

S.I. 2008 No.

Supreme Court of Judicature Act  
Cap. 117A

**THE SUPREME COURT (CIVIL PROCEDURE)  
RULES 2008**

The Rules Committee of the Supreme Court in exercise of the powers conferred on it by section 82 of the *Supreme Court of Judicature Act*, makes the following Rules:

**Table of Contents**

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**Part 1: The Overriding Objective**

The overriding objective	Rule 1.1
Application of the overriding objective by the court	Rule 1.2
Duty of the parties	Rule 1.3

**Part 2: Application and  
Interpretation of the Rules**

Citation	Rule 2.1
Application of the Rules	Rule 2.2
Definitions	Rule 2.3
Who may exercise the powers of the court	Rule 2.4
Court staff	Rule 2.5
Court's discretion as to when, where and how it deals with cases	Rule 2.6

### **Part 3: Time, Documents and Forms**

Time – court to state calendar date	Rule 3.1
Time – computation	Rule 3.2
Vacations	Rule 3.3
Hearings in vacations	Rule 3.4
Time – vacations	Rule 3.5
Documents	Rule 3.6
Filing of documents	Rule 3.7
Filing and service by FAX	Rule 3.8
Sealing of documents issued by the court	Rule 3.9
Forms	Rule 3.10
Statement of case – address for service	Rule 3.11
Statement of case – certificate of truth	Rule 3.12
Failure to give certificate of truth	Rule 3.13

### **Part 4: Practice Directions**

Who may issue practice directions	Rule 4.1
Scope of practice directions	Rule 4.2
Publication of practice directions	Rule 4.3
Date from which practice directions take effect	Rule 4.4
Compliance with practice directions	Rule 4.5

### **Part 5: Service of Claim Form within Jurisdiction**

Service of claim form, normal method	Rule 5.1
Statement of claim to be served with claim form	Rule 5.2
Method of personal service	Rule 5.3
Permitted place of service	Rule 5.4
Proof of personal service	Rule 5.5
Service on attorney-at-law	Rule 5.6
Service on a limited company	Rule 5.7
Service of claim form on a firm or partnership	Rule 5.8
Service on a body corporate	Rule 5.9
Service of claim form on minors and patients	Rule 5.10

**Part 5: Service of Claim Form  
within Jurisdiction**

Proof of postal service	Rule 5.11
Proof of service by FAX	Rule 5.12
Alternative methods of service	Rule 5.13
Power of court to make order for service by a specified method	Rule 5.14
Proof of service by specified method	Rule 5.15
Service of claim form by contractually agreed method	Rule 5.16
Service of claim form on agent of principal who is overseas	Rule 5.17
Service of claim form for possession of vacant land	Rule 5.18
Deemed date of service	Rule 5.19

**Part 6: Service of other documents**

Who is to serve documents other than the claim form	Rule 6.1
Method of service	Rule 6.2
Address for service	Rule 6.3
Address for serving documents where no address for service is given	Rule 6.4
Service of documents on a non-party	Rule 6.5
Deemed date of service	Rule 6.6
Proof of service	Rule 6.7
Power of court to dispense with service	Rule 6.8
Service of notices etc. on the Attorney-General	Rule 6.9

**Part 7: Service of Court Process out  
of the Jurisdiction**

Scope of this Part	Rule 7.1
General rule as to service out of jurisdiction	Rule 7.2
Nature of cases where service out of jurisdiction may be permitted	Rule 7.3
Proceedings which include other types of claim	Rule 7.4

**Part 7: Service of Court Process out of the  
Jurisdiction (Cont'd)**

Permission to serve out of jurisdiction	Rule 7.5
Acknowledgment of service where claim form served out of jurisdiction	Rule 7.6
Application to set aside service under Rule 7.3	Rule 7.7
Mode of service – general provisions	Rule 7.8
Service through foreign governments, etc.	Rule 7.9
Procedure where claim form is to be served through foreign governments, etc.	Rule 7.10
Service of claim form on a State where court permits service out of jurisdiction	Rule 7.11
Translation of claim form	Rule 7.12
Undertaking to be responsible for expenses of Minister of Foreign Affairs	Rule 7.13
Service of court process other than a claim form	Rule 7.14

**Part 8: How to start proceedings**

The Claimant – how to start proceedings	Rule 8.1
Statement of claim to be issued and served with claim form	Rule 8.2
Right to file a claim form which includes two or more claims	Rule 8.3
What must be included in the claim form	Rule 8.4
Claimant's duty to set out his case and consequences of not doing so	Rule 8.5
Claim not to fail by adding or failing to add parties	Rule 8.6
Special requirements applying to claims for personal injuries	Rule 8.7
Relator claims	Rule 8.8
Service of a claim form	Rule 8.9
Time within which a claim form may be served	Rule 8.10
Extension of time for serving a claim form	Rule 8.11
Defence form etc., must be served with claim form	Rule 8.12

**Part 9: Acknowledgment of Service and  
Notice of Intention to Defend**

Scope of this Part	Rule 9.1
Filing an acknowledgment of service and consequence of not doing so	Rule 9.2
The period for filing an acknowledgment of service	Rule 9.3
Notice to claimant of filing of acknowledgment of service	Rule 9.4
Contents of acknowledgment of service	Rule 9.5
Right to dispute the jurisdiction of court not taken away by acknowledgment of service	Rule 9.6
Procedure for disputing court's jurisdiction	Rule 9.7

**Part 10: Defence**

Scope of this Part	Rule 10.1
The defendant – filing defence and consequences of not doing so	Rule 10.2
The period for filing defence	Rule 10.3
Service of copy of defence	Rule 10.4
Defendant's duty to set out his case	Rule 10.5
Additional matters which must be included in defence	Rule 10.6
Consequences of not setting out defence	Rule 10.7
Special requirements applying to claims for personal injuries	Rule 10.8
Defence of tender	Rule 10.9
Reply to defence	Rule 10.10

**Part 11: General Rules about Interlocutory  
Applications for Court Orders**

Scope of this Part	Rule 11.1
Applicants and respondents	Rule 11.2
Application to be in writing and dealt with at a case management conference	Rule 11.3

**Part 11: General Rules about Interlocutory  
Applications for Court Orders (Cont'd)**

Notice of application and evidence in support	Rule 11.4
Time when application is made	Rule 11.5
What application must include	Rule 11.6
Contents of notice of application	Rule 11.7
Period of notice of application and service	Rule 11.8
Powers of court in relation to conduct of application	Rule 11.9
Consequence of not asking for order in application	Rule 11.10
Applications which may be dealt with without a hearing	Rule 11.11
Service subsequently of application where application made without notice	Rule 11.12
Applications to set aside or vary order made on application made without notice	Rule 11.13
Power of court to proceed in absence of a party	Rule 11.14
Application to set aside order made in absence of a party	Rule 11.15

**Part 12: Default Judgments**

Scope of this Part	Rule 12.1
Claims in which default judgment may not be obtained	Rule 12.2
Cases in which permission of the court is required	Rule 12.3
Conditions to be satisfied – judgment for failure to file acknowledgment of service	Rule 12.4
Conditions to be satisfied – judgment for failure to defend	Rule 12.5
Admission of part – request for time to pay	Rule 12.6
Procedural requirements	Rule 12.7
Claim for specified sum of money	Rule 12.8
Claim against more than one defendant	Rule 12.9
Nature of default judgment	Rule 12.10

**Part 12: Default Judgments (Cont'd)**

Interest	Rule 12.11
Costs	Rule 12.12
Directions to be given where further decision of court is needed	Rule 12.13
Defendant's rights following default judgment	Rule 12.14

**Part 13: Setting Aside or Varying  
Default Judgment**

Scope of this Part	Rule 13.1
Cases where the court must set aside default judgment	Rule 13.2
Cases where the court may set aside or vary default judgment	Rule 13.3
Application to vary or set aside default judgment - procedure	Rule 13.4
Court to impose condition as to filing of defence	Rule 13.5
Hearing to be treated as case management conference	Rule 13.6
Abandoned claims to be restored if judgment set aside	Rule 13.7

**Part 14: Judgment on Admissions**

Making an admission	Rule 14.1
Admissions by a minor or patient	Rule 14.2
Admission by notice in writing – application for judgment	Rule 14.3
Action on receipt of admission in whole or in part of money claim	Rule 14.4
Admission of claim for specified amount of money	Rule 14.5
Admission of part of claim for money only	Rule 14.6
Admission of liability to pay the whole of a claim for an unspecified sum of money	Rule 14.7
Requests for time to pay	Rule 14.8

**Part 14: Judgment on Admissions (Cont'd)**

Requests for time to pay – procedure where time and rate agreed	Rule 14.9
Requests for time to pay – procedure where time and rate not agreed	Rule 14.10
Right of reconsideration	Rule 14.11
Variation of order	Rule 14.12
Withdrawal and effect of admissions	Rule 14.13

**Part 15: Summary Judgment**

Scope of this Part	Rule 15.1
Grounds for summary judgment	Rule 15.2
Types of proceedings for which summary judgment is not available	Rule 15.3
Procedure	Rule 15.4
Evidence for purposes of a summary judgment hearing	Rule 15.5
Powers of the court on an application for summary judgment	Rule 15.6

**Part 16: Assessment of Damages**

Scope of this Part	Rule 16.1
Assessment of damages after default judgment	Rule 16.2
Assessment of damages after admission of liability on claim for an unspecified sum of money	Rule 16.3
Assessment of damages after a direction for a trial of issue of quantum	Rule 16.4

**Part 17: Interim Remedies**

Orders for interim remedies	Rule 17.1
Time when an order for interim remedy may be made	Rule 17.2
How to apply for an interim remedy	Rule 17.3
Interim injunctions and similar orders	Rule 17.4



**Part 17: Interim Remedies (Cont'd)**

Interim payments – general procedure	Rule 17.5
Interim payments – conditions to be satisfied and matters to be taken into account	Rule 17.6
Powers of court where it has made an order for interim payment	Rule 17.7
Power of court to order early trial, etc.	Rule 17.8
Restriction on disclosure of interim payment	Rule 17.9

**Part 18: Ancillary Claims – Counterclaims,  
Third Party and other similar claims**

Meaning of "Ancillary Claim"	Rule 18.1
Ancillary claim to be treated as application for purposes of the Rules	Rule 18.2
Defendant's claim for contribution or indemnity from co-defendant	Rule 18.3
Procedure for making other ancillary claims	Rule 18.4
Service of ancillary claim	Rule 18.5
Counterclaim may survive application	Rule 18.6
Restrictions on right to make counterclaim or plead set-off in proceedings by or against the Crown	Rule 18.7
Adding other defendants to counterclaim	Rule 18.8
Defence to ancillary claim	Rule 18.9
Matters relevant to whether ancillary claim should be dealt with separately from main application	Rule 18.10
Effect of service of ancillary claim	Rule 18.11
Special provisions relating to judgment on failure to file defence to ancillary claim	Rule 18.12
Procedural steps on service of ancillary claim on a non-party	Rule 18.13
Case management where there is a defence to ancillary claim	Rule 18.14

**Part 19: Addition and Substitution of Parties**

Scope of this Part	Rule 19.1
Change of parties – general	Rule 19.2
Procedure for adding and substituting parties	Rule 19.3
Special provisions about adding and substituting parties after the end of a relevant limitation period	Rule 19.4

**Part 20: Changes to Statement of Case**

Changes to statement of case	Rule 20.1
Changes to statement of case after the end of a relevant limitation period	Rule 20.2

**Part 21: Representative Parties**

Representative plaintiffs and defendants – general	Rule 21.1
Appointment of representative claimant or defendant - procedure	Rule 21.2
Consequence of order appointing representative party	Rule 21.3
Representation of persons who cannot be ascertained in proceedings about estates, trusts and construction of written instruments	Rule 21.4
Compromise in proceedings to which rule 21.4 applies	Rule 21.5
Representation of beneficiaries by trustees	Rule 21.6
Proceedings against the estate of deceased person	Rule 21.7
Power of court to give directions to enable proceedings to be carried on after a party's death	Rule 21.8
Power of court to strike out action after death of claimant	Rule 21.9

**Part 22: Miscellaneous Rules about Parties**

Partners	Rule 22.1
Person carrying on business in another name	Rule 22.2
Bodies corporate	Rule 22.3

**Part 23: Minors and Patients**

Scope of this Part	Rule 23.1
Requirement of next friend in proceedings by or against minors or patients	Rule 23.2
Stage of proceedings at which next friend becomes necessary	Rule 23.3
Who may be minor's next friend	Rule 23.4
Who may be patient's next friend	Rule 23.5
Conditions for being next friend	Rule 23.6
How person becomes next friend without court order	Rule 23.7
How person becomes next friend by court order	Rule 23.8
Court's power to terminate appointment of and substitute next friend	Rule 23.9
Appointment of next friend by court order – supplementary	Rule 23.10
Procedure where appointment of next friend ceases	Rule 23.11
Compromise etc., on behalf of minor or patient	Rule 23.12
Control of money recovered by or on behalf of minor or patient	Rule 23.13

**Part 24: Security for costs**

Scope of this Part	Rule 24.1
Application for order for security for costs	Rule 24.2
Conditions to be satisfied	Rule 24.3
Security for costs against counter-claiming defendant	Rule 24.4
Enforcing order for security for costs	Rule 24.5

**Part 25: Case Management – The Objective**

Court's duty to manage cases actively Rule 25.1

**Part 26: Case Management –  
the Court's Powers**

Court's general powers of management Rule 26.1

Court's power to make orders of its own  
initiative Rule 26.2

Sanctions – striking out statement of case Rule 26.3

General power of the court to rectify matters  
where there has been a procedural error Rule 26.4

**Part 27: Case Management Conferences –  
Procedure**

Scope of this Part Rule 27.1

Fixed date claims – first hearing Rule 27.2

Case Management Conference Rule 27.3

Attendance at case management conference  
or pre-trial review Rule 27.4

Orders to be made at case management conference Rule 27.5

Dispensing with case management  
conference in simple and urgent proceedings Rule 27.6

Adjournment of case management conference Rule 27.7

Variation of case management timetable Rule 27.8

Listing questionnaire Rule 27.9

Fixing trial date Rule 27.10

**Part 28: Disclosure and Inspection  
of Documents**

Scope of this Part Rule 28.1

Duty of disclosure limited to documents which  
are or have been in party's control Rule 28.2

Disclosure of copies Rule 28.3

Standard disclosure Rule 28.4

**Part 28: Disclosure and Inspection of Documents (Cont'd)**

Specific disclosure	Rule 28.5
Criteria for ordering specific disclosure	Rule 28.6
Procedure for disclosure	Rule 28.7
Duty of attorney-at-law	Rule 28.8
Requirement for party to certify that he understands duty of standard disclosure	Rule 28.9
Disclosure in stages	Rule 28.10
Inspection and copying of listed documents	Rule 28.11
Duty of disclosure continuous during proceedings	Rule 28.12
Consequence of failure to disclose documents under order for disclosure	Rule 28.13
Claim of right to withhold disclosure or inspection of document	Rule 28.14
Restriction on use of a privileged document inspection of which has been inadvertently allowed	Rule 28.15
Document referred to in statement of case, etc.	Rule 28.16
Subsequent use of disclosed documents	Rule 28.17
Notice to prove document	Rule 28.18

**Part 29: Evidence**

Power of court to control evidence	Rule 29.1
Evidence at trial – general rule	Rule 29.2
Evidence by video link or other means	Rule 29.3
Requirement to serve witness statements	Rule 29.4
Form of witness statements	Rule 29.5
Witness summaries	Rule 29.6
Procedure where one party does not serve witness statement by date directed	Rule 29.7
Witness to give evidence unless court otherwise orders	Rule 29.8
Amplifying witness statements at trial	Rule 29.9
Cross-examination on witness statement	Rule 29.10

**Part 29: Evidence (Cont'd)**

Consequence of failure to serve witness statement or summary	Rule 29.11
Use of witness statements for other purposes	Rule 29.12
Notice to admit facts	Rule 29.13

**Part 30: Affidavits**

Affidavit evidence	Rule 30.1
Form of affidavits	Rule 30.2
Contents of affidavits	Rule 30.3
Documents to be used in conjunction with affidavit	Rule 30.4
Making of affidavits	Rule 30.5
Service of affidavits	Rule 30.6

**Part 31: Miscellaneous rules about evidence**

Use of plans, photographs etc., as evidence	Rule 31.1
Evidence on questions of foreign law	Rule 31.2
Evidence of consent of trustee to act	Rule 31.3

**Part 32: Experts and Assessors**

Scope of this Part	Rule 32.1
General scope of expert evidence	Rule 32.2
Expert's overriding duty to court	Rule 32.3
Way in which expert's duty to court is to be carried out	Rule 32.4
Expert's right to apply to court for directions	Rule 32.5
Court's power to restrict expert evidence	Rule 32.6
General requirement for expert evidence to be given in written report	Rule 32.7
Written questions to experts	Rule 32.8
Court's power to direct evidence by single expert	Rule 32.9
Instructions to single expert	Rule 32.10

**Part 32: Experts and Assessors (Cont'd)**

Power of court to direct party to provide expert report	Rule 32.11
Contents of report	Rule 32.12
Meeting of experts	Rule 32.13
Consequence of failure to disclose expert's report	Rule 32.14
Appointment of assessors	Rule 32.15
Cross examination of court experts	Rule 32.16
Expert's reports to be addressed to Court	Rule 32.17

**Part 33: Court attendance by witnesses and depositions**

Scope of this Part	Rule 33.1
Witness summonses (subpoenas)	Rule 33.2
Issue of witness summons	Rule 33.3
Witness summonses in aid of inferior court or tribunal	Rule 33.4
Time for serving witness summons	Rule 33.5
Right of witness to travelling expenses and compensation for loss of time	Rule 33.6
Evidence by deposition before examiner	Rule 33.7
Conduct of examinations	Rule 33.8
Evidence without examiner being present	Rule 33.9
Enforcing attendance of witnesses	Rule 33.10
Special reports	Rule 33.11
Fees and expenses of examiner	Rule 33.12
Order for payment of examiner's fees	Rule 33.13
Use of deposition at hearing	Rule 33.14
Where person to be examined is out of jurisdiction – letter of request	Rule 33.15
Early appointment to produce documents	Rule 33.16

**Part 34: Requests for information**

Right of parties to obtain information	Rule 34.1
Orders compelling reply to request for information	Rule 34.2
Information obtained under Part 34 not to be used in other proceedings	Rule 34.3
Certificate of Truth	Rule 34.4

**Part 35: Offers to settle**

Scope of this Part	Rule 35.1
Introductory	Rule 35.2
Making offer to settle	Rule 35.3
Time when offer to settle may be made	Rule 35.4
Procedure for making offer to settle	Rule 35.5
Extent to which offer to settle includes interest, costs or counterclaim	Rule 35.6
Offer to settle made after interim payment	Rule 35.7
Offer to settle part of claim	Rule 35.8
Time limit for accepting offer to settle	Rule 35.9
Procedure for acceptance	Rule 35.10
Effect of acceptance – generally	Rule 35.11
Costs where offer not accepted – general rules	Rule 35.12

