

Small Claims Court Practice and Procedure in Ontario

Third Edition

Laurence M. Olivo

B.A., M.A., J.D. of the Ontario Bar
(Deputy Judge of the Ontario Small Claims Court)

DeeAnn M.P. Gonsalves

B.A., J.D. of the Ontario Bar
(Deputy Judge of the Ontario Small Claims Court)

Captus Press

Small Claims Court Practice and Procedure in Ontario, Third Edition

© 2020 Laurence M. Olivo, DeeAnn M.P. Gonsalves, and Captus Press Inc.

All rights reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the copyright holders.

Captus Press Inc.

Mail: Units 14 & 15
1600 Steeles Avenue West
Concord, Ontario
Canada L4K 4M2
Telephone: (416) 736-5537
Fax: (416) 736-5793
Email: info@captus.com
Internet: <http://www.captus.com>

Library and Archives Canada Cataloguing in Publication

Title: Small claims court practice and procedure in Ontario /
Laurence M. Olivo, B.A., M.A., J.D. of the Ontario Bar (Deputy Judge of the Ontario
Small Claims Court), DeeAnn M.P. Gonsalves,
B.A., J.D. of the Ontario Bar (Deputy Judge of the Ontario Small Claims Court).
Names: Olivo, Laurence M., author. | Gonsalves, DeeAnn, author.
Description: Third edition. | Includes bibliographical references and index.
Identifiers: Canadiana 20190228385 | ISBN 9781553223979 (softcover)
Subjects: LCSH: Small claims courts—Ontario—Textbooks. |
LCSH: Civil procedure—Ontario—Textbooks. |
LCSH: Debtor and creditor—Ontario—Textbooks. | LCGFT: Textbooks.
Classification: LCC KE01090 .O45 2020 | LCC KF8769 .O45 2020 kfmod |
DDC 347.713/04—dc23

Funded by the
Government
of Canada

Financé par le
gouvernement
du Canada

Canada

Extracts from *Paralegal Rules of Conduct* — Rules 3.01, 3.03,
3.07, 4.02, 4.03, 5.01, 6.01, 7.01 and 8.03 — found at Chapters
2, 6, and 11: Copyright 2007–2017, Law Society of Ontario.
Reprinted with permission.

Extracts from *By-Laws* made under subsections 62(0.1) and (1)
of the *Law Society Act* found at Chapter 1 and 2:
By-Law 4 and By-Law 7.1: Copyright 2007–2018, Law Society of
Ontario. Reprinted with permission.
By-Law 9: Copyright 2007–2017. Law Society of Ontario.
Reprinted with permission.

0 9 8 7 6 5 4 3 2 1
Printed in Canada

Dedication

To Joyce Moore, as always, and to my students, who for over a quarter century have provided me with both insight and inspiration.

L.M.O.

To my family and friends — thank you for all of your ongoing love and support — and to my students, who continue to inspire me.

D.G.

From both of us, thank you to our colleagues and to the staff of Richmond Hill Small Claims Court for providing us with insight and perspective on the day-to-day operation of the Small Claims Court.

Contents

| | |
|---------------------------------------|-----|
| Dedication | iii |
| Preface to the Third Edition. | xix |

Part One Preliminary Matters

| | |
|---|----|
| Chapter 1 Introduction to the Ontario Small Claims Court | 3 |
| LEARNING OBJECTIVES | 3 |
| INTRODUCTION | 4 |
| HISTORICAL OVERVIEW | 4 |
| THE SMALL CLAIMS COURT TODAY | 5 |
| JUDGES IN THE SMALL CLAIMS COURT | 5 |
| Provincial Court Judge | 7 |
| Small Claims Court Administrative Judge | 7 |
| Superior Court of Justice Judges | 7 |
| Deputy Judges of the Small Claims Court | 8 |
| • Appointment, Compensation, and Regulation of Deputy Judges | 10 |
| • Complaints against Deputy Judges | 10 |
| SMALL CLAIMS COURT HEARINGS | 12 |
| Composition of the Small Claims Court for a Hearing | 12 |
| Court Hearings | 13 |

