

**ONTARIO
DIVISIONAL COURT
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

**Plaintiff
(Appellant)**

-and-

MATTHEW R. MAMONE aka MATTHEW MAMONE aka MATT R. MAMONE

**Defendant
(Respondent)**

PLAINTIFF'S FACTUM

I. STATEMENT OF THE APPEAL

1. This is an appeal by the plaintiff, Capital One Bank (Canada Branch), from the order of Deputy Judge MacDonald dated March 19, 2015 made at the Hamilton Small Claims Court in Hamilton at a Settlement Conference dismissing the plaintiff's action.

Capital One Bank (Canada Branch) v. Matthew R. Mamone (March 19, 2015), Appeal Book and Compendium, Tab 3.

II. OVERVIEW

2. At issue on this appeal is whether Deputy Judge MacDonald erred in (a) failing to give sufficient reasons for dismissing the action for the parties to know why the decision was made and to permit meaningful appellate review; and in (b) dismissing the action at the settlement conference and not permitting the action to be determined on its merits.

III. SUMMARY OF FACTS

3. The plaintiff's claim was issued on November 27, 2014 for \$6,593.33 due as of March 10, 2014 along with prejudgment and post-judgment interest at the rate of 19.8 percent per year and costs, owing by the defendant under a credit card agreement between the parties.

Plaintiff's Claim, Appeal Book and Compendium, Tab 4.

4. The defendant was served personally on December 13, 2014.

5. On or about December 22, 2014 the defendant's lawyer Ms. Lucie Molinaro submitted a statement of defence on behalf of the defendant via fax.

Statement of Defense, Appeal Book and Compendium, Tab 5.

6. On March 19, 2015 a mandatory settlement conference was held at the Hamilton Small Claims Court and presided over by Deputy Judge MacDonald. Neither party attended at the settlement conference in person but were represented by their lawyers. Ms.

Lucie Molinaro appeared for the defendant and Zameer N. Hakamali of Christensen Law Firm appeared for the plaintiff.

Capital One Bank (Canada Branch) v. Matthew R. Mamone (March 19, 2015), *Appeal Book and Compendium*, Tab 3.

7. At the settlement conference the learned Deputy Judge dismissed the plaintiff's action giving only the following reasons:

Settlement impossible as there is no actual [plaintiff] in [sic] Capital one Bank. Counsel for Capital One has not exchanged documents, sought instructions nor has he spoken to anyone other than his law firm's principal. Counsel maintains he has [plaintiff's] consent to appear and enter into settlement negotiations without contact with Capital One as [plaintiff]. This did not appear in discussions until approximately 2 hours into the settlement conference. Both counsel from out of town. Action dismissed.

Capital One Bank (Canada Branch) v. Matthew R. Mamone (March 19, 2015), *Appeal Book and Compendium*, Tab 3.

IV. LAW AND ARGUMENT

Issue 1. Did the trial judge fail to give sufficient reasons?

8. The rules of Small Claims Court allow a deputy judge to dismiss an action at a settlement conference with written reasons.

Rule 13.05(2)(a)(iii), *Rules of Small Claims Court*, O. Reg. 258/98.

9. The Divisional Court has repeatedly held that the requirement to give reasons applies to decisions made in Small Claims Court, and a failure to give adequate reasons can result in the decision being set aside.

Jane Conte Professional Corporation v. Josephine Smith, 2014 ONSC 6009, at paras. 8-10, Book of Authorities, Tab 1.

10. The requirement to give reasons requires that the “path” taken by the deputy judge to reach her decision should be clear from the reasons read in the context of the proceeding.

Clifford v. Ontario (Attorney General) (2009), 98 O.R. (3d) 210 (Ont. C.A.), cited in *Loans Till Payday v. Brown*, 2010 CarswellOnt 9151, Book of Authorities, Tab 2.

11. In this case, the judge stated that “Settlement impossible as there is no actual [plaintiff] in [sic] Capital one Bank” and dismissed the action; however, she did not provide any cogent explanation as to what she meant or how it constituted a reason for dismissing the action.

