Supreme Court Registrars' Newsletter
Consolidation 1992 – 2025

The Supreme Court Registrars' Newsletter is a Question and Answer resource that is used by the Registrar, District Registrars and Deputy District Registrars throughout the province to help clarify registry practice with respect to a number of provincial and federal statutes and the Supreme Court Civil and Family Rules. The Newsletter contains questions from District Registrars and Deputy District Registrars from 1992 to present and is maintained and released by the Manager of the Provincial Registrars' Program.

The questions and answers appearing in bold are from the last issue released.

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PROVINCIAL & FEDERAL COURT ACTS		
Adoption Act	Q	Do the Practice Directions of the Chief Justice apply to the *Adoption Act* proclaimed November 4, 1996?
	A	FPD – 14 issued by the Honourable Chief Justice Bauman and effective July 1, 2010 is the current Practice Direction with respect to adoption applications.
Adoption Act	Q	Under the previous *Adoption Act,* a person presenting a photocopy of an entered adoption order could have it certified by the court registry where the order was entered. Under the existing *Act*, no provision is made for obtaining a certified copy. How can a person now obtain a certified copy of the adoption order without making application?
	A	As there is no restriction to the above procedure in the new *Act*, if a photocopy is presented for certification, compare it with the original order. In some registries the original orders are kept separate from the file, which avoids the necessity of opening the court file. If you keep your original orders in the file, you will have to open it to compare the photocopy. A suggestion might be made to the applicant to request a certified copy at the time the application is filed.
Adoption Act Famil Rule 3-1(2.2)(a)	Q	Are adult adoptions commenced by requisition or petition?

	A	Pursuant to Supreme Court Family Rule 3-1(2.2)(a) and 3-1(3), an order for adoption sought in a family law case must be commenced by petition under Rule 17-1.
Adoption Act Family Rule 3-1(2.2)(a)	Q	How is an adoption proceeding commenced?
	A	An application for an order for adoption must be commenced by petition. These applications are to be filed in an adoption file folder and kept separate from regular Supreme Court files. Where the non-disclosure provision applies, (i.e. the identity of the adoptive parents is not known to a birth parent) or where a person entitled to notice of the application cannot be served, an application to dispense with consent or notice must be made by way of a separate petition in a regular (non-adoption) Supreme Court file. These separate proceedings are commenced in the names of "John Doe/Jane Doe".
Adoption Act section 32	Q	Can a filed birth certificate/registration be returned to a party by the registry after an adoption has been approved?
	A	No. When presented at the registry, the birth certificate/registration must be date stamped either on its face if there is room or on the back. It is then a filed document and cannot be returned without an order of the court. The birth certificate/registration cannot be obtained by way of an application for a consent order. An order for the return of the birth certificate/registration may be sought together with the adoption order with supporting evidence or separately on application with the supporting evidence. The application materials may be filed electronically and processed as a desk order.
Adoption Act section 42	Q	Is it appropriate to include the name of the child to be adopted in the style of proceeding?
	A	Generally speaking because of privacy concerns adoption applications do not refer to the child or adult to be adopted in the style of proceedings and are filed with the following style of proceeding, which appears on the prescribed forms set out in the regulations made pursuant to the *Adoption Act;* IN THE SUPREME COURT OF BRITISH COLUMBIA IN THE MATTER OF THE *ADOPTION ACT* IN THE MATTER OF A ..... [male/female] CHILD Birth Registration Number ..... Section 42(2) of the *Adoption Act* directs that when the identity of a parent or other guardian is not known to an adoptive parent, the child may only be identified on an

		adoption order by the child's birth registration number. Some foreign jurisdictions do not issue a birth registration number. In such circumstances, where it is established by the evidence filed in support of the application that the identity of the parent(s) is/are known to the adoptive parents, the name of the child may be included in the style of proceeding. Note that some foreign jurisdictions may not issue a birth registration number so it may be appropriate to reference the child to be adopted by their date of birth in place of a birth registration number.
Adoption Act section 43	Q	Where is the authority for sealing adoption files?
	A	There is no statutory authority to seal an adoption file. Each registry, however, must ensure that section 43 of the *Adoption Act* is complied with. We believe it sufficient if an adoption file is stamped "no search", with no access permitted by registry staff, absent a court order or on direction of the director. Adoption files should be placed in a segregated area within the registry in order to minimize the risk of unauthorized searches.
Adoption Act Section 45	Q	Is the registrar required to send a certified copy of the adoption order to Vital Statistics?
	A	No, section 45 of the *Adoption Act* directs the registrar to send a <u>copy</u> of the order to the registrar general at Vital Statistics.
Arbitration Act section 29	Q	When a party presents an award under the *Arbitration Act* for filing and enforcement, what is the process?
	A	Leave of the court is required to enforce an arbitral award. The petition for leave must be served; it cannot be done without notice. A registrar cannot issue enforcement process until the leave has been granted by the court. See: *Bekar v. TD Evergreen*, 2006 BCCA 266.
Bankruptcy and Insolvency Act	Q	Can a trustee rely on a proposal or a consumer proposal as authority for a registrar to approve payment out to the trustee of funds/money held in court?
	A	No. A proposal or a consumer proposal is different from an assignment into bankruptcy and unless the proposal or consumer proposal includes a specific term for the payment out of the money/funds then a registrar should not approve payment out without a court order.
Bankruptcy and Insolvency Act	Q	Can funds in court be paid out to a trustee on the strength of deemed approval of a proposal which contains a term for payment out of the funds?

	A	Yes.
Bankruptcy and Insolvency Act	Q	In the past, assignments in bankruptcy by a husband and wife were given two estate numbers by the Superintendent but were administered jointly. Under the new CEIS system should a filing fee be charged for each estate number?
	A	If a joint assignment has two estate numbers assigned by Industry Canada, one file is opened and one filing fee paid. CEIS was enhanced in 2007 to allow for more than one estate number to be included.
Bankruptcy and Insolvency Act	Q	When a trustee sends an assignment into bankruptcy to a court registry, do they have to include the court file number from each location or can they send a blanket letter and have the registry look up the files which show the bankrupt as a party?
	A	The trustee should be providing the court file numbers of the proceedings in each specific court location.
Bankruptcy and Insolvency Act	Q	When a conditional order has been granted and subsequently paid but where the trustee fails to bring the discharge application in a timely fashion, may the discharge be backdated to the date of the payment of the conditional order?
	A	No. Orders should always be dated on the date they are made but the terms of the order could state an effective date.
Bankruptcy and Insolvency Act	Q	What is the process to have an urgent bankruptcy application heard at another bankruptcy registry in the province?
	A	If there is urgency the motion may include a request for leave to have the application heard at the hearing registry, which may be filed at that same registry. The adjudicator will first determine if the leave should be granted and then either adjourn the application or proceed with the balance of relief sought.
Bankruptcy and Insolvency Act – Tariff	Q	Do amendments to fees payable to the Crown in Schedule 1 of Appendix C to the *Supreme Court Civil Rules* affect the fees charged for matters under the *Bankruptcy & Insolvency Act*?
	A	No. The fees for applications under the *Bankruptcy & Insolvency Act* are governed by the tariff in Part II of the *Bankruptcy & Insolvency General Rules*. Only when these Federal Rules are silent do the Provincial Rules apply.
Bankruptcy and Insolvency Act – Tariff	Q	What fee is a trustee required to pay when filing a notice of motion under the *Bankruptcy and Insolvency Act*?

	A	No fee is payable for a notice of motion by the trustee pursuant to Part II of the Schedule to the *Bankruptcy and Insolvency General Rules*.
Bankruptcy and Insolvency Act – Tariff	Q	When legal fees incurred by a trustee in a bankruptcy estate are required to be taxed by the court, is a fee payable under the new tariff?
	A	If the application is made by the trustee, then the fee is encompassed in the general fee payable by a trustee under Item 3. If, however, the application is filed by the solicitor, then the fees set out in Item 4(h) apply.
Bankruptcy and Insolvency Act section 43 and Bankruptcy and Insolvency General Rules section 69	Q	What must a registrar in bankruptcy check before signing an Application for Bankruptcy Order?
	A	The registrar should sign every Application for Bankruptcy Order presented for filing. Signing the application is an administrative function and no exercise of discretion is required. The court will determine if there are any deficiencies with the material in the application.
Bankruptcy and Insolvency Act section 49(1)	Q	How is an application for leave of the court made for an assignment into bankruptcy on behalf of a deceased person?
	A	PD-13 - Initiation of Bankruptcy Files applies so the applicant must file a requisition and pursuant to section 11 of the *Bankruptcy and Insolvency General Rules*, also file a notice of motion and affidavit evidence to support the order seeking leave of the court.
Bankruptcy and Insolvency Act section 49(3)	Q	Is there a local venue rule in cases of bankruptcy?
	A	Yes. Under s. 49(3) of the *Bankruptcy and Insolvency Act*, the assignment into bankruptcy is made "to the official receiver in the locality of the debtor". "Locality of a debtor" is defined by section 2 to mean: "the principal place (a) Where the debtor has carried on business during the year immediately preceding his bankruptcy, (b) Where the debtor has resided during the year immediately preceding his bankruptcy, or (c) In cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated."

		This point was canvassed briefly in the *Bankruptcy of South Thompson Guest Ranch Ltd.* (unreported, Vancouver Registry 159235 VA95), which held that a court, under section 187(7), can transfer any proceedings to another bankruptcy district or division, on satisfactory proof that the affairs of the bankrupt can be more economically administered within another bankruptcy district or division. "Court" under section 192 can include a registrar.
Bankruptcy and Insolvency Act section 49(3) and section 187 (7)	Q	Can an application for discharge of a bankrupt in a Prince George file be heard in Vancouver without a change of venue application?
	A	No, there must be a change of venue application. This could be accomplished by desk order with supporting affidavit material.
Bankruptcy and Insolvency Act section 49(3)	Q	Some applications received refer to the date of bankruptcy as the date shown on the assignment, others refer to the date referred to on the certificate of appointment issued by the Office of the Superintendent of Bankruptcy Canada ("the OSB"). Which is the correct date to reference?
	A	Pursuant to section 49(3) of the *Bankruptcy and Insolvency Act,* the assignment is inoperative until it has been filed with the official receiver, therefore, the date to be used is the date shown on the certificate of appointment issued by the OSB.
Bankruptcy and Insolvency Act section 66.22(2)	Q	What documentation should a trustee submit to the registry when requesting payment out of court pursuant to a term included in a consumer proposal?
	A	The trustee must submit; • a requisition requesting payment out of the specified amount setting out the authority the applicant relies on and advising to whom the payment should be made, • a copy of the court approved consumer proposal, • if the consumer proposal was not formally approved by the court, a copy of the proposal must be provided together with a letter from the trustee setting out that: o the proposal has been approved by the creditors, o 15 days have expired after the acceptance or deemed acceptance of the consumer proposal and no request has been made by the official receiver or any other interested party that the trustee apply to the court for approval of the proposal, and

		○ pursuant to section 66.22(2) of the *BIA,* the consumer proposal is now deemed approved by the court.
Bankruptcy and Insolvency Act section 73(2)	Q	Are funds held in court required to be paid directly to a trustee in bankruptcy?
	A	Yes. In *Bankruptcy of Dore* (1997) 38 B.C.L.R. (3d) 383) the court found that upon receipt of a copy of the assignment into bankruptcy or the bankruptcy order (certified by the trustee as a true copy), any funds paid by or in the name of the bankrupt should be paid to the trustee without an order of the court. In order to avoid any misunderstandings, the cashier may decide to informally notify the other party of the trustee's request. If the other party raises an objection, the cashier may refer the matter to the court for determination.
Bankruptcy and Insolvency Act section 81(2)	Q	Section 81(2) of the *Bankruptcy and Insolvency Act* requires a claimant who seeks to appeal a trustee's decision disputing their claim to file an appeal to the court within 15 days after the trustee has sent the notice of dispute. What document is required to be filed with the court to commence the appeal?
	A	PD-13 - Initiation of Bankruptcy Files applies and the claimant must file a requisition accompanied by a notice of motion (section 11 of the *Bankruptcy and Insolvency General Rules*) to bring the appeal of the trustee's decision.
Bankruptcy and Insolvency Act section 135(4)	Q	How is an appeal under s. 135(4) of the *Bankruptcy and Insolvency Act* made?
	A	Section 113 of the *Bankruptcy and Insolvency General Rules*, which is the rule that relates to a notice of disallowance or of valuation, is silent as to process for an appeal referred to in s.135(4) of the *BIA*. Section 11 of the *Bankruptcy and Insolvency General Rules* directs; subject to these Rules, every application to the court must be made by motion unless the court orders otherwise. There is no prescribed form for a motion and applicants often will file a notice of motion or notice of application similar to Form 32 in Appendix A of the Supreme Court Civil Rules. The Houlden & Morawetz practice manual includes a sample for an application under s. 135(4) called, "Notice of Appeal from Disallowance of Claim by Trustee". Although it is not styled as a motion it should be accepted by the registry as there is a 30 day appeal period.

		If there is no bankruptcy proceeding already filed PD-13 applies and a requisition in Form 17 must be filed to initiate a court file.
Bankruptcy and Insolvency Act section 164	Q	How does a trustee set an examination pursuant to section 164 of the *Bankruptcy and Insolvency Act*?
	A	Sections 115 to 116 of the *Bankruptcy and Insolvency General Rules* provide some direction on who must hear an examination under section 164 and where it must be heard. One option is to have the hearing heard by a person qualified to hold examinations for discovery so the trustee could make arrangements similar to that of the process for an appointment to examine for discovery. The Rules also indicate the hearing may be heard before a registrar, which would require the trustee to schedule a registrar hearing and file a notice of motion for examination.
Bankruptcy and Insolvency Act section 168.1(1)(e) and Part II, Bankruptcy Tariff, s. 2(a) & 4(f)	Q	When a creditor files an opposition to the discharge of a bankrupt is a fee payable by the trustee to file the section 170 report, etc.?
	A	If the court file has already been opened pursuant to section 4(f) of Part II of the Bankruptcy Tariff, then the trustee need pay no further fee. If the creditor is the Provincial Loan Administration Branch of the Ministry of Finance and Corporate Relations, then no fee is payable. If, however, the trustee has been notified of the opposition by a creditor pursuant to section 168.1(1)(e) and the creditor has not filed any material with the court, then it is incumbent upon the trustee to file the necessary documents and pay the filing fee.
Bankruptcy and Insolvency Act section 172	Q	Are there any sample orders available to the public relating to discharges of a bankrupt?
	A	Yes. AN-12 - Bankruptcy Proceedings before a Registrar in Bankruptcy, includes model forms of discharge orders in Appendix A of the notice. The administrative notice may be found on the Supreme Court website under Administrative Notices.
Bankruptcy and Insolvency Act section 178(1.1)	Q	What is the procedure to be used if a bankrupt applies to have a student loan debt discharged pursuant to section 178(1.1) of the *Bankruptcy and Insolvency Act* when the date of the bankruptcy occurred within 7years after the date on which the bankrupt ceased to be a full-time student or

		before the date on which the bankrupt ceased to be a full or part-time student? Who opens the court file if there isn't one already?
	A	If the trustee has not been discharged, the trustee should open a court file. If the trustee has been discharged and there is no court file, the bankrupt may open the court file by filing a requisition, notice of motion and affidavit in support. The bankrupt should try to obtain copies of the statement of affairs, the assignment, the certificate of appointment and the section 170 report. If the bankrupt opens the court file, the bankrupt will be required to pay the fee for filing a notice of motion but not the fee for opening a court file. The notice of motion and affidavit in support should be served on Student Loans, the trustee and the Superintendent of Bankruptcy.
Bankruptcy and Insolvency Act section 180 and 181	Q	What is the process for a creditor to apply to the court for an annulment of a discharge, assignment or bankruptcy order?
	A	If there is an existing bankruptcy proceeding, the creditor should make an application in that proceeding. If there is no court proceeding, for example, because the discharge order was granted by the Office of the Superintendent of Bankruptcy, the creditor should commence a court proceeding in accordance with PD-13 by filing a requisition in Form 17, the application for the annulment and any other supporting documents. Note: There are various sections throughout the *Bankruptcy and Insolvency Act* that authorize a creditor to make an application to the court.
Bankruptcy and Insolvency Act section 237(3)	Q	Where is a consolidation order and notice of default under the *Bankruptcy & Insolvency Act*, Orderly Payment of Debts ("OPD") section, filed?
	A	In any Supreme Court registry. A default order under the OPD takes a matter out of the Bankruptcy Act. Section 237(3): "None of the provisions of Parts I to IX of this *Act* apply to proceedings under this Part."
Bankruptcy and Insolvency Act section 269	Q	How is an application made in British Columbia to recognize and enforce a foreign bankruptcy proceeding?

	A	A party may apply for recognition of a foreign bankruptcy proceeding in accordance with section 269 of the *BIA* by bringing an originating application.
Bankruptcy and Insolvency Act General Rules section 18,19 & 20	Q	What material should be submitted to the Registrar for taxation of a bill for legal fees rendered to a trustee in bankruptcy?
	A	The material submitted to the Registrar should include: 1. a requisition 2. a draft certificate for the Registrar's signature; 3. a copy of the bill with the declaration and signature of the trustee as required by Rule 20 of the *Bankruptcy and Insolvency Act General Rules*; and 4. an affidavit of the solicitor in support of the fees setting out the nature of the services, the hours spent, hourly rate, experience of the lawyer, results, amount involved and any complexities, so that the Registrar can assess the reasonableness of the bill.
Business Corporations Act	Q	Who can apply to restore a company to the register pursuant to the *Business Corporations Act*?
	A	Pursuant to section 356 and 360 of the *Business Corporations Act* a person may apply for a full restoration; any person may apply for a limited restoration.
Business Corporations Act section 346	Q	How is service on a dissolved company effected?
	A	Section 346(1)(b) permits a legal proceeding to be brought against a company within 2 years after its dissolution as if the company had not been dissolved and subsection (2) directs that records related to a legal proceeding may be delivered to the company at its address for delivery in the legal proceeding or, if there is no address for delivery, by personal service on any individual who was a director or senior officer of the company immediately before the company was dissolved or otherwise in the manner ordered by the court.
Central Registry of Divorce Proceedings Fee Order (Canada)	Q	Is the fee for registration of a divorce in the Central Divorce Registry payable when a person receives legal aid and has obtained an order to waive court fees?
	A	No. Pursuant to section 2 of the *Central Registry of Divorce Proceedings Fee Order Regulation*, no fee is payable. However, if the person obtains an order to waive court fees but is not receiving legal aid, the $10.00 fee must be paid.

		S. 2 of the *Central Registry of Divorce Proceedings Fee Order*: **2.** (1) Subject to subsection (2), the fee to be paid by a person who files an application for divorce and in respect of whom a service is provided under section 5 of the *Central Registry of Divorce Proceedings Regulations* is $10 per application. (2) No fee shall be paid by a person who receives legal aid from a province in respect of the person's application for divorce where, pursuant to the law of the province, payment by that person of the fees established by the province for filing an application for divorce is waived. SOR/86-614, s. 1; SOR/86-835, s. 1.
Civil Forfeiture Act	Q	Can a default judgment in Form 8 be signed by a registrar when the relief sought is for an order for forfeiture of any land and goods seized?
	A	No. A registrar may only sign a default for relief set out in Supreme Court Civil Rule 3-8(3), (5) or (6). Section 5 of the *Civil Forfeiture Act* sets out that the court must make the order (not a registrar).
Civil Resolution Tribunal Act section 56.5	Q	What is the process to appeal a final decision from the Civil Resolution Tribunal in a strata property claim when the parties do not consent to the appeal?
	A	Section 56.5(2)(b) of the *Civil Resolution Tribunal Act* requires leave of the court to file an appeal when the parties do not consent to an appeal being filed. In *McKnight v. Bourque*, 2017 BCSC 2280, the court confirms that the appeal should be commenced by Form 73 to be entitled, “Notice of Appeal if Directions Required and Application for Leave to Appeal”. The required information for the appeal and the application for leave must be included in the same document. The form should also be modified to include specific language to permit a person to register their interest in an appeal (if granted) as opposed to necessarily being involved in a leave application. The hearing to seek leave should be set by requisition.
Civil Resolution Tribunal Act section 57	Q	When an applicant wishes to file a decision from the Civil Resolution Tribunal relating to strata property with the Supreme Court for enforcement pursuant to section 57 of the *Civil Resolution Tribunal Act* does the registry need to ensure the requirements of that section have been met before registering the decision?

	A	No. The onus is on the applicant to ensure that they have complied with the legislation. Rule 2-2 of the SCCR sets out the process for filing a decision of a tribunal with the Supreme Court. Upon the applicant providing a requisition in Form 17.2 (Appendix A, SCCR) and providing a validated copy of the order (see sections 142-144 of the Civil Resolution Tribunal General Rules) the decision should be accepted for filing.
Commercial Tenancy Act section 18 & 19	Q	How is a file opened under section 18 and 19 of the *Commercial Tenancy Act*?
	A	Section 18 states "apply to the Supreme Court". An originating application may be made by petition or requisition. Since the application must be served, a petition is appropriate.
Commercial Tenancy Act section 25	Q	How is a show cause summons under section 25 of the *Commercial Tenancy Act* issued?
	A	The Show Cause Summons is filed with a requisition and an affidavit which must contain the information required in section 25: (c) setting forth the terms of the lease or occupancy, (d) the amount of rent in arrears, and the time for which it is in arrears, (e) producing the demand made for the payment of rent or delivery of the possession, and stating the refusal of the tenant to pay the rent or to deliver up possession, and the answer of the tenant, if an answer was made, and (f) setting forth that the tenant has no right to set off or the reason for withholding possession, or setting forth the covenant, term or condition in performance of which default has been made, and the particulars of the forfeiture, and on filing of the affidavit, the registrar shall issue a summons calling on the tenant, 3 days after service, to show cause why an order should not be made for delivering up possession of the premises to the landlord, and the summons shall be served in the same manner as the demand. Upon being satisfied that the affidavit complies with the above noted sections, the registrar issues the show cause summons giving 3 days notice. The applicant chooses the date. The filing fee is $200.00 and the matter is set on the chambers list on the date chosen for the hearing.
Court of Appeal Act **Section 13(2)(b)**	**Q**	**Is the Court of Appeal still required to initial a Certificate of Reciprocal Enforcement, Certificate of**

		Dismissal, etc., if the judgment or order was made by an Associate Judge in the Supreme Court?
	A	**Yes. No appeal may be taken to the Court of Appeal directly from an order of an Associate Judge under s. 13(2)(b) of the *Court of Appeal Act*. This change took effect in July 2022. Because of this, the Certificate (of Reciprocal Enforcement, of Dismissal, etc.) must include language that either an appeal has been filed and finally disposed of by a Judge of the Supreme Court of British Columbia, or no appeal has been taken to a Judge of the Supreme Court of British Columbia and the time to do so has expired. Once either of those options is added to the Certificate, the Court of Appeal will be able to initial the Certificate prior to it being filed in the Supreme Court, as usual.**
Court of Appeal Act section 41	Q	If a judgment is granted in the Court of Appeal how does the judgment holder enforce its judgment?
	A	Section 41 of the *Court of Appeal Act* reads as follows: Proceedings on a judgment 41 (1) After a judgment of the court has been entered in a registry of the court, a certified copy of the judgment may be filed in the court appealed from. (2) A judgment filed under this section has the same force and effect, and all proceedings may be taken on it, as though it were an order of the court appealed from. Therefore, the judgment should be enforced in the Supreme Court.
Court Order Enforcement Act	Q	Where are the costs of attachment proceedings indicated on a garnishing order?
	A	The costs of attachment proceedings are shown on the face of the garnishing order – not in the affidavit. The amount owing on the judgment in the affidavit must only refer to the amount owing plus post judgment interest (if the garnishing order is after judgment).
Court Order Enforcement Act	Q	If a garnishee continues to pay money into court pursuant to a single garnishing order, is the registry to accept the payment?
	A	Yes, the registry should accept the payment but be wary about paying out. An application for an order for payment out would need to be made to the court by the party requesting money to be paid to them.

Court Order Enforcement Act section 3	Q	Can a garnishing order be served by fax on financial entities such as a credit union?
	A	No. Neither the Rules nor the *Court Order Enforcement Act* permit service by fax on an entity who is not a party of record to a proceeding. Personal service is therefore required: *AMS Equipment Inc. v Case* (1994) 31 C.P.C. (34) 22.
Court Order Enforcement Act section 3	Q	What costs and disbursements may be claimed directly on a garnishing order?
	A	**Garnishing Order before Judgment** Only costs that relate to the garnishing order and that are due at the time the garnishing order is issued should be allowed on a garnishing order before judgment. Those costs only include; 1. costs for a garnishing process as set out in Schedule 2 of Appendix B (s. 6(3) of Appendix B) 2. the cost for issuance of a garnishing order (Item 12 of Schedule 1 of Appendix C) (See the decision of Registrar Cameron in *Rossing v. Ocion Water Sciences Group Ltd*, 2014 BCSC 1638.) **Garnishing Order after Judgment** Pursuant to SCCR 13-2(22) costs, fees and expenses of enforcement that are necessary and reasonable to produce, issue and serve the garnishing order may be claimed. If you have any doubt as to the amounts claimed they should be supported by receipts. The following is a list of recommended disbursements: 1. fee for garnishment process: Schedule 2 of Appendix B of the SCCR or Item 9 of the Schedule to Appendix B of the SCFR plus GST if applicable; 2. filing garnishing order plus GST if applicable: Schedule 1 of Appendix C; 3. cost of service of garnishing order: Schedule 2 of Appendix C plus GST; The costs of a previous garnishing order after judgment can be added directly to the judgment debt set out on a current garnishing order, whether or not that previous garnishing order was successful. However, the judgment debtor may apply to the registrar to have these assessed and the registrar may disallow any item unnecessary or improperly incurred.

Court Order Enforcement Act section 3	Q	Can a garnishing order before judgment be issued in a proceeding commenced by petition?
	A	No. Garnishing orders before judgment are only available to "a plaintiff in an action". [*Royalet Mtg. v. Damar Estates* (1978), 8 B.C.L.R. 24].
Court Order Enforcement Act section 3 Civil Rule 13-1(8) Family Rule 15-1(9)	Q	Should the original garnishing order be retained in the court file?
	A	Most registries retain the original in the court file due to volume and practice. The original should be dated pursuant to Civil Rule 13-1(8) and Family Rule 15-1(9).
Court Order Enforcement Act section 3	Q	What is the minimum requirement of "the nature of the cause of action" in an affidavit in support of a garnishing order before judgment?
	A	The preferred procedure is to attach a copy of the notice of civil claim as an exhibit to the affidavit. At a minimum the cause of action must be accurately described. An insufficient description of the claim is a common ground for an application to set aside a garnishing order before judgment. A garnishing order may only be issued in respect of a liquidated claim. The registrar should err on the side of caution before issuing a garnishing order before judgment. Where the registrar is unsure about the nature of the cause of action, the matter should be referred to an associate judge or a judge. "A liquidated claim is one which can be ascertained by calculation or fixed by any scale of charges or other positive data. But when the amount to be recovered depends upon the circumstances of the case and is fixed by opinion or by assessment or by what might be judged reasonable, the claim is unliquidated*."(Pacific Blasting v. Skeena Cellulose Inc.* (1992), 68 B.C.L.R. (2d) 101). In the words of the late Wilson, J. in *Knowles v. Peter* (1954) 12 W.W.R. (NS) 560: "It must not be forgotten that the attachment of debts before judgment is an extraordinary process, unique in our law, whereby a defendant is deprived of the use of his property before any judgment is rendered

		against him. There must therefore be a meticulous observance of the requirements of the *Act*."
Court Order Enforcement Act section 3	Q	Can a judgment creditor/plaintiff request one garnishing order naming numerous garnishees?
	A	Yes, but the garnishing order must name each garnishee and the affidavit in support should refer specifically to each garnishee. This procedure will save the judgment creditor/plaintiff filing fees in the Supreme Court and will reduce the time required to issue the garnishing order.
Court Order Enforcement Act section 3	Q	Can a plaintiff by way of counterclaim issue a garnishing order before judgment?
	A	Yes, section 1 of the *Court Order Enforcement Act* includes the following definition for a plaintiff: "plaintiff" includes a claimant in a family law case brought by the filing of a notice of family claim and any person by whom a counterclaim is brought in any proceeding.
Court Order Enforcement Act section 3	Q	Can a garnishing order after judgment be issued in a proceeding commenced by Petition?
	A	S. 3(2) of the Court Order Enforcement Act allows for a judgment creditor to collect money owing to a judgment debtor directly from a person (called the garnishee) who owes money to the judgment debtor. Once an order is made in a proceeding started by Petition, the Petitioner is a judgment creditor, and therefore a post-judgment garnishing order may be issued in a proceeding commenced by Petition.
Court Order Enforcement Act section 3(1)	Q	How long is a garnishing order against wages effective?
	A	The garnishing order is in effect for "wages that would in the ordinary course of employment become owing, payable or due within 7 days after the date on which an affidavit has been sworn..." Registry staff should simply accept payment in without reference to the date of the affidavit or payment of wages. This is an example of the registry as a repository. It would be inappropriate for the registry to, in effect, take the initiative in ruling on a procedural matter by questioning whether to accept a payment in.
Court Order Enforcement Act section 3(2)	Q	A recent application for a garnishing order before judgment was grounded on a pleading that alleged that an employment agreement provided for a fixed amount of

		severance pay if the employee was terminated without cause. Should the registrar be concerned whether cause for termination will be contested by the employer?
	A	If the affidavit material supports that the order seeks a liquidated amount, the garnishing order before judgment should issue. In *Moore v. RFID,* [1998] BCJ 1378 (S.C), McEwan J held, "I do not think the onus on the plaintiffs is to establish with certainty that the only possible outcome of the case is the return of the money they seek: it is sufficient to show that the claim is about specific sums that do not need to be calculated."
Court Order Enforcement Act section 3(2)	Q	Would a registrar issue a garnishing order before judgment based on an affidavit of a legal assistant or secretary of a law firm which states that he/she is "acting for" the plaintiff?
	A	No. A legal assistant or secretary cannot "act" on behalf of a party, however, if the legal assistant or secretary deposes to being the assistant for the solicitor for the plaintiff and is aware of the facts deposed to then the affidavit is acceptable.
Court Order Enforcement Act section 3(2)(e)	Q	Is a garnishing order issued in British Columbia effective in other provinces or territories?
	A	The other provinces and territories of Canada are not bound by B.C. legislation. In addition, section 3(2)(e) of the *Court Order Enforcement Act* requires that the garnishee be within the jurisdiction of the court.
Court Order Enforcement Act section 3 (2)(e)	Q	Can a garnishing order be issued if the garnishee is not within the Province of B.C.?
	A	No. Section 3(2)(e) of the *Court Order Enforcement Act* provides that the affidavit in support of a garnishing order must include a statement that the garnishee is in the jurisdiction of the court.
Court Order Enforcement Act section 3(2)(e)	Q	When a garnishee is an extraprovincial company that has been registered in British Columbia in accordance with the *Business Corporations Act,* is it considered to be within the jurisdiction of the court as set out in section 3(2)(e) of the *Court Order Enforcement Act*?

