PART 3: COURT ACTIONS

What this Part is about: This Part describes the documents to be used to commence and defend court actions and the options that parties have during court proceedings.

The Part begins by describing how court actions are commenced (either by a statement of claim or by an originating application) and in which court office the commencement document must be filed to start the court action.

The Part then deals with actions started by statement of claim, time limits for serving the commencement document and the options that the defendant has.

The Part describes how a defence to a statement of claim is filed and served and the reply to the defence, and what happens if no defence is filed.

The Part also describes how to make a cross-claim against a co-defendant, a third party claim, a counterclaim or a request for more particulars about a claim, and explains how documents filed in court (called pleadings) can be amended.

The rules then describe the requirements for originating applications and the specific rules for originating application for judicial review, which is the process used to challenge a decision, act or omission of a person or body, and the specific rules for originating application for *habeas corpus*.

The Part describes how parties to a court action can be joined, separated or changed.

The Part ends by describing the specific rules for class actions.

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PART 3: COURT ACTIONS

DIVISION 1
Court Actions and their Venue

Rules govern Court actions

3-1 A Court action for a claim may only be brought and carried on, applications may only be filed and proceedings may only be taken in accordance with these rules.

How to start an action

3-2(1) An action, other than a family law proceeding, may only be started by filing in the appropriate judicial centre described in rule 3-3 or 3-4:

(a) a statement of claim by a plaintiff against a defendant;

(b) an originating application by an originating applicant against a respondent; or

(c) a notice of appeal, reference or other procedure or method specifically authorized or permitted by an enactment.

(2) A statement of claim must be used to start an action, unless an enactment or these rules provide otherwise.

(3) An action may be started by originating application if these rules authorize the commencement of an action by originating application.

(4) If an enactment authorizes, requires or permits an application to be made to the Court and the application:

(a) is made in an action with respect to which a commencement document has been filed, the application must be made pursuant to Part 6, unless the Court orders otherwise; or

(b) is not made in an action with respect to which a commencement document has been filed and the enactment does not provide a procedure to be used, an originating application must be used unless the Court orders otherwise or these rules provide otherwise.

(5) If an enactment authorizes, requires or permits an appeal or reference to be made to the Court and provides a procedure, the appeal or reference must be made by notice of appeal:

(a) in the form prescribed by the enactment; or

(b) if no form is prescribed, in a form consistent with the procedure.

(6) If an enactment authorizes, requires or permits an appeal or reference to be made to the Court and does not provide a procedure, the appeal or reference must be made by originating application.

(7) If an action that is started in one form should have been started or should continue in another, the Court may make any procedural order to correct and continue the proceeding and deal with any related matter.

Information Note

The rules regarding a family law proceeding are found in Part 15.

The rules regarding actions started by statement of claim are found in Division 2. Rules about the contents of statements of claim, defence and other related documents (called ***pleadings***), and rules for affidavits are contained in Part 13.

The rules regarding actions started by originating applications and the rules for contents of originating applications are in Division 3.

Determining the appropriate judicial centre

3-3(1) Subject to this rule, all actions must be commenced and, unless ordered otherwise, tried at the judicial centre nearest to the place where:

(a) the cause of action arose;

(b) the defendant or one of several defendants resides when the action is commenced; or

(c) the defendant or one of several defendants carries on business when the action is commenced.

(2) If the parties have agreed in writing to a venue, the plaintiff may commence the action at the judicial centre specified in the agreement as long as that judicial centre has not been disestablished.

(3) Except where the parties have agreed in writing to a venue, an action may be commenced at any judicial centre, but, unless an action is commenced at one of the judicial centres mentioned in subrule (1), a defendant may request a transfer of the action in accordance with rule 3-6.

Appropriate judicial centre – *Adult Guardianship and Co-decision-making Act*

3-4 If a proceeding is an application pursuant to *The Adult Guardianship and Co-decision-making Act*, the appropriate judicial centre is:

(a) the judicial centre nearest to the location of the property, or some of the property, of the dependent adult; or

(b) the judicial centre nearest to the residence of the dependent adult.

Claim regarding land

3-5 Notwithstanding any agreement to the contrary or any provision in a mortgage of land or in an agreement for the sale of land, all actions for foreclosure or sale under a mortgage, or for enforcement of the vendor's lien, specific performance, termination, cancellation or rescission of a contract respecting land, must be commenced and, unless ordered otherwise, continued and tried at the judicial centre nearest to which the land or any part of it lies.

Information Note

In order to determine which is the nearest judicial centre, refer to section 23 of *The Queen's Bench Act, 1998*.

Transfer of an action

3-6(1) If there is only one defendant, the defendant may, at any time after filing a statement of defence and before the action is set down for trial, file with the local registrar at the judicial centre where the action was commenced a notice requesting a transfer of the action to a judicial centre mentioned in subrule 3-3(1) that is specified in the notice.

(2) If there are 2 or more defendants, any defendant may, at any time after filing a statement of defence and before the action is set down for trial, file with the local registrar at the judicial centre where the action was commenced:

(a) a notice requesting a transfer of the action to the judicial centre nearest to the place where the cause of action arose; or

(b) with the concurrence of all other defendants, a notice requesting a transfer of the action to a judicial centre mentioned in subrule 3-3(1) that is specified in the notice.

(3) On receipt of a notice requesting the transfer of an action:

(a) the local registrar shall immediately forward to the local registrar at the judicial centre specified in the notice all documents in the action and transfer all matters in the action to that judicial centre; and

(b) unless the Court orders otherwise, the action must be continued at the judicial centre specified in the notice as if it had been commenced there.

(4) A judge may order the transfer of any action to any judicial centre.

Where an action is carried on

3-7 Subject to rule 3-8, an action must be:

(a) carried on in the judicial centre in which the statement of claim or originating application was filed; or

(b) if the action is transferred in accordance with rule 3-6, continued in that judicial centre and all subsequent documents in the action must be titled accordingly.

Where applications and originating applications may be heard

3-8 An application and an originating application may be heard or a trial may be held in any judicial centre specified by the Court other than the judicial centre mentioned in rule 3-7.

DIVISION 2
Actions Started by Statement of Claim

Subdivision 1
Statement of Claim

Contents of statement of claim

3-9 A statement of claim must:

(a) be in Form 3-9;

(b) include the notice to defendant on the first page;

(c) state the names of the parties and their places of residence;

(d) state the claim and the basis for it;

(e) state any specific remedy sought; and

(f) comply with the rules about pleadings in Division 3 of Part 13.

Subdivision 2
Time Limit for Service of Statement of Claim

Time for service of statement of claim

3-10(1) Unless an enactment provides otherwise, a statement of claim must be served on the defendant within 6 months after the date that the statement of claim is issued unless the Court, on application, grants an extension of time for service.

(2) An application for an extension of time for service pursuant to this rule may be made without notice, before or after the expiration of the time for service.

(3) Any extension of time for service of the statement of claim must be marked on the statement of claim and dated and signed by the local registrar.

Information Note

An Act may expressly provide that a statement of claim to enforce a claim or recover damages respecting a matter governed by that Act must be served within a period other than the 6-month period mentioned in subrule 3-10(1). All enactments relevant to the cause or matter should be checked.

Throughout this Part there are references to service of pleadings and other documents. Part 12 describes how commencement documents and other documents are to be served.

Rule 13-5 describes how to count months and years.

Effect of not serving a statement of claim in time

3-11 If a statement of claim is not served on a defendant within the time or extended time for service:

(a) no further proceeding may be taken in the action against a defendant who was not served in time; and

(b) a statement of claim served on any defendant in time is unaffected by the failure to serve any other defendant in time.

Subdivision 3
Defence to a Statement of Claim, Reply to Defence and Demand for Notice

Variation of time for defence

3-12(1) On application before or after the issue of the statement of claim, the Court may vary the time within which a statement of defence must be served and filed.

(2) If an order is made pursuant to subrule (1), either:

(a) the notice to the defendant must be amended to reflect the variation and initialled by the local registrar; or

(b) a notice of the variation must be served on the defendant.

Defendant's options

3-13 A defendant who is served with a statement of claim may do one or more of the following:

(a) serve and file a statement of defence, notice of intent to defend or demand for notice;

(b) apply to the Court to set aside service in accordance with rule 12-1;

(c) apply to the Court for an order pursuant to rule 7-9;

(d) apply to the Court for an order pursuant to rule 1-6;

(e) apply to the Court for an order pursuant to rule 3-14.