12. The reasons given by the trial judge are inadequate to allow for appellate review. The judge only offered a bare conclusion that there was no plaintiff in Capital One Bank (Canada Branch) and did not explain how she reached this conclusion or what she meant. The appeal should therefore be allowed on the basis that the judge failed to give adequate reasons.

Issue 2. Did the trial judge err in dismissing the action at the settlement conference?

13. In her endorsement, the deputy judge took issue with the fact that counsel appearing for Capital One Bank had not presented documents to or spoken directly with Capital One Bank (Canada Branch). The plaintiff is denied the opportunity to challenge the factual correctness of these assertions as a settlement conference is a confidential hearing for which there is no record. Even if these factual assertions were correct, they would not provide any basis for dismissing the plaintiff's action.
14. With the settlement conference content being privileged with no record of the hearing, there is no opportunity for the plaintiff to establish what submissions the plaintiff did make with respect to the adequacy of documents exchanged, what communication and instructions Mr. Hakamali had from the plaintiff prior to the settlement conference, or what communications may have happened between the plaintiff's lawyers and the plaintiff during the settlement conference that were relayed to the deputy judge.
15. The *Small Claims Court Rules* provide adequate remedies to address the plaintiff's misfeasance alleged in the deputy judge's endorsement without dismissing the action. If her assertions were correct, she could have ordered costs against the plaintiff for failure to attend in person, being inadequately prepared, or failure to file the required material and order an additional settlement conference.

Rules of the Small Claims Court, O. Reg 258/98, r.13.02(5) & (7) (the "Rules")

16. The rule 13.02(6) specifically provides that a defence or defendant's claim may be dismissed for failure to attend a first settlement conference only after the defendant receives notice of an additional settlement conference and fails to attend that additional settlement conference.

Rules of the Small Claims Court, O. Reg 258/98, r.13.02(6)

17. The plaintiff submits that a plaintiff should be afforded the same procedural protection, especially when the plaintiff's lawyer attended the first settlement conference.

18. Clearly the Rules indicate that an inability to settle a matter at a settlement conference because of a party's absence or unpreparedness should not be a reason to dismiss a claim. This interpretation is support by *Kamloops Dental Centre v. McMillan*, 1996 CarswellBC 2714, cited in Zuker and Winny's Ontario Small Claims Court Practice, where the British Columbia Supreme Court overturned the decision of a small claims court judge dismissing a claim because the person at the settlement conference did not have authority to enter a settlement and was therefore unable to settle. As Blair J. stated in *Kamloops*,

On the face of the record it appears that the learned Provincial Court Judge dismissed KDC's action after concluding at the outset of the settlement conference that KDC's representative lacked the authority to settle the claim. At most, I conclude, that KDC might have been found to have attended the settlement conference unprepared, in the sense that KDC's representative lacked the authority to settle the claim. I do not find in the Rules a basis upon which to dismiss KDC's claim because it was not prepared at the settlement conference. The ramification for such unpreparedness is set out in Rule 7(6) which allows the Provincial Court Judge to order KDC pay the reasonable expenses of the other parties, Mr. and Mrs. McMillan.

Kamloops Dental Centre v. McMillan 1996 CarswellBC 2714, at para. 14 (“*Kamloops*”), Book of Authorities, Tab 3.

19. Similarly, in this case even if the deputy judge’s factual assertions are correct, the most that could be said is that the plaintiff was unprepared or not present. As in British Columbia, the consequence for unpreparedness in Ontario is set out in rules 13.02(5) & (7) where the judge can issue costs sanctions and order an additional settlement conference. It is notable that the defendant was not present either, yet the deputy judge delivered no sanction for his non-attendance.

Kamloops, supra, at para. 15, Book of Authorities, Tab 3.

20. Even if the deputy judge’s factual assertions in her endorsement were true, under the Rules and persuasive case law from British Columbia, the deputy judge erred in dismissing the action.

