mailing a copy of it by registered mail to the registered office of the association.	
an unincorporated association or trade union;	;		leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.	
a corporation incorporated	I		mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.	
outside British Columbia if			leaving a copy of it 🗌 at a place of business or registered office of the corporation outside British Columbia with a	
it is not an extraprovincial company;			receptionist or a person who appears to manage or control the corporation's business, or with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation. 	
alternate service method ordered by the Court.			(fill in any instructions given by a judge or registrar for service)	

NOTE: You must give proof of service by *REGISTERED MAIL* by attaching <u>one</u> of the following:

- 1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.
- 2. a print-out of the delivery confirmation made available on the Internet by Canada Post (http://www.canadapost.ca).

THIRD PARTY NOTICE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

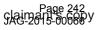
то:	NAME	THIRD P	ARTY
Fill in the name, ad-	ADDRESS		
dress and telephone number of the person or	CITY, TOWN,	TEL. #	
business the defendant thinks should pay all or	MUNICIPALITY PROV. POSTAL		
part of the claim against the defendant.			
FROM:	NAME	DEFEND	DANT_
Fill in the name, ad- dress and telephone	ADDRESS		
number of the defend- ant who is adding the	CITY, TOWN,	TEL. #	
third party.	MUNICIPALITY PROV. POSTAL	CODE	
Copy the name, ad- dress and telephone	NAME	CLAIN	
number of the claimant from the notice of claim.	ADDRESS		— Ì
	CITY, TOWN,	TEL. #	
	MUNICIPALITY PROV. POSTAL	CODE	
WHAT			
HAPPENED?			
Tell what happened to make you think the third			
party should pay all or part of the claim.			
	If you need more space to describe what happened, attach another pag- tice" and check this box. A copy of the attached page must accompany		
HOW MUCH?	а		1 1 1
Tell what you are claim-	_a		-' \$ '''
ing from the third party. If the claim is made			
up of several parts, separate them here and	b		_ I _ I _ I _ I
show the amount for each part. Add these			\$
amounts and fill in the total claimed.	С		
total claimed.			\$
	d		'\$'
			· · · · · · · · · · · · · · · · · · ·
		TOTAL	\$
	TIME LIMIT FOR THE THIRD PARTY	+ FILING FEES	
	If the third party does not settle directly with the claimant and the defendant or file a reply within 14 days from being served with this notice, a court order may be		
	made against the third party. Then the third party will have to pay the amount	+ SERVICE FEES	
	claimed plus interest and further expenses.	= TOTAL CLAIMED	· • · · · ·
	The Court Address for filing documents is:		\$
			 □ DEBT □ OTHER THAN DEBT

THIRD PARTY NOTICE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY LOCATION

TO:	ADDRESS		ARTY	
	CITY, TOWN, MUNICIPALITY	TEL. #		
	PROV. POSTAL	CODE		
	The defendant says that the third party named above should pay all or part of you	ur claim against the defe	ndant.	
FROM:	NAME	DEFEN	DANT	
	ADDRESS		DANT	
	CITY, TOWN, MUNICIPALITY PROV. POSTAL	TEL. #		
	PROV. POSTAL	CODE		
	NAME	CLAI	MANT	
	ADDRESS			
	CITY, TOWN,	TEL. #		
	MUNICIPALITY PROV. POSTAL			
WHAT				
HAPPENED?				
This is why the defend-				
ant says the third party				
should pay part or all of				
your claim.	 ☐ If this box is checked the "what happened" section is continued on ano copy of it. 	ther page. Be sure you	ı have been give	n a
your claim.	If this box is checked the "what happened" section is continued on ano copy of it.	ther page. Be sure you	- -	n a
your claim. HOW MUCH? This is what the defend-	copy of it.	ther page. Be sure you	I have been give	
your claim.	copy of it.	ther page. Be sure you	- -	I I
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it.	ther page. Be sure you	\$	
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it.	ther page. Be sure you	- -	
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it		\$	
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it.		\$	
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it		*\$	
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it			
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it.		*\$	
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it.			
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it.			
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it.			
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it	TOTAL + FILING FEES		
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it	TOTAL		
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it	TOTAL + FILING FEES + SERVICE FEES	\$ \$ \$ \$ \$ \$ \$	
your claim. HOW MUCH? This is what the defend- ant says the third party	copy of it	TOTAL + FILING FEES	\$ \$ \$ \$ \$ \$ \$	

FORM 3 SCL 003 02/2007 (OPC 7530854503)



	TRIAL/HEARIN In the Provincial Court of British (Small Claims Court)		Page of REGISTRY FILE NUMBER: REGISTRY LOCATION:
	TAPES:		EXHIBIT CARD NUMBER:
COURT DATE:		CCR:	
JUDGE:			
PARTIES	CLAIMANT(S)	DEFENDANT(S)	THIRD PARTY(S)
	1	1	1
	2	2	2
	3	3	3
	4	4	4
APPEARING FO	DR THE:		
	CLAIMANT(S)	DEFENDANT(S)	THIRD PARTY(S)
	1	1	1
	2	2	2
	3	3	3
	4	4	4
TAPE:		TAPE:	

TRIAL/HEARING LOG

TAPE:	 TAPE:	

Page 2 of _____

TRIAL/HEARING LOG

Page	of	
TAPE:		TAPE:
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TRIAL INFORMATION

THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

How evidence will be heard at a trial

A judge may conduct a trial without complying with the formal rules of procedure and evidence, and in doing so may

- (a) ask the parties to explain their cases, to respond to each other and to call witnesses, or
- (b) receive evidence in any other way the judge thinks is appropriate

What should the parties bring?

Each party to a claim must bring to the trial all relevant documents and reports including those the judge ordered exchanged or disclosed.

If a defendant does not attend

If a defendant or third party does not attend the trial, either personally or by a representative, the judge may

- (a) allow the claim,
- (b) make a payment order or other appropriate order against that defendant or third party, and
- (c) dismiss the counterclaim (if any)

If a claimant does not attend

If a claimant does not attend the trial, either personally or by a representative, the judge may dismiss the claim.

Adjourning a trial

A party may make an application to a judge to request a postponement or adjournment of the trial and must attend at a hearing to make the application.

Fee to adjourn a trial

As of May 1, 1998, a party who applies for an adjournment less than 30 days before the trial date must pay a fee if the adjournment is granted. The fee must be paid within 14 days after the adjournment or within a longer period of time set by the registrar.

Failure to pay the fee

If a party fails to pay the fee to adjourn a trial, a judge may

- (a) dismiss the claim if that party is the claimant,
- (b) strike out the reply, counterclaim or third party notice and make a payment order if that party is a defendant, or
- (c) make any order the judge thinks is fair.

TRIAL RECORD/ORDER

In the Provincial Court of British Columbia, Canada (Small Claims Court)

REGISTRY FILE NUMBER:

COURTROOM REGISTRY LOCATION:

Before Judge				on	c	lerk	
In the case between							CLAIMANT(S)
and							DEFENDANT(S)
Appearances Order	PA NA	Counsel/representative	PA	nt(s) Counsel/representative NA Dismissed	•	PA NA	rty el/representative
		_		Г			
Warrants	Wa	arrant of Arrest 🛛 🗌 Wa	rrant of I	mprisonment for	days	Name of person to b	e arrested/imprisoned
Adjournment	For a [[[Trial Settlement Conference Payment Hearing Default Hearing 		er of Witnesses	at ^{time}	AM / PM	or to a date to be set by the court.
Payment Order	For S	5	Awarde	d to 🛛 🗌 Claim	ant 🗌 Def	fendant	
		* + =)		per annum culated from gistrar	date
Payment Schedule	Payme	nt 🗌 Immediate		Schedule			
Terms:	\$		on	date	and	\$	
	on	of each month until th	ne amou	nt is paid or anoth	er order is mad	de by the cour	t.
Other Orders							
					se	e attachment	for continuation of order
Total from Court	For \$;			Sic	inature of a Judge in ar	d for the Province of British Columbia.
			Interest	% as noted above		,	
			Expense	es	Γ		
			Total aw	arded	Sig	nature of a Registrar in	and for the Province of British Columbia.
SCL 023 09/2007		1-COURT 2-CLA	IMANT 3	-DEFENDANT 4-TRI		J/	Page 247 AG-2015-00066

Party:

The following must be brought to the trial preparation settlement conference. Documents prepared by you for the Court should be in typed format where possible. These documents need to be collected and put together in an organized fashion with a copy for the Judge and a copy for the other party(s).

Statement of facts in the order events happened in numbered paragraphs $\ . \ . \ . \ .$					
List of persons who have information and will attend trial and \ldots					
Details of claim calculations \ldots					
Documents that are relevant to the evidence					
Photographs that assist descriptions (if any) \ldots \ldots \ldots \ldots \ldots \ldots \ldots \ldots					
Repair estimates (if any)					
Expert reports (if any)					
Other					

If you intend to make a settlement offer according to Rule 10.1, *Civil Rules*, you may do so prior to the pre-trial, during the pre-trial or within 30 days of the pre-trial. If you do not make a settlement offer you cannot ask for the 20 per cent cost penalty under Section 10.1(7).

Ordered:

Date:

Signature of Judge

TRIAL STATEMENT

In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY LOCATION

THIRD PARTY

Fill in the registry file number and location as shown on the Notice of Claim.

Fill in the names of the

parties, copying them

and the Third Party Notice, if applicable.

CLAIMANT(S) and DEFENDANT(S) from the Notice of Claim

and

This Trial Statement should contain all of the facts that you wish the court to consider. You must file it with the court at least 14 days before your trial conference or simplified trial. You must serve the other parties with a copy no less than 7 days before the hearing.

Collect and review all of the facts and evidence vou intend to present to the court at trial.

Organize your documents and attach them directly to this form.

A. Statement of Facts

Attach a summary of the facts in numbered paragraphs. Set out the facts in the order that events happened (typed if possible, and not more than 3 pages in length).

B. Amount Claimed, Disputed or Counterclaimed

Attach a document showing the amount you are claiming, disputing or counterclaiming and how the amount is calculated.

C. Documents

Attach copies of all relevant documents (including contracts, cheques, repair estimates, invoices, photographs, etc.).

D. Witnesses

Attach a list of the witnesses (including experts) who will attend the trial. Briefly state what each witness will say under oath.

You may not be allowed to rely on a document or other information as evidence in court unless you have attached it to this Trial Statement and filed and served it in accordance with the Small Claims Rules.

Date and sign the form.	I certify that these fa	acts are true:		
	Date		Signature of party	
	Name of party (and title if Authorize	ed Signing Officer).		
Indicate which party is filing this Trial Statement			THIRD PARTY	
FORM 33				Des

In the case between:

SCL 045 10/2007 OPC #7530854547

Verification of Default

In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY FILE NUMBER

REGISTRY LOCATION

IN THE CASE BETWEEN

Fill in the registry file		CLAIMANT(S)
number and location as shown on the Notice of Claim.	NAME(S)	<
Fill in the names of the parties, copying them from the Notice of Claim	AND	DEFENDANT(S)
and the Third Party Notice, if applicable.	NAME(S)	
	AND	
	NAME(S)	
Fill in the name of the mediator.	I,	, mediator, DECLARE AND CONFIRM THAT:
When and where the mediation session was scheduled.	1.	A mediation session was scheduled to commence at on on
The time the mediator was present.	2.	I was present at this location on this date from to to
If some of the parties did not attend, fill in the names of the parties.	3.	The following party(ies), who were required to attend, did not attend within one half hour of the scheduled commencement of the mediation session:
If some of the parties did not sign the fee declaration, fill in the names of the parties.	4.	The following party(ies), who were required to sign the fee declaration, did not sign the fee declaration:
	5.	The following parties attended:
Indicate which parties were present.		
	6.	The following persons attended as representatives of parties:
Indicate if anyone attended representing any of the parties.		representing
Fill in today's date and sign the notice.	Dated	Mediator
	Full name	e of mediator:
This will be completed by the court.	The Co	ourt orders that
Today's date		date by the registrar

VERIFICATION OF NON-ATTENDANCE IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

Fill in the registry file number and location as shown on the Notice of	IN THE CASE BETWEEN CLAIMANT(S) <
Claim. Fill in the name of the	NAME
parties, copying them from the Notice of Claim	
and the Third Party Notice, if applicable.	AND
	DEFENDANT(S)
	AND THIRD PARTY
	NAME
Г	
Indicate what happened.	I,, mediator,
	DECLARE AND CONFIRM THAT:
	a) a mediation session was scheduled to commence at on on
	at, and
	Address
	the claimant(s), namely
	L the defendant(s), namely
	the third party(ies), namely
	c) the following party(ies) did not attend within one-half hour of the scheduled commencement of the mediation session:
	the claimant(s), namely
	the defendant(s), namely
	the third party(ies), namely
L	
Date, sign and print	Deted
your name.	Dated Mediator
	Mediator (print full name)
This will be completed	The Court orders that
by the court.	
Today's date	
I Guy S Uale	Date By the registrar
Form 22 SCL 041 10/2007 OPC # 7530854541	Page 251 1-COURT 2-MEDIATION COORDINATOR (Rules 7.2 and 7.4)JAG-2015-00066

	W	Ά	RR	AN	IT	OF	IMP	RIS	ONN	IENT
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In the Provincial Court of British Columbia (Small Claims Court)

Court File Number:	
Registry Location:	

			DEB
To all sheriffs and peace officers in British centre referred to below:	Colum	bia ar	nd to the director of the correctional
This Court orders that	(ns	ame of per	son to be imprisoned)
be arrested and taken to			
and imprisoned for under Rule 13(8) of the <i>Small Claims Rule</i> under Rule 19(1) of the <i>Small Claims Rule</i>	9 <i>S</i> .	or con	tempt of Court
Issued on			By the Court
Where the Warrant is issued under section	13(8) c	of the	
(a) Total Amount of Payment Order			\$
(b) Less any payments to the creditor		-	\$
(c) Amount remaining due		=	\$
(d) Interest (calculated to the date below)		+	\$
(e) Creditor's expenses allowed by the Court		+	\$
Amount Due to the creditor	Total	=	\$
If the TOTAL is paid to the Registrar before the the TOTAL is paid after the arrest of the debtor the debtor, the warrant will be cancelled. Any n payment to the creditor named above.	r, to the	e Regi: receive	strar or the person who has custody of
This warrant remains in force for 1 year after th	ha data	U	
Warrant Cancelled		n was	รารรณอน มั้ง แก่อ OOuli.
by			
		War	rant Executed
Person contacted			
		by _	

This part must be completed if the warrant is for the imprisonment of a debtor under Rule 13(8).

If claiming interest, show your calculation. Attach an extra sheet if necessary.

WARRANT OF ARREST IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

REGISTRY LOCATION

In the case between:
CLAIMANT(S)
and DEFENDANT(S)
DEFENDANT(S)
4
To all sheriffs and peace officers in British Columbia:
This Court orders you to arrest and promptly bring that person before the court. The reason for the arrest is the person did not attend
and promptly bring that person before the court. The reason for the arrest is the person did not attend this court
at
court location, address and phone no.
ON month day year
as required by :
a summons to a witness
a summons to a payment hearing
a summons to a default hearing
Issued on:
This warrant remains in force for 1 year after the date it was issued by the Court.
Warrant cancelled
by:
Person contacted Warrant executed
by phone at m. by:
Date:

PUBLIC NOTICE

Procedures for Serving Documents on Government of British Columbia

Crown Proceeding Act – Section 8

Service on government

A document to be served on the government

- (a) must be served on the Attorney General at the Ministry of the Justice in the City of Victoria, and
- (b) is sufficiently served if
 - (i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or
 - (ii) mailed by registered mail to the Deputy Attorney General at Victoria.

Addresses for Service

A court document may be served on the Province of British Columbia

• personally by delivering a copy to:

Duty Counsel Legal Services Branch 1st Floor, 1001 Douglas Street Victoria, B.C.

• by Registered Mail at:

Deputy Attorney General Ministry of Justice P.O. Box 9280 Stn Prov Govt Victoria, B.C. V8W 9J7

PN 811 03/2012

Previous Secti	on:
Forms List	

Overview of the Pilot Streams

Introduction

This chapter of the Small Claims manual outlines the procedures for claims falling within the Small Claims Mediation for Claims for more than \$5,000 or for Damages for Personal Injury, Trial Conferences, Simplified Trials for Claims up to \$5,000 and for Summary Trials for Financial Debt. All of these pilots will be running at Robson Square. Only the Simplified Trials for Claims up to \$5,000 will be running at Richmond.

Eligible claims began streaming into these pilots on November 26, 2007. The pilots will continue to run until further notice.

The mediation stream will aim to capitalize on the benefits of mediation and to encourage early settlement of claims. Claims falling into the mediation stream will automatically go to a mediation session unless they fall within an exemption specified in the rules. Any claims that do not settle all issues at the mediation session will be directed next to a trial conference, where the parties will appear before a judge to prepare the case for trial. Claims will then proceed to an ordinary Small Claims trial.

The simplified trials stream will attempt to involve an amount of civil procedure that is proportional to the value of the claim. Claims falling into the simplified trials stream will automatically be set for a trial, nless they fall within an exemption specified in the rules. The trials will be conducted by a judge or a judicial justice of the peace (referred to as an "adjudicator" in the rule) and will likely be set for one hour. At Robson Square, these trials will occur in the evenings. At Richmond, these trials will occur during the day.

The summary trial for financial debt stream will attempt to involve an amount of civil procedure that is proportional to the type of the claim, assuming that these claims will often be relatively straightforward with respect to the facts at issue. Claims falling into the summary trial for financial debt stream will automatically be set for a trial, unless they fall within an exemption specified in the rules. The trials will be conducted by a judge, and will likely be set for one half hour.

Legal Commentary

Rule 7.4 will set out the civil procedure for the Mediation for Claims for more than \$5,000 or for Damages for Personal Injury stream.

Rule 7.5 will set out the Trial Conferences component of the mediation stream.

Rule 9.1 will set out the civil procedure for the Simplified Trials for Claims up to \$5,000 stream.

Rule 9.2 will set out the Summary Trial for Financial Debt stream.

rocedure

All files commenced by a notice of claim filed after November 25, 2007 at the Robson Square registry

will be directed into the appropriate stream, depending on the characteristics of the claim. The existing small claims processes will continue to apply with respect to files which were filed prior to this date.

At Richmond, files commenced by a notice of claim filed after November 25, 2007 may be streamed into the simplified trial stream, depending on the characteristics of the claim. The existing small claims processes will continue to apply to all files filed prior to this date, and to files which do not fall into the simplified trial stream because of their characteristics.

Forms

The following forms have been created or amended for the pilot project.

Forms Created:

- Trial Statement (SCL 045)
- Trial Conference Record (SCL 052)
- Consent to Adjourn Trial Conference (SCL 828)
- Notice of Trial Conference (SCL 835)
- Notice of Simplified Trial for Claims up to \$5,000 (SCL 836)
- Notice of Summary Trial for Financial Debt (SCL 837)

Forms Amended:

- Application for Default Order (SCL 005)
- Verification of Non-Attendance (SCL 041)
- Request for Judgment or for Dismissal (SCL 042)
- Result of Mediation (SCL 043)
- Mediation Agreement (SCL 044)
- Offer to Settle (SCL 803)
- Notice of Mediation Session (SCL 826)

Flowchart

An overview of the pilot project streams is shown in the attached flowchart.

 Next Section: Mediation for Claims for More than \$5,000 or for Damages for Personal Injury (Robson	Тор	Small Claims Manual Home Page
Square Only)		