	A	Yes. In accordance with sections 376 and 386 of the *Business Corporations Act,* the address of the company on the garnishing order and in the affidavit should be its head office in British Columbia or, if it does not have one, the address of its British Columbia attorney, as this information is shown in the company's extraprovincial registration.
Court Order Enforcement Act section 5 Civil Rule 8-2(4) and Family Rule 10-2(4)	Q	What is the procedure to follow where parties who are applying to set aside a garnishing order under section 5 of the *Court Order Enforcement Act* reside outside the judicial district where the proceeding was commenced or is pending?
	A	Because section 5 allows the application to set aside the garnishing order to be made on a without notice basis. These applications are most often heard by a registrar and set down by requisition. As these applications are somewhat urgent the applicant may file the requisition at their local registry for hearing. If the application is made in chambers to a judge or associate judge, Civil Rule 8-2(4) or Family Rule 10-2(4) would apply and they may seek leave of the registrar to have the matter heard where the debtor resides. For example, if the file is in Vancouver and the debtor/defendant lives in Dawson Creek, they can apply to the Registrar at Dawson Creek under Civil Rule 8-2(4) or Family Rule 10-2(4) to have the application under the Court Order Enforcement Act heard in Dawson Creek. Under Civil Rule 8-2(4) or Family Rule 10-2(4) any Registrar, upon being satisfied of the urgency or convenience of the parties, may authorize an application to be heard at a place outside of the judicial district in which the proceeding was commenced. As a matter of courtesy, when the application to release the garnishing order is set down, the creditor should be notified and permitted to attend either by telephone (with approval of the district registrar/associate judge), in person, or by agent, if it won't unduly delay the hearing.
Court Order Enforcement Act section 5	Q	Does a party against whom a garnishing order has been issued have to set a hearing to apply for it to be released if all the parties have consented?
	A	No. This application can be made via a desk order by consent as long as all the parties indicate their consent on the order. The application should consist of a Requisition, a draft order, and an Affidavit giving background to the consent of the parties. The application can then be referred to an associate judge or legally-trained registrar.

Court Order Enforcement Act section 9	Q	Does a garnishing order have to be personally served? How is personal service effected on a company?
	A	Yes. Personal service of a copy of the garnishing order is required on the defendant, judgment debtor, person liable to satisfy the judgment or order and the garnishee pursuant to section 9(2) of the *COEA* unless an order for substituted service has been granted under section 9(5). Personal service on a company is provided for in SCCR 4-3(2)(b), which includes service pursuant to section 9 of the *Business Corporation Act*.
Court Order Enforcement Act section 13	Q	If monies are paid into court more than 7 days after the affidavit in support of a garnishing order is sworn, for example 3 months later, does a registrar still have authority to approve an application for payment out of court under section 13?
	A	Yes, if all of the requirements for an application pursuant to section 13 have been met, then a registrar may approve the payment out.
Court Order Enforcement Act section 13	Q	Does section 13 of the *Court Order Enforcement Act* apply to money paid into court on garnishing orders before judgment if a judgment has not yet been obtained?
	A	The only part of section 13 that applies in this instance is subsection (4) – monies can be paid out to a plaintiff without an order if the defendant signs a consent to payment out.
Court Order Enforcement Act section 13	Q	What must a judgment creditor prove to obtain payment out of garnished monies without an order?
	A	Providing there is no suggestion that the monies paid in belong to a third party, they can be paid out with: 1. the written consent of the defendant, or 2. proof of service of the notice of payment out of court and the expiry of 10 days since service, or 3. proof that judgment was obtained by default and three months have elapsed since payment in. (See *Sears Canada Inc. v. Naswell* (1986), 20 C.P.C. (2d) 97, particularly the editor's note by Master Horn).
Court Order Enforcement Act section 12 and 13	Q	Is proof of service of the garnishing order on the debtor required before garnished funds can be paid out?
	A	Yes, except where the debtor consents to the payment out or there is a consent order directing the payment out of the funds.

Court Order Enforcement Act section 13	Q	Is service of a notice of intended payment out on a judgment debtor's solicitor acceptable as notice under section 13(1) of the *Court Order Enforcement Act*?
	A	Section 13(2) requires that the notice "must be served personally on the judgment debtor..."
Court Order Enforcement Act section 13	Q	Can money be paid out of court without an order if judgment was obtained pursuant to Rule 9-7?
	A	Yes, but notice of intended payment out must be served as required by section 13.
Court Order Enforcement Act Section 13(1)(b)	Q	If a party obtains a default judgment in a foreign jurisdiction, and files it in the Supreme Court under the *Enforcement of Canadian Judgments Act*, is it still considered a default judgment when it comes to payment out of court under s. 13(1)(b)?
	A	Yes. The registration of the foreign judgment under the *Enforcement of Canadian Judgments Act* is a recognition of the original judgment "as if it were an order or judgment of, and entered in, the Supreme Court." (s. 4(a) of the *ECJA*). A foreign default judgment that is registered under the *ECJA* and filed for enforcement purposes in the BC Supreme Court is treated as a BC judgment, and any payments out of court can be processed in the same way as payments out of court for any default judgment granted in the Supreme Court.
Court Order Enforcement Act section 13(2)	Q	If a judgment creditor obtains an order for substituted service to serve a garnishing order on a debtor, can the notice of intended payment out be served in the same manner set out in the order even though that order only addresses service of the garnishing order?
	A	Yes, section 13(2) states that "….if an order for substituted or other service has been made under section 9(5), the notice may be served in the same manner as provided in the order".
Court Order Enforcement Act section 13(4)	Q	Can money paid into court pursuant to a garnishing order be paid out prior to judgment with the consent of the defendant?
	A	Yes, see section 13(4).
Court Order Enforcement Act section 13(4)	Q	Section 13(4) of the *Court Order Enforcement Act* states "money paid into court under garnishing proceedings may be paid out to a plaintiff or his or her solicitor without any order if the consent in writing of the defendant to the payment out is filed ….". Can the solicitor for the judgment debtor/defendant sign the consent for payment out or does it have to be the

		signature of the judgment debtor/defendant, whether it be a person or a company/corporation?
	A	Yes, the solicitor of record can sign both a consent order for payment out and a consent for payment out on behalf of his/her client.
Court Order Enforcement Act section 31	Q	How is the Canadian rate of exchange calculated on a foreign currency judgment being registered in the Supreme Court of British Columbia?
	A	Section 31 of the *Court Order Enforcement Act* directs that the *Foreign Money Claims Act* applies to ascertain the amount of Canadian currency payable under the judgment sought to be registered. Section 3 of the *Foreign Money Claims Act Regulations* directs a person filing a judgment for enforcement under the *COEA* must convert the amount owing under the foreign money judgment into Canadian currency and the conversion date for that purpose must be the business day preceding the day on which a record is filed in a court to initiate that manner of enforcement. The plaintiff should provide an affidavit as to the exchange rate and the amount due and owing in Canadian currency. The exchange rate used should be the banker's rate to buy foreign currency.
Court Order Enforcement Act section 33	Q	Section 33 provides that no "sale or other disposition of any property" of a judgment debtor shall be made under a foreign judgment registered without notice in British Columbia pursuant to Part 2 of the *Court Order Enforcement Act*, before the expiration of one month after the judgment debtor has had notice of the registration of the judgment. Does this mean the registry requires proof that one month has elapsed after a judgment debtor has had notice of the registration of a judgment in British Columbia before issuing a garnishing order?
	A	No. In *Cominco v. Duval* (1993), 89 B.C.L.R. (2d) 83, the court found that a garnishing order is not a sale or disposition of property. Therefore the registry can issue a garnishing order, on a foreign judgment registered in British Columbia, without proof of notice to the judgment debtor.

		Note - *Cominco v. Duval* does not refer to writs of execution. Since a writ of execution directs the sheriff to seize and sell property the registry should require proof that one month has elapsed from the time the judgment debtor was given notice of the registration of a foreign judgment in British Columbia before issuing a writ of execution under section 33 of the *Court Order Enforcement Act*.
Court Order Enforcement Act section 47	Q	Should the registry issue a writ of seizure and sale if there is a garnishing order outstanding?
	A	Yes. The registry can issue multiple processes of execution, except where to issue execution might be determined to be an abuse of process, e.g. where the judgment was for a nominal amount and multiple processes of execution were issued: *Gervais v. Yewdale* (1993), 91 B.C.L.R. (2d) 299. The decision appears to be broad enough to permit writs of execution and garnishing orders to be issued while other garnishing orders or writs of execution are outstanding. *Bank of B.C. v. Ballance* (1983) 50 B.C.L.R. 164 remains authority for the proposition that garnishing orders should not be issued while a writ of execution is outstanding. *Gervais v. Yewdale* does not appear to have the effect of overturning that decision but rather points out that it is inappropriate to impose a general rule disallowing multiple execution processes
Court Order Enforcement Act section 71	Q	What is the exemption allowed to a judgment debtor when a writ of seizure and sale is being executed against them?
	A	The exemption allowance effective May 1, 1998 is as follows (B.C. Reg. #28/98): $4,000 for household furnishing and appliances Tools of the trade $10,000 Motor Vehicle $5,000 ($2,000 for maintenance debtors) Equity in a home $12,000 in the Victoria area and Greater Vancouver Regional District $9,000 elsewhere in the Province In addition, the debtor or a dependent can retain all necessary clothing and all required medical aids. The same exemption allowance also applies to an order of seizure and sale against a judgment debtor under the

		Small Claims Rules and for a bankrupt under the *Bankruptcy and Insolvency Act*.
Court Order Enforcement Act section 81	Q	A party obtains a default judgment for "damages and costs to be assessed". Can a certificate of judgment to that effect be issued?
	A	Yes. Madam Justice Ross in *Graham et al v. Moore et al* (2004 BCSC 274) concluded that a certificate of judgment can be issued on a judgment for damages to be assessed. "s. 81 is intended to distinguish pecuniary judgments which can be registered against interests in land from other types of judgments which cannot. "
Court Order Enforcement Act section 98	Q	When a judgment creditor files an application under section 92 of the *Court Order Enforcement Act* for a judgment debtor to show cause why their land should not be sold to satisfy the judgment, can a certificate of pending litigation be issued on the strength of the notice of application?
	A	Yes, section 98 of the *Court Order Enforcement Act* sets out that a certificate of pending litigation may be issued for registration against any land described in the notice of application.
Court Order Enforcement Act section 111	Q	Is the registrar able to approve, without a court order, payment out of court, pursuant to s. 111 of the *Court Order Enforcement Act* ("*COEA*"), of monies that were paid into court under sections 106 and 110 of the *COEA* as a result of a court-ordered sale of a property?
	A	The registrar ought not to approve payment of money out of court under section 111 of the *COEA*. Section 111 of the *COEA* provides that the moneys received by the registrar under sections 106 and 110 from a court-ordered sale of a property must "be distributed by the registrar to the persons to whom the sheriff would, under the *Creditors Assistance Act*, distribute money levied under a writ of execution." Currently, the sheriffs do not keep the log and/or record referred to in the *Creditors Assistance Act.* Therefore the registrar is unable to determine which parties are entitled to distribution of the money. A party wishing to have the money paid out of court must apply to the court for an order to pay out on notice to all of those who might have an interest in the money.
Court Order Interest Act	Q	How are the pre judgment and post judgment interest rates ascertained?
	A	Both rates are based on the prime lending rate of the banker to the government. Twice a year (on 1 January and 1 July) the Registrar confirms the prime lending rate

		of CIBC, the banker to the government, and advises staff of the current interest rates. The schedule is available on the Courts' Website at http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/Court_Order_Interest_Rates.aspx
Court Order Interest Act section 1 and 7	Q	Can post judgment interest be calculated on a claim which includes prejudgment interest?
	A	Yes. Post judgment interest is calculated on the total amount awarded at the time of judgment, which includes both interest and costs.
Court Order Interest Act section 1(2) and (3)	Q	What is the correct way to calculate court order interest on special damages?
	A	Interest on special damages is calculated in 6 month periods. See subsections 1(2) and (3).
Creditor Assistance Act section 11	Q	What does a registrar require before issuing a certificate under the *Creditor Assistance Act*?
	A	1) a requisition 2) affidavit required by section 11(1); 3) certificate of claim: 4) fee in accordance with the *Creditor Assistance Fee Regulation.*
Currency Act (Canada) section 12	Q	Does a monetary reference in a judgment have to be calculated in Canadian currency?
	A	Yes. See the *Currency Act* (Canada), section 12.
Divorce Act (Canada)	Q	What is the process for confirmation of a provisional order pursuant to the *Divorce Act,* which was granted in another province?
	A	An application is made to the Supreme Court where the original order was made. The original order is varied provisionally, i.e. it has no force or effect until confirmed in a court of competent jurisdiction (i.e. a similar superior court in a reciprocating jurisdiction). The Court Registry where the order was varied sends certified copies of the order together with copies of the evidence (i.e. transcript, affidavit material) to the Attorney General of that jurisdiction (i.e. the province in which the order was made). The Attorney General transmits the documents to our Attorney General. Our Attorney General (Reciprocals Office) forwards the documents to the Court Registry closest to where the other party lives. The Registry sets a date for the confirmation hearing and then arranges service of the notice on the other party (by sheriff). The party may or may not appear. No one appears for the applicant

		from the originating court. After the hearing, the evidence at the confirmation hearing (transcript, any affidavits) and the resulting order are transmitted through the Attorneys General Offices to the originating location. (If no one appears at the hearing, the registry drafts the order.) The Honourable Madam Justice Huddart addressed this issue in a Court of Appeal decision – *Metanczuk v. Medeiros* 2000 BCCA 233. The full text can be located on the Supreme Court internet site at: http://www.courts. gov.bc.ca/jdb-txt/ca/00/02/c00-0233.htm
Divorce Act (Canada) Section 3(1)	Q	Counsel submitted a notice of family claim pointing out to the registry that his client had not been resident in B.C. for one year prior to the filing of the action. He wanted to apply for an order for interim custody of the children to which his client would be entitled under the *Family Law Act*. He did not intend to seek an order for divorce until his client had fulfilled the residential requirement. What is the registry's authority to refuse to file the notice of family claim, under these circumstances?
	A	The registrar has no authority to refuse to file the notice of family claim in these circumstances. The respondent may apply to strike it or the court may refuse to grant an order for divorce. The registrar may refer any deficiencies to the court on the certificate of the registrar at the time of the application for the divorce order.
Divorce Act (Canada) section 8(2)(a)	Q	Can a party proceed with a notice of family claim where the ground for divorce is one year separation but the parties reconciled for a period after the date of filing of the notice of family claim?
	A	The party could amend the notice of family claim to set out the new date of separation if the reconciliation is longer than 90 days and make an application for the divorce after complying with section 8(2)(a) of the *Divorce Act.* The court will decide whether to accept the amended notice of family claim.
Divorce Act (Canada) section12(7)	Q	Can a non-party obtain a divorce certificate without authorization from a party or a party's solicitor?
	A	Yes. Section 12(7) of the *Divorce Act* authorizes any person on request to have a certificate of divorce issued.
Divorce Act (Canada) section 12(7)	Q	Can a divorce certificate be issued on a pre-1985 divorce proceeding?

	A	No, there were no transitional provisions when the former *Divorce Act* was repealed. A certified copy of the Decree Absolute (which is equivalent to a divorce certificate) can be made.
Divorce Act (Canada) section 12(7) and (8)	Q	Is it necessary for a divorce order to be entered before issuing a certificate of divorce?
	A	Yes, a divorce order must be entered. The registrar must check to ensure the divorce has taken effect and that no appeal is pending pursuant to s. 12(7) of the *Divorce Act* (Canada). As s. 12(8) of the *Divorce Act* (Canada) indicates that the certificate of divorce is conclusive proof of the facts certified therein, the registrar must also check the certificate against the information in the entered divorce order.
Divorce Act (Canada) section 19(9), (9.l) and (10)	Q	When a provisional order made in another province is returned to British Columbia for confirmation under the *Divorce Act*, the Ministry of the Attorney General does not appoint counsel to appear on the applicant's behalf. This usually means that if the party served does not appear at the hearing, no one is present. Our judges have been reluctant to deal with applications under these circumstances. What do you think the registries could do to assist the court?
	A	Use an information sheet to advise the court of the options. It is important registry staff identify this application on the chambers sheet/list, as the application must be recorded and a transcript produced.
Divorce Act (Canada) (Federal Child Support Guidelines)	Q	If a child resides in another province or territory than the payor, which Child Support Guideline should be used to calculate child maintenance?
	A	The Federal Child Support Guideline tables for the province or territory in which the payor resides should be used.
Elections Act **Section 139**	**Q**	**How is a judicial recount in a Provincial Election handled?**
	A	**Sections 139-143 of the *Election Act* outline the requirements for a Judicial Recount in the Supreme Court. The file is commenced by a Petition to the Court. The Petition is set down by Notice of Hearing, and the initial order to set the dates for the recount may be made. The Court may then set various Pre-Hearing Conferences as required before the recount to solidify logistical processes.**

Electronic Transactions Act section 8	Q	Are electronic signatures acceptable on a court order that has been submitted to the registry manually for entry?
	A	No. Pursuant to section 8 of the *Electronic Transactions Act* it is not permitted. Orders submitted to the registry manually must be approved in writing by all parties or their lawyers as set out in SCCR 13-1(1)(b) and SCFR 15-1(3)(b)
Employment Standards Act section 91	Q	Where must a determination under the *Employment Standards Act* be filed?
	A	A determination may be filed at any Supreme Court Registry. It is entered as an order of the court and is enforceable in the same manner as a judgment of the Supreme Court. The process for filing an order, decision, judgment or other determination that, under an enactment, may be filed or registered with the court for enforcement purposes is set out in Rule 2-2 - Tribunal Awards.
Employment Standards Act section 91	Q	What is the "determination" filed by the Director of Employment Standards or a delegate?
	A	A "determination" is a decision made by the Director of Employment Standards concerning violations of the *Employment Standards Act* and, pursuant to section 91, is enforceable in the same manner as a judgment of the Supreme Court.
Employment Standards Act section 91, 112 – 116	Q	What is an order of the Employment Standards Tribunal?
	A	The Employment Standards Tribunal hears appeals of determinations. An order may confirm, vary or cancel the determination under appeal. Like determinations, orders may be filed in a Supreme Court registry and are enforceable as judgments of the Supreme Court. The process for filing an order, decision, judgment or other determination that, under an enactment, may be filed or registered with the court for enforcement purposes is set out in Rule 2-2 - Tribunal Awards.
Enforcement of Canadian Judgments and Decrees Act Section 3(1)(b)	Q	Section 3(1)(b) of the *Act* states; 3(1) A Canadian judgment is registered under this *Act* by paying the fee prescribed by regulation and by filing in the registry of the Supreme Court…..

		(b) the additional information or material required by the Rules of Court What additional material is required?
	A	The additional material required is set out in Civil Rule 19-2 or Family Rule 19-1, which provide: A person wishing to register a Canadian judgment under the *Enforcement of Canadian Judgments and Decrees Act* must, for the purposes of section 3(1)(b) of that *Act*, file a certified English translation of the Canadian judgment if the judgment was made in a language other than English.
Enforcement of Canadian Judgments and Decrees Act Section 10	Q	Section 10 states; "This *Act* applies to (a) a Canadian judgment made in a proceeding commenced after this *Act* comes into force, and (b) a Canadian judgment made in a proceeding commenced before this *Act* comes into force and in which the party against whom enforcement is sought took part. How is (b) different from (a)? What does "took part" mean? For example can a default judgment issued prior to the coming into force of this *Act* be registered in this court?
	A	Section 10 is a transitional provision, which is intended to prevent default judgments (or any order obtained without notice) prior to the *Act* coming into force from being registered. The reason for this provision is that someone may have relied upon legal advice (valid at the time) to not respond to distant litigation since any resulting judgment would not be enforceable outside the place where it was made. However, if the person took part in the proceeding this concern does not arise.
Evidence Act section 5	Q	Can a commissioner take an affidavit for a minor who is under 14 years of age?
	A	The commissioner must be satisfied that the person understands the nature of an oath or a solemn affirmation and the person is able to communicate the evidence before taking the affidavit.
Evidence Act section 60	Q	Are articled students commissioners for taking affidavits?

	A	Yes. Section 60 of the *Evidence Act* sets out a list of commissioners for taking affidavits in British Columbia. Commissioners because of office or employment 60 The following persons are, because of their office or employment, commissioners for taking affidavits for British Columbia: (a)a judge of a court in British Columbia; (b)justices; (c)registrars, deputy registrars, district registrars and deputy district registrars of the Supreme Court; (d)practising lawyers as defined in section 1 (1) of the *Legal Profession Act*; (e)notaries public; (f)the local government corporate officer and that person's deputy; (g)[Repealed 1998-34-248.] (h)the secretary treasurer of a board of school trustees; (h.1)the directeur général of a francophone education authority as defined in the *School Act*; (i)coroners; (j)government agents and deputy government agents; (k)[Repealed 1999-6-11.] (l)other classes of office holder or employment the Attorney General prescribes. (l), shown above, refers to other classes of office holder or employment the Attorney General prescribes. Commissioner for Taking Affidavits for British Columbia Regulation clarifies the other classes of office holder or employment; Commissioners because of office or employment 1 The following classes of office holder or employment are prescribed for the purposes of section 60 (l) of the *Evidence Act*: (a)articled students within the meaning of the *Legal Profession Act*; (b)persons enrolled in temporary articles under the rules made under section 11 of the *Legal Profession Act*; (c)police constables who are appointed under section 44 of the *Railway Safety Act* (Canada) and are located in British Columbia; (d)family justice counsellors appointed under section 10 of the *Family Law Act*; (e)child support officers and local managers employed in the Family Justice Services Division of the Justice Services Branch of the Ministry of Attorney General;

		(f)family maintenance workers and family maintenance supervisors employed in the Ministry of Social Development and Social Innovation; (g)family search officers, managers and directors employed in the Maintenance Enforcement and Locate Services Division of the Justice Services Branch of the Ministry of Attorney General; (h)customer service representatives and senior customer service representatives employed in the Service BC division of the Ministry of Technology, Innovation and Citizens' Services; (i)local managers, regional managers, assistant deputy wardens, deputy wardens, wardens, deputy provincial directors and provincial directors employed in the Corrections Branch of the Ministry of Attorney General; (j)registrar as defined in the *Court of Appeal Act*.
Evidence Act section 60	Q	Are all district registrars and deputy district registrars commissioners for taking affidavits?
	A	Yes section 60 of the *Evidence Act* provides that registrars, deputy registrars, district registrars, and deputy district registrars of the Supreme Court are commissioners for taking affidavits for British Columbia because of their office or employment.
Family Law Act section 93(5)	Q	Why does the registry reject consent orders for division of family assets unless evidence is provided to show that the proposed division is not prima facie unfair?
	A	See the decision of Mr. Justice Preston in *Schlenker v Schlenker* (http://www.courts.gov.bc.ca/jdb-txt/sc/99/19/s99-1976.html) which sets out the court's duty to ensure that the proposed division achieves a minimum standard of fairness.
Family Law Act sections 233 and 234	Q	How is an appeal filed from a decision of the Provincial Court under the *Family Law Act*?
	A	Family Rule 18-3 applies to these appeals. A standard set of directions issued by the Chief Justice governs the conduct of the appeal. FPD -10 issued by the Honourable Chief Justice Bauman sets out standard directions for appeals from Provincial Court under the *Family Law Act.* See also sections 233 and 234 of the *Family Law Act*.
Family Maintenance Enforcement Act section 18	Q	Can a registrar issue a garnishing order for maintenance and arrears of maintenance to remain in force for one year?
	A	No. See section 18.

Family Maintenance Enforcement Act section 26	Q	May a registrar issue a certificate of judgment based on an order for monthly child support?
	A	No, a certificate of judgment should not be issued based on an order for monthly child support. Section 26 of the *Family Maintenance Enforcement Act* provides that a maintenance order may be registered in a Land Title Office in the same manner as a charge is registered against land and the order is deemed for the purposes of Part 5 of the *Court Order Enforcement Act* to be a judgment defined in section 81 of that *Act*. The applicant must file a certified copy of the maintenance order with the land title office for registration.
Foreign Money Claims Act	Q	If a claim is made in US funds, can a default judgment be issued pursuant to the *Foreign Money Claims Act*?
	A	No. The applicant must apply to the court since the *Act* requires that the court be satisfied that the applicant would be "most truly and exactly compensated" if the money payable is measured in a foreign currency. A registrar would not have the jurisdiction to sign a default judgment that refers to the *Act* since Form 8 (default judgment) does not reflect that wording.
Garnishment, Attachment and Pension Division Act (Canada)	Q	How does a judgment creditor issue a garnishing proceeding against a federal government employee?
	A	Part 1 of the *Garnishment, Attachment and Pension Diversion Act* authorizes a person to apply to intercept wages of employees by the federal government or contract fees owed by the federal government to an individual contractor. A list of the salaries that may be intercepted, the forms and the process may be found on the Government of Canada's website at the following link, http://www.justice.gc.ca/eng/fl-df/enforce-execution/pwr-pqr.html.
Human Rights Code section 39	Q	Section 39 of the *Human Rights Code* authorizes the party in whose favour an order under the *Human Rights Code* is made or a person designated in the order to file a certified copy of the order with the Supreme Court, which order will then have the same effect as if it was a judgment of the Supreme Court. Is provision of a certified copy of the reasons for judgment, rather than an order, sufficient for filing under this section?
	A	Yes, no formal order follows the reasons for judgment issued by the Human Rights Tribunal. Therefore, it is

		acceptable to accept for filing a certified copy of the reasons for judgment of the Tribunal and to issue execution proceedings based on the filed reasons for judgment, provided that the registrar is able to confirm from the reasons for judgment the terms of that judgment that may be executed on.
Indian Act (Canada)	Q	What role does Indigenous and Northern Affairs Canada (INAC) play in the estates of First Nations individuals?
	A	Section 42 of the *Indian Act* provides that "all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister." This includes the authority to appoint and remove executors. Appointment documents (grants of probate or letters of administration) are issued by the minister or his/her delegate, and not by the courts, unless the Minister refers the matter to the court or otherwise consents to court proceedings (section 44 of the *Act*).
Infants Act section 48	Q	How is an infant defendant served with an originating process?
	A	See section 48 - service of the originating process must be made by serving it on a guardian resident in British Columbia.
Interest Act (Canada) section 2	Q	If interest has been agreed to be paid at an amount based on a financial institution's prime rate or at prime plus a fixed amount, what evidence is required to support the prime rate?
	A	An affidavit should be filed attaching as an exhibit a document from the financial institution, such as a letter or a print out from its website, showing what its prime rate was for all of the relevant date(s). It is not appropriate for someone to depose that they were advised by a representative of the institution of the applicable prime rates.
Judicial Review Procedure Act	Q	Is a Judicial Review the same as an appeal?
	A	No. "Judicial Review is not an appeal. It is a limited review to ensure that correct and fair procedures have been followed. The review does not concern itself with the appropriateness of the result, but looks at the process to ensure that the persons involved have been accorded fair treatment." (*Lee v. Gao* (1992) 65 B.C.L.R. (2d) 294)

Labour Relations Code section 102	Q	What is the authority that allows a Labour Relations Board decision to be filed in Supreme Court?
	A	Section 102 of the *Labour Relations Code* sets out the circumstances when a decision of the Labour Relations Board may be filed and enforced through the court and the relevant procedure. Enforcement 102 *(*1) If a party or a person has failed or neglected to comply with the decision of an arbitration board, a party or person affected by the decision may, after the expiration of 14 days from the date of the release of the decision or the date provided in the decision for compliance, whichever is later, file in the Supreme Court registry a copy of the decision in the prescribed form. (2) A decision filed under subsection (1) must be entered as if it were a decision of the court, and on being entered is deemed, for all purposes except an appeal from it, to be an order of the Supreme Court and enforceable as an order of the court. The process for filing an order, decision, judgment or other determination that, under an enactment, may be filed or registered with the court for enforcement purposes is set out in Rule 2-2 - Tribunal Awards.
Land Act **Section 61**	**Q**	**How is the certificate referred to at section 61(2) filed with the court for enforcement?**
	A	**The process for filing an order, decision, judgment or other determination that, under an enactment, may be filed or registered with the court for enforcement purposes is set out in Rule 2-2 – Tribunal Awards. The original certificate is submitted together with a requisition which quotes the enactment that authorizes the filing of the certificate. The requisition and certificate are stamped and sealed, and an enforcement file is opened with no filing fee. Once filed, the certificate is enforceable in the same manner as a judgment of the Supreme Court for the recovery of a debt in the amount stated in the certificate against the person named in it, and all proceedings may be taken as if it were an order of the court.**
Land Title Act section 215	Q	In a family law case, are registrars only permitted to issue a CPL in Form 33?