| | |
|--|----|
| Summary Hearings | 13 |
| Representation in the Small Claims Court | 14 |
| • Exemptions from Paralegal Licensing | 17 |
| SMALL CLAIMS COURT JURISDICTION. | 23 |
| Jurisdiction over Subject Matter. | 23 |
| Monetary Jurisdiction | 24 |
| • Transfer of an Action to the Small Claims Court from the Superior Court | 26 |
| Territorial Jurisdiction | 27 |
| Jurisdiction to Grant Remedies | 28 |
| An Overview of the Small Claims Court Process: | |
| A Tale of Love Derailed | 30 |
| • The Sad Tale of Albert Oryx | 30 |
| • Commencing Proceedings | 32 |
| • Serving the Plaintiff’s Claim | 33 |
| • Defending a Claim | 34 |
| • Defendant’s Claims: Counterclaims, Crossclaims, and Third Party Claims | 34 |
| • Case Management — Control of the Progress of the Case by the Court | 35 |
| • Settlement Conferences | 35 |
| • Notice of Trial | 36 |
| • Trial | 36 |
| • Costs. | 37 |
| • Enforcement of Judgments | 38 |
| • Appeals and Motions for a New Trial | 39 |
| CHAPTER SUMMARY | 40 |
| REVIEW QUESTIONS. | 41 |
| DISCUSSION QUESTIONS / CASE STUDIES. | 41 |
| | |
| Chapter 2 The Small Claims Court Client and the Client File | 45 |
| LEARNING OBJECTIVES. | 45 |
| INTRODUCTION | 47 |
| COMPETENCY TO ACT | 47 |
| INITIAL CONSULTATIONS. | 49 |
| FORMALIZING THE CONTRACTUAL RELATIONSHIP WITH THE CLIENT | 49 |
| Retainer Agreements | 50 |
| Financial Retainers. | 57 |

| | |
|--|-----|
| CASE INFORMATION | 61 |
| Interviewing Clients | 61 |
| Obtaining Client Documents | 62 |
| • Client Documents as Evidence | 63 |
| • Client Documents and Case Information | 64 |
| • Client Documents for Identification and Verification Purposes | 64 |
| FILE ORGANIZATION | 77 |
| STORAGE OF CLOSED FILES | 79 |
| KEEPING ON TOP OF THE FILE | 80 |
| Limitation Periods | 80 |
| • <i>Limitations Act</i> Exceptions and Qualifications | 81 |
| PROTOCOLS FOR CLIENT COMMUNICATION | 83 |
| 1. Maintaining Communication with the Client | 83 |
| 2. Confidentiality | 84 |
| 3. Circumstances for Client Communication | 86 |
| CHAPTER SUMMARY | 86 |
| REVIEW QUESTIONS | 88 |
| DISCUSSION QUESTIONS / CASE STUDIES | 88 |
| | |
| Chapter 3 Background Searches for the Small Claims Court File | 91 |
| LEARNING OBJECTIVES | 91 |
| INTRODUCTION | 93 |
| OBTAINING BACKGROUND INFORMATION | 93 |
| IDENTIFYING AND LOCATING THE DEBTOR | 94 |
| Searches by Name: Consumer Debtors | 94 |
| • Ministry of Transportation Driver and Vehicle Searches | 95 |
| • Driving Record Abstract | 96 |
| • Plate History, Vehicle Identification Number, and Vehicle History Abstracts | 98 |
| • Online Name and “People Finder” Searches | 98 |
| Searches by Name: Business Debtors | 100 |
| • Conducting a Business Name Search | 105 |
| • Conducting a Corporation Profile Report Search | 107 |