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Previous Section:
Introduction
```

14.1 Mediation of Claims for More than \$5,000 or for Damages for Personal Injury (Robson Square Only) (Rule 7.4)

Introduction

This section outlines the procedures for mediation of claims for more than \$5,000 or for damages for personal injury [Rule 7.4]. This rule will apply to claims filed at, or transferred to the Robson Square registry after November 25, 2007 [Rule 7.4(2)(c)] provided that: the claim is for more than \$5,000 or for personal injury; the claim is not for financial debt as defined by Rule 9.2; and the claim is not otherwise exempted by the rules, by the mediation coordinator, or by a judge [Rule 7.4(3) to (6)].

Mediation is a collaborative process in which the disputing parties meet and attempt, with the assistance of a mediator, to resolve their dispute. Although mediation is an informal process, the mediator does structure the discussion to help parties negotiate a settlement.

Like judges, mediators are neutral and unbiased. Unlike judges, mediators do not have the power to decide the case. The purpose of mediation is not to determine who wins and who loses, but to find solutions that meet the needs of the people involved in the dispute. The mediator's job is to assist the parties in finding mutually acceptable solutions to the dispute. A claim will settle only if all parties to the claim agree to the terms of the settlement voluntarily.

ot only does mediation save valuable court time and reduce demands on Court Services resources and staff but there are many benefits to the parties. Mediation puts more control in the hands of the parties, allowing them to decide upon a result. Mediation also encourages an early resolution to the dispute by saving the parties the need to proceed to a full trial if they can settle their dispute. In many cases, parties find mediation to be a comfortable, productive and satisfying dispute resolution process.

Application of Rule 7.4

This section outlines the procedure for streaming files under Rule 7.4.

Definitions

With respect to Rule 7.4, the following definitions apply [Rule 7.4(1)]:

- "Mediation coordinator" means a person designated by the Justice Services Branch of the Ministry
 of Attorney General as the mediation coordinator;
- "Mediator" means the individual appointed as mediator under Rule 7.4(9);
- "Mediation registry" means the Robson Square Small Claims Registry (Vancouver); and
- "Mediation session" means a meeting between two or more parties to a claim for the purpose of reaching, with the assistance of a mediator, agreement on the issues in dispute.

For the purposes of this policy manual, any references to the Robson Square registry will either be Robson Square" or, simply, "the registry"; such references may be interpreted to mean the "mediation registry" if necessary.

Small Claims Manual Chapter 14.1 - Mediation of Claims for More than \$5,000 or for Damages for ... Page 2 of 15

Claims to which Rule 7.4 Applies

Subject to the exclusions set out in Rule 7.4(3) to (6), a claim will fall into the mediation stream if:

Location:

- The notice of claim was filed after November 25, 2007 at the Robson Square registry [Rule 7.4(2) (c)(i)]; or
- The notice of claim was transferred to the Robson Square registry after November 25, 2007 [Rule 7.4(2)(c)(ii)]; and

<u>Тор</u>

Nature of Claim:

- The amount claimed is for more than \$5,000, not including interest and expenses [Rule 7.4(2)(b) (i)]; or
- The claim is for damages for personal injury (for any amount) [Rule 7.4(2)(b)(ii)].

Rule 7.4(2)(a) further provides that a claim will not technically fall into the mediation stream unless all replies to notices of claim, counterclaims or third party notices have been filed. In practice, this means that for any claim in which there is an "outstanding" defendant or third party who has not, for any reason, filed a reply, the claim will not proceed to a mediation session. Such claims may remain at this stage until the notice of claim expires, or until the outstanding matters relating to parties are otherwise resolved (e.g. by way of a default order or withdrawal of the claim).

In addition, Rule 7.4(2)(a) will also serve to exempt a claim from the mediation stream if a default order is issued against any defendant to the claim. In such cases, the defendant(s) present at the mediation session will tend to argue that all liability (if any) for the claim rests with the defendant against whom the default order was issued. Accordingly, once a default order is made with respect to one or more defendants, the registry must set the claim for a trial conference under Rule 7.5 [Rule 7.4(8)(a)]. The claimant should be encouraged to apply for default orders against any other outstanding defendants in advance of the trial conference, but these matters can also be dealt with at the trial conference, if necessary.

In the case of Robson Square, Rule 7.4(8)(a) will also serve as a residual means to deal with claims that cannot otherwise be processed through this or any of the other streams if Rule 7.4 does not apply from the outset, or if it ceases to apply at some point. Under some circumstances (described below), the Registrar must set the claim for a trial conference under Rule 7.5.

Notice of Claim and Reply - Procedures

- **Note:** All existing provisions of the *Small Claims Manual* apply to these procedures unless specifically exempted by Rule 7.4.
- 1. The claimant comes to the registry to file the claim.
- 2. The clerk checks the Notice of Claim to determine whether it fits into the mediation stream:

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- The claim is for more than \$5,000 not including interest and expenses or for personal injury for any amount up to \$25,000.
- The claim is not for financial debt under Rule 9.2 (the claimant is not in the business of lending money or extending credit and is not claiming for a debt arising from a loan of money or the extension of credit in the course of that business).
- 3. The clerk gives to the claimant the pilot overview fact sheet.

If the *Notice of Claim* is filed by mail, send pilot overview fact sheet with filed copies of *Notice of Claim* returned by mail.

4. The clerk data enters into CEIS per best practices, and select correct stream.

- 5. The Reply is filed.
 - All existing provisions of the Small Claims Manual apply unless specifically exempted by Rule 7.4.
 - If defendant appears in person, provide the pilot overview fact sheet.
 - If Reply is filed by mail, send the pilot overview fact sheet with copies of Reply by mail.
- 6. The clerk data enters into CEIS per best practices.
- 7. If the claim is for personal injury, wait for Certificate of Readiness before scheduling mediation.

8. Subject to exemptions (<u>below</u>), once all the Replies are filed, add the claim to the list for the Judicial Case Manager (JCM) to set a date and make a notation in "File Detail" comments in CEIS.

9. If there is an "outstanding defendant": the claim will not be set for the next step.

- If the claimant inquires, and has served the *Notice of Claim* on the outstanding defendant, advise them to apply for a *Default Order* or to withdraw the claim.
- Once the application for a *Default Order* has been filed, the claim can be set for a trial conference under Rule 7.5.
- If a *Notice of Withdrawal* is filed, to resolve the only outstanding defendant(s), the registry can schedule the claim for a mediation session.

Тор

Exemptions by Operation of the Rules

Files will be exempt from Rule 7.4 if any of the following exemptions apply:

• The claim is for financial debt and is caught by the summary trial for financial debt stream under Rule 9.2 unless an order is made under Rule 9.2(13)(c) that the claim be set for mediation under this rule [Rule 7.4(3)(c)]

These files must be set for a summary trial for financial debt under the procedures set out in Rule 9.2.

- The claim involves a party who has obtained a restraining order against another party under <u>ss. 37</u> or <u>38</u> of the *Family Relations Act* [Rule 7.4(3)(a)(i)].
- The claim involves a party who has obtained a peace bond against another party under <u>s. 810</u> of (the *Criminal Code of Canada*.

These files must be set for a trial conference under the procedures set out in Rule 7.5 [Rule 7.4(8)(a)].

• The parties to the claim are parties to the same cause of action before the Supreme Court [Rule 7.4(3)(b)].

Files will become exempt from Rule 7.4 if the claim is transferred to another registry [Rule 7.4(4)(a)].

Exemption by the Mediation Coordinator

At any time, and without an application, the mediation coordinator [Rule 7.4(1)] may exempt a claim from the application of Rule 7.4 if the mediation coordinator considers it to be unfair or impractical to require mediation [Rule 7.4(5)(a)].

If a claim is exempted under this rule, the Registrar must set it for a trial conference under Rule 7.5 [Rule 7.4(4)(b) and (8)(a)].

Exemption by a Judge

A party may apply to a judge to exempt a claim from Rule 7.4 provided that the application is filed no less than 7 days before the date set for the mediation session [Rule 7.4(6)(a)].

An application to a judge under this rule must be made pursuant to Rule 16(7) [Rule 7.4(6)]. A judge may exempt a claim from Rule 7.4 if:

- All of the parties to the claim have already attempted to mediate the matters in issue [Rule 7.4(7) (a)(i)]; or
- If the judge thinks it is unfair or impractical to require mediation [Rule 7.4(7)(b)].

If a claim is exempted under this rule, the Registrar must set it for a trial conference under Rule 7.5 [Rule 7.4(4)(b)].

Exemptions from Attending Mediation Session

Under some circumstances, the mediation coordinator or a judge may exempt a party from attending a mediation session for a claim which is otherwise proceeding in accordance with the Rule 7.4 mediation process.

At any time, and without an application, the mediation coordinator may exempt a party from attending a mediation session if, in the mediation coordinator's opinion, it is unfair or impractical to require the party to attend [Rule 7.4(5)(a)].

A party may apply to a judge to exempt a party from attending the mediation session, provided that the application is filed no less than 7 days before the date set for the mediation session [Rule 7.4(6)(b)].

An application to a judge under this rule must be made pursuant to Rule 16(7) [Rule 7.4(6)]. A judge may exempt a party from attending the mediation session if, in the court's opinion, it is unfair or practical to require the party to attend [Rule 7.4(7)(b)].

<u>Top</u>

Exemptions from Rule 7.4 - Procedure

1. If there is an exemption for any of the exemption categories set out in the rules:

- Data enter into CEIS; and
- Set the claim for a trial conference under Rule 7.5, or for a summary trial or simplified trial, depending on the circumstances.

Appointing a Mediator and Scheduling the Mediation Session

Appointing a Mediator

The mediation coordinator may appoint a mediator to a claim, or to conduct the mediation sessions for claims set for a date, time and place [Rule 7.4(9)]. The mediator must be appointed from a roster of approved mediators maintained by the BC Dispute Resolution Practicum Society (DRPS).

Scheduling of Mediation Session

Although the rules state that the Registrar must set the date for a mediation session [Rule 7.4(11)], as of the commencement of this pilot in November 2007, the practice will be as follows:

- Once all Replies have been filed [Rule 7.4(2)(a)], the registry will advise the JCM to schedule a mediation date;
- The JCM will consult with the DRPS (if necessary), and will schedule a date;
- The JCM will advise the registry that the date has been scheduled; and
- The registry will then be in position to serve a Notice of Mediation on the parties [Rule 7.4(17)].

Scheduling of Mediation Session: Personal Injury - Certificate of Readiness

In personal injury claims, the claimant must file a *Certificate of Readiness* (<u>SCL 007</u>) with medical reports and records of expenses or losses attached [Rule 7.4(12)].

The claimant must file the *Certificate of Readiness* within 6 months of serving the notice of claim, and before the mediation session is held, subject to extensions granted by the Registrar by way of an application to extend [Rule 7.4(13)]. The claimant must serve the *Certificate of Readiness* on the other parties within 14 days of filing it [Rule 7.4(14)].

In personal injury claims, the defendant may apply to a judge for an order that the claimant be examined by a doctor [Rule 7.4(15)]. The defendant must serve a copy of any such report on the claimant at least ⁷ days before the mediation session, and must bring a copy to the mediation session [Rule 7.4(16)].

Notice of Mediation Session

The registry must serve a completed *Notice of Mediation Session* (<u>SCL 826</u>) on the parties. The parties must receive the *Notice of Mediation Session* at least 14 days before the scheduled date of the mediation session.

If a *Notice of Mediation Session* is returned by mail indicating that the party to whom it was sent has changed their address without notifying the registry of that change, the mediation session should remain scheduled and the other parties are still required to attend. The non-attendance provisions will apply without exception in these situations.

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Length of Mediation Session

Mediation sessions will be scheduled for 2 hours. Some variance in the length of each session may occur. There are no restrictions on the length of mediation sessions set out in Rule 7.4.

Appointing and Scheduling a Mediation Session - Procedure

1. When the JCM has advised that the date of the mediation has been set, prepare the *Notice* of *Mediation Session* in CEIS.

2. Insert the mediation fact sheet into the mailing and mail to parties.

3. After the mediation is scheduled, any change in the status of the parties or the claim that come to the (attention of the registry, such as a withdrawal or a settlement, should be brought to the attention of the JCM and the DRPS.

Changing the Date of a Mediation Session

Change of Date by Consent

To change the date of a mediation session by consent, a party must file written evidence of their agreement and consent to change of date under <u>Rule 16(1)</u>. [Rule 7.4(18)]. Parties should be encouraged to use the *Consent Order* (<u>SCL 021</u>) to record evidence of their consent but are not required to do so by the rules. The application for a consent (which includes a draft *Consent Order*) order can also be recorded on, or attached to, an *Application to Registrar* (<u>SCL 016</u>). Parties should also be encouraged to obtain a new date for their trial conference from the JCM which can be noted in their application.

If the application is granted, the Registrar may order the party applying to serve notice of the change on the other parties [7.4(22)(a)]. If the parties have not already obtained a new date at the time the consent order is granted, the registry must ask the JCM to reschedule the mediation session, and the registry must serve a *Notice of Mediation Sesson* (SCL 826) on the parties specifying the new date, time and place for the mediation session.

Change of Date by Consent - Procedure

Note: These applications may be heard and decided by the JCM, rather than

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by the registry. The procedures below may be modified in such circumstances.

1. If the parties wish to change the date by consent, encourage them to contact the JCM for a new date of mediation session before making the application.

- If they receive a new date, note it in their application / Consent Order.
- Encourage them to write: "Adjourned to [date] or to the next available date".

2. The order to change the date may be granted, even if it does not state a new date.

3. If the date is actually set for the date specified in the consent order, the registry does not need to serve a new *Notice of Mediation* Session.

4. If the new date set for a mediation session is not actually the date noted in the application / Consent Order, prepare a new Notice of Mediation Session and serve on the parties by mail.

5. Data enter into CEIS.

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Change of Date by Application

consent to change the date of a mediation session has not been obtained from the other parties, a party can apply to the Registrar using an *Application to Registrar* (SCL 016) under <u>Rule 16(3)</u> [Rule 7.4 (18)(b)].

On an application made at least 7 days before the date set for the mediation session, the Registrar may change the date if the Registrar is satisfied that the original date is "unreasonably inconvenient" (see definition below) to the party making the application [Rule 7.4(19)].

On an application made within 7 days before the date set for a mediation session, the Registrar may change the date if:

- The Registrar is satisfied that the original date is "unreasonably inconvenient" to the party [Rule 7.4 (19)(a)]; and
- The application contains an explanation, satisfactory to the Registrar, as to why it was not reasonably practicable for the party to bring the application at least 7 days before the date set for a mediation session [Rule 7.4(19)(b)].

In an application to change the date of a mediation session at least 7 days before or 7 days within the date set for the mediation session, the Registrar may determine that a date is "unreasonably inconvenient" to a party if:

- A family emergency renders the party unable to attend the scheduled session [Rule 7.4(21 (a)];
- The party has a pre-arranged out-of-town commitment on the day of the scheduled mediation session, and the commitment cannot be changed due to travel requirements [Rule 7.4(21)(b)];
- The party is required to attend court on the day set for mediation [Rule 7.4(21)(c)]; or

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• The Registrar otherwise determines that the date is unreasonably inconvenient to the party [Rule 7.4(21)(d)].

If the Registrar grants an order to change the date of a mediation session, the party who applied for the change must give the other parties whatever notice of the change of date the Registrar requires [Rule 7.4(22)(a)]. The Registrar must ask the JCM to promptly reschedule the mediation session [Rule 7.4(22) (b)]. Once the JCM has scheduled a new date, the registry must serve a *Notice of Mediation* to the parties specifying the new date, time and place for the mediation session [Rule 7.4(22)(b)].

Change of Date by Application - Procedure

- **Note:** All existing provisions of the Small Claims Manual apply to these procedures unless specifically exempted by Rule 7.4.
- **Note:** These applications may be heard and decided by the JCM, rather than by the registry. The procedures below may be modified as required in such circumstances.
- 1. The party submits the application to the registry.
 - Check to confirm that the application lists what the applicant is asking for, and their reason for asking.
 - Advise the applicant to amend the application to include these items, if necessary.
- 2. Receive the application and data enter into CEIS.
- 3. Refer the application to the JCM to decide whether to grant.
- 4. If application is denied, the JCM should notify the registry.
 - Data enter denial into CEIS.
 - Return the denied application to the applying party.
- 5. If application is granted, issue order.
 - Advise JCM to set a new date of mediation (if necessary).
 - Confirm "trial date cancelled" entry into CEIS (likely done by JCM).
 - Provide signed copies of the order to the person who applied. Advise them to follow the terms of the order with respect to service on the other parties.
 - Prepare and serve a new Notice of Mediation Session by mail.

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Attendance at the Mediation Session

Attendance by Telephone

A party may apply to the Registrar under Rule 16(3) for a direction that one or more of the parties may

attend the mediation session by telephone [Rule 7.4(23)]. Such applications may be granted if the party or the party's representative (as permitted by the rules) does not reside or carry on business within a asonable distance from the mediation location or, if exceptional circumstances exist [Rule 7.4 (24)].

If a direction to attend by telephone is granted, the Registrar may order that the parties file all documents and reports relevant to the claim at the registry before a specific date and time [Rule 7.4(25)(a)]. The Registrar may also order that the telephone call be made at the expense of the party requesting mediation by telephone [Rule 7.4(25)(b)].

Attendance by Telephone - Procedure

1. The party submits the application to the registry.

- Check to confirm that the application lists what the applicant is asking for, and their reason for asking.
- Advise the applicant to amend the application to include these items, if necessary.
- 2. Receive the application and data enter into CEIS.
- 3. Grant or deny the order.

4. If the application is denied, data enter into CEIS.

5. If the order is granted, data enter in CEIS which party is attending by telephone (enter desk order in CEIS).

• The DRPS will require notice of the order permitting attendance by telephone in advance of the session. In some cases, the court list should indicate this fact. If the order is made late, the registry should provide the DRPS with a copy of the order as soon as possible, to give them notice.

Attending Mediation Generally

All parties served with a *Notice of Mediation* must attend the mediation session [Rule 7.4(26)(a)] unless they are exempted under Rule 7.4(5)(b) (a party is exempted from attending by the mediation coordinator) or Rule 7.4(7)(b) (a party is exempted from attending by a judge). If the party is not an individual (e.g. a corporation, society or partnership), a representative may attend on that party's behalf [Rule 7.4(26)(b)]. A party or its representative must have the authority to settle the claim [Rule 7.4(26) (c)].

Lawyers or articled students are permitted to accompany parties or their representatives at the mediation session [Rule 7.4(26)(d)].

A party or a party's representative attending a mediation session must bring all documents and reports that are relevant to the dispute [Rule 7.4(30)].

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Attendance Where the Claim Involves an Insurer

Page 265 JAG-2015-00066 A party is not required to attend a mediation session in person if an insurer attends in place of that party [Rule 7.4(27)]. These cases may arise where the party has assigned all of his of her rights with respect to the claim to the insurer [Rule 7.4(27)(a)(i)], or where the insurer has a duty to defend any claims mad against that party [Rule 7.4(27)(a)(ii)(B)], or to indemnify the party for liability arising out of the claim [Rule 7.4(27)(a)(ii)(B)].

A party to a claim involving an insurer will only be permitted to not attend a mediation session if the insurer's representative does, in fact, attend the session [Rule 7.4 (27) (b)]. In other words, a party whose insurer could have attended, but failed to attend, will face the consequences of non-attendance.

Requirements of a Representative

If a representative attends a mediation session in the place of a party because the party is not an individual [Rule 7.4(26)(b)] or because the claim involves an insurer [Rule 7.4(27)], that representative must:

- be familiar with all facts relevant to the dispute [Rule 7.4(28)(a)];
- must have authority to settle the claim on the party's behalf [Rule 7.4(28)(b)]; and
- may be accompanied by a lawyer or articled student [Rule 7.4(28)(c)].

Attendance of Others

Any other person may attend a mediation session permitted by the mediator and consented to by the other parties

[Rule 7.4(29)]. Generally witnesses do not attend.

Non-Attendance of a Mediation Session

Verification of Non-Attendance

If a party who has been served with a *Notice of Mediation Session* does not attend a mediation session, the mediator must complete a *Verification of Non-Attendance* (SCL 041) [Rule 7.4(31)(a)(i)] and give it to the parties attending [Rule 7.4(31)(b)(ii)] (in practice, the parties may each request a completed copy). Any party in attendance may file the completed *Verification of Non-Attendance* in the registry [Rule 7.4 (31)(b)].

Non-Attendance by a Claimant

If the claimant does not attend, upon the filing of a *Verification of Non-Attendance*, the defendant may file a *Request for Judgment or* for *Dismissal* (<u>SCL 042</u>), pay the required fee, and ask the Registrar to make an order dismissing the claim [Rule 7.4(32)(a)]. The Registrar may then make an order dismissing the claim of that claimant [Rule 7.4(32)(b)].

Non-Attendance by a Defendant

If a defendant who is not a defendant to a claim may by way of counterclaim or third party notice does not attend, upon the filing of a *Verification of Non-Attendance*, the claimant may file a *Request for Judgment or Dismissal* (<u>SCL 042</u>), pay the required fee, and ask the Registrar to proceed as if the defendant had not filed a *Reply* and the claimant had completed the steps in Rule 6(3) [Rule 7.4(33)(a)]. The Registrar must then make either a *Default Order* under <u>Rule 6(4)</u> or set a date under <u>Rule 6(5)</u> for a

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hearing before a judge [Rule 7.4(33)(b)].

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Non-Attendance by a Defendant to Counterclaim or Third Party Notice

If the defendant to counterclaim or third party does not attend, upon the filing of a *Verification of Non-Attendance*, the party bringing the counterclaim or third party notice may apply under <u>Rule16(7)</u> for a *Default Order* under <u>Rule 16(6)(c)</u> [Rule 7.4(34)].

Non-Attendance by All Parties to the Claim

If no party attends the mediation session, the mediator must complete a *Verification of Non-Attendance* (<u>SCL 041</u>) and file it with the registry [Rule 7.4(35)(a)]. The Registrar must then make an order dismissing each claim [Rule 7.4(35)(b)].

Non-Attendance of a Mediation Session - Procedure

- 1. Enter the Result of Mediation form data into CEIS.
- 2. Enter the Verification of Non-Attendance form data into CEIS.
- 3. Enter dismissal order(s) into CEIS (if any) and deactivate the party against whom a dismissal is made.

4. Grant the default order if claim is for debt or set the matter before a judge on a chambers date if the claim is for other than debt.

5. Enter default order(s) into CEIS (if any).

Cancellation of Dismissal or Default Orders Relating to Non-Attendance

A party against whom an order of dismissal or default has been made as a result of non-attendance of a mediation session may apply to a judge for cancellation of the order under <u>Rule 16(7)</u> [Rule 7.4(36)]. The application must include an affidavit containing:

- The reason for not attending the mediation session [Rule 7.4(37)(a)];
- The reason for any delay, if there has been a delay in filing the application [Rule 7.4(37)(b)]; and
- The facts that support the claim or defence [Rule 7.4(37)(c)].

The judge may cancel the order of dismissal or default under <u>Rule 16(6)(j)</u> [Rule 7.4(36)]. In doing so, the judge may also do one of the following:

- Order that the claim be returned to mediation on any terms the judge considers appropriate [Rule 7.4(38)(a)];
- Order the payment of any expenses incurred by the party or parties who did attend [Rule 7.4(38) (b)]:
- Order that the claim be set for a trial conference [Rule 7.4(38)(c)]; and
- Make any other order that the judge considers appropriate in the circumstances [Rule 7.4(38)(d)].

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Cancellation of Dismissal or Default Orders Relating to Non-Attendance - Procedure

1. Enter the application to set aside the dismissal or default into CEIS.

- Check to ensure that all necessary information is included.
- Check to see that the affidavit of support is included.
- 2. Accept the fees, and set the matter for a chambers date.
- 3. Advise the party applying to serve notice on the other parties.
- 4. If the order is granted, enter into CEIS.
 - Reactivate the party, if necessary.

5. Follow all directions of the judge in relation to the next date of hearing. If no direction is provided, place the matter back on the list for the JCM to schedule a date for a mediation session.

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Conclusion of Mediation

If the parties reach agreement on all or some issues, the mediator must complete a *Result of Mediation* (Form 24) (<u>SCL 043</u>) and file the completed form at the registry [Rule 7.4(39)(a)]. The parties must complete and sign a *Mediation Agreement* (<u>SCL 044</u>) [Rule 7.4(39)(b)]. The Mediation Agreement may or may not be filed with the registry, depending on the agreement of the parties with respect to confidentiality. If the parties do not agree to make the agreement confidential, any one of the parties may file it with the registry [Rule 7.4(39)].

If the parties reached an agreement on some, but not all issues, then the claim continues onto the trial conference.

If the Dispute is Resolved

If the parties reach agreement on all issues, then the dispute is effectively resolved. The mediator must complete a *Result of Mediation* (SCL 043) and file it with the registry [Rule 7.4(43)(a)]. The parties may or may not file a copy of their *Mediation Agreement* with the registry depending on whether they deem it to be confidential.

If the Dispute is Unresolved

If the parties do not reach an agreement on all issues in the mediation session, the mediator must complete a *Result of Mediation* (SCL 043) and file it with the registry [Rule 7.4(43)(a)]. The registry should then advise the JCM to set the claim for a trial conference [Rules 7.4(43)(b) and 7.5(1)(a)] and apply the procedures set out in Rule 7.5.

Conclusion of Mediation - Procedure

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1. Data enter the *Result of Mediation* form.

If the *Result of Mediation* form indicates that the parties settled all issues in the mediation deactivate ine parties.

3. If the *Result of Mediation* form indicates that the parties settled some issues or no issues notify the JCM to set the claim for a trial conference and apply the procedures in Rule 7.5.

4. If the parties wish to file a Mediation Agreement:

- Observe the confidentiality and compellability procedures noted below.
- If the Mediation Agreement is accepted for filing, data enter into CEIS.

5. Data enter any other mediation session results or data.

Confidentiality and Compellability

Subject to the exceptions set out in Rule 7.4(45) and (46), a person must not disclose, or be compelled to disclose in any proceeding oral or written information acquired in or in connection with a mediation session [Rule 7.4(44)].

The exceptions in Rule 7.4(45) apply to:

- Information, opinion, documents, offers or admissions that all of the parties have agreed in writing may be disclosed [Rule 7.4(45)(a)];
- Any mediation agreement made during or in connection with a mediation session [Rule 7.4(45)(b)];
- Any threats of bodily harm made in or in connection with a mediation session [Rule 7.4(45)(c)];
- Any information that does not identify the parties and that is disclosed for research or statistical purposes only [Rule 7.4(45)(d)].

The exception in Rule 7.4(46) serves to affirm that a party may introduce as evidence in a proceeding any information or records that is otherwise producible or compellable in those proceedings, even if the information or records were produced in the course of the mediation [Rule 7.4 (46)]

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Confidentiality and Compellability - Procedure

- **Note:** The Mediation Agreement has tick boxes to indicate whether the parties agreed to file the agreement with the court.
- 1. If the Mediation Agreement tick boxes indicate that it may be filed with the court, accept it for filing.
 - Data enter into CEIS.

If the Mediation Agreement tick boxes indicate that it is confidential and may be filed with the court only in support of an *Affidavit of Non-Compliance*, draw this fact to the attention of the party attempting to file.

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- If the party insists on filing the Mediation Agreement, accept it for filing.
- Data enter into CEIS.

If Payment Terms are not complied with in Mediation Agreement

If a party fails to comply with a provision of a mediation agreement, the party not in default may involve the court in an effort to force the defaulting party to comply with that provision.

If the relevant provision of the mediation agreement requires a payment of money, the party not in default may file an *Affidavit of Non-compliance* (<u>SCL 808</u>) [Rule 7.4 (40) (a)]. Upon filing the *Affidavit of Non-compliance*, the party not in default may:

- File a *Payment Order* (<u>SCL 010</u>) in the amount specified in the mediation agreement less any amount already paid in compliance with the agreement [Rule 7.4(40)(b)(i)]; or
- If no amount was specified in the mediation agreement, for the amount of the claim less any amount already paid in compliance with the agreement [Rule 7.4(40)(b)(ii)].

If the relevant provision of the mediation agreement was not one requiring a payment of money, the party not in default may:

- If the mediation agreement establishes an amount of liquidated damages that is to be payable in the event of such a default, file an *Affidavit of Non-compliance* (SCL 808) and a *Payment Order* (SCL 010) for that amount [Rule 7.4 (41)(a)]; or
- If the mediation agreement does not establish a liquidated damages amount in relation to the relevant provision, seek a *Mediation Compensation Order* (SCL 827) under <u>Rule 16(6)(f.2)</u> [Rule 7.4(41)(b)].

A judge may make a *Mediation Compensation Order* (SCL 827) under Rule 7.4(41)(b), if the party makes an application [<u>Rule 16 (7)</u>] and attaches an *Affidavit of Non-compliance* (<u>SCL 808</u>) to its application [Rule 7.4(42)].

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If Payment Terms are not complied with in Mediation Agreement - Procedure

Payment Terms

- 1. Accept and file the Affidavit of Non-Compliance.
 - Accept filing fees if sworn at registry.
- 2. Data enter into CEIS.
- 3. File the Payment Order for:
 - The amount specified in the Mediation Agreement less any amount already paid in compliance with the Mediation Agreement [Rule 7.4(40)(b)(i)] or,
 - If no amount was specified in the Mediation Agreement, for the amount of the claim less any

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amount already paid in compliance with the Mediation Agreement [Rule 7.4(40)(b)(ii)].

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1. Accept and file the Affidavit of Non-Compliance at the registry.

- Accept filing fees if sworn at registry.
- 2. Data enter into CEIS.

3. If the Mediation Agreement establishes an amount of liquidated damages to be payable in the event of a default, file a *Payment Order* for that amount.

4. If the Mediation Agreement does not establish an amount of liquidated damages to be payable in the event of a default, accept the applicant's *Application to a Judge* for a Mediation Compensation Order in accordance with

Rule 16(6)(f.2).

• Set the matter for a chambers date.

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14.2 Trial Conferences (Robson Square Only) (Rule 7.5)

Introduction

This section outlines the procedures for a trial conference, which is the hearing that occurs after a mediation session. Trial conferences serve a case management function, assisting parties with the organization and presentation of their claims, and with the resolution of a range of issues that do not need to come before a judge at trial. Trial conferences share many similarities with settlement conferences with respect to the clarification of issues and general trial preparation. However, unlike settlement conferences, the trial conference does not serve to encourage settlement between the parties; it is presumed that this opportunity would have occurred at the mediation stage.

Parties will be required to file a *Trial Statement* containing a statement of facts (certified to be true) and with relevant documents attached, 14 days before the date set for the trial conference. At the trial conference the judge may make orders on a number of trial matters including dismissal of a claim, counterclaim, reply or third party notice if the judge determines that it is without reasonable grounds, discloses no triable issue, or is frivolous or an abuse of process. If the matter is not resolved at the trial conference, it will proceed to trial.

Application of Rule 7.5

This section outlines the procedure for streaming files under Rule 7.5.

Claims to which Rule 7.5 Applies

A claim must be set for a trial conference if:

- The parties do not reach agreement at mediation on all the issues [Rule 7.5 (1) (a)];
- Rule 7.4 does not apply or ceases to apply [Rule 7.4(8)] (registrar to set claim for trial conference by operation of Rule 7.4); or
- An order is made under Rule 7.4(38)(c) (order of a judge upon cancellation of dismissal or default order issued under Rule 7.4 mediation) or 9.2(13)(c) (order of a judge at a summary trial for financial debt).
- Note: *Rule 7.3 Mediations at Robson Square*: reference has been made in the rules to Rule 7.3(52) [see Rule 7.5(1)(a)]. Accordingly, if a claim fails to settle at mediation in the Rule 7.3 stream, and the *Result of Mediation* form is filed at Robson Square after November 25, 2007, the claim will be set for a trial conference under this Rule 7.5 [Rule 7.3(52)(b)].

Scheduling and Notifying the Parties

. he parties must attend a trial conference, at a time and place set by the registrar, before their claim is set for trial [Rule 7.5(2)]. Once the registry determines that the claim is to be set for a trial conference, it

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will notify the Judicial Case Manager (JCM) to schedule a date. Once the JCM advises the registry of the date, the registry must serve a *Notice of Trial Conference* (<u>SCL 835</u>) on the parties.

The *Notice of Trial Conference* must be served by the registry at least 30 days before the date set for the trial conference [Rule 7.5(3)].

Scheduling and Notifying the Parties - Procedure

1. Determine whether the matter will be set for a trial conference.

2. Add the claim to the list for the JCM to set a date and make a notation in "File Detail" comments in CEIS.

3. When the JCM has advised that the date for the trial conference has been set, prepare the *Notice of Trial Conference* in CEIS.

4. Insert the *Trial Statement* form and the Trial Conference Information fact sheet into the mailing and mail it to the parties.

5. Data enter into CEIS.

Changing the Date of a Trial Conference

Change of Date by Consent

To change the date of a trial conference by consent, a party must file written evidence of their agreement and consent to change of date under Rule 16(1) [Rule 7.5(4)(a)]. Parties should be encouraged to use the *Consent to Adjourn Trial Conference* form (<u>SCL 828</u>) to record evidence of their consent but are not required to do so by the rules. The consent order can also be recorded on, or attached to, an *Application to the Registrar* (<u>SCL 016</u>). Parties should also be encouraged to obtain a new date for their trial conference from the JCM which can then be noted in their application (which includes a *Consent to Adjourn Trial Conference*).

If the application is granted, the registrar may order the party applying to serve notice of the change on the other parties [Rule 7.5(8)(a)]. If the parties have not already obtained a new date at the time the consent order is granted, the registry must ask the JCM to reschedule the trial conference. In such cases, the registry must serve a *Notice of Trial Conference* (SCL 835) to the parties specifying the new date, time and place of the trial conference.

Change of Date by Consent - Procedure

Note: These applications may be heard and decided by the JCM, rather than by the registry. The procedures below may be modified as required in such circumstances.

1. If the parties wish to change the date by consent, encourage them to contact the JCM for a new trial conference date before making the application.

• If they receive a new date, note it in their application / Consent to Adjourn Trial Conference.

• Encourage them to write: "Adjourned to [date] or to the next available date".

The order to change the date may be granted, even if it does not state a new date.

3. If the date is actually set for the date specified in the order, the registry does not need to send new *Notice of Trial Conference*.

4. If the new date set for a trial conference is not actually the date noted in the application / *Consent to Adjourn Trial Conference*, prepare a new Notice of Trial Conference and send to the parties.

5. Data enter into CEIS.

Change of Date by Application

If consent to change the date of a trial conference has not been obtained from the other parties, a party can apply to the Registrar using an *Application to the Registrar* (<u>SCL 016</u>) under Rule 16(3) [Rule 7.5(4) (b)].

On an application made at least 7 days before the date set for the trial conference, the registrar may change the date if the registrar is satisfied that the original date is "unreasonably inconvenient" (see definition below) to the party making the application [Rule 7.5 (5)].

On an application made within 7 days before the date set for a mediation session, the registrar may change the date if:

- The registrar is satisfied that the original date is "unreasonably inconvenient" to the party [Rule 7.5 (6)(a)]; and
- The application contains an explanation, satisfactory to the registrar, as to why it was not reasonably practicable for the party to bring the application at least 7 days before the date set for a mediation session [Rule 7.5(6)(b)].

In an application to change the date of a trial conference at least 7 days before or 7 days within the date set for the mediation session, the registrar may determine that a date is "unreasonably inconvenient" to a party if:

- A family emergency renders the party unable to attend the scheduled session [Rule 7.5(7)(a)];
- The party has a pre-arranged out-of-town commitment on the day of the scheduled mediation session, and the commitment cannot be changed due to travel requirements [Rule 7.5(7)(b)];
- The party is required to attend court on the day set for mediation [Rule 7.5(7)(c)]; or
- The registrar otherwise determines that the date is unreasonably inconvenient to the party [Rule 7.5(7)(d)].

If the registrar grants an order to change the date of a trial conference, the party who applied for the change must give the other parties whatever notice of the change of date the registrar requires [Rule 7.5 (8)(a)]. The registrar must ask the JCM to promptly reschedule the trial conference [Rule 7.5(8)(b)]. Once the JCM has scheduled a new date, the registry must send out a *Notice of Trial Conference* (SCL 835) to the parties specifying the new date, time and place for the trial conference [Rule 7.5(8)(b)].

Application to Registrar - Procedure

- **Note:** All existing provisions of the *Small Claims Manual* apply to these procedures unless specifically exempted by Rule 7.5
- **Note:** These applications may be heard and decided by the JCM, rather than by the registry. The procedures below may be modified as required in such circumstances.
- 1. Party submits the application to the registry.
 - Check to confirm that the application lists what the applicant is asking for, and their reason for asking.
 - Advise the applicant to amend the application to include these items, if necessary.
- 2. Receive the application and data enter into CEIS.
- 3. Refer the application to the JCM to decide whether to grant.
- 4. If the application is denied the JCM should notify the registry.
 - Data enter denial into CEIS.
 - Return the denied application to the applying party.

5. If application is granted, issue the order.

- Advise the JCM to set a new date of mediation in CEIS (if necessary).
- Confirm trial date cancelled entry into CEIS (likely done by JCM).
- Provide signed copies of the order to the person who applied. Advise them to follow the terms of the order with respect to service on the other parties.
- Prepare and mail a new Notice of Mediation Session to the parties.

Filing and Service of the Trial Statement

At least 14 days before the date set for the trial conference, each party must file with the registry a completed *Trial Statement* (SCL 045) [Rule 7.5(9)].

At least 7 days before the date set for the trial conference, each party serve a copy of their completed *Trial Statement* on each of the other parties [Rule 7.5(10)].

Filing of the Trial Statement - Procedure

1. The parties present their completed *Trial Statements* to the registry for filing.

2. The clerk checks the *Trial Statement* to determine whether it meets minimum requirements for completeness.

3. Accept the *Trial Statement* for filing.

- Optional: stamp all copies of the Trial Statement for service on the other parties.
- Optional: remind the party to serve a completed copy on the other parties.

4. Data enter into CEIS.

ttendance and Non-Attendance of a Trial Conference

Attendance Generally

The individual who will be responsible for presenting a party's case at trial must attend the trial conference [Rule 7.5(11)]. This requirement may be satisfied by the attendance of:

- A party [Rule 7.5(11)(a)];
- A representative of the party if the party is not an individual [Rule 7.5(11)(b)];
- A representative of an insurer if the party has assigned his or her relevant rights to the claim to the insurer, or if the insurer has a duty to defend and/or indemnify the party in any claim in the proceeding [Rule 7.5(11)(c)]; or
- A lawyer or articling student [Rule 7.5(11)(d)].

The party is not required to attend the trial conference in person if someone attends on his or her behalf in accordance with Rule 7.5(11)(b) - (d) [Rule 7.5(12)].

A lawyer may accompany a party or a representative of the party or an insurer at the trial conference [Rule 7.5(13)].

Non-Attendance of a Trial Conference

's a defendant or a third party does not attend the trial conference, either personally or by a .epresentative in accordance with Rule 7.5(11)(b) to (d), the judge may allow the claim [Rule 7.5(17)(a)], and may make a payment order or other appropriate order against that defendant or third party [Rule 7.5 (17)(b)].

If a claimant does not attend the trial conference, either personally or by a representative in accordance with Rule 7.5(11)(b) - (d), the judge may dismiss the claim [Rule 7.5(18)].

Non-Attendance of a Trial Conference - Procedure

1. Enter the Trial Conference Record form data into CEIS.

- 2. Enter dismissal order(s) into CEIS (if any) and deactivate the party against whom a dismissal is made.
- 3. Enter default order(s) and payment order(s) into CEIS (if any).

Trial Conference Outcomes

What Happens at a Trial Conference

Trial conferences serve a case management function, assisting parties with the organization and presentation of their claims, and with the resolution of issues that do not need to come before a judge at 'rial. At a trial conference, a judge may:

Decide on any issues that do not require evidence [Rule 7.5(14)(a)];

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- Make a payment order or other order in the terms agreed to by the parties [Rule 7.5(14)(b)];
- Discuss any evidence that will be required and the procedure that will be followed if a trial is necessary [Rule 7.5(14)(c)];
- Order a party to produce any information in the manner the judge considers appropriate [Rule 7.5 (14)(d)];
- Make orders respecting the evidence of experts [Rule 7.5(14)(e)];
- Order a party to permit a person chosen by another party to examine property damage [Rule 7.5 (14)(f)];
- Make orders respecting medical examinations of a claimant [Rule 7.5(14)(g)];
- Dismiss a claim, counterclaim, reply or third party notice if it is held to be without reasonable grounds, to disclose no triable issue, or to be frivolous or an abuse of the courts process [Rule 7.5 (14)(i)];
- Give a non-binding opinion of the probable outcome of the trial [Rule 7.5(14)(j)];
- If Rule 7.4 does not apply to the claim only because a party did not file a reply opposing all or part
 of the claim, order that the claim be set for mediation [Rule 7.5(14)(k)]; and
- Make any other order for the just, speedy and inexpensive resolution of the claim [Rule 7.5(14)(l)].

If a payment order is made at a trial conference, Rule 11 (Payment of the Judgment) applies as though the payment order was made following a trial [Rule 7.5(16)].

Trial Conference Outcomes - Procedure

- 1. Endorse the judge's order(s) on the *Trial Conference Record* form and provide copies to the parties.
- 2. Enter the Trial Conference Record form data into CEIS.
- 3. Enter any orders into CEIS.
- 4. Set the claim for trial (subject to discretion of the judge at the trial conference).
 - Advise the JCM to schedule a trial date.

5. When the JCM has advised that a trial date has been set, prepare the *Notice of Trial* in CEIS and serve on all parties by mail.

Non-Compliance with Orders Made at a Trial Conference

If a party does not comply with any order made under Rule 7.5(14)(d) to (h), a judge may at any time:

- Adjourn a trial and order that party to pay all the reasonable expenses incurred by any other parties as a result of the adjournment [Rule 7.5(15)(a)];
- Order a trial to proceed without permitting that party to produce as evidence an information, document or records withheld as a result of the non-compliance [Rule 7.5(15)(b)]; and
- Dismiss that party's claim, counterclaim, reply or third party notice [Rule 7.5(15)(c)].

Non-Compliance with Orders Made at a Trial Conference - Procedure

1. Enter the order(s) to adjourn and to pay expenses into CEIS.

2. Cancel the trial date (if necessary).

Enter dismissal order(s) into CEIS (if any) and deactivate the party against whom a dismissal is made.

4. If the trial is adjourned, advise the JCM to schedule a new date.

5. When the JCM had advised that a trial date has been set, prepare the *Notice of Trial* in CEIS and serve on all parties by mail.

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Previous Section: Trial Conferences (Robson Square Only)

14.3 Simplified Trials for Claims up to \$5,000 (Robson Square and Richmond) (Rule 9.1)

Introduction

This section outlines the procedures for simplified trials for claims up to \$5,000 ("simplified trials"). This rule will apply to claims filed at, or transferred to, the Robson Square or Richmond registries after November 25, 2007 [Rule 9.1(2)(d)] provided that: the claim or any counterclaim is \$5,000 or less, not including interest and expenses [Rule 9.1(2)(b) to (c)]; and the claim is not for damages for personal injury [Rule 9.1(3)(b)]. An additional condition will apply to claims filed or transferred to Robson Square to exclude financial debt claims which will be heard under Rule 9.2[9.1(3)(c)].

Simplified trials differ from ordinary [Rule 10] trials in many respects. Most notably, the simplified trial is expected to be presided over by a Justice of the Peace, who is referred to in the rules as an "adjudicator" [Rule 9.1(1)]. In addition, simplified trials will be scheduled for one hour (not required by the rules). In most cases, the adjudicator will deliver a decision at the conclusion of the simplified trial. In other cases, the decision may be delivered up to 30 days after its conclusion.

The simplified trial stream will also differ from the ordinary process in terms of pre-trial process. Parties will be required to file a *Trial Statement* containing a statement of facts (certified to be true) and with relevant documents and witness lists attached, 14 days before the date set for the simplified trial [Rule 9.1(17)].

ties will also be required to serve the *Trial Statement* on the other parties at least 7 days before the date set for the simplified trial [Rule 9.1(18)]. Subject to certain exceptions, there will be no case management or preparation hearings in advance of the simplified trial.

Application of Rule 9.1

Adjudicators

Any reference to an adjudicator in Rule 9.1 means a judge or a justice of the peace [Rule 9.1(1)]. Several other rules are amended by way of reference to read "judge" as a reference to an "adjudicator" [Rule 9.1 (31)].

Claims to which Rule 9.1 Applies

Subject to the exclusions set out in Rule 9.1(3) to (4) and (8), a claim will fall into the simplified trial stream if:

Location:

- The notice of claim was filed after November 25, 2007 at the Robson Square registry or at the Richmond registry [Rule 9.1(2)(d)(i)]; or
- The court file relating to the claim was transferred to the Robson Square registry or the Richmond registry after November 25, 2007 [Rule 9.1(2)(d)(ii)].

Nature of Claim:

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- The amount claimed is \$5,000 or less, not including interest and expenses [Rule 9.1(2)(b)];
- The amount of any counterclaim is \$5,000 or less, not including interest and expenses [Rule 9.1(2)(c)].
- The claim is not for damages for personal injury for any amount [Rule 9.1(3)(a)]; or
- Rule 9.2 does not apply to the claim (i.e. the claim does not fall into the Summary Trial for Financial Debt stream at Robson Square) [Rule 9.1(3)(b)].

Rule 9.1(2)(a) further provides that a claim will not technically fall into the simplified trial stream unless a reply is filed opposing all or part of the claim. In practice, this means that for any claim in which no reply has been filed, the claim will not proceed to a simplified trial. Such claims will not, for this reason alone, be moved to a further stage of this stream, or into a different stream altogether; they will remain at this stage until the notice of claim expires, or until a reply opposing all or part of the claim is filed.

In addition, a claim brought against multiple defendants must not be set for a simplified trial until the status of each defendant is determined. In such cases, the claimant will be required to provide proof of service and to apply for a *Default Order* against any defendant(s) who has not filed a *Reply* before the claim is set for trial.

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Exemptions

In addition to the above noted exemptions for personal injury claims [Rule 9.1(3)(a)], and for claims falling under Rule 9.2 at Robson Square [Rule 9.1(3)(b)], a claim will be exempted from Rule 9.1 if the file is transferred to another registry [Rule 9.1(4)(a)] or if the *Notice of Claim* is changed to increase the amount (the claim or counterclaim to more than \$5,000, not including interest and expenses [Rule 9.1(4)(b)].

Claims which are transferred to a registry that is not participating in this pilot project will fall into the appropriate trial stream at that registry.

Claims which are exempted because the *Notice of Claim* or *Counterclaim* is increased to an amount in excess of \$5,000, not including interest and expenses, will:

- · At Richmond, be streamed into the appropriate stream; and
- At Robson Square, be streamed into the mediation stream [Rule 7.4] or to a trial conference [Rule 7.5], depending on the circumstances (e.g. if a default is granted, or if the claim is exempted from mediation by operation of the rules).

Abandonment of Part of Claim or Counterclaim in Excess of \$5,000

A claimant who has a claim in excess of \$5,000, not including interest and expenses, may abandon part of the claim so that the dispute can be heard under the simplified trial rule [Rule 9.1(5)]. To abandon part of the claim, the claimant must state on the *Notice of Claim* that the amount in excess of \$5,000 is abandoned [Rule 9.1(6)]. Subject to Rule 9.1(11), the claimant may not, at any time, sue for the part that was abandoned [Rule 9.1(7)].

