RULE 1 – INTRODUCTION AND DEFINITIONS

Citation

(1) These rules are made under section 38 of the *Judicature Act*, RSY 2002, c. 128, effective September 15, 2008, amended October 4, 2022, and may be cited as the Rules of Court.

(2) A group of rules having the same unbracketed numeral may be cited as "Rule" followed by the numeral, for example, "Rule 1" means Rule 1(1) to 1(20), inclusive.

(3) A rule or part of a rule may be cited as "Rule" followed by the number, subrule, paragraph or clause of the rule cited, for example, "Rule 15(5)(a)(i)" means clause (i) of paragraph (a) of subrule (5) of Rule 15.

Application

(4) These rules govern every non-criminal proceeding in the Supreme Court of Yukon except where a statute or regulation otherwise provides.

Practice Directions

(5) The court may make practice directions to assist in the interpretation of these rules and to provide directions which shall have the same force as these rules.

Object of rules

(6) The object of these rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits and to ensure that the amount of time and process involved in resolving the proceeding, and the expenses incurred by the parties in resolving the proceeding, are proportionate to the court's assessment of

(a) the dollar amount involved in the proceeding,

(b) the importance of the issues in dispute to the jurisprudence of Yukon and to the public interest, and

(c) the complexity of the proceeding.

Mandatory Case Management

(7) Self-represented plaintiffs and petitioners, applicants for judicial reviews and appellants shall schedule a case management conference no later than 60 days from the filing of a statement of claim or petition, except for family law proceedings, estate matters, collections, foreclosures and adoptions.

Case Management

(8) Any party to a proceeding may request that a case be referred to case management, and the court must further the object of these rules by actively managing proceedings, and, for that purpose, may do any or all of the following:

(a) encourage the parties to co-operate with each other in the conduct of the proceeding;

(b) identify the issues at an early stage;

(c) decide promptly which issues need full investigation and trial and which may be disposed of summarily under these rules;

(d) decide the order in which issues are to be resolved;

(e) encourage the parties to use alternative dispute resolution procedures the court considers appropriate, and facilitate the use of those procedures;

(f) help the parties to settle the whole or part of the proceeding by using judicial settlement conferences;

(g) set realistic timetables or otherwise control the progress of the proceeding;

(h) consider whether the likely benefits of taking a particular step justify the cost of taking it;

(i) deal with as many aspects of the proceeding on the same occasion as is reasonably practicable;

(j) make use of technology, including telephone conferencing and video conferencing;

(k) give directions to ensure that the proceeding proceeds quickly and efficiently; and

(l) make any other orders and give any other directions the court considers appropriate.

Delay of Proceeding

(9) In a proceeding where judgment has not been obtained and the proceeding has not been settled or set down for trial or hearing, excluding applications, within one year from the date of filing the statement of claim or petition, a judge may require the parties or their lawyers to appear on an Appearance Day to explain the delay. At the Appearance Day, the judge may:

(a) dismiss the proceeding;

(b) award costs;

(c) make any case management order under Rule 36(6).

Appearance Day

(10) There shall be an Appearance Day at which time the trial coordinator, on the direction of a judge, lawyer or a party, may bring forward a proceeding to address the status of the proceeding and its progress as provided for in a practice direction.

(10.1) Where the Appearance Day Notice in Form 52A is filed by counsel or a party, it shall be served or delivered, as the case may be, at least two days before the Appearance Day. It shall set out the matter or issue to be addressed and the relief requested. No confirmation that the matter is proceeding is required and the matter may be withdrawn or adjourned by contacting the clerk of the Supreme Court.

(10.2) On an Appearance Day, the court may make any order that may be made under Rule 36.

Interpretation

(11) Except where a contrary intention appears, the *Interpretation Act*, RSY 2002, c. 125, applies to these rules.

Titles and headings

(12) The titles and headings of these rules are for convenience only and are not intended as a guide to construction.

Definitions

(13) In these rules, unless the context otherwise requires:

"action" means a proceeding commenced by statement of claim and includes a lawsuit;

"applicant" means a person commencing an application and includes a person who commences a proceeding by way of application for judicial review;

"appellant" means a person who commences a proceeding with a notice of appeal;

"clerk" includes a court clerk, a clerk of the registry and a deputy clerk;

"court" means the Supreme Court of Yukon;

"defendant" includes a defendant by way of counterclaim;

"document" includes any originating process, document or form;

"family law proceeding" includes a proceeding in which relief is claimed under the *Family Property and Support Act*, RSY 2002, c. 83, or the *Children's Law Act*, RSY 2002, c. 31, and includes a proceeding for nullity;

"file" means to file in the registry;

"holiday" means Sunday, New Year's Day, Heritage Day, Good Friday, Easter Monday, Victoria Day, National Indigenous Peoples Day, Canada Day, Discovery Day, National Day for Truth and Reconciliation, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day;

"judgment creditor" means a person entitled to enforce an order of the court, whether for payment of money or otherwise;

"judgment debtor" means a person against whom an order may be enforced, whether for payment of money or otherwise;

"lawyer" means an active member of the Law Society of Yukon or a lawyer from another jurisdiction with a certificate of permission to act in the proceeding;

"order" includes a judgment and a decree;

"originating application" means a proceeding commenced by petition, requisition or application for judicial review;

"originating process" means a statement of claim, counterclaim, petition, third party notice, application for judicial review, notice of appeal, or any document which commences a proceeding or adds a new party to a proceeding;

"party of record" means a person who has

(a) commenced a proceeding,

(b) filed an appearance or a pleading, or

(c) been added as a third party under the *Insurance Act*, RSY 2002, c. 119;

"petitioner" means a person who commences a proceeding by petition;

"plaintiff" means a person who commences an action and includes a plaintiff by way of counterclaim;

"pleading" includes a statement of claim, petition, application for judicial review, statement of defence, reply, counterclaim, statement of defence to counterclaim, third party notice and statement of defence to third party notice and Notice of Appeal;

"proceeding" includes an action, suit, cause, matter, appeal or originating application;

"Public Guardian and Trustee" means the Public Guardian and Trustee appointed under s. 2 of the *Public Guardian and Trustee Act*, SY 2003, c. 21, Schedule C, which is Schedule C to the *Decision Making, Support and Protection to Adults Act*, SY 2003, c. 21;

"receiver" includes a receiver-manager;

"registry" means the office of the court;

"relief" includes remedy;

"respondent" includes a person entitled to notice of a petition or notice of application;

"special referee" means any person appointed by the court under these rules or under a statute or regulation to hold an assessment, inquiry or accounting;

"statute" means a written law that has been passed by the Parliament of Canada or a provincial or territorial legislature, and includes Acts

"writ of execution" includes a writ for seizure and sale, for possession or delivery, for rents and profits and any subsequent writ that issues to give effect to these writs, and also includes a warrant or other process of execution issued out of any court in Yukon having jurisdiction to grant and issue that process.

Waiver of rule

(14) On application, on its own motion, or if all parties to a proceeding agree, the court may order that any provision of these rules does not apply to the proceeding.

Orders on terms and conditions

(15) When making an order under these rules the court may impose terms and conditions and give directions as it thinks just.

Petitions and applications

(16) Where a statute or regulation authorizes an application to the court or to a judge of the court, and, whether or not the statute or regulation provides for the mode of application, the application shall be:

(a) by petition under Rule 10;

(b) by application under Rule 47; or

(c) by application under Rule 54

with such modifications as the statute or regulation may require.

Statute or regulation of Canada

(17) Subrule (16) does not apply where a particular mode of application is required by a statute or regulation of Canada.

Transition

(18) Unless the court otherwise orders, all proceedings, whenever commenced, shall be governed by these rules.

Directions

(19) An application for directions may be made under these rules.

Fees

(20) Fees payable to the Territorial Treasurer and witness fees are set out in Appendix C.

RULE 2 – EFFECT OF NON-COMPLIANCE

Non-compliance with rules

(1) Unless the court otherwise orders, a failure to comply with these rules shall be treated as an irregularity and does not nullify a proceeding, a step taken or any document or order made in the proceeding.

(2) Subject to subrules (3) and (4), where there has been a failure to comply with these rules, the court may:

(a) set aside or stay a proceeding, either wholly or in part;

(b) set aside or stay any step taken in the proceeding, or a document or order made in the proceeding;

(c) allow an amendment to be made under Rule 24;

(d) dismiss the proceeding or strike out the statement of defence and grant judgment; or

(e) make any other order it thinks just.

(3) The court shall not wholly set aside or stay a proceeding on the ground that it was required to be commenced by an originating process other than the one employed.

Application to set aside for irregularity

(4) An application for an order under subrule (2)(a), (b) or (d) shall not be granted unless:

(a) it is made within a reasonable time; and

(b) the application is made before the party applying has taken a fresh step after knowledge of the irregularity.

Consequences of certain non-compliance

(5) Where a person, contrary to these rules and without lawful excuse:

(a) refuses or neglects to obey a subpoena or to attend at the time and place appointed for the examination for discovery;

(b) refuses to be sworn or to affirm or to answer any question put to the person;

(c) refuses or neglects to produce or permit to be inspected any document or other property;

(d) refuses or neglects to answer interrogatories or to serve an affidavit of documents; or

(e) refuses or neglects to attend for or submit to a medical examination;

then

(f) where the person is the plaintiff, petitioner or a present officer of a corporate plaintiff or petitioner, or a partner in or manager of a partnership plaintiff or petitioner, the court may dismiss the proceeding; and

(g) where the person is the defendant, respondent or a third party, or a present officer of a corporate defendant, respondent or third party, or a partner in or manager of a partnership defendant, respondent or third party, the court may order the proceeding to continue as if no Appearance had been entered or no defence had been filed.

(6) Where a person, without lawful excuse, refuses or neglects to comply with a direction of the court, the court may make an order under subrule (5)(f) or (g).

Dismissal for want of prosecution

(7) If upon application by a party it appears to the court that there is want of prosecution in a proceeding, the court may order that the proceeding be dismissed.

Want of prosecution

(8) Notwithstanding Rule 3(6), a defendant or respondent may apply to have a proceeding dismissed for want of prosecution without serving notice of intention to proceed.

(9) The court:

(a) may, with or without terms, dismiss the proceeding for want of prosecution or give directions for the speedy determination of the proceeding; or

(b) except in a family law or *Divorce Act*, R.S.C. 1985, c. 3, (2nd Supp.) proceeding, shall dismiss so much of the proceeding that relates to the applicant where for five or more years no step has been taken that materially advances the action or proceeding.

RULE 3 – TIME

Definitions

"holiday" means Sunday, New Year's Day, Heritage Day, Good Friday, Easter Monday, Victoria Day, National Indigenous Day, Canada Day, Discovery Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day.

Computation of time

(1) Unless a contrary intention otherwise appears, the computation of time under these rules or in an order of the court is governed by the following provisions:

(a) if a period of less than 7 days is prescribed by these rules or the order, holidays shall not be counted;

(b) service or delivery of documents effected after 4 p.m. shall be deemed to have been effected on the next day that is not a Saturday or holiday.

Extending or shortening time

(2) The court may extend or shorten any period of time provided for in these rules or in an order of the court, notwithstanding that the application for the extension or the order granting the extension is made after the period of time has expired.

(3) The period fixed by these rules or an order for serving, delivering, filing or amending a pleading or other document may be extended by consent.

Short notice applications

(4) Without limiting subrule (2),

(a) in case of urgency, the court may

(i) order that an application be heard in chambers on short notice,

(ii) fix the date and time for the application to be heard,

(iii) fix the date and time before which service of or delivery of documents must be made, and

(iv) give such other directions as may be appropriate, and

(b) if an order is made under paragraph (a), the time limits provided in Rules 10 and 47 and the provisions of Rule 48 do not apply to the application.

Form of applications

(5) If an application is made for an order under subrule (4)(a),

(a) the application may be made by requisition, without notice, and in a summary way, and

(b) the provisions of Rule 48 do not apply to the application.

Notice of intention to proceed after delay of one year

(6) In a proceeding, excluding a family law or *Divorce* Act, R.S.C. 1985, c. 3 (2nd Supp.), proceeding, where judgment has not been obtained and no step has been taken for one year, no party shall proceed until

(a) the expiration of 28 days after service of Notice of Intention to Proceed in Form 24 on all other parties of record, and

(b) a copy of the notice and proof of its service has been filed.

Attendance

(7) Attendance on an appointment for discovery under Rule 27(14) before a certified reporter within 30 minutes following the time fixed for the appointment is a sufficient attendance.

RULE 4 – FORMS AND ADDRESS FOR DELIVERY

Forms

(1) The forms in Appendix A shall be used where applicable with variations as the circumstances of the proceeding require.

Documents

(2) Unless the nature of the document renders it impracticable, every document prepared for use in the court shall be in the English or French language, legibly printed, typewritten, written or reproduced on 8 1/2 inch x 11 inch (126 mm x 279 mm) durable white paper or durable off-white recycled paper.

(3) Transcripts of oral evidence shall conform to subrule (2) but may be double sided.

Space for stamp

(4) The first page of each document prepared for use in a proceeding must contain a blank area extending at least 5 centimetres from the top of the page and at least 5 centimetres from the right edge of the page.

Style of proceeding

(5) A document prepared for use in a proceeding must be headed with the style and number of the proceeding, but in a document, other than an order or a document that commences a proceeding, if there is more than one party in the proceeding identified as a plaintiff or as any other classification of party, the style of proceeding may be abbreviated to show the name of the first party listed in that classification, followed by the words "and others". The style of proceeding shall not refer to legislation.

Signature and dating

(6) A document prepared for use in a proceeding shall be signed and dated by the party, or by the party’s lawyer.

Address for delivery

(7) The following documents must contain the address for delivery of the party by whom or on whose behalf the document is filed:

(a) an originating process;

(b) an appearance;

(c) a third party notice;

(d) a caveat;

(e) a notice of appointment or change of lawyer;

(f) a notice of self-representation.

Required address

(8) Subject to subrule (10), each party of record to a proceeding must have, and must include on each document referred to in subrule (7) that is filed by or on behalf of the party, an address for delivery which includes:

(a) a residential address or business address; and

(b) a postal address.

Additional address

(9) In addition, a party of record may provide a telephone number, fax number or email address.

Required address must be available for delivery of documents

(10) An address for delivery, other than a postal address, a fax number or email address, must describe a unique and identifiable place, other than a post office box, that is accessible to the public during normal business hours for the delivery of documents.

Address must be in Yukon

(11) The place referred to in each address for delivery provided under this rule must be a place located in Yukon unless otherwise ordered by the court.

Change of address for delivery

(12) A lawyer of record or a party of record may change an address for delivery to an address for delivery that complies with subrules (8), (9) and (10) by filing and serving on all other parties of record a Notice of Change of Address for Delivery in Form 17.

Failure to give address for delivery

(13) Where a party:

(a) fails to give an address for delivery as required by these rules; or

(b) gives an address which is declared by the court, upon an application that may be made without notice, to be fictitious or illusory,

the party is not entitled to service or delivery of any pleading or other document otherwise required by these rules.

RULE 5 – MULTIPLE CLAIMS AND PARTIES

Multiple claims

(1) Subject to subrule (6), a person, whether claiming in the same or different capacities, may join several claims in the same proceeding.

Multiple parties

(2) Subject to subrule (6), a proceeding may be commenced by or against 2 or more persons where

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

(b) a right to relief claimed in the proceedings, whether it is joint, several or alternative, is in respect of or arises out of the same transaction or series of transactions, or

(c) the court grants leave to do so.

(3) Subject to any statute, regulation or these rules or unless the court otherwise orders, a plaintiff or petitioner who claims relief to which any other person is jointly entitled shall join as parties to the proceeding all persons so entitled, and any of them who do not consent to be joined as a plaintiff or petitioner shall be made a defendant or respondent.

(4) Where relief is claimed against a person who is jointly liable with some other person, the other person need not be made a party to the proceeding; but where persons may be jointly, but not severally, liable and relief is claimed against some but not all of these persons in a proceeding, the court may stay the proceeding until the other persons who may be liable are added as parties.

(5) It is not necessary that every party be interested in all the relief sought in a proceeding, but the court may order that a party be compensated for being required to attend, or be relieved from attending, a part of a trial or hearing in which that party has no interest.

Separation

(6) Where a joinder of several claims or parties in a proceeding may unduly complicate or delay the trial or hearing of the proceeding or is otherwise inconvenient, the court may order separate trials or hearings or make any other order it thinks just.

(7) Where a counterclaim or a third party proceeding ought to be disposed of by a separate proceeding, the court may so order.

Consolidation

(8) Proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.

Misjoinder or nonjoinder of parties

(9) No proceeding shall be defeated by reason of the misjoinder or nonjoinder of a party and the court may deal with the matter in controversy so far as it affects the rights and interests of the parties before it.

***Carriage by Air Act* (Canada)**

(10) In an action under the *Carriage by Air Act*, R.S.C. 1985, c. C-26, and the convention set out in that *Act*, a high contracting party to the convention who, for the purposes of that action and by virtue of that *Act*, is deemed to have submitted to the jurisdiction of the court, may be made a defendant subject to these rules.

Representative proceeding

(11) Where numerous persons have the same interest in a proceeding, other than a proceeding referred to in subrule (17), the proceeding may be commenced and, unless the court otherwise orders, continued by or against one or more of them as representing all or as representing one or more of them.

(12) At any stage of a proceeding under subrule (11), the court, on the application of a party, may appoint one or more of the defendants or respondents or another person to represent one or more of the persons having the same interest in the proceeding, and where the court appoints a person not named as a defendant or respondent, it shall make an order under Rule 15 adding that person as a defendant or respondent.

Enforcement of order made in representative proceeding

(13) An order made in a proceeding under subrule (11) is binding on all the persons represented in the proceeding as parties, but shall not be enforced against a person not a party to the proceeding, except with leave of the court as follows:

(a) an application for leave shall be served on the person against whom the applicant seeks to enforce the order, and that person may dispute liability to have the order enforced against them; or

(b) on the application, the court may order that the question of whether the order is enforceable against that person be determined in the manner it thinks just.

Representation of interested person who cannot be ascertained

(14) In a proceeding concerning:

(a) the administration of the estate of a deceased person;

(b) property subject to a trust; or

(c) the construction of a written instrument, including a statute or regulation,

the court may appoint one or more persons to represent a person, including an unborn or unascertained person, or the members of a class of persons who have a present, future, contingent or unascertained interest in, or who may be affected by the proceeding, and who, or some of whom, cannot readily be ascertained or found.

(15) If an appointment is made under subrule (14), an order in the proceeding is binding upon a person or class so represented.

(16) Where, in a proceeding referred to in subrule (14), a compromise is proposed and a person or member of a class interested in the compromise is not a party to the proceeding, but:

(a) there is another person with the same interest who is a party and who assents to the compromise; or

(b) the absent person or member of the class is represented by a person appointed under subrule (14) who so assents,

the court, if satisfied that the compromise will be for the benefit of the absent person or member of the class and that it is expedient, may approve the compromise and order that it is binding on the absent person or member of the class and, unless the order has been obtained by fraud or non-disclosure of material facts, the person or member of the class is bound accordingly.

Representation of beneficiaries by trustees

(17) A proceeding may be brought by or against trustees or personal representatives without joining a person having a beneficial interest in the trust or estate and, unless the court otherwise orders on the ground that the trustees or personal representatives could not or did not represent the interest of that person, an order granted or made in the proceeding is binding on that person.

(18) Subrule (17) does not limit the power of the court to order a person having an interest to be made a party or to make an order under subrule (14).

Representation of deceased person interested in a proceeding

(19) Where the estate of a deceased person has an interest in a matter in question in a proceeding, but there is no personal representative, the court may proceed in the absence of a person representing the estate of the deceased person or may appoint a person to represent the estate for the purposes of the proceeding, and an order made or granted in the proceeding binds the estate to the same extent as it would

have been bound had a personal representative of the deceased person been a party to the proceeding.

(20) Before making an order under subrule (19), the court may require notice of the application to be given to a person having an interest in the estate.

Declaratory order

(21) No proceeding shall be open to objection on the ground that only a declaratory order is sought, and the court may make binding declarations of right whether or not consequential relief is or could be claimed.

Conduct of a proceeding

(22) The court may give the conduct of a proceeding to any person it thinks just.

RULE 6 – PERSONS UNDER DISABILITY

Interpretation

(1) In this rule, “person under a legal disability” includes a minor.

Commencement of proceedings by person under disability

(2) A person under a legal disability shall commence or defend a proceeding by a litigation guardian.

(3) Unless a statute or regulation otherwise provides, anything that is required or authorized by the rules to be done by or invoked against a party under a legal disability shall:

(a) be done on the party’s behalf by the party’s litigation guardian; or

(b) be invoked against the party by invoking the same against the party’s litigation guardian.

(4) A litigation guardian shall be represented by a lawyer unless the litigation guardian is the Public Guardian and Trustee.

Litigation guardian

(5) Unless the court otherwise orders or a statute or regulation otherwise provides, a person ordinarily resident in Yukon may be a litigation guardian of a person under a legal disability without being appointed by the court.

Consent of litigation guardian

(6) Before the name of a person is used in a proceeding as a litigation guardian that person’s consent, signed by the person or the person’s lawyer, shall be filed, unless the person has been appointed by the court or is the litigation guardian under s. 55 of the *Adult Protection and Decision Making Act*, SY 2003, c. 21 Schedule A, of a party in that proceeding.

Certificate of fitness

(7) Unless a litigation guardian has been appointed, the lawyer for a person under a legal disability, before acting in a proceeding, must file a Certificate of Fitness in Form 5 that it is known or believed:

(a) the person to whom the certificate relates is a person under a legal disability, giving the grounds of that knowledge or belief, and, that a litigation guardian has not been appointed for the person; and

(b) the proposed litigation guardian of the person under a legal disability has no interest in the proceeding adverse to that person.

Party becoming incompetent

(8) If a party to a proceeding becomes a person under a legal disability the court must appoint a litigation guardian for the person.

Removal of litigation guardian

(9) If it is in the interest of a party who is under a legal disability, the court on application or on its own motion may remove, appoint or substitute a litigation guardian.

Party attaining age of majority

(10) A party to a proceeding who attains the age of majority shall, if the party is not otherwise under a legal disability, file an affidavit confirming the attainment of the age of majority in Form 6, and deliver a copy of that affidavit to all parties of record.

Effect of filing affidavit

(11) After an affidavit is filed under subrule (10):

(a) the party on whose behalf the affidavit was filed shall assume conduct of that party's claim or defence in the proceeding; and

(b) the style of proceeding must no longer refer to a litigation guardian for that party.

Step in default

(12) A party shall not take a step in default against a person under a legal disability without leave of the court.

(13) Unless the court otherwise orders, notice of the application for leave shall be served on the person under a legal disability 10 days before the hearing of the application, in the manner provided by Part 3 of the *Adult Protection and Decision Making Act*, SY 2003, c. 21 Schedule A.

(14) If no appearance has been entered to an originating process on behalf of a person under a legal disability, the person who commenced the proceeding, before continuing the proceeding against the person under a legal disability, shall obtain an order from the court appointing a litigation guardian.

Compromise by person under disability

(15) Unless a statute or regulation otherwise provides, where a proceeding is settled by or on behalf of a person under a legal disability, no settlement, compromise, payment or acceptance of money paid into court, whenever entered into or made, so far as it relates to that person’s claim, is binding without the approval of the court.

(15.1) Subrule (15) does not apply if the person under a legal disability attains the age of majority or otherwise ceases to be under a legal disability at the time of the settlement.

Approval of compromise

(16) Where, before a proceeding is commenced, an agreement is reached for the settlement or compromise of a claim of a person under a legal disability, whether alone or with others, and it is desired to obtain the court's approval, on a requisition with evidence, the court may make any order it thinks just.

RULE 7 – PARTNERSHIPS

Partners may sue or be sued in firm name

(1) Two or more persons claiming to be entitled, or alleged to be liable, as partners may sue or be sued in the name of the firm in which they were partners at the time when the alleged right or liability arose.

Service on firm

(2) Service is effected upon a firm by leaving a copy of the document to be served either with a person who was a partner at the time the alleged right or liability arose or with a person at a place of business of the firm who appears to manage or control the partnership business there.

Appearance

(3) An appearance by a partnership shall be in the name of the firm, but a partner or a person served as a partner may file an appearance and defend in the person's own name, whether or not named in the originating process.

Affidavit naming partners

(4) Where a partnership is a party to a proceeding, any other party may deliver a notice requiring one of the partners to deliver within 10 days an affidavit setting out the names and addresses of all persons who were partners when the alleged right or liability arose.

(5) Where the affidavit requested under subrule (4) is not delivered, the court may order delivery.

Execution against partnership or partners

(6) Where an order is made against a firm, execution to enforce the order may issue against any property of the firm.

(7) Subject to subrule (8), where an order is made against a firm, execution to enforce the order may issue against any person who:

(a) entered an appearance in the person's own name in the proceeding as a partner,

(b) having been served with the originating process as a partner, failed to enter an appearance in the proceeding;

(c) admitted in a pleading or affidavit that the person is a partner; or

(d) was adjudged to be a partner.

(8) Where a party who has obtained an order against a firm claims that a person, who is not a person described in subrule (7), is liable to satisfy the order as being a member of the firm, the party may apply to the court for leave to issue execution against that person**.**

(9) Where the person against whom an application under subrule (8) is made disputes liability, the court may order that the liability of the person be determined in any manner in which an issue or question in an action may be determined.

Action against person carrying on business in a name other than the person's own

(10) A person carrying on business in a name or style other than the person's own name may be sued in that name or style as if it were the name of a firm, and this rule applies as though the person were a partner and the name in which the person carries on business were the name of that firm.

RULE 8 – STATEMENT OF CLAIM

Statement of Claim

(1) Except where otherwise authorized by a statute, regulation or these rules, every proceeding in the court shall be commenced by filing a statement of claim.

Form

(2) A Statement of Claim shall be in Form 1 and:

(a) state the proposed place of trial, if other than Whitehorse;

(b) if applicable, state the date for the case management conference as required by Rule 1(7); and

(c) be as brief as the nature of the case will permit and not plead conclusions of law unless the material facts supporting those conclusions are pleaded.

Specific relief

(3) A statement of claim must state the specific relief which the plaintiff claims and may ask for relief in the alternative.

Service

(4) Subject to Rule 13, a statement of claim may be served within or outside Yukon.

Representative capacity

(5) If the plaintiff sues or a defendant is sued in a representative capacity, the statement of claim shall show in what capacity the plaintiff sues or defendant is sued.

Statement of claim to be signed

(6) A statement of claim shall be signed by the plaintiff or by the plaintiff's lawyer.

Sealing of statement of claim

(7) A statement of claim shall be sealed and dated by the clerk.

Clerk’s copy of statement of claim

(8) The plaintiff or the plaintiff's lawyer must leave the original statement of claim with the clerk or, if the statement of claim is transmitted by fax to the registry for filing, the plaintiff or the plaintiff's lawyer must provide the original statement of claim to the clerk promptly.

Procedure on filing statement of claim

(9) After a statement of claim is filed under this rule, the clerk is to number the action commenced by the statement of claim and enter the names of the parties in an index.

Lost statement of claim

(10) If a statement of claim has been lost, the court, on being satisfied of the loss and the correctness of a copy of the statement of claim, may order that the copy be filed and stand in the place of the originally filed statement of claim.

Application to petition

(11) Subrules (4) to (10) apply to a petition.

Commencement of proceeding

(12) No proceeding may be commenced by a lawyer who is not an active member of the Law Society of Yukon or in possession of a certificate of permission to act in the proceeding.

RULE 9 – RENEWAL OF STATEMENT OF CLAIM

Renewal of original statement of claim

(1) No original statement of claim shall be in force for more than one year unless served. Where a defendant named in the statement of claim has not been served, the court, on the application of the plaintiff made before or after the expiration of one year, may order that the original statement of claim be renewed for a period of not more than one year which, unless otherwise ordered, shall commence on the date of the order.

Renewal of renewed statement of claim

(2) If a renewed statement of claim has not been served on a defendant named in the statement of claim, the court, on the application of the plaintiff made during the currency of the renewed statement of claim, may order the renewal of the statement of claim for a further period of not more than one year which, unless otherwise ordered, shall commence on the date of the order.

Renewal of statement of claim

(3) Unless otherwise ordered by the court, a copy of each order granting renewal of a statement of claim shall be served with the renewed statement of claim, and the renewed statement of claim shall remain in force and be available to prevent the operation of any statutory limitation and for all other purposes.

Application to petition

(4) This rule applies to a petition.

RULE 10 – PETITION

Petition

(1) A Petition in Form 2 shall be filed where:

(a) an application is authorized to be made to the court;

(b) the sole or principal question at issue is alleged to be one of interpretation of a statute or regulation, will, deed, oral or written contract, or other document;

(c) the petitioner is the only person who is interested in the relief claimed, or there is no person against whom relief is sought;

(d) the relief, advice or direction sought relates to a question arising in the administration of an estate of a deceased person or the execution of a trust, or the performance of an act by a person in the person's capacity as executor, administrator or trustee, or the determination of the persons entitled as creditors or otherwise to the estate or trust property;

(e) the relief, advice or direction sought relates to the maintenance, guardianship or property of infants or other persons under disability;

(f) the relief sought is for payment of funds into or out of court;

(g) the relief sought relates to land and is for

(i) a declaration of a beneficial interest in or a charge on land and of the character and extent of the interest or charge,

(ii) a declaration settling the priority between interests or charges,

(iii) an order cancelling a certificate of title or making a title subject to an interest or charge,

(iv) an order of partition or sale; or

(h) the relief, advice or direction sought relates to the determination of a claim of lawyer and client privilege.

Application by consent or if notice not required

(2) An application referred to in Rule 43(10), (11) or (13) may be commenced by requisition for order in Form 3 rather than petition.

Supporting affidavits to be filed

(2.1) An application filed under this rule shall be accompanied by supporting affidavits, unless otherwise ordered by the court.

Service

(3) Unless these rules provide otherwise, a copy of the filed petition and of each affidavit in support must be served on all persons whose interests may be affected by the order sought.

Setting down for case management and for hearing

(4) A petition shall:

(a) state the date for the case management conference if required by Rule 1(7); and

(b) be set down for hearing in accordance with Rules 41 and 48.

Response

(5) A respondent who wishes to receive notice of the time and date of the hearing of the petition or to respond to it must, in addition to filing an appearance under Rule 14(1)(b), file and deliver to the petitioner and to every other party of record one copy, of

(a) a response in Form 11, and

(b) each affidavit on which the respondent intends to rely.

Time for Response

(6) A respondent must deliver the documents referred to in subrule (5) on or before the eighth day after the date indicated for appearance in Rule 14(2).

Reply by petitioner

(7) A petitioner who wishes to reply to a response must, within seven (7) days of receiving the response, deliver a reply and any supporting affidavits to each respondent.

No additional affidavits

(8) Unless all parties of record consent or unless the court otherwise orders, a party must not deliver any further affidavits.

Conversion

(9) On application to a judge, or on the court's own motion, a petition may be converted to a statement of claim.

Applicable rules

(10) Rules 8(4)-(10) and Rule 9 apply to petitions.

RULE 11 – SERVICE AND DELIVERY OF DOCUMENTS

Service of statement of claim

(1) Service of a statement of claim or any originating process is required unless the defendant or respondent enters an appearance.

How service effected

(2) Service of a document is effected on:

(a) an individual by leaving a copy of the document with the individual;

(b) a corporation, including a society, by leaving a copy of the document with the president, chair, mayor or other chief officer of the corporation, or with the city or municipal clerk, or with the manager, cashier, superintendent, treasurer, secretary, clerk or agent of the corporation or of any branch or agency of the corporation in Yukon, or in the manner provided by the *Business Corporations Act*, RSY 2002, c. 20*, Societies Act*, SY 2018, c.15, or any statute or regulation relating to the service of process, and, for the purpose of serving a document upon a corporation whose chief place of business is outside Yukon, every individual who, within Yukon, transacts or carries on any of the business of, or any business for, that corporation shall be deemed its agent;

(c) an unincorporated association, including a trade union, by leaving a copy of the document with any officer of the association, or in the case of a trade union, with a business agent;

(d) a Yukon First Nation or Indian Band by leaving a copy of the document with a Chief, councillor, officer or any individual on the staff working at the administration office of the First Nation or Indian Band;

(e) a tribunal or board by leaving a copy of the document with the Chair or a member of the tribunal or board, or any individual on the staff at the office of the tribunal or board;

(f) an infant, whether residing in Yukon or not, by leaving a copy with a parent or guardian resident in Yukon; and

(g) an individual under legal disability by leaving a copy of the document

(i) with the individual with whom they reside or in whose care they are or with the individual appointed by the court to be served; and

(ii) with the Public Guardian and Trustee,

and in no case is it necessary to show the original document.

Date of deemed service

(3) Where a statement of claim or any originating process has not been served on a person, but the person files an appearance or attends at the trial or hearing, the statement of claim or any originating process shall be deemed to have been served on that person on the date the individual files or attends.

Service on Government of Yukon

(4) A document to be served on the Government of Yukon shall be served at the Department of Justice in Whitehorse, and is sufficiently served if left during office hours with any person on the staff of the Department of Justice, Legal Services Branch, in Whitehorse or mailed by registered mail to the Deputy Minister of Justice in Whitehorse.

Service on Government of Canada

(4.1) A document to be served on the Government of Canada shall be served at the Northern Regional Office (Yukon) of the Department of Justice in Whitehorse or at the office of the Deputy Attorney General in Ottawa, or as otherwise provided by the federal *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50 and *Regulations*. A document is sufficiently served if left during office hours with any person on the staff of Department of Justice in the Whitehorse office or mailed by registered mail to the Deputy Attorney General of Canada at either the Whitehorse or Ottawa office.

Service on a party of record

(5) Service of a document on a party of record, other than a Notice of Intention to Withdraw as Lawyer in Form 15, may be made by delivering the document to an address for delivery provided under Rule 4.

How to deliver a document

(6) A document may be delivered to an address for delivery in any of the following ways:

(a) if the address for delivery is the office or postal address of the lawyer of record for a party;

(i) by leaving the document at the office of the lawyer during normal business hours, or

(ii) by mailing the document by ordinary prepaid mail to the address for delivery;

(b) if the address for delivery includes the fax number or email address of the lawyer of record for a party, by transmitting the document to the fax number or email address of the lawyer;

(c) if the address for delivery of a party who acts in person is a residential address or business address:

(i) by leaving the document at the residential or business address with anyone who appears to be an adult person;

(ii) if delivery cannot be effected under subparagraph (i), by inserting the document into a mail box, mail slot or mail receptacle at the residential or business address; or

(iii) if delivery cannot be effected under subparagraph (i) or (ii), by affixing the document to a door of the residence or business;

(d) if the address for delivery of a party who acts in person is a postal address, by mailing the document by ordinary prepaid mail to the postal address;

(e) if the address for delivery of a party who acts in person includes a fax number or email address, by transmitting the document to the fax number or email address.

When delivery by mail is effective

(7) Delivery of a document sent by ordinary prepaid mail to an address for delivery under this rule is effective on the same day of the week, in the calendar week following mailing, as the day of the week on which the document was mailed or, if that day is a Saturday or holiday, on the next day that is not a Saturday or holiday.

When delivery by fax or email is effective

(8) Transmission of a document by fax or email to an address for delivery under this rule is effective:

(a) on the day of the transmission if the document is transmitted before 4 p.m.; or

(b) on the next day that is not a Saturday or holiday, if the document is transmitted after 4 p.m.

If document does not reach person

(9) Even though a document has been delivered in accordance with this rule, a person may show, on an application to set aside the consequences of default, on an application for an extension of time or on an application in support of a request for an adjournment, that the document:

(a) did not come to the person’s notice;

(b) did come to the person’s notice at a time later than when it was delivered or effectively delivered; or

(c) was incomplete or illegible.

Proof of service or delivery

(10) An Affidavit of Service in Form 7 or an Affidavit of Delivery in Form 8 shall state upon whom, what document, when, where, how and by whom service or delivery was effected. A copy of the front page of all documents served shall be attached as separate exhibits.

Service or delivery acknowledged by lawyer

(11) Service or delivery of a document upon a lawyer of record, if acknowledged in writing by the lawyer, need not be verified by affidavit.

Delivery where no address for delivery given

(12) Where the party has no address for delivery as required by these rules, a document may be delivered by mailing a copy by ordinary prepaid mail to the party's lawyer or, if the party has no lawyer, to the last known address of the party.

Service on member of Canadian Armed Forces

(13) Where a member of the Canadian Armed Forces has been served by an officer of the Canadian Armed Forces with a document, proof of the service in the form of a certificate annexed to a copy of the document served, signed by the officer and stating their rank and when, where and how service was effected, may be filed as proof of service.

RULE 12 – SUBSTITUTED SERVICE

Court may order substituted service

(1) Where for any reason it is impractical to serve a document as set out in Rule 11, the court may order substituted service, whether or not there is evidence that the document will probably reach the person to be served or will probably come to the person's attention or that the person is evading service.

