

REFERENCES
RULE 54
DIRECTING A REFERENCE

APPLICATION OF RULES 54 AND 55

54.01 Rules 54 and 55 apply to references directed,

- (a) under Rule 54.02 or any other rule; and
- (b) under a statute, subject to the provisions of the statute.

WHERE REFERENCE MAY BE DIRECTED

Reference of Whole Proceeding or Issue

54.02 (1) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference of the whole proceeding or a reference to determine an issue where,

- (a) all affected parties consent;
- (b) a prolonged examination of documents or an investigation is required that, in the opinion of the judge, cannot conveniently be made at trial; or
- (c) a substantial issue in dispute requires the taking of accounts.

Reference of Issue

(2) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference to determine an issue relating to,

- (a) the taking of accounts;
- (b) the conduct of a sale;
- (c) the appointment of a committee, guardian or receiver;
- (d) the conduct of a committee, guardianship, or receivership; or
- (e) the enforcement of an order.

TO WHOM REFERENCE MAY BE DIRECTED

Supreme Court

- 54.03** (1) A reference may be directed to,
- (a) the referring judge;
 - (b) another judge with that judge's consent;
 - (c) the Prothonotary;
 - (d) a person agreed on by the parties; or
 - (e) a family mediator or counsellor, where the reference is directed under Rule 70.21 or 71.07

Person Agreed on by Parties

- (2) Where a reference is directed to a person agreed on by the parties, the person is, for the purposes of the reference, an officer of the court directing the reference.
- (3) The judge directing a reference to a person agreed on by the parties may,
 - (a) determine his or her remuneration and the liability of the parties for its payment;
 - (b) refer that issue to the person to whom the reference is directed; or
 - (c) reserve that issue until the report on the reference is confirmed.

ORDER DIRECTING A REFERENCE

- 54.04** (1) An order directing a reference shall specify the nature and subject matter of the reference and who is to conduct it and may,
- (a) direct in general terms that all necessary inquiries be made, accounts taken and costs assessed;
 - (b) contain directions for the conduct of the reference; and
 - (c) designate which party is to have carriage of the reference.
- (2) An order of the Prothonotary directing a reference shall not require a report back, and the report or an interim report on the reference shall be confirmed under Rule 54.09 (confirmation by passage of time).
- (3) A referee has, subject to the order directing the reference, all the powers these rules give to a referee.

MOTIONS ON A REFERENCE

- 54.05** (1) A referee shall hear and dispose of any motion made in connection with the reference, but in the absence of or with the

consent of the referee a motion may be heard and disposed of by a judge or, if the referee is not the Prothonotary, by the Prothonotary.

- (2) Rule 37.03 (place of hearing of motions) does not apply to a motion made in connection with a reference and heard by the referee.
- (3) Where a referee has made an order on a motion in the reference, a person who is affected by the order may make a motion to a judge to set aside or vary the order by a notice of motion served within seven days after the order is made and naming the first available hearing date that is at least three days after service of the notice of motion.

REPORT ON REFERENCE

54.06 A referee shall make a report that contains his or her findings and conclusions.

REPORT MUST BE CONFIRMED

- 54.07** (1) A report has no effect until it has been confirmed.
- (2) A report shall be entered immediately after it has been confirmed and Rule 59.04 (entry of order) applies, with necessary modifications.

CONFIRMATION ON MOTION WHERE REPORT BACK REQUIRED

- 54.08** (1) Where the order directing a reference requires the referee to report back, the report or an interim report on the reference may be confirmed only on a motion to the judge who directed the reference, subject to subrule 70.21(3) (reference to family mediator or counsellor), on notice to every party who appeared on the reference, and the judge may require the referee to give reasons for his or her findings and conclusions and may confirm the report in whole or in part or make such other order as is just.
- (2) Where the judge who directed the reference is unable for any reason to hear a motion for confirmation, the motion may be made to another judge.

CONFIRMATION BY PASSAGE OF TIME WHERE REPORT BACK NOT REQUIRED

Fifteen Day Period to Oppose Confirmation

- 54.09** (1) Where the order directing a reference does not require the referee

to report back, the report or an interim report on the reference is confirmed,

- (a) immediately on the filing of the consent of every party who appeared on the reference; or
- (b) on the expiration of fifteen days after a copy, with proof of service on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced, unless a notice of motion to oppose confirmation of a report is served within that time.

To Whom Motion to Oppose Confirmation Made

- (2) A motion to oppose confirmation of a report shall be made,
 - (a) in a proceeding in which the reference was directed by a judge, to a judge;
 - (b) in a proceeding in which the reference was directed by the Prothonotary, to a judge.

Notice of Motion to Oppose Confirmation

- (3) A notice of motion to oppose confirmation of a report shall,
 - (a) set out the grounds for opposing confirmation;
 - (b) be served within fifteen days after a copy of the report, with proof of service on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced; and
 - (c) name the first available hearing date that is at least three days after service of the notice of motion.

Motion for Immediate Confirmation

- (4) A party who seeks confirmation before the expiration of the fifteen day period prescribed in subrule (1) may make a motion to a judge for confirmation.

Disposition of Motion

- (5) A judge hearing a motion under subrule (2) or (4) may require the referee to give reasons for his or her findings and conclusions and may confirm the report in whole or in part or make such other order as is just.

REFEREE UNABLE TO CONTINUE OR COMPLETE REFERENCE

54.10 Where a referee is unable for any reason to continue or complete a

reference,

- (a) the parties to the reference may by consent appoint a new referee; or
- (b) any party to the reference may make a motion to a judge for directions for continuation or completion of the reference.