An amount in excess of \$5,000, not including interest and expenses, may also be abandoned in a counterclaim by stating that fact on the counterclaim [Rule 9.1(9)]. The defendant who abandons part of a counterclaim may not at any time sue for the part that was abandoned [Rule 9.1(10)].

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If a defendant who has a counterclaim in excess of \$5,000, not including interest and expenses, does not abandon part of the claim so that it can be heard under the simplified trial rule, the claimant may then sue for > whole amount to which he or she is entitled [Rule 9.1(11)].

Notice of Claim and Reply - Procedure

- **Note:** All existing provisions of the *Small Claims Manual* apply to these procedures unless specifically exempted by Rule 9.1.
- 1. The claimant comes to the registry to file the claim.
- 2. The clerk checks the Notice of Claim to determine whether it fits into the simplified trial stream:
 - The claim is for \$5,000 or less, not including interest and expenses;
 - The claim is not for damages for personal injury; and
 - The claim is not for financial debt under Rule 9.2 (the claimant is not in the business of lending money or extending credit and is not claiming for a debt arising from a loan of money or the extension of credit in the course of that business).
- 3. The clerk provides a blank Trial Statement to the claimant.
- 4. The clerk gives to the claimant the pilot overview fact sheet.
 - If the Notice of Claim is filed by mail, send the pilot overview fact sheet with filed copies of Notice of Claim returned by mail.
- 5. The clerk data enters into CEIS per best practices, and selects correct stream.

6. The Reply is filed.

- If the defendant appears in person, provide a blank *Trial Statement* and provide the pilot overview fact sheet to them.
- If the *Reply* is filed by mail, send blank *Trial Statement* and information sheet with copies of *Reply* by mail.

7. The clerk data enters into CEIS per best practices and selects the correct stream.

8. Subject to exemptions below, once a *Reply* opposing all or part of the claim is filed, <u>Rule 9.1</u> applies. If there is only one defendant named in the claim, add it to the list for the Judicial Case Manager (JCM) to set a date and make a notation in "File Detail" comments in CEIS.

9. For multiple defendant claims, where there is an "outstanding defendant" who has been served but who has not filed a *Reply*:

If the claimant inquires, and has served the Notice of Claim on the outstanding defendant, advise them
to apply for a Default Order or to withdraw the claim against the outstanding defendant(s).

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- If the claimant applies for a *Default Order* or withdraws the claim against the outstanding defendant(s), the claim can be set for a simplified trial.
- If the claimant does not apply for a *Default Order* or withdraw the claim, the claim should not be set f(a simplified trial.

10. If a counterclaim in excess of \$5,000 is filed, change the file stream to Rule 7.4 mediation.

- Note any such change in CEIS.
- Send the appropriate information sheets to the parties.

Scheduling the Simplified Trial Date

If Rule 9.1 applies to a claim, it must be set for a simplified trial [Rule 9.1(12)(a)]. Once the registry determines that the claim will indeed fall into this stream, it will notify the JCM to schedule a date. In a multiple-defendant claim where one or more defendant(s) has not replied, wait for the claimant to apply for a *Default Order* or to withdraw the claim against the outstanding defendant(s) before notifying the JCM to schedule a date. Once the JCM advises the registry of the date, the registry must serve a *Notice of Simplified Trial for Claims up to \$5,000* (SCL 836 - *Notice of Simplified Trial*) on each of the parties.

The *Notice of Simplified Trial* must be served by the registry at least 30 days before the date set for the simplified trial [Rule 9.1(12)(b)].

Scheduling the Simplified Trial Date - Procedure

1. As noted in the *Notice of Claim* and *Reply* <u>Procedure</u> section above, when the claim is ready to be set for trial, add it to the list for the JCM to set a date and make a notation in "File Detail" comments in CEIS.

2. Once the JCM advises that the date of the simplified trial has been set, prepare the *Notice of Simplified Trial* in CEIS.

3. Insert the simplified trial fact sheet into the mailing and mail to parties.

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Changing the Date of a Simplified Trial

Change of Date by Consent

To change the date of a simplified trial by consent, a party must file written evidence of their agreement and consent to change the date under <u>Rule 16(1)</u> [Rule 9.1(13)(a)]. Parties should be encouraged to use the *Consent Order* (<u>SCL 021</u>) to record evidence of their consent but are not required to do so by the rules. The application for a consent order (which includes a draft *Consent Order*) can also be recorded on, or attached to, an *Application to the Registrar* (<u>SCL 016</u>). Parties should also be encouraged to obtain a new date for their simplified trial from the JCM which can then be noted in their application.

If the order is granted, the Registrar may order the party applying to serve notice of the change on the other parties [Rule 9.1(16)(a)]. If the parties have not already obtained a new date at the time the consent order is granted, the registry must ask the JCM to reschedule the simplified trial. In such cases, the registry must

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serve a Notice of Simplified Trial (SCL 836) on the parties specifying the new date, time and place of the simplified trial [Rule 9.1(16)(b)].

Change of Date by Consent - Procedure

Note: These applications may be heard and decided by the JCM, rather than by the registry. The procedures below may be modified as required in such circumstances.

1. If the parties wish to change the date by consent, encourage them to contact the JCM for a new simplified trial date before making the application.

- If they receive a new date, note it in their application / Consent Order.
- Encourage them to write: "Adjourned to [date] or to the next available date".

2. The order to change the date may be granted, even if it does not state a new date.

3. If the date is actually set for the date specified in the consent order, the registry does not need to serve a new *Notice of Simplified Trial*.

4. If the new date set for the simplified trial is not actually the date noted in the application / Consent Order, prepare a new Notice of Simplified Trial in CEIS and serve it on the parties by mail.

5. Data enter into CEIS.

Unange of Date by Application

If consent to change the date of a simplified trial has not been obtained from the other parties, a party can apply to the Registrar using an *Application to Registrar* (SCL 016) under <u>Rule 16(3)</u> [Rule 9.1(13)(b)].

The application to change the date of a simplified trial must be made at least 7 days before the date set for the simplified trial, unless the Registrar otherwise orders [Rule 9.1(13)(b)(i)]. Although Rule 9.1(13)(b)(ii) provides that the Registrar may order the party applying for the change to give the other parties notice of the application, this will likely not be a requirement in practice.

On an application to change the date of a simplified trial, the Registrar may change the date if the Registrar is satisfied that the original date is "unreasonably inconvenient" to the party [Rule 9.1(14)]. The Registrar may determine that a date is "unreasonably inconvenient" to a party if:

- A family emergency renders the party unable to attend the scheduled session [Rule 9.1(15)(a)];
- The party has a pre-arranged out-of-town commitment on the day of the scheduled mediation session, and the commitment cannot be changed due to travel requirements [Rule 9.1(15)(b)];
- The party is required to attend court on the day set for mediation [Rule 9.1(15)(c)]; or
- The Registrar otherwise determines that the date is unreasonably inconvenient to the party [Rule 9.1 (15)(d)].

The Registrar grants an order to change the date of a simplified trial, the party who applied for the change st give to the other parties whatever notice of the change of date the Registrar requires [Rule 9.1(16)(a)]. The Registrar must ask the JCM to promptly reschedule the simplified trial [Rule 9.1(16)(b)]. Once the JCM

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has scheduled a new date, the registry must send out a *Notice of Simplified Trial* (<u>SCL 836</u>) to the parties specifying the new date, time and place for the simplified trial [Rule 9.1(16)(b)]. Accordingly, the new simplified trial date must be set sufficiently far ahead (at least 45 days) so as to give the registry time to serve a new *Notice of Simplified Trial*.

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Application to Registrar - Procedure

Note: All existing provisions of the *Small Claims Manual* apply to these procedures unless specifically exempted by Rule 9.1.

Note: These applications may be heard and decided by the JCM, rather than by the registry. The procedures below may be modified as required in such circumstances.

1. The party submits the application to the registry.

- Check to confirm that the application lists what the applicant is asking for, and their reason for asking.
- Advise the applicant to amend the application to include these items, if necessary.
- 2. Receive the application and data enter into CEIS.
- 3. Refer the application to the JCM to decide whether to grant.

4. If the application is denied, the JCM should notify the registry.

- Data enter denial into CEIS.
- Return the denied application to the applying party.

5. If the application is granted, issue the order.

- Advise the JCM to set a simplified trial date (if necessary).
- Confirm "trial date cancelled" entry into CEIS (likely done by JCM).
- Provide signed copies of the order to the person who applied. Advise them to follow the terms of the order with respect to service on the other parties.
- Prepare and mail new Notice of Simplified Trial.

Filing and Service of the Trial Statement

At least 14 days before the date set for the simplified trial, each party must file with the registry a completed *Trial Statement* (SCL 045) [Rule 9.1(17)].

At least 7 days before the date set for the simplified trial, each party serves a copy of their completed *Trial Statement* on each of the other parties [Rule 9.1(18)].

If a party does not file and/or serve its completed *Trial Statement* in accordance with Rule 9.1(17) and/or ((18), an adjudicator may: Small Claims Manual Chapter 14.3 - Simplified Trials for Claims up to \$5,000 (Robson Square and Rich... Page 7 of 9

- Adjourn the simplified trial and order the party to pay all the reasonable expenses incurred by any
 other parties as a result of the adjournment [Rule 9.1(19)(a)]; or
- Order the simplified trial to proceed without permitting that party to produce as evidence any information, document or records withheld as a result of the non-compliance [Rule 9.1(19)(b)].

Filing and Service of the Trial Statement - Procedure

1. The parties bring their Trial Statements and attached documents to the registry for filing.

- Accept the documents for filing.
- Stamp copies and return to the filing party.
- Data enter into CEIS.

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The Simplified Trial

How the Simplified Trial is Conducted

The format of a simplified trial may vary from that of an ordinary trial. The hearings are meant to be streamlined, and will automatically be scheduled for one hour. Rather than leaving it to the parties to lead evidence in support of their cases, the adjudicator may take an inquisitive approach, and actively question the parties in an attempt to derive the facts relevant to the claim. In most cases, the adjudicator will deliver a cision at the end of the hearing; however, it may be delivered up to 30 days later.

At Robson Square simplified trials will be "night sittings", beginning at 4:30p.m. At Richmond, the simplified trials will be held during daytime court hours.

The rules provide that:

- If, after reviewing the documents filed by the parties, the adjudicator determines that the parties are able to settle, the adjudicator must make a payment order or other appropriate order in the terms agreed to by the parties [Rule 9.1(21)];
- If the adjudicator determines that the parties are not able to settle, the following provisions apply with respect to the simplified trial:
 - The simplified trial may be conducted without following the formal rules of evidence and procedure [Rule 9.1(20)];
 - The parties must swear an oath or affirm the truth of their evidence (oral and documentary) [Rule 9.1(22)(a) and (c)];
 - The parties must state the facts related to the claim and file any additional documents [Rule 9.1 (22)(b)] and must respond to each other [Rule 9.1(22)(d)];
 - The parties may call witnesses [Rule 9.1(22)(e)], including experts (or just the evidence of the expert) [Rule 9.1(22)(f)];
 - The parties' counsel may ask questions of the parties or witnesses [Rule 9.1(22)(g)] and may make submissions [Rule 9.1(22)(i)];
 - o The adjudicator may ask questions of the parties or witnesses [Rule 9.1(22)(h)]; and
 - The adjudicator must review any legislation or case law to which the parties refer [Rule 9.1(22)
 (k)].

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The adjudicator may, at any time, adjourn the simplified trial [Rule 9.1(22)(I)(i)]. The adjudicator may also dismiss a claim, counterclaim or third party notice in whole or in part [Rule 9.1(22)(I)(ii)]. Finally, the adjudicator may also make a *Payment Order* or other appropriate order at the simplified trial [Rule 9.1(22)(I)(ii)].

The adjudicator may extend the simplified trial beyond the time scheduled, provided it would not, in the opinion of the adjudicator, interfere with the next scheduled matter [Rule 9.1(24)(a)]. If necessary, the adjudicator can also adjourn the remainder of the simplified trial [Rule 9.1(24)(b)]. If the simplified trial is adjourned under Rule 9.1(24), the adjudicator may make any order he or she thinks is appropriate with respect to the completion of the trial [Rule 9.1(25)].

The Adjudicator's Decision

The adjudicator must give a decision in court orally at the end of the simplified trial or on a later date within 30 days of its conclusion [Rule 9.1(28)(a)]. Alternatively, the adjudicator may give a decision in writing served on the parties within 30 days after the end of the simplified trial [Rule 9.1(28)(b)].

If the adjudicator indicates that his or her decision is to be given orally on a date following the trial, the registry must notify the parties of the date [Rule 9.1(29)]. The timelines will be very important in these cases, as the registry will require 14 days + 1 mailing day to provide notice to the parties.

If a decision is provided later in writing, the registry will:

- immediately file the adjudicator's written decision by stamping the original (the 40 day appeal period begins on the day after the date the adjudicator's written decision is filed);
- make the appropriate number of copies of the adjudicator's written decision and forward a copy of the filed judgment to the adjudicator; and
- notify the parties by mailing a copy to each party involved.

An adjudicator's written decision is effective on the date it is filed at the registry [Rule 9.1(30)].

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The Adjudicator's Decision - Procedure

1. If the adjudicator decides to provide a decision orally on a date following the trial, advise the JCM to set a date promptly. Once the date is set, prepare notice and serve on the parties by mail.

• Note that the registry will require at least 15 days to serve this notice on the parties.

2. If the adjudicator decides to provide a decision later in writing:

- Enter the Trial Record / Order data into CEIS immediately after the simplified trial.
- Once the adjudicator provides the written decision, immediately file it by stamping the original.
- Data enter the decision into CEIS.
- Make the appropriate number of copies of the adjudicator's written decision.
- Forward a copy of the filed judgment to the adjudicator.
- Forward a copy of the filed judgment to each of the parties by mail.

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3. If the adjudicator provides a decision at the end of the simplified trial:

- Endorse the adjudicator's order on the Trial Record / Order form and provide copies to the parties.
- Enter the Trial Record / Order form data into CEIS.
- 4. Enter payment orders or dismissal orders if appropriate in CEIS (and deactivate parties).

Non-Attendance of a Simplified Trial

If a defendant or a third party does not attend the simplified trial, either personally or by a representative, the adjudicator may allow the claim [Rule 9.1(26)(a)], and may make a payment order or other appropriate order against that defendant or third party [Rule 9.1(26)(b)].

If a claimant does not attend the simplified trial, either personally or by a representative, the adjudicator may dismiss the claim [Rule 9.1(27)].

Non-Attendance of a Simplified Trial - Procedure

- 1. Endorse the judge's order(s) on the Trial Record / Order form and provide copies to the parties.
- 2. Enter the Trial Record / Order form data into CEIS.
- 3. Enter dismissal order(s) into CEIS (if any) and deactivate the party against whom a dismissal is made.

Enter default order(s) and payment order(s) into CEIS (if any).

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14.4 Summary Trials for Financial Debt (Robson Square Only) (Rule 9.2)

Introduction

This section outlines the procedures for summary trials for financial debt ("summary trials"). This rule will apply to claims filed at, or transferred to, the Robson Square registry after November 25, 2007 [Rule 9.2(1) (b)] provided that the claimant is in the business of lending money or extending credit and the claim is for a debt that arises from a loan of money or the extension of credit in the course of that business [Rule 9.2(1) (d)]. Typically, claims involving matters such as unpaid bank loans or credit card debts will fall into this stream. In some cases, it will be difficult to determine whether the claimant satisfies the characteristics of Rule 9.2(1)(d). As it does with any file, the registry will attempt to offer the appropriate procedural advice to potential claimants; but uncertainties relating to the eligibility of a claimant or a claim with respect to this rule should ultimately be left to the court to decide.

The summary trial process differs from the ordinary trial process in many respects. Summary trials will be scheduled for one half-hour (not required by the rules). Subject to some exceptions, there will be no case management or trial preparation hearings in advance of the summary trials. Parties will be required to file (14 days before the summary trial) and to serve (7 days before trial) the documents on which they plan to rely at the summary trial [Rule 9.2(7) and (8), but will not be required to set out a statement of facts in chronological order, or to provide a list of witnesses in advance.

plication of Rule 9.2,

Claims to which Rule 9.2 Applies

A claim will fall into the summary trial stream if:

Location:

- The Notice of Claim was filed after November 25, 2007 at the Robson Square registry [Rule 9.2(1)(b) (i)]; or
- The court file relating to the claim was transferred to the Robson Square registry after November 25, 2007 [Rule 9.2(1)(b)(ii)].

Nature of Claim:

 The claimant is in the business of lending money or extending credit and the claim is for a debt that arises from a loan of money or the extension of credit in the course of that business [Rule 9.2(1)(d)].

If there are uncertainties as to whether the claimant is in the business of lending money or extending credit, or as to whether the claim is for a debt that arises from a loan of money or the extension of credit in the course of that business, and if these uncertainties cannot be resolved by a review of the *Notice of Claim*, registry staff receiving the initiating documents should make a brief attempt to clarify the matter by asking

claimant or their counsel. However, the registry must avoid engaging in an overly technical analysis or in any attempts to apply relevant facts to the law. Such questions should be left to a judge to decide.

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<u>Rule 9.2(1)(a)</u> further provides that a claim will not technically fall into the summary trial stream unless a reply is filed opposing all or part of the claim. In practice, this means that for any claim in which no reply has been filed, the claim will not proceed to a summary trial. Such claims will not, for this reason alone, be moved to a further stage of this stream, or into a different stream altogether; they will remain at this stage until the notice of claim expires, or until a reply opposing all or part of the claim is filed.

In addition, a claim brought against multiple defendants must not be set for a summary trial until the status of each defendant is determined. In such cases, the claimant will be required to provide proof of service and to apply for a *Default Order* against any defendant(s) who has not filed a *Reply* before the claim is set for trial.

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Notice of Claim and Reply - Procedure

Note: All existing provisions of the *Small Claims Manual* apply to these procedures unless specifically exempted by Rule 9.2.

1. The claimant comes to the registry to file the claim.

2. The clerk checks the *Notice of Claim* to determine whether, based on the description provided, it fits into the summary trial stream:

- The claimant is in the business of lending money or extending credit; and
- The claim is for a debt that arises from a loan of money or the extension of credit in the course of the business.
- **Note:** Both of these characteristics must be present for the claim to fit into this stream. If either characteristic is not present, the file will be directed to another stream.
 - If the clerk cannot, based on the *Notice of Claim*, determine whether the claim falls into this stream, the clerk may attempt to clarify the situation with the claimant or with the claimant's counsel.
 - If the clerk indicates that the claim should not fall into this stream, but the claimant continues to insist otherwise, the clerk should accept the claim and file it into this stream and make a notation in "File Detail" comments in CEIS.
- 3. The clerk gives to the claimant the pilot overview fact sheet.
 - If the *Notice of Claim* is filed by mail, send the pilot overview fact sheet with filed copies of *Notice of Claim* returned by mail.
- 4. The clerk data enters into CEIS per best practices, and selects correct stream.
- 5. The Reply is filed.
 - If the defendant appears in person, provide a copy of the pilot overview fact sheet to him or her.
 - If Reply is filed by mail, send the pilot overview fact sheet with copies of the Reply by mail.
- 6. The clerk data enters into CEIS per best practices and selects the correct stream.

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7. Subject to exemptions below, once a *Reply* opposing all or part of the claim is filed, <u>Rule 9.2</u> applies. If there is only one defendant named in the claim, add it to the list for the Judicial Case Manager (JCM) to set `ate and make a notation in "File Detail" comments in CEIS.

8. For multiple-defendant claims, where there is an "outstanding defendant" who has been served but who has not filed a Reply:

- If the claimant inquires, and has served the *Notice of Claim* on the outstanding defendant, advise them to apply for a *Default Order* or to withdraw the claim against the outstanding defendant(s).
- If the claimant applies for a *Default Order* or withdraws the claim against the outstanding defendant(s), the claim can be set for a summary trial.
- If the claimant does not apply for a *Default Order* or withdraw the claim, the claim should not be set for a summary trial.

Тор

Scheduling the Summary Trial Date

If Rule 9.2 applies to a claim, it must be set for a summary trial [Rule 9.2(2)(a)]. Once the registry determines that the claim will indeed fall into this stream, it will notify the JCM to schedule a date. In a multiple-defendant claim where one or more defendant(s) has not replied, wait for the claimant to apply for a *Default Order* or to withdraw the claim against the outstanding defendant(s) before notifying the JCM to schedule a date. Once the JCM advises the registry of the date, the registry must serve a *Notice of mmary Trial for Financial Debt* (SCL 837 - *Notice of Summary Trial*) on each of the parties.

The *Notice of Summary Trial* must be served by the registry at least 30 days before the date set for the summary trial [Rule 9.2(2)(b)].

Scheduling the Summary Trial Date - Procedure

1. As noted in the *Notice of Claim* and *Reply* <u>Procedure</u> section above, when the claim is ready to be set for trial, add it to the list for the JCM to set a date and make a notation in "File Detail" comments in CEIS.

2. Once the JCM advises that the date of the summary trial has been set, prepare the *Notice of Summary Trial* in CEIS.

3. Insert the summary trial fact sheet into the mailing and mail to parties.

Changing the Date of a Summary Trial

Change of Date by Consent

To change the date of a summary trial by consent, a party must file written evidence of their agreement and consent to change of date under <u>Rule 16(1) [Rule 9.2(3)(a)]</u>. Parties should be encouraged to use the *Consent Order* (<u>SCL 021</u>) to record evidence of their consent but are not required to do so by the rules. The

Solution for a consent order (which includes a draft *Consent Order*) can also be recorded on, or attached an *Application to the Registrar* (SCL 016). Parties should also be encouraged to obtain a new date for their summary trial from the JCM which can then be noted in their application.

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If the order is granted, the Registrar may order the party applying to serve notice of the change on the other parties [Rule 9.2(6)(a)]. If the parties have not already obtained a new date at the time the consent order is granted, the registry must ask the JCM to reschedule the summary trial. In such cases, the registry must (serve a *Notice of Summary Trial* (SCL 837) on the parties specifying the new date, time and place of the summary trial [Rule 9.2(6)(b)].

Change of Date by Consent - Procedure

Note: These applications may be heard and decided by the JCM, rather than by the registry. The procedures below may be modified as required in such circumstances.

1. If the parties wish to change the date by consent, encourage them to contact the JCM for a new summary trial date before making the application.

- If they receive a new date, note it in their application / Consent Order.
- Encourage them to write: "Adjourned to [date] or to the next available date".

2. The order to change the date may be granted, even if it does not state a new date.

3. If the date is actually set for the date specified in the consent order, the registry does not need to serve a new *Notice of Summary Trial*.

4. If the new date set for the summary trial is not actually the date noted in the application / Consent Order, prepare a new Notice of Summary Trial in CEIS and serve it on the parties by mail.

5. Data enter into CEIS.

Тор

Change of Date by Application

If consent to change the date of a summary trial has not been obtained from the other parties, a party can apply to the Registrar using an *Application to the Registrar* (SCL 016) under <u>Rule 16(3)</u> [Rule 9.2(13)(b)].

The application to change the date of a summary trial must be made at least 7 days before the date set for the summary trial, unless the Registrar otherwise orders [Rule 9.2(3)(b)(i)]. Although Rule 9.1(13)(b)(i) provides that the Registrar may order the party applying for the change to give the other parties notice of the application, this will likely not be a requirement in practice.

On an application to change the date of a summary trial, the Registrar may change the date if the Registrar is satisfied that the original date is "unreasonably inconvenient" to the party [Rule 9.2(4)]. The Registrar may determine that a date is "unreasonably inconvenient" to a party if:

- A family emergency renders the party unable to attend the scheduled session [Rule 9.2(5)(a)];
- The party has a pre-arranged out-of-town commitment on the day of the scheduled date of the summary trial, and the commitment cannot be changed due to travel requirements [Rule 9.2(5)(b)];
- The party is required to attend court on the day set for summary trial [Rule 9.2(5)(c)]; or
- The Registrar otherwise determines that the date is unreasonably inconvenient to the party [Rule 9.2

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<u>(5)(d)</u>].

he Registrar grants an order to change the date of a summary trial, the party who applied for the change must give the other parties whatever notice of the change of date the Registrar requires [Rule 9.2(6)(a)]. The Registrar must ask the JCM to promptly reschedule the summary trial [Rule 9.2(6)(b)]. Once the JCM has scheduled a new date, the registry must send out a *Notice of Summary Trial* (SCL 837) to the parties specifying the new date, time and place for the summary trial [Rule 9.2(6)(b)].

Application to Registrar - Procedure

- **Note:** All existing provisions of the *Small Claims Manual* apply to these procedures unless specifically exempted by Rule 9.2.
- **Note:** These applications may be heard and decided by the JCM, rather than by the registry. The procedures below may be modified as required in such circumstances.
- 1. The party submits the application to the registry.
 - Check to confirm that the application lists what the applicant is asking for, and their reason for asking.
 - Advise the applicant to amend the application to include these items, if necessary.
- 2. Receive the application and data enter into CEIS.
- 3. Refer the application to the JCM to decide whether to grant.
- 4. If application is denied, the JCM should notify the registry.
 - Data enter denial into CEIS.
 - Return the denied application to the applying party.

5. If application is granted, issue the order.

- Advise the JCM to set a summary trial date (if necessary).
- Confirm "trial date cancelled" entry into CEIS (likely done by JCM).
- Provide signed copies of the order to the person who applied. Advise them to follow terms of the order with respect to service on the other parties.
- Prepare and mail new Notice of Summary Trial.

Top

Filing and Service of Documents in Advance of Summary Trial

At least 14 days before the date set for the summary trial, each party must file with the registry any contracts, statements of account, proofs of payment or other documents upon which the party will rely on at the summary trial [Rule 9.2(7)].

At least 7 days before the date set for the summary trial, each party serves copies of the documents they

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filed under Rule 9.2 (7) on each of the other parties [Rule 9.2(8)].

Filing and Service of Documents in Advance of Summary Trial - Procedure

1. The parties bring their documents to the registry for filing.

- Accept the documents for filing.
- Stamp copies and return to the filing party.
- Data enter into CEIS.

The Summary Trial

How the Summary Trial is Conducted

Summary trials are meant to be streamlined, and will automatically be scheduled for one half-hour.

The rules provide that:

- The summary trial may be conducted without following the formal rules of evidence and procedure [Rule 9.2(9)];
- The judge may ask the parties to explain their cases, to respond to each other and to call witnesses [Rule 9.2(9)(a)] or may receive evidence in any other way the judge thinks is appropriate [Rule 9.2(9) (b)]; and
- All evidence must be given under oath or affirmation [Rule 9.2(10)].

Summary Trial Outcomes

At the end of a summary trial, the judge must make a payment order [Rule 9.2(13)(a)] or dismiss the claim, counterclaim or third party notice [Rule 9.2(13)(b)]. Alternatively, if the judge thinks that the claim cannot be decided at a summary trial, he or she can cancel the trial [Rule 9.2(13)(c)(i)] and order that the claim be set for:

- Mediation under Rule 7.4 [Rule 9.2(13)(c)(ii)(A)];
- A trial conference under Rule 7.5 [Rule 9.2(13)(c)(ii)(B)]; or
- A trial under rule 9.1 or 10 [Rule 9.2(13)(c)(ii)(C)].

If a judge makes an order under <u>Rule 9.2(13)(c)</u>, the judge may make any other order for the just, speedy and inexpensive resolution of the claim [Rule 9.2(14)].

Тор

Summary Trial Outcomes - Procedure

1. If the judge cancels the trial and orders that it be set for mediation, a trial conference or a simplified trial:

- o Notify the JCM to set a date for the appropriate hearing.
- Endorse the judge's order(s) on the Trial Record / Order and provide copies to the parties.
- o Enter the Trial Record / Order data into CEIS.

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- Once the JCM sets a date for the appropriate hearing, follow the notification process for the appropriate stream.
- 2. If the judge provides a decision at the end of the summary trial:
 - Endorse the judge's order on the *Trial Record / Order* and provide copies to the parties.
 - Enter the Trial Record / Order data into CEIS.
- 3. Enter payment orders or dismissal orders if appropriate in CEIS (and deactivate parties).

Non-Attendance of a Summary Trial

If a defendant or a third party does not attend the summary trial, either personally or by a representative, the judge may allow the claim [Rule 9.2(11)(a)], and may make a payment order or other appropriate order against that defendant or third party [Rule 9.1(11)(b)].

If a claimant does not attend the summary trial, either personally or by a representative, the judge may dismiss the claim [Rule 9.2(12)].

Non-Attendance of a Summary Trial - Procedure

1. Endorse the judge's order(s) on the Trial Record / Order form and provide copies to the parties.

- 2. Enter the Trial Record / Order form data into CEIS.
- . Enter dismissal order(s) into CEIS (if any) and deactivate the party against whom a dismissal is made.
- 4. Enter default order(s) and payment order(s) into CEIS (if any).

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March 2008

Previous Section: Summary Trails for Financial Debt (Robson Square Only)

15.1 Fax Filing

Background

Fax filing is only permitted at designated registries of the court: Chilliwack, Cranbrook, Dawson Creek, Kamloops, Kelowna, Nelson, Penticton, Prince George, Rossland, Salmon Arm, Smithers, Terrace, Vernon and Williams Lake.

The documents not accepted by fax are set out in [Rule 17.1].

Policy

Staff should ensure incoming faxes are processed regularly. Processing of faxed documents should be done at least daily so where possible a document will be processed on the day it is received. Submissions should be reviewed and prioritized. The registry cannot guarantee a document will be filed on the day it is received. It is the responsibility of the filing party to indicate if there is a time limit on the document. A requirement for "Rush" or "Urgent" should be indicated on the Fax Cover Sheet. A faxed document that meets the document filing standards must be accepted for filing.

If the Fax Cover Sheet shows an incorrect amount for the fees that results in a lesser amount it will be wed as an error and the Rejection Letter will be returned as we do not have the filing parties' permission to take the correct amount from their credit card or BC OnLine account. If the amount shown is higher than required the payment can be taken. The amounts shown on the Fax Cover Sheet should be viewed as the authorized amount to be taken.

Credit card information should not be received over email/telephone and should be destroyed immediately upon receipt. Also delete any emails containing credit card info from Deleted Items folder. If you must forward, reply, save or print the email for any reason, delete the credit card information from the email first.

Do not retain or collect the CAV2, CVC2, CVV2, CID codes from the back of credit cards.

Business Process

Preparation

• • Staff should regularly check the dedicated fax machine to ensure it is adequately stocked with paper and toner.

Processing Fax Filed Documents

- Check incoming faxes visually as they are taken off the fax to ensure:
- Acceptable transmission
- Fax Cover Sheet is fully completed including a Credit Card or BC Online number
- The appropriate number of documents and pages are there as set out on the Fax Cover Sheet
- Organize faxed pages into individual documents and prioritize. Retain the Fax Cover Sheet with the

documents. Fax filed documents that cannot be processed right away should be locked in a secure location.

- If the fax transmission appears to be illegible or have some problem with it, use the <u>Rejection Letter</u> notify the sender if there is sufficient information on the Fax Cover Sheet to do so. If this cannot be done, take no further action. Hold faulty transmissions by date. Forward to the accounting section for filing.
- Make sure that fax filers are using redesigned fax cover sheets. If not, using the rejection letter, request that they re-submit their fax filing cover sheet on the redesigned form and shred the old form.
- Review documents for filing according to current document filing standards.
- Process documents according to normal procedure.
- Forward the checked or filed document(s) or Rejection Letter(s) with the accompanying Fax Cover Sheets to the accounting section to obtain payment.
- After payment has been processed, return the first page of the document filed (showing the file number, registry stamp and cash register imprint) or Rejection Letter to the sender showing the amount taken for the transaction, any page altered by registry staff and a new fax cover page if desired.
- Some clients may have chosen to have their documents returned by mail to the address given.
- Retain the fax submitted documents as original and file. The accounting section will file the Fax Cover Sheet with an attached POS receipt.

Resources

- Financial Operations Manual
- Managers' Reference Manual

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July 2011



Date:	
To:	
Re:	Fax Filing Rejection Letter (Documents transmitted to the Court Registry by fax)
	e documents transmitted to the registry as shown on your fax cover sheet which is attached, cannot be cessed for the following reason(s):
	A document is exempt from the Fax Filing Project:
	We were unable to process your payment based on the payment arrangements indicated on the Fax Cover Sheet. Since payment of the registry service fee is part of the acceptance requirement, please make appropriate credit arrangements before resubmitting the documents.
	A document is either not legible on incomplete.
	A document cannot be accepted for filing for the reasons indicated on the attached rejection form.
	Other
is re cas cate	ar documents have not been held and must be completely resubmitted with the applicable fee, if a fee equired. Alternatively you may wish to resubmit them by mail or in person. If so, payment can be made by h, certified cheque, bank draft or money order payable to "Minister of Finance" at the Court location indi- ed below. Please do not submit cash by mail.
YOL	ırs truly,
Autho	rizing Signature
	Registry Address
Court	Location
	urt Services Branch istry of Justice

Previous Section: Fax Filing

Chapter 16 Local Government Act (LGA) Applications Pertaining to an Election

16.1 Background

The Local Government Act (LGA) states that an application for a judicial recount or an application to challenge the nomination of an election candidate is to be filed in Provincial Court.

16.2 Judicial Recounts

16.2.1 Enabling Legislation

<u>Section 138 – 142</u> of the Local Government Act (LGA) and <u>sections 110 – 114</u> of the Vancouver Charter (which is applicable only to the City of Vancouver) allow a local government election to be recounted by the BC provincial court.

16.2.2 Registry Procudures

16.2.2a The Hearing

- A time and date for a hearing must be set at the time of filing.
- The registry must issue a written notice of hearing, so that the applicant can meet the legal requirement of informing affected parties of hearing date within 24 hours of filing the application.
- The registry staff should advise the JCM that:
 - Sufficient time must be scheduled to allow the court to complete the recount prior to the statutory deadline (section 138(7) of the LGA).
 - o Recounts typically take two three days to complete.
 - The recount is to be completed and an order issued by the end of 13 days after the close of general voting (section 139(1) of the LGA).

16.2.2b Filing the Application

- This Application form (<u>ADM865</u>) is to be used to make the application for judicial recount. This form is an initiating document.
- The applicant's own version of an application form is also acceptable, since the form is not prescribed.
- The application for judicial recount is to be filed regardless of content.
- It is also acceptable if other non-prescribed forms are used by the applicant, such as a petition, which is also an originating document in CEIS.
- Fill out the date and time on the Application form (as provided by the JCM), file the form, and provide the applicant with a copy.

16.2.2c Application Timelines

 Accept the application regardless of whether it is being filed by the statutory deadline, which is described in the FAQ.

16.2.2d Filing Fees

• The Small Claims fee schedule is silent on charging a fee for this type of application. Until further notice, do not charge a fee for filing an application for a judicial recount.

16.2.2e Service Requirements

• The applicant must notify affected persons by immediately notifying the Chief Election Officer and affected candidates of the application and deliver to those affected persons copies of the initiating document(s), the accompanying affidavit, and a notice of time for the recount, within 24 hours of filing the judicial recount application.

16.2.2f CEIS Entry

At receipt of this document the CEIS data entry practice will be:

Initiate file

- 1. Initiate new Provincial, Small Claims File.
- 2. Add File Details Comment: "Commenced pursuant to the *Local Government Act*. This is not a Small Claims file."
- 3. Party role types: Applicant/Respondent.
- 4. Initiating Document code: ATC Application to Court (Local Government Act)

Schedule Appearance

5. Set appearance against the Application to Court using appearance reason APP.

16.2.2g Folder

• On the physical folder containing a paper copy of the file, strike out "Small Claims" and write in Provincial Court General File.

16.2.2h Administrative Steps

- Registry staff accepting applications for a judicial recount must immediately inform their Court Manager that they have received such an application.
- The Court Manager is to immediately inform the Administrative Judge.
- Registry staff should scan the application and immediately email it to the <u>ADM's office</u> and copy it to the Regional Executive Director. The contact person for the ADM's office may be found <u>here</u>.
- HQ will forward the application to the Office of Chief Judge

The Court Manager should be aware that:

- The LGA is silent on where a recount may take place.
- The initial hearing takes place in a courtroom to determine if, where, and how a recount

is to occur.

- There is a precedent for a judicial recount to occur in municipal council chambers as described in paragraph 1 of Dhaliwal v. Comis and Spitz (Number 2), 2005 BCPC 590 (CanLII), a decision of Judge Rae who attended the recount on her own without audio recording equipment.
- Audio recording equipment may be used in Provincial Court, as per Section 2(3) of the Sound Recording Regulations B.C. Reg. 288/2005.
- Sufficient time must be scheduled to allow the court time to complete the recount prior to the statutory deadline, as per section 138(7) of the LGA.
- Recounts typically take two three days to complete.
- The recount must be completed and an order issued by the end of the 13th day after the close of general voting, as per section 139(1) of the LGA.

16.2.2i Filing Supplemental Documents

 The parties may file arguments, submissions, books of authorities, and other related documents. File these documents as per normal procedures.

See the FAQs for more information.

16.3 Challenging Nominations

16.3.1 Enabling Legislation

Section 73.2 of the Local Government Act (the "LGA") governs the challenge of a nomination of a local government candidate in Provincial Court.

16.3.2 Registry Procedures

16.3.2a The Hearing

- Within 72 hours of the end of the period for commencing a challenge (which is 4 pm on the fourth day after the close of the nomination period), the court must hear and determine the matter and issue an order, as per section 73.2(2).
- Please make the JCM aware that the time set for the hearing must be adequate to allow the court sufficient time to give its decision on the matter by the statutory deadline, as set out in section 73.2(9) of the LGA.
- The deadline for the court to issue an order will fall on a Friday at 4:00 pm, unless the last day of the nomination period is on a holiday. If the last day of the nomination period is on a holiday, then the deadline for the court to issue an order will fall on a Thursday at 4:00 pm.
- The hearing date must be set immediately, as the applicant has a statutory obligation to serve the application, the affidavit, and a hearing notice on the Chief Election Officer and on the person whose nomination is being challenged within 24 hours of the application being filed.

16.3.2b Filing the Application

- Section 73.2 of the LGA governs an application to challenge to a nomination.
- A challenge application can be made using the Application form (ADM 865), which is an

originating document. This form can be used both for Applications to Challenge Nominations and for Applications for Judicial Recounts (refer to <u>section 16.2</u> in the manual for procedures).

- The applicant's own version of an application form is also acceptable, and since the form is not prescribed an application for Challenge of a Nomination is to be filed regardless of what form is used.
- It is also acceptable if other non-prescribed forms are used by the applicant, such as a
 petition, which is also an originating document in CEIS. An Affidavit must also be filed
 and served within 24 hours. There is no prescribed form for the Affidavit. If an Affidavit is
 not filed with the Application, inform the filer that they must have one filed and served
 within 24 hours.
- Fill out the date and time on the Application form (as provided by the JCM), file the form, and provide the applicant with a copy.

16.3.2c Application Timelines

- Accept the application even if it appears that the applicant is out of time.
- The time period during which a challenge may be made is between the time of the delivery of the nomination documents (in accordance with section 73.2(2) of the *LGA*) and 4:00 p.m. on the fourth day after the end of the nomination period. This information should be found in either the application or the affidavit.
- The fourth day after the end of the nomination period will always be a Tuesday, unless the last day of the nomination period is a holiday. If the last day of the nomination period is a holiday, then the nomination period will be shortened by a day, as per section 69(3) of the *LGA*, and the fourth day after the nomination period will fall on a Monday.

16.3.2d Filing Fees

• The Small Claims fee schedule is silent on charging a fee for this type of application. Until further notice, do not charge a fee for filing an application for a challenge to a nomination.

16.3.2e Service Requirements

• The applicant must notify affected persons by **immediately** notifying the Chief Election Officer and affected candidates of the application **and** deliver to those affected persons copies of the initiating document(s), the accompanying affidavit, and a notice of time for the recount within 24 hours of filing the judicial recount application.

16.3.2f CEIS Entry

At receipt of this document the CEIS data entry practice will be:

Initiate file

- Initiate new Provincial, Small Claims File.
- Add File Details Comment: "Commenced pursuant to the *Local Government Act*. This is not a Small Claims file."
- Party role types: Applicant/Respondent.
- Initiating Document code: ATC Application to Court (Local Government Act).

Schedule Appearance

• Set appearance against Application to Court using reason APP.

16.3.2g Folder

• On the physical folder containing a paper copy of the file, strike out "Small Claims" and write in Provincial Court General File.

16.3.2h Administrative Steps

- Registry staff accepting applications for a nomination challenge must immediately inform their Court Manager that they have received such an application.
- The Court Manager is to immediately inform the Administrative Judge.
- Registry staff should scan the application and immediately email it to the ADM's office and copy it to the Regional Executive Director.
- HQ will immediately inform the Office of Chief Judge.

16.3.2i Filing Supplemental Documents

• The parties may file arguments, submissions, books of authorities, and other related documents. These documents can be date stamped and originals retained in the court file.

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November 2014

Small Claims Manual - Chapter 16

Local Government Act Applications Pertaining to an Election FAQs

Why is an application for a judicial recount held in Small Claims Court? The Small Claims court is the civil registry of the provincial court and is the most suitable venue to hear this type of application, even though the *Small Claims Rules* do not apply to this type of application.

When may a person file a judicial recount application? Applications for judicial recount may be filed only after the declaration of official election results and up to 9 days after the close of general voting. The ninth day will always be a Monday. Official election results can be declared from the day of the general election until 4pm on the fourth day after the general election, as per section 136(1) of the *LGA*. That official election results have been declared should be found in either the application or the affidavit.

Are Small Claims forms acceptable for making a judicial recount application? No, since the *Rules* don't apply, Small Claims Forms can't be used. Prescribed Forms under the Small Claims Rules are to be rejected, including Notice of Claim, Application to a Registrar, and an Application to a Judge.

What form is to be used for a judicial recount application? Since section 138 of the *LGA* is silent on what form to use to make an application for judicial recount, the Ministry of Attorney General has published a non-prescribed form to make this type of Application (ADM865). A provincial court judge possesses sufficient inherent jurisdiction to ensure a fair process including the acceptance of non-prescribed forms.

What is the style of cause? The style of cause is applicant and respondent. There will likely be two respondents. If the Chief Election Officer is the applicant, then the two respondents will be the two candidates that are separated by a narrow margin of victory. If the applicant is a candidate, than one of the two respondents will be the Chief Election Officer.

Does the application require specific content? The application should comply with section 138 of the *LGA*, but it is not up to the registry to determine compliance. Guidance to the applicant can include the following:

- An application may only be made on one or more of the following bases, as per section 138(2) of the LGA:
 - that votes were not correctly accepted or ballots were not correctly rejected as required by the rules of section 129 of the LGA;

- that a ballot account does not accurately record the number of valid votes for a candidate;
- that the final determination under section 135 of the LGA did not correctly calculate the total number of valid votes for a candidate.
- The application is only to be made by an elector of the jurisdiction for which the election was held, an election candidate or their representative, or the Chief Election Officer, as per section 138(4) of the *LGA*.
- The document commencing an application must set out briefly the facts on which the application is based and must be supported by affidavit as to those facts, as per section 138(6) of the *LGA*.

Does an affidavit need to be filed with the application? An affidavit is required by section 138(6) of the *LGA* and must be filed at some point before the matter is heard, but it need not be filed with the application. The application and the affidavit are to be entered into CEIS as separate documents.

Does the applicant have to file proof of service? No, the applicant is not required to file any proof of service.

Who is an affected person? Section 138(8)(a) of the *LGA* refers to affected persons as including the Chief Election Officer and affected candidates. Affected candidates will be the candidates whose vote tallies are being disputed in the application.

What if the 24 hour period to serve the documents on affected persons falls on a weekend? If the 24 hour period falls on a day that the registry is not open, then the applicant can argue that the time period is extended to the next day that businesses are open, as per section 25(3) of the *Interpretation Act*.

Can I use the application form (*Local Government Act***) in a Small Claims action?** No. There are existing prescribed forms in Small Claims Court to makes applications to either a judge (Form 17) or a registrar (Form 16).

How do I find out the date of the next local government election (and other related dates)? Please see the <u>Ministry of Community</u>, Sport and Cultural Development local government elections calendar for more information.

Previous Section: Overview of Small Claims Court

7 [•] Making a Claim

Introduction

This section outlines the procedure for processing a Notice of Claim.

Legal Commentary

Starting a Claim

The Small Claims Court process begins when a person comes into the registry to file a claim. The claimant (person with the claim) should complete the *Notice of Claim* Form 1 (SCL 001) following the instructions on the form [Rule 1(1)]. The claimant should be advised to refer to the information brochure called <u>Making a Claim</u> for information about the procedures.

If the person decides to prepare the form and mail it back to the registry, the clerk should advise the person to be aware of the time limits for filing the claim and the fees that must be paid at the time of filing.

If a notice of claim is received in the mail without the appropriate filing fee, the registry will return the form along with a letter (<u>SCL 812</u>) advising the person the fees must be paid in full before the claim can be filed.

Determining Jurisdiction

V. .en a person comes into the registry to file a claim, it is important that the registry determine the nature and amount of the claim, where and when the claim arose and if the person is suing the correct party.

These questions ensure that:

- the Small Claims Court has jurisdiction
- the person is initiating the action in the correct court

If it is questionable whether the claim is within the jurisdiction of the Small Claims Court, the clerk should advise the claimant to seek legal advice before filing the notice of claim. If the claimant wishes, the clerk should file the claim and let the judge decide.

Monetary Jurisdiction (Section 3(1) Small Claims Act)