**Part 36: Payments into court to support offers under Part 35 and under order of court**

Scope of this Part	Rule 36.1
Payments into court to support offers to settle	Rule 36.2
Right to payment out on acceptance of offer	Rule 36.3
Cases where payment out requires court order	Rule 36.4
Money paid into court under order	Rule 36.5
Money paid into court as condition for permission to defend or to continue to defend	Rule 36.6
Proceedings under the Accident (Compensation Reform) Act, Cap. 193A and the Law Reform (Miscellaneous Provisions) Act, Cap. 205	Rule 36.7



**Part 37: Discontinuance**

Scope of this Part	Rule 37.1
Right to discontinue claims	Rule 37.2
Procedure for discontinuing	Rule 37.3
Right to apply to have notice of discontinuance set aside	Rule 37.4
Effect of discontinuance	Rule 37.5
Liability for costs	Rule 37.6
Quantification of costs	Rule 37.7
Discontinuance and subsequent proceedings	Rule 37.8

**Part 38: Pre-trial Review**

Scope of this Part	Rule 38.1
Direction for pre-trial review	Rule 38.2
Rules relating to case management conference to apply	Rule 38.3
Who is to conduct pre-trial review	Rule 38.4
Parties to prepare pre-trial memorandum	Rule 38.5
Directions at pre-trial review	Rule 38.6

**Part 39: Trial**

Documents for use at trial	Rule 39.1
Cross-examination	Rule 39.2
Written submissions	Rule 39.3
Failure of party to attend trial	Rule 39.4
Applications to set aside judgments given in party's absence	Rule 39.5
Adjournment of trial	Rule 39.6
Inspection	Rule 39.7

**Part 40: Appointment of Referee to Inquire and Report**

Power to order trial before referee	Rule 40.1
Reference to referee to inquire and report	Rule 40.2
Appointment of referee	Rule 40.3
Conduct of reference	Rule 40.4
Report following reference	Rule 40.5
Consideration of report by court	Rule 40.6
Restrictions on appointment of referee in proceedings by or against Crown	Rule 40.7

**Part 41: Accounts and Inquiries**

Scope of this Part	Rule 41.1
Directions for account	Rule 41.2
Verification of account	Rule 41.3
Omissions etc.	Rule 41.4
Allowances	Rule 41.5
Delay	Rule 41.6
Distribution before entitlement ascertained	Rule 41.7

**Part 42: Judgments and Orders**

Scope of this Part	Rule 42.1
Parties present when order made or notified of its terms to be bound	Rule 42.2
Practice forms to be used where available	Rule 42.3
Standard requirements	Rule 42.4
Drawing up of judgments and orders	Rule 42.5
Service of orders	Rule 42.6
Consent judgments and orders	Rule 42.7
Time when judgment or order takes effect	Rule 42.8
Time for complying with judgment or order	Rule 42.9
Correction of error in judgment or order	Rule 42.10
Cases where court gives judgment both on claim and counterclaim	Rule 42.11
Service of copy of order on person not a party	Rule 42.12

**Part 43: Enforcement – General Provisions**

Scope of this Part	Rule 43.1
Procedure for beginning enforcement	Rule 43.2
Judgment subject to conditions	Rule 43.3
Separate enforcement of costs	Rule 43.4
Effect of order setting aside judgment or order	Rule 43.5
Court's powers where person ordered to do act fails to comply	Rule 43.6
Judgment for sum in foreign currency	Rule 43.7
Enforcement by or against person who is not a party	Rule 43.8
Enforcement against partnerships	Rule 43.9
Enforcement of awards, etc., made by outside bodies	Rule 43.10

**Part 44: Oral Examination in aid  
of enforcement**

Scope of this Part	Rule 44.1
Who may be orally examined	Rule 44.2
Procedure to obtain order for oral examination	Rule 44.3
Order for oral examination	Rule 44.4
Conduct of oral examination	Rule 44.5
Order for payment by instalments	Rule 44.6
Financial position notice	Rule 44.7

**Part 45: How Judgments may be Enforced**

Scope of this Part	Rule 45.1
How money judgments may be enforced	Rule 45.2
Enforcement of orders for payment of money into court	Rule 45.3
Enforcement of judgments and orders for possession of land	Rule 45.4
Enforcement of judgments and orders for delivery of goods	Rule 45.5

**Part 45: How Judgments may be Enforced (Cont'd)**

Enforcement of judgments and orders requiring persons to do act within specified time or not to do act	Rule 45.6
Enforcement of judgments and orders requiring body corporate to do an act within specified time or not to do an act	Rule 45.7

**Part 46: General Rules about Writs of Execution**

Meaning of "writ of execution"	Rule 46.1
Permission required to enforce in certain cases	Rule 46.2
Application for permission to enforce	Rule 46.3
Amount to be recovered on enforcement	Rule 46.4
Enforcement of judgment or order requiring judgment debtor to do two or more different things	Rule 46.5
No writ of execution against the Crown	Rule 46.6
Enforcement of judgment for payment by instalments	Rule 46.7
No writ of execution for goods or payment of assessed value unless court has assessed value	Rule 46.8
Order for specific delivery	Rule 46.9
Period for which writ of execution valid	Rule 46.10
Renewal of writ of execution	Rule 46.11
Period for which court may renew writ of execution	Rule 46.12
Effective date of renewed writ unchanged	Rule 46.13
Claims to goods seized under writ of execution	Rule 46.14
Suspension of writ of execution at request of judgment creditor	Rule 46.15
Return to writ of execution	Rule 46.16

**Part 47: Variation of Terms of Judgments  
and Suspension of Writs of Fi Fa  
and Writs of Delivery**

Scope of this Part	Rule 47.1
Applications to vary time and method of payment or suspend writs for seizure and sale of goods or delivery	Rule 47.2
Where there is no objection except as to terms – procedure	Rule 47.3
Where judgment creditor objects to variation or suspension	Rule 47.4
Pre-suspension costs	Rule 47.5

**Part 48: Charging Orders**

Scope of this Part and definitions	Rule 48.1
How to apply for charging order	Rule 48.2
Evidence in support of application for charging order	Rule 48.3
Single charging order for more than one judgment debt	Rule 48.4
Procedure for making provisional charging order	Rule 48.5
Interested persons	Rule 48.6
Service of provisional charging order and of copies	Rule 48.7
Making of final charging order	Rule 48.8
Effect of provisional or final charging order	Rule 48.9
Discharge or variation of final charging order	Rule 48.10
Enforcement of charging order by sale	Rule 48.11

**Part 49: Stop Notices and Stop Orders**

Scope of this Part	Rule 49.1
Right to apply for stop notice	Rule 49.2
Procedure for obtaining stop notice	Rule 49.3
Service	Rule 49.4
Amendment of stop notice	Rule 49.5
Withdrawal or discharge of stop notice	Rule 49.6
Stop orders	Rule 49.7
Procedure on application for stop order	Rule 49.8
Power to vary or discharge stop order	Rule 49.9

**Part 50: Attachment of Debts**

Scope of this Part	Rule 50.1
Circumstances in which court may make order for attachment of debt	Rule 50.2
Procedure – making of provisional order	Rule 50.3
Money in bank accounts, etc.	Rule 50.4
Joint funds	Rule 50.5
Presumption of equal shares in joint funds	Rule 50.6
Attachment of debts owed by a firm	Rule 50.7
Service of provisional order	Rule 50.8
Effect of provisional order	Rule 50.9
Hearing to consider making final order	Rule 50.10
Claim to debt by person other than judgment debtor	Rule 50.11
Enforcement against garnishee	Rule 50.12
Discharge of garnishee's debt to judgment debtor	Rule 50.13
Costs of attachment of debt proceedings	Rule 50.14
Money in court	Rule 50.15

**Part 51: Appointment of Receiver**

Scope of this Part	Rule 51.1
Application for appointment of receiver and injunction	Rule 51.2
Conditions for appointment of a receiver	Rule 51.3
Giving of security by receiver	Rule 51.4
Remuneration of receiver	Rule 51.5
Receiver's powers	Rule 51.6
Accounts of receiver	Rule 51.7
Payment of balance into court	Rule 51.8
Default by receiver	Rule 51.9

**Part 52: Judgment summons**

Scope of this Part	Rule 52.1
Issue of judgment summons	Rule 52.2
Service of judgment summons	Rule 52.3
Hearing of judgment summons	Rule 52.4
Failure to comply with instalment order	Rule 52.5
Restored hearing of judgment summons	Rule 52.6

**Part 53: Committal and Sequestration  
of assets**

Scope of this Part	Rule 53.1
Order specifying time for act to be done	Rule 53.2
When committal order or sequestration of assets order may be made	Rule 53.3
Committal order or sequestration of assets order against officer of body corporate	Rule 53.4
Making committal order or sequestration of assets order when judgment or order not served	Rule 53.5
Undertakings	Rule 53.6
Application for committal order or sequestration of assets order	Rule 53.7

**Part 53: Committal and Sequestration  
of assets (Cont'd)**

Service of notice of hearing	Rule 53.8
Powers of the court	Rule 53.9
Restoration of adjourned hearing	Rule 53.10
Application for enforcement of suspended committal order or order for sequestration of assets	Rule 53.11
Special provisions relating to order for sequestration	Rule 53.12

**Part 54: Interpleader**

Scope of this Part	Rule 54.1
Claim to goods taken in execution	Rule 54.2
How to interplead	Rule 54.3
Service of interpleader application	Rule 54.4
Powers of the court	Rule 54.5
Power to order sale of goods taken in execution	Rule 54.6

**Part 55: Sale of Land by Order of Court**

Scope of this Part	Rule 55.1
Application for order for sale	Rule 55.2
Hearing of application	Rule 55.3
Order for sale	Rule 55.4
Directions	Rule 55.5
Further directions	Rule 55.6

**Part 56: Judicial Review**

Scope of this Part	Rule 56.1
Who may apply for judicial review	Rule 56.2
The application for judicial review	Rule 56.3
Service of the application	Rule 56.4
Delay	Rule 56.5



**Part 56: Judicial Review (Cont'd)**

Proceedings by way of ordinary application which should be application for judicial review	Rule 56.6
Joinder of claims for other relief	Rule 56.7
Defence and evidence in answer	Rule 56.8
Directions Hearing	Rule 56.9
Procedural applications	Rule 56.10
Hearing of application for judicial review and costs	Rule 56.11
Special provisions relating to certiorari	Rule 56.12

**Part 57: Habeas Corpus**

Scope of this Part	Rule 57.1
Application for issue of writ of Habeas Corpus	Rule 57.2
Powers of court	Rule 57.3
Service of writ	Rule 57.4
Return to writ	Rule 57.5
Powers of court on person detained being brought before the court	Rule 57.6
Bringing up prisoner to give evidence etc.	Rule 57.7

**Part 58: Bail Applications**

Scope of this Part	Rule 58.1
How to apply to the court	Rule 58.2
Service of application	Rule 58.3
Hearing of application	Rule 58.4
Bail pending appeal	Rule 58.5
Taking of recognizance	Rule 58.6
Release of person detained	Rule 58.7
Forfeiture of recognizance	Rule 58.8
How to forfeit recognizance	Rule 58.9
Use of Forms	Rule 58.10

**Part 59: Proceedings by and  
against the Crown**

Scope of this Part	Rule 59.1
Service of application	Rule 59.2
Claimant's duty to give particulars	Rule 59.3
Proceedings relating to postal packets	Rule 59.4
Enforcement against Crown	Rule 59.5

**Part 60: Appeals to the High Court**

Scope of this Part	Rule 60.1
How to appeal to the court	Rule 60.2
Effect of appeal	Rule 60.3
Persons on whom claim form must be served	Rule 60.4
Time within which claim form must be served	Rule 60.5
Amendment of statement of case	Rule 60.6
First hearing	Rule 60.7
Hearing of appeal	Rule 60.8

**Part 61: Appeals to the Court by way  
of Case Stated**

Scope of this Part	Rule 61.1
Application for order to state a case	Rule 61.2
Persons on whom claim form must be served	Rule 61.3
Time within which claim form must be served	Rule 61.4
Signing and service of case	Rule 61.5
How to commence proceedings to determine a case	Rule 61.6
Determination of case	Rule 61.7

**Part 62: Appeals to the Court of Appeal**

Scope of this Part	Rule 62.1
How to obtain leave to appeal	Rule 62.2
How to appeal	Rule 62.3
Contents of Notice of Appeal	Rule 62.4
Nature of appeal and some incidents of the right of appeal	Rule 62.5
Time for filing Notice of Appeal	Rule 62.6
Service of Notice of Appeal	Rule 62.7
Cross-appeal and Notice of Contention	Rule 62.8
Action by court on receiving Notice of Appeal	Rule 62.9
Procedural appeal	Rule 62.10
Skeleton arguments	Rule 62.11
The Record – appeal from High Court	Rule 62.12
The Record – appeals from magistrates’ courts	Rule 62.13
Case management	Rule 62.14
Procedural applications to the Court of Appeal	Rule 62.15
Powers of single judge, Master and Registrar	Rule 62.16
Security for costs of appeal	Rule 62.17
Non-disclosure of payments into court, etc.	Rule 62.18
Stay of execution	Rule 62.19
Failure of party to attend appeal	Rule 62.20
Application to set aside a decision made in party’s absence	Rule 62.21
Adjournment of Appeal	Rule 62.22
Fresh evidence	Rule 62.23
Certificate of result of appeal	Rule 62.24

**Part 63: Change of attorney-at-law**

Scope of this Part	Rule 63.1
Change of attorney-at-law	Rule 63.2
Notice of appointment of attorney-at-law	Rule 63.3
Party acting in person	Rule 63.4

**Part 63: Change of Attorneys-at-Law (Cont'd)**

Application by another party to remove attorney-at-law from record	Rule 63.5
Application by attorney-at-law to be removed from record	Rule 63.6
Time when notice takes effect	Rule 63.7

**Part 64: Costs – General**

Scope of this Part	Rule 64.1
Definitions and application	Rule 64.2
Orders about costs	Rule 64.3
Costs where there is an appeal	Rule 64.4
Entitlement to recover costs	Rule 64.5
Successful party generally entitled to costs	Rule 64.6
Two or more parties having same interest	Rule 64.7
Wasted costs orders	Rule 64.8
Wasted costs orders – procedure	Rule 64.9
Costs against person who is not a party	Rule 64.10

**Part 65: Costs – Quantification**

Scope of this Part	Rule 65.1
Basis of quantification	Rule 65.2
Ways in which costs are to be quantified	Rule 65.3
Fixed costs	Rule 65.4
Prescribed costs	Rule 65.5
Applications to determine value of claim for purpose of prescribed costs	Rule 65.6
What is included in prescribed costs	Rule 65.7
Budgeted costs	Rule 65.8
Client's consent to application for budgeted costs	Rule 65.9
What is included in budgeted costs	Rule 65.10
Assessed costs of procedural applications	Rule 65.11
Assessment of costs – general	Rule 65.12
Costs of proceedings in Court of Appeal	Rule 65.13

**Part 65: Costs – Quantification (Cont'd)**

Appendix A – Fixed Costs  
 Appendix B – Prescribed Costs  
 Appendix C – Prescribed Costs: Percentage  
 to be allowed at various stages of claim

**Part 66: Mortgage Claims**

Scope of this Part	Rule 66.1
Mortgage claim to be brought by fixed date claim	Rule 66.2
Evidence at first hearing	Rule 66.3
Claim for possession or payment of mortgage debt	Rule 66.4

**Part 67: Administration Claims**

Scope of this Part	Rule 67.1
Parties	Rule 67.2
Claims by third parties	Rule 67.3
Determination of questions without administration claim	Rule 67.4
Judgments and orders in administration claims	Rule 67.5
Conduct of sale of trust property	Rule 67.6

**Part 68: Contentious Probate Proceedings**

Scope of this Part	Rule 68.1
How to commence probate proceedings	Rule 68.2
Parties to proceedings for revocation of grant	Rule 68.3
Lodgment of grant in proceedings for revocation	Rule 68.4
Affidavit of testamentary scripts	Rule 68.5

**Part 68: Contentious Probate Proceedings (Cont'd)**

Failure to enter acknowledgment of service	Rule 68.6
Counterclaim	Rule 68.7
Contents of statement of case	Rule 68.8
Discontinuance and dismissal	Rule 68.9
Compromise of action: trial on affidavit evidence	Rule 68.10
Application for order to bring in will, etc.	Rule 68.11
Probate counterclaim in other proceedings	Rule 68.12

**Part 69: Defamation Claims**

Scope of this Part	Rule 69.1
Statement of Case	Rule 69.2
Claimant's Statement of Claim	Rule 69.3
Pleading the defence of truth	Rule 69.4
Pleading the defence of comment	Rule 69.5
Pleading Privilege	Rule 69.6
Pleading in Rebuttal	Rule 69.7
Allegation of Malice	Rule 69.8
Claim for damages	Rule 69.9
Ruling on meaning	Rule 69.10
Offer of amends	Rule 69.11
Statement in open court	Rule 69.12

**Part 70: Admiralty Proceedings**

Scope of this Part	Rule 70.1
Proceedings to be dealt with under this Part	Rule 70.2
Admiralty proceedings <i>in rem</i>	Rule 70.3
How to bring Admiralty proceedings	Rule 70.4
Service of claim form <i>in rem</i>	Rule 70.5
How service on ships is to be effected	Rule 70.6
Service of claim form out of jurisdiction	Rule 70.7
Acknowledgment of service	Rule 70.8

**Part 70: Admiralty Proceedings (Cont'd)**

Warrant of arrest	Rule 70.9
Caveat against arrest	Rule 70.10
Committal of attorney-at-law for failing to comply with undertaking	Rule 70.11
Execution of warrant, etc., of arrest	Rule 70.12
Directions with respect to property under arrest	Rule 70.13
Release of property under arrest	Rule 70.14
Caveat against release, etc.	Rule 70.15
Duration of caveats	Rule 70.16
Bail	Rule 70.17
Interveners	Rule 70.18
Preliminary acts	Rule 70.19
Failure to file preliminary act: proceedings against party in default	Rule 70.20
Special provisions as to statement of case in collision, etc., proceedings	Rule 70.21
Judgment by default	Rule 70.22
Order for sale of ship: determination of priority of claims	Rule 70.23
Appraisalment and sale of property	Rule 70.24
Undertakings as to expenses, etc.	Rule 70.25
Payment into and out of court	Rule 70.26
Case management conference	Rule 70.27
Trial	Rule 70.28
Stay of proceedings in collision, etc., proceedings until security given	Rule 70.29
Inspection of ship	Rule 70.30
Examination of witnesses: affidavit evidence	Rule 70.31
Proceeding for apportionment of salvage	Rule 70.32
Application in proceedings <i>in rem</i>	Rule 70.33
Limitation proceedings: parties	Rule 70.34
Limitation proceedings: payment into court	Rule 70.35

**Part 70: Admiralty Proceedings (Cont'd)**

Application for decree or directions in limitation proceedings	Rule 70.36
Limitation proceedings: proceedings under decree	Rule 70.37
Limitation proceedings: proceedings to set aside decree	Rule 70.38

**Part 71: Obtaining Evidence for  
Foreign Courts**

Scope of this Part	Rule 71.1
Application for order	Rule 71.2
Application by Attorney-General in certain cases	Rule 71.3
Examiner and manner of examination	Rule 71.4
Dealing with depositions	Rule 71.5
Claim to privilege	Rule 71.6