	A	In general, parties to a family law case will submit a CPL in Form 33 (a *Land Title Act* form) to be issued by the registrar where an estate or interest in land is claimed because this is the form designated by the LTA director for use in proceedings under the *Family Law Act* (see *Land Title Act* section 215(6)) There is nothing in section 215 of the *Land Title Act* that precludes the use of a CPL in Form 31 in a family law case. The onus is on the applicant to ensure that they are filing the correct form for use in the Land Title Office. The registrar must ensure that an estate or interest in land is claimed in the court proceeding.
Land Title Act section 215(1)	Q	If a certificate of pending litigation is not claimed, can a registrar issue one?
	A	Yes. A person who has commenced or is a party to a proceeding which claims an estate or interest in land may request a certificate pursuant to section 215(1) of the *Land Title Act*. The claim does not necessarily have to give a legal description but you must be satisfied that the pleading claims an interest or estate in the land against which the certificate will be filed. However, the Land Title Office would prefer the legal description be included in the pleading attached to the certificate.
Land Title Act section 266	Q	What is an "office copy" as used in section 266 of the *Land Title Act*?
	A	The commonly accepted definition of "office copy" is a copy issued by the registry, bearing a stamp showing the date and name of the registry. However, Administrative Notice – 3, effective July 1, 2010, sets out that an office copy will no longer be issued by the registry nor accepted by the Land Titles Office to transfer real property – a certified copy of the disclosure statement is now required. (See AN -3 – Estate Administration Applications – Disclosure Statements, effective 1Jul10)
Law and Equity Act section 21(2)	Q	Where is a foreclosure proceeding on a mortgage commenced?
	A	Section 21(2) states: “Unless the court otherwise orders, every foreclosure proceeding on a mortgage must be commenced, (a) if the land that is the subject of the foreclosure proceeding is located in a municipality and there is a

		registry of the Supreme Court located in that municipality, at that registry, or (b) if the land that is the subject of the foreclosure proceeding is not located in a municipality or, if it is located in a municipality but there is no registry of the Supreme Court located in that municipality, at any registry located in the judicial district in which the land is located, and all applications in the proceedings must, subject to the Supreme Court Civil Rules, be heard at the location of that registry."
Law and Equity Act section 38	Q	How should a registrar execute an instrument pursuant to an order of the court?
	A	The registrar would sign the document on behalf of the party and include a reference to the order. Example: "Stuart Cameron, Registrar, on behalf of John Doe, pursuant to the order of The Honourable Justice_____, made the_day of _____2017."
Law and Equity Act section 56	Q	What percentage is used for the discount rate pursuant to section 56 of the *Law and Equity Act*?
	A	The discount rates are prescribed by section 1 of the Regulations to the *Law and Equity Act*.
Law Society Rules 2 - 71	Q	Are articled students permitted to approve and sign orders?
	A	Yes, articled students may approve and sign orders when they appear in Court on matters in respect of which they are permitted to appear (section 2-71 of the Law Society Rules found at Part 2 – Membership and Authority to Practise Law | The Law Society of British Columbia
Legal Profession Act section 15	Q	Who can appear as agent for a barrister and solicitor in Supreme Court?
	A	See section 15.
Legal Profession Act section 66(6)	Q	What is the procedure to follow on an application to increase a member's remuneration under a contingent fee agreement in excess of limits set out by the benchers in the *Legal Profession Act*?
	A	The court registry will set a time and place for this application to be heard by a Supreme Court Judge.

		The application is private. If either the solicitor or the client requests that the application be kept confidential, then the registry must ensure that the records are confidential and that no person other than the solicitor or the client or a person authorized by either may search the records absent a court order.
Legal Profession Act section 66(8)	Q	How should the registry index an application for an increase in remuneration under the *Legal Profession Act*?
	A	Section 66(8)(b) says: "the style of proceeding must not disclose the identity of the lawyer or the client". In order to maintain a record for any future applications, the application may be indexed as follows: *Legal Profession Act* Pursuant to section 66 (petitioner) and Contract for Remuneration ___day of_____20__ (respondent).
Legal Profession Act section 70 and Civil Rule 14-1(22)	Q	The *Legal Profession Act* does not contain a section saying where the review of a lawyer's bill must take place. Can an appointment be taken out in any registry?
	A	No, the provisions with respect to the place for review of a lawyer's bill are found in the Supreme Court Civil Rules. Rule 14-1(22) states: An appointment for review of a bill, examination of an agreement or assessment of costs must be taken out; (a) in the case of a bill to be reviewed or an agreement to be examined; (i) if the bill or agreement relates to a court proceeding, at the registry at which the proceeding is being conducted, or (ii) if the bill or agreement does not relate to a court

		proceeding, at the registry nearest to the place of business of the lawyer concerned, (b) in the case of a bill of costs to be assessed, at the registry at which the proceeding is being conducted, or (c) at any other registry to which the parties to the appointment may agree.
Legal Profession Act section 70 and Civil Rule 14-1 (28)	Q	Can parties consent to a certificate of fees under the *Legal Profession Act*?
	A	Yes. There are two scenarios where this may occur. 1) The parties may consent to the fees prior to any court proceeding being commenced and in this situation they must file; • an appointment <u>without</u> a scheduled hearing date; • a requisition requesting the certificate of fees; • a certificate of fees signed by consent, and • a copy of the lawyer's bill. 2) Where an appointment has been filed with a scheduled hearing date and the parties consent to the fees prior to the hearing; • they may appear at the hearing and speak to a consent certificate of fees, or • they may adjourn the hearing, and o file a requisition requesting the entry of a consent certificate of fees, and o the certificate signed by consent of all parties.
Legal Profession Act section 70(11)(a)	Q	Can a registrar review a lawyer's bill to a client if there is a judgment issued against the client for the amount of the bill?
	A	No. See section 70(11)(a).
Legal Profession Act section 70(11)(b)	Q	How does a party get before the Supreme Court to apply to extend the time to review a bill pursuant to the *Legal Profession Act?*
	A	A person who wishes to extend the time for review of a lawyer's bill must commence the proceeding by filing an appointment (Form 49). The party must also make an

		application to the court for an order extending the time for review prior to the date set for hearing of the review.
Legal Profession Act section 70(14)	Q	Can a district registrar refer an issue to the court in a review under the *Legal Profession Act*?
	A	Section 70(14) permits a registrar to refer any matter arising in a review to the Supreme Court for directions.
Legal Profession Act section 72(1) and Civil Rule 14-1	Q	What are the costs to be awarded to a successful party in a review under the *Legal Profession Act*?
	A	Entitlement is determined by the "1/6" rule set out in section 72(1), that is if less than 1/6th of the account is disallowed the lawyer is entitled to costs; if 1/6th or more is disallowed the client is entitled to costs. The registrar may either apply the tariff set out in Appendix B to the Civil Rules and allow the items set out *Gourlay & Spencer v Krezymon* [1991] B.C.J. No. 4010 (S.C. Registrar)) (See also the *Legal Profession Act* section of Registrar's Handbook) or the registrar may summarily determine the amount pursuant to section 73(2)(b). Considerations would include the amount involved, whether the review is opposed, whether the issues are substantial, and the length of the review. For example, if the client takes no issue with the account but is simply unable to pay and the solicitor is able to justify the account in a matter of minutes, the registrar might apply the flat fee used for default judgments in Schedule 1 of Appendix B.
Legal Profession Act section 73 and Civil Rule 14-1(28)	Q	When is a certificate of fees in Form 65 signed?
	A	A certificate of fees is signed at the conclusion of a review of a lawyer's bill or where the parties to the review have consented to the amount due under the bill. Care must be taken to make the distinction between a certificate of fees under the *Legal Profession Act* and a certificate of costs following an assessment of costs pursuant to Appendix B of the Rules of Court (Form 64).
Legal Profession Act section 75	Q	What is the proper way to bring an appeal from a registrar's review of a bill?

	A	File a notice of appeal in Form 121 within fourteen (14) days of the date the certificate of the registrar was filed.
Legal Profession Act section 76(3) and Civil Rule 14-1 (28)	Q	When can a certificate of a registrar in a matter under the *Legal Profession Act* be considered a judgment of the Supreme Court?
	A	At the conclusion of a review under the *Legal Profession Act* the registrar may issue a certificate in Form 65, (Rule 14-1(28)). Although the certificate may be filed any time after the registrar signs it; execution cannot take place until after the appeal period expires (14 days from the date the certificate is filed). See section 75 of the *Legal Profession Act*). It is then enforceable as a judgment in the Supreme Court.
Legal Profession Act section 76(3)	Q	Is it possible to register a certificate issued after a *Legal Profession Act* review against land?
	A	Yes. Section 76(3) of the *Legal Profession Act*, provides that after a review, the certificate of the registrar may be filed in a registry of the Court and after the expiry of the 14 day appeal period, (or such other period as the court or the Registrar permits) the certificate is deemed to be a judgment of the Court. Therefore after the expiry of the appeal period, a certificate of judgment can be issued based on the certificate of fees and registered against land.
Legal Profession Act section 77	Q	What options are open to a client when a lawyer has not delivered or sent a bill for services?
	A	The client may apply to the Supreme Court requesting an order for delivery of a bill to the person charged.
Legal Profession Act section 77	Q	When a lawyer has sent a client a series of accounts dealing with one matter and all but the last of those accounts have been paid and only the last account is within the limitation period specified by section 70 of the *Legal Profession Act* are the earlier accounts reviewable?
	A	Parties should attach to the appointment all of the bills they wish to have reviewed. Whether particular bills are reviewable is a question of law that may be decided by the registrar at the hearing.
Limitation Act section 6	Q	What are the limitation periods under the *Limitation Act* [SBC 2013] Chapter 13 and are limitation periods a concern for the registrars when reviewing applications for default judgments.

	A	Section 6 of the *Act* sets out the basic limitation period as 2 years after the day on which the claim is "discovered". Depending on the type of claim and the particulars of the proceeding the discovery date of the claim may be impacted by other sections of the *Act.* The *Limitation Act* can be complex to interpret and the onus is on the defendant(s) to raise any limitation defence in their filed response. In a default judgment application where no response has been filed or the response has been struck by order of the court, the registrar does not need to investigate any limitation issues.
Limitation Act section 7	Q	Can a judgment creditor who sues on a judgment before the 10 year limitation period expires obtain default judgment?
	A	Yes. As there is no mechanism to renew a judgment, the judgment creditor sues on the original judgment. The amount is a liquidated sum because it is specified in the previous judgment. The creditor may obtain default judgment for the amount owing and continue trying to collect the debt. Under section 7 of the *Limitation Act*, an action cannot be brought after the expiration of 10 years "on a judgment for the payment of money or the return of personal property".
Limitation Act section 24	Q	Counsel presents a certificate of judgment to the registry for signature. The judgment was granted in 2002 Along with the certificate is an affidavit setting out that the judgment debtor acknowledged the debt at an examination in aid of execution in 2006. The debtor later sent a letter with postdated cheques to the creditor acknowledging the debt. Is the limitation period on the judgment extended pursuant to section 24 of the *Limitation Act*? Should the registry question whether the judgment has expired?
	A	No. The registry should not question whether the judgment has expired. If the certificate is in order on its face, it should be signed. The judgment creditor is entitled to it and the debtor has remedies if it is unenforceable.
Medicare Protection Act	Q	How are payments for premiums under the *Medicare Protection Act* enforced?
	A	The Medical Services Commission may file a certificate under the *Act* in either Provincial or Supreme Court

		and thereafter enforce it as a judgment (section 8.2 of the *Act*). The process for filing an order, decision, judgment or other determination that, under an enactment, may be filed or registered with the court for enforcement purposes is set out in Rule 2-2 - Tribunal Awards.
Motor Vehicle Act section 94.1	Q	What process is followed in filing a judicial review petition relating to a 90 day roadside suspension under the *Motor Vehicle Act*?
	A	An application to the Court for a review of the confirmation by the Superintendent of Motor Vehicles of a driving prohibition served under section 94.1 of the *Motor Vehicle Act* (i.e. roadside suspensions) is commenced by petition to the court in Form 66 of the Supreme Court Civil Rules and must be filed in the Civil Registry. The usual filing fees apply. A copy of the petition must be served on the Attorney General for British Columbia (at 6th Floor, 1001 Douglas Street, Victoria, B.C.) and the Superintendent of Motor Vehicles. Appeals from a decision under section 93 (i.e. unsatisfactory driving record, etc.) of the *Motor Vehicle Act* will continue to be governed by Rule 18-3.
Name Act	Q	When a divorce order includes a name change, when is it effective, the date of the order or when the divorce takes effect?
	A	The name change is effective on the date the divorce becomes effective i.e. 31 days after the date of the order unless the order provides that the name change will occur “forthwith”.
Name Act section 3	Q	Is it necessary to apply to the court for a name change in a family law case claiming a divorce order if you wish to revert back to a previous surname?
	A	No. The name of either spouse was never legally changed on marriage. See section 3 of the *Act*. This amendment was effective October 1, 1992. It clarified the existing law. The *Name Act* does allow a former spouse after divorce to apply to the Supreme Court to change his or her name to any name desired as set out in section 5 of the *Act*.

Patients Property Act section 2	Q	Can an application to appoint a committee be made by desk order?
	A	No, unless the court otherwise orders, notice must be given to the patient so the application must be set in chambers to allow the patient the opportunity to appear and dispute the application.
Patients Property Act section 10	Q	Can an attorney sign a bond on behalf of a committee?
	A	The bonding company will determine whom they allow to sign a bond. Registry approval requires that the bond is in the proper format, the amounts are correct, and the bond is issued by an authorized bonding company.
Patients Property Act section 10	Q	When a court has ordered a committee to post a bond, can the registrar enter the order appointing the committee without having approved the bond?
	A	No. The bond must be attached to the order when the order is presented for entry. The registrar will not enter the order until the bond is approved. The bond must be sent to the Public Guardian and Trustee. Practices on transmission of the bond vary from registry to registry. A record should be kept of when the bond was sent and should provide for acknowledgement from the Public Guardian and Trustee that the bond was received at their office.
Patients Property Act section 22	Q	Can a committee bring a divorce action before the court in the name of the patient?
	A	Yes, section 22 of the *Patients Property Act* empowers the committee to bring action on behalf of the patient. There would be an obligation on the committee to bring before the court evidence that will satisfy the court that the proceedings are in the best interest of the patient: *Beadle v. Beadle* (1984), 56 B.C.L.R. 386 (C.A.).
Presumption of Death Act section 3(5)	Q	Is the registrar required to forward a copy of an entered order declaring that a person has been presumed dead to Vital Statistics?
	A	Yes. Section 3(5) says, "the registrar of the court must forward to the registrar general under the *Vital Statistics Act* an order made under subsection (1) or (3) within 30 days of the entry of the order. A VSA 799 – Identification Particulars of Person Presumed Dead Province of British Columbia must also be sent with the order. The party must submit the form with the order

		and the registrar certifies the information at the bottom of the form. The order itself must specifically state that the individual is declared deceased **for all purposes**.
Probate Fee Act	Q	Where the deceased was not ordinarily resident in BC immediately prior to death, is money in a bank account in BC considered a tangible asset as defined by the Ministry of Finance and therefore subject to probate fees?
	A	No. Pursuant to the memo issued by the Ministry of Finance in June of 2004, **intangible** personal property is defined as "property without a physical presence, such as rights in shares, bonds, bank accounts, debt, pensions, trademarks, franchises, estates, etc." No fees are payable on these assets.
Probate Fee Act	Q	If a bank refuses to disclose exactly how much is in the deceased's bank account prior to issuance of an estate grant, how is an applicant able to prepare their materials to apply for an estate grant?
	A	The applicant should complete a submission for an estate grant indicating that they are seeking an authorization to obtain estate information, as well as the other documents required by Rule 25-3(2). Once the authorization to obtain estate information has been issued to the applicant(s), they may deliver it to any person in control or possession of an asset of the deceased so that they may obtain the necessary information. After they have gathered all of the information with respect to the assets of the estate they may subsequently file the affidavit of assets and liabilities and request the estate grant.
Probate Fee Act	Q	Are probate fees payable on land where the deceased is a trustee of a bare trust agreement?
	A	No fees are payable as the land is not an asset of the deceased. A bare trust agreement gifts the land to a named beneficiary. See, *Graham v. Smith,* 2008 BCSC 348. The value of the trust should be listed (nil) and not the value of the property.
Probate Fee Act	Q	Are B.C. Probate fees chargeable on Canada Savings Bonds located outside of British Columbia?
	A	No probate fees are chargeable. Canada Savings Bonds belong to a category known as "specialty debts". Their situs for the purpose of assessing probate fees is determined by their location at the testator's death.
Probate Fee Act	Q	Are probate fees payable on treasury bills located in a bank outside the province when the testator was resident in British Columbia?

	A	No. In all likelihood treasury bills, whose existence is documented at a bank outside the province, would be considered a "specialty debt", similar to a Canada Savings Bond: *Royal Trust Company v A.G. Alta*. [1930] 1 D.L.R. 868.
Probate Fee Act	Q	Are probate fees payable on a mortgages or loans registered against property or vehicles?
	A	No. Charges against property are deducted from the gross value of the estate. Fees are based on the net value.
Real Estate Services Act section 33	Q	How does money get paid in and out of court when a matter is settled pursuant to section 33 of the *Real Estate Services Act*?
	A	Payment in may be made without notice. The agent who holds the deposit in dispute files a requisition (pursuant to Civil Rule 17-1), a draft of the order, and an affidavit setting out the information listed in section 33(2). An application for payment out must be spoken to in court.
Rent Distress Act	Q	What tariff is used for a review of a bailiff's account under the *Rent Distress Act*?
	A	Section 21 of the *Act* provides that in the event of a dispute between the parties over fees, the account must be reviewed by the registrar. The account must be billed according to the schedule of the *Act* which allows for a somewhat dated level of remuneration. *Sizzling Wok v. Able Bailiffs* (1990), 51BCLR (2d) 368 confirmed that the schedule amounts were all bailiffs are entitled to and indicated bailiffs cannot contract out of the schedule.
Residential Tenancy Act	Q	Section 84.1(2) of the *Residential Tenancy Act* states that "A decision or order of the director on a matter in respect of which the director has exclusive jurisdiction is final and conclusive and is not open to question or review in any court". Does this mean that judicial review is no longer available?
	A	No. A party can file for judicial review of an arbitrator's decision, but must do so within 60 days from the date of the decision. See section 57 of the *Administrative Tribunals Act* and *McFarland v. Residential Tenancy Board* 2004 BCSC 1693.
Residential Tenancy Act	Q	Do the recent amendments to the *Residential Tenancy Act* (Bill 75) have any effect on the service of orders of possession filed for enforcement?

	A	Yes, service of the order of possession must be either: (a) as directed by the order of the director as set out in section 71(1), *Residential Tenancy Act*, or (b) in accordance with section 88, *Residential Tenancy Act* or (c) in accordance with Supreme Court Civil Rule 13-2(13)(b)(ii).
Residential Tenancy Act	Q	Should the registrar issue a writ of possession in circumstances where the landlord has obtained an order for possession from the Residential Tenancy Branch but has failed to promptly enforce the order and has allowed the tenant to remain in the premises and has continued to collect payments?
	A	The registrar should err on the side of caution and refuse to issue a writ of possession in these circumstances. The landlord should be directed to make an application to the court with a supporting affidavit that sets out the circumstances that have transpired since the order of possession was granted and the court will decide if a writ of possession should issue.
Residential Tenancy Act section 84	Q	When can a director's order be filed in the Supreme Court?
	A	After a review of the order or after the time for review has passed. The process for filing an order, decision, judgment or other determination that, under an enactment, may be filed or registered with the court for enforcement purposes is set out in Rule 2-2 - Tribunal Awards.
Residential Tenancy Act section 88 and 89	Q	Must a document in a proceeding relating to a residential tenancy be personally served?
	A	No. Such documents may be served in accordance with sections 88 and 89 of the *Act*, which provides for alternate service if the party is absent from their premises or is evading service.
Residential Tenancy Act section 90	Q	When an applicant applies for a writ of possession under the *Residential Tenancy Act* and the applicant has served the tenant by registered mail with the order from the Residential Tenancy Branch, is the signature service from the post office required to prove service?

	A	No, section 90 of the *Residential Tenancy Act* sets out when documents served under section 88 or 89 of the *Act* are deemed to be received. Subsection 90(a) says documents given or served by mail are deemed to be received on the 5th day after mailing. There is no requirement for proof of receipt otherwise and no distinction between ordinary and registered mail. These provisions are not the same as in the Supreme Court Civil Rules but apply to delivery of documents under the *Residential Tenancy Act.*
Small Claims Act	Q	A Small Claims appeal was filed and the appellant paid the amount of the judgment and $200 security for costs into court. The appellant subsequently abandoned the appeal. How can the respondent obtain the funds paid into Court?
	A	The respondent will need a Supreme Court order for payment out of the money. If the appellant will not consent to the order the respondent must make an application to the court.
Small Claims Act section 7(2)	Q	Whose responsibility is it to inform the Provincial Court when a notice of appeal is filed in the Supreme Court?
	A	It is the appellant's responsibility.
Small Claims Act section 8(3)	Q	Section 8(3) of the *Small Claims Act* says that the "Supreme Court" may make an order reducing the amount required to be paid in on a Small Claims appeal. These applications have been referred to a judge in the past. Can this now be dealt with by an associate judge?
	A	Yes, an associate judge can deal with an application under section 8(3). However, a judge must hear an application pursuant to section 15 to extend or shorten a time limit as that section specifically states a judge.
Small Claims Act section 13(2)	Q	Can a Supreme Court decision on a Small Claims appeal be appealed?
	A	No, see section 13(2) of the *Act.*
Small Claims Act section 15	Q	Can an associate judge hear an application to extend time to appeal a Small Claims action?
	A	No, this may only be done by a judge.
Strata Property Act section 189	Q	How is a decision of an arbitrator pursuant to the *Strata Property Act* enforced?

	A	The arbitrator's decision and order for costs may be filed in a Supreme Court Registry and enforced as an order of the court. The process for filing an order, decision, judgment or other determination that, under an enactment, may be filed or registered with the court for enforcement purposes is set out in Rule 2-2 - Tribunal Awards. The decision may be filed in Provincial Court if the amount claimed or the value of the personal property or services is within the monetary jurisdiction of that court. The decision or an order for costs may not be filed until the time limit for appeal under section 188 has expired (30 days after receiving the decision) and no appeal has been taken, or the appeal has been either completed or abandoned.
Unclaimed Property Act	Q	Applications for orders under the *Unclaimed Property Act* are submitted in the form of a requisition. The bottom half of the requisition is an order. Should the requisition display a full style of proceedings?
	A	Yes. The requisition becomes an order when signed by the registrar and as such, must have the full style of proceedings.
Vital Statistics Act section 40	Q	Should the court registry issue certified copies of marriage certificates?
	A	Section 40 of the *Vital Statistics Act* states: "Except as provided in section 38(4), a certificate, certified copy, or certified electronic extract issued under section 36, 37, 38 or 39 must be issued by the registrar general." Note: Section 37 deals with marriage certificates. Given the wording in section 40, the registry ought not to certify copies of marriage certificates as a matter of policy. If litigants know that in advance, they can take the necessary steps with Vital Statistics and obtain the required copies from them.
Wills, Estates and Succession Act section 60 and	Q	Can a proceeding to vary a will under section 60 of the *Wills, Estate and Succession Act* be dismissed by a registrar's consent order?

Civil Rule 8-3(2)		
	A	Yes, as long as the requirements set out in Civil Rule 8-3(2) are met.
Wills, Estates and Succession Act section 122	Q	Are mobile homes considered personal or real property in an application for probate?
	A	The mobile home should be listed as personal property unless it is situated on real property owned by the deceased. Then, the value of the real property should include the value of the mobile home.
Wills, Estates and Succession Act section 124	Q	When an application for a representation grant is made by the Public Guardian and Trustee ("PGT") pursuant to section 164 of the *WESA* and the PGT has given the notice required by Rule 25-2(15) (to the PGT itself for a minor), are written comments required from the PGT under section 124 of the *WESA* before the registrar may issue a representation grant?
	A	No. Where the PGT is the applicant and the application has otherwise been made in accordance with the Supreme Court Civil Rules the representation grant should issue without any written comments from the PGT as they are the applicant.
Wills, Estates and Succession Act Section 124	Q	If the Public Guardian and Trustee has been given notice of application for a representation grant, can a P18 Authorization to Obtain Estate Information be issued prior to receiving the PG&T's comments?
	A	Yes. Section 124 of the Wills, Estates and Succession Act specifies that the court must not issue the representation grant unless the applicant has provided the written comments of the Public Guardian & Trustee. As a P18 is not a representation grant, the registry can issue that Authorization. However, the reviewing registrar should ensure that a note is made on the file that the PG&T's comments are required once the Affidavit of Assets and Liabilities is received and before the grant is issued.
Wills, Estates and Succession Act section 132	Q	If the court grants an order appointing a person as an administrator of an estate pursuant to section 132 of the *Wills, Estates and Succession Act* should the registry issue an estate grant based on the order?
	A	No, an estate grant must not be issued. An order appointing an administrator under section 132 of the *WESA* is not an authority to issue an estate grant. This type of order is generally an interim order appointing a person to administer (run) the estate pending a subsequent application pursuant to section 129 of the

		WESA in accordance with Rule 25-3 for an estate grant, if an estate grant is required. The order is the authority for the administrator to act. Except for a request for a certified copy of the order, the registry should not be producing any further documents as a result of an order granted under this section.
Wills, Estates and Succession Act section 147(4)	Q	A lawyer is insisting on paying money into court without an order for monies described under section 147(4) by submitting a statement showing the particulars of the payment in. Section 147(4) states that the personal representative must pay into court net proceeds (of any funds that have not been paid to a beneficiary who cannot be located) deducting the costs of doing so. How would the registrar know what the appropriate costs would be?
	A	The costs would be 1 unit (Item 39 at Scale B) allowed under Appendix B of the tariff. If there is a disagreement on the costs, the matter should be referred by requisition to a district registrar or associate judge.
Wills, Estates and Succession Act section 150	Q	In a civil proceeding where the deceased's estate is named as one of the defendants and the affidavit of service filed in support of a default judgment proves personal service on a personal representative of the deceased's estate, is this service satisfactory for the registrar to approve the application or does the applicant require an order of the court for leave to serve the personal representative of the deceased?
	A	Personal service on a personal representative of a deceased's estate is proper service and if the default judgment application is otherwise in order the registrar may approve. A personal representative is defined in section 29 of the *Interpretation Act* as: "personal representative" includes an executor of a will and an administrator with or without will annexed of an estate, and, if a personal representative is also a trustee of part or all of the estate, includes the personal representative and trustee; Section 150 of the *Wills, Estates and Succession Act* authorizes a person to commence or continue a proceeding against a deceased person that could have been commenced or continued against the deceased

		person if living, whether or not a personal representative has been appointed for the deceased person. A proceeding may be commenced naming as a defendant or a respondent, the personal representative, if any, or the deceased person. Where there is no personal representative of a deceased person, Rule 20-6 sets out the process for a person to apply to the court for an order appointing a person as a litigation representative or order that the matter proceed in the absence of a person representing the deceased's estate.
Woodworker Lien Act section 3(2)	Q	The *Woodworker Lien Act* requires a fee for filing a statement of lien, which is prescribed by the Lieutenant Governor in Council. Where is this fee set out?
	A	The fee is set out in the regulations to the *Act*.
SUPREME COURT CIVIL RULES		
Rule 1-1(1)	Q	Should court documents be filed in a registry other than where the proceeding is being conducted?
	A	No, unless the file has been transferred to another registry for the purposes of a hearing or trial.
Rule 3-1(1)	Q	Does a notice of civil claim have to be signed by the plaintiff or their solicitor?
	A	Yes, while there is no specific provision in the rules requiring a plaintiff or their solicitor to sign the notice of civil claim, as Form 1 (notice of civil claim), which contains a place for signature by a party of his solicitor, must be filed to commence a proceeding (Rule 3-1(1)), a signature appears to be required.
Rule 3-1(2)(d) and Rule 12-1(5)	Q	If a party has named in their notice of civil claim another location as the place of trial, do they need an order to transfer the file to that location?
	A	No order is required. Rule 3-1(2)(d) requires the place of trial to be named in the notice of civil claim. Rule 12-1(5) states that the place of trial is the place named in the notice of civil claim. The court may order that the place of trial be changed. Once a party has received a trial date in the other location, they should file a requisition requesting the file be transferred to that location for the trial approximately a month before the trial date.