Judgment to be granted immediately

21. The plaintiff respectfully requests that, in addition to the order being set aside, judgment be granted by this court immediately for the amounts claimed by the plaintiff rather than remitting the matter back to the Small Claims Court. As the defendant has asserted no reasonably arguable defence to the claim and a trial would be a waste of the court’s time, in accordance with the case law discussed below this would be the most just, expeditious and least expensive determination of the action.

22. On appeal, this court may make any order or decision that could have been made by the court appealed from and can make any order or decision that is considered just.

23. Under the Rules the court can either at a settlement conference or at the hearing of a motion strike the defence and grant judgment.

Rules of Small Claims Court, O. Reg. 258/98, rules 12.02(1) and 13.05(2)(a)(iv).

24. This court has held that credit card cases should be determined in a few minutes in a summary fashion unless a genuine defence is raised. It did so by citing and applying the words of Justice Corbett in *Canadian Imperial Bank of Commerce v Prasad* 2010 CarswellOnt 108 2010 ONSC 320 in *Capital One v. Toogood*, 2013 ONSC 5440 (*sub nom. Capital One Bank v. Wright*, 2013 CarswellOnt 12424) (Div. Ct.):

23 In *Canadian Imperial Bank of Commerce v. Prasad*, [2010 ONSC 320](#) (Ont. S.C.J.), Corbett J. offered the following comments on the general approach which should be taken on credit card debt collection cases, in the context of a summary judgment motion:

The goal of civil litigation, as embodied in R.1.04(1), is to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. It is clear that Ms. Prasad held and used a credit card. The principal amount claimed was not contested, and yet the court did not grant partial summary judgment. It is clear (and frankly notorious) that interest is charged on unpaid credit card balances. If the calculation of the interest is in serious question, the proper approach is to grant judgment for the uncontested portion of the claim, without prejudice to a further motion respecting any controversial issues. Where this happens, often the creditor does not pursue additional relief since it is unable to collect the amount of the partial judgment anyway. Where there does not appear to be any defence to the claim, as appears to have been the case here, such a motion should take no more than a few minutes of time in regular motions court. The manner in which this has been handled, the case would proceed to a trial.

The Divisional Court in *Toogood* applied this principle to a similar action in which no defence was delivered. In this case a defence was delivered but as in *Prasad* it is clear that the defendant held and used a credit card. The same documents supporting the plaintiff's

claim based on which the Divisional Court granted judgment in *Toogood* are attached to the plaintiff's claim in this case and the defendant asserts no genuine defence, only a boilerplate "the defendant puts the plaintiff to the strict proof thereof." The plaintiff submits that in accordance with *Toogood* the last statement attached to the plaintiff's claim is sufficient to prove the plaintiff's claim (1) in the absence of the defendant asserting a genuine defence and "filing a defence and appropriate evidence in opposition to the summary claim" (*Toogood* para. 25) and (2) given the failure of the defendant to assert a defence and file any documentary evidence supporting that defence by attaching it to the defence as required by rule 9.02. Consequently, this Court may grant judgment as claimed.

Capital One v. Toogood, 2013 ONSC 5440 (*sub nom. Capital One Bank v. Wright*, 2013 CarswellOnt 12424) at paras. 23, 26-28 Book of Authorities, Tab 7.

Rules of Small Claims Court, O. Reg. 258/98, rule 9.02.

25. Furthermore, the Court of Appeal in *Van de Vrande v. Butkowsky*, 2010 CarswellOnt 1777, 2010 ONCA 230, and Deputy Judge Winny in *Bank of Montreal v. McConnell*, 2008 CarswellOnt 5187 both endorse the idea that, if matters can be determined at an early stage such that proceeding to trial would be a waste of time, then judgment can and should be granted in order to conform or dovetail with summary nature of Small Claims Court.

Van de Vrande v. Butkowsky, 2010 CarswellOnt 1777, 2010 ONCA 230, at paras. 19-20, Book of Authorities, Tab 5.

Bank of Montreal v. McConnell, 2008 CarswellOnt 5187, at paras. 13-14, Book of Authorities, Tab 6.

26. In this case, judgement should be granted now as the defendant has failed to assert a genuine defence or file evidence supporting it and there is sufficient information on the record to determine the matter on its merits without the need for a trial.