Claims fall within the monetary jurisdiction of the court if they do not exceed \$25,000 (not including interest and expenses). The claimant should prepare the notice of claim with the interest identified separately so that the registry staff can determine if the claim falls within the jurisdiction of the Small Claims Court.

If the actual claim is greater than the limit, the claimant can lower the claim to bring it within Small Claims jurisdiction. The claimant must state on the notice that the amount over \$25,000 is abandoned. [Rules 1(4), 1(5), 1(6)]

i aimant who abandons part of a claim may not later sue for that part, unless the claim is withdrawn under $\frac{\text{Rule 4}(9)}{\text{Rule 1}(7)}$ and filed in the Supreme Court or the claim was transferred to the Supreme Court under $\frac{\text{Rule 7.1}}{\text{Rule 1}(7)}$.

A claimant may not split an action to avoid the \$25,000 limit.

Example: if the claim is for \$26,000, the claimant cannot break it into two \$13,000 claims instead of abandoning the \$1,000 excess.

The claimant may sometimes issue more than one notice of claim, providing the second one does not include anything that could have been claimed on the first.

Example: a promissory note for \$25,200 is to be repaid with \$12,600 on April 1 and \$12,600 on October 1. The claimant can:

• issue one notice for \$12,600 between April 1 and September 30, and a second notice after October 1.

or

• wait and issue only one notice after October 1 for \$25,000, and abandon the excess \$200.

The claimant may not issue two notices after October 1, one for the \$12,600 due April 1 and one for the \$12,600 due October 1. This would be splitting the action.

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Currency

All Small Claims actions and subsequent proceedings, shall be stated in Canadian Currency, pursuant to Section 12 of the *Currency Act* R.S.C.

Statutory Jurisdiction

There are some types of claims which the Small Claims Court does not have jurisdiction to hear and which must be initiated in a higher court.

Examples:

- actions for libel or slander or actions for malicious prosecution (Section 3(2) Small Claims Act)
- actions involving certain claims with respect to land (ss. 3, 13 and 35 Property Law Act or ss. 37, 42, 71 and 73 of the Condominium Act). Various remedies are available to strata owners under the Condominium Act. The legislation has provided specific remedies that are available only in the Supreme Court (subject to limited exceptions). Although the claim is for damages or debt of \$25,000 or less a party cannot bring the action in Provincial Court.
- actions involving claims for breaches of conditional sales contracts. The Supreme Court has decided that
 the Provincial Court does not have jurisdiction to grant relief under the Personal Property Security Act for
 recovery of personal property. However, the Provincial Court may make an order regarding the detention,
 custody or preservation of property [Rule 17(18)(d) and Supreme Court Rule 10-1].
- actions involving certain claims with respect to estates ss. 56, 110, 112 Estate Administration Act, s.2 Wills Variation Act).
- The Supreme Court has exclusive jurisdiction regarding a builders lien. However, the Provincial Court has jurisdiction to deal with a claim based on the trust provisions of the *Builders Lien Act*.
- Most residential tenancy claims (Residential Tenancy Act).

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Most of these claims are dealt with by arbitration by the Residential Tenancy Office. The arbitrator makes an order and the order can be filed in Small Claims for enforcement (see <u>Chapter 2.2 Filing an Order</u>). There are some exceptions outlined in the *Residential Tenancy Act* which are not dealt with by their office. These include disputes over recreational property and others. These cases can be filed in Small Claims Court. If the claimant is usure where to file their case, they should ask the Residential Tenancy Office or seek legal advice.

 actions naming the Government of Canada as a defendant. These actions are barred by the Crown Liability and Proceedings Act and must be initiated in Supreme or Federal Court.

The Small Claims Court **does** have jurisdiction to hear a claim against the Province of British Columbia, **unless** it is:

- a. a matter for which notice under section 8 of the Constitutional Question Act is required; or
- b. a matter involving the Canadian Charter of Rights and Freedoms

(section 5 of the Crown Proceeding Act).

The clerk should advise litigants to seek legal advice if they have questions regarding jurisdiction.

Place of Filing (Rule 1(2))

A claim must be filed at the small claims registry nearest to where:

- the defendant lives or carries on business, or
- the transaction or event that resulted in the claim took place

If a claim could be filed in two different registries, the claimant decides where it will be held. If unsure where to me the claim, the claimant should seek legal advice.

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Limitation Period

There are time limitations on most types of legal actions. This means that there is a definite time period in which legal action should be taken. If the action is started after this time period, the claim may not succeed. Part 2 of the *Limitation Act* sets out the basic limitation period (two years in most cases) and Part 3 sets out the ultimate limitation period (15 years in most cases) and when the claimant comes in to start an action, the clerk may point out that the limitation period may be expired and should advise the party to seek legal advice. However, the suspected expiration of a Limitation period should not form the basis for the registry to reject the claim. That will be up to the judge to determine.

Claimants should also be aware that a new *Limitation Act* came into force June 1, 2013. Depending on when their claim occurred, it may fall under the new transition rules. If parties are unsure of whether or not their claim falls within the limitation period, they should seek legal advice. For more information about transitional rules, parties can be referred to resources found <u>here</u> on the Ministry website.

Examples of limitations:

- as of June 1, 2013, in most cases for damage claims for injury to person or property, including economic loss, the action should begin within two years of the discovery of the claim.
- actions for unpaid debts should begin within two years of the discovery of the claim.

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Example: if a defendant admits in writing that a debt is owing, or makes a payment, the limitation period is extended for another two years.

If it is questionable whether the claim is within the limitation period, the clerk may advise the claimant to seek legal advice before filing the notice of claim keeping in mind that the limitation period may run out. If the claimant wishes, the clerk should file the claim and let the judge decide.

Other Legislation May Govern Time Limits or Add Additional Requirements

In addition to the Limitation Act other statutes may govern when or how actions may be initiated.

Example: The *Municipal Act* has its own limitation clause requiring that actions against a municipality be commenced within six months after the cause of action has arisen. Damage caused by a municipality requires notice in writing with specified information to be sent to the clerk of municipality within two months of the damage being sustained.

The clerk should advise litigants to seek legal advice if they have questions regarding jurisdiction.

Proper Names of Parties

It is important to name all parties properly since any judgment obtained may be unenforceable if it is not against the legal name.

Example: If a judgment is obtained against "Smith Meat Packers Ltd.," but the legal name of the company is actually "Smith Meat Packers (1987) Ltd.," a bank may legitimately refuse to honour a garnishing order.

Individuals

When individuals are named on the Notice of Claim, their full names are shown; initials alone are not sufficient. Titles such as Mr., Mrs., Dr., etc. should not be used.

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Infants

See Appendix A

Limited Companies

To sue an incorporated or limited company, the claimant must obtain a full company search which must be submitted with the notice of claim for filing [Rule 1(2.1)].

How can searches be conducted?

- At Service BC Centres (payment by cheque or cash).
- In Vancouver, at Small Business BC.
- By mailing a request directly to the Corporate Registry (payment by cheque or money order made payable to the Minister of Finance).

Corporate Registry PO Box 9431 Stn Prov Gov't Victoria, British Columbia V8W 9V3

- Through a title search company (check the yellow pages in your local telephone book under Title Search Services).
- Holders of a BC OnLine account can request a search at any of the above locations or conduct a search online through BC OnLine.

A fee is charged for the search and there may be a service charge.

(**Note**: a fax of the printout of the company search may be filed with the notice of claim)

If individuals have questions about these services they can be referred to <u>BC Registry Services website</u> or to their phone number (250) 387-5101.

A full company search supplies the following information:

- the correct legal name of the company
 - address of the registered office and records office (usually the same, and usually where the notice of claim is served)
 - names and addresses of the directors and officers

The registered office is usually not the same address as the business premises. If the company is served by registered mail, it is the address of the registered office that must be used.

If the company is incorporated, only the company is named on the notice of claim, unless there are special circumstances which make the principal of the company personally liable.

Example: the principal guaranteed a company debt, or was the driver of a company car involved in an accident.

Businesses Which are NOT Limited

If the business is not incorporated, there is no listing with the Registrar of Companies. The claimant should contact the local business licence office at City Hall for the correct name of the business and proprietor. Although the proprietor is the only legal defendant, both the proprietor and the business are named as d ndants to signal that the assets and income of both the proprietor and the business can be looked at for payment of any judgment.

Example: Proprietor: Joe Bloe

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Business: Bloe's Fish Market

The defendants are named as follows: JOE BLOE carrying on business (c.o.b.a.) as BLOE'S FISH MARKET and BLOE'S FISH MARKET.

For a Partnership

The notice of claim should name both the partners and the partnership.

Example: "Joe Bloe and John Bloe, carrying on business as Bloe's Fish Market, and Bloe's Fish Market."

Societies

To sue a society incorporated under the *Society Act*, the claimant must file with the notice of claim a printout of a search showing the most recent address of the society on file with the Registrar of Companies [Rule 1(2.2)]. The printout may be obtained from the same places as noted above for companies.

Province of British Columbia

To sue the Province of British Columbia, the claimant must name as a defendant:

"Her Majesty the Queen in Right of the Province of British Columbia".

This is the legal name of the Province of British Columbia.

Naming More than One Defendant

A claimant may name more than one defendant in a notice of claim only if the claim against each defendant is related to the original claim [Rule 1(3)].

If uncertain who to sue, the clerk should advise the claimant to seek legal advice. The clerk must **never** offer a legal opinion.

Example: A claimant wants to recover money paid for a used car. The claimant wants to sue the limited company that owns the lot, a director of the company, the manager of the lot, and the salesman. Since all three individuals would be personally liable only in unusual circumstances, the clerk might advise the claimant to seek legal advice on who to sue. However, the clerk should not advise the claimant to sue only the limited company.

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Interest

If the claimant wishes interest which is not stated in a yearly rate, they may apply to the court for an order (section 4 *Canada Interest Act.*) If there is an agreement between the parties on the amount of interest payable, the claimant must request this rate of interest in the notice of claim. Otherwise, interest will be awarded at the rate set by the *Court Order Interest Act.* (See <u>Chapter 8</u>)

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When an amount is being claimed as interest, it should be shown separately on the notice of claim, because interest is not included in the claim total for the purpose of assessing the filing fee, as well as determining if the claim is within the jurisdiction of the Provincial Court.

E enses on the Notice of Claim

The registrar determines the amount of expenses to be charged for filing and service fees. However, after a payment order is granted at the settlement conference or trial, the judge can either set the amount of expenses charged for filing and service fees or refer the matter to the registrar.

Debt/Other Than Debt

The clerk checks the facts as they are presented to determine whether the claim is for debt.

If the claim is for a specified amount in dollars or security with a specific value that can be verified, and any interest claimed is defined in an annual percentage rate, the claim is for **debt**.

If the claim refers to goods, services or property that cannot be assigned a specific dollar value, the claim is for **other than debt.**

Making a Claim under the Parental Responsibility Act

The *Parental Responsibility Act* (PRA) provides a mechanism for a person who suffers property damage or loss to hold accountable the parent of a child who intentionally caused damage to or loss of the property. A person who suffers this type of loss may commence a civil action under the *Small Claims Act* [PRA s. 4].

T claimant can use in Small Claims Court a copy of the order of disposition issued under the Young Orrenders Act (Canada) as evidence that the child was found guilty of the offence [PRA s. 10].

For any file opened where the notice of claim alleging that the child has been convicted in Youth Court, registry staff must use the ban of disclosure stamp on the court file folder.

For any file where an order of disposition under the Young Offenders Act (Canada) is filed, the registry staff must use the ban of disclosure stamp on the court file folder.

When a ban of disclosure is in effect, the court file must not be disclosed to any person except to the following:

- a. The court, authorized court employees and authorized persons who provides services to the court
- b. The claimant and the claimants lawyer or agent
- c. The child, his or her parents and their lawyers or agents
- d. A peace officer who requires the information for the purpose of conducting an investigation
- e. A Crown counsel who requires the information for the purpose of prosecuting an offence [PRA s. 12]

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2 ¹ Making a Claim

Process

1. Claimant comes to registry to file claim. Background

The Small Claims Court process begins when the claimant comes into the registry to file a claim.

The claimant should complete the notice of claim following the instructions on the form, but the clerk may assist by:

- providing the copy of the notice of claim form and the booklet
- explaining process
- ensuring that documents are drawn up correctly

Particulars of the claim must appear on the front of the notice. The claimant should provide enough information to let the defendant know what the claim is about.

2. Clerk checks the form. Procedure

The clerk checks that the notice of claim is complete. The clerk should also ensure that:

- the Small Claims Court has jurisdiction
 - o territorial jurisdiction
 - o monetary jurisdiction (\$25,000 or under). If the claim exceeds \$25,000, the claimant must state on the form that the excess amount is abandoned.
 - statutory jurisdiction (not libel, slander or malicious prosecution)
 - the details of the claim are explained clearly
 - o the claim is under the Parental Responsibility Act
- debt/other than debt

The clerk checks the facts to determine whether the claim is for debt or other than debt, and checks the correct box on the form.

interest

The clerk checks whether an annual rate of interest was included or should be included in the claim.

an incorporated company or a society

The clerk checks whether the company printout is provided.

personal injury

The clerk gives these claimants a certificate of readiness form (Form 7).

claims against the Province of British Columbia

The clerk:

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- checks that the defendant is named as "Her Majesty the Queen in the Right of the Province of British Columbia";
- gives the claimant a hand-out (<u>PN 811</u>) describing how to serve a document on the government of British Columbia.

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3. Is Notice of Claim accepted or rejected? Consideration

Note: The registrar can reject a notice of claim if:

- it is not in the correct form
- it is not completed properly [Rule 21]

If claim is accepted, go to step 4.

If claim is rejected, go to step 1 to resubmit the claim.

4. Clerk completes fee section of form. Procedure

The clerk:

- enters the filing fee from the Fee Schedule and the service fee set by the registrar.
- totals the fees.

Note: A person who cannot afford the fee can apply for an exemption [Rule 20(1)]. (See <u>Chapter 7</u>)

5. Clerk processes form and refers claimant to accounting clerk for collection of filing fee. Procedure

The clerk processes the notice of claim and directs the claimant to the accounting clerk for collection of the filing fee. The claimant can pay the filing fee by cheque, cash or money order.

The clerk should:

- stamp the notice with the registry stamp.
- refer the claimant to the accounting clerk for the collection of the filing fee.
- keep the original notice for the court file.
- arrange for the facts of claim, file number, names and date of filing, amount of claim etc. to be entered into the computer system, and for the file to be indexed.

6. Clerk gives forms to claimant. Procedure

The claimant is responsible for serving each defendant and for providing any additional information needed to complete the filing process. The clerk:

- gives the claimant copies of the notice of claim and a blank Reply form (SCL 002) for each defendant.
- gives a blank Certificate of Readiness form (SCL 007) to any claimant whose case relates to personal injury and explains that this form must be filed at the registry within 6 months after serving the notice of claim along with copies of all medical reports and records of expenses or losses incurred or expected [Rule 7(9)].

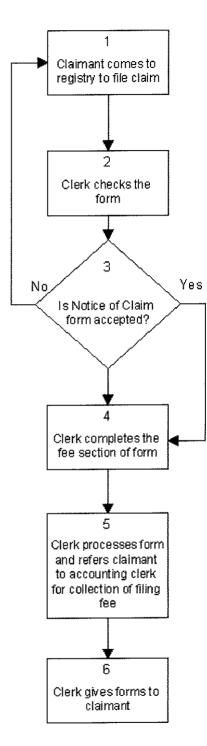
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- gives the claimant the service copy of the notice of claim and explains the need to complete a separate certificate of service (Form 4) for each defendant. Explains that this form shows various entities that may require special methods of service [Rule 18(1-6.1)].
- <u>E</u> flowchart

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2.1 Making a Claim



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2 [•] Filing an Order

Introduction

This section outlines the procedure for processing an order of another court being filed in Small Claims Court for enforcement or other process.

The Small Claims Court process begins when a person comes into the registry to file an order, certificate or a judgment issued by another court or under some authority. These can include the following matters:

- transfers from the Supreme Court to the Provincial Court
- transfers from other small claims registries
- restitution orders made under the Criminal Code
- fine orders made under federal statutes or enactments
- certificates under the Offence Act
- monetary orders made under the Residential Tenancy Act

The person filing a judgment for enforcement is referred to as the judgment creditor and the person who has to pay the judgment is referred to as the judgment debtor.

Legal Commentary

D⁺**ermining Jurisdiction**

When a person comes into the registry to file a document, it is important that the registry determine that:

- the Small Claims Court has jurisdiction
- the person is filing the document in the correct court

Note: If it is questionable whether the judgment is within the jurisdiction of the Small Claims Court, the clerk should advise the person to seek legal advice before filing the document. If the person wishes, the clerk should file the document and let the judge decide.

Monetary Jurisdiction

The monetary jurisdiction for the Small Claims Court is set by section 3(1) of the Small Claims Act. Judgments fall within the monetary jurisdiction of the court if they do not exceed \$25,000 (not including interest and expenses).

If the judgment is in excess of \$25,000 the clerk should advise the person to go to the Supreme Court to file the document. There is no provision for abandoning a part of a judgment in excess of the \$25,000 limit.

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Place of Filing

A judgment may be filed at any small claims registry that the judgment creditor chooses for mostecases.

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However it would be best to choose a registry that is most convenient to the judgment debtor to ensure that the debtor can easily attend any court hearing that may be set.

In some situations where a file is being transferred to the Small Claims Court, the order may specify the court where the matter will be heard. For some others, the legislation may indicate where an order is to be filed.

Limitation Period

The *Limitation Act* sets the time limits on most types of legal actions. This means that there is a definite time period in which legal action should be taken on a judgment.

Section 7 of the Limitation Act says:

Subject to this Act, a court proceeding must not be commenced to enforce or sue on a judgment for the payment of money or the return of personal property,

- a. (a) if the judgment is a local judgment, more than 10 years after the day on which the judgment becomes enforceable
- b. (b) if the judgment is an extraprovincial judgment, after the earlier of the following:
 - i. (i) the expiry of the time for enforcement in the jurisdiction where the extraprovincial judgment was made;
 - ii. (ii) the date that is 10 years after the judgment became enforceable in the jurisdiction where the extraprovincial judgment was made.

When the person comes in to file an order, the clerk should check the date of the order. If it is questionable whether the judgment is within the limitation period, the clerk may advise the person to seek legal advice before filing it. If the person wishes, the clerk should file the order and let the judge decide.

Type of Order

There are several types of orders or matters which may be presented to the small claims registry for filing. Some are transferred from the Supreme Court or other Small Claims Courts for all purposes, some are filed for a specific purpose such as the hearing of an application, and some are filed to commence enforcement.

Judgment creditors will file their judgments to use the enforcement processes available under the <u>Small Claims</u> <u>Rules</u> or the *Court Order Enforcement Act*. (See <u>Chapter 11 Enforcement and Non-compliance</u>).

Transfers from Supreme Court

The Supreme Court Act, section 15 permits a judge or a master to transfer cases to the Provincial Court if the case falls within the jurisdiction of the Small Claims Act.

The transfer may be requested by one of the parties or all parties may agree to the transfer. This usually happens where the parties think the outcome will be less than \$25,000 and it would be less expensive to continue the action in Small Claims Court. Once the decision is made the parties prepare an order for filing at the Supreme Court. The location of the receiving registry must be specified in the order.

The court file contents are then removed from the folder and forwarded to the small claims registry along with a transfer memorandum. Only a copy of the transfer memorandum and any audio tape log notes are retained on the file.

Files received from the Supreme Court are generally set for settlement conference unless it is a motor vehicle accident case and only liability for property damage is being disputed. These cases go directly to a trial. JAG-2015-00066

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However, the file could be transferred at any time, and this could occur before a reply has been made to the original claim. There is no filing fee when the matter has been transferred by the court, but any subsequent procedures requiring a fee are subject to the Small Claims Fee schedule.

V in the registry receives the transferred file, the order should be carefully checked to determine if any directions have been included in the order.

Prior to the matter being transferred to Provincial Court, the costs for proceedings in the Supreme Court should be determined. The Provincial Court can only deal with costs associated with the Provincial Court proceedings. Where the transfer is by consent of the parties, the issue of costs may be noted in a consent order.

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Transfers from Other Small Claims Courts

On occasion an order can be made to transfer a file from one small claims registry to another for a continuation of a hearing or a trial. This usually occurs because the case cannot be concluded and the same judge is not available in the original registry for the continuation date or there is no court time available at that court location.

The parties may be given a specific date or they may have to attend at the registry to have the registrar contact the other location to determine an appropriate date. The notation of the transfer would be made on the *Trial Record* (SCL 023) (or the *Application Record* (SCL 026)) and the contents of the file would be forwarded to the other court, leaving only a copy of the record in the file to show where the case was sent to, and the audio tape log notes.

Vullen the file contents are received, they would be placed in a new file folder and subsequent process would be under that new file number.

On rare occasions where the file is returned to the original location, the original file folder would be reactivated.

Application Hearings

Applications are normally heard at the court served by the registry that holds the court file. However, if the parties agree or if the registrar is satisfied that the application is urgent, the registrar may allow the application to be filed or to be heard in another court location. [Rule 16(8) and (11)]

Example: A defendant living in Prince George wants to file an application on a file held in Vancouver. The application would normally be heard in Vancouver. If the Prince George registrar is satisfied that the claimant consents or that the application is urgent, the registrar may allow the defendant to file the application in Prince George. The registrar forwards the original application to the Vancouver registry. The two registries must confer to arrange a court date.

If a registrar allows an application to be heard in a different court location [Rule 16(11)], the registrar must fc ard the file to the court where the application is returnable. A copy of the registrar's order made on the a_{Fr} ication is left in the originating court file.

When the file contents are received, they are placed in a new Small Claims file folder and entered to the case tracking system for the hearing date provided.

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After hearing the application, the registrar returns the file and the new order to the originating registry, unless a judge orders otherwise. If the file is to remain in the new registry, the receiving registry must advise the originating registry of this by forwarding a copy of the *Application Record* (SCL 026) which shows the judge's order to have the file stay in the new registry.

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Restitution Order

A criminal court may make an order for restitution to be paid to a person who has been a victim of a crime of property damage or personal injury. These orders may be enforced in Small Claims Court where the amount is up to \$25,000, or in Supreme Court where the amount is over \$25,000. There is no provisions to abandon a portion of an order for restitution so that it might be enforced in Small Claims Court.

Note: Compensation orders made under the *Criminal Code of Canada* and for an amount under \$25,000 must still be enforced in the Supreme Court even if they were made after September 3, 1996.

The order is payable directly to the victim at the end of the appeal period (30 days) or immediately if the offender has waived the appeal. If an appeal is filed, the order remains suspended until there is a decision on the appeal.

To enforce the order, the recipient (judgment creditor) must file a certified copy of the restitution order. The recipient's copy of the order should have been certified when the order was made. If that copy has not been certified, the person should be advised to get the copy certified by the originating registry or ask the originating registry to make a certified copy of the original order.

There is **no fee to have the order certified** and **no fee for filing the order** with the Small Claims Court. A restitution order made in British Columbia may be filed at any small claims registry in the province at any time within 10 years of the order being made.

Although the *Criminal Code* [s.741.1(1)], indicates an order of restitution may be filed "in any civil court in Canada that has jurisdiction to enter a judgment for that amount", any order made outside of the province is subject to the Reciprocal Enforcement of Court Orders part of the *Court Order Enforcement Act*, and must be filed at the Supreme Court. [s.31 C.O.E.A.]

A person who has a restitution order in their favour may decide to start a civil action in the Small Claims Court and that action is not affected by reason only that an order for restitution has been made. (See *Criminal Code* section 741.2).

Note: Registry staff should check if there is a disclosure ban on the restitution order pursuant to subsection 486(3) of the *Criminal Code*. Such a disclosure ban would stay in force forever unless a judge orders otherwise. A restitution order with a disclosure ban cannot be searched by anyone including collection agencies.

Offence Act Certificate

If a person fails to pay a fine imposed by a justice or a fine payable as a result of the person being deemed convicted on a violation ticket, a certificate may be filed with the Supreme Court or the Provincial Court to enforce the payment of the fine. [Sec.82(6) Offence Act]. The certificate has the same effect as if it were a Page 319 JAG-2015-00066

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judgment of the Supreme or Provincial Court. [s.82(7)O.A.].

The certificate must be signed by a person designated by the Fines Enforcement Regulation and be in the prescribed form. A preprinted Form Master (SCL 804) is available at the registry or the person wishing to file a ficate may prepare their own.

The Certificate may include more than one conviction against the same person, but the certificate cannot include any conviction entered more than 10 years before. [s. 82(8) O.A.].

The filing fee for this Certificate is \$30.00, as per Fee 9 of Schedule A of the Small Claims Rules.

Local Government Bylaw Notice Enforcement Act Certificate of Amounts Owing

If an individual fails to pay a bylaw fine imposed by a local government arising out of a bylaw notice adjudication or a default, the *Local Government Bylaw Notice Enforcement Act* allows a local government to file a Certificate of Amounts Owing in small claims court. This permits the local government to enforce the fine if it is under *Small Claims Rules* <u>11</u> & <u>12</u>.

The bylaw notice must be attached to the Certificate and it must include the debtor's name and address. The Certificate must be signed.

The certificate may not be filed if the amount owing has exceeded two years from the date of the amount owing. There is no service requirement.

The filing fee for this Certificate is \$30.00, as per <u>Fee 9 of Schedule A</u> of the *Small Claims Rules*. For more information, please see <u>FAQ</u>.

Cusk here for processing procedures.

Тор

Criminal Fine Order

A fine order made under the *Criminal Code* may be filed in a civil court for enforcement proceedings if the fine is not paid in full. [s.734.6 CCC]. This applies to fines against individuals and fines against corporations. [s. 735 (2)CCC].

These orders may be enforced in Small Claims Court where the amount is up to \$25,000, or in Supreme Court where the amount is over \$25,000. Any partial payments made on a fine in excess of \$25,000 which reduces the balance to less than \$25,000 must still be filed in the Supreme Court.

Fines may be owed to the province or the federal government and to enforce the order in the Small Claims Court, an agent for the judgment creditor must file a certified copy of the fine order. A certified copy of the original court order should be obtained from the originating registry for filing at the small claims registry.

If any payments have been made against the fine, a Certificate (FOM 800) should be prepared by the accounting clerk in charge of the accounting records to indicate the outstanding balance of the fine. This c^{-1} if icate is copied as needed from the Form Master and submitted along with the certified copy of the fine c^{-1} .

There is no fee to have the fine order certified and no filing fee for filing it with the Small Claims Court if the fine is owed to the Province. If the fine is owed to the federal government, the filing fee for filing an order of another JAG-2015-00066

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registry of the court is charged.

A fine order made in British Columbia may be filed at any small claims registry in the province at any time within 10 years of the order being made.

Although the *Criminal Code* (s.734.6), indicates a fine order may be filed "in any civil court in Canada that has jurisdiction to enter a judgment for that amount", any order made outside of the province is subject to the Reciprocal Enforcement of Court Orders part of the *Court Order Enforcement Act*, and must be filed at the Supreme Court. [COEA s.29].

Residential Tenancy Orders

The *Residential Tenancy Act* (RTA) sets out when an order made by a director under the RTA may be filed in Small Claims Court. A decision or order of a director in respect of money or of the return of personal property, may be filed in Small Claims Court for enforcement if the amount of the money or the value of the personal property, is within the jurisdiction of the court. [Refer to RTA s. 85(1)]

A director's order may not be filed in court while it is suspended [RTA s. 81(3)]. The onus is on the parties to inform the registry if there is an application for review of the order and/or if the order has been suspended.

When a party presents a director's order for filing for enforcement, the registry will check the order to determine whether:

- the correct addresses for the parties are provided (usually these are not included in the order, but must be provided to the court for future notification);
- any other orders have been filed for the same event (if the style of cause on the orders is the same, the orders may be filed together rather than opening a new file with a cross reference);
- any direction for service given by the director in the order has been complied with. If a proof of service is required, the party should complete an Affidavit of Service issued by the Residential Tenancy Office; or
- if the director's order does not specifically require service, then proof of service is not required before filing for enforcement.
- an order with a digital or an ink signature is acceptable for filing. Please note, it is not the responsibility of registry staff to ensure that the orders being presented for filing are originals.

Note: The *Affidavit of Service* can now be sworn at the Residential Tenancy Office.

There is a fee for filing a copy of a director's order. However, there is no fee for filing an order that has been varied by a director.

If an order has been filed and enforcement has commenced, the enforcement must be halted if a suspension order is issued and filed in the small claims registry.

Review of decisions on the grounds of bias, error in law, exceeding jurisdiction or a breach of natural justice may proceed under the *Judicial Review Procedures Act*.

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Other Orders

There may be specific provisions included in various provincial statutes for the recovery of money owed to the Province. The statute usually sets out the requirements to proceed with collection using the courts are JAG-2015-00066

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jurisdiction for the amount.

An example of this is the *Forest Act* which provides for a certificate to be prepared setting out the amount remaining unpaid, including interest and the name of the person who is required to pay it. [s. 130(4) *Forest*

When a Certificate is prepared and filed as a judgment for enforcement, there is no fee charged because the judgment creditor is the Province. These orders are treated as new actions and are placed in a small claims file folder and entered to the computer system.

Arbitrators Orders under the Strata Property Act

Under the *Strata Property Act*, disputes between a strata corporation and an owner or a tenant can go to arbitration [SPA s. 177].

An arbitrators decision and order may be filed for enforcement in Small Claims Court if the amount claimed or the value of the personal property or services is within the monetary jurisdiction of the court and if the decision is in respect of:

- Debt or damages;
- Recovery of personal property;
- · Specific performance of an agreement relating to personal property or services; or
- Relief from opposing claims to personal property [SPA s. 189(2)]

An arbitrators decision or order for costs may not be filed until the time limit for an appeal has expired and no appeal has been taken or the appeal is completed or abandoned [SPA ss. 189 (4) and 188].

There are no fees for filing an arbitrators order.

Homeowner Protection Act Monetary Penalty

A Monetary Penalty is to be treated as an order of the court, as per <u>Section 28.4(1)(b)</u> of the Homeowner *Protection Act.* There is no requirement to provide proof of service, but the certificate is not to be rejected if proof of service is provided.

The date of judgment is the date that the Monetary Penalty was filed with the court.

The filing fee for this is \$30, as per Fee 9 of the Small Claims Fee Schedule (filing fee for a certificate).

BC Safety Authority Monetary Penalty

A Monetary Penalty is to be treated as an order of the court, as per <u>section 41(1)(b)</u> of the Safety Standards Act. There is no requirement to provide proof of service, but the certificate is not to be rejected if proof of service is provided.

The date of judgment is the date that the Monetary Penalty was filed with the court.

The filing fee for this is \$30, as per Fee 9 of the Small Claims Fee Schedule (filing fee for a certificate).

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∠.2 Filing an Order

Process

1. Creditor comes to registry to file an order Background

The Small Claims Court process begins when the creditor comes into the registry to file an order.

The creditor should:

- provide the original order or a certified copy of the order; and
- serve documents and provide proof of service if service is required under the relevant legislation or according to a term of the order.

2. Clerk checks the order. Procedure

The clerk checks that:

- the Small Claims Court has jurisdiction
 - o territorial jurisdiction
 - monetary jurisdiction (\$25,000 or under). If the judgment exceeds \$25,000, the creditor must file the order in the Supreme Court
 - - the judgment is within the Limitation Act
 - o the specific directions for service have been followed if they were included in the order
- the creditor's and debtor's names and addresses are obtained for the file
- the case has not previously been entered on the computer system. If it has previously been entered
 the file may be reactivated, or the new order added to a current file if the style of cause is the same.
- it is subject to a filing fee or exempt

3. Is Order accepted? Consideration

If order is accepted, go to step 4.

If order is rejected, end of process (until the creditor corrects the problem and resubmits the order).

4. Clerk files the order. Procedure

The clerk:

- stamps the order with the registry stamp
- refers the creditor to the accounting clerk for the collection of the filing fee, if applicable.

Note: A person who cannot afford the fee can apply for an exemption [Rule

20(1)]. (See Chapter 7)

- keeps the original or certified copy for the court file.
- · returns any copies to the creditor
- enters the file number, names and date of filing, amount of order, etc. to the computer system.

5. Creditor chooses enforcement option Procedure

The creditor decides how to enforce the payment of the order and the clerk may provide the booklet "Getting Results" to the creditor. (See Chapter 11 - Enforcement).

See flowchart

6. Filing a Certificate for Local Government

- 1. Confirm that the bylaw notice is attached to the Certificate. If not attached, do not file.
- 2. Make sure that paragraph 1 contains the debtor's name and address.
- 3. Make sure columns 1 3 have been completed. Do not reject based on content of the columns.
- 4. If the amount owed on the Certificate has been owing for more than two years before the date of certification, then the Certificate cannot be filed. The date the amount owing became due is either the date of default or date of adjudication, which is to be stated in column 2 of the Certificate.
- 5. Make sure that the certificate is signed.
- 6. Make sure that the certificate is not filed before the following times have elapsed.

Statutory reason in column 1 for adjudication or default	Trigger Date	Minimum # of days before certificate can be filed
21(2) or (4)	column 2 date	immediately
9(1)(2)	bylaw notice issue date	14 days
13(2)	column 2 date	immediately
18(4)	column 2 date	immediately
25(2)	column 2 date	28 days

For additional information, click here.

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3.1 Serving the Notice of Claim

Introduction

This section outlines the procedure for serving the Notice of Claim.

After the Notice of Claim has been prepared and filed, it must be served. It is the claimant's responsibility to ensure that the notice is served. If the defendant is an individual, service is made by giving the Notice of Claim to the defendant or by registered mail. mail. (**Note**: Canada Post's Xpresspost is also acceptable as registered mail as long as either a signature is provided upon delivery or a print-out of Canada Post's delivery confirmation made available on the internet [Rule 18(14)]). Different rules apply to partnerships and corporations [Rule 2(3-5)]. Rule 18 contains service provisions for a municipality, a young person, a society, an extraprovincial society, an unincorporated association including a trade union and a corporation that has assets in British Columbia but is incorporated outside British Columbia and is not an extraprovincial company.

Legal Commentary

Methods of Service

The Small Claims Rules of Court govern the service of a Notice of Claim [Rule 2].

The claimant may serve the Notice of Claim or may have another adult serve it. The claimant may hire a "process server," a professional document server, to do this. (See Process Servers in the Yellow Pages or the Process Service Directory.) Registry staff are not to recommend any particular process server. Process servers will charge a fee to serve the defendant and this fee usually includes preparing and filing a Certificate of Service.

If the defendant is an individual, the notice must be served by leaving a copy of it with him or her or mailing it by registered mail [Rule 2(2)].

If the defendant is a partnership, the Notice of Claim must be served by mailing a copy of it to a partner by registered mail or by leaving a copy of it with:

- a partner
- at a place of business of the partnership with a person who appears to manage or control the partnership's business
- a receptionist at the place of business [Rule 2(5)]

If the partners are also named as defendants along with their business name, each partner must be served individually and one copy can be left with either partner on behalf of the business.

If the defendant is a company within the meaning of the Business Corporations Act the Notice of Claim must be served:

- by leaving a copy of it at, or sending it by registered mail to the registered office of the corporation [Rule 2(3)]. (See <u>Chapter 2</u> for information about company offices)
- by leaving it with a director, officer, liquidator, trustee in bankruptcy or receiver-manager of the company [Rule 2(3)].
- by leaving a copy of it with a receptionist or a person at the company's place of business who appears to be in charge [Rule 2(3)].

If the defendant is a municipal corporation, regional district or other local government body, the Notice of Claim must be served by giving a copy to the clerk, deputy clerk or some similar official [Rule 18(1)].

If the defendant is less than nineteen years old, the Notice of Claim must be served by leaving a copy with the defendant's mother, father, or guardian, unless a judge orders otherwise [Rule 18(2)].

If the defendant is a society incorporated under the Society Act, the Notice of Claim must be served by mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies or by leaving a copy of it at the address on file with the Registrar of companies, or with a director, officer, receiver manager or liquidator of the society. [Rule 18 (3)].

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If the defendant is an extraprovincial society, the Notice of Claim must be served by mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the *Society Act* or by leaving a copy of it with the attorney or if no attorney has been appointed by following the rule for a society [Rule 18(4)].

If the defendant is an unincorporated association and trade union, the Notice of Claim must be served by mailing a copy of it by registered mail to the registered office of an association or by leaving a copy of it with an officer of the association, or in the case of a trade union, with a business agent [Rule 18(5)].

If the defendant is a corporation that has assets in British Columbia but is incorporated outside British Columbia and is not an extra-provincial company, the Notice of Claim must be served by mailing a copy by registered mail to a place of business or registered office of the corporation outside British Columbia or by leaving a copy at a place of business or registered office of the corporation outside British Columbia British Columbia with a receptionist or a person who appears to manage or control the corporations business, or with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation [Rule 18 (6.1)].

If the defendant is the Province of British Columbia, the Notice of Claim may be served either:

- personally, by leaving a copy of it during business hours at:

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Ministry of Attorney General 1st Floor, 1001 Douglas Street Victoria, B.C.;

- or by mailing a copy of it by registered mail to the following address:

Deputy Attorney General Ministry of Attorney General P.O. Box 9280 Stn Prov Govt Victoria, B.C. V8W 9J7

If the claim is for damages caused by a motor vehicle or trailer within B.C., the Notice of Claim must be served on all defendants and a copy of the claim must be served on the Insurance Corporation of British Columbia (ICBC) [s.22(1) *Insurance (Motor Vehicle) Act*]. The claimant is responsible for serving ICBC; registry staff must not do so.

The Notice of Claim must be served on ICBC in the same manner that a defendant would be served. The notice may be left at, or mailed by registered mail to:

I.C.B.C. Legal Department Suite 800 - 808 Nelson Street Vancouver, B.C. V6Z 2L5

ICBC often mails an Acknowledgment of Service to the registry which satisfies the requirement for proof of service. If no acknowledgment is received, the claimant must either:

- · contact ICBC and arrange for an acknowledgment to be sent, or
- prepare a certificate of service

The claimant cannot take further action until eight days after the acknowledgment or certificate was filed. [Sec. 22(2), *Insurance (Motor Vehicle) Act*]

ICBC sometimes files a reply or appoints legal counsel for the defendant.

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Alternate Methods of Service

If it is impractical to serve the Notice of Claim in the usual way, the claimant can apply to the registrar to serve it by an alternate method.

To make the application, the claimant must file an application to the registrar outlining:

- the attempts made to serve the defendant
- any suggested method of service

<u>Rule 16</u> sets out the process for making an application to a registrar and the instructions on Form 16 should help them set out their application. Before granting permission, the registrar

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must be satisfied that the claimant has made a reasonable attempt to serve the defendant. The application may be referred to a judge if the registrar is not satisfied. If the application is granted the registrar may direct that another method of service be used, and determine how long the defendant has to file a Reply.

Alternate methods of service include:

- · leaving a copy of the notice with a relative
- · leaving a copy at the defendant's workplace
- posting a copy on the door of the defendant's home
- publishing a classified ad in the newspaper (the party who obtained the order must pay for the advertisement) [Rule 18(11)]

If the registrar permits another method of service to be used, a copy of the registrar's order must be served with the Notice of Claim and a blank Reply form [Rule 18(9)] unless the registrar orders otherwise, or orders notice to be given by advertisement. If the registrar extends the time limit for a reply, this should be stated in the order. The registrar must prepare and sign the order unless a lawyer is involved, in which case the lawyer usually prepares the order. Form 16 provides a place for the order to be written so a separate order should not be required.

Service Outside of B.C.

A Notice of Claim can be served outside of B.C. if:

- the person to be served is:
 - o an individual who normally resides in British Columbia [Rule 18 (6)(a)(i)] or
 - a corporation that has assets in British Columbia but is incorporated outside British Columbia and is not an extra-provincial company [Rule 18 (6)(a) (ii)]
- the event that resulted in the claim took place in B.C. [Rule 18(6)(3)], or
- a registrar gives permission [Rule 18(6)(c)].

For permission of the registrar, the claimant must file an Application stating:

- where the defendant is
- why service outside B.C. should be allowed

If the Notice of Claim is served outside B.C., the time limit for the defendant to reply is extended to thirty days [Rule 3(4)]. The extended time limit must be written on the Notice of Claim. A copy of this notice must be filed with the registry before it is served [Rule 18(7)].

If the Notice of Claim is sent by ordinary mail to the defendant following an order for alternate service, it is considered to be served fourteen (14) days after it was sent [Rule 18(13)].

Note: If a party's address changes, the party must notify the registrar and all other parties of the new address in writing [Rule 18(16)].

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Serving More than one Defendant

If there is more than one defendant named on the Notice of Claim, each defendant must be served with their own copy of the Notice of Claim and a blank Reply form. This applies to more than one defendants being served at the same address, either in person or by mail (separate envelopes must be used).

Renewing the Notice of Claim

Within twelve months of filing a Notice of Claim, the claimant must serve each defendant who is named in the notice with:

- the defendant's copy of the Notice of Claim
- a blank reply form

The notice expires if it is not served within twelve months [Rule 2(7)].

The claimant can apply to the registrar to renew the Notice of Claim at any time. The claimant must file:

• an Application to the Registrar (SCL 016) explaining why the notice was not served within the time limit [Rule 16(3)].

The registrar may renew the Notice of Claim for an additional twelve months. The registrar completes the "Order" section of form 16, Application to the Registrar, indicating that the Notice of Claim has been renewed for 12 months from ______ to _____.

If the registrar refuses to renew the Notice of Claim, the claimant can start a new claim if it is still within the limitation period. The claimant may also appeal the registrar's decision to a judge.

Computing Time Periods

An order takes effect on the day it was made unless the judge or registrar who made it orders otherwise [Rule 17(9)]. In calculating time under the rules or under an order, the number of days between two events is counted by excluding the days on which these events happen. The days in between are sometimes referred to as "clear days" [Rule 17(10)]. If the last day of the time period falls on a day when the registry is closed, the time period ends on the next day that the registry is open [Rule 17(11)].

Proof of Service

The registry may require the person who served the Notice of Claim to complete a Certificate of Service. The certificate is considered proof that the notice was served.

The Certificate of Service sets out:

• who served the notice

- when the notice was served
- · where the notice was served
- how the notice was served

The server must complete the Certificate of Service which is either on the reverse of the service copy of the Notice of Claim or attached to it. Note that a judge or registrar may allow service to be proven orally under oath [Rule 18(15)].

Example: A Certificate of Service must accompany an application for a default order. After the fourteen-day reply period (or 30 day period for an out of province defendant) has passed, the claimant contacts the registry. If no reply has been filed, a certificate can then be filed along with the form for a default order.

If service was by registered mail, a copy of the document must be filed with the certificate with one of the following proofs of service:

- a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered; or
- a print-out of the delivery confirmation made available on the Internet by Canada Post [Rule 18 (14)(b)].
- Please note that Canadapost's XpressPost should be treated like registered mail and service can be proven with either a copy of the signature obtained upon delivery or a print-out of the delivery confirmation made available on the Internet [Rule 18(14)].

Proof of Service - More than one Defendant

