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Law Society of Saskatchewan
Queen's Bench Rules of Court Part 4: Managing Litigation

Presented By:

The Honourable
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What this Part is about

This Part states that each party is responsible for managing litigation. Once a statement of claim, defence, reply and, in more complicated actions, a counterclaim or third party claim and related pleadings have been served and filed, each party knows what claims and defences are being made in an action.

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What this Part is about

The Rules then:

- Require the parties to manage the litigation so that the parties know when important stages in the action should be complete;
- Provide a means for the parties to obtain Court assistance for managing the litigation, including the appointment of a case management judge; and
- Require the parties to participate in mandatory mediation and in a pre-trial conference.

This part also includes:

- Rules describing how an award for security for payment of costs can be obtained; and
- Rules for a formal offer to settle the litigation and a description of the potential costs consequences when settlement is not pursued, to ensure that formal offers are given careful consideration.

Lastly, this Part deals with litigation delay, the effects of the death of a party and discontinuing an action.

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Purpose and intention of these rules

1-3(1) The purpose of these rules is to provide a means by which claims can be justly resolved in or by a court process in a timely and cost effective way.

(2) In particular, these rules are intended to be used:

(a) to identify the real issues in dispute;
(b) to facilitate the quickest means of resolving a claim at the least expense;
(c) to encourage the parties to resolve the claim themselves, by agreement, with or without assistance, as early in the process as is practicable;
(d) to oblige the parties to communicate honestly, openly and in a timely way; and
(e) to provide an effective, efficient and credible system of remedies and sanctions to enforce these rules and orders and judgments.

(3) To achieve the purpose and intention of these rules, the parties shall, jointly and individually during an action:

(a) identify or make an application to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense;
(b) periodically evaluate dispute resolution process alternatives to a full trial, with or without assistance from the Court;
(c) refrain from filing applications or taking proceedings that do not further the purpose and intention of these rules; and
(d) when using publicly funded Court resources, use them effectively.

(4) Resolving a claim justly in a timely and cost effective way includes, so far as is practicable, conducting the proceeding in ways that are proportionate to:

(a) the amount involved in the proceeding;
(b) the importance of the issues in dispute; and
(c) the complexity of the proceeding.

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DIVISION 1

Responsibilities of the Parties

What the responsibility includes

Responsibilities of the parties to manage litigation

4-1 The parties are responsible for managing their dispute and for planning its resolution in a timely and cost effective way.

4-2 The responsibility of the parties to manage their dispute and to plan its resolution requires the parties:

(a) to act in a manner that furthers the purpose and intention of the rules described in rule 1-3;

(b) to respond in a substantive way and within a reasonable time to any proposal for the conduct of an action; and

(c) when the complexity or the nature of an action requires it, to apply to the Court for direction or request case management pursuant to rule 4-5.

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DIVISION 2

Court Assistance in Managing Litigation

Issues of fact, preparing and settling

4-3(1) If in any cause or matter it appears to the Court that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues.

(2) If the parties differ respecting the issues directed pursuant to subrule (1), the issues must be settled by the Court.

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Assistance by the Court

4-4(1) The Court may, at any time, direct the parties and any other person to attend a conference with the Court.

(2) If a party files a request for a conference pursuant to this rule, that party shall:

(a) give one or more reasons for the conference in the request; and

(b) serve on every other party and file the request.

(3) On receiving a request for a conference, the local registrar shall schedule a date for the conference.

(4) The participants in the conference may consider:

(a) dispute resolution possibilities, the process for them and how they can be facilitated;

(b) simplification or clarification of a claim, a pleading, a question, an issue, an application or a proceeding;

(c) setting or adjusting dates by which a stage or a step in the action is expected to be complete;

(d) case management by a judge;

(e) practice, procedural or other issues or questions and how to resolve them;

(f) any other matter that may aid in the resolution or facilitate the resolution of a claim, application or proceeding or otherwise meet the purpose and intention of the rules described in rule 1-3.

(5) The Court may make a procedural order before, at or following the conference.

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Request for case management

4-5(1) A request for a case management order must be in Form 4-5 and made to the Chief Justice, and a copy of the request must be served on every other party.

