

The Small Claims Act, 2016

being

Chapter S-50.12 of *The Statutes of Saskatchewan, 2016*
(effective January 1, 2018) as amended by the *Statutes of
Saskatchewan, 2019, c.P-27.01*.

NOTE:

This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.

CHAPTER S-50.12

An Act respecting Small Claims and making a consequential amendment to another Act

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Small Claims Act, 2016*.

Interpretation

2 In this Act:

“**clerk**” means a clerk of the Provincial Court of Saskatchewan appointed pursuant to *The Court Officials Act, 2012*; (« *greffier* »)

“**counterclaim**” includes a set-off; (« *demande reconventionnelle* »)

“**court**” means the Provincial Court of Saskatchewan continued pursuant to *The Provincial Court Act, 1998*; (« *tribunal* »)

“**defendant**” means a person to whom a summons is directed in accordance with this Act; (« *défendeur* »)

“**judge**” means, except where the context otherwise provides:

(a) a judge appointed pursuant to *The Provincial Court Act, 1998* but does not include a judge of the Court of Queen’s Bench acting as a judge of the court by virtue of his or her office; or

(b) a justice of the peace appointed pursuant to *The Justices of the Peace Act, 1988*; (« *juge* »)

“**monetary limit**” is the amount prescribed for the purposes of subsection 4(1) as the monetary limit; (« *limite pécuniaire* »)

“**notice of counterclaim**” means a counterclaim that is included within a reply filed by a defendant in accordance with section 9; (« *avis de demande reconventionnelle* »)

“**plaintiff**” means a person who has a claim to which this Act applies and who applies pursuant to subsection 6(1) to have a summons issued; (« *demandeur* »)

“**prescribed**” means prescribed in the regulations; (« *réglementaire* »)

“**reply**” means a reply filed by a defendant or a third party in accordance with this Act; (« *réponse* »)

“**summons**” means a summons issued or to be issued pursuant to this Act;
(« *assignation* »)

“**third party**” means a person to whom a notice of third party claim is directed;
(« *mis en cause* »)

“**third party claimant**” means a defendant to a claim, or a plaintiff who has been served with a notice of counterclaim, who applies pursuant to subsection 10(2) for a notice of third party claim. (« *auteur de mise en cause* »)

2016, cS-50.12, s.2.

Application of Act

3(1) Subject to section 4, this Act applies, whether or not the Crown is a party to the action, to any claim or counterclaim for:

- (a) debt or damages;
- (b) recovery of personal property, including personal property:
 - (i) improperly paid or transferred to a party; or
 - (ii) paid or transferred in error to a party;
- (c) compensation for goods or services:
 - (i) improperly transferred or provided to a party; or
 - (ii) transferred or provided in error to a party;
- (d) specific performance or rescission of an agreement relating to personal property or services; or
- (e) relief from opposing claims to personal property.

(2) This Act does not apply to a claim for libel, slander, malicious arrest, malicious prosecution or false imprisonment.

(3) Subject to subsections (4) and (5) and section 4, but notwithstanding clause 2(1)(o) of *The Saskatchewan Insurance Act*, actions by or against an insurer may be brought pursuant to this Act in any situation in which there is a disagreement between the insured and the insurer.

(4) If a contract of insurance or *The Saskatchewan Insurance Act* requires an appraisal before there can be any recovery, the procedures for an appraisal set out in the contract or *The Saskatchewan Insurance Act*, including, if applicable, submission to an umpire, must be completed before an action may be brought.

(5) If a contract of insurance or *The Saskatchewan Insurance Act* allows but does not require an appraisal, an action may be brought whether or not the procedures for an appraisal set out in the contract or *The Saskatchewan Insurance Act* have been completed.

(6) For the purposes of subsection (4), “**requires an appraisal**” includes a situation in which a contract of insurance or *The Saskatchewan Insurance Act* provides an insured or an insurer with the right to require an appraisal and the insured or insurer has exercised that right.

(7) Subject to section 4 but notwithstanding section 61 of *The Automobile Accident Insurance Act*, an action to recover benefits or insurance money may be brought pursuant to this Act.

2016, cS-50.12, s.3.

Monetary limit

4(1) The maximum amount that may be claimed or the maximum value of the personal property or services with respect to which relief may be sought pursuant to this Act is the amount prescribed as the monetary limit.

(2) In determining whether a claim or counterclaim exceeds the monetary limit, the amount or value is to be calculated without taking into consideration interest or costs.

(3) No person shall divide a claim or counterclaim that exceeds the monetary limit into two or more claims or counterclaims.

(4) If a claim or counterclaim exceeds the monetary limit, the person making the claim or counterclaim may abandon that part of the claim or counterclaim that is in excess of the monetary limit.

2016, cS-50.12, s.4.

Choice of proceedings

5 A person may proceed in any other manner authorized by law rather than proceeding pursuant to this Act.

2016, cS-50.12, s.5.

PART II Commencing a Claim

Application for summons

6(1) Any person who has a claim to which this Act applies and who wishes to proceed pursuant to this Act may apply to a clerk to have a summons issued.

(2) A person applying to a clerk shall:

(a) provide the clerk with the details of the person’s claim; and

(b) produce for inspection by the clerk all documents in the person’s possession relating to the claim.