If there is more than one defendant a separate Certificate of Service must be prepared for each defendant. Additional copies of the Certificate of Service are to be attached to the service copy of the Notice of Claim. If the service was done by registered mail, separate proof of service must be presented for each defendant.

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3.1 Serving the Notice of Claim

Process

1. Claimant arranges for service of the Notice of Claim Background

The claimant is responsible for ensuring the Notice of Claim is served. Any adult (including the claimant) can serve the notice by delivering it to the defendant personally, or by sending it by registered mail.

2. Is the claimant able to have the defendant served? Consideration

If NO, go to 3.

If YES, go to 5.

3. Claimant applies for an alternate method of service Procedure

The claimant completes an application to a registrar and files it with the registry.

The registrar must prepare the order either by filling in and signing the bottom portion of the application to the registrar form or creating a separate order.

4. Notice of Claim is served by an alternate method of service Procedure

A signed copy of the court order must be attached to the Notice of Claim when it is served. The claimant is responsible for ensuring that alternate service is followed as set out in the order.

5. Proof of service returned to registry Procedure

If required, the server must return a completed Certificate of Service to the registry as proof that the Notice of Claim was served.

The clerk must:

- ensure the certificate is complete and that any attachments are there
- ensure a separate certificate is completed for each defendant
- stamp and file the certificate.

6. Clerk stamps and files original Procedure

The clerk should:

• stamp and file the original Certificate of Service.

See flowchart

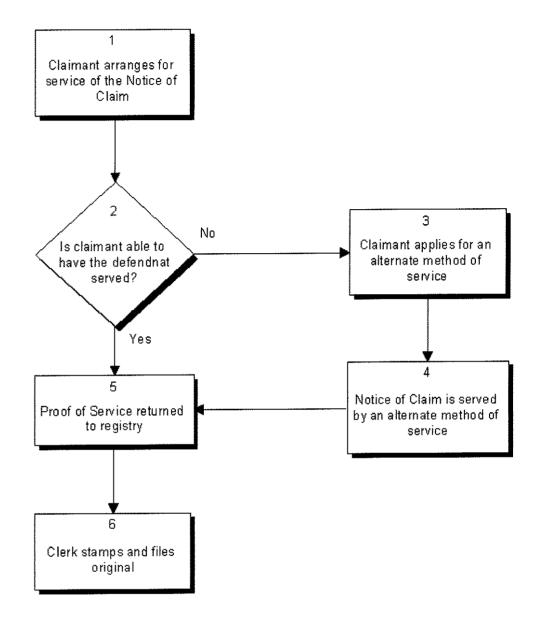
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3.1 Serving the Notice of Claim



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4.1 Garnishing Orders Before Judgment

Introduction

This section outlines the procedure for issuing a Garnishing Order Before Judgment, under the *Court Order Enforcement Act*.

A garnishing order attaches money owed to the defendant by a third party. The third party is called the **garnishee**. When issuing a Notice of Claim for debt, the claimant may also issue a garnishing order before judgment. Garnishment before judgment is not possible in actions for anything other than debt. The garnishee must be located in B.C. By law, the garnishee must pay into court any funds owing to the defendant up to the total amount owed. Wages cannot be garnished before judgment but most other money owing to the defendant can be attached. Bank accounts are most commonly garnished.

The garnished funds are held in court until the judge makes an order for payment out, or until the parties consent to payment out, or the claim is resolved or the provisions for payment out have been met.

Legal Commentary

Requirements for Supporting Affidavits

The claimant or a representative must swear/affirm an Affidavit in Support of Garnishing Order Before Judgment (COEA Schedule 1, Form C) which the registrar uses as supporting evidence when deciding whether a Garnishing Order Before Judgment (COEA Schedule 1, Form F) should be issued. [COEA s. 3 (2)]. The forms for both the affidavit and the order are prescribed by the *Court Order Enforcement Act* and a party may use the preprinted forms PSC 003 and PSC 002 or produce their own.

If there are any errors in the affidavit, the claimant must:

- · return to the Commissioner who swore/affirmed it to have any changes initialled, or
- reswear/reaffirm the affidavit, or
- prepare and swear/affirm a new affidavit.

Claimants who want to issue a Garnishing Order Before Judgment before a Notice of Claim has been filed must use the Affidavit In Support of a Garnishing Order Before Action form (COEA Schedule 1, Form A). [COEA s. 4(2)]. Form Master SCL806 may be copied for use by claimants, or they may prepare their own.

This form states that the action is pending and the claimant "intends" to file a claim. However, the Notice of Claim must be filed as the same time as the Affidavit for the Garnishing Order to be issued [COEA s. 3(3)]. Law firms or others must use this form if the affidavit is completed and sworn/affirmed by someone in their office prior to the claim being brought to the registry for filing. The regular Affidavit in Support of a Garnishing Order Before Judgment must only be sworn and used after the claim has been filed.

If the claimant submits a sworn Affidavit in Support of Garnishing Order Before Judgment with a Notice of Claim to be filed, the clerk must:

- reject the garnishing order application
- direct the claimant to reswear/reaffirm the affidavit

The person applying for the Garnishing Order must also pay the fee for having the order issued, and if the

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affidavit is sworn/affirmed by the registrar, the affidavit fee is also applicable.

Multiple Defendants and Garnishees

The *Court Order Enforcement Act* (COEA) allows more than one garnishee to be named on an order [COEA s. 26]. The claimant can:

- · prepare separate affidavits and orders for each garnishee, or
- prepare one order listing all garnishees and submit one expanded affidavit with one paragraph for each garnishee, or
- prepare one order listing all garnishees and submit separate affidavits for each garnishee.

The claimant can issue as many garnishing orders as he or she wishes. However, the claimants issuing numerous garnishing orders at once should be advised that they may not be able to recover expenses for the unsuccessful garnishing orders. The registrar will decide which fees may be recovered.

If there is more than one defendant in the action, the affidavit and order must clearly show which defendant is being garnished. If more than one defendant is being garnished, the affidavit and order must clearly show whose funds are being garnished from which garnishee. In this case, it is advisable to prepare separate affidavits and orders.

Note: Joint bank accounts cannot be garnished unless the claimant has named both owners as defendants.

Correct Name of Garnishee

The garnishee's correct name must appear on the order or the garnishing order can be refused.

Example: The Canadian Imperial Bank of Commerce can legitimately refuse to honour an order directed to "The Commerce." It is also important to name the defendant correctly (see <u>Chapter 2</u>, <u>Proper Names of Parties</u>).

Garnishing Order Issued on Counterclaim

A defendant may file a counterclaim and issue a garnishing order before judgment if the counterclaim is for debt. When the forms are prepared, the style of cause would remain the same, but in the rest of the form wherever the words claimant or defendant appear, changes will need to be made to correctly identify the party.

In several places on the forms the name of the party (claimant or defendant) should be changed to "claimant who is a defendant by counterclaim", or "defendant who is a claimant by counterclaim" depending on the circumstance. It should be very clear to the garnishee whose funds to attach.

An example of this would be on the Affidavit in Support of the Garnishing Order Before Judgment where the deponent identifies who they are. The form has a check box that indicates "I am the above-named claimant". This should be changed to "I am the above-named defendant who is a claimant by counterclaim".

Expenses Allowed on Garnishing Order

The registrar decides the amount of expenses which can be claimed on a garnishing order before judgment. Expenses may include:

- the fee for issuing the order as set in the Fee Schedule
- the fee for swearing/affirming the affidavit in support of the order
- the expenses for serving the garnishing order on the garnishee
- the expenses for serving the garnishing order on the debtor
- the fee for swearing/affirming the Affidavits of Service

The registrar enters the allowable expenses on the garnishing order under "cost of attachment proceedings." The registrar then adds this figure to the "amount due" to determine the total amount being sought from the garnishee. [COEA s. 10].

At a later date, if the claimant obtains an order for payment against the defendant, the claimant may be entitled to recover the expenses claimed on the garnishing order before judgment. These expenses should appear on the order for payment, so the registrar issuing a subsequent enforcement order must include them.

Serving the Garnishing Order

A copy of the Garnishing Order must be served at once or within a time set by the judge or registrar which must be noted on the order. [COEA s. 9(2)]. The garnishing order is good for one attachment only.

A Garnishing Order may be served by any person including the claimant/creditor, on the garnishee and the defendant/debtor.

A copy of a garnishing order may be served in the following ways:

On an individual:

- · personally, or
- by mailing a copy to the person to be served by registered mail to their last known address. [COEA s. 9(4)].

On a company:

- by leaving it at or mailing it by registered mail to the registered office of the company, or
- by personally serving any director, officer, liquidator or trustee in bankruptcy of the company (and where a receiver manager has been appointed, by personally serving the receiver manager). [Business Corporations Act s.9(1)].

On a partnership:

• by serving any member of a partnership, an authorized agent of the partnership, or secretary at its usual place of business. [COEA s. 25].

Alternate Methods of Service

If the claimant has paid to serve the garnishing order and the defendant or garnishee cannot be found, the claimant can request that the order be served another way. [COEA s. 9(5)]. (See <u>Chapter 3</u>, <u>Alternate</u> <u>Methods of Service</u>.)

Proof of Service

An Affidavit of Service of the Garnishing Order on the defendant must be filed only if the garnishee pays money into court. [COEA s. 9(3)]. An affidavit of service is available on the back of the service copy included

in the preprinted form for the Garnishing Order Before Judgment and if it is sworn/affirmed at the registry, the applicable fee would be charged. Usually, no affidavit of service on the garnishee is required.

Garnishee's Responsibility

From the time service is made on the garnishee, the garnishee is bound by the order to attach the debts, obligations or liabilities owing, payable or accruing due to the defendant. [COEA s. 9(1)]. The order is good for one attachment only. The garnishee must send the attached funds to the court registry indicated on the order. The funds will be held in trust until there is an order for payment out or the case is resolved.

Garnishee Disputes Liability

The `Notice to Garnishee' on the Garnishing Order Before Judgment form tells the garnishee to file a dispute note at once if the garnishee disputes his or her liability. This should be done by using an Application to a Judge so that a hearing can be set to determine the dispute. [COEA s. 16]. This would likely occur if the garnishee has funds, but suggests they belong to some third person. The judge may order the third person to appear at the hearing to state their claim on the funds. [COEA s. 17].

If the garnishee does not hold any funds for the defendant, then they usually return a letter to the registry indicating they hold no funds in that person's name. Generally the claimant contacts the registry to find out the results of the garnishment order.

However, if the garnishee does not respond to the garnishing order and does not:

- pay the funds into court at once, or
- reply to indicate they have no funds for the defendant, or
- · dispute their liability to the defendant, or
- attend at the dispute hearing after they have disputed their liability,

and the claimant wishes to pursue the matter, the claimant may make an application to a judge and ask the judge to issue a Garnishing Order (Absolute). [COEA s. 11]. The *Court Order Enforcement Act* has a prescribed form for this type of an order (COEA Schedule 1, Form E), and the applicant must produce their own form. No preprinted form is available.

The judge may order the garnishee to pay the principal amount and the costs of the garnishing proceedings into court. If the judgment has been recovered or an order for the payment of the money was made, a judge may still make an order against the garnishee. This additional order could be made as a form of penalty for failing to obey the original garnishing order.

Application to Release a Garnishing Order

The defendant may apply to have the garnishing order released. [COEA s. 5(1)]

The registrar may hear the application informally. If the registrar refers the application to a judge, the defendant should complete an Application to a Judge. The application may be made without informing the claimant. [COEA s. 5(3)]. After hearing the applicant, the registrar or the judge may make an order releasing the funds in whole or in part. [COEA s. 5(2)].

If an application is made after a payment or default order has been issued, the registrar or judge who releases the Garnishment in whole or in part may set an amount and terms of payment of the judgment by instalments. [COEA s. 5(2)]

Instalment orders may be varied upon application and three days' notice. [COEA s. 5(3)]. Where an instalment order has been made and the judgment debtor is not in default under the order, no further

garnishing order can be made concerning the judgment debt. [COEA s. 5(4)]

Promptly after making an order, the registrar arranges to have a copy of the order mailed to the creditor and the garnishee, or their agents. [COEA s. 5(5)]

If the registrar refuses to release the garnishing order, the defendant can appeal the decision to a judge.

Payment Out of Court

Money paid into court under a garnishing order before judgment is normally held in trust until the claim is resolved. There are two exceptions to this rule:

- a judge or registrar releases the garnishing order and orders payment out
- the parties reach an agreement and sign a consent to pay out

The money may be paid out of court at any time upon written consent of the defendant [COEA s. 13(4)]. The consent must specify:

- the amount to be paid out
- whom the money should be paid out to

Once the claim is settled, the judge usually makes an order for the money to be paid out. If the order is not made, the creditor must follow the procedure for the payment out of funds received under a garnishing order **after** judgment. (See <u>Chapter 11.4</u>, <u>Garnishing Orders</u>.)

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Previous Section: Garnishing Orders Before Judgment

4.1 Garnishing Orders Before Judgment

Process

1. Claimant wants to obtain a garnishing order before judgment Background

When issuing a Notice of Claim for debt, the claimant may also obtain a garnishing order before judgment. The claimant must complete:

- a Garnishing Order form
- an Affidavit in Support of a Garnishing Order Before Judgment

The clerk may explain procedures and assist the claimant in filling out the forms.

2. The registrar checks the documents Procedure

The registrar must ensure that:

- the forms are complete
- the affidavit has been sworn after the claim is filed
- the claim is for debt
- the funds to be attached are not wages
- the garnishee is located in B.C.

3. The registrar processes the order Procedure

The registrar must:

- date and sign the order
- date stamp the originals and all copies
- stamp the registry address on the Garnishing Order, if the claimant has not filled in the address
- file the original order and affidavit and return all copies to the claimant

4. Claimant arranges for service Procedure

The claimant must serve the order on the defendant and the garnishee. Any adult can serve the garnishment order by delivering it to the defendant personally or by mailing a copy by Registered mail to the last known Post Office address of the defendant. It is not necessary to serve the affidavit with the order.

5. Does the claimant succeed in serving the defendant and garnishee? Consideration

If YES, go to 7.

If NO, go to 6.

6. Claimant arranges for an alternate method of service Procedure

The claimant completes an application to a registrar and a statement of facts.

The registrar must complete the order.

7. Claimant returns proof of service Background

An Affidavit of Service on the defendant must be filed only if the garnishee pays money into court. No Affidavit of Service on the garnishee is required.

8. Does the Garnishee dispute liability? Consideration

If NO, go to 9

If YES, go to 11

9. Is payment received? Consideration

If NO, end of Garnishing Order Before Judgment process.

If YES, go to 10.

10. Payment is held in court Procedure

Money paid into court is held until:

- all parties reach an agreement and file written consent for payment out, or
- a registrar or judge makes an order for payment out before trial, or
- the judge makes an order for payment out at the settlement conference or trial, or
- · the creditor complies with steps for payment out after judgment

11. Garnishee completes and files an Application to a Judge Procedure

The clerk provides the garnishee with an application to a judge form to file the dispute. The garnishee completes the form. The clerk checks it, sets a hearing date and files the original of the form. The copies are returned to the garnishee for service and for their own records.

12. Application is served Procedure

The garnishee is responsible for serving the application. (If necessary, the applicant must provide the registry with proof of service.) There must be seven days between service and the hearing date.

13. Hearing held and order completed Procedure

At the hearing the judge decides whether or not the garnishee must obey the garnishing order.

The court clerk writes the order on the Application form, or the garnishee may prepare an order.

The judge or registrar signs the order.

See flowchart

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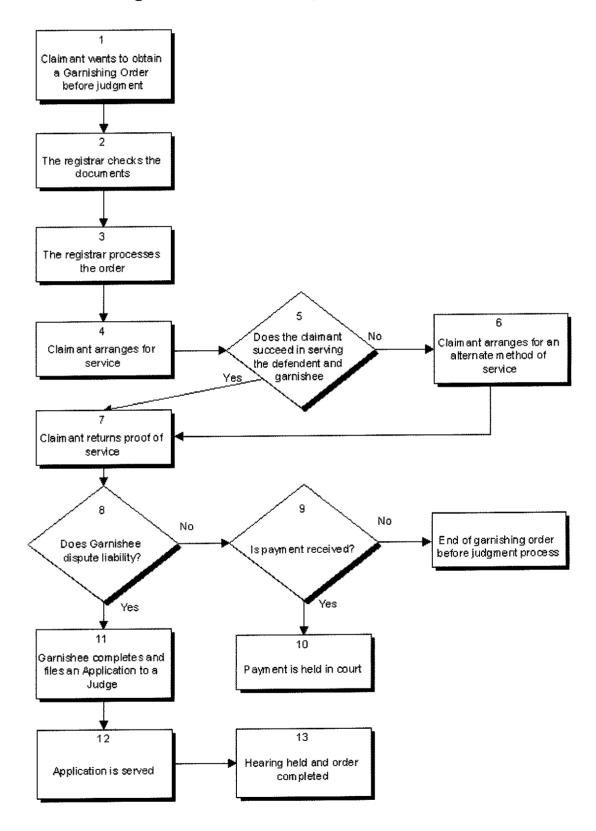
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September 1999

4.1 Garnishing Orders Before Judgment



September 1999

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4.2 Recovery of Goods Before Judgment

Introduction

If the claimant states that goods such as chattels, deeds, promissory notes, books of account, papers, securities or any property have been wrongfully taken or detained by the defendant, the claimant can apply to a judge to recover them before trial.

Legal Commentary

A Notice of Claim (SCL 001) must be filed to commence the proceedings before a claimant can make an Application to a Judge (SCL 017) to have any items returned. The claimant must be the owner of the goods or be lawfully entitled to possess them.

The procedures for recovering goods before judgment are governed by <u>Rule 46 of the Supreme Court Rules</u> and <u>Small Claims Rule 17(18)d</u>. The judge will normally make an order for the recovery of goods before trial where there could not be adequate compensation for the goods and/or the defendant likely will dispose of them before trial.

The claimant may attach a claim for damages for the wrongful detention or conversion of the goods to the claim for recovery of goods before trial. Thus, if the goods are returned, the claimant can recover damages for loss of their use. If they are not recovered (e.g., the defendant has sold them to someone else) the claimant can recover damages for conversion of the goods.

The court may order that the goods be given to the claimant without conditions, or may set terms.

The claimant must agree to abide by any order that the court makes for damages arising out of the delivery of the property to the claimant or compliance with any other order. The judge may require the claimant to provide a security deposit in an amount set by the judge which would be held in trust by the court registry.

Example: the claimant agrees to abide by the court's order for damages, in case the judge should eventually decide that the claimant was not legally entitled to possession of the property recovered from the defendant.

After the judge has made the order, the registry prepares the order for the claimant unless the claimant is represented by counsel. Although there is no specific form for the order, Form Master SCL 809 may be used and sufficient copies made for the parties.

Once an order is made, the sheriff or court bailiff seizes the goods from the defendant and serves the Notice of Claim and the order for recovery of goods. The sheriff or court bailiff then delivers the goods to the claimant.

Otherwise, the action proceeds like an ordinary action. If the defendant files a reply, the matter is set for settlement conference. At the end of the trial, the claimant may be ordered to return the goods to the defendant and to pay damages (whether or not the defendant counterclaims for them). Or, the claimant may be able to recover damages for the original wrongful retention, including the costs of recovering the goods. If no reply is filed, the claimant may ask to appear before the judge for a default order.

After an order has been issued, the defendant may apply to cancel or change the order on notice to the

claimant.

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4.2 Recovery of Goods Before Judgment

Process

1. Claimant wants to recover goods before trial Background

If the defendant has wrongfully taken or held goods belonging to the claimant, the claimant can file a Notice of Claim and apply to recover those goods before judgment.

2. Does the claimant think the defendant will dispose of the goods before trial? Consideration

If YES, go to 3.

If NO, see Chapter 2, Making a Claim, Process.

3. Claimant files a notice of claim and an application with the registry Procedure

The claimant must complete and file their Notice of Claim to commence the proceedings.

The claimant must complete an Application to a judge. It is not necessary to serve the defendant with a copy of the application.

4. Clerk sets a hearing date Procedure

The clerk must immediately present the Application before a Judge.

5. Does the judge grant the application? Consideration

If NO, see Chapter 2, Making a Claim, Process.

If YES, go to 6.

6. Order prepared Procedure

The registry prepares the order, unless the claimant is represented by counsel, and gives it to the judge for signature.

The clerk files the order and makes sufficient copies for the parties.

If counsel prepared the order, they should provide the required copies.

7. Sheriff serves on the defendant and seizes the goods Procedure

After the fees are paid and the order is granted, the sheriff or court bailiff:

- serves the notice of claim and a copy of the order on the defendant and
 - seizes the goods
 - delivers the goods to the claimant
 - provides proof of service of the notice of claim to the claimant or registry

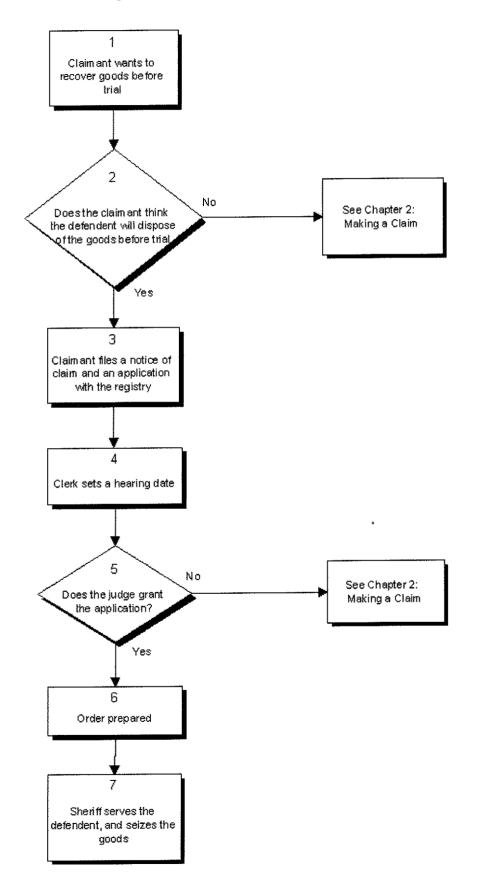
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4.2 Recovery of Goods Before Judgment



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5.1 Reply

Introduction

This section outlines the steps involved in replying to a Notice of Claim. Many of the steps also apply to replying to counterclaims and third party notices.

A person who receives a Notice of Claim may respond by paying the full amount directly to the claimant, by reaching some other agreement with the claimant, by filing a Reply, or by ignoring the claim. The reply is the defendant's answer to the Notice of Claim. In it, the defendant may:

- agree to all or part of the claim
- agree to all or part of the claim and propose a payment schedule
- agree to all or part of the claim and ask the court to set a payment schedule
- oppose all or part of the claim
- make a claim against the claimant (called a "counterclaim")

The defendant has fourteen clear days after being served with the Notice of Claim to pay the claim or file a reply. If the Notice of Claim was served on a defendant outside British Columbia, the reply must be filed within 30 days after the notice was served.

The reply must be filed at the registry where the Notice of Claim was filed. Within 21 days after the reply is filed, the registrar must serve a copy on each of the other parties.

If the defendant feels someone else is responsible for the claimant's claim, the defendant may add this person as a party to the action.

If the defendant does not file a reply within the time period allowed, the claimant may obtain a default order. The defendant may file a reply to the claim until an order is made, a date is set for a default hearing, or a judge orders otherwise.

Legal Commentary

Paying the Claim

The claimant and the defendant may reach an agreement out of court at any time to end the action. The defendant may pay the full amount of the claim, including court costs, directly to the claimant and may ask the claimant to withdraw the claim. [Rule 3(1)(a)]. An Acknowledgement of Payment (SCL 800) available from the registry, may be used as a form of receipt between the parties, although this form is not required by the rules.

Full payment may be made through the registry at any stage of the process although defendants should be encouraged to make direct arrangements with the claimant.

Settling Out of Court

The parties may draft a written agreement which should set out the amount to be paid and the terms of payment. Both parties should sign the agreement. It is not appropriate for Court Services staff to sign agreements as a witness. If the agreement requires that the defendant make payments to the claimant, the claimant may not wish to withdraw the claim until payment is received.

For their written agreement the parties may use the Consent Order (SCL 021) form provided by the registry although the use of this form is not required by the rules.

If the parties wish to file their written agreement at the registry one of the parties must complete the Application portion of the consent order [Rule 16(1)]. Once the written agreement is filed it becomes a "consent order" which the claimant can enforce later, if necessary. The file will remain inactive unless the claimant takes further action.

If the defendant is settling with the claimant outside the court the defendant can ask the claimant to file a notice of withdrawal or letter indicating that the claim has been settled. The claimant can use the Notice of Withdrawal (SCL 019) although using this form is not required under the rules.

(See Chapter 6 for withdrawing a document).

Тор

Admission in a Reply

The defendant can admit to all or part of the claim by completing a Reply in Form 2 (SCL 002) and filing it at the registry where the claim was filed. If the defendant admits all of the claim, there is no filing fee for the reply. The fee is payable if the reply indicates only partial agreement [Rule 3(3)].

If a defendant admits to the claim amount but expressly disputes the fees or interest, a filing fee is charged for the Reply. A settlement conference should not be scheduled in these instances. The claimant may submit a Payment Order for the full amount requested, together with a Requisition outlining the request to enter a Payment Order to include the costs and interests. The Registrar may refer the matter to a judge in their office/chambers. Judge decides whether the payment order should be finalized as a desk order with costs and interests included or whether the matter needs to be addressed in court, in which case the registry is to notify the parties of a hearing date.

If the reply is sent in by mail and does not contain the reply fee, the reply cannot be filed. The registry will return the reply and a Reply letter (SCL 813) advising the defendant that the fee must be paid before the reply can be filed.

When the registry receives a reply indicating an agreement to all or part of the amount claimed, a Notice to the Claimant (SCL 025) is sent out along with the claimant's copy of the reply. This notice sets out the options the claimant has and advises the claimant that the case will not proceed until they respond.

If the claimant does not accept the amount offered in the reply, the claimant should advise the

registry by completing and returning the notice to claimant form. When the registry receives this notification, a settlement conference will be scheduled. Although this process is not required by the Rules, it greatly assists the efficient management of small claims cases by ensuring only those cases that need settlement conferences appear on the judge's list.

If the claimant agrees with the defendant's reply, the claimant can contact the defendant and arrange to sign a Consent Order (SCL 021) using the form available from the registry or they can prepare their own order. The consent order should be submitted to the registry for the Registrar's signature and filing [Rule 16(1)]. This will allow the claimant to enforce the order at a later date if necessary.

Alternatively, the claimant can attend at the registry and complete a Payment Order for filing in the same terms as the admission using Form 10 (SCL 010) [Rule 3(6)]. The Registrar will sign the form making it a Payment Order which may be enforced if necessary [Rule 11(9)-(10)].

Even if a settlement conference is already scheduled, the parties may reach an agreement and submit a consent order or a payment order to a registrar outlining the terms of their agreement, and ask the registrar to make an order.

Request for Payment Schedule

If the defendant does not dispute liability for the debt but cannot pay the full amount, the registry staff should advise the defendant and claimant to try to reach an agreement between themselves for payment by instalments. However, either the claimant or the defendant can ask for a payment schedule to be set by the court.

Where a reply indicates full agreement on liability there is no fee for filing the reply.

Where a defendant indicates in the reply full agreement on liability and proposes a payment schedule that the claimant does not agree to, the claimant may ask for a payment hearing. To do this the claimant would file a payment order at the registry and issue a summons to a payment hearing (SCL012) [Rule 12(3)].

A date for the payment hearing should be set as soon as possible. When agreement for liability has been reached, a judge or a justice of the peace can hear this matter and it can be set for the earliest possible date.

If the defendant wants to have the payment schedule set by the court, the defendant must complete the Notice of Payment Hearing (Form 13) and file it at the registry [Rule 12(10)]. The registry then sets the case down for a payment hearing. These matters should also be set as soon as possible since agreement for liability has been reached and only the terms for payment need to be set.

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Disagreeing with the Claim

If the defendant disagrees with the claim and cannot settle the matter out of court, he or she must file a reply in Form 2 (SCL 002). [Rule 3(2)]. The reply should clearly and briefly list the

reasons why the claim is opposed. The defendant has fourteen days from the day the Notice of Claim was served to file a reply [Rule 3(4)]. Defendants served outside of B.C. have thirty days to file a reply [Rule 3(4)].

The defendant must file the reply in the registry where the Notice of Claim was filed and pay the required fee. [Rule 3(3)]. If the reply is sent in by mail and does not contain the reply fee, the reply cannot be filed. The registry will return the reply and a Reply letter (SCL 813) advising the defendant that the fee must be paid before the reply can be filed.

The defendant is not required to serve the claimant with a copy of the reply. However, the registry must serve a copy of the reply on each of the other parties who have filed documents within 21 days after the reply is filed. This informs the claimant why the defendant is disputing the claim.

Once all replies in a case are filed the registry must schedule a settlement conference or trial. Most cases will have a settlement conference but those motor vehicle cases which only dispute liability for property damage will go directly to trial.

Claims for personal injury are not scheduled until a Certificate of Readiness (SCL 007) is filed by the claimant. The Notice of Settlement Conference (SCL 006) must be sent to the parties at least fourteen days before the scheduled date.

If there is more than one defendant, the registry should not, without a judge's permission, send out the Notice of Settlement Conference until they have proof every defendant has been served or the claimant either withdraws his claim against every defendant who has not been served or indicates what they intend to do with the "outstanding" defendants.

If the claim is for damages for personal injuries, the registry should make sure the Certificate of Readiness is filed before sending out the Notice of Settlement Conference.

Defendant Admits Partial Liability

A defendant who accepts responsibility for only a portion of a claim must file a reply, pay the reply fee and attend the settlement conference. The reply should clearly explain which portions of the claim the defendant agrees and disagrees with.

The defendant cannot make a partial payment into court; the defendant may make a partial payment directly to the claimant if desired.

Counterclaim

Whether or not a defendant wishes to dispute the action, the defendant may feel that the claimant owes money to them.

Example: The claimant says that the defendant borrowed and did not repay \$500. The defendant says that the claimant will not return personal effects valued at \$700.

Example: The claimant says that the defendant owes \$250 for car repairs. The defendant says that the claimant did a poor repair job, and that the claimant should pay the \$300 it cost to have the car repaired at another garage.

Тор

Filing a Counterclaim

The defendant may file a counterclaim by completing the appropriate section of the reply. The defendant should include enough detail to clearly explain the reasons for the counterclaim. The judge will hear the claim and counterclaim at the same time. There is a filing fee for the counterclaim which must be paid in addition to the reply fee.

If the reply containing a counterclaim is sent in by mail and does not contain the counterclaim fee, the reply cannot be filed. The registry will return the reply and a Counterclaim letter (SCL 814) advising the defendant that the fee must be paid before the reply containing the counterclaim can be filed.

If the counterclaim exceeds \$25,000, the defendant may:

- abandon the amount over \$25,000
- begin an action in Supreme Court

If the defendant begins an action in Supreme Court, the defendant may apply to a Small Claims judge to have the trial postponed. [Rule 4(7)]

If the Small Claims trial is held and an order is made against the defendant, the judge may order the claimant not to begin enforcement proceedings until a date set by the judge or the defendant's Supreme Court action is heard whichever comes first. [Rule 4(8)]

If a claimant has abandoned part of a claim under <u>Rule 1(4)</u>, the claim may be withdrawn and an action begun in the Supreme Court or the claimant may participate in an action begun by the defendant, claiming the higher amount. [Rule 4(9)]

A defendant can amend a reply already filed to include a counterclaim, following the rules for changing a document. This can be done at any time until the settlement conference is held. After the settlement conference, the defendant must obtain a judge's permission to include a counterclaim. [Rule 8(1)]

Serving a Counterclaim

The counterclaim is served on the claimant when a copy of the reply containing the counterclaim is mailed to them by the registry. This must be done within 21 days after the reply has been filed. A blank reply form must also be sent to the claimant because the claimant must reply to a counterclaim if it is opposed.

Replying to a Counterclaim

The claimant may respond to a counterclaim in the same way as the defendant responded. The claimant would complete a reply in Form 2 and file it with the court. Rule 4(3.1) refers to a fee for filing a reply to a counterclaim. However, there is no fee for filing such a reply in the fee schedule. Therefore, registries should not charge claimants for filing a reply to a counterclaim.

Although the claimant uses the same reply form as the defendant uses, the claimant may not include a counterclaim on the form.

If the claimant admits to all or part of a counterclaim, the defendant may go to the registry to file a payment order in the same terms as the admission, as long as a settlement conference has not been held [Rule 4(3.2)].

If the claimant does not file a reply to the counterclaim, the defendant may apply to a judge for a default order [Rule 6(2)].

Тор

Third Party Notice

If the defendant feels there is some other person who is wholly or partly responsible for the claimant's claim or for any damage caused to the defendant or debt that is owed, he or she should make this person a party to the action. [Rule 5(1)]

Filing the Notice

The defendant must file a Third Party Notice (SCL 003) with the registry where the Notice of Claim was filed and pay the required fee [Rule 5(2)]. If the third party is a company or a society, the defendant must file a printout of a search showing the most recent address of the company or the society that is on file with the Registrar of Companies [Rule 5(2.1)-(2.2)]. (See Chapter 2 for more information about searches.)

- If the defendant is claiming that a third party is responsible for the claimant's debt or damages, the defendant does not have to bring the third party into the action but merely disputes the claimant's claim on the grounds that the wrong party is being sued.
- If the defendant is claiming against the third party for damages or debt owing to the defendant from the same cause of action as the claimant's claim, the defendant may dispute the claimant's claim (or not dispute it) and issue a Third Party Notice.
- If the defendant is claiming that IF the defendant is ordered to pay the claimant, THEN the third party must pay the defendant some or all of the claim, then third party proceedings must be issued. Unless the defendant admits liability, the claimant's claim should also be disputed.

Serving the Notice

The defendant is responsible for serving the Third Party Notice on the third party. A blank Reply to Third Party Notice form (SCL 801), a copy of the Notice of Claim, a copy of the defendant's Reply, and a copy of the Notice of Settlement Conference or Trial (if any) must be

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served along with a copy of the Third Party Notice. [Rule 5(3)]

The documents must be served on the third party in the same way as a Notice of Claim. Proof of service must be returned to the registry within 30 days after the notice was filed, unless the third party has filed a reply. [Rule 5(5)] If the defendant does not file the proof of service in time, the third party notice expires, but the defendant can apply to have it renewed. [Rule 5(5.1)]

The registrar must serve a copy of the Third Party Notice on each of the other parties within 21 days. [Rule 5(6)]

Replying to a Third Party Notice

The third party can reply to the notice by following the procedure for replying to a Notice of Claim. [Rule 5(7)] The fee for filing a reply is applicable unless the third party has agreed to pay all of the claim. If there is an agreement with the amount, the defendant and the third party may settle the claim out of court, or they may file a consent order.

If the third party does not file a reply, the judge will deal with the claim against the third party and the claimant's claim at the same time.

The judge may make an order in favour of the defendant against the third party in the third party's absence. The registrar cannot give a default order against a third party. [Rule 6(2)]

Issue of Third Party Notice by ICBC - Motor Vehicle Cases

In some motor vehicle cases, the Insurance Corporation of British Columbia (ICBC) may choose to defend the action as a third party. ICBC can obtain third party status under the *Insurance (Vehicle) Act* (s. 77(3)) (formerly the *Insurance (Motor Vehicle) Act* (ss. 21(7) and (8))) by issuing a Third Party Notice itself.

ICBC must file a Third Party Notice (SCL 003) and pay the required fee. There is no requirement for ICBC to file the attached Certificate of Service. The registrar must serve a copy of the Third Party Notice on each of the other parties within 21 days.

ICBC must file its defence in the form of a Reply (SCL 002) and pay the required fee. ICBC must change the Reply form to show itself as "Third Party" rather than as "Defendant". The procedure for replying to a Notice of Claim will apply [Rule 5(7)].

Upon filing the Third Party Notice, ICBC is to be treated as a Third Party until the case is resolved.

Ignoring the Claim

If the defendant does not reply or settle the claim within the time limit, the claimant may ask the registrar for a default order. Once a default order has been asked for and either granted or a date is set for a hearing, the defendant may not file a reply or take any other step other than applying to file a late reply [Rule 6(8)] or applying to have the default order cancelled where it has been granted. [Rule17(2)] (See Chapter 8 for more information).

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<u>F</u>	Reply

5.1 Reply

Process

1. Defendant is served Notice of Claim Background

Upon receiving the Notice of Claim, the defendant may:

- pay the claimant in full or make their own agreement with the defendant outside the court process.
- file a reply (possibly making a counterclaim or add a third party).
- ignore the claim.

If the defendant chooses to pay the full amount or make their own agreement with the defendant, go to 2.

If the defendant files a reply (including counterclaim or adding a third party), go to $\underline{3}$.

If the defendant ignores the claim go to 14.

2. Defendant pays claim or makes an agreement with the claimant Procedure

Where the defendant pays claimant in full the claimant may file a notice stating that the claim has been settled. This is particularly important if a hearing date is set. The claimant can use the Notice of Withdrawal (SCL 019) although using is form is not required under the rules.

When a notice of withdrawal is filed the clerk must check the notice for:

- correct file number;
- correct names of parties;
- that it indicates what is being withdrawn;
- that it is signed and dated by the person submitting it;
- file it and advise that copies should be served on all parties; and
- check the file to see if a settlement conference needs to be cancelled.

If **all** the parties agree, they may draft a written agreement to settle the claim and present it to a registrar along with an application to a registrar for signing and filing as a consent order. The Consent Order (SCL 021) may be used for this purpose although its use is not required under the rules. An application is required under the rules and is included on the consent order form. It must be completed by one of the parties.

When an application and agreement are filed the registrar must pull the case file and check the documents for:

- correct file number;
- · correct names of parties;
- that the agreement generally covers off the case. That it sets out what payments are to be made, when they are
 to be made, what happens if they are not made. etc.; and
- that it is signed and dated by all the parties to the action.

ne registrar can sign the agreement/consent order and give the parties copies. The original should be kept in the case file.

Check the file to see if any hearings need to be cancelled.

3. Defendant files a reply to the claim Background

The defendant has fourteen days to complete a Reply form and pay the reply fee and file it at the registry. The defendant who is served outside B.C. has 30 days to pay the fee and file a reply.

Note: If the file is not located when a reply is received which is past the time limit, the clerk should note the time of receiving the reply on the date stamp. This is to prevent any confusion if the file is located and contains an application for a default order.

The defendant must include enough information in the reply to let the claimant know the reasons for disagreeing with the claim.

If the defendant admits all or part of the claim and/or offers to pay in instalments, go to 4.

If the defendant admits all or part of the claim and requests a payment schedule set by the court, go to 9.

If the defendant opposes the claim, go to 10.

If the defendant makes a counterclaim, go to 11.

If the defendant names a third party who is responsible for the claim, go to 12.

4. Defendant agrees with all or part of the claimand may propose a payment schedule Procedure

The defendant must:

- complete the agreement with the claim section on the reply form.
- file it with the registry.

The clerk must:

- check and stamp the reply. If the defendant has agreed with all of the claim and not disputed anything there is no fee for filing the reply. Where the defendant has agreed in part and proposed a payment schedule, the fee is charged.
- arrange for a copy of the reply to be served on other parties within 21 days along with a Notice to Claimant which
 advises the claimant of their options. Service is usually done by ordinary mail and a notation is made on the court
 copy of the reply noting "Mailed", the date and the name of the clerk. If proof of service is required at a later date,
 it may be prepared by a Certificate of Service or provided orally.

5. Claimant receives Notice to the Claimant and chooses option Background

Upon receiving the Notice to the Claimant, the claimant must choose an option and advise the registry or the case will not proceed any further. The claimant may:

- contact the defendant and arrange to sign a consent order.
- attend at the registry and file a payment order.
- file a payment order and ask for a payment hearing if the payment schedule is not acceptable.
- advise the registry the amount is not acceptable and request a settlement conference.

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If the claimant chooses a consent order or payment order, go to 6.

the claimant chooses a payment hearing, go to 7.

If the claimant requests a settlement conference, go to 8.

6. Claimant chooses a consent order or payment order Procedure

For a Consent Order, the Claimant must:

- contact the defendant and arrange to have a consent order signed. Consent Order form SCL 021 may be used by the parties, but they may draft their own orders.
- one of the parties completes the application portion on the consent order.
- deliver the form to the registrar for signing and filing.

For a Payment Order, the Claimant must:

- complete the Payment Order (SCL 010).
- deliver the form to the registrar for signing and filing.

The clerk must:

- check the consent form to be sure agreement is signed by all parties; and
- ensure the application portion on the consent order has been completed by one of the parties.
- check the payment order to be sure it agrees with the admission in the reply filed by the defendant.
- have the registrar review and sign the consent order or payment order.
- stamp and file the order.

7. Claimant chooses a payment hearing Procedure

The claimant may accept the amount offered in the reply and ask for a payment hearing to set the payment schedule. The claimant must:

- complete a payment order (SCL 010), setting out the agreement from the reply.
- complete a summons to a payment hearing (SCL 012).
- submit the forms to the registrar for signing and filing.

The clerk must:

- · check the payment order to be sure the agreement is the same as on the reply
- set a date for the payment hearing and have the registrar sign the payment order and the summons

The claimant is responsible for serving the defendant with the summons and completing an affidavit of service.

(See Chapter 11 for more information on Payment Hearings).

. Claimant requests settlement conference Procedure

The Claimant must:

• complete the bottom of the Notice to Claimant and return the Court Copy to the registry.

The clerk must:

• check the file to determine if there are multiple defendants. If not the clerk may set a settlement conference date and notify the parties. If there are multiple defendants the settlement conference date should not be set until the status of the other defendants is clarified.

9. Defendant agrees with all or part of the claim and asks the court to set the payment schedule Procedure

The defendant must:

- complete the agreement with the claim section on the reply form.
- file it with the registry.

The clerk must:

- check and stamp the reply. If the defendant has agreed with all of the claim and not disputed anything there is no fee for filing the reply. Where the defendant has agreed in part and requested a payment schedule be set by the court, the fee is charged.
- arrange for a copy of the reply to be served on other parties within 21 days.
- check the file to determine if there are multiple defendants. If not the clerk may set a settlement conference date and notify the parties. If there are multiple defendants the settlement conference date should not be set until the status of the other defendants is clarified.

10. Defendant disputes all or part of the claim Procedure

The defendant must:

• pay the fee and file a reply, explaining why they oppose the claim, at the registry where the claim was started.

The clerk must:

- check the reply form to be sure reasons for opposing the claim have been set out.
- stamp and file the reply.
- check the file to determine if there are multiple defendants. If not the clerk may set a settlement conference date and notify the parties. If there are multiple defendants the settlement conference date should not be set until the status of the other defendants is clarified.
- check the reply to determine if it is a motor vehicle accident case with only liability for property damage in dispute. These cases go directly to trial.
- serve the other parties with a copy of the reply within 21 days.

11. Defendant may make a counterclaim Procedure

The counterclaim must be for no more than \$25,000.

The defendant must:

- complete the counterclaim section on the reply form.
- include enough information in the reply to let the claimant know what the counterclaim is about.

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• file it with the registry.

he clerk must:

- check and stamp the reply and ensure the reply fee and the counterclaim fees are paid.
- arrange for a copy of the reply to be served on the other parties within 21 days along with a blank reply form.
- check the file to determine if there are multiple defendants. If not the clerk may set a settlement conference date
- and notify the parties. If there are multiple defendants the settlement conference date should not be set until other replies are received or the claimant indicates what they intend to do with the "outstanding" defendants.

The claimant has the same options as the defendant had for responding to the claim, except for making another counterclaim.

12. Defendant names a third party who is responsible for the claim Procedure

The defendant must:

- complete a Third Party Notice form.
- explain why the third party has some responsibility in the case.
- if the third party is a company or society, obtain a company search and submit it with the Third Party Notice form.
- file it with the registry and pay the required fee.

The defendant is responsible for serving the Third Party Notice, a blank Reply To Third Party Notice form, a copy of their own Reply, a copy of the Notice of Claim and Notice of Settlement Conference or Notice of Trial on the third party.

The registrar must:

• serve a copy of the Third Party Notice on each of the other parties within 21 days.

The third party can reply to the notice by following the procedure for replying to a Notice of Claim.

13. ICBC files Third Party Notice in a motor vehicle case Procedure

ICBC must:

- complete a Third Party Notice form.
- file it with the registry and pay the required fee.

ICBC does not need to serve itself and can dispense with the proof of service.

The registrar must:

• serve a copy of the Third Party Notice on each of the other parties within 21 days.

Upon filing its Third Party Notice, ICBC must:

- file its defence in the form of a Reply, changing the form to show itself as "Third Party" rather than as "Defendant".
- he Reply must be filed and served in accordance with the procedure for replying to a Notice of Claim.

14. Defendant ignores the claim Procedure

If the defendant does nothing within the time limit, the claimant can request a default order. The defendant may pay the fee and file a reply until a default order is issued or a date is set for a hearing to assess the amount of the default order.

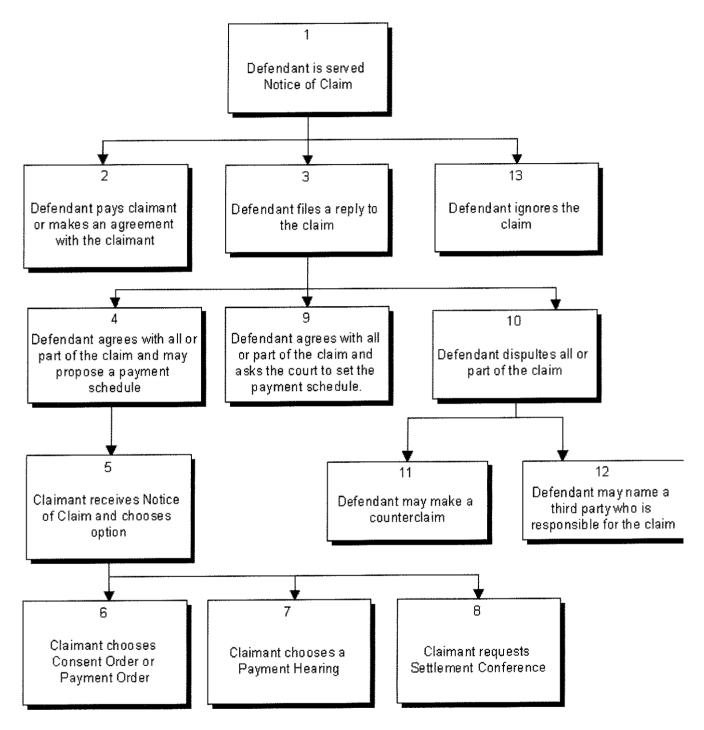
If the claimant does not reply to a counterclaim, or a third party does not reply to a third party notice, default orders may be made against them by a judge.

See flowchart

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September 2007

5.1 Reply



September 2001

Previous Section: Reply

6.1 Changes to Documents

Introduction

This section outlines the procedure for making changes to documents.

Any party may change a document that he or she has filed any time before the Settlement Conference. However, after the Settlement Conference is held, no changes may be made to a document without the permission of a judge. <u>Rule 8</u> governs changes to documents.

Legal Commentary

Changes Before the Settlement Conference

Any party may change anything in a document that he or she has filed without a judge's permission if the settlement conference has not begun. [Rule 8(1)]. Changes may be made right up to the time set for the start of the conference. Changes should be made on a copy of the filed document. All changes including deletions should be underlined, initialled and dated. [Rule 8(2)].

If there are too many changes to use a copy of the original, the document may be retyped. All the contents of the original document must be retyped exactly.

Example: If a paragraph is to be deleted and a new paragraph substituted, the old paragraph should be typed and then crossed out. The new paragraph should be added and underlined.

A notation should be made in place of the registry stamp -- for example, "Original filed January 16, 1997."

If an original document required a signature, the persons's name should be typed in quotation marks to show that the original document was signed by that person. The new document should not be signed.

Sometimes a change is made by order of a judge. This should be written on the document. [Rule 8(2)].

Example: "Amended this _____ day of _____, 1997 by order of Judge Smith."

There is no fee to file an amended document, unless the amendment is the addition of a counterclaim to a reply. Then the counterclaim fee is charged.

Changes After the Settlement Conference

After the settlement conference has been held, no document may be changed without a judge's permission. A party wishing to change a document must file an Application to a Judge (SCL017) and serve it on all other parties at least seven days before the date set for hearing of the application. [Rule 16(7)]. Service may be done by following provisions of Rule 2 or Rule 18(12).

If the judge grants permission, the party must make the changes to the document as outlined above. The date the application was granted must be written on the amended document.

Serving Amended Documents

The person who requested the change is responsible for filing the amended document at the registry and serving it on all parties. [Rule 8(3)].