27. Accordingly, the plaintiff submits this court may grant judgment for the amount shown on the final credit card statement as claimed, less payments made, because the credit card agreement between the parties provides that the cardholder accepts the statement as accurate if the customer (i.e., the defendant), does not inform the plaintiff of any alleged errors within thirty days of the statement date. The agreement further provides that the total debt must be paid if the cardholder fails to fulfill any of the terms of the agreement. As such, the amount appearing on the final statement is a "sum agreed upon or quantified in advance by the parties" which the plaintiff is entitled to claim.

Capital One v. Toogood, 2013 ONSC 5440 (*sub nom. Capital One Bank v. Wright*, 2013 CarswellOnt 12424) at paras. 4, 6, 16, 22-28 Book of Authorities, Tab 7.

Rules of Small Claims Court, O. Reg. 258/98, rule 9.02.

28. The interest rate that the plaintiff is entitled to can also be determined by reference to the materials. As set out in the Divisional Court's ruling in *Capital One Bank v. Matovska*, 2007 WL 2602217 (Ont. Div. Ct.), [2007] O.J. No. 3368, 2007 CarswellOnt 5605, MacKenzie, J. stated that effect should be given to the contractual rate for the determination of both pre- and post-judgment interest. As indicated in the plaintiff's statement of claim, the contractual rate of 19.8 % is set out on the final statement, just above the section titled, "Account Activity (Date of Transaction / Date Posted)", where it says: "Your account is 6 payments behind and will be charged off, the status reported to

credit bureaus and the interest rate for your total balance will move to 19.8%....”

Plaintiff’s Claim, Appeal Book and Compendium, Tab 4.

Capital One Bank v. Matovska, 2007 WL 2602217 (Ont. Div. Ct.), [2007] O.J. No. 3368, 2007 CarswellOnt 5605 at paras. 8-13, *Book of Authorities*, Tab 8.

29. In *Citi Cards v. Ross*, 2014 CarswellOnt 36, 2014 ONSC 114 (Ont. S.C.J. Jan 07, 2014), Justice Wein followed the decision *Capital One Bank v. Matovska* and concluded,

[s]ympathetic as I am to the circumstances of the defendants, who did make real efforts to settle the matter, and who at one time were offered the opportunity of paying this debt off at a much slower rate and lower rate of interest, I cannot simply insert a lower rate of interest out of sympathy. Consequently, judgment must be given in the contractual amount of 28.8 per cent...

Citi Cards v. Ross, 2014 CarswellOnt 36, 2014 ONSC 114, at para. 32 *Book of Authorities*, Tab 9.

V. ORDER SOUGHT

30. Based on the above, the plaintiff respectfully seeks an order as follows: “The appeal is allowed. The order of Deputy Judge MacDonald dated March 19, 2015 is set aside. Judgment is ordered for the plaintiff in the amount of \$6,593.33 as of March 10, 2014, with pre-judgment and post-judgment interest at the rate of 19.8% per year plus costs of \$_____ and costs of the appeal of \$_____.”

31. In the alternative, the plaintiff respectfully seeks an order as follows, “The appeal is allowed. The order of Deputy Judge MacDonald dated March 19, 2015 is set aside and

replaced with the order ‘Matter not settled, plaintiff may proceed to trial’ with cost of the appeal to the appellant fixed in the amount of of \$_____.”

ALL OF WHICH IS RESPECTFULLY
SUBMITTED

Christensen Law Firm
Per Zameer N. Hakamali, LSUC No.: 57124F
Lawyers for the Appellant (Plaintiff)

**ONTARIO
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B E T W E E N:

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Plaintiff
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-and-

MATTHEW R. MAMONE aka MATTHEW MAMONE aka MATT R. MAMONE

Defendant
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CERTIFICATE

I, Zameer N. Hakamali, lawyer for the appellant, certify:

1. An order under subrule 61.09 (2) is not required, and
2. I estimate I will require 0.5 hours for oral argument.

Christensen Law Firm
Per Zameer N. Hakamali, LSUC No.: 57124F
Lawyers for the Appellant (Plaintiff)

