

## **RULE 43 – ORDERS**

### **No application for judgment necessary**

- (1) No application for judgment is necessary except where a statute, regulation or these rules otherwise provide.

### **Drawing and approving orders**

- (2) An order of the court may be drawn up by any party, and, unless the court otherwise directs, shall be approved in writing by all parties or their respective lawyers, and then left with the clerk to have the seal of the court affixed, but the order need not be approved by a party who has not consented to it and who did not attend, or was not represented at the trial or hearing following which the order was made.

### **Form of order**

- (3) Unless these rules otherwise provide, an order shall be in Form 43, 44, 53, 54 or 90.

### **Endorsement of order on application sufficient in certain cases**

- (4) If an order has been made substantially in the same terms as requested, if the court endorses the application, petition or other document to show that the order has been made or made with any variations or additional terms shown in the endorsement, it is not necessary to draw up the order, but the endorsed document must be filed.

### **Order granted conditionally on document to be filed**

- (5) Where an order may be entered on the filing of a document, the party shall file the document when leaving the draft order with the clerk, and the clerk shall examine the document and, if satisfied that it is sufficient, shall enter the order accordingly.

### **Waiver of order obtained upon condition**

- (6) Where a person who has obtained an order upon condition does not comply with the condition, the person shall be deemed to have abandoned the order so far as it is beneficial to the person and, unless the court otherwise directs, any other person interested in the matter may take either the steps the order may warrant or the steps that might have been taken if the order had not been made.

### **Effect and form of orders**

- (7) (a) An order must:
  - (i) if it is spoken to, show on its face the name of the judge who made the order;or

- (ii) if it is not spoken to, be in Form 53 or 54.
- (b) An order may be approved by any judge.

#### **Date of order**

- (8) (a) An order shall be dated as of the day on which it was pronounced.
- (b) An order made by a clerk shall be dated as of the day on which it is signed by the clerk.
- (c) Unless the court otherwise orders, an order takes effect on the day of its date.

#### **Requirement of consent order**

- (9) No consent order shall be entered unless the consent of each party affected is signified:
  - (a) where the party is represented by a lawyer, by the signature of that lawyer; or
  - (b) where the party is not represented by a lawyer:
    - (i) by the oral consent of the party who attends before the court or the clerk; or
    - (ii) by the written consent of the party.
- (9.1) Where an order requires the signature of more than one lawyer, the signature of the filing lawyer shall be original, but the signatures of other lawyers may be faxed or scanned copies of their original signatures.

#### **Application by consent**

- (10) Subject to subrule (11), an application for an order by consent may be made by filing:
  - (a) a Requisition in Form 3;
  - (b) a draft of the Order in Form 53; and
  - (c) evidence that the application is consented to.

#### **Application by consent if party under a legal disability**

- (11) If the leave or approval of the court is required under Rule 6(15), an application for that order may be made by filing:
  - (a) the documents referred to in subrule (10) of this rule; and

(b) the consent of the litigation guardian.

### **Consent order**

(12) On being satisfied that an application referred to in subrule (10) or (11) is consented to and that the materials appropriate for the application have been submitted, the clerk may:

(a) if the clerk is satisfied that none of the parties applying for or consenting to the order is under a legal disability or that, if a party is under a legal disability, the litigation guardian consents:

(i) enter the order; or

(ii) refer the application to a judge; or

(b) in any other case, refer the matter to a judge.

### **Application of which notice is not required**

(13) An application of which notice need not be given pursuant to legislation or Rule 50(14) may be made by filing:

(a) a Requisition in Form 3;

(b) a draft of the Order in Form 54; and

(c) evidence in support of the application, including the reason why notice was not given.

### **Referral by clerk**

(14) On being satisfied that the materials appropriate for an application referred to in subrule (13) have been submitted, the clerk shall refer the matter to a judge.

### **Disposition of referred applications**

(15) If an application is referred by the clerk to a judge under subrule (12) or (14), the judge to whom the application is referred may:

(a) make the order;

(b) require further evidence; or

(c) direct that the application be spoken to.

**Settlement of orders**

- (16) An order shall be settled by the clerk who may refer the matter to the judge who made the order or any other judge if the judge who made the order is not available.

**Appointment to settle**

- (17) A party may obtain an Appointment to settle an order in Form 28 and shall deliver the appointment and a draft order to all parties whose approval is required under subrule (2) at least 1 day before the time fixed by the appointment.

**Party failing to attend on appointment to settle**

- (18) If a party fails to attend at the time appointed for settlement of an order, the judge may settle the order in the party's absence.

**Review of settlement**

- (19) The court may review and vary the order as settled.

**Clerk may draw order**

- (20) The court may direct the clerk to draw up and enter an order.

**Special directions for carriage, entry or service**

- (21) The court may give special directions respecting the carriage, entry or service of an order.

**Correction of orders**

- (22) The court may at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission, or may amend an order to provide for any matter which should have been but was not adjudicated upon.

**Case file to be kept by clerk**

- (23) The original copy of all orders required to be drawn up shall be inserted by the clerk in a case file kept for that purpose, except where a photocopy of the order is taken and maintained.