| | |
|---|-----|
| INFORMATION ABOUT THE DEBTOR'S ASSETS AND DEBTS | 115 |
| Is the Defendant Worth Suing? | 115 |
| Execution Search | 116 |
| • Conducting an Execution Search | 118 |
| <i>Personal Property Security Act</i> Search | 120 |
| • Conducting a PPSA Search | 121 |
| <i>Bank Act</i> Search | 122 |
| • Searching under the <i>Bank Act</i> | 122 |
| <i>Bankruptcy and Insolvency Act</i> Search | 123 |
| Credit Bureau Search | 124 |
| • Commercial Credit Reports | 125 |
| • Consumer Credit Reports | 128 |
| POST-SEARCH STRATEGIES | 133 |
| CHAPTER SUMMARY | 138 |
| REVIEW QUESTIONS | 140 |
| DISCUSSION QUESTIONS / CASE STUDIES | 141 |
| | |
| Chapter 4 Introduction to Credit Transactions and Collections | 143 |
| LEARNING OBJECTIVES | 143 |
| INTRODUCTION | 144 |
| THE SMALL CLAIMS COURT AND CREDIT COLLECTION | 144 |
| COLLECTION PROCEDURES AND STRATEGIES | 144 |
| Secured and Unsecured Debt | 144 |
| Administration of Credit Transactions: Debt, Interest, Terms of Payments | 149 |
| • Consumer Credit Administration | 149 |
| CREDIT COLLECTION: TIME AND MONETARY CONSIDERATIONS | 155 |
| THE <i>COLLECTION AND DEBT SETTLEMENT SERVICES ACT</i> | 156 |
| Contacting Debtors under the <i>Collection and Debt Settlement Services Act</i> | 157 |
| Registering as a Collection Agency or as a Collector under the <i>CDSSA</i> | 159 |
| CHAPTER SUMMARY | 159 |
| REVIEW QUESTIONS | 161 |
| DISCUSSION QUESTIONS / CASE STUDIES | 161 |

| | |
|---|-----|
| Chapter 5 Determining Damages and the Amount Owning | 163 |
| LEARNING OBJECTIVES | 163 |
| INTRODUCTION | 164 |
| CALCULATING THE INTEREST OWING | 164 |
| Calculating Overdue "Net 30" Accounts | 166 |
| Calculating Simple Interest When There Is a Fixed Date for Repayment | 168 |
| Calculating Simple Interest over a Period of Years | 169 |
| Determining What Kind of Interest to Charge | 169 |
| DETERMINING THE AMOUNT OWING ON A DEBT | 173 |
| Determining the Amount Owning on Simple Interest Running Accounts | 173 |
| INTEREST: HOW MUCH IS TOO MUCH? | 174 |
| MEASURING DAMAGES IN TORT AND CONTRACT | 178 |
| Heads (Categories) of Damages | 179 |
| • General or Unliquidated Damages | 180 |
| • Special or Liquidated Damages | 182 |
| Aggravated and Punitive Damages | 183 |
| Harm with No Damages | 184 |
| The Duty to Mitigate Damages | 184 |
| Apportioning Damages | 185 |
| Dependants' Claim for Damages | 187 |
| HEALTH CARE COSTS IN PERSONAL INJURY ACTIONS | 190 |
| CHAPTER SUMMARY | 191 |
| REVIEW QUESTIONS | 192 |
| DISCUSSION QUESTIONS / CASE STUDIES | 193 |

Part Two

Small Claims Court Proceedings: From Commencement of Proceedings to Trials

| | |
|---|-----|
| Chapter 6 Commencing Proceedings for the Plaintiff | 197 |
| LEARNING OBJECTIVES | 197 |
| INTRODUCTION | 199 |
| SENDING A COLLECTION LETTER | 200 |