How substituted service effected

(2) Substituted service of a document is effected by taking the steps that the court has ordered to bring the document to the attention of the person to be served and filing the Affidavit of Substituted Service in Form 7A.

Service of order required

(3) Unless otherwise ordered, a copy of the order for substituted service of a document shall be served with the document, except in the case of an order for substituted service by advertisement, in which case the advertisement shall contain a reference to the order.

Substituted service at residence without order

(4) [repealed by O.I.C. 2022/168]

Effective date of service

(5) A document served under subrule (3) is deemed to be served on the same day of the week, in the calendar week following mailing, as the day of the week on which the document was mailed or, if that day is a Saturday or holiday, on the next day that is not a Saturday or holiday.

Affidavit

(6) [repealed by O.I.C. 2022/168]

Substituted service by mail without order

(7) [repealed by O.I.C. 2022/168]

Effective date of service

(8) [repealed by O.I.C. 2022/168]

Affidavit

(9) [repealed by O.I.C. 2022/168]

Limits on substituted service without order

(10) [repealed by O.I.C. 2022/168]

If document does not reach person

(11) Even though a document has been served in accordance with this rule, a person may show, on an application to set aside the consequences of default, on an application for an extension of time or on an application in support of a request for an adjournment, that the document:

(a) did not come to the person's notice; or

(b) did come to the person's notice at a time later than when it was served or effectively served.

RULE 13 – SERVICE OUTSIDE YUKON

Service outside Yukon without order

(1) Service of a document on a person outside Yukon may be effected without an order if:

(a) the whole subject matter of the proceeding is land in Yukon (with or without rents or profits), or the perpetuation of testimony relating to land in Yukon;

(b) any act, deed, will, contract, obligation or liability affecting land or hereditaments in Yukon is sought to be construed, rectified, set aside or enforced;

(c) it is sought to construe a will affecting personal property, if the testator was, at the time of their death, domiciled in Yukon;

(d) relief is sought against a person domiciled or ordinarily resident in Yukon;

(e) the proceeding is for the administration of the personal estate of a deceased person who, at the time of their death, was domiciled in Yukon;

(f) the proceeding is for the execution (as to property in Yukon) of a trust which ought to be executed according to the law in force in Yukon and the person to be served is a trustee;

(g) the proceeding is in respect of a breach, committed in Yukon, of a contract wherever made, even though the breach was preceded or accompanied by a breach, outside Yukon, which rendered impossible the performance of the part of the contract that ought to have been performed in Yukon;

(h) the proceeding is founded on a tort committed in Yukon;

(i) an injunction is sought as to anything to be done in Yukon, or a nuisance in Yukon is sought to be prevented or removed, whether or not damages are also sought in addition;

(j) a person outside Yukon is a necessary or proper party to a proceeding properly brought against some other person duly served in Yukon;

(k) the proceeding is by a mortgagee or mortgagor in relation to a mortgage of property in Yukon and seeks relief of the nature of sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance or delivery of possession by the mortgagee, whether or not the mortgagee seeks personal judgment or an order for payment of money due under the mortgage;

(l) the proceeding is brought by or on behalf of the Crown or a municipality to recover moneys owing for taxes or other debts due to the Crown or a municipality;

(m) the proceeding is founded upon a contract, or is in respect of a claim for child or spousal support, and the defendant has assets in Yukon;

(n) the action is brought under the *Carriage by Air Act*, R.S.C. 1985, c. C-26;

(o) the claim arises out of goods or merchandise sold or delivered in Yukon;

(p) the proceeding is brought upon a foreign judgment and the defendant or respondent has assets in Yukon; or

(q) the proceeding is

(i) a family law proceeding;

(ii) a *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp), proceeding; or

(iii) for an adoption.

(2) Except in a family law or *Divorce Act* proceeding, a copy of an originating process served outside Yukon without an order shall state specifically by endorsement on the originating process for service outside Yukon upon which of the grounds referred to in subrule (1) it is claimed that service is permitted under this rule.

Application for order to serve outside Yukon

(3) In any case not provided for in subrule (1), the court may order service of a document outside Yukon.

Applications may be made without notice

(4) An application for an order to serve a person outside Yukon:

(a) may be made without notice; and

(b) must be supported by an affidavit or other evidence showing

(i) in what place or country that person is or may probably be found, and

(ii) the grounds upon which the application is made.

Service of order

(5) Copies of the application for the order to serve, of all affidavits in support of the application, and of the order to serve shall be served with the document.

Time for appearance

(6) Subject to subrule (7), if a person is served with a document outside Yukon, the time for appearance by that person, after service, is:

(a) 21 days, in the case of a person residing anywhere within Canada;

(b) 28 days, in the case of a person residing in the United States of America; and

(c) 42 days, in the case of a person residing elsewhere.

Time for appearance may be shortened

(7) The court may shorten the time for appearance on an application made without notice.

Where service without leave valid

(8) This rule does not invalidate service outside Yukon without an order where the document could have been validly served apart from this rule.

Contract containing terms for service

(9) Notwithstanding this rule, the parties to a contract may agree:

(a) that the court will have jurisdiction to hear a proceeding in respect of the contract; and

(b) that service of a document in the proceeding may be effected at any place, within or outside Yukon, on any party, or on any person on behalf of any party, or in a manner specified or indicated in the contract.

(10) Service of a document in accordance with an agreement referred to in subrule (9) is effective service, but no contractual stipulation as to service of a document shall invalidate service that would otherwise be effective under these rules.

Definition

(11) In subrules (12) to (15) "Convention" means the *Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters*, signed at the Hague on November 15, 1965.

Manner of service abroad

(12) A document may be served outside Yukon:

(a) in a manner provided by these rules for service in Yukon;

(b) in a manner provided by the law of the place where service is made if, by that manner of service, the document could reasonably be expected to come to the notice of the person to be served; or

(c) in a state that is a contracting state under the Convention, in a manner provided by or permitted under the Convention.

Proof of service abroad

(13) Service of a document outside Yukon may be proved:

(a) in a manner provided by these rules for proof of service in Yukon;

(b) in the manner provided for proof of service by the law of the place where service was made regardless of the manner under subrule (12) by which service was effected; or

(c) in accordance with the Convention, if service was effected under subrule (12)(c).

Forms

(14) Where service is desired to be made in accordance with Article 5 of the Convention, a Request in Form 105 and a Notice and Summary of Documents in Form 106 shall be used.

Certificate

(15) Where an authority has, in accordance with Article 6 of the Convention, completed a Certificate in Form 107, then the certificate is evidence of the facts stated in it.

RULE 14 – APPEARANCE

Filing of appearance

(1) (a) Where a party wishes to enter an appearance to an originating process, the party shall file an Appearance in Form 9 and shall deliver a copy of the appearance promptly to the plaintiff, petitioner or applicant for judicial review.

(b) Where a party wishes to enter an appearance to an appeal, the party shall file an Appearance in Form 9 and shall deliver a copy of the appearance promptly to the appellant.

(c) An appearance may be filed at the registry by fax.

(d) An appearance that is received by fax after 4 p.m. shall be deemed to be filed on the following business day.

(e) Where an appearance is filed by a lawyer acting for a party, it may name more than one lawyer if those lawyers are acting as co-counsel.

Time for appearance

(2) Unless the court otherwise orders or these rules otherwise provide, an appearance must be filed within 7 days from the service of the originating process, not including the day of service. If a person is served with a document outside Yukon, the time for appearance by that person, after service, is:

(a) 21 days, in the case of a person residing anywhere within Canada;

(b) 28 days, in the case of a person residing in the United States of America; or

(c) 42 days, in the case of a person residing elsewhere.

Appearance after time for appearance

(3) A party may enter an appearance after the time for appearance has expired.

Disputed jurisdiction

(4) A party who has been served with an originating process in a proceeding, whether served in or outside of Yukon, may, after entering an appearance:

(a) apply to strike out a pleading or to dismiss or stay the proceeding on the ground that the originating process or other pleading does not allege facts that, if true, would establish that the court has jurisdiction over that party in respect of the claim made against that party in the proceeding;

(b) apply to dismiss or stay the proceeding on the ground that the court does not have jurisdiction over that party in respect of the claim made against that party in the proceeding; or

(c) allege in a pleading that the court does not have jurisdiction over that party in respect of the claim made against that party in the proceeding.

Application for stay

(5) Whether or not a party referred to in subrule (4) makes an application or allegation under that subrule, the party may apply to court for a stay of the proceeding on the ground that the court ought to decline to exercise jurisdiction over that party in respect of the claim made against that party in the proceeding.

Disputed process or service

(6) If a party who has been served with an originating process in a proceeding, whether served in or outside of Yukon, alleges that the originating process in the proceeding is invalid or has expired or that the purported service of the process was invalid, the party may, after entering an appearance, apply for one or both of the following:

(a) an order setting aside the process;

(b) an order setting aside service of the process.

Powers of court pending resolution

(7) If an application is brought under subrule (4)(a), (4)(b) or (6) or an issue is raised by an allegation in a pleading referred to in subrule (4)(c), the court may, on its own motion or on the application of a party of record, before deciding the first-mentioned application or issue:

(a) stay the proceeding;

(b) give directions for the conduct of the first-mentioned application;

(c) give directions for the conduct of the proceeding; or

(d) set aside any order previously made in the proceeding.

Party does not submit to jurisdiction

(8) If, within 30 days after entering an appearance in a proceeding, a party of record applies under subrule (4)(a), (4)(b) or (6) or files a pleading referred to in subrule (4)(c):

(a) the party does not submit to the jurisdiction of the court in relation to the proceeding merely by filing or delivering any or all of the following:

(i) the appearance;

(ii) a pleading under subrule (4)(c);

(iii) an application and supporting affidavits under subrule (4)(a) or (4)(b), and

(b) until the court has decided the application or the issue raised by the pleading, the party may, without submitting to the jurisdiction of the court:

(i) apply for, enforce or obey an order of the court; and

(ii) defend the action on its merits.

RULE 15 – CHANGE OF PARTIES

Party's death

(1) Where a party dies or a corporate party is wound up or otherwise ceases to exist, but the claim survives, the proceeding shall be stayed until an order to continue the proceeding by or against a substituted party has been made.

(1.1) An order to continue a proceeding by or against an estate, trustee, successor or other properly substituted party may be obtained by the filing of a Requisition for order in Form 3 by any interested person without notice to any other party.

(1.2) An order to continue shall be served forthwith on every other party.

(1.3) Where no order to continue is made within a reasonable time, a defendant may move to have the action dismissed for delay, and Rule 3(6) applies with necessary modifications.

(2) Whether or not the claim survives, a proceeding shall not abate by reason of either party dying between the verdict or finding on the issues of fact and the entry of judgment, but judgment may be entered notwithstanding the death.

Assignment or conveyance of interest

(3) Where by assignment, conveyance or death, an estate, interest or title devolves or is transferred, a proceeding relating thereto may be continued by or against the person upon whom or to whom that estate, interest or title has devolved or been transferred.

Change or transmission of interest or liability

(4) Where a change or transmission of interest or liability of a party has taken place or a person interested comes into existence after the commencement of a proceeding and it becomes necessary or desirable:

(a) that a person not already a party should be made a party; or

(b) that a person already a party should be made a party in another capacity,

the court may order that the proceeding be carried on between the continuing parties and the new party.

Removing, adding or substituting party

(5) (a) At any stage of a proceeding, the court on application by any person may:

(i) order that a party, who is not or has ceased to be a proper or necessary party, cease to be a party;

(ii) order that a person, who ought to have been joined as a party or whose participation in the proceeding is necessary to ensure that all matters in the

proceeding may be effectually adjudicated upon, be added or substituted as a party; and

(iii) order that a person be added as a party where there may exist, between the person and any party to the proceeding, a question or issue relating to or connected:

(A) with any relief claimed in the proceeding; or

(B) with the subject matter of the proceeding,

which, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

(b) No person shall be added or substituted as a plaintiff or petitioner without the person's consent.

(5.1) An order removing, adding or substituting a party may also be made in case management.

(5.2) Notwithstanding Rule 47, no notice is required when bringing an application under subrule (5) and (5.1).

Procedure where order made

(6) Unless the court otherwise orders, where an order is made under subrule (4) or (5) adding or changing a party:

(a) the originating process shall be amended, and a reference to the order and the date on which the amendment is made shall be endorsed upon the amended process;

(b) no further steps shall be taken until the amended process and a copy of the order are served upon the person made a party and all other parties;

(c) the person made a party under the order, or any other party, may apply to the court to vary or discharge the order within 7 days after the expiry of the time for appearance; and

(d) the rules as to service and entering an appearance apply to the amended process.

Effect of order

(7) Unless the court otherwise orders, where a person becomes a party in substitution for a former party, all things done in the proceeding before the person became a party shall have the same effect in relation to that person as they had to the former party, but the substituted party shall enter an appearance.

Prosecution for action where plaintiff or petitioner dies

(8) [repealed by O.I.C. 2022/168]

(9) [repealed by O.I.C. 2022/168]

RULE 16 – CHANGE OR WITHDRAWAL OF LAWYER

Change of lawyer

(1) A party to a proceeding:

(a) may change lawyers or add or remove co-counsel;

(b) having been acting on their own behalf, may engage a lawyer to act; or

(c) having been represented by a lawyer, may discharge the lawyer and act on their own behalf,

but until copies of the applicable Notice of Appointment or Change of Lawyer in Form 13, or the Notice of Self-Representation in Form 14 have been filed and delivered to the other parties of record, the other parties are entitled to proceed on the basis that there has been no change of representation or address for delivery.

Order that lawyer has ceased to act

(2) Where:

(a) a lawyer for a party has died, cannot be found or for any reason is unable to practice; and

(b) the party has not given Notice of Appointment or Change of Lawyer in Form 13 or Notice of Self-Representation in Form 14 in accordance with subrule (1),

the court on the application of any other party, may order that the lawyer has ceased to act for the first mentioned party.

Order on application of lawyer

(3) Where a lawyer who has acted for a party in a proceeding has ceased to act and the party has not given a notice of change in accordance with subrule (1), the court, on the application of the lawyer, may order that the lawyer has ceased to act for the party and, where applicable, that the address for delivery provided by the lawyer is no longer the address for delivery of the party and give directions, including directions for service or delivery on the former client.

Notice of withdrawal

(4) As an alternative to proceeding under subrule (3), a lawyer who has ceased to act for a party who has not given a notice of change under subrule (1) may serve on that party a Notice of Intention to Withdraw in Form 15 and deliver a copy of it to all other parties of record.

(4.1) After service and delivery of the Notice of Intention to Withdraw in Form 15, the withdrawing lawyer shall file Affidavits of Service in Form 7 and Delivery in Form 8.

Filing of objection

(5) A party receiving a notice of intention to withdraw may, within 7 days of receipt, file in the registry a Notice of Objection in Form 16 and shall deliver it to the lawyer.

Procedure where no objection filed

(6) If, within 7 days after the last date of delivery or service of the notice of intention to withdraw on a party, no objection has been filed and no notice of appointment or change of lawyer or notice of self-representation has been filed, the lawyer may file a Notice of Withdrawal in Form 18.

Delivery of notice of withdrawal

(7) If a lawyer files a notice of withdrawal the lawyer ceases to be the lawyer of record for that party when the notice has been delivered to all other parties of record.

Delivery of documents after withdrawal

(8) Delivery of documents after withdrawal may be made in the manner provided by Rule 11(12) to the address set out in the notice of withdrawal until a new address for delivery is given.

Procedure where objection filed

(9) If, within the time referred to in subrule (6), an objection has been filed in the registry, the lawyer may apply, on notice to each party who has filed an objection, for an order under subrule (3).

Substituted service

(10) Where personal service of a notice of intention to withdraw cannot be made on a party for whom the lawyer acts, the lawyer may apply for directions for substituted service.

Delivery of copy of order

(11) An applicant who obtains an order under subrule (2) or (3) shall deliver a copy of the order to all parties of record and, until it is delivered, a party is entitled to proceed on the basis that there has been no change of lawyer or address for delivery.

RULE 17 – DEFAULT OF APPEARANCE OR PLEADING

Default in filing of appearance

(1) A plaintiff may proceed against a defendant under this rule if:

(a) that defendant has not filed an appearance to a statement of claim; and

(b) the time for appearance has expired.

Filings required

(2) A plaintiff proceeding against a defendant under subrule (1) must file:

(a) proof of service of the statement of claim on that defendant; and

(b) a requisition requesting the clerk to enter Default Judgment in Form 90.

Default in filing and delivering a statement of defence

(3) A plaintiff may proceed against a defendant under this rule if:

(a) that defendant has not filed and delivered a statement of defence; and

(b) the time for filing and delivering the statement of defence has expired.

Filings required

(4) A plaintiff proceeding against a defendant under subrule (3) must file:

(a) proof of service or delivery of the statement of claim on that defendant;

(b) proof that the defendant has failed to deliver a statement of defence; and

(c) a requisition requesting the clerk to enter default judgment.

Claim for debt or liquidated demand

(5) Where the plaintiff's claim against a defendant is solely for recovery of a debt or liquidated demand, the plaintiff may enter final judgment against that defendant for a sum not exceeding that claimed, interest if entitled and costs, and may proceed with the action against any other defendant.

(6) For the purpose of subrule (5), a claim may be treated as a claim for a liquidated demand notwithstanding that part of the claim is for interest accruing after the date of the statement of claim, and the interest shall be computed from the date of the statement of claim to the date of entering judgment.

Claim for unliquidated damages

(7) Where the plaintiff's claim against a defendant is solely for unliquidated damages, the plaintiff may enter judgment against that defendant for damages to be assessed and costs, and may proceed with the action against any other defendant.

Claim for detention of goods

(8) Where the plaintiff's claim against a defendant relates solely to the detention of goods, the plaintiff, at the plaintiff's option, may enter either:

(a) judgment against that defendant for the delivery of the goods, or their value to be assessed and costs; or

(b) judgment for the value of the goods to be assessed and costs,

and may proceed with the action against any other defendant.

Multiple claims

(9) Where the plaintiff's claim against a defendant is for one or more of the claims referred to in subrule (5), (7) or (8), and for another claim, the plaintiff may enter judgment against that defendant, in respect of any claim, as the plaintiff would be entitled to enter under those subrules if that were the plaintiff's only claim, and may proceed with the action against that defendant and any other defendant.

Application to judge

(10) Where the clerk is not certain that a plaintiff's claim against a defendant relates to a claim within subrule (5), (7), (8) or (9), the clerk may refuse to enter judgment and the plaintiff may apply to a judge in chambers for default judgment.

No defence to part of claim

(11) Where a statement of defence answers only part of the claim in the statement of claim, the plaintiff may apply to the court for such judgment in respect of the unanswered claim as the plaintiff would be entitled to enter under subrules (5) to (8) if no statement of defence were filed.

No execution on default judgment where there is a counterclaim

(12) Unless the court otherwise orders, where there is a counterclaim the plaintiff shall not issue execution on a judgment obtained under this Rule until the entire action has been disposed of.

Judgment in other claims

(13) If the plaintiff's claim against a defendant is not one referred to in subrules (5) to (8), the plaintiff may apply for judgment against the defendant under Rule 18.

Default by one of several defendants

(14) Where, in any action mentioned in subrule (13), there are several defendants and a defendant defaults in filing and delivering a statement of defence, the plaintiff may apply for judgment against that defendant under Rule 18.

Method of assessment

(15) Where a plaintiff has obtained judgment for damages or value to be assessed, the plaintiff may set the assessment down for trial but, unless the court otherwise orders, it shall be tried at the same time as the trial of the action or issues against any other defendant.

Court may set aside or vary default judgment

(16) The court may set aside or vary any judgment entered under this Rule.

Alternative methods of assessment

(17) Where a plaintiff has obtained judgment under subrule (7), (8) or (9), instead of proceeding to trial to assess the damages or the value of the goods, the plaintiff may apply to the court and the court may

(a) assess the damages or value of the goods summarily upon affidavit or other evidence,

(b) order an assessment, an inquiry or an accounting,

(c) give directions as to the trial or hearing of the assessment or determination of value, or

(d) make any other order it thinks just.

RULE 18 – SUMMARY JUDGMENT

Application for summary judgment

(1) In an action in which an appearance has been entered, or in an action referred to in Rule 17(13) or in a family law proceeding that is not an uncontested divorce proceeding within the meaning of Rule 63(1), the plaintiff, on the ground that there is no defence to the whole or part of a claim, or no defence except as to amount, may apply to the court for judgment on an affidavit setting out the facts verifying the claim or part of the claim and stating that the deponent knows of no fact which would constitute a defence to the claim or part of the claim except as to amount.

Order for summary judgment

(2) On the hearing of an application under subrule (1), the court may exercise any of its powers under Rule 50(9) and may:

(a) grant judgment for the plaintiff on the whole or part of the claim and may impose terms on the plaintiff, including a stay of execution of any judgment, until the determination of a defendant's counterclaim or third party proceeding;

(b) allow the defendant to defend the whole or part of the claim either unconditionally or on terms relating to the giving of security, time, the mode of trial or otherwise, and may give directions under Rules 42(46) and (53) for the hearing of evidence at trial;

(c) with the consent of all parties, dispose of the action finally in a summary way, with or without pleadings;

(d) award costs; or

(e) grant any other order it thinks just.

Continuing proceedings after summary judgment

(3) Where a plaintiff obtains judgment under subrule (2), the plaintiff may continue the action in respect of any remaining part of the claim, any other claim or against any other defendant.

Summary judgment on counterclaim or third party proceeding

(4) This rule applies to a counterclaim or third party proceeding.

Setting aside or varying summary judgment

(5) A judgment given against a party who does not attend at the hearing of an application under this rule may be set aside or varied by the court.

Summary judgment for defendant

(6) In an action in which an appearance has been entered, the defendant may, on the ground there is no merit in the whole or part of the claim, apply to the court for judgment on an affidavit setting out the facts verifying the defendant's contention that there is no merit in the whole or part of the claim and stating that the deponent knows of no facts which would substantiate the whole or part of the claim.

Order for summary judgment for defendant

(7) On the hearing of an application under subrule (6) the court may:

(a) dismiss the action; or

(b) make any order referred to in subrule (2).

RULE 19 – SUMMARY TRIAL

Application for summary trial

(1) A party may apply to the court for judgment, either on an issue or generally, in any of the following:

(a) an action in which a defence has been filed;

(b) a petition in respect of which a trial has been ordered under Rule 50(12)(d);

(c) a contested family law or *Divorce* Act, R.S.C., 1985, c. 3 (2nd Supp.), proceeding;

(d) a third party proceeding in which a statement of defence to third party notice has been filed;

(e) a proceeding by way of counterclaim in which a statement of defence to counterclaim has been filed.

When application must be heard

(2) An application under subrule (1) must be heard at least 45 days before the date set for trial in the proceeding.

Setting application for hearing

(3) Unless otherwise ordered, an application under subrule (1) must be set for hearing in accordance with Rule 48.

Evidence on application

(4) Unless the court otherwise orders, on an application under subrule (1), the applicant and each other party of record may adduce evidence by any or all of the following:

(a) affidavit;

(b) an answer, or part of an answer, to interrogatories;

(c) any part of the evidence taken on an examination for discovery;

(d) an admission under Rule 31; or

(e) a written statement setting out the opinion of an expert, if:

(i) the statement conforms with Rule 34(5); or

(ii) the court orders that the statement is admissible even though it does not conform with Rule 34(5).

Application of Rule 42

(5) Rule 42(29)(a) and (d), (30), (31) and (33) to (35) applies to subrule (4).

Application of Rule 34

(6) Rule 34(7) and (8)(a) applies to an application under subrule (1).

Filings with application

(7) A party who applies for judgment under subrule (1):

(a) must serve with the application and the other documents referred to in Rule 47(5), every statement of expert opinion, not already filed, on which the party will rely; and

(b) must not serve any further affidavits, statements of expert opinion or notices except

(i) to adduce evidence that would, at a trial, be admitted as rebuttal evidence;

(ii) in reply to an application filed and delivered by another party of record; or

(iii) with leave of the court.

Notice of evidence to be used on application

(8) Notice shall be given of the answers to interrogatories, the evidence taken on an examination for discovery and the admissions on which a party seeks to rely as follows:

(a) by an applicant, in accordance with Rule 47(5); and

(b) by a party who is not an applicant, in accordance with Rule 47(6).

Preliminary orders

(9) Where the parties disagree about whether a matter is suitable for summary trial, any party may apply for directions at an Appearance Day or a case management conference and the court may order that:

(a) the application under subrule (1) be adjourned; or

(b) the application under subrule (1) be dismissed on the ground that:

(i) the issues raised by the application under subrule (1) are not suitable for disposition under this rule; or

(ii) the application under subrule (1) will not assist the efficient resolution of the proceeding;

(c) a party file and deliver, within a fixed time, any of the following on which it intends to rely:

(i) an affidavit;

(ii) a notice under subrule (8);

(d) a deponent or an expert whose statement is relied on attend for cross-examination, either before the court or before another person as the court directs;

(e) cross-examinations on affidavits be completed within a fixed time;

(f) no further evidence be adduced on the application after a fixed time; or

(g) a party file and deliver a brief, with such contents as the court may order, within a fixed time.

Timing of preliminary application

(10) An application for an order under subrule (9) may be made at an Appearance Day or case management conference or, with the consent of all parties, at the same time as an application under subrule (1).

Judge not seized of application

(11) A judge who makes an order under subrule (9) is not seized of the application under subrule (1) unless the judge otherwise orders.

Judgment

(12) On the hearing of an application under subrule (1), the court may:

(a) grant judgment in favour of any party, either on an issue or generally, unless

(i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or

(ii) the court is of the opinion that it would be unjust to decide the issues on the application;

(b) impose terms respecting enforcement of the judgment, including a stay of execution, as it thinks just; and

(c) award costs.

No further application without leave

(13) If the court does not grant judgment under subrule (12), the applicant may not make a further application under subrule (1) without leave of the court.

Directions

(14) If the court is unable to grant judgment under subrule (12) and considers that the proceeding ought to be expedited by giving directions, the court may order the trial of a proceeding generally or on an issue and may order that:

(a) the pleadings be amended or closed within a fixed time;

(b) a party file and deliver, within a fixed time, to each party as specified by the court, a list of documents or an affidavit verifying a list of documents in accordance with the directions that the court may give;

(c) applications be brought within a fixed time;

(d) a general application for directions be brought within a fixed time;

(e) a statement of agreed facts be filed within a fixed time;

(f) all procedures for discovery be conducted in accordance with a schedule and plan directed by the court, and the plan may set limitations on those discovery procedures;

(g) the obligation to pay conduct money to any of the parties or persons to be examined be allocated in the manner specified in the order;

(h) an examination for discovery or a pre-trial examination of a witness be of limited duration;

(i) a party deliver a written summary of the proposed evidence of a witness within a fixed time;

(j) the evidence in chief of a witness be of limited duration;

(k) the evidence in chief of a witness be given in whole or part by the production of a written statement;

(l) experts who have been retained by the parties meet, on a without prejudice basis, to determine those matters on which they agree and to identify those matters on which they do not agree;

(m) evidence be adduced in a manner provided by Rule 42(46) and (53);

(n) a party deliver a written summary of the whole or part of the party's argument within a fixed time;

(o) all or any part of the submissions of counsel be in writing or of limited length;

(p) a case management conference be held at a time and place to be fixed at which any of the orders in this subrule may be made;

(q) the proceeding be set for trial; and

(r) a settlement conference be held.

Right to vary or set aside order

(15) A court may, before or at trial, vary or set aside an order made under subrules (9) and (14).

Order if jury notice filed

(16) A party may apply to the court for judgment under subrule (1) notwithstanding the fact that a party may have filed a jury notice.

RULE 20 – PLEADINGS GENERALLY

Contents

(1) A pleading shall be as brief as the nature of the case will permit and must contain a statement in summary form of the material facts on which the party relies, but not the evidence by which the facts are to be proved.

(2) The effect of any document or the purport of any conversation referred to in a pleading, if material, shall be stated briefly and the precise words of the documents or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead a fact if it is presumed by law to be true or if the burden of disproving it lies on the other party.

(4) A party need not plead the performance of a condition precedent necessary for the party's case, unless the other party has specifically denied it in that other party's pleadings.

Form

(5) A pleading shall be divided into paragraphs numbered consecutively, each allegation being contained in a separate paragraph.

Matters arising since commencement

(6) A party may plead a matter which has arisen since the commencement of the proceeding.

Inconsistent allegations

(7) A party shall not plead an allegation of fact or a new ground or claim inconsistent with the party's previous pleading.

Alternative allegations

(8) Subrule (7) does not affect the right of a party to make allegations in the alternative or to amend or apply for leave to amend a pleading.

Objection in point of law

(9) A party may raise in a pleading an objection in point of law.

Pleading conclusions of law

(10) Conclusions of law may be pleaded only if the material facts supporting them are pleaded.

Status admitted

(11) Unless the incorporation of a corporate party or the office or status of a party is specifically denied, it shall be deemed to be admitted.

Where particulars necessary in pleading

(12) Where the party pleading relies on misrepresentation, fraud, breach of trust, wilful default or undue influence, or where particulars may be necessary, full particulars, with dates and items if applicable, shall be stated in the pleading. If the particulars of debt, expenses or damages are lengthy, the party may refer to this fact and instead of pleading the particulars shall deliver the particulars in a separate document either before or with the pleading.

(13) [repealed by O.I.C. 2022/168]

Particulars in libel or slander

(14) In an action for libel or slander:

(a) where the plaintiff alleges that the words or matter complained of were used in a derogatory sense other than their ordinary meaning, the plaintiff shall give particulars of the facts and matters on which the plaintiff relies in support of that sense; and

(b) where the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and that in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, the defendant shall give particulars stating which of the words complained of the defendant alleges are statements of fact and of the facts and matters relied on in support of the allegation that the words are true.

Set-off or counterclaim

(15) A defendant in an action may set-off or set up by way of counterclaim any right or claim, whether the set-off or counterclaim is for damages or not, so as to enable the court to pronounce a final judgment on all claims in the same action.

Filing and delivery of pleadings

(16) A pleading shall be filed and a copy delivered to all parties of record and shall contain the style of proceeding, the description of the pleading, and the name and address for delivery of the party delivering the same.

Pleading after the statement of claim

(17) In a pleading subsequent to a statement of claim a party shall plead specifically any matter of fact or point of law that:

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

(b) if not specifically pleaded, might take the other party by surprise; or

(c) raises issues of fact not arising out of the preceding pleading.

Order for particulars

(18) The court may order a party to deliver further and better particulars of a matter stated in a pleading.

Demand for particulars

(19) Before applying to the court for particulars, a party shall demand them in writing from the other party, and a response shall be given within 10 days of the demand being received.

(19.1) No demand for particulars can be made after the pleadings have closed, unless such particulars are necessary to answer a new pleading or an amended pleading, or by order of the court.

Demand for particulars not a stay of proceedings

(20) A demand for particulars does not operate as a stay of proceedings or give an extension of time, but a party may apply for an extension of time for delivering a pleading on the ground that the party cannot answer that pleading until particulars are provided.

Consequence if fact not responded to

(21) An allegation of fact in a pleading, if not admitted, denied or stated to be outside the knowledge of the opposite party, shall be taken to be outside the knowledge of the opposite party.

General denial sufficient except where proving different facts

(22) It is not necessary in a pleading to deny specifically each allegation made in a preceding pleading and a general denial is sufficient of allegations which are not admitted, but where a party intends to prove material facts that differ from those pleaded by an opposite party, a denial of the facts so pleaded is not sufficient, and the party shall plead their own statement of facts if those facts have not been previously pleaded.

Substance to be answered

(23) If a party in a pleading denies an allegation of fact in the previous pleading of the opposite party, the party shall not do so evasively but shall answer the point of substance.

Denial of contract

(24) If a contract, promise or agreement is alleged in a pleading, a bare denial of it by the opposite party shall be construed only as a denial of fact of the express contract,

promise or agreement alleged, or of the matters of fact from which it may be implied by law, and not as a denial of the legality or sufficiency in law of that contract, promise or agreement.

Allegation of malice

(25) Where malice or fraudulent intent is alleged, the pleading shall contain full particulars.

(25.1) Knowledge may be alleged as a fact in a pleading without pleading the circumstances from which it is to be inferred.

Scandalous, frivolous or vexatious matters

(26) At any stage of a proceeding the court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that:

(a) it discloses no reasonable claim or defence as the case may be;

(b) it is unnecessary, scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding; or

(d) it is otherwise an abuse of the process of the court,

and the court may grant judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

(27) Where on the filing of a document the court considers that the whole or any part of an endorsement, pleading, petition or other document could be the subject of an order under subrule (26), the court may, notwithstanding any other provision of these rules, conduct a summary hearing as the court directs and make an order under subrule (26).

(28) Where the court makes such an order, the clerk shall give notification of the order, in the manner directed by the court, to the person who filed the document, and that person may, within 7 days of being notified, apply to the court and the court may confirm, vary or rescind the order.

(29) No evidence is admissible on an application under subrule (26)(a).

(30) [repealed by O.I.C. 2022/168]

General damages shall not be pleaded

(31) Where general damages are claimed, the amount of the general damages claimed shall not be stated in the originating process or in any pleading.

RULE 21 – STATEMENT OF DEFENCE AND COUNTERCLAIM

Form

(1) A Statement of Defence must be in Form 10.

Damages

(2) No denial is necessary as to damages claimed or their amount, but they shall be deemed to be put in issue in all cases unless expressly admitted.

Delivery

(3) Where a defendant has entered an appearance the defendant shall file and deliver a statement of defence and any counterclaim to the plaintiff within 14 days from the time limited for appearance or from the delivery of the statement of claim, whichever is later.

Counterclaim

(4) A Counterclaim must be pleaded separately, must be in Form 19 and may be included in the same document as the Statement of Defence.

(5) The parties shall be referred to in a counterclaim in their original capacities.

Counterclaim against plaintiff and another person

(6) Where a defendant sets up a counterclaim that raises questions between that defendant and the plaintiff along with any other person, the defendant may join that person as a party against whom the counterclaim is made.

(7) Where the person referred to in subrule (6) is not a party to the original action, the person's name shall be added to the style of proceeding as "defendant by counterclaim".

(8) Where the person referred to in subrule (6) is a party to the original action, the defendant shall deliver the counterclaim to that person within the period in which the defendant is required to deliver it to the plaintiff.

(9) Where the person referred to in subrule (6) is not a party to the original action, a Notice to Defendant by Counterclaim in Form 20 shall be filed, and, together with the counterclaim, be served on that person, and the person may enter an appearance to it, and Rules 17, 18 and 19 apply as though that person were a defendant to a statement of claim.

Defence to counterclaim

(10) A person served with a counterclaim becomes a defendant to the counterclaim from the time of service with the same rights and obligations in respect of conducting a defence to the counterclaim or otherwise as a defendant.

Separate trial of counterclaim

(11) Where, on the application of a party against whom a counterclaim is made, it appears that the subject matter of the counterclaim ought to be dealt with separately, the court may order that the counterclaim be struck out or tried separately or may make any other order it thinks just.

Where action stayed or discontinued

(12) Where, in an action in which the defendant has set up a counterclaim, the action of the plaintiff is stayed, discontinued or dismissed, the counterclaim may proceed.

Judgment

(13) Where a set-off or counterclaim establishes a defence to the plaintiff's claim, the court may give judgment for the defendant for any balance in the defendant's favour or for other relief as the court thinks just.

Payment into court when tender pleaded

(14) If a defence of tender or tender of money by way of amends is pleaded, the defendant shall pay into court the amount alleged to have been tendered, failing which the plea may be struck out.

Costs where defence of tender successful

(15) If, on a judgment, costs are awarded to a defendant who has paid into court under this rule, the assessed costs shall be paid to the defendant out of the money in court.

Acceptance of money paid into court

(16) A plaintiff may, before trial, apply to take out money paid into court under this rule, and the court may deal with costs of the action as if the defence of tender had succeeded.

Tender in defamation action

(17) If in an action for defamation the defendant is permitted to plead a matter in mitigation of damages, the defendant may also plead tender of money by way of amends, whether the tender was made before or after action was commenced.

RULE 22 – THIRD PARTY PROCEDURE

Filing a third party notice

(1) A party of record who is a defendant or a defendant by counterclaim may file a Third Party Notice in Form 21 if the party of record alleges against any person (in this rule called "the third party"), whether or not the third party is a party to the action, that:

(a) the party is entitled to contribution or indemnity from the third party in respect of a claim made against the party in the action;

(b) the party is entitled to any relief against the third party relating to or connected with the original subject matter of the action; or

(c) a question or issue relating to or connected with any relief claimed in the action or with the original subject matter of the action is substantially the same as a question or issue between the party and the third party and should properly be determined in the action.

Contents of a third party notice

(2) A third party notice must contain a statement of claim.

When leave is required

(3) A party of record may file a third party notice:

(a) at any time with leave of the court; or

(b) without leave of the court,

(i) at any time before a Notice of Trial in Form 39 is delivered, or

(ii) if a notice of trial has been delivered, at least 120 days before the scheduled trial date.

