|  |  |
| --- | --- |
| **Action** | **Application** |
| Used any time when there is no application required. In a complex case where there are facts at issue | Straightforward: used when there is no material facts in dispute, no questions of credibility to be determined.**14.05(2)** application can be brought if a statute or the Rules of Civ Pro authorize it – See P. 141**14.05(3):** authorises application to be used in other circumstances. 14.05(3) is the catch all provision – Ch 22, P 147b-148a |
| **14.03** originating process is a statement of claim, notice of action, counterclaim, cross clam or third party claim.  | **14.05(1)** originating process for the commencement of an application is a notice of application |
| Have 6 months to serve it from date of issuance | **38.06** Serve at least 10 days before the date of hearing  |
| **18.01:** Defendant replies with Statement of Defence to address all the allegations in the Statement of Claim, has to be filed within 20 days**18.02** OR notice of intent to defend which allows 10 more days to deliver Statement of Defence**27.02** Can have counterclaim by defendant | **38.07** Respondent files Notice of Appearance. Much simpler than a Statement of Defence (one page document to say yes I'm here) and a factumMy choose to file a respondent’s application record  |
| **24.01** Mandatory mediation Ottawa, Toronto, Windsor | Application doesn’t have mandatory mediation |
| 77: action may be case managed if in Ottawa, Toronto or Essex County | **77.02(1)** application may be case managed if in Ottawa, Toronto or Essex County  |
| **30-33** Action has discovery of documents, oral discovery, physical discovery, medical discovery.  | Application has very limited discovery rights**39.02** can cross examine affidavits that are filed. **39.03** can cross examine a witness that filed an affidavit |
| **50.02** Mandatory pre trial conference  | **50.03** pre trial conference not necessarily required  |
| Action has oral evidence with witnesses. Rules **52 and 53**. Action is adjudicated by the court via trial process., where witnesses come and give live oral testimony | **38.10:** Application disposed of at a hearing, not a trial. There is no live evidence, can have special exceptions from the court. lawyers put evidence before the court in the form of paper (affidavits and documents). |
|  | R. 20 Summary Judgement not available –issue of factR. 21 Determination of a point of law not available-issue of lawR. 76 Simplified procedure does not apply  |
|  | Must be heard by a judge (not master) of the SCJ; and for Judicial Review at Div Crt -Ch22.P. 149B 3.8 |

**Different Types of Claims That Can Arise in an Action**

 Action Defendant 1

 Plaintiff  **R. 28 Cross Claim**

 Defendant 2

 **R. 27 Counterclaim**

*OR* ***S. 111 Set off if Debt* R. 29 Third Party Claim**

Third Party Defendant

 **R. 29 Fourth Party Claim**

 Fourth Party Defendant Fourth Party Defendant

 **R. 28 Cross Claim**

### Appeal Routes for Interlocutory Orders

 **Supreme Court of Canada**

* A decision from master that's interlocutory appeal goes to a judge from SCJ as of right
* Every appeal after that needs leave
* Every interlocutory ruling from a judge of the SCJ requires leave to appeal

*(with leave)*

 **Court of Appeal**

 *(with leave: s. 6(1)(a) and rules 61.03 and 61.03.1)*

 **Divisional Court**

 *(with leave: s. 19(1)(b) and rule 62.02)*

 **Judge of the Superior Court of Justice**

 **Master or Case Management Master**

 ***s. 17(a) and rule 62.01***

### Appeal Routes for Final Orders

 **Supreme Court of Canada**

*(with leave)*

 **Court of Appeal**

*(with leave:*

 *s. 6(1)(a) and rules*

*(involving more than $50,000)*

 *61.03 and 61.03.1)*

 **Divisional Court**

*Payment or recovery of property in excess of*

*$2,500*

*(involving $50,000 or less)*

 **Judge of the Superior**

 **Court of Justice**

 s. 6(1)(b) and s. 19(1)(a)

**Master or**

**Case Management**

**Master**

***s. 19(1)(c)***

Assessment Officer

re Superior Court

of Justice Proceeding

*s. 17(b)*

**Small Claims Court**

***s. 31***

Assessment Officer

re Court of

Appeal Proceeding

*s. 6(1)(c))*

**\*\*\*Final vs. Interlocutory Order – See P. 256-257\*\*\***

Statutory Exceptions: i.e. any order made under the OBCA, appeal lies to the Divisional Court

**Constitutional References** – Court of Appeal

**Applications for Judicial Review** – Divisional Court

**ORDER OF PRESENTATION AT TRIAL**

Party who has onus of proof must begin (usually PL)

1. PL Opening Address
2. PL Adduce Evidence
3. Def Opening Address (unless with leave permitted to present right after PL opening)
4. Def Adduce Evidence
5. PL may call any reply evidence
6. Def Closing Address
7. PL Closing Address (where def adduces no evidence, Pl makes first closing address)

Where there are two or more Def represented separately, order shall be directed by trial judge