Information Note

The rule relating to a demand for notice is rule 3-18. The rule relating to a notice of intent to defend is subrule 3-15(5).

Objection to jurisdiction

3-14(1) Within the time limited for service and filing of a statement of defence and before serving and filing the statement of defence, a defendant may apply to the Court to object to the jurisdiction of the Court.

(2) An application pursuant to subrule (1) is not deemed to be a submission to the jurisdiction of the Court.

(3) On an application made pursuant to this rule, the Court may make any order it considers just, including an order requesting transfer of the proceeding pursuant to *The Court Jurisdiction and Proceedings Transfer Act*.

(4) If an application is made pursuant to this rule, the plaintiff shall take no further step in the proceeding against the applicant, except with leave of the Court, until 5 days after the application has been decided.

Statement of defence

3-15(1) If a defendant files a statement of defence, the statement of defence must:

(a) be in Form 3-15A; and

(b) comply with the rules about pleadings in Division 3 of Part 13.

(2) Within the applicable period after service of the statement of claim, the defendant shall serve the statement of defence on the plaintiff and file the statement of defence.

(3) The applicable period is:

(a) 20 days if the defendant is served in Saskatchewan;

(b) 30 days if the defendant is served elsewhere in Canada or in the United States of America;

(c) 40 days if the defendant is served outside Canada and the United States of America.

(4) Notwithstanding subrule (3), a statement of defence may be served and filed at any time before the action is noted for default.

(5) Notwithstanding subrule (2), a defendant who intends to defend the action may, within the time limited for the service and filing of a statement of defence, serve and file a notice of intent to defend in Form 3-15B.

(6) On filing a notice of intent to defend pursuant to subrule (5), the defendant:

(a) is entitled to have 10 days in addition to the period mentioned in subrule (3) within which to serve and file a statement of defence; and

(b) is deemed to have submitted to the jurisdiction of the Court.

Information Note

See rules 13-4 and 13-5 respecting how time is counted.

Additional options for defendant who files a defence

3-16 If a defendant files a statement of defence, the defendant may also do one or more of the following:

(a) file a cross-claim against a co-defendant in accordance with rule 3-30;

(b) file a third party claim in accordance with rule 3-31;

(c) file a counterclaim in accordance with rule 3-42.

Reply to a defence

3-17(1) A plaintiff may file a reply to a statement of defence.

(2) If the plaintiff files a reply, the reply must:

(a) be in Form 3-17; and

(b) comply with the rules about pleadings in Division 3 of Part 13.

(3) Within 8 days after service of the statement of defence on the plaintiff, the plaintiff shall serve the reply on the defendant and shall file the reply.

Demand for notice by defendant

3-18(1) If the defendant files a demand for notice, the demand must be in Form 3-18.

(2) The defendant may, at any time, serve the demand for notice on the plaintiff and file the demand for notice.

(3) If the defendant serves a demand for notice on the plaintiff and files it, the defendant must be served with notice of all subsequent pleadings and proceedings in the action, but service and filing of the notice does not give the defendant a right to contest liability.

(4) If the defendant serves a demand for notice on the plaintiff and files it, the plaintiff may proceed against the defendant as if the defendant had failed to defend, subject to subrule (3).

(5) This rule applies with any necessary modification to any proceeding commenced otherwise than by statement of claim.

(6) This rule does not apply to:

(a) noting a defendant in default pursuant to rule 3-21; or

(b) taking out a default judgment for a debt or liquidated demand pursuant to rule 3-22.

Amended. Gaz. 13 Nov. 2015.

Judgment or order by agreement

3-19(1) If a lawyer files a statement of defence, notice of intent to defend or demand for notice on behalf of a defendant, no judgment or order may be obtained by agreement of the parties unless the defendant's lawyer of record is a party to the agreement or consents to the agreement.

(2) No judgment or order may be obtained by agreement of the parties unless the defendant's agreement, with an affidavit of execution, is filed with the application for the judgment or order if the defendant:

(a) does not file a statement of defence, notice of intent to defend or a demand for notice;

(b) files a statement of defence, notice of intent to defend or demand for notice in person or by a lawyer who has ceased to be the defendant's lawyer of record; or

(c) is not represented by a lawyer of record.

Information Note

Rules about lawyers of record are contained in Division 4 of Part 2.

Subdivision 4
Failure to Defend

Default of defence by minor

3-20(1) If no defence or notice of intent to defend has been filed by a minor who has been served with a statement of claim, no further proceeding must be taken against the minor except by leave of the Court.

(2) Notice to the minor must be given of an application for leave to note an action for default or for judgment.

(3) On an application pursuant to subrule (2), the Court may order the judgment to be entered that the Court considers that the plaintiff is entitled to, with or without evidence of the truth of the statement of claim.

(4) Evidence of the truth of the statement of claim may be given orally, by affidavit or by any other means that the Court may direct.

(5) A plaintiff who has noted an action for default or has taken any further proceeding in the action may apply without notice for an order to set aside the noting or proceeding and, subject to the terms of the order, may then proceed pursuant to subrules (1) to (4).

Default of defence

3-21(1) If any defendant fails to deliver a statement of defence and the time for so doing has expired, the plaintiff may, on filing proof of service of the statement of claim, require the local registrar to note the default of that defendant.

(2) On filing proof of service pursuant to subrule (1), the local registrar shall:

(a) endorse on the statement of claim and on the fly-leaf accompanying the court file the words "Noted for default the _____ day of _____, 20 _____";

(b) sign the statement of claim and fly-leaf; and

(c) make an entry in the court registry database that the default has been noted.

(3) After default has been noted in accordance with subrule (2), the defendant shall not file a statement of defence without leave of the Court or the written consent of the plaintiff.

(4) On default being noted as provided in this rule, the plaintiff may enter judgment or take any other proceedings that the plaintiff may be entitled to take on default of defence.

Information Note

See subrule 13-21(2) for the requirements for service if no address for service is filed.

Claim for debt or liquidated demand

3-22(1) If the plaintiff's claim is for a debt or liquidated demand only, and the defendant fails, or all the defendants, if more than one, fail to serve and file a statement of defence, the plaintiff may, after the time limited for defence has elapsed and after filing an affidavit in Form 3-22, enter final judgment for:

(a) any sum, not exceeding the sum claimed in the action, together with lawful interest, if claimed; and

(b) costs of the action.

(2) If the plaintiff's claim is for a debt or liquidated demand only, and there are several defendants, of whom one or more defend and another or others of whom fail to defend, the plaintiff may, without prejudice to the plaintiff's right to proceed with the action against the defendants that have defended:

(a) enter final judgment pursuant to subrule (1) against the defendants that have not defended; and

(b) issue an enforcement instruction with respect to the final judgment.

(3) If the plaintiff's claim for a debt or liquidated demand has been partially satisfied, default judgment shall be confined to the balance of the plaintiff's claim.

(4) In the assessment of costs, fees shall be allowed in accordance with Item 39 of Schedule I "B" – General of the Tariff as follows:

(a) on Column 1 or 2, if *The Small Claims Act, 2016* applies to the claim; and

(b) on Column 3, if *The Small Claims Act, 2016* does not apply to the claim.

Information Note

The Small Claims Act, 2016 applies to claims for debt or liquidated demand that are not greater than the prescribed monetary limit that is to be calculated without taking into consideration interest or costs. Currently, the prescribed monetary limit is $30,000.

Amended. Gaz. 22 Feb. 2019.

Claim for pecuniary damages or detention of goods

3-23(1) If the plaintiff's claim is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages and the defendant fails, or all the defendants, if more than one, fail to defend:

(a) the plaintiff may have the default noted as provided in rule 3-21; and

(b) on an application without notice by the plaintiff, the Court may:

(i) assess the value of the goods and the damages or either of them; or

(ii) order that the value of the goods and the damages, or either of them, be ascertained in any way the Court may direct.

(2) On assessing or ascertaining the value of the goods and the damages, or either of them, in accordance with clause (1)(b), judgment may be entered in accordance with the Court's assessment or order or as the Court may direct.

(3) If the plaintiff's claim is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and there are several defendants of whom one or more serve and file a statement of defence and another or others of whom fail to defend:

(a) the plaintiff may proceed against the defendant or defendants failing to defend by having the default noted as provided in rule 3-21; and

(b) on an application without notice by the plaintiff, the value of the goods and the damages, or either of them, as the case may be, must, unless the Court directs otherwise, be assessed as against the defendant or defendants failing to defend at the same time as the trial of the action or issue against the other defendant or defendants.