(2) The request must state whether any other party agrees with the request.

(3) An action commenced or continued pursuant to *The Class Actions Act* must have a designated judge for case management appointed pursuant to rule 3-90.

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Appointment of case management judge

4-6 The Chief Justice may order that an action be subject to case management and appoint a judge as the case management judge for the action after having considered all the relevant circumstances, including any or all of the following:

(a) the purpose and intention of the rules described in rule 1-3;
(b) the complexity of the issues of fact or law;
(c) the importance to the public of the issues of fact or law;
(d) the number and type of parties or prospective parties, and whether they are represented;
(e) the number of proceedings involving the same or similar parties or causes of action;
(f) the amount of intervention by the Court that the proceeding is likely to require;
(g) the time required for questioning, if applicable, and for preparation for trial or hearing;
(h) the number of expert witnesses and other witnesses;
(i) the time required for the trial or hearing;
(j) whether there has been substantial delay in the conduct of the proceeding.

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Authority of the case management judge

4-7(1) A case management judge, or, if the circumstances require, any other judge, may:

(a) order that steps be taken by the parties to identify, simplify or clarify the real issues in dispute;

(b) set or adjust dates by which a stage or a step in the action is expected to be complete and order the parties to comply with the dates;

(c) make an order to facilitate an application, proceeding, questioning or pre-trial proceeding;

(d) make an order to promote the fair and efficient resolution of the action by trial;

(e) facilitate efforts the parties may be willing to take towards the efficient resolution of the action or any issue in the action through negotiation or a dispute resolution process other than trial; and

(f) make any procedural order that the judge considers necessary.

(2) Unless the Chief Justice or the case management judge directs otherwise or these rules provide otherwise, the case management judge shall hear every application filed with respect to the action for which the case management judge is appointed.

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Appearance at case management conference

4-8 A case management conference may take place either by personal appearance, video conference, teleconference or a combination of them.

Case management judge presiding at summary judgment hearing and trial

4-9 Unless every party and the judge agree, a case management judge shall not hear an application for summary judgment or preside at the trial of the action for which the case management judge is appointed.

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DIVISION 3

Dispute Resolution

Subdivision 1: Mandatory Mediation

Mandatory mediation

4-10 The parties shall participate in mediation as required by *The Queen's Bench Act, 1998* and the regulations made pursuant to that Act.

Subdivision 2: Pre-trial Conference

Obtaining a date for pre-trial conference

4-11(1) On the close of the pleadings, the parties may request a pre-trial conference by filing with the local registrar:

(a) a joint request in Form 4-11 that:

(i) contains a certificate of readiness;

(ii) confirms that efforts at settlement have been made;

(iii) sets out the estimated time required for the pre-trial conference and the trial; and

(iv) estimates the number of witnesses to be called at the trial; and

(b) a certified copy of the pleadings, but, in a proceeding commenced by petition, a certified copy of the petition and answer is not required.

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Obtaining a date for pre-trial conference (continued)

(2) If one of the parties neglects or refuses to join in a joint request, the party wishing to obtain a pre-trial conference may obtain from the local registrar a date for a pre-trial conference by filing:

(a) the documents described in subrule (1) other than a joint request; and

(b) a certificate confirming that the opposite party was requested to execute a joint request but failed to do so within 20 days without stating any reason.

(3) If one of the parties refuses to join in a joint request, the party wishing to obtain a pre-trial conference may apply for an order scheduling a pre-trial conference date and a date by which the party refusing to join in a joint request must file the documents described in subrule (1) other than a joint request.

(4) The unsuccessful party to an application pursuant to subrule (3) shall immediately pay the costs of the application.

(5) The party obtaining a date for a pre-trial conference pursuant to subrule (3) or (4) shall immediately notify all other parties of the date, and, unless the Court orders otherwise, the pre-trial conference must proceed on that date.

(6) Notwithstanding subrule (1), if all the parties file a written request with the local registrar, they may apply to a judge to direct that a pre-trial conference be held.