Application for leave

(4) Notice of an application for leave under subrule (3)(a) shall be:

(a) served on the proposed third party; and

(b) delivered to all parties of record.

Service and delivery of a third party notice

(5) A party who files a third party notice shall promptly:

(a) serve on each person named as a third party in the third party notice

(i) copies of that third party notice and

(ii) if the third party was not a party of record at the time of the filing of the third party notice, copies of any pleadings that have previously been delivered by any party to the action; and

(b) deliver a copy of the third party notice to each party of record.

Application to set aside notice

(6) At any time, on application, the court may set aside a third party notice.

Appearance

(7) A third party may enter an Appearance in Form 9 in accordance with Rule 14 and shall promptly deliver a copy of the appearance to each other party of record.

Statement of defence

(8) A third party who has entered an appearance shall file and deliver to each other party of record a statement of defence to the third party notice within 14 days after the later of:

(a) the time limited for appearance; and

(b) the service of the third party notice.

Reply

(9) The party who issued the third party notice shall file and deliver any reply within 7 days after the statement of defence to the third party notice has been delivered.

Default of appearance

(10) If a third party has not entered an appearance to a third party notice and the time for doing so has expired, the party who filed the third party notice may apply for judgment in default of appearance against the third party and notice of that application shall be delivered to each other party of record.

Default of statement of defence

(11) If a third party has filed an appearance to the third party notice but has not filed a statement of defence and the time for filing the statement of defence has expired, the party who filed the third party notice may apply for judgment in default of statement of defence against the third party and notice of the application shall be delivered to each other party of record.

Relief

(12) On an application under subrule (10) or (11), the court may grant any or all of the relief claimed in the third party notice.

Statement of defence to statement of claim

(13) A third party who has entered an appearance may file and deliver a statement of defence to the plaintiff's statement of claim, raising any defence open to a defendant.

Contribution or indemnity claimed under the *Contributory Negligence Act*

(14) A defendant who claims contribution or indemnity under the *Contributory Negligence Act*, RSY 2002, c. 42, from a person shall do so:

(a) if the person is a plaintiff, by counterclaim; or

(b) in any other case, whether or not the person is a party to the action, by third party notice.

Apportionment of liability claimed under the *Contributory Negligence Act*

(15) A defendant who does not claim contribution or indemnity under the *Contributory Negligence Act* but who does claim an apportionment of liability under that *Act* shall claim that apportionment in the statement of defence.

When statement of defence to third party notice not required

(16) A defendant against whom a third party notice is filed need not deliver a statement of defence to the third party notice and is deemed to deny the allegation of fact made in the third party notice and to rely on the facts pleaded in that party's statement of defence to the plaintiff's claim if:

(a) the third party notice contains no claim other than a claim for contribution or indemnity under the *Contributory Negligence Act*;

(b) the defendant has filed and delivered a statement of defence to the plaintiff's claim; and

(c) the defendant intends, in defending against the third party claim, to rely on the facts pleaded in that statement of defence and on no other facts.

Application for directions

(17) A party affected by a third party procedure may apply to the court for directions.

Third party procedure not to prejudice the plaintiff

(18) The court may impose terms on any third party procedure to limit or avoid any prejudice or unnecessary delay that might otherwise be suffered by the plaintiff as a result of that third party procedure.

Trial

(19) An issue between the party filing the third party notice and the third party may be tried at the time the court may direct.

RULE 23 – REPLY AND SUBSEQUENT PLEADINGS

Form

(1) A Reply must be in Form 22.

Delivery of reply

(2) A plaintiff shall file and deliver any reply within 7 days after the statement of defence has been delivered.

Pleading subsequent to reply

(3) No pleading subsequent to reply shall be filed or delivered without leave of the court.

Statement of defence to counterclaim

(4) Where a counterclaim is pleaded, the Statement of Defence to Counterclaim it shall be in Form 23 and shall be subject to the rules applicable to statements of defence.

Close of pleadings

(5) Where no reply to a statement of defence, to a statement of defence to a counterclaim, or to a subsequent pleading is delivered within the time allowed, the pleadings are closed and material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

Failure to reply

(6) Where no reply to a statement of defence is delivered, a joinder of issue on that defence is implied.

No joinder of issue

(7) No reply that is a simple joinder of issue shall be filed or delivered.

RULE 24 – AMENDMENT

When amendment may be made

(1) A party may amend an originating process or pleading issued or filed by the party at any time with leave of the court, and, subject to Rules 15(5) and 31(5):

(a) without leave of the court, at any time up to 90 days before trial or hearing; and

(b) at any time with the written consent of all the parties.

How amendment made

(2) An amendment to an originating process or pleading issued or filed by a party must be in the following form, unless otherwise ordered by the court:

(a) the amendment must be a new document, identified as an amended document, in which any additions to the wording of the original document have been underlined, and any deletions to the original have been identified by a line drawn through the deleted wording, in such a way as to leave that portion legible;

(b) the document must bear the date of the original document and the date of the amendment;

(c) subsequent amendments must identify all additions or deletions that have been made to the original document. Each amendment must be identified by underlining or striking out, as set out above, using a different colour for each subsequent amendment. The date of each amendment must be clearly indicated. This should be done by relating the colour of the line used to the date of the amendment; and

(d) each amendment must also indicate by what authority the amendment is made.

(2.1) The court may order that a final clean copy be placed in the Trial Record or on the court file.

Service of amended pleading

(3) Unless the court otherwise orders, service on a party of an amended originating process or pleading shall be required if the original has been served on that party and no appearance has been entered or, in the case of a third party notice, no statement of defence has been filed.

Amendment at trial

(4) Unless the court otherwise orders, where an amendment is granted during a trial or hearing, an order need not be taken out and the amended document need not be filed, delivered or served.

Service or delivery of amended document

(5) Unless the court otherwise orders, where a party amends a document under subrule (1), the party shall deliver copies of the amended document to all the parties of record within 7 days after its amendment and, where service is required under subrule (3), the party shall serve copies on the persons required to be served as soon as reasonably possible and before taking any further step in the proceeding.

Time for appearance to amended originating process

(6) Where a party is served with an amended originating process under subrule (3), the party has the same period of time for entering an appearance as that to which the party was entitled with respect to the original document.

Amendment consequent upon amendment

(7) Where an amended originating process is served on or delivered to an opposing party:

(a) the opposing party, if the party has already delivered a statement of defence, may amend that statement of defence, but only with respect to any matter raised by the amendments to the originating process; and

(b) the period for filing and delivering a statement of defence or amended statement of defence is 14 days after the amended pleading is delivered to the party.

Failure to deliver Amended Statement of Defence

(8) Where a party does not deliver an amended statement of defence as provided in subrule (7), the party shall be deemed to rely upon their original statement of defence.

RULE 25 – DISCOVERY OF DOCUMENTS

Interpretation

(1) "Document" for the purpose of discovery of documents rule includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, and data and information in electronic form.

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

Disclosure

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

Production for inspection

(4) Every document relating to any matter in issue in an action that is in the possession, control or power of a party to the action shall be produced for inspection if requested, as provided in this rule unless privilege is claimed in respect of the document.

Insurance policies

(5) Subject to the *Insurance Act*, RSY 2002, c. 119, a party shall disclose and, if requested, produce for inspection any insurance policy under which an insurer may be liable:

(a) to satisfy all or part of a judgment in the action; or

(b) to indemnify or reimburse a party for money paid in satisfaction of all or part of the judgment,

but no information concerning the insurance policy is admissible in evidence unless it is relevant to an issue in the action.

Affidavit or list of documents

(6) Subject to an agreement or an order to exchange a List of Documents in Form 111A, a party to an action shall, within 30 days after the close of pleadings under Rule 23(5), deliver to every other party an Affidavit of Documents in Form 110 or 111 disclosing to the full extent of the party's knowledge, information and belief all documents relating to any matter in issue in the action that are or have been in the party's possession, control or power.

(a) The affidavit or list shall list and describe, in separate schedules, all documents relating to any matter in issue in the action:

(i) that are in the party's possession, control or power and that the party does not object to producing;

(ii) that are or were in the party's possession, control or power and for which the party claims privilege, and the grounds for the claim; and

(iii) that were formerly in the party's possession, control or power, but are no longer in the party's possession, control or power, whether or not privilege is claimed for them, together with a statement of when and how the party lost possession or control of or power over them and their present location.

(b) An affidavit shall also contain a statement that, to the best of the party's knowledge and belief, the party has never had in the party's possession, control or power any document relating to any matter in issue in the action other than those listed in the affidavit.

(c) An agreement to exchange lists of documents does not limit the court's discretion to order the exchange of affidavits of documents.

(6.1) In cases where a party to an action is not an appropriate person to swear or affirm an affidavit of documents, the parties may agree on the appropriate person or persons to sign one or more affidavits of documents and file a consent order under subrule (16). Where agreement cannot be reached, either party may request the court to set the matter down for a case management conference.

Lawyer's certificate

(7) Where a party is represented by a lawyer, the lawyer shall certify on the affidavit of documents that they have explained to the deponent:

(a) the necessity of making full disclosure of all documents relating to any matter in issue in the action; and

(b) what kinds of documents are likely to be relevant to the allegations made in the pleadings.

Affidavit not to be filed

(8) An affidavit of documents shall not be filed, unless it is relevant to an issue on a pending application or at trial.

Inspection of documents

(9) A party who delivers to another party a Request to Inspect Documents in Form 112 is entitled to inspect any document that is not privileged and that is referred to in the

other party's affidavit of documents as being in that party's possession, control or power.

(10) A request to inspect documents may also be used to obtain the inspection of any document in another party's possession, control or power that is referred to in the originating process, pleadings or an affidavit delivered by the other party.

(11) A party to whom a request to inspect documents is delivered shall promptly inform the party making the request of a date, within 7 days after the delivery of the request to inspect documents, and a time, between 9:30 a.m. and 4:30 p.m., when the documents may be inspected at the office of the lawyer of the party receiving delivery, or at some other convenient place, and shall at the time and place named make the documents available for inspection.

(12) Unless the court otherwise orders, or by consent, inspection of documents shall take place in Whitehorse.

Documents to be taken to examination and trial

(13) Unless the parties agree otherwise, all documents listed in a party's affidavit of documents that are not privileged and all documents previously produced for inspection by the party shall, without notice, summons or order, be taken to and produced at:

(a) the examination for discovery of the party, or of a person on behalf or in place of or in addition to the party; and

(b) the trial of the action.

Court may order production

(14) The court may at any time, on the application of a party, order production for inspection of documents that are not privileged and that are in the possession, control or power of a party.

Court may inspect to determine claim of privilege

(15) Where privilege is claimed for a document, the court may inspect the document to determine the validity of the claim.

Court may excuse compliance

(16) The court may, on application, order that a party be excused from compliance with this rule, either generally or in respect of one or more documents or classes of documents.

Copying of documents

(17) Where a party is entitled to inspect documents in the possession or control or power of another party, the other party shall, on request, deliver copies of any of the documents, if reproducible, on payment in advance of the cost of reproduction and delivery.

E-Discovery

(18) The parties may agree to produce documents in electronic form and any party may apply to the court for an order to produce documents in electronic form. If a document is in electronic form, the party inspecting it shall be entitled, upon request, to receive a copy in that form.

Delayed disclosure or production

(19) Where a document may become relevant only after the determination of an issue in the action and disclosure or production for inspection of the document before the issue is determined would seriously prejudice a party, the court, on application, may grant leave to withhold disclosure or production until after the issue has been determined.

Disclosure or production not admission of relevance

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

Where affidavit incomplete or privilege improperly claimed

(21) Where the court is satisfied by any evidence that a relevant document in a party's possession, control or power may have been omitted from the party's affidavit of documents, or that a claim of privilege may have been improperly made, the court may:

(a) order cross-examination on the affidavit of documents;

(b) order service of a further and better affidavit of documents;

(c) order the disclosure or production for inspection of the document, or a part of the document, if it is not privileged; or

(d) inspect the document for the purpose of determining its relevance or the validity of a claim of privilege.

Documents or errors subsequently discovered

(22) Where a party, after serving an affidavit of documents:

(a) comes into possession or control of or obtains power over a document that relates to a matter in issue in the action and that is not privileged; or

(b) discovers that the affidavit is inaccurate or incomplete,

the party shall promptly deliver a supplementary affidavit specifying the extent to which the affidavit of documents requires modification and disclosing any additional documents.

Party may not use document

(23) Unless the court otherwise orders, where a party claims privilege in respect of a document, or fails to make discovery of or produce for inspection or copying a document as required by this rule, the party may not put the document in evidence in the proceeding or use it for the purpose of examination or cross-examination.

Failure to deliver affidavit or produce document

(24) Where a party fails to serve an affidavit of documents or produce a document for inspection in compliance with these rules or fails to comply with an order of the court under this rule the court may:

(a) revoke or suspend the party's right, if any, to initiate or continue an examination for discovery;

(b) dismiss the action, if the party is a plaintiff, or strike out the statement of defence, if the party is a defendant; and

(c) make such other order as is just.

Production from non-parties with leave

(25) The court may, on the application of a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged, where the court is satisfied that:

(a) the document is relevant to a material issue in the action; and

(b) it would be unfair to require the applicant to proceed to trial without having discovery of the document.

(26) An application for an order under subrule (25) shall be made on notice:

(a) to every other party; and

(b) to the person not a party, served personally or substitutionally.

(27) Where privilege is claimed for a document referred to in subrule (25), or where the court is uncertain of the relevance of or necessity for discovery of the document, the court may inspect the document to determine the issue.

(28) The court may give directions respecting the preparation of a certified copy of a document referred to in subrule (25) and the certified copy may be used for all purposes in place of the original.

Document deposited for safe-keeping

(29) The court may order that a relevant document be deposited for safe-keeping with the clerk and thereafter the document shall not be inspected by any person except with leave of the court.

RULE 26 – USE OF EVIDENCE OUTSIDE THE PROCEEDING

Application

(1) This Rule applies to:

(a) evidence obtained under

(i) Rule 25 (Discovery of documents);

(ii) Rule 27 (Examination for discovery);

(iii) Rule 28 (Pre-trial examination of witness);

(iv) Rule 29 (Discovery by interrogatories); and

(v) Rule 30 (Physical examination and inspection); and

(b) information obtained from such evidence.

(2) This rule does not apply to evidence or information obtained otherwise than under the rules referred to in subrule (1).

Deemed undertaking

(3) All parties and their lawyers are deemed to undertake not to use evidence or information to which this rule applies for any purposes other than those of the proceeding in which the evidence was obtained.

Exceptions

(4) Subrule (3) does not prohibit a use to which the person who disclosed the evidence consents.

(5) Subrule (3) does not prohibit the use, for any purpose, of:

(a) evidence that is filed with the court;

(b) evidence that is given or referred to during a hearing; and

(c) information obtained from evidence referred to in paragraphs (a) or (b).

(6) Subrule (3) does not prohibit the use of evidence obtained in one proceeding, or information obtained from such evidence, to impeach the testimony of a witness in another proceeding.

Order that undertaking does not apply

(7) If satisfied that the interests of justice outweigh any prejudice that would result to a party who disclosed evidence, the court may order that subrule (3) does not apply to the evidence or to information obtained from it, and may impose such terms and give such directions as are just.

RULE 27 – EXAMINATION FOR DISCOVERY

Leave of the court not required

(1) Subject to this rule, an examination for discovery may take place without leave of the court at any time up to 14 days before the scheduled trial date.

Oral examination on oath

(2) An examination for discovery is an oral examination on oath or affirmation.

Examination of party adverse in interest

(3) A party to an action may examine for discovery any party adverse in interest.

(3.1) Unless the court otherwise orders, each party to an action must

(a) make themselves available, and

(b) if any of subrules (4), (7), (8), (9), (10) or (11) apply, make a person referred to in that subrule available,

for examinations for discovery by parties who are adverse in interest.

Examination of party that is not an individual

(4) Unless the court otherwise orders, if a party to be examined for discovery is not a person:

(a) the examining party may examine one representative of the party to be examined;

(b) the party to be examined must nominate as its representative an individual, who is knowledgeable concerning the matters in question in the action, to be examined on behalf of that party;

(c) the examining party may examine

(i) the representative nominated under paragraph (b), or

(ii) any other person the examining party considers appropriate and who is or has been a director, officer, employee, agent or external auditor of the party to be examined.

(5) [repealed by O.I.C. 2022/168]

(6) [repealed by O.I.C. 2022/168]

Examination of partners

(7) Where a partnership is a party, one or more of the partners may be examined for discovery.

Examination of party for whose benefit action brought

(8) Subject to subrule (11), a person for whose immediate benefit an action is brought or defended may be examined for discovery.

Examination of assignor

(9) Where an action is brought by an assignee, the assignor may be examined for discovery.

Examination of person under a legal disability

(10) Where a person under a legal disability is a party, their guardian or litigation guardian may be examined for discovery, but the person under a legal disability may not be examined without leave of the court.

Examination of bankrupt

(11) Where a trustee in bankruptcy is a party, the bankrupt may be examined for discovery.

Time

(12) An examination for discovery by a plaintiff or a defendant may take place after the expiration of time for delivery of the affidavits or lists of documents of the parties.

Place

(13) Unless the court otherwise orders, or the parties to the examination consent, an examination for discovery shall take place in Whitehorse.

Time limitation

(13.1) Unless the court otherwise orders, the examination for discovery of a person by all parties who are adverse in interest must not exceed in total duration

(a) 7 hours, or

(b) any greater period to which the person being examined consents.

Considerations of the court

(13.2) In an application under subrule (13.1) to extend the examination for discovery period, the court must consider the following:

(a) the conduct of a person who has been or is to be examined, including

(i) the person's unresponsiveness in any examination for discovery held in the action,

(ii) the person's failure to provide complete answers to questions, or

(iii) the person's provision of answers that are evasive, irrelevant, unresponsive or unduly lengthy;

(b) any denial or refusal to admit, by a person who has been or is to be examined, anything that should have been admitted;

(c) the conduct of the examining party;

(d) whether or not it is or was reasonably practicable to complete the examinations for discovery within the period provided under subrule (2);

(e) the number of parties and examinations for discovery and the proximity of the various interests of those parties.

Examination before reporter

(14) An examination for discovery shall be conducted before a reporter certified by a justice of the Supreme Court of Yukon, or certified in another jurisdiction, who is empowered to administer an oath or affirmation.

Appointment

(15) Where a party is entitled to examine a person for discovery, the party may fix a time for the examination with a certified reporter, and the person to be examined shall attend and submit to examination if

(a) the person is served with an Appointment to Examine for Discovery in Form 113 and the proper witness fees 7 days, not counting the day of service, before the examination, or

(b) the person is a party to and has a lawyer in the action and the Appointment to Examine for Discovery in Form 113 and the proper witness fees are delivered to that lawyer 7 days, not counting the day of service, before the examination,

and the Appointment to Examine for Discovery has been served or delivered on the other parties of record.

(16) In this rule "proper witness fees" shall be determined under Schedule 3 of Appendix C of these Rules.

Delivery of notice

(17) Where a lawyer receives a notice under this rule, the lawyer shall promptly inform the person required to attend an appointment to examine for discovery and shall pay the fees to that person.

Production of documents

(18) Unless the court otherwise orders, a person to be examined for discovery, and the party on whose behalf the person is to be examined, shall produce for inspection on the examination all documents in their possession or control, not privileged, relating to the matters in issue in the action.

Examination and re-examination

(19) The examination of a person for discovery shall be in the nature of a cross-examination, and the person examined may be re-examined by their lawyer or any party not adverse in interest in relation to any matter previously examined on. The examining party may cross-examine on the re-examination.

Scope of examination

(20) Unless the court otherwise orders, a person being examined for discovery shall answer any question within their knowledge or means of knowledge regarding any matter, not privileged, relating to a matter in question in the action, and is compellable to give the names and addresses of all persons who reasonably might be expected to have knowledge relating to any matter in question in the action.

(21) In order to comply with subrule (20), a person being examined for discovery may be required to inform themselves and the examination may be adjourned for that purpose.

Objections

(22) Where a person under examination objects to answering a question put to them, the question and the objection shall be taken down by the certified reporter and the validity of the objection may be decided by the court, which may order the person to submit to further examination.

Refusal to answer

(23) Where a party, or a person examined for discovery on behalf of or in place of a party, has refused to answer a proper question or to answer a question on the ground of privilege, and has failed to furnish the information in writing not later than 60 days before the trial begins, the party may not introduce the information at trial except with the leave of the trial judge.

Failure to answer in accordance with request

(24) Where a party, or a person examined for discovery on behalf of or in place of a party, has been requested to answer a question, but has failed to furnish the information in writing not later than 60 days before the trial begins, the party may not introduce the information at trial except with leave of the trial judge.

Effect of counsel answering

(25) Questions on an oral examination for discovery shall be answered by the person being examined but, where agreed to by the examiner, the question may be answered by their counsel and the answer shall be deemed to be the answer of the person being examined unless, before the conclusion of the examination, the person repudiates, contradicts or qualifies the answer.

Information subsequently obtained

(26) (a) Where a party has been examined for discovery or a person has been examined for discovery on behalf or in place of, or in addition to the party, and the party subsequently discovers that the answer to a question on the examination

(i) was incorrect or incomplete when made, or

(ii) is no longer correct and complete,

the party shall promptly provide the information in writing to every other party.

(b) Where a party provides information in writing under subrule (a)

(i) the writing may be treated at a hearing as if it formed part of the original examination of the person examined; and

(ii) any adverse party may require that the information be verified by affidavit of the party or be the subject of further examination for discovery.

(c) Where a party has failed to comply with paragraph (a) or a requirement under clause (b)(ii), and the information subsequently discovered is

(i) favourable to the party's case, the party may not introduce the information at the trial, except with leave of the trial judge; or

(ii) not favourable to the party's case, the court may make such order as is just.

How recorded

(27) An examination for discovery shall be taken down in the form of question and answer, and copies of the transcript may be obtained on payment of the proper fee

by any party of record, the person examined or by any other person as the court for special reason may permit.

Application to persons outside Yukon

(28) So far as is practical, this rule applies to a person residing outside of Yukon, and the court, on application on notice to the person, may order the examination for discovery of the person at a place and in the manner it thinks just and convenient, but unless the court otherwise orders, delivery of the order and the notice may be made on, and payment of the proper witness fees may be made to, the lawyer for the person.

Insurance policies

(29) Subject to the *Insurance Act*, RSY 2002, c.119, a party may on an examination for discovery obtain disclosure of

(a) the existence and contents of any insurance policy under which an insurer may be liable to satisfy all or part of a judgment in the action or to indemnify or reimburse a party for money in satisfaction of all or part of the judgment, and

(b) the amount of money available under the policy, and any conditions affecting its availability.

RULE 28 – PRE-TRIAL EXAMINATION OF WITNESS

Order for

(1) (a) Where a person, not a party to an action, may have material evidence relating to a matter in question in the action, on application, the court may order that the person be examined on oath, or affirmation on the matters in question in the action and may, either before or after the examination, order that the examining party pay reasonable lawyer's costs of the person relating to the application and the examination.

(b) An order under paragraph (a) shall not be made unless the court is satisfied that:

(i) the applicant has been unable to obtain the information from other persons whom the applicant is entitled to examine for discovery, or from the person the party seeks to examine;

(ii) it would be unfair to require the applicant to proceed to trial without having the opportunity of examining the person; and

(iii) the examination will not

(A) unduly delay the commencement of the trial of the action;

(B) entail unreasonable expense for other parties; or

(C) result in unfairness to the person the applicant seeks to examine.

Expert

(2) An expert retained or specially employed by another party in anticipation of litigation or preparation for trial may not be examined under this rule unless the party seeking the examination is unable to obtain facts and opinions on the same subject by other means.

Affidavit in support of application

(3) An application for an order under subrule (1) shall be supported by an affidavit setting out:

(a) the matter in question in the action to which the applicant believes that the evidence of the proposed witness may be material; or

(b) where the proposed witness is an expert retained or specially employed by another party in anticipation of litigation or preparation for trial, that the applicant is unable to obtain facts and opinions on the same subject by other means.

Notice of application

(4) The applicant shall serve notice on the proposed witness at least 7 days before the hearing of the application.

Subpoena

(5) Where a party is entitled to examine a person under this rule, by serving on that person a Subpoena in Form 25, the party may require the person to bring to the examination:

(a) any document in the person's possession, control or power relating to the matters in question in the action, without the necessity of identifying the document; and

(b) any physical object in the person's possession, control or power which the party contemplates tendering at the trial as an exhibit, but the subpoena must identify the object.

Notice of examination

(6) The examining party shall give notice of examination of a person under this rule by delivering copies of the subpoena to all parties of record not less than 7 days before the day appointed for the examination.

Mode of examination

(7) The proposed witness shall be cross-examined by the party who obtained the order, then may be cross-examined by any other party, and then may be further cross-examined by the party who obtained the order.

Application of examination for discovery rules

(8) Rules 27(14), (18) and (20) to (29) apply to an examination under this rule.

RULE 29 – DISCOVERY BY INTERROGATORIES

Purpose

(1) The purpose of interrogatories is to obtain evidence in a timely and cost effective manner and reduce or eliminate the need of or time required for oral examination for discovery.

Service of and answer to interrogatories

(2) A party to an action may serve Interrogatories in Form 26 on any other party, or on a director, officer, partner, agent, employee or external auditor of a party, if:

(a) the party to be examined consents; or

(b) the court grants leave.

Where a party is a body of persons

(3) Where a party is a body of persons, corporate or unincorporate, empowered to sue or to be sued, in its own name or in the name of an officer or other person, the court may, on the application of any other party, make an order allowing that other party to serve interrogatories on the officer or member of the body specified in the order.

Powers of court

(3.1) In making an order under paragraph (2)(b) or subrule (3), the court may set terms and conditions on the interrogatories, including terms and conditions respecting:

(a) the number or length of the interrogatories;

(b) the matters the interrogatories are to cover;

(c) the timing of any response to the interrogatories; or

(d) the notification, if any, to be given to the other parties of record respecting the interrogatories.

Timing of answer to interrogatories

(4) A person to whom interrogatories are directed must, within 60 days of service of the interrogatories or such other period as the court may order under subrule (3.1), serve an answer on affidavit to the interrogatories.

Where more than one person to answer interrogatories

(5) Where a party serving interrogatories requires that interrogatories be answered by more than one person who is an officer, director, partner, agent or employee of a

party, the interrogatories shall state which of the interrogatories each person is required to answer.

Objection to answer interrogatory

(6) Where a person objects to answering an interrogatory on the ground of privilege or on the ground that it does not relate to a matter in issue in the action, the person may make the objection in an affidavit in answer.

Insufficient answer to interrogatory

(7) Where a person to whom interrogatories have been directed answers any of them insufficiently, the court may require the person to make a further answer either by affidavit or on oral examination.

Application to strike out interrogatory

(8) Where a party objects to an interrogatory on the grounds that it is not necessary for disposing fairly of the action or that the costs of answering would be unreasonable, that party may apply to the court to strike out the interrogatory, and the court shall take into account any offer by that party to make admissions, to produce documents or to give oral discovery.

Delivery of interrogatories to lawyer

(9) A party may, instead of serving interrogatories under subrule (2) or (3), deliver the interrogatories to the lawyer of the person to whom the interrogatories are directed.

(10) Where a lawyer receives interrogatories under subrule (9), the lawyer shall promptly inform the person to whom the interrogatories are directed.

Continuing obligation to answer

(11) Where a person who has given an answer to an interrogatory later learns that the answer is inaccurate or incomplete, the person is under a continuing obligation to deliver to the party who served the interrogatory an affidavit deposing to an accurate or complete answer.

RULE 30 – PHYSICAL EXAMINATION AND INSPECTION

Order for medical examination

(1) Where the physical or mental condition of a person is in issue in a proceeding, the court may order that the person submit to examination by a medical practitioner, a psychologist, physio-therapist, occupational therapist or other similarly qualified person, and if the court makes such an order, it may also make:

(a) an order respecting any expenses connected with the examination; and

(b) an order that the result of the examination be put in writing and that copies be made available to interested parties.

Multi-disciplinary examinations

(2) In exceptional circumstances, or on consent, the court may order an examination of a person by more than one qualified person.

Subsequent examinations

(3) The court may order more than one examination under this rule.

Questions by examiner

(4) A person who is making an examination under this rule may ask any relevant question concerning the medical condition or history of the person being examined.

Order for inspection and preservation of property

(5) Where the court considers it necessary or expedient for the purpose of obtaining full information or evidence, it may order the production, inspection and preservation of any property and authorize samples to be taken or observations to be made or experiments to be conducted on or with the property.

Entry upon land or buildings

(6) For the purpose of enabling an order under this rule to be carried out, the court may authorize a person to enter upon any land or building.

Application to persons outside Yukon

(7) Rule 27(28) applies to examinations and inspections ordered under this rule.

RULE 31 – ADMISSIONS

Notice to admit

(1) At any time after the close of pleadings, a party may, by delivery of a Notice to Admit in Form 27, request any party of record to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document specified in the notice.

Effect of notice to admit

(2) Unless the court otherwise orders, the truth of a fact or the authenticity of a document specified in the Notice to Admit shall be deemed to be admitted, for the purposes of the proceeding only, unless, within 60 days, the party receiving the notice delivers to the party giving the notice a written statement that:

(a) specifically denies the truth of that fact or the authenticity of that document;

(b) sets forth in detail the reasons why the party cannot make the admission; or

(c) states that the refusal to admit the truth of that fact or the authenticity of that document is made on the grounds of privilege or irrelevancy or that the request is otherwise improper, and sets forth in detail the reasons for the refusal.

Copy of document to be attached

(3) Unless the court otherwise orders, a copy of a document specified in a notice to admit shall be attached to the notice when it is delivered.

Unreasonable refusal to admit

(4) Where a party unreasonably denies or refuses to admit the truth of a fact or the authenticity of a document, the court may order the party to pay the costs of proving the truth of the fact or the authenticity of the document and may award as a penalty additional costs, or deprive a party of costs, as the court thinks just.

Withdrawal of admission

(5) A party is not entitled to withdraw:

(a) an admission made in response to a notice to admit;

(b) a deemed admission under subrule (2); or

(c) an admission made in a pleading

except by consent or with leave of the court.

Application for order on admissions

(6) An application for judgment or any other application may be made to the court using as evidence:

(a) admissions of the truth of a fact or the authenticity of a document made

(i) in an affidavit or pleading filed by a party;

(ii) in an examination for discovery of a party or a person examined for discovery on behalf of a party; or

(iii) in response to a notice to admit; or

(b) admissions of the truth of a fact or the authenticity of a document deemed to be made under subrule (2),

and the court may, without waiting for the determination of any other question between the parties, make any order it thinks just.

RULE 32 – INQUIRIES, ASSESSMENTS AND ACCOUNTS

Direction for inquiries, assessments or accounts

(1) At any stage of a proceeding the court may direct an inquiry, assessment or accounting to be held by a clerk or special referee.

Certificate as to result

(2) The court may direct that the result of an inquiry, assessment or accounting held by a clerk or special referee be certified by that person, and the certified result, when filed, shall be binding on the parties to the proceeding.

Report and recommendation

(3) Where the court does not direct that the result of an inquiry, assessment or accounting be certified, then the result of the inquiry, assessment or accounting shall be stated in the form of a report and recommendation to the court.

Application to vary or confirm recommendation

(4) On application by a party, the court may vary or confirm the recommendation or remit the matter.

Time and place of hearing

(5) A clerk or special referee may hold a hearing at a convenient time and place, may adjourn it from time to time, may administer oaths, take evidence, direct production of documents and give general directions for the conduct of the hearing.

Appointment

(6) A party proceeding with an inquiry, assessment or accounting shall take out an Appointment in Form 28 and shall serve notice of it upon all parties of record or as directed by the court.

Witnesses

(7) A party to a proceeding in which an inquiry, assessment or accounting is held may subpoena any person, including a party, to give evidence at the hearing and to produce documents.

Certificate or recommendation to be filed and served

(8) A clerk or special referee shall state the result of an inquiry, assessment or accounting in the form of a certificate or a report and recommendation as directed, with or without reasons, and shall:

(a) provide a certificate to the party requesting it; or

(b) file the report and recommendation and provide a copy to all persons who appeared at the hearing.

Party may file certificate

(9) A party to whom a certificate is provided under paragraph (8)(a) may file that certificate.

Opinion of the court

(10) Before the clerk or special referee has concluded a hearing he or she may, in a summary or other manner, ask the opinion of the court on any matter arising in the hearing.

Accounts of executor, trustee, etc.

(11) A person may apply by petition or application for the furnishing of accounts by the executor or administrator of an estate, a trustee, a receiver, a liquidator, guardian or partner.

Special directions

(12) The court may give special directions as to the manner in which an inquiry, assessment or accounting is to be taken or made, and the directions may include:

(a) the manner in which the inquiry, assessment or accounting is to be prosecuted;

(b) the evidence to be adduced in support;

(c) the parties required to attend all or any part of the proceedings;

(d) the time within which each proceeding is to be taken; and

(e) a direction that persons whose interest can be classified shall constitute a class and be represented by the same lawyer and, where the persons cannot agree on the lawyer to represent them, the court may appoint the lawyer to represent them,

and the court may fix a time for the further attendance of the parties.

Varying directions

(13) The court may vary or rescind a direction given under subrule (12).

Form of account

(14) Where an account is directed to be taken, unless the court otherwise orders, the accounting party shall make out that party's account and verify it by an affidavit to which the account shall be exhibited. The items on each side of the account shall be numbered consecutively, and the accounting party shall file the affidavit and the account and deliver copies to all parties of record.

Particulars of errors in account

(15) A party who alleges that there are errors or omissions in an account shall file and deliver to all parties of record a notice thereof with brief particulars.

Notice of order

(16) Where in a proceeding relating to:

(a) the administration of the estate of a deceased person;

(b) the execution of a trust; or

(c) the sale of any property;

the court makes an order which directs any inquiry, assessment or accounting to be taken or made, the court may direct the Notice of Order in Form 29 to be served on any person interested in the estate or under the trust or in the property, and any person served with notice of an order in accordance with this rule shall, subject to subrule (18), be bound by the order to the same extent as the person would have been if the person had originally been made a party to the action.

Dispensing with service

(17) The court may dispense with service on a person in any case where it appears it is impracticable for any reason to serve the person and may also order that that person shall be bound by any order made to the same extent as if the person had been served with notice of the order, and the person shall be bound accordingly except where the order was obtained by fraud or non-disclosure of material facts.

Person may apply to vary or rescind

(18) A person served with notice, within 28 days after service of the notice on them, without entering an appearance, may apply to the court to vary or rescind the order.

Person may enter appearance

(19) A person served with notice may, after entering an Appearance in Form 9, take part in the proceeding.

RULE 33 – COURT APPOINTED EXPERTS

Appointment by court

(1) On application, or on its own initiative, the court may, at any time, appoint one or more independent experts to inquire into and report on any question of fact or opinion relevant to an issue in the proceeding.

(2) The selection of the expert may be agreed upon by the parties, but where they cannot agree, selection shall be made by the court.

Directions to expert

(3) The court, after consultation with the parties, shall settle the question to be submitted to the expert and shall give the expert appropriate directions.

Duty of expert

(4) It is the duty of a court appointed expert to assist the court on matters within their expertise. A court appointed expert is not an advocate and their primary duty is to assist the court.

Contents of order appointing expert

(5) The order appointing an expert shall contain the directions to the expert and the court may make such further orders as it considers necessary to enable the expert to carry out the directions, including, on application by a party, an order for:

(a) inspection of property under Rule 30(5); or

(b) the examination with respect to the physical or mental condition of a party under Rule 30(1).

Remuneration of expert

(6) The remuneration of the expert shall be fixed by the court, and may include a fee for the report required under subrule (8) and an appropriate sum for each day that the expert's attendance in court is required.

Security for remuneration

(7) The court may make an order for security for the remuneration of the expert, without prejudice to either party's right to costs.

Report

(8) The expert shall prepare a report and send it to the registry, with a copy to the parties or to their lawyers, within such time as the court directs.

Report filed as evidence

(9) The report shall be entered as evidence at the trial of the action, unless the trial judge orders otherwise.

Further reports

(10) The court may direct the expert to make a further or supplementary report, and subrules (8) and (9) apply to that report.

Cross-examination of expert

(11) Any party may require the attendance of the expert at the trial for cross-examination by any of the parties.

RULE 34 – EVIDENCE OF OWN EXPERTS

Application

(1) This rule does not apply to summary trials under Rule 19, except as provided in that rule.

Admissibility of written reports of expert opinion

(2) A written report setting out the opinion of an expert is admissible at trial, without proof of the expert's signature, if a copy of the report is delivered to every party of record a reasonable time before the report is tendered in evidence, which shall not be less than 60 days, unless the court otherwise orders.

(3) The report shall be tendered in evidence.

Admissibility of oral testimony of expert opinion

(4) An expert may give oral opinion evidence if a written report of the opinion has been delivered to every party of record a reasonable time before the expert testifies, which shall not be less than 60 days, unless the court otherwise orders.