**Part 72: Reciprocal Enforcement  
of Judgments**

Scope of this Part	Rule 72.1
Application for registration	Rule 72.2
Security for costs	Rule 72.3
Order for registration	Rule 72.4
Register of judgments	Rule 72.5
Notice of registration	Rule 72.6
Application to set aside registration	Rule 72.7
Issue of execution	Rule 72.8
Certified copy of High Court judgment for enforcement in another country	Rule 72.9



**Part 73: Transitional Provisions**

Scope of this Part	Rule 73.1
New proceedings	Rule 73.2
Old proceedings	Rule 73.3
Exercise of discretion	Rule 73.4

**Part 74: Commencement and Revocation**

Commencement	Part 74.1
Revocation	Part 74.2

**APPENDIX: Prescribed Forms**

Form 1:	Claim Form	Rules 8.1(4), 70.4(2)
Form 1A:	Notes for Defendant	Rule 8.12(1)(c)
Form 2:	Fixed Date Claim Form	Rules 8.1(5), 23.12(2), 27.2, 60.2(1), 61.2, 61.6(1) 59.4(2)
Form 3:	Acknowledgement of Service of Claim Form	Rules 8.12(1)(a), 9.1(2), 9.2(1)(b)
Form 4:	Acknowledgment of Service of Fixed Date Claim Form	Rules 8.12(1)(a), 9.1(2)(a), 9.2(1)
Form 4A:	Application to Pay by Instalments	Rule 8.12(1)(e)
Form 5:	Defence and Counterclaim	Rules 8.12(1)(b), 10.2(1)
Form 6:	Request for Default Judgment	Rule 12.7(1)
Form 7:	Request for Entry of Judgment on Admissions	Rule 14.5(2)
Form 8:	List of Documents	Rules 28.7, 28.9(1)
Form 9:	Listing Questionnaire	Rule 27.9(1)
Form 10:	Application for Court Orders During or After the Course of Court Proceedings	Rule 11.4(4)
Form 11:	Third Party Notice	Rule 18.2(2)
Form 12:	Witness Summons (Subpoena)	Rule 33.2
Form 13:	Notice to Non-Party Served with Order	Rules 42.12(3), 57.4(4)(b)
Form 13A:	Order for Oral Examination	Rule 44.4(1)
Form 13B:	Notice of Adjourned Hearing	Rule 44.5(6)
Form 14:	Financial Position Notice	Rule 44.7

**APPENDIX: Prescribed Forms (Cont'd)**

Form 15:	Writ of Execution Against Goods (FIFA)	Rule 46.1(a)
Form 16:	Writ of Possession	Rule 46.1(b)
Form 17:	Writ of Delivery or Value	Rules 46.1(d)(ii), 46.8
Form 17A:	Order for seizure and sale of goods	Rule 46.7(2)
Form 18:	Writ of Specific Delivery	Rules 46.1(d)(i), 46.9
Form 18A:	Order for Recovery of Goods or Their Assessed Value	Rule 46.1(d)(ii)
Form 18B:	Judgment Summons	Rule 52.2(1)
Form 19:	Writ of Habeas Corpus	Rule 57.3(1)(a)
Form 20:	Notice of Appeal	Rule 62.3
Form 21:	Certificate of Result of Appeal	Rule 62.24
Form 22:	Admiralty Claim In Rem	Rule 70.4(1)
Form 22A:	Acknowledgement of Service of Admiralty Claim Form In Rem	Rules 70.5(7), 70.8
Form 23:	Admiralty Limitation Application	Rule 70.4(3)
Form 24:	Warrant of Arrest (Admiralty)	Rule 70.9(1)
Form 24A:	Request for Caveat Against Arrest	Rule 70:10
Form 24B:	Request for Undertaking for Release	Rule 70.14(1)
Form 24C:	Request for Caution Against Release	Rule 70.15(1)
Form 24D:	Request for Withdrawal of Caution Against Release	Rule 70.24(2)
Form 24E:	Application for Appraisal and Sale	Rule 70.24(1)
Form 24F:	Order for Sale of a Ship	Rule 70.24(2)

## Part 1

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### The Overriding Objective

#### Contents of this Part

The overriding objective	Rule 1.1
Application of the overriding objective by the court	Rule 1.2
Duty of the parties	Rule 1.3

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#### The Overriding Objective

**1.1** (1) The overriding objective of these Rules is to enable the court to deal with cases justly.

- (2) Dealing justly with a case includes, so far as is practicable,
  - (a) ensuring that the parties are on an equal footing;
  - (b) saving expense;
  - (c) dealing with the case in ways which are proportionate to
    - (i) the amount of money involved;
    - (ii) the importance of the case;
    - (iii) the complexity of the issues; and
    - (iv) the financial position of each party;
  - (d) ensuring that it is dealt with expeditiously and fairly; and
  - (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

**Application of the overriding objective by the court**

**1.2** The court must seek to give effect to the overriding objective when interpreting these Rules or exercising any powers under these Rules.

**Duty of the parties**

**1.3** The parties are required to help the court to further the overriding objective.

## Part 2

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### Application and Interpretation of the Rules

#### Contents of this Part

Citation	Rule 2.1
Application of the Rules	Rule 2.2
Definitions	Rule 2.3
Who may exercise the powers of the court	Rule 2.4
Court staff	Rule 2.5
Court's discretion as to when, where and how it deals with cases	Rule 2.6

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#### Citation

**2.1** These Rules may be cited as the *Supreme Court (Civil Procedure) Rules, 2008*.

#### Application of the Rules

**2.2** (1) Subject to sub-rule (3), these Rules apply to all civil proceedings in the Supreme Court.

(2) In these Rules "civil proceedings" include Judicial Review.

(3) These Rules do not apply to the following proceedings:

- (a) bankruptcy and insolvency proceedings (including winding up of companies);
- (b) family proceedings;
- (c) non-contentious probate proceedings;

- (d) proceedings in which the High Court is acting as a Prize Court;
- (e) any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings; and
- (f) any proceedings to which, by Part 73 (transitional provisions), it is provided that these Rules do not apply.

### **Definitions**

**2.3** In these Rules,

"ADR procedure" means any procedure for alternative dispute resolution including, in particular, mediation;

"ancillary claim" has the meaning given in rule 18.1(1);

"ancillary claimant" has the meaning give in rule 18.1(2);

"ancillary defendant" has the meaning given in rule 18.1(2);

"application" has the meaning given in rule 11.2;

"body corporate" includes a company or other body corporate wherever or however incorporated, other than a corporation sole, unless a rule otherwise provides;

"claim" and "claim form" are to be construed in accordance with Part 8;

"claim for a specified sum of money" means

- (a) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract; and

- (b) for the purposes of Parts 12 (default judgments) and 14 (admissions), a claim for
- (i) the cost of repairs executed to a vehicle;
  - (ii) the cost of repairs executed to any property in, on or abutting a road; or
  - (iii) any other actual financial loss other than loss of wages or other income,

claimed as a result of damage which is alleged to have been caused in an accident as a result of the defendant's negligence where the amount of each item in the claim is specified and copies of receipted bills for the amounts claimed are attached to the application or statement of claim;

"claim for personal injuries" means a proceeding in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death;

"claimant" means a person who makes a claim by bringing an application in the court; and, in relation to any proceeding commenced before these Rules came into force, includes a plaintiff in any action or the petitioner or applicant in any proceeding commenced by petition, originating summons or motion;

"court" means the High Court and, where the context admits and in Part 64, the Court of Appeal;

"defendant" means a person against whom a claim is made and, in relation to proceedings commenced before these Rules came into force, includes a respondent to any petition, originating summons or motion;

"external company" means any incorporated or unincorporated body formed under the laws of a country other than Barbados;



"FAX" means the transmission and making of a facsimile copy of a document by the transmission of electronic signals;

"filing", in relation to a document, means delivering, sending it by FAX or posting it to the Registry and is not completed until the document is received at that office;

"fixed date application" is an application in Form 2 upon which there has been stated a date, time and place for a first hearing of the proceeding; Form 2.

"The Hague Convention" means the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at The Hague on 15 November, 1965;

"judge" includes the Chief Justice and, in the case of Part 62, a judge of the Court of Appeal but does not include a master except where required by the context;

"judgment creditor" and "judgment debtor" have the meanings given them in rule 43.1(2);

"legal practitioner" means an attorney-at-law;

"next friend" has the meaning given by Part 23;

"order" includes a judgment, decree, direction, award or declaration;

"the overriding objective" means the objective set out in rule 1.1;

"party" includes every person served with notice of or attending any proceeding, although not named on the record;

"patient" means a person who by reason of mental disorder is incapable of managing his own affairs;

"period for filing a defence" has the meaning given by rule 10.3;

"personal injuries" includes any disease and any impairment of a person's physical or mental state or condition;

"proper officer" means the Registrar or any Deputy or Assistant Registrar of the Supreme Court or any other person who may be designated as having responsibility for the administration of the several departments or sections of the Supreme Court and of the Registration Office;

"Registry" means the Registration Office of the Supreme Court;

"statement of case" includes

- (a) an application, statement of claim, defence, counterclaim, third party (or subsequent) notice or other ancillary claim or defence and a reply to a defence;
- (b) any further information given in relation to any statement of case under Part 34 either voluntarily or by order of the court;

"statutory rate of interest" means the rate of interest on judgment debts that may be prescribed under any relevant enactment;

"summary judgment" is to be construed in accordance with Part 15;

Cap. 117A. "Supreme Court" means the Supreme Court of Judicature as constituted under section 3 of the *Supreme Court of Judicature Act*.

### **Who may exercise the powers of the court**

**2.4** (1) Except where any enactment, rule or practice direction provides otherwise, the functions of the High Court may be exercised by any judge, master or registrar of that court.

Cap. 117A. (2) The functions of the Court of Appeal shall be carried out in accordance with the provisions of the *Supreme Court of Judicature Act*.

(3) The Chief Justice may by direction allocate the work of the court between judges, masters or registrars.

(4) Where

(a) a trial has been commenced but not completed by a judge; or

(b) any enactment or rule requires an application to be made to, or jurisdiction to be exercised by, the judge by whom a claim was tried

then if the judge dies or is incapacitated, or ceases to be a judge of the High Court, or if for any other reason it is impossible or inconvenient for the judge to act in the matter, the Chief Justice may nominate some other judge to retry or complete the trial of the claim or to hear any application or exercise the jurisdiction.

### **Court Staff**

**2.5** (1) Where these Rules refer to an act being done by the Registry or require or permit the performance of an act of a formal or administrative character, that act may be performed by a member of the court staff authorised generally or individually in writing by the Chief Justice.

(2) Where these Rules expressly so provide, any other functions of the court may be carried out by a member of the court staff authorised in writing by the Chief Justice.

(3) Where a step may be taken by a member of the court staff

(a) that person may consult a judge, master or registrar before taking the step; and

(b) that step may be taken by a judge, master or registrar instead of a member of the court staff.

**Court's discretion as to when,  
where and how it deals with cases**

**2.6** (1) The court may deal with a case at any time and place that it considers appropriate.

(2) The court will not select any unusual time or place without considering the convenience of that time or place to the parties and their legal practitioners and to any witnesses.

(3) The court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video conference or any other form of electronic communication.

(4) The court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

## Part 3

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### Time, Documents and Forms

#### Contents of this Part

Time – court to state calendar date	Rule 3.1
Time – computation	Rule 3.2
Vacations	Rule 3.3
Hearings in vacations	Rule 3.4
Time – vacations	Rule 3.5
Documents	Rule 3.6
Filing of documents	Rule 3.7
Filing and service by FAX	Rule 3.8
Sealing of documents issued by the court	Rule 3.9
Forms	Rule 3.10
Effect of defect of form	Rule 3.11
Statement of case – address for service	Rule 3.12
Statement of case – certificate of truth	Rule 3.13
Failure to give certificate of truth	Rule 3.14

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#### Time – court to state calendar date

**3.1** When making any judgment, order or direction which imposes a time limit for doing any act the court must, wherever practicable

- (a) state the calendar date; and
- (b) include the time of day, by which such act must be done.

#### Time – computation

**3.2** (1) This rule shows how to calculate any period of time for doing any act which is fixed by

- (a) these Rules;

(b) any practice direction; or

(c) any order of the court.

(2) All periods of time expressed as a number of days are to be computed as clear days.

(3) In this rule "clear days" means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

**Examples**

(a) A document served by post is deemed to be served fourteen days after posting: a document posted on September 1<sup>st</sup> is deemed to be served on September 16<sup>th</sup>;

(b) A notice of an application must be served at least 3 days before the hearing: an application that is to be heard on Friday October 20<sup>th</sup>: the last date for service is Monday October 16<sup>th</sup>.

(2) Where the specified period

(a) is 7 days or less; and

(b) includes

(i) a Saturday or Sunday; or

(ii) any other day on which the Registry is closed,

that day does not count.

**Example**

Notice of application must be given not less than 7 days before a hearing: hearing on Friday October 20<sup>th</sup>: notice must be given not later than Tuesday October 10<sup>th</sup>.

- (2) When the period fixed
  - (a) by these Rules; or
  - (b) by any practice direction; or
  - (c) by any order,

for doing any act ends on a day on which the Registry is closed, it shall be done in time, subject to any express statement to the contrary, if done before close of business on the next day on which the Registry is open.

**Vacations**

**3.3** The period during which the Supreme Court is on vacation is that notified by the Chief Justice by order published in the Official Gazette.

**Hearings in vacations****3.4** During vacations

- (a) the Court of Appeal may sit to hear and determine such appeals or applications as the Chief Justice may direct; and
- (b) the High Court may sit to hear and determine such trials or applications as the Chief Justice may direct.

**Time - vacations**

**3.5** (1) During vacations, time prescribed by these Rules for filing and serving any statement of case other than the claimant's statement of claim served with his claim form, does not run.

(2) However, this rule does not override any order or direction of the court which specifies a date for service of a statement of case.

**Documents**

**3.6** (1) So far as is practicable, every document prepared for use in the Supreme Court must be on "letter size" paper, that is, approximately 11 inches (28cm) long by 8.5 inches (21.5cm) wide. Margins of approximately 1 inch (2.5 cm) must be left at the top and the bottom and of 1.5 inches (4cm) at each side.

(2) The Chief Justice may by a Practice Direction,

- (a) require any document filed or to be used at court to be in such format as the Chief Justice prescribes to facilitate electronic recording or filing of that document; and
- (b) prescribe the conditions under which documents may be served or filed electronically.

(3) Every document to be filed at the Registry must

- (a) be headed with the full title of the proceeding and the title of the document;
- (b) state the
  - (i) name;
  - (ii) business address;
  - (iii) reference (if any);



- (iv) telephone number; and
  - (v) FAX number (if any),  
of the person or persons filing it;
  - (c) contain its date;
  - (d) (except in the case of an affidavit) be signed by the person filing it; and
  - (e) state the name of the party on whose behalf it is filed.
- (4) Where a document is signed, the full name of the signatory must be set out legibly below the signature.

**Filing of documents**

**3.7** (1) A document may be filed by

- (a) delivering it;
- (b) posting it; or
- (c) sending it by FAX,

to the Registry.

(2) The document is filed on the day when it is received at the Registry or, if it is received at a time when the Registry is closed, on the next day on which the Registry is open.

(3) Where a fee is to be paid the document is not to be treated as filed until

- (a) the fee is paid; or

- (b) an undertaking to pay the fee acceptable to the Registrar is received.

**Filing and service by FAX**

**3.8** In addition to any condition contained in a practice direction any document

- (a) filed; or
- (b) served,

by FAX, must include a cover page stating

- (i) the name, address and telephone number of the sender;
- (ii) the date and time of transmission;
- (iii) the total number of pages transmitted, including the cover page;
- (iv) the number of the FAX machine at which documents may be received; and
- (v) the name and telephone number of a person to contact if problems occur in transmission.

**Sealing of documents issued by the court**

**3.9** (1) The Registrar must seal the following documents on issue:

- (a) the claim form; and
- (b) all judgments, orders or directions of the court.

(2) The Registrar may place the seal on any document by

(a) hand; or

(b) printing a facsimile of the seal on the document electronically or by any other means.

(3) All judgments and orders and directions of the court must also be signed by the Registrar or, in the case of an order or direction of a master, the master.

(4) A document purporting to bear the court's seal shall be admissible in evidence without further proof.

### **Forms**

**3.10** (1) The forms in the Appendix to these Rules and, where appropriate, practice forms must be used in the cases to which they apply.

(2) Where these Rules require a party to send a blank form to any other party, he must send it without variation except the insertion of the title of the case and the court's address, if necessary, to which that document is to be returned.

(3) A form marked with the word "Seal" must bear the seal of the Supreme Court, unless the form is a blank form referred to in sub-rule (2).

### **Statement of case – address for service**

**3.11** (1) Every statement of case must contain

(a) an address within the jurisdiction at which the party filing the statement of case or on whose behalf it is filed will accept service of documents; and

(b) the name and the telephone number and, if applicable, the FAX number of the legal practitioner filing the document, or of the party if in person, and any reference number applicable to the legal practitioner's or party's file on the matter.

(2) A party must notify the court and all other parties immediately if the address for service is changed and any document sent to the original address before notice of such change is received by the party serving the document, shall be validly served.

- "Statement of case" is defined in rule 2.3.

### **Statement of case – certificate of truth**

**3.12** (1) Every statement of case must be verified by a certificate of truth.

(2) The certificate of truth should be signed

(a) by the claimant, defendant or other litigating party, as the case may be; or

(b) in the case of a corporation, by an authorised officer having knowledge of the matter (to any of whom, in this rule, the expression "the litigating party" refers); and

(c) where several litigating parties sue or are sued jointly, by one of them in respect of a statement of case filed on behalf of both or all.

(3) Where it is impracticable for the litigating party to sign the certificate required by sub-rule (1) it may be given by a legal practitioner.

(4) A certificate of truth given by a legal practitioner must also certify

- (a) the reasons why it is impracticable for the litigating party or any litigating party, as the case may be, to give the certificate; and
- (b) that the certificate is given on the instructions of the litigating party or of both or all the litigating parties.

(5) Where a statement of case is changed under Part 20, the amended statement of case must be verified by a certificate of truth.

(6) Information given under Part 34, whether voluntarily or following an order of the court, must be verified by a certificate of truth.

(7) A certificate of truth given by a litigating party must be in the following form:

"I [*name*] certify that I believe that the facts stated in this [*name document*] are true."

(8) A certificate given by a legal practitioner for a litigating party must be in the following form:

"I [*name of the individual legal practitioner giving the certificate*] certify that

- (a) the [*claimant or as the case may be*] believes that the facts stated in this [*name document*] are true; and
- (b) this certificate is given on the [*claimant's or as the case may be*] instructions.  
It is not practicable for the [*claimant or as the case may be*] to give a certificate of truth because [*state reason*]".

**Failing to give certificate of truth**

**3.13** (1) The court may strike out any statement of case which has not been verified by a certificate of truth.

(2) Any party may apply for an order under sub-rule (1).

## Part 4

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### Practice Directions

#### Contents of this Part

Who may issue practice directions	Rule 4.1
Scope of practice directions	Rule 4.2
Publication of practice directions	Rule 4.3
Date from which practice directions take effect	Rule 4.4
Compliance with practice directions	Rule 4.5

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#### Who may issue Practice Directions

**4.1** Practice directions may only be issued by the Chief Justice after consultation with the judges.

#### Scope of Practice Direction

**4.2** (1) A practice direction may be issued in any case where provision for such a direction is made by these Rules.

(2) Where there is no express provision in these Rules for such a direction, the Chief Justice may give directions as to the practice and procedure to be followed in the Supreme Court.