Claim for debt or liquidated demand and pecuniary damages or detention of goods

3-24 If the plaintiff's claim is for a debt or liquidated demand, and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to serve and file a statement of defence, the plaintiff may:

(a) enter after filing an affidavit in Form 3-22, final judgment for the debt or liquidated demand, any claimed interest and costs against the defendant or defendants failing to defend; and

(b) as to the balance of the claim:

(i) have the default noted as provided in rule 3-21; and

(ii) proceed as mentioned in rule 3-23.

Amended. Gaz. 22 Feb. 2019.

Claim for recovery of land only or with other remedy

3-25(1) If a statement of defence has not been served and filed in an action for the recovery of land only, the plaintiff may enter a judgment that the person whose title is asserted in the claim shall recover possession of the land together with the costs of the action.

(2) In an action for the recovery of land where the plaintiff also claims any other remedy, the plaintiff may:

(a) enter judgment pursuant to subrule (1) for the land; and

(b) proceed as otherwise provided in this subdivision for the other remedy.

(3) Subrule (2) does not apply to proceedings taken pursuant to Division 5 of Part 10.

Judgment in other actions

3-26(1) In any other action on default of defence by one or more defendants, the plaintiff may apply without notice to the Court for an order for judgment.

(2) On an application pursuant to subrule (1), the Court may order the judgment to be entered that the Court considers that the plaintiff is entitled to, with or without evidence of the truth of the statement of claim.

(3) Evidence of the truth of the statement of the claim may be given orally, by affidavit or by any other means that the Court may direct.

Where a defence is delivered to part of claim only

3-27(1) Subject to subrules (2) and (3), if the plaintiff's claim is for a debt or liquidated demand, or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any of those matters or for the recovery of land, and the defendant delivers a statement of defence that purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may, by leave of the Court, enter judgment for the part unanswered.

(2) Subrule (1) applies only if the unanswered part:

(a) consists of a separate cause of action; or

(b) is severable from the rest of the claim, as in the case of part of a debt or liquidated demand.

(3) If there is a counterclaim, an enforcement instruction with respect to any judgment pursuant to subrule (1) with respect to the plaintiff's claim must not be issued without leave of the Court.

(4) If in any action mentioned in subrule (1) there are several defendants and if any of the defendants defaults as set out in that subrule, the plaintiff may:

(a) if the cause of action is severable, proceed in accordance with subrules (1) to (3) against the defendant in default; or

(b) apply for judgment against the defendant at the time of trial or other final disposition of the action.

Judgment entered in excess of amount due

3-28 If, on any application to set aside a judgment entered pursuant to this subdivision, the Court is satisfied that the judgment has been entered for an amount in excess of that to which the plaintiff was entitled on the plaintiff's pleadings or by the order of the Court and that the judgment was entered by inadvertence, the Court may direct that the judgment be amended in any manner that the Court considers necessary and on those terms as to costs or otherwise that the Court considers just.

Limitation on when judgment or noting in default can occur

3-29 Notwithstanding the other rules in this Division, judgment may not be entered against a defendant and a defendant may not be noted in default if the defendant has filed an application that has not been decided:

(a) to set aside service of a statement of claim;

(b) pursuant to rule 7-9, to set aside or amend a statement of claim, to strike out a claim or to stay an action, application or proceeding;

(c) pursuant to rule 1-6; or

(d) pursuant to rule 3-14.

Subdivision 5
Cross-claims: Claims Against Co-defendants

Cross-claims

3-30(1) A defendant may cross-claim against a co-defendant who the defendant claims:

(a) is or may be liable to the defendant for all or part of the plaintiff's claim, including a claim for contribution or indemnity; or

(b) is or may be liable to the defendant for any other remedy relating to or connected with the subject matter of the main action.

(2) A cross-claim:

(a) must be in Form 3-30; and

(b) must be made by serving it with a copy of the statement of defence on the co-defendant:

(i) at any time before filing a joint request to the local registrar to schedule a pre-trial conference date;

(ii) if no joint request is filed, within 10 days after service of an application for an order that a pre-trial conference be held; or

(iii) at any time with leave of the Court.

(3) The cross-claim must also:

(a) be served on all other parties to the action; and

(b) be filed within the time limited for service of the cross-claim on the co-defendant.

(4) Except as modified by this rule, the rules respecting a third party claim apply to a cross-claim.

(5) The rules respecting cross-claim apply with any necessary modification to the assertion of a cross-claim:

(a) by one defendant to a counterclaim against another defendant to the same counterclaim; or

(b) by one third party defendant against another third party defendant to the same third party claim.

Subdivision 6
Third Party Claims

When a third party claim can be filed

3-31 A defendant or third party defendant may file a third party claim against another person not already a party to the action who:

(a) is or may be liable to the party filing the third party claim for all or part of the claim, including a claim for contribution or indemnity against that party;

(b) is or may be liable to the party filing the third party claim for an independent claim relating to or connected with the subject matter of the main action; or

(c) should be bound by a decision about an issue between the plaintiff and the defendant.

Information Note

Refer to section 32 of *The Queen's Bench Act, 1998* regarding third parties.

Some enactments may provide for third party procedures that differ from these rules. For example, section 7 of *The Contributory Negligence Act* requires leave of the Court to add a third party defendant. See also: *The Automobile Accident Insurance Act*, subsection 45(6); *The Saskatchewan Insurance Act*, subsections 210(14)-(16); and *The Municipalities Act*, section 349.

Form of third party claim

3-32 A third party claim must:

(a) be in Form 3-32;

(b) comply with the rules about pleadings in Division 3 of Part 13;

(c) be served on the third party defendant and all other parties to the action and filed:

(i) at any time before filing a joint request to the local registrar to schedule a pre-trial conference date;

(ii) if no joint request is filed, within 10 days after service of an application for an order that a pre-trial conference be held; or

(iii) at any time with leave of the Court; and

(d) be accompanied, when it is served on the third party defendant, with a copy of the statement of claim served on the defendant and the defendant's statement of defence.

Third party defendant becomes a party

3-33(1) On service of a third party claim:

(a) the third party defendant becomes a party to the action between the plaintiff and defendant; and

(b) all subsequent proceedings in the action must name the third party as a party in the action between the plaintiff and defendant.

(2) The pleadings between the defendant and the third party defendant, and a third party plaintiff and a third party defendant, form part of the Court file between the plaintiff and defendant.

(3) A third party claim must be tried at or immediately after the trial of the main action, unless the Court orders otherwise.

Third party defendant's options

3-34 A third party defendant may do one or more of the following:

(a) serve and file a statement of defence, notice of intent to defend or demand for notice;

(b) apply to the Court to set aside service in accordance with rule 12-1;

(c) apply to the Court for an order pursuant to rule 7-9 with respect to the third party claim;

(d) apply to the Court for an order pursuant to rule 7-9 with respect to the plaintiff's statement of claim;

(e) apply to the Court for an order pursuant to rule 1-6;

(f) apply to the Court for an order pursuant to rule 3-14.

Other parties' options

3-35 Any party affected in an action in which a third party claim is filed may apply to the Court for an order pursuant to rule 7-9, or for directions, with respect to the third party claim.

Third party statement of defence

3-36(1) A statement of defence by a third party defendant:

(a) must be in Form 3-36;

(b) must comply with the rules about pleadings in Division 3 of Part 13; and

(c) may dispute either or both of the following:

(i) the defendant's liability to the plaintiff and may raise any defence open to the defendant; or

(ii) the third party defendant's liability described in the third party claim.

(2) If a third party defendant files a statement of defence, the third party defendant shall serve it on each of the other parties and file it within the applicable period after service of the third party claim on the third party defendant.

(3) The applicable period is:

(a) 20 days after the day of service of the third party claim if the third party defendant is served in Saskatchewan;

(b) 30 days after the day of service of the third party claim if the third party defendant is served elsewhere in Canada or in the United States of America;

(c) 40 days after the day of service of the third party claim if the third party defendant is served outside Canada and the United States of America.

(4) Notwithstanding subrule (3), a third party's statement of defence may be served and filed at any time before the third party defendant is noted for default.

(5) Notwithstanding subrule (2), a third party defendant who intends to defend the third party claim may, within the time limited for the service and filing of the third party's statement of defence, serve and file a notice of intent to defend in Form 3-15B.

