

Manitoba Regulation 553/88

Court of Queen's Bench Rules

This version consolidates the following amendments: 150/89; 25/90; 31/90; 146/90; 31/91; 155/91; 240/91; 12/92; 13/93; 14/94; 67/94; 127/94; 214/94; 98/95; 182/95; 42/96; 184/96; 185/96; 186/96; 201/96; 229/96; 26/97; 187/97; 228/97; 6/98; 160/98; 69/99; 120/99; 158/99; 159/99; 160/99; 66/2000; 50/2001; 32/2002; 121/2002; 151/2002; 204/2002; 205/2002; 43/2003; 167/2003; 104/2004; 106/2004; 120/2004; 188/2004; 207/2004; 11/2005; 12/2005; 48/2005; 92/2005; 93/2005; 120/2006; 199/2006; 67/2007; 76/2007; 13/2008; 14/2008; 87/2008; 88/2008; 148/2009; 149/2009; 18/2010; 27/2010; 28/2010; 69/2010; 139/2010; 140/2010; 162/2011; 177/2011; 215/2011; 60/2012; 128/2012; 134/2012; 54/2014; 258/2014; 271/2014; 17/2015; 98/2015; 164/2015.

Recent amendments not yet consolidated/: 165/2015

THE COURT OF QUEEN'S BENCH ACT

(C.C.S.M. c. C280)

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COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

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EXTENSION OR ABRIDGMENT

General powers of court

3.02(1) The court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

Expiration of time

3.02(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Consent in writing

3.02(3) A time prescribed by these rules for serving or filing a document may be extended or abridged by consent in writing.

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VALIDATING SERVICE

16.08 Where a document has been served in an unauthorized or irregular manner, the court may make an order validating the service where the court is satisfied that,

(a) the document came to the notice of the person to be served; or

(b) the document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

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PART IX

MOTIONS AND APPLICATIONS

RULE 37

MOTIONS — JURISDICTION AND PROCEDURE

Notice of motion

37.01 A motion shall be made by notice of motion (Form 37A), unless the court orders otherwise.

JURISDICTION TO HEAR A MOTION

Judge

37.02(1) A judge has jurisdiction to hear any motion in a proceeding.

Master

37.02(2) A master has jurisdiction to hear any motion in a proceeding, except a motion,

(a) where the power to grant the relief sought is conferred expressly on a judge by a statute or rule;

(b) to set aside, vary or amend an order of a judge;

(c) to abridge or extend a time prescribed by an order that a master could not have made;

(d) for judgment on consent in favour of or against a party under disability;

(e) relating to criminal proceedings or the liberty of the subject;

(f) in an appeal; or

(g) for interim relief in a family proceeding in respect of custody, access, support or property.

M.R. 31/91

TO WHOM MOTION TO BE MADE

To a master

37.03(1) Subject to subrule (2), a motion within the jurisdiction of a master shall be made to a master.

To a judge

37.03(2) Where a motion is within the jurisdiction of a master and a master is not available at the centre at which the motion is to be heard or a judge grants leave to make the motion to a judge, the motion may be made to a judge.

M.R. 31/91

Referral to judge

37.03(3) A motion pending before a master may be referred by the master to a judge for decision and the judge may dispose of the motion in whole or in part or refer the motion back in whole or in part.

PLACE OF FILING

37.04 A motion shall be filed in the administrative centre in which the court file is located.

PLACE AND DATE OF HEARING

Place

37.05(1) The moving party shall name in the notice of motion as the place of hearing,

(a) where the court file is located in a judicial centre, that judicial centre; or

(b) where the court file is located in an administrative centre which is not a judicial centre, the judicial centre nearest that administrative centre.

Hearing date

37.05(2) The moving party shall name in the notice of motion as the date of hearing

(a) where the motion is to a master or other officer, such date as may be obtained from the master or other officer.

(b) where the motion is to a judge, and

(i) is not to be contested, or

(ii) the moving party is uncertain as to whether it will be contested, or

(iii) is to be contested and is urgent,

any date on which the court sits to hear motions;

(c) where the motion is to a judge and is to be contested, such date as may be obtained from the registrar.

SERVICE OF NOTICE

Required as general rule

37.06(1) The notice of motion shall be served on any person or party who will be affected by the order sought, unless these rules provide otherwise.