#### Publication of Practice Directions

**4.3** Practice directions must be

- (a) published in the *Official Gazette*; and
- (b) displayed and made available for sale at the Registry.

**Date from which Practice Directions take effect**

**4.4** A practice direction takes effect from the date specified in the Direction.

**Compliance with Practice Directions**

**4.5** (1) A party must comply with all relevant practice directions unless there is good reason for not doing so in any particular case.

(2) If a party fails to comply with a practice direction, the court may make an order against him under Part 26 (Case Management - The Court's Power) or Part 64 (Costs - General).

(3) A party may apply to the court to be excused from complying with a practice direction or to ask for time to comply.



## Part 5

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### Service of Claim Form within Jurisdiction

#### Contents of this Part

Service of claim form, normal method	Rule 5.1
Statement of claim to be served with claim form	Rule 5.2
Method of personal service	Rule 5.3
Permitted place of service	Rule 5.4
Proof of personal service	Rule 5.5
Service on attorney-at-law	Rule 5.6
Service on a limited company	Rule 5.7
Service of claim form on a firm or partnership	Rule 5.8
Service on a body corporate	Rule 5.9
Service of claim form on minors and patients	Rule 5.10
Proof of postal service	Rule 5.11
Proof of service by FAX	Rule 5.12
Alternative methods of service	Rule 5.13
Power of Court to make order for service by a specified method	Rule 5.14
Proof of service by specified method	Rule 5.15
Service of claim form by contractually agreed method	Rule 5.16
Service of claim form on agent of principal who is overseas	Rule 5.17
Service of claim for possession of vacant land	Rule 5.18
Deemed date of service	Rule 5.19

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#### Service of claim form, normal method

**5.1** (1) The general rule is that a claim form may be served personally on each defendant.

(2) The Chief Justice may by practice direction authorise the use of electronic means, including FAX and e-mail, for service of a claim form.

- **Part 6 deals with service of other documents.**

### **Statement of Claim to be served with claim form**

**5.2** (1) The general rule is that the claimant's statement of claim must be served with the claim form.

(2) The claim form may be served without the statement of claim in accordance with rule 8.2.

(3) In this Part, reference to service of the claim form requires that

- (a) the statement of claim;
- (b) if these Rules so require, an affidavit or other document;
- (c) a copy of any order that may have been made; and
- (d) a copy of any order or application made under rule 8.2,

must be served with the claim form unless the statement of claim is contained in the claim form.

### **Method of Personal Service**

**5.3** A claim form is served personally on an individual by handing it to or leaving it with the person to be served.

### **Permitted Place of Service**

**5.4** Except as permitted by Part 7 (service out of the jurisdiction), a claim form must be served at a place within the jurisdiction of the court.

### **Proof of Personal Service**

**5.5** Personal service of a claim form is to be proved by an affidavit sworn by the server stating

- (a) the date and time of service;
- (b) the precise place or address at which it was served;
- (c) precisely how the person served was identified; and
- (d) precisely how the claim form was served.

### **Service on an attorney-at-law**

**5.6** Where an attorney-at-law

- (a) is authorised to accept service of the claim form on behalf of the defendant; and
- (b) has notified the claimant in writing of that authorisation,

the claim form may be served on that attorney-at-law.

### **Service on a limited company**

**5.7** Service on a limited company may be effected

- (a) by leaving the claim form at the registered office of the company;
- (b) by sending the claim form by telex, FAX or prepaid post or cable addressed to the registered office of the company;
- (c) by serving the claim form personally on an officer or manager of the company at any place of business of the company which has a real connection with the claim;

- (d) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company; or
- (e) in any other way allowed by any enactment.

**Service of claim form on a firm or partnership**

**5.8** (1) Service on a firm or partnership may be effected

- (a) by serving the claim form personally on any partner of the firm;
- (b) by serving the claim form personally on any manager or other responsible person at any place of business of the firm or partnership having a real connection with the claim; or
- (c) in any other way allowed by any enactment.

(2) Where the claimant knows that a partnership has been dissolved when the claim is issued, the claim form must be served personally on every person within the jurisdiction whom the claimant seeks to make liable.

**Service on a body corporate**

**5.9** Service on a body corporate, other than a limited company may be effected

- (a) by sending the claim form by prepaid post to the principal office of the body corporate; or
- (b) by serving the claim form personally on any principal officer of the body corporate; or
- (c) in any other way allowed by any enactment.

In this Rule "principal officer" means the Chairman or President of the body, the Chief Executive Officer, Secretary or Treasurer or other similar officer of the body.

### **Service of claim form on minors and patients**

**5.10** (1) Sub-rules (2) to (5) specify the persons on whom a claim form must be served if it would otherwise be served on a minor or patient.

(2) A claim form which would otherwise be served on a minor who is not also a patient must be served on

- (a) one of the minor's parents or guardians; or
- (b) the person with whom the minor resides or in whose care the minor is, if there is no parent or guardian.

(3) If a person is authorised under any relevant enactment to conduct the proceedings in the name of the patient or on the patient's behalf, a claim form must be served on that person.

(4) If there is no person so authorised, a claim form must be served on the person with whom the patient resides or in whose care the patient is.

(5) The court may make an order permitting the claim form to be served on the minor or patient, or on some person other than the person specified in sub-rules (2) to (4).

(6) The court may order that, although sub-rules (2) to (4) have not been complied with, the claim form is to be treated as properly served.

(7) An application for an order under sub-rule (5) or (6) may be made without notice but must be supported by evidence on affidavit.

- **Part 23 deals generally with parties who are minors or patients.**

**Proof of postal service**

**5.11** (1) Service by post should be proved by an affidavit of service by the person responsible for posting the claim form to the person to be served.

(2) The affidavit must exhibit a copy of the claim form served and state

(a) the date and time of posting; and

(b) the address written on the relevant envelope or package.

**Proof of service by FAX**

**5.12** (1) Service by FAX should be proved by an affidavit of service by the person responsible for transmitting the claim form to the person to be served.

(2) The affidavit must exhibit copies of

(a) the document served;

(b) any cover sheet; and

(c) the transmission record;

and must state the date and time of transmission and the FAX number to which it was sent.

**Alternative methods of service**

**5.13** (1) Instead of personal service a claimant may choose an alternative method of service.

- (2) Where a party
  - (a) chooses an alternative method of service; and
  - (b) the court is asked to take any step on the basis that the claim form has been served,

the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.

- (3) An affidavit under sub-rule (2) must
  - (a) exhibit a copy of the documents served;
  - (b) give details of the method of service used;
  - (c) show that
    - (i) the person intended to be served was able to ascertain the contents of the documents; or
    - (ii) it is likely that the person would have been able to do so; and
  - (d) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents.

(4) The Registrar must immediately refer any affidavit filed under sub-rule (2) to a judge or master who must

- (a) consider the evidence; and
- (b) endorse on the affidavit whether it satisfactorily proves service.

(5) If the court is not satisfied that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the Registry must fix a date, time and place to consider making an order under rule 5.14 and give at least 7 days notice to the claimant.

(6) An endorsement made pursuant to sub-rule (4) may be set aside on good cause being shown.

**Power of court to make an order for service by a specified method**

**5.14** (1) The court may direct that a claim form may be served by a method specified in the court's order.

(2) An application for an order to serve by a specified method may be made without notice but must be supported by evidence on affidavit

- (a) specifying the method of service proposed; and
- (b) showing that that method of service is likely to bring the document to the attention of the person to be served and to enable him to ascertain the contents of the application and if relevant, the claim form.

**Proof of service by specified method**

**5.15** Service should be proved by an affidavit of the person who served the document in accordance with the court's order showing that the terms of the order were carried out.



**Service of claim form by contractually agreed method**

**5.16** (1) This rule applies where a contract contains a term specifying how any proceeding under the contract should be served.

(2) A claim form containing a claim in respect of a contract may be served by any method permitted by the contract.

(3) Where the claim form is served within the jurisdiction in accordance with the contract, it is to be treated as having been served on the defendant.

(4) Where the claim form is served out of the jurisdiction in accordance with the contract, it is not to be treated as having been served on the defendant unless service out of the jurisdiction is permitted under Part 7.

**Service of claim form on agent of principal who is overseas**

**5.17** (1) Where the conditions specified in sub-rule (2) are satisfied, the court may permit a claim form relating to a contract to be served on a defendant's agent.

(2) An order may be made under this rule where the court is satisfied that

- (a) the defendant cannot be served within the jurisdiction;
- (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and
- (c) at the time of the application either the agent's authority has not been terminated or he is still in business relations with the defendant.

(3) An application may be made without notice but must be supported by evidence on affidavit.

(4) An order under this rule must state the periods within which the defendant must

(a) file an acknowledgment of service; and

(b) file a defence.

(5) When the court makes an order under this rule, the claimant, in addition to serving the agent in the manner specified in the order, must send to the defendant at his address out of the jurisdiction by prepaid ordinary post copies of

(a) the order;

(b) the claim form; and

(c) the statement of claim, where relevant.

#### **Service of claim form for possession of vacant land**

**5.18** (1) Sub-rules (2) and (3) deal with the service of a claim form for possession of land where there is no person in occupation of the land and service cannot otherwise be effected on the defendant.

(2) The court may direct that the claim form be served by affixing a copy of it to some conspicuous part of the land and by publishing a notice of the claim once in a specified newspaper of general circulation in the area in which the land is situated.

- (3) An application for an order under this rule
  - (a) may be made without notice; but
  - (b) must be supported by evidence on affidavit that there is no person in possession of the land and that there is no other method of serving the defendant.

**Deemed date of service**

**5.19** (1) Where a claim form is served within the jurisdiction by prepaid post, it is deemed to be served, unless the contrary is shown, on the date ascertained by the application of rule 6.6.

(2) If a claim is sent to a legal practitioner who certifies that he accepts service on behalf of the defendant, the claim is deemed to have been served on the date on which the legal practitioner certifies that he accepts service. A copy of such certificate must be filed in the Registry.

(3) Where an acknowledgment of service or a defence is filed, whether or not the claim form has been duly served, the claimant may

- (a) if he so wishes, treat the date of the filing of the acknowledgment of service or defence as the date of service; or
- (b) if either of those documents, that is the acknowledgement of service or the defence, acknowledge some earlier date as the date of service, treat that earlier date as the date of service.

(4) A claimant may file evidence by affidavit to prove that service was effected on a date earlier than a date on which, by these Rules, it is deemed to have been effected.

## Part 6

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### Service of other Documents

#### Contents of this Part

Who is to serve documents other than the claim form	Rule 6.1
Method of service	Rule 6.2
Address for service	Rule 6.3
Address for serving documents where no address for service is given	Rule 6.4
Service of documents on a non-party	Rule 6.5
Deemed date of service	Rule 6.6
Proof of service	Rule 6.7
Power of court to dispense with service	Rule 6.8
Service of notices etc. on the Attorney-General	Rule 6.9

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#### Who is to serve documents other than the claim form

**6.1** (1) Subject to sub-rule (2), any judgment or order which is required to be served will be served by the court, unless

- (a) a rule provides that a party must serve it; or
- (b) the court orders otherwise.

(2) Any of the following orders must be served by the party who obtains it:

- (a) an injunction;
- (b) any order under rule 17.1(1)(b),(c), (e), (f), (g), (j), or (k).

(3) Any document requiring to be served may be served by a party, unless

(a) provision is made otherwise by these Rules or by an enactment; or

(b) the court orders otherwise.

### **Method of service**

**6.2** Where these Rules require a document other than a claim form to be served on any person it may be served by any of the following methods:

(a) any means of service in accordance with Part 5;

(b) leaving it at, or sending it by prepaid post to, any address for service in accordance with rule 6.3 (1);

(c) (where rule 6.3 (2) applies) FAX; or

(d) other means of electronic communication permitted by a relevant practice direction,

unless a rule provides otherwise or the court orders otherwise.

### **Address for service**

**6.3** (1) Where a party has given an address within the jurisdiction at which documents for him may be served, the document may be delivered or posted to him at that address.

(2) Where the party has given a FAX number in his address for service, the document may be sent by FAX to that number.

(3) Where a party to be served has not given an address within the jurisdiction at which documents for him may be served, the document may be served at the address indicated in rule 6.4.

**Address for serving documents where no address for service is given**

**6.4** (1) Where no address is given for service, the document may be served by leaving it or posting it at or to

- (a) the business address of any legal practitioner who purports to act for the party in the proceedings;
- (b) in the case of an individual, his usual or last known place of residence;
- (c) in the case of a proprietor of a business, either
  - (i) his usual or last known place of residence; or
  - (ii) his place of business or last known place of business; or
- (d) in the case of a firm or partnership, either
  - (i) the principal or last known address of the firm or partnership or any place where the firm or partnership carries on business and which has a real connection with the claim to which the document relates; or
  - (ii) the usual or last known place of residence of one of the partners.

(2) The provisions of Part 5 may be applied to such a document as if it were a claim form.

**Service of documents on a non-party**

**6.5** Where the court or a party is to serve documents on a person who is not a party, such documents may be served by one of the methods specified in Part 5.

**Deemed date of service**

**6.6** (1) A document which is served within the jurisdiction in accordance with these Rules shall be deemed to be served on the day shown in the following table:

<b>Method of Service</b>	<b>Deemed Date of Service</b>
(a) Post	7 days after posting
(b) Registered Post	3 days after the date indicated on the Post Office or courier receipt
(c) Leaving document at a permitted address	The day after leaving the document
(d) FAX	(i) if it is transmitted on a business day before 4 p.m., the day of transmission; or  (ii) in any other case, the business day after the day of transmission.
(e) Other electronic method	The business day after transmission.

(2) Any document served after 4 p.m. on a business day or at any time on a day other than a business day shall be deemed to have been served on the next business day.

- (3) In this rule,
- (a) "business day" means any day other than
- (i) a Saturday, Sunday or public holiday; or
  - (ii) a day on which the Registry is closed;
- (b) "public holiday" means a day which is, or is to be observed as a public holiday within the meaning of the *Public Holidays Act*.

Cap. 352.

### **Proof of Service**

**6.7** Where proof of service of any document is required it may be proved by any method of proving service set out in Part 5.

### **Power of court to dispense with service**

**6.8** (1) The court may dispense with service of a document if it is appropriate to do so.

(2) An application for an order to dispense with service may be made without notice, supported by evidence on affidavit.

### **Service of notices etc., on the Attorney-General**

**6.9** (1) This rule applies where any document has to be served on the Attorney-General in connection with any proceedings of which notice has to be given to the Attorney-General and no express provision as to service is made by any enactment or rule.

(2) Any such document must be served by handing a copy to an official at the Attorney-General's office.



## Part 7

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### Service of Court Process out of the Jurisdiction

#### Contents of this Part

Scope of this Part	Rule 7.1
General rule as to service out of jurisdiction	Rule 7.2
Nature of cases where service out of jurisdiction may be permitted	Rule 7.3
Proceedings which include other types of claim	Rule 7.4
Permission to serve out of jurisdiction	Rule 7.5
Acknowledgment of service where claim form served out of jurisdiction	Rule 7.6
Application to set aside service under Rule 7.3	Rule 7.7
Mode of service – general provisions	Rule 7.8
Service through foreign governments etc.	Rule 7.9
Procedure where claim form is to be served through foreign governments etc.	Rule 7.10
Service of claim form on a State where court permits service out of jurisdiction	Rule 7.11
Translation of claim form	Rule 7.12
Undertaking to be responsible for expenses of Minister of Foreign Affairs	Rule 7.13
Service of court process other than a claim form	Rule 7.14

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#### Scope of this Part

- 7.1** (1) This Part contains provisions about
- (a) the circumstances in which court process may be served out of the jurisdiction; and
  - (b) the procedure for serving court process out of the jurisdiction.

(2) In this Part, references to service and to filing of the claim form and copies of it include, where applicable,

- (a) the statement of claim;
- (b) an affidavit in support of the application; or
- (c) a copy of an order giving permission under rule 8.2 to serve the claim form without the statement of claim.

**General rule as to service out of jurisdiction**

**7.2** A claim form may be served out of the jurisdiction only if

- (a) rule 7.3 or 7.5 allows; and
- (b) the court gives permission.

**Nature of cases where service out of jurisdiction may be permitted**

**7.3** (1) A claim form may be served out of the jurisdiction by permission of the court if the proceedings are listed in this rule.

*Features which may arise in any type of claim*

- (2) A claim form may be served out of the jurisdiction where
  - (a) a claim is made against someone on whom the claim form has been or will be served and
    - (i) there is between the claimant and that person a real issue which it is reasonable for the court to try; and
    - (ii) the claimant now wishes to serve the claim form on another person who is outside the jurisdiction and who is a necessary and proper party to that claim;

- (b) a claim is made for an injunction ordering the defendant to do or refrain from doing some act within the jurisdiction; or
- (c) a claim is made for a remedy against a person domiciled or ordinarily resident within the jurisdiction.

*Claims about contracts*

- (3) A claim form may be served out of the jurisdiction where
  - (a) a claim is made in respect of a breach of contract committed within the jurisdiction;
  - (b) a claim is made to enforce, rescind, dissolve or otherwise affect a contract or to obtain any other remedy in respect of a breach of contract and in either case the contract
    - (i) was made within the jurisdiction;
    - (ii) was made by or through an agent trading or residing within the jurisdiction;
    - (iii) is by its terms or by implication or by operation of rule governed by the Laws of Barbados;
    - (iv) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract; or
  - (c) a claim is made with respect to an alleged contract falling within sub-rule (3)(a) of this rule, for a declaration that no contract exists;

*Claims in tort*

(4) A claim form may be served out of the jurisdiction where a claim in tort is made and

- (a) the damage was sustained within the jurisdiction; or
- (b) the damage sustained resulted from an act committed within the jurisdiction.

*Enforcement*

(5) A claim form may be served out of the jurisdiction where a claim is made to enforce any judgment or arbitral award made within the jurisdiction.

*Claims about property within the jurisdiction*

(6) A claim form may be served out of the jurisdiction where

- (a) a claim is made
  - (i) for a debt secured on land;
  - (ii) to assert, declare or determine rights in or over land; or
  - (iii) to obtain authority to dispose of land,

and in any of these cases the land is located within the jurisdiction;

- (b) a claim is made in order to interpret, rectify, set aside or enforce a document, obligation or liability affecting land located within the jurisdiction; or

- (c) the subject matter of the proceeding is
  - (i) land located within the jurisdiction; or
  - (ii) the perpetuation of testimony relating to land located within the jurisdiction.

*Claims about trusts etc.*

- (7) A claim form may be served out of the jurisdiction where
  - (a) a claim is made for any remedy which might be obtained in proceedings to execute the trusts of a written instrument where
    - (i) the trusts ought to be executed according to the Laws of Barbados; and
    - (ii) the person on whom the application is to be served is a trustee of the trusts;
  - (b) a claim is made for any remedy which might be obtained in a proceeding for the administration of the estate of a person who died domiciled within the jurisdiction;
  - (c) a claim is made otherwise in a probate proceeding as defined in Part 68 relating to a person who died domiciled within the jurisdiction; or
  - (d) a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction.