| | |
|---|-----|
| COMMENCEMENT OF PROCEEDINGS IN SMALL CLAIMS COURT | 204 |
| Choice of Forum: The Basic Rule Is Sue Where | |
| a Defendant Resides or Carries on Business or Where the Cause of Action Arose | 204 |
| • Sue Where a Defendant Resides or Carries on Business. | 205 |
| • Commencing the Proceeding Where the Cause of Action Arose: Rule 6.01(1)(a)(i) | 206 |
| • Filing Requirements for an Action Commenced in the Jurisdiction in Which a Defendant Resides or Carries on Business | 208 |
| • Filing Requirements for an Action Commenced in the Court Located Nearest to Where a Defendant Resides or Carries on Business. | 208 |
| • Filing Requirements for an Action Commenced in the Jurisdiction in Which the Cause of Action Arose. | 208 |
| • The Balance of Convenience and Judicial Override. | 209 |
| Suing the Proper Party | 210 |
| • Choosing the Proper Party | 211 |
| • Fixing Mistakes If You Start an Action Against the Wrong Party | 212 |
| • Naming the Party Correctly | 212 |
| • Fixing “Naming” Mistakes | 214 |
| Parties Under Disability — Rule 4 | 214 |
| • Litigation Guardians | 215 |
| • Litigation Guardian Consent. | 218 |
| • Court Supervision of Settlements Where Party under Disability | 223 |
| • Procedure for Making Payments Into or Out of Court. | 224 |
| Suing or Being Sued by Partnerships and Sole Proprietorships — Rule 5 | 230 |
| • The Importance of Being a “Partner at Any Material Time” | 232 |
| • Expanding Enforcement Rights: Notice to Alleged Partner | 233 |
| • Adding Individual Parties after Trial. | 237 |
| • Rule 5.06 — Sole Proprietors | 237 |
| PREPARATION AND DRAFTING OF THE CLAIM | 238 |
| The Plaintiff’s Claim (Form 7A) | 241 |
| • How to Complete the Plaintiff’s Claim | 241 |

| | |
|--|-----|
| Some Suggestions for Drafting the Reasons for Claim and Details | 247 |
| • Organizing Your Claim | 248 |
| Drafting the Claim | 250 |
| • The Detailed Approach to Drafting a Claim | 251 |
| ISSUING THE PLAINTIFF'S CLAIM | 256 |
| Issuing the Claim | 257 |
| Court Fees to Issue Claims — Frequent and Infrequent Claimants | 261 |
| SERVICE OF THE CLAIM AND LATER DOCUMENTS — RULE 8 | 262 |
| Personal Service — On Whom? Rule 8.02 | 264 |
| Alternatives to Personal Service: Rule 8.03 | 267 |
| 1. At the Place of Residence (Individuals) Where Personal Service Ineffective (Rule 8.03(2)) | 271 |
| 2. Corporations No Longer at the Last Known Business Address (Rule 8.03(3)). | 272 |
| 3. Service on Lawyer or Paralegal Who Is Authorized to Accept Service (Rule 8.03(5)) | 272 |
| 4. Service of Claim by Mail to the Last Known Address (Rule 8.03(7)) | 273 |
| Modes of Services: Rule 8.07 and Rule 8.08 | 273 |
| Substitutional Service: Rule 8.04 | 275 |
| When Served Documents Fail to Reach a Party | 276 |
| Notice of Change of Address | 278 |
| CHAPTER SUMMARY | 278 |
| REVIEW QUESTIONS | 281 |
| DISCUSSION QUESTIONS / CASE STUDIES | 283 |
| | |
| Chapter 7 Default Proceedings | 285 |
| LEARNING OBJECTIVES | 285 |
| INTRODUCTION | 286 |
| DEFAULT PROCEEDINGS | 286 |
| When May a Default Judgment Be Signed? | 286 |
| Conditions Precedent to Signing Default Judgment | 287 |
| Consequences of Being Noted in Default — Rule 11.05 | 290 |
| Obtaining Default Judgment — Liquidated and Unliquidated Damages | 292 |
| • Liquidated Damages | 292 |
| • Unliquidated Damages | 293 |