(6) If a notice of intent to defend is served and filed pursuant to subrule (5), the third party defendant:

(a) is entitled to 10 days in addition to the period mentioned in subrule (3) within which to serve and file the third party's statement of defence; and

(b) is deemed to have submitted to the jurisdiction of the Court.

(7) If a third party defendant files a statement of defence, the third party defendant may do any or all of the following:

(a) make a claim against a third party co-defendant in accordance with rule 3-30;

(b) make a counterclaim in accordance with subrule 3-42(2);

(c) make a third party claim against another person, whether or not the person is already a party to the action.

Rules re a third party statement of defence

3-37(1) Unless the Court orders otherwise, the directions in this rule apply with respect to a third party statement of defence.

(2) If a third party defendant disputes the liability of the defendant to the plaintiff:

(a) the third party defendant and all other parties who have filed an address for service shall serve one another with all subsequent pleadings and proceedings in the action;

(b) the third party defendant and the plaintiff are entitled to discovery each from the other;

(c) the third party defendant may defend the liability of the defendant to the plaintiff at trial in any manner and to any extent that the trial judge may direct;

(d) the third party defendant is bound by any judgment with respect to the liability of the defendant to the plaintiff and saving all just exceptions, and unless otherwise directed, has the same right to appeal as a defendant.

(3) If the third party defendant disputes liability to the defendant:

(a) the third party defendant and all other parties who have filed an address for service shall serve one another with all subsequent pleadings and proceedings in the action;

(b) the third party defendant and the defendant are entitled to discovery each from the other;

(c) the third party defendant is, unless otherwise directed, bound by any judgment for the plaintiff against the defendant on the pleadings.

(4) If the third party defendant serves and files a third party statement of defence, the third party defendant and every other party with whom the third party is adverse in interest are entitled to discovery each from the other.

Default of defence

3-38(1) If a third party defendant fails to serve and file a third party statement of defence, the defendant may:

(a) have the third party defendant noted for default, as though the third party claim were a statement of claim; and

(b) if the defendant suffers judgment by default, enter judgment against the third party defendant:

(i) after satisfaction of the judgment against the defendant; or

(ii) with leave of the Court, before satisfaction of the judgment against the defendant.

(2) For the purposes of subclause (1)(b)(ii):

(a) leave may be obtained without notice or otherwise as the Court may direct; and

(b) the Court may vary or rescind any judgment granted without notice.

Plaintiff's reply to third party defence

3-39(1) A plaintiff or third party plaintiff may file a reply to a statement of defence filed by a third party defendant.

(2) If a plaintiff or third party plaintiff files a reply, the reply must:

(a) be in Form 3-39;

(b) comply with the rules about pleadings in Division 3 of Part 13; and

(c) be served on the third party defendant and each of the other parties and filed within 8 days after service of the statement of defence by the third party defendant on the plaintiff or third party plaintiff, as the case may be.

Application of rules to third party claims

3-40(1) Except when the context or these rules provide otherwise, a rule that applies to or with respect to:

(a) a plaintiff applies equally to or with respect to a third party plaintiff;

(b) a defendant applies equally to or with respect to a third party defendant; and

(c) a pleading related to a claim made by a statement of claim applies equally to or with respect to a pleading related to a third party claim.

(2) The rules respecting a third party claim apply, with any necessary modification, to the assertion of a third party claim:

(a) by a defendant to a counterclaim; or

(b) by a defendant to a cross-claim.

No prejudice or delay to plaintiff

3-41(1) A plaintiff must not be prejudiced or unnecessarily delayed by a third party claim.

(2) The Court shall give all directions on terms or otherwise that may be necessary to prevent prejudice or delay to the plaintiff if it can be done without injustice to the defendant or third party.

Subdivision 7
Counterclaims

Right to counterclaim

3-42(1) A defendant may, by counterclaim, file a claim against:

(a) a plaintiff; or

(b) the plaintiff and another person whether the other person is a party to the action by the plaintiff or not.

(2) A third party defendant may, by counterclaim, file a claim against the plaintiff, defendant or third party plaintiff, or any combination of them, and another person, whether the other person is a party to the action or not.

Information Note

Refer to section 31 of *The Queen's Bench Act, 1998* regarding counterclaims.

Contents of counterclaim

3-43 A counterclaim must:

(a) be set forth in the statement of defence under the heading "Counterclaim";

(b) include the added defendant-by-counterclaim, if any, in the style of cause to the statement of defence;

(c) include the notice of counterclaim in Form 3-43 in the statement of defence;

(d) comply with the rules about pleadings in Division 3 of Part 13;

(e) be served on the defendant-by-counterclaim and the other parties to the main action and filed within the same period that the plaintiff-by-counterclaim must file a statement of defence pursuant to subrule 3-15(2); and

(f) be accompanied, when it is served on a defendant-by-counterclaim not already a party to the main action, with a copy of the statement of claim served on the defendant.

Statement of defence to counterclaim

3-44(1) A defendant-by-counterclaim may file a statement of defence to counterclaim.

(2) If a defendant-by-counterclaim files a statement of defence to counterclaim, the statement of defence to counterclaim must:

(a) be in Form 3-15A;

(b) comply with the rules about pleadings in Division 3 of Part 13; and

(c) be served on the plaintiff-by-counterclaim and each of the other parties and filed within 20 days after service of the counterclaim by the plaintiff-by-counterclaim on the defendant-by-counterclaim.

Default of defence to counterclaim

3-45 If a defendant-by-counterclaim fails to serve and file a statement of defence to counterclaim pursuant to subrule 3-44(2), the plaintiff-by-counterclaim may:

(a) have the defendant-by-counterclaim noted for default; and

(b) enter judgment or take any other proceedings that the plaintiff-by-counterclaim may be entitled to take on default of defence as though the counterclaim were a statement of claim.

Status of counterclaim

3-46(1) A counterclaim is an independent action.

(2) Unless the Court orders otherwise, the counterclaim must be tried at or immediately after the trial of the main action.

(3) If it appears that a counterclaim may unduly complicate or delay the trial of the main action, or cause undue prejudice to any party, the Court may:

(a) order separate trials; or

(b) strike out the counterclaim without prejudice to the right of the defendant to assert a claim in a separate action.

(4) If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued or dismissed, the defendant may nevertheless proceed with the counterclaim.

(5) If a defendant does not dispute the claim of the plaintiff in the main action but sets up a counterclaim, the Court may stay the main action until the disposition of the counterclaim.

(6) If the plaintiff does not dispute the counterclaim of a defendant, the Court may stay the counterclaim until the disposition of the claim.

(7) If both the plaintiff in the main action and the plaintiff-by-counterclaim succeed, either in whole or in part, and there is a balance in favour of one of them, the Court may in a proper case give judgment for the balance.

Claiming a set-off

3-47(1) A matter that might be claimed by set-off may be claimed by counterclaim or by pleading set-off as a defence or by both.

(2) A defendant may plead that a claim be set-off against the claim of the plaintiff if:

(a) there are mutual debts between the plaintiff and the defendant;

(b) in the case where either party sues or is sued in a representative capacity, there are mutual debts between the person represented and the other party; or

(c) a claim, whether of an ascertained amount or not, by the defendant arises out of the same dealings, transactions or occurrence giving rise to the claim of the plaintiff.

(3) The defendant's claim pursuant to subrule (2) must be pleaded in accordance with the principles that would govern the pleading of the defendant's claim if the defendant were a plaintiff.

(4) If, on a plea of set-off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance remaining due to the defendant.

Application of rules to counterclaims

3-48 Except when the context or these rules provide otherwise, a rule that applies to or with respect to:

(a) a plaintiff applies equally to or with respect to a plaintiff-by-counterclaim and a third party plaintiff-by-counterclaim;

(b) a defendant applies equally to or with respect to a defendant-by-counterclaim and a third party defendant-by-counterclaim; and

(c) a pleading related to a claim made by statement of claim applies equally to or with respect to a pleading related to a counterclaim.

DIVISION 3
Actions Started by Originating Application

Subdivision 1
General Rules

Actions started by originating application

3-49(1) An action may be started by originating application if the remedy claimed is:

(a) the opinion or direction of the Court on a question affecting the rights of a person with respect to the administration of the estate of a deceased person or the execution of a trust;

(b) an order directing executors, administrators or trustees to do or abstain from doing any particular act with respect to an estate or trust for which they are responsible;

(c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;

(d) the determination of rights that depend solely on the interpretation of:

(i) a deed, will, contract or other instrument; or

(ii) an enactment, order in council or municipal bylaw or resolution;

(e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;

(f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;

(g) the judicial review of a decision, act or omission of a person or body;

(h) for a remedy pursuant to the *Canadian Charter of Rights and Freedoms*; or

(i) with respect to any matter where it is unlikely that there will be any material facts in dispute.