Form of report

(5) The report shall set out or be accompanied by a supplementary report setting out the following:

(a) the qualifications of the expert;

(b) the facts and assumptions on which the opinion is based;

(c) a description of documents reviewed and relied upon by the expert including any tests, and

(d) the name of the person primarily responsible for the content of the report and the names of all other persons who contributed to the report.

Production of documents

(6) Unless the court otherwise orders, if a report of a party's own expert is delivered under this rule, the party who delivered the report must:

(a) promptly after being asked to do so by a party of record, deliver on the requesting party whichever one or more of the following has been requested:

(i) any written statement or statements of facts on which the expert's opinion is based;

(ii) a record of any independent observations made by the expert in relation to the report;

(iii) any data compiled by the expert in relation to the report;

(iv) the results of any test conducted by or for the expert, or of any inspection conducted by the expert, if the expert has relied on that test or inspection in forming their opinion; and

(b) if asked to do so by a party of record, make available to the requesting party for review and copying the contents of the expert's file relating to the preparation of the opinion set out in the expert's report:

(i) if the request is made within 14 days before the scheduled trial date, promptly after receipt of that request; or

(ii) in any other case, at least 14 days before the scheduled trial date.

Proof of qualifications

(7) The assertion of qualifications of an expert is evidence of them.

Admissibility of evidence

(8) If a report that does not conform to subrule (5) has been delivered:

(a) it is inadmissible under subrules (2) and (3); and

(b) the testimony of the witness under subrule (4) is inadmissible

unless the court otherwise orders.

Notice of trial date to expert

(9) A party who delivers a report shall, on delivery or when a trial date has been obtained, whichever is later, inform the expert of the trial date and that the expert may be required to attend at trial in person or by videoconference for cross-examination.

Demand to cross-examine

(10) A party to whom a report has been delivered under subrule (2) and who is adverse in interest to the party delivering the report may, by demand to that party, require the attendance of the expert at trial for cross-examination.

(11) The expert need not attend at trial unless the demand is made within a reasonable time after delivery of the report.

Costs of cross-examination

(12) If an expert has been required to attend for cross-examination and the court is of the opinion that the cross examination was not of assistance, the court may order the party who required the attendance of the expert to pay, as costs, a sum the court considers appropriate.

Notice of objection to expert evidence

(13) A party who receives a written report under subrule (2) or (4) shall notify the party delivering the report of any objection to the admissibility of the evidence that the party receiving the report intends to raise at trial.

(14) No objection under subrule (13) of which reasonable notice could have been given, but was not, shall be permitted at trial unless the court otherwise orders.

Dispensing with statement

(15) At trial, the court may dispense with the requirement of delivery of a report.

(16) Without limiting the generality of subrule (15), the court may dispense with the requirement of delivery of a report on one or more of the following grounds:

(a) where facts have come to the knowledge of the party tendering the witness after the delivery of the report of that witness' evidence, that could not, with due diligence, have been learned in time to be reduced to a further report and delivered within the time required by this rule;

(b) where the non-delivery is unlikely to cause prejudice:

(i) by reason of an inability to prepare for cross-examination; or

(ii) by depriving the party against whom the evidence is tendered of a reasonable opportunity to present evidence in response; or

(c) where the interests of justice require it.

Time

(17) Before or at trial, the court may extend or abridge the time limits set out in this rule.

Experts to confer

(18) The court may order that, if 2 or more reports are delivered under subrule (2) in relation to the same issue, the experts who prepared those reports must confer and must, at least 35 days before the date scheduled for trial, produce and sign a statement setting out the points of difference between them.

Lawyers not to attend

(19) Unless the court otherwise orders, the experts must confer and produce their statement under subrule (18) without participation of the parties or their lawyers.

Court may make directions

(20) The court may provide directions to the experts referred to in subrule (18) respecting:

(a) matters to be

(i) considered by them when conferring; and

(ii) referenced in the statement;

(b) the form of the statement; or

(c) any other matter the court considers appropriate.

Delivery of statement

(21) Promptly after receipt of a statement produced by experts under subrule (18), the parties who appointed those experts must deliver a copy of the statement to all other parties of record.

Privilege

(22) Except for the statement referred to in subrule (18), evidence of anything done or said or of any admission made at the conference referred to in that subrule is not admissible at a trial of the action unless the experts and all parties to the action agree.

Duty of expert

(23) In giving an opinion to the court, an expert appointed under this rule has a duty to assist the court and that duty overrides any obligation the expert may have to any party or to any person who is liable for the expert's fee or expenses.

Advice and certification

(24) If an expert is appointed under this rule:

(a) the party appointing the expert or that party's lawyer must advise the expert when the expert is retained of the expert's duty under subrule (23); and

(b) the expert must, in any report they prepare under this rule, certify that they

(i) are aware of that duty;

(ii) have made the report in conformity with that duty; and

(iii) will, if called on to give oral or written testimony, give that testimony in conformity with that duty.

RULE 35 – STATED CASE

On consent

(1) The parties to a proceeding may concur in stating a question of law or fact, or partly of law and partly of fact, in the form of a stated case for the opinion of the court.

By order

(2) Upon application by filing a Notice of Stated Case From Tribunal in Form 30A, the court may order a question or issue arising in a proceeding, whether of fact or law, or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be stated in the form of a stated case.

Stated case from tribunal

(3) In subrules (4) and (5), "tribunal" means any statutory board, commission or similar entity that is not a court.

(4) When there is no proceeding, a tribunal may initiate a stated case by filing a Notice of Stated Case From Tribunal in Form 30A including:

(a) a statement of the relevant facts and evidence;

(b) the question(s) to be determined by the court; and

(c) the addresses of all parties participating in the tribunal proceeding.

Notice of hearing of stated case

(5) The parties to a stated case or the tribunal must file and deliver a Notice of Hearing of Stated Case in Form 31 at least 14 days before the hearing of stated case.

Hearing

(6) On the hearing of a stated case, the court and the parties may refer to any document mentioned in the stated case, and the court may draw from the stated facts and documents any inference, whether of fact or law, that might have been drawn from them if proved at a trial or hearing.

Powers of Court

(7) The court may:

(a) give directions it considers necessary for the proper hearing and determination of the stated case;

(b) without limiting paragraph (a), make one or more of the following orders:

(i) that records, including transcripts and minutes, or other things be produced;

(ii) that evidence be adduced by way of affidavit, or that it be given orally;

(iii) that sets time limits for taking steps in, and for the hearing of, the stated case;

(iv) that the stated case be disposed of summarily;

(v) dismiss the action; and

(c) exercise the powers of the court as on a petition.

Order after hearing

(8) With the consent of the parties, on any question in a stated case being answered, the court may grant specific relief or order judgment to be entered.

RULE 36 – CASE MANAGEMENT CONFERENCE

Mandatory for self-represented plaintiffs/petitioners

(1) Where a plaintiff or petitioner is self-represented, a case management conference shall be scheduled no later than 60 days from the filing of an originating process, except for family law proceedings, estate matters, collections, foreclosures and adoptions.

By request

(2) Any party may request the holding of a case management conference by letter or email to the Trial Coordinator at any time after an originating process has been filed.

(2.1) At the time a request is made, the party requesting a case management conference shall identify in writing the issues to be discussed and any orders or directions being sought from the case management judge.

By order

(3) Upon request, or on their own initiative, at any stage of a proceeding a judge may order that a case management conference be held.

Agenda

(4) A case management conference shall be attended by the lawyers for the parties, or the parties themselves, and shall consider:

(a) the simplification of the issues;

(b) the necessity or desirability of amendments to pleadings;

(c) the possibility of obtaining admissions which might facilitate the trial or hearing;

(d) the use of a court-appointed expert or the directions for a jointly-instructed expert;

(e) directions for the conduct of the proceeding;

(f) questions of liability, damages and any other relief claimed;

(g) the requirement for and length of examinations for discovery;

(h) the production of documents, electronic discovery and electronic trial;

(i) fixing a date for the trial or hearing; and

(j) any other matters that may aid in the disposition of the action or the attainment of justice, including those matters set out in subrule (6).

Applications

(5) Applications may be heard and decided at case management conferences, in which case Rule 47 applies, unless otherwise directed by the case management judge.

Order following conference

(6) At a case management conference, the judge may, whether or not on the application of a party, order that:

(a) the pleadings be amended or closed within a fixed time;

(b) a party file and deliver, within a fixed time, to each other party as specified by the judge, an affidavit of documents in accordance with the directions that the judge may give;

(c) applications be brought within a fixed time or on a specified date;

(d) a statement of agreed facts be filed within a fixed time or by a specified date;

(e) the parties comply with any directions given;

(f) all procedures for discovery be conducted in accordance with a schedule and plan that the court directs, and the plan may set limitations on those discovery procedures;

(g) the obligation to pay conduct money to any of the parties or persons to be examined be allocated in the manner specified in the order;

(h) a party deliver a written summary of the proposed evidence of a witness within a fixed time or by a specified date;

(i) the parties attend an alternative dispute resolution process or a judicial settlement conference;

(j) a court appointed expert under Rule 33, or a jointly-instructed expert, be appointed;

(k) experts who have been retained by the parties confer, on a without prejudice basis, and determine those matters on which they agree and identify those matters on which they do not agree;

(l) each party disclose the witnesses to be called, the length of time for examination and cross-examination and notify the judge of any preliminary or in-trial applications that may be required;

(m) in lengthy and complex matters:

(i) the preparation of a trial plan setting out the specific days in which witnesses will be called;

(ii) timelines for filing outlines, briefs and case law. An outline or brief should contain a statement of facts, issues, law, and analysis;

(n) the trial or hearing be set on a particular date;

(o) settlement offers be exchanged; and

(p) the trial or hearing be adjourned and a new date be set,

and, on making a Case Management Conference Order in Form 108 under this subrule, the judge may give other directions that they think just or necessary.

(6.01) If counsel are unable to meet deadlines that have been set, a further case management conference should be requested. If counsel agree to change the deadlines, they may submit a desk order on consent.

(6.02) Any directions given at the case management conference are orders of the Court.

(6.1) An order made in case management may be signed and filed by counsel for one party after receiving approval as to form and content from the other parties or counsel for those parties.

(6.2) Trial dates will be discussed at a case management conference. Adjournment applications may also be considered at a case management conference.

Case management judge may preside

(7) The case management judge may preside at the trial or hearing.

RULE 37 – JUDICIAL SETTLEMENT CONFERENCE

By order

(1) A party may request a settlement conference and a judge may order a settlement conference upon such request or on his or her own motion.

Agenda

(2) Prior to the settlement conference, the assigned judge will hold a case management conference by telephone or in person to discuss the process, the issues to be discussed and any timelines for the filing of briefs, filing of affidavits or giving of oral evidence.

Procedure

(3) A settlement conference may consist of mediation, one judge's opinion and, with consent of the parties, binding arbitration.

(3.1) Parties proceeding by binding judicial settlement conference must file the Binding Judicial Settlement Conference Agreement in Form 108A.

(4) Lawyers and instructing parties must be present at settlement conferences, which may include attendance by video or telephone where necessary and appropriate.

Disclosure of settlement offers

(5) Lawyers or parties will be required to disclose the latest settlement offers, unless the settlement conference judge considers it inappropriate to do so.

Without prejudice

(6) Settlement conferences are without prejudice and offers, and discussion or briefs from settlement conferences cannot be raised at trial.

Recording

(7) The settlement conference may be recorded by the judge for their own use.

Orders

(7.1) Subject to the discretion of the presiding judge, details of any settlement reached in a settlement conference shall be read into the official court record in a courtroom and take the form of a court order.

Settlement conference judge

(8) The settlement conference judge shall not preside at the trial or hearing, unless the parties consent.

Documents and briefs

(9) Documents and briefs submitted for the judge at the settlement conference shall be returned to counsel or the party by the clerk at the conclusion of the settlement conference.

RULE 38 – DISCONTINUANCE AND WITHDRAWAL

Discontinuance by plaintiff

(1) At any time before a proceeding is set down for trial or hearing, a plaintiff may discontinue it in whole or in part against a defendant by filing and delivering a Notice of Discontinuance in Form 32 to each party of record.

Application

(2) This rule applies to matters commenced by originating process, and the terms petitioner, respondent or third party may be used instead of plaintiff and defendant, as the case may be.

(3) After a proceeding has been set down for trial or hearing, a plaintiff may discontinue it in whole or in part against a defendant with the consent of all parties of record or by leave of the court.

Withdrawal by defendant

(4) A defendant may withdraw their defence or any part of it with respect to any plaintiff at any time by filing a Notice of Withdrawal in Form 33 and delivering a copy of it to each party of record.

Costs and default procedure on discontinuance or withdrawal

(5) Subject to subrule (3), a person wholly discontinuing a proceeding or wholly withdrawing their defence against a party shall pay the costs of that party to the date of delivery of the notice of discontinuance or withdrawal and if a plaintiff, liable for costs under this rule, subsequently brings a proceeding for the same or substantially the same claim before paying those costs, the court may order the proceeding to be stayed until the costs are paid.

(6) Where a plaintiff discontinues the whole or any part of a proceeding in which a person has been joined as a third party, the third party, if the discontinuance disposes of the claim against the third party, is entitled to costs and may apply to the court for a direction as to who should pay them.

(7) A plaintiff's right to recover costs from a defendant under subrule (5) does not preclude the plaintiff from recovering other costs properly incurred.

(8) Where a defendant wholly or partly withdraws their defence under this rule, the plaintiff may proceed under Rule 17 as though the defendant had delivered no statement of defence or only a partial statement of defence.

Discontinuance not a defence

(9) Unless otherwise ordered, the discontinuance of a proceeding in whole or in part is not a defence to a subsequent proceeding for the same, or substantially the same, cause of action.

RULE 39 – OFFER TO SETTLE

Definitions

(1) In this rule:

"defendant" includes "respondent";

"double costs" means double the fees allowed under Rule 60(2) and includes the disbursements allowed under Rule 60(4);

"offer to settle" means an offer to settle under subrule (2);

"plaintiff" includes "petitioner";

"trial" includes "hearing".

Where available

(2) A party to a proceeding may deliver to any other party of record a written Offer to Settle in Form 65 to settle one or more of the claims in the proceeding in the terms specified in the offer.

Money settlement

(3) An offer to settle for a sum of money includes, in that sum, all interest under the *Judicature Act*, RSY 2002, c. 128, to the date of the delivery of the offer, but does not include costs.

Application

(4) This rule also applies to a claim for interim or interlocutory relief.

(5) Subrules (24) to (31) do not apply if a judgment is obtained in default of appearance or pleading or if the relief obtained on an application was unopposed.

Time for making offer

(6) An offer to settle may be delivered at any time before the trial commences.

(7) If an offer is delivered less than 7 days before the trial commences, subrules (24) to (31) do not apply but the court may, in exercising its discretion as to costs, consider the offer and the date that it was delivered.

Withdrawal of offer

(8) A party may withdraw an offer to settle before it is accepted by delivering a written Notice of Withdrawal of Offer in Form 66.

Expiry of offer

(9) An offer to settle that specifies a time within which it may be accepted expires if it is not accepted within that time.

Counter offer

(10) An offer to settle does not expire by reason that a counter offer is made.

No disclosure to court

(11) No statement of the fact that an offer to settle has been made shall be disclosed to the court, or jury, or set forth in any document used in the proceeding, until all questions of liability, and of the relief to be granted, other than costs, have been determined.

Offer not admission

(12) An offer to settle is not an admission.

Acceptance of offer

(13) An offer to settle which has not been withdrawn may be accepted at any time before the trial commences.

(14) An offer may be accepted only by delivering a written notice of Acceptance of Offer in Form 67.

Acceptance must be unconditional

(15) Except as provided in subrules (17) and (18), an acceptance of an offer to settle must be unconditional.

Stay of proceedings

(16) Except as provided in subrules (20), (21) and (35) on acceptance of an offer to settle a claim, all proceedings relating to that claim, except recovery of costs, and entry of and enforcement of judgment, are stayed.

Payment into court as condition of offer or acceptance

(17) If a plaintiff offers to settle a claim for payment of money by a defendant, the plaintiff may include in the offer a condition that the money be paid into court, or to a named trustee, and, in that case, the defendant may accept the offer only by paying the money in accordance with the offer and by delivering an Acceptance of Offer in Form 67.

(18) If a defendant offers to settle a claim for payment of money to a plaintiff, the plaintiff may accept the offer with the condition that the money be paid into court or to a

named trustee, and, in that case, if the defendant fails to pay the money in accordance with the condition, the plaintiff may proceed under subrule (20).

Payment out of court

(19) Subject to subrule (34) and the provisions of Rule 61 relating to an infant's money, money paid into court under this rule may be paid out to a person by order or by consent of the interested parties or of their lawyers of record.

Failure to comply with conditions

(20) If a party fails to comply with the conditions of an accepted offer to settle, the other party may:

(a) apply for an order in the terms of the accepted offer; or

(b) continue the proceeding as if there had been no accepted offer.

Order on acceptance

(21) If an offer is accepted, the court may incorporate any of its terms in an order.

Costs on acceptance

(22) Subject to subrule (23), an offer is accepted:

(a) if the offer was made by the plaintiff, the plaintiff is entitled to costs; or

(b) if the offer was made by the defendant, the plaintiff is entitled to costs assessed to the date the offer was delivered to the plaintiff, and the defendant to costs assessed from that date.

Costs on acceptance of offer in family law proceeding

(23) If a party has made an offer to settle a claim in a family law proceeding and the offer is accepted:

(a) unless the court orders otherwise, neither party is entitled to any costs to the date the offer was delivered; and

(b) the party making the offer is entitled to costs from the date the offer was delivered.

Consequences of failure to accept plaintiff's offer to settle a monetary claim

(24) If the plaintiff has made an offer to settle a claim for payment of money, and it has not expired or been withdrawn or been accepted, and if the plaintiff obtains a judgment for the amount of money specified in the offer or a greater amount, the

plaintiff is entitled to costs assessed to the date the offer was delivered and to double costs assessed from that date.

Consequences of failure to accept defendant's offer for monetary relief

(25) If the defendant has made an offer to settle a claim for money and the offer has not expired or been withdrawn or been accepted:

(a) if the plaintiff obtains judgment for the amount of money specified in the offer or a lesser amount, the plaintiff is entitled to costs assessed to the date the offer was delivered and the defendant is entitled to costs assessed from that date; or

(b) if the plaintiff's claim is dismissed, the defendant is entitled to costs assessed to the date the offer was delivered and to double costs assessed from that date.

Consequences of failure to accept plaintiff's offer for non-monetary relief

(26) If the plaintiff has made an offer to settle a claim for non-monetary relief, and it has not expired or been withdrawn or been accepted, and if the plaintiff obtains a judgment as favourable as, or more favourable than, the terms of the offer to settle, the plaintiff is entitled to costs assessed to the date the offer was delivered and to double costs assessed from that date.

Consequences of failure to accept defendant's offer for non-monetary relief

(27) If the defendant has made an offer to settle a claim for non-monetary relief and the offer has not expired or been withdrawn or been accepted:

(a) if the plaintiff obtains a judgment as favourable as, or less favourable than, the terms of the offer to settle, the plaintiff is entitled to costs assessed to the date the offer was delivered and the defendant is entitled to costs assessed from that date; or

(b) if the plaintiff's claim is dismissed, the defendant is entitled to costs assessed to the date the offer was delivered and to double costs assessed from that date.

Consequences of failure to accept offer in family law proceeding

(28) Despite subrules (24) to (27), if a party has made an offer to settle a claim in a family law proceeding, and the offer has not expired, been withdrawn or been accepted, and if the party making the offer obtains a judgment as favourable as, or more favourable than, the terms of the offer to settle, the party making the offer is entitled to costs assessed to the date the offer was delivered and to double costs assessed from that date.

Exception

(29) Notwithstanding subrules (24) to (27), the court may award costs, or double costs, up to, or from, a time later than the date of delivery of the offer to settle, if it is

satisfied that the offer could reasonably have been accepted only at a time later than the date of delivery.

Interpretation

(30) For the purposes of subrules (26) and (27):

(a) a judgment shall be presumed to be as favourable as, or more favourable than, the terms of an offer to settle made by a plaintiff if the judgment includes the relief specified in the offer; and

(b) a judgment shall be presumed to be as favourable as, or less favourable than, the terms of an offer to settle made by a defendant if the relief granted in the judgment is included in the relief specified in the offer.

Burden of proof

(31) Notwithstanding subrule (30), the burden of proving that the judgment is as favourable as the terms of the offer to settle, or more or less favourable, as the case may be, is on the party who claims the benefit of the subrule.

Multiple plaintiffs

(32) If there is more than one plaintiff, a separate offer to settle may be made by or to a plaintiff and if that plaintiff becomes entitled to have costs assessed, the clerk shall apportion costs that have been jointly incurred by that plaintiff and other plaintiffs in the proceeding.

Multiple defendants

(33) Other than in an action for defamation, if several defendants are sued jointly, a plaintiff may not make an offer to settle except jointly to all defendants, and a defendant may not make an offer to settle except jointly with all other defendants.

Counter claims and third party claims

(34) This rule applies to counter claims and to third party claims, but, if an offer to settle, made between a third party and a defendant, has been accepted, no money shall be paid by the third party to a defendant other than into court and no money paid into court by the third party shall be taken out of court without leave of the court on notice to the plaintiff or without the consent of all parties of record or their lawyers.

Parties under disability

(35) A party under disability may make, withdraw or accept an offer to settle, but the acceptance of an offer made by or to such a party is subject to approval by the court under Rule 6(15).

Fatal Accidents Act

(36) A defendant in an action under the *Fatal Accidents Act*, RSY 2002, c. 86, may offer to pay one sum as compensation to all persons entitled to recover damages in the action, without specifying the shares into which or the parties among which it is to be divided. If the offer is not accepted this rule applies as if all persons represented by the plaintiff were a single plaintiff.

Defamation actions

(37) If, in an action for defamation against several defendants sued jointly, the plaintiff accepts an offer to settle made by one defendant, the action may proceed against other defendants, but the sum recoverable on judgment against them shall be reduced by the amount already accepted by the plaintiff.

(38) A plaintiff in an action for defamation who accepts an offer to settle, or takes money out of court under Rule 21(16), may apply to court for leave to make in open court a statement in terms approved by the court.

Costs in cases within small claims jurisdiction

(39) Despite subrule (22), the plaintiff is not entitled to costs other than disbursements if:

(a) an offer is accepted for a sum within the jurisdiction of the Small Claims Court of Yukon; and

(b) the proceeding in which the offer was made could appropriately have been brought in the Small Claims Court of Yukon.

(40) Notwithstanding subrules (24) to (31), if the plaintiff obtains a judgment for a sum within the jurisdiction of the Small Claims Court of Yukon, the plaintiff is not entitled to costs or to double costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court of Yukon and so orders.

Settlement offer may be delivered

(41) In any circumstance to which subrules (1) through (40) do not apply, a party to a proceeding may deliver a written settlement offer, in any form, of one or more of the claims in the proceeding if that settlement offer includes a statement that the party delivering the settlement offer reserves the right to bring it to the attention of the court for consideration in relation to costs after the court has rendered judgment on all other issues in the proceeding.

(42) If a written settlement offer has been delivered under subrule (41) and brought to the attention of the court, the court may:

(a) award costs to the offering party in an amount not greater than the costs to which the party would have been entitled had the offer been made under subrules (1) through (40); or

(b) deprive the party to whom the offer was made of costs to an extent not greater than that which the court could have ordered had the offer been made under subrules (1) through (40).

Application of subrules (10) to (12)

(43) Subrules (10) to (12) apply to a written settlement offer made under subrule (41).

RULE 40 – DEPOSITIONS

Examination of person

(1) By consent of the parties or by order of the court, a person may be examined on oath before or during trial, before an official reporter, or any other person the court may direct, in order that the deposition be available to be tendered as evidence at the trial.

Grounds for order

(2) In exercising its discretion to order an examination under subrule (1), the court shall take into account:

(a) the convenience of the person sought to be examined;

(b) the possibility that the person may be unavailable to testify at the trial by reason of death, infirmity, sickness or absence;

(c) the possibility that the person will be beyond the jurisdiction of the court at the time of the trial; and

(d) the expense of bringing the person to the trial.

Subpoena

(3) Where a party is entitled to examine a person under this rule, by serving on that person or a party a Subpoena in Form 25, the party may require the person or the party to bring to the examination:

(a) any document in the person's possession or control relating to the matters in question in the action, without the necessity of identifying the document; and

(b) any physical object in the person's possession or control, which the examining party contemplates tendering at the trial as an exhibit, but the subpoena shall identify the object.

Place of examination

(4) Unless the court otherwise orders, or the parties to the examination consent, an examination under this rule shall take place at the office of an official reporter that is nearest to the place where the person to be examined resides.

Application of rule outside Yukon

(5) So far as is practicable this rule applies to the examination of a person residing outside Yukon, and the court may order the examination of a person in the place and the manner it thinks just and convenient.

Where person willing to testify

(6) If the person to be examined is willing to testify, the order shall be in Form 35 Order for Examination of Person(s) Outside the Jurisdiction and the Instructions to Examiner who has appointed in the order shall be in Form 36.

Where person not willing to testify

(7) If the person to be examined is unwilling to testify, or if for any other reason the assistance of a foreign court is necessary, the order shall be in Form 37 Order for Issue a Letter of Request to Judicial Authority of Another Jurisdiction and the Letter of Request to Foreign Court for Examination of Witness out of Jurisdiction referred to in the order shall be in Form 38.

Letter of request

(8) Where an order is made under subrule (7), the Letter of Request shall be sent by the party obtaining the order to the Under Secretary of State for External Affairs of Canada, or equivalent position (or, if the evidence is to be taken in Canada, to the Deputy Minister of Justice for Yukon), and shall have attached to it:

(a) any interrogatories to be put to the witness;

(b) a list of the names, addresses and telephone numbers of the lawyers or agents of the parties, both in Yukon and in the other jurisdiction; and

(c) a copy of the Letter of Request and any interrogatories translated into the appropriate official language of the jurisdiction where the examination is to take place and bearing the certificate of the translator that it is a true translation and giving their full name and address.

Filing of undertaking

(9) The lawyer for the party obtaining the order shall file with the Under Secretary of State for External Affairs of Canada, or equivalent position (or the Deputy Minister of Justice for Yukon, as the case may be) their undertaking to be personally responsible for all the charges and expenses incurred by the Under Secretary (or the Deputy Minister of Justice, as the case may be) in respect of the Letter of Request and to pay them on receiving notification of the amount.

Notice of examination

(10) Notice of examination of a person under this rule shall be given by the examining party delivering copies of the subpoena to the person to be examined and to all parties of record not less than 7 days before the day appointed for the examination.

Mode of examination

(11) The examining party shall examine the witness, who shall be subject to cross-examination and re-examination, unless otherwise ordered.

Objection to question

(12) If an objection is made to a question put to a witness in an examination under this rule, the question and the objection shall be taken down by the official reporter and the validity of the objection may be decided by the court, which may order the witness to submit to further examination.

Recording of deposition evidence

(13) Unless otherwise ordered, the deposition shall be recorded either by:

(a) the official court reporter in the form of questions and answers; or

(b) on video or film.

Perpetuating testimony

(14) A person who, under the circumstances alleged by the person to exist, would become entitled, on the happening of any future event, to an estate or interest in property, the right or claim to which cannot be brought by the person to trial or hearing before the happening of the event, may apply by petition for an order to perpetuate any testimony which may be material for establishing the right or claim by examination under this rule.

RULE 41 – TRIAL

Application

(1) This rule applies to:

(a) an action; and

(b) a petition that is transferred to the trial list under Rule 50(12)(d).

Request for trial date

(2) A trial date may be obtained from the trial coordinator after approval of the trial date from a judge in a case management conference.

Notice of trial

(3) Notice of Trial in Form 39 shall be filed within 14 days from receiving the trial date by the party obtaining the trial date.

(4) Notice of trial shall be delivered to or personally served upon all other parties of record within 7 days of filing, but not less than 28 days before trial, unless otherwise ordered.

(5) The court may direct that an action be set down for trial at a particular time and place and that the notice of trial be issued by the registry.

Place of trial

(6) The place of trial shall be at Whitehorse, but the court may order that the place of trial be changed or that the trial be heard partly in one place and partly in another.

Time of trial

(7) The trial shall be heard on the day appointed by the notice of trial or so soon thereafter as may be convenient.

Court may adjourn trial date, etc.

(8) The court may order the adjournment of a trial or fix the date of trial of an action or issue, or order that a trial shall take precedence over another trial.

Duty to inform trial coordinator

(9) Each party to an action entered for trial shall inform the trial coordinator without delay all available information as to the settlement of the action or affecting the estimated length of the trial.

Trial record for the court

(10) The party who obtained the notice of trial shall file a trial record for the court, which trial record must contain:

(a) the pleadings as amended;

(b) particulars delivered pursuant to a demand, together with the demand made;

(c) any order made governing the conduct of the trial;

(d) any agreed statement of facts;

(e) any admissions made; and

(f) any other document ordered by a judge or agreed on by counsel.

(10.1) The trial record should have a cover page indicating the style of proceeding and title of the document on blue cover stock (cardstock) paper. Each page is to be numbered “Page __ of Record”.

Powers of clerk respecting trial records

(11) The clerk may direct inclusion in the trial record of any document the clerk thinks necessary or may reject a trial record that, in the clerk’s opinion:

(a) does not contain all the pleadings;

(b) contains a document other than those set out in subrule (10); or

(c) is illegible.

Trial record documents to be marked

(12) Each document referred to in subrule (10) that is required for the trial record shall contain the date that the document was filed, or, where it was not filed, the date that the document was prepared, completed or made.

Filing and delivery of trial record

(13) The party referred to in subrule (10) shall file the trial record not more than 30 days and not fewer than 14 days before the scheduled trial date and shall deliver a copy of the trial record immediately after filing to all other parties of record.

Amended trial record

(14) Where a pleading is amended after delivery of the trial record, the party who obtained the notice of trial, at least one day before the trial, shall file an amended trial record and deliver a copy to all other parties of record.

Direction as to trial record

(15) Where the court directs that an action be set down for trial under subrule (5), it may also direct one of the parties to prepare, file and deliver a trial record.

Failure to file

(16) Failure to file, deliver or personally serve the notice of trial or the trial record may result in the action being struck from the trial list.

Trial without jury generally

(17) Subject to the *Jury Act*, RSY 2002, c. 129, a trial shall be heard by the court without a jury.

Trial of one question before others

(18) The court may order that one or more questions of fact or law arising in an action be tried and determined before the others, and upon the determination a party may move for judgment, and the court, if satisfied that the determination is conclusive of all or some of the issues between the parties, may grant judgment.

Trial by different modes of trial

(19) The court may order that different questions of fact arising in an action be tried by different modes of trial.

Calculation of amount by officer of the court

(20) In an action in which it appears that the amount to be recovered is substantially a matter of calculation, the court may direct an inquiry, assessment or accounting under Rule 32.

Failure of all parties to appear at trial

(21) If no party is in attendance when the trial of an action is called, the action shall be struck off the trial list.

Failure of one party to appear at trial

(22) If a party is not in attendance when the trial of an action is called, the court may proceed with the trial, including hearing a counterclaim, in the absence of that party.

Court may set aside judgment

(23) The court may set aside a verdict or judgment obtained where a party does not attend the trial.

RULE 42 – EVIDENCE AND PROCEDURE AT TRIAL

Application

(1) This rule does not apply to summary trials under Rule 19, except as provided in that rule.

Witness to testify orally

(2) Subject to any statute or regulation and these rules:

(a) a witness at a trial of an action shall testify in open court; and

(b) unless the parties otherwise agree, the witness shall testify in person or by videoconference.

Court may vary order

(3) An order made under this rule concerning the mode of proving a fact or document or of adducing evidence may be revoked or varied by a subsequent order made at or before the trial.

Use of transcript of other proceedings

(4) Where a witness is dead, or is unable to attend and testify because:

(a) of age, infirmity, sickness;

(b) of imprisonment;

(c) they are out of the jurisdiction; or

(d) their attendance cannot be secured by subpoena,

the court may permit a transcript of any evidence, including an audio or video recording, of that witness taken in any proceeding, hearing or inquiry at which the evidence was taken under oath, whether or not involving the same parties, to be put in as evidence. A party seeking such permission shall give reasonable notice of their intention to do so.

Transcript for the court

(5) In an action in which evidence or argument is taken down by an official reporter or is recorded digitally, or on audio or video recording, a party shall, if required by the court, furnish it with a certified transcript of the evidence or argument or any portion of it, the costs of which shall form part of the costs of the action. Where payment of the costs of providing a transcript would be a hardship on a party, the court may order that the transcript be prepared.

Use of recording device

(6) With the consent of the court, a party or their lawyer may use a recording device to record evidence, or a personal computer, provided it does not interfere with the trial.

Failure to prove a material fact

(7) Where a party omits or fails to prove some fact material to the party's case, the court may proceed with the trial, subject to that fact being proved afterwards, as the court shall direct, and:

(a) if the case is being tried by a jury, the court may direct the jury to find a verdict as if that fact had been proved; and

(b) unless the court otherwise orders, judgment shall be entered according to whether or not that fact is or is not proved afterwards, as directed.

No evidence application

(8) At the close of the plaintiff's case, the defendant may apply to have the action dismissed on the ground that there is no evidence to support the plaintiff's case.

(9) A defendant is entitled to make an application under subrule (8) without being called upon to elect whether or not to call evidence.

Insufficient evidence application

(10) At the close of the plaintiff's case, the defendant may apply to have the action dismissed on the ground that the evidence is insufficient to make out the plaintiff's case.

(11) Unless the court otherwise orders, an application under subrule (10) may be made only after the defendant has elected not to call evidence.

Notice to produce

(12) By delivering a Notice to Produce in Form 40 at least 2 days before a trial, a party may require any other party to bring to the trial:

(a) any document in the other party's possession or control relating to the matters in question in the action, without the necessity of identifying the document; and

(b) any physical object in the other party's possession or control which the party contemplates tendering at the trial as an exhibit, but the notice shall identify the object.

Numbering exhibit pages

(13) If a copy of a document is introduced as an exhibit:

(a) each page of the exhibit must be numbered consecutively, beginning with the first page of the exhibit and ending with the last page of the exhibit; or

(b) if the exhibit is divided by tabs:

(i) each page of the exhibit that is not behind a tab must be numbered sequentially, beginning with the first of those pages and ending with the last of those pages; and

(ii) each page of the exhibit that is behind a tab must be numbered sequentially, beginning with the first page behind the tab and ending with the last page behind the tab.

Opportunity to inspect exhibit

(14) Unless the court otherwise orders or the parties agree, no plan, photograph, electronic record, or object shall be received in evidence at the trial of an action unless, at least 7 days before the commencement of the trial, the opposing party has been given an opportunity to inspect it.

Registry to take charge of exhibits

(15) A clerk of the registry shall take charge of each document or object put in as an exhibit, mark or label each exhibit with a number, and make a list of the exhibits, giving a short description of each and stating by whom it was tendered.

Adverse party as witness

(16) Subrules (17) to (20) apply where a party wishes to call as a witness at the trial:

(a) an adverse party; or

(b) a person who, at the time the notice referred to in subrule (17) is delivered, is a director, officer, partner, employee or agent of an adverse party.

Notice to call adverse party as witness

(17) If a party wishes to call as a witness a person referred to in subrule (16), the party may deliver to the adverse party a Notice on Intention to Call Witness Adverse in Interest in Form 41 together with proper witness fees at least 7 days before the day on which the attendance of the intended witness is required.

Exceptions

(18) Notwithstanding subrule (17), a party may:

(a) call as a witness, without payment of witness fees or previous notice, an adverse party or a current director, officer, partner, employee or agent of an adverse party if the person called is in attendance at the trial; or

(b) subpoena an adverse party or a current director, officer, partner, employee or agent of an adverse party.

Application to set notice aside

(19) The court may set aside a notice delivered under subrule (17) on the grounds that:

(a) the adverse party is unable to procure the attendance of the person named in the notice;

(b) the evidence of the person is unnecessary;

(c) it would cause a hardship to the person or the adverse party to require the person to attend the trial; or

(d) the person is not a person referred to in subrule (16)(a) or (b).

Court may make order

(20) On an application under subrule (19), the court may make any order it thinks just including, without limitation, an order adjourning the trial.

"Adverse party" defined

(21) For the purpose of subrules (16) to (19), "adverse party" means a party who is adverse in interest.

Refusal to comply with notice

(22) If a person or party called as a witness in accordance with subrule (17) or (18) refuses or neglects to attend at the trial, to be sworn or to affirm, to answer a proper question put to the person or to produce a document that the person is required to produce, the court may do one or more of the following:

(a) pronounce judgment in favour of the party who called the witness;

(b) adjourn the trial;

(c) make an order as to costs; or

(d) make any other order it thinks just.