| | |
|---|-----|
| OBTAINING A DEFAULT JUDGMENT — STEP BY STEP. | 294 |
| Default Judgment for Damages for a Debt or Liquidated Claim. | 294 |
| Service of the Default Judgment | 302 |
| Proceeding with Other Parts of the Claim | 302 |
| Default Judgment for an Unliquidated Claim | 302 |
| • Assessment of Damages on the Basis of a Motion in Writing Using Filed Documents | 303 |
| • Hearing for the Assessment of Damages | 305 |
| SETTING ASIDE A NOTING IN DEFAULT AND A DEFAULT JUDGMENT. | 315 |
| CHAPTER SUMMARY | 317 |
| REVIEW QUESTIONS | 322 |
| DISCUSSION QUESTIONS / CASE STUDIES | 322 |
| | |
| Chapter 8 Preparing Defences and the Defendant’s Claim | 325 |
| LEARNING OBJECTIVES | 325 |
| INTRODUCTION | 326 |
| DEFENCES | 326 |
| Defence Options | 326 |
| Organizing and Preparing a Defence. | 327 |
| Drafting and Filing a Defence | 328 |
| • Time for Filing a Defence. | 328 |
| • What Happens If the Parties Do Not Move the Case Forward? Dismissal by Clerk of Abandoned Cases | 329 |
| • Contents of the Defence | 330 |
| • Some Suggestions for Drafting the Reasons for Disputing the Claim and Details. | 339 |
| Admitting Liability and Proposing Terms of Payment. | 339 |
| • The Plaintiff’s Response to the Proposal. | 342 |
| • Procedure Where There Is No Dispute. | 342 |
| • Plaintiff’s Dispute of the Proposal | 343 |
| THE DEFENDANT’S CLAIM | 349 |
| Procedure for Completing a Defendant’s Claim | 350 |
| Service of Defendant’s Claim. | 357 |
| Disputing a Defendant’s Claim. | 357 |
| Special Rules for Third Party Defences to a Defendant’s Claim | 357 |

| | |
|---|-----|
| CHAPTER SUMMARY | 358 |
| REVIEW QUESTIONS | 359 |
| DISCUSSION QUESTIONS / CASE STUDIES | 359 |
| | |
| Chapter 9 Repairs, Amendments, Motions, and Discontinuance | 361 |
| LEARNING OBJECTIVES | 361 |
| INTRODUCTION | 362 |
| THE RULES TOOLBOX | 362 |
| Rule 1.03: The General Principle | 362 |
| Rule 2.01: Effect of Non-Compliance with the Rules | 363 |
| Rule 2.02: Dispensing with Compliance with the Rules | 364 |
| Rule 3.02(1): Power of the Court to Lengthen or Shorten Time | 364 |
| AMENDING PLEADINGS | 365 |
| How to Amend Pleadings | 367 |
| Striking Out or Amending Improper Pleadings | 367 |
| COURT'S POWER TO DISMISS ON ITS OWN INITIATIVE | 370 |
| MOTIONS | 372 |
| Motion Documents | 373 |
| • The Notice of Motion and Supporting Affidavit | 373 |
| • The Affidavit | 373 |
| Motion Procedure | 376 |
| • Obtaining a Motion Date | 376 |
| • Service of Motion Materials | 376 |
| • Filing Motion Materials with the Court | 377 |
| • Responding to a Motion | 377 |
| • Timing Sequence for Serving and Filing Motion Material | 378 |
| Methods of Hearing on Motions with Notice | 381 |
| Motions without Notice | 383 |
| Consent Motions | 384 |
| • Consent Motions by Request for a Clerk's Order | 384 |
| Unnecessary Motions and Costs on Motions | 386 |
| DISCONTINUANCE OF AN UNDEFENDED ACTION | 391 |
| CHAPTER SUMMARY | 392 |
| REVIEW QUESTIONS | 393 |
| DISCUSSION QUESTIONS / CASE STUDIES | 394 |