(3) The plaintiff or the plaintiff’s lawyer shall sign the written statement of the claim.

(4) The clerk shall provide the written statement of the claim to a judge.

2016, cS-50.12, s.6.

Issuing a summons

7(1) If the judge is satisfied that the plaintiff may have a valid claim, the judge shall issue a summons that:

- (a) is directed to the person against whom the claim is made; and
- (b) states:
 - (i) the date and time of the first appearance, case management conference or trial, as the case may be; and
 - (ii) the court location that the judge considers appropriate.

(2) For the purposes of deciding which court location is appropriate, the judge shall consider the following factors:

- (a) any agreement between the parties respecting the location;
- (b) the place where the claim arose;
- (c) the place where the defendant resides;
- (d) the place where the plaintiff resides.

(3) The judge may refuse to issue a summons if the judge considers that it is not in the interest of one or more of the parties to proceed with the claim pursuant to this Act.

(4) The judge may refuse to issue a summons if the judge considers that the plaintiff's claim:

- (a) is without reasonable grounds;
- (b) discloses no triable issue; or
- (c) is frivolous, vexatious or an abuse of the court's process.

(5) If a judge refuses to issue a summons, that refusal does not prevent a plaintiff from proceeding in the Court of Queen's Bench or in any other manner authorized by law.

2016, cS-50.12, s.7.

Serving a summons

8(1) The plaintiff must serve a copy of the summons on the defendant at least 30 days before the date of the first appearance, case management conference or trial stated in the summons.

(2) If a summons is not served within the period mentioned in subsection (1), a judge may set a new date for the first appearance, case management conference or trial.

(3) If a new date is set for the first appearance, case management conference or trial pursuant to subsection (2), the summons must be amended to reflect the new date.

2016, cS-50.12, s.8.

Reply by defendant

9(1) Any defendant who has been served with a summons must, at least 10 days before the date of the first appearance, case management conference or trial stated in the summons:

- (a) file a reply with the clerk; and
 - (b) serve a copy of the reply on the other parties to the action.
- (2) In a reply, the defendant may:
- (a) admit all or part of the plaintiff's claim;
 - (b) oppose all or part of the plaintiff's claim by listing why the claim is opposed;
 - (c) make a counterclaim against the plaintiff; and
 - (d) include any other prescribed information.
- (3) If a defendant raises a defence or counterclaim orally and the judge is of the opinion that the plaintiff is taken by surprise, the judge may:
- (a) adjourn the first appearance, case management conference or trial, as the case may be; and
 - (b) order the defendant to file a reply with the court by a specified date.

2016, cS-50.12, s.9.

Third party claims

10(1) If a defendant to a claim, or a plaintiff who has been served with a notice of counterclaim, believes that he or she may be entitled to recover all or part of a judgment from a person who is not a party to the claim or counterclaim, the defendant or plaintiff may make a third party claim against that person.

(2) A third party claimant shall apply to the clerk at the court location named in the summons for a notice of third party claim.

(3) After it has been signed by the third party claimant or the third party claimant's lawyer, the clerk shall provide the written statement of the third party claim to a judge.

(4) If the judge is satisfied that the third party claimant may have a valid third party claim, the judge shall issue a notice of third party claim.

(5) The judge may refuse to issue a notice of third party claim if the judge considers that the third party claim:

- (a) is without reasonable grounds;
- (b) discloses no triable issue; or
- (c) is frivolous, vexatious or an abuse of the court's process.

(6) The third party claimant shall serve the third party and the other parties to the action with copies of the notice of third party claim at least 30 days before the date of the first appearance, case management conference or trial stated in the notice of third party claim.

(7) A third party must serve and file a reply in accordance with section 9 to the notice of a third party claim.

2016, cS-50.12, s.10.

PART III Procedure on Claims

First appearance

11(1) A judge may set a first appearance date in a summons or a notice of third party claim requiring the parties to an action to appear before a judge before the case management conference or trial if:

- (a) the judge is of the view that the first appearance would be beneficial to one or more parties to the action; and
- (b) the first appearance will not cause unreasonable hardship for any party to the action.

(2) At a first appearance, the judge may do any of the following:

- (a) make any order that the judge considers appropriate against a party who fails to attend the first appearance;
- (b) without hearing evidence, give judgment in the absence of:
 - (i) the plaintiff; or
 - (ii) any other party who fails to attend a first appearance if:
 - (A) proof of service on that party of the summons or the notice of third party claim, as the case may be, has been filed with the court; and
 - (B) the defendant or the third party, as the case may be, did not file a reply in accordance with section 9;
- (c) make any order that a judge may make at a case management conference in accordance with section 12.

2016, cS-50.12, s.11.

Case management conference

12(1) Subject to subsections (2) and 14(4), before a trial date is set, a case management conference must be held at the time and place:

- (a) set out in the summons or the notice of third party claim; or
- (b) set by the judge at a first appearance.