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Obtaining a date for pre-trial conference (continued)

(7) On an application pursuant to subrule (6), if the judge is satisfied that a pre-trial conference will substantially settle the proceedings, the judge may:

(a) direct that a pre-trial conference be held; and

(b) dispense with any or all of the requirements set out in subrule (1).

(8) A trial judge or a chambers judge may, on his or her initiative:

(a) order a pre-trial conference to be held respecting any proceeding coming before him or her; and

(b) conduct the pre-trial conference if appropriate to do so.

(9) The local registrar shall schedule a pre-trial conference date to ensure optimum use of court time, but shall endeavour to suit the convenience of the parties.

(10) The parties shall accept the date scheduled pursuant to subrule (9).

(11) If a pre-trial conference date has been scheduled, the party having carriage of the proceeding shall immediately pay the required fee for setting down.

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Purpose of pre-trial conference

4-12(1) The parties shall make a genuine attempt to settle an action before a pretrial conference.

(2) A pre-trial conference is not to replace normal negotiations between the parties.

(3) The goals of a pre-trial conference are:

(a) to allow the parties to participate in the problem-solving process;

(b) to allow the parties to receive the view of a trial judge as to the issues, both facts and law, in dispute, as far as the material before the pre-trial judge allows;

(c) to allow settlement options to be presented that would not necessarily be available at trial;

(d) to seek settlement of the dispute so as to improve the efficiency of the court system and to save time and costs for all parties and witnesses.

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Purpose of pre-trial conference (continued)

(4) A pre-trial conference must be for the purpose of attempting to settle the proceeding, and if that is not possible, to consider:

(a) the identification and simplification of the issues;
(b) the necessity or desirability of amendments to the pleadings;
(c) the possibility of obtaining admissions that will facilitate the trial;
(d) whether all necessary steps have been taken in preparation for trial;
(e) the possibility of settlement of specific issues;
(f) the quantum of damages;
(g) any other matters that may aid in the disposition of the proceedings;
(h) the actual trial time required; and
(i) the date for trial.

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Pre-trial briefs

4-13(1) The parties shall file and exchange pre-trial briefs not later than 10 days before the date scheduled for pre-trial conference.

(2) Each pre-trial brief:

- (a) must clearly state on the first page the name of the party on whose behalf it is filed;
- (b) must include a concise summary of the evidence expected to be adduced;
- (c) must include a concise statement of the issues in dispute and the law relating to those issues, together with a list of the authorities relied on and legible copies of pertinent portions of those authorities with appropriate highlighting;
- (d) subject to subrule (4), must be accompanied by all documents, or legible copies of documents, intended to be used at trial that may be of assistance to the pre-trial judge in achieving the purposes of a pre-trial conference, including medical and expert reports; and
- (e) may be accompanied by a proposal for settlement of the issues involved in the proceedings that may include admissions for the purpose of the pretrial conference or other statements relating to the issues that the party may choose not to have available to the trial judge.

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Pre-trial Briefs (continued)

(3) All documents and copies filed pursuant to clause (2)(d) must, at the request of the party producing them, be returned to that party at the conclusion of the pre-trial conference.

(4) If the parties agree in writing that a productive pre-trial conference is possible without medical or expert reports and that these reports are not critical to a liability or valuation issue, the parties shall file the written agreement, and not the reports, with the pre-trial brief.

(5) If the proceeding is to go to trial after the conclusion of the pre-trial conference, a proposal filed pursuant to clause (2)(e) must be returned to the party submitting it.

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Witness lists

4-14(1) Unless the Court orders otherwise, each party shall, not later than 10 days before the date scheduled for a pre-trial conference, serve on every other party and file a list of the witnesses the party may call at trial, other than expert witnesses who are to provide evidence pursuant to Division 3 of Part 5.

(2) Unless the Court orders otherwise, a witness list must include the full name and address of each listed witness.

(3) If a party who had provided a witness list or an amended witness list later learns that the list is inaccurate or incomplete, the party shall promptly:

(a) amend the witness list to make it accurate and complete; and

(b) serve a copy of the amended witness list on all parties and file the amended list.

(4) Nothing in this rule requires a party to call as a witness at trial an individual named as a witness on a witness list served by the party pursuant to subrule (1) or (3).