| | |
|---|-----|
| Chapter 10 Settlement | 395 |
| LEARNING OBJECTIVES | 395 |
| INTRODUCTION | 396 |
| SETTLEMENT CONFERENCES | 396 |
| Encouraging Settlement | 398 |
| Scheduling of Settlement Conferences | 400 |
| Mandatory Attendance and Alternatives to Personal Attendance | 401 |
| Disclosure and Production | 405 |
| Adjournments, Non-Attendance, Non-Cooperation, Unpreparedness, Costs Consequences, and Second Conferences | 406 |
| Adjournment of Settlement Conference on Consent | 408 |
| The Conduct of a Settlement Conference | 408 |
| Using a Settlement Conference to “Clean Up” an Action | 411 |
| Obtaining a Final Determination at a Settlement Conference | 415 |
| Concluding a Settlement Conference | 416 |
| • Costs | 417 |
| • No Discontinuance of Claim | 417 |
| • Moving on to Trial — Notice of Trial | 418 |
| RULE 14 OFFER TO SETTLE — PLAYING “SETTLEMENT ROULETTE” | 418 |
| The Rule 14 Offer Procedure | 421 |
| Who Can Make an Offer? | 421 |
| • Requirements for Attracting Cost Consequences | 421 |
| • Written Requirement for Offers | 422 |
| • Withdrawal of Offer | 422 |
| • Acceptance of Offers | 425 |
| • Costs in Respect of an Offer Accepted Before Trial | 431 |
| • Enforcement of an Offer to Settle | 431 |
| Cost Consequences after Judgment on a Rule 14 Offer | 432 |
| • Cost Consequences When a Plaintiff Makes an Offer | 434 |
| • Cost Consequences When a Defendant Makes an Offer | 435 |
| SETTLEMENT DOCUMENTATION AND PRACTICE | 436 |
| Settlement Before the Action Begins | 437 |
| • Documents Required for Settling Before the Action Begins | 437 |

| | |
|---|-----|
| Settlement After the Action Begins | 437 |
| • Documents Required for Settling After the Action Begins | 439 |
| Settling After Judgment | 441 |
| • Documents Required for Settling After Judgment. | 441 |
| CHAPTER SUMMARY | 441 |
| REVIEW QUESTIONS | 447 |
| DISCUSSION QUESTIONS / CASE STUDIES | 448 |
| | |
| Chapter 11 Preparation for Trial and Trial | 449 |
| LEARNING OBJECTIVES | 449 |
| INTRODUCTION | 450 |
| PREPARING FOR TRIAL | 450 |
| Adjourning a Trial and Consequences of Non-Attendance | 450 |
| • Adjournments | 451 |
| • Consequences of Non-Attendance at Trial | 451 |
| • Setting Aside a Judgment for Failure to Attend Trial | 453 |
| Reviewing and Revising the Theory of the Case Prior to Trial. | 454 |
| • Initial Theory of the Case for the Plaintiff and Defendant | 455 |
| • Consideration of Revisions to Your Theory of the Case | 455 |
| Evidentiary Considerations | 457 |
| • Section 27 of the <i>Courts of Justice Act</i> | 457 |
| • Rules 18.01 and 18.02: Controls and Protections on the Admission of Evidence | 459 |
| • Procedure for Summoning Witnesses. | 463 |
| • Witness Management | 470 |
| • What to Do If the Witness Fails to Appear | 471 |
| • Motion to Exclude Witnesses in Court | 473 |
| PRESENTING THE CASE AT TRIAL — A STEP-BY-STEP OVERVIEW | 476 |
| PROFESSIONAL CONDUCT IN COURT PROCEEDINGS | 480 |
| Media Statements and Public Comment on Court Cases | 481 |

| | |
|--|-----|
| Duty to Report Persons Not Authorized to Practise Law | 482 |
| General Courtesy and Good Faith Towards Others Involved in the Administration of Justice | 483 |
| CHAPTER SUMMARY | 485 |
| REVIEW QUESTIONS | 486 |
| DISCUSSION QUESTIONS / CASE STUDIES | 486 |