SCHEDULE A

List of Authorities

1. *Jane Conte Professional Corporation v. Josephine Smith*, 2014 ONSC 6009
2. *Loans Till Payday v. Brown*, 2010 CarswellOnt 9151
3. *Kamloops Dental Centre v. McMillan* 1996 CarswellBC 2714
4. *Canadian Imperial Bank of Commerce v Prasad* 2010 CarswellOnt 108 2010 ONSC 320.
5. *Van de Vrande v. Butkowsky*, 2010 CarswellOnt 1777, 2010 ONCA 230.
6. *Bank of Montreal v. McConnell*, 2008 CarswellOnt 5187
7. *Capital One v. Toogood*, 2013 ONSC 5440 (*sub nom. Capital One Bank v. Wright*, 2013 CarswellOnt 12424)
8. *Capital One Bank v. Matovska*, 2007 WL 2602217 (Ont. Div. Ct.), [2007] O.J. No. 3368, 2007 CarswellOnt 5605
9. *Citi Cards v. Ross*, 2014 CarswellOnt 36, 2014 ONSC 114 (Ont. S.C.J. Jan 07, 2014)

Schedule B

Section 134 of the Courts of Justice Act, R.S.O. 1990, c. C.43.

134. (1) Unless otherwise provided, a court to which an appeal is taken may,
- (a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;
 - (b) order a new trial;
 - (c) make any other order or decision that is considered just. R.S.O. 1990, c. C.43, s. 134 (1).

Rule 1.03 of the Rules of Small Claims Court, O.Reg. 258/98

General Principle

1.03(1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 25 of the *Courts of Justice Act*. O. Reg. 258/98, r. 1.03 (1).

Matters Not Covered in Rules

(2) If these rules do not cover a matter adequately, the court may give directions and make any order that is just, and the practice shall be decided by analogy to these rules, by reference to the *Courts of Justice Act* and the Act governing the action and, if the court considers it appropriate, by reference to the Rules of Civil Procedure. O. Reg. 78/06, s. 3.

Rule 12.02 Rules of Small Claims Court, O. Reg. 258/98

Motion to Strike out or Amend a Document

12.02(1) The court may, on motion, strike out or amend all or part of any document that,

- (a) discloses no reasonable cause of action or defence;
- (b) may delay or make it difficult to have a fair trial; or
- (c) is inflammatory, a waste of time, a nuisance or an abuse of the court's process. O. Reg. 78/06, s. 26.

(2) In connection with an order striking out or amending a document under subrule (1), the court may do one or more of the following:

1. In the case of a claim, order that the action be stayed or dismissed.
2. In the case of a defence, strike out the defence and grant judgment.
- 2.1 In the case of a motion, order that the motion be stayed or dismissed.
3. Impose such terms as are just. O. Reg. 78/06, s. 26; Reg. 44/14, s. 11 (2).

Rule 13 of the Rules of Small Claims Court O. Reg. 258/98

RULE 13 SETTLEMENT CONFERENCES

Settlement Conference Required in Defended Action

13.01 (1) A settlement conference shall be held in every defended action. O. Reg. 78/06, s. 27.

Duty of Clerk

(2) The clerk shall fix a time, date and place for the settlement conference and serve a notice of settlement conference, together with a list of proposed witnesses (Form 13A), on the parties. O. Reg. 78/06, s. 27.

Timing

(3) The settlement conference shall be held within 90 days after the first defence is filed. O. Reg. 78/06, s. 27.

Exception

(4) Subrules (1) to (3) do not apply if the defence contains an admission of liability for all of the plaintiff's claim and a proposal of terms of payment under subrule 9.03 (1). O. Reg. 78/06, s. 27.

Attendance

13.02 (1) A party and the party's representative, if any, shall, unless the court orders otherwise, participate in the settlement conference,

(a) by personal attendance; or

(b) by telephone or video conference in accordance with rule 1.07. O. Reg. 78/06, s. 27; O. Reg. 230/13, s. 14.