(2) An action may be started by originating application if an enactment or these rules authorize or require an application, an originating application, an originating notice, an originating summons, a notice of motion or a petition to be used.

(3) An action may be started by originating application if an enactment provides for a remedy, certificate, direction, opinion or order to be obtained from the Court without describing the procedure to obtain it.

(4) An originating application must:

(a) be in Form 3-49;

(b) state the claim and the basis for it;

(c) state the remedy sought; and

(d) identify the affidavit or other evidence to be used in support of the originating application.

Information Note

Rules for affidavits are contained in Part 13. See rule 13-30 and the rules that follow that rule.

Service of originating application, evidence and written argument

3-50(1) Except on an originating application for an order in the nature of *habeas corpus* and unless ordered otherwise by the Court on an application without notice, an originating application and any affidavit and other evidence filed with the originating application must be served on each of the other parties and filed 14 days or more before the date scheduled for hearing the originating application.

(2) A party moving or opposing an originating application shall serve a brief of written argument, if any, on each of the other parties and file it in accordance with rule 13-23.1 before the date scheduled for hearing the originating application.

Information Note

The rules for service of documents are in Part 12.

Amended. Gaz. 15 Jly. 2016.

Application of Part 4 and Part 5 to originating applications

3-51 Part 4 and Part 5 do not apply to an action started by originating application unless the parties otherwise agree or the Court otherwise orders.

Information Note

See also rule 3-53. Typically, an action started by originating application will not require the same kind of management, either by the parties or the Court, nor require the same kind of disclosure of documents or questioning, as actions started by statement of claim. However, if management, document disclosure and questioning are required, the parties may agree to them or the Court may order them.

Service and filing of affidavits and other evidence in reply and response

3-52(1) If the respondent to an originating application intends to rely on an affidavit or other evidence when the originating application is heard or considered, the respondent shall reply by serving on the originating applicant, at least 10 days before the originating application is to be heard or considered, a copy of the affidavit and other evidence on which the respondent intends to rely.

(2) The originating applicant:

(a) may respond by affidavit or other evidence to the respondent's affidavit or other evidence; and

(b) if the originating applicant does respond, shall:

(i) serve the response affidavit or other evidence on the respondent at least 5 days before the originating application is to be heard or considered; and

(ii) limit the response to replying to the respondent's affidavit or other evidence.

(3) If either the respondent or originating applicant does not comply with the time limits in subrules (1) and (2), and an adjournment is not granted:

(a) the party who did not comply with the time limits in subrules (1) and (2) may not rely on the affidavit or other evidence unless the Court permits otherwise; and

(b) the Court may make a costs award against the party responsible.

Information Note

See rules 13-23.1, 6-12 and 6-15 regarding when affidavits must be filed with the Court.

Amended. Gaz. 15 Jly. 2016.

Application of statement of claim rules to originating applications

3-53 At any time in an action started by originating application, the Court may, on application, direct that all or any rules applying to an action started by statement of claim apply to the action started by originating application.

Information Note

See also rule 3-51.

Questioning on an affidavit

3-54(1) On any originating application, evidence may be given by affidavit, but the Court may, on the application of either party, order the attendance for cross-examination of the person making the affidavit.

(2) The costs of any cross-examination pursuant to subrule (1) must be paid by the party applying for the cross-examination.

Information Note

Regarding the form and content of affidavits, see Subdivision 2 of Division 4 of Part 13.

See rule 6-32 regarding the practice on cross-examination at trial.That rule extends to evidence taken pursuant to this rule.

Originating application evidence (other than judicial review)

3-55 When making a decision about an originating application, other than an originating application for judicial review, the Court may consider the following evidence only:

(a) affidavit evidence, including an affidavit by an expert;

(b) an admissible document that is an exhibit to an affidavit;

(c) anything permitted by any other rule or by an enactment;

(d) evidence taken in any other action, but only if the party proposing to submit the evidence gives every other party 5 days or more notice of that party's intention and obtains the Court's permission to submit the evidence;

(e) with the Court's permission, oral evidence, which if permitted must be given in the same manner as at trial.

Subdivision 2
Additional Rules Specific to Originating Applications for Judicial Review

Originating application for judicial review

3-56(1) An originating application for judicial review may be made by any person having an interest that the Court considers sufficient in the matter to which the originating application relates.

(2) An originating application must be filed in the form of an originating application for judicial review if the originating applicant seeks from the Court any one or more of the following remedies against a person or body whose decision, act or omission is subject to judicial review:

(a) an order in the nature of mandamus, prohibition, *certiorari, quo warranto, habeas corpus*, or to quash proceedings;

(b) a declaration or injunction.

(3) Subject to rule 3-63 and any enactment limiting the time in which an originating application for judicial review may be made, if there has been undue delay in making an originating application, the Court may refuse to grant any remedy sought if the order:

(a) would be likely to cause substantial hardship to or substantially prejudice the rights of any person; or

(b) would be detrimental to good administration.

(4) An originating application for judicial review must be served on:

(a) the person or body with respect to whose act or omission a remedy is sought;

(b) the Minister of Justice and Attorney General for Saskatchewan or the designate of the Minister of Justice and Attorney General for Saskatchewan if the Minister of Justice and Attorney General for Saskatchewan appears to have an interest;

(c) the Minister of Justice and Attorney General of Canada or the designate of the Minister of Justice and Attorney General of Canada if the Minister of Justice and Attorney General of Canada appears to have an interest; and

(d) every person or body directly affected by the application.

(5) The Court may require an originating application for judicial review to be served on any person or body not otherwise required to be served.

(6) The Minister of Justice and Attorney General for Saskatchewan, the Minister of Justice and Attorney General of Canada or the designate of either of them may be served by registered mail.

Information Note

Generally, an order:

- of mandamus compels the performance of a statutory or public duty;
- of prohibition restrains a decision-making body from further proceeding with a matter which exceeds its jurisdiction;
- of *certiorari* requires a decision-making body to deliver a record of its decision to the Court for review so the Court may determine whether to quash or set aside the decision;
- of *quo warranto* requires a public officer to show by what authority the officer holds that office;
- of *habeas corpus* brings a person before the Court to determine whether the person's detention or imprisonment is legal;
- to quash proceedings will make a proceeding or decision void, of no force or effect.

See *The Queen's Bench Act, 1998*:

- section 11 regarding a declaration;
- section 51 regarding an injunction in a labour dispute;
- section 65 regarding an interlocutory injunction or mandamus; and
- section 66 regarding damages in addition to or instead of injunction.

The Court may grant intervenor status to other persons pursuant to rule 2-12. References to the Attorney General for Saskatchewan are to the Saskatchewan Minister of Justice and Attorney General.

Notice to obtain record of proceedings

3-57(1) An originating applicant for judicial review who seeks an order to set aside a decision or act must include with the originating application a notice in Form 3-57, addressed to the person or body that made or possesses the record of proceedings on which the decision or act sought to be set aside is based, to send the record of proceedings to the local registrar named in the notice.

(2) The notice must require the following to be sent or require an explanation of why an item cannot be sent:

(a) the written record, if any, of the decision or act that is the subject of the originating application for judicial review;

(b) the reasons given for the decision or act, if any;

(c) the document that started the proceeding;

(d) the evidence and exhibits filed with the person or body, if any.

(3) The Court may add to, dispense with or vary anything required to be sent to the local registrar under this rule.

Sending in certified copy of record of proceedings

3-58(1) On receipt of an originating application and a notice in accordance with rule 3-57, the person or body named in the notice shall, as soon as is practicable:

(a) comply with the notice and send to the local registrar a certified copy of the record of proceedings in Form 3-58; or

(b) provide in Form 3-58 a written explanation as to why the notice cannot be complied with or fully complied with.

(2) The certified copy of the record of proceedings sent to the local registrar pursuant to this rule constitutes part of the Court file of the originating application.

(3) If the Court is not satisfied with the explanation for not sending all or part of the record of proceedings, the Court may order any or all of the following:

(a) a better explanation;

(b) a certified copy of a document to be sent to the local registrar;

(c) the person or body to take any other action the Court considers appropriate.