Rule 3-1(2)(d) and Rule 12-1(5)	Q	Can a Notice of Civil Claim name a location for trial which is different from the registry in which the claim has been filed?
	A	Yes. While this is rare, there is no impediment to the plaintiff taking this approach. Rule 3-1(2)(d) only requires that the place of trial be named in the Notice of Civil Claim and Rule 12-1(5) confirms the place of trial is the place named in the claim. The court may order that the place of trial be changed.
Rule 3-2	Q	If an original notice of civil claim is amended and served within 1 year of the amendment but more than 1 year after the original filing, does Rule 3-2 still apply?
	A	The amendment of a notice of civil claim does not constitute a "renewal" of the notice of civil claim and thus the clock does not start over on an amendment. In the example given, the notice of civil claim has expired.
Rule 3-2(1)	Q	How do you renew a notice of civil claim pursuant to Rule 3-2(1)?
	A	A notice of civil claim may be renewed by the court for a period of 12 months (Rule 3-2(1)) and then further renewed for a period of not more than 12 months (Rule 3-2(2)). The application(s) for renewal may be made by "desk" order pursuant to Rule 8-4(1) or heard in chambers pursuant to Rule 8-1(2)(b)(i). Unless otherwise ordered by the court, a copy of each order granting renewal of a notice of civil claim must be served with the renewed notice of civil claim. Rule 3-2(4).
Rule 3-4(4)	Q	Must a counterclaim be personally served or is ordinary service sufficient?
	A	If the counterclaim is against a party to the original action, ordinary service is sufficient. If the counterclaim is against a person who is not a party to the existing action, personal service of the filed counterclaim and filed notice of civil claim must be served within 60 days after the date on which the counterclaim was filed. (Rule 3-4(4)(b))
Rule 3-8	Q	Should a copy of the document served (i.e. the notice of civil claim) be exhibited to the affidavit of service in support of a default judgment application?
	A	No. Form 15 (Affidavit of Personal Service) does not require any documents that have already been **filed** in a proceeding to be exhibited to the affidavit. The affiant must describe the document that was served as

		indicated on the Form 15. However, any documents that have not been filed must be attached to the affidavit as an exhibit. Registrars will have to refer to the notice of civil claim on file when reviewing the application.
Rule 3-8	Q	A default judgment was filed requesting that judgment be granted "in the sum of $21,458.29 less applicable statutory deductions, plus costs". Can the judgment be issued in these terms?
	A	No. The amount of the judgment is not a sum certain since the amount of the statutory deductions is not set out.
Rule 3-8	Q	Counsel continue to file default judgment applications using the wording, "...the plaintiff recovers judgment against the defendants." Is this acceptable practice?
	A	No. The proper wording is set out in Form 8 of Appendix A.
Rule 3-8	Q	If the prayer for relief in an application for a default judgment claims "damages" but the statement of claim clearly makes out a liquidated sum, can a default judgment be issued?
	A	Yes, a default judgment may be issued. If the reverse were true, namely the prayer for relief sought payment of a liquidated amount, and this was not established in the notice of claim, then a default judgment would be issued for damages to be assessed.
Rule 3-8	Q	In a case where the facts in the notice of claim set out that the debt was originally an unliquidated amount, such as an agreement to supply materials and labor, and an invoice is subsequently issued, which the party pays by cheque in the amount of the invoice but the cheque was dishonored by the bank does the debt then become a liquidated amount?
	A	Yes. The debtor has acknowledged and accepted the amount claimed by delivering a cheque for the full amount.
Rule 3-8	Q	Can a default judgment be issued if the notice of civil claim contains a liquidated claim and an alternative unliquidated claim?
	A	Yes. In both *Lumberman's Pension Plan v. Moore*, 2016 BCSC 89 and *Global Fleet Management Inc. v. Deltaura*, 2020 BCSC 1938 the courts have held that default judgement can issue where a claim for a liquidated amount is coupled with a claim, in the alternative, for a non-liquidated amount.

Rule 3-8 and Rule 3-4(6)	Q	Is it possible to grant a default judgment on a counterclaim?
	A	Yes. Rule 3-4(6) indicates that Rule 3-8 applies to a counterclaim as if it were a notice of civil claim and to a response to a counterclaim as if it were a response to civil claim.
Rule 3-8 and 14-1	Q	Are there guidelines as to disbursements allowed on a bill of costs presented with a default judgment such as B.C. On-Line, agent's fees and search fees?
	A	Rule 14-1(5) compels the registrar to allow expenses and disbursements that were "necessarily or properly incurred in the conduct of the proceeding". The party submitting the bill should prove the necessity and reasonableness of the disbursements sought by including an affidavit of disbursements attaching the invoices, [*Holzapfel v Matheusik* (1987) 14 B.C.L.R. (2d) 135]. This is particularly true for unusual disbursements.
Rule 3-8 and Rule 14-1(26)	Q	A default judgment was submitted including a term granting solicitor client costs instead of the usual term for costs included in the Default Judgment - Form 8. Is a DDR able to approve a default judgment for solicitor client costs when it is pleaded in the notice of civil claim that the parties agreed to that allowance for costs?
	A	No. A registrar only has authority to approve costs as set out in SCCR 14-1(26), which is consistent with the wording for costs in the default judgment (Form 8). The SCCR no longer include solicitor client costs and if a party is seeking any different order for costs, such as special costs or full indemnity costs they must apply to the court.
Rule 3-8 and Appendix B	Q	What disbursements are usually allowed on a default judgment?
	A	• Filing fee for commencing a proceeding • Fee for filing a requisition for default judgment • Photocopies - $.25 per page to a max of $25.00 • Color copies – up to $1.00 per page • Faxes - $.35 per page for incoming and outgoing max $35.00 • Scanning - $.15 per page (see *Turner v. Whittaker*, 2013 BCSC 712) • Service fees – include invoice • GST if paid (Rule 14-1(8)) • Reasonable amount for postage

		And if applicable: • Filing fee for alternate method of service application • If the application was by desk order; Item 23, (1-5 units) and Item 41 – 1 unit. The assessing officer will need to use their discretion to consider objectively whether more or less than an ordinary amount of time was required to prepare the application, (including the affidavit in support) when deciding to allow the 1 to 5 units allowed under Item 23. If the application was spoken to in chambers, they are allowed to claim Item 21 – 1 unit, Item 22 – 2 units and Item 41 – 1 unit. The scale of costs should be assessed at Scale B. • Company search - $10.00 • Attempted service fees – include invoice • Fees to locate defendant – include invoice • Long distance charges if client is out of town • agents fees • Fees for issuance of certificate(s) of pending litigation • Court Services Online fees No costs other than disbursements are allowed if the claim is within the jurisdiction of the Small Claims Court (Rule 14-1(10).
Rule 3-8	Q	If a response to a civil claim was filed in time but was lost or misfiled and a default judgment was granted, what should the registrar do?
	A	Advise both counsel of the error in writing. The sensible procedure is for counsel to file a consent order setting aside the default judgment. In the absence of consent, either party can apply to court.
Rule 3-8	Q	An application for default judgment is presented at the registry for filing. Due to lack of staffing, the default judgment is not signed before the defendants file a response to civil claim. Counsel insists that the default judgment be issued as the response to civil claim was filed after the default judgment application was presented and the time for doing so had expired. What is the registrar's recourse?
	A	The default judgment should not be signed. Rule 3-8(1) sets out that: "A plaintiff may proceed against a defendant under this rule if:

		a) that defendant <u>has not filed</u> and served a response to civil claim" (emphasis added) This prevents the registrar from signing the default judgment as a response to civil claim was filed, albeit out of time. (see *Adams v. Fisher* [1997] BCJ No. 1162 (Q.L.)
Rule 3-8(3)(a)(ii)	Q	What interest is a plaintiff entitled to if the claim sets out contract interest at anything other than a per annum rate?
	A	Pursuant to section 4 of the *Interest Act* (Canada) if the interest is not set out as a per annum rate the plaintiff is only entitled to 5% per annum. If the parties did not have an agreement for interest, the plaintiff is entitled to pre-judgment interest pursuant to the *Court Order Interest Act*.
Rule 3-8(3)(b)	Q	Can a default judgment have more than one form of relief in it such as judgment in a dollar amount and judgment for damages to be assessed?
	A	Yes, as long as the relief claimed in the notice of civil claim is for multiple claims that support a default judgment and not alternative claims. So the relief sought should ask for judgment for $X.XX <u>and</u> damages to be assessed, not <u>in the alternative.</u>
Rule 3-8(3)(b)	Q	When a notice of claim includes a debt that two or more parties are jointly and severally liable for, is the plaintiff permitted to apply for default judgment against one or more than one of the defendant(s) at different stages in the litigation or must the default judgment seek judgment against all defendants at the same time?
	A	The plaintiff may proceed against one defendant in default. There is no need for the default judgment to be granted against all defendants where the debt is joint and several. Rule 3-8(3)(b) permits the plaintiff to proceed against one or more of the defendants, including the defendant against whom judgment was obtained, on any other claims brought in the action that are not barred as a result of the judgment referred to in Rule 3-8(3)(a). Also, section 53 of the *Law and Equity Act* states, 1) If a party has a demand recoverable against 2 or more persons jointly liable, it is sufficient if any of those persons is served with process, and an order may be obtained and execution

		issued against the person served even if others jointly liable may not have been served or sued or may not be within the jurisdiction of the court. 2) The obtaining of an order against any one person jointly liable does not release any others jointly liable who have been sued in the proceeding, whether the others have been served with process or not. 3) Every person against whom an order has been obtained who has satisfied the order is entitled to demand and recover in the court contribution from any other person jointly liable with the person. This same principle does not generally apply when a defendant is alternatively liable. See *T.F. Specialty Sawmill Inc. v. Obal,* [1999] B.C.J. No. 67.
Rule 4-1(1)	Q	If a document presented for filing provides an address for delivery that is outside the jurisdiction, should the registry reject it?
	A	No. It is up to the opposing party to take issue with that party's address for delivery. The document should be filed.
Rule 4-2(2)(b) and (7)	Q	Would an affidavit of ordinary service be sufficient if it is stated that a document had been mailed by regular mail?
	A	Service by ordinary mail to a person's address for service is permitted pursuant to Rule 4-2(2)(b). Where there is no address for service given and personal service is not required the document may be served by ordinary mail to the party's lawyer or if the party has no lawyer representing them in the proceeding, to the party's last known address. See Rule 4-2(7)
Rule 4-2(4)	Q	How is time calculated for delivery by mail?
	A	A document sent for service by ordinary mail is deemed to be served one week later on the same day of the week as the day of mailing or, if that deemed day of service is a Saturday or holiday, on the next day that is not a Saturday or holiday.
Rule 4-3(8)	Q	Is proof of service of a petition or an originating pleading required when a response to a petition or a responding pleading has been filed?

	A	Filing of a response to a petition or a responding pleading is an admission of service of the petition or originating pleading.
Rule 4-4(1)	Q	Can a notice of civil claim be served substitutionally without an order?
	A	No. Rule 4-4(1) says that if it is impractical to serve a document personally or the person to be served cannot be found after a diligent search or is evading service, the court may make an order for an alternate method of service, on application without notice.
Rule 4-5	Q	How do you serve an appointment pursuant to the *Legal Profession Act* on a client outside British Columbia?
	A	An appointment should be served in accordance with Rule 4-5 with the appointment endorsed accordingly. (Form 11)
Rule 4-5(10)	Q	How do you serve a petition or originating pleading on a company in Ontario which is not registered under the *Business Corporation Act* of British Columbia?
	A	In general, personal service is required. Personal service is, generally, governed by Rule 4-3 and; (a) Personal Service on a corporation is governed by Rule 4-3(2)(b); (b) "Corporation" not defined in Rule 4-3 but the *Business Corporations Act* defines a “corporation” as “a company, a body corporate, a body politic and corporate, an incorporated association or a society, however and wherever incorporated, but does not include a municipality or a corporation sole”; (c) service on a corporation is effected by complying with Rule 4-3(2)(b)(i) – (iii) or by service "in the manner provided by *Business Corporations Act* " Section 9 of the *Business Corporations Act* provides for service of a legal record by registered mail to the corporation’s registered and records office or personally on a director, senior office, liquidator or receiver manager of the corporation. Therefore one should be able to serve a company registered outside B.C. by registered mail to the company's registered office.
Rule 5-3 and Rule 8-3	Q	Are parties to a proceeding able to submit a Case Planning Conference Order by consent without having attended a Case Planning Conference?
	A	Yes, parties may apply pursuant to Rule 8-3 and the order should be forwarded to a judge or associate

		judge for their approval. (See *Stockbrugger v. Bigney*, 2011 BCSC 785)
Rule 5-4(1)(b)	Q	What is the process for an application to amend a case plan order that is not by consent and is there a filing fee?
	A	The party seeking the amendment must first comply with the procedure set out in Rule 5-4(1)(b)(i). If consent of the other parties for the amendment is not obtained, the applicant must then provide the registry with copies of the following documents served on the other parties (Rule 5-4(1)(b)(ii)): • Requisition (Form 17); • Letter which: a) identifies the judge or associate judge who made the case plan order; and b) sets out the requested amendment(s) and the basis for the request; • A draft of the proposed order (Form 35) Note: The order should only include the proposed amendment and not be a revised Case Plan Order in Form 21 • Any other supporting documents, other than affidavits, that were delivered to the parties of record; and • A statement from the applicant that, ○ the above documents were served on the parties of record and whichever of the following applies: i. no answer has been received within 7 days after the date of service, or ii. an answer was received; • where an answer was received, a copy of the answer. The appropriate fee for an application (Item 4 of Appendix C) should be collected. The application does not need to be referred to the judge or associate judge who made the original case plan order. For applications where the applicant has received an answer to the served documents, the registrar should bring this to the attention of the judge or associate judge reviewing the application.

Rule 6-1	Q	Can a claim be amended after a default judgment has been issued in an action?
	A	No, the court would be *functus.* The party could apply to set aside the default judgment, and then if the application is granted, proceed to amend the initiating document.
Rule 6-1	Q	Can a plaintiff withdraw a filed amended notice of civil claim without leave of the court?
	A	No, there is no authority for withdrawing an amended document. An application to the court would be required.
Rule 6-1	Q	Must an amended pleading expressly reference the rule relied on for the amendment?
	A	No. Although it is common, and perhaps recommended practice to refer to the rule, Rule 6-1(2) simply directs that the amendment be made in accordance with subrule (3), which requires that any deleted words be shown as struck out and any new words be underlined. The amended pleading must indicate the date on which the original version of the pleading was filed.
Rule 6-1(1)	Q	Can a Notice of Civil Claim be amended to replace a party named originally as “John Doe” (or its equivalent) with the name of the person whose identity is now known without leave of the court? (Without a court order?)
	A	Yes. *Broom v The Royal Centre et al., 2005 BCSC 1630*, held that a party is entitled to amend their pleadings without a court order, in the case of a misnomer. A John Doe (or equivalent) defendant can be substituted with a named party once the identity of the person is known. (In other words, they can substitute the actual name for the John Doe or Jane Doe name as a correction of a pleading rather than as an addition of a new party.)
Rule 6-1(1)	Q	Once a notice of trial is filed and delivered, can the pleadings be amended without either the consent of the other party or an order of a judge?
	A	Rule 6-1(1) requires either the written consent of the parties of record or leave of the court to file amended pleadings after the date of service of the notice of trial
Rule 6-1(1)(b)	Q	Rule 6-1(1)(b) provides that after service of a notice of trial an amendment to a pleading may be made with the written consent of all parties of record. What form must that consent take?
	A	There is no requirement for an application and subsequent order, therefore, consent may be an

		endorsement anywhere on the document, usually on the first or last page or a covering letter(s) signed by all parties to the proceedings.
Rule 6-1(3)	Q	Is it mandatory to underline amendments in red? If so, what is the authority?
	A	No. Rule 6-1(3) provides that, unless the court otherwise orders, if a pleading is amended: a) any deleted word must be shown as struck out, and b) any new word must be underlined.
Rule 6-2(1)	Q	Can a bill of costs be assessed when the party awarded costs dies before the assessment is completed?
	A	Yes. See Rule 6-2(1).
Rule 6-2(7) and Rule 6-1	Q	Does Rule 6-2(7) apply when a spelling error has occurred in the name in the style of cause? Counsel often argue that they should not have to apply under Rule 6-2(7) for a correction of this nature.
	A	A spelling error may be corrected either by a Rule 6-2(7) order or by a Rule 6-1 amendment. If an originating pleading is amended under Rule 6-1, the registrar must accept it even if the party should be applying to substitute under Rule 6-2. If the pleading should not have been amended under Rule 6-1, the plaintiff runs the risk that the court will later rule the amendment invalid.
Rule 7-2(13)	Q	What are the fees that must be tendered to a party to the proceeding to attend an examination for discovery?
	A	A party wishing to examine another party for discovery must tender to the party to be examined (or their lawyer) the witness fees in the amount required under Schedule 3 of Appendix C
Rule 8-1	Q	If an application brought by filing a notice of application under Rule 8-1 is going ahead by consent or without notice is the applicant required to provide an application record?
	A	Yes. Rule 8-1(2)(a) and (b) indicate that if an application is by consent or without notice the party may proceed under Rule 8-1 (notice of application) or by way of (desk order) under Rule 8-3 or Rule 8-4. Therefore, if a party files a notice of application for an order by consent or without notice they must comply with Rule 8-1, which includes the requirement that a party prepare and file an application record.
Rule 8-1	Q	Are applications in bankruptcy proceedings governed by Rule 8-1?

	A	No. The *Bankruptcy and Insolvency Act* is a federal statute with its own rules for bringing applications.
Rule 8-1	Q	What is the authority for the registry to accept an amended notice of application?
	A	Rule 8-1 does not include a process for amending a notice of application, however, there is nothing that prohibits it. There is no restriction on the number of notices of application a party may file so the best practice is for another application to be filed rather than amending an existing one. In *Ramcoff Productions v Lesmur*, 2000 BCSC 1940, the Court said a party should not be prevented from filing an amended notice of motion (now an application), provided it is served in accordance with the rules. If an amended notice of application is presented to the registry for filing, it should be accepted with the usual fee prescribed in Schedule 1 of Appendix C for applications. The amended notice of application will still need to be served in accordance with the Rules. The opposing party, or the Court, can raise any issues concerning non-compliance with the rules, including prejudice or the need for an amended response.
Rule 8-1(15)	Q	Do I have to file a record if the matter is under 30 minutes?
	A	Rule 8-1(15) requires an application record for all applications, regardless of the time estimate.
Rule 8-1(15)	Q	Can a chambers application that is not on the list due to the failure to file the application record be added back to the list on a without notice or short leave application filed that same day?
	A	No. The proper procedure is to file a requisition for re-instatement in Civil Form 30.01 or Family Form F32.001 and have that relief spoken to in chambers on the date set for hearing in the original notice of application. Re-instatement of the application to the Chambers List is at the discretion of the presiding judge or associate judge. In contrast, a without notice application requires compliance with Rule 8-1 (SCCR) or Rule 10-6 (SCFR), as applicable, including filing an application record. The short leave procedure is intended for matters of urgency that require abridgment of the usual

		notice period, but not because a party has failed to comply with the SCCR or SCFR.
Rule 8-2(1)	Q	Could a notice of application filed in Prince George name the Smithers Registry as the place of hearing?
	A	Under Rule 8-2(1) an application may be heard at a) the place ordered by the registrar under subrule (4) [if the registrar is satisfied, due to urgency or convenience that an application should be heard outside the judicial district]; b) the place on which all parties or record have agreed, or c) a place at which the court normally sits in the judicial district in which the proceeding is being conducted. Judicial districts are described in section 8 of the *Supreme Court Act*. As Prince George and Smithers are not in the same judicial district, registrar's leave or consent of all parties of record would be required in this instance.
Rule 8-2(4)	Q	When a party applies to the registrar under Rule 8-2(4) for leave to have an application heard at a location outside of the judicial district where the proceeding is being conducted on the grounds of "convenience to the parties", should the registrar grant leave if the reason given is that the defendant has not filed a response to civil claim?
	A	Not as a general rule, if that is the only reason given. Rule 8-2(4) indicates that for leave to be given, it must be convenient to the "parties" and not to the "parties of record". Rule 1-1 defines a "party" as; • in relation to a proceeding, means a person named as a party in the style of proceeding. A "party of record" is defined as; • in relation to a proceeding, means a person who has filed a pleading, petition or response to petition in the proceeding, and includes, a) in a proceeding referred to in Part 18, a person who has filed a notice of interest under that Part, and

		b) in a proceeding referred to in Rule 21-5, a person who has filed a notice of interest referred to in Rule 21-5(47); See the decision of Master McDiarmid in *Bank of Montreal v. Crocker,* 2012 BCSC 195 (note, however, this case was in a foreclosure context where the application was governed by Practice Direction 33).
Rule 8-2(4)	Q	If an application is set on our chambers list in respect of a file from another registry, can we accept another notice of application for a different application?
	A	Only if all parties of record have agreed (Rule 8-2(1)(b) or a registrar has granted leave (Rule 8-2(1)(a) and 8-2(4)) or the court otherwise orders.
Rule 8-2(4)	Q	Has there been any judicial guidance on the interpretation of the procedure to be followed by a registrar when entertaining an application under Rule 8-2(4)?
	A	Yes. *Roberts and Whieldon v. Corrigal and Corrigal* (1993), 84 B.C.L.R. (2d) 155 at page 161: "I wish to add the following observation which may be of assistance to Registrars, in the future, in considering whether or not to exercise their discretion to grant applications under R. 44(16)[now Rule 8-2(4)]. Any exercise of a Registrar's discretion under the Rule, *particularly* if the application is, as in this case, ex parte, should be based on *written* material in support. That material could be in affidavit form but may be less formal, e.g., a letter from counsel. Where the application is based upon convenience, the material should set out the position of all parties. If the applicant does not adequately cover that in his or her communication, the Registrar should insist on being advised of the position of the other parties. If this is done in writing, there will be a record to indicate to a Judge reviewing the decision under R. 44(17) [now Rule 8-2(6)] the basis upon which the Registrar made that decision." Also see *Bank of Montreal v. Crocker*, 2012 BCSC 195 at page 19.

Rule 8-2(4)	Q	Must leave be granted under Rule 8-2(4) for a short notice application if the file is outside of the judicial district?
	A	Yes. Leave should still be sought and granted under Rule 8-2(4). The leave stamp can be placed on the short notice requisition before filing and setting the hearing.
Rule 8-3	Q	Is it appropriate to sign a consent dismissal order when there are two defendants and the order dismisses the case against one and only that defendant and the plaintiff have endorsed the order?
	A	No. An explanation should be included on the requisition that sets out that the 2nd defendant will not be affected by the order or explains why they have not endorsed it. If the explanation is anything other than the action has already been discontinued or dismissed against them or that the defendant has not filed a response to a civil claim, the order must be referred to the court for approval.
Rule 8-3	Q	Are parties to a proceeding able to apply for a consent order for the removal or return of filed documents?
	A	No this application cannot be made by consent. The proper procedure for dealing with these filed documents is for the applicant to apply to seal part of the court file pursuant to Practice Direction 58 - Sealing Orders in Civil and Family Proceedings. However, if the applicant does apply to remove a document from a file, the application should be made in chambers, where the applicant must provide their submissions for why the document should be removed. The order should be specific that the document is to be removed from the court file and the court record, which will encompass both the physical document and any electronic version. If such an order is granted, the registry should follow the order, a copy of which should be affixed to the outside of the file.
Rule 8-3	Q	What is the process for entering a consent judgment for money when no file has been opened?
	A	The plaintiff files a notice of civil claim, the defendant files a response to civil claim and then the parties may proceed pursuant to Rule 8-3(1).
Rule 8-3	Q	Should a registrar enter a consent order for a reference to the registrar?
	A	Not when it is a delegation of the court's jurisdiction, e.g. maintenance reference; but generally acceptable when the reference is procedural, e.g. passing of accounts.

Rule 8-3	Q	A consent order was submitted seeking leave to issue a third-party notice where the proposed third parties had consented to being added. It was rejected by the duty associate judge who required that an affidavit in support be provided. Counsel sought advice from the registry as to what the affidavit should address. What direction should the DDR provide applicants for this order?
	A	The applicant should file the documents set out in SCCR 8-3(1), along with an affidavit in support. The affidavit should address the factors reviewed in *Sohal v. Lezama,* 2021 BCCA 40.
Rule 8-3 and Rule 7-1(19)	Q	Registries have been receiving different forms of consent orders for production of documents from the police. How does the DDR know which form is correct?
	A	Different language may be used when the applicant is seeking production from a municipal police department, which may refer to the *Freedom of Information and Protection of Privacy Act* in contrast to production of documents sought from the R.C.M.P. Federal legislation generally applies to the R.C.M.P. and the order is likely to refer to the *Privacy Act* (Canada). The onus is on all of the parties consenting to the order to ensure they are referencing the correct authority. Samples of these orders may be found in a number of the CLE Manuals.
Rule 8-3 and Rule 8-4	Q	What form of order should be used for desk order applications?
	A	Rule 8-3(1)(b) requires that a consent order be in Form 34 and Rule 8-4(1)(b) requires that orders in respect of which no notice is required be in Form 35.
Rule 8-3	Q	Is a party represented by a committee in a *Patients Property Act* application, or a person represented by an executor in an estate matter, a person under a "legal disability" for the purpose of Rule 8-3(2)(b)(i)?
	A	A "person under a legal disability" refers to someone who is either mentally incapable or legally incapable because they are under the age of majority. If a registrar is unsure if a party applying for or consenting to an order is a “person under a legal disability” the registrar should exercise caution and refer the application to the court under Rule 8-3(2)(a).
Rule 8-3 and Rule 12-5(67)	Q	Applications for consent orders providing that issues of liability and damages be tried separately are referred by the registrars to the court for approval. Sometimes

		the application is rejected by the court for lack of evidence and the court requests an affidavit justifying why these issues be tried separately. Should the registrar require such supporting affidavit as a matter of course before referring the application to the court and, if so, what is the authority?
	A	Yes, an affidavit justifying why these issues should be tried separately should be filed with the requisition requesting such consent order in addition to the other filings/requirements set out in Rule 8-3(1). Because these orders are discretionary, the applicant should be submitting a supporting affidavit addressing the factors discussed in *Emtwo Properties Inc. v. Cineplex (Western Canada) Inc.,* 2009 BCSC 1592.
Rule 8-3 and Rule 22-5(8)	Q	There seems to be some inconsistent practices with respect to consent orders seeking to have two or more proceedings tried at the same time. Is the registrar able to approve these orders and are any additional materials required to be submitted?
	A	Applications for consent orders to have two or more actions tried at the same time should <u>always</u> be referred to an associate judge or a judge for approval under R. 8-3(2)(a). In addition to the documents required under Rule 8-3, the applicant should file an affidavit setting out facts in support of the application as discussed in *Shah v. Bakken,* (1996) 20 B.C.L.R. (3d) 393. Preferred practice is to file an order in each proceeding. Regardless, any order filed must include one style of proceeding only and must also include the consent of all affected parties.
Rule 8-3 and *Insurance (Vehicle) Act*	Q	How should a consent order be processed when ICBC has signed on behalf of a defendant pursuant to section 20 of the *Insurance (Vehicle) Act*?
	A	Rule 8-3(2) requires, among other things, that the registrar be satisfied that an application for a consent order is consented to and that the materials appropriate for the application have been submitted. Section 20(5) and (7) of the *Insurance (Vehicle) Act* allows ICBC to consent on behalf of a defendant in two situations, provided it has taken certain prescribed steps. The situations are these:

		(a) Section 20(5): Where ICBC has sent a notice in prescribed form to an uninsured motorist (and, if they are not the same person, to the registered owner) and that person either does not reply or replies with a response other than a denial of liability; (b) Section 20(7): Where ICBC has intervened in an action against an uninsured motorist for a reason set out in Section 20(6), i.e., because that motorist, as defendant, has failed to appear or, having appeared, consents to judgment or does something that entitles the plaintiff to bring default proceedings. Accordingly, under Rule 8-3(2) “the materials appropriate for the application” are as follows: (a) If signing a consent pursuant to section 20(5), ICBC must file an affidavit confirming that: (i) it has sent to the uninsured motorist (and, if applicable, to the registered owner) a notice in prescribed form by registered mail at least 8 days prior (the notice is deemed to have been received on the 8th day after mailing); and (ii) no reply denying liability has been received. (b) If signing a consent pursuant to section 20(7), ICBC must file an affidavit confirming that it has intervened in the action by reason of one of the acts or defaults by the uninsured motorist that are set out in section 20(6). It should be noted that a judgment by consent against an uninsured motorist who is an infant must not be entered without approval of the court [section 20(8) of the *Insurance (Vehicle) Act*].

