

Part 40 Time

Month

544 The word “month” where it occurs in these Rules or in any judgment, order, direction or other document forming part of any proceeding in the court means a calendar month, unless the context otherwise requires.

AR 390/68 s544

Holidays and Saturdays not included

545 Where any period less than seven days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, holidays and Saturdays shall not be reckoned in the computation of the period.

AR 390/68 s545

Clear days

546(1) Where a number of days not expressed to be “clear” days is prescribed, the number shall be reckoned exclusively of the first day and inclusively of the last day.

(2) Where the days are expressed to be “clear days” or where the term “at least” or the term “not less than” is added, the first and the last days shall be excluded.

AR 390/68 s546

Time expiring on holiday

547 Where the time for doing any act or taking any proceeding expires on a holiday or Saturday or other day on which the court offices are closed, the act or proceeding shall, so far as regards the time of doing or taking it, be held to be duly done or taken on the day on which the court offices shall next be open.

AR 390/68 s547

Court may enlarge or abridge time

548(1) Unless there is an express provision that this Rule does not apply, the court may enlarge or abridge the time appointed by these Rules of any rules relating to time or fixed by any order for doing any act or taking any proceeding upon such terms as may be just.

(2) An enlargement may be ordered although the application therefor is not made until after the expiration of the time appointed or allowed.

AR 390/68 s548

Time enlarged by consent

549 The time for delivering, amending or filing any pleading, answer or other document may be enlarged by consent in writing without application to the court.

AR 390/68 s549

Service on holiday

550 Service of any document, other than one by which a proceeding is commenced, made after five o'clock in the afternoon or on a Saturday or holiday shall be deemed to have been made on the next day following which is not a Saturday or holiday.

AR 390/68 s550

Repealed

551 Repealed AR 338/83 s15.

Part 41 Vacation

Computation of time during vacation

552(1) Unless otherwise directed by the court, no trials shall be held during vacation and the time of vacation shall not be reckoned in the computation of the times appointed by order or allowed by these Rules for amending or delivering any pleadings.

(2) Notwithstanding subrule (1) in default of defence being delivered, the plaintiff may proceed as hereinbefore provided unless the defendant has filed an affidavit stating that in the belief of the deponent the defendant has a good defence on the merits and intends to defend the action.

AR 390/68 s552

Court vacations

553 The vacations of the Court of Appeal and the Court of Queen's Bench are

- (a) The long vacation to consist of the months of July and August, and
- (b) The Christmas vacation to consist of the period from the 22nd day of December to the 6th day of the following January.

AR 390/68 s553;338/83

Part 42 Solicitors

Change of solicitors

554(1) A party represented by a solicitor may change his solicitor by filing and serving a notice of the change, but until the notice is so filed and served the former solicitor shall be considered the solicitor of the party.

(2) A party acting in person and desiring to be represented by a solicitor may file and serve a notice to that effect.

(3) A party represented by a solicitor and desiring to act in person may file and serve a notice to that effect, but until notice is so filed and served the former solicitor shall be considered as solicitor of the party.

(4) A party whose solicitor has died or ceased to be engaged in the practice of law or filed a notice of ceasing to act may file and serve a notice of change of solicitor or notice that he intends to act in person.

(5) Any notice given pursuant to this Rule shall include an address for service.

(6) The notice shall be served upon all parties other than those who have been noted in default or against whom default judgment has been entered and, when the notice is given pursuant to subrule (1) or subrule (3), on the former solicitor.

(7) The party giving the notice may do so by his new solicitor.

AR 390/68 s554

Solicitor ceasing to act

555(1) Subject to subsection (6), a solicitor who desires to remove himself as solicitor of record for a party he has been representing may do so by

- (a) serving a written notice of his intention to withdraw from the record upon the party and upon all other parties who have provided an address for service, except those who have been noted in default or against whom a default judgment has been entered, and
- (b) filing proof of the required service.

(2) The notice of withdrawal shall set out the last known address of the client.

