SETTLE AN ORDER

What is it?
Civil Rule 13-1(1) or Family Rule 15-1(3) requires that every party who appeared or consented to an order approve the terms of order before entry. If the parties are unable to agree on the terms of an order following delivery or hearing of the reasons, they may take out an Appointment to Settle an Order (Civil Form 49 or Family Form F55). The hearing takes place before a registrar.
The purpose of settling an order is not to re-argue the issue; it is to determine the terms of the order pronounced by the court.
Parties occasionally refuse to sign an order in the mistaken belief that their signature implies that they agree with the order made by the court when the order was not made in the terms they sought.

The registrar cannot settle a consent order nor vary or set aside an order made by the court.

Documents required:

- Appointment [Civil Form 49 or Family Form 55]
- Draft order
- Copy of clerk's notes, oral reasons or reasons for judgment
- Proof of delivery of the appointment if the other party does not appear
- Filing fee of $80.00

What happens before the hearing?
The party who wants the order settled contacts Supreme Court Scheduling for a hearing date and files an appointment (filing fee required). A copy of the appointment (transcript and notes attached) and draft order must be delivered to all parties whose approval is required giving them at least one day's notice of the hearing (Civil Rule 13-1(12) or Family Rule 15-1(13). Notice is not required to a party who did not attend or who was not represented at the trial or hearing where the order was made.

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 that is required to be filed with that appointment (draft order)
    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 reasons for judgment on which the order is based, a transcript of the order made or a copy of the clerk's notes from the hearing;
    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 order
    ii. a list of 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 documents unless they are included with the consent of the applicant and the respondents.

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What happens at the hearing?
The hearings are generally brief. The party taking out the appointment proves service if the other party does not appear. The registrar may settle the order in their absence (Civil Rule 13-1(13) or Family Rule 15-1(14)).The party taking out the appointment describes briefly the terms of the order they have drawn, with reference to, for example, reasons for judgment or the notes of the court clerk. If the terms of the order are opposed, the opposing party outlines their objections and the reasons for the opposition. This might include a different interpretation of the reasons for judgment or conflicting notes. If the party taking out the appointment wishes to reply, they can then do so. The opposing party may wish to present their own suggested version of the order.

The duty of the registrar is to distil the reasons for judgment and to express the reasons for the judgment in the form of an order.

If the registrar is able to settle the order and changes are made, he or she will initial each change and endorse the last page of the order stating the order has been settled. Alternatively, the registrar may require that the order be re-drafted to reflect the changes made. If the registrar has already endorsed the order, the parties should prepare a clean copy of the order and re-submit it for entry bearing the notation "Minutes Filed" on the parties' signature line and the settled order attached as minutes. If minimal changes are necessary or there are time constraints, the parties can simply submit the settled order for entry to the court registry.

If the registrar is unable to settle the order the registrar may, but is not obliged to, prepare a brief memorandum for the judge/master who pronounced the order, setting out the issues in contention. It is then up to the parties to have the matter put before the judge or master who pronounced the order. Alternatively, the registrar may seek direction directly from the judge or master in question. If that is the case, the registrar will then settle the order on receipt of directions from the judge or master.

The registrar has the jurisdiction to settle an order by incorporating a term respecting costs into it when the reasons are silent on the issue.

Further reading: Continuing Legal Education Manual – Practice Before the Registrar; Supreme Court Rule 41(18) to 41(21).