- (2) If the judge is of the view that a case management conference would not be beneficial, the judge may:
- (a) issue a summons or a notice of third party claim setting the trial date; or
 - (b) set a trial date at a first appearance.
- (3) All parties to the action:
- (a) must attend the case management conference and have authority to settle the claim; and
 - (b) may be accompanied by a lawyer or agent.
- (4) Each party to the action must bring to the case management conference all relevant documents.
- (5) A judge in a case management conference may attempt to settle any issues in dispute.
- (6) If settlement attempts pursuant to subsection (5) have not resolved the dispute, a judge in a case management conference may do any of the following:
- (a) decide any issues that do not require evidence;
 - (b) make any other appropriate order according to terms agreed to by the parties;
 - (c) set a trial date and location, if a trial is necessary;
 - (d) discuss any evidence that will be required and the procedure that will be followed, if a trial is necessary;
 - (e) order the defendant or a third party to file a reply in accordance with section 9, if the defendant or third party has not already done so;
 - (f) if the defendant or a third party has filed a reply in accordance with section 9, order the defendant or third party to:
 - (i) provide additional information respecting the reply;
 - (ii) amend the reply based on the additional information; and
 - (iii) serve the amended reply on the other parties to the action;
 - (g) order the plaintiff or a third party claimant to:
 - (i) provide additional information respecting the summons or the notice of third party claim;
 - (ii) amend the summons or the notice of third party claim based on the additional information; and
 - (iii) serve the amended summons or notice of third party claim on the other parties to the action;

- (h) order a party to:
 - (i) give another party copies of documents by a set date; or
 - (ii) allow another party to inspect and copy documents by a set date;
 - (i) order a party to permit a person chosen by another party to examine any item or property;
 - (j) adjourn the case management conference from time to time;
 - (k) direct the parties to participate in a mediation session;
 - (l) make any order for the just, timely and inexpensive resolution of the action.
- (7) If a party does not comply with an order made pursuant to subsection (6), a judge may at any time do one or more of the following:
- (a) adjourn a case management conference;
 - (b) order a trial to proceed without permitting that party to produce as evidence any information, document or records withheld as a result of the non-compliance;
 - (c) dismiss the claim, counterclaim, reply or third party claim, as the case may be.
- (8) A judge may do one or both of the following:
- (a) make any appropriate order against a party who does not attend a case management conference;
 - (b) without hearing evidence, give judgment in the absence of:
 - (i) a plaintiff; or
 - (ii) any other party who fails to attend a case management conference if proof of service on that party of the summons or the notice of third party claim, as the case may be, has been filed with the court.
- (9) If a matter is to proceed to trial, the judge shall prepare a case management conference report.
- (10) If the matter proceeds to trial, no communication shall be made to the trial judge as to the proceedings at the case management conference except as disclosed in the case management conference report prepared pursuant to subsection (9).
- (11) Subject to an order of a judge made pursuant to subsection (6), the following are not admissible as evidence in any civil, administrative, regulatory or summary conviction proceeding, except with the written consent of all parties to an action who participated in the case management conference:
- (a) evidence directly arising from anything said in the course of the case management conference;
 - (b) anything said in the course of the case management conference;
 - (c) any oral or written admission or communication made in the course of the case management conference.

Changing location

13(1) After issuing a summons, a judge may change the location of the first appearance, case management conference or trial to any other court location if:

- (a) all parties to the action consent; or
 - (b) the judge is of the opinion that another court location would be appropriate based on information provided by one of the parties.
- (2) If a judge changes the location of the first appearance, case management conference or trial as a result of information provided pursuant to subsection (1), the clerk shall issue an amended summons and provide it to the party who provided the information.
- (3) The party to whom the amended summons is issued shall serve the other parties to the action with copies of the amended summons at least 10 days before the date of the first appearance, case management conference or trial stated in the amended summons.

2016, cS-50.12, s.13.

Transfer from Court of Queen's Bench

14(1) An action in the Court of Queen's Bench may be transferred to the court by the local registrar with the consent of all parties filed with the Court of Queen's Bench before the trial begins, if this Act applies to that claim.

- (2) If an action is transferred from the Court of Queen's Bench, the local registrar shall forward to the clerk at the court location agreed to by the parties all documents in the possession of the Court of Queen's Bench respecting the matter.
- (3) When the clerk receives the documents pursuant to subsection (2), the clerk shall advise the parties to the action of the time and date of the first appearance, case management conference or trial, as the case may be.
- (4) If an action is transferred from the Court of Queen's Bench, and if the parties did not participate in a settlement pre-trial conference pursuant to *The Queen's Bench Act, 1998* before the action is transferred, section 12 of this Act applies, with any necessary modification, to the case management conference procedure.
- (5) An action transferred from the Court of Queen's Bench is deemed to have been commenced in the court on the day it was commenced in the Court of Queen's Bench.

2016, cS-50.12, s.14.

Transfer to Court of Queen's Bench

15(1) A judge may order that a matter be transferred to the Court of Queen's Bench:

- (a) with the consent of all parties; or
- (b) if a claim, counterclaim, defence or third party claim:
 - (i) involves a matter to which this Act does not apply; or
 - (ii) exceeds the monetary limit.

- (2) If a matter is ordered to be transferred, the clerk, after the prescribed fees are paid, shall forward to the local registrar of the Court of Queen's Bench:
- (a) the record of any evidence in the form in which it was taken; and
 - (b) all documents and exhibits in the possession of the court respecting the matter.
- (3) If a matter is transferred to the Court of Queen's Bench, that court, on application by a party, may:
- (a) give directions for continuation of the matter to completion; or
 - (b) order that the matter be recommenced.
- (4) If a matter is transferred to the Court of Queen's Bench and a party had abandoned a portion of his or her claim, counterclaim, defence or third party claim before it was transferred, the Court of Queen's Bench, on application by the party, may allow the abandonment to be withdrawn.
- (5) Subject to an order made pursuant to subsection (3), a matter transferred to the Court of Queen's Bench is deemed to have been commenced in the Court of Queen's Bench on the day on which the summons was issued.