Part Three
Judgment and Enforcement

| | |
|--|-----|
| Chapter 12 Judgment, Post-Judgment Motions, and Appeals | 491 |
| LEARNING OBJECTIVES | 491 |
| INTRODUCTION | 492 |
| JUDGMENT, PRE- AND POST-JUDGMENT INTEREST, AND COSTS | 492 |
| Judgment | 493 |
| Pre- and Post-Judgment Interest | 494 |
| • Pre-Judgment Interest | 495 |
| • Post-Judgment Interest | 497 |
| Instalment Orders | 499 |
| Costs | 506 |
| 1. Disbursements and Expenses | 509 |
| 2. Preparation Fee | 513 |
| 3. The Representation Fee | 513 |
| 4. Compensation for Inconvenience and Expense if Unrepresented | 513 |
| 5. Costs Penalty | 514 |
| Certificates of Judgment | 514 |
| APPEALS AND MOTIONS FOR A NEW TRIAL | 518 |
| Appeals | 518 |
| Motions for a New Trial | 522 |
| CHAPTER SUMMARY | 523 |
| REVIEW QUESTIONS | 525 |
| DISCUSSION QUESTIONS / CASE STUDIES | 526 |

| | |
|---|-----|
| Chapter 13 Post-Judgment Considerations | 527 |
| LEARNING OBJECTIVES | 527 |
| INTRODUCTION | 528 |
| DEVELOPING A STRATEGY TO COLLECT A JUDGMENT DEBT. | 529 |
| Specific Steps to Take After Obtaining Judgment | 530 |
| ENFORCEMENT REMEDIES | 532 |
| Basic Enforcement Procedure | 532 |
| • Calculating the Amount Owning after Judgment: Step by Step | 533 |
| Certificates of Judgment | 543 |
| Examination Hearing | 544 |
| • Procedure for Examination of Judgment Debtor | 562 |
| • Examination of a Person Other Than the Judgment Debtor | 566 |
| • The Judgment Debtor’s Obligations at the Examination | 574 |
| • Contempt Proceedings | 575 |
| Relief for Judgment Debtors | 586 |
| • Instalment Orders. | 586 |
| • Consolidation Orders. | 587 |
| CHAPTER SUMMARY | 591 |
| REVIEW QUESTIONS | 594 |
| DISCUSSION QUESTIONS / CASE STUDIES | 594 |
| | |
| Chapter 14 Writs of Delivery and Writs of Seizure and Sale | 597 |
| LEARNING OBJECTIVES | 597 |
| INTRODUCTION | 598 |
| WRITS OF DELIVERY | 598 |
| Content of the Writ of Delivery | 599 |
| Enforcement of the Writ of Delivery | 600 |
| Taking Other Property “Hostage” | 603 |
| WRITS OF SEIZURE AND SALE — PERSONAL PROPERTY | 604 |
| Contents of the Writ of Seizure and Sale — Personal Property | 605 |
| Seizure and Sale Procedure. | 606 |
| Considerations in Seizing and Selling Property | 612 |
| Personal Property Exempt from Seizure | 614 |

| | |
|---|-----|
| WRITS OF SEIZURE AND SALE — REAL PROPERTY | 616 |
| Procedure for Writs of Seizure and Sale of Land | 617 |
| CHAPTER SUMMARY | 628 |
| REVIEW QUESTIONS | 629 |
| DISCUSSION QUESTIONS / CASE STUDIES | 629 |

| | |
|---|-----|
| Chapter 15 Garnishment | 631 |
| LEARNING OBJECTIVES | 631 |
| INTRODUCTION | 632 |
| WHEN TO USE A GARNISHMENT | 632 |
| GARNISHMENT PROCEDURE | 634 |
| Commencement of Garnishment Proceedings | 635 |
| Service of the Notice of Garnishment | 640 |
| GARNISHEE’S RESPONSE | 644 |
| GARNISHMENT DISPUTES AND HEARINGS | 647 |
| GARNISHMENT PAYMENTS AND DISTRIBUTIONS TO CREDITORS | 656 |
| RENEWAL OF GARNISHMENT | 657 |
| TERMINATION OF GARNISHMENT | 658 |
| CHAPTER SUMMARY | 658 |
| REVIEW QUESTIONS | 663 |
| DISCUSSION QUESTIONS / CASE STUDIES | 663 |