Notice not required

37.06(2) Where the nature of the motion or the circumstances render service of the notice of motion impracticable or unnecessary, the court may make an order without notice.

Consent order without notice of motion

37.06(2.1) The court may make an order on consent without a notice of motion being filed.

M.R. 121/2002

Interim order without notice

37.06(3) Where the delay necessary to effect service might entail serious consequences, the court may make an interim order without notice.

Service of order

37.06(4) Where an order is made without notice to a person or party affected by the order, the order, together with a copy of the notice of motion and all affidavits and other documents used at the hearing of the motion, shall be served forthwith on the person or party unless the court orders or these rules provide otherwise.

M.R. 6/98

Where notice ought to have been served

37.06(5) Where it appears to the court that the notice of motion ought to be served on a person who has not been served, the court may,

- (a) dismiss the motion or dismiss it only against the person who was not served;
- (b) adjourn the motion and direct that the notice of motion be served on the person; or
- (c) direct that any order made on the motion be served on the person.

Time for service

37.06(6) Where a motion is made on notice, the notice of motion shall be served at least four days before the date on which the motion is to be heard.

TIME FOR SERVICE

Where to master or other officer or uncontested

37.07(1) Where a motion is made on notice in any of the cases mentioned in clauses 37.05(2)(a) and (b), the notice of motion shall be served at least four days before the date on which the motion is to be heard.

Contested motion to a judge

37.07(2) Where a motion to a judge is to be contested and a date for the hearing of the motion has been obtained from the registrar, the notice of motion and the moving party's brief shall be served at least 14 days before the date on which the motion is to be heard.

M.R. 150/89

CONTESTED MOTIONS

To be adjourned for a hearing date

37.08(1) Subject to subrule (2), where a notice of motion to a judge has been served under subrule 37.07(1) and it transpires that the motion is to be contested, the judge shall adjourn the motion and the moving party may obtain a hearing date from the registrar.

Immediate hearing where urgent, etc.

37.08(2) In a case of urgency or where otherwise appropriate, the judge may proceed to hear the motion.

Moving party's brief

37.08(3) Where the motion is to a judge or master and is to be contested, the moving party shall, at the time of obtaining a hearing date, file in the judicial centre in which the motion is to be heard and serve on all other parties, a brief consisting of

(a) a list of any documents specifically identified, including filing date, filed in court to be relied upon by the moving party, unless the court orders that copies of all documents be filed as part of the brief;

(b) a list of any cases and statutory provisions to be relied on by the moving party, together with a statement as to the principle being relied upon in each case; and

(c) a list of the points to be argued.

M.R. 186/96

Responding party's brief

37.08(4) A responding party who has been served with a brief under subrule (1) shall, at least seven days before the hearing, file in the judicial centre in which the motion is to be heard and serve on all other parties, a brief consisting of,

(a) a list of any documents described in clause (3)(a), not included in the moving party's brief and to be relied on by the responding party;

(b) a list of cases and statutory provisions not included in the moving party's brief, to be relied on by the responding party, together with a statement as to the principle being relied upon in each case; and

(c) a list of the points to be argued by the responding party, not included in the moving party's brief.

M.R. 12/92; 186/96

Waiver

37.08(5) The court may, either before or at the hearing of the motion, waive or vary the requirements of this rule where there is insufficient time to comply or where, due to the nature of the motion, a brief is not justified.

37.08(6) Repealed.

M.R. 186/96

HEARING BY TELEPHONE, VIDEO CONFERENCE OR OTHER MEANS OF COMMUNICATION

Consent

37.09(1) If all the parties to a motion consent and the court permits, a motion may be heard by telephone, video conference or other means of communication.

M.R. 121/2002

Order, no consent

37.09(2) If not all the parties consent, the court may, on motion, make an order directing the manner in which the motion is to be heard.

M.R. 121/2002

Motion to determine manner

37.09(3) The motion under subrule (2) to determine the manner of hearing a motion may be held

(a) without the necessity of filing a notice of motion or evidence; and

(b) by telephone, video conference or other means of communication.

M.R. 121/2002

Arrangements

37.09(4) Where a motion is to proceed by telephone, video conference or other means of communication under subrule (1) or clause (3)(b), the moving party shall make the necessary arrangements and give notice of those arrangements, including the date, time and manner of hearing, to the other parties to the motion and to the court.