2016, cS-50.12, s.15.

Fees

- 16(1)** Every person who applies for a summons or a notice of third party claim and every person who proposes to file any document respecting an action to which this Act applies, including a notice of counterclaim, shall pay the prescribed fee, if any, to the clerk.
- (2) If the prescribed fee, if any, is not paid to the clerk, the court may refuse:
- (a) to issue a summons or a notice of third party claim; or
 - (b) to file any document.

2016, cS-50.12, s.16.

Fee waivers

- 17** Any fee payable pursuant to this Act is subject to *The Fee Waiver Act*.

2016, cS-50.12, s.17.

Serving documents

- 18(1)** A summons issued pursuant to this Act must be served:
- (a) by personal service on the person required to be served with the summons;
 - (b) by registered mail addressed to the person required to be served with the summons; or
 - (c) in any manner mentioned in subsection (4) or (5).

- (2) A reply must be served:
- (a) by regular mail addressed to each person required to be served with the reply;
 - (b) by email addressed to each person required to be served with the reply; or
 - (c) in any manner mentioned in clause (3)(a) or subsection (4) or (5).
- (3) Subject to subsections (1) and (2), all documents required to be served by this Act may be served:
- (a) in any manner that permits the person serving the document to produce proof that it was received by the person to be served, including registered mail, fax, courier, personal service and any other prescribed means; or
 - (b) in any manner mentioned in subsection (4) or (5).
- (4) A document may be served:
- (a) on an adult, by delivering a copy of the document to the person to be served;
 - (b) on a minor, by delivering a copy of the document to the minor and the minor's parent or guardian or another adult with whom the minor resides;
 - (c) on a municipality, by leaving a copy of the document with the mayor, reeve, clerk or administrator of the municipality or with a deputy of any of those persons;
 - (d) on a Crown corporation:
 - (i) by personal service of a copy of the document on the chief executive officer of the Crown corporation; or
 - (ii) by sending a copy of the document by registered mail to the chief executive officer of the Crown corporation; or
 - (e) on any corporation other than a Crown corporation:
 - (i) by leaving a copy of the document with any officer, director, agent or liquidator of the corporation or the clerk, manager, agent or other representative at, or in charge of, any office or any other place where the corporation carries on business in Saskatchewan; or
 - (ii) by mailing by registered mail or delivering a copy of the document to the registered office of the corporation or to any attorney of the corporation appointed pursuant to section 268 of *The Business Corporations Act*;
 - (f) on the Government of Saskatchewan, by leaving a copy of the document with:
 - (i) the Attorney General or the Deputy Attorney General; or
 - (ii) any barrister and solicitor who is designated by the Attorney General for the purposes of section 13 of *The Proceedings Against the Crown Act, 2019*.

(5) A document may be served on a person by leaving a copy with the person's lawyer if the lawyer accepts service by signing a copy of the document and indicating that he or she is the lawyer for that person.

(6) A document may be served outside Saskatchewan if the matter is one in which service outside Saskatchewan would be allowed without a court order if the action were commenced in the Court of Queen's Bench.

2016, cS-50.12, s.18; 2019, cP-27.01, s.28.

Proof of service

19(1) Service of a document may be proved:

- (a) if service is by personal service, by the oral testimony or affidavit of the person who served the document;
 - (b) if service is by registered mail, by filing with the court a copy of the post office acknowledgment of receipt purporting to be signed by or on behalf of the addressee;
 - (c) if service is by courier, by filing with the court:
 - (i) a copy of the acknowledgment of receipt purporting to be signed by or on behalf of the recipient; or
 - (ii) if a signed acknowledgment of receipt is not available, a copy of a certificate or other form of written confirmation from the courier that indicates the date on which the document was delivered and the address of the recipient;
 - (d) if service is by regular mail, by the oral testimony or affidavit of the person who served the document;
 - (e) if service is by email, by filing with the court a copy of the email that indicates the date on which the email was sent and the email address of the recipient;
 - (f) if service is by fax, by filing with the court a copy of the transmission record or journal generated by the fax machine that indicates the date of transmission and that the transmission was successful;
 - (g) if service is by a sheriff, a deputy sheriff or a sheriff's bailiff, by filing with the court a copy of the document endorsed with the certificate of service in the prescribed form; or
 - (h) if service is effected pursuant to subsection 18(5), by filing with the court a copy of the document endorsed with the acceptance of service by the lawyer.
- (2) If service is by registered mail, a copy of the post office acknowledgment of receipt purporting to be signed by or on behalf of the addressee is admissible, in the absence of evidence to the contrary, as proof of service without proof of the signature.
- (3) If service is by courier, a copy of the acknowledgment of receipt purporting to be signed by or on behalf of the addressee is admissible, in the absence of evidence to the contrary, as proof of service without proof of the signature.

2016, cS-50.12, s.19.

Date of service by mail

20(1) If service is made by registered mail, the document is deemed to have been served on the delivery date shown on the signed post office acknowledgment of receipt.