*Admiralty proceedings*

- (8) This rule does not apply to an Admiralty claim *in rem*.

*Mixed Claims*

(9) A claim form may be served out of the jurisdiction where the proceeding, so far as concerns the person to be served, falls partly within one of the foregoing sub-rules and falls, as to the residue, within one or more of the others of the foregoing sub-rules.

**Proceedings which include other types of claim**

**7.4** Where the claimant makes a claim which falls within

- (a) rule 7.3(3) (claims about contracts); or
- (b) rule 7.3(4) (claims in tort); or
- (c) rule 7.3(7)(d) (claims against the defendant as a constructive trustee), the court may grant any claim for a remedy which
  - (i) does not fall within rule 7.3; but
  - (ii) arises out of the same facts or substantially the same facts as the claim in respect of which the order is made.

**Permission to serve out of jurisdiction**

**7.5** (1) An application for permission to serve out of the jurisdiction may be made without notice but must be supported by evidence on affidavit stating

- (a) the grounds on which the application is made;
- (b) that in the deponent's belief the applicant has a claim with a realistic prospect of success;
- (c) in what place, within what country, the defendant may probably be found.

(2) An order permitting a claim form to be served out of the jurisdiction shall state the periods within which the defendant is required to file

- (a) an acknowledgment of service in accordance with Part 9; and
- (b) a defence in accordance with Part 10.

**Acknowledgment of service where a claim form served out of jurisdiction**

**7.6** Where a claim form is to be served out of the jurisdiction, it must show the periods within which the defendant is required to file

- (a) an acknowledgement of service in accordance with Part 9; and
- (b) a defence in accordance with Part 10.

**Application to set aside service under rule 7.3**

**7.7** (1) Any person on whom a claim form has been served out of the jurisdiction under rule 7.3 may apply to set aside service of the application.

- (2) The court may set aside service under this rule where
  - (a) service out of the jurisdiction is not permitted by the Rules;
  - (b) the case is not a proper one for the court's jurisdiction; or
  - (c) the claimant does not have a sufficient prospect of establishing a good cause of action.

(3) This rule does not limit the court's power to make an order under rule 9.7 (procedure for disputing the court's jurisdiction).

**Mode of service – general provisions**

**7.8** (1) Subject to the following provisions of this rule, where a claim form is to be served out of the jurisdiction, it may be served

- (a) personally by the claimant or his agent;
- (b) in accordance with the rule of the country in which it is to be served; or
- (c) where appropriate, by a method provided for by
  - (i) rule 7.9 (service through foreign governments, etc.); or
  - (ii) rule 7.11 (service on a State).

(2) Nothing in this Part or in any court order or direction authorises or requires any person to do anything in the country where the claim form is to be served which is against the laws of that country.

**Service through foreign governments,  
judicial and consular authorities**

- 7.9** (1) This rule does not apply to service in
- (a) the United Kingdom, the Isle of Man or the Channel Islands;
  - (b) any independent Commonwealth country; or
  - (c) the Republic of Ireland,

unless the claim form is to be served in accordance with sub-rule (3).

(2) The methods of service permitted by this rule are in addition to any method of service permitted under rule 7.8(1)(a) or (b).



*Service under the Hague Convention*

(3) A claim form to be served on a defendant in any country which is a party to the Hague Convention may be served

- (a) through the authority designated under the Hague Convention in respect of that country; or
- (b) if the law of that country permits
  - (i) through the government or judicial authorities of that country;
  - (ii) through a consular authority in that country; or
  - (iii) without limiting the generality of the above, through the British consular authority in that country.

*Service under other Conventions*

(4) Where a claim form is to be served on a defendant in any country which is a party to a Civil Procedure Convention other than the Hague Convention providing for service in that country of court process, the claim form may be served, if the law of that country permits,

- (a) through the judicial authorities of that country, or
- (b) through a British or other consular authority in that country, subject to any provision of the Convention as to the nationality of persons who may be so served.

*Service where there is no applicable Convention*

(5) Where a claim form is to be served on a defendant in any country with respect to which there is no relevant Civil Procedure Convention providing for service in that country of court process, the claim form may be served, if the law of that country so permits,

- (a) through the government of that country, where that government is willing to serve it or enable its service; or
- (b) through a British or other consular authority in that country,

unless service through that authority is contrary to the law of that country.

**Procedure where claim form is to be served through foreign governments, judicial authorities or consular authorities**

**7.10** (1) This rule applies where a claimant wishes to serve a claim form

- (a) through the judicial authorities of the country where the claim form is to be served;
- (b) through the British consular authority or another consular authority in that country;
- (c) through an authority designated under the Hague Convention or any other relevant Civil Procedure Convention in respect of that country; or
- (d) through the government of that country.

(2) Where this rule applies, the claimant must file

- (a) a request for service of the claim form by the claimant's chosen method;

- (b) a copy of the claim form;
  - (c) an additional copy of the claim form for each person to be served; and
  - (d) a copy of any translation required by rule 7.12 with each copy of the claim form.
- (3) When the claimant files the documents specified in sub-rule (2) the Registry must
  - (a) seal each copy of the claim form and any translation; and
  - (b) send the documents filed pursuant to sub-rule (2) to the Minister of Foreign Affairs with a request that the Minister arrange for the claim form to be served by the method indicated in the request for service filed under sub-rule (2) or, where that request indicates alternative methods, by the most convenient method.
- (4) An official certificate which
  - (a) states that the application has been served in accordance with this rule either personally, or in accordance with the rule of the country in which service was effected;
  - (b) specifies the date on which the claim form was served; and
  - (c) is made by
    - (i) a British consular authority or some other consular authority in the country where the application was served;
    - (ii) the government or a judicial authority in that country; or

- (iii) any other authority designated in respect of that country under the Hague Convention or any other relevant Civil Procedure Convention,

is evidence of the facts stated in the certificate.

(5) A document purporting to be an official certificate under sub-rule (4) is to be treated as such a certificate, unless the contrary is proved.

**Service of claim form on a State where court permits service out of jurisdiction**

**7.11** (1) This rule applies where a claimant wishes to serve a claim form on a State.

(2) Where that State has agreed to a method of service other than a method permitted by this Part, the claim form may be served either by the method agreed or in accordance with the other rules in this Part.

(3) The claimant must file at the Registry

(a) a request for service to be arranged by the Minister of Foreign Affairs; and

(b) an appropriate number of copies of the claim form, with copies of any translation required by virtue of rule 7.12.

(4) The Registrar must send documents filed under this rule to the Minister of Foreign Affairs with a request that the Minister arrange for the claim form to be served.

(5) An official certificate by the Minister of Foreign Affairs stating that a claim form has been duly served on a specified date in accordance with a request made under this rule is evidence of that fact.

(6) A document purporting to be such a certificate is to be treated as such a certificate, unless the contrary is proved.

### **Translation of claim form**

**7.12** (1) Except where sub-rule (4) or (5) applies, every copy of the claim form filed under rule 7.10 or rule 7.11 must be accompanied by a translation of the claim form.

(2) The translation must be

(a) in the official language of the country in which the claim form is to be served; or

(b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the claim form is to be served.

(3) Every translation filed under this rule must be certified by the person making it to be a correct translation, and the certificate must state

(a) the name of the person making the translation;

(b) his address; and

(c) his qualifications for making the translation.

(4) The claimant is not required to file a translation of a claim form filed under rule 7.10 (procedure for service through foreign governments, judicial or consular authorities) where the claim form is to be served in a country of which English is an official language, unless a relevant Civil Procedure Convention expressly requires a translation.

(5) The claimant is not required to file a translation of a claim form filed under rule 7.11 (service on a State) where English is an official language of the State where the claim form is to be served.

**Undertaking to be responsible for expenses of Minister of Foreign Affairs**

**7.13** (1) Every request for service filed under rule 7.10 (procedure for service through foreign governments, judicial or consular authorities) or rule 7.11 (service of claim form on a State where court permits service outside of jurisdiction) must contain an undertaking by the person making the request

- (a) to be responsible for all expenses incurred by the Minister of Foreign affairs; and
- (b) on being informed of the amount of those expenses,
  - (i) to pay that amount to the Accountant General; and
  - (ii) to produce a receipt for the payment to the Registry.

(2) No further step in the proceedings may be taken by the claimant until he has produced the receipt required by sub-rule (1)(b)(ii).

**Service of court process other than a claim form**

**7.14** (1) An order or notice, or an interlocutory application issued, made or given in any proceedings, may be served out of the jurisdiction without the court's permission, if it is served in a proceeding in which permission has been given to serve the claim form out of the jurisdiction.

(2) The procedure by which a document specified in sub-rule (1) is to be served is the same as that applicable to the service of a claim form and accordingly rules 7.8 (mode of service - general provisions) to 7.13 (undertaking for expenses of Ministry of Foreign Affairs) apply.

## Part 8

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### How to Start Proceedings

#### Contents of this Part

The Claimant – how to start proceedings	Rule 8.1
Statement of claim to be issued and served with claim form	Rule 8.2
Right to file a claim form which includes two or more claims	Rule 8.3
What must be included in the claim form	Rule 8.4
Claimant's duty to set out his case and consequences of not doing so	Rule 8.5
Claim not to fail by adding or failing to add parties	Rule 8.6
Special requirements applying to claims for personal injuries	Rule 8.7
Relator claims	Rule 8.8
Service of a claim form	Rule 8.9
Time within which a claim form may be served	Rule 8.10
Extension of time for serving claim form	Rule 8.11
Defence form etc., must be served with claim form	Rule 8.12

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#### The Claimant – how to start proceedings

**8.1** (1) A proceeding is started by filing in the Registry the original and one copy for sealing of

- (a) the claim form;
- (b) subject to rule 8.2, the claimant's statement of claim; or
- (c) where any rule or practice direction so requires, an affidavit or other document.

(2) A claim is issued on the date entered on the claim form by the Registry.

(3) Whether or not the claim form is issued on the same day, a claim made in it is brought by the claimant on the day on which the claim form is filed in the Registry.

- **Rule 3.7(2) establishes when a document is filed.**

Form 1. (4) A claim form must be in Form 1, with or without variation, except in the circumstances set out in sub-rule (5).

Form 2. (5) Form 2 (fixed date claim form) must be used

- (a) in proceedings for possession of land;
- (b) in claims arising out of hire-purchase or credit sale agreements;
- (c) whenever its use is required by a rule or practice direction; and
- (d) where by any enactment proceedings are required to be commenced by originating summons or motion.

- **Re: fixed date claims, see rule 27.2.**

(6) A person must make an application under Part 11 if he seeks a remedy from the court

- (a) before proceedings have been started; or
- (b) in relation to proceedings which are taking place, or will take place, in another jurisdiction.



**Statement of claim to be issued  
and served with claim form**

**8.2** (1) Subject to sub-rule (6), a claim form may be issued and served without the claimant's statement of claim (or an affidavit or other document referred to in sub-rule (1)(c) of rule 8.1) only where

(a) the claimant has included in the claim form all the information required by rules 8.4 and 8.5 and (if applicable) 8.7 and 8.8; or

(b) the court gives permission.

(2) The court may only give permission if the court is satisfied that

(a) the claim form must be issued as a matter of urgency and that it is not appropriate for the claimant to be required to prepare a statement of claim or affidavit or other document; or

(b) without limiting paragraph (a), a relevant limitation period is about to expire and the claimant has only obtained adequate legal advice within the 28 days prior to the date on which he wishes to file the claim form.

(3) An application for permission may be made without notice but must be supported by evidence.

(4) Any order giving permission for the claim form to be served without a statement of claim, or affidavit or other document referred to in rule 8.1(1)(c), must state a time within which the statement of claim, affidavit or document is to be served, being a time not longer than two months from the date of the furnishing, by acknowledgment of service or otherwise, by the defendant to the claimant of an address for service of documents in the proceedings.

(5) A copy of the order must be served with the claim form.

(6) In a case of emergency, if it is not practicable to obtain the permission of the court under sub-rule (1)(b) before the issue of a claim form, the claim form may be issued and served without a statement of claim, or affidavit or other document referred to in rule 8.1(1)(c), provided that the claimant

- (a) certifies in writing that the claim form is to be issued in an emergency and states how that emergency arose; and
- (b) serves with the claim form
  - (i) a copy of the certificate;
  - (ii) a copy of an application to the court for permission; and
  - (iii) a copy of an affidavit in support of that application for permission.

(7) Where sub-rule (6) applies, the claimant may take no further step, except the service of the claim form and other documents referred to in the sub-rule, until the grant of the court's permission.

**Right to file a claim form which includes two or more claims**

**8.3** A claimant may include in a single claim form all, or any, other claims which can be conveniently disposed of in the same proceeding.

**What must be included in the claim form**

**8.4** (1) The claim form must

- (a) include a short description of the nature of the claim;

- (b) specify any remedy that the claimant is seeking, though this does not necessarily prevent the court granting any other remedy to which he may be entitled and which can be granted without injustice to the defendant; and
  - (c) furnish an address for service in accordance with rule 3.12.
- (2) Where the claimant is seeking aggravated and/or exemplary and/or punitive damages this must be stated expressly in the claim form.
- (3) Where the claimant is seeking interest, he must
  - (a) so state expressly in the claim form; and
  - (b) include details of
    - (i) the basis of entitlement;
    - (ii) the rate;
    - (iii) the period for which interest is claimed; and
    - (iv) where the claim is for a specified amount of money,
      - (A) the total amount of interest claimed to the date of the application; and
      - (B) the daily rate at which interest will accrue after the date of the claim, in the claim form or in the statement of claim.
- (4) Where the claimant is claiming in a representative capacity under Part 21 he must state what that capacity is.
- (5) Where the defendant is being sued in a representative capacity under Part 21, the claimant must state what that capacity is.

### **Claimant's duty to set out his case and consequences of not doing so**

**8.5** (1) The claimant must include in the claim form or in the statement of claim a short statement of all the facts on which he relies.

(2) The claim form or the statement of claim must identify or annex a copy of any document which is necessary to the claimant's case.

(3) The claimant may not rely on any allegation or factual argument which is not set out in the statement of claim, but which could have been set out there, unless the court gives permission.

(4) Where the claim form seeks the recovery of any property, the claimant's estimate of the value of that property must be stated.

(5) The statement of claim must include a certificate of truth in accordance with rule 3.12.

### **Claim not to fail by adding or failing to add parties**

**8.6** (1) The general rule is that a claim will not fail because

(a) a person was added as a party to the proceedings who should not have been added; or

(b) a person who should have been made a party was not made a party to the claim.

(2) However

(a) where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceedings unless the court orders otherwise; and

(b) where any person does not agree to be a claimant, that person must be made a defendant unless the court orders otherwise.

(3) This rule does not apply in probate or administration proceedings.

- **Rules 67.2 and 68.3 deal with parties in probate or administration proceedings.**

### **Special requirements applying to claims for personal injuries**

**8.7** (1) This rule sets out additional requirements with which a claimant in a claim for personal injuries must comply.

(2) The claim form or the statement of claim must state the claimant's date of birth or age.

(3) Where the claimant intends to rely on the evidence of a medical practitioner, the claimant must attach to the claim form a report from a medical practitioner on the personal injuries alleged in the application.

(4) Sub-rule (3) does not restrict the right of the claimant to call other or additional medical evidence at the hearing.

(5) The claimant must include in, or attach to, the claim form or statement of claim a schedule of any special damages claimed.

### **Relator claims**

**8.8** No person's name may be used in any claim as a relator unless that person has given written authority for his name to be used and the authority is filed at the Registry before the claim is issued.

### **Service of a claim form**

**8.9** After a claim form has been issued it may be served on the defendant in accordance with Part 5 (Service of claim form within jurisdiction) or Part 7 (Service out of the jurisdiction).

### **Time within which a claim form may be served**

**8.10** (1) The general rule is that a claim form may only be served within twelve months after the date when it was issued.

(2) The period for service of an Admiralty claim form *in rem* is also twelve months.

- **Part 70 deals with Admiralty proceedings.**

### **Extension of time for serving a claim form**

**8.11** (1) The claimant may apply for an order extending the period within which the claim form may be served.

(2) Save in special circumstances, an application under sub-rule (1) must be made within the period for serving the claim form specified by rule 8.10, or within the period of a previous extension by the court.

(3) Save in special circumstances, the court may make such an order only if it is satisfied that the claimant has taken all reasonable steps

- (i) to trace the defendant, and
- (ii) to serve the claim form,

but has been unable to effect service.

(4) An application for an order extending the time for service may be made without notice but must be supported by evidence on affidavit.

(5) Where an order is made extending the validity of the claim form

- (a) the claim form must be marked with an official stamp showing the period for which the validity of the claim form has been extended; and

(b) a sealed copy of any order made must be served with the claim form.

(6) No more than one extension may be allowed unless the court is satisfied that the defendant is deliberately avoiding service, or that for some other reason it is impossible or extremely difficult for the claimant to effect service, or there is some other compelling ground for extending the time.

**Defence form etc., must be served with claim form**

**8.12** (1) When a claim form is served on a defendant, it must be accompanied by

- (a) a form of acknowledgment of service (Form 3 or 4); Form 3  
or 4.
  - (b) a defence form (Form 5); Form 5.
  - (c) the prescribed notes for defendants (Form 1A); Form 1A.
  - (d) a copy of any order made under rule 8.2 or 8.11; and,
  - (e) where the claim is for a specified sum of money, an application to pay by instalments (Form 4A). Form 4A.
- (2) There must be inserted on each form
- (a) the address of the Registry to which it would be necessary for the defendant to return the forms if he wished to utilise them;
  - (b) the title of the claim; and
  - (c) the reference number of the claim.

## Part 9

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### Acknowledgment of Service and Notice of Intention to Defend

#### Contents of this Part

Scope of this Part	Rule 9.1
Filing an acknowledgment of service and consequence of not doing so	Rule 9.2
The period for filing an acknowledgment of service	Rule 9.3
Notice to claimant of filing of acknowledgment of service	Rule 9.4
Contents of acknowledgment of service	Rule 9.5
Right to dispute the jurisdiction of court not taken away by acknowledgment of service	Rule 9.6
Procedure for disputing court's jurisdiction	Rule 9.7

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#### Scope of this Part

**9.1** (1) This Part deals with the procedure to be followed by a defendant who wishes to contest a proceeding and avoid a default judgment being entered against him.

(2) The defendant does so

(a) by filing:

- (i) within the time limited by rule 9.3, an acknowledgment of service in Form 3 or 4 (the appropriate form will have been served with the claim form in the proceeding) containing notice of his intention to defend; and
- (ii) within the time limited by rule 10.3, a defence in accordance with Part 10; or



(b) by filing, within the time limited by rule 9.3, a defence in accordance with Part 10.

(3) The filing of an acknowledgment of service shall be treated as the entry of an appearance for the purpose of any enactment or rule referring to the entry of an appearance.

• See also Part 14.

### **Filing an acknowledgment of service and consequence of not doing so**

**9.2** (1) A defendant who intends

(a) to dispute the claim; or

(b) to dispute the court's jurisdiction,

must file at the Registry an acknowledgment of service containing a notice of intention to defend in Form 3 or 4 as may be appropriate or an acknowledgment of service accompanied or followed by an application under rule 9.7. He may do both. Form 3 or 4.