(5) This rule does not apply to family law proceedings.

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Participants at pre-trial

4-15(1) Unless the Court orders otherwise, every party shall appear with the party's lawyer, if any, at all pre-trial conferences.

(2) Unless the Court orders otherwise, a corporation shall have a representative present, in addition to its lawyer, at all pre-trial conferences.

(3) If a party is represented by a lawyer and wishes to dispense with the appearance of the party or a representative of a corporation, the lawyer shall send a written request, with reasons, to the local registrar.

(4) The local registrar shall present the request mentioned in subrule (3) to the pretrial judge, who may:

(a) refuse or grant the request without hearing from all parties to the proceeding;

(b) grant the request with conditions, including a requirement that the party or representative must be available by conference telephone or immediately available for telephone communication; or

(c) order the request to proceed by way of application.

(5) Unless the Court orders otherwise, the lawyer representing a party at the pre-trial conference must be the lawyer who will be representing that party at the trial.

(6) A pre-trial judge may at any time request that any other person whose attendance may be of assistance be present at the pre-trial conference.

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Withdrawal after trial date scheduled

2-43 After a pre-trial date or a trial date is scheduled, a lawyer of record may not, without the Court's permission, serve a notice of withdrawal as lawyer of record, and any notice of withdrawal that is served without the Court's permission has no effect.

Use of transcript of questioning or affidavit in answer to written questions at pre-trial conference

4-16 The transcript of questioning pursuant to rule 5-29 and the affidavit in answer to written questions pursuant to rule 5-32:

(a) must be available for the use of the pre-trial judge; and

(b) at the conclusion of the pre-trial conference, must be resealed until trial.

Adjournment of pre-trial conference

4-17 A pre-trial conference may be adjourned from time to time at the discretion of the pre-trial judge.

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Documents resulting from pre-trial conference

4-18(1) The only documents, if any, resulting from a pre-trial conference are to be:

(a) an agreement prepared by the parties and any other document necessary to implement the agreement;

(b) a consent order or consent judgment;

(c) an order for the preparation of a custody report, an access report or both pursuant to section 97 of *The Queen's Bench Act, 1998*;

(d) an order for costs; and

(e) if the matter is to proceed to trial, the pre-trial conference report form that includes:

- (i) matters agreed on by the parties;
- (ii) issues of fact and law in dispute;
- (iii) whether required documents were filed;
- (iv) whether there have been or will be any pre-trial applications relevant to the trial;
- (v) the estimated number of witnesses, including expert witnesses;
- (vi) the estimated length of trial; and
- (vii) whether summaries, books of exhibits or books of authorities will be provided by the parties to the trial judge.

(2) In the absence of an order pursuant to clause (1)(d), costs must be costs in the cause.

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Confidentiality and use of information

4-19(1) A pre-trial conference is a confidential process intended to facilitate the resolution of a claim, or if that is not possible, to manage the action until trial.

(2) Unless the parties otherwise agree in writing, statements made or documents generated for or in the pre-trial conference with a view to resolving the dispute:

(a) are privileged and are made without prejudice;

(b) must be treated by the parties and participants in the process as confidential and may only be used for the purpose of the pre-trial conference; and

(c) may not be referred to, presented as evidence or relied on, and are not admissible in a subsequent application or proceeding in the same action or in any other action, or in proceedings of a judicial or quasi-judicial nature.

(3) Subrule (2) does not apply to the documents referred to in rule 4-18.

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Trial date

4-20 If the matter is to proceed to trial, the pre-trial judge shall direct the local registrar to schedule a date for trial.

Trial judge other than pre-trial judge

4-21(1) A pre-trial judge shall not preside at the trial unless all parties and the judge consent in writing.

(2) This rule does not prevent or disqualify the trial judge from holding trial meetings subsequent to the pre-trial conference and before or during the trial, to consider any matter that may assist in the just, most expeditious or least expensive disposition of the proceeding.

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DIVISION 4

Security for Payment of a Costs Award

Security for costs in the discretion of the Court

4-22(1) Subject to the express provisions of any enactment and notwithstanding any other rule, the Court:

(a) has discretion respecting security for costs; and

(b) may order security for costs against any party to a proceeding, including a party who is ordinarily resident in Saskatchewan.