(2) If service is made by regular mail, the document is deemed to have been served on the fifth day after the date of its mailing.

(3) If service is made by email, the document is deemed to have been served at the time it is sent.

(4) Notwithstanding that a person is deemed to have been served pursuant to subsection (1), (2) or (3), that person may prove that he or she was not served and, for that purpose may apply to a judge:

(a) for an adjournment or for an extension of time; or

(b) to have the judgment set aside in accordance with section 42.

2016, cS-50.12, s.20.

Alternative method of service

21(1) If a judge is satisfied that it is impractical for any reason to serve a document in accordance with section 18, the judge may make an order setting out a method of service to be used in place of the methods described in section 18.

(2) A document is deemed to be properly served if it is served by the method stated in the order.

2016, cS-50.12, s.21.

Deemed service

22(1) A summons is deemed to be served if the defendant takes any action or step to participate in the proceedings without having been served.

(2) A notice of third party claim is deemed to be served if the third party takes any action or step to participate in the proceedings without having been served.

(3) A judge may order that a document is deemed to have been served if, in the opinion of the judge, the document came to the attention of the person to be served without having been served by a method that meets the requirements of this Act.

2016, cS-50.12, s.22.

Subpoenas

23(1) Any party may apply to have a judge or clerk issue a subpoena, directed to a witness, to compel the witness:

(a) to give evidence; or

(b) to give evidence and bring documents to court.

(2) Subject to subsection (5), a subpoena must be served personally at least five days before the date of the trial, by delivering to the person named in the subpoena:

(a) a copy of the subpoena; and

(b) the prescribed witness fee.

(3) A person who is served with a subpoena shall attend at the time and court location mentioned in the subpoena.

(4) A subpoena issued pursuant to subsection (1) has the same effect as a subpoena issued out of the Court of Queen's Bench, and any witness who does not attend in obedience to a subpoena is liable in the same manner as if the witness had disobeyed a subpoena issued out of that court.

(5) A judge may order an abridgment of the time of service required by this section, either before or after service of the subpoena.

2016, cS-50.12, s.23.

Trials are public

24 Trials are to be open and accessible to the public to the extent that is conveniently possible in each case.

2016, cS-50.12, s.24.

Trial and determination of action

25(1) Every action is to be tried on the trial date set pursuant to this Act or on the date to which the trial has been adjourned.

(2) A judge or clerk may adjourn a trial as may be required, and a judge may reserve judgment.

(3) In a judgment, a judge may make any order that the judge considers appropriate.

2016, cS-50.12, s.25.

Decision on written material

26(1) Notwithstanding any other provision of this Act, with the consent of the parties, a judge may decide a claim on the basis of written material filed with the court, whether or not the parties are present.

(2) Section 42 does not apply to a judgment granted pursuant to subsection (1).

2016, cS-50.12, s.26.

Withdrawal

27 At any time before or during a trial, a plaintiff, defendant or third party claimant may:

- (a) withdraw his or her claim, counterclaim or third party claim; or
- (b) consent to judgment.

2016, cS-50.12, s.27.

Failure to appear

28(1) A judge may:

- (a) adjourn a trial if a party does not appear at the trial;
 - (b) if proof of service of the summons is filed, give judgment without hearing evidence in the absence of a defendant who does not appear at a trial;
 - (c) if proof of service of the notice of counterclaim is filed, give judgment without hearing evidence in the absence of a plaintiff who does not appear at a trial;
 - (d) if proof of service of the notice of third party claim is filed, give judgment without hearing evidence in the absence of a third party who does not appear at a trial; or
 - (e) dismiss the claim of a party who does not appear at a trial.
- (2) If a plaintiff, defendant or third party advises the clerk in advance of a trial that he or she does not intend to appear at the trial, the judge may give judgment against that party without requiring the attendance of the other parties on the date of the trial.

2016, cS-50.12, s.28.

Oral evidence

29(1) If oral evidence is given at trial:

- (a) it is to be given under oath or affirmation; and
 - (b) the parties and witnesses giving oral evidence are subject to cross-examination and re-examination.
- (2) The judge shall ensure that a recording is made of the oral evidence given at trial.

2016, cS-50.12, s.29.

Evidence by telephone, etc.

30(1) A judge may order that the oral evidence of any witness may be taken by telephone, or by any audio-visual method approved by the judge, if:

- (a) the parties consent; or
 - (b) in the opinion of the judge, it is necessary to ensure a fair hearing.
- (2) If the taking of evidence by telephone or by an approved audio-visual method is or becomes unsatisfactory, or if the personal attendance of the witness is desirable, the judge may:
- (a) refuse to hear or to continue hearing the evidence;
 - (b) receive or reject any evidence that may have been heard; and
 - (c) make any order that the judge considers appropriate, including an order respecting costs.

(3) Unless the judge orders otherwise, if a party intends to call a witness whose oral evidence is to be taken by telephone or by an approved audio-visual method, the party shall file with the court, before the trial, all written material to which the witness intends to refer.

(4) The party on whose behalf a witness is called shall pay all of the charges of contacting that witness by telephone or by the approved audio-visual method.

2016, cS-50.12, s.30.