(2) The defendant files an acknowledgment of service by completing the form of acknowledgment of service and delivering it or sending it by post or fax to the Registry, but the acknowledgment of service is not filed and has no effect until it is received at the Registry.

• **Rule 3.8 deals with filing and service by FAX.**

(3) The defendant need not file an acknowledgment of service if he files a defence within the period specified in rule 9.3.

(4) Where the defendant fails to file an acknowledgement of service or defence within the specified period, judgment may be entered provided Part 12 allows it.

### **The period for filing an acknowledgment of service**

**9.3** (1) The general rule is that the period for filing an acknowledgment of service is the period of 14 days after the date of service of the claim form.

(2) Where permission has been given under rule 8.2 (1)(b) for an application to be served without a statement of claim, the period for filing an acknowledgment of service is the period of 14 days after the service of the statement of claim.

(3) A defendant may file an acknowledgment of service at any time before a request for default judgment is received at the Registry.

(4) The general rule does not apply where

(a) the claim form is served outside the jurisdiction in accordance with Part 7; or

(b) the claim form is served on an agent of an overseas principal under rule 5.17.

- **Rules 7.6 and 5.17 deal with the time for filing an acknowledgment of service in those cases.**

### **Notice to claimant of filing of acknowledgment of service**

**9.4** (1) When the defendant files an acknowledgment of service at the Registry, the defendant must forthwith notify the claimant in writing that it has been filed.

(2) A copy of the acknowledgment of service must be annexed to the notification.

(3) A claimant must serve copies of any acknowledgement of service on all other defendants who have been served with the claim form.

### **Contents of acknowledgment of service**

**9.5** (1) An acknowledgment of service must state the date on which the defendant received the claim form.

(2) A defendant may state in an acknowledgment of service that he admits all or part of the claim made by the claim.

(3) A defendant who admits part of the claim must state the amount that he admits.

(4) Where a defendant admits all or part of a claim for a specified sum of money, he may file with his acknowledgment of service

(a) his proposals for payment of any sum for which he admits liability; and

(b) details of his financial circumstances.

• **Part 14 deals with the way in which decisions are made upon such proposals.**

(5) If a defendant admits part only of the claim he must also file a defence as to that part which he disputes within the time for filing a defence.

• **Rule 10.3 sets out the period for filing a defence.**

(6) An acknowledgment of service must be signed by the defendant or his attorney-at-law.

(7) The defendant must include in an acknowledgment of service an address for service within the jurisdiction to which documents may be sent.

**Right to dispute jurisdiction of court not taken away by acknowledgment of service**

**9.6** A defendant who files an acknowledgment of service does not by doing so lose any right that he may have to dispute the court's jurisdiction, but he may lose any such right under rule 9.7 (5), subject to the court's powers on any subsequent application he may make.

**Procedure for disputing court's jurisdiction**

**9.7** (1) A defendant who wishes

(a) to dispute the court's jurisdiction to try the claim; or

(b) to argue that the court should not exercise its jurisdiction,

may apply to the court for an order declaring that the court has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first file an acknowledgment of service.

(3) An application under this rule must be made within the period for filing a defence.

• **Rule 10.3 sets out the period for filing a defence.**

(4) An application under this rule must be supported by evidence on affidavit.

(5) If the defendant

(a) files an acknowledgment of service; and

(b) does not make such an application within the period for filing a defence,

he is treated as having accepted that the court has jurisdiction to try the claim.

(6) Any order under this rule may also

- (a) discharge any order made before the claim was commenced or served;
- (b) set aside service of the claim form; and
- (c) strike out any statement of claim.

(7) If on application under this rule the court does not make a declaration, the court

- (a) may
  - (i) fix a date for a case management conference; or
  - (ii) treat the hearing of the application as a case management conference; and
- (b) must make an order as to the period for filing a defence.

- **Part 26 sets out powers which the court may exercise on a case management conference.**

(8) Where a defendant makes an application under this rule, the period for filing a defence is extended until the time specified by the court under sub-rule (7)(b) and any further extension requires a further order of the court.

- **Rule 10.3(3) deals with an application to stay proceedings where there is a binding agreement to arbitrate.**

## Part 10

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### Defence

#### Contents of this Part

Scope of this Part	Rule 10.1
The defendant – filing defence and consequences of not doing so	Rule 10.2
The period for filing defence	Rule 10.3
Service of copy of defence	Rule 10.4
Defendant’s duty to set out his case	Rule 10.5
Additional matters which must be included in defence	Rule 10.6
Consequences of not setting out defence	Rule 10.7
Special requirements applying to claims for personal injuries	Rule 10.8
Defence of tender	Rule 10.9
Reply to defence	Rule 10.10

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#### Scope of this part

**10.1** The rules in this Part set out the procedure for disputing the whole or part of a claim.

- **Part 18 deals with the procedure for making a counterclaim.**

**The defendant – filing defence and the consequences of not doing so**

**10.2** (1) A defendant who wishes to defend all or part of a claim must file a defence in Form 5.

Form 5.

(2) Where

(a) the claimant issues a fixed date claim form in Form 2 and serves with it an affidavit instead of a statement of claim; or

Form 2.

(b) any rule requires the service of an affidavit,

the defendant may file an affidavit in answer instead of a defence.

(3) In this Part, the word "defence" includes an affidavit filed under sub-rule (2).

(4) In particular, where a defendant admits liability but wishes to be heard on the issue of quantum, he must file and serve a defence dealing with that issue.

(5) Where a defendant fails to file a defence within the period for filing a defence, judgment for failure to defend may be entered provided Part 12 allows it.

- **Part 14 deals with the procedure to admit all or part of the claim.**

**The period for filing defence**

**10.3** (1) The general rule is that the period for filing a defence is the period of 28 days after the date of service of the claim form and statement of claim.

(2) Where permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing a defence is the period of 28 days after the service of the statement of claim.

(3) Where the defendant within the period set out in sub-rule (1) or (2) makes an application under any relevant legislation relating to arbitration to stay the claim on the ground that there is a binding agreement to submit to arbitration, the period for filing a defence is extended to 14 days after the determination of that application.

(4) A defendant may apply for an order extending the time for filing a defence.

(5) The parties may agree, by one agreement or several successive agreements, to extend the time for filing a defence specified in sub-rule (1), (2) or (3) up to a maximum total period of 56 days.

(6) The defendant must file details of such an agreement.

(7) Any further extensions may only be made by court order.

(8) The general rule is subject to any express provision made elsewhere in these Rules, and in particular to rule 9.7 (procedure for disputing court's jurisdiction); rule 5.17 (service of claim form on agent of overseas principal); and rule 7.6 (service of claim form out of the jurisdiction).

### **Service of copy of defence**

**10.4** When the defendant files a defence, he must also serve a copy on every other party.

### **Defendant's duty to set out his case**

**10.5** (1) The defendant must include in his defence a short statement of all the facts on which he relies to dispute the claims made against him.



(2) In his defence the defendant must state which, if any, of the allegations in the claim form or the claimant's statement of claim

- (a) are admitted;
- (b) are denied;
- (c) are neither admitted nor denied, because the defendant does not know whether they are true, but which he wishes the claimant to be required to prove.

(3) Where the defendant denies any of the allegations in the claim form or statement of claim,

- (a) he must state his reasons for doing so; and
- (b) where he intends to prove a different version of events from that given by the claimant, he must state concisely his own version.

(4) Where, in relation to any allegation in the claim form or statement of claim the defendant does not

- (a) admit it; or
- (b) deny it and put forward a different version of events,

the defendant must state each of his reasons for resisting the allegation.

(5) The defendant must identify in or annex to the defence any document which he considers to be necessary to his defence.

**Additional matters which must be included in the defence**

**10.6** (1) Where the defence is filed by or on the instructions of an attorney-at-law the defence must

- (a) be signed by the attorney-at-law; and

(b) give the attorney-at-law's name, business address, telephone number and FAX number, if any.

(2) Where the defence is filed by an agent, it must be signed by the agent who must also give his name and address for service together with any telephone and FAX number, or other means of electronic transmission, if any.

(3) Where the defence is filed by the defendant personally, or in the case of a body corporate, by an officer of that body corporate, the defence must give an address within the jurisdiction at which documents may be served, unless the defendant has filed an acknowledgment of service which includes such an address.

(4) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with Rule 3.12.

(5) Where it is impracticable for the defendant to give the certificate required by sub-rule (4) it may be given by the defendant's attorney-at-law.

(6) Where the certificate is given by the attorney-at-law, the attorney-at-law must also certify the reasons why it is impracticable for the defendant to give the certificate and that the certificate is given on the defendant's instructions.

(7) Where the defendant is defending in a representative capacity, the defendant must say

(a) what that capacity is; and

(b) whom he is representing.

• **Part 21 deals with representative parties.**

### **Consequences of not setting out defence**

**10.7** The defendant may not rely on any allegation or ground which is not set out in the defence, but which the defendant could have set out there, unless the court gives permission to do so.

### **Special requirements applying to claims for personal injuries**

**10.8** (1) This rule sets out additional requirements with which a defendant to a claim for personal injuries must comply.

(2) Where the claimant has attached to the claim form or statement of claim a report from a medical practitioner on the personal injuries which the claimant is alleged to have suffered, the defendant must

- (a) state in the defence whether all or any part of the medical report is agreed; and
- (b) if any part of the medical report is disputed, the nature of the dispute.

(3) Where the defendant intends to rely on a report from a medical practitioner to dispute any part of the claimant's claim for personal injuries and the defendant has obtained such a report, the defendant must attach that report to the defence.

### **Defence of tender**

**10.9** (1) The defence of tender shall not be available unless the defendant, within the period for filing a defence, pays into court, or, with the agreement of the claimant or the permission of the court, into an interest bearing account, the amount alleged to have been tendered.

- **Rule 10.3 states the period for filing a defence; Part 36 deals with payments into court.**

(2) Where the claimant does not, within 28 days of the service of the defence, give notice of acceptance of the payment into court, the defendant may apply for payment out of the moneys and any interest.

**Reply to a defence**

**10.10** (1) A claimant may file and serve a reply to a defence

(a) within 14 days of service of the defence; not less than 14 days before the case management conference; or

(b) within such other time as the court may permit.

• **Rule 18.9 deals with service of a defence to an ancillary claim**

(2) A reply must contain a certificate of truth in accordance with rule 3.12.

(3) No further statement of case may be filed or served except as in accordance with Part 18 or Part 34.

## Part 11

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### General Rules about Interlocutory Applications for Court Orders

#### Contents of this Part

Scope of this Part	Rule 11.1
Applicants and respondents	Rule 11.2
Application to be in writing and dealt with at a case management conference	Rule 11.3
Notice of application and evidence in support	Rule 11.4
Time when application is made	Rule 11.5
What application must include	Rule 11.6
Contents of notice of application	Rule 11.7
Period of notice of application and service	Rule 11.8
Powers of court in relation to conduct of application	Rule 11.9
Consequence of not asking for order in application	Rule 11.10
Applications which may be dealt with without a hearing	Rule 11.11
Service subsequently of application where application made without notice	Rule 11.12
Applications to set aside or vary order made on application made without notice	Rule 11.13
Power of court to proceed in absence of a party	Rule 11.14
Application to set aside order made in absence of a party	Rule 11.15

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#### Scope of this Part

**11.1** This Part deals with interlocutory applications (in this Part called "applications") for court orders being applications made before, during or after the course of proceedings.

## **Applicants and respondents**

**11.2** In this Part,

"applicant" means a person who seeks a court order by making an application; and

"respondent" means

- (a) the person against whom the order is sought and any other person named in the application as a respondent; and
- (b) any other person whom the court directs to be served with the application.

## **Application to be in writing and dealt with at case management conference**

**11.3** (1) The general rule is that an application must be in accordance with Form 10.

(2) An application may be made orally if

- (a) this is permitted by a rule or practice direction ; or
- (b) the court dispenses with the requirement for the application to be made in writing, which it will generally do, where convenient and provided no party is prejudiced, at a case management conference.

(3) So far as is practicable, all applications in a pending proceeding will be listed for hearing at a case management conference.

### **Notice of application and evidence in support**

**11.4** (1) The general rule is that the applicant must give notice of the application to each respondent.

(2) An applicant may make an application without giving notice if this is permitted by

- (a) a rule; or
- (b) a practice direction.

(3) Evidence in support of an application is not needed unless it is required by the nature of the case, or by

- (a) a rule;
- (b) a practice direction; or
- (c) a court order.

(4) Notice of the application must be included in the form used to make the application (Form 10).

Form 10.

(5) Where evidence in support of an application is required it must be contained in an affidavit unless

- (a) a rule;
- (b) a practice direction; or
- (c) a court order,

otherwise provides.

- **Part 30 deals with affidavit evidence.**

### **Time when application is made**

**11.5** Where an application must be made within a specified period it is so made if it is received by the Registry or made orally to the court within that period.

### **What application must include**

**11.6** (1) An application must state

(a) what order the applicant is seeking; and

(b) briefly, the grounds on which the applicant is seeking the order.

(2) The applicant must file with the application or not less than 3 days before the hearing of the application a draft of the order sought and serve a copy on all respondents to whom notice is given.

(3) Where the application is made without notice, the draft order must be filed with the application.

### **Contents of notice of application**

**11.7** (1) The notice must state the date, time and place of the hearing which, except for good reason, will be at the next case management conference pursuant to rule 11.3 (3), although the court may adjourn it if necessary or convenient to some other date.

(2) If there is not to be a hearing but notice of the application is required, the notice must state how the court will be asked to deal with the application.

- **Rule 11.11 sets out the circumstances in which there may not be a hearing.**



**Period of notice of application and service**

**11.8** (1) The general rule is that a notice of an application must be served

- (a) as soon as practicable after the day on which it is issued; and
- (b) at least 7 days before the court is to deal with the application.

(2) The period in sub-rule (1)(b) shall not apply where any rule specifies some other period of notice.

(3) Where

- (a) notice of an application has been given, but
- (b) the period of notice is shorter than the period required,

the court may nevertheless direct that, in all the circumstances of the case, sufficient notice has been given, and may accordingly deal with the application.

(4) The notice must be accompanied by

- (a) any evidence in support; and
- (b) a copy of any draft order which the applicant has attached to the application.

(5) The notice must be served in accordance with Part 6 (service of documents) unless any respondent is not a party to the proceedings, in which case the notice must be served in accordance with Part 5 (service within jurisdiction) or Part 7 (service out of jurisdiction), as the case may be.

**Powers of court in relation to the conduct of application**

**11.9** (1) The court may

- (a) issue a witness summons (*subpoena*) requiring a party or other person to attend the court on the hearing of the application;
- (b) require a party to produce documents or things at such a hearing; and
- (c) question any party or witness at such a hearing.

(2) The court may question a party or witness

- (a) orally; or
- (b) by putting written questions to him and asking him to give written answers to the questions.

(3) Any party may then cross-examine the witness, subject to

- (a) the directions of the court; and
- (b) the permission of the court in those cases where cross-examination is not a matter of right.

(4) The court may exercise any power which it might exercise at a case management conference.

**Consequences of not asking for order in application**

**11.10** An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission.

**Applications which may be dealt with without hearing**

**11.11** The court may deal with an application without a hearing if

- (a) no notice of the application is required;
- (b) the parties agree;
- (c) the court considers that the application can be dealt with over the telephone or by other means of communication;
- (d) the parties have agreed to the terms of an order and the application, or a copy of the application, is signed by all parties to the application or their attorneys-at-law; or
- (e) the court does not consider that a hearing would be appropriate.

- **Rule 42.7 deals with consent orders. See also rule 2.6.**

**Service of application where order is made without notice**

**11.12** (1) After the court has disposed of an application made without notice, a copy of the application and any evidence in support, together with a copy of any order made, must be served by the applicant on all other parties.

(2) Where an urgent application is made without notice and the applicant undertakes to file evidence after the hearing he must also serve copies of the evidence on all other parties affected by the order.

**Application to set aside or vary order made on application without notice**

**11.13** (1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.

(2) A respondent must make such an application not more than 14 days after the date on which the order was served on him.

(3) An order made on an application of which notice was not given must contain a statement informing the respondent clearly of his right to make an application under this rule, and the time within which it must be made.

**Power of the court to proceed  
in the absence of a party**

**11.14** Where the applicant or any person on whom the notice of application has been served fails to attend the hearing of the application, the court may proceed in his absence.

**Application to set aside order  
made in the absence of a party**

**11.15** (1) A party who was not present when an order was made may apply to set aside that order.

(2) The application must be made within 14 days after the date on which the order was served on the applicant.

(3) The application to set aside the order must be supported by evidence showing

(a) a good reason for failing to attend the hearing; and

(b) that it is likely that had the party attended, some other order might have been made.

## Part 12

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### Default Judgments

#### Contents of this Part

Scope of this Part	Rule 12.1
Claims in which default judgment may not be obtained	Rule 12.2
Cases in which permission of the court is required	Rule 12.3
Conditions to be satisfied – judgment for failure to file acknowledgment of service	Rule 12.4
Conditions to be satisfied – judgment for failure to defend	Rule 12.5
Admission of part – request for time to pay	Rule 12.6
Procedural requirements	Rule 12.7
Claim for specified sum of money	Rule 12.8
Claim against more than one defendant	Rule 12.9
Nature of default judgment	Rule 12.10
Interest	Rule 12.11
Costs	Rule 12.12
Directions to be given where further decision of court is needed	Rule 12.13
Defendant’s rights following default judgment	Rule 12.14

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#### Scope of this Part

**12.1** In these Rules, default judgment means judgment without trial where a defendant

- (a) has failed to file an acknowledgment of service giving notice of intention to defend in accordance with Part 9; or
- (b) has failed to file a defence in accordance with Part 10.

**Claims in which default judgment may not be obtained**

**12.2** A claimant may not obtain default judgment where the claim is

- (a) a claim in probate proceedings;
- (b) a fixed date claim; or
- (c) an admiralty claim *in rem*.

- **Part 68 deals with probate proceedings.**
- **Rule 70.22 makes special provision for default judgment in admiralty cases for personal injury arising out of a collision between two ships.**

**Cases in which permission of the court is required**

**12.3** (1) A claimant needs the permission of the court to obtain default judgment on any claim which is

- (a) a claim against a State which may be entitled to State immunity; or
- (b) a claim against a minor or patient.

- **Part 23 deals with proceedings involving a minor or patient.**

(2) A claimant needs the permission of the court to obtain judgment in default of acknowledgment of service against a diplomatic agent who may enjoy immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges.

(3) An application under sub-rule (1) or (2) must be supported by evidence on affidavit.

(4) For the avoidance of doubt, sub-rule (1) shall apply to proceedings against the Crown.

**Conditions to be satisfied to obtain judgment for failure to file acknowledgment of service**

**12.4** The Registrar may, at the request of the claimant enter judgment for failure to file an acknowledgment of service where

- (a) the claimant proves service of the claim form and statement of claim;
- (b) the period for filing an acknowledgment of service has expired;
- (c) the defendant
  - (i) has not filed an acknowledgment of service;
  - (ii) has not filed a defence to the claim or any part of it;
  - (iii) where the only claim, apart from costs and interest, is for a specified sum of money, has not filed or served on the claimant an admission of liability to pay all of the money claimed together with a request for time to pay it; and
  - (iv) has not satisfied the claim on which the claimant seeks judgment; and
- (d) necessary, the claimant has the permission of the court to enter judgment.