Appendices, Glossary, Bibliography, Index

| | |
|--|-----|
| Appendices | 667 |
| Appendix 1 Days of the Year Chart | 668 |
| Appendix 2 Rules of the Small Claims Court | 670 |
| Appendix 3 Table of Forms | 729 |
| Appendix 4 Small Claims Court Fees and Allowances | 730 |
| Appendix 5 Post-judgment and Pre-judgment Interest Rates | 735 |
| Appendix 6 Ontario Small Claims Court List | 737 |
| Glossary | 741 |
| Bibliography | 749 |
| Index | 753 |

Preface to the Third Edition

In the normal course of events we would not have written a new edition of this text within a year of the previous edition. However, in the spring of 2019 the fees for the Small Claims Court increased, in some cases substantially, and in the fall of 2019 the government announced that the monetary jurisdiction of the court would increase from \$25,000 to \$35,000 on January 1, 2020. These changes led us to believe that it would benefit our readers to update the text.

In addition to incorporating the new monetary jurisdiction, the new appealable amount of a claim, and the new fees into the text, all of the forms and appendices were also updated, and new versions of the forms, where applicable, have been used.

We also provide new information in this edition as to the revised categories of judges sitting in Small Claims Court, which now includes an Administrative Small Claims Court Judge. Material on some searches, including Ministry of Transportation Driver's Searches, has also been updated. The chapter on calculating interest and damages has been updated, with a note on a net 30 day calculation shortcut being among the additions to the material. Some minor corrections and edits were also made to this edition to make it easier to read.

E-filing continues to evolve, and e-filing procedures continue to change. Additional material on e-filing procedures for claims, on default judgments for liquidated claims, and on some enforcement procedures have been added to the text.

We have also included statutory changes that have taken place since the last edition, including updates to take into

account the new Ontario *Crown Liability and Proceedings Act, 2019* and the repeal of the *Compensation for Victims of Crime Act*. Reference notes have been added for various cases, including *Bruyee v. Canada (Veteran Affairs)*, 2019 ONCA 599, the Divisional Court decision on anti-SLAPP motions being beyond the scope of the Small Claims Court.

As some readers may be moving from the first edition of this text directly to the third edition, we have listed here the major changes that were made in going from the first to the second edition and are continued in the third edition:

- The replacement of the *Construction Lien Act* with the *Construction Act* is discussed, with information on the transfer of certain matters from the Superior Court of Justice to the Small Claims Court under the new Act
- Material on electronic filing with respect to liquidated claims, default judgment for such claims, and the requisition of various enforcement procedures via e-filing, plus notations on when hard copies of material that has been e-filed must be provided to the court
- The name change of the Law Society of Upper Canada to the Law Society of Ontario
- The repeal of the *Bulk Sales Act* in Ontario
- The replacement of the *Collection Agencies Act* with the *Collection and Debt Settlement Services Act*, with explanatory notes about the changes for paralegals under the Act, including the provision of the same exemption as lawyers from the provisions of the Act
- Changes to the *Payday Loans Act*, including interest and fees reductions
- The change in forms from bilingual wording to English only or French only wording
- Changes to the Small Claims Court Rules, including changes in the rules for dismissal for delay and for dismissing vexatious claims
- The clarification that has taken place with respect to the handling of contempt findings by a deputy judge, with the penalty for contempt being reserved to a Superior Court judge
- Updates on exemptions from property seizure provided to a judgment debtor

The provision of this new edition would not have been possible without the dedicated assistance and support provided by Pauline Lai at Captus Press.

As always, there is room for improvement, and we continue to welcome suggestions from our readers so that we can continue to provide a practical and accurate text that can be used for everyone from new students to legal representatives, deputy judges, and litigants.

Laurence M. Olivo and DeeAnn M.P. Gonsalves
November 2019