(2) The Court has discretion to determine the amount and form of security for costs.

Application procedure

4-23(1) A party may apply for an order for security for costs against another party at any time.

(2) A party applying for an order for security for costs shall serve the application on all other parties to the proceeding.

(3) An application for an order for security for costs must be supported by an affidavit of the party applying for the order, or an agent of that party, that:

(a) alleges the party applying for the order has a good claim or defence on the merits, as the case may be; and

(b) specifies the nature of that claim or defence.

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Considerations for a security for costs order

4-24 The Court may order a party to provide security for payment of a costs award if the Court considers it just and reasonable to do so, taking into account all of the following:

(a) whether it is likely the applicant for the order will be able to enforce an order or judgment against assets in Saskatchewan;

(b) the ability of the respondent to the application to pay the costs award;

(c) the merits of the action in which the application is filed;

(d) whether an order to give security for payment of a costs award would unduly prejudice the respondent's ability to continue the action;

(e) any other matter the Court considers appropriate.

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Contents of security for costs order

4-25(1) An order to provide security for payment of a costs award must, unless the Court orders otherwise:

(a) specify the nature and amount of the security to be provided, which may include payment into Court;

(b) require a party to whom the order is directed to provide the security no later than 2 months after the date of the order or any other time specified in the order;

(c) stay some or all applications and other proceedings in the action until the security is provided; and

(d) state that if the security is not provided in accordance with the order, as the case requires:

(i) all or part of an action is dismissed without further order; or

(ii) a claim or defence is struck out.

(2) If the security is given by bond, the bond must be given to the party requiring security unless the Court orders otherwise.

(3) If the security is given by money paid into Court, the money may, by agreement of the parties, be paid out and a bond substituted for it.

(4) As circumstances require, the Court may:

(a) increase or reduce the security required to be provided; and

(b) vary the nature of the security to be provided.

(5) The Court may order that security be given in stages as costs are incurred.

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DIVISION 5

Settlement Using Court Process

Formal offers to settle

4-26(1) One party may serve on the party to whom the offer is made a formal offer to settle the action or a claim in the action at any time after a proceeding is commenced, but 10 days or more before:

(a) an application for summary judgment is scheduled to be heard;
(b) a trial is scheduled to start; or
(c) an application is scheduled to be heard or considered.

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Formal offers to settle (continued)

(2) To be a valid formal offer, the offer to settle must:

(a) be made within the period described in subrule (1);

(b) be in Form 4-26; and

(c) include the following information:

(i) the name of the party making the offer;

(ii) the name of the party or parties to whom the offer is made;

(iii) what the offer is and any conditions attached to it;

(iv) whether or not the amount of the offer is inclusive of interest and, if not, to what date and at what rate interest is payable under the terms of the offer;

(v) whether or not the amount of the offer is inclusive of costs and, if not, the amount or scale of the costs and the date to which they are payable under the terms of the offer;

(vi) the requirements that must be complied with to accept the offer;

(vii) a form of acceptance of the offer; and

(viii) notice of the costs consequences specified in rule 4-31.

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Formal Offers to settle (continued)

(3) Unless a valid formal offer is withdrawn pursuant to subrule (4), the valid formal offer remains open for acceptance until the earlier of:

(a) the expiry of 30 days after the date of the offer or any longer period specified in the offer; and

(b) the start of the hearing of an application for summary judgment or the start of the trial, as the case may be.

(4) A valid formal offer may not be withdrawn unless the Court first gives permission for the withdrawal, and the Court shall give that permission only if the Court is satisfied that there are special circumstances that justify withdrawal.

(5) If the Court gives permission for a valid formal offer to be withdrawn, the withdrawal is effective as of the time of service of the notice of application for withdrawal on the party to whom the offer was made.

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Acceptance of formal offer to settle

4-27(1) For the purpose of this Division, a valid formal offer to settle an action or a claim in an action may only be accepted in accordance with this rule.