		Finally, a consent judgment must not be entered in an action where an order granting judgment against the same party has already been entered
Rule 8-3(1)	Q	Is an application made under Rule 8-3(1) to remove an action from fast track litigation (Rule 15-1(6)) within the jurisdiction of a registrar?
	A	Yes if all of the consents required by Rule 13-1(10) are included a registrar may approve such an order.
Rule 8-3(1)	Q	When all parties consent to an application to have a court file sealed is it appropriate for the application to proceed under Rule 8-3(1)?
	A	No an application seeking to have a court file (or part of a court file) sealed should be spoken to in chambers by filing a notice of application. Practice Direction 58 – Sealing Orders specifies that these applications must be set for hearing, and may not be brought by desk order, even if by consent. (See the decision of Mr. Justice Myers in *New World Expedition Yachts LLC v. P.R. Yacht Builders Ltd*, 2010 BCSC 1496)
Rule 8-4	Q	A desk order application for substitutional service was rejected as the requisition stated "each affected party has consented to the order". The defendant who was to be served did not sign the order and the application was returned to counsel to correct the requisition. How closely should registrars check the Form 31 requisition when a desk order application is submitted?
	A	The registrar should check the requisition. If it says all parties have consented, then the consents must be evident or the application should be rejected. Form 31 provides a choice under paragraph 3 between “each party affected has consented to the order” or “the evidence in support of the application is…..” In this case, counsel should resubmit the application as one without notice and provide the necessary evidence as, clearly, a party against whom a substitutional service order is sought cannot consent to the granting of such order.
Rule 8-5(1)	Q	Is a deputy district registrar permitted to grant an application for short notice when there is no judge or associate judge available to hear the application?
	A	No, all short notice applications must be heard by a judge, associate judge or a legally trained registrar. If a judge, associate judge or legally trained registrar is not available in your registry the short notice

		application should be referred to Supreme Court Scheduling who will arrange to have someone hear the matter.
Rule 8-5(1)	Q	Must a filing fee be paid for a short notice application?
	A	No. The application may be made by requisition in Form 17.1 so there is no filing fee for the short notice application. However, a fee is payable for the main application when the notice of application is filed with the signed requisition granting short notice.
Rule 8-5(1)	Q	What is the procedure for short notice under Rule 8-5(1)?
	A	Applicants should file the documents and follow the procedures set out in Rule 8-5(1) - (5). The applicant completes the short notice requisition (Form 17.1) and attends at the court registry with the requisition, a copy of the notice of application and affidavit(s). The applicant will be directed to a courtroom to speak to the application for short notice and if granted the judicial officer hearing the application will endorse the requisition. After the hearing the applicant will return to the registry with the endorsed requisition and will file the notice of application and any affidavits. The applicant must then serve a copy of the requisition, notice of application and any affidavits to all parties that may be affected by the relief sought within the time fixed by the presider.
Rule 8-5(6)	Q	How does a party apply for an urgent order without notice pursuant to Rule 8-5(6)?
	A	The application must be brought by filing a notice of application and an application record in accordance with Rule 8-1. The application must be spoken to in chambers if notice is required but has not been given because of urgency.
Rule 9-5(3)	Q	What should we as registrars do when someone commences a proceeding against God, or the King, etc.?
	A	File the documents, but note the provisions of Rule 9-5(3). If the registrar considers Rule 9-5(1) is applicable, they may refer the matter to a judge upon accepting the documents for filing and before filed copies are returned to the applicant.
Rule 9-5(3)	Q	Should the registrar refer a filed document to the court under Rule 9-5(3) upon the request of a party alleging that the pleading is scandalous, frivolous or vexatious?
	A	No. Once a document has been filed and served the registrar does not have authority to make the referral

		under Rule 9-5(3)(a)(i) as it requires the registrar to retain all filed copies.
Rule 10-4(2)	Q	Can a person make an application to the court prior to commencing a proceeding?
	A	Yes. Rule 10-4(2) allows for urgent applications for injunctions to be made prior to the commencement of a proceeding.
Rule 12-5(11) and (14)	Q	How should an exhibit be entered by a clerk at a registrar's hearing?
	A	An exhibit filed in a registrar's hearing should be treated as any other exhibit entered in a proceeding.
Rule 13-1	Q	Does an order made pursuant to a summary trial application have to be initialled by a judge?
	A	PD – 26 issued by Chief Justice Bauman on July 12, 2010 provides: Orders made following appearance in chambers 1. An order submitted to the registry for entry following an appearance in chambers will be checked by the registrar against the clerk's notes. 2. If the order submitted corresponds to the clerk's notes and is not otherwise questioned by the registrar, the registrar will sign and enter the order. 3. If the order submitted to the registry does not correspond to the clerk's notes or is otherwise questioned by the registrar, the order must be approved by the judge or associate judge before the order is entered. Orders made after a trial 4. An order made after a trial must be approved by a judge before the order is entered. Therefore, an order made following a summary trial application does not need to be initialed by the judge who made it.
Rule 13-1	Q	If bonds are presented pursuant to an order of the court by a bonding company not listed as one accepted by the government, where is the registrar's authority to reject it?
	A	Most legislation that requires a bond be posted, such as section 10 of the *Patients Property Act*, includes language that the bond must be approved by the registrar of the Supreme Court, therefore, for a registrar to approve the bond they should be checking for; • The information in the bond is consistent with the terms of the order.

		• That the bond is written by an insurer that is currently authorized to write guarantee and/or surety business in British Columbia. The Registrar's Office distributes a list of Insurers Currently Authorized to Write Guarantee and/or Surety for British Columbia. The list is issued by the BC Financial Services Authority. The list is also posted on the Court's website at http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/Surety%20List.pdf
Rule 13-1	Q	If the court places a condition on an order (*i.e.* that the order will only be effective if certain conditions are met) must the order be confirmed by an application to the court?
	A	Yes, in most circumstances, a second application must be made to the court for a further order based on evidence confirming that the condition has been satisfied. An exception would be if the original order specified that the order would take effect without further application on filing of specified material or other requirements; for example, an affidavit of service/delivery of the notice of application.
Rule 13-1	Q	What is the registry's responsibility when checking an order made before the court when the order contains provisions not spoken to before the judge or associate judge, but endorsed by all parties?
	A	Orders must reflect what was spoken to in court. If counsel insist on adding extra provisions or refer to matters not included in the court clerk's notes, you may wish to refer the order to the judge or associate judge who made the order. (See PD-26 - Orders)
Rule 13-1	Q	When an order is resubmitted to the registry with a letter from counsel indicating that the clerk's notes are incorrect should the registrar forward the order directly to the judge/associate judge that made the order for their approval?
	A	The registrar should first arrange to have the court clerk review the audio from the hearing. If the clerk's notes are incorrect the clerk should amend the notes and the registrar may then proceed to enter the order. If the audio confirms the clerk's notes are correct the order and the letter from the party may be forwarded to the judge/associate judge for their approval.

Rule 13-1	Q	Is a registrar authorized to check and enter a chambers or pre-trial order that includes a term dispensing with a party's signature?
	A	Practice Direction 26 - Orders, permits a registrar to check an order that was heard in chambers or any other pre-trial hearing against the clerk's notes and when the order is entirely consistent with the notes the registrar may enter the order. A recent decision from the Court of Appeal (*Vetrici v. Vetrici*, 2017 BCCA 121) addresses a concern where an order was entered when the signature of a party had been dispensed with and the terms included in the entered order were not consistent with what the judge had ordered. It has been recommended for our court that the best practice for complicated or detailed orders should be for the adjudicator to include a direction as part of the clerk's notes that the order be referred to the adjudicator when an order is made dispensing with the approval as to form by a party. If the court does not direct that the order be sent to the adjudicator for signature, the registrar may check and enter the order but the registrar must ensure that the terms of the order are <u>exactly</u> as indicated on the clerk's notes and if in doubt the registrar should err on the side of caution and refer the order to the adjudicator for signature.
Rule 13-1	Q	What happens when an order is submitted to the registry for entry that requires the signature of a judge or associate judge who has retired?
	A	If the judge or associate judge is no longer available to sign the order it should be forwarded to a resident senior judge or if there are no resident judges, to the Chief Justice or the Associate Chief Justice for signature.
Rule 13-1(1)	Q	Often vesting orders made in foreclosure proceedings are submitted to the registrar for checking and entry where the clerk's notes indicate the order was made pursuant to a contract of purchase and sale. Sometimes, the draft order submitted contains names that do not exactly match the names in the contract of purchase and sale. For example the contract of purchase and sale may refer to the purchasers as

		“Terry Labelle” and “Nelly Labelle” but the draft order submitted names them as “Terrance Gabriel Labelle” and “Nelly Evelyn Labelle”. Is a registrar able to approve the order submitted or should it be referred to the judge or associate judge who granted the vesting order for approval?
	A	If it the registrar is satisfied that the purchasers named in the contract of purchase and sale are the same purchasers as those named in the order submitted for entry, it is within the registrar’s discretion to enter the order.
Rule 13-1(1)	Q	Will the registry accept an order for entry which has been faxed between the parties but which bears original signatures approving the form of order?
	A	If the order is in the proper form, sufficiently legible, the paper used meets the requirements of Rule 22-3(2) and the original signature of the parties appearing are endorsed, the order should be accepted.
Rule 13-1(1)	Q	Can a trustee in bankruptcy approve an order that was made prior to the date the party entered into an assignment of bankruptcy?
	A	No. The order must be approved by the parties or their counsel acting at the time unless the court dispenses with such approval.
Rule 13-1(1)	Q	If only one party appears at a chambers application does that party have to approve the order?
	A	Yes, even if it is only the applicant who appears, approval must nevertheless appear on the order.
Rule 13-1(1)	Q	If an order is granted at a different location from where the file was opened, how could we provide a better service for checking and entering the order?
	A	There is no specific rule requiring that orders be filed in the originating registry. However, Rule 13-1(1) stipulates that the order must be sealed by the registrar. Given the definition of "registrar" (Rule 1-1(1)) and the fact that the seal of the court must be stamped on every document requiring a seal “issued from or filed in that registry” (Rule 23-1(5)), this should be done in the registry that the proceeding is being conducted, unless the court orders otherwise. The order may be checked in either registry by accessing the clerk’s notes from the CEIS database but since the order must be entered in the registry in which

		the proceeding is being conducted it would be more efficient to have the order submitted there for checking and entering.
Rule 13-1(8)	Q	When should an order be dated when judgment is not pronounced in open court?
	A	When the judgment is not pronounced in open court, it is pronounced when the Judge's reasons are released to the parties. The release date appears on the upper right hand corner of the reasons as well as in the date stamp that is placed on the reasons by the registry.
Rule 13-1(8)(b) and *Court Order Interest Act* section 7(2)	Q	From what date does interest accrue on an amount awarded under a certificate of costs?
	A	Costs are payable upon pronouncement of the judgment and interest accrues from the date of the judgment and not from the date of the taxation unless the court specifically provides that interest shall not run until some later date. In effect, a taxation of costs is a formality in the nature of the entry of an order***:*** *Syed v Randhawa*, (1996) 24 B.C.L.R. (3d) p.164
Rule 13-1(10)	Q	What authority precludes a registrar from settling a consent order?
	A	Rule 13-1(10): "A consent order <u>must not</u> be entered unless the consent of each party of record affected by the order is signified" (underline added)
Rule 13-1(11)	Q	Can a registrar include an entitlement to costs at the appointment for settling an order?
	A	Yes, when settling an order, a registrar may include for the benefit of a successful party a term entitling that party to costs provided the judge or associate judge who pronounced the order has not otherwise disposed of the issue of costs: *Chernoff v Insurance Corporation of B. C.* (1992) 12 C.P.C. (3d) 220.
Rule 13-1(11)	Q	If a registrar settles an order after a trial of the proceeding, must the order be put before the judge for approval?
	A	No, the order can be entered once settled by the registrar.
Rule 13-1(17)	Q	What does "to provide for any matter which should have been but was not adjudicated upon" pursuant to slip Rule 13-1(17) mean?
	A	These applications are normally presented as a desk order with affidavit material in support. Registrars should not reject these applications, as they are in the sole

		discretion of the court but rather, a registrar should refer the order back to the judge or associate judge who made it originally. The subrule enables a judge who would otherwise be *functus officio* after entry of an order to include a term that was omitted, where it is shown the parties intended to include that term of the order: *Dalziel v Dalziel* (1977) 3 B.C.L.R. 73 at 76-7; 4 C.P.C. 73 (S. C.)
Rule 13-2	Q	Can a Writ of Execution directed "To a Bailiff" be issued?
	A	No. Form 50 (Writ of Seizure and Sale), Form 51 (Writ of Sequestration), Form 52 (Writ of Possession), Form 53 (Writ of Delivery) and Form 54 (Writ of Delivery or Assessed Value) specifically provide that they are to be directed "To the Sheriff". Writs of Execution are to be executed by a court authorized bailiff, not a bailiff of the creditor's choice.
Rule 13-2	Q	Is a deputy district registrar permitted to approve an application for enforcement, such as a garnishing order after judgment or a writ of execution based on the order for personal judgment that was granted as one of the terms in an order nisi or must the petitioner apply to the court for leave to enforce under Rule 13-2(8)?
	A	The order for personal judgment in an order nisi is a final order and not conditional. Therefore no application to the court for leave to enforce is required. (See *Discovery Trust Co. of Canada v. Ali* [1986] B.C.J. No. 2273)
Rule 13-2(8) and (13)	Q	Is it appropriate for a vesting order pronounced in a foreclosure proceeding to include a term that a writ of possession be issued without a further court order?
	A	In some instances the court may wish to include such a term in a vesting order, however, this is not one of the "usual" terms and the onus is on the applicant to specifically advise the court that they are seeking such an order. If the court is inclined to grant the order it must be noted on the clerk's notes and the registrar is then able to enter the order including this term. Where a vesting order has been entered in the usual terms and the applicant requires a writ of possession, they must apply to the court pursuant to Rule 13-2(8) because a vesting order is conditional on the sale completing.

		A registrar may issue a writ of possession based on an order absolute of foreclosure pursuant to Rule 13-2(13)(a) as there is no condition precedent to the granting of the writ.
Rule 13-2(10)	Q	Where a judgment has been assigned to another party, can the new judgment holder issue execution proceedings?
	A	The new judgment holder must obtain leave of the court to issue execution (see Rule 13-2(10)). This involves an application to the court.
Rule 13-2(16)	Q	When the registrar issues a writ of execution, can the original be given back to the creditor for enforcement purposes?
	A	No, the writs must be directed to a court bailiff designated by the Ministry of Justice. You will find the listing of the designated bailiffs in the Court Services Branch List of Civil Execution Contractors (Court Bailiffs) and Government Contract Administrators and in the B. C. Lawyers Directory.
Rule 13-3(3) Appendix C Schedule 3	Q	Is conduct money required to be served with a subpoena to debtor?
	A	A party subpoenaed to attend an examination under Rule 13-3 (subpoena to debtor) is entitled to a daily witness fee (currently $20, plus reasonable expenses). With respect to expenses, if the individual subpoenaed lives less than 8 kilometers from the place of examination, no expenses are payable; if the distance is more than 8 kilometers, the debtor is entitled to $.30 per kilometer; if he/she resides within 200 kilometers of the place of examination; if the debtor resides more than 200 kilometers from the place of examination, the minimum return airfare must be provided together with $.30 per kilometer each way from his or her residence to the departure airport and from the arrival airport to the place where the examination is conducted. Where appropriate, allowances for meal expenses and overnight accommodation will be required. (see Schedule 3 of Appendix C)
Rule 13-3(3)	Q	Does a subpoena to debtor need to be served by a sheriff?
	A	No. Rule 13-3(3) requires that the debtor be served at least 7 days prior to the date of the examination and Rule 4-3(1)(f) requires that the subpoena be personally served.

		Historically subpoenas to debtor may have been served by the sheriff, however service by a sheriff is not required.
Rule 13-3(3)	Q	When a sheriff has been requested by the creditor to serve a subpoena to debtor on a person, is it necessary for the sheriff to swear an affidavit of service or would a certificate suffice?
	A	An endorsed certificate is acceptable: see Rule 4-6(2) and Form 18.
Rule 13-3(12)	Q	If a debtor fails to obey an examiner's order for payment by installments, what is the creditor's option?
	A	The creditor may file a notice of application for committal in Form 58 on filing an affidavit showing that the default has occurred: Rule 13-3(12).
Rule 14-1, 19-3 and *Court Order Enforcement Act*	Q	Is service on the debtor of an appointment to assess costs for registration of a foreign judgment necessary?
	A	Yes. Although the application for registration is made without notice, the debtor has 30 days to challenge the registration once they have notice of it. Since there is no requirement for the debtor to file a response, the argument that service of the appointment is not required because the debtor failed to respond cannot succeed. Notice of a claim -- even a claim for costs -- is an elementary part of our procedure, because a debtor must have an opportunity to challenge it. Until service of the appointment the debtor would have no idea of the costs being claimed.
Rule 14-1	Q	Is a successful unrepresented litigant entitled to an award of costs?
	A	Yes. In *Skidmore et al v. Blackmore*, (1995), 2 B.C.L.R. (3d) 201, the Court of Appeal found that party and party costs serve several functions: they partially indemnify the successful litigant, deter frivolous actions and defences, encourage both parties to deliver reasonable offers to settle, and discourage improper or unnecessary steps in the litigation. Based on this reasoning, the court concluded that successful unrepresented litigants should be entitled to the benefit of party/party costs under Appendix B.
Rule 14-1	Q	When an appeal of the decision of the trial judge has been filed, should the registrar proceed with an assessment of costs?
	A	Yes, unless a stay of proceedings has been granted by the court.

Rule 14-1	Q	Can three separate plaintiffs in the same proceeding submit three bills for assessment if awarded costs at the end of the day?
	A	No. Not in the absence of a specific order. One cause of action, one bill to be submitted for assessment. See *A.G. of Canada v. Canadian Pacific Ltd.* (1981) 30 B.C.L.R. 230: "Plaintiffs who sue together must be jointly represented."
Rule 14-1	Q	Can a successful plaintiff assess its costs before the defendant's counterclaim has been heard and the entire action has been disposed of?
	A	Yes. The plaintiff's success is final, not interlocutory: *Doherty v. Blades Aviation Ltd. et al* (1996), 77 B.C.A.C. 150; 126 W.A.C. 150.
Rule 14-1(3)	Q	When an award of special costs is made by the court, under Rule 14-1(3) how is the bill presented at the assessment and what does the registrar look for?
	A	A court may order that costs payable by one party to another be assessed as special costs [Rule 14-1(3)]. A bill for special costs is usually presented in the same form as a bill between a lawyer and his/her client under the *Legal Profession Act.* It may be presented on a lump-sum basis [Rule 14-1(30)] but this means that the fee may be shown as one lump sum and not allocated item by item. A lump-sum bill must contain a sufficient description of the nature of the services and of the matter involved as would, in the opinion of the registrar, afford any lawyer sufficient information to advise a client on the reasonableness of the charge made [Rule 14-1(31)]. Particulars may be demanded and ordered if a sufficient description is not given. In assessing a bill for special costs the registrar is performing a task akin to that which they perform when reviewing a bill between a lawyer and his own client under the *Legal Profession Act*, however, different criteria are enumerated in Rule 14-1(3). The registrar must only allow those fees, expenses and disbursements which were reasonably necessary and proper to conduct the proceeding. They must apply an objective test to the matter, *i.e.* what would a reasonable client pay a reasonable lawyer for the work done (see *Gichura v. Smith,* 2014 BCCA 414).

		As to disbursements, the registrar must disallow charges and disbursements, which were not necessary or proper, even though they were specifically authorized by the client. Since party and party costs are only a partial indemnity, where special costs are awarded it is proper for the registrar to inquire what were the actual fees paid or agreed to be paid by the successful party to his own solicitor. For that purpose, discovery may be obtained of materials in the solicitor's file.
Rule 14-1(5)	Q	What is being allowed for fax charges and photocopies as disbursements on an assessment?
	A	Thirty-five cents per page incoming or outgoing for fax; twenty-five cents per page for photocopies. (See Administrative Notice 5 effective July 1, 2010). Recent case law has established an allowance for fifteen cents per page for scanning documents. (*Turner v. Whittaker,* 2013 BCSC 712)
Rule 14-1(5)	Q	Is there a difference between what a party may recover in relation to an expert's fees for attending at court to give evidence and what must be paid by such party to secure the attendance of the expert at trial?
	A	Yes. If a subpoena is provided to the expert, that subpoena must be served and the fee set out in Schedule 3 of Appendix C must be tendered to the witness with the subpoena in advance to secure the witness' attendance. On an assessment of costs, a registrar must determine that the expert's fees were "necessarily or properly incurred in the conduct of the proceeding" and then must allow a "reasonable amount" for such fees (which may not be the full amount of the fees charged). See Rule 14-1(5). Reference should also be made to case law on the subject.
Rule 14-1(8)	Q	Is GST allowable on a bill of costs relating to a Schedule 1 & 2 default judgment and on an assessment for special costs?
	A	It depends. Rule 14-1(8) provides that: "If tax is payable by a party in respect of legal services or disbursements, a registrar must allow an additional amount to compensate for that tax……

		a) if the tax is payable in respect of legal services, the additional amount to compensate for the tax must be determined by multiplying the percentage rate of the tax by, (i) in the case of a judgment entered on default of response to civil claim, the costs allowed under Item 1 or 2, as the case may be, of Schedule 1 of Appendix B, (ii) in the case of a writ of execution, a garnishing order, a subpoena to debtor in Form 56, a notice of application for committal in Form 58 or an order of committal in Form 59, the costs allowed under Item 1 or 2, as the case may be, of Schedule 2 of Appendix B …. Similarly, where a party has paid tax in respect of legal services or disbursements, an award of special costs, should include an amount for tax as "proper or reasonably necessary" within the meaning of Rule 14-1(3).
Rule 14-1(9)	Q	If reasons for judgment were silent as to costs, and the outcome was clear, can the registrar settle an order including costs to the successful party?
	A	Yes. See Rule 14-1(9), costs to follow the event.
Rule 14-1(9)	Q	If a party files an Appointment to assess costs before the Registrar, what must be attached to the Appointment?
	A	Unless an enactment authorizes a registrar to assess costs without an order, the order awarding costs that has been pronounced and entered must be attached to the Appointment. If the matter has settled and the settlement agreement provides for the payment of costs to be assessed, a copy of the signed settlement agreement must be attached to the Appointment to show the entitlement to costs.
Rule 14-1(10)	Q	Is a plaintiff who recovers a judgment within the monetary jurisdiction of the Provincial Court entitled to Appendix C, Schedule 1, costs on taking default judgment?
	A	Rule 14-1(10) states: A plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the *Small Claims Act* is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason

		for bringing the proceeding in the Supreme Court and so orders. Therefore, on an application for default judgment, a registrar should only allow the plaintiff his/her disbursements, unless there is legislation that requires that proceeding be commenced in the Supreme Court. If the registrar is unsure as to why the proceeding was brought in the Supreme Court it should be referred to a legally trained registrar, associate judge or a judge.
Rule 14-1(21)	Q	Must an appointment for an assessment of costs, an examination of an agreement between a lawyer and a client or a review of a lawyer's bill have attached the bill or agreement when delivered?
	A	Yes. Pursuant to Rule 14-1(21)(b), the Form 49 appointment must have attached to it; • the bill to be reviewed, • the agreement to be examined, or • the bill of costs to be assessed
Rule 14-1(21)	Q	Should the original lawyer's bill be attached to the appointment?
	A	No, a copy is sufficient.
Rule 14-1(21), Rule 4-2 and Rule 4-3	Q	What are the service requirements of an appointment to assess costs, to examine an agreement between a lawyer and his/her client or a review of a lawyer's bill
	A	Rule 14-1(21)(c) requires service of the appointment and any affidavits at least 5 days before the date of the appointment: i. in the case of a bill to be reviewed, on the lawyer whose bill is to be reviewed, on the person who is charged with the bill or on the person who has agreed to indemnify the person charged, as the case may be, ii. in the case of an agreement to be examined, on the lawyer who is a party to the agreement to be examined, or iii. in the case of a bill of costs to be assessed, in accordance with subrule (25) Subrule (25) requires service of the appointment to assess costs on: a) the person against whom the costs are to be assessed, and

		b) every other person whose interest may be affected. In respect of an appointment to assess costs, likely Rule 4-2(2) which sets out the methods for ordinary service on a person who has provided an address for service in the proceeding, will apply. An appointment to examine an agreement or review a lawyer's bill is more likely to be an originating proceeding. Rule 4-3(1)(j) requires personal service of a document that is to be served on a person who is not a party of record to the proceeding or who has not provided an address for service in the proceeding under Rule 8-1(11) and should govern these latter hearings.
Rule 14-1(22)	Q	What is the procedure for setting down an appointment to have a bill of costs assessed in a location other than the originating registry?
	A	All parties must agree to have the assessment set down in another location or an order of the court is required, Rule 14-1(22)(c). Leave of the registrar pursuant to Rule 8-2(4) only applies to court applications. The party setting the appointment for hearing must call Supreme Court Scheduling in the registry where they want it heard for a date. The original appointment should be filed in the originating registry. A hearing record (see Rule 23-6(3.1)) must be filed no later than 4pm on the business day that is one full business day before the date set for the hearing at the registry where the matter will be heard.
Rule 14-1(26)	Q	Often, on an application for default judgment brought by a bank against a husband & wife, the claim includes multiple debts such as lines of credit, personal loans and/or credit card debts. Some of the amounts may be owed jointly by the couple and others may be owed by only one of them. Frequently, the bank provides two bills of costs (one against each of the husband and the wife) which duplicate the amount of costs sought against each party and the disbursements for commencing the action, service, etc. Should the registrar assess two bills of costs and allow the plaintiff two sets of costs in these circumstances?

	A	No. One bill of costs should be submitted by the plaintiff. It should include the total amount of costs involved and one set of disbursements. If one of the parties is only required to pay disbursements (because the value of the claim falls within the Small Claims limits), this can be clarified on the default judgment. The registrar is not required to apportion the amount of costs to each defendant.
Rule 14-1(26)	Q	Are registry agent fees for filing documents in the court registry an allowable disbursement at the default judgment stage?
	A	Yes.
Rule 14-1(26)	Q	When assessing costs on a default judgment application, are CSO Online Fees allowed?
	A	Yes, this is a fee payable to the Crown.
Rule 14-1(27)	Q	What is the procedure for obtaining a certificate of costs if the party charged consents to the amount of a bill of costs pursuant to Rule 14-1(27)?
	A	The party requesting the certificate must provide: 1) a requisition referring to the order or rule allowing costs; 2) a copy of the entered order for costs if the costs were allowed by order; 3) the fee for the certificate; and 4) a certificate in Form 64, signed by consent of the parties. 5) if a bill of costs is presented (not required) date and sign as the registrar indicating it has been consented to by the parties. The registrar will issue the certificate and keep a copy for the file.
Rule 14-1(27)	Q	Must the date of a certificate of costs reflect the date the registrar assessed the costs or can the certificate be the same date as the order granting the costs?
	A	The registrar should certify the date on which the costs were assessed. Form 64 says: "I CERTIFY….. that on [*insert day, month and year of the assessment*] the costs of the ….. However, if the certificate is endorsed by the registrar on a later date, the registrar may date the bottom of the certificate on the actual date of signing. It should be noted that the costs are payable when the court's judgment is pronounced. See case law *Syed v. Randhawa* (1996), 136 D.L.R.(4th) 119 at p. 122 (S.C.)

Rule 14-1(27) and (28)	Q	Now that registrar hearings are recorded are deputy district registrars permitted to sign a certificate of costs or a certificate of fees following a registrar's hearing based on the clerk's notes?
	A	Yes. A DDR may sign the certificate of costs or certificate fees when filed subsequent to the registrar's hearings pursuant to the clerk's notes. Note: An interest calculation may be required for the DDR to approve a certificate of fees where the clerk's notes do not reflect the amount of interest and the applicant was directed to file an updated interest calculation with the certificate.
Rule 14-1(28)	Q	What is the correct procedure to request a certificate of legal fees when both parties consent to the amount due under the lawyer's bill?
	A	There are two scenarios; 1) The parties may consent to the fees prior to any court proceeding being commenced and in this situation they must file; • an appointment <u>without</u> a scheduled hearing date; • a requisition requesting the certificate of fees; • a certificate of fees signed by consent, and • a copy of the lawyer's bill. 2) Where an appointment has been filed with a scheduled hearing date and the parties consent to the fees prior to the hearing; • they may appear at the hearing and speak to a consent certificate of fees, or • they may adjourn the hearing, and o file a requisition requesting the entry of a consent certificate of fees, and o the certificate signed by consent of all parties.
Rule 14-1(29)	Q	How is a review of a registrar's decision on an assessment of costs brought before the court?
	A	Rule 14-1(29) provides that: "a party who is dissatisfied with a decision of a registrar on an assessment of costs may, within 14 days after the registrar has certified the costs, apply to the court for a review of the assessment." It should be noted that this is not an appeal of a registrar's decision (which is governed by Rule 23-6(8):

		See *Xerox Canada Inc. v. Sweany* (1990) 42 C.P.C. (2d) 101 at 102 (S. C.)
Rule 15-1(13)	Q	Under Rule 15-1 Fast Track Litigation, can a trial date be set 5 months from the date of the application for a trial date?
	A	If a party applies for a trial date within 4 months after the date on which the fast track litigation rule becomes applicable to the action, the registrar **must** set a date for trial that is within 4 months after the application for the trial date. However, parties are free to ask for a trial date that suits counsels' calendars and that may be later than 4 months after the date the action came within the ambit of Rule 15-1.
Rule 16-1	Q	Can a party file a notice of hearing of petition in the original registry and name as the place of hearing some other registry elsewhere in the Province?
	A	The hearing of a petition must be heard in the registry where the proceeding is being conducted unless an order has been made to transfer the file for hearing in another registry under Rule 23-1(13). (See *Bank of Montreal v. Crocker,* 2012 BCSC 195)
Rule 18-1(5)	Q	How do the parties or counsel make an application, for example, for an adjournment, to the registrar prior to the date set for an appointment before the registrar?
	A	1. A party may file a requisition for the application, with service on the other side. These are usually set at 9:30 a.m. before any district registrar; or 2. A party may make an application to an associate judge in chambers by way of notice of application and affidavit; or 3. A party may request a pre-hearing conference before a registrar pursuant to Rule 18-1(5).
Rule 18-1(10)	Q	Where is the authority for a district registrar to refer a matter to the court for an opinion during the course of a reference pursuant to Rule 18-1?
	A	Rule 18-1(10) allows an associate judge, registrar or special referee to seek "the opinion of the court on any matter arising in the hearing".
Rule 18-2 and Rule 18-3	Q	How does Rule 8-1 apply to matters that are heard in chambers but are not commenced by petition and are not interlocutory applications such as appeals from an associate judge or registrar, appeals under Rule 18-3 and stated cases proceedings brought under Rule 18-2?
	A	These matters are not governed by Rule 8-1 because they are not originating or interlocutory applications.