Other circumstances when a record of proceedings may be required

3-59(1) The Court may order a person having custody or control of any material or evidence in any proceeding to produce at or before the hearing:

(a) the whole or any part of the record of proceedings or a copy of the record of proceeding; or

(b) the whole or any part of the evidence in the proceeding or a copy of the evidence.

(2) Unless the Court orders otherwise, if compliance with the order would require a transcription of evidence or unusual expense, no transcription shall be required or expense incurred unless the proper fees for the transcription have been paid.

(3) If the Court orders the record of proceedings to be sent to the local registrar, rules 3-57 and 3-58 apply, unless the Court orders otherwise.

Interim orders and stay of proceedings

3-60(1) The Court may:

(a) make any interim orders that it considers appropriate, including orders preserving the status quo or the position of the parties; and

(b) extend, modify or set aside any interim orders.

(2) An originating application for judicial review does not constitute a stay of the proceedings to which the originating application relates, but the Court may grant a stay of those proceedings on an application made for that purpose.

(3) An interim order may be granted without notice or on any notice, including short notice or oral notice, that the Court may direct.

Information Note

See rule 10-25 regarding enforcement of mandamus or injunction by Court.

See rules 10-26 and 10-29 regarding enforcement by committal.

See Division 3 of Part 6 regarding interlocutory orders as to mandamus, injunctions, etc.

Additional remedies on judicial review

3-61(1) If the Court is satisfied that there are grounds for quashing or declaring void a decision to which the originating application relates, the Court, in addition to granting that remedy, may remit the matter to the court, tribunal or other authority concerned with the direction:

(a) to rehear it or to reconsider it; and

(b) to reach a decision according to law.

(2) If the sole ground for a remedy is a defect in form or a technical irregularity, the Court may, if the Court finds that no substantial wrong or miscarriage of justice has occurred, despite the defect:

(a) refuse a remedy; or

(b) validate the decision made to have effect from a date and subject to any terms and conditions that the Court considers appropriate.

Rules adopted under *Criminal Code*

3-62 The rules in this subdivision are adopted, with any necessary modification, as rules in applications to which the provisions of the *Criminal Code* apply.

Subdivision 3
Additional Rules Specific to Originating Applications for Judicial Review: Habeas Corpus

Originating application for judicial review: *habeas corpus*

3-63(1) An originating application for an order in the nature of *habeas corpus* may be filed at any time and must be served pursuant to subrule 3-56(4) as soon as is practicable after filing.

(2) An originating application for an order in the nature of *habeas corpus* may, with leave of the Court, be made without notice.

(3) An affidavit or other evidence to be used to support the originating application must be:

(a) served on each of the other parties 10 days or more before the date scheduled for hearing the application; and

(b) filed in accordance with rule 13-23.1.

(4) An originating application for an order in the nature of *habeas corpus* may be in Form 3-63.

Information Note

An order of *habeas corpus*, usually, but not always, brings a person before the Court to determine whether the person's detention or imprisonment is legal.

Amended. Gaz. 15 Jly. 2016.

Habeas corpus ad subjiciendum

3-64(1) An order of *habeas corpus ad subjiciendum* to have the validity of the detention of any person determined must be in Form 3-64A.

(2) Any person is entitled to bring proceedings, on his or her own behalf or on behalf of any other person, to obtain an order of *habeas corpus ad subjiciendum*.

(3) If an application is brought by a person on behalf of another person, the Court may determine which of the applicant or the subject of the application is to have the carriage of the proceedings.

(4) An application pursuant to this rule may include *certiorari-in-aid* for the purpose of:

(a) bringing forward evidence to determine the truth of a matter before the Court; or

(b) quashing a warrant of committal or an order of detention where the detention is held to be invalid.

(5) On the return of the originating application, the detained person may apply to be admitted to bail.

(6) On an application to be admitted to bail pursuant to subrule (5), unless the detained person is otherwise required to be detained, the Court may admit him or her to bail until the validity of his or her detention has been determined.

(7) If an originating application is made pursuant to this rule, the Court may, without determining the validity of the detention:

(a) make an order for the further detention of the person; and

(b) authorize or direct that the head of the institution in which the person is detained, or any other person, take any steps or do any other thing that the Court considers just.

(8) On the argument of an application for an order of *habeas corpus ad subjiciendum*, the Court may grant an order for the person's discharge, and that order is a sufficient warrant to any jailer or other person for the person's discharge.

(9) An order of discharge pursuant to subrule (8) must be in Form 3-64B.

Information Note

An order of *habeas corpus ad subjiciendum* is directed to someone detaining another person and commands them to bring the detainee before the Court to give evidence before the Court.

An order of *certiorari* requires a decision-making body to deliver a record of its decision to the Court for review.

The *habeas corpus* procedure differs from the judicial interim release, or bail, procedure outlined in Part XVI of the *Criminal Code*.

Order of *habeas corpus*

3-65(1) All necessary provisions for *habeas corpus* may be given by judgment or order.

(2) An order of *habeas corpus* pursuant to subrule (1) must be in Form 3-64A.

(3) An order of *habeas corpus* shall be signed by:

(a) the local registrar under the seal of the Court; or

(b) a judge of the Court.

Enforcement by committal for contempt

3-66 If an order of *habeas corpus* is disobeyed, an application may be made, on proof of service of the order:

(a) for summary committal for contempt; or

(b) for committal by separate proceedings for that purpose.

Information Note

The rules regarding contempt proceedings are found in Subdivision 2 of Division 3 of Part 11.

Directions on hearing

3-67 If a hearing or trial of any issue is ordered on an application for an order or for committal for contempt, the Court may give any directions and set any terms and conditions that the Court considers appropriate.

When fees payable

3-68 Unless the Court orders otherwise, if the detention is by the Crown or one of its servants or agents or by a peace officer, no fee is payable to the local registrar:

(a) for filing or hearing an application pursuant to this subdivision; or

(b) for issuing an order of *habeas corpus* or a discharge.

Rules apply to other *habeas corpus*

3-69 The rules in this subdivision, other than rule 3-64, apply with any necessary modification to any application for an order of *habeas corpus* that these rules do not specifically provide for.

Rules adopted under *Criminal Code*

3-70 The rules in this subdivision apply, with any necessary modification, to applications to which the provisions of the *Criminal Code* apply.

DIVISION 4
Request for Particulars, Amendments to Pleadings and Close of Pleadings

Request for particulars

3-71(1) A party on whom a pleading is served may, at any time before the action is set down for trial, serve on the party who served the pleading a request for particulars about anything in the pleading.

(2) If the requesting party does not receive a sufficient response within 8 days after the date on which the request is served, the requesting party may apply to the Court for an order requiring the party who served the pleading to provide the particulars.

(3) If the Court orders particulars to be provided, it may do so on any terms as to costs and otherwise that the Court considers just.

(4) The requesting party must have the same length of time for pleading after delivery of the particulars as the requesting party had when the request for particulars was made.

Information Note

Division 3 of Part 13 sets out generally what particulars must be included in a pleading.

Amending a pleading

3-72(1) A party may amend the party's pleading, including an amendment to add, remove, substitute or correct the name of a party, as follows:

(a) before a statement of defence is filed, any number of times without the Court's permission;

(b) subject to subrule (2), in the case of an action proposed as a class action, before a statement of defence is filed;

(c) after a statement of defence is filed:

(i) by agreement of the parties filed with the Court; or

(ii) with the Court's prior permission, in any manner and on any terms that the Court considers just.

(2) A party in an action proposed as a class action may amend its pleading, including an amendment to add, remove, substitute or correct the name of a party:

(a) before an application for certification is filed, any number of times without the Court's permission; and

(b) after an application for certification is filed:

(i) by agreement of the parties filed with the Court; or

(ii) with the Court's prior permission, in any manner and on any terms that the Court considers just.

(3) Parties shall make all amendments to their pleadings that are necessary to determine the real questions in issue between the parties.

(4) An amended pleading must be served on each of the other parties and filed within 8 days after:

(a) the date of the order pursuant to subclause (1)(c)(ii); or

(b) the date of service of the last pleading of the other party on the party amending, unless the Court orders otherwise or the parties agree otherwise.