(2) At any time a valid formal offer remains open for acceptance or before a valid formal offer is withdrawn, a party to whom a valid formal offer to settle has been made may accept the offer by serving on the party who made the offer notice that:

(a) the offer has been accepted; and

(b) the terms of any judgment or order in the offer have been agreed to.

(3) After the service and filing of the formal offer to settle and the acceptance of it, a party may:

(a) apply to the Court for judgment or an order in accordance with the agreement;

(b) continue the action with respect to any matter not covered by the judgment or order; and

(c) continue the action against any party who is not a party to the settlement.

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If costs are not dealt with in formal offer
4-28 If a valid formal offer and acceptance filed pursuant to rule 4-27 does not deal with costs, either party may apply to the Court for an order pursuant to rule 11-1.

Status of formal offers
4-29 Unless agreed otherwise by the parties, a valid formal offer pursuant to this Division:

(a) is to be considered as an offer to settle that is made without prejudice; and
(b) is not an admission of anything.

Confidentiality of formal offers
4-30(1) Subject to subrule 4-26(4) and subrule (2), a valid formal offer is to be kept confidential and not disclosed to the Court until:

(a) it is accepted; or
(b) the remedy for the claim has been decided.

(2) Subrule (1) does not apply to an offer of a written or printed apology made pursuant to section 4 of *The Libel and Slander Act*.

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Costs consequences of formal offer to settle

4-31(1) Subject to subrule (3), if a plaintiff makes a valid formal offer that is not accepted and subsequently obtains a judgment or order in the action that is equal to or more favourable to the plaintiff than the formal offer, the plaintiff is entitled to double the costs to which the plaintiff would otherwise have been entitled pursuant to rule 11-18 for all steps taken in relation to the action or claim after service of the formal offer, excluding disbursements.

(2) Subject to subrule (3), if a defendant makes a valid formal offer that is not accepted and a judgment or order in the action is made that is equal to or more favourable to the defendant than the formal offer, the defendant is entitled to double costs for all steps taken in the action in relation to the action or the claim after service of the formal offer.

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Costs consequences of formal offer to settle (continued)

(3) This rule does not apply:

(a) if costs are awarded pursuant to rule 11-1;

(b) in the case of an offer made with respect to an application for summary judgment, if the offer is made less than 10 days before the date scheduled to hear the application for summary judgment;

(c) in the case of an offer made with respect to any other matter, if the offer is made less than 10 days before the date scheduled for the trial to start;

(d) if an offer is withdrawn in accordance with subrule 4-26(4); or

(e) if in special circumstances the Court orders that this rule is not to apply.

When this Division does not apply

4-32 This Division does not apply to an action or a claim in an action with respect to which a defence of tender before the commencement of a proceeding is pleaded unless that defence is first withdrawn.

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DIVISION 6

Payment into and out of Court

Subdivision 1: Tender

Payment into Court where defence of tender

4-33(1) If a defence of tender before the commencement of a proceeding is pleaded, the defence may not be delivered or relied on unless concurrently with that pleading and on notice to the plaintiff, the sum of money alleged to have been tendered is paid into Court.

(2) A notice of payment into Court:
- (a) may be in Form 4-33A; and
- (b) must specify the claims with respect to which payment is made and the sum paid with respect to each of those claims.

(3) Payment pursuant to this rule may not be revoked except by leave of the Court.

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

(5) A notice of acceptance:
- (a) must be in Form 4-33B; and
- (b) must specify the claims to which it relates.

(6) If the plaintiff accepts the money in satisfaction of all claims made in the action:
- (a) the defendant may assess his or her costs of the action;
- (b) the amount of those assessed costs shall be paid to the defendant out of the money; and
- (c) the balance of the money must be paid to the plaintiff.

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Subdivision 2: Satisfaction

Payment into Court as satisfaction

4-34(1) At any time before commencement of the trial, a defendant may, on notice to the plaintiff, pay into Court a sum of money in satisfaction of:

(a) any claim made by a plaintiff; or

(b) if there is more than one claim, any one or more claims.

(2) A notice of payment into Court:

(a) may be in Form 4-33A; and

(b) must specify the claim or claims with respect to which payment is made and the sum paid with respect to each claim.