Questioning by judge

31 During a trial, a judge may ask the parties or witnesses any questions that the judge considers necessary:

- (a) to ensure that the facts, and the case of each party, are fully before the court; or
- (b) to clarify any ambiguity in the facts or information with respect to the matter before the court.

2016, cS-50.12, s.31.

Admission of evidence

32 If a judge considers the evidence to be credible and trustworthy, the judge may admit as evidence any oral or written testimony or report.

2016, cS-50.12, s.32.

Representation by lawyer or agent

33 The parties may be represented at trial by lawyers or agents.

2016, cS-50.12, s.33.

Voluntary appearance

34(1) The parties to a claim to which this Act applies may appear voluntarily before a judge.

(2) If the parties voluntarily appear before a judge, the judge shall set a date for:

- (a) a case management conference; or
- (b) a trial.

(3) At the case management conference or trial, the judge may proceed without requiring a summons to be issued.

(4) The provisions of this Act that govern a case management conference or trial when a summons has been issued, or that govern a judgment or order given by a judge in a case management conference or trial when a summons has been issued, also apply to a case management conference or trial pursuant to this section.

2016, cS-50.12, s.34.

Contempt

- 35(1)** It is a contempt of court for a person to:
- (a) without adequate excuse, fail to obey an order of a judge made pursuant to this Act; or
 - (b) otherwise behave in a proceeding before the court in a manner that is disorderly, disobedient or disruptive.
- (2) If a judge, on application or on the judge's own initiative, is satisfied that there are reasonable grounds for believing that a person may be in contempt of court, the judge may order the person to appear before a judge to show why the person should not be held in contempt of court.
- (3) A judge may declare a person to be in civil contempt of court if the person:
- (a) in a proceeding before the court, engages in conduct described in clause (1)(a) or (b); or
 - (b) after appearing before a judge pursuant to subsection (2), is found to have engaged in conduct described in clause (1)(a) or (b).
- (4) Every person in contempt of court is liable:
- (a) to a fine of not more than \$5,000;
 - (b) to imprisonment for a term of not more than 30 days; or
 - (c) to both that fine and imprisonment.
- (5) A judge who imposes a sanction pursuant to subsection (4) may waive the sanction in whole or in part, or suspend any imprisonment, if the judge is satisfied that the person found to be in contempt of court has purged that person's contempt.
- (6) This section does not apply to an order for the payment of money.

2016, cS-50.12, s.35.

Costs

- 36(1)** A judge may at any time, in any proceeding before the court, award costs, other than lawyer-related costs, on any terms and conditions that the judge considers appropriate, including:
- (a) the prescribed fee for issuing a summons or a notice of third party claim;
 - (b) costs incurred to effect service;
 - (c) fees paid to a witness pursuant to section 23; and
 - (d) charges incurred pursuant to section 30.
- (2) Subject to the regulations, a judge may at any time, in any proceeding before the court, award additional costs, other than lawyer-related costs, on any terms and conditions that the judge considers appropriate for each instance in which a party:
- (a) without reasonable excuse, fails to attend or prepare for any stage of a proceeding before the court; or
 - (b) takes any step for the purpose of delaying a proceeding or increasing costs of another party.

(3) Subject to the regulations, in addition to any costs awarded pursuant to subsection (1) or (2), a judge may, at the conclusion of a matter, award additional costs, other than lawyer-related costs, on any terms and conditions that the judge considers appropriate if the judge is of the opinion that additional costs are appropriate after taking into account one or more of the following factors:

- (a) access to justice;
- (b) fairness to the parties;
- (c) whether or not the defendant or third party prepared a reply;
- (d) any offer to settle made by a party;
- (e) the conduct of the parties;
- (f) the failure of a party to comply with an order of a judge made pursuant to this Act;
- (g) any other factor that the judge considers appropriate.

2016, cS-50.12, s.36.

Counterclaim

37(1) A counterclaim is to be applied in satisfaction of any claim established by the plaintiff, to the extent of the amount established.

(2) If the counterclaim established exceeds the amount of the plaintiff's claim, the defendant is entitled to have judgment entered for the excess in an amount not more than the monetary limit.

(3) If the counterclaim established exceeds the plaintiff's claim by more than the amount of the monetary limit, the defendant may set off the amount of the plaintiff's claim but is not entitled to judgment for the excess unless the defendant abandons the portion of the counterclaim that will reduce the excess to the amount of the monetary limit.

(4) If the counterclaim established is less than the established amount of the plaintiff's claim, the plaintiff is entitled to judgment for the difference.

2016, cS-50.12, s.37.

PART IV Decision on Claim

Certificate of judgment

38(1) When a matter has been resolved at a first appearance or a case management conference, or a judgment has been rendered at a trial, a judge shall cause a certificate of judgment to be prepared and certified by the clerk or the judge.

(2) The clerk shall send to each of the parties:

- (a) a copy of the certificate of judgment; and
- (b) a notice stating that any aggrieved party may appeal the judgment within 30 days after the date of the judgment.

(3) The date of the judgment is the date on which the certificate of judgment is issued.

2016, cS-50.12, s.38.

Powers of judge re judgment

39(1) If a judge orders one party to pay money to or take any action respecting another party, the judge may include in the judgment a timetable for complying with that judgment.

(2) If a judgment does not include a timetable for complying with it, any party may apply to the court for a summons to establish a timetable for compliance with the judgment.