Authority to Settle

(2) A party who requires another person's approval before agreeing to a settlement shall, before the settlement conference, arrange to have ready telephone access to the other person throughout the conference, whether it takes place during or after regular business hours. O. Reg. 78/06, s. 27.

Additional Settlement Conferences

(3) The court may order the parties to attend an additional settlement conference. O. Reg. 78/06, s. 27.

(4) The clerk shall fix a time and place for any additional settlement conference and serve a notice of settlement conference, together with a list of proposed witnesses (Form 13A) on the parties. O. Reg. 78/06, s. 27.

Failure to Attend

(5) If a party who has received a notice of settlement conference fails to attend the conference, the court may,

(a) impose appropriate sanctions, by way of costs or otherwise; and

(b) order that an additional settlement conference be held, if necessary. O. Reg. 78/06, s. 27.

(6) If a defendant fails to attend a first settlement conference, receives notice of an additional settlement conference and fails to attend the additional settlement conference, the court may,

- (a) strike out the defence and dismiss the defendant's claim, if any, and allow the plaintiff to prove the plaintiff's claim; or
- (b) make such other order as is just. O. Reg. 78/06, s. 27.

Inadequate Preparation, Failure to File Material

(7) The court may award costs against a person who attends a settlement conference if,

- (a) in the opinion of the court, the person is so inadequately prepared as to frustrate the purposes of the conference;
- (b) the person fails to file the material required by subrule 13.03 (2). O. Reg. 78/06, s. 27.

Purposes of Settlement Conference

13.03 (1) The purposes of a settlement conference are,

- (a) to resolve or narrow the issues in the action;
- (b) to expedite the disposition of the action;
- (c) to encourage settlement of the action;
- (d) to assist the parties in effective preparation for trial; and
- (e) to provide full disclosure between the parties of the relevant facts and evidence. O. Reg. 78/06, s. 27.

Disclosure

(2) At least 14 days before the date of the settlement conference, each party shall serve on every other party and file with the court,

- (a) a copy of any document to be relied on at the trial, including an expert report, not attached to the party's claim or defence; and
- (b) a list of proposed witnesses (Form 13A) and of other persons with knowledge of the matters in dispute in the action. O. Reg. 78/06, s. 27.

(3) At the settlement conference, the parties or their representatives shall openly and frankly discuss the issues involved in the action. O. Reg. 78/06, s. 27.

Further Disclosure Restricted

(4) Except as otherwise provided or with the consent of the parties (Form 13B), the matters discussed at the settlement conference shall not be disclosed to others until after the action has been disposed of. O. Reg. 78/06, s. 27.

Recommendations to Parties

13.04 The court may make recommendations to the parties on any matter relating to the conduct of the action, in order to fulfil the purposes of a settlement conference, including recommendations as to,

- (a) the clarification and simplification of issues in the action;
- (b) the elimination of claims or defences that appear to be unsupported; and
- (c) the admission of facts or documents without further proof. O. Reg. 78/06, s. 27.

Orders at Settlement Conference

13.05 (1) A judge conducting a settlement conference may make any order relating to the conduct of the action that the court could make. O. Reg. 78/06, s. 27.

(2) Without limiting the generality of subrule (1), the judge may,

- (a) make an order,
 - (i) adding or deleting parties,
 - (ii) consolidating actions,
 - (iii) with written reasons, staying or dismissing the action,
 - (iv) amending or striking out a claim or defence under subrule 12.02 (1),
 - (v) Revoked: O. Reg. 44/14, s. 12 (3).
 - (vi) directing production of documents,
 - (vii) changing the place of trial under rule 6.01,
 - (viii) directing an additional settlement conference under subrule 13.02 (3), and
 - (ix) ordering costs; and
- (b) at an additional settlement conference, order judgment under subrule 13.02 (6). O. Reg. 78/06, s. 27; O. Reg. 44/14, s. 12.

Recommendations to Judge

(3) If the settlement conference is conducted by a referee, a judge may, on the referee's recommendation, make any order that may be made under subrules (1) and (2). O. Reg. 78/06, s. 27.