		Each has specific rules setting out the appropriate procedure for setting a matter for hearing.
Rule 20-2(12) and (13)(b)	Q	Does an affidavit of a party attaining the age of majority filed in a proceeding affect the style of cause?
	A	Yes. The style of cause should not refer to a litigation guardian after an affidavit (Form 78) confirming the attainment of the age of majority has been filed (see Rule 20-2(13)(b)). However, this is a matter of form only. Documents should not be rejected for this reason.
Rule 20-2(14)	Q	Where a defendant is an infant at the commencement of an action and subsequently attains the age of majority, can a plaintiff apply for default judgment without obtaining leave of the court?
	A	As the defendant would no longer be a "person under a disability", leave of the court would not be required.
Rule 20-5	Q	Is there a charge to swear an affidavit in support of an application for an order to waive fees?
	A	Until the court makes an order to waive fees, rather than risk having to process a refund, a fee should not be collected in this instance.
Rule 20-5	Q	Does an order to waive fees apply to applications under the *Bankruptcy and Insolvency Act* or the *Divorce Act*?
	A	An order to waive fees does not apply to bankruptcy proceedings because the *Bankruptcy and Insolvency Act* has its own tariff. However, it does apply to *Divorce Act* proceedings with the exception of the $10.00 federal registration fee.
Rule 20-5	Q	When a person is granted an order to waive fees, does it apply to all proceedings in the file?
	A	The court may order that a party is not required to pay fees in relation to the proceeding as a whole or the order may be more specific. See Rule 20-5(5). The party must produce a copy of their order each time they file documents that attract fees or request photocopies so the registry may determine if the order covers the documents sought to be filed or the request for photocopies. An order to waive fees applies only to fees payable to the Crown under Appendix C of the Supreme Court Civil and Family Rules. It does not apply to other fees such as those payable for transcripts, to

		the federal government for registration of divorce proceedings or under the *Jury Act* for jury fees.
Rule 21-1 and Rule 3-8	Q	Under the old Supreme Court Rules a party was required to apply to the court for default judgment in an action *in rem*, however, Rule 21-1 does not include any subrules dealing with default judgment applications. Is a party now able to apply under Rule 3-8 for a default judgment against a person or a ship?
	A	Yes Rule 3-8 applies to proceedings brought under Rule 21-1- Admiralty Matters.
Rule 21-1(9)	Q	To whom should an application for a warrant under Rule 21-1(9) be submitted?
	A	These applications should be forwarded to a legally trained registrar or in registries where there is no legally trained registrar, to an associate judge.
Rule 22-1 (1)(c)(i)	Q	Can a trial judgment be set aside by a consent dismissal order?
	A	No. An application to change or vary a judgment must be made in Chambers – Rule 22-1(1)(c)(i). See *Carla M. Courtenay Law Corporation v. Lalani*, 2001 BCCA 82.
Rule 22-1(7)	Q	Can one party adjourn a chambers application without the consent of the other party who has been served with the application?
	A	If a notice of application has been served, all persons who have had notice of the application must consent to the adjournment. Where there is no consent a court order is required to adjourn the application (Rule 22-1(7)). The procedures for consent adjournments are also found in Practice Direction 65 – Consent Adjournments effective 2024/01/15.
Rule 22-2	Q	When should registry staff act as "commissioners for taking affidavits"?
	A	If the documents are for use by the court, it is appropriate for registry staff to act as commissioners for taking affidavits. We should exercise caution in not performing dual functions, i.e. swearing affidavits in support of a garnishing order and then issuing the garnishing order as the registrar. As long as the affidavit is sworn by a commissioner other than the registrar who actually issues the process, there would be no conflict of interest.
Rule 22-2	Q	What steps should staff take having decided to act as "commissioners for taking affidavits"?

	A	Before you act as a "commissioner for taking affidavits": a) You must either personally know the deponent or be satisfied on the basis of photo identification (e.g. driver's license), that the deponent is the person before you, *i.e.* that their name matches the name and photo of the person named as the deponent of the affidavit; and b) You must be satisfied that the deponent understands what it is they are swearing to.
Rule 22-2	Q	If an affidavit has been filed in a proceeding and a minor change needs to be made, may registry staff re-swear the affidavit for the deponent?
	A	No, once the affidavit is filed, there is no authority for any changes to be made to it. If the affidavit has not been filed, registry staff may re-swear the affidavit but only in urgent circumstances. A better practice would be to suggest that the deponent return to the lawyer or notary who originally swore the affidavit for them.
Rule 22-2	**Q**	**Can an affidavit commissioned in British Columbia for use in the Supreme Court of British Columbia be signed electronically?**
	A	**No. The use of the word "sign" in Rule 22-2 has always been interpreted by the courts as "signed by hand". Rule 23-3(6) indicates that affidavits submitted via E-Filing must be accompanied by a Form 119 Electronic Filing Statement. That Statement must indicate that "the original paper version of the document appears to bear an original signature of the person…" [emphasis added]. Subrule (6.1) allows for affidavits to be *commissioned* by video conference, but does not allow for affidavits to be *signed* with an electronic signature.**
Rule 22-2	**Q**	**When commissioning an affidavit, does the commissioner have to indicate whether the affiant has chosen to swear or affirm?**
	A	**Yes, the commissioner should indicate clearly on the affidavit whether the affiant has chosen to swear or affirm by either circling the affiant's choice, or crossing out the option they are not choosing. This has been addressed in various judgments where members of the court have confirmed this requirement. See *British Columbia v. Adamson, 2016 BCSC 584*, and *PKS v. ANR, 2024 BCSC 2110*. The Law Society also confirms this in their Professional Legal Training Course document**

		which is publicly available: "Before an affidavit is sworn or affirmed, the affiant's chosen method must be indicated." Rule 22-3(1) allows for "variations as the circumstances of the proceeding require" to the Forms as prescribed. Indicating the affiant's choice of sworn or affirmed can be considered such a variation.
Rule 22-2(6)	Q	How would a commissioner for taking affidavits swear/affirm a document where the deponent is blind or illiterate?
	A	The commissioner must read the affidavit to the deponent and certify that the deponent seemed to understand.
Rule 22-2(6.1)	Q	How should an Affidavit be commissioned if it is sworn or affirmed by video conference?
	A	The Law Society of British Columbia has set out detailed instructions on how lawyers are to commission Affidavits by video conference. These instructions can be found here, at paragraph [12] under the Commentary section. Two additional paragraphs indicating the Affidavit was sworn or affirmed by video conference have been added to all prescribed Affidavits in the Forms and should be present at the end of the document when Affidavits are sworn or affirmed remotely. Note also that pursuant to Rule 22-2(5), the place of commissioning in the jurat should reflect the city or town where the *commissioner* (not the affiant) is located.
Rule 22-3	Q	Do you require backing sheets on documents filed in Supreme Court?
	A	No, although if counsel do not provide backing sheets they must put their address and phone number on either the face of the document or at the end of the document. Note: counsel's address and phone number should not appear on the face of an order or default judgment.
Rule 22-3(1)	Q	Are forms submitted for filing required to be exactly as set out in Appendix A?
	A	Rule 22-3(1) requires the forms in Appendix A or A.1 to be used if applicable, however it also allows for variations as the circumstances of the proceeding require. Many of the forms have multiple options and only the applicable option need be included on the form.
Rule 22-3(2)	Q	What is the proper way to submit a translation of a foreign document for use in court?

	A	An affidavit of the translator setting out the qualifications of the translator and attaching both the document and the translation as exhibits should be provided and filed to provide a link between the translation and the document.
Rule 22-3(2)	Q	Can a document prepared for use in court utilize both sides of the paper?
	A	Yes, Rule 22-3(2) does not preclude using both sides: "...every document purported for use in the court shall be in the English language, legibly printed, typewritten, written or reproduced on 8 1/2 inch x 11 inch durable white paper..."
Rule 22-3(5)	Q	When signing a certificate of pending litigation or a certificate of judgment is the full style of proceedings required on the certificate?
	A	No. Since certificates of pending litigation and certificates of judgment are neither an order nor a document that commences a proceeding, the full style of proceeding is not required on the certificate.
Rule 22-4(4)	Q	Is it necessary for a party to file a notice of intention to proceed when there are no other parties of record?
	A	No. The notice is only required when there are other parties of record.
Rule 22-5(8)	Q	Where an order has been made that two or more actions be tried at the same time, is it appropriate to include multiple style of proceedings on documents filed in the actions to be tried together?
	A	No. An order directing that two or more actions be tried at the same time must not have multiple styles of proceeding. CLE – *Supreme Court Chambers Orders – Annotated* provides a template with applicable terms of order for having more than one action tried at the same time.
Rule 22-5(8)	Q	When a desk order application is made to have more than one action tried at the same time, is a separate order required for each file?
	A	Technically a separate order should be filed in each action. However, the practice has been to accept one order. Having two styles of proceeding on one order is not acceptable (although this may be accepted if the judge's written reasons have both styles of proceeding on them).
Rule 23-1(7)	Q	Can a registrar use a signature stamp on a court document?
	A	A signature stamp cannot be used on an original document, as it requires a signature of the registrar. A stamp showing the name of the person who signed the

		original may be used on copies of the original document. Electronic documents may also be digitally signed and in those instances, no “original” signature is affixed.
Rule 23-1(13)	Q	What is the correct procedure to transfer a file for all purposes when an order has been made?
	A	A requisition requesting the transfer together with a copy of the entered order is filed at the registry where the proceeding is being conducted. The file is then transferred to the new registry. The receiving registry opens a new file and puts the new file number and new location on all documents in the file. The receiving registry should advise the originating registry of the new file number.
Rule 23-1(13)	Q	When an order is made transferring a matter to another location for hearing, what is the procedure for transferring the file?
	A	The party who obtained the order must file a requisition with a copy of the entered order requesting that the file be sent to the other location. The request should be made within a reasonable period before the hearing date to ensure the file reaches the other registry in time. Note: As hearing records are required for the majority of chambers applications and registrar hearings it may not be necessary to transfer the file.
Rule 23-4	Q	If counsel insist interest should be payable on monies in court but the registry's position is the money falls under Rule 23-4(1)(a), (b), (c) or (d) what is counsel's recourse?
	A	Counsel would have to make an application to the court by way of notice of application requesting a declaration the monies come within the definition of "funds" in Rule 23-4.
Rule 23-4(5)	Q	When an order directs payment out of funds in court to a party, can the funds be paid directly to the solicitor for the party without the party’s consent?
	A	If the order says that the funds are to be paid out to a party, the cheque should be made payable to that party even if the request for payment out is accompanied by a written consent from the party for payment to the law firm. The cheque may be delivered to the party in care of the law firm. Counsel should obtain the consent of the party for payment to the law firm in advance of the application and seek an order for payment out to the law firm in trust.

Rule 23-4(5) and Rule 8-3	Q	If a consent order directs payment out directly to the solicitor, is consent of the party required?
	A	No. The funds should be paid out in accordance with the order.
Rule 23-6	Q	What recourse is open to an applicant when a registrar, due to deficiencies in documentation, refuses to issue execution proceedings, or enter a judgment?
	A	If the refusal falls under a rule that has a specific remedy set out, the applicant's recourse is clear, for example, under Rule 3-8(8) "...the plaintiff may apply to a judge or associate judge in chambers for default judgment". If the rule does not contain a specific remedy the registrar may refer the application to a judge or associate judge (Rule 23-6(7)) (Decision of Master Patterson - *C990610 – Hastings v O'Neill Hotels*), or the applicant may appeal the registrar's decision by filing a notice of appeal in Form 121 (Rule 23-6(7) & (8)). It is important that the registrar set out a clear and concise statement of the reasons for refusal. In cases of refusal, a registrar should issue a rejection slip which rejection slip should be signed by the registrar.
Rule 23-6(8)	Q	Is a new file opened on an appeal from an associate judge or registrar?
	A	The appeal is filed in the existing proceeding and the fee set out in Appendix C, Schedule 1, Item 5 is charged.
Rule 23-6(11)	Q	How can a party obtain a stay of an order of an associate judge pending appeal?
	A	Either the associate judge or the court may stay execution of the order. A party may apply to the associate judge to stay the order at the time it is made or make an application to the court afterwards.
Rule 25-1(6)	Q	Who is considered to be a "party" in an estate matter?
	A	The applicant for the representation grant is generally the only party to an estate matter. Other people (for example beneficiaries) may search the court file but must pay the search fee. Rule 25-1(6) sets out that a party of record is a person who has filed a document in an estate proceeding.
Rule 25-2(2)	Q	If an applicant is required to serve the Attorney General because the government is entitled to all or part of the estate pursuant to section 3 of the *Escheat Act*, how is service effected?

	A	Service on the Attorney General for the purpose of notifying them of an application for probate or estate administration, including where all or part of the estate escheats to the government, can be affected via a designated email address: AGLSBEscheat@gov.bc.ca as per the Attorney General's website.
Rule 25-3	Q	In a probate application may a grant issue to a corporation or society?
	A	Yes, provided that the applicant files a copy of the constitution of the corporation or society, which contains a clause allowing the corporation or society to carry out the duties of estate administration.
Rule 25-3	Q	What is the correct approach where a will appoints co-executors but does not set out conditions if one or both do not want to apply?
	A	Either of the executors may apply without the other participating so long as power is reserved to the other to apply.
Rule 25-3	Q	Is an applicant for an estate grant required to justify the value attributed to assets in the statement of assets, liabilities and distribution?
	A	The registrar reviewing the application should not question how the applicant arrived at the value at the date of death. The applicant has sworn to the value.
Rule 25-3(2)	Q	Can an applicant leave the section of the P2 Submission for Estate Grant asking for "Other names" blank?
	A	No, all questions on the P2 must be answered. The instructions on the form indicate the applicant must fill in the blanks ensuring each of the items is answered. The "other names the deceased may have held property in" is not an optional field and must be answered, even with "none" or "nil".
Rule 25-4(2)	Q	When the registrar refuses to grant an application for an estate grant on the basis that it has been submitted with incomplete information in the Form P2 (Submission for Estate Grant), how does the applicant address the deficiencies?
	A	Where a registrar is unable to approve the application because the submission is incomplete, the registrar will need to provide the reasons for refusal in writing. The applicant may then address any of the deficiencies by submitting a supplemental affidavit in Form 109 if they are minor (see SCCR 25-4(6)(a)). If there are substantial deficiencies SCCR 25-3.1 sets out the

		process for when and how an application for estate grant may be amended.
Rule 25-3(2)(j)	Q	When accepting applications for an estate grant, should the will be date stamped?
	A	Yes, they should be stamped but only on the back to avoid defacement.
Rule 25-3(3)	Q	An application for administration without will annexed was filed and the applicant was in possession of a copy of the will. Should the applicant not apply for a grant of probate based on a copy of the will?
	A	Rule 25-3(3) requires a person applying for a grant of probate or a grant of administration with will annexed to file the originally signed version of the will, if that original exists or, if that original does not exist, a copy of the will. When the will-maker was in possession of the original will after its execution, and the original will cannot be found after their death, there is a presumption that the will-maker destroyed the will with the intention of revoking it. The onus is on the person(s) making the application to determine, based on the particular circumstances of the deceased's will, which of the two applications is appropriate. Whether the application is for a grant of probate based on a copy of the will, or administration without will annexed, the applicant must provide sufficient evidence to show the court the requested grant should be approved. (See *Haider v. Kalugin*, 2008 BCSC 930). These applications should be referred to the court for review.
Rule 25-3(7)	Q	Are mobile homes considered personal or real property in an application for probate?
	A	The mobile home should be listed as personal property unless it is situated on real property owned by the deceased. Then, the value of the real property should include the value of the mobile home.
Rule 25-3(24)	Q	Where a registry does not have a resident associate judge or judge, what is the process for forwarding material to another registry for approval of representation grants?

	A	The registrar mails the checked applications to the closest registry where a judge or associate judge is presiding. When the approved applications are returned to the originating registry, the registrar must check for notice of disputes. If a notice of dispute is in effect, the grant cannot be issued. It is not necessary for the judge or associate judge to rescind their order as Rule 25-10(8) provides that the registrar must not, with respect to that estate, issue an estate grant, an authorization to obtain estate information or an authorization to obtain resealing information, or reseal a foreign grant while a notice of dispute is in effect.
Rule 25-4	Q	When photocopying a will for the estate grant, should the registry remove the staples in the will?
	A	No. The will should not be unstapled by the registry as this would leave marks on the will that may be problematic if the original will is required in the future. It should be possible to photocopy the will without taking it apart although it may be more awkward.
Rule 25-10	Q	When checking to see if a notice of dispute has been filed prior to issuing an authorization to obtain estate information or a representation grant and finding that there are no active notices of dispute filed regarding the estate but that there is another related estate proceeding should the authorization or the grant issue?
	A	If a related proceeding appears when you search for a notice of dispute, the registrar should review the related estate proceeding to ascertain the nature of that application. If that review discloses that there are two separate applications for a grant and no notice of dispute has been filed the application should be referred to the court for approval noting the related proceeding. In some cases one applicant may be of the view that the other is not entitled to notice of their application and therefore they may not be aware of the application and the need to file a notice of dispute. Best practice is to err on the side of caution and have the court determine if notice is required or the matter should be spoken to, etc.
Rule 25-12(2)	Q	What is the process when the registry receives a subpoena in Form P35 with the supporting affidavit as set out in Rule 25-12(2)?
	A	The requisition, subpoena and the affidavit should be forwarded to a legally trained registrar or, in registries

		where there is no legally trained registrar, to an associate judge for approval and signature.
Rule 25-12(6)	Q	Where a subpoena to deliver documents in relation to an estate matter has been served on a person and the person refuses deliver the document(s) or provide an affidavit referred to in Rule 25-12(5)(b), what is the applicant's recourse?
	A	The applicant may apply for a warrant to be issued pursuant to Rule 25-12(6)
APPENDICES		
Appendix B section 4(2)	Q	How does one calculate the 5 hours referred to in Appendix B section 4(2) when determining per diem rates?
	A	When calculating the 5 hours deduct the lunch break only, not the morning and afternoon adjournments.
Appendix B section 8	Q	Can an offer to settle be utilized when trying to settle a party/party bill of costs?
	A	Yes. Appendix B, section 8, provides for offers to settle costs. A Form 123 must be delivered to the other party, and produced to the registrar at the conclusion of the assessment. If the registrar feels that the offer ought to have been accepted, he/she may disallow the tariff items relating to the assessment or allow the party who made the offer their costs of the assessment or allow the offering party double costs.
Appendix B Items 1, 2, 3 and 6	Q	Can Items 1, 2, 3 & 6 be claimed more than once in a proceeding?
	A	A party may not claim more than the maximum allowed for any of these items. A registrar assessing the costs will exercise discretion in deciding how many units (up to the maximum allowable) that may be awarded for the work done under these items.
Appendix B Items 21 and 22	Q	When counsel attend for chambers at 09:45 and are not called until the afternoon, what items are claimable for the morning?
	A	Since the party is required to be in Chambers for the full day, even if they spend the morning waiting, the matter attracts the full day tariff items for both preparation and attendance under Items 21 and 22 or 26 and 27 (depending on the nature of the application).
Appendix B Item 34	Q	If a trial does not proceed, would the registrar allow Item 34?

	A	The registrar will allow Item 34, up to the maximum allowable for one day (5 units). See Appendix B, section 4(4).
Appendix C	Q	Is a fee chargeable for filing an arbitrator's award granted under various enactments?
	A	Currently there is no applicable fee for this service.
Appendix C	Q	Are extra court filing fees payable for filing a notice of hearing or response to petition?
	A	No extra filing fees are payable for a response to petition or when the notice of hearing (Form 68) is filed.
Appendix C	Q	Under the *Commercial Arbitration Act*, leave to appeal is required for any appeal of an arbitration decision. Once leave is granted, is a new file opened when the notice of appeal is filed?
	A	No. The application for leave must be made by a petition or, if Rule 17-1 of the Supreme Court Civil Rules applies, a requisition proceeding (section 42), which requires a $200 filing fee (Appendix C, Schedule 1, Item 1). If leave is granted the notice of appeal should be filed within the same proceeding, however, as the proceeding has already been commenced no fee is required.
Appendix C	Q	Should registry staff accept documents if the individual filing the document does not have the fee required by Appendix C - Schedule l.
	A	No. If there is no fee paid, we should not accept the document for filing. In appropriate circumstances, registry staff may want to advise the litigant about making an application for an order to waive fees and provide them with a copy of the Order to Waive Fees Package.
Appendix C, Schedule 1 Item 1	Q	If a file is being commenced only by Requisition for a Consent Order or Order Without Notice pursuant to Rule 17-1(2), what is the filing fee that should be paid?
		The fee would be $200, as the Requisition is considered a commencement of proceedings.
Appendix C Schedule 1 Item 4(b)	Q	Is there a charge for an appointment for a hearing, inquiry or reference before a registrar or special referee under the *Court Order Enforcement Act*?
	A	No. See Item 4(b), Appendix C, Schedule 1. These hearings are exempt from the filing fees.
Appendix C Schedule 1 Item 5	Q	What fee applies for filing a notice of appeal from the associate judge or registrar?

	A	$80.00 is payable. This falls under Item 5, Schedule 1 of Appendix C.
Appendix C Schedule 1 Items 9 and 10	Q	Must a party pay fees for the courtroom or hearing room if they are represented on a Legal Aid basis?
	A	Yes, the party must pay the fee to the Minister of Finance and then submit the receipt to Legal Aid for reimbursement unless the party has been granted an order to waive fees.
Appendix C Schedule 1 Item 10	Q	Is it the responsibility of the lawyer or the party to pay the fees for the time spent in hearing a trial?
	A	It is the party's responsibility.
Appendix C Schedule 1 Item 19	Q	When requesting a certified copy of a document of record, is there a photocopy charge in addition to the charge for making a certified copy?
	A	No, there is no additional charge for photocopies.
Appendix C Schedule 1 Item 19(c)	Q	On a Certificate of Pending Litigation, (*Land Title Act,* Form 31), there is an asterisk that indicates the filing fee is not applicable where the CPL relates to proceedings under the *Builders Lien Act* or *Repairers Lien Act.* Does that mean that we do not charge the associated fee set out in Appendix C, Schedule 1, Item 19(c) for issuing the certificate of pending litigation?
	A	No. That exemption applies to fees associated with filing the CPL in the Land Title office. We must still collect the required fee set out in Appendix C.
Appendix C Schedule 1 Item 19(d)	Q	When a person requests a copy of a transcript which was filed within the last five years, what fee is the registry required to collect?
	A	See Item 19(d). Where the transcript was filed within the last five years, the registry is to collect $4.00 per page. Where the transcript was filed more than 5 years ago the charge is $1.00 per page for photocopying.
Appendix C Schedule 2 Sheriff's Fees	Q	If a person is granted an order to waive fees, does the order include exemption from sheriff's fees?
	A	No. An order to waive fees applies only to fees payable to the Crown pursuant to Schedule 1 of Appendix C. Sheriff's fees are contained in Schedule 2 of Appendix C and therefore are still payable by persons who have been granted an order to waive fees.
SUPREME COURT FAMILY RULES		

Rule 1-1(1)	Q	Can court documents be filed in a registry other than where the proceeding was first commenced?
	A	No, unless the file is physically located in another registry. For example when a file has been transferred to one registry from another for a hearing counsel may wish to file affidavits in the registry in which the application is set to be heard for the convenience of both the court and the parties involved.
Rule 2-1	Q	Can a foreign separation agreement be filed for enforcement in a Supreme Court Registry?
	A	Yes, if the agreement relates to custody and access to children. If the order is to be registered to enforce child or spousal support, the *Interjurisdictional Support Orders Act* must be followed.
Rule 2-1	Q	Is a filing fee charged for filing a written agreement if a court file for the same parties has already been opened?
	A	Yes. See Appendix C, Schedule 1, Item 7.1. The fee is not required if the party is filing an addendum or amendment to an agreement already filed.
Rule 2-2(2)(a)	Q	Is there a prescribed form for a joint action for divorce?
	A	Yes Form F1 in Appendix A of the Supreme Court Family Rules.
Rule 2-2(4)	Q	When a party withdraws from a joint family law case and files a response or a counterclaim or both, should there be any change to the style of proceeding?
	A	Yes. Once a person has withdrawn from a joint family law case and filed either a response or a counterclaim or both, they become a respondent in the proceeding and the other party will remain the claimant.
Rule 2-2(4)	Q	If a joint family law claim is filed and that joint claim includes a claim for divorce can one party continue with the divorce if the other party won't continue?
	A	Yes. The party wishing to proceed should file and deliver a notice of withdrawal from joint family law claim in Form F2 and then proceed in accordance with Rule 2-2(4). If the party seeks relief that person must, at the time of filing the notice of withdrawal, file a response to family claim or counterclaim or both.
Rule 4-1	Q	What should the registry check when a notice of family claim (including an order for divorce) is filed?
	A	- Name of registry on the document is consistent with the location it is being filed. - One party ordinarily resident in B.C. - Name of parties (against the marriage certificate)

		- Place of trial is named. - Notice of Family Claim is dated and signed - Marriage certificate, or confirm Part 4 of Schedule 1 - Divorce to the notice of family claim has been completed and leave has been granted - Time for filing a response to family claim is included - Address of the registry - Address for service - Registration of divorce proceeding form
Rule 4-2	Q	If an original notice of family claim is amended and served within 1 year of the amendment but after 1 year of the original filing, does Rule 4-2(1) still apply?
	A	The amendment of a notice of family law claim does not constitute a “renewal” of the notice of family law claim and thus the clock does not start over on an amendment.
Rule 4-2(1)	Q	How do you renew a notice of family law claim pursuant to Rule 4-2(1)?
	A	A notice of family law claim may be extended more than once up to twelve (12) months from the date of the renewal. An application to renew may be brought by "desk" application under Rule 10-8(1). Unless otherwise ordered by the court, a copy of each order granting renewal of a family law claim must be served with the renewed writ. Rule 4-2(4).
Rule 4-4(1)	Q	Can a respondent apply for a divorce order?
	A	A respondent may apply for a divorce order if they have filed a counterclaim pleading that relief. Rule 4-4(1).
Rule 4-4(5)	Q	How does a claimant respond to a counterclaim in a family law proceeding?
	A	Pursuant to Rule 4-4(5) the claimant and any other person named as a respondent to the counterclaim must, within 30 days after being served, file a response to counterclaim in Form F6.
Rule 4-5(2)	Q	Can a filed proof of marriage document be returned to a party by the registry after the divorce is final?
	A	No. When presented at the registry, the marriage certificate/registration must be date stamped either on its face if there is room or on the back. It is then a filed document and cannot be returned without an order of the court. This order can be obtained by way of an application with supporting evidence. The application cannot be obtained by way of an application for a consent order. The application materials may be filed electronically and processed as a desk order.

Rule 4-5(2)	Q	What should the registry do when a party insists on filing a church certificate as proof of marriage when filing a notice of family claim claiming a divorce?
	A	The registry should accept the certificate. The registrar should bring this to the court's attention on the certificate of the registrar when an application for a divorce order is made. See case law *Snippa v. Snippa*, 2006 BCSC 172
Rule 4-5(2)(b)	Q	What guidelines should be used when granting leave to file a notice of family claim without a marriage certificate?
	A	The registrar should insist on a good reason for issuing the notice of family claim without the marriage certificate. Although there are probably many acceptable reasons, a few of the more common ones are: • The claimant wants to make an application for a protection order (a copy of the notice of application should be provided) • A certificate of pending litigation needs to be issued • The respondent is leaving the jurisdiction and service must be affected quickly.
Rule 4-5(2)(b)	Q	Where the registrar has granted leave to file the pleading without the marriage certificate pursuant to Rule 4-5(2)(b), should the document be endorsed?
	A	The registrar should endorse and sign the front page of the document noting that leave has been granted.
Rule 6-1(1)	Q	If a document presented for filing provides an address for delivery that is outside the jurisdiction, should the registry reject it?
	A	No. It is up to the opposing party to take issue with that party's address for delivery. The document should be filed. Note that Family Rule 6-1(2) also provides for a party to give, as an address for delivery a postal address; a fax number, or an additional e-mail address.
Rule 6-2(2)(a)(ii) and (7)	Q	Would an affidavit of ordinary service be sufficient if it is stated that a document had been mailed by regular mail?
	A	Service by ordinary mail to a person's address for service is permitted pursuant to Rule 6-2(2)(a)(ii) Where there is no address for service given and personal service is not required the document may be served by ordinary mail to the party's lawyer or if the

		party has no lawyer representing them in the proceeding, to the party's last known address. See Rule 6-2(7)
Rule 6-2(4)	Q	How is time calculated for delivery by mail?
	A	A document sent for service by ordinary mail is deemed to be served one week later on the same day of the week as the day of mailing or, if that deemed day of service is a Saturday or holiday, on the next day that is not a Saturday or holiday.
Rule 6-3(5)	Q	Is proof of service or delivery of a notice of family claim, counterclaim or petition required when a response to a family claim, response to counterclaim or response to a petition has been filed?
	A	Filing of a response to a family claim, response to counterclaim or response to a petition is an admission of service of the petition or originating pleading.
Rule 7-1	Q	Are registry staff required to check to see if the parties have attended a Judicial Case Conference prior to filing a notice of application from one of the parties?
	A	No, registry staff are not expected to check if a Judicial Case Conference has been held prior to filing a notice of application. The onus is on the parties to comply with the rules.
Rule 7-1	Q	Must a Judicial Case Conference ("JCC") be held at the file's home registry?
	A	A JCC must be held at the registry where the family law case is being conducted. Subrule (7) says to request a judicial case conference, a party must file a notice of judicial case conference in Form F19. Definitions are found under Rule 1-1; • "file" means file in the registry • "registry", in relation to a family law case, means the office of the court in which the family law case is being conducted. There is no provision to change the place of hearing for a JCC unless ordered by the court (Rule 22-2(13)).
Rule 7-1	Q	What are the fees to be paid to request a Judicial Case Conference or an application to be exempted under Rule 7-1(4) & (5)?
	A	The fee for filing a notice of judicial case conference is set out in Appendix C, Schedule 1, Item 6 ($80.00). If a party makes an application to be relieved from the requirement of JCC pursuant to Rule 7-1(4), they must file the required document as set out in Rule 7-1(5) and no fee is required.