(3) Payment into Court pursuant to this rule is deemed to be an offer of compromise made without prejudice and is not to be taken as an admission of liability for the claim with respect to which it is made, unless otherwise shown in the notice of payment into Court.

(4) No communication of the fact that money has been paid into Court pursuant to this rule must be made to the trial judge or the jury until all questions of liability and the amount of debt or damages have been decided.

(5) A payment into Court pursuant to this rule is irrevocable for a period of 8 days after the date of service of the notice of payment into Court.

(6) After the expiry of the 8-day period mentioned in subrule (5) but before the commencement of the trial or the acceptance by the plaintiff, the defendant may revoke any payment by serving on the plaintiff a notice of revocation in Form 4-34.

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Payment into Court as satisfaction (continued)

(7) On filing the Notice of Revocation with proof of service, the money in Court must be paid out to the defendant.

(8) If money has been paid out to a defendant pursuant to a notice of revocation, the payment into Court is to have no effect on the costs of the action.

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

(10) A notice of acceptance:

- (a) must be in Form 4-33B; and
- (b) must specify the claims to which it relates.

(11) If the plaintiff accepts the money in satisfaction of all claims in the action:

- (a) the plaintiff may assess his or her costs to the date of service with the notice of payment into Court; and
- (b) the defendant may assess his or her costs from the date the plaintiff was served with notice of payment into Court.

(12) Following the assessment of costs pursuant to subrule (11), the money must be paid out to the plaintiff, after deducting the amount payable to the defendant for his or her assessed costs.

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Subdivision 3: General

Costs, where judgment less than amount paid into Court

4-35 If a plaintiff fails to obtain judgment for more than the amount paid into Court:

(a) the plaintiff is entitled to costs to the date of service of the notice of payment into Court; and

(b) the defendant is entitled to double costs from the date of service of the notice of payment into Court to the date of judgment.

Interest

4-36(1) The plaintiff is entitled to interest earned on money paid into Court from the date of the plaintiff's acceptance.

(2) The defendant is entitled to interest earned on money paid into Court by the defendant before acceptance by the plaintiff, unless that payment is not sufficient to satisfy the judgment obtained by the plaintiff, after deducting any costs to which the defendant may be entitled.

(3) In the circumstances mentioned in subrule (2), the plaintiff is entitled to the whole or any part of the interest that may be necessary to satisfy the plaintiff's judgment, unless the Court orders otherwise.

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Payment out, where all claims not satisfied

4-37 If a plaintiff accepts money paid into Court with respect to one or more but not all of the claims in an action, the money must not be paid to the plaintiff except with:

(a) the written consent of the parties; or
(b) leave of the Court.

Money remaining in Court

4-38 If all of the money paid into Court is not taken out pursuant to this Division, the money remaining in Court must not be paid out except pursuant to:

(a) an order of the Court; or
(b) the written consent of the parties that is filed with the local registrar.

Defendant may surrender counterclaim

4-39 If a counterclaim is asserted, a defendant may offer to surrender his or her counterclaim and pay into Court a sum of money in satisfaction of one or more of the claims for which the plaintiff sues, in settlement of the action and counterclaim.

Where payment into Court by third party

4-40 The defendant shall not take out any money paid into Court by a third party without leave of the Court.

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Payment out

4-41 If money is paid out of Court, payment must be made to:

(a) the person entitled to the money; or

(b) on the written authority of the person entitled to the money or by order of the Court, the person's lawyer.

Application to other claims

4-42 The rules in this Division apply with any necessary modification to any claim, counterclaim, cross-claim or third party claim.

Issuance of judgment

4-43 If money has been paid into Court, the local registrar shall not issue a judgment until:

(a) the fact that money has been paid has been drawn to the attention of the trial judge; or

(b) an agreement as to costs has been filed with the local registrar.

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DIVISION 7

Delay in an Action

Application to deal with delay

4-44 If delay occurs in an action, on application the Court may:

(a) dismiss all or any part of a claim if the Court is satisfied that the delay is inordinate and inexcusable and that it is not in the interests of justice that the claim proceed; or

(b) make a procedural order or any other order provided for by these rules.