The changed document must be served using the same options for service available when the original document was served. No further step may be taken in the claim until all entitled parties have been served.

Replying to Amended Documents

The person who is served with an amended claim, counterclaim or third party notice has the option of amending their reply or relying on their original reply. [Rule 8(3.1)].

No default order would be issued on the amended document because the person is relying on their original reply to cover the amended document. [Rule 8(3.2)].

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Previous Section: Changes to Documents

6.1 Changes to Documents

Process

1. Party wants to change document Background

Any party may change a document they have filed by filing a copy of the revised document with the registry.

2. Has the Settlement Conference been held? Consideration

If YES, go to 3.

If NO, go to 5.

3. Application to a Judge filed and served on other parties Procedure

The party must:

- file an Application form
- serve the Application on all parties

The clerk should set a date for hearing the application, allowing time for service of the application. Depending on how the party chooses to serve the application, the party receiving the application must have at least 7 days notice.

4. Is the application granted? Consideration

If YES, go to 5.

If NO, end of process.

5. Amended document prepared and filed Procedure

The clerk should:

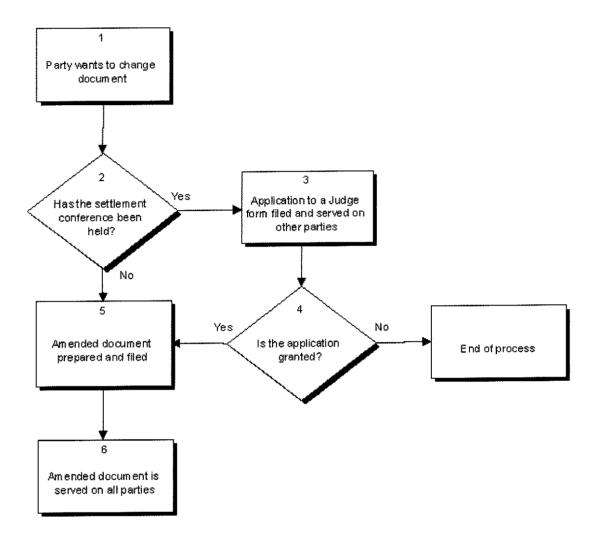
- check that all changes are underlined, initialled and dated
- check that the date of the court order giving permission for the change is noted (if applicable)
- in place of the stamp, the document is marked "original filed on (date)"
- if the document is a reply, check to see if a counterclaim has been added and charge the appropriate fee
- file the original of the document in the court file and return the copies for service.

6. Amended document is served on all parties Procedure

Before proceeding with the claim, the party who filed the changed document must serve it on:

- everyone who received the earlier version
- anyone added as a party in the new document

6.1 Changes to Documents



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6.2 Withdrawing a Claim, Counterclaim, Reply or Third Party Notice

Introduction

This section outlines the procedure for withdrawing a claim, a counterclaim, a reply or a third party notice.

Legal Commentary

The claimant or defendant may withdraw a claim, counterclaim, reply or third party notice at any time. [Rule 8(4)]. The rules do not set out a regulated form for a Notice of Withdrawal so it may be any form such as a letter as long as it identifies the case, the document being withdrawn, date and the name and signature of the person withdrawing.

Court Services has produced a form (SCL 019) for the convenience of litigants but its use is not required by the rules.

The party must:

- file a Notice in the registry
- serve the Notice on all parties served with the document

If it was the Notice of Claim that was withdrawn, then the action is discontinued and it is removed from the settlement conference or trial list.

Withdrawing the claim does not discontinue a counterclaim. If all parties wish to discontinue the counterclaim as well, the defendant should also file a notice.

If only the defendant withdraws a counterclaim, the next step will depend on the rest of the contents of the reply.

If the defendant withdraws a reply, the claimant may request default judgment, unless the parties have reached an agreement which may or may not be filed with the court.

If the defendant withdraws a third party notice, the next step will depend on whether the defendant had filed a reply or not.

A party who withdraws a claim, counterclaim, reply or third party notice must get the permission of a judge to proceed with it or to file another notice with respect to the claim or counterclaim. [Rule 8(6)]

The permission of a judge to proceed is requested by completing an Application to a Judge, Form 17 (SCL017) and requesting the registry to set the application for a hearing. (See <u>Chapter 7 for Applications to the Court</u>).

The provisions under <u>Rule 8(4)</u> refer to withdrawal of a complete document. A party cannot withdraw part of a document, but they can use the amending provisions under <u>Rule 8 (1) to (3)</u> to delete those portions of the document that would no longer apply.

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6.2 Withdrawing a Claim, Counterclaim, Reply or Third Party Notice

Process

1. Party wants to withdraw a claim, counterclaim, reply or third party notice Background

Any party may discontinue a claim, counterclaim, reply or third party notice filed by them at any time.

2. Party files a Notice of Withdrawal and serves it on all other parties Procedure

The party should:

- prepare a Notice of Withdrawal clearly identifying which document is being withdrawn
- · present a copy of the notice at the registry for filing

The clerk should:

- check the notice to make sure it contains the date, the case file number, the document being withdrawn, the name and signature of the person withdrawing, etc.
- file the notice

The party must ensure that the notice is served on all parties who were originally served with the document.

3. Claim, counterclaim, reply or third party notice is withdrawn Procedure

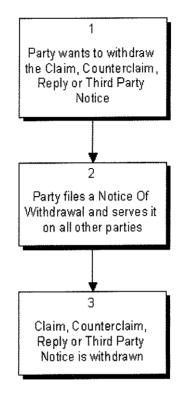
The trial coordinator should:

• remove the case from the settlement conference or trial list, if necessary

See flowchart

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6.2 Withdrawing a Claim, Counterclaim, Reply or Third Party Notice



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7.1 Applications to the Court

Introduction

This section outlines the procedure for making applications to the court.

At some point in the proceedings, any party can apply to take action which varies from standard court procedure or seek direction from the judge. Three types of application can be made:

- applications for consent orders
- applications not requiring a hearing
- applications requiring a hearing

Applications not requiring a hearing are made to a registrar or to a judge. Applications requiring a hearing are made to a judge in court.

A party who is not satisfied with a decision of a registrar may appeal that decision by making an application to a judge. [Rule 17(21)]

Legal Commentary

Consent Orders [Rule 16(1)]

If **all** parties reach agreement, they may record the details of their agreement in a document and apply to a registrar to file it as a "consent order". The parties must satisfy the registrar that their consent was given.

In this situation, the application to the registrar may be included in the same form as the Consent Order. All parties must sign the agreement, but only one of the parties needs to make the application. It is not appropriate for Court Services staff to sign agreements as a witness.

Various types of written agreements can be "consent orders"; common types include:

- an agreement on payment or payment schedules
- an agreement order to dismiss a claim

Consent orders cannot be used to change trial dates because only a judge may cancel, postpone or adjourn a trial and only after a hearing. [Rule 16(6)].

The registrar signs and files the agreement making it an order and returns copies to the party who submitted it.

There is a preprinted form (SCL 021) that may assist litigants in preparing their application and their agreement but its use is not required by the rules.

If the registrar is uncertain whether to make the consent order, the registrar may refer the matter to a judge. [Rule 16(4)] The judge may make the consent order or may request that the parties attend court to explain why the order should be made. [Rule 16(5)].

A consent order is as valid as an order made in court by a judge, and may be enforced if necessary.



Applications That Do Not Require a Hearing [Rule 16(2)]

The registrar can make certain orders without a hearing.

These orders include:

- an order renewing a claim or a third party notice [Rule 2(7) and 5(5.1)] (see chapter 3)
- an order changing the date of a settlement conference [Rule 7(7)]
- an order extending the time for filing a Certificate of Readiness [Rule 7(10)]
- an order permitting a hearing to be conducted by telephone [Rule 17(16.1)] (see below)
- an order extending the time for paying the fee for an adjourned trial [Rule 17 (5.3)(b)]
- an order authorizing service of a Notice of Claim outside B.C. [Rule 18(6)] (see chapter 3)
- an order allowing an alternate method of service [Rule 18(8)] (see chapter 3)
- an order exempting someone from paying a filing fee [Rule 20(1)]
- any other order that the registrar is authorized to make without notice to another party

The applicant must complete an *Application to the Registrar*, using Form 16 (SCL 016), explaining the details of the order requested and the reasons for the application [Rule 16(3)] and file it at the registry. An application to a registrar is not served on the other parties.

The registrar records the order on the Application form. The registrar signs and files the order, gives a copy to the applicant, and advises the applicant if the order must be served on another party.

The registrar may refer any application to a judge, who may either make the order or direct the applicant to appear in court. [Rule 16(4)].

Indigence Applications

Anyone who cannot afford the fees payable for the registry services listed in the fee schedule, may apply to the registrar to be exempted from paying the fees. [Rule 20(1)]. This provision only applies to the fees for Registry Services and does not apply to the fees in the Sheriff Services section of the fee schedule.

The applicant should be asked to complete the *Application to the Registrar* (SCL 016), and a *Statement of Finances* (SCL 024) to support the application. Although the statement of finances is not required by the rules, use of the form will assist the applicant and the registrar in determining the applicant's financial position in a more efficient manner.

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The registrar may ask the applicant to provide some documents to support the statement of finances.

Telephone Hearing Applications

A registrar, justice of the peace or judge may conduct a hearing, **except a trial or a hearing where sworn evidence may be required**, by telephone, if the party requesting the telephone hearing does not reside or carry on business within a reasonable distance from the court location where the hearing is to occur or exceptional circumstances exist. [Rule 17(16)].

Telephone hearings have become popular with companies whose offices are not in the court location where the action is being heard. Also, many litigants who do not want to interrupt their schedules by attending court are asking for telephone hearings. It is the registrar's decision whether they may participate in the hearing by telephone.

A party who wants to apply for a telephone hearing must complete an application form (SCL 016) and submit it to the registrar for consideration. [Rule 16(3)]. If the registrar grants the application, then the registrar must order that all documents relevant to the hearing be sent to the court and the other parties before the hearing. [Rule 17 (16.1)(a)] The registrar should set a date in the order for the documents to be received by the other party to allow the receiving party sufficient time to review the documents prior to the hearing.

The registrar may also order that the telephone call be made at the expense of the party requesting the telephone hearing. [Rule 17 (16.1)(b)]. Generally, when the person requesting the telephone call is **outside of the Province of British Columbia**, they would likely be required to pay for the telephone call either by calling the registry where the hearing is to be held or accepting a telephone call from the registry on a "collect call" basis.

Conference calls to locations **within the province** may be made using the provincial conference call services ProvNet Audio Teleconferencing and these would be paid for by the Province. To arrange a conference call, registry staff would contact the Reservation Centre at:

Vancouver 775-0584 Victoria 952-6789 Toll Free 800-461-9660

and request to have the call set up using the *Chairperson Manual Dial-Out Conference* service.

If the in-province call cannot be arranged through the ProvNet Audio Teleconferencing service, the registrar will decide whether the applicant must pay for the telephone call.

Applications That Require a Hearing [Rule 16(6)]

Some orders are made only after all parties have been served with an Application and the applicant has appeared in court to explain why the order should be made. These orders include the following:

- an order changing the date of a trial [Rule 4(7) or 9(6)]
- an order permitting a third party claim to be made [Rule 5(1)]
- a default order if no reply to a counterclaim or third party notice is filed [Rule 6(2)]
- an order transferring a claim to the Supreme Court [Rule 7.1(1)(b) and (2)]
- an order extending the time for serving an offer to settle [Rule 10.1(1)(b)]
- an order permitting a late reply to be filed [Rule 6(8)]
- an order for a medical examination [Rule 7(12)]
- an order setting a place for a trial [Rule 7(19)]
- an order cancelling a summons to witness [Rule 9(5)]
- an order permitting a creditor to ask for a payment hearing [Rule 12(4)]
- an order changing or cancelling an order made in the absence of a party [Rule 17(1)]
- an order cancelling a default order or dismissal order [Rule 17(2)] (see below)
- an order changing or cancelling the terms of a payment schedule [Rule 17(3)]
- an order postponing or adjourning a trial [Rule 17(5.1)] (see below).
- an order extending or shortening a time limit [Rule 17(12)]
- an order for failing to obey a rule [Rule 17(13)]
- a review of a decision of a registrar [Rule 17(22)]
- any other order that a judge has the power to make and notice of which is served on another party

The applicant must file an *Application to a Judge* using Form 17 (SCL 017) at the registry where the court file is held unless the registrar allows it to be filed at another registry. [Rule 16 (7)]

The applicant must serve the notice on all parties affected by the order requested at least seven days before the hearing date. [Rule 16(9)]

Service may be made by ordinary mail to the person's address if there is enough time to allow for the presumed service of 14 days after being mailed and the 7 day notice requirement. Service may also be made using the service options for a Notice of Claim. [Rule 18(12)]. Proof of service may be required at the hearing of the application if the served party does not attend. Proof of service may be done using the *Certificate of Service* (SCL 004F).

The results of the application are recorded on the Application form or the *Application Record/Order* (SCL 026) by the clerk. The parties are provided with copies of the application or the record/order.

Application to Cancel Dismissal or Default Order

A judge may cancel a dismissal order or default order if the order was made in the absence of a party, or for failing to file a reply and the party attaches an affidavit to support the application. The affidavit should contain the reason the party did not file a reply or attend a settlement conference or trial, the reason for any delay in filing the application and the facts that support the claim or defence. [Rule 17(2)].

A form of affidavit is required by the rules but it is not a prescribed form. An Affidavit To Cancel a Dismissal or Default Order form (SCL 020) may be obtained from the registry or the party may draft his or her own form as long as it contains the reasons and facts set out in (b) of Rule 17(2).

A copy of the affidavit must be served with the copy of the application, on the other party.



Application to Adjourn a Trial

A party must make an application to a judge to postpone or adjourn a trial. [Rule 16(6)(a) and (k.1)]. The party must complete an application using Form 17 (SCL 017) and file it at the registry where the court file is held. [Rule 16(7)]. The registry will set a hearing date for the application and the applicant will have to serve the other party at least 7 days before the hearing date.

At the hearing the trial will only be postponed or adjourned if the judge is satisfied that the postponement or adjournment is unavoidable and an injustice will result to one of the parties if the trial proceeds.[Rule 17(5.1)(b)].

A fee for adjourning a trial will be required under the following conditions ([Rule 17 (5.2)]):

- the trial date had been set,
- notification had been sent to the parties at least 45 days before the trial date,
- the application to adjourn the case is being made within 30 days of the set trial date, and
- the adjournment has been granted.

The fee is set out in the Fee Schedule for Small Claims.

The fee must be paid within 14 days of obtaining the adjournment or according to the time limit set by the registrar who may set a longer period. [Rule 17 (5.3)]. The case is set on the trial list **only when the fee has been paid**. The registry does not have to track the file.

If the party who has been granted the adjournment does not pay the fee within the 14 days and no extension has been granted by the registrar under $\underline{\text{Rule } 17(5.3)}$ (b), then the other party can apply to a judge under $\underline{\text{Rule } 17(5.4)}$ A judge has several options against the party who failed to pay the fee. The judge may dismiss a claim, (if the party is the claimant), strike out a reply, counterclaim or a third party notice and make a payment order, (if the party is a defendant), or make any other order the judge thinks is fair. [Rule 17 (5.4)].

Urgent Applications

If the application to a judge is urgent, the registrar may allow an application for which notice is normally required to be made without notifying the other parties. However, the registrar should encourage the applicant to give the other parties as much notice as possible. [Rule 16(10)].

Filing or Hearing an Application at Another Court

Applications are normally heard at the court served by the registry that holds the court file. However, if the parties agree or if the registrar is satisfied that the application is urgent, the registrar may allow the application to be filed or to be heard in another court location. [Rule 16 (8) and 16(11)] **Example:** A defendant living in Prince George wants to file an application on a file held in Vancouver. The application would normally be heard in Vancouver. If the Prince George registrar is satisfied that the claimant consents or that the application is urgent, the registrar may allow the defendant to file the application in Prince George. The registrar forwards the original Application to the Vancouver registry. The two registries must confer to arrange a court date.

If a registrar allows an application to be heard in a different court location [Rule 16(11)], the registrar must forward the file to the court where the application is returnable. After hearing the application, the registrar returns the file and the new order to the originating registry, unless a judge orders otherwise.

Alternatively, registry staff may suggest to the parties that they could use the telephone conference call method to have the application heard. (See <u>Telephone Hearing Applications in this Chapter</u>)

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December 2014

Previous Section: Applications to the Court

7.1 Applications to the Court

Process

1. Party wants to make an application Background

The application process begins when a party comes into the registry to file an application.

2. What type of application is being made? Consideration

The clerk should:

- determine what the order is for
- advise the party whether a hearing is required

Is the application for a Consent Order? Go to 3.

Is the application to a registrar? Go to 4.

Is the application to a judge? Go to 6.

3. All parties agree to a consent order and sign an agreement Procedure

The parties prepare a written agreement and all parties sign it.

One of the parties completes an application to a registrar to request the consent order be filed as an order of the court, and submits it to the registrar.

Parties may prepare their own forms or use the form available at registry (SCL 021), which combines the application and the consent order.

The Registrar confirms that all parties consent to the agreement, and signs and files the order.

The clerk places the original in the court file and returns copies to the parties for their own records.

4. Applicant completes and files an Application to the Registrar Procedure

The applicant must complete and file an application to the registrar Form 16 (SCL 016) containing the details of the order requested, and the reason for the application.

The registrar considers the application. The registrar may require supporting documents, such as a statement of finances if the application is for indigency status.

5. Registrar records the order and signs Procedure

If the registrar **grants** the application, the registrar writes the order on the form and signs it. The court copy is placed in the court file and the copy is given to the applicant. The registrar advises the applicant if the order must be served on another party.

If the registrar **refuses** the application, the registrar records the application is refused on the form and signs it. A copy is provided to the applicant. The applicant may appeal the decision by making an application to a judge for a review of the registrar's decision.

If the registrar **refers** the application to a judge, the applicant is advised whether the judge granted or refused the application, or requires the person to appear in court to make the application.

6. Applicant completes and files an Application to a Judge Procedure

The clerk provides the applicant with an application to a judge Form 17 (SCL 017), and advises the applicant if an affidavit in support of the application is required.

The applicant completes the form and affidavit if necessary.

The clerk checks the form(s) and sets a hearing date. The clerk stamps and files the original of the form and returns the copies to the applicant for service and their own records.

Note: If the application is for adjourning a trial with less than 30 days' notice, and the judge grants the adjournment, the clerk must advise the applicant that there is a trial resetting fee and that the applicant has 14 days to pay the fee. The clerk should also advise the party about the possible consequences of failing to pay the fee.

7. Application is served Procedure

The applicant is responsible for serving the application. (If necessary, the applicant must provide the registry with proof of service.) There must be seven days between service and the hearing date.

8. Hearing held and order completed and signed Procedure

At the hearing the judge decides whether or not to grant the application.

The Registrar/court clerk writes the order on the Application form, or the Application Record/Order, or the applicant may prepare an order.

The judge signs the order.

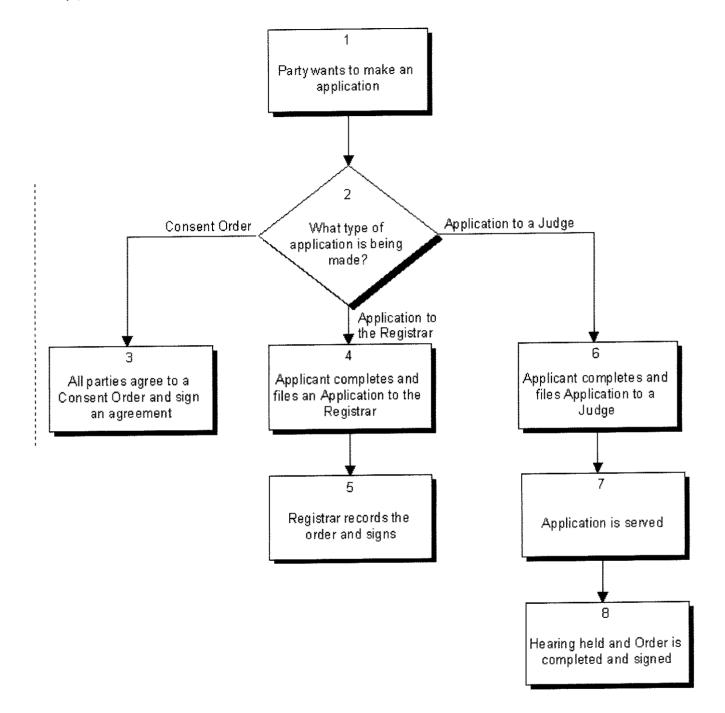
Note: If the order is for resetting a trial with less than 30 days' notice, the applicant must be directed to the accounting section to pay the required fee.

See flowchart

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September 2001

7.1 Applications to the Court



September 2001

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8.1 Default Orders

Introduction

This section outlines the procedure for issuing a default order.

If the defendant does not file a reply, the claimant may ask the registrar for a default order.

The method for obtaining the order depends on the claim. If the claim is for a debt, the registrar may make a default order without a hearing. This order is fully enforceable. If the claim is not for a debt, the clerk must set a default hearing date so a judge can determine the amount the claimant is entitled to. Interest and expenses may be added to the amount claimed.

A default order may be cancelled in an application to a judge [Rule 17(2)].

Legal Commentary

If the Claim Is for a Debt

If the defendant does not file a reply, the claimant may ask for a default order after providing proof of service. [Rule 6(1)]. To ask for a default order, the claimant must complete Form 5 (SCL005), file it at the registry where the notice of claim was filed, together with a certificate of service for the notice of claim and pay the required fee. [Rule 6(3)].

The registrar must determine whether or not the claim is for debt. Some common examples of debt claims are:

- claims for goods and services where all parties agreed to the amount. Example: an unpaid invoice for
 office supplies provided, or for labour performed, where the rate was agreed to.
- claims for the repayment of a loan, whether by verbal or written agreement
- claims for NSF cheques (including NSF charges)
- deficiency on promissory note

The registrar determines whether the claim is for debt according to the facts of the claim.

- **Example:** in a claim for an NSF cheque, the defendant obviously knew the amount owing and agreed to pay it.
- **Example:** in a claim for six hours of labour at \$10.00 per hour, although the defendant might not know the total amount owing, if the claimant and defendant agreed to the hourly rate before the work was performed the claim is treated as a debt.

If the claim is for debt, and if the registrar has proof that the Notice of Claim was served on the defendant, the registrar may make a default order by completing the appropriate section of the Application for Default Order. $[P^{++}] = 6(3)$]. Registrars should not be screening for limitation periods when issuing default orders and should n = 3e rejecting a default orders due to a suspected expiry of limitation period.

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Registrars must award interest on all default orders as required by the *Court Order Interest Act*. The court order interest rates are posted on the Supreme Court website at http://www.courts.gov.bc.ca/supreme% <u>5Fcourt/about the supreme court/Court Order Interest Rates.aspx</u>. If only part of the claim is for debt, then the claimant can ask for a Default Order on that part only and take the "non draft" part of the claim to Court for assessment.

If there is no specific rate of interest mentioned in the Notice of Claim, the registrar must award interest at the registrar's rate. This rate is set by statute and is reviewed twice a year. The same interest rate is used in default judgments in Supreme Court.

If the parties had agreed in a written contract on the amount of interest to be paid, the rate must be a specified annual rate in percentage. The claimant may request this rate of interest in the Notice of Claim. The registrar uses this contractual interest rate when making the default order.

No interest is awarded:

- if the claimant has waived the right to interest in writing (either on the Notice of Claim, or by writing "nil" or a zero on the default order)
- on expenses

The claimant must calculate the interest and submit a written calculation sheet or adding machine tape. The registrar should check the claimant's calculations.

interest can be calculated as follows:

(amount of claim x interest rate) 365 days

x number of days

Expenses

The claimant can recover filing and service fees, and any other reasonable charges or expenses directly related to the proceeding. [Rule 20(2)]

The registrar must determine the amount of expenses the claimant is entitled to and include them on the default order. For service fees the registrar is not limited to the amounts set out in the schedule of fees. Those fees are the fees charged in those specific instances where the court performs service. If the claimant has spent more and the registrar believes the expense to be justified, a higher amount may be awarded.

Example: the filing fee is recoverable, as well as reasonable costs for service or a company search.

If the Claim is Not for a Debt

If the claim is not for a debt, the claimant may ask for a default order by completing the top portion of the *Application for Default Order* Form 5 (SCL 005), file it at the registry where the notice of claim was filed and bay the required fee. [Rule 6(3) and (5)]. The registrar must set a date for a hearing before a judge when the application is received. The default order is not automatically made as in the case of a claim for debt and the claimant must prove the amount of the claim at a hearing before the judge. [Rule 6(9)]. The hearing date is entered in the appropriate section on the Application for Default Order form and the claimant is given the default order is not automatically order form and the claimant is given the appropriate section on the Application for Default Order form and the claimant is given the default order is not automatically order form and the claimant is given the default order is not automatically order form and the claimant is given the default order is not automatically order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the claimant is given the default order form and the default order form and the claimant is given the default order form and the default order form and

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Notice of Hearing copy of the form. The defendant does not receive notice of the hearing. [Rule 6(7)].

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Defendant's Rights

After a default order is made or a date has been set for a hearing, the defendant has no right to:

- file a reply
- receive a Notice of Settlement Conference, if there is a settlement conference between the claimant and another defendant
- take any other step except for applying to file a late reply or to cancel the default order. [Rule 6(8) and Rule 17(2)]

Proof of Service

Before granting a default order, the registrar must be satisfied that the Notice of Claim was served on the defendant, together with a blank reply form. [Rule 6(3)]. See Chapter 3, Proof of Service.

Multiple Defendants

If the claim is for debt and no hearing is required, the registrar may make a default order against any defendant who has not replied any time after the time limit for replying has passed, whether other defendants have been served or not. [Rule 6(4)]

T^L > defendant should be clearly identified to prevent any confusion when multiple defendants have been n, led on the notice of claim.

If a claim is not for debt the default hearing against the defendant who has not replied must be held at the same time as the settlement conference or trial unless a judge orders otherwise. [Rule 6(6)]

The registrar should not set a default hearing date until the claimant either produces proof of service for all defendants named and the time limit for filing all replies has passed or indicates what they intend to do with the "outstanding" defendants. The purpose of holding the hearing and the settlement conference or trial on the same date is to determine "the amount" -- full amount the claimant is entitled to. This cannot be determined until all defendants have replied. [Rule 6(6) and 6(9)].

After the time limits are up, the registrar may schedule a settlement conference for those defendants who have filed a reply, and schedule the default hearing for the same time. If no defendants have replied, the registrar can schedule the default hearing that has been asked for. The claimant may either include all defendants named in the notice of claim in the application for the default order or withdraw the claim against those defendants that the claimant does not wish to pursue.

Hearing

If a defendant has not filed a reply and a hearing is required, the claimant must appear in court and give evidence to the judge. The purpose of the hearing is to allow a judge to determine the amount the claimant is entitled to and to make any other appropriate orders. [Rule 6(9)].

All evidence is taken under oath, and the judge may mark any documents provided by the claimant as exhibits. The judge may allow witnesses to be called for support in determining the value of the claim.

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If the claimant fails to appear for the hearing, the claim is struck off the court list. However, the claimant may ask the registrar to reschedule the hearing by filing a new Application for Default Order and requesting a new date. [Rule 6(11)]

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Cancelling a Default Order

A defendant cannot file a reply after a default order has been issued, but the defendant may apply to have the default order cancelled and to be allowed to file a reply. [Rule 17(2)].

If the default order has been made the defendant must complete an *Application to a Judge* Form 17 (SCL 017) and obtain a hearing date from the registry. The defendant must also attach an affidavit containing the reason they did not file a reply, the reason for any delay in filing the application, and the facts that support their defence [Rule 17(2)]. An *Affidavit to Cancel a Dismissal or Default Order* form (SCL 020) may be used or the party may draft his or her own form as long as it contains the reasons and facts set out in Rule 17(2)(b). If the affidavit is sworn/affirmed at the registry, the appropriate fee is charged. The application and affidavit must be served on the claimant.

At the hearing, the defendant must convince the judge that there was good reason for not filing a reply within the time limit and that there is a reasonable defence to the claim. If the judge makes an order cancelling the default order, the defendant must file a reply. A settlement conference is then scheduled or in the case of multiple defendants, the defendant is notified of the date of an already scheduled settlement conference.

Filing a Late Reply

A defendant cannot file a reply after a date has been set for a default hearing without the permission of a judge [Rule 6(8)].

If a date for the default hearing has been set the defendant completes an *Application to a Judge* Form 17 (SCL 017), and obtains a hearing date from the registry. The registry should set the hearing date for the application before the date for the default hearing or just prior to it on the same date. The defendant then serves the Application on the claimant giving them at least 7 days notice. [Rule 16(9)]. If there is insufficient time for the service of the application on the claimant, the registrar may allow the application to be made without the other parties being served. [Rule 16(10)].

Since the default order has not been made yet, an affidavit is not required, but the defendant should explain on the application why the reply was not filed in time. (See <u>Chapter7</u>, <u>Applications to the Court</u>.)

Default Order on a Counterclaim or Third Party Notice

If the claimant does not file a reply to the counterclaim, the defendant may apply to a judge for a default order [Rule 6(2)].

If the third party does not file a reply, the judge will deal with the claim against the third party and the claimant's claim at the same time.

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8.1 Default Orders

Process

1. Claimant requests default order Background

If the defendant does not file a reply within the time limit, the claimant may ask for a default order.

2. Has the defendant filed a reply? Consideration

If YES, see Chapter 9, Settlement Conference.

If NO, go to 3.

3. Claimant completes an Applicationfor Default Order form Procedure

The claimant must submit to the registry a completed Application for Default Order form and pay the required fee.

The Certificate of Service must be filed to prove the Notice of Claim and a blank Reply form have been served. In exceptional circumstances, the registrar will accept oral evidence of service.

4. Is the claim for debt? Consideration

. he registrar examines the claim to determine whether or not it is for debt.

If NO, go to 5.

If YES, go to 7.

5. Registrar checks form and sets hearing date Procedure

The registrar must:

- check the file to determine if there are multiple defendants. If multiple defendants are named the hearing should be held on the same date as the settlement conference or trial. The claimant should be asked to indicate what they intend to do with the "outstanding" defendants before a date is set.
- tick the box on the form indicating that a hearing is required
- schedule a hearing date and enter it in the court diary
- write the hearing date on the form
- stamp the form and tear off the last sheet of the form and give to the claimant to tell them when the date is and
 place the first three copies in the file for the hearing

Note: If the file is not located when the application for a default order is received, the clerk should note the time of receiving the application for the default order on the date stamp. This is to prevent any confusion if the file is located and contains a reply or a reply had been received and had not been placed in the file.

6. Hearing held Procedure

The claimant must present evidence to support the claim before a judge. The judge determines the dollar value of the claim.

7. Default order issued Procedure

The claimant/court clerk completes the default order portion of the form on the three copies held in the file.

The registrar checks the form to make sure the amount claimed agrees with Notice of Claim or judge's award.

The registrar must:

- calculate the amount of the order, and ensure the amount of the claim, the allowable expenses and the interest are shown separately
- sign and date the order
- stamp all copies of the order
- file the original order and return all copies to the claimant

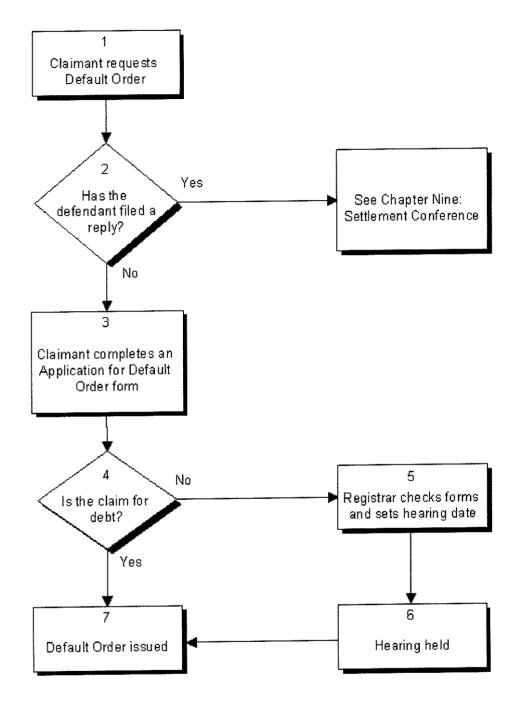
See flowchart

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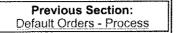
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8.1 Default Orders

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9.1 Mediation

Introduction

This section outlines the procedures for referral to mediation for **claims up to \$10,000** [Rule 7.2] and for arranging mediation for **claims between \$10,000 and \$25,000 including personal injury and motor vehicle related actions.** Mediation for claims between \$10,000 and \$25,000 applies to *Notice of Claims* filed after August 31, 2005. [Rule 7.3 (2)]

Mediation is a collaborative process in which two or more people meet and attempt, with the assistance of a mediator, to resolve their dispute. Mediation is an informal process, however, the mediator does structure the discussion to help parties negotiate a settlement.

Like judges, mediators are neutral and unbiased. Unlike judges, however, mediators do not have the power to decide the case. The purpose of mediation is not to determine who wins and who loses, but to find solutions that meet the needs of the people involved in the dispute. The mediators job is to work with the parties to a dispute and help them to find a solution that satisfies all of them. The case only settles if all parties to the dispute agree to the settlement.

Not only does mediation save valuable court time and diminish demands on Court Services resources and staff but there are many benefits to the parties. The best resolution to any problem is usually the one worked out by the people involved. Through mediation people may arrive at a final resolution more quickly and conveniently than by going to trial and asking a judge to decide their case. Many people find it a comfortable and productive procedure. They also get personal satisfaction from using the mediation process. They prefer to take an active part in solving their own problem, "ather than waiting for a judge to impose a solution.

Legal Commentary

Court Mediation Program for Claims Up To \$10,000

This section outlines the procedure for referral to mediation for claims up to \$10,000 under Rule 7.2.

There are three ways a case can go to mediation:

Cases where parties must attend

- In Courts that are participating in the Program, some kinds of cases are referred automatically to mediation, i.e. construction cases or first number replies filed (<u>Schedule D</u>). A notice is forwarded telling the parties when and where the mediation is going to be held. The parties must then attend at least one meeting involving a mediator.
- Where one party chooses to attend
 - One party can choose to mediate by completing a Notice to Mediate (SCL 040) (Form 21) and filing it at the court registry. The Court Mediation Program then schedules a mediation session by mailing a Notice of Settlement Conference (SCL 006) to the parties.
- Where both parties consent to being referred to mediation
 - o Both parties can consent to mediation and be referred by a judge at a settlement conference. [Rule 7.2 (2)]

Exemptions

Parties may apply to a judge under <u>Rule 16 (7)</u> by completing an *Application to a Judge* (SCL 017) for an exemption if une case does not fall within the class of cases described in <u>Schedule E</u> such as *Motor Vehicle Act* cases or cases where a party is under disability, or cases where the disputed claim amounts to more than \$10, 000 and is not one to

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which <u>Rule 8 (13)</u> applies. This application must be made at least 14 days before the date set for mediation. [<u>Rule 7.2</u> (9)] A judge may order an exemption if all the parties have previously engaged in mediation on the matter in issue or it is unfair or impractical to require mediation. The judge may exempt one or more parties from the mediation if it is determined that it is unfair or impractical for that party to attend [Rule 7.2].

When Rule 7.2 ceases to apply

If the court file relating to the claim is transferred to a registry that is not a mediation registry or the claims is transferred under <u>Rule 7.1</u> to the Supreme Court or the claim is withdrawn under <u>Rule 8</u>, the rule ceases to apply. [Rule 7.2 (4)]

Appointing a Mediator

The mediation coordinator must, for each disputed claim to which this rule applies, appoint a mediator from a roster of approved mediators maintained by the Ministry of Attorney General. [Rule 7.2 (5)]

Scheduling a Mediation Session

The mediation coordinator must in consultation with the appointed mediator set the date, time and place at which a mediation session is to be conducted and unless a judge orders otherwise, the date set for mediation must be earlier than the date of any settlement conference relating to the disputed claim. [Rule 7.2 (6)]

In a claim for personal injuries, the claimant must file a *Certificate of Readiness* (SCL 007) (Form 7) with medical reports and records of expenses and losses attached before a mediation session. The defendant in such a case may apply to a judge for an order that the claimant be examined by a doctor. This is to ensure that the necessary information is available to facilitate resolution of the claim. [Rule 7.2 (7.1)]

At least 21 days before the date set for the mediation session, the mediation coordinator must serve a *Notice of Mediation Session* (SCL 826) (Form 27) on the parties specifying the date, time and place of mediation session. [Rule 7.2 (8)]

The mediation session will usually last two hours. If all parties agree, the mediation session can end earlier or continue beyond two hours.

Mediation by telephone

A party may apply to the Registrar under Rule 16(3) by completing an *Application to a Registrar* (SCL 016) to attend the mediation by teleconference.

The registrar may authorize a party to attend by telephone if that party does NOT reside or carry on business within a reasonable distance of the location of the mediation; or exceptional circumstances exist. [Rule 7.2 (14)]

If the Registrar makes an order that one party may attend by telephone, the Registrar may order that the parties send to the Mediation Program or to the Small Claims Registry, before the mediation session, all documents and reports that are relevant to the dispute and may order that the call be at the expense of the party requesting mediation by telephone. [Rule 7.2 (16)]

Attendance at Mediation

All parties served must attend unless the party is exempted under subrule (10).

If the party is not an individual a representative may attend the mediation. [Rule 7.2 (17.1)] A representative who attends a mediation session must be familiar with all facts relevant to a dispute, must have authority to settle the claim

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on the party's behalf. Any party may be accompanied by a lawyer or articled student. [Rule 7.2 (19)]

Inv other person may attend the mediation if permitted by the mediator and consented to by the parties. [Rule 7.2 (21)]

Adjourning the date of a Mediation Session

To change the date of mediation session, a party may apply to the registrar, using *an Application to Registrar* (SCL 016), at least seven days before or within seven days of the date of the mediation session, if the application contains an explanation that is satisfactory to the registrar. [Rule 7.2 (11.1)]

The registrar may adjourn the mediation session to avoid hardship due to a family emergency, a pre-arranged out of town commitment that would necessitate a change of travel arrangements or a conflicting court date or the date is unreasonably inconvenient to a party. [Rule 7.2 (12.1)]

If the registrar adjourns the date, the party who applied for the adjournment must give to the other parties whatever notice of the adjournment the registrar may order. [Rule 7.2 (11)]

The mediation coordinator must promptly set a new date and then serve a *Notice of Mediation Session* (SCL 826) (Form 27) on the parties specifying the new date, time and place for the mediation session. [Rule 7.2 (13)]

Non-Attendance

If a party does not attend, the mediator completes a *Verification of Non-attendance* (SCL 834) (Form 22) and gives a copy to all of the parties attending. Any one of the parties attending may file the form at the registry. [Rule 7.2 (22)]

If the claimant does not attend, the defendant may file a *Request for Judgment or Dismissal* (SCL 042) (Form 23) and request the Registrar to make an order dismissing the claim.

The Registrar may make an order dismissing the claim of the claimant that failed to attend. [Rule 7.2 (23)]

If a the defendant does not attend, the claimant may file a *Request for Judgment or Dismissal* and ask the Registrar to proceed as if the defendant had not filed a reply and the claimant had completed the steps in <u>Rule 6 (3)</u>.

The Registrar must make a default order or set a date for a hearing before a judge (*Application for Default Order*). [Rule 7.2 (24)]

If the defendant to counterclaim or third party does not attend, the party bringing the counterclaim or third party notice may apply under <u>Rule16 (7)</u> (Application to a Judge) for a default order under <u>Rule16 (6)(c)</u>. [Rule 7.2 (25)]

If no party attends, the mediator completes a *Verification of Non-attendance* (SCL 041) (Form 22) and the Registrar must make an order dismissing each disputed claim. The Registrar prepares an Order (<u>SCL 809</u>) dismissing the claim. [Rule 7.2 (26)]

What parties must bring

Each party who is required to attend a mediation session under subrule (17) must bring copies of all relevant documents and reports including any written contracts, invoices, reports, estimates or photographs.

Concluding mediation

If the parties reach an agreement on all or some issues, the mediator must complete a *Result of Mediation* (SCL 043) Form 24) and file the completed form at the registry, and the parties must complete and sign a *Mediation Agreement* (SCL 044) (Form 25). The mediatior submits the forms to the Court Mediation Program and the program staff file the forms at the registry. [Rule 7.2 (30)]

Cancellation of a dismissal or default order

A party against whom a dismissal or default order is made under subrule (23)(b), (24)(b) or (26 (b) for not attending a mediation session may apply under Rule 16 (7) to a judge to cancel the order under Rule 16 (6)(j). [Rule 7.2 (27)]

Rule 7.2 (28) sets out that the application for cancellation of a dismissal or default order must contain the reason for not attending the mediation session, the reason for any delay, if there has been delay in filing the application and the facts that support the claim or defence.

If Payment Terms are not complied with in Mediation Agreement

If payment terms are not complied with, the party not in default, may file an *Affidavit of Non-compliance* and a *Payment Order* in the amount specified in the mediation agreement less any amount already paid **OR** if no amount specified in the agreement, for the amount of the claim less any amount already paid. [Rule 7.2 (31)]

If Other Terms are not complied with in Mediation Agreement

If other terms, not requiring a payment of money are not complied with, the party not in default may file an *Affidavit of Non-compliance* and file a *Payment Order* for a liquidated amount agreed to in the mediation agreement **OR** if no amount was established in the *Mediation Agreement* the party not in default may request a *Mediation Compensation Order* (SCL 827) (Form 26) under Rule 16(6)(f.2). [Rule 7.2 (32)]

If a dispute is unresolved

The mediator will complete and file a *Result of Mediation* form with the Registry. The mediator will provide a Trial Preparation Settlement Conference Information Sheet to all attending parties and direct them to the registry counter to set a date for a trial preparation settlement conference. The Registrar will then set the case for a trial preparation settlement conference and, if any of the parties attended the session by teleconference, the registrar will include a Trial Preparation Settlement Conference Information Sheet along with the notice that is mailed to the teleconferencing party (ies).

Confidentiality and compellability

Subject to subrules (36) and (37), a person must not disclose, or be compelled to disclose information acquired in a mediation session. [Rule 7.2 (35)]

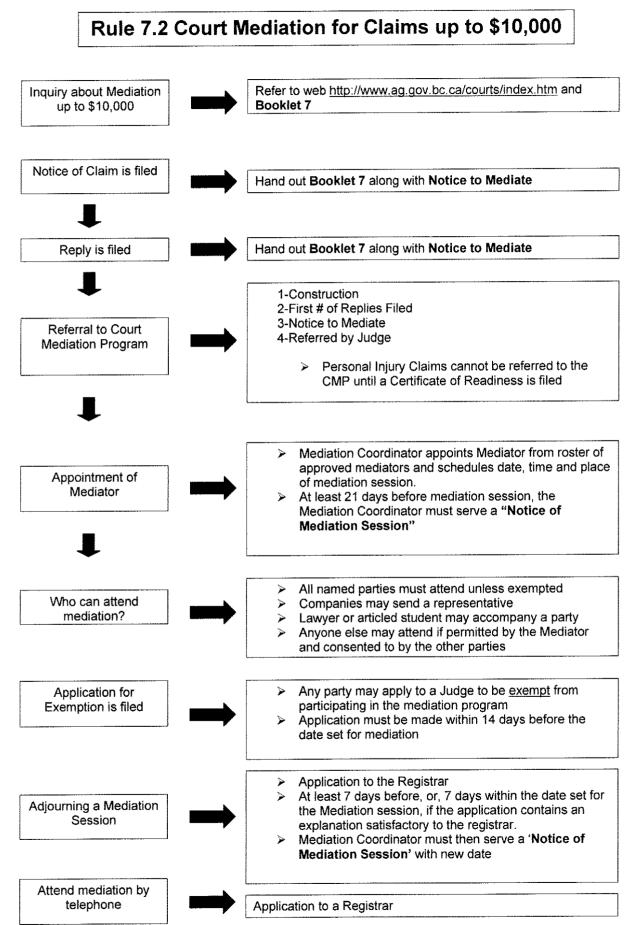
This rule does not apply in respect of any information, opinion, document, offer or admission that all of the parties agree in writing will be disclosed, to any mediation agreement made during or in connection with a mediation session, to any threats of bodily harm made in or in connection with a mediation session or to any information that does not identify the parties and that is disclosed for research or statistical purposes only. [Rule 7.2 (36)]

Process

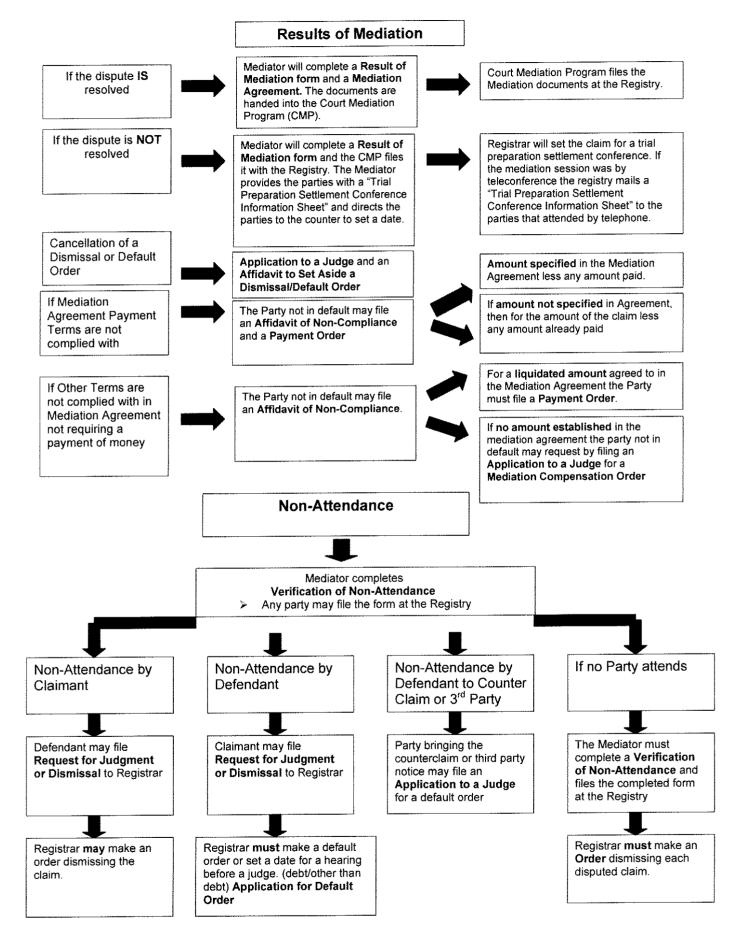
See flowchart for Rule 7.2 Court Mediation Claims up to \$10,000.

Mediation for Claims between \$10,000 and \$25,000

This section outlines the procedure for arranging mediation for claims between \$10,000 and \$25,000.



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How Mediation is commenced

In Party may initiate mediation by filing a *Notice to Mediate for Claims between \$10,000 and \$25,000* Form 29 (SCL 332). Parties must wait until at least one reply has been filed before they file a *Notice to Mediate*. Parties should, however, be advised that mediation is most effective when attended by all parties to the claim. [Rule 7.3(6)] If there are multiple parties, encourage the parties to file all replies before the mediation session is scheduled. A matter will not be scheduled for a settlement conference until the mediation process is concluded. [Rule 7.3(16)]

Appointing a Mediator

The parties must jointly appoint a mutually acceptable mediator within 14 days after the *Notice to Mediate* has been delivered to all parties. [Rule 7.3 (9)]

The parties are responsible for finding their own Mediator. Refer them to the Yellow Pages or to the BC Mediator Roster Society: http://www.mediator-roster.bc.ca/ or Toll Free (in British Columbia): 1-888-713-0433.

Exemptions

Parties may apply to a judge under <u>Rule 16(7)</u> using an *Application to a Judge* form for an exemption. This application must be made at least 14 days before the date set for mediation.

[Rule 7.3 (28)] A judge may order an exemption if all the parties have previously engaged in mediation on the matter in issue or it is unfair or impractical to require mediation. The judge may exempt one or more parties from the mediation it determines that it is unfair or impractical for that party to attend. [Rule 7.3 (29)]

Scheduling the Mediation Session

The mediation session must be held within 60 days after the appointment of the mediator and at least seven days Jefore the date set for the settlement conference, unless a later date is agreed upon by all parties and that agreement is confirmed by the mediator in writing, or a later date is ordered by the court. [Rule 7.3 (16)]

The mediation session will usually last two hours. If all parties agree, the mediation session can end earlier or continue beyond two hours.

Location of the Mediation Session

The mediation session can be held at any location that the mediator considers appropriate. If one of the parties is represented by a lawyer or articled student, it may be possible to have the mediation session at their office. If it is necessary to rent space for the mediation session, that rental cost will be included in the cost of the mediation. [Rule 7.3 (15)]

Mediation by telephone

A party may apply to the Registrar under <u>Rule 16(3)</u>, using an *Application to a Registrar* form, to attend the mediation by teleconference. [Rule 7.3 (24)]

The registrar may authorize a party to attend by telephone if that party does **NOT** reside or carry on business within a reasonable distance of the location of the mediation; or exceptional circumstances exist. [Rule 7.3 (25)]

If the Registrar makes an order that one party may attend by telephone, the Registrar may order that the parties send to the mediator, before the mediation session, all documents and reports that are relevant to the dispute and may order that the call be at the expense of the party requesting mediation by telephone. [Rule 7.3 (27)]

Attendance at Mediation

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All parties served must attend unless the party is exempted under subrule (29). [Rule 7.3 (17)] If the party is not an individual a representative may attend the mediation. [Rule 7.3 (20)] Any other person may attend the mediation if permitted by the mediator and consented to by the parties. [Rule 7.3 (23)]

Adjourning the date of a Mediation Session

To change the date of mediation session, a party may apply to the registrar, using an *Application to Registrar* form, at least seven days before the mediation session and that party must give notice to the other parties whatever notice of the application registrar may order. [Rule 7.3 (30)]

The registrar may adjourn the mediation session to avoid hardship (see grounds in Rule 7.3 (31)).

If the registrar adjourns the date, the party who applied for the adjournment must give to the other parties whatever notice of the adjournment the registrar may order. The parties must jointly set a new date, satisfactory to the mediator for the mediation session. [Rule 7.3 (27)]

Non-Attendance

If a party does not attend, the mediator completes a *Verification of Default* (SCL 834) (Form 31) and gives it to one of the parties attending. Any one of the parties attending may file the form at the registry. [Rule 7.3 (37) by Claimant]

If the claimant does not attend, the defendant may file a *Request for Judgment or Dismissal* (SCL 042) (Form 23) and request the Registrar to make an order dismissing the claim. [Rule 7.3 (38)]

The Registrar may make an order dismissing the claim.

If a the defendant does not attend, the claimant may file a *Request for Judgment or Dismissal* and ask the Registrar to proceed as if the defendant had not filed a reply and the claimant had completed the steps in <u>Rule 6(3)</u>.

The Registrar must make a default order or set a date for a hearing before a judge, using an *Application for Default Order* form. [Rule 7.3 (39) by Defendant]