**Conditions to be satisfied to obtain judgment for failure to defend**

**12.5** The Registrar may, at the request of the claimant enter judgment for failure to defend where

- (a) the claimant proves service of the claim form and statement of claim;

- (b) an acknowledgment of service has been filed by the defendant against whom judgment is sought;
- (c) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;
- (d) the defendant
  - (i) has not filed a defence within time to the claim or any part of it or any defence filed has been struck out;
  - (ii) where the only claim, apart from costs and interest, is for a specified sum of money, has not filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; and
  - (iii) has not satisfied the claim on which the claimant seeks judgment;
- (e) the claimant has the permission of the court to enter judgment; and
- (f) there is no pending application for an extension of time to file the defence.

**Admission of part – request for time to pay**

- 12.6** (1) This rule applies where
- (a) the defendant is an individual who has admitted liability to pay either
    - (i) part only of a claim for a specified sum; or
    - (ii) a specified sum towards a claim for an unspecified sum of money;
  - (b) the defendant has not filed a defence; and



- (c) the claimant does not accept the sum admitted.
- (2) Subject to any restriction imposed by this Part, the claimant may apply for judgment to be entered for
  - (a) the whole amount of the claim for a specified sum together with interest and costs; or
  - (b) where the claim is for an unspecified sum, an amount to be determined by the court.
- (3) Where the defendant has requested time to pay, and the claim is for
  - (a) a specified sum, that request must be dealt with in accordance with rules 14.8, 14.9, and 14.10; or
  - (b) an unspecified sum, that request must be dealt with when damages are assessed.

### **Procedural requirements**

**12.7** (1) A claimant applies for default judgment by filing a request in Form 6.

Form 6.

(2) No request for final judgment in default of defence shall be filed unless notice in writing has been served upon the defendant calling upon the defendant to remedy his default within 14 days after service of the notice.

(3) A copy of the notice shall be filed in the Registry immediately after service of the notice with an endorsement on the copy of the time, place and particulars of the service of the notice.

- **In cases where Part 16 so specifies, the claimant must also comply with further requirements set out in that Part. (See rule 16.2)**

### **Claim for specified sum of money**

**12.8** (1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money.

(2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for either

- (a) the sum of money claimed together with interest at the statutory rate from the date of the claim to the date of entering judgment; or
- (b) the sum of money claimed and interest to be assessed.

(3) Where a claim is partly for a specified sum and partly for an unspecified sum, the claimant may

- (a) abandon the claim for the unspecified sum and enter default judgment for the specified sum; or
- (b) with the permission of the court, enter default judgment for the specified sum and for the payment of a further amount to be determined by the court.

### **Claim against more than one defendant**

**12.9** (1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.

(2) Where a claimant applies for a default judgment against one of two or more defendants and

(a) the claim can be dealt with separately from the claim against other defendants

(i) the court may enter default judgment against that defendant; and

(ii) the claimant may continue the proceedings against the other defendants;

(b) the claim cannot be dealt with separately from the claim against the other defendants

(i) the court may not enter default judgment against that defendant; and

(ii) the court must deal with the application conjointly with the claim against the other defendants.

(3) Where a claim for delivery of goods is made against more than one defendant, with or without any other claim, the claimant may not without the permission of the court enforce any judgment for delivery entered under this Part against a defendant unless he has obtained a judgment for delivery, whether or not obtained under this Part, against all the defendants to the claim.

## Nature of default judgment

### 12.10 (1) A default judgment

- (a) on a claim for a specified sum of money, shall be judgment for the payment of that amount or, where part has been paid, the amount certified by the claimant and verified by affidavit as outstanding
- (i) where the defendant has applied for time to pay under Part 14, at the time or times and rate ordered by the court; or
  - (ii) in all other cases, at the time or times and rate specified in the request for default judgment;
- **Rule 2.3 defines "a claim for a specified sum of money" and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.**
  - **Part 65 deals with the quantification of costs.**
- (b) on a claim for an unspecified sum of money, shall be judgment for the payment of an amount to be determined by the court;
- **Rule 16(2) deals with the procedure for assessment of damages where judgment is entered under this paragraph.**
- (c) on a claim for goods, shall be, at the option of the claimant,
- (i) judgment requiring the defendant either to deliver the goods or pay their value as assessed by the court;
  - (ii) judgment requiring the defendant to pay the value of the goods as assessed by the court; or
  - (iii) if the court gives permission, a judgment requiring the defendant to deliver the goods without giving him the alternative of paying their assessed value.

(2) An application for permission to enter a default judgment under paragraph (c)(iii) of sub-rule (1) must be supported by evidence on affidavit.

(3) A copy of the application and the evidence must be served on the defendant against whom judgment has been sought even though he has failed to file an acknowledgment of service or a defence, and must be so served 14 days before the application for permission is dealt with by the court.

(4) Default judgment where the claim is for some other remedy shall be such judgment as the court considers the claimant to be entitled to.

(5) An application for the court to determine the terms of a judgment under sub-rule (4) need not be on notice but must be supported by evidence on affidavit and rule 11.12 does not apply.

### **Interest**

**12.11** (1) A default judgment for a specified sum shall include judgment for interest for the period claimed where

- (a) the claim form includes a claim for interest;
- (b) the claim form or statement of claim includes the details required by rule 8.4(3); and
- (c) the request for default judgment states the amount of interest to the date on which the request was filed.

(2) Where the application or statement of claim includes any other claim for interest, default judgment shall include judgment for such amount of interest as may be determined by the court.

## Costs

**12.12** (1) A default judgment gives a claimant a right to costs, which the court may award.

(2) Where an assessment included any abnormal item or amount, the defendant may apply, within 14 days of service of the judgment on him, for a review of the assessment.

- **Part 65 sets out how costs are assessed.**

## Directions to be given where further decision of the court is needed

**12.13** Where default judgment is entered and a further decision of the court is needed under rule 12.8(3), rule 12.10(1)(*b*) or (*c*), rule 12.10(4) or rule 12.11(2), the court shall give directions for the resolution of any outstanding matters.

- **Part 16 deals with the procedure for assessment of damages.**

## Defendant's rights following default judgment

**12.14** Unless the defendant obtains an order for the judgment to be set aside or varied, the only matters on which a defendant against whom a default judgment has been entered may be heard are

- (a) an application under rule 12.10(5);
- (b) costs;
- (c) enforcement of the judgment;
- (d) the time of payment of any judgment debt; and
- (e) any stay deferment he may be entitled to seek.

- **Part 13 deals with setting aside or varying default judgments.**

## Part 13

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### Setting Aside or Varying Default Judgment

#### Contents of this Part

Scope of this Part	Rule 13.1
Cases where the court must set aside default judgment	Rule 13.2
Cases where the court may set aside or vary default judgment	Rule 13.3
Application to vary or set aside default judgment - procedure	Rule 13.4
Court to impose condition as to filing of defence	Rule 13.5
Hearing to be treated as case management conference	Rule 13.6
Abandoned claims to be restored if judgment set aside	Rule 13.7

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#### Scope of this Part

**13.1** The rules in this Part set out the procedure for setting aside or varying a default judgment entered under Part 12 (default judgments).

- **Part 47 deals with variation of the terms of a judgment as to time and method of payment.**

#### Cases where the court must set aside a default judgment

**13.2** (1) The court must set aside a judgment entered under Part 12 if judgment was wrongly entered because in the case of

- (a) a failure to file an acknowledgement of service – any of the conditions in rule 12.4 was not satisfied; or

(b) judgment for failure to defend – any of the conditions in rule 12.5 was not satisfied.

(2) The court may set aside judgment under this rule on or without an application.

**Cases where the court may set aside or vary default judgment**

**13.3** (1) The court may set aside or vary a judgment entered under Part 12 if the defendant has a real prospect of successfully defending the claim.

(2) In considering whether to set aside or vary a judgment under this rule, the court must consider whether the defendant has

(a) applied to the court as soon as reasonably practicable after finding out that judgment had been entered; and

(b) given a good explanation for the failure to file an acknowledgement of service or a defence as the case may be.

(3) Where this rule gives the court power to set aside a judgment, the court may instead vary it.

- **Rule 26.1(3) enables the court to attach conditions to any order.**

**Applications to vary or set aside judgment – procedure**

**13.4** (1) An application may be made by any person who is directly affected by the entry of judgment.

(2) The application must be supported by evidence on affidavit.

(3) The affidavit must exhibit a draft of the proposed defence.



**Court to impose condition  
as to filing of defence**

**13.5** Where judgment is set aside under rule 13.3, the general rule is that the order must be conditional upon the defendant filing and serving a defence by a specified date.

**Hearing to be treated as case  
management conference**

**13.6** (1) Where judgment is set aside under rule 13.3, the court must treat the hearing as a case management conference unless it is not possible to deal with the matter justly at that time.

(2) Where it is not possible to deal with the matter justly at that time, the Registrar must fix a date, time and place for a case management conference and give notice to the parties.

- **Part 26 deals with the powers of the court on a case management conference.**
- **Part 27 deals with the procedure for case management conferences.**

**Abandoned claims to be  
restored if judgment set aside**

**13.7** Where the claimant has abandoned any remedy sought in the claim form in order to enter a default judgment, the abandoned claim is restored if judgment is set aside.

## Part 14

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### Judgment on Admissions

#### Contents of this part

Making an admission	Rule 14.1
Admissions by a minor or patient	Rule 14.2
Admission by notice in writing – application for judgment	Rule 14.3
Action on receipt of admission in whole or in part of money claim	Rule 14.4
Admission of claim for specified amount of money	Rule 14.5
Admission of part of claim for money only	Rule 14.6
Admission of liability to pay the whole of a claim for an unspecified sum of money	Rule 14.7
Requests for time to pay	Rule 14.8
Requests for time to pay – procedure where time and rate agreed	Rule 14.9
Requests for time to pay – procedure where time and rate not agreed	Rule 14.10
Right of reconsideration	Rule 14.11
Variation of order	Rule 14.12
Withdrawal and effect of admissions	Rule 14.13

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#### Making an admission

**14.1** (1) A party may admit the truth of the whole or any part of any other party's case.

(2) A party may do this by giving notice in writing (as for example in a statement of case or a letter) before or after the issue of proceedings.

(3) A defendant may admit the whole or part of a claim for money by filing an acknowledgment of service containing the admission.

(4) The defendant may do this in accordance with the following rules

- (a) rule 14.5 (admission of whole of claim for specified amount of money);
- (b) rule 14.6 (admission of part of claim for money only); or
- (c) rule 14.7 (admission of liability to pay whole of claim for unspecified sum of money).

(5) If the defendant pays the claimant the sum claimed together with any interest claimed and the appropriate costs, as shown in the claim, within the period for filing an acknowledgment of service under rule 9.3, the claim is stayed, subject to the power of the court to relieve against a mistake as to the amount of the claim and interest.

- **Rules 65.11 and 65.12 deal with assessed costs.**

#### **Admissions by a minor or a patient**

**14.2** Except by permission of the court, judgment may not be entered on an admission where

- (a) the defendant is a minor or a patient; or
- (b) the claimant is a minor or a patient and the admission is within the terms of rule 14.6 or 14.7.

- **Rule 23.12 provides that where money is claimed by or on behalf of a minor or patient, no settlement, compromise or payment shall be valid, so far as it relates to that person's claim, without the approval of the court.**

**Admission by notice in writing –  
application for judgment**

**14.3** (1) Where a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for any judgment to which he may be entitled on the admission.

(2) The terms of any judgment shall be such as it appears to the court that the applicant is entitled to on the admission.

**Action on receipt of admission  
in whole or in part of money claim**

**14.4** A party making an admission of the whole or part of a claim for money under rule 14.1(3) must send to the other party a copy of the acknowledgment of service containing the admission together with a copy of any request for time to pay under rule 14.8.

**Admission of whole of claim  
for specified amount of money**

**14.5** (1) This rule applies where

- (a) the only remedy which the claimant is seeking is payment of a specified sum of money (including an amount to be treated as such by virtue of rule 2.3);
- (b) the defendant admits the whole of the claim in his acknowledgment of service or in his defence; and
- (c) the defendant has not requested time to pay.

Form 7.

(2) The claimant may file a request for judgment in Form 7 for the amount claimed, interest and costs and may specify

- (a) the date by which the whole of the judgment debt is to be paid;  
or

(b) the times and rate at which it is to be paid if by instalments

(3) The Registrar shall enter judgment in accordance with the request.

- **Part 65 deals with the quantification of costs.**

#### **Admission of part of claim for money only**

**14.6** (1) This rule applies where

(a) the only remedy which the claimant is seeking is payment of money; and

(b) the defendant admits a specified sum of money, or a specified proportion of a claim for an unspecified sum of money, in his acknowledgment of service or in his defence.

- **If the defendant does not file a defence the claimant will be entitled to default judgment in accordance with rule 12.5.**

(2) The Registrar must serve a notice on the claimant requiring the claimant to file a notice stating whether

(a) the claimant accepts the amount or proportion admitted in satisfaction of the claim; or

(b) the proceedings are to continue.

(3) The claimant must

(a) file the notice; and

(b) serve a copy on the defendant,

within 14 days after the court's notice is served on the claimant.

(4) Where the claimant does not file the notice within 14 days after the service of the court's notice

- (a) the claim is stayed until the notice is filed; and
- (b) any party may apply for the stay to be lifted.

(5) Where the defendant has not requested time to pay under rule 14.8, the claimant may file a request for judgment for the amount admitted, interest and costs and may specify

- (a) the date by which the judgment debt is to be paid; or
- (b) the times and rate at which it is to be paid by instalments.

(6) The Registrar must enter judgment in accordance with the request.

(7) Where the claimant gives notice that he accepts the defendant's admission of a specified proportion of a claim for an unspecified sum of money, the court must enter judgment for that proportion of an amount to be determined by the court, and costs.

(8) Where the claimant files notice under sub-rule (2) that the claim is to continue the Registrar must fix a date, time and place for a case management conference and notify the parties.

- **Part 27 sets out the procedure relating to a case management conference.**
- **Part 65 deals with quantification of costs.**

**Admission of liability to pay the whole of a claim for an unspecified amount of money**

**14.7** (1) This rule applies where

- (a) the only remedy the claimant seeks is the payment of money;
- (b) the amount of the claim is not specified;
- (c) the defendant admits liability in his acknowledgment of service to pay the whole of the claim and does not offer to pay a specified sum of money or a specified proportion of the claim in satisfaction of the claim; and
- (d) the defendant has not requested time to pay under rule 14.8.

(2) The claimant may file a request for judgment.

(3) The Registrar must enter judgment for an amount to be determined by the court and costs.

- **Part 16 deals with how the court decides the amount of the judgment.**
- **Part 65 deals with the quantification of costs.**

**Request for time to pay**

**14.8** (1) A defendant who

- (a) makes an admission of the kind referred to in rule 14.5, 14.6 or 14.7; and
- (b) is an individual,

may make a request for time to pay.

(2) A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the rate specified in the request.

(3) The defendant's request for time to pay must be filed with his admission.

(4) The defendant's request for time to pay must be accompanied by a statement of his financial position in the appropriate practice form.

(5) The statement must be verified on oath by the defendant as being correct and may be used as evidence of the defendant's financial position at the date it was signed in any subsequent proceedings with regard to the enforcement of any judgment given upon the claimant's claim.

(6) Where the request for time to pay relates to a claim for an unspecified sum of money and the court is required to assess damages under rule 14.7(3), the court must deal with the request for time to pay when it assesses damages.

**Request for time to pay – procedure  
where time and rate agreed**

**14.9** (1) This rule applies where

- (a) the only remedy which the claimant seeks is the payment of a sum of money and costs, whether or not interest is also claimed;
- (b) the defendant
  - (i) admits the whole of that claim or a specified sum; and
  - (ii) requests time to pay or makes a proposal to pay by instalments; and
- (c) the claimant states in his request for judgment on the admission that he accepts the defendant's proposal as to the amount and time or rate of payment.



(2) Where this rule applies, judgment on the admission shall be judgment for the specified sum of money admitted, less any payments made, interest, if claimed, at the agreed time or rate and costs.

- **Part 65 deals with the quantification of costs.**

**Request for time to pay – procedure where time or rate, as the case may be, is not agreed**

**14.10** (1) This rule applies where

- (a) the only remedy which the claimant seeks is the payment of a specified sum of money and costs, whether or not together with interest;
- (b) the defendant
  - (i) admits the whole of a claim or a specified sum; and
  - (ii) requests time to pay or makes an offer to pay by instalments; and
- (c) the claimant accepts the sum admitted but does not accept the defendant's offer as to the amount, time and rate of payment.

(2) Where this rule applies, the claimant must state in his request for judgment his reasons for rejecting the defendant's proposal as to payment.

(3) The court must consider the defendant's request and the claimant's objection and enter judgment for the amount of the claim, interest (if claimed) and costs on such terms as it sees fit.

(4) The general rule is that the court should enter judgment under sub-rule (3) without a hearing.

(5) Where the court decides to deal with the matter at a hearing, it must give the parties at least 7 days notice of the hearing.

(6) The costs of any hearing shall be in the discretion of the court.

- **Part 65 deals with quantification of costs.**

### **Right of reconsideration**

**14.11** (1) Where the court has determined the time or rate of payment under rule 14.10 without a hearing, either party may apply for the decision to be reconsidered by the court at a hearing.

(2) An application for reconsideration must be made within 21 days after service of the judgment on the party who applies.

(3) At the hearing the court shall consider the matter *de novo* and may confirm the judgment or make such other order as to the time or rate of payment as it considers just.

- **Part 11 deals with interlocutory applications.**

### **Variation of order**

**14.12** (1) Either party may apply to stay, vary or rescind any order made under this Part without a hearing.

(2) Save in exceptional circumstances, the application must be made within 21 days after service of the order upon the party applying.

**Withdrawal and effect of admissions**

**14.13** (1) Any party may apply to the court for permission to withdraw an admission made in a proceeding in the court, and the court will make such order as may be just.

(2) An admission made in relation to a proceeding in the court is to be taken to have been made for the purpose of that proceeding only and in favour only of the parties concerned in it in that proceeding.

## Part 15

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### Summary Judgment

#### Contents of this Part

Scope of this Part	Rule 15.1
Grounds for summary judgment	Rule 15.2
Types of proceedings for which summary judgment is not available	Rule 15.3
Procedure	Rule 15.4
Evidence for purposes of a summary judgment hearing	Rule 15.5
Powers of the court on an application for summary judgment	Rule 15.6

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#### Scope of this Part

**15.1** This Part sets out a procedure by which the court may decide a claim or a particular issue in a claim without a trial.

#### Grounds for summary judgment

**15.2** The court may give summary judgment against a party on the whole of a claim or on a particular issue if

- (a) it considers that
  - (i) the claimant has no real prospect of succeeding on the claim or issue; or
  - (ii) the defendant has no real prospect of successfully defending the claim or issue; and

- (b) there is no other reason why the case or issue should be disposed of at a trial.
- **Rule 26.3 gives the court power to strike out the whole or part of a statement of case if it discloses no reasonable ground for bringing or defending the claim.**

**Types of proceedings for which summary judgment is not available**

**15.3** The court may give summary judgment in any type of proceeding except

- (a) a proceeding for redress under the *Constitution*;
- (b) a proceeding for
  - (i) false imprisonment;
  - (ii) malicious prosecution; or
  - (iii) defamation;
- (c) a claim against the Crown;
- (d) an admiralty proceeding *in rem*; and
- (e) a probate proceeding.

