

REFERENCE TO THE REGISTRAR

What is it? Under Rule 18-1 of the Civil and Family Rules, the Court (i.e. a master or a judge) may direct an inquiry, assessment or accounting to be held by a master, registrar or special referee. The matters most commonly referred are passing of accounts in an estate matter, family law issues such as determinations of income for child support purposes, and accounting issues that may arise in any number of circumstances. The authority of the registrar flows from the court order obtained by the party seeking the reference. It is thus imperative that the order accurately set out what it is that is sought to be determined. When obtaining the order, the parties should consider whether the order should direct the registrar to certify the results (and thus avoid a further hearing before the court) or issue a report and recommendation.

Family Law issues: Both parties ought to exchange financial information. This includes a Financial Statement in Family Form F8 and documents required pursuant to the Child Support Guidelines (for child support) and Supreme Court Family Rule 5-1.

Passing of accounts in estate matters: The applicant must prepare the accounts as prescribed in Civil Rule 25-13(6) and attach them as an exhibit to an affidavit in Form P40, if the applicant is the personal representative. The affidavit in support of the application to pass accounts (Civil Form P38) ought to be made available at the hearing as well, but this would already have been filed. An affidavit detailing the work performed by the personal representative is required if remuneration is sought at the same time. Where there was a lawyer acting for the estate, the lawyer's bill needs to be included with the appointment if it will be reviewed at the same time. All documents relating to the conduct of the estate are required.

What happens before the hearing? The party who obtained the order for the reference sets the matter for hearing before the registrar by filing an **Appointment in Form 49 or Form F55** to which is attached a copy of the entered order and any supporting document, i.e. accounts etc. The order may set out a time for service/delivery on all affected parties. If not, the party setting the appointment should deliver the appointment at least five days in advance of the hearing. A party may issue a subpoena to any person requiring that person to attend at the hearing to give evidence and/or produce documents.

Parties should:

- Gather exhibits – provide copies of exhibits to opposing counsel or parties at least 1 week prior to the hearing.
- Notify witnesses, if any. All witnesses must attend the hearing.
- Expert Reports – If a party intends to rely on expert evidence, a copy of the expert's report must be delivered to the opposing party well in advance of the hearing. Parties contemplating the use of an expert are well advised to arrange a pre-hearing

conference so that directions can be made on exchange of reports, etc.

- Fully exchange information before the hearing.
- Have proof of service of the appointment if the other party does not appear.
- Define the issues before the hearing, including providing particulars of any objections to the accounts: Supreme Court Civil & Family Rule 18-1(17).
- Schedule a pre-hearing conference if the hearing will exceed a half day (in non metropolitan locations) or one day (in metropolitan locations) or if directions for the conduct of the hearing are required.
- The party who filed the appointment must, no later than 4 p.m. on the business day that is one full business day before the date set for the hearing, provide to the registry where the hearing is to take place, a hearing record. The hearing record
 - a) must be in a ring binder or in some other form of secure binding;
 - b) must contain, in consecutively numbered pages, or separated by tabs, the following documents in the following order:
 - i. a title page bearing the style of proceeding and the names of the lawyers, if any, for the applicant and the persons served with the appointment;
 - ii. an index;
 - iii. a copy of the filed appointment and of every document required to be filed with that appointment;
 - iv. a copy of the affidavit of service of the appointment, which copy must not include the exhibits to the affidavit;
 - v. a copy of the entered order referring the matter to the registrar;
 - vi. a copy of every filed affidavit and pleading, and of every other document, that is to be relied on at the hearing;
 - c) may contain
 - i. a draft of the proposed report, and
 - ii. a list of the authorities
 - d) must not contain
 - i. written argument,
 - ii. copies of authorities, including case law, legislation, legal articles or excerpts from text books, or
 - iii. any other document unless they are included with the consent of the applicant and the respondents.

What happens at the hearing? The registrar will make a brief statement to the parties as to the scope of the reference at the beginning of the hearing after the parties have introduced themselves. The hearing is conducted in

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the same manner as a trial. The applicant or person claiming the relief presents his or her case first. The person against whom relief is sought then has an opportunity to present his or her case, following which submissions are made to the registrar outlining what relief each party believes should be granted and pointing out specific supporting evidence. The registrar may ask questions throughout the hearing. Evidence is usually given orally although occasionally reference may be made to affidavits. Where oral evidence is received, witnesses are examined in-chief and cross-examined and there is opportunity for re-examination in limited circumstances. Documents produced by witnesses are marked as exhibits and retained by the registrar.

What happens after the hearing? The registrar is required to state the result of the inquiry in the form of either a Certificate with or without reasons or a Report and Recommendation, and will provide a copy of the Certificate or the Report to all parties. If the result is contained in a Report and Recommendation then it must be confirmed by the court. The party who obtained the order for the reference will deliver a notice of application in accordance with Civil Rule 8-1 or Family Rule 10-6 to set the matter on the chambers list for confirmation of the Report and Recommendation.

Further reading: Continuing Legal Education Manual – Practice Before the Registrar.

Documents required:

- Appointment [Form 49 or Form F55]
- Supporting documentation i.e. accounts, financial statements etc.
- Filing fee of \$80.00

Note: If you appear at the hearing without proper documentation or not having made proper disclosure to the opposing party, the matter may be adjourned. This will result in an inconvenience to you and the opposing party and may result in costs being awarded against you if it is thought that what you have done is improper.