Agreement about delay

4-45 If 2 or more parties agree to delay an application or proceeding in an action, every other party must be served with notice of the agreement to delay and of the nature and extent of the delay.

Notice after one year

4-46(1) In any cause or matter in which there has been no proceeding for one year from the last proceeding, the party who desires to proceed shall give a month's notice to the other party of the party's intention to proceed.

(2) On the expiry of one month after the service on all parties of the notice, any party may proceed without further notice, but that further proceeding must be taken within one year of the date of that service.

(3) For the purposes of this rule, an application on which no order has been made, other than a request for a pre-trial conference or for a trial, is not deemed to be a proceeding within this rule.

(4) This rule does not apply to any defendant who has not appeared.

(5) A defendant mentioned in subrule (4) is not required to give a notice pursuant to this rule before applying to dismiss an action for want of prosecution.

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DIVISION 8

Transfer and Transmission of Interest

Orders on transfer or transmission of interest

4-47(1) If at any time in an action the interest or liability of a party is transferred or transmitted to another person by assignment, bankruptcy, death or other means, the Court may, on application or on its own motion, make orders for:

(a) the addition, removal, substitution or arrangement of the parties or their personal representatives;
(b) the conduct of the proceedings; and
(c) the service of notice of any proceeding or order.

(2) The Court may at any time vary, rescind or modify any order made pursuant to this rule.

Death has no effect on an action after evidence heard

4-48 If a party dies before judgment but after all the evidence has been heard:

(a) the death does not terminate the action, whether or not the claim survives death; and
(b) judgment may be pronounced and entered despite the death.

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DIVISION 9
Discontinuance

Discontinuance or withdrawal of claim

4-49(1) At any time before receipt of the statement of defence of any defendant, or after the receipt of the statement of defence and before taking any other proceeding in the action other than an interlocutory application, the plaintiff may wholly discontinue the plaintiff's action against the defendant or withdraw any part of the action by serving and filing a notice in Form 4-49.

(2) If the plaintiff serves and files a notice in accordance with subrule (1), the defendant is entitled to:

(a) if the action is wholly discontinued, the costs of the action; or

(b) if the action is not wholly discontinued, the costs occasioned by the part of the action that has been withdrawn.

(3) If the action is wholly discontinued, the costs to which the defendant is entitled pursuant to subrule (2) may be assessed on production of the notice served, and if not paid within 30 days after assessment, the defendant may issue an enforcement instruction with respect to those costs.

(4) A plaintiff may discontinue the action respecting one or more defendants.

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Discontinuance or withdrawal of claim (continued)

(5) The discontinuance or withdrawal of all or part of the action may not be raised as a defence to any subsequent action for the same or substantially the same claim.

(6) Notwithstanding the expiration of the time limited in subrule (1), a plaintiff may give written notice to the other parties that at the trial of the action the plaintiff will apply to withdraw a part or parts of the plaintiff's claim that involve substantially a complete discontinuance.

(7) On an application pursuant to subrule (6), the trial judge may allow that withdrawal on those terms as to costs or otherwise as the judge considers just.

(8) Except as provided in this rule, a plaintiff shall not discontinue in whole or in part, unless:

(a) it is with the consent of the party or parties against whom discontinuance is sought; or

(b) it is with the leave of the Court.

(9) For the purposes of clause (8)(b), the Court may grant leave on those terms as to costs and as to any other action against all or any of the defendants and otherwise that the Court considers just.

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Discretionary stay of subsequent action pending payment

4-50 If a subsequent action is brought before payment of the costs of a discontinued action for the same or substantially the same cause of action, the Court may in its discretion order a stay of that subsequent action until those costs have been paid.

Discontinuance of defence

4-51(1) A defendant may discontinue the whole of a statement of defence by serving a notice of discontinuance in Form 4-51 on the plaintiff and filing it.

(2) On filing a notice of discontinuance:

(a) the defendant is in default of defence; and

(b) the plaintiff is entitled to a costs award against the defendant for having responded to the discontinued defence.

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Thank you!

The Queen's Bench Rules of Court and accompanying documents are found on the Law Society website, under the heading 'For Lawyers and Students', 'Practice Resources'.