Adverse party as witness may be cross-examined

(23) A party calling a witness in accordance with subrule (17) or (18) is entitled to cross-examine the witness generally on one or more issues. Examination of the witness by a lawyer for the adverse party shall be confined to explanation of matters brought out in the first party's cross-examination. Cross-examination of the witness by other parties may be general or limited, as the court may direct. Re-examination shall be

confined to new matters brought out in examination by the adverse party or cross-examination by other parties.

Examination of witnesses

(24) The court may permit a party:

(a) to examine a witness, either generally or with respect to one or more issues:

(i) by the use of leading questions;

(ii) by referring the witness to a prior statement made by the witness, whether or not made under oath;

(iii) respecting the interest of the witness, if any, in the outcome of the proceeding; or

(iv) respecting any relationship or connection between the witness and a party; or

(b) to cross-examine a witness, either generally or with respect to one or more issues.

Any party may contradict testimony

(25) A party may contradict or impeach the testimony of any witness.

Use of deposition evidence

(26) A transcript and any other recordings of a deposition under Rule 40 may be given in evidence at the trial by any party and, notwithstanding that the deposition of a witness has or may be given in evidence, the witness may be called to testify orally at the trial.

Proof of deposition evidence

(27) A transcript of a deposition may be given in evidence if certified as an accurate transcription by the person taking the deposition, without proof of the signature of that person. A video recording, film or other electronic recording of a deposition may be presented as evidence without proof of its accuracy or completeness, but the court may order such investigation as it thinks fit to verify the accuracy or completeness. A video recording, film or other electronic recording given in evidence shall become an exhibit at the trial.

Deposition to be given in full

(28) Where a deposition is given in evidence:

(a) subrule (31) applies; and

(b) the deposition shall be presented in full, unless otherwise agreed by the parties or ordered by the court.

Use of discovery evidence

(29) Discovery evidence may be used as follows:

(a) if otherwise admissible, the evidence given on an examination for discovery by a party or by a person examined under Rule 27(4) to (11) may be given in evidence at trial, unless the court otherwise orders, but the evidence is admissible only against:

(i) the adverse party who was examined; or

(ii) the adverse party whose status as a party entitled the examining party to conduct the examination under Rule 27(4) to (11);

(b) where the person examined was, at the time of the examination, a former director, officer, employee, agent or external auditor of a party, any part of their evidence may be given at trial if notice has been delivered to all parties at least 14 days before trial specifying that part of the evidence intended to be given at trial;

(c) any party may require the attendance at trial of a person whose evidence taken on examination is intended to be given under paragraph (b), and if the evidence is given, all parties may cross-examine that person; or

(d) where part of an examination for discovery is given in evidence, the court may review the whole or any part of that examination and if, following the review, it considers that another part of the examination is closely connected with the part given in evidence, it may direct that the other part be put in as evidence.

Discovery evidence of person under legal disability

(30) Where, at the time of an examination for discovery, the person examined was a minor or a person under legal disability, the examination shall not be given in evidence unless the trial judge, at the time the evidence is tendered, determines that the person, at the time of the examination, was competent to give evidence.

Transcripts of discovery evidence

(31) A transcript of an examination for discovery may be given in evidence if certified as an accurate transcription by the official reporter without proof of the reporter's signature.

Use of pre-trial examination of a witness

(32) A party may give in evidence at the trial part or all of the examination of a person taken under Rule 28:

(a) to contradict or impeach the testimony of the deponent at trial; or

(b) where the deponent is dead or is unable to attend and testify because of age, infirmity, sickness or imprisonment or is out of the jurisdiction or their attendance cannot be secured by subpoena and where it is necessary in the interests of justice,

but where part only of the examination is given in evidence, the court may look at the whole of the examination and if it is of the opinion that any other part is so connected with the part given that the last mentioned part ought not to be used without the other part it may direct the other part to be put in as evidence.

Objection to transcript evidence at trial

(33) At the trial a party may object to the admissibility of any question and answer in a transcript, video recording, film or other electronic recording given in evidence, although no objection was taken at the examination.

Custody of transcripts

(34) If a transcription of an examination for discovery, a pre-trial examination of a witness or a deposition examination is made, the party who conducted the examination shall keep the original transcript unmarked and shall have it available at the trial.

Use of interrogatories at trial

(35) At the trial of an action a party may give in evidence an answer, or part of an answer, to interrogatories, but the court may look at the whole of the answers and, where it is of the opinion that any other answer or part of an answer is so connected with an answer or part thereof given in evidence that the one ought not to be used without the other, it may direct that the other answer or part thereof be put in as evidence.

Form of subpoena

(36) A subpoena shall be in Form 25 and may contain any number of names.

Party may prepare and serve subpoena

(37) A party may prepare a subpoena and serve it on any person.

Subpoena not to be filed or sealed

(38) A subpoena need not be filed in or bear the seal of the court.

Service of subpoena

(39) A subpoena must be personally served and, where an affidavit is filed for the purpose of proving the service, it must state when, where, how and by whom service was effected.

Fees to accompany subpoena

(40) A person served with a subpoena is entitled to be paid the proper fees set out in Appendix C, Schedule 3, at the time of service.

Production of documents and physical objects

(41) A party, by subpoena, may require any person to bring to the trial:

(a) any document in the person's possession or control relating to the matters in question, without the necessity of identifying the document; and

(b) any physical object in the person's possession or control which the party contemplates tendering at the trial as an exhibit, but the subpoena shall identify the object to be brought.

Order for attendance of witness in custody

(42) The court may order the attendance of a witness who is in the lawful custody of another person, including the custodian of a penal institution.

Failure of witness to attend, etc.

(43) Upon proof:

(a) of the personal service of a subpoena on a witness who fails to attend or to remain in attendance in accordance with the requirements of the subpoena;

(b) that proper witness fees have been paid to that witness; and

(c) that the presence of that witness is material to the ends of justice,

the court, by its Warrant in Form 42 directed to a sheriff or other officer of the court or to a peace officer, may cause that witness to be apprehended and promptly brought before the court and to be detained in custody or released on terms the court may order, and the court may order that witness to pay the costs arising from their failure to attend or to remain in attendance.

Order setting aside subpoena

(44) A person who has been served with a subpoena may apply to the court for an order setting aside the subpoena on the grounds that compliance with it is unnecessary or

that it would cause a hardship to the person, and the court may make any order, as to postponement of the trial or otherwise, as it thinks just.

Clerk to note time of trial

(45) On each day of a trial, a clerk shall note the time the trial commences and terminates, the name of each witness and the time the witness' evidence begins and ends.

Affidavit evidence

(46) On the application of a party at or before trial, a judge may order that the evidence-in-chief of a witness may be given by affidavit.

Copy of affidavit must be furnished

(47) The party seeking to tender evidence by affidavit must furnish a copy of the affidavit to all parties of record at least 30 days, or such lesser period as may be ordered by the court, before the hearing of the application referred to in subrule (46).

Cross-examination

(48) If an affidavit of a witness is furnished under subrule (47), any party may, unless the court otherwise orders, require the witness to be called for cross-examination at trial in person or by videoconference, provided that that party gives to the party seeking to tender the evidence by affidavit notice of the requirement within 14 days after receiving the affidavit.

Court may extend or abridge time to require witness attendance

(49) If an affidavit is furnished under subrule (47) less than 30 days before the hearing of the application referred to in subrule (46), the court may extend or abridge the time referred to in subrule (48) within which parties may require the attendance of the witness at trial for cross-examination.

Contents

(50) The deponent of an affidavit under subrule (46) may state only what they would be permitted to state were the evidence to be given orally.

(51) Cross-examination under subrule (48) or (49) is not confined to matters contained in the affidavit.

Costs where attendance unnecessary

(52) Where a witness has been required to give evidence under subrule (48), and the court is of the opinion that the evidence obtained does not materially add to the information in the affidavit furnished under subrule (46), the court may order the

party that required the attendance of the witness to pay, as costs, a sum the court considers appropriate.

Evidence of particular facts

(53) At or before a trial, the court may order that evidence of a fact or document may be presented at the trial in any manner, including:

(a) by statement under oath on information and belief;

(b) by documents or entries in books;

(c) by copies of documents or entries in books; or

(d) by a specified publication which contains a statement of that fact.

Order of speeches

(54) Addresses to the jury or the court shall be as follows:

(a) the party who bears the onus of proof may open their case before giving evidence;

(b) at the close of the case of the party who began, the opposite party, if that party announces their intention to give evidence, may open their case;

(c) at the close of all of the evidence, the party who began may address the jury or the court, and the opposite party may then address the jury or the court and the party who began may then reply and the court may allow the opposite party to be heard in response to a point raised in the reply;

(d) where a defendant claims relief against a co-defendant, that defendant may address the jury after that co-defendant; and

(e) where a party is represented by a lawyer, the rights conferred by this rule shall be exercised by the party's lawyer.

Court may make order respecting submissions

(55) At or before a trial, the court may make one or both of the following orders in respect of a party's submissions to the court at the trial:

(a) all or any part of the submissions be in writing;

(b) all or any part of the submissions be of limited length.

Return of exhibits

(56) After the time for appeal from judgment has expired or after the disposition of an appeal, new trial or further appeal, whichever is latest, the clerk may return an exhibit to the party who tendered it. The parties may agree, or the court may order, that an exhibit be returned at an earlier time or to a person other than the party who tendered it.

Disposal of exhibits after final disposition

(57) The clerk may, with the approval of the Chief Justice, destroy or otherwise dispose of an exhibit tendered in evidence in a proceeding if the return of the exhibit has not been applied for within one year after the later of:

(a) the date of the judgment at trial in, or any other final disposition of, the proceeding; and

(b) the date of the judgment on, or any other final disposition of, any appeal, new trial or further appeal.

Notice respecting disposal of exhibits before final disposition

(58) If an exhibit is tendered in evidence in a proceeding and nothing is filed in that proceeding for a period of 1 year, the clerk may deliver to the parties of record notice that the clerk intends to destroy or otherwise dispose of the exhibit unless, within 30 days after the date of the notice:

(a) a request in writing is made for the return of the exhibit or casebook of exhibits; or

(b) a notice of intention to proceed is served on all parties of record and a copy of the notice and proof of its service has been filed in the proceeding.

Disposal of exhibits before final disposition

(59) After a notice is delivered under subrule (58), the clerk may:

(a) if a person requests in writing to the clerk within 30 days after the date of the notice for a return of the exhibit, return the exhibit to the party who tendered it or to such other person as the parties may agree or the court may order; or

(b) if no such application is made and if none of the parties comply with subrule (58)(b) within 30 days after the date of the notice, destroy or otherwise dispose of the exhibit with the approval of the Chief Justice.

If exhibit disposed of

(60) If an exhibit is disposed of under subrule (57) or (59)(b):

(a) any money received as a result of the disposition must be paid to the Territorial Treasurer for the Minister of Finance; and

(b) the exhibit list must be endorsed to indicate the date and method of disposition and the amount of any money recovered.

If exhibit destroyed

(61) If an exhibit is destroyed under subrule (57) or (59)(b), the exhibit list must be endorsed to indicate the date and method of destruction.

RULE 43 – ORDERS

No application for judgment necessary

(1) No application for judgment is necessary except where a statute, regulation or these rules otherwise provide.

Drawing and approving orders

(2) An order of the court may be drawn up by any party, and, unless the court otherwise directs, shall be approved in writing by all parties or their respective lawyers, and then left with the clerk to have the seal of the court affixed, but the order need not be approved by a party who has not consented to it and who did not attend, or was not represented at the trial or hearing following which the order was made.

Form of order

(3) Unless these rules otherwise provide, an order shall be in Form 43, 44, 53, 54 or 90.

Endorsement of order on application sufficient in certain cases

(4) If an order has been made substantially in the same terms as requested, if the court endorses the application, petition or other document to show that the order has been made or made with any variations or additional terms shown in the endorsement, it is not necessary to draw up the order, but the endorsed document must be filed.

Order granted conditionally on document to be filed

(5) Where an order may be entered on the filing of a document, the party shall file the document when leaving the draft order with the clerk, and the clerk shall examine the document and, if satisfied that it is sufficient, shall enter the order accordingly.

Waiver of order obtained upon condition

(6) Where a person who has obtained an order upon condition does not comply with the condition, the person shall be deemed to have abandoned the order so far as it is beneficial to the person and, unless the court otherwise directs, any other person interested in the matter may take either the steps the order may warrant or the steps that might have been taken if the order had not been made.

Effect and form of orders

(7) (a) An order must:

(i) if it is spoken to, show on its face the name of the judge who made the order;

or

(ii) if it is not spoken to, be in Form 53 or 54.

(b) An order may be approved by any judge.

Date of order

(8) (a) An order shall be dated as of the day on which it was pronounced.

(b) An order made by a clerk shall be dated as of the day on which it is signed by the clerk.

(c) Unless the court otherwise orders, an order takes effect on the day of its date.

Requirement of consent order

(9) No consent order shall be entered unless the consent of each party affected is signified:

(a) where the party is represented by a lawyer, by the signature of that lawyer; or

(b) where the party is not represented by a lawyer:

(i) by the oral consent of the party who attends before the court or the clerk; or

(ii) by the written consent of the party.

(9.1) Where an order requires the signature of more than one lawyer, the signature of the filing lawyer shall be original, but the signatures of other lawyers may be faxed or scanned copies of their original signatures.

Application by consent

(10) Subject to subrule (11), an application for an order by consent may be made by filing:

(a) a Requisition in Form 3;

(b) a draft of the Order in Form 53; and

(c) evidence that the application is consented to.

Application by consent if party under a legal disability

(11) If the leave or approval of the court is required under Rule 6(15), an application for that order may be made by filing:

(a) the documents referred to in subrule (10) of this rule; and

(b) the consent of the litigation guardian.

Consent order

(12) On being satisfied that an application referred to in subrule (10) or (11) is consented to and that the materials appropriate for the application have been submitted, the clerk may:

(a) if the clerk is satisfied that none of the parties applying for or consenting to the order is under a legal disability or that, if a party is under a legal disability, the litigation guardian consents:

(i) enter the order; or

(ii) refer the application to a judge; or

(b) in any other case, refer the matter to a judge.

Application of which notice is not required

(13) An application of which notice need not be given pursuant to legislation or Rule 50(14) may be made by filing:

(a) a Requisition in Form 3;

(b) a draft of the Order in Form 54; and

(c) evidence in support of the application, including the reason why notice was not given.

Referral by clerk

(14) On being satisfied that the materials appropriate for an application referred to in subrule (13) have been submitted, the clerk shall refer the matter to a judge.

Disposition of referred applications

(15) If an application is referred by the clerk to a judge under subrule (12) or (14), the judge to whom the application is referred may:

(a) make the order;

(b) require further evidence; or

(c) direct that the application be spoken to.

Settlement of orders

(16) An order shall be settled by the clerk who may refer the matter to the judge who made the order or any other judge if the judge who made the order is not available.

Appointment to settle

(17) A party may obtain an Appointment to settle an order in Form 28 and shall deliver the appointment and a draft order to all parties whose approval is required under subrule (2) at least 1 day before the time fixed by the appointment.

Party failing to attend on appointment to settle

(18) If a party fails to attend at the time appointed for settlement of an order, the judge may settle the order in the party's absence.

Review of settlement

(19) The court may review and vary the order as settled.

Clerk may draw order

(20) The court may direct the clerk to draw up and enter an order.

Special directions for carriage, entry or service

(21) The court may give special directions respecting the carriage, entry or service of an order.

Correction of orders

(22) The court may at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission, or may amend an order to provide for any matter which should have been but was not adjudicated upon.

Case file to be kept by clerk

(23) The original copy of all orders required to be drawn up shall be inserted by the clerk in a case file kept for that purpose, except where a photocopy of the order is taken and maintained.

RULE 44 – ENFORCEMENT OF ORDERS

Order to pay money

(1) An order to pay money to a person or into court may be enforced by a Writ of Execution in Form 45 or by Writ of Garnishment under the *Garnishee Act*, RSY 2002, c. 100.

Order for recovery of personal property or land

(2) An order for recovery of personal property or land may be enforced by a Writ of Execution (Possession or Delivery) in Form 46 or Writ of Execution (Rents and Profits) in Form 47.

Appointment of receiver

(3) An order may be enforced by the appointment of a receiver under Rule 56.

Production of order before execution

(4) No writ of execution shall issue without the production to the registry of a copy of the order upon which the writ is to issue.

Endorsement of writ

(5) A writ of execution shall be endorsed with the name and address of the lawyer or person causing it to be issued.

Issue of writ of execution where order to pay money within a period

(6) Where the order sought to be enforced is for the payment of money within a specified period, no writ of execution shall be issued until the expiration of the period.

Issue of writ of execution

(7) (a) Subject to these rules or an order of the court, a writ of execution may be issued by the clerk at any time during the lifetime of the order sought to be enforced.

(b) A writ of execution shall be prepared by the person seeking to enforce the order or the person's lawyer, shall be sealed by the clerk, and shall thereupon be deemed to be issued.

(c) The original writ of execution shall be filed in the registry.

Term and renewal of writ of execution

(8) (a) A writ of execution, if unexecuted, shall remain in force for two years, unless renewed.

(b) At any time before the expiration of a writ of execution, or a renewed writ of execution, the writ may be renewed for two years from the date of renewal on the application of the party issuing the writ.

(c) An application to renew a writ of execution may be made by requisition supported by an affidavit setting out the amount unpaid. The affidavit may be upon information and belief.

(d) A renewed writ of execution shall be endorsed by the court or the clerk with the date of the order granting renewal and the date of the renewal.

Enforcement costs

(9) (a) Unless the court otherwise orders, a party who is entitled to enforce an order is entitled to the costs, fees and expenses of enforcement.

(b) Subject to paragraph (c), where these rules or some other statute or regulation provides that enforcement costs may be included in the amount endorsed on any process of enforcement, the clerk may fix the amount to be endorsed on the process.

(c) Where a judgment debtor alleges that they have satisfied an order for the payment of money or otherwise, whether or not the costs of enforcement and interest on those costs have been paid:

(i) either the judgment creditor or debtor may apply to have the costs of enforcement assessed before the clerk, and Rule 60 applies; or

(ii) the judgment debtor may apply to the clerk for an accounting.

(d) On an accounting referred to in paragraph (c)(ii), Rule 32 applies and the clerk may certify:

(i) the amount, if any, then due to the judgment creditor;

(ii) the amount, if any, then due to the judgment debtor as a result of an overpayment; and

(iii) that the judgment has been paid.

(e) A certificate under paragraph (d)(iii) has the same effect as though it were an order under subrule (13).

Separate writs for costs

(10) Upon an order granting relief and costs there may be, at the election of the person entitled, either one writ or separate writs of execution for the relief granted and for the recovery of the costs.

Judgment for recovery of property other than land

(11) Where it is sought to enforce an order for the recovery of property other than land or money by writ of execution, upon the application of the judgment creditor, the court may order that execution issue for the delivery of the property without giving the other party the option of retaining the property upon paying the assessed value, and that if the property cannot be found, and unless the court otherwise orders, the sheriff shall take possession of all the other party's lands, goods and chattels until the other party delivers the property or, at the option of the judgment creditor, until the sheriff realizes from the other party's goods and chattels the assessed value of the property.

Acknowledgment of payment

(12) A judgment debtor may require, as a condition of paying a money judgment, that the judgment creditor forthwith execute, file and deliver an Acknowledgment of Payment, in Form 48.

Order that judgment has been paid

(13) Where a judgment debtor claims to have paid the judgment but has not obtained an acknowledgment of payment from the judgment creditor, the debtor may apply to the court for an order certifying that the judgment has been paid.

Stay of execution

(14) (a) The court may, at or after the time of making an order:

(i) stay the execution of the order until such time as it thinks fit; or

(ii) provide that an order for the payment of money be payable by instalments.

(b) Unless the court in an order under paragraph (a)(ii) otherwise provides, where an instalment is not paid by the time fixed for payment, the balance of the money remaining unpaid under the order is, at that time, due and payable without notice being given to the judgment debtor.

(c) Without limiting the generality of paragraph (a), a party against whom an order has been made may apply to the court for a stay of execution or other relief on grounds with respect to which the supporting facts arose too late for them to be pleaded, and the court may give relief it considers just.

Application for directions

(15) A sheriff, judgment creditor or judgment debtor may apply to the court for directions under Rule 46 concerning the sale of any property taken in execution.

Judgment summons

(16) A judgment creditor may apply in writing to the clerk to examine a judgment debtor under the *Collection Act*, RSY 2002, c. 35, after obtaining a date from the trial coordinator, and the clerk shall issue a Judgment Summons in Form 49.

Order of commitment

(17) A judgment debtor may be imprisoned by an order of commitment under the *Collection Act*, RSY 2002, c. 35, in Form 50.

Debtor to be brought before court

(18) Subject to subrule (20), a sheriff or peace officer executing an order of commitment shall promptly bring the person arrested before the court, and the person arrested may be examined by the court, and if the court considers that imprisonment is not appropriate, it may stay execution of the order and shall fix a time and place for a hearing to determine whether or not the order of commitment should be set aside or varied, and shall give directions for notice of the hearing to be given to the judgment creditor.

Application to set aside or vary order

(19) A person who is the subject of an order of commitment may apply to the court to set aside or vary the order, and the court may direct a stay of execution of the order pending the hearing of the application and give directions for service of notice of the hearing.

Payment of debt

(20) (a) A person who is the subject of an order of commitment may pay the amount payable endorsed on the order to the clerk.

(b) Upon payment to the clerk of the amount payable, the clerk shall issue a receipt to that effect.

(c) Upon payment of the amount payable or upon being shown a clerk's receipt to that effect, a sheriff or peace officer or warden shall release the person committed from custody and shall endorse the order accordingly and return it to the registry.

(d) All money received under this rule shall forthwith be paid to the judgment creditor.

Requisition for discharge

(21) A judgment creditor who has obtained an order of commitment may file in the registry a requisition requesting discharge of the person committed, and the clerk shall endorse the requisition and a copy with the words "This is your authority to

discharge (name) from custody" above the clerk’s signature, and, on being shown the copy of the requisition, a sheriff or peace officer or warden shall release the person committed from custody and shall endorse the order accordingly and return it to the registry.

Liability imposed by order

(22) No imprisonment under these rules extinguishes the liability imposed by an order.

RULE 45 – EXAMINATION IN AID OF EXECUTION

Examination of debtor

(1) Where a judgment creditor is entitled to a writ of execution upon, or otherwise enforce, an order of the court, the creditor may examine the judgment debtor for discovery as to:

(a) any matter pertinent to the enforcement of the order;

(b) the reason for non-payment or non-performance of the order;

(c) the income and property of the debtor;

(d) the debts owed to and by the debtor;

(e) the disposal the debtor has made of any property either before or after the making of the order;

(f) the means the debtor has, or has had, or in future may have, of satisfying the order; and

(g) whether the debtor intends to obey the order or has any reason for not doing so.

Examination of corporate, partnership or firm debtor

(2) An officer or director of a corporate judgment debtor, or a person liable to execution upon the order in the case of a partnership or firm judgment debtor, may, without an order, be examined for discovery upon the matters set out in subrule (1).

Limitation

(3) Unless the court otherwise orders, a person examined under subrule (1) or (2) shall not be further examined in the same proceeding for a year.

Examination of person other than debtor

(4) Upon being satisfied that any other person may have knowledge of the matters set out in subrule (1) the court may order the person to be examined for discovery concerning the person's knowledge.

Order in certain cases

(5) Where a difficulty arises in or about the execution or enforcement of an order the court may make any order for the attendance and examination of a party or person it thinks just.

Application of examination for discovery rules

(6) The provisions of Rule 27 apply, with such modifications as may be required, to an examination under this rule.

Use of examination

(7) Any part of an examination for discovery under this rule may be given in evidence in the same or any subsequent proceeding between the parties to the proceeding or between the judgment creditor and the person examined for discovery.

Costs

(8) Unless the court otherwise orders, the party conducting an examination under this rule is entitled to recover the costs of the examination from the debtor.

RULE 46 – SALES BY THE COURT

Court may order sale

(1) Where in a proceeding it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.

Sale in debenture holder's proceeding

(2) In a debenture holder's proceeding where the debenture holder is entitled to a charge on any property, the court, if it is of the opinion that eventually there must be a sale of the property, may order the sale before or after judgment, whether or not all interested persons are ascertained or served.

Conduct of sale

(3) Where an order is made directing property to be sold, the court may permit any person having the conduct of the sale to sell the property in the manner the person thinks just or as the court directs.

Directions for sale

(4) The court may give directions it considers just for the purpose of effecting a sale, including directions:

(a) appointing the person who is to have conduct of the sale;

(b) fixing the manner of sale, whether by contract conditional on the approval of the court, private negotiation, public auction, sheriff's sale, tender or some other manner;

(c) fixing a reserve or minimum price;

(d) defining the rights of a person to bid, make offers or meet bids;

(e) requiring payment of the purchase price into court or to trustees or to other persons;

(f) settling the particulars or conditions of sale;

(g) obtaining evidence of the value of the property;

(h) fixing the remuneration to be paid to the person having conduct of the sale and any commission, costs or the expenses resulting from the sale;

(i) that any conveyance or other document necessary to complete the sale be executed on behalf of any person by a person designated by the court; and

(j) authorizing a person to enter upon any land or building.

Application for directions

(5) A person having conduct of a sale may apply to the court for further directions.

Certificate of sale

(6) The result of a sale by order of the court shall be certified by the person having the conduct of the sale by completing the Certificate of Result of Sale in Form 51, verified by affidavit, and promptly filed after completion of the sale.

Vesting order

(7) The person having conduct of the sale may apply to the court for a vesting order in favour of a purchaser.

RULE 47 – APPLICATIONS

How an application must be brought

(1) If an application in a proceeding is authorized to be made to the court, it must be made by Notice of Application in Form 52.

(1.1) A notice of application shall contain a concise statement of the facts that support the relief claimed, as well as reasons for the relief.

An application by consent or if notice not required

(2) An application referred to in Rule 43(10), (11), (12) or (13) may be made in accordance with that rule.

Notice of application

(3) Subject to subrule (2), a party wishing to bring an application must serve or deliver a notice of application at or before the time at which the notice of hearing is filed under Rule 48.

More than one matter may be included

(4) A party may include, in one application, claims for relief in respect of more than one matter.

Service or delivery

(5) Unless these rules provide otherwise, the applicant must deliver to each party of record and must serve on each other person, other than a party, who may be affected by the order sought:

(a) a copy of the notice of application;

(b) a copy of each affidavit in support of the application that has not already been filed and served; and

(c) any notice that the applicant is required to give under Rule 19(8).

Response

(6) Subject to subrule (11), a party or person who receives documents under subrule (5) and who wishes to receive notice of the time and date of the hearing of the application or who wishes to respond to it must deliver to the applicant, and to every other party of record one copy, of:

(a) a Response in Form 11;

(b) each affidavit that has not already been filed and served on which the respondent intends to rely; and

(c) any notice that that person is required to give under Rule 19(8),

on or before the 8th day after the date on which the notice of application was served or delivered.

(6.1) A response shall contain a concise statement of the facts and reasons for opposing the application.

Reply by applicant

(7) An applicant who wishes to respond to any document provided under subrule (6) must, no later than the date on which the Notice of Hearing is delivered to the respondent in accordance with Rule 48, deliver any affidavits in reply to each person who delivered a response under subrule (6).

No additional affidavits

(8) Unless all parties of record consent or the court otherwise orders, a party or person must not deliver any affidavits additional to those delivered under subrules (5), (6) and (7).

Place of hearing of application

(9) The application shall be heard at Whitehorse, unless otherwise ordered.

Appearance at hearing

(10) A party or person may appear in person, or by telephone or videoconference with leave of the court or by consent of the parties.

Application for directions

(11) A party or person may apply for directions for an application at an Appearance Day or a case management conference.

(12) When counsel wish to refer to the transcript of an examination for discovery or interrogatories in an application, the Notice of Application must include notice that the material will be referred to. The particulars including page and line numbers and/or question numbers must be referenced in the Notice of Application. A copy of the relevant pages must be filed.

RULE 48 – SETTING DOWN APPLICATIONS FOR HEARING

Application of this rule

(1) This rule applies to petitions and applications.

Definitions

(2) In this rule:

"applicant" means a person bringing a petition or application;

"respondent" means a person who has delivered a Response in Form 11.

Setting application for hearing

(3) An applicant wishing to set an application down for hearing must file:

(a) a Notice of Hearing in Form 103; and

(b) 1 copy of the petition or application so marked as to indicate claims for relief that will not proceed and those that will proceed by consent.

Date and time of hearing

(4) If the application is estimated to take less than 30 minutes for all parties, the hearing must be set for a date and time on which the court regularly holds chambers or at such other time or date as has been fixed by the trial coordinator.

Date and time if hearing time more than 30 minutes

(5) If the application is estimated to take more than 30 minutes, the date and time of hearing must be fixed by the trial coordinator.

Time for filing and delivery of notice of hearing

(6) The applicant must file and deliver the notice of hearing to each respondent at least 7 days, not counting Saturday or holidays, before the date set for the hearing, unless the application is made without notice or by consent.

Documents to be filed with the notice of hearing if application is without notice

(7) If the application is to be made without notice, the applicant must file, with the notice of hearing, the original of every affidavit, and of every other document, that:

(a) has not already been filed in the proceeding; and

(b) is to be referred to at the hearing.

Documents to be filed with the notice of hearing if application is by consent, unopposed or estimated to take not more than 30 minutes

(8) If the application is to be made by consent, will be unopposed, or will be opposed but is not estimated by the applicant or by any respondent to take more than 30 minutes, the applicant must file, with the notice of hearing and other documents referred to in subrule (3):

(a) the original of every affidavit, and of every other document, that:

(i) is delivered by the applicant to a respondent with respect to the application; and

(ii) is to be referred to at the hearing; and

(b) a copy of every response, affidavit and other document that:

(i) was delivered by a respondent to the applicant with respect to the application; and

(ii) is to be referred to at the hearing.

Documents to be filed by respondent if application is opposed

(9) If the application will be opposed, each respondent must, before the hearing commences, file the original of every affidavit, and of every other document, that:

(a) was delivered by that respondent to the applicant with respect to the application; and

(b) is to be referred to at the hearing by that respondent.

Procedure if the application is estimated to take more than 30 minutes

(10) If the application will be opposed and the applicant or any respondent has estimated that the time required for the hearing of the application will be more than 30 minutes:

(a) the applicant must prepare an Outline in Form 104A and each respondent must prepare an outline in Form 104B and:

(i) the applicant must file and deliver the applicant's outline to each respondent with or after delivery of the applicant's reply affidavits and at least 7 days, not counting Saturday or holidays, before the date set for the hearing; and

(ii) each respondent must file and deliver that respondent's outline to the applicant and to each other respondent at least 3 days, not counting Saturday or holidays, before the date set for the hearing;

(b) the applicant must compile a chambers record in a ring binder or in some other form of secure binding;

(c) the chambers record must contain, in consecutively numbered pages, or separated by tabs, the following documents in the following order:

(i) a title page bearing the style of proceeding and the names of lawyers or parties if self-represented;

(ii) an index;

(iii) a copy of the applicant's outline;

(iv) a copy of the outline of each respondent;

(v) a copy of the petition or application, as the case may be;

(vi) a copy of each Response in Form 11; and

(vii) a copy of every affidavit that is to be referred to at the hearing;

(d) the chambers record may contain any of the following:

(i) a draft order;

(ii) [deleted]

(iii) a list of necessary authorities;

(iv) a draft bill of costs;

(e) the chambers record must not contain affidavits of service;

(f) the applicant must file the chambers record and deliver the index of the chambers record to each respondent who has responded to the application 2 days, not counting Saturday or holidays, before the date of hearing;

(g) the party or person that intends to rely on an affidavit must file the original affidavit 2 days, not counting Saturday or holidays, before the date of hearing.

If respondent's application is to be heard at the hearing

(11) If a respondent intends to bring on an application for hearing at the same time as the applicant's application and the applications together are estimated by any party to take more than 30 minutes to hear, subrule (10) applies and the parties must, so far as is possible, prepare and file a joint chambers record, 2 days, not counting Saturday or holidays, before the date of hearing, and agree to a date for the hearing of both applications.

Chambers record to be returned

(12) The judge may direct the chambers record to be destroyed or returned to the applicant at the conclusion of the hearing.

May apply for directions

(13) (a) The applicant or a respondent may apply for directions in a case management conference or by way of appearance notice.

(b) If the applicant does not set an application down for hearing within a reasonable time after a respondent has requested the applicant to do so, a respondent may apply by appearance notice for directions.

RULE 49 – AFFIDAVITS

Affidavit to be filed

(1) An affidavit used in a hearing or trial must be filed.

Form and content of affidavit

(2) An affidavit shall:

(a) be expressed in the first person and show the name, municipality, territory/ province of the deponent;

(b) if the deponent is a party or the lawyer, agent, director, officer or employee of a party, state that fact;

(c) be divided into paragraphs numbered consecutively;

(d) be in Form 59; and

(e) when containing more than one exhibit, have tabs placed on the first page of each exhibit, so the exhibits may be readily located.

Identifying affidavits

(3) An affidavit, other than an affidavit of service or of delivery, must be endorsed, in the top right hand corner of the title page, with:

(a) the initials and surname of the deponent;

(b) the sequential number of the affidavit made by that deponent in the same proceeding; and

(c) the date on which the affidavit was made,

as in the following example:

J. Doe #3
July 24, 2000.

Making affidavit

(4) An affidavit is made when:

(a) the affidavit is sworn or affirmed by the deponent;

(b) the deponent:

(i) signs the affidavit; or

(ii) where the deponent is unable to sign the affidavit, places their mark on it; and

(c) the jurat of the affidavit is signed by the person before whom it is sworn or affirmed.

Identification of notary public or other person receiving an affidavit

(4.1) The notary public or other person receiving an affidavit shall, below or adjacent to their signature, legibly print or stamp:

(a) their first and last name;

(b) their office; and

(c) if applicable, the expiry date of their term of enrolment.

(4.2) Where a notary public is a government employee appointed under s. 15 of the *Notaries Act*, RSY 2002, c. 158, they shall also set out the position title, government, and government department to which the appointment is attached.

Reference to oath in affidavit or exhibit

(5) In an affidavit or in a certificate placed on an exhibit, the word "sworn" shall be deemed to include the word "affirmed".

Jurat where deponent unable to read

(6) Where it appears to a person before whom an affidavit is sworn that a deponent is unable to read it, they shall certify in the jurat that the affidavit was read in their presence to the deponent who seemed to understand it.

Interpretation to deponent who does not understand English

(7) Where it appears to a person before whom an affidavit is to be sworn that the deponent does not understand the English language, the affidavit shall be interpreted to the deponent by a competent interpreter who shall swear by affidavit in Form 60 that they have interpreted the affidavit to the deponent.

Exhibit to be marked

(8) An exhibit referred to in an affidavit must be identified by the person before whom it is sworn by signing a certificate placed on the exhibit in the following form:

This is Exhibit ..... referred to in the affidavit of ..... sworn/affirmed before me on ..... [date].

Copies of documentary exhibits

(9) With leave of the court in case management, an exhibit referred to in an affidavit need not be filed, but must be made available for the use of the court and for the prior inspection of a party to the proceeding and, in the case of a documentary exhibit of 5 pages or less, a true reproduction must be attached to the affidavit and to all copies served or delivered.

Numbering exhibit pages

(10) Each page of the documentary exhibits referred to in an affidavit, other than an affidavit of service or of delivery, must be numbered consecutively, beginning with the first page of the first exhibit and ending with the last page of the last exhibit:

(a) on the original exhibits and on all copies that are served or delivered; and

(b) even though one or more of those exhibits is not attached to the affidavit.

Alterations to be initialled

(11) The person before whom an affidavit is sworn shall initial all alterations in the affidavit, and unless so initialled the affidavit shall not be used in a proceeding without leave of the court.

Contents of affidavit

(12) An affidavit may state only what a deponent would be permitted to state in evidence at a trial, except that, if the source of the information is given, an affidavit may contain statements as to the deponent's information and belief, if it is made:

(a) in respect of an application for pre-trial order; or

(b) by leave of the court under Rule 42(53)(a) or 50(9)(e).

Use of defective affidavit

(13) With leave of the court an affidavit may be used in evidence notwithstanding an irregularity in form.

Affidavit sworn before proceeding commenced

(14) An affidavit may be used in a proceeding notwithstanding that it was sworn before the proceeding was commenced.

Affidavit of patient under legal disability

(15) If an affidavit is required for use in a proceeding and the proposed deponent is a person under a legal disability, the affidavit may be sworn, on information and belief, by the litigation guardian of the person.

RULE 50 – CHAMBERS

Applications to be heard in chambers

(1) All petitions and, unless made in the course of trial, all applications, shall be heard and disposed of by the court in chambers.