Consent to Final Judgment

(4) A judge may order final judgment at a settlement conference where the matter in dispute is for an amount under the appealable limit and a party files a consent (Form 13B) signed by all parties before the settlement conference indicating that they wish to obtain final determination of the matter at the settlement conference if a mediated settlement is not reached. O. Reg. 78/06, s. 27.

Service of Order

(5) Within 10 days after the judge signs an order made at a settlement conference, the clerk shall serve the order on the parties that were not present at the settlement conference in accordance with subrule 8.01 (6). O. Reg. 78/06, s. 27.

Memorandum

13.06 (1) At the end of the settlement conference, the court shall prepare a memorandum summarizing,

- (a) recommendations made under rule 13.04;
- (b) the issues remaining in dispute;
- (c) the matters agreed on by the parties;
- (d) any evidentiary matters that are considered relevant; and
- (e) information relating to the scheduling of the remaining steps in the proceeding. O. Reg. 78/06, s. 27.

(2) The memorandum shall be filed with the clerk, who shall give a copy to the trial judge. O. Reg. 78/06, s. 27.

Notice of Trial

13.07 At or after the settlement conference, the clerk shall provide the parties with a notice stating that one of the parties must request a trial date if the action is not disposed of within 30 days after the settlement conference, and pay the fee required for setting the action down for trial. O. Reg. 78/06, s. 27.

Judge Not To Preside At Trial

13.08 A judge who conducts a settlement conference in an action shall not preside at the trial of the action. O. Reg. 78/06, s. 27.

Withdrawal of Claim

13.09 After a settlement conference has been held, a claim against a party who is not in default shall not be withdrawn or discontinued by the party who brought the claim without,

- (a) the written consent of the party against whom the claim is brought; or
- (b) leave of the court. O. Reg. 78/06, s. 27.

Costs

13.10 The costs of a settlement conference, exclusive of disbursements, shall not exceed \$100 unless the court orders otherwise because there are special circumstances. O. Reg. 78/06, s. 27.

Rule 15.02(1) of the Rules of Civil Procedure R.R.O. 1990, Reg. 194.

NOTICE OF AUTHORITY TO COMMENCE PROCEEDING

Request for Notice by Lawyer

15.02 (1) A person who is served with an originating process may deliver a request that the lawyer who is named in the originating process as the lawyer for the plaintiff or applicant deliver a notice declaring whether he or she commenced or authorized the commencement of the proceeding or whether his or her client authorized the commencement of the proceeding. O. Reg. 427/01, s. 9; O. Reg. 575/07, s. 1.

Power of Court

(2) If the lawyer fails to deliver a notice in accordance with the request, the court may,

- (a) order the lawyer to do so;
- (b) stay the proceeding; and
- (c) order the lawyer to pay the costs of the proceeding. O. Reg. 427/01, s. 9; O. Reg. 575/07, s. 1.

Proceeding Commenced without Lawyer's Authority

(3) If the lawyer declares that he or she did not commence or authorize the commencement of the proceeding, the court may, on motion without notice, stay or dismiss the proceeding. O. Reg. 427/01, s. 9; O. Reg. 575/07, s. 1.

Proceeding Commenced without Client's Authority

(4) If a lawyer has commenced a proceeding without the authority of his or her client, the court may, on motion, stay or dismiss the proceeding and order the lawyer to pay the costs of the proceeding. O. Reg. 427/01, s. 9; O. Reg. 575/07, s. 1.

Effect of Stay

(5) If a proceeding is stayed under this rule, no further step may be taken without leave of the court. O. Reg. 427/01, s. 9.

DIVISIONAL COURT, SUPERIOR COURT OF JUSTICE

B E T W E E N:

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Plaintiff
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-and-

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Defendant
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CAPITAL ONE BANK (CANADA BRANCH) v. MATTHEW R. MAMONE aka MATTHEW MAMONE aka MATT R. MAMONE

**DIVISIONAL COURT, SUPERIOR
COURT OF JUSTICE**

Proceedings commenced at Hamilton

PLAINTIFF'S FACTUM

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