M.R. 121/2002

DISPOSITION OF MOTION

37.10 On the hearing of a motion, the presiding judge or officer may allow, dismiss or adjourn the motion, in whole or in part, and with or without terms, and, in the alternative or in addition, may

(a) direct the trial of an issue, with such directions as are just, and adjourn the motion to be disposed of by the trial judge;

(b) where the proceeding is an action, order that it be set down for trial forthwith or within a specified period; or

(c) where the proceeding is an application, order that it be heard at such time and place and upon such terms as are just.

RESCINDING OR VARYING ORDERS

Motion to rescind or vary

37.11(1) A person affected by an order made without notice, or a person who has failed to appear on a motion due to accident, mistake or insufficient notice, may, by notice of motion filed, served and made returnable promptly after the order first came to the person's notice, move to rescind or vary the order.

To original judge or officer

37.11(2) Where practicable, a motion under subrule (1) shall be made to the judge or officer who made the order.

ABANDONMENT OF MOTIONS

Abandonment of motions, where not served

37.12(1) Where a party makes a motion by filing a Notice of Motion in accordance with this rule and has not served the Notice of Motion, the party may abandon the motion by filing a Notice of Abandonment of Motion (Form 37B) and an affidavit deposing that the Notice of Motion has not been served.

M.R. 25/90

Abandonment of motions, where served

37.12(2) Where a party makes a motion by filing and serving a Notice of Motion in accordance with this rule, the party may abandon the motion

(a) by serving a Notice of Abandonment of Motion on the parties who were served with the Notice of Motion; and

(b) by filing the Notice of Abandonment of Motion along with proof of service of the Notice of Abandonment of Motion.

M.R. 25/90

Deemed abandonment of motions

37.12(3) Where a party

(a) serves a Notice of Motion on another party and, within a reasonable time after serving the Notice, does not file the Notice; or

(b) files and serves a Notice of Motion and does not appear at the hearing of the motion; the party is deemed to have abandoned the motion unless the court orders otherwise.

M.R. 25/90

Costs on abandoned motions

37.12(4) Where a motion is abandoned by a Notice of Abandonment of Motion under subrule (2) or is deemed to be abandoned under subrule (3), a party on whom the Notice of Motion is served is entitled to the costs of the motion, unless the court orders otherwise.

M.R. 25/90

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CONTEMPT ORDER

Motion for contempt order

60.10(1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

Service

60.10(2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not by an alternative to personal service, unless the court orders otherwise.

Affidavit in support

60.10(3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit.

Warrant for arrest

60.10(4) A judge may issue a warrant for arrest (Form 60I) of the person against whom a contempt order is sought where the judge is of the opinion that the person's attendance at the hearing is necessary in the interest of justice and it appears that the person is not likely to attend voluntarily.

Content of order

60.10(5) In disposing of a motion under subrule (1) the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

- (a) be imprisoned for such period and on such terms as are just;
- (b) be imprisoned upon failure to comply with a term of the order;
- (c) pay a fine;
- (d) do or refrain from doing an act;
- (e) pay such costs as are just; and
- (f) comply with any other order that the judge considers necessary;

and may direct the sheriff to take possession of and hold the property of the person in contempt and to collect and hold any income from the property until the person complies with the order.

Where corporation is in contempt

60.10(6) Where a corporation is in contempt, the judge may also make an order under subrule (5) against any officer or director of the corporation.

Warrant of committal

60.10(7) An order under subrule (5) for imprisonment may be enforced by the issue of a warrant of committal (Form 60J).

Discharging or setting aside contempt order

60.10(8) On motion, a judge may discharge, set aside, vary or give directions in respect of an order under subrules (5) or (6) and may grant such other relief and make such other order as is just.

Order that act be done by another person

60.10(9) Where a person fails to comply with an order requiring that person to do an act, other than the payment of money, a judge on motion may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the order or any other person appointed by the judge.

Costs and expenses

60.10(10) The party enforcing the order and any person appointed by the judge are entitled to the costs of the motion under subrule (9) and the expenses incurred in doing the act ordered to be done, fixed by the judge or assessed by an assessment officer in accordance with Rule 58.