Particular applications to be heard in chambers

(2) Without limiting the generality of subrule (1), the following matters shall be heard and disposed of by the court in chambers:

(a) appeals from and applications to confirm, vary or set aside orders, reports, certificates or recommendations of a special referee, clerk or other officer of the court;

(b) actions or issues in actions that have been ordered to be proceeded with by affidavit or on documents before the court, and stated cases and hearings on a point of law;

(c) applications for judgment under Rules 17, 18, 19, and 31;

(d) applications to vary or set aside a judgment;

(e) matters which, being otherwise proceeded with by action, are ordered to be disposed of in chambers.

Definition of "application"

(3) In this rule, "application" includes all proceedings that may be heard and disposed of in chambers.

Failure of party to attend

(4) If a party to an application fails to attend, whether on the return of the application or at the time appointed for the consideration of the matter, the court may proceed if, considering the nature of the case, it thinks it expedient to do so, and may require evidence of service it thinks necessary.

Reconsideration of proceeding

(5) If the court has proceeded under subrule (4), the proceeding shall not be reconsidered unless the court is satisfied that the party failing to attend was not guilty of wilful delay or default.

(6) [repealed by O.I.C. 2022/168]

Chambers list

(7) Each application to be spoken to, when set down for hearing, must be entered in the registry in a list kept for that purpose.

(8) The dates, times and procedures for regular chambers shall be set out in a Practice Direction.

Evidence on an application

(9) On an application, evidence shall be given by affidavit, but the court may:

(a) order the attendance for cross-examination of a deponent, either before the court or before another person as the court directs;

(b) order the examination of a party or witness, either before the court or before another person as the court directs;

(c) give directions required for the discovery, inspection or production of a document or copy thereof;

(d) order an inquiry, assessment or accounting under Rule 32; and

(e) permit other forms of evidence to be adduced.

Hearing of application in public

(10) Except in cases of urgency, an application shall be heard in a place open to the public when the application is made, unless the court, in matters relating to children or in the case of a particular application, directs that for special reasons the application ought to be dealt with in private.

Adjournment of application returnable on a holiday

(11) Where an application has been made returnable on a day on which the court does not hold chambers, the application will stand adjourned without order to the next day on which the court holds chambers.

Power of the court

(12) On an application the court may:

(a) grant or refuse the relief claimed in whole or in part, or dispose of any question arising on the application;

(b) adjourn the application from time to time, either to a particular date or generally, and when the application is adjourned generally, a party may set it down by requisition on 2 days' notice, not counting Saturday or holidays, for further hearing;

(c) obtain the assistance of one or more experts, in which case Rule 33 applies; and

(d) order a trial of the proceeding, either generally or on an issue, and order pleadings to be filed, and may give directions for the conduct of the trial and of pre-trial proceedings, and for the disposition of the application.

Powers of court if notice not given

(13) If it appears to the court that a petition or application ought to have been but was not served on or delivered to a person, the court may:

(a) dismiss the application or dismiss it only against that person;

(b) adjourn the application and direct that service or delivery be effected, or that notice be given in some alternate manner, to that person; or

(c) direct that any order made, together with any other documents the court may order, be served on or delivered to that person.

Orders without notice

(14) If the nature of the application or the circumstances render service of a petition or application impracticable or unnecessary, or in case of urgency, the court may make an order without notice.

Service of orders required

(15) If an order is made without notice by reason of urgency, a copy of the order and the documents filed in support must be served by the party obtaining the order on each person who is affected by the order.

Setting aside orders made without notice

(16) On the application of a person affected by an order made without notice, the court may vary or set aside the order.

Adjournment

(17) The hearing of an application may from time to time be adjourned by the trial coordinator or the clerk.

Notes of proceedings

(18) The clerk shall attend at and keep notes of all proceedings in chambers with a short statement of the questions or points decided or orders made at every hearing.

RULE 51 – INJUNCTIONS

Applications for pre-trial injunctions

(1) An application for a pre-trial injunction may be made by a party whether or not a claim for an injunction is included in the relief claimed.

Applications for pre-trial injunctions before proceeding commenced

(2) An application for a pre-trial injunction may be made by filing a Requisition in Form 3 with supporting Affidavits in Form 59, before commencement of a proceeding and the injunction may be granted on terms providing for the commencement of the proceeding.

Applications for pre-trial injunctions without notice

(3) An application for a pre-trial injunction may be made without notice if the circumstances permit.

Injunction by court order

(4) No writ of injunction shall be issued. An injunction shall be by order of the court.

Undertaking as to damages

(5) Unless the court otherwise orders, an application for a pre-trial injunction shall contain the applicant's sworn undertaking to abide by any order which the court may make as to damages.

Application for injunction after judgment

(6) In a proceeding in which an injunction has been or might have been claimed, a party may apply by petition after judgment to restrain another party from the repetition or continuance of the wrongful act or breach of contract established by the judgment or from the commission of any act or breach of a like kind.

RULE 52 – DETENTION, PRESERVATION AND RECOVERY OF PROPERTY

Property which is the subject matter of a proceeding

(1) The court may make an order for the detention, custody or preservation of any property that is the subject matter of a proceeding or as to which a question may arise and, for the purpose of enabling an order under this rule to be carried out, the court may authorize a person to enter upon any land or building.

Fund which is the subject matter of a proceeding

(2) Where the right of a party to a specific fund is in dispute in a proceeding, the court may order the fund to be paid into court or otherwise secured.

Allowance of income from property

(3) Where property is the subject matter of a proceeding and the court is satisfied that it will be more than sufficient to answer all claims on it, the court at any time may allow the whole or part of the income of the property to be paid, during such period as it may direct, to a party who has an interest in it or may direct that part of the personal property be delivered or transferred to a party.

Recovery of specific property

(4) Where a party claims the recovery of specific property other than land, the court may order that the property claimed be given up to the claimant, pending the outcome of the proceeding, either unconditionally or upon terms relating to giving security, time, mode of trial or otherwise as it thinks just.

Compensation for wrongful recovery

(5) Unless the court otherwise orders, if an order is made under subrule (4) the order shall contain the claimant's undertaking to abide by any order which the court may make as to damages arising out of delivery of the property to the claimant or compliance with any other order.

RULE 53 – APPEALS

Application

(1) Where by a statute or regulation, an appeal or an application in the nature of an appeal from the decision, direction or order of any person or body, including the Territorial Court of Yukon, is authorized to be made to the court, a clerk or to a judge, the appeal shall be governed by this rule to the extent that it is not inconsistent with any procedure provided for in the statute or regulation.

Form

(2) An appeal shall be commenced by filing in a registry a Notice of Appeal in Form 56.

Directions

(3) A notice of appeal must include an application for directions as to the conduct of the appeal.

Application for direction

(4) An application for directions under subrule (3) must be set for hearing on a date not less than 7 days after the notice of appeal has been served, unless the court otherwise directs. The application for directions may be heard at an Appearance Day or case management conference.

Service of notice of appeal

(5) A notice of appeal shall be served upon the person or body which gave the decision or direction or made the order and on all other persons who may be affected by the order sought, unless the court otherwise directs.

Powers of court

(6) The court may give directions it considers necessary for the proper hearing and determination of the appeal and, without limiting the generality of such directions, may make an order:

(a) that documents or transcripts or minutes be produced;

(b) that appeals under the *Small Claims Court Act*, RSY 2002, c. 204, proceed by transcript, unless the court orders it to proceed by way of new trial;

(c) that the appeal be determined by way of stated case, or argument upon a point of law;

(d) prescribing time limits for taking steps in and for the hearing of the appeal; or

(e) that the appeal be disposed of summarily,

and may exercise the powers of the court as on a petition.

Respondent to enter appearance

(7) A person who intends to oppose the appeal shall enter an appearance under Rule 14(1)(b).

Notice of hearing of appeal

(8) After obtaining from the trial coordinator a date for the hearing of the appeal, if the appellant wishes to proceed with the appeal, the appellant must set the appeal for hearing on that date by:

(a) filing a Notice of Hearing of Appeal in Form 57; and

(b) serving a copy of the notice of hearing of appeal on each respondent.

Notice of abandonment of appeal

(9) An appellant may abandon an appeal by:

(a) filing a Notice of Abandonment of Appeal in Form 58; and

(b) serving a copy of the notice of abandonment of appeal on each respondent.

RULE 54 – APPLICATION FOR JUDICIAL REVIEW

Application of rule

(1) Applications for judicial review of administrative decisions seeking relief in the nature of declaration, injunction, *mandamus*, prohibition, *certiorari* or *habeas corpus* must be brought under this rule, except by leave of the court.

Writs abolished

(2) No writ of *mandamus,* prohibition, *certiorari*, or *habeas corpus* shall be issued but all necessary directions shall be made by order.

Form of application for judicial review

(3) An application for judicial review is an originating application and shall be commenced by an Application for Judicial Review in Form 2A, setting out:

(a) the names of the applicant and respondent;

(b) the decision and decision-maker in respect of which the application is made;

(c) the date and details of the decision in respect of which judicial review is sought and the date on which it was first communicated to the applicant;

(d) a precise statement of the relief sought;

(e) a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied upon; and

(f) a list of the documentary evidence to be used at the hearing of the application.

Limited to single decision

(4) Unless the court orders otherwise, an application for judicial review shall be limited to a single decision in respect of which relief is sought and need not specify the relief set out in subrule (1).

Respondents

(5) An applicant shall name as a respondent every person directly affected by the order sought in the application and every person required to be named as a party under the statute pursuant to which the application is brought.

(5.1) Where in an application for judicial review there are no persons that can be named under Rule 54(5), the applicant shall name the decision-maker in respect of which the application is made as a respondent

Filing of Application for Judicial Review and Affidavits

(5.2) Unless the court directs otherwise, the applicant shall file the application for judicial review and supporting affidavits at the same time.

Service of application for judicial review

(6) Unless the Court directs otherwise, within 10 days after the filing of an Application, the applicant shall serve it upon:

(a) all respondents;

(b) the decision-maker in respect of which the application is brought;

(c) any other person who participated in the proceeding before the decision-maker in respect of which the application is made;

(d) the Government of Yukon; and

(e) where the application is made under a statute:

(i) the official appointed under that statute; and

(ii) any other person required to be served under that statute.

Appearance and response

(6.1) A respondent who intends to oppose an application for judicial review shall file and serve an Appearance in Form 9 and a Response in Form 11 within the time set out in the application for judicial review.

Person affected may take part in proceeding

(7) The court may order that a person who may be affected by a proceeding for an order in the nature of *mandamus* may take part in the proceeding to the same extent as if served with the application for judicial review.

Case management

(8) Either the applicant or a respondent may seek directions in a case management conference or at an Appearance Day.

(9) The court may order that a case management conference be held.

(10) [repealed by O.I.C. 2022/168]

Applicant's affidavits

(11) Within 30 days after issuance of an application, an applicant shall file and serve its

supporting affidavits and documentary exhibits.

Respondent's affidavits

(12) Within 30 days after service of the applicant's affidavits, a respondent shall file and serve any supporting affidavits and documentary exhibits.

Cross-examination on affidavits

(13) The applicant or a respondent may apply for the right to cross-examine the deponent on their affidavit.

Additional steps

(14) With leave of the court, a party may:

(a) file additional affidavits;

(b) conduct cross-examinations on additional affidavits; or

(c) file a supplementary record.

Preparation by decision-maker

(15) The court may order the decision-maker to prepare a record of the proceeding to be reviewed.

Requirement to file additional material

(16) Where the court considers that the record is incomplete, the court may order that other material, including any portion of a transcript, be filed.

Setting the application down for hearing

(17) The applicant or a respondent shall follow the procedure in Rule 48 to set the application for judicial review for hearing.

Testimony regarding issue of fact

(18) On application, the court may, in special circumstances, authorize a witness to testify in court in relation to an issue of fact raised in an application.

Material from tribunal

(19) A party may request material relevant to an application for judicial review that is in the possession of a decision-maker whose order is the subject of the application and not in the possession of the party, by filing with the registry a written request, identifying the material requested and serving a copy of the written request on the decision-maker.

Request in application for judicial review

(20) An applicant may include a request under subrule (19) in its application.

Service of request

(21) If an applicant does not include a request under subrule (20) in its application, the applicant shall serve the request on the other parties.

Material to be transmitted

(22) Within 20 days after service of a request under subrule (19), the decision-maker shall transmit:

(a) a certified copy of the requested material to the registry and to the party making the request; or

(b) where the material cannot be reproduced, the original material to the registry.

Objection by decision-maker

(23) Where a decision-maker or party objects to a request under subrule (19), the decision-maker or the party shall inform all parties and the clerk, in writing, of the reasons for the objection.

Directions as to procedure

(24) The court may give directions to the parties and to a decision-maker as to the procedure for making submissions with respect to an objection under subrule (23).

Order

(25) The court may, after hearing submissions with respect to an objection under subrule (23), order that a certified copy, or the original, of all or part of the material requested be forwarded to the registry.

Return of material

(26) Unless the court directs otherwise, after an application for judicial review has been heard, the clerk shall return to a decision-maker any original material received from it under subrules (22)(b) and (25).

RULE 55 – INTERPLEADER

Entitlement to relief by way of interpleader

(1) Where a person (in this rule called the "applicant") is sued or expects to be sued in respect of property in the person's possession or under the person's control or in respect of the proceeds from a disposition of the property, or receives a claim in respect of the property or proceeds by or from 2 or more persons (in this rule called the "claimants") making adverse claims and the applicant claims no beneficial interest in the property, the applicant may apply to the court for relief by way of interpleader.

Claim to real or personal property taken by sheriff

(2) A person who makes a claim to or in respect of property taken or intended to be taken by a sheriff in the execution of any process, or to the proceeds from a disposition of the property, shall deliver to the sheriff written notice of the person's claim and the person's address for delivery.

Sheriff to deliver notice

(3) On receipt of a notice of claim, a sheriff shall promptly deliver a copy to the person who caused the process to issue, and that person shall, within 7 days after receiving the copy, deliver to the sheriff a written notice stating whether that person admits or disputes the claim.

Where claim admitted

(4) On receipt of a notice admitting a claim, a sheriff shall release any property the claim to which is admitted, and the court may restrain the bringing of a proceeding against the sheriff for or in respect of having taken possession of the property and, unless the court otherwise orders, a person who admits a claim is only liable to the sheriff for any costs, fees and expenses incurred by the sheriff before receipt of the notice admitting the claim.

Sheriff may apply for interpleader relief

(5) On receipt of a notice disputing a claim or on the failure of the person who caused the process to issue to give the sheriff the notice within the time required by subrule (3), the sheriff may apply for interpleader relief.

Mode of application

(6) An application for interpleader relief shall be made by petition, unless it is made in a proceeding already commenced, in which case it may be made by notice of application.

Affidavit

(7) An application for interpleader relief shall be supported by an affidavit stating the names and addresses of the claimants of whom the applicant has knowledge and that the applicant:

(a) claims no beneficial interest in the property in dispute, other than for costs, fees or expenses;

(b) does not collude with any claimant of the property; and

(c) is willing to deliver the property to the court or to dispose of it as the court may direct.

Application for interpleader relief

(8) An application for interpleader relief may be made without notice, and the court may deal with the matter summarily or may give directions for service.

Powers of court on hearing application

(9) On the hearing of an application for interpleader relief the court may:

(a) order a claimant to be made a party in a proceeding already commenced in substitution for or in addition to the applicant;

(b) order an issue between the claimants to be stated and tried and may direct which claimant is to be plaintiff and which defendant;

(c) on the request of the applicant or a claimant, determine the rights of the claimants summarily;

(d) if a claimant fails to attend, or attends and fails or refuses to comply with an order made in the proceeding, make an order declaring the claimant be forever barred from prosecuting the claim against the applicant, without affecting the rights of the claimants as between themselves;

(e) stay any further step in a proceeding;

(f) where there are interpleader applications pending in several proceedings, make an order that shall be binding on all the parties to the various proceedings;

(g) order the costs of the applicant to be paid out of the property or proceeds;

(h) declare that the liability of the applicant with respect to the property or the proceeds is extinguished; and

(i) make any other order it thinks just.

RULE 56 – RECEIVERS

Appointment

(1) The court may appoint a receiver in any proceeding either unconditionally or on terms, whether or not the appointment of a receiver was included in the relief claimed by the applicant.

Form of security

(2) Unless the court otherwise orders, a receiver shall give security as the court may direct in Form 55, Security of Receiver by Undertaking, and until that security is given, the order appointing the receiver shall not be presented for entry.

Remuneration

(3) The court shall fix any remuneration to be paid to a receiver.

Accounts

(4) Unless the court otherwise orders, a receiver shall file and deliver their accounts annually.

RULE 57 – FORECLOSURE AND CANCELLATION

Commencement

(1) A proceeding for foreclosure of the equitable right to redeem mortgaged property or for redemption shall be commenced by Petition for Foreclosure in Form 2B.

Service

(2) All persons whose interest in or claim to the mortgaged property is sought to be extinguished and all persons against whom any relief is sought shall be made respondents, and unless the court otherwise orders, it is not necessary to join any other person as a respondent.

Joinder of claim or party

(3) Notwithstanding Rule 10(1) a petitioner under this rule may join in the proceeding any claim arising out of the mortgage or out of any bond or collateral security or obligation given for the mortgage debt and may join as a party any person who is liable to pay the mortgage debt.

Person filing interest after certificate of pending litigation

(4) A person who registers or files in a land title office an interest, right or claim in or to the mortgaged property after the petitioner has registered a certificate of pending litigation in respect of the proceeding against the mortgaged property, need not be served with the petition and is bound by an order made in the proceeding, but the person may enter an appearance in the proceeding.

(4.1) The following shall govern the filing and setting aside of certificates of pending litigation in the Land Titles Office and in the Office of the Mining Recorder:

(a) where an action is commenced in which an interest or estate in land or a mining claim is in question, the clerk may issue a Certificate of Pending Litigation in Form 117;

(b) a party who seeks a certificate of pending litigation shall include, in the pleading that commences the action, a claim for it with a description of the land or mining claim in question sufficient, for the purpose of registration in a Land Titles Office to identify the land, or in the Office of the Mining Recorder to identify the claim;

(c) a certificate of pending litigation shall be served with the originating document in the action on all parties to the action;

(d) a person affected by the issuance or registration of a certificate of pending litigation may apply to the court, on notice, for an order setting aside the certificate or discharging the registration of the certificate;

(e) on an application under paragraph 4.1(d), the court may make such order as it considers just, including giving directions for the summary determination of any issue relating to the issuance or registration of the certificate; or

(f) the clerk shall issue, without an order, a Withdrawal of Certificate of Pending Litigation in Form 118 at the request of the party who sought it.

Powers of the court

(5) The court may:

(a) make a final order of foreclosure or order that a respondent shall, within a redemption period that the court may fix, or promptly, pay to the petitioner what is due under the mortgage and for costs, and that, in default of payment, the respondent shall be foreclosed of their equity of redemption;

(b) determine summarily or order that an account be taken of, and that the clerk certify, what is due to the petitioner or to any person on the date of hearing of the petition or the accounting and either:

(i) the daily amount of interest; or

(ii) if the daily amount of interest may fluctuate, the method for calculating such interest

from the date of the hearing of the petition or the accounting to the expiration of the period of redemption;

(c) determine summarily or order an inquiry to determine any issues raised between respondents, including priorities;

(d) determine summarily or order an inquiry to determine whether a person should be served with the petition for foreclosure;

(e) order at what times, on what terms and in what order of priority respondents may redeem the mortgaged property and that in default they shall be foreclosed of any interest, right or claim in or to the mortgaged property;

(f) grant judgment for any amount found due, or which may be certified to be due on an accounting;

(g) order a sale of the mortgaged property;

(h) grant further or corollary relief; and

(i) make an order under Rule 50(12).

Final order

(6) In default of payment in accordance with an order made under subrule (5), a final order of foreclosure may be granted against a respondent on application by the petitioner.

Order for sale

(7) A party of record may apply at any time for an order that the mortgaged property be sold or be put up for sale.

Inquiry to settle terms of sale

(8) The court may order an inquiry to settle the terms of a sale.

Order confirming sale

(9) Notwithstanding that the time for redemption has not expired, the person having conduct of a sale may apply to the court for an order confirming the sale, directing the disposition of the proceeds and vesting title in the purchaser.

Notice to assess costs

(10) A respondent desiring to redeem may, upon paying to the petitioner the amount due under the mortgage, give notice to the petitioner to assess costs, and if, within 14 days of delivery of the notice, the petitioner has not filed a bill of costs for assessment, the petitioner shall not be entitled to costs.

Agreement for sale

(11) This rule applies to a proceeding by a vendor on an agreement for sale of land in which a claim is made for specific performance of an agreement for sale and for its cancellation upon failure to perform.

RULE 58 – RECIPROCAL ENFORCEMENT OF JUDGMENTS

Applications

(1) The *Reciprocal Enforcement of Judgments* Act, RSY 2002, c. 189, governs applications to enforce judgments from reciprocating states and applicants may seek directions in a case management meeting or at an appearance day.

(2) An Order to Register a Foreign Judgment shall be in Form 61.

(3) If notice is not required, an application may be made under Rule 43(13).

RULE 59 – CONTEMPT OF COURT

Non-compliance with order

(1) If an order or an order for the specific performance of a contract is not obeyed, the court, besides or instead of proceeding against the disobedient person for contempt, may direct that the act required to be done may be done so far as is practicable by the person who obtained the order, or some other person appointed by the court, at the cost of the disobedient person; and upon the act being done, the expenses incurred may be ascertained in the manner as the court may direct, and execution may issue for the amount so ascertained and costs.

Power of court to punish

(2) The power of the court to punish contempt of court shall be exercised by imprisonment or by imposition of a fine or both.

Corporation in contempt

(3) An order against a corporation wilfully disobeyed may be enforced by one or more of the following:

(a) imposition of a fine upon the corporation;

(b) imprisonment of one or more directors or officers of the corporation;

(c) imposition of a fine upon one or more directors or officers of the corporation.

Special costs

(4) Instead of or in addition to making an order of imprisonment or imposing a fine, the court may order a person to give security for the person's good behaviour.

Certain acts as contempt

(5) A person who is guilty of an act or omission described in Rule 2(5) or 42(22), in addition to being subject to any consequences prescribed by those rules, is guilty of contempt of court and subject to the court's power to punish contempt of court.

Apprehension of person

(6) Where the court is of the opinion that a person may be guilty of contempt of court, it may order, by Warrant in Form 62 directed to a sheriff or other officer of the court or to a peace officer, that the person be apprehended and brought before the court. On the person being brought before the court, the court in a summary manner may adjudge the innocence or guilt of the person and punish the person for the contempt, if any, or may give the directions it thinks fit for the determination of the person's innocence or guilt and punishment.

(7) Where the court is of the opinion that a corporation may be guilty of contempt of court, it may order by its Warrant in Form 62 directed to a sheriff or other officer of the court or to a peace officer, that any director, officer or employee of the corporation be apprehended and brought before the court. On the person being brought before the court, the court in a summary manner may adjudge the innocence or guilt of the corporation and punish the corporation for the contempt, if any, or may give the directions it thinks fit for the determination of its innocence or guilt and the punishment to be imposed.

Release of apprehended person

(8) The court may order the release of a person apprehended under subrule (6) or (7) on receiving an Undertaking in Form 63 from that person.

Order for release

(9) A Release Order under subrule (8) shall be in Form 64.

Proceeding for contempt

(10) A party taking proceedings for contempt shall serve the person alleged to be in contempt with a copy of the notice of application and all affidavits in support of it at least 7 days before the hearing of the application.

(11) An application under subrule (10) shall be supported by affidavit setting out the conduct alleged to be contempt of court.

Hearing

(12) The court may give directions as to the mode of hearing the application, including an order that the matter be transferred to the trial list under Rule 50(12).

Service of order not necessary

(13) Where the court is satisfied that a person has actual notice of the terms of an order of the court, it may find the person guilty of contempt for disobedience of the order, notwithstanding that the order has not been served on the person.

Suspension of punishment

(14) The court at any time may direct that the punishment for contempt be suspended for the period or on the terms or conditions it may specify.

Discharge of person

(15) The court on application by or on behalf of a person committed to prison for contempt may discharge that person, notwithstanding that the period of the imprisonment may not have elapsed.

Weekly review of person in custody

(16) Where the court orders a person committed without specifying in days, weeks or months the period of the imprisonment, the sheriff shall bring that person before the court at intervals of not more than 7 days, in order that the court may review the imprisonment and determine whether relief as set out in subrule (14) or (15) should be granted.

RULE 60 – COSTS

How costs assessed generally

(1) Where costs are payable to a party under these rules or by order:

(a) by another party;

(b) out of a fund of other parties; or

(c) out of a fund in which the party whose costs are being assessed has a common interest with other persons,

they shall be assessed as party and party costs under Appendix B, unless the court orders that they be assessed as special costs, increased costs, or awards a lump sum.

Special costs

(1.1) The court may award special costs when a party's conduct is reprehensible, scandalous or outrageous and the circumstances call for a rebuke.

Increased costs

(1.2) Where the court is of the view that, as a result of unusual circumstances, an award of costs on a given scale would be inadequate or unjust, the court may order increased costs in accordance with sections 2(e) and (f) of Appendix B.

Lump sum costs

(1.3) The court may fix a lump sum as the costs of a proceeding, including a trial and an application and may fix those costs, either inclusive or exclusive of disbursements.

Costs to be reasonable

(2) On an assessment of party and party costs, the court shall allow those fees under Appendix B that were proper or reasonably necessary to conduct the proceeding.

Review of an assessment

(3) Where the court orders that costs be assessed as special costs, the court shall allow those fees that it considers were proper or reasonably necessary to conduct the proceeding to which the fees relate, and, in exercising that discretion, the court shall consider all of the circumstances, including:

(a) the complexity of the proceeding and the difficulty or the novelty of the issues involved;

(b) the skill, specialized knowledge and responsibility required of the lawyer;

(c) the amount involved in the proceeding;

(d) the time reasonably expended in conducting the proceeding;

(e) the conduct of any party that tended to shorten, or to lengthen unnecessarily, the duration of the proceeding;

(f) the importance of the proceeding to the party whose bill is being assessed, and the result obtained; and

(g) the benefit to the party whose bill is being assessed of the services rendered by the lawyer.

Expenses and disbursements

(4) In addition to determining the fees that are to be allowed on an assessment under subrule (1) or (3), the court must:

(a) determine which expenses and disbursements have been necessarily or properly incurred in the conduct of the proceeding; and

(b) allow a reasonable amount for those expenses and disbursements.

Estate Administration Act

(5) Unless the court on application otherwise orders, where costs are payable for any non-contentious business under Rule 64, those costs:

(a) shall be assessed as special costs; and

(b) may be assessed without an order of the court

and subrules (3) and (4) apply.

Judge to assess costs

(6) Costs will be assessed by a judge but a judge may assign an assessment under this rule to the clerk.

Assessment before clerk

(7) Where the court has made an order for costs and assigns the assessment to the clerk:

(a) any party may, at any time before the clerk issues the certificate under subrule (29), apply for directions to the judge who made the order for costs;

(b) the judge may direct that any item of costs, charges or disbursements be allowed or disallowed; and

(c) the clerk is bound by any direction given by the judge.

Tax in respect of legal services and disbursements

(8) If tax is payable by a party in respect of legal services or disbursements, the court must, on an assessment under subrule (1) or (3), allow an additional amount to compensate for that tax, which additional amount must:

(a) if the tax is payable in respect of legal services, it shall be determined by multiplying the percentage rate of the tax by:

(i) in the case of a judgment entered on default of appearance or of pleading, the costs allowed of $600 plus disbursements as per 7(a) of Appendix B;

(ii) in the case of a writ of execution, a garnishment or an enforcement process, the costs allowed of $100 plus disbursements as per 7(b) of Appendix B; or

(iii) in any other case, the monetary value of the units assessed; or

(b) if the tax is payable in respect of disbursements, be determined by multiplying the percentage rate of the tax by the monetary value of the disbursements as assessed.

Costs to follow event

(9) Subject to subrule (12), costs of and incidental to a proceeding shall follow the event unless the court otherwise orders.

Costs in cases within small claims jurisdiction

(10) A plaintiff who recovers a sum within the jurisdiction of the Territorial Court of Yukon under the *Small Claims Court Act*, RSY 2002, c. 204, is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court of Yukon and so orders.

Costs where party represented by an employee

(11) A party is not disentitled to costs on the ground only that the lawyer who represented the party is an employee of the party.

Costs of applications

(12) Unless the court hearing an application otherwise orders:

(a) the party making an application that is granted, is entitled to costs as costs in the cause, but the party opposing it is not entitled to costs as costs in the cause;

(b) the party making an application that is refused, is not entitled to costs as costs in the cause, but the party opposing it is entitled to costs as costs in the cause; and

(c) where an application made by one party and not opposed by the other is granted, the costs of the application are costs in the cause.

When costs payable

(13) If an entitlement to costs arises during a proceeding whether as a result of an order or otherwise, those costs are payable on the conclusion of the proceeding unless the court orders otherwise.

(14) [repealed by O.I.C. 2022/168]

Costs arising from improper act or omission

(15) Where anything is done or omitted improperly or unnecessarily, by or on behalf of a party, the court may order:

(a) that any costs arising from or associated with any matter related to the act or omission not be allowed to the party; or

(b) that the party pay the costs incurred by any other party by reason of the act or omission.

Costs of part of proceeding

(16) The court may award costs that relate to some particular issue or part of the proceeding or may award costs except as they relate to some particular issue or part of the proceeding.

Costs payable from estate or property

(17) Where it is ordered that any costs shall be paid out of an estate or property, the court may direct out of what portion of the estate or property the costs shall be paid.

Set-off of costs

(18) Where a party entitled to receive costs is liable to pay costs to another party, the court may assess the costs the party is liable to pay and may adjust them by way of deduction or set-off or may delay the allowance of the costs the party is entitled to receive until the party has paid or tendered the costs the party is liable to pay.

Costs of one defendant payable by another

(19) Where the costs of one defendant against a plaintiff ought to be paid by another defendant, the court may order payment to be made by one defendant to the other directly, or may order the plaintiff to pay the costs of the successful defendant and allow the plaintiff to include those costs as a disbursement in the costs payable to the plaintiff by the unsuccessful defendant.

Unnecessary expense after judgment

(20) Where after pronouncement of judgment a party puts another party to unnecessary proceedings or expense, the court may award costs as the court thinks proper against the offending party.

Form of bill of costs

(21) A Bill of Costs shall be in Form 68, or, if the bill of costs pertains to a judgment under Rule 17, Form 69.

Appointment to review a bill, examine an agreement or assess costs

(22) Except as provided in subrule (27), a person who seeks a review of a lawyer's bill for costs, fees, charges or disbursements or an examination of an agreement under the *Legal Profession Act*, SY 2017, c. 12, or who seeks to have costs assessed must:

(a) obtain a date for an appointment before the court or the clerk;

(b) file an Appointment in Form 28, to which is attached the bill to be reviewed, the agreement to be examined or the bill of costs to be assessed; and

(c) subject to subrule (26), at least 5 days before the date of the appointment, serve a copy of the appointment and any affidavit in support:

(i) in the case of a lawyer's bill to be reviewed, on the lawyer whose bill is to be reviewed, on the person who is charged with the bill or on the person who has agreed to indemnify the person charged, as the case may be;

(ii) in the case of an agreement to be examined, on the lawyer who is a party to the agreement to be examined; or

(iii) in the case of a bill of costs to be assessed, on the party against whom costs are to be assessed.

Place for review or examination

(23) An appointment for review of a bill, examination of an agreement or assessment of costs must be made at the registry in Whitehorse.

Further particulars

(24) The court or the clerk may order further particulars or details of:

(a) a bill under review;

(b) an agreement under examination; or

(c) a bill of costs being assessed.

Assessment of sheriff's fees

(25) If a sheriff who has charged fees for services set out in Schedule 2 of Appendix C or a person affected by those fees wishes to have those fees assessed, the person seeking the assessment shall:

(a) obtain an Appointment in Form 28 and attach to that appointment a copy of the bill to be assessed, if available; and

(b) at least 5 days before the assessment, deliver a copy of the appointment and any affidavit in support to all persons affected by the fees.

Service of appointment

(26) Service of an appointment for assessment of costs, the bill of costs and an affidavit in support is not necessary where the party against whom costs are to be assessed has not entered an appearance.

Costs on default judgment

(27) On signing a default judgment, the clerk may, without an appointment, fix the costs to which the plaintiff is entitled against the defendant in default, and enter the amount allowed on the judgment, or on a separate certificate.

Notice to person affected

(28) On an assessment of costs, on review of a lawyer’s bill or on an examination of an agreement, the court may order notice of hearing to be given to a person whose interest, whether in a fund or estate or otherwise, may be affected.

Certificate of costs

(29) On the conclusion of an assessment, or where the party charged has consented to the amount, the court shall, either by endorsing the original bill or by issuing a Certificate of Costs in Form 70, certify the amount of costs awarded, and the party assessing costs shall file the certificate.

Certificate of fees

(30) On the conclusion of a review of a bill under the *Legal Profession Act*, SY 2017, c. 12, or where the parties to the review have consented to the amount due under the bill, the clerk shall, by issuing a Certificate of Fees in Form 71, certify the amount due, and either party to the review may file the certificate.

Certificate deemed to be an order

(31) A certificate of costs and a certificate of fees shall be deemed to be an order.

Review of the clerk's assessment

(32) A party who is dissatisfied with a decision of the clerk on an assessment may, within 14 days after the clerk has certified the costs, apply to the court for a review of the assessment, and the court may make an order as it thinks just.

Form of bill in certain cases

(33) A bill for special costs or a bill under the *Legal Profession Act*, SY 2017, c. 12, may be rendered on a lump sum basis.

Description of services

(34) A lump sum bill shall contain a description of the nature of the services and of the matter involved as would, in the opinion of the clerk, afford any lawyer sufficient information to advise a client on the reasonableness of the charge made.

Evidence of lawyer

(35) A party to an assessment or a review of a lump sum bill may put in evidence the opinion of a lawyer as to the nature and importance of the services rendered and of the matter involved and the reasonableness of the charges made, but no party shall put in evidence the opinions of more than 2 lawyers, and a lawyer giving an opinion may be required to attend for examination and cross-examination.

Disallowance of lawyer's fees and disbursements

(36) Where the court considers that a lawyer for a party has caused costs to be incurred without reasonable cause, or has caused costs to be wasted through delay, neglect or some other fault, the court may do any one or more of the following:

(a) disallow any fees and disbursements between the lawyer and the lawyer's client or, where those fees or disbursements have been paid, order that the lawyer repay some or all of them to the client;

(b) order that the lawyer pay their client for all or part of any costs that the client has been ordered to pay to another party;

(c) order that the lawyer be personally liable for all or part of any costs that their client has been ordered to pay to another party; or

(d) make any other order that the court considers appropriate.

Costs may be ordered without assessment

(37) Where the court makes an order under subrule (36), the court may:

(a) direct the clerk to conduct an inquiry and file a report with recommendations as to the amount of costs; or

(b) subject to subrule (40), fix the costs with or without reference to the tariff in Appendix B.

Notice

(38) An order against a lawyer under subrule (36) or (37) shall not be made unless the lawyer is present or has been given notice.

(39) A lawyer against whom an order under subrule (36) or (37) has been made shall promptly serve a copy of the order on his or her client.

Limitation

(40) An order by the court under subrule (37)(b) in respect of the costs of an application shall not exceed $1,000.

Refusal or neglect to procure assessment

(41) If a party entitled to costs fails to assess costs and prejudices another party by failing to do so, the court may certify the costs of the other party and certify the failure and disallow all costs of the party in default.

Referrals

(42) Unless the court otherwise orders, fees to lawyers, accountants, engineers, actuaries, valuators, merchants and other scientific persons to whom any matter or question is referred by the court shall be determined by a judge.

(43) For the purposes of this rule, a party becomes entitled to costs:

(a) when an order for costs is pronounced; or

(b) where a judgment is silent in the matter of costs, from the time that judgment in the proceeding is entered

whichever date first occurs.

Security for Costs

(44) The court may make an order for security for costs where it appears that:

(a) the plaintiff or applicant is ordinarily resident outside of Yukon;

(b) the plaintiff or applicant has another proceeding for the same relief pending in Yukon or elsewhere;

(c) the defendant or respondent has an order against the plaintiff or applicant for costs in the same or another proceeding that remains unpaid in whole or in part;

(d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Yukon to pay the costs of the defendant or respondent;

(e) there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff or applicant has insufficient assets in Yukon to pay the costs of the defendant or respondent; or

(f) a statute entitles the defendant or respondent to security for costs.

(45) An application for security for costs may be made only after the defendant has delivered a statement of defence in an action, or after the respondent has delivered an appearance in an application.

(46) An application for security for costs shall be made on notice to the plaintiff and every other defendant who has delivered a defence or an appearance in an action, or the applicant and every other respondent who has delivered an appearance in an application.

(47) The amount and form of security and time for paying into court or otherwise shall be determined by the court. The amount of security required by an order may be increased or decreased at any time.

(48) A plaintiff or applicant against whom an order for security for costs has been made may not take any step in the proceeding except an appeal from the order, until the security has been given, unless the court orders otherwise.