## **Procedure**

**15.4** (1) Notice of an application for summary judgment identifying the issues to be raised must be served not less than 14 days before the date fixed for hearing the application.

(2) The court may exercise its powers without such notice at any case management conference, provided it is satisfied that each party has had a full opportunity to present any relevant evidence and argument.

- **Part 11 contains general rules about interlocutory applications.**

## **Evidence for the purpose of a summary judgment hearing**

**15.5** (1) The applicant must

- (a) file evidence on affidavit in support of his application; and
- (b) serve copies on the party against whom summary judgment is sought not less than 14 days before the date fixed for the hearing of the application.

(2) If the respondent wishes to rely on evidence he must at least 7 days before the summary judgment hearing

- (a) file the evidence on affidavit; and
- (b) serve copies on the applicant and any other party.

## **Powers of the court on an application for summary judgment**

**15.6** (1) The court may give summary judgment on any issue of fact or law whether or not such judgment will bring the proceedings to an end.

(2) Where the proceedings are not brought to an end, the court must also treat the hearing as a case management conference.

## Part 16

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### Assessment of Damages

#### Contents of this Part

Scope of this Part	Rule 16.1
Assessment of damages after default judgment	Rule 16.2
Assessment of damages after admission of liability on claim for an unspecified sum of money	Rule 16.3
Assessment of damages after a direction for a trial of issue of quantum	Rule 16.4

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#### Scope of this Part

**16.1** This Part deals with the procedure relating to a hearing to decide the amount of any damages under a judgment for damages to be assessed.

#### Assessment of damages after default judgment

**16.2** (1) On applying for a default judgment to be entered in a case falling within rule 12.10(1)(b), the claimant must state in writing

- (a) whether he is presently in a position to prove the amount of the damages and, if so, his estimate of the time required to deal with the assessment; or
- (b) if he is not yet in a position to prove the amount of the damages, when he will be in a position to do so.

(2) Unless the claimant states that he is not presently in a position to prove the amount of the damages, the Registrar must fix a date

- (a) for the hearing of the assessment of damages;
- (b) by which standard disclosure and inspection must take place; and
- (c) by which statements must be filed and exchanged, and

give the claimant at least 14 days notice of the date, time and place fixed for the hearing.

(3) Where the claimant states that he is not presently in a position to prove the amount of the damages, the Registrar must fix and notify to the claimant a date

- (a) on which a listing questionnaire will be sent to the claimant; and
- (b) by which the listing questionnaire must be filed.

- **Rules 27.9 and 27.10 deal with the fixing of a date for trial.**

**Assessment of damages after an admission of liability on a claim for an unspecified sum of money**

**16.3** (1) This rule applies where the defendant has admitted liability for an unspecified sum of money or for a specified proportion of such a sum.

(2) On applying for judgment to be entered for damages to be assessed on an admission under Part 14, the claimant must state in writing

- (a) whether he is presently in a position to prove the amount of the damages and, if so his estimate of the time required to deal with the assessment; or



(b) if he is not yet in a position to prove the amount of the damages, when he will be in a position to do so.

(3) Unless the claimant states that he is not presently in a position to prove the amount of the damages, the Registrar must fix a date for the assessment of damages and give the parties at least 14 days notice of the date, time and place fixed for the hearing.

(4) Where the claimant states that he is not presently in a position to prove the amount of the damages, the Registrar must fix and notify to the parties

(a) a date on which a listing questionnaire will be sent to the parties; and

(b) in the discretion of the Registrar or Master, a date for a case management conference.

• **Rules 27.9 and 27.10 deal with the fixing of a date for trial.**

(5) The defendant is entitled to cross-examine any witness called on behalf of the claimant and make submissions to the court but is not entitled to call any evidence unless he has filed a defence setting out the facts the defendant seeks to prove.

(6) The court must also deal with any request under Part 14 for time to pay.

#### **Assessment of damages after a direction for a trial of issue of quantum**

**16.4** (1) This rule applies where the court gives a direction as to the trial of an issue of quantum.

(2) The direction may be given at

(a) a case management conference pursuant to Parts 25, 26 and 27;

- (b) the hearing of an application for summary judgment; or
- (c) the trial of the application or of an issue, including the issue of liability.

(3) On giving a direction under sub-rule (2), the court must exercise the powers of a case management conference and in particular may give directions about

- (a) disclosure under Part 28;
- (b) service of affidavits or witness statements under Part 29; and
- (c) service of expert reports under Part 32.

(4) The court must also fix

- (a) a date on which the Registrar is to send a listing questionnaire to the parties; and
- (b) a period within which the assessment of damages is to commence.

- **Rules 27.9 and 27.10 deal with fixing of a date for trial.**

## Part 17

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### Interim Remedies

#### Contents of this Part

Orders for interim remedies	Rule 17.1
Time when an order for interim remedy may be made	Rule 17.2
How to apply for an interim remedy	Rule 17.3
Interim injunctions and similar orders	Rule 17.4
Interim payments – general procedure	Rule 17.5
Interim payments – conditions to be satisfied and matters to be taken into account	Rule 17.6
Powers of court where it has made an order for interim payment	Rule 17.7
Power of Court to order early trial, etc.	Rule 17.8
Restriction on disclosure of interim payment	Rule 17.9

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#### Orders for interim remedies

- 17.1** (1) The court may grant interim remedies including
- (a) an interim injunction;
  - (b) an order for the
    - (i) detention, custody or preservation of relevant property;
    - (ii) inspection of relevant property;
    - (iii) taking of a sample of relevant property;
    - (iv) carrying out of an experiment on, upon or with relevant property;

- (v) sale of relevant property, including land, which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
  - (vi) payment of income from a relevant property until a claim is decided;
- (c) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under paragraph (b);
- (d) an order to deliver up goods;
- (e) an order, referred to as a "freezing order" or as an injunction in the nature of a "Mareva injunction",
- (i) restraining a party from removing from the jurisdiction assets located there; or
  - (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;
- (f) an order, referred to as a "search order", requiring a party to admit another party to premises for the purpose of locating and preserving evidence etc.;
- (g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order or search order;
- (h) an order, referred to as an "order for interim payment", under rule 17.5 for payment by a defendant on account of any damages, debt or other sum which the court may find the defendant liable to pay;
- (i) an order for interim costs;

- (j) an order for a specified fund to be paid into court or otherwise secured where there is a dispute over a party's right to the fund;
- (k) an order permitting a party seeking to recover personal property to pay a sum of money into court pending the outcome of the proceedings and directing that, if he does so, the property shall be given up to him;
- (l) an order directing a party to prepare and file accounts in relation to the dispute.

(2) In paragraphs (b) and (g) of sub-rule (1), "relevant property" means property which is the subject of a claim or as to which any question may arise on a claim.

(3) The fact that a particular type of interim remedy is not listed in sub-rule (1) does not affect any power that the court may have to grant that remedy.

(4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

- See also any practice directions re: applications for interim orders.

**Time when an order for interim remedy may be made**

**17.2** (1) An order for an interim remedy may be made at any time, including

- (a) before a claim has been made; and
- (b) after judgment has been given.

- (2) However
  - (a) sub-rule (1) is subject to any rule which provides otherwise; and
  - (b) the court may grant an interim remedy before a claim has been made only if
    - (i) the matter is urgent; or
    - (ii) it is otherwise necessary to do so in the interests of justice; and
  - (c) unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before filing an acknowledgment of service under Part 9.

(3) Where the court grants an interim remedy before a claim has commenced, it must require an undertaking to issue and serve a claim form by a specified date.

### **How to apply for an interim remedy**

**17.3** (1) The court may grant an interim remedy on an application made without notice where it appears to the court that there is good reason for not giving notice.

(2) An application for an interim remedy must be supported by evidence on affidavit, except that in a case of extreme urgency where the interests of justice so demand, an application may be presented on the basis of representations made to the court personally, by telephone, or by some other means accompanied by an undertaking to file and serve an affidavit embodying them by a date being the earliest date reasonably practicable.

(3) Where the applicant makes an application without giving notice, the evidence in support of the application must indicate the reason or reasons why notice was not given.

(4) The application is otherwise to be made in accordance with the general rules about applications contained in Part 11.

### **Interim Injunctions and similar orders**

**17.4** (1) This rule deals with applications for

- (a) an interim injunction under rule 17.1(1)(a);
- (b) an order for the detention, custody or preservation of relevant property under rule 17.1(1)(b)(i);
- (c) an order authorising a person to enter any land or building for the purpose of carrying out an order under rule 17.1(1)(c);
- (d) a freezing order under rule 17.1(1)(e); and
- (e) a search order under rule 17.1(1)(f).

(2) Unless the court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting, continuance or extension of the order.

(3) An application for an interim order under this rule may in the first instance, be made on 3 days notice to the respondent.

(4) The court may grant an interim order under this rule on an application made without notice if it is satisfied that

- (a) in a case of urgency no notice is reasonably possible; or
- (b) that to give notice may defeat the purpose of the application.

- (5) On granting an order under sub-rule (4) the court must
- (a) fix a date for further consideration of the application; and
  - (b) fix a date, which may be later than the date under paragraph (a), on which the injunction will terminate unless a further order is made on the further consideration of the application.
- (6) When an order is made under sub-rule (4), the applicant must serve the respondent personally with
- (a) the application for an interim order;
  - (b) the evidence on affidavit in support of the application;
  - (c) any interim order made without notice; and
  - (d) notice of the date and time on which the court will further consider the application.
- (7) An application to extend an interim order under this rule must be made on notice to the respondent unless the court otherwise orders.

### **Interim payments – general procedure**

**17.5** (1) The claimant may not apply for an order for an interim payment before the end of the period for entering an acknowledgment of service applicable to the defendant against whom the application is made.

- **Rule 9.3 sets out the period for entering an acknowledgment of service.**

(2) The claimant may make more than one application for an order for an interim payment even though an earlier application has been refused.



- (3) Notice of an application for an order must be
  - (a) served at least 14 days before the hearing of the application; and
  - (b) supported by evidence on affidavit.
- (4) The affidavit must
  - (a) state the claimant's assessment of the amount of damages or other monetary judgment that is likely to be awarded;
  - (b) set out the grounds of the application;
  - (c) annex or exhibit any documentary evidence relied on by the claimant in support of the application; and
  - (d) where the claim is made under any relevant enactment in respect of injury resulting in death, contain full particulars of the
    - (i) nature of the claim in respect of which the damages are sought to be recovered; and
    - (ii) person or persons for whom and on whose behalf the claim is brought.
- (5) Where the respondent to an application for an interim payment wishes to rely on evidence or the claimant wishes to rely on evidence in reply, that party must
  - (a) file the evidence on affidavit; and
  - (b) serve copies on every other party to the application,at least 7 days before the hearing of the application.

(6) This rule does not require written evidence

(a) to be filed if it has already been filed; or

(b) to be served on a party on whom it has already been served.

(7) The court may order an interim payment to be made in one sum or by instalments.

**Interim payments – conditions to be satisfied  
and matters to be taken into account**

**17.6** (1) The court may make an order for an interim payment only if

(a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;

(b) the claimant has obtained an order for an account to be taken as between himself and the defendant and judgment for any amount certified due on taking the account;

(c) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money, including costs, to be assessed;

(d) except where sub-rule (3) applies, it is satisfied that if the claim went to trial, the claimant would obtain judgment against the defendant from whom he is seeking an order for interim payment for a substantial amount of money or for costs; or

(e) the following conditions are satisfied

- (i) the claimant is seeking an order for possession of land, whether or not any other order is also being sought; and
- (ii) the court is satisfied that, if the case went to trial, the defendant would be held liable, even if the claim for possession should fail, to pay the claimant a sum of money for rent or for the defendant's use and occupation of the land while the claim for possession was pending.

(2) In addition, in a claim for personal injuries, the court may make an order for the interim payment of damages only if the defendant is

- (a) insured in respect of the claim;
- (b) a public authority; or
- (c) a person whose means and resources are such as to enable that person to make the interim payment.

(3) In a claim for damages for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if

- (a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants, even if the court has not yet determined which of them is liable; and
- (b) sub-rule (2) is satisfied in relation to each defendant.

(4) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

- (5) The court must take into account
  - (a) contributory negligence, where applicable; and
  - (b) any relevant set-off or counterclaim.

**Powers of court where it has made order for interim payment**

**17.7** (1) Where a defendant has been ordered to make an interim payment, or has in fact voluntarily made an interim payment, the court may make an order to adjust the interim payment.

- (2) The court may in particular
  - (a) order all or part of the interim payment to be repaid;
  - (b) vary or discharge the order for interim payment; or
  - (c) order a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment.
- (3) The court may make an order under this rule
  - (a) without an application by a party, if it makes the order when it disposes of the application or any part of it; or
  - (b) on an application by a party made at any time.

**Power of Court to order early trial, etc**

**17.8** On hearing any application under this Part, the court may exercise any of its case management powers under Parts 26 and 27 and may in particular give directions for an early trial of the claim or any part of the claim.

**Restriction on disclosure of interim payment**

**17.9** The fact that an order has been made for interim payment must not be disclosed to the Court until after all questions of liability and damages have been decided.

## Part 18

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### Ancillary Claims – Counterclaims, Third Party and other Similar Claims

#### Contents of this Part

Meaning of "Ancillary Claim"	Rule 18.1
Ancillary claim to be treated as claim for purposes of these Rules	Rule 18.2
Defendant's claim for contribution or indemnity from co-defendant	Rule 18.3
Procedure for making other ancillary claims	Rule 18.4
Service of ancillary claim	Rule 18.5
Counterclaim may survive application	Rule 18.6
Restrictions on right to make counterclaim or plead set-off in proceedings by or against the Crown	Rule 18.7
Adding other defendants to counterclaim	Rule 18.8
Defence to ancillary claim	Rule 18.9
Matters relevant to whether ancillary claim should be dealt with separately from main claim	Rule 18.10
Effect of service of ancillary claim	Rule 18.11
Special provisions relating to judgment on failure to file defence to ancillary claim	Rule 18.12
Procedural steps on service of ancillary claim on a non-party	Rule 18.13
Case management where there is a defence to ancillary claim	Rule 18.14

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### **Meaning of "Ancillary Claim"**

**18.1** (1) An "ancillary claim" is any claim other than a claim made by a claimant against a defendant or a claim by a defendant to be entitled to a set-off and includes

- (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
- (b) a claim by the defendant against any person, whether or not already a party, for contribution or indemnity or some other remedy; and
- (c) where an ancillary claim has been made against a person, any claim made by that person against any other person, whether or not already a party.

(2) In this Part,

"ancillary claimant" means a person who makes an ancillary claim and "ancillary defendant" means the defendant to that claim.

(3) Where an ancillary defendant makes an ancillary claim against a further person, that person is to be called the "second or as the case may be, ancillary defendant".

### **Ancillary claim to be treated as claim for the purposes of these Rules**

**18.2** (1) An ancillary claim is to be treated as if it were a claim for the purposes of these Rules except as provided by this rule.

(2) Particulars of an ancillary claim must be contained in or served with the ancillary claim, which is to be made in accordance with Form 11.

- (3) An ancillary claim must include
  - (a) the ancillary claimant's address for service in accordance with rule 3.11; and
  - (b) a certificate of truth in accordance with rule 3.12.
- (4) The following rules do not apply to ancillary claims:
  - (a) rules 8.10 (time within which a claim form may be served) and 8.11 (extension of time for serving a claim form);
  - (b) those provisions in Part 12 which enable a claimant to enter default judgment; and
  - (c) Part 14 (Judgment on admissions) other than rule 14.1(1) and (2) and rules 14.2 and 14.3.
- (5) Where the ancillary claim is a counterclaim by the defendant against a claimant, with or without any other person the claimant is not required to file an acknowledgment of service and therefore Part 9 (acknowledgment of service) does not apply to the claimant.

**Defendant's claim for contribution  
or indemnity from co-defendant**

**18.3** (1) A defendant who has filed an acknowledgment of service or a defence may make an ancillary claim for contribution or indemnity against another defendant by

- (a) filing within 28 days after the first directions hearing a notice containing a statement of the nature and grounds of his claim; and
- (b) serving that notice on all other defendants and the claimant.



(2) Rule 18.4 does not apply to an ancillary claim made under this rule.

- **Part 9 deals with filing an acknowledgment of service and Part 10 deals with filing a defence.**

### **Procedure for making other ancillary claims**

**18.4** (1) A defendant may make an ancillary claim other than one made under rule 18.3 without the court's permission, where

- (a) in the case of a counterclaim it is filed with the defence; or
- (b) in any other case, the ancillary claim is filed before the first case management conference.

(2) Where sub-rule (1) does not apply, an ancillary claim may be made only if the court gives permission.

(3) Unless the court directs otherwise, an application for permission to make an ancillary claim is to be made as soon as reasonably practicable at a case management conference.

(4) An applicant for permission must attach to his application a draft of the proposed ancillary claim and ancillary statement of claim.

(5) The ancillary claim is made

- (a) in the case of a counterclaim, when it is filed; and
- (b) in any other case when the court issues the ancillary claim.

### **Service of ancillary claim**

**18.5** (1) An ancillary claim which may be made without the court's permission must, if practicable be served on the person against whom it is made within 14 days after the date on which the defendant files his defence.

(2) Where the court gives permission to make an ancillary claim, it must at the same time give directions as to the service of the ancillary claim.

(3) A copy of the ancillary claim and ancillary statement of claim must be served on all other parties.

### **Counterclaim may survive application**

**18.6** The defendant may continue a counterclaim even where

- (a) the court gives judgment on the claim for the claimant and does not dismiss the counterclaim; or
- (b) the claim is stayed, discontinued or dismissed.

### **Restrictions on right to make counterclaim or plead set-off in proceedings by or against the Crown**

**18.7** (1) No counterclaim may be made or set-off pleaded in proceedings by the Crown where

- (a) the proceedings are for the recovery of; or
- (b) the counterclaim or set-off arises out of

a right or claim to repayment in respect of any taxes, duties or penalties.

(2) No counterclaim may be made or set-off pleaded in any other proceedings by or against the Crown without the consent of the Attorney-General, or the permission of the court.

### **Adding other defendants to counterclaim**

**18.8** (1) Where the defendant to the claim alleges that another person as well as the claimant is liable on the counterclaim, the defendant may add that other person as a defendant to the counterclaim.

(2) Where a person so added is not already a party, the defendant must add the person's name to the title of the proceeding as "defendant to the counterclaim".

- **Rule 18.13 deals with the documents to be served on a defendant who is not already a party.**

### **Defence to ancillary claim**

**18.9** (1) A person against whom an ancillary claim is made may file a defence.

(2) The period for filing a defence is the period of 28 days after the date of service of the ancillary claim.

(3) Subject to Rule 18.2(4)(b), the rules relating to a defence to a claim apply to a defence to an ancillary claim.

(4) An ancillary defence must include

(a) the ancillary defendant's address for service under rule 3.11;  
and

(b) a certificate of truth under rule 3.12.

### **Matters relevant to the question whether an ancillary