If the defendant to counterclaim or third party does not attend, the party bringing the counterclaim or third party notice may apply under <u>Rule16 (7)</u>, using an *Application to a Judge* form, for a default order under <u>Rule16 (6)(c)</u>. [Rule 7.3 (40) by defendant to counterclaim or third party.]

If no party attends, the mediator completes a *Verification of Non-attendance* form and the Registrar must make an order dismissing each disputed claim. The Registrar prepares an *Order* (SCL 809) dismissing the claim. [Rule 7.3 (44)]

What Parties must bring

Each party must bring copies of all relevant documents to the mediation session including any written contracts, invoices, reports, estimates or photographs.

Concluding Mediation

If the parties reach an agreement on all or some issues, the mediator must complete a *Result of Mediation* (SCL 043) (Form 24) and file the completed form at the registry, and the parties must complete and sign a *Mediation Agreement* (SCL 044) (Form 25) and any one of those parties may file the agreement at the registry. [Rule 7.3 (48)]

Cancellation of a dismissal or default order

A party against whom a dismissal or default order is made or for not signing a fee declaration may apply to a judge to cancel the order. [Rule 7.3 (42)]

<u>Rule 7.3 (43)</u> sets out that the application for cancellation of a dismissal or default order must contain the reason for not attending the mediation session or for failing to sign the fee declaration, the reason for any delay, if there has been delay in filing the application; and the facts that support the claim or defence.

Rule 7.3 (44) sets out what a judge can order upon cancellation of a dismissal or default order. Judge can also do one or more of the following:

- order that the disputed claims proceed to mediation on any terms the judge considers appropriate;
- order the payment of any expenses incurred by the party or parties who did attend;
- order that a settlement conference or trial be held; and
- make any order that the judge considers appropriate in the circumstances.

If Payment Terms are not complied with in Mediation Agreement

If payment terms are not complied with, the party not in default may file an *Affidavit of Non-compliance* and a *Payment Order* in the amount specified in the mediation agreement less any amount already paid **OR** if no amount specified in the agreement, for the amount of the claim less any amount already paid. [Rule 7.3 (49)]

If Other Terms are not complied with in Mediation Agreement

If other terms, not requiring a payment of money are not complied with, the party not in default may file an Affidavit of Non-compliance and file a Payment Order for a liquidated amount agreed to in the mediation agreement **OR** if no amount was established in the Mediation Agreement the party not in default may request a Mediation Compensation \Im rder (SCL 827) (Form 26) under (ule 16 (6) (f.2). [Rule 7.3 (50)]

A judge may make a Mediation Compensation Order under (50)(b) if a party applies for that order under <u>Rule 16 (7)</u>, using an *Application to a Judge* form, and attaches to the application an *Affidavit of Non-compliance*. [Rule 7.3 (51)]

If A Dispute is Unresolved

The mediator will complete and file a *Result of Mediation* form with the Registry. The Registrar will then set the claim for a settlement conference or for trial if a settlement conference has already taken place. [Rule 7.3 (52)]

Confidentiality and Compellability

Subject to subrule (46) and (47), a person must not disclose, or be compelled to disclose information acquired in a mediation session. [Rule 7.3 (45)]

This rule does not apply in respect of any information, opinion, document, offer or admission that all of the parties agree in writing will be disclosed, to any mediation agreement made during or in connection with a mediation session, to any threats of bodily harm made in or in connection with a mediation session or to any information that does not identify the parties and that is disclosed for research or statistical purposes only. [Rule 7.3 (46)]

Process

See flowchart for Rule 7.3 Mediation Claims between \$10,000 and \$25,000.

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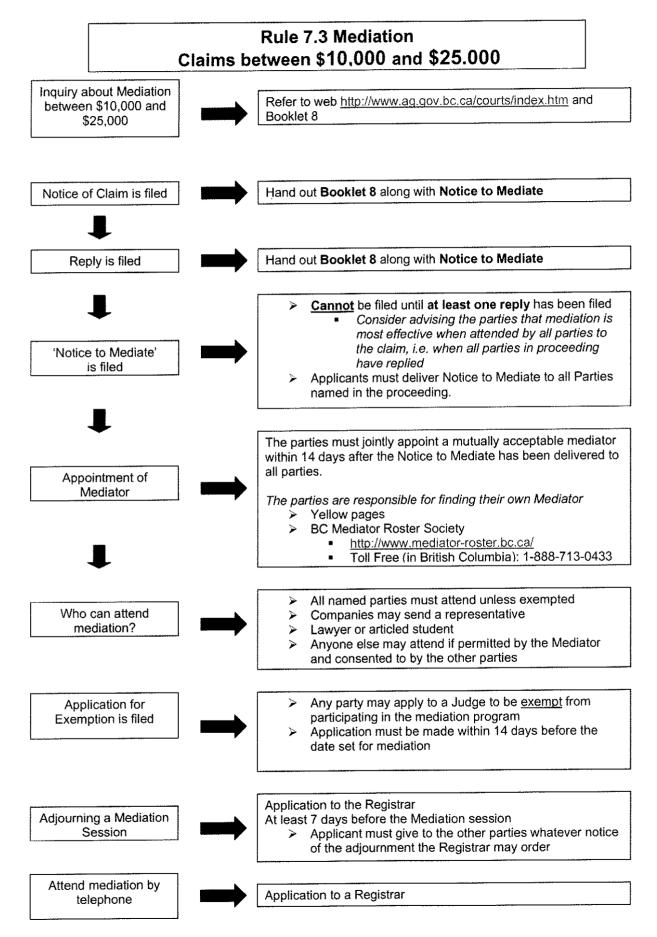
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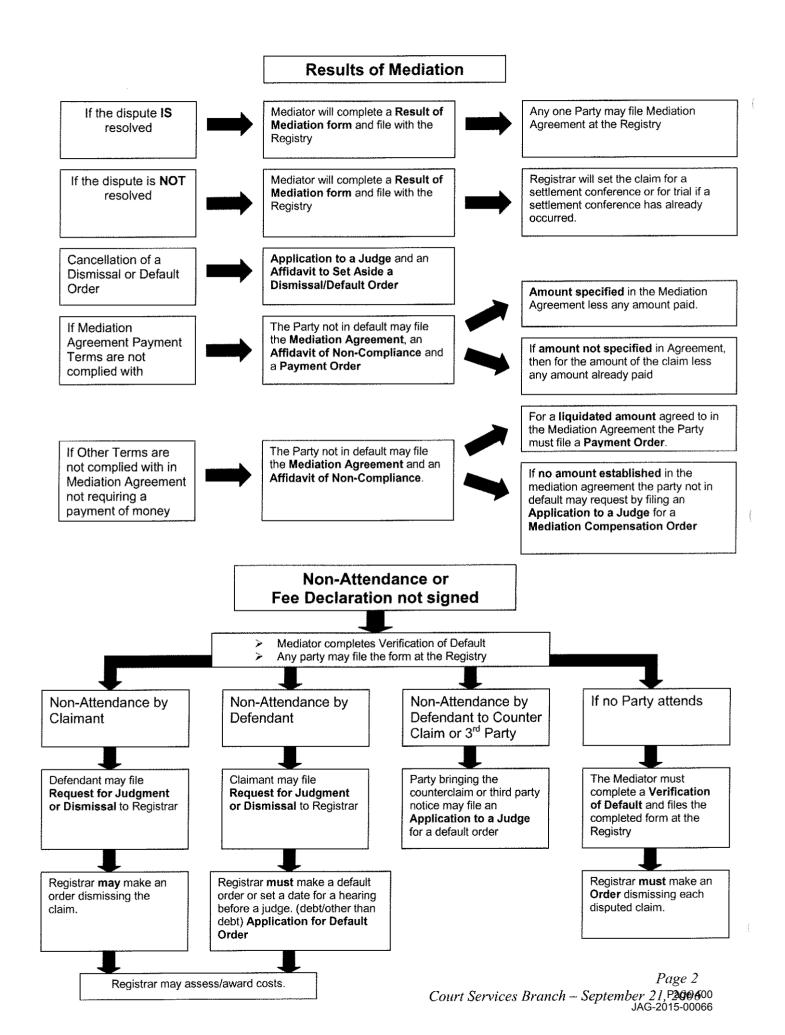
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9.2 Settlement Conference

Introduction

This section outlines the procedure for arranging a settlement conference.

Usually if the defendant files a reply, all parties must attend a settlement conference. The exception is when the case is a motor vehicle accident case and only liability for property damage is being disputed. These cases go directly to trial. [Rule 7(2)].

The settlement conference is a meeting between the claimant and defendant and a judge. A court clerk is also in attendance and notes any decisions or orders made. The settlement conference is a chance for the parties to reach an agreement before the claim goes to trial. If the dispute cannot be settled, a trial date is set at the settlement conference.

Legal Commentary

Purpose of the Settlement Conference

The purposes of the settlement conference are to:

- mediate any issues being disputed
- settle some or all of the issues being disputed
- make a payment order if the parties agree
- discuss a payment schedule
- order the exchange or disclosure of any documents or records prior to the trial
- discuss the evidence required if a trial is necessary
- set a date for trial, if necessary
- make any order for the just, speedy and inexpensive resolution of the claim

If the parties cannot reach an agreement and the trial is estimated by a judge to take more than half a day, the judge sets a date for a second settlement conference or directs the Parties to attend the Registry or the Judicial Case Manager depending on who books trials at the location. This second settlement conference is called a Trial Preparation settlement Conference (TPSC).

A "Preparing for a Pre-Trial" information sheet which contains information about what will happen on the Trial Preparation Settlement Conference date and adjournments should be available in the settlement conference rooms ready to be used. Court clerks should hand the form to the judge when a judge adjourns the case to a pre-trial. Clerks should fill in the file number at the top and date the document. The judge will fill in the other parts and sign the document.

The primary purpose of the Trial Preparation Settlement Conference is the preparation of the case for trial. It is intended to be used in the following two circumstances:

- If a case does not settle at the settlement conference and the trial is estimated by a judge to take more than ½ a day.
- If a case has gone through The Court Mediation Program [Rule 7.2] and has not settled.

When a case has been set over for a Trial Preparation Settlement Conference (cases estimated to take more than ½ day of trial) the judge at the Settlement Conference will likely make a number of orders that will make the pre-trial a more meaningful event. When the orders are made, the parties will have the time between the settlement conference and the pretrial to prepare. At the TPSC the judge will review their preparation and compliance with the order. Failure to comply could lead to a delay in obtaining a trial date, another TPSC, an order that the documents cannot be used at trial or costs being assessed.

Whether the documents which are the subject of the orders need to be exchanged is dependant on what the judge orders. If the judge is silent about it then the documents need to be brought to the pretrial If a judge sets a date then the exchange needs to have a quick turn around as the pre-trials are expected to occur within 30 days. The date for exchange can be entered on the Order in the space called "Other".

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Location of the Settlement Conference

The settlement conference is held at the time and place set by the registrar. [Rule 7(1)] All further steps in the claim, including the trial, will take place where the settlement conference was held, unless a judge orders otherwise. [Rules 7(19), 16(6)(f), 16(11), 17(6)(7)]

If one of the parties does not reside or carry on business within a reasonable distance from the court location where the hearing is to occur or exceptional circumstances exist, the person may take part in the settlement conference by telephone conference call. The party must apply to a registrar to be granted permission to use this option. [Rule 17(16)]. (See Chapter 7 Applications to the Court).

Scheduling the Settlement Conference

A date for the settlement conference cannot be set until either all replies are received or the claimant either produces proof of service or indicates what they intend to do with "outstanding" defendants. The claimants options for defendants that have not replied include filing a default order and filing a notice of withdrawal. The purpose of the settlement conference cannot be achieved if all defendants are not included.

Once the date has been selected, the registrar must prepare a Notice of Settlement Conference in Form 6 (SCL 006) and serve a copy on each party at least 14 days before the date of the conference. [Rule 7(3)]

If there is a claim for damages for personal injuries, the date for the settlement conference cannot be set until the Certificate of Readiness in Form 7 (SCL 007) is filed by the claimant.

If a reply indicates agreement with the claim but the parties cannot agree on a repayment schedule, the settlement conference can be held before any Provincial Court Judge.

What Happens at the Settlement Conference

Only the claimant and defendant and their representatives may attend a settlement conference. All parties must attend the settlement conference and must have authority to settle the claim. A company must send someone who has authority to settle the claim. [Rule 7(4)]

There is one exception to this. If the claim results from a motor vehicle accident and only the amount of the claim is in dispute, the Insurance Corporation of British Columbia may appoint a person to attend with or without the defendant.

During the conference, the judge will mediate any issues being disputed. The judge assists the parties in reaching an agreement by asking questions, stimulating discussion, and making suggestions. The judge may make any order considered necessary or advisable for "the just, speedy and inexpensive resolution of the claim" including a payment schedule in terms agreed to by the parties. [Rule 7(14)].

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Settlement By Consent - Agreement

If the parties reach a Settlement By Consent for the claim, an Agreement may be prepared using form SCL 028. This form is not required by the rules, but its use ensures the agreement is written up without delay, all parties sign the order in the presence of the judge and receive copies immediately. It is not appropriate for Court Services staff to sign agreements as a witness. (See below for <u>"Non-Compliance with a Settlement Conference Agreement"</u>).

Settlement By Consent - Default Order

In addition to the settlement by agreement, the parties may consent to a Default Order being made by the judge. The amount and terms would be set out on the Settlement Conference Record (SCL 018) and the creditor would not need to prepare a separate payment order. If more space is needed to record the order the Additional Page form SCL 029 should be used. Any order made by the judge at a settlement conference is enforceable under <u>Rule 11</u> - Payment of the Judgment.

Dismissal Order

The judge may also make a Dismissal Order at a settlement conference. After discussion with the parties and reviewing the filed documents, a judge may dismiss a claim, counterclaim, reply or third party notice if the judge considers it is without reasonable grounds, discloses no triable issue or is frivolous or an abuse of the court's process. [Rule 7(14)(i)].

However, before dismissing the document, the judge may require the party to file an affidavit setting out further information. [Rule 7(14)(j)]. There is no pre-printed form for this required affidavit and the party must prepare their own form. If the party wishes to swear/affirm the affidavit at the court registry, the affidavit fee as set out in the fee schedule would be applicable.

Adjournment

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If the parties cannot reach an agreement, the judge explains the type of evidence, procedure, and length of time required for a trial, and sets a trial date. Normally, all parties are present when the matter is adjourned for trial, and the registrar does not need to send out any notices of trial. The parties receive a copy of the Settlement Conference Record (SCL 018) to remind them of the trial date along with a Trial Information (SCL 810) sheet which contains information about what will happen on the trial date and adjournments.

But if a party is absent, the registrar must serve a notice of the trial date on that party, unless the judge orders otherwise. [Rule 7(18)]. A Notice of Trial (SCL 034) is prepared and mailed to the party by ordinary mail. If the trial date is not set immediately after the settlement conference, all parties will receive their Notice of Trial by mail at a later date.

A notation is made on the court copy of the notice indicating the date the notice was mailed and the clerk's name. If proof of service is required at a later date, it may be prepared by a Certificate of Service or provided orally.

When the case is being adjourned the judge might also make a Document Exchange Order or a Disclosure of Evidence Order. These orders are made to ensure the parties are ready to proceed on the trial date by requiring the exchange or disclosure to occur by a specific date ahead of the trial. [Rule 7(14)(f)(g)]

A settlement conference may be adjourn to another date because one of the parties did not comply with an order to produce documents (to the court or to the other party), permit another party to examine property damage or file an affidavit as directed by the judge. In addition to adjourning the conference, the judge may order that the party who caused the adjournment by failing to comply with an order, pay all the reasonable expenses incurred by any other parties as a result of the adjournment. [Rule 7(15)(a)].

If a party fails to attend a settlement conference, the judge may make an order against that party, such as an order dismissing a claim or a payment order. [Rule 7(17)]

The results or any orders made at the settlement conference are recorded on the Settlement Conference Record (SCL 018). A copy of the form is given to each of the parties.

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Claims for Personal Injury

In a claim for personal injuries, the claimant must file at the registry, within six months after serving the Notice of Claim and before a settlement conference is held, a Certificate of Readiness in Form 7 (SCL 007) with all copies of medical reports and records of expenses attached. [Rule 7(9)]

If a claimant is not ready to file the Certificate of Readiness, the registrar may extend the time. [Rule 7(10)]

The claimant must serve a copy of the Certificate of Readiness on each of the other parties within 14 days of filing. [Rule7(11)]

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A defendant may apply to a judge for an order requiring the claimant to be examined by a doctor. The defendant must pay for the examination and must serve the report on the claimant at least seven days before the settlement conference, and must bring a copy to the settlement conference. [Rule 7(12), (13)]

What Parties Must Bring

Parties must bring all relevant documents or reports to the settlement conference. [Rule 7(5)]. Parties who require more time to bring a document or report to the settlement conference may request a change in the date of the settlement conference.

If the settlement conference cannot be properly conducted because a party is not prepared for it, a judge may order that party to pay the reasonable expenses of the other party or parties. [Rule 7(6)]

Changing the Date of a Settlement Conference

A party may change the date of the settlement conference by filling a consent to change the date, if all parties are in agreement with the change. [Rule 7 (7)(a)]. Alternatively, one of the parties may apply to the registrar where the conference is to be held, for an order changing the date. [Rule 7(7)(b)]. The registrar must receive the application for an order changing the date at least seven days before the date set for the conference.

If a settlement conference date is changed [Rule 7(7)], the registrar must notify the parties of the place and time of the rescheduled conference. [Rule 7(8)]

Non-Compliance with a Settlement Conference Agreement

If a settlement is recorded on the Settlement Conference Record (SCL 018) as an agreement by consent, and not as a payment order, and a party does not comply with the recorded terms of the agreement, then the agreement is cancelled. [Rule 7(20)(a)].

The claimant must file an Affidavit of Non-Compliance (SCL808) and a Payment Order (SCL 010) in the amount that the judge directed at the settlement conference, or if no direction was made, in the amount of the claim. [Rule 7(20)(b)]. The affidavit sets out how the agreement was not followed. The file does not have to be referred to the judge, but should be handled by the registrar who would reviews the affidavit and issue the Payment Order.

The affidavit of non-compliance is available as a Form Master from the registry, but use of this form is not required by the rules. The party may prepare their own affidavit, and if it is sworn/affirmed at the registry, there is no fee charged because it is exempted in the fee schedule.

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Transfer of Claim to Supreme Court

If at a settlement conference the judge is satisfied the monetary outcome of the claim (not including interest and expenses) may exceed \$25,000, the judge must transfer the claim to the

Supreme Court. [Rule 7.1(1)]. However, the claimant may choose to abandon the amount over \$25,000 so that the claim may be heard in the Provincial Court. [Rule 7.1(2)].

Additionally, the claimant or the defendant may apply at any time to a judge to have the case transferred to the Supreme Court. The application is to be submitted on an Application to a Judge Form 17 (SCL 017) and would require a hearing.

In those situations where a claimant had previously abandoned part of the claim, and the claim is subsequently transferred to Supreme Court, the claimant may then sue for the whole amount. [Rule 1(7)].

Before transferring a claim for personal injury to the Supreme Court, a judge must consider any medical or other reports filed or brought to the settlement conference by the parties. [Rule 7.1(3)]. Any counterclaims should also be dealt with by the judge at that time.

When an judge decides a file will be transferred to the Supreme Court, the order is endorsed on the settlement conference record or the application to a judge and signed by the judge. No other order needs to be prepared. The registry will forward the entire contents of the small claims file, retaining only a copy of the settlement conference record or the application to a judge showing the transfer order in the file folder. If any funds had been paid into court before judgment on the claim, they should be transferred to the Supreme Court along with the file.

Once the file is received at the Supreme Court it is entered into the civil cases system. There is no filing fee required but any subsequent procedures are subject to the Supreme Court Rules and Supreme Court Fee Schedule.

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9.2 Settlement Conference

Process

1. Clerk sets location and date Procedure

The date for a settlement conference can be set when all replies in a case are received and filed or the status of multiple defendants has been clarified. Where there are "outstanding" defendants the claimant should produce proof of service and either apply for a default order or withdraw the claim before the case is scheduled for a conference.

The settlement conference is usually held at the court where the Notice of Claim was filed but can be held at a time and place set by the registrar.

2. Notice of Settlement Conference prepared and served Procedure

The Notice of Settlement Conference must be served at least 14 days before the conference date [Rule 7(3)].

The clerk should:

- check to see whether a Certificate of Readiness is filed in personal injury cases
- check the status of all defendants where there are multiple defendants named.
- set the date of the settlement conference according to the guidelines for scheduling set by the Administrative Judge
- at least 28 days (14 days under <u>Rule 7(3)</u> plus 14 days under <u>Rule 18(13)</u>), before the settlement conference date, serve all entitled parties a Notice of Settlement Conference by regular mail, specifying the time, date and location of the conference. Service is usually done by ordinary mail and a notation is made on the court copy noting "Mailed", the date and the name of the clerk. If proof of service is required at a later date, it may be prepared by a Certificate of Service or provided orally.
- enter the conference date on the case record/computer system, if applicable
- notify parties to bring to the settlement conference all the documents and reports (including medical reports) they
 will use to support their case

3. Settlement conference is held Procedure

At the settlement conference, the judge may:

- mediate any issues being disputed
- consider the issues of the claim that do not require evidence and make a decision
- discuss required evidence and the procedure to be followed at trial
- set a trial date
- make a payment order or other appropriate order in terms agreed to by the parties
- order a party to produce any information at the settlement conference or anything as evidence at the trial
- order a party to give another party copies of documents and records or allow another party to inspect and copy the documents and records by a set date.
- make any order against a party who does not attend
- if the dispute concerns property damage, make an order allowing a representative of the defendant to examine the damage
- dismiss a claim, counterclaim, reply or third party notice where after discussing with the parties and reviewing the filed documents, a judge determines that it is without reasonable grounds, or it discloses no triable issue, or it is

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frivolous or an abuse of the court's process.

- before dismissing a claim, counterclaim, reply or third party notice, require a party to file affidavits setting out further information
- make any other order deemed necessary for the just, speedy and inexpensive resolution of the claim

4. Is the claim settled? Consideration

If YES, go to 5

If NO, go to 6.

5. Parties Receive Record of Settlement Procedure

The judge indicates the method of settlement at the end of the settlement conference.

The Clerk:

- records the results on the Settlement Conference record.
- asks the parties to sign the record and gives a copy to each of the parties.

6. Is this the first settlement conference and is the time estimate for trial more than 1/2 a day or has mediation not resulted in settlement?

If YES, second settlement conference known as Trial Preparation Settlement Conference is required, go to 1. Provide "Preparing for a Pre-Trial" information sheet to parties.

If NO, go to 7

7. Trial date set Procedure

The judge sets the matter for trial at the end of the settlement conference and directs the parties to schedule a date with the Judicial Case Manager or the CSB Trial Scheduler, if applicable.

The Clerk:

- records the results on the Settlement Conference record.
- gives a copy to each of the parties, along with a trial information sheet.

The registrar sends a notice of trial date to any party who attended the settlement conference but did not attend to set a date for trial unless a judge orders otherwise.

If the trial date cannot be set immediately, a copy of the Settlement Conference record is provided to the Judicial Case Manager or CSB Trial Scheduler, if applicable, to have the date set whenever dates are available. Once the date is set, the registrar mails the Notice of Trial to all the parties.

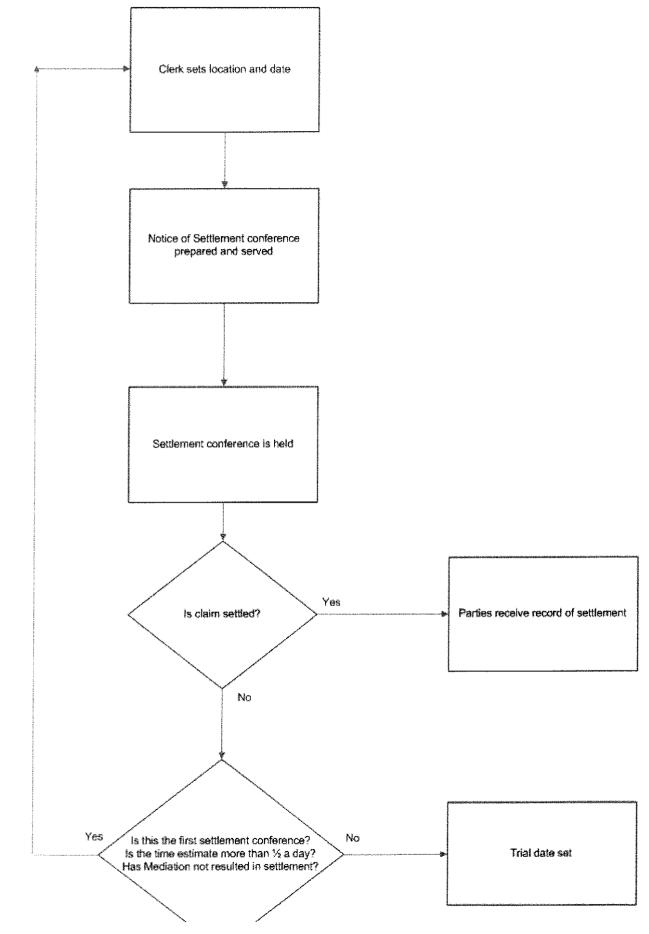
See flowchart

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9.2 Settlement Conference

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9.3 Offer to Settle

Introduction

This section outlines the procedure for making and accepting an offer to settle a claim. At any time either party can make a written offer to settle to the other party, but if there has been a settlement conference, it should be made within 30 days after the conference. If the offer is accepted, the trial is cancelled. If the offer is rejected, and the outcome of the trial is much the same as the offer, a penalty could be imposed.

Legal Commentary

Making an Offer to Settle

Any party may offer to settle one or more claims by making a written offer to settle. The offer is made using Form 18 Offer to Settle (SCL 803) and served on the other party in the same way as a notice of claim is served. [Rule 10.1(1)]. The form has been prepared as a Form Master and is copied as required or the party may prepare their own form as long as it conforms to the prescribed form.

Besides a claim, an offer to settle may be made on a counterclaim or third party claim. [Rule 10.1(14)].

If a person wishes to file an *Offer to Settle*, they should be advised that there is no requirement to file it with the court. This is to ensure the offer is not disclosed to the trial judge until after the judge has given a final decision on the amount to be awarded. If the person insists on filing, the document may be filed, but it should be placed in an envelope labelled, "Offer to Settle" with the file number and put in the court file. A Certificate of Service in Form 4 (SCL 004F) is used to prove service if it becomes necessary.

A defendant that makes an offer to settle may include a term that money paid into court as a result of a garnishing order be paid to the claimant. [Rule 10.1(10)].

Time Limit for Making an Offer

An offer to settle must be served on the party to whom the offer is made within 30 days of after the settlement conference, or at a later time, if permitted by a judge. [Rule10.1(2)]. To ask a judge to permit the offer to be made at a later time, an Application to a Judge (SCL 017) should be completed and a hearing set.

An offer to settle may be made after the time limit has passed, but in that case a judge may not impose a penalty. [Rule10.1(9)].

Accepting an Offer

If a party served with an offer to settle wishes to accept the offer in full settlement of the claim,

Page 412 JAG-2015-00066 interest and expenses, they must:

- complete an Acceptance of Offer Form 19 (SCL805), and
- serve the party who made the offer, with the acceptance within 28 days of being served with the offer. [Rule10.1(3)]

The acceptance is also served in the same manner as a notice of claim and a certificate of service may be prepared if necessary.

An offer may be accepted after the time limit for accepting a settlement has passed, but in that case a judge may not impose a penalty. [Rule 10.1(9)].

In most cases, once the offer has been accepted, the party that made the offer, files the offer and the acceptance in the registry and the acceptance becomes a payment order. [Rule 10.1 (4)]. If the terms are not followed, it may be enforced as any other order.

However, if a defendant accepts an offer to settle made by a third party, the third party must **pay the amount of the offer into court**, and the funds may only be paid out by order of a judge or with the consent of all the parties. [Rule 10.1(15)].

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Rejected Offer

If an offer to settle made by a defendant was not accepted by a claimant, the trial judge may order the claimant to pay the defendant a penalty if the amount awarded at trial, including interest and expenses, is equal to or less than the defendant's offer. [Rule 10.1(5)].

If an offer to settle made by a claimant was not accepted by a defendant, the trial judge may order the defendant to pay the claimant a penalty if the amount awarded at trial, including interest and expenses, is equal to or more than the claimant's offer. [Rule 10.1(6)].

The amount of the penalty may be **up to 20%** of the amount of the offer to settle and is in addition to any other expenses or penalties. [Rule 10.1(7)]. (See Chapter 10.1 Trial, for more information.)

Offers to Multiple Parties

If two or more defendants are sued together, a claimant must make an offer to settle jointly to all the defendants. [Rule10.1(12)(a)].

If two or more defendants are sued together, they may only make a joint offer to settle to the claimant. [Rule 10.1(12)(b)].

If there are two or more claimants, a separate offer to settle may be made by or to each of them. [Rule 10.1(13)].

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9.3 Offer to Settle

Process

1. Party Makes an Offer to Settle Background

Any party who wants to make an offer to settle a claim, counterclaim or third party claim, may prepare a written offer to settle.

Multiple claimants may make or receive separate offers.

Multiple defendants must make or receive joint offers.

Offers must be in the prescribed form.

2. Party serves offer to settle on other party Procedure

The party making the offer is responsible for serving the offer on the other party. Service may be made in the same way as a notice of claim. The offer must be served within 30 days after the settlement conference.

The Certificate of Service should be available if the offer is not accepted and a penalty is being considered after the trial.

. Is the offer accepted? Consideration

If YES, go to 4.

If NO, go to 6.

4. Acceptance of Offer Prepared Procedure

The party accepting the offer must:

- complete an Acceptance of Offer form
- serve the acceptance on the party who served the offer within 28 days of receiving the offer

5. Offer and Acceptance filed in Registry Procedure

The party who made the offer files the offer and the acceptance in the registry, along with copies for the parties.

The acceptance is deemed to be a payment order.

The clerk stamps and files the documents and returns copies to the parties.

The clerk cancels any trial date that had been set.

A Offer Disclosed to Judge after Trial Procedure

After a judge has given a final decision on the amount to be awarded, the party that made the offer discloses the offer

to the court.

The party produces a copy of the offer to the court along with a certificate of service.

The judge decides whether any penalty is to be imposed.

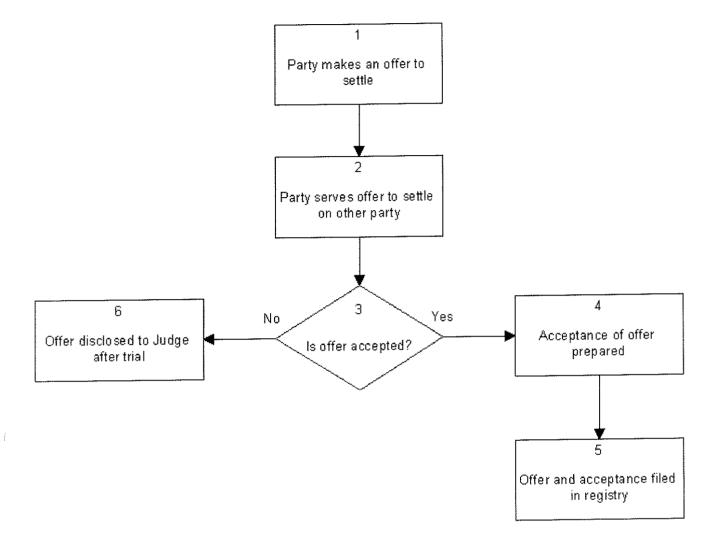
See flowchart

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9.3 Offer to Settle

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Background

[Rule 25-1]

This rule sets out the various definitions applicable to estate proceedings. It should be read in conjunction with the definitions and interpretation sections of the *Wills, Estates and Succession Act.*

The rule also sets out:

- When delivery occurs;
- When an executor has renounced executorship;
- When a will is proved in solemn form; and
- Who are to be considered the parties of record.

Rule 25-2 (4) deals with the renunciation of executorship. It is likely that a renunciation will come in as part of the submission for estate grant package, however there may be occasions where it is filed separately. In order to be filed, the file must have already been opened. The renunciation is in Form P17 and is a document that is required to be witnessed when signed by the person renouncing. Registry staff should not be witnessing these documents.

Policy

1. CSB staff should not be witnesses to documents that require a witness. Advise the party that a non-CSB person should witness the party's signature on the document.

Business Process

Notice of Renunciation filing procedure

Document filing process

📽 Business Process in Detail

Notice of Renunciation filing procedure (separate document)

- Check for the following information:
 a. Registry file number;
- - If a notice of renunciation is presented for filing without a file number, perform a search in CEIS to determine if the submission for estate grant has already been submitted. If no file number is found, advise the person trying to file the

document to contact the executor to determine if the application has been submitted. The notice cannot be accepted if there is no file open.

- b. Registry location;
- c. Style of proceeding.
- d. Signature of renouncing executor and witness.
- 2. Date stamp original and copies.
- 3. Retain original; return copies.
- 4. CEIS
- 5. File.
- 6. If re-submission, give file to DDR.

🖀 Background

[Rule 25-2]

Before a person (intended applicant) can apply to the Court for an estate grant or to reseal a foreign grant in relation to the estate of a deceased, the intended applicant must, at least 21 days before submitting for filing the required materials, deliver a notice in Form P1 and whichever of the following, if any, applies to the intended application:

- If the intended applicant intends to apply for a grant of probate or grant of administration with will annexed, a copy of the will in relation to which the application is to be made;
- If the intended applicant intends to apply for the resealing of a foreign grant or for an ancillary grant of probate or administration with will annexed, a copy of the foreign grant and, if a copy of the will in relation to which the foreign grant was issued is not attached to the foreign grant, a copy of the will;
- If the intended applicant intends to apply for an ancillary grant of administration without will annexed, a copy of the foreign grant.

Rule 25-2 (2)sets out the persons to whom the documents referred to in subrule (1) must be delivered to, if the deceased left a will, as well as who must be given documents if the deceased did not leave a will or was a Nisga'a citizen or member of a treaty first nation.

The form of notice is not filed with the court prior to the intended applicant delivering it to the necessary parties. It will be attached as an exhibit to the affidavit of notice the applicant must provide pursuant to Rule 25-3 (2)(f). If someone wants to file a Form P1 notice, inform them the document is not filed prior to being served. As there will be no existing file and the notice is not an initiating document, the document cannot be accepted for filing.

Rule 25-2 (5) states that delivery of a document under this rule occurs as follows:

- If sent for delivery by ordinary mail to the person's mailing address, the document is deemed to be delivered on the date it is mailed;
- Subject to subrule (6) and (7) of this rule, if the document is transmitted for delivery by email, fax, or other electronic address, the document is deemed delivered the date it is transmitted.

If a document is sent by email, fax or other electronic means, it is not deemed to have been delivered unless the person it is sent to provides written acknowledgment of receipt.

The intended applicant must swear an affidavit in Form P9 that the intended recipient of the documents acknowledged receipt in writing and the intended applicant will retain a copy of that acknowledgment until the personal representative of the deceased is discharged and will produce the acknowledgment promptly after being requested to do so by the registrar.

Subrules (8) - (11) set out how to deliver documents on a minor or mentally incompetent person.

If the person to whom the documents are to be delivered is dead, the personal representative of the deceased must be given the documents instead. An application to the court under Rule 8-4 for directions must be made if the personal representative is not known by the intended

applicant. The intent of the legislation is that the intended applicant would file their submission for estate grant and would then make any necessary applications to the court within that file. If a submission for estate grant is submitted with a notice of application, the estate file is to be opened with the submission as the initiating document, and the notice of application can then be filed within the estate file.

An application can be made, pursuant to Rule 25-2 (14), to ask the court to vary the classes of persons to whom documents are to be delivered or to dispense with the requirement to deliver documents to persons other than the Public Guardian and Trustee. As with Rule 25-2 (12), the intent of the legislation is that the applicant would have already commenced their estate proceeding and make the application in that file.

It is possible that the applicant would want to deal with this type of application prior to filing their submission grant material. Therefore, a requisition in Form P41 may be filed to initiate a file in order to make the application. The applicant would then proceed in accordance with Part 8. The \$200 filing fee would be paid at the time the requisition is filed opening the file and when the submission for estate grant material is subsequently filed, there would be no filing fee due.

Notice need not be provided if the application is for a grant of probate or grant of administration with will annexed in relation to a will that has been proved in solemn form and the person to whom documents are to be delivered was served with the petition or notice of application under which proof of the will in solemn form was sought, pursuant to Rule 25-2 (16).

Policy

1. Since there will be no file open prior to the submission for estate grant (or other initiating document as set out in Rule 2-1 (2.1)) being filed and a file cannot be initiated with a notice of proposed application (Form P1), notices of proposed application for estate grants or resealing are not to be filed with the registry prior to being served.

🖀 Business Process

Affidavit of Delivery filing process

1. Document filing process

Requisition Application for directions (Rule 25-2 (12) – desk order)

- 1. Desk order filing procedure
- 2. CEIS
- 3. DDR for review

Notice of Application to vary or dispense (existing estate file)

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- 1. Notice of Application filing procedure
- 2. CEIS

Requisition to Open a File

- 1. Requisition that initiates file filing process
- 2. CEIS

🖀 Business Process in Detail

Affidavit of delivery filing procedure

- 1. Check for the following and reject document if not present:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding.
- 2. Date stamp original and copies.
- 3. Retain original; return copies.
- 4. CEIS
- 5. File



This document will likely be part of the application package but may be filed separately if the file has already been opened.

Requisition Application for directions (Rule 25-2 (12) – desk order)

- 1. Check for the following and reject document if not present:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding; and
 - d. Any affidavit(s) provided have been sworn.
- 2. Date stamp documents.
- 3. Retain original documents; return copies to applicant.
- 4. Process payment for application (Appendix C, Schedule 1, Item 4 (c)).
- 5. Enter into CEIS.
- 6. Refer application to DDR.
- 7. If DDR signs order:
 - a. Seal order, enter and scan.
 - b. Retain the original, return copies to applicant
 - c. CEIS
 - d. File
- 8. If DDR rejects application:
 - a. Provide reasons for rejection to applicant
 - b. CEIS
 - c. File

Notice of Application to vary or dispense

- 1. Check for the following and reject document if not present:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. If hearing requested, date, time and place of hearing; and
 - e. Any affidavit(s) provided have been sworn.
- 2. Ensure date set for hearing is less than two hours and is set for a date in which chambers sits.
- 3. If time estimate of application is more than two hours, refer applicant to Supreme Court scheduling or designate to obtain a hearing date.
- 4. Date stamp documents.
- 5. Retain original documents; return copies to applicant.
- 6. Process payment for application (Appendix C, Schedule 1, Item 4).
- 7. Enter documents and date of hearing into CEIS.
- 8. File.

Requisition to Open a File (Rule 25-14 (1)(a))

- 1. Check to ensure the requisition is in Form P41 and for the following information; reject document if not present:
 - a. Registry location;
 - b. Style of proceeding;
- 2. Open new file and stamp file number on all documents.
- 3. Seal the original requisition, any copies and date stamp all original affidavits and copies; return copies of documents. Do not date stamp the draft order.
- 4. Process payment (Appendix C, Schedule 1, Item 1).
- 5. CEIS procedure.
- 6. Give file to DDR to refer application to the court.
- 7. If signed by DDR:
 - a. Seal, date stamp and scan order and give copy to party that submitted order for entry.
 - b. CEIS process.
 - c. Place original order in order book.
- 8. If rejected and returned by DDR:
 - a. Return the rejected order and reasons for rejection to the party that submitted the order for entry.
 - b. Retain a copy of the rejected order and reasons for rejection for the file.

🖀 Background

[Rule 25-3]

This rule has 14 sub-rules that explain the application procedure. Subrules (1) - (13) set out how to apply for an estate grant. These subrules cover:

- what documents must be filed, after delivering the necessary documents required in accordance with Rule 25-2;
- the requirements for filing a will;
- the procedure if there are multiple applicants, and
- when an applicant can use a short form affidavit or when a long form affidavit is required.

The affidavit of assets and liabilities can be filed concurrently with or subsequent to the filing of the other documents required under subrule (2) and (3). The affidavit of assets and liabilities will be filed separately if the applicant cannot learn all of the deceased's financial information prior to the filing of their application.

If the affidavit of assets and liabilities is not filed with the rest of the submission for estate grant documents, the registrar must issue to the applicant an authorization to obtain estate information in Form P18. This document can be used by the applicant to satisfy third parties, such as banks, that the applicant is the person to whom an estate grant will be issued once the affidavit of assets and liabilities is filed and is therefore, as the deceased's personal representative, entitled to the deceased's information. Refer to Rule 25-4 (1) for more information.

The affidavit of assets and liabilities contains a statement of assets, liabilities and distribution. The Rules do not require an applicant to set out the proposed distribution of the estate and this is not something registrars will check for. However, the wording "Statement of Assets, Liabilities and Distribution" is used in the *Probate Fee Act*, which was not amended when WESA and the new Rules came into effect. Therefore, the word "distribution" remains as part of the title of the statement.

Rule 25-3 (8) sets out the circumstances under which an applicant would file an affidavit of assets and liabilities for non-domiciled estate grant (Form P11). In most cases, the Form P10 affidavit will be used.

Pursuant to Rule 25-3 (13), if the Public Guardian and Trustee is an applicant to a grant of probate or administration, it may file a direction in Form P13, directing that the court file respecting the application and any related material, be sealed pursuant to s. 125 of the *Wills, Estates and Succession Act.*

S. 125 (2) of WESA says that upon receipt of a direction in Form P13, the registrar must seal the court file and prohibit access to the file except as permitted by the Public Guardian and Trustee or by the court. The file and application must be sealed for 180 days from the date the application was filed with the registrar, unless the Public Guardian and Trustee or the court authorizes all or part of the court file to be disclosed, pursuant to s. 125 (3) of WESA.

A person may make an application pursuant to s. 125 (5) to unseal a file and must give notice of the application to the Public Guardian and Trustee. The Public Guardian and Trustee may

also apply, under s. 125 (6) to extend the time for which the file is sealed for one or more additional periods not exceeding in total 18 months.

Practice Direction #35 on sealing files in civil and family proceedings does not apply to directions to seal a file, however, the procedures set out in the directive may be helpful guidelines in dealing with these matters.

A person who, without the consent of the Public Guardian and Trustee or the court, knowingly discloses any information that the person knows or reasonably ought to know is information in a sealed file, commits an offence and is liable to a fine of not more than \$10,000 or to imprisonment for not more than 12 months, or to both, pursuant to s. 125 (7) of WESA

Subrule (14) pertains to the applicant's responsibility to search for a will and swear an affidavit that a diligent search for a will has been made.

Subrules (15) - (19) cover issues relating to the execution of the will and the requirement for the applicant to provide proof of proper execution of the will.

Subrules (20) - (24) cover issues relating to the appearance of the will. Rule 25-3 (24) says that if there is a question under subrule (20) - (23), the registrar must refer the application to a judge or master for an order resolving that question.

Policy

- 1. If a submission for estate grant is submitted without an affidavit of assets and liabilities, the authorization to obtain estate information will be processed on a regular basis. If a letter requesting issuance of the authorization to obtain estate information on an expedited basis is submitted along with the submission, the application is to be brought to the attention of the DDR who will determine if the request for rush processing will be accepted.
- 2. When the affidavit of assets and liabilities is submitted, after an authorization to obtain estate information has been issued, the application will be treated as a resubmission and completed on a priority basis.
- 3. A person requesting access to a file that has been sealed at the direction of the Public Guardian and Trustee must produce a document in writing from the Public Guardian and Trustee that sets out the terms of what can be viewed and whether or not access is granted for one time only or on an ongoing basis.
- 4. Certified copies of an authorization to obtain estate information, estate grant, authorization to obtain resealing information or a resealed foreign grant can only be made while the registry has possession of the original document. Certified copies cannot be made from a copy of the document retained on the court file. If a certified copy of one of these documents is requested and the original is not in the possession of the registry, the person requesting the certified copy should be referred to the holder of the original document who can arrange to have a notary or lawyer prepare a certified copy from the original document. In rare circumstances where a court certified copy is required, if the person requesting the certified copy attends at the registry with the original document, and the person certifying the document is satisfied that the original grant matches the copy that is on file, a certified copy can be made, upon payment of the appropriate fee

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😤 Business Process

Submission for Estate Grant filing process

- 1. Document filing process
- 2. CFIS
- 3. Refer to DDR for review

Direction to seal court file by Public Guardian and Trustee

- 1. Document filing process
- 2. CEIS
- 3. Sealing file process

Request to see sealed file

- 1. Verify whether file is still sealed and ensure either court order or permission from PGT is submitted
- 2. Unseal file
- 3. CEIS

Affidavit of Assets and Liabilities filing process

- 1. Document filing process
- 2. CEIS
- 3. Refer to DDR for review

Business Process in Detail

Submission for Estate Grant filing process

- 1. Check for the following information:
 - a. Registry location; and
 - b. Style of proceeding
- 2. Open a new file and place file number on all documents.
- 3. Seal and date stamp the Form P2 Submission for Estate Grant document; date stamp affidavits.



The will is not attached as an exhibit to any affidavit, but is submitted as a stand alone document. There should never be any date stamps or markings put on the will by the registry that might obscure any of the contents of the will. If the will has a backing sheet, a date stamp and the file number should be written on the back of the backing sheet.

- 4. Collect required filing fee (Appendix C, Schedule 1, Item 1)
- 1

If the value of the estate is under \$25,000, no filing fee is required. Value of the estate is defined in the *Probate Fee Act* as: "the gross value, as deposed to in a Statement of Assets, Liabilities and Distribution exhibited to the affidavit leading to a grant or to a resealing, as the case may be, of a) the real and tangible personal property of the deceased situated in British Columbia, and b) if the deceased was ordinarily resident in British Columbia immediately before the date of death, the intangible personal property of the deceased, wherever situated, that passes to the personal representative at the date of death.



If the value of the estate is not known at the time the submission for estate grant is submitted, charge the \$200 filing fee. If it later turns out that the value of the estate is under \$25,000 the applicant can request a refund on the filing fee.

- 5. Retain original documents; return copies.
- 6. CEIS.
- 7. Refer to DDR. See Rule 25-4 for the process of issuing the grant/authorization once signed by the DDR.

Direction to Seal filing process

Check for the following information:
 a. File number;



The direction to seal may come in at the same time as a submission for estate grant from the Public Guardian and Trustee. The submission is the initiating document. A direction to seal document cannot initiate a court file.

- b. Registry location;
- c. Style of proceeding; and
- 2. Date stamp documents; retain original and return copies.
- 3. Enter the document in CEIS and ensure that access is changed to reflect that the file has been sealed.
- 4. Place copy of direction to seal file on front of file. Seal physical file and any other related material specified by the Public Guardian and Trustee according to local practice.
- 5. Change status in CEIS from general to sealed.
- 6. Calculate the date the direction to seal will expire (180 days from the day of filing)
- Make a notation of the date and set a reminder to check the file after 180 days to determine if the status can be changed from sealed to general access.
- 8. File

Review of sealed file at expiry of 180 days

1. Upon receiving reminder to check status of sealed file, check CEIS to determine if 180 days has expired from date of filing and ensure that no further orders to extend the time

for filing have been made.

2. If satisfied that 180 days has expired and no further orders to extend the time for filing have been made, change the sealed status in CEIS to general access.

Request to view sealed file

- 1. If a request is made to access a file that has been sealed, check CEIS to ensure that no order has been made extending the time for which the file is to be sealed and that 180 days has passed from the date the direction to seal has been filed.
- 2. If the file is still sealed:
 - ask the person to provide authorization from the Public Guardian and Trustee (PGT) or a court order that allows access to the file. If not provided, advise the person that they can make application to the court for an order allowing access or contact the Public Guardian and Trustee to obtain authorization to access the file.
 - check the document issued by the Public Guardian and Trustee or the entered court order to determine what documents can be accessed and verify the person's identity.
 - Take a copy of the document issued by the Public Guardian and Trustee to place on the court file.
 - Advise the person of s. 125 (7) of WESA which provides that a person commits an offence if the person, without the consent of the PGT or the court, knowingly discloses any information that the person knows or reasonably ought to know is information in a sealed file.
- 3. If the 180 days has expired and no further order has been made extending the time for filing:
 - after verifying that the sealing order is no longer in effect, change the access code in CEIS from sealed to general;
 - provide access to the file as requested.
- 4. If the person requesting access is not a party to the file, charge the prescribed search fee.

Affidavit of Assets and Liabilities filing process

- 1. Check for the following information and reject document if not present:
 - a. File number;
 - b. Registry location;
 - c. Style of proceeding; and
- 2. Date stamp documents; retain original and return copies.
- 3. CEIS.
- 4. Pull file and/or application for grant and give to DDR for processing.

Supreme Civil Manual - Part 25-4 - Procedure after Filing Application Materials for Estat... Page 1 of 5

😤 Background

[Rule 25-4]

Rule 25-4 sets out the roles and responsibilities of the registrar when issuing a grant of probate or an authorization to obtain estate information, including when the registrar must approve an application and when they must refuse to approve an application.

If an application is refused, the registrar must provide written notice to the applicant of the deficiencies in the material or setting out questions or requests for further information that must be provided before the application can be granted. A checklist for DDR's to use has been developed.

The applicant, on receiving the rejection notice, can either file the further requested information or proceed under Rule 25-9, which allows an applicant to apply to the court if the registrar refuses to issue an estate grant, authorization to obtain estate information, an authorization to obtain resealing information or to reseal a foreign grant. Rule 25-9 (2) sets out that an applicant wishing to apply to the court under Rule 25-9 (1) must file:

- A requisition in Form 31,
- A draft of the proposed order in Form 35,
- Affidavit or other evidence in support of the application, and
- Any material provided by the registrar in relation to the application (e.g. the reasons for rejection)

Policy

- 1. In order to ensure compliance with Rule 25-10 (8), a check for a notice of dispute must be performed by registry staff prior to the review of an application for and issuance of an estate grant, an authorization to obtain estate information or an authorization to obtain resealing information or before a foreign grant is resealed.
- 2. Probate fees are payable prior to the grant of probate or resealed grant being issued. There is no priority processing for applications that are submitted with probate fees and applicants should be discouraged from submitting the fees until the review of the application is complete and the applicant is advised of the amount of the fees due.