(3) The notice of withdrawal shall be endorsed with a notice to the party whom the solicitor is ceasing to represent to the following effect:

“You are hereby notified that on the expiry of 10 days from the filing

of the proof of service of this document the undersigned will no longer be your solicitor of record and you will not be entitled to be served with any pleadings or notice of other proceedings in the action unless a further address for service is filed and served in accordance with the Rules of Court.

Name of Solicitor”.

(4) On the expiry of 10 days from the filing of the proof of service of the notice of withdrawal upon all those parties required to be served, the solicitor shall be deemed to have withdrawn from the record and no documents relating to the action or matter shall be required to be served upon him or at the address for service provided by him.

(5) On the expiry of 10 days, unless in the meantime the party has furnished a new address for service, the address set out in the notice of withdrawal shall be deemed to be that party’s address for service and any other party may effect service of any document by mailing it to the party at that address by prepaid registered mail endorsed with a memorandum to the following effect:

“This document is served by mail as no new address for service has been furnished by you”.

(6) Once a solicitor has executed a Certificate of Readiness in respect of an action, that solicitor shall not remove himself as solicitor of record for the party without leave of the Court.

(7) The removal of a solicitor as a solicitor of record pursuant to the leave of the Court shall not be construed so as to affect any legal or ethical obligation of the solicitor to the solicitor’s client.

AR 390/68 s555;313/81;87/92

Service if no notice given

556 When a solicitor dies or ceases to be engaged in the practice of law and no notice has been given by the party pursuant to Rule 554, any other party may apply ex parte, to the court for directions as to service of all or any documents, and the court may direct the way in which service is to be effected, or may dispense with service which direction or dispensation may have effect unless and until a notice is given pursuant to Rule 554.

AR 390/68 s556

Solicitor must declare action started by him

557(1) Any solicitor whose name is endorsed on any statement of claim or other proceeding by which a cause or matter is commenced shall, on receipt of a written demand made by or on behalf of any person who has been served therewith, declare, forthwith, in writing, whether a cause or matter has been commenced by him or with his authority or privity and a solicitor who fails to comply with the demand may be held in civil contempt.

(2) If the solicitor answers in the affirmative the Court may direct that he also disclose within such time as it might limit the profession or occupation

and place of abode of the plaintiff or party on whose behalf he is acting.

(3) If the solicitor declares that the cause or matter was not commenced by him or with his authority or privity, all proceedings thereon shall be stayed and no further proceedings shall be taken without leave of the Court.

AR 390/68 s557;160/93

Part 43 Non-Compliance and Irregularities

Setting aside proceeding

558 Unless the court so directs non-compliance with the Rules does not render any act or proceeding void, but the act or proceeding may be set aside either wholly or in part as irregular or amended or otherwise dealt with.

AR 390/68 s558

Motion must be made promptly

559 An application to set aside any process or proceedings for irregularity shall be made within a reasonable time and shall not be allowed if the party applying has taken a fresh step after knowledge of the irregularity.

AR 390/68 s559

Action improperly begun

560 An action improperly begun by statement of claim, originating notice or petition may be treated as an irregularity and the action may be continued upon such terms and subject to such conditions as the court may impose.

AR 390/68 s560

Pleading not defeated by defect

561 No pleading or other proceedings shall be defeated on the ground of an alleged defect of form.

AR 390/68 s561

Forms

561.01(1) In this Rule, “deviation” includes the deletion of material that is not applicable or the addition of material that is applicable.

(2) Where a person

- (a) uses a form that is prescribed by these Rules, or
- (b) prepares a document that is based on or that is to be used in place of a form prescribed by these Rules,

any deviation in that form or document from the prescribed form that, in the circumstances under which that form or document is to be used, does not adversely affect

- (c) the substance of the prescribed form, or
- (d) the information reasonably required or specifically required by the Court,

and is not intended to mislead does not invalidate that form or document.

AR 133/97 s3