(5) Unless the Court orders otherwise, a party may amend that party's pleading before or after pleadings close if that amended pleading is:

(a) a statement of defence in response to an amended statement of claim, an amended counterclaim or an amended third party claim; or

(b) a reply to an amended statement of defence, amended statement of defence to a counterclaim or amended statement of defence to an amended third party claim.

(6) A response pleading must be served on each of the other parties and filed:

(a) within 8 days after the date that the amended pleading mentioned in subrule (5) is served; or

(b) if the party has not yet pleaded, within the time the party then has to plead, if it is longer than in clause (a).

(7) If a party has pleaded in response to a pleading that is subsequently amended and served on that party and the party does not file and serve a further response to the amended pleading, the party is assumed to rely on the party's unamended pleading in response to the amended pleading mentioned in subrule (5).

(8) Unless the Court orders otherwise, if a pleading is amended at a trial or hearing, the amended pleading does not need to be served and filed.

Information Note

See rule 3-84 for more information on amending the parties to an action.

Rule 3-94 says that after a certification order is made in a class action, pleadings in a class action may only be amended with the Court's permission.

See section 20 of *The Limitations Act* regarding amendment notwithstanding the expiry of a limitation period after the commencement of a proceeding.

Identifying amendments to pleadings

3-73(1) Unless the Court otherwise orders, if a party amends a pleading, a new pleading must be served on each of the other parties and filed, being a copy of the original pleading but amended and bearing the date of the original.

(2) The amendment must be dated and identified and each amended version identified.

(3) The amendment must be underlined or otherwise designated to distinguish it from the original wording.

Time limit for application to disallow amendment to a pleading

3-74(1) On application, the Court may disallow an amendment to a pleading or a part of it.

(2) The application to disallow an amendment must be filed within 8 days after service on the applicant of the amended pleading.

Costs

3-75 The costs, if any, as a result of an amendment to a pleading are to be paid by the party filing the amendment unless:

(a) the amendment is a response to an amended pleading; or

(b) the Court orders otherwise.

Close of pleadings

3-76(1) This rule applies to pleadings between the following:

(a) a plaintiff and a defendant;

(b) a plaintiff by counterclaim and a defendant by counterclaim;

(c) a third party plaintiff and a third party defendant;

(d) a plaintiff and a third party defendant.

(2) Pleadings close when the earlier of the following occurs:

(a) a reply is filed and served by a plaintiff, plaintiff by counterclaim or third party plaintiff, as the case may be;

(b) the time for filing and serving a reply expires.

Information Note

The time for service and filing of a reply is covered in earlier rules in this Part. For example rule 3-17 requires the plaintiff's reply to be filed and served on the defendant within 8 days after service of the statement of defence on the plaintiff. See also subrule 3-39(2).

DIVISION 5
Refining Claims and Changing Parties

Subdivision 1
Joining and Separating Claims and Parties

Joining claims

3-77(1) A party may join 2 or more claims in an action unless the Court orders otherwise.

(2) A party may sue or be sued in different capacities in the same action.

(3) If there is more than one defendant or respondent, it is not necessary for each to have an interest:

(a) in all the remedies claimed or sought; or

(b) in each claim included in the action.

Information Note

This rule and the following rules of this Division apply to all actions, whether started by statement of claim or by originating application.

See also section 29 of *The Queen's Bench Act, 1998* regarding avoiding multiplicity of proceedings.

Parties joining to bring an action

3-78(1) Persons may be joined as plaintiffs, petitioners or originating applicants in a proceeding if:

(a) they claim a remedy, whether jointly or severally or in the alternative, with respect to or arising out of the same transaction, occurrence or series of transactions or occurrences;

(b) a common question of law or fact may arise in the proceeding; or

(c) their presence in the proceeding may promote the convenient administration of justice.

(2) Persons may be joined as defendants or respondents if:

(a) a remedy is claimed against them, whether jointly or severally or in the alternative, arising out of the same transaction, occurrence or series of transactions or occurrences;

(b) a common question of law or fact may arise in the proceeding;

(c) there is doubt as to the person or persons from whom the plaintiff, petitioner or originating applicant is entitled to a remedy;

(d) damage or loss has been caused to the same plaintiff, petitioner or originating applicant by more than one person, whether or not:

(i) there is any factual connection between the several claims apart from the involvement of the plaintiff, petitioner or originating applicant; and

(ii) there is doubt as to the respective amounts for which each may be liable; or

(e) their presence in the proceeding may promote the convenient administration of justice.

Mandatory joining of parties

3-79(1) A plaintiff, petitioner or originating applicant who claims a remedy to which another person is jointly entitled with the plaintiff, petitioner or originating applicant shall join each person who is entitled as a party to the action.

(2) In an action by the assignee of a debt or other chose in action, whether or not *The Choses in Action Act* applies, the assignor must be joined as a party unless the assignment is absolute.

(3) For the purposes of subrule (2), an assignment is absolute if it purports to assign the entire interest of the assignor, whether or not it purports to be given by way of security or on certain trusts or otherwise.

(4) If a person ought to be joined as a plaintiff, petitioner or originating applicant but does not consent to be joined, the person must be added as a defendant or respondent.

(5) The Court may relieve against the necessity for the joining of any person.

Separating claims

3-80(1) The Court may make an order pursuant to this rule if:

(a) 2 or more claims are made in an action or 2 or more parties join or are joined in an action; and

(b) the Court is satisfied that the joined claims or parties, or both, may:

(i) unduly complicate or delay the action; or

(ii) cause undue prejudice to a party.

(2) The Court may make one or more of the following orders:

(a) an order for separate trials, hearings, applications or other proceedings;

(b) an order for one or more of the claims to be asserted in another action;

(c) an order for a party to be compensated by a costs award for having to attend part of a trial, hearing, application or proceeding in which the party has no interest;

(d) an order that excuses a party from having to attend all or part of a trial, hearing, application or proceeding in which the party has no interest;

(e) an order that the action against a defendant or respondent be stayed pending the hearing against another defendant or respondent, on condition that the party against whom the action is stayed is bound by the findings made at the hearing against the other defendant or respondent;

(f) any other order that the Court considers just.

Information Note

Subrule 3-33(3) says that third party claims are to be tried at or immediately after the main action unless the Court orders otherwise.

Consolidation or separation of claims and actions

3-81(1) The Court may order one or more of the following:

(a) that 2 or more claims or actions be consolidated;

(b) that 2 or more claims or actions be tried at the same time or one after the other;

(c) that one or more claims or actions be stayed until another claim or action is determined;

(d) that a claim be asserted as a counterclaim in another action.

(2) An order pursuant to subrule (1) may be made for any reason the Court considers appropriate, including, without limitation, that 2 or more claims or actions:

(a) have a common question of law or fact; or

(b) arise out of the same transaction, occurrence or series of transactions or occurrences.

Information Note

See also section 37 of *The Queen's Bench Act, 1998* regarding stay of proceedings.

Directions for consolidation or separation of claims

3-82 If an order is made pursuant to rule 3-80 or 3-81, the Court may:

(a) give directions that will avoid unnecessary costs or delay;

(b) vary the procedure for setting an action down for trial; and

(c) alter, rescind or modify any order or directions mentioned in clauses (a) and (b).

Incorrect parties are not fatal to actions

3-83(1) No claim or action fails solely because:

(a) 2 or more parties join in an action that they should not have joined;

(b) 2 or more parties do not join an action that they could or should have joined; or

(c) a party was incorrectly named as a party or was incorrectly omitted from being named as a party.

(2) If subrule (1) applies, a judgment entered with respect to the action is without prejudice to the rights of persons who were not parties to the action.

Subdivision 2
Changes to Parties

Court may add necessary parties

3-84(1) At any stage of the action, the Court may order that any person be added as a party if:

(a) that person ought to have been joined as a party; or

(b) the person's presence as a party is necessary to enable the Court to adjudicate effectively and completely on the issues in the action.

(2) At any stage of the action, the Court may grant leave to add, delete or substitute a party, or to correct the name of a party, and that leave shall be given, on any terms that the Court considers just, unless prejudice will result that cannot be compensated for by costs or an adjournment.

(3) A person must not be added as a plaintiff, petitioner or originating applicant without the person's consent in writing being filed.

(4) If a person ought to be joined as a plaintiff, petitioner or originating applicant but does not consent to be joined, the person may be added as a defendant or respondent.

Information Note

See also rule 3-72.

See section 20 of *The Limitations Act* regarding adding parties after limitation period.