Rule 8-1 and Rule 8-2(7)	Q	Is it necessary to obtain an order to add an “also known as” name to the style of proceedings?
	A	It may not be necessary as the amendment might be acceptable to the court when made under Rule 8-1(1)(a). The registrar should accept the amended pleading as presented and when an application is made to the registrar, the registrar should draw to the court’s attention that the amendment was made in this fashion and not by an order of the court under Rule 8-2(7).
Rule 8-1	Q	Is there a requirement that an amended pleading reference the rule relied on for the amendment?
	A	No. Although it is common, and perhaps recommended practice to refer to the rule, Rule 8-1(2) simply directs that the amendment be made in accordance with subrule (3), which requires that any deleted words be shown as struck out and any new words be underlined. The amended pleading must indicate the date on which the original version of the pleading was filed.
Rule 8-1(1)	Q	Once a notice of trial is filed and delivered, can amended pleadings be filed without either the consent of the other party or an order of a judge?
	A	Rule 8-1(1) requires either the written consent of the parties of record or leave of the court to file amended pleadings after the notice of trial has been delivered.
Rule 8-1(1)(b)	Q	Rule 8-1(1)(b) says that an amendment to a pleading can be made at any time with the written consent of all parties of record. What form must that consent take?
	A	Consent may be an endorsement anywhere on the document, usually on the first or last page or a covering letter(s) signed by all parties to the proceedings. • Note the rule doesn't make reference to an order or an application to the court.
Rule 8-1(3)	Q	Is it mandatory to underline amendments in red? If so, what is the authority?
	A	No. The rule provides that, “Unless the court otherwise orders, an amendment to a pleading under this rule must be dated, identified and underlined”. No specific colour is required and, in more instances, the underling will be in black as the amendments are likely done directly on the computer.
Rule 8-2(1)	Q	Can a bill of costs be assessed when the party awarded costs dies before the assessment is completed?
	A	Yes. See Rule 8-2(1).

Rule 8-2(7) and Rule 8-1		Does Rule 8-2(7) apply when a spelling error has occurred in the name in the style of cause? Counsel often argue that they should not have to apply under Rule 8-2(7) for a correction of this nature.
		A spelling error cannot be corrected without getting either a Rule 8-2(7) order or a Rule 8-1 amendment. If an originating pleading is amended under Rule 8-1, the registrar must accept it even if the party should be applying to substitute under Rule 8-2. If the pleading should not have been amended under Rule 8-1, the plaintiff runs the risk that the court will later rule the amendment invalid.
Rule 10-2(2)	Q	Could a notice of application filed in Prince George name the Smithers Registry as the place of hearing?
	A	Under Rule 10-2(1) an application may be heard at a) the place ordered by the registrar under subrule (4) [if the registrar is satisfied, due to urgency or convenience that an application should be heard outside the judicial district]; b) the place on which all parties or record have agreed, or c) a place at which the court normally sits in the judicial district in which the proceeding is being conducted. Judicial districts are described in section 8 of the *Supreme Court Act*. As Prince George and Smithers are not in the same judicial district, registrar's leave or consent of all parties of record would be required in this instance.
Rule 10-2(4)	Q	If an application on our chambers list is a file from another registry, can we accept a notice of application pertaining to another application?
	A	Only if Rule 10-2(4) has been complied with, the parties have agreed (Rule 10-2(1)(b)) or the court otherwise orders.
Rule 10-2(4)	Q	Has there been any judicial guidance on the interpretation of the procedure to be followed by a registrar when entertaining an application under Rule 10-2(4)?
	A	Yes. *Roberts and Whieldon v. Corrigal and Corrigal* (1993), 84 B.C.L.R. (2d) 155 at page 161: "I wish to add the following observation which may be of assistance to Registrars, in the future,

		in considering whether or not to exercise their discretion to grant applications under R. 44(16)[*now Rule 10-2(4)]*. Any exercise of a Registrar's discretion under the Rule, *particularly* if the application is, as in this case, ex parte, should be based on *written* material in support. That material could be in affidavit form but may be less formal, e.g., a letter from counsel. Where the application is based upon convenience, the material should set out the position of all parties. If the applicant does not adequately cover that in his or her communication, the Registrar should insist on being advised of the position of the other parties. If this is done in writing, there will be a record to indicate to a Judge reviewing the decision under R. 44(17) [*now Rule 10-2(6)*] the basis upon which the Registrar made that decision."
Rule 10-3(7)	Q	Can one party adjourn a chambers application without the consent of the other party who has been served with the application?
	A	If a notice of application has been served, all persons who have had notice of the application must consent to the adjournment. Where there is no consent a court order is required to adjourn the application (Rule 10-3(7)). The procedures for consent adjournments are also found in Practice Direction 65 – Consent Adjournments effective 2024/01/15.
Rule 10-4	Q	When should registry staff act as "commissioners for taking affidavits"?
	A	If the documents are for use by the court, it is appropriate for registry staff to act as commissioners for taking affidavits. We should exercise caution in not performing dual functions, i.e. swearing affidavits in support of a garnishing order and then issuing the garnishing order as the registrar. As long as the affidavit is sworn by a commissioner other than the registrar who actually issues the process, there would be no conflict of interest.
Rule 10-4	Q	What steps should staff take having decided to act as "commissioners for taking affidavits"?
	A	Before you act as a "commissioner for taking affidavits":

		a) You must either personally know the deponent or be satisfied that the deponent is the person named in the affidavit on the basis of photo identification (e.g. driver's license), duly noted on the document itself; and b) You must be satisfied that the deponent understands what it is they have sworn.
Rule 10-4	Q	If an affidavit has been filed in a proceeding and a minor change needs to be made, may registry staff re-swear the affidavit for the deponent?
	A	No, once the affidavit is filed, there is no authority for any changes to be made to any document. If the affidavit has not been filed, registry staff may re-swear the affidavit but it would be better practice to suggest that the deponent return to the lawyer or notary who originally swore the affidavit for them in the interest of economy.
Rule 10-4	**Q**	**Can an affidavit commissioned in British Columbia for use in the Supreme Court of British Columbia be signed electronically?**
	A	**No. The use of the word "sign" in Rule 10-4 has always been interpreted by the courts as "signed by hand". Rule 22-4(6) indicates that affidavits submitted via E-Filing must be accompanied by a Form 119 Electronic Filing Statement. That Statement must indicate that "the original paper version of the document appears to bear an original signature of the person…" [emphasis added]. Subrule (6.1) allows for affidavits to be *commissioned* by video conference, but does not allow for affidavits to be *signed* with an electronic signature.**
Rule 10-4	**Q**	**When commissioning an affidavit, does the commissioner have to indicate whether the affiant has chosen to swear or affirm?**
	A	**Yes, the commissioner should indicate clearly on the affidavit whether the affiant has chosen to swear or affirm by either circling the affiant's choice, or crossing out the option they are not choosing. This has been addressed in various judgments where members of the court have confirmed this requirement. See *British Columbia v. Adamson, 2016 BCSC 584*, and *PKS v. ANR, 2024 BCSC 2110*. The Law Society also confirms this in their Professional Legal Training Course document which is publicly available: "Before an affidavit is sworn or affirmed, the affiant's chosen method**

		must be indicated." Rule 22-3(1) allows for "variations as the circumstances of the proceeding require" to the Forms as prescribed. Indicating the affiant's choice of sworn or affirmed can be considered such a variation.
Rule 10-4(6)	Q	How would a commissioner for taking affidavits swear/affirm a document where the deponent is blind or illiterate?
	A	The commissioner must read the affidavit to the deponent and certify that the deponent appeared to understand.
Rule 10-4(6.1)	Q	How should an Affidavit be commissioned if it is sworn or affirmed by video conference?
	A	The Law Society of British Columbia has set out detailed instructions on how lawyers are to commission Affidavits by video conference. These instructions can be found here, at paragraph [12] under the Commentary section. Two additional paragraphs indicating the Affidavit was sworn or affirmed by video conference have been added to all prescribed Affidavits in the Forms and should be present at the end of the document when Affidavits are sworn or affirmed remotely. Note also that pursuant to Rule 10-4(5), the place of commissioning in the jurat should reflect the city or town where the *commissioner* (not the affiant) is located.
Rule 10-5(1)(b)	Q	Can an application to vary child support in accordance with the Child Support Guidelines be done by a consent order?
	A	Yes. Rule 10-5(1)(b) directs that an application to rescind, change or suspend a final order may be made by consent. The parties should apply in accordance with Rule 10-7 for a desk order by consent by filing: • Requisition in Form F29 • A draft of the proposed order in Form F33 • Evidence, in accordance with Rule 15-1(11), that the application is consented to, and • Any consent or comments of the Public Guardian and Trustee required under section 40 of the *infants Act.* • Affidavit materials in support, setting out compliance with the guidelines, and/or change in circumstances. (note: this is not required by the rule, however this evidence is required pursuant to the *Family Law Act or Divorce Act*)

Rule 10-6	Q	What is the authority for the registry to accept an amended notice of application?
	A	Rule 8-1 does not include a process for amending a notice of application, however, there is nothing that prohibits it. There is no restriction on the number of notices of application a party may file so the best practice is for another application to be filed rather than amending an existing one. In *Ramcoff Productions v Lesmur*, 2000 BCSC 1940, the Court said a party should not be prevented from filing an amended notice of motion (now an application), provided it is served in accordance with the rules. If an amended notice of application is presented to the registry for filing, it should be accepted with the usual fee prescribed in Schedule 1 of Appendix C for applications. The amended notice of application will still need to be served in accordance with the Rules. The opposing party, or the Court, can raise any issues concerning non-compliance with the rules, including prejudice or the need for an amended response.
Rule 10-6(14)	Q	Do I have to file a record if the matter is under 30 minutes and set in Vancouver?
	A	Rule 10-6(14) provides that an application record is required for all applications, regardless of the time estimate.
Rule 10-7	Q	Should a registrar enter a consent order for a reference before the registrar?
	A	Not when it is a delegation of the court's jurisdiction, e.g. maintenance reference; but generally acceptable when the reference is procedural, e.g. passing of accounts.
Rule 10-7	Q	Are parties to a proceeding able to apply for a consent order for the removal or return of filed documents?
	A	No, Rule 10-7(1.1) does not include an application for the removal or return of filed documents so this application cannot be made by consent. The proper procedure for dealing with these filed documents is for the applicant to apply to seal part of the court file pursuant to Practice Direction 58 - Sealing Orders in Civil and Family Proceedings. However, if the applicant does apply to remove a document from a file, the application should be made in chambers, where the applicant must provide their submissions for why the document should be removed. The order should be specific that the document is to be removed from the court file and the court record, which will encompass

		both the physical document and any electronic version. If such an order is granted, the registry should follow the order, a copy of which should be affixed to the outside of the file.
Rule 10-7	Q	May an order seeking to terminate a protection order be granted by consent in Form F33 under SCFR 10-7?
	A	No. Orders to terminate a protection order are made under s. 187 of the *Family Law Act*. SCFR 15-2 directs that orders made under that section must not include any other terms not related to the protection order and SCFR 15-1(1)(d.2) directs a change of protection order under this section must be in Form F54.1, which must be drafted by the registrar pursuant to SCFR 15-1(16.1). The parties must therefore proceed by notice of application and speak to the matter.
Rule 10-7 and Rule 10-8	Q	What form of order should desk orders be in?
	A	Rule 10-7(1)(b) directs a consent order to be in Form F33 and Rule 10-8(1)(b) directs an order without notice to be in Form F34.
Rule 10-7(1.1), Rule 15-1(1)(d.2) and Rule 16.1	Q	Are parties to a proceeding able to apply for a consent order in Form F33 pursuant to SCFR 10-7 to vary the terms of a protection order?
	A	No SCFR 10-7(1.1) does not include an application for a protection order or a variation of a protection order and SCFR 15-1(1)(d.1) and (d.2) directs a protection order to be in Form F54 and a variation of a protection order to be in Form F54.1. SCFR 15-1(16.1) further requires that a protection order and variations of a protection order are to be drafted and entered by a registrar, unless otherwise ordered by the court. An application seeking a protection order or the variation of a protection order by consent should be spoken to in chambers by filing a notice of application.
Rule 10-8	Q	A desk order application for an alternate method of service was rejected as the requisition stated "each affected party has consented to the order". The defendant who was to be served did not sign the order and the application was returned to counsel to correct the requisition. How closely should registrars check the Form F29 requisition when a desk order application is submitted?
	A	The registrar should be checking the requisition. If the requisition says all parties have consented, then the consents must be evident or the application will be

		rejected. The form allows for a choice under paragraph 3 to be made between "each party affected has consented to the order" or "the evidence in support of the application is….." In this case, counsel might want to resubmit the application as one without notice.
Rule 10-9(1)	Q	Is a deputy district registrar permitted to grant an application for short notice when there is no judge or associate judge available to hear the application?
	A	No, all applications for short notice must be heard by a judge, associate judge or a legally trained registrar. If a judge, associate judge or legally trained registrar is not available in your registry the short notice application should be referred to Supreme Court Scheduling and they will arrange to have someone hear the matter.
Rule 10-9(1)	Q	Do I have to pay a filing fee for a short notice application?
	A	No. The application may be made by requisition so there is no filing fee for the short notice application. However, the fee for the main application is payable when the notice of application is filed with the requisition seeking short leave.
Rule 10-9(1)	Q	What is the procedure for short notice under Rule 10-9(1)?
	A	The applicant completes the short notice requisition in Form F32.01 as per Rule 10-9(2) and attends at the court registry with the requisition, a copy of the notice of application and affidavit(s). The applicant will be directed to a courtroom to speak to the application for short notice and if granted the judicial officer hearing the application will endorse the requisition. After the hearing the applicant will return to the registry with the endorsed requisition and will file the notice of application and any affidavits. The applicant must then serve a copy of the requisition, notice of application and any affidavits to all parties that may be affected by the relief sought within the time fixed by the presider.
Rule 10-10	Q	Can a party in an undefended divorce proceeding apply by way of a desk order for a final corollary relief order before the end of the one-year separation period?
	A	Such relief is most unusual; however, a party may apply pursuant to Rule 10-10(2) by filing; • Requisition in Form F35 • A draft of the proposed order

		• Proof that the case is an undefended family law case • A certificate of the registrar in Form F36 certifying that the pleadings and proceedings in the family law case are in order • Unless subrule (3) applies, proof of service of the notice of family claim or counterclaim under which judgment is sought • If appropriate, a Child Support Affidavit in Form F37 The registrar will refer the matter to a judge, as it is a final order. The judge must be satisfied that the other party has had notice and that the relief sought is appropriate.
Rule 10-10	Q	How would a party apply for final judgment in a family law case where there was no marriage and no response to family claim has been filed?
	A	The party would file the applicable documents set out in Rule 10-10(2) and the matter would be referred to a judge, as it is a final order.
Rule 10-10	Q	Is the approval of the respondent required for a desk order divorce when they have not filed a response to family claim or counterclaim?
	A	The court may require the respondent's approval on an order if the relief requested in the order is not set out in the relief claimed. The registry should forward those applications to a judge for consideration.
Rule 10-10	Q	Is an order for a desk order divorce and/or corollary relief under Rule 10-10 required to be signed by the applicant(s)?
	A	Yes. A final order for divorce must be in Form F52 and whether the application was spoken to or granted as a desk order, the form indicates it must be signed by or for each approving party.
Rule 10-10	Q	Are parties to a joint family law case permitted to file the documents for a desk order divorce on the same day they commence their proceeding?
	A	Yes. Both parties are applying together so the proceeding is unopposed and there is no requirement for service, therefore, all of the documents for a undefended divorce set out in Rule 10-10(2) may be filed at the same time as the notice of joint family claim. Paragraph 5 of FPD-17 - Divorce Applications, clarifies that at least one of the affidavits in Form F38 must be sworn after the notice of joint family claim has been

		filed. The filing party may swear their affidavit at the registry and the other party may already have had their affidavit sworn or they can both be sworn at the registry at the time of filing. Rule 15-2(1) directs that a divorce order must not be granted unless the court is satisfied that no earlier divorce proceeding is ongoing anywhere in Canada. As a result, a clearance certificate must be received from the Central Divorce Registry before the order may be approved. The registrar must ensure that all of the other requirements set out in the Supreme Court Family Rules and FPD-17 have been complied with, and once all is in order, they will sign the registrar's certificate and refer the matter to a Judge of the Court.
Rule 10-10(1)(a.1) and Rule 11-3(2)(d)	Q	Can a party file a Notice of Application to speak to an undefended family law case?
	A	Yes, Rule 10-10(1)(a.1) allows for a party to apply for judgment in an undefended family law case by way of summary trial in accordance with Rule 11-3. Rule 11-3(2)(d) indicates that a party may apply under this rule for judgment in an undefended family law case. The applicant should submit a Registrar's Certificate of Pleadings at the time of filing their Notice of Application as per Rule 14-4(5)(b) so the registrar can certify that the pleadings and proceedings in the family law case are in order.
Rule 10-10(2)	Q	What additional evidence is required when filing a desk order divorce application where the process server relied on a photograph of the respondent to identify the person served?
	A	When the process server does not personally know the respondent named in the proceeding and they select the option provided on the affidavit of personal service (Form F15) that reads; [ ] attached to this affidavit and marked as Exhibit B is a photograph that is a true likeness of the person I served. [*If this box is checked, there must be filed an affidavit that exhibits the same photograph and confirms that the person shown in the photograph is the person identified in section 1 of this affidavit as the person served.*]

		the claimant will generally include an additional paragraph in the Form F38 affidavit that exhibits the same photograph the process server used confirming that the person in the photograph is a true likeness of the respondent named in the within proceeding. The affidavit does not have to be sworn by the claimant but must be sworn by a person that personally knows the respondent and state how they are personally known to them.
Rule 10-10(2)	Q	How does the registry process desk order divorce applications?
	A	Two checklists are available in the Registrars' Handbook that should be used to assist in the processing of applications. Checklist #1 is used to reject the application when information or material is incorrect or missing. When an application is submitted without errors or omissions or resubmitted with an explanation for the deficiencies, the deputy district registrar uses checklist #2 to refer the material to a judge. The DDR should note the concerns (if any) on the checklist or refer the judge to the comments on the certificate of the registrar (Form F36).
Rule 10-10(2)(c)	Q	What is sufficient proof of an undefended family law case when the applicant relies on the definition included in paragraph (e) of SCFR 1-1(1)? "undefended family law case" means a family law case in which one of the following is true: (a)the family law case is a joint family law case and no party has filed a notice of withdrawal; (b)no response to family claim has been filed; (c)a response to family claim was filed but has been withdrawn or struck out; (d)a response to family claim and a counterclaim have been filed but the notice of family claim and any response to counterclaim have been (i)withdrawn, or (ii)struck out, discontinued or dismissed;

		(e)all claims other than a claim for divorce, if any, have been settled, the parties have filed a statement to that effect signed by the parties or their lawyers and the claim for divorce, if any, is not contested.
	A	There is no prescribed form for the statement referred to in paragraph (e) above. The application must include supporting documentation or evidence to demonstrate all claims have been settled by the parties except for the claim for divorce and this should be noted on the registrar's certificate of pleadings and the matter will rest with the discretion of the judge. Examples may include: • a signed letter/statement from the parties confirming all claims except for the divorce have been settled, • a draft divorce order including orders addressing all the corollary relief in the notice of family claim and/or counterclaim that has been signed and consented to by the parties or their lawyers.
Rule 10-10(2)	**Q**	**If, after a Desk Order Divorce is referred to the Court, the Court makes a direction that a Desk Order Divorce be spoken to, does the party have to file a Notice of Application to set the matter down?**
	A	**No. The party can set the application down by filing a Requisition and confirming the application is being spoken to pursuant to a direction from the court. Best practice is for the party to attach a photocopy of the Judges' direction to speak to the matter to the Requisition. The party is not required to file a binder for the hearing – the registry should pull the file itself for the hearing.**
Rule 10-10(5)	Q	What is the appropriate form/process to set an application for judgment in an undefended family law case in chambers when a judge has directed it must be spoken to?
	A	Counsel may set it down for hearing in chambers by requisition. If the judge has indicated he/she is seized of the matter, counsel will have to contact Supreme Court Scheduling to determine when that judge is available to hear the matter. Practice Direction 18 (PD-18) sets out the procedure for requesting a hearing before a specific judge.

Rule 11-3 and Rule 14-4(5)	Q	If a summary trial application is made for a divorce, how does counsel ensure that the registrar's certificate of pleadings and marriage certificate is made available to the court?
	A	Rule 14-4(5) says that a notice of application under Rule 11-3 must not be filed unless a party has filed a certificate in Form F36, signed by the registrar, certifying that the pleadings and proceedings in the family law case are in order. A copy of the entered certificate should be included in the application record. Rule 10-6(14)(b)(v).
Rule 11-3	Q	Can a deputy district registrar issue a certificate of pleadings to a respondent who has filed a notice of application for a divorce or other corollary relief if they have filed a response agreeing to the divorce, but not filed a counterclaim?
	A	Yes, the deputy district registrar should issue the certificate of pleadings (as long as all other requirements have been met: clearance, etc.), and note on the certificate that no counterclaim has been filed, and the respondent is applying seeking adjudication of the claimant's claim for divorce. This will flag the issue for the judges, while ensuring that the registrars have done their duty. Rule 11-3(2) indicates that <u>any party</u> may apply for judgment in chambers, either on one or more issues, or the whole claim. The court has expressed the opinion that a respondent should not be required to file their own counterclaim seeking a divorce, but can apply to the court seeking the same relief that the claimant has already sought in the Notice of Family Claim.
Rule 14-2(4)	Q	If a party has named in their notice of family claim another location as the place of trial, do they need an order to transfer the file to that location?
	A	No order is required. Rule 14-2(4) states that the place of trial must be the place named in the notice of family claim. The court may order that the place of trial be changed. When a party has received a trial date in the other location, they should file a requisition requesting the file be transferred to that location for the trial approximately a month before the trial date.
Rule 14-2(4)	Q	Can a Notice of Family Claim name a location for trial which is different from the registry in which the claim has been filed?

	A	Yes. While this is rare, there is no impediment to the plaintiff taking this approach. Rule 14-2(4) only states that the place of trial must be the place named in the notice of family claim. The court may order that the place of trial be changed.
Rule 14-4(5)	Q	What should a registrar check when issuing a certificate of pleadings in a family law case when the claim is for nullity (i.e.: an annulment) or judicial separation?
	A	The registrar should check; • particulars of the marriage are set out in the notice of family claim (an annulment should be pled in Schedule 5 – Other Orders in the Notice of Family Claim); • a marriage certificate or registration has been filed; • the claim for nullity or judicial separation is made out in the notice of family claim; • if it is a notice of application under Rule 11-3 – Summary Trial, that Rule 11-3(2)(a), (b), (c) or (d) applies; • if it is an application for judgment under Rule 10-10(1)(a), that the documents required by Rule 10-10(2) have been filed.
Rule 14-4(5)	Q	Are there any other considerations parties should keep in mind when applying for a nullity of marriage (annulment)?
	A	• Because Annulments are not sought under the *Divorce Act*, no Registration of Divorce Proceedings is required. • The law that applies to annulments is the common law and the court will determine if certain requirements are met. Because of this it is strongly recommended that annulments are spoken to and not sought by desk order. In *Grewal v. Bal, 2020 BCSC 1588*, Justice Verhoeven wrote: "…given the findings of fact that are required in order to grant a judgment annulling a marriage, I suggest that an application for a desk order annulling a marriage is almost certainly doomed to fail. Therefore, the more appropriate practice would be to commence an action, and proceed to trial, or perhaps a summary trial. Applications for annulment by

		way of desk order are likely to be a waste of time and expense for the parties, and a waste of judicial resources…"
Rule 14-7(11) & (14)	Q	How should an exhibit be entered at a registrar's hearing?
	A	An exhibit filed in a registrar's hearing should be treated as any other exhibit entered in a proceeding.
Rule 15-1	Q	Does an order made pursuant to a summary trial application have to be initialled by a judge?
	A	No, Practice Direction 26 (PD–26) of Chief Justice Bauman, effective dated July 12, 2010, sets out..."An order submitted to the registry for entry following an appearance in chambers will be checked by the registrar against the clerk's notes.
Rule 15-1	Q	If the court places a condition on an order must the party apply to court to have the order confirmed?
	A	The parties must make a second application to the court for a further order based on evidence confirming that the condition has been satisfied. An exception would be if the original order specified that the order would take effect without another application on filing of specified material or other requirements; for example, an affidavit of service/delivery of the notice of application or a registrar's certificate of pleadings when a divorce has been granted.
Rule 15-1	Q	What is the registry's responsibility when checking an order made before the court when the order contains provisions not spoken to before the judge or associate judge, but endorsed by all parties?
	A	Orders must reflect what was spoken to in court. If counsel insist on adding extra provisions or refer to matters not included in the court clerk's notes, you may wish to refer the order to the judge or associate judge who made the order.
Rule 15-1	Q	What happens when an order is submitted to the registry for entry that requires the signature of a judge or associate judge who has retired?
	A	If the judge or associate judge is no longer available to sign the order it should be forwarded to a resident senior judge or if there are no resident judges, to the Chief Justice or the Associate Chief Justice for signature.
Rule 15-1(1)(c)	Q	What is the proper form of order used for "desk order divorces", when referring to the judge approving the order?

	A	Rule 15-1(1)(a)(iv) states that a final order must be in Form F52. As these are desk order applications for a final order, the appropriate selection is, “BEFORE A JUDGE OF THE COURT” with the corresponding preamble, “This family law case coming on as an undefended family law case without an oral hearing under Rule 10-10 of the Supreme Court Family Rules, and on considering the evidence put forward”.
Rule 15-1(2)	Q	How do the police know whether a family law restraining order is in effect?
	A	The police are able to contact the Protection Order Registry by telephone to confirm that the order is in effect and that they have the most recent order.
Rule 15-1(3)	Q	Will the registry accept for entry an order which has been faxed between the parties but which bears original signatures approving the form of order?
	A	If the order is in the proper form, sufficiently legible, the paper used meets the requirements of Rule 21-1(2) and the original signature of the parties appearing are endorsed, the order should be accepted.
Rule 15-1(3)	Q	If only one party appears at a chambers application does that party have to approve the order?
	A	Yes, even if it is only the applicant who appears, approval must nevertheless appear on the order.
Rule 15-1(3)	Q	If an order is granted at a different location from where the file was opened, how could we provide a better service for checking and entering the order?
	A	There is no specific rule requiring that orders be filed in the originating registry. However, Rule 15-1(3) stipulates that the order must be entered and sealed by the registrar. Given the definition of "registrar" (Rule 1-1(1)) and "seal" (Rule 22-2(5)), this must be done in the registry that the proceeding is being conducted, unless the court orders otherwise. The order may be checked in either registry by accessing the clerk’s notes from the CEIS database but since the order must be entered in the registry that the proceeding is being conducted it would be more efficient to have the order submitted there for checking and entering.
Rule 15-1(9)	Q	When should an order be dated when judgment is not pronounced in open court?