- 3. Certified copies of an authorization to obtain estate information, estate grant, authorization to obtain resealing information or a resealed foreign grant can only be made while the registry has possession of the original document. Certified copies cannot be made from a copy of the document retained on the court file. If a certified copy of one of these documents is requested and the original is not in the possession of the registry, the person requesting the certified copy should be referred to the holder of the original document who can arrange to have a notary or lawyer prepare a certified copy from the original document. In rare circumstances where a court certified copy is required, if the person requesting the certified copy attends at the registry with the original document, and the person certifying the document is satisfied that the original grant matches the copy that is on file, a certified copy can be made, upon payment of the appropriate fee.

🔄 Business Process

Estate grant issuance process

- 1. DDR review
- 2. Probate filing fees paid
- 3. Check for notice of dispute
- 4. Grant issue process
- 5. CEIS
- 6. File

Authorization to obtain estate information issuing process

- 1. DDR review
- 2. Receive signed document from DDR
- 3. Check for notice of dispute
- 4. CEIS
- 5. File

Authorization to obtain resealing information issuing process

- 1. DDR review
- 2. Receive signed document from DDR
- 3. Check for notice of dispute
- 4. CEIS
- 5. File

Resealing a foreign grant

- 1. DDR review
- 2. Probate filing fees paid
- 3. Check for notice of dispute
- 4. Resealing issue process
- 5. CEIS
- 6. File

Requisition Application filing procedure

- 1. Requisition Application filing procedure
- 2. CEIS
- 3. Give to DDR to refer to Court

Business Process in Detail

Estate grant issuance process

- 1. After application has been reviewed and approved, DDR will notify applicant of the amount of the probate fees due.
- 2. After probate fees are paid but before signing grant, DDR:
 - a. Checks CEIS for any disputes filed against the estate. If there is a dispute:
 - i. Indicate that the application for probate grant is rejected in the order screen and indicate in the comments section of the File Detail screen that a notice of dispute has been filed.
 - ii. Add the probate file number to the reference field in the notice of dispute tab using format: Court location -S P file number.
 - iii. Notify the applicant in the probate file that a notice of dispute has been filed.
 - iv. Make a copy of the notice of dispute and place it in the probate file, along with a note indicating when the applicant was advised of the dispute.
- 3. If there are no disputes, sign and seal the original grant.

To seal the grant, place a red seal under the line on the grant that says "Sealed by the Supreme Court of British Columbia on [dd/mmm/yyyy]". Impression seal the red seal and any attached documents so the impression seal goes through all the documents.

- 4. Process payment for any certified copies requested.
- 5. Return original grant and any certified copies requested to applicant.
- 6. Send a copy of the completed will search to Vital Stats if the "Court Registry Use only" box has been completed by the DDR.
- 7. CEIS
- 8. File

Authorization to obtain estate information issuing process

- 1. Prior to signing authorization, DDR:
 - a. Checks CEIS for any disputes filed against the estate. If there is a dispute:
 - i. Indicate that the authorization to obtain estate information is rejected in the order screen and indicate in the comments section of the File Detail screen that a notice of dispute has been filed.
 - ii. Add the probate file number to the reference field in the notice of dispute tab using format: Court location -S P file number.
 - iii. Notify the applicant in the probate file that a notice of dispute has been filed.
 - iv. Make a copy of the notice of dispute and place it in the probate file, along with a note indicating when the applicant was advised of the dispute.
- 2. If no dispute is in effect:
 - i. Date stamp/seal original and any copies.



The authorization does not require a red seal. Place

the blue/black ink rubber seal on the document (the

 $^{"}$ same seal placed on orders or originating documents). arphi

- ii. Return original and any copies; retain a copy for the file.
- iii. Prepare certified copies, if requested.
- iv. Process payment for any certified copies.
- v. CEIS
- vi. File.

http://portal.ag.gov.bc.ca/portal/page/portal/CSB_Home/document_repository/public/ma... 2015-02-16

Authorization to obtain resealing information issuing process

- 1. Prior to signing authorization, DDR:
 - a. Checks CEIS for any disputes filed against the estate. If there is a dispute:
 - i. Indicate that the authorization to obtain resealing information is rejected in the order screen and indicate in the comments section of the File Detail screen that a notice of dispute has been filed.
 - ii. Add the probate file number to the reference field in the notice of dispute tab using format: Court location - S - P - file number.
 - iii. Notify the applicant in the probate file that a notice of dispute has been filed.
 - iv. Make a copy of the notice of dispute and place it in the probate file, along with a note indicating when the applicant was advised of the dispute.
- 2. If no dispute is in effect:
 - i. Date stamp/seal original and any copies.



The authorization does not require a red seal. Place the blue/black ink rubber seal on the document (the same seal placed on orders or originating documents).

- ii. Return original and any copies; retain a copy for the file.
- iii. Prepare certified copies, if requested.
- iv. Process payment for any certified copies.
- v. CEIS
- vi. File.

Resealing a foreign grant

- 1. After application has been reviewed and approved, DDR will notify applicant of the amount of the probate fees due.
- 2. After probate fees are paid but before signing grant, DDR:
 - a. Checks CEIS for any disputes filed against the estate. If there is a dispute:
 - i. Indicate that the application for resealing is rejected in the order screen and indicate in the comments section of the File Detail screen that a note of the dispute has been filed.
 - ii. Add the resealing file number to the reference field in the notice of dispute tab using format: Court location – S – P – file number.
 - iii. Notify the applicant in the probate file that a notice of dispute has been filed.
 - iv. Make a copy of the notice of dispute and place it in the resealing file, along with a note indicating when the applicant was advised of the dispute.
- 3. If there are no disputes, the DDR signs and seals the certificate of resealing.



To seal the certificate, place a red seal under the line on the grant that says "Place seal below". Impression seal the red seal and any attached documents so the impression seal goes through all the documents.

- 2. Return the original certificate of resealing and any certified copies to the applicant.
- 3. Retain a copy for the file.
- 4. Process payment for certified copies, if provided.
- 5. CEIS

- 6. If the foreign jurisdiction is a province/territory of Canada, notify them of the resealing.
- 7. File

Requisition Application filing procedure

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Any affidavit(s) provided have been sworn;
 - e. Copy of registrar's reasons for rejection
- 2. Date stamp documents.
- 3. Retain original documents; return copies to applicant.
- 4. Process payment for application (Appendix C, Schedule 1, Item 4 (c)).
- 5. Enter into CEIS.
- 6. Refer application to DDR to refer to Court.

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Supreme Civil Manual - Part 25-5 - Corrections, Amendments and Revocations of Estate ... Page 1 of 4

Background

[Rule 25-5]

This rule sets out the processes to follow if errors are found in the grant after it is issued or if an applicant needs to have a grant amended after it is issued. Pursuant to Rule 25-5 (1), applications to correct an accidental slip or omission may be made to the registrar. If the registrar is satisfied that a clerical mistake or an error has occurred in an estate grant or resealed foreign grant, the registrar may correct the clerical mistake or error by issuing the applicant a correction record in Form P20. The original grant that was issued is not rescinded and reissued. The applicant would have to show the grant and correction record together to anyone needing to see the grant.

An application under Rule 25-5 (1) only applies to estate grants or a resealed foreign grant. The process does not apply to an authorization to obtain estate information or an authorization to obtain resealing information.

If the nature of the error goes beyond a clerical mistake or omission, then an application has to be made to the court under Rule 25-5 (3). While subrule (1) only applies to estate grants or a resealed foreign grant, subrule (3) applies to authorizations as well. The original estate grant, authorization to obtain estate information, authorization to obtain resealing information or resealed foreign grant, along with all certified or notarial copies of it must be returned when the application record is filed.

If the person making the application to amend is not the person to whom the original estate grant, authorization to obtain estate information, authorization to obtain resealing information or resealed foreign grant was issued, they must be served with notice of the application.

The person who has possession or control of the original estate grant, authorization to obtain estate information, authorization to obtain resealing information or resealed foreign grant must file the document no later than 4:00pm on the day that is one full day before the date set for the hearing.

If a document is amended under subrule (3), the amended document replaces the original document and unless the court orders otherwise, the original document and the certified and notarial copies provided to the registry are not to be returned to any person.

An application to revoke an estate grant, authorization to obtain estate information, authorization to obtain resealing information or resealed foreign grant may be made pursuant to Rule 25-5 (5). If the person applying for the revocation is the person to whom the estate grant, authorization to obtain estate information, authorization to obtain resealing information or resealed foreign grant was issued to, they must surrender the originals, along with all certified and notarial copies of it at the same time as they file the notice of application. After having turned in the documents, they must not act for the estate without leave of the registrar until the application is decided.

If the person applying for revocation is not the person to whom the estate grant, authorization to obtain estate information, authorization to obtain resealing information or resealed foreign grant was issued to, the person who has possession or control of the documents must file them within seven days after being served with the notice of application for the revocation and

after being served with the notice of application, the person to whom the estate grant, authorization to obtain estate information, authorization to obtain resealing information or resealed foreign grant was issued must not act for the estate without leave of the registrar until the application is decided.

A request for leave to act may be made to the registrar by filing a requisition in Form 17 and affidavit in support of the request. The registrar may grant leave if satisfied that the harm that will occur if leave is granted is less than the harm that will occur if leave is not granted. No fee is payable for these types of requests.

Policy

- 1. No fee is payable for applications to the registrar to correct a clerical error or other mistake made by the registry.
- 2. Documents that are revoked by court order are to have a line drawn through them and void printed across the document .
- 3. Documents surrendered pending the outcome of an application for revocation are to be kept on the court file.

Business Process

Issuing a correction record procedure

- 1. Received signed document from DDR
- 2. Issue correction record procedure
- 3. CEIS

Notice of Application for amendment filing procedure

- 1. Notice of Application filing procedure
- 2. Handling surrendered estate documents
- 3. CEIS

Notice of Application for revocation filing procedure

- 1. Notice of Application filing procedure
- 2. Handling surrendered estate documents
- 3. CEIS

Requests to the registrar for leave

- 1. Document filing procedure
- 2. CEIS
- 3. DDR to refer

Business Process in Detail

Issuing a correction record procedure

- 1. Check the requisition or letter for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Any affidavit(s) provided have been sworn.
- 2. Date stamp documents, except the correct record.
- 3. Retain original documents; return copies to applicant.
- 4. Enter documents into CEIS.
- 5. Refer to DDR for approval.
- 6. If DDR signs Correction Record in Form P20, seal original and make copies for applicant.
- 7. Retain original; return copies
- 8. CEIS
- 9. File

Notice of Application (for amendment or revocation) filing procedure

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Date, time and place of hearing; and
 - e. Any affidavit(s) provided have been sworn.
- 2. Ensure date set for hearing is less than two hours and is set for a date in which chambers sits.
- 3. If time estimate of application is more than two hours, refer applicant to Supreme Court scheduling or designate to obtain a hearing date.
- 4. Date stamp documents.
- 5. Retain original documents; return copies to applicant.
- 6. Process payment for application (Appendix C, Schedule 1, Item 4).
- 7. Enter documents and date of hearing into CEIS.
- 8. File.

Application record (for applications to amend) filing procedure

1. Check for original estate grant, authorization to obtain estate information, authorization to obtain resealing information or resealed foreign grant and any certified/notarial copies submitted with application record.



If documents are not provided, accept application record.

2. Remove documents and place in file.

Supreme Civil Manual - Part 25-5 - Corrections, Amendments and Revocations of Estate ... Page 4 of 4

3. CEIS

Requests for leave

- 1. Check the requisition for the following information:
 - a. Registry file number;

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- b. Registry location;
- c. Style of proceeding;
- d. Any affidavit(s) provided have been sworn.
- 2. Date stamp documents.
- 3. Retain original documents; return copies to applicant.
- 4. Enter documents into CEIS.
- 5. Refer to DDR for processing.

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- 6. If leave granted, requisition will be signed/endorsed. Retain original, provide copy to applicant.
- 7. If leave denied, provide reasons for rejection to applicant.

Page 1 of 3

🖀 Background

September 2014

[Rule 25-6]

Rule 25-6 sets out the procedure to follow to have the BC court "reseal" or formally recognize a grant of probate or administration obtained in a foreign jurisdiction.

S. 138 of the *Wills, Estates and Succession Act* says the BC court may reseal a foreign grant made in another province or in a territory of Canada or in another prescribed jurisdiction. S. 3 of the Wills, Estates and Succession Regulations sets out the prescribed jurisdictions.

If a jurisdiction is not included in the prescribed list, the person has to apply for an ancillary grant of probate or administration.

Upon resealing, the foreign grant has the same effect in British Columbia as if it were issued by the court and is with respect to property situated in BC, subject to any order of the court to which a representation grant issued by the court with respect to the same property would be subject.

The applicant must deliver notice of their intention of applying to reseal the grant of probate or administration in accordance with Rule 25-2 and after having done so, applies for resealing by filing the documents set out in Rule 25-6 (2).

Policy

1. There is no policy.

Business Process

Submission for Resealing filing process

- 1. Document filing process
- 2. CEIS
- 3. Refer to DDR to process

Authorization to obtain resealing information issuing process

- 1. Document filing process
- 2. CEIS
- 3. Refer to DDR to process

Business Process in Detail

Submission for Resealing filing process

- 1 Check for the following information:
 - a. Registry location; and
 - b. Style of proceeding
- 2. Open a new file and place file number on all documents.
- 3. Seal and date stamp the Submission for resealing document; date stamp affidavits. Do not stamp the certified copy of the foreign grant and/or certified copy of foreign will if submitted. Date stamp and place file number on back of documents.
- 4. Collect required filing fee (Appendix C, Schedule 1, Item 1)



If the value of the estate is under \$25,000, no filing fee is required. If the value of the estate is not known at the time of filing, the \$200 filing fee is to be charged. If it turns out the value of the estate is under \$25,000, the applicant can make a request for refund of the filing fee. The DDR will calculate probate fees when they review the package and those fees must be paid before the grant will be issued.

- 5. Retain original documents; return copies.
- 6. CEIS.
- 7. Refer to DDR to process
- 8. If DDR signs certificate and probate fees have been paid:
 - a. Before issuing, check for any notices of dispute.
 - b. If satisfied that no disputes have been entered against the estate, the certificate may be issued.
 - c. Seal the certificate, make any certified copies the applicant may have requested at the time of filing. Place impression seal on original of certificate going to applicant.



The certified copy of the foreign grant must be retained on the court file. A photocopy of the certified copy is to be attached to the certificate and given to the applicant.

- d. Provide the applicant with the original certificate; retain a copy for the court file.
- e. CEIS
- f. File
- 5. If DDR rejects application:
 - a. Provide rejection notice to applicant; retain copy for file.
 - b. CEIS
 - c. File
- 6. If there is a dispute:
 - a. Indicate that the submission for resealing is rejected in the order screen and indicate in the comments section of the File Detail screen that a note of the dispute has been filed.
 - b. Add the resealing file number to the reference field in the notice of dispute tab using format: Court location -S - P - file number.
 - c. Notify the applicant in the probate file that a notice of dispute has been filed.

d. Make a copy of the notice of dispute and place it in the resealing file, along with a note indicating when the applicant was advised of the dispute.

Authorization to obtain resealing information issuing process

- 1. If authorization to obtain resealing information granted by DDR:
 - a. Ensure that no notice of dispute has been filed and is still in effect;
 - b. Date stamp original and any copies.
 - c. Retain original; return copies.
 - d. Prepare certified copies, if requested.
 - e. Process payment for any certified copies.
 - f. CEIS
 - g. File.
- 2. If there is a dispute:
 - a. Indicate that the authorization to obtain resealing information is rejected in the order screen and indicate in the comments section of the File Detail screen that a note of the dispute has been filed.
 - b. Add the resealing file number to the reference field in the notice of dispute tab using format: Court location -S P file number.
 - c. Notify the applicant in the probate file that a notice of dispute has been filed.
 - d. Make a copy of the notice of dispute and place it in the resealing file, along with a note indicating when the applicant was advised of the dispute.

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Background

October 2014

[Rule 25-7]

Rule 25-7 sets out the procedures to be followed once the application materials for resealing are submitted to the registry. Many of the registrar's duties are set out in this rule and further details on these are located in the Registrar's handbook as well as in the Academy of Court Administration's Registrar's college.

If an application is refused, the registrar must provide written notice to the applicant of the deficiencies in the material or setting out questions or requests for further information that must be provided before the application can be granted.

The applicant, on receiving the rejection notice, can either file the further requested information or proceed under Rule 25-9, which allows an applicant to apply to the court if the registrar refuses to issue an estate grant, authorization to obtain estate information, an authorization to obtain resealing information or to reseal a foreign grant.

After a foreign grant has been resealed, the registrar must provide notice of the resealing to the court that issued the foreign grant. If the registrar knows that a BC grant has been resealed in another jurisdiction, the registrar must notify the resealing court of any revocation or amendment of the BC grant.

😤 Policy

- 1. In order to ensure compliance with Rule 25-10 (8), a check for a notice of dispute must be performed by registry staff prior to the review of an application for and issuance of an authorization to obtain resealing information or before a foreign grant is resealed.
- 2. Probate fees are payable prior to the resealed grant being issued. There is no priority processing for applications that are submitted with probate fees and applicants should be discouraged from submitting the fees until the review of the application is complete and the applicant is advised of the amount of the fees due.

Business Process

Authorization to obtain resealing information issuing process

- 1. DDR review
- 2. Receive signed document from DDR
- 3. Check for notice of dispute
- 4. CEIS
- 5. File

Supreme Civil Manual - Part 25-7 - Procedure After Filing Application Materials for Rese... Page 2 of 4

Resealing a foreign grant

- 1. DDR review
- 2. Probate filing fees paid
- 3. Check for notice of dispute
- 4. Resealing issue process
- 5. CEIS
- 6. Notice to other court
- 7. File

Requisition Application filing procedure

- 1. Requisition Application filing procedure
- 2. CEIS
- 3. Give to DDR to refer to Court
- 4. Reject/approve
- 5. If approved, notice to other court

Notice of Resealing to original court

1. Mail letter to original court

📽 Business Process in Detail

Authorization to obtain resealing information issuing process

- 1. If authorization to obtain resealing information granted by DDR:
 - a. Check for notice of dispute. If none filed:
 - i. Date stamp original authorization and any copies.
 - ii. Retain original; return copies.
 - iii. Prepare certified copies, if requested.
 - iv. Process payment for any certified copies.
 - v. CEIS
 - vi. File.
- 2. If there is a dispute:
 - a. Indicate that the authorization to obtain resealing information is rejected in the order screen and indicate in the comments section of the File Detail screen that a note of the dispute has been filed.
 - b. Add the resealing file number to the reference field in the notice of dispute tab using format: Court location -S P file number.
 - c. Notify the applicant in the probate file that a notice of dispute has been filed.
 - d. Make a copy of the notice of dispute and place it in the resealing file, along with a note indicating when the applicant was advised of the dispute.

Resealing a foreign grant

1. After application has been reviewed and approved, DDR will notify applicant of the amount of the probate fees due.

Supreme Civil Manual - Part 25-7 - Procedure After Filing Application Materials for Rese... Page 3 of 4

- 2. After probate fees are paid but before signing certificate, DDR:
 - a. Checks CEIS for any disputes filed against the estate. If there is a dispute:
 - i. Indicate that the application for resealing is rejected in the order screen and indicate in the comments section of the File Detail screen that a note of the dispute has been filed.
 - ii. Add the resealing file number to the reference field in the notice of dispute tab using format: Court location -S P file number.
 - iii. Notify the applicant in the probate file that a notice of dispute has been filed.
 - iv. Make a copy of the notice of dispute and place it in the resealing file, along with a note indicating when the applicant was advised of the dispute.
- 3. Upon receiving signed certificate from DDR:
 - a. Impression seal original certificate; make any certified copies requested.

The certified copy of the foreign grant must be retained on the court file. A photocopy of the certified copy is to be attached to the certificate and given to the applicant.

- b. Return original certificate and any certified copies requested to applicant.
- 4. Process payment for certified copies, if provided.
- 5. CEIS
- 6. Notify the other court of the resealing.
- 7. File

Requisition Application filing procedure

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Any affidavit(s) provided have been sworn;
 - e. Copy of registrar's reasons for rejection
- 2. Date stamp documents.
- 3. Retain original documents; return copies to applicant.
- 4. Process payment for application (Appendix C, Schedule 1, Item 4 (c)).
- 5. Enter into CEIS.
- 6. Refer application to DDR to refer to Court.
- 7. If approved by Court, enter order and issue foreign grant as directed.
- 8. If rejected by Court, provide reasons for rejection to party.
- 9. CEIS
- 10. File

Notice of resealing to original court

- 1. Send letter to original court
- 2. CEIS
- 3. File

Supreme Civil Manual - Part 25-7 - Procedure After Filing Application Materials for Rese... Page 4 of 4

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Supreme Civil Manual - Part 25-8 - Effect of Authorization to Obtain Estate Information ... Page 1 of 2

Background

[Rule 25-8]

Once an authorization to obtain estate information or resealing information has been issued, the applicant may deliver a copy of that authorization to any person whom the applicant believes has possession or control of one or more assets or documents relating to the estate of the deceased.

Rule 25-8 (2) sets out what a person who receives an authorization must do, within 30 days after the date of delivery. If the person does not comply, the applicant may apply to the court for an order that the required information or access be provided, on giving notice.

Policy

1. There is no policy.

Business Process

Notice of Application filing procedure

- 1. Notice of Application filing procedure
- 2. CEIS

🛎 Business Process in Detail

Notice of Application filing procedure

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Date, time and place of hearing; and
 - e. Any affidavit(s) provided have been sworn.
- 2. Ensure date set for hearing is less than two hours and is set for a date in which chambers sits.
- 3. If time estimate of application is more than two hours, refer applicant to Supreme Court scheduling or designate to obtain a hearing date.
- 4. Date stamp documents.
- 5. Retain original documents; return copies to applicant.
- 6. Process payment for application (Appendix C, Schedule 1, Item 4).
- 7. Enter documents and date of hearing into CEIS.

Supreme Civil Manual - Part 25-8 - Effect of Authorization to Obtain Estate Information ... Page 2 of 2

8. File.

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📽 Background

[Rule 25-9]

If a registrar refuses to issue an estate grant, an authorization to obtain estate information or an authorization to obtain resealing information or refuses to reseal a foreign grant, the applicant may apply to the court for the authorization, grant or resealing.

In order to make an application under subrule (1), the applicant must file a requisition in Form 31, a draft of the proposed order in Form 35, an affidavit or other evidence in support of the application and any material provided by the registrar in relation to the application. This is not an appeal from a registrar. The \$80 filing fee for applications is applicable.

If the application is approved by the court, the registrar must issue the estate grant, authorization to obtain resealing information or reseal the foreign grant in accordance with the order.

If the court directs that an application be made for the will to be proved in solemn form, the applicant must apply to the court by way of notice of application and pay the appropriate fee for making an application.

If the court directs that the application be heard by the court, the applicant can set the matter on the chambers list by filing a requisition and complying with any directions the court may have set out respecting the hearing. There is no fee to set the matter on the list.

Policy

1. There is no policy.

Business Process

Requisition Application filing procedure

- 1. Document filing procedure
- 2. CEIS
- 3. Refer to DDR for referral

Notice of Application filing procedure

- 1. Notice of Application filing procedure
- 2. CEIS

🖀 Business Process in Detail

Requisition Application filing procedure

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Any affidavit(s) provided have been sworn;
 - e. Reasons for refusal by DDR.
- 2. Date stamp documents.
- 3. Retain original documents; return copies to applicant.
- 4. Process payment for application (Appendix C, Schedule 1, Item 4(c)).
- 5. Enter into CEIS.
- 6. Refer application to DDR for referral.
- 7. If approved by the court, enter order and issue estate grant, authorization to obtain estate information, authorization to obtain resealing information or foreign grant as directed.



It is not necessary for the estate grant, authorization to obtain estate information, authorization to obtain resealing information or resealed foreign grant to refer to the terms of the order.

- 8. If rejected by the court, provide reasons for rejection to party.
- 9. CEIS
- 10. File

Notice of Application filing procedure

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Date, time and place of hearing; and
 - e. Any affidavit(s) provided have been sworn.
- 2. Ensure date set for hearing is less than two hours and is set for a date in which chambers sits.
- 3. If time estimate of application is more than two hours, refer applicant to Supreme Court scheduling or designate to obtain a hearing date.
- 4. Date stamp documents.
- 5. Retain original documents; return copies to applicant.
- 6. Process payment for application (Appendix C, Schedule 1, Item 4).
- 7. Enter documents and date of hearing into CEIS.
- 8. File.

Background

[Rule 25-10]

A person to whom documents have been or are to be delivered pursuant to Rule 25-2 (2) must file a notice of dispute with the court if they wish to oppose the issuance of:

- a. an estate grant;
- b. an authorization to obtain estate information;
- c. an authorization to obtain resealing information; or
- d. The resealing of a foreign grant.

The dispute must be filed before the issuance of the authorization to obtain estate or resealing information and the issuance of an estate grant or resealing of a foreign grant, whichever is earlier.

There is an \$80 filing fee for a notice of dispute, pursuant to Item 12 of Appendix C, Schedule 1 of the Supreme Court Rules. The notice of dispute gets its own file rather than being filed in the estate or resealing file to which the notice pertains.

The notice of dispute must be in Form P29 and must provide an address of service for the disputant. However, because of the serious ramifications that can occur if process is issued and a party wanted to file a notice of dispute but was not permitted to do so by the registry, if a document is deficient in some manner, advise the party of the problem. If they insist on filing, accept the document for filing. If a notice of dispute is filed after an authorization to obtain estate or resealing information is issued, the DDR will refer the matter to the court before issuing the estate grant or resealing the foreign grant.

A notice of dispute can be amended once without leave of the court but any subsequent amendments require leave of the court. Rule 6-1 (2) and (3) apply to amendments made to the notice of dispute.

Pursuant to subrule (2), a person must not file more than one notice of dispute in relation to any one estate. This is so people can't repeatedly file notices of dispute without having to justify the need for them. This is a change from the old rules which allowed a person to file an unlimited number of caveats without providing a reason for doing so. It is not the responsibility of the registry to police this. If a person takes issue with a notice of dispute that has been filed, they can make an application to the court to have the notice withdrawn or struck.

An application can be made to the court to renew a notice of dispute upon giving notice to:

- a. each person who has submitted for filing a submission for estate grant, or a submission for resealing, in relation to the estate;
- b. to each person who has filed a notice of dispute in relation to the estate, and
- c. any other interested person to whom the court directs notice be given.

The court may make an order renewing a notice of dispute without notice in the case of urgency, pursuant to Rule 8-1 (6).

An estate grant, authorization to obtain estate information or an authorization to obtain

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resealing information or the resealing of a foreign grant **must not** issue while a notice of dispute is in effect. Therefore it is very important that a check for any disputes is made before these documents are issued by the registry. A check is also performed before the DDR starts reviewing an application.

A disputant may withdraw a notice of dispute by filing a withdrawal of notice of dispute in Form P30.

A person who is interested in an estate in which a notice of dispute has been filed may apply on notice to the disputant for an order removing the notice of dispute.

Pursuant to Rule 25-10 (12), a notice of dispute ceases to be in effect:

- a. Subject to paragraph b, on the date that is one year after the date on which the notice of dispute was filed;
- b. If the notice of dispute has been renewed under subsection (6), at the end of the renewal period;
- c. If the notice of dispute is withdrawn by the disputant;
- d. If the will in relation to which the notice of dispute relates is proved in solemn form;
- e. If the court orders that the notice of dispute be removed.

🛎 Policy

- 1. Even though Rule 25-10 clearly sets out what form and information must be contained within a Notice of Dispute, if a piece of information is missing, advise the disputant that further information is required. If the disputant insists on filing as is, accept the document for filing.
- 2. It is the responsibility of the person wanting to file a notice of dispute to determine if an authorization to obtain estate information, authorization to obtain resealing information, estate grant or resealed foreign grant has already been issued by the registry. If a process has issued and the party still insists on filing the notice of dispute, accept the document for filing.

🖀 Business Process

Notice of dispute filing process

- 1. Document filing process
- 2. CEIS
- 3. File

Amended notice of dispute filing process

- 1. Document filing process
- 2. CEIS

http://portal.ag.gov.bc.ca/portal/page/portal/CSB Home/document repository/public/ma... JAG-2015-00066 2015-02-16

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3. File

Notice of Application (for renewal or removal of notice of dispute) filing process

- 1. Notice of Application filing procedure
- 2. CEIS

Withdrawal of notice of dispute filing process

- 1. Document filing procedure
- 2. CEIS

Business Process in Detail

Notice of dispute filing process

- 1. Check for the following information:
 - a. Registry location;
 - b. Style of proceeding;
- 2. Date stamp documents.
- 3. Retain original document; return copies to applicant.
- 4. Process payment for application (Appendix C, Schedule 1, Item 12).
- 5. CEIS
- 6. File.

Notice of Application (for renewal or removal of notice of dispute) filing process

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Date, time and place of hearing; and
 - e. Any affidavit(s) provided have been sworn.
- 2. Ensure date set for hearing is less than two hours and is set for a date in which chambers sits.
- 3. If time estimate of application is more than two hours, refer applicant to Supreme Court scheduling or designate to obtain a hearing date.
- 4. Date stamp documents.
- 5. Retain original documents; return copies to applicant.
- 6. Process payment for application (Appendix C, Schedule 1, Item 4).
- 7. Enter documents and date of hearing into CEIS.
- 8. File.

Withdrawal of notice of dispute filing process

- 1. Check for the following information:
 - a. Registry file number;

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- b. Registry location;
- c. Style of proceeding;

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- 2. Date stamp document.
- 3. Retain original document; return copies of applicant.
- 4. CEIS
- 5. File

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Background

[Rule 25-11]

If a person believes that a will or other testamentary document exists, they may issue a citation in Form P32 and personally serve each person named as an executor, requiring the served person to apply for a grant of probate. The citation and answer documents are not filed with the court prior to being served on the other side. The intent is for this process to occur outside of court, with parties only having to come to court if a person does not comply with what they have been cited to do.

A person who is served with a citation has 14 days to comply with Rule 25-11 (4). If a cited person serves an answer in Form P33, the form is not filed with the court before it is served.

If a person who is cited to apply for a grant of probate is deemed to have renounced executorship, the citor or another person interested in the estate may apply for:

- a. A grant of probate or a grant of administration with will annexed in relation to the testamentary document or another testamentary document;
- b. An order under s. 58 of the *Wills, Estates and Succession Act* curing any deficiencies in the testamentary document;
- c. An order that the testamentary document in a will proved in solemn form;
- d. If the testamentary document is in the possession of the cited person, the issuance of a subpoena under Rule 25-12 to require the cited person to file the testamentary document.

The citor may swear an affidavit of deemed renunciation in Form P34 if the person served with a citation is deemed under subrule (5) to have renounced executorship. This affidavit will likely come in as part of the submission for estate grant package rather than as a separate affidavit.

🖹 Policy

1. If a person wants to file a document that the rules don't require to be filed, advise the party that there is no requirement under the rules to file the document and do not accept the document for filing.

🛎 Business Process

There is no business process

Business Process in Detail

There is no business process in detail.

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📽 Background

[Rule 25-12]

A person may apply for a subpoena to be issued to require a person to deliver to the registry one or more of:

- a testamentary document;
- an authorization to obtain estate information;
- an authorization to obtain resealing information;
- an estate grant;
- a foreign grant;
- a resealed foreign grant, and
- a certified or notarial copy of such a document.

Such an application is made by filing a requisition for subpoena in Form P35, an affidavit in support and a subpoena in Form P37 in the existing estate file. If there is no existing estate file, pursuant to Rule 2-1 (2.1) (c), a requisition in Form P35 can initiate an estate file within which to bring an application for a subpoena. The applicant would pay the \$200 initiation fee at the time of filing the subpoena. When the submission for estate grant is submitted in the existing file, no filing fee would be charged.

There is no filing fee for a subpoena submitted in an existing estate file.

If the registrar is satisfied that the requirements set out in subrule (3) are met, the subpoena can be issued. The subpoena must be personally served. It is the responsibility of the party obtaining the subpoena to serve or have the person served.

If the person to whom the subpoena was directed does not, within 14 days, deliver to the registry the document referred to in the subpoena or provide to the registrar an affidavit indicating that the document referred to in the subpoena is not in the person's possession or control and setting out what knowledge the person has respecting that document, the registrar may endorse a copy of the requisition for subpoena accordingly.

If the person does deliver to the registry a document referred to in the subpoena, have them complete a requisition with the file information and attach the document to the requisition for filing. If the document is a will or other testamentary document, ensure that it is not marked in any way. The document, once filed, cannot be returned without court order. A copy of the document can be made upon request.

Upon application, the court may issue a warrant in Form P36 for the arrest of the person served with the subpoena. The court may release the person in custody by release order in Form 117 on receiving an undertaking in Form 116 from the person. Unlike other applications for warrants, this does not need to be spoken to or filed by way of notice of application but proceeds by way of desk order.

A person who has been served with a subpoena may apply to the court for an order setting aside the subpoena on the grounds the compliance with it is unnecessary or that it would cause a hardship on the person.

🛎 Policy

1. Warrants for arrest are to be forwarded by the registry directly to the sheriff in the location where the person to be arrested lives.

Business Process

Application to issue subpoena (initiating document)

- 1. Requisition application process
- 2. DDR
- 3. CEIS

Application to issue subpoena (existing file)

- 1. Desk order application process
- 2. DDR
- 3. CEIS

Notice of Application (to set aside subpoena) filing procedure

- 1. Notice of Application filing procedure
- 2. CEIS

Delivery of document filing procedure

- 1. Document filing procedure
- 2. CEIS

Requisition to request warrant

- 1. Document filing procedure
- 2. DDR to refer
- 3. CEIS

Release of in-custody procedure

- 1. Entry of release order (Form 117); obtain undertaking in Form 116
- 2. DDR
- 3. CEIS
- 4. Obtain original warrant
- 5. File

🖀 Business Process in Detail

Application to issue subpoena (initiating file)

- 1. Check the requisition is in Form P35 and contains the following information:
 - a. Registry location;
 - b. Style of proceeding; and
 - c. Any affidavit(s) provided have been sworn.
- 2. Seal requisition. Date stamp documents, except subpoena.
- 3. Retain original documents; return copies to applicant.
- 4. Charge \$200 filing fee for initiating the file.
- 5. Enter into CEIS.
- 6. Refer application to DDR.
- 7. If subpoena is signed:
 - a. Seal and date stamp subpoena.
 - b. Retain a copy of subpoena and originals of supporting documents. Return original subpoena and copies to applicant.
 - c. CEIS
- 8. If subpoena is not signed:
 - a. Provide reasons for rejection to applicant.
 - b. CEIS
- 9. File



Reference to the seal means the standard black/blue ink rubber seal usually placed on orders and initiating documents.

Application to issue subpoena (existing file)

- 1. Check the requisition for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Requisition is in Form P35, and
 - e. Any affidavit(s) provided have been sworn.
- 2. Date stamp documents, except subpoena.
- 3. Retain original documents; return copies to applicant.



There is no filing fee for a subpoena if it is submitted in an existing estate file.

- 4. Enter into CEIS.
- 5. Refer application to DDR.
- 6. If subpoena is signed:
 - a. Seal and date stamp subpoena.
 - b. Retain a copy of subpoena and originals of supporting documents. Return original subpoena and copies to applicant.
 - c. CEIS
- 7. If subpoena is not signed:

- a. Provide reasons for rejection to applicant.
- b. CEIS
- 8 File



Reference to the seal means the standard black/blue ink rubber seal usually placed on orders and initiating documents.

Document delivery filing process

- 1. Check the requisition or affidavit for the following information:
 - a. Registry file number:
 - b. Registry location:
 - c. Style of proceeding and
 - d. Any affidavit (s) provided have been sworn.
- 2. Date stamp requisition or affidavit.
- 3. Retain original documents; return copies to applicant.
- 4. Enter document into CEIS.
- 5. File.

Application for warrant

- 1. Check the requisition for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Copy of the requisition in Form P35 endorsed by the DDR, and
 - e. Any affidavit(s) provided have been sworn.
- 2. Date stamp documents, except warrant.
- 3. Retain original documents; return copies to applicant.
- 4. Enter into CEIS.
- 5. Refer materials to DDR to refer to the Court.
- 6. If warrant is signed:
 - a. Seal and date stamp warrant.
 - b. Retain original warrant and originals of supporting documents. Return copy of warrant and copies of documents to applicant.
 - c. Forward warrant to sheriff for execution according to local practice.



Warrants should be forwarded by the registry directly to the sheriff in the location where the person to be arrested lives.

- 7. If warrant is not signed:
 - a. Retain original documents.
 - b. Return copies of documents and reasons for rejection.
 - c. CEIS
- 8. File.

Release from custody procedure

- 1. After the Judge has ordered the release of an in-custody:
 - a. Depending on local practice, prepare the release order in Form 117 and undertaking in Form 116; give to DDR.
 - b. The DDR will have the Judge sign the release order and enter the order.
 - c. Attach a copy of the entered order to the undertaking.
- 2. Give the documents to the Sheriff.
- 3. The Sheriff will arrange for the in-custody to sign the undertaking and will give the incustody a copy of the order and undertaking for their records.
- 4. Ensure that the originally signed undertaking is returned to the registry.
- 5. Ensure the original warrant is returned to the registry and a line drawn through the face of it, indicating if the warrant was executed or vacated.
- 6. CEIS.
- 7. File

Notice of Application (to set aside subpoena) filing procedure

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Date, time and place of hearing; and
 - e. Any affidavit(s) provided have been sworn.
- 2. Ensure date set for hearing is less than two hours and is set for a date in which chambers sits.
- 3. If time estimate of application is more than two hours, refer applicant to Supreme Court scheduling or designate to obtain a hearing date.
- 4. Date stamp documents.
- 5. Retain original documents; return copies to applicant.
- 6. Process payment for application (Appendix C, Schedule 1, Item 4).
- 7. Enter documents and date of hearing into CEIS.
- 8. File.

Background

May 2014

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[Rule 25-13]

A personal representative or a person interested in an estate administered by a personal representative may apply for an order for the passing of the personal representative's accounts in relation to the estate and/or an order to fix and approve the personal representative's remuneration.

The application may be brought:

- in accordance with Rule 25-14 (1), (o), (p) or (q);
- in conjunction with an application referred to in Rule 25-14 (1) (d) (e) or (f), or
- in accordance with Rule 8-3 if each interested person other than the applicant has consented to the accounts to be passed or the remuneration to be fixed and approved.

If the application is brought by the personal representative, it must be supported by an affidavit in support of an application to pass accounts in Form P38.

If the court directs the registrar to conduct an inquiry, assessment or accounting under subrule (3)(b), the registrar must, by certificate in Form F39, certify the result of the inquiry, assessment or accounting.

In addition to other required materials, if the applicant is the personal representative, a statement of account affidavit in Form P40 must be filed. If the applicant is a person other than the personal representative, an affidavit explaining why an accounting is required must be filed.

Policy

1. There is no policy.

Business Process

Requisition application filing procedure – existing file

- 1. Document filing procedure
- 2. CEIS
- 3. DDR

Notice of Application

- 1. Notice of Application filing procedure
- 2. CEIS

Certificate (P39) filing procedure

- 1. Certificate signed by Registrar
- 2. Certificate entry
- 3. CEIS

Business Process in Detail

Requisition application (by consent/without notice) filing procedure - existing file

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Any affidavit(s) provided have been sworn.
- 2. Date stamp documents.
- 3. Retain original documents; return copies to applicant.
- 4. Process payment for application (Appendix C, Schedule 1).
- 5. Enter into CEIS.
- 6. Refer application to DDR.
- 7. If order is signed by the DDR:
 - a. Enter and scan order.
 - b. Provide copy of entered order to applicant.
 - c. File.
- 8. If order is rejected by DDR:
 - a. Make a copy of any reasons for rejection.
 - b. Return copies to applicant.

Notice of Application filing procedure

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Date, time and place of hearing; and
 - e. Any affidavit(s) provided have been sworn.
- 2. Ensure date set for hearing is less than two hours and is set for a date in which chambers sits.
- 3. If time estimate of application is more than two hours, refer applicant to Supreme Court scheduling or designate to obtain a hearing date.
- 4. Date stamp documents.
- 5. Retain original documents; return copies to applicant.
- 6. Process payment for application (Appendix C, Schedule 1, Item 4).
- 7. Enter documents and date of hearing into CEIS.
- 8. File.

Certificate (P39) filing procedure

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- 1. Check for the following information and reject document if not present:
 - a. Registry file number;
 - b. Registry location; and
 - c. Style of proceeding.
- 2. If certificate is signed by the Master/Registrar:
 - a. Seal and date stamp original(s) and copies.
 - b. Process payment (Appendix C, Schedule 1, Item 19).
 - c. Retain original; return copies.
 - d. CEIS process.
 - e. File.
- 3. If certificate is not signed by the court:
 - a. Retain original documents.
 - b. Return copies of documents and any reasons for rejection.

April 2014

[Rule 25-14]

Rule 25-14 (1) sets out how to apply for relief listed in subrules (a) – (q). A person may apply for these types of applications by way of notice of application pursuant to Part 8 of the Rules. If nothing has been filed in relation to the estate, an application can be made by requisition in Form P41 which commences the proceeding. The \$200 filing fee to initiate a proceeding would be charged at this point. If a submission for estate grant comes in subsequently in that file, no fee is payable.

Rule 25-14 (2) sets out how to apply for:

- a. An order under s. 30 of WESA determining the value of a deceased's interest in a spousal home;
- b. An order under s. 33 of WESA relating to a spousal home;
- c. An order under s. 58 respecting deficiencies in a document that does or may disclose a testamentary intention or testamentary disposition of a deceased;
- d. An order under s. 59 of WESA rectifying a will.

For these particular applications, if there is an existing proceeding within which it is appropriate to seek the order, a notice of application in Form P42 may be used or if there is no existing proceeding that it would be appropriate to apply within, a requisition in Form P43 must be used.

In order to apply to the court for an order proving a will in solemn form, a person may, if there is an existing proceeding within which it is appropriate to seek that order, apply by way of notice of application in that proceeding. If there is no existing proceeding, the applicant must start a petition under Rule 16-1 and seek the order within that proceeding.

Subrules (5)-(7) sets out service requirements for notices of application.

Policy

1. If a requisition in Form P41 or P43 is used to commence a proceeding, the \$200 filing fee is to be charged at the time of filing. If a submission for estate grant is subsequently filed in the existing file, there is no filing fee for the submission.

Business Process

Notice of Application filing procedure

- 1. Notice of Application filing procedure
- 2. CEIS

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Requisition (P41 or P43) – initiating file

- 1. Requisition initiating file procedure
- 2. CEIS
- 3. DDR

Business Process in Detail

Notice of Application filing procedure

- 1. Check for the following information:
 - a. Registry file number;
 - b. Registry location;
 - c. Style of proceeding;
 - d. Date, time and place of hearing; and
 - e. Any affidavit(s) provided have been sworn.
- 2. Ensure date set for hearing is less than two hours and is set for a date in which chambers sits.
- 3. If time estimate of application is more than two hours, refer applicant to Supreme Court scheduling or designate to obtain a hearing date.
- 4. Date stamp documents.
- 5. Retain original documents; return copies to applicant.
- 6. Process payment for application (Appendix C, Schedule 1, Item 4).
- 7. Enter documents and date of hearing into CEIS.
- 8. File.

Requisition (Form P41 or P43) filing process - initiating file

- 1. Check the requisition for the following information:
 - a. Registry location;
 - b. Style of proceeding;
 - c. Address for service, and
 - d. Any affidavit(s) provided have been sworn.
- 2. Date stamp documents.
- 3. Retain original documents; return copies to applicant.
- 4. Process payment for application (Appendix C, Schedule 1, Item 1).
- 5. Enter into CEIS.
- 6. Refer application to DDR.
- 7. If order is signed by the DDR:
 - a. Enter and scan order.
 - b. Provide copy of entered order to applicant.
 - c. File.
- 8. If order is rejected by DDR:
 - a. Make a copy of any reasons for rejection.
 - b. Return copies to applicant.

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Background

[Rule 25-15]

This rule deals with various things such as making a grant of administration to a minor's guardians, changing an address for service, what to do if no address for service is given and how to deal with costs if only proof of solemn form is required.

🖹 Policy

1. There is no policy.

Business Process

There is no business process.

Business Process in Detail

There is no business process in detail.

🖉 Background

[Rule 25-16]

This rule sets out how to deal with certain things in the transition from the old rules to the *Wills Estates and Succession Act* and the new court rules. Refer to this section and the transitional section in WESA to determine what process should be followed during the transition.

How to proceed with applications started under the previous rules, caveats filed under the former rules, citations and probate actions are dealt with in this rule.

S. 185 of WESA says Part 2 [Fundamental Rules], Part 3 [When a Person Dies Without a Will] and Part 6 [Administration of Estates] apply in respect of deaths occurring on or after the date on which those Parts come into force. Rule 25-16 (2) says that if an application for a grant of probate or administration, ancillary grant of probate or administration or resealing of a foreign grant was brought under the old Rules, it is deemed to be an application for an estate grant or resealing, under the new Rules.

The only difficulty occurs if a person dies before WESA comes into effect and no paperwork was filed under the old rules. In those circumstances, while the sections mentioned in s. 185 of WESA do not apply, the new court Rules do and the application can be made using the new forms and rules. DDRs will not be apply to approve these grants and will have to refer them to the court for approval.