(49) Where a plaintiff or applicant defaults in giving the security required by an order, the court may dismiss the proceeding against the defendant or respondent who obtained the order and the stay imposed by Rule 60(48) no longer applies unless another defendant or respondent has obtained an order for security for costs.

RULE 61 – MONEY IN COURT

Interpretation

(1) In this rule, unless the context otherwise requires:

"financial institution" means a bank, credit union or trust company designated by the minister;

"funds" means any money that has been paid into or deposited in court, except money paid

(a) for security for costs,

(b) in satisfaction of a claim, or

(c) for bail;

"minister" means the Minister of Finance; or

"securities" means any bonds, stocks, shares, debentures or other securities.

Deposit of funds

(2) All funds shall be deposited promptly by the clerk in a financial institution to be held in trust until payment out of court.

Payment out of court

(3) Funds shall be paid out or delivered, on authority of an order of the court, on production of a certified copy of the order or authorization by the clerk for payment out, and shall be paid or delivered to the person named in the order or authorization.

Interest

(4) All funds held in court shall draw interest, payable by the minister, for each 6 month period after December 31, 2008 at 2% below the prime lending rate of the banker to the Government of Yukon on January 1 and July 1 respectively, in each year, with interest to be compounded on January 1 and July 1 in each year.

(5) The interest paid under this rule is instead of any interest earned upon an investment made by the minister under subrule (7).

Calculation of interest

(6) Interest under subrule (4) is payable on all funds up to $100, 000 from the first day of the month following payment into court until the last day of the month before payment out of court, and on all funds in excess of $100, 000 from the date of payment into court until the date of payment out.

Investments

(7) The minister may invest as they see fit all or any part of the funds.

Direction for payment out

(8) Where, by an order of the court, funds are directed to be dealt with, delivered or paid out, the order shall be a direction to the minister to that effect.

Deposit of other money paid into court

(9) Money paid into court, other than funds, shall be deposited by the clerk in the financial institution and be paid out in accordance with the existing practice of the court, but the clerk shall pay to the minister all moneys on deposit for more than 2 years.

(10) Money paid to the minister under this rule shall be held by the minister in the same manner as funds deposited under subrule (2), except as to payment of interest.

Money for person under disability

(11) In a proceeding in which a sum of money or a security is awarded to a person under a disability, the court may, at or after the trial or settlement, order that the whole or any part of the sum or the security be paid:

(a) if the person is an infant, to the Public Guardian and Trustee in trust for the infant;

(b) to the parent or guardian in trust for the infant; or

(c) in any other case, into court to the credit of the person.

Payment out of money or security

(12) Where a sum of money or security is paid into court under subrule (11)(c), the sum or the security may be paid out of court as the court may direct.

Payment in for infant

(13) When money is paid into court to the credit of an infant, a copy of the birth certificate of the infant, or other proof to the satisfaction of the clerk of the name and date of birth of the infant shall be filed, unless the clerk dispenses with the filing.

Payment out of money held for infant

(14) In support of an application for payment out of money paid in under subrule (13), the applicant shall file a Declaration for Payment Out in Form 34.

RULE 62 – SITTINGS AND HEARINGS

Under direction of Chief Justice

(1) The court shall dispose of the business before it at the times and in the places the Chief Justice directs.

Urgency

(2) In case of urgency, an application may be made personally to a judge of the court.

Urgency or convenience

(3) In case of urgency or convenience, the court may hear an application or matter and may make an order or decision by telephone.

Video conferencing

(4) On application by a party or on its own initiative, the court may direct:

(a) that an application be heard by way of video conference; and

(b) the manner in which the video conference is to be conducted.

RULE 63 – DIVORCE AND FAMILY LAW

Definitions

(1) In this rule,

"claim for relief" includes a child support order, a spousal support order, a parenting order, a property order, and corollary relief under the *Divorce Act* (Canada);

"common law proceeding" means a proceeding in a court in which a party seeks any of child support, spousal support, custody, access or division of property under the *Children's Law Act* and/or the *Family Property and Support Act*.

"divorce proceeding" means a proceeding in a court in which either or both spouses seek a divorce alone or together with a child support order, a spousal support order or a parenting order;

"family law proceeding" includes a proceeding in which relief is claimed under the *Family Property and Support Act*, the *Children's Law Act* or the *Divorce Ac*t (Canada), divorce proceeding, uncontested divorce proceeding, and applications for division of property under the common law;

"uncontested divorce proceeding" means a family law proceeding in which a claim for divorce is made and

(a) no statement of defence has been filed,

(b) a statement of defence has been filed that disputes the claim for divorce, or a counterclaim has been filed that makes a claim for divorce, but the statement of defence or counterclaim, as the case may be, has been

(i) withdrawn under subrule (11), or

(ii) struck out or dismissed, or

(c) all claims other than the claim for divorce have been settled, and the parties have filed a statement to that effect signed by the parties or their lawyers.

Application

(2) Except as provided in this rule, the Rules of Court apply to a family law proceeding.

COMMENCEMENT OF PROCEEDING

Commencement by statement of claim

(3) A family law proceeding must be commenced by a statement of claim.

Claim for relief after divorce granted

(4) If a divorce order has been granted and no claim for relief was sought in the proceeding in which that order was granted, any subsequent claim for relief must be brought by way of a common law proceeding, in accordance with subrule (3).

(5) If an order from another jurisdiction has been filed by requisition for purposes of enforcement, an application to rescind, vary or suspend the order must be brought by notice of application.

Application to vary, suspend or rescind

(6) An application to vary, suspend or rescind an order made by this court in a proceeding brought under the *Family Property and Support Act*, the *Children's Law Act* or the *Divorce Act* (Canada) must be brought by notice of application in the family law proceeding.

Procedural step after long delay

(7) If no step has been taken in a family law proceeding for one year,

(a) the applicant must

(i) comply with Rule 3(6), or

(ii) personally serve the other parties of record with the notice of application, in which event the applicant need not comply with Rule 3(6), and

(b) Rule 11(5) and (12) do not apply to service of the notice of application in (a)(ii).

PLEADINGS

Form of pleadings

(8) In a family law proceeding:

(a) a Statement of Claim (Family Law – Divorce) in Form 91A;

(b) a Statement of Claim (Family Law – Common Law) in Form 91B;

(c) a Statement of Defence (Family Law – Divorce and Common Law) in Form 92; and

(d) a Counterclaim (Family Law – Divorce and Common Law) in Form 93.

Appearance

(9) If no appearance, statement of defence or counterclaim is filed, the family law proceeding may proceed on an uncontested basis.

Person allegedly involved in adultery in a divorce proceeding

(10) If it is alleged in a pleading for divorce that a spouse has committed adultery:

(a) the name of another person alleged to have been involved in the adultery must not be set out in that pleading unless that person is made a party to the proceeding;

(b) the other person must not be made a party to the proceeding unless relief is claimed against that person; and

(c) particulars of the identity of the other person may be demanded from the plaintiff, but any particulars provided in response to that demand must not be filed before the trial or hearing.

Withdrawal of pleading

(11) A party who has filed a pleading in a divorce proceeding may withdraw the pleading or any part of it by filing and delivering a Notice of Withdrawal (Family Law – Divorce and Common Law) in Form 102.

FINANCIAL DISCLOSURE

(12) The Rules for financial disclosure in a family law proceeding are set out in Rule 63A.

FAMILY LAW CASE CONFERENCE

(13) A family law case conference shall be held in all family law proceedings, except those exempted as set out in a practice direction, no later than 60 days from the date of service of the statement of claim.

(14) A party requesting any additional family case conference other than pursuant to (13), shall file and deliver a Notice of Family Law Case Conference in Form 95A on the other party at least 7 days, not counting Saturday or holidays, before the date set for the hearing.

(15) The purpose of the family law case conference is to ensure that all parties are aware of alternative dispute resolution procedures available.

(16) The judge conducting the family law case conference may:

(a) proceed to a judicial settlement conference under Rule 37; or

(b) proceed to a case management conference under Rule 36;

(c) proceed to a binding Judicial Settlement Conference pursuant to Practice Direction 12; and

(d) make any orders under Rule 36(6) to facilitate the proceeding or resolution of it in a Family Law Case Conference Order, Form 109.

(17) The family law case conference shall be conducted as set out in the family law case conference and case management practice directions.

MARRIAGE CERTIFICATE

Certificate to be filed

(18) Before the issuance of a divorce pleading or an amended divorce pleading, a certificate of the marriage or a registration of the marriage must be filed unless the pleading states that:

(a) it is impossible to obtain such a certificate; or

(b) the certificate will be filed before the action is set down for trial or before an application is made for a Divorce Order.

(19) A party may apply in writing to the clerk for the return of the original marriage certificate. The clerk may make a certified copy of the marriage certificate and return the original marriage certificate to the party that filed it.

ADDITION OF CLAIMS AND PARTIES

Addition of claims and parties

(20) Subject to Rule 5(6), a claim that, on its own, would not be the subject matter of a family law proceeding may be made in a family law proceeding, and a person by or against whom any such claim is made may be joined in that proceeding, if the claim is related to or connected with any relief in the family law proceeding.

(21) The judge may give directions to the parties for the procedure and hearing of the additional claim.

(22) Where a child protection proceeding is filed in Territorial Court and a custody or parenting proceeding for the same child(ren) is filed in Supreme Court and, where it is expedient to do so, the Supreme Court judge may sit as a Territorial Court judge in the child protection proceeding and a Supreme Court judge in the custody or parenting proceeding.

MINORS

Party who is a minor

(23) A minor who has attained the age of 16 years and who is a party to a family law proceeding may act without a litigation guardian and the provisions of Rule 6 do not apply to that party.

Appointment of litigation guardian

(24) Notwithstanding subrule (22), if the court considers that it is in the interest of a minor referred to in subrule (22) or of any child of the minor, it may, on application or on its own motion, appoint a litigation guardian for the minor or for the child of the minor.

SERVICE

(25) A statement of claim and a statement of defence or counterclaim in a family law proceeding must be served by someone other than the plaintiff or defendant.

Affidavit of service

(26) An Affidavit of Service in Form 7 of a statement of claim, statement of defence or counterclaim in a family law proceeding must state the means by which the person served was identified.

SECURITY FOR COSTS

Security for costs

(27) The court may, in a family law proceeding, make an order for payment of, or for security for, the costs of a party, including interim or advance costs in appropriate cases.

UNCONTESTED PROCEEDINGS

Proceedings in default

(28) Rule 17 does not apply to family law proceedings but a party may proceed where the served party fails to appear or file a statement of defence.

Uncontested divorce proceeding

(29) In an uncontested divorce proceeding, the evidence, and any information required to enable the court to comply with ss. 10 and 11 of the *Divorce Act* (Canada), may be presented by affidavit, unless the court otherwise orders.

Application for judgment in uncontested family law proceeding

(30) In an uncontested family law proceeding, a party may apply for judgment:

(a) by requisition in accordance with subrule (31); or

(b) by setting the proceeding for trial or hearing in the manner directed by these rules or by practice direction.

Application by requisition

(31) An application for judgment under subrule (30)(a) may be made by either party to the court by filing:

(a) a Requisition for Divorce Order in Form 97A or for common law proceedings, a Requisition for Order in Form 3, setting out briefly the nature of the relief sought;

(b) a draft order or orders (for divorce proceedings a Divorce Order in Form 100 or Divorce Order (Uncontested) in Form 100B or for common law proceedings an Order in Form 54);

(c) if necessary, proof of service of the statement of claim, or proof of delivery of a counterclaim;

(d) if appropriate, an Affidavit for Divorce Order in Form 97 or an Affidavit for Divorce Order (Divorce Only) in Form 97B stating that the action is uncontested;

(e) if appropriate, an Affidavit in Form 59; and

(f) if appropriate, a Child Support Affidavit in Form 98.

(32) Upon receipt of an application for divorce by requisition, the clerk may issue a certificate certifying that the pleadings and proceedings are in order.

Powers of court on application

(33) On being satisfied that an application under subrule (30) or (31) is appropriate, the court may give any directions that it considers necessary and may, without limitation:

(a) make an order or give judgment without the attendance of the lawyer or the applicant;

(b) direct the attendance of the lawyer or the applicant; or

(c) direct that further evidence be presented.

APPLICATION FOR JUDGMENT ON CONSENT

Judgment on Consent

(34) In a divorce proceeding, in which the parties are seeking judgment on consent, the evidence, and any information required to enable the court to comply with ss. 10 and 11 of the *Divorce Act* (Canada), may be presented by affidavit, unless the court otherwise orders.

(35) In a family law proceeding, the parties may apply for judgment on consent by filing:

(a) a Requisition in Form 3, setting out briefly the nature of the relief sought;

(b) a draft order or orders (for divorce proceedings a Divorce Order (Consent) in Form 100A) and for common law proceedings a Consent Order in Form 53);

(c) if appropriate, an Affidavit for Divorce in Form 97 or an Affidavit for Divorce Order (Divorce Only) in Form 97B;

(d) if appropriate, an Affidavit in Form 59; and

(e) if appropriate, a Child Support Affidavit in Form 98.

Powers of court on application

(36) On being satisfied that an application under subrule (35) is appropriate, the court may give any directions that it considers necessary and may, without limitation:

(a) make an order or give judgment without the attendance of the lawyer or the parties;

(b) direct the attendance of the lawyer or the parties; or

(c) direct that further evidence be presented.

DIVORCE ORDERS

Pending prior divorce proceedings

(37) A order granting a divorce must not be pronounced unless the court is satisfied that no earlier divorce proceeding was instituted and is pending anywhere in Canada.

Claim for divorce joined with other claims

(38) If a claim is made for divorce together with one or more other claims, the court may do one or more of the following:

(a) set the proceeding for trial pursuant to Rule 41;

(b) grant a divorce and direct that an order for divorce alone be entered;

(c) grant a divorce and give judgment on the other claims;

(d) adjourn the hearing of the claim for divorce;

(e) give judgment on the other claims and direct that a separate order dealing with them be entered;

(f) adjourn the hearing of the other claims.

Form of divorce order

(39) An order for divorce must be in either Form 100, Form 100A for divorces on consent or Form 100B for uncontested divorces.

Form of certificate of divorce

(40) The Certificate of Divorce referred to in s. 12(7) of the *Divorce Act* (Canada) must be in Form 101 and issued by the clerk or a judge.

Delivery of divorce order

(41) Unless the court otherwise orders, the party who applies for an order for divorce must:

(a) deliver a true copy to the other party at the other party's address for delivery; or

(b) if the other party has not provided an address for deliver, by mailing the order to the party's last known address by ordinary mail.

CONSENT ORDERS

(42) Consent orders in family law proceedings, where no affidavits have been filed in support of the relief being sought, may be filed pursuant to Rule 43(9), (10), (11) and (12) subject to the condition that one party shall file an affidavit setting out the factual basis and reasons for the consent order.

RELOCATION

Notice of Relocation

(43) A party who, pursuant to s. 16.9 of the *Divorce Act* (Canada) is required to provide notice that they are intending to undertake a relocation, shall, at least 60 days before the expected date of relocation and in accordance with the requirements of the *Divorce Act* (Canada):

(a) serve the other party a Notice of Relocation in Form 1;

(b) if appropriate, serve any other party with a Notice- Persons with Contact in Form 3; and

(c) the party is not required to file the notice, except in accordance with (45)(b).

Objection

(44) A party objecting to the relocation shall:

(a) Serve the other parties a Notice of Objection to Relocation in Form 2; and/or

(b) File a notice of application in accordance with (45).

Notice of Application

(45) A Notice of Application with regard to relocation:

(a) Shall be made in accordance with Rule 47 and the *Divorce Act* (Canada), s. 16.9 and 16.91; and

(b) Except as permitted by the *Divorce Act* (Canada), if the moving party is the party intending to undertake a relocation, shall include the Notice of Relocation in Form 1 and/or Notice – Persons with Contact in Form 3.

RESTRAINING ORDERS

(46) Where a judge makes a restraining order in a family law proceeding:

(a) it shall be in Form 99; and

(b) a party may request the inclusion of an RCMP assist clause in the order.

APPEALS

No stay on appeal

(47) If a parenting order, custody order, contact order or support order is appealed, the order remains in force until the determination of the appeal, unless the court that made the order or the appeal court, otherwise directs.

INTER-JURISDICTIONAL PROCEEDINGS AND PROCEEDINGS FROM A DESIGNATED JURISDICTION UNDER THE DIVORCE ACT

Application

(48) An applicant shall commence a proceeding going to another jurisdiction under s. 18.1 or 19 of the *Divorce Act* by filing with the designated authority for Yukon a Statement of Claim (Family Law – Divorce) in Form 91A, if one has not already been commenced, a Notice of Application in Form 52 and an Affidavit in Form 59 in support.

Receipt of Application

(49) The designated authority for Yukon under the *Divorce Act* shall send an application commenced from another jurisdiction under s. 18.1(1)(a) or 19(1)(a) of the *Divorce Act* to the clerk of the court.

Service on Respondent

(50) The clerk shall serve on the respondent:

(a) A copy of the application referred to in (45); and

(b) Notice of Inter-jurisdictional Proceeding shall be in Form 102B and shall set out the manner in which the respondent shall respond to the application and the respondent's obligation to provide documents or information.

Conversion of Applications

(51) A respondent to an application made under s. 17(1)(a) for a support variation order may request, pursuant to s. 18.2 of the *Divorce Act* (Canada) that the court convert the application into an inter-jurisdictional proceeding under s. 18.1 of the *Divorce Act* (Canada) by filing a Request to Convert in Form 102A.

(52) Where child support is paid to a third-party, the third-party shall complete only the portion of the form related to the assignee.

Service not Possible

(53) If the clerk is unable to serve the application and all applicable documents, they shall return the application to the designated authority for Yukon.

Registration of orders

(54) If an order that has legal effect throughout Canada under s. 20(2) of the *Divorce Act* (Canada) is made by a court other than the Supreme Court, the order may be registered without fee by filing a certified copy of the order in the Supreme Court.

Exchange of orders between territories and provinces

(55) The clerk of the court must, on request or if the court is required by s. 17(11) of the *Divorce Act* (Canada), and without a fee, send a certified copy of a parenting order, support order or variation order made by the court:

(a) to the clerk of a court in another territory or province or to any person holding an equivalent position to that of clerk in relation to that court;

(b) to a public welfare organization in another territory or province; or

(c) to any person designated by the Attorney General of another territory or province.

Enforcement in Territorial Court

(56) A support order or maintenance order made by the court or registered under subrule (54) may be filed in and enforced by the Territorial Court as if it were contained in an order of that court.

SEARCHES

Search of files

(57) Unless the court otherwise orders,

(a) no person, other than the following, may search a registry file in respect of a family law proceeding or an *Interjurisdictional Support Orders Act* proceeding:

(i) a lawyer of a party;

(ii) a party;

(iii) a person authorized by a party;

(iv) duty counsel to a party; or

(iv) a person authorized by a party's lawyer.

Search of exhibits

(58) The exhibits produced at the trial or hearing of a proceeding referred to in subrule (57), but not including exhibits attached to affidavits, must be sealed by the clerk in a secure manner and, unless the court otherwise orders, no person other than a party's lawyer, a party or a person authorized by a party or by a party's lawyer, may search the exhibits.

RULE 63A – FAMILY LAW PROCEEDING

FINANCIAL DISCLOSURE

Interpretation

(1) In this rule:

"applicable income documents" means, in respect of a person:

(a) a copy of every personal income tax return filed by the person for each of the 3 most recent taxation years;

(b) a copy of every notice of income tax assessment or reassessment issued to the person for each of the 3 most recent taxation years;

(c) if the person is receiving employment insurance benefits, a copy of the 3 most recent employment insurance benefit statements;

(d) if the person is receiving workers' compensation benefits, a copy of the 3 most recent workers' compensation benefit statements;

(e) if the person is receiving social assistance, current documentary evidence of the social assistance that is being received by that person;

(f) if the person owns or has an interest in real property, a copy of the most recent assessment notice issued from an assessment authority for each property,

(g) if the person is an employee:

(i) the most recent statement of earnings indicating the total earnings paid to the person in the year to date, including overtime; or

(ii) if that statement is not provided by the employer, a letter from the person's employer setting out the information referred to in subparagraph (i) and including the person's rate of annual salary or remuneration,

(h) if the person is self employed, the following information for the 3 most recent taxation years:

(i) the financial statements of the person's business or professional practice, other than a partnership;

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the person does not deal at arm's length,

(i) if the person is a partner in a partnership, confirmation of the person's income and draw from, and capital in, the partnership for each of its 3 most recent taxation years,

(j) if the person controls a corporation, the following information for the corporation's 3 most recent taxation years:

(i) the financial statements of the corporation and its subsidiaries;

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation and every related corporation does not deal at arm's length, and

(k) if the person is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's 3 most recent financial statements;

"child support guidelines" means:

(a) in reference to an application under the *Family Property and Support Act*, the *Yukon Child Support Guidelines*; or

(b) in reference to an application under the *Divorce Act* (Canada), the *Federal Child Support Guidelines*;

"financial statement (family law – detailed)" means a statement in Form 94;

“financial statement (family law – simplified)” means a statement in Form 94A;

"parent" means, the father or mother of a child by birth, or because of an adoption order made or recognized under the *Children’s Law Act*, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family other than under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

"party" means a party to a family law proceeding who is claiming, or against whom is claimed,

(a) an order for child support or an order varying an order for child support,

(b) an order for spousal support or an order varying an order for spousal support,

(c) an order for parental support or an order varying an order for parental support, or

(d) a division of family or non-family assets;

"social assistance" includes income assistance from the Government of Yukon or Government of Canada.

"support" includes maintenance.

Application of this rule

(2) This rule applies to a family law proceeding in which an application is made to obtain or to vary an order for child support, for spousal support, for parental support or for a division of family or non-family assets as follows:

(a) if an application is made to obtain or to vary an order for child support the applicant must complete a Financial Statement (Family Law – Simplified) in Form 94A;

(b) if an application is made to obtain an order for spousal support or parental support, subrules (1), (10), (11), (14) to (16) and (18) to (37) apply in respect of that application;

(c) if an application is made to obtain or to vary an order for division of family or non-family assets, subrules (1), (12) to (16), (18) to (34), (35) (a) to (d), (36) and (37) apply in respect of that application.

APPLICATIONS FOR CHILD SUPPORT

Who must provide Financial Statement (Family Law – Simplified)

(3) Each party who is required under the child support guidelines to provide income information must provide to the other party the Financial Statement (Family Law – Simplified) in Form 94A and all applicable documents.

Numbering applicable income documents

(4) Each page of the applicable income documents that are to be used in court must be numbered consecutively and attached to the financial statement.

If special or extraordinary expenses are claimed

(5) Each party who is required under the child support guidelines to provide income information:

(a) where there is or maybe shared or split parenting or custody, must provide to the other party Parts 1, and 3-7 of a Financial Statement (Family Law – Detailed) in addition to any other documents that the party is obliged to provide under subrule (6)-(8) and all other income documents.

(b) where spousal support, parental support or a division of assets is additionally sought, must provide Parts 1, and 3-7 of a Financial Statement (Family Law –

Detailed) in addition to any other documents the party is obliged to provide under subrule (6-8), (11), and (13), and all other income documents.

If special or extraordinary expenses are claimed

(6) A party who makes a claim for special or extraordinary expenses must provide to the other party Part 2 of a Financial Statement (Family Law – Simplified) or Part 2 of the Financial Statement (Family Law – Detailed) in addition to any documents that the party is obliged to provide under subrule (3) to (5).

If undue hardship is claimed

(7) If a claim for undue hardship is made a party must provide to the other party a Financial Statement (Family Law – Detailed) in Form 94.

(8) If a claim for undue hardship is made, a party must provide to the other party the following documents, as applicable, in addition to any documents that the party is obliged to provide under this rule:

(a) the party making that claim must provide Parts 1, 3, 4, 8 and 9 of a financial statement along with all applicable income documents;

(b) unless the court otherwise orders, the other party must provide Parts 1, 3, 4 and 9 of a financial statement along with all applicable income documents.

When party must serve documents

(9) Each party who is obliged to provide documents under subrule (3), (5), (6), (7) or (8) must serve those documents on the other party as follows:

(a) if the party is obliged to provide the documents in respect of a claim made by that party in a pleading or in application materials, within 30 days after serving that pleading or those application materials on the other party;

(b) if the party is obliged to provide the documents in respect of a claim made by the other party in a pleading or in application materials and is served with a notice in accordance with subrule (17),

(i) within 30 days after service if the party resides in Canada or the United States of America, or

(ii) within 60 days after service if the party resides elsewhere; or

(c) within such time as the court may order.

Agreement instead of documents

(10) Parties are deemed to have complied with the requirements of the child support guidelines, and with the requirements of this rule, respecting the provision of documents if:

(a) the parties have agreed on the annual income of the party who is to pay the child support and on the amount to be paid for child support;

(b) the parties have signed an Agreement as to Annual Income and Amount of Child Support in Form 96; and

(c) the agreement has been filed with the court together with the documents referred to.

APPLICATIONS FOR SPOUSAL OR PARENTAL SUPPORT

Who must provide income documents

(11) A party must provide to the other party Parts 1, 3 and 4 of a financial statement, along with the party's applicable income documents, if:

(a) the party is seeking to obtain a spousal or parental support order;

(b) the party is seeking to vary a spousal or parental support order;

(c) a spousal or parental support order is being sought against the party; or

(d) the other party is seeking to vary a spousal or parental support order obtained against the party.

When party must serve documents

(12) Each party who is obliged to provide documents under subrule (11) must serve those documents on the other party as follows:

(a) if the party is obliged to provide the documents in respect of a claim made by that party in a pleading or in application materials, within 30 days after serving that pleading or those application materials on the other party;

(b) if the party is obliged to provide the documents in respect of a claim made by the other party in a pleading or in application materials and is served with a notice in Form 95 in accordance with subrule (17),

(i) within 30 days after service if the party resides in Canada or the United States of America, or

(ii) within 60 days after service if the party resides elsewhere; or

(c) within such time as the court may order.

APPLICATIONS FOR DIVISION OF ASSETS

Who must provide Part 4 of a financial statement

(13) Each party who is making a claim for division of family or non-family assets or against whom such a claim is being made, if not otherwise obliged under this rule to provide any portion of a financial statement to the other party, must completed the Financial Statement (Family Law – Detailed) and provide to the other party Part 4 of the financial statement.

When parties must serve documents

(14) Each party who is obliged to provide documents under subrule (13) must serve those documents on the other party as follows:

(a) if the party is obliged to provide the documents in respect of a claim made by that party in a pleading or in application materials, within 30 days after serving that pleading or those application materials on the other party;

(b) if the party is obliged to provide the documents in respect of a claim made by the other party in a pleading or in application materials and is served with a notice in Form 95 in accordance with subrule (17),

(i) within 30 days after service if the party resides in Canada or the United States of America, or

(ii) within 60 days after service if the party resides elsewhere;

(c) within such time as the court may order.

FINANCIAL STATEMENT

Assessment notice to be included

(15) Part 4 of a financial statement must have attached to it or have accompanying it a copy of the notice that is, at the time that the statement is provided to a party under this rule, the most recent assessment notice provided by an assessment authority for any real property that the party owns or has an interest in unless that assessment notice has already been provided.

When documents must be filed

(16) A party who is obliged under this rule to serve a financial statement on any other party must file a copy of that document with the court before the end of the period within which that service must be completed.

NOTICE TO FILE A FINANCIAL STATEMENT

Service of notice to file financial statement

(17) Each party who, under this rule, is entitled to receive documents from another party, including a financial statement and applicable income documents, must serve on the other party a Notice to File a Financial Statement in Form 95 along with the pleading or application materials referred to in subrule (8), (11) or (13), as the case may be.

Endorsement of notice

(18) If a claim for child support is made in the family law proceeding, the notice referred to in subrule (17) may be endorsed with a statement that if the party receiving the notice does not comply with the applicable requirement under subrules (4) to (8), the requesting party will, for the purposes of determining child support, apply to the court to attribute to the party receiving the notice an annual income in a specified amount.

PARTICULARS OF FINANCIAL STATEMENTS

Particulars may be demanded

(19) If a financial statement lacks particularity, the other party may demand particulars.

Court may order particulars

(20) If the party from whom particulars are demanded under subrule (19) fails to provide those particulars within 7 days after receipt of the demand, the court may, on terms it considers appropriate:

(a) order particulars to be delivered within a specified time; or

(b) order that a new financial statement be delivered within a specified time.

Cross-examination on financial statements

(21) A party may be cross-examined on his or her financial statement at any time before the trial or hearing, and Rules 27 and 42(31), (33), (35) and (36) apply to the cross-examination.

CHANGES IN FINANCIAL CIRCUMSTANCES

Information must be kept current

(22) Whenever a material change in circumstances renders information provided by a party inaccurate or incomplete, the party must, whether the inaccurate or incomplete information is contained in a financial statement, in particulars provided under subrule (19) or (20) (a), in the party's applicable income documents or in a

statement provided under this subrule, promptly after that change, deliver to the other party:

(a) a written statement setting out particulars of the accurate or complete information; or

(b) a revised financial statement containing the correct current information.

Additional documents

(23) If the change in circumstances referred to in subrule (22) is such that the party becomes obliged to provide documents under this rule that are additional to the documents previously provided by that party, the party must:

(a) provide those additional documents; and

(b) comply with subrule (22) in relation to the previously provided documents.

If written statement or particulars provided

(24) If a party provides a written statement under subrule (22) or particulars under subrule (19) or (20)(a):

(a) the statement or particulars may be treated at a trial or hearing as if they formed part of the original financial statement of the party; and

(b) the other party may, with leave of the court, require that the statement or particulars be

(i) verified by an affidavit of the party providing the statement or particulars, or

(ii) the subject of further cross-examination.

Updated statements

(25) A party who has delivered a financial statement more than 90 days before the commencement of the trial or hearing must deliver to the other party an updated financial statement at least 30 days and not more than 60 days before the commencement of the trial or hearing, but the delivering party may not be cross-examined before the trial or hearing on the updated financial statement, unless the court gives leave or the parties agree.

DISCLOSURE OF BUSINESS INTERESTS

Production of documents

(26) If a party discloses business or corporate interests in a financial statement delivered under this rule, the party receiving the statement may, in writing, request the disclosing party to produce for inspection and copying specified documents or

classes of documents in the disclosing party's possession or control that might reasonably be required to verify the valuation of the disclosing party's interest or to determine the disclosing party's income.

Responding to demand

(27) A party receiving a request under subrule (26) must, within 21 days after receipt, deliver a notice to the requesting party stating:

(a) a time and place, during normal business hours, at which the documents may be inspected; and

(b) the cost of copying the documents.

Request to corporation, partnership or proprietorship

(28) If the party who makes a request under subrule (26) is not satisfied with the response to the request, that party may make a written request to the corporation, partnership or proprietorship in which the other party has disclosed an interest, to produce for inspection all documents that are relevant to the valuation of the interest or the determination of the disclosing party's income.

Production required

(29) A corporation, partnership or proprietorship receiving a request under subrule (28) must, within 21 days after receipt, provide a written statement to the requesting party:

(a) detailing the documents, in its possession or control, that it is obliged to produce in response to the request;

(b) identifying those documents, if any, in respect of which the corporation, partnership or proprietorship intends to seek an exemption under subrule (31);

(c) specifying a time and place at which the documents for which an exemption is not being sought may be inspected; and

(d) specifying the cost of copying the documents for which an exemption is not being sought.

Application to court for directions

(30) A corporation, partnership or proprietorship or either of the parties may apply to the court at any time for directions respecting any request for production of documents under subrule (26) or (28), including directions respecting payment of the costs of copying the documents, and the court may give those directions accordingly.

Application to court for exemption

(31) A corporation, partnership or proprietorship may, within 21 days after the date a request is served on it under subrule (28), apply to the court for an order exempting it from the requirement to produce any document.

Application by person authorized

(32) An application under subrule (30) or (31) may be made on behalf of a corporation or partnership by a person who has been authorized by the corporation or partnership for that purpose.

Court may order exemption

(33) On an exemption application under subrule (31), the court may issue an order exempting the applicant from the requirement to produce all or any of the requested documents if the court considers that:

(a) the documents and information already received by the party who made the request under subrule (28) are sufficient for the purposes of the main application;

(b) the production of the documents is not necessary for the purposes of the main application;

(c) in the case of a corporation, the prejudice likely to be caused to the corporation, or to its directors or shareholders, by refusing to exempt the corporation, outweighs the prejudice likely to be caused to the person requesting the documents if the corporation is exempted; or

(d) in the case of a partnership, the prejudice likely to be caused to the partnership, or to its partners or associates, by refusing to exempt the partnership, outweighs the prejudice likely to be caused to the person requesting the documents.

Costs

(34) The costs of producing documents under subrule (27) or (29) and the costs of an application under subrule (30) or (31) are in the discretion of the court and the court may order that the costs be paid in favour of or against:

(a) either of the parties to the proceeding; or

(b) the corporation, the partnership or the owner of the proprietorship, as the case may be.

When costs are payable

(35) The court may order when any costs awarded under subrule (34) are payable.

ENFORCEMENT OF THIS RULE

Relief

(36) If a party fails to comply with a requirement under this rule to file or serve a financial statement, particulars if ordered or any applicable income document, or fails to comply with a notice under subrule (17), the court may do any or all of the following:

(a) order that the financial statement, particulars or applicable income document, as the case may be, be delivered on terms the court considers appropriate;

(b) dismiss the application or strike out a party's statement of defence or counterclaim;

(c) proceed under Rule 59 to punish the party for contempt of court;

(d) draw an adverse inference against the party;

(e) attribute income to that party in an amount the court considers appropriate.

CONFIDENTIALITY OF INFORMATION

Confidentiality

(37) Any person who has access to documents obtained under this rule must keep the documents and any information contained in them in confidence and must not disclose the documents or information to anyone other than:

(a) for the purposes of a valuation of an asset;

(b) for a determination of the disclosing party's income; or

(c) in the course of permitting the documents to be introduced into evidence during the proceeding.

Sealing of financial information

(38) If the court considers that public disclosure of any information filed in a family law proceeding to which this rule applies would be a hardship on the person in respect of whom the information is filed:

(a) the court may order that the whole or any part of the document in which the information is contained, and the whole or any part of the transcript of the cross-examination on the document, must promptly be sealed in an envelope; and

(b) if an order is made under paragraph (a), no person may search the sealed documents without an order of the court.

CONFLICT WITH GUIDELINES

Child support guidelines prevail

(39) If and to the extent that there is a conflict between any provision of this rule and a provision of the child support guidelines, the provision of the child support guidelines prevails.

No conflict

(40) For the purposes of subrule (39), it is not a conflict between the child support guidelines and this rule merely because this rule:

(a) requires a person to provide information that is different from or additional to the information, if any, that that person would be obliged to provide under the child support guidelines;

(b) requires that certain information required by this rule but not by the child support guidelines be presented in a manner or form that is different from the manner or form in which information required under the child support guidelines is to be presented; or

(c) requires the provision, in one manner or form, of information some or all of which is required under the child support guidelines to be provided in a different manner or form.

RULE 64 – ADMINISTRATION OF ESTATES (NON-CONTENTIOUS)

Interpretation and application

(1) (a) The *Estate Administration Act*, RSY 2002, c.77, the *Wills Act*, RSY 2002, c. 230 as amended by SY 2020, c. 15 and the *Trustee Act*, RSY 2002, c. 223, apply to this rule.

(b) This rule applies to "non-contentious business" defined as the obtaining of a grant of probate or administration where there is no contention as to the right thereto and includes:

(i) the obtaining of grants of probate or administration in contentious cases where the contest has been concluded;

(ii) the filing of caveats against the granting of probate or administration,

(iii) the fixing of remuneration and passing of accounts; and

(iv) all non-contentious matters relating to testacy and intestacy, not being proceedings in an action.

Application for grant of probate or administration

(2) Subject to subrule (14), the applicant for a grant of probate or administration shall deposit with the clerk the original will, if any, and file:

(a) a Requisition in Form 4A;

(b) an Affidavit of Executor in Form 72 or Affidavit of Proposed Administrator (No Will) in Form 74 or Affidavit of Proposed Administrator (Will Annexed) in Form 75;

(c) a Grant of Probate in Form 115 or Letters of Administration (will annexed) in Form 116; and

(d) any further affidavits as may be required by these rules.

Notice of application

(3) (a) Notice of application for a grant of probate or administration under s. 108 of the *Estate Administration Act*, RSY 2002, c. 77, shall include named contingent beneficiaries (where a benefit depends on the happening of a condition or an event) attached as Exhibit “A” to the date of mailing or delivery and be in Form 73 Affidavit of Notice of Application.

(b) Notice of application for a grant of probate or letters of administration may be given by email. Where this is done the applicant shall require written acknowledgement of the receipt of the Notice of Application and shall swear to

receiving this acknowledgment in the Affidavit of Notice of Application in Form 73.

(c) The following explanation of the process for opposing the issue of a grant of probate or letters of administration shall be attached to the Notice of Application when it is delivered by the applicant to potential beneficiaries and persons with a prior or equal right to apply for letters of administration:

Explanatory Notes

This summary is not intended to replace the advice of a lawyer.