	A	When the judgment is not pronounced in open court, it is pronounced when the judge's reasons are released to the parties. The release date appears on the upper right hand corner of the reasons as well as in the date stamp that is placed on the reasons by the registry.
Rule 15-1(9)(b) and *Court Order Interest Act* section 7(2)	Q	From what date does interest accrue on an amount awarded under a certificate of costs?
	A	Costs are payable upon pronouncement of the judgment and interest accrues from the date of the judgment and not from the date of the taxation unless the court specifically provides that interest shall not run until some later date. In effect, a taxation of costs is a formality in the nature of the entry of an order*:* *Syed v Randhawa*, (1996) 24 B.C.L.R. (3d) p.164
Rule 15-1(12)	Q	Can a registrar include an entitlement to costs at the appointment for settling an order?
	A	Yes, when settling an order, a registrar can include for the benefit of a successful party a term entitling that party to costs except where the judge or associate judge who pronounced the order has determined that costs should not follow the event: *Chernoff v Insurance Corporation of B. C.* (1992) 12 C.P.C. (3d) 220.
Rule 15-1(12)	Q	If a registrar settles an order after a trial of the proceeding, must the order be put before the judge for approval?
	A	No, the order can be entered once settled by the registrar.
Rule 15-1(18)	Q	What does "to provide for any matter which should have been but was not adjudicated upon" pursuant to slip Rule 15-1(18) mean?
	A	These applications are normally presented as a desk order with affidavit material in support. Registrars should not reject these applications but rather should refer them back to the judge or associate judge who made the original order as they are in the sole discretion of the court. The subrule enables a judge who would otherwise be *functus officio* after entry of an order to include a term that was omitted, where the intention of the parties is shown to have been that the term should be included: *Dalziel v Dalziel* (1977) 3 B.C.L.R. 73 at 76-7; 4 C.P.C. 73 (S. C.)

Rule 15-2(1)	Q	Can a party proceed with a divorce when another divorce action is outstanding in British Columbia or elsewhere in Canada?
	A	No. A party cannot proceed with a subsequent divorce proceeding unless the first divorce proceeding is discontinued.
Rule 15-2(1)	Q	Should the registry advise the Central Divorce Registry that a party has withdrawn from a Joint Action for Divorce?
	A	No – the form only needs to be forwarded when the divorce proceeding is completed. The clearance only indicates if there are any other divorce proceedings outstanding.
Rule 15-2(2)	Q	Must the body of a divorce order refer to the statute relied on?
	A	Yes, as prescribed in the instructions found within Form F52.
Rule 15-2(3)	Q	Is it the registry's responsibility to draft Form F56, the Certificate of Divorce?
	A	No. Form F56, Appendix A to the Supreme Court Family Rules, should be submitted to the registry by the applicant, with the proper fees, for issuance by the registrar. We should, however, continue to provide certificates when requests are made from out of the Province or in other unusual circumstances.
Rule 15-2(4)	Q	Whose responsibility is it to advise the other party that an order for divorce has been entered?
	A	Unless the court otherwise orders it is the responsibility of the party who enters the order for divorce.
Rule 15-3(4)	Q	How is an out of province custody order registered in British Columbia for enforcement?
	A	See Rule 15-3(4). If the order was made pursuant to section 20(2) of the *Divorce Act*, it has legal effect throughout Canada. A certified copy of the order is filed in the Victoria Registry of the Supreme Court without fee. If the custody order was made pursuant to the legislation of another province or another country, there is no provision for its registration. An application may be made to the court to recognize the order (section 75 of the *Family Law Act)*
Rule 15-4	Q	Can a writ of execution directed "to a Bailiff" be issued?

	A	No. Form F57 (Writ of Seizure and Sale), Form F58 (Writ of Sequestration), Form F59 (Writ of Possession), Form F60 (Writ of Delivery) and Form F61 (Writ of Delivery or Assessed Value) indicate the order is directed "To the Sheriff". Writs of Execution are to be executed by a court authorized bailiff, not a bailiff of the creditor's choice.
Rule 15-4(16)	Q	When the registrar issues a writ of execution, can the original be given back to the creditor for enforcement purposes?
	A	No, the writs must be directed to a court bailiff designated by the Ministry of Attorney General. You will find the listing of the designated bailiffs in the Court Services Branch List of Civil Execution Contractors (Court Bailiffs) and Government Contract Administrators and in the B. C. Lawyers Directory.
Rule 15-5(1)	Q	What form is used if a debtor defaults in a payment required under a maintenance order pursuant to section 19 *Family Maintenance Enforcement Act*?
	A	Form F63 of Appendix A in the Supreme Court Family Rules.
Rule 16-1	Q	Is a successful unrepresented litigant entitled to an award of costs?
	A	Yes. In *Skidmore et al v. Blackmore*, (1995), 2 B.C.L.R. (3d) 201, the Court of Appeal found that party and party costs serve several functions: they partially indemnify the successful litigant, deter frivolous actions and defences, encourage both parties to deliver reasonable offers to settle, and discourage improper or unnecessary steps in the litigation. The court concluded that unrepresented litigants are entitled to the benefit of party/party costs under Appendix B when they are successful and would otherwise be entitled to costs.
Rule 16-1	Q	When an appeal of the decision of the trial judge has been filed, can a district registrar proceed with an assessment of costs?
	A	Yes, unless a stay of proceedings has been granted by the court.
Rule 16-1(1)	Q	Should the registrar assess a bill under Appendix B where the order was silent as to costs?
	A	No. Refer to Rule 16-1(1), or, in the case of an interlocutory order, Rule 16-1(9).

Rule 16-1(2)	Q	When an award of special costs is made by the court, under Rule 16-1(2) how is the bill presented at the assessment and what does the registrar look for?
	A	A court may order that costs payable between party and party be assessed as special costs [Rule 16-1(2)]. Special costs were formerly called "solicitor and client costs". A bill for special costs is presented in the same form as a bill between solicitor and client under the *Legal Profession Act.* It may be presented on a lump-sum basis [Rule 16-1(27)]. This only means that the fee may be set as one lump sum and not allocated item by item. A lump-sum bill must contain such description of the nature of the services and of the matter involved as would, in the opinion of the registrar, afford any solicitor sufficient information to advise a client on the reasonableness of the charge made [Rule 16-1(28)]. Particulars may be demanded and ordered if a sufficient description is not given. In assessing a bill for special costs the registrar is performing a task similar to that which she performs when reviewing a bill between a solicitor and his own client. The registrar will, however, assess the bill applying a different standard from that which she must apply under section 71(4) of the *Legal Profession Act*. The considerations are not the same in all respects as those set out in section 71(4) of the *Legal Profession Act*. In particular, the following circumstances, which are relevant upon a review under the *Legal Profession Act*, are not relevant upon an assessment under Rule 16-1(2). (1) The member's character and standing in the profession, (2) Any agreement between the member and the client that fixes a fee rate on an amount per unit of time spent. Nor is the ability of the client to pay a relevant consideration [*O'Connell v. Gelb* (1988) 20 C.P.C. (2d) 124]. The registrar must, upon an assessment, consider the benefit to the party whose bill is being assessed of the

		services rendered by the solicitor [Rule 16-1(2)(b)(vii)]. The registrar must only allow those fees, expenses and disbursements which were reasonably necessary and proper to conduct the proceeding, and may not, as he may upon a review under the *Legal Profession Act*, allow fees, expenses and disbursements which were requested or authorized by the client or which were approved by the client or which were in the reasonable opinion of the client's lawyer calculated to advance the interest of the client, if such were not reasonably necessary. As to disbursements, the registrar must disallow charges and disbursements, which were not necessary or proper, even though they were specifically authorized by the client. While it is not proper to present evidence of the opinion of a solicitor as to the nature and importance of the services rendered, and the reasonableness of the charges made where a bill is being assessed under Appendix B, it is proper for the registrar to hear such evidence upon an assessment of a lump sum bill for special costs. No party may put in evidence the opinion of more than two solicitors, and any solicitor giving an opinion may be required to attend for examination and cross-examination [Rule 16-1(29)]. Notice may have to be given under section 11 of the *Evidence Act* (*Cooperview Haven Ltd. v. Waverley Park Estates Ltd*. (1984) 55 B.C.L.R. 230). Since party and party costs are only a partial indemnity, where special costs are awarded it is proper for the registrar to inquire what were the actual fees paid or agreed to be paid by the successful party to his own solicitor. For that purpose, discovery may be obtained of materials in the solicitor's file, which bear upon the financial obligation of the client to his solicitor, but subject to all just claims of solicitor and client privilege (*Denovan v. Lee* (1991) 62 B.C.L.R. 213).
Rule 16-1(4)	Q	What is being allowed for fax charges and photocopies as disbursements on an assessment?
	A	Thirty-five cents per page incoming or outgoing for fax; twenty-five cents per page for photocopies. (See Administrative Notice 5 effective July 1, 2010).

Rule 16-1(4)	Q	With the increase to court and registry fees set out in Appendix C, Schedule 1, will the allowed rates for such items as fax charges and photocopies increase in party/party bills?
	A	The amendments to Appendix C, Schedule 1 are independent of the allowable rates on a party/party bill. The intention of party/party costs is not to indemnify the successful party, but rather to pay a reasonable portion of their legal costs. The result is that a successful party may claim such things as, photocopy costs paid to the registry at the rate charged by the registry (providing it was for the purposes of the litigation: (*Bell v. Fantini* (1981) 32 B.C.L.R. 322) but may only claim in house photocopying at the party/party rate of $.25 per page. It is always open to a party, however, to prove that the actual cost of producing the photocopy was more than $.25.
Rule 16-1(4)	Q	Is there a distinction between securing an expert witness' attendance and compensating that person for their attendance?
	A	Yes. The fee set out in Schedule 3 of Appendix C must be tendered in advance to secure the attendance of the witness. To recover additional fees, the attendance itself must meet the test set out in Rule 16-1(4).
Rule 16-1(4)	Q	What fee is a professional witness entitled to for giving evidence at trial?
	A	Fees are set out in Appendix C, Schedule 3, Item 1. The factors set out in Rule 16-1(4) apply. With respect to professional witnesses who are physicians, the B.C.M.A. Fee Guide is, although not binding on the registrar, an indication of what is reasonable, necessary and proper for fees charged by physicians: *Laramee and Lytkowski v. Olson and IWA-Canada Holdings Society Local 1-367* (1992), 82 B.C.L.R. (2d) 228.
Rule 16-1(7)	Q	If reasons for judgment were silent as to costs, and the outcome was clear, can the registrar settle an order including costs to the successful party?
	A	Yes. See Rule 16-1(7), costs to follow the event.
Rule 16-1(7)	Q	If a party files an Appointment to assess costs before the Registrar, what must be attached to the Appointment?
	A	Unless an enactment authorizes a registrar to assess costs without an order, the order awarding costs that has been pronounced and entered must be attached to the Appointment. If the matter has

		settled and the settlement agreement provides for the payment of costs to be assessed, a copy of the signed settlement agreement must be attached to the Appointment to show the entitlement to costs.
Rule 16-1(21)	Q	What is the procedure for setting down an appointment to have a bill of costs assessed in a location other than the originating registry?
	A	All parties must agree to have the assessment set down in another location or an order of the court is required, Rule 16-1(21). Leave of the registrar pursuant to Rule 10-2(4) only applies to court applications. The party who wants to set the appointment for hearing must call Supreme Court Scheduling in the registry where they want it heard for a date. They then should file the original appointment in the originating registry. A hearing record (see Rule 23-6(3.1)) must be filed no later than 4pm on the business day that is one full business day before the date set for the hearing at the registry where the matter will be heard.
Rule 16-1(25)	Q	What is the procedure for obtaining a certificate of costs if the party charged consents to the amount of a bill of costs pursuant to Rule 16-1(25)?
	A	The party requesting the certificate must provide: 6) A requisition referring to the order or rule allowing costs; 7) A copy of the entered order for costs 8) The fee for the certificate; and 9) A certificate in Form F72, signed by consent of the parties. 10) If a bill of costs is presented (not required) date and sign as the registrar indicating it has been consented to by the parties. The registrar will issue the certificate and return the copies to the requesting party.
Rule 16-1(25)	Q	Must the date of a certificate of costs reflect the date the registrar assessed the costs or can the certificate be the same date as the order granting the costs?
	A	The certificate of costs is dated on the day the registrar assessed the costs. The costs are payable when the court's judgment is pronounced. See case law *Syed v. Randhawa* (1996), 136 D.L.R.(4th) 119 at p. 122, 46 C.P.C. (3d) 350, 24 B.C.L.R. (3d) 164, [1996] B.C.D. Civ. 2052-01 (S.C.)

Rule 16-1(26)	Q	How is a review of a registrar's assessment of costs brought before the court?
	A	It is properly brought by way of notice of application under Rule 16-1(26), not by way of notice of appeal under Rule 22-7(8): *Xerox Canada Inc. v. Sweany* (1990) 42 C.P.C. (2d) 101 at 102 (S. C.)
Rule 16-1(35)	Q	Is there a time limit to file a party/party bill of costs under Appendix B?
	A	No, although keep in mind the expiration of judgments, and Rule 16-1(35).
Rule 18-1(5)	Q	How do the parties or counsel make an application, for example, for an adjournment, before the registrar prior to the appointment date?
	A	1. Requisition requesting adjournment etc., with service on the other side. Set down usually at 9:30 a.m. before the registrar; or 2. Speak to adjournment, etc. before the associate judge in chambers by way of notice of application and affidavit; or 3. Request the registrar to order a pre-hearing conference pursuant to Rule 18-1(5)
Rule 20-5	Q	Is there a charge to swear an affidavit in support of an application for an order to waive fees?
	A	Rather than risk having to process a refund, it would be appropriate not to charge a fee in this instance.
Rule 20-5	Q	Does an order to waive fees apply to applications under the *Divorce Act*?
	A	On order to waive fees relieves the party of the obligation to pay Appendix C fees. Appendix C fees do apply to proceedings brought under the *Divorce Act* with the exception of the $10.00 federal registration fee.
Rule 20-5	Q	When a person is granted an order to waive fees, does it apply to all proceedings in the file?
	A	The court may order to waive fees relation to the proceeding or the order may be more specific. See Rule 20-5(2). The party must produce a copy of their order to waive fees each time they file documents which attract fees or request photocopies so the registry can determine if the order covers the request. An order to waive fees only applies to fees payable to the Crown under Appendix C of the Supreme Court Civil and Family Rules. It does not apply to other fees such as those payable for transcripts, to

		the federal government for registration of divorce proceedings or under *Jury Act* for jury fees.
Rule 21-1	Q	Should registries reject forms if they do not comply with Appendix A of the Supreme Court Family Rules?
	A	Rule 21-1(1) indicates that the forms in Appendix A must be used if applicable, with variations as the circumstances of the family law case require, and each of those forms must be completed by including the information required by that form in accordance with any instructions included on the form. If a party insists on filing a document that is not in accordance with Appendix A, registry staff should accept the document and leave it up to the parties or the court to take issue with the document.
Rule 21-1	Q	Do you require backing sheets on documents filed in Supreme Court?
	A	No, although if counsel do not provide backing sheets they must put their address and phone numbers on either the face of the document or at the end of the document. Note: this should not appear on the face of an order or default judgment.
Rule 21-1(2)	Q	Should the registry accept an affidavit of the translator with a photocopy of a marriage certificate attached when filed together with the original marriage certificate? This practice has been used when the party wants the marriage certificate to be returned to them after the order has been granted.
	A	The registry may accept the affidavit for filing but there is no authority to accept the original certificate under Rule 21-2(2) if it is not in the English language. The original certificate should be exhibited to the affidavit of the translator together with the translation. If that is not done the registrar would refuse to certify that the pleadings are in order. If the party wants the original returned to them, they will have to make an application to the court to release it.
Rule 21-1(2)	Q	An affidavit sworn by a translator states that he prepared a translation from a photocopy of a marriage certificate. The affidavit exhibits a photocopy of the marriage certificate (certified to be a true copy of the original by the translation company). Should this affidavit be rejected by the registry?
	A	No. The registry should seldom refuse to file a document but it should be recognized that filing may not accomplish anything at the end of the day. Filing a translation of a copy would not be sufficient evidence of

		the marriage; the registrar would not certify the pleadings and that would lead to a request for another affidavit.
Rule 21-1(2)	Q	Where is the authority for the registrar to require a translation of birth registrations or marriage registrations? (We have had counsel argue that Rule 21-1(2) only deals with documents "prepared for use in court".)
	A	Birth registrations and marriage registrations need to be translated pursuant to Rule 21-1(2), as they are required for use in a proceeding.
Rule 21-1(2)	Q	Can a document prepared for use in court utilize both sides of the paper?
	A	Yes, Rule 21-1(2) does not preclude using both sides: "...every document purported for use in the court shall be in the English language, legibly printed, typewritten, written or reproduced on 8 1/2 inch x 11 inch durable white paper..."
Rule21-1(5)	Q	When signing a certificate of pending litigation or a certificate of judgment is the full style of proceedings required on the certificate?
	A	No. Since certificates of pending litigation and certificates of judgment are neither an order nor a document that commences a proceeding, the full style of proceeding is not required on the certificate.
Rule 21-2(4)	Q	Is it necessary for a claimant to serve a respondent with a notice of intention to proceed when no response has been filed?
	A	Rule 21-2(4) requires notice on all parties, however, Rule 1-1 defines a “respondent” as a person who has filed a response to family claim under Rule 4-3 so if no response has been filed a notice of intention to proceed need not be served.
Rule 21-2(4)	Q	Can a Certiicate of Pending Litigation be issued on a family file where no step has been taken for over a year?
	A	The question of what constitutes a “step” can be fairly nuanced (it could be a document filed, or a letter between counsel), but as the issuing of a CPL can be considered a safeguarding of an interest in property claimed to be family property, the registrar should issue the CPL. The other party may apply to remove it if they believe it was obtained improperly. The registrar should confirm however that the Claim on which they are relying to issue the CPL was served prior to expiry, as if the claim has expired, a CPL should not be issued.

Rule 22-2(7)	Q	Can a registrar use a signature stamp on a court document?
	A	A signature stamp cannot be used on the original document, as this requires the signature of the registrar. A stamp showing the name of the person who signed the original could be used on copies of the original document.
Rule 22-2(13)	Q	What is the correct procedure to transfer a file for all purposes when an order has been made?
	A	A requisition requesting the transfer together with a copy of the entered order is filed at the registry where the proceeding is being conducted. The file is then transferred to the new registry. The receiving registry opens a new file and puts the new file number and new location on all documents in the file. The receiving registry should advise the originating registry of the new file number.
Rule 22-2(13)	Q	When an order is made transferring a matter to another location for hearing, what is the procedure to transfer the file?
	A	If a hearing record/application record is required by the rules it may not be necessary to transfer the court file. If the file must be transferred, then the party who obtained the order must file a requisition with a copy of the entered order requesting the file to be sent to the other location. The request should be made within a reasonable period before the hearing date to ensure the file reaches the other registry in time.
Rule 22-5	Q	If counsel insist interest should be payable on monies in court but the registry's position is the money falls under Rule 23-4(1)(a), (b), (c) or (d) what is counsel's recourse?
	A	Counsel would have to make an application to the court by way of notice of application requesting a declaration the monies come within the definition of "funds" in Rule 22-5.
Rule 22-5(5)	Q	When an order directs payment out of funds in court to a party, can the funds be paid directly to the solicitor without the client’s consent?
	A	If the order says that the funds are to be paid out to a party, the cheque should be made payable to that party even if the request for payment out is accompanied by a written consent from the party for payment to the law firm. The cheque may be delivered to the party in care of the law firm. Counsel should obtain the client’s

		consent in advance of the application and seek an order for payment out to the law firm in trust.
Rule 22-5(5) and Rule 10-7	Q	If a consent order directs payment out directly to the solicitor, is consent required from the client?
	A	No. The funds should be paid out in accordance with the order.
Rule 22-7	Q	What recourse is open to an applicant when a registrar, due to deficiencies in documentation, refuses to issue execution proceedings, or enter a judgment?
	A	If the refusal falls under a rule that sets out a specific remedy, the recourse of the applicant is clear. If the Rule does not contain a specific remedy the registrar may refer it to a Judge or Associate Judge (Rule 22-7(7)) (Decision of Master Patterson - C990610 – Hastings v O'Neill Hotels), or an appeal may be made by the applicant by filing a notice of appeal in Form F98 (Rule 22-7(8) & (9)). It is important that the registrar set out a clear and concise statement of the reasons for refusal. A rejection slip would be useful and should be signed by the registrar.
Rule 22-7(8)	Q	Is a new file opened on an appeal from an associate judge or registrar?
	A	The appeal is filed in the existing proceeding and the fee set out in Appendix C, Schedule 1, Item 5 is charged.
Rule 22-7(11)	Q	How can a party obtain a stay of an order of an associate judge pending appeal?
	A	Either the associate judge or the court may stay execution of the order. A party may apply to the associate judge to stay the order at the time it is made or make an application to the court afterwards.
Rule 22-8	Q	Under Rule 22-8 who can search a family law case?
	A	Rule 22-8(1) specifies who can search a registry file in respect of a family law case; • A lawyer, whether or not a lawyer of a party • A party • A person authorized in writing by a party • A person authorized in writing by a party's lawyer. Rule 22-8(6) limits the individuals who may search a separation agreement filed under section 122 of the

		Family Relations Act to the parties, or someone authorized in writing by that party, or their solicitors. Separation agreements filed under section 122 should be placed in a clearly marked envelope within the court file.
Rule 22-8	Q	Are the reasons for judgment issued in a *Divorce Act* proceeding, a *Family Relations Act*, or a *Family Law Act* proceeding available to the public?
	A	The Court Record Access Policy allows the public to have access to written reasons for judgment in a family proceeding unless the reasons for judgment or the court record are sealed.
Rule 22-8	Q	Are orders made under the *Divorce Act,* the *Family Relations Act* or the *Family Law Act* searchable documents?
	A	The Court Record Access Policy allows the public access to orders made in family proceedings unless the court record or the order is sealed.
Rule 22-8(1)	Q	Is a lawyer from another country or jurisdiction able to search a Supreme Court family law case under Rule 22-8(1)?
	A	A lawyer from another province or territory of Canada who is authorized to practise law in that province or territory falls within the definition of a "lawyer" found in s. 1(1) of the *Legal Profession Act*. A lawyer from outside of Canada does not fall within the definition of a "lawyer" under the *Legal Profession Act* and should not have access to a family law case under Rule 22-8(1). Note: The "visiting lawyer" must provide proof satisfactory to the registry (such as a current card issued by the province's or territory's law society, plus picture identification) that he/she meets the definition of "lawyer" in the *Legal Profession Act*.
Rule 22-8(1)	Q	Are personal representatives of a deceased party to a family law proceeding permitted to search the court file?
	A	Yes, upon production of the estate grant that names them as the personal representative of the estate of the deceased party, they are permitted to search the file.
Rule 22-8(1)	Q	Are representatives of deceased First Nations individuals able to access family files?

	A	Yes. The legally appointed representatives should be able to access any information that the deceased would have been able to.
Rule 23-1(3) and (5)	Q	Where orders received still refer to the parties as plaintiffs and defendants, should the orders be entered or returned for revision?
	A	The orders should be entered as submitted. It is often the case that these orders are urgent and the order would not be nullified because the identification of the parties is incorrect.
APPENDICES		
Appendix C	Q	Are there extra court filing fees for filing the notice of hearing or the response to petition?
	A	No, Appendix C does not include any fees for filing a response to a petition or filing a notice of hearing of petition.
Appendix C	Q	Should registry staff accept documents if the individual filing the document does not have the fee required by Appendix C - Schedule l.
	A	No. If there is no fee paid, we should not accept the document for filing. In appropriate circumstances, registry staff may want to advise the litigant of the Order to Waive Fees Package available for self-represented litigants.
Appendix C Schedule 1 Item 4(b)	Q	Is there a charge for an appointment for a hearing, inquiry or reference before a registrar or special referee under the *Court Order Enforcement Act*?
	A	No. See Item 4(b), Appendix C, Schedule 1.
Appendix C Schedule 1 Item 5	Q	What fee applies for filing a notice of appeal from the associate judge or registrar?
	A	This falls under Item 5, Schedule 1 of Appendix C.
Appendix C Schedule 1 Items 9 & 10	Q	Must a party pay fees for the courtroom or hearing room if they are represented on a Legal Aid basis?
	A	Yes, the party must pay the fee to the Minister of Finance and then submit the receipt to Legal Aid for reimbursement.
Appendix C Schedule 1 Item 10	Q	Is it the responsibility of the solicitor or the party to pay the fees for the time spent in hearing a trial?
	A	It is the party's responsibility.

Appendix C Schedule 1 Item 19	Q	When requesting a certified copy of a document of record, is there a photocopy charge in addition to the charge for making a certified copy?
	A	No, there is no additional charge for photocopies.
Appendix C Schedule 1 Item 19(d)	Q	When a person requests a copy of a transcript which was filed within the last five years, what fees are the registry required to collect?
	A	See Item 19(d). Where the transcript was filed within the last five years, the registry is to collect $4.00 per page. Where the transcript was filed more than 5 years ago the charge is $1.00 per page for photocopying.
COURT OF APPEAL RULES		
Rule 69	Q	How does a party enforce an order for costs granted by the British Columbia Court of Appeal?
	A	If a Certificate has been filed it may be enforced as if it were a judgment of the court referred to in section 41 of the *Act*. Section 41(2) of the *Court of Appeal Act* says the proceedings may be taken on the judgment as though it were an order of the court appealed from. Note: There is also a similar procedure for enforcing an order of costs from the Supreme Court of Canada. See section 51 of the *Supreme Court Act.*
REGISTRY PROCEDURE		
Correspondence with the Court	Q	What is the procedure to follow if counsel wish to know the status of a reserve judgment?
	A	The proper way for such an enquiry to be made, if it must be, is by a letter to the registry to the attention of Supreme Court Scheduling. (See Practice Direction 27 effective July 12, 2010)
Definition	Q	What is an "attorney" in British Columbia?
	A	The term "attorney" could refer to a recipient of a power of attorney or to a person appointed as an extra provincial company agent in B.C. The term does not refer to a member of the Law Society of British Columbia.

		Black's Law Dictionary: "In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place or stead of another."
Hague Convention - Article 16 Child Abduction	Q	What must the registry do when notice is received from a foreign jurisdiction requesting that a proceeding be stayed pursuant to Article 16 of the Hague Convention (Child Abduction)?
	A	When the registry is made aware that a child may have been wrongfully removed from or retained by another jurisdiction, the associate judge/judge hearing an application for custody must be informed. The Article 16 Notice must be entered in CEIS in accordance with established instructions. The Article 16 Notice is to be brought to the attention of the presiding associate judge/judge before the hearing.
Vexatious Litigants – Registry Practice	**Q**	**If a person is served with, or otherwise becomes aware of, process or materials filed by a vexatious litigant who has not obtained prior leave of the Court, what should they do?**
	A	**The person should bring this circumstance to the attention of the local registry. The Court may issue an *ex mero motu* order declaring the process filed to be a nullity or may make other such orders as the circumstances require.**
Registry Practice	Q	What is the role of the registry concerning the contents of documents, which are submitted for filing?
	A	Documents submitted for filing should be filed. The role of the registry is to receive documents and maintain a file of proceedings. The contents of documents are not an issue for registry staff. Contents of documents may be an issue for a registrar when called upon to issue process, such as a garnishing order or a writ of execution.
Registry Practice	Q	Is a registrar required to keep abreast of relevant decisions?
	A	While case references may often be helpful, lay registrars are not required to cite case law in making decisions. The Registrar's Office will advise registry staff of cases if they affect registry procedure.
Registry Practice	Q	Should registry staff respond to the garnishee's request to interpret the exemptions in a garnishing order?

	A	No. Such an answer requires legal advice. The garnishee should consult a lawyer.
Registry Practice	Q	How can registry staff differentiate between requests for legal advice and requests for procedural advice?
	A	This question was answered by Chief Justice McEachern in October of 1984. The answer is as helpful today as it was in 1984: "I think a distinction must be drawn between legal advice on substantive matters and practical assistance on practice matters. I agree that the Registrars should not give legal advice, but there is no harm in referring a lawyer, or anyone, to case references. Practice matters I think are something different and to the extent that a practice is known, I see no objection, and I encourage Registrars to inform counsel and others about a matter of settled practice."
Registry Practice	Q	What is the procedure for counsel to follow if there is an urgent application that must be heard outside regular court hours e.g.: someone is arrested for breach of a family law restraining order?
	A	If there is a Vancouver action or counsel is unable to reach the local registrar counsel should phone the Vancouver Registry on-call registrar at (604) 833-4642. The registrar will call back (usually within ½ hour) to obtain the details of the application and the reasons for urgency and will advise whether the application will be heard outside office hours and, if so, the time and method of hearing (either by telephone or at the courthouse). (See Administrative Notice-15 for more details)
Registry Practice	Q	What does the registry require when the court has ordered that a letter of credit be deposited?
	A	A letter of credit can be issued by any Canadian bank or credit union and must meet the requirements set out in Administrative Notice – 4, effective July 1, 2010.
Registry Practice	Q	When an order of the court authorizes the return of a filed document, what process should be used to release it?
	A	Filed documents may not be returned to a party without an order of the court. Once an order is granted, the party authorized to receive the document must file a

		requisition with a copy of the entered order. Registry staff should take a photocopy of the document being released which will be retained in the court file. The person receiving the original document must sign the requisition acknowledging receipt of same.
Registry Practice	Q	If only photocopies of documents to be filed with the court are presented at the counter for filing are we able to accept them?
	A	Unless an enactment or the Court Rules specifically authorize the filing of a photocopy the documents should not be accepted for filing because the court record should only include original documents. References throughout the rules confirm the court has the original documents (Rule 3-2(1), Rule 22-2(10), Rule 14-1(27) and Rule 16-1(20)). Schedule 1 of Appendix C, Item 19 authorizes the registry to produce a certified copy of a document upon payment of the required fee. The registry may only produce a certified copy if they are in possession of the original document.
Registry Practice	Q	If an order made by an Associate Judge prior to January 15, 2024 is submitted for entry, should the order state it is made by an Associate Judge or Master?
	A	The Order should still state it is made by a Master if the order was pronounced prior to January 15, 2024, even if being entered after that date. Any orders made after January 15, 2024 should state they are made by an Associate Judge.