(3) Any party may apply to the court for a summons to amend a timetable for compliance with a judgment.

(4) A timetable for compliance with a judgment may:

- (a) state that the judgment debtor is to comply with the judgment immediately;
- (b) set a date by which the judgment is to be complied with;
- (c) if compliance involves the payment of money, set out a schedule for payment by instalments; or
- (d) contain any other provision respecting the timetable that the judge considers appropriate.

2016, cS-50.12, s.39.

Registration of judgment

40(1) The successful party to the action may file the certificate of judgment in the office of the local registrar of the Court of Queen's Bench at the judicial centre nearest to the place where the trial was held.

(2) A certificate of judgment filed pursuant to subsection (1) is admissible in evidence as proof of the judgment without proof of the signature of the clerk or judge.

(3) Subject to subsections (4) and 42(5), the local registrar of the Court of Queen's Bench, on receipt of a certificate of judgment pursuant to subsection (1), shall enter the certificate as a judgment of the Court of Queen's Bench, and that judgment may be enforced as a judgment of that court.

(4) A local registrar of the Court of Queen's Bench shall not enter a certificate of judgment unless satisfied that:

- (a) the time for appealing an order has elapsed; and
- (b) an appeal has not been filed respecting that judgment.

2016, cS-50.12, s.40.

Enforcement of judgment

41(1) Subject to an order made pursuant to subsection 39(3), a judgment creditor may not take any steps to enforce the judgment as long as the judgment debtor is complying with the terms of the judgment.

- (2) If a judgment debtor fails to comply with the terms of the judgment:
- (a) the balance of money required to be paid becomes due immediately if the judgment required the payment of money;
 - (b) any action to be taken by the judgment debtor is to take place immediately; and
 - (c) the judgment creditor may enforce the judgment.

2016, cS-50.12, s.41.

Setting aside judgment

42(1) Subject to subsection (2), if there has been no appeal of a judgment made pursuant to this Act, any party to the action may, within 90 days after the date of judgment, apply to the court for a summons to set aside the judgment and rehear the matter if:

- (a) the party applying to set aside the judgment did not appear at:
 - (i) the first appearance at which the judge gave judgment;
 - (ii) the case management conference at which the judge gave judgment; or
 - (iii) the trial at which the judge gave judgment;
 - (b) the party applying to set aside the judgment submits an affidavit setting out:
 - (i) the party's reasons for not appearing; and
 - (ii) if the party is a defendant or a third party, that the party has a valid defence to the claim or third party claim, as the case may be, made against him or her; and
 - (c) in the judge's opinion:
 - (i) the party applying to set aside the judgment has a reasonable excuse for not appearing; and
 - (ii) if the party is a defendant or a third party, the party has a valid defence to the claim or third party claim, as the case may be.
- (2) In exceptional circumstances, the court may allow an application to be made pursuant to subsection (1) after the expiry of 90 days after the date of judgment.
- (3) For the purposes of subclause (1)(c)(ii), the defence is not valid if the judge considers that the defence:
- (a) is without reasonable grounds;
 - (b) discloses no triable issue; or
 - (c) is frivolous, vexatious or an abuse of the court's process.

- (4) On the return date of a summons issued pursuant to subsection (1), the judge may:
- (a) set aside the judgment on any terms as to costs that the judge considers appropriate; and
 - (b) give any directions that the judge considers necessary respecting the rehearing of the matter.
- (5) If the judgment is set aside pursuant to subsection (4), any certificate of judgment that was entered pursuant to subsection 40(3) is vacated.

2016, cS-50.12, s.42.

Claim against personal representative

43 When a claim is established against a personal representative of a deceased person, the judgment binds only the assets of the estate in the hands of the personal representative.

2016, cS-50.12, s.43.

PART V
Appeals

Appeal to Court of Queen's Bench

44(1) A party may appeal a judgment made pursuant to this Act to the Court of Queen's Bench:

- (a) within 30 days after the date of judgment; or
 - (b) within any further time, not exceeding 150 days, that the Court of Queen's Bench may allow.
- (2) An appeal is commenced by filing with the local registrar of the Court of Queen's Bench at the judicial centre nearest to the place where the trial was held:
- (a) a notice of appeal;
 - (b) proof of service of the notice of appeal on the opposite party or the party's lawyer;
 - (c) a copy of the certificate of judgment; and
 - (d) a copy of the request for a transcript of the proceedings.
- (3) A notice of appeal must set out:
- (a) the grounds of the appeal;
 - (b) the details of the defendant's defence and of any counterclaim, if the appeal is by a defendant who did not serve and file a reply before trial; and
 - (c) the details of the third party's defence, if the appeal is by a third party who did not serve and file a reply before trial.