Person may apply to be added

3-85(1) A person who is not a party may apply to be added as a party if that person claims:

(a) that the person has an interest in the subject matter of the action;

(b) that the person may be adversely affected by a judgment in the action; or

(c) that there exists between the person and one or more of the parties a question of law or fact in common with a question in issue in the action.

(2) On an application pursuant to this rule, the Court may:

(a) add the person as a party; and

(b) give any directions, impose any conditions or make any order that the Court considers just.

Action to be taken when defendant or respondent added

3-86(1) If a defendant or respondent is added to or substituted in an action, the plaintiff, petitioner, originating applicant, plaintiff by counterclaim or third party plaintiff shall, unless the Court orders otherwise:

(a) amend the commencement document, as required, to name the new party; and

(b) serve the amended commencement document on each of the other parties.

(2) Unless the Court orders otherwise:

(a) in the case of a new defendant, the new defendant shall serve and file a statement of defence within the period provided pursuant to subrule 3-15(2); and

(b) the action against the new defendant or new respondent, as the case may be, starts on the date that the new party is added to or substituted in the action.

Judgment may stand where party given leave to defend

3-87 If, after judgment, a party is added or is given leave to defend, the Court may, without affecting any step that has been taken and without setting aside any judgment, enforcement instruction or any other step in the action, give any directions that may be necessary, including directions:

(a) for the exchange of pleadings;

(b) for any adjournment;

(c) that no further step may be taken under the judgment or enforcement instruction without leave of the Court; and

(d) that the judge hearing the matter may confirm, vary or rescind the judgment and enforcement instruction as may be required.

DIVISION 6
Class Action Rules

Interpretation of Division

3-88 In this Division:

"Act" means *The Class Actions Act*; (« *Loi* »)

"designated judge" means the judge designated by the Chief Justice to consider an application for certification of a class action and appointment of a representative plaintiff. (« *juge désigné* »)

Application of Division

3-89(1) This Division applies to actions and applications brought pursuant to the Act.

(2) Unless provided otherwise by the Act or by this Division, the general procedure and practice of the Court applies to actions and applications brought pursuant to the Act.

Application to the Chief Justice

3-90 An application to the Chief Justice for the appointment of a designated judge may be made without notice and must be made:

(a) within 90 days after the later of:

(i) the date on which the statement of defence was served and filed; and

(ii) the date on which the time prescribed for service and filing of the statement of defence expires without it being served and filed; or

(b) with leave of the Court, at any other time.

Information Note

Clause 4(2)(a) of *The Class Actions Act* requires that the proposed representative plaintiff apply to the Chief Justice for the appointment of a designated judge.

Conferences

3-91(1) The designated judge may, on his or her initiative, order a conference to be held respecting the conduct of the action, including the application for certification, at any time after his or her designation.

(2) The rules relating to pre-trial conferences in Subdivision 2 of Division 3 of Part 4 do not apply to a conference ordered pursuant to this rule, unless the designated judge orders otherwise.

Information Note

The designated judge may, but need not, preside at the trial of the common issues: see subsection 16(3) of *The Class Actions Act*.

Application by defendant

3-92(1) If a defendant applies for certification of a class action pursuant to section 5 of the Act:

(a) the defendant shall apply to the Chief Justice for the designation of a judge to consider the application; and

(b) the designated judge shall order a conference to be held respecting the conduct of the action.

(2) If the Court certifies 2 or more actions as a class action pursuant to section 5 of the Act, the Court may:

(a) order the addition, deletion or substitution of parties;

(b) order the amendment of the pleadings; and

(c) make any other order that it considers appropriate.

Information Note

The Class Actions Act does not provide for a defendant class. Rule 2-10 therefore applies to a defendant class.

Application for certification

3-93(1) A notice of application for certification pursuant to clause 4(2)(b) or section 5 of the Act must be in Form 3-93.

(2) An application for a certification order pursuant to section 4 of the Act must be supported by an affidavit of the proposed representative plaintiff:

(a) deposing to the proposed representative plaintiff's willingness to be appointed;

(b) setting out the basis of the proposed representative plaintiff's personal claim, if applicable, and the reason the proposed representative plaintiff believes that common issues exist for the rest of the members of the class;

(c) setting out objective criteria for determining membership in the proposed class, and providing the proposed representative plaintiff's best information on the number of members in the proposed class;

(d) setting out sufficient information to establish that the proposed representative plaintiff would fairly and adequately represent the interests of the class and is aware of the responsibilities to be undertaken;

(e) exhibiting a plan for the class action that sets out a workable method of:

(i) advancing the action on behalf of the class; and

(ii) notifying class members of the action; and

(f) setting out sufficient information to establish that the proposed representative plaintiff does not have, on the common issues, an interest that is in conflict with the interests of other class members.

(3) An application for a certification order pursuant to section 5 of the Act must be supported by an affidavit of the defendant applying for certification:

(a) setting out the reason the defendant believes that common issues exist for the members of the proposed class;

(b) setting out objective criteria for determining membership in the proposed class; and

(c) providing the defendant's best information on the number of members in the proposed class.

(4) A notice of application for certification and the supporting materials must be filed and a copy served on all parties to the action.

(5) Unless the Court orders otherwise, there must be at least 14 days between:

(a) the service of a notice of application for certification and supporting materials; and

(b) the day set for the hearing.

(6) Unless the Court orders otherwise, a party opposing an application for certification must:

(a) file an affidavit in response; and

(b) serve a copy of the affidavit on all parties to the action at least 7 days before the day set for the hearing.

(7) A party filing an affidavit pursuant to subrule (6) must provide the party's best information on the number of members in the proposed class.

Amendments to pleadings in class actions

3-94 After a certification order is made pursuant to the Act, a party may amend a pleading only with the Court's permission.

Information Note

Rule 13-15 describes how class actions must be titled.

Discovery

3-95(1) If a class member is questioned pursuant to subsection 19(2) of the Act:

(a) rule 5-20 does not apply to that class member; and

(b) unless the Court orders otherwise, the evidence of that class member may not be read into evidence at the trial of the common issues.

(2) The Court may:

(a) require the parties to propose which class members should be questioned pursuant to subsection 19(2) of the Act;

(b) limit the purpose and scope of questioning of a class member; and

(c) determine the use that may be made of the evidence obtained on questioning of a class member.

Information Note

Section 20 of *The Class Actions Act* states the following:

> **20** A class member who fails to submit to an examination for discovery is subject to the sanctions set out in *The Queen's Bench Rules*.

For sanctions respecting a refusal or neglect in answering questions, please refer to rule 5-36.

Rule 3-95 applies to questioning of class members other than the representative plaintiff. The usual questioning rules would apply to the representative plaintiff who is a party to the action: see subsection 19(1) of *The Class Actions Act*.

Notices

3-96(1) If an agreement respecting fees and disbursements is summarized in the notice to class members, notice that the agreement is not enforceable unless approved by the Court pursuant to section 41 of the Act must be included.

(2) If an application for settlement has been filed, or a settlement has been approved, notice must be given by the representative plaintiff to the class members in accordance with the provisions of subsections 21(3) to (5) of the Act, unless the Court orders otherwise.

(3) Notice pursuant to section 23 of the Act may:

(a) state that common issues have been determined;

(b) identify the common issues that have been determined and explain the determinations made;

(c) state that members of the class or subclass may be entitled to individual relief;

(d) describe the steps that must be taken to establish an individual claim;

(e) state that failure on the part of a member of the class or subclass to take those steps will result in the member not being entitled to assert an individual claim except with leave of the Court;

(f) give an address to which members of the class or subclass may direct inquiries about the proceeding; and

(g) give any other information that the Court considers appropriate.

(4) The Court may order any appropriate means of giving notice pursuant to clause 21(4)(e) of the Act, including creating and maintaining an Internet site.

(5) If the Act or these rules require notice to class members, notice must be given to other interested parties, including the lawyer for a subclass, as directed by the Court.

Agreements respecting fees and disbursements

3-97(1) An application for approval of an agreement respecting fees and disbursements must be brought after:

(a) judgment on the common issues; or

(b) approval of a settlement, discontinuance or abandonment of the class action.

(2) The application pursuant to subrule (1):

(a) must be made to the judge who presided over the trial of the common issues, or who approved the settlement, discontinuance or abandonment, as the case may be; and

(b) must be made on that notice to class members that is required by the Court.

(3) If, on an application pursuant to subrule (1), the Court determines that the agreement ought not to be followed, the Court may amend the terms of the agreement.