Attached is a Notice of Application for a Grant of Probate or Letters of Administration with respect to the estate of someone who has passed away. If there is a Will, it will be attached to the Notice. The person who has signed the Notice of Application is seeking to administer the estate by paying its debts and distributing its assets.

If you wish to oppose the issue of a Grant of Probate or Letters of Administration to the applicant named in the Notice, you must file a caveat with the Supreme Court of Yukon. A caveat form is available at the Court Registry or under 'Rules and Forms' at www.yukoncourts.ca (Form 79). You must also file an affidavit (Form 59) that sets out the nature of your interest in the property of the deceased and states generally the grounds upon which the caveat is filed. After you file a caveat, you will be contacted by the Supreme Court of Yukon to set up a case management conference with a judge. It costs $70 to file a caveat with the Supreme Court of Yukon.

You have 21 days to file a caveat (Form 79). If you do not file a caveat you will not hear anything further.

You may or may not be entitled to claim against the estate itself for relief under the *Family Property and Support Act*, RSY 2002, c. 83, and *Dependent's Relief Act*, RSY 2002, c. 56.

If the estate grant issues to the intended applicant as a result of the application, the intended applicant must provide, if there is a will, to the beneficiaries, or, if there is no will, to the successors of the intestate deceased, an accounting as to how the estate was administered and how the estate assets were distributed.

You may consult with a lawyer considering your interest in the estate.

Time of issuing grant

(4) The Court will not issue a grant of probate or letters of administration until 21 days have elapsed from the date of mailing or the date of delivery as reflected in the Affidavit of Notice of Application. This 21 day timeline applies to all files, including resealing orders, regardless of whether the recipient of the Notice of Application for Grant of Probate or Letters of Administration is in Yukon, outside Yukon or outside of Canada.

Proof of death

(5) The applicant shall state the day on which the testator or the intestate died and provide a certificate of death. If the fact of the death is certain, but there is no certificate of death, the applicant's affidavit shall set out the date and place of death and provide any other documents such as burial or cremation certificates.

Self-Government Agreement

(6) Where the deceased was a member of a First Nation with a Final Agreement and Self-Government Agreement, the applicant shall make inquiries and indicate whether the First Nation has passed any laws in relation to inheritance, wills, intestacy or the administration of estates and state whether these laws apply or whether the *Estate Administration Act*, RSY 2002, c. 77, the *Wills Act*, RSY 2002, c. 230, as amended by SY 2020, c. 15 and the *Trustee Act*, RSY 2002, c. 223, apply.

Indian Act

(7) Where the deceased was subject to the administration of the *Indian Act*, R.S.C., 1985, c. I-5, a consent of the Minister of Indigenous Services under s. 44 of the *Indian Act* must be filed.

Approval by court

(8) A judge may approve the application and mark the documents as approved, but if the judge refuses to approve the application, the judge shall provide reasons for refusing approval.

Hearing of application

(9) The applicant may set down the application for hearing by the court at any time after a judge has refused to approve it or apply for directions.

Proof of execution where no attestation clause

(10) Where there is no attestation clause to a will or codicil, or if the attestation clause is insufficient, the clerk shall require an affidavit from at least one of the subscribing witnesses, if they or either of them are living, to prove that the requirements of the *Wills Act*, RSY 2002, c. 230, as amended by SY 2020, c. 15 as to execution, were in fact complied with.

Affidavit of witness

(11) Where, on perusing the affidavit of a subscribing witness, it appears that the requirements of the *Wills Act*, RSY 2002, c. 230, as amended by SY 2020, c. 15 were not or may not have been complied with, the judge shall refuse to approve the application.

Proof where no affidavit of witness

(12) Where no affidavit can be obtained from either subscribing witness, an affidavit shall be provided from any other person present at the execution of the will or codicil, but if no affidavit from any person can be obtained, evidence shall be provided on affidavit:

(a) of that fact and of the handwriting of the deceased and the subscribing witnesses; and

(b) of any circumstances which may raise a presumption in favour of proper execution.

Proof of date of execution

(13) Where there is doubt as to the date on which a will was executed, a judge may require evidence they think necessary to establish the date, and may endorse a note of the date on the will.

Proof of will

(14) Where the circumstances appear to justify the direction, the court may require that proof of the will be made in court by oral evidence.

Petition

(15) An application for proof of a will shall be by Petition in Form 2, and Rule 10 applies.

(16) On application for proof of a will, copies of the petition shall be served on all persons having an interest in upholding or contesting the validity of the will.

Interlineations and alterations

(17) When an interlineation or alteration appears in the will, which is not properly executed, or recited in, or otherwise identified by the attestation clause, an affidavit in proof of its existence in the will before execution must be filed, except when the alteration is of small importance and is evidenced by the initials of the attesting witnesses.

Erasures and obliterations

(18) An erasure or obliteration shall not prevail unless it is:

(a) proved to have existed in the will at the time of its execution;

(b) properly executed and attested; or

(c) rendered valid by the re-execution of the will, or by the subsequent execution of a codicil,

but if no satisfactory evidence can be adduced as to the time when the erasure or obliteration was made, and the words erased or obliterated are not entirely effaced, but can be ascertained on inspection, the words must form part of the probate.

Affidavit explaining

(19) Where words that might have been of importance have been erased or obliterated, a judge may require an affidavit explaining the circumstances.

Document referred to in a will

(20) Where a will contains a reference to a document, which is of such nature as to raise a question whether the document ought to form part of the will, a judge may require the production of the document to ascertain whether it is entitled to probate, and, if not produced, its non-production must be accounted for.

(21) No document can form part of a will unless it was in existence at the time the will was executed.

Appearance of the paper

(22) Where there is an indication on the testamentary papers leading to the inference that a document has been attached to them, the indication must be satisfactorily explained, or the judge may require the document to be produced, and, if not produced, its non-production must be accounted for.

Notice to next of kin

(23) Where a person applies for a grant of administration under the *Estate Administration Act*, RSY 2002, c. 77**,** the names and kinship of those having a prior right or an equal right to a grant shall be shown, and it shall be shown that each of them has consented or renounced, otherwise a judge may direct notice to be given in Form 76 to any of them by mail.

Limited administrations

(24) Unless the court otherwise orders, a limited administration shall not be granted unless every person entitled to a general grant has consented or renounced, or has been notified and has failed to file an appearance.

(25) Unless the court otherwise orders, no person entitled to a general grant of administration of the personal estate and effects of a deceased will be permitted to take a limited grant.

Grants to an attorney

(26) Where a person entitled to administration resides outside Yukon, administration, or administration with the will annexed, may be granted to the person or the person's attorney acting under a power of attorney.

Grants of administration to guardians

(27) A grant of administration may be made to the guardians of an infant or person under a disability for their use and benefit, upon the consent of the Public Guardian and Trustee.

Administration bonds

(28) Unless the court otherwise orders, the bond to be given upon any grant of administration shall be in Form 77 an Administration Bond or an Administration Bond on Resealing in Form 78.

Affidavit of surety

(29) The sureties in an administration bond are required to prove by affidavit that they together have assets equal to the amount of the bond. No clerk shall become surety to any administration bond.

Required surety

(30) In all cases other than those in which the court may dispense with a bond, unless the court otherwise orders, not less than 2 sureties shall be required to the administration bond, and the bond shall be in an amount as the court may order, and the court may also order that more than one bond shall be given so as to limit the liability of a surety.

Delay in application

(31) Where probate or administration is applied for more than 3 years after the death of the deceased:

(a) the reason for the delay shall be set out in an affidavit; and

(b) the court may require further proof of the alleged cause of delay.

Identity of parties

(32) The court may require proof, in addition to the affidavit of the executor or administrator, of the identity of the deceased, or of the party applying for a grant.

Proof of search for will

(33) On every application for administration it must be shown that a search for a will or testamentary paper has been made in all places where the deceased usually kept their documents, and the applicant must make inquiries of the deceased's lawyer(s) and banks used by the deceased to determine if a safety deposit box exists.

Search of will

(34) The court may require an applicant for a grant of administration to make further efforts and give directions for the search of a will.

Renunciations

(35) No person, other than the Public Guardian and Trustee, who renounces as executor of the will or who renounces the right to apply for administration of the estate of a deceased person in one capacity, shall be appointed the personal representative of the deceased in another capacity.

Caveats

(36) A person intending to oppose the issue of a grant of probate or administration shall file a Caveat in Form 79.

Contents of caveat

(37) The caveator must declare in the caveat and verify by affidavit the nature of their interest in the property of the deceased, and state generally the grounds upon which the caveat is filed. The caveat shall be signed by the caveator and shall state an address for delivery in accordance with Rule 4.

Time caveat in force

(38) Subject to subrule (43), a caveat remains in force for 6 months after being filed, unless it is sooner withdrawn by notice filed by the caveator, and then it expires and is of no effect, but by order of the court, it may be renewed from time to time.

No grant while caveat in force

(39) Unless otherwise ordered by the court, no grant of administration or probate shall be made while a caveat is in force.

Notice to caveator

(40) A person intending to apply for probate or administration or claiming an interest in an estate with respect to which a caveat has been filed, may file a Notice to Caveator in Form 80 and shall deliver a copy to the address for delivery set out in the caveat.

Contents of notice

(41) The notice to caveator shall state the name and interest of the person on whose behalf it is issued and, if that person claims under a will or codicil, shall also state:

(a) the date of the will or codicil; and

(b) the person's address for delivery under Rule 4.

Appearance to notice

(42) An Appearance to a notice to caveator shall be in Form 9.

Effect of failure to appear to notice

(43) Where a notice to caveator has been filed and a copy delivered to the caveator and no appearance has been filed within the time stated in the notice, the court may cancel the caveat.

Citation to accept executorship

(44) Where an executor fails to apply for the probate of a will, any person interested shall file a Requisition in Form 4A and a citation to the executor to accept or refuse probate of the will, or to show cause why administration should not be granted to the executor or to some other person having a prior right who is willing to accept the grant, but no citation shall issue until 14 days after the testator's death.

Form of subpoena and answer

(45) The Citation to Accept Probate as Executor shall be in Form 81 and an Answer in Form 82.

Subpoena to apply

(46) (a) Where there is or may be a document that may be alleged to be a will of a deceased person, a subpoena to apply for probate or administration of the document may be issued by any person interested.

(b) The Subpoena to Apply for Grant of Probate of an Alleged Will must:

(i) be in Form 83;

(ii) be supported by affidavit; and

(iii) be directed to the executor and any other person named in the document.

(c) An answer shall be in Form 84.

Subpoena to bring in a will, document or asset

(47) Where a testamentary document or asset of an estate may be in the possession or control of a person, a subpoena may be issued to the person calling on the person to deposit with the clerk or sheriff any testamentary document or asset in the person's possession or control, or to state under oath that no testamentary document or asset is in the person's possession or control.

(48) The Subpoena to Bring in a Will or Asset shall be in Form 85 and shall be supported by affidavit.

Filing and service of subpoena and answer

(49) A citation or subpoena shall be served personally, and Rules 11, 12 and 13 apply. An answer shall be filed and delivered.

Foreign grants

(50) If probate or administration has been granted by a court of competent jurisdiction outside Yukon:

(a) a grant of administration, limited to the estate of the deceased in Yukon, may be made to the lawyer of the personal representative appointed by the foreign court; or

(b) an ancillary grant of probate or administration may be made to the personal representative appointed by the foreign court.

(51) The affidavit in support of an application for a limited or ancillary grant of probate or administration shall be in Form 86.

Foreign wills

(52) A copy of a foreign will to be attached to a grant of administration must be certified by the court out of which probate or administration has been granted.

Application to reseal grant

(53) An application to reseal a grant of probate or letters of administration may be made by the personal representative or the representative's lawyer.

(54) The applicant for resealing shall file the grant of probate or administration, or a copy certified by the issuing court.

Affidavit on resealing

(55) An application for resealing must be accompanied by an Affidavit for Resealing of Grant, in Form 86.

Domicile of deceased on resealing

(56) (a) If the domicile of the deceased at the time of death as sworn to in the affidavit differs from that suggested by the description in a foreign grant, the court may require further evidence as to domicile.

(b) If the court is satisfied that the deceased was not at the time of death domiciled within the jurisdiction of the court from which the foreign grant issued, the clerk shall mark the application accordingly.

Application of other rules on resealing

(57) These rules apply to an application for resealing.

Grant to be resealed

(58) No grant of probate or administration or certified copy shall be resealed unless it includes a copy of any testamentary paper admitted to probate.

Notice of resealing

(59) Notice of a resealing of a grant shall be sent to the court from which the grant issued.

(60) Where the clerk has notice of the resealing of a Yukon grant, the clerk shall give notice of the revocation of or any alteration in the grant to the court which resealed it.

Remuneration and passing of accounts

(61) An application to the court for passing of accounts and remuneration shall be made by notice of application supported by an Affidavit to Pass Accounts in Form 87.

(62) On the application, the court shall give all necessary directions and may refer the matter to the clerk under Rule 32.

Affidavit required for passing of accounts and remuneration

(63) As part of an application for the passing of accounts and remuneration, the applicant must file a Statement of Account in Form 88:

(a) describing the assets and liabilities of the estate for which the statement is prepared, as at the later of:

(i) the date of the deceased's death; and

(ii) the effective date of the most recent of any previous accounting done under this rule;

(b) describing capital transactions since the applicable date referred to in paragraph (a), including expenses related to and necessary for the maintenance of capital assets;

(c) describing income transactions, other than transactions included under paragraph (b), since the applicable date referred to in paragraph (a), including the payment of any liabilities of the estate;

(d) describing the assets and liabilities of the estate as at the effective date of the statement of account;

(e) including a calculation of the remuneration, if any, claimed by the applicant for:

(i) the applicant; and

(ii) any previous trustee for whom a claim for remuneration has not yet been made;

(f) describing all distributions made or anticipated to be made out of the estate; and

(g) including, in any other schedules, details or information the court may require or the applicant may consider relevant.

RULE 65 – ADMINISTRATION OF ESTATES (CONTENTIOUS)

Interpretation

(1) In this rule "probate action" means an action for the grant of probate of the will of, or grant of administration of the estate of, a deceased person, or for the revocation of a grant or for an order pronouncing for or against the validity of an alleged testamentary paper, but does not include a proceeding governed by Rule 64.

Dispute as to the validity of a testamentary paper

(2) In an action where the validity of a testamentary paper is questioned, all persons having an interest in upholding or disputing its validity shall be joined as defendants.

Commencement of action

(3) A probate action shall be commenced by Statement of Claim in Form 1 and shall contain a statement of the interest of the plaintiff and of each defendant in the estate of the deceased.

Parties

(4) Each person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate or grant of administration must be made a party to any action for revocation of the grant, and by leave of the court, a person interested in the estate, but not named as a defendant, may enter an appearance and defend the action as though the person were a defendant.

Action for revocation of grant

(5) In an action for the revocation of a grant of probate or administration:

(a) if the action is commenced by a person to whom the grant was made, the person shall lodge the grant with the clerk within 7 days after the issue of the statement of claim; or

(b) if a defendant to the action has the grant in his or her possession or control, the defendant shall lodge it with the clerk within 7 days after the service of the statement of claim upon him or her,

and the person to whom the grant was issued shall not act under it without leave of the court.

Failure to lodge grant on action for revocation

(6) Where a person fails to comply with subrule (5), any person may issue a Subpoena to Bring in Grant of Probate or Administration in Form 89 calling on the person to bring the grant into the registry, and a person against whom the subpoena is issued

shall not take any step in the action without leave of the court until the person has complied with the citation.

Failure to enter appearance

(7) Rule 17 does not apply to a probate action, and if a defendant fails to enter an appearance within the time allowed, the plaintiff may proceed with the action.

Counterclaim

(8) A defendant to a probate action who alleges that he or she has a claim or is entitled to relief in respect of a matter relating to the grant of probate or administration shall deliver a Counterclaim in Form 19 in respect of that claim or relief.

Failure to serve statement of claim

(9) Where the plaintiff fails to serve a statement of claim, a defendant may file and deliver a counterclaim.

Defence limited to proof of will

(10) In a probate action, a Statement of Defence in Form 10 may state that the defendant merely requires that the will be proved in court and that the defendant only intends to cross-examine the witnesses produced in support of the will. In that event the defendant is not liable for costs, unless the court determines that there was no reasonable ground for requiring that the will be proved in court.

Order for discontinuance or dismissal

(11) At any stage of a probate action the court may order the action to be discontinued or dismissed, and may order that a grant of probate or administration be made to the person entitled.

Compromise

(12) No probate action shall be compromised without leave of the court.

RULE 66 – TRANSFER OF PROCEEDINGS TO AND FROM SMALL CLAIMS COURT

Definition

(1) In this rule, "transfer order" includes an order of the Small Claims Court of Yukon to transfer a proceeding to the Supreme Court of Yukon and an order by the Supreme Court of Yukon to transfer a proceeding to the Small Claims Court of Yukon.

Transfer order to Supreme Court

(2) If a proceeding has been commenced in the Small Claims Court of Yukon and a judge of that court orders that the proceeding be transferred to the Supreme Court of Yukon, these rules apply to the proceeding as if it had been commenced in the Supreme Court of Yukon.

Pleadings

(3) If a proceeding is transferred to the Supreme Court of Yukon in the manner referred to in subrule (2):

(a) the claim filed in the Small Claims Court of Yukon is deemed to be the statement of claim filed in the Supreme Court of Yukon; and

(b) the reply filed in the Small Claims Court of Yukon is deemed to be the statement of defence filed in the Supreme Court of Yukon.

Case Management Conference

(4) When a proceeding is transferred to the Supreme Court of Yukon, a case management conference shall be scheduled to promptly give directions to the parties, which may include the filing of new pleadings.

Filing fees

(5) Despite any other provision of these rules, the fees payable in respect of the statement of claim and the statement of defence are the same fees payable in the Supreme Court of Yukon less any amount previously paid in the Small Claims Court of Yukon.

Transfer order to Small Claims Court of Yukon

(6) If a proceeding has been commenced in Supreme Court of Yukon, a clerk may transfer the proceeding to the Small Claims Court of Yukon pursuant to the *Small Claims Court Act*, RSY 2002, c. 204

APPENDIX B

PARTY AND PARTY COSTS

Interpretation

(1) In this Appendix "process" means the drawing, filing, service or delivery of a document and any amendment to it or particulars of it, but does not include an application made with respect to the process or any part of the process.

Scale of costs

(2) (a) Where a court has made an order for costs, it may fix the scale, from Scale A to scale C in subsection (b), under which the costs will be assessed, and may order that one or more steps in the proceeding be assessed under a different scale from that fixed for other steps.

(b) In fixing the scale of costs the court shall have regard to the following principles:

(i) Scale A is for matters of little or less than ordinary difficulty;

(ii) Scale B is for matters of ordinary difficulty;

(iii) Scale C is for matters of more than ordinary difficulty.

(c) In fixing the appropriate scale under which costs will be assessed, the court may take into account the following:

(i) whether a difficult issue of law, fact or construction is involved;

(ii) whether an issue is of importance to a class or body of persons, or is of general interest;

(iii) whether the result of the proceeding effectively determines the rights and obligations as between the parties beyond the relief that was actually granted or denied.

(d) If a settlement is reached under which payment of assessed costs is agreed to or an order for costs is made, and if no scale is fixed or agreed to in that settlement or order, the costs must be assessed under Scale B, unless a party, on application, obtains an order of the court that the costs be assessed under another scale.

(e) If, after it fixes the scale of costs applicable to a proceeding under subsection (a) or (d), the court finds that, as a result of unusual circumstances, an award of costs on that scale would be inadequate or unjust, the court may order that the value for each unit allowed for that proceeding, or for any step in that proceeding, be 1.5 times the value that would otherwise apply to a unit in that scale under section 3(a).

(f) For the purposes of subsection (e), an award of costs is not inadequate or unjust merely because there is a difference between the actual legal expenses

of a party and the costs to which that party would be entitled under the scale of costs fixed under subsection (a) or (d).

(g) Where costs may be assessed by a clerk without order or agreement, the scale of costs shall be fixed by the clerk upon the assessment.

(h) If an offer to settle is made under Rule 39 any costs payable on acceptance of that offer must be assessed under Scale B.

Value of units

(3) (a) The value for each unit allowed on an assessment conducted after December 31, 2018 in relation to orders and settlements made after that date is as follows:

(i) Scale A — $70;

(ii) Scale B — $130;

(iii) Scale C — $200.

(b) Where maximum and minimum numbers of units are provided for in an Item in the Tariff, the court has the discretion to allow a number within that range of units.

(c) In assessing costs where the Tariff indicates a range of units, the court shall have regard to the following principles:

(i) one unit is for matters upon which little time should ordinarily have been spent;

(ii) the maximum number of units is for matters upon which a great deal of time should ordinarily have been spent.

Per diem rates

(4) (a) Where in a Tariff Item a number of units is allowed for each day but the time spent during a day is not more than 2 1/2 hours, only 1/2 of the number of units shall be allowed for that day.

(b) Where in a Tariff Item a number of units is allowed for each day but the time spent during a day is more than 5 hours, the number of units allowed for that day shall be increased by 1/2 of the number.

(c) Where in a Tariff Item a number of units is allowed for preparation for an attendance but the time spent on the attendance is not more than 2 1/2 hours, only 1/2 of the number of units for preparation shall be allowed.

(d) Where in the Tariff units may be allowed for preparation for an activity, the court may allow units for preparation for an activity that does not take place or is adjourned up to the maximum allowable for one day.

Uncontested family law proceedings

(5) In a family law proceeding in which no claim, other than a claim for costs, has been contested, the costs shall be assessed under Scale B.

Uncontested foreclosure proceeds

(6) [repealed by O.I.C. 2022/168]

Default judgment and process for execution

(7) (a) Where judgment is entered upon default of appearance or of pleading, the costs shall be $600 plus disbursements.

(b) Where a writ of execution or garnishing order, or process in Forms 45 to 47, is issued, the costs shall be endorsed on the process and allowed at $100 plus disbursements.

(c) [repealed by O.I.C. 2022/168]

(d) [repealed by O.I.C. 2022/168]

(e) In addition to the fees in (a) and (b), the costs of any application to the court relating to the judgment or to the process for execution may be ordered to be assessed under the Tariff.

Apportionment where proceedings tried together

(8) Where 2 or more proceedings have, by order, been tried at the same time or tried one after the other and no order has been made as to apportionment of costs, the court may:

(a) assess 2 or more bills as one bill;

(b) allow an item once or more than once; or

(c) apportion the costs of an item or of the whole bill between the proceedings.

Offer to settle bill of costs

(9) A party to an assessment may deliver to another party an Offer to Settle Costs in Form 114 the amount of the bill of costs and, after the assessment has been completed, may produce the offer to the court, and the court shall determine whether the offer should have been accepted and, if so, may disallow items of the Tariff which relate to the assessment to the party presenting the bill, and

(a) allow, by way of set off, items of the Tariff which relate to the assessment to the party making the offer, or

(b) allow double the value of items of the Tariff which relate to the assessment to the party presenting the bill and making the offer.

Transitional- orders, settlements and costs before the coming into force of updated Rules

10 This Appendix, as it read pursuant to O.I.C. 2009/65 applies to

(a) orders for costs made before the updated Rules come into force,

(b) settlements reached before the updated Rules come into force under which payment of assessed costs is agreed to,

(c) costs payable on acceptance of an offer to settle made under Rule 39, if that offer to settle was made before the updated Rules come into force, and

(d) all assessments related to those orders, settlements and costs.

Transitional- orders, settlements and costs on or after coming into force of updated Rules

11 This Appendix, as it read on or after the date that the updated Rules come into force applies to

(a) orders for costs made on or after the date the updated Rules come into force,

(b) settlements reached on or after the date the updated Rules come into force under which payment of assessed costs is agreed to,

(c) costs payable on acceptance of an offer to settle made under Rule 39, if that offer to settle was made on or after the date that the updated Rules come into force, and

(d) all assessments related to those orders, settlements and costs.

SCHEDULE 1

[repealed by O.I.C. 2022/168]

SCHEDULE 2

[repealed by O.I.C. 2022/168]

SCHEDULE 3

[repealed by O.I.C. 2022/168]

TARIFF

Item	Description	Units	
	Instructions and Investigations		
1A	Correspondence, conferences, instructions, investigations or negotiations by a party until the commencement of the proceeding, for which provision is not made elsewhere in this tariff.	Minimum Maximum	1 10

1B	Correspondence, conferences, instructions, investigations or negotiations by a party after the commencement of the proceeding to the completion of the trial or hearing, for which provision is not made elsewhere in this tariff.	Minimum Maximum	10 30
1C	Correspondence, conferences, instructions, investigations or negotiations by a party after the trial or hearing to enforce any final order obtained in that trial or hearing, for which provision is not made elsewhere in this tariff.	Minimum Maximum	1 10
2	Instructions to an agent to appear at a trial, hearing, application, examination, reference, inquiry, assessment, or other analogous proceeding, where necessary or proper, and where held more than 40 km from the place where the instructing lawyer carries on business.		1
	Pleadings		
3	All process, for which provision is not made elsewhere in this tariff, for commencing and prosecuting a proceeding.	Minimum Maximum	1 10
4	All process, for which provision is not made elsewhere in this tariff, for defending a proceeding, and for commencing and prosecuting a counterclaim.	Minimum Maximum	1 10
5	All process for which provision is not made elsewhere in this tariff for commencing and prosecuting or defending a third party proceeding.	Minimum Maximum	1 10
6	Defence to counterclaim and, where necessary, reply.	Minimum Maximum	1 10
6A	Process for obtaining particulars.	Minimum Maximum	1 3
6B	Process for supplying particulars.	Minimum Maximum	1 3
	Discovery		
7	Process for receiving and inspecting documents.		
	(a) 1 to 999 documents,	Minimum Maximum	1 10
	(b) 1000 to 5000 documents, or	Minimum Maximum	10 20
	(c) over 5000 documents	Minimum Maximum	10 30
8	Process for producing documents for inspection.		
	(a) 1 to 999 documents,	Minimum Maximum	1 10
	(b) 1000 to 5000 documents, or	Minimum Maximum	10 20
	(c) over 5000 documents	Minimum Maximum	10 30
9	Process for delivering interrogatories.	Minimum Maximum	1 10
10	Process for answering interrogatories.	Minimum Maximum	1 10

11	Process for delivering notices to admit.	Minimum Maximum	1 5
12	Process for making admission of facts.	Minimum Maximum	1 5
13	Process for preparation of accounts, statement of property or financial information where required by statute or regulation or by order of court.	Minimum Maximum	1 10
	Expert Evidence and Witnesses		
13A	All process and correspondence associated with retaining and consulting all experts for the purposes of obtaining opinions for use in the proceeding.	Minimum Maximum	1 10
13B	All process and correspondence associated with contacting, interviewing and issuing subpoenas to all witnesses.	Minimum Maximum	1 10
	Examinations		
14	Preparation for examination of a person coming under Item 15 for each day of attendance (a) by party conducting examination. (b) by party being examined.		 4 3
15	Attendance on examination of a person for discovery, on affidavit, upon a subpoena to debtor, or in aid of execution, or of a person before trial under Rule 28 or 40, or any other analogous proceeding, for each day (a) by party conducting examination. (b) by party being examined.		 8 5
	Applications, Hearings and Conferences		
16	Preparation for an application or other matter referred to in Item 17, for each day of hearing commenced (a) where unopposed. (b) where opposed.		 2 3
17	Application for which provision is not made elsewhere in this tariff, for each day (a) where unopposed. (b) where opposed		 4 5
17.1	Preparation for a hearing referred to in Item 17.2, for each day of hearing.		3
17.2	Reference to, or inquiry, assessment, accounting or hearing before, or on appeal from, a clerk or special referee, with or without witnesses and whether before or after judgment, for each day.		6
18	Preparation for an application or other matter referred to in Item 19, for each day of hearing (a) if unopposed (b) if opposed		 4 5
19	Hearing of proceeding including originating application, special case, proceeding on a point of law, interpleader or any other analogous proceeding, and applications for judgment under Rules 18, 19 and 31 (6), for each day (a) if unopposed (b) if opposed		 6 10

19A	Preparation for a hearing referred to in Item 17(b), 17.2 or 19(b), which hearing was initially contested but for which no attendance was required as a result of an agreement reached as to the issues that would have been the subject of the hearing (a) for a hearing referred to in Item 17(b) (b) for a hearing referred to in Item 17.2 (c) for a hearing referred to in Item 19		 2 2 4
20	Preparation for attendance referred to in Item 21, for each day of attendance.		2
21	Attendance before a judge or clerk to assess costs, for each day.		4
22	Preparation for attendance referred to in Item 23, for each day of attendance	Minimum Maximum	1 5
23	Attendance at a pre-trial, settlement conference, judicial case conference or case management conference, for each day.	Minimum Maximum	1 10
	Applications, Hearings and Conferences		
23A	All process for obtaining the comments and recommendations of the Public Guardian and Trustee or Child Lawyer.	Minimum Maximum	1 10

	Trial		
24	Preparation for trial, if proceeding set down for each day of trial		5
25	Attendance at trial of proceeding or of an issue in a proceeding, for each day.		10
26	Chambers Record	Minimum Maximum	1 10
26.1	Preparation of an outline under Rule 48	Minimum Maximum	1 5
27	Attendance at the court for trial or hearing where party is ready to proceed and when trial or hearing has not commenced.		3
28	Attendance to speak to trial or hearing list.		1
	Attendance at Registry		
29	Process for payment into or out of court.		1
30	(a) process for setting down proceeding for trial, and (b) where case management or trial plan filed.		1 1
31	Process relating to entry of an order or a certificate of costs when Item 21 or 34 does not apply.		1
32	All process, for which provision is not made elsewhere in this tariff, relating to execution upon or enforcement of an order, exclusive of any application to the court.		1
	Miscellaneous		
33	Conduct of sale where property sold by order of court.	Minimum Maximum	1 10
34	Negotiations, including mediation, and process for settlement, discontinuance, or dismissal by consent of any proceeding if settled, discontinued, or dismissed by consent as a result of the negotiations.		5

34A	Attendance at mediation, per day.		5
34B	Preparation for a mediation, for each day of attendance.		3
34C	Preparation for a mediation if the mediation is not held due to a reason other than the party's refusal, failure or neglect to attend.		3
35	Travel by a lawyer to attend at any trial, hearing, application, examination, reference, inquiry, assessment, or other analogous proceeding where held more than 40 km from the place where the lawyer carries on business, for each day upon which lawyer travels.		2
	In addition, reasonable travelling and subsistence expenses shall be allowed as a disbursement.		

APPENDIX C

SCHEDULE 1

FEES PAYABLE TO TERRITORIAL TREASURER

1	For commencing a proceeding in the Supreme Court.	$ 140
2	For filing a statement of defence including a statement of defence to a counterclaim and a statement of defence to third party notice,	
	(a) if a counterclaim is not included in the same record	25
	(b) If a counterclaim is included in the same record	100
3	For filing a counterclaim separately from a statement of defence	75
4	For issuing a third party notice	75
5	For filing an application for summary trial under Rule 19	50
6	For filing an application, whether by notice of application or requisition, except for a requisition under Rule 43(10), or any other application for which a fee is not payable under this Schedule	30
7	For filing a notice of trial or hearing if proceedings are set down on the trial list	140
8	For hearing a trial, payable by the party who files the notice of trial, unless the court orders payment by another party	
	(a) if the time spent on the hearing is 1/2 day or less	75
	(b) if the time spent on the hearing is more than 1/2 day	
	(i) for each of the first 4 days spent, in whole or in part, on the hearing	150
	(ii) for each additional day spent after the first 4 days, in whole or part, on the hearing	200
9	For filing an appointment for a hearing before a Clerk or Special Referee, for an inquiry, assessment or accounting, or to review a lawyer's bill under the *Legal Profession Act,* or on a reference from a court	25
10	For filing a certificate of the clerk under the *Legal Profession Act*	15
11	For every grant or ancillary grant of probate and administration, and on every resealing of an extra-territorial grant of probate or administration. No fee is payable to obtain a grant of probate and administration where a person dies leaving an estate not exceeding $25,000 in value	140
12	For filing a caveat	70
13	For issuing a citation	35
14	For issuing a writ of execution, or a garnishing order before or after judgment, not including an application to the court	20
15	For issuing a subpoena to debtor	35
16	For search of a record, other than a search of a record of a proceeding by a party to that proceeding or his or her lawyer	4
17	For copies, per page	.50
18	For (a) a certified copy of a document of record	
	(i) for 10 pages or less	15
	(ii) for each additional page over 10 pages, per page	3

	(b) issuing a certificate of judgment	15
	(c) issuing a certificate of pending litigation or other certificate not otherwise provided for	15
19	For use of court registry fax machines, the aggregate of the following: (a) fee for service (b) cost per page faxed	 7.50 .50

INDIGENCY STATUS:

S1 (1) If the court, on summary application before or after the commencement of a proceeding, finds that a person is indigent, the court may order that no fee is payable to the Territorial Treasurer by the person to commence, defend or continue the whole or any part of the proceeding unless the court considers that the claim or defence

(a) discloses no reasonable claim or defence, as the case may be,
(b) is scandalous, frivolous or vexatious, or
(c) is otherwise an abuse of the process of the court.

(2) An order under subsection (1) may apply to one or more of the following:

(a) a proceeding generally;
(b) any part of the proceeding;
(c) a specific period of time;
(d) one or more particular steps in the proceeding.

(3) On application or on the court's own motion, the court may review, vary or rescind any order made under subsection (1) or (2).

(4) Despite anything in this Schedule, if the court makes an order in relation to a person under this section, no fee is payable to the Territorial Treasurer by that person in relation to the proceeding, part of the proceeding, period of time or steps to which the order applies.

SCHEDULE 2

FEES PAYABLE TO THE SHERIFF

1.	For Service	$
	a) receiving, filing, serving on one person and returning any process together with an affidavit of service or attempted service	50
	b) each additional party served at the same address	10
	c) each additional party not served at the same address	15
2.	For arrest or execution on goods and chattels	
	a) every arrest, execution or similar writ or order	100
	b) attending, investigating, inventorying, cataloguing, taking possession, preparing for sale, per hour for each person involved	40
	c) commission on the sum realized or settled for	
	i) where that sum is $5,000 or less	10%
	ii) where that sum is more than $5,000 but is less than $100,000	$500 plus 2 ½ % on the amount in excess of $5,000
	iii) where the sum is $100,000 or over	$2,875 plus 1% on the amount in excess of $100,000
3.	For lien and recovery actions	
	a) executing a lien other than a repairer's lien or for recovering specific property other than land where the execution or recovery is accomplished in whole or in part	150
	b) attending, investigating, inventorying, cataloguing, taking possession, per hour for each person involved	40
4.	For sale or possession of land	
	a) executing order for sale or possession of land, in part or in whole	150
	b) commission on the sum realized or settled for, on the sale of land	
	i) where that sum is $5,000 or less	10%
	ii) Where that sum is more than $5,000 but is less than $100,000	$500 plus 2½ % on the amount in excess of $5,000
	iii) where that sum is $100,000 or over	$2,875 plus 1% on the amount in excess of $100,000
5.	For a search made by a sheriff including the certificate of result	15
6.	In respect of each of the foregoing items except item 1 the sheriff shall be paid at a rate set for Yukon public service for each kilometer traveled beyond a radius of 16 km from the sheriff's office or court registry nearest to the place where service is effected, whichever is closer.	
7.	In respect of each of the foregoing items, all disbursements properly incurred.	

SCHEDULE 3

FEES PAYABLE TO WITNESSES

In all cases in which a witness is required to attend an examination, hearing or trial, the following witness fees and fees for travel, meals and preparation are payable, and shall, unless otherwise ordered, be tendered in advance by the party requiring the attendance of the witness:

Daily witness fee

1. For any witness, other than a party or a present officer, director or partner of a party to a proceeding, for each day or part of a day, a daily witness fee of $80. A witness who is a party or a present officer, director or partner of a party to the proceeding is not entitled to a daily witness fee.

Travel

2. For any witness, where the examination, hearing or trial is held at a place
   (a) within 200 km by road of where the witness resides, at the kilometer rate set for Yukon public service by road between his or her residence and the place of examination, hearing or trial, but no travel allowance will be paid if the distance is less than 8 km, or
   (b) more than 200 km from where the witness resides, the minimum return air fare by scheduled airline plus the kilometer rate set for Yukon public service each way from his or her residence to the departure airport and from the arrival airport to the place of examination, hearing or trial.

Allowances

3. For any witness, a reasonable allowance for meal expenses made necessary by the witness' attendance, and where the witness resides elsewhere than the place of examination, hearing or trial and is required to remain overnight, a rate set for Yukon public service for overnight accommodation.

Preparation

4. For any witness other than a party or present officer, director or partner of a party to a proceeding, a reasonable sum shall be allowed for the time employed and expenses incurred by the witness in preparing to give evidence, when that preparation is necessary.