- (4) Subject to subsection (9), the appellant shall file with the local registrar at the judicial centre mentioned in subsection (2) a transcript of the evidence heard by the judge.
- (5) If the transcript mentioned in subsection (4) is not filed within six months after the day on which the notice of appeal is filed, the appeal is deemed to be dismissed unless an order extending the time for filing the transcript is made before the expiration of the six-month period by a judge of the Court of Queen's Bench on an application by the appellant.
- (6) If a judge of the Court of Queen's Bench extends the time for filing the transcript pursuant to subsection (5) and the transcript is not filed before the expiration of that extended period, the appeal is deemed to be dismissed.
- (7) On receipt of the transcript, the local registrar of the Court of Queen's Bench shall enter the appeal for hearing at the judicial centre where the appeal is filed.
- (8) When an appeal is filed pursuant to this section, execution of the judgment and all other proceedings in the action are stayed until the appeal is determined unless a judge or a judge of the Court of Queen's Bench orders otherwise.
- (9) If a judge of the Court of Queen's Bench is satisfied that a transcript cannot be provided for the appeal, the judge, on application by the appellant, may:
- (a) order that the matter be returned to the court for a new trial; or
 - (b) make any other order that the judge considers appropriate.

2016, cS-50.12, s.44.

Form of appeal

45 An appeal pursuant to this Act is to take the form of an appeal on the record.

2016, cS-50.12, s.45.

Records from trial

46 On being notified by the local registrar of the Court of Queen's Bench that an appeal has been filed pursuant to section 44, the clerk shall ensure that the following are delivered to the local registrar:

- (a) the summons, if any;
- (b) the third party claim, if any;
- (c) the reply, if any, filed by a defendant or a third party;
- (d) any exhibits entered at the trial.

2016, cS-50.12, s.46.

Disposal of exhibits

47 After the expiry of the appeal period, the chief judge as defined in *The Provincial Court Act, 1998* may direct the disposal of any exhibits in the possession or control of the court.

2016, cS-50.12, s.47.

Order on appeal

48 On hearing an appeal pursuant to section 44, the Court of Queen's Bench may:

- (a) allow the appeal and give the judgment that the trial judge should have given;
- (b) dismiss the appeal; or
- (c) order that the action be returned to the court for a new trial.

2016, cS-50.12, s.48.

Costs on appeal

49 The Court of Queen's Bench may grant to a successful party the costs of the appeal calculated in accordance with the prescribed tariff.

2016, cS-50.12, s.49.

Entry as Queen's Bench judgment

50(1) A judgment made pursuant to section 48 is to be entered as a judgment of the Court of Queen's Bench and may be enforced as a judgment of that court.

(2) The local registrar of the Court of Queen's Bench shall forward a copy of the judgment of the Court of Queen's Bench to the trial judge.

2016, cS-50.12, s.50.

Appeal to Court of Appeal

51 The judgment of the Court of Queen's Bench is subject to appeal to the Court of Appeal on a question of law, with leave of a judge of the Court of Appeal.

2016, cS-50.12, s.51.

PART VI General

Procedural informality

52 No proceedings pursuant to this Act are to be considered invalid for informality if there has been substantial compliance with this Act.

2016, cS-50.12, s.52.

Authority of clerks

53 A clerk has the authority to:

- (a) issue subpoenas;
- (b) certify certificates of judgment; and
- (c) adjourn any proceeding or matter.

2016, cS-50.12, s.53.

Immunity

54 No action or proceeding lies or shall be commenced against a clerk if that person is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out of any responsibility imposed by this Act or the regulations.

2016, cS-50.12, s.54.

If a different judge issued summons

55 If a judge has issued a summons or a notice of third party claim, any other judge has the same powers respecting the matter as if that judge had issued the summons or notice of third party claim.

2016, cS-50.12, s.55.

Regulations

56 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) for the purposes of section 4:
 - (i) either:
 - (A) prescribing a monetary limit; or
 - (B) dividing Saskatchewan into different areas or places and prescribing different monetary limits applicable to different areas or places; and
 - (ii) prescribing any additional rules or guidelines respecting the application of the prescribed monetary limit or the prescribed different monetary limits;
- (c) governing procedures in the court;
- (d) prescribing the form of any document required for the purposes of this Act;
- (e) prescribing the fees where fees are authorized by this Act;
- (f) prescribing the terms and conditions pursuant to which a fee authorized by this Act may be waived in whole or in part;
- (g) for the purposes of clause 18(3)(a), prescribing additional means of service, including prescribing rules respecting:
 - (i) proof of service; and
 - (ii) determination of the date of service;

- (h) prescribing any rule, limit, tariff, guideline or other matter respecting the awarding of costs;
- (i) prescribing any matter or thing required or authorized by this Act to be prescribed;
- (j) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2016, cS-50.12, s.56.

PART VII Repeal and Transitional

S.S. 1997, c.S-50.11 repealed

57 *The Small Claims Act, 1997* is repealed.

2016, cS-50.12, s.57.

Transitional

58 Every proceeding commenced pursuant to *The Small Claims Act, 1997*, as that Act existed on the day before the coming into force of this Act, but not completed before the coming into force of this Act is continued pursuant to this Act and is to be dealt with as if it had been commenced pursuant to this Act.

2016, cS-50.12, s.58.

PART VIII Consequential Amendment

S.S. 1998, c.Q-1.01, new section 40

59 Section 40 of *The Queen's Bench Act, 1998* is repealed and the following substituted:

“Small claims action no bar

40 A claim brought pursuant to *The Small Claims Act, 2016*, whether or not it results in a judgment, is not a bar to an action against the same defendant on a separate claim or issue arising out of the same cause of action”.

2016, cS-50.12, s.59.

PART IX Coming into Force

Coming into force

60 This Act comes into force on proclamation.

2016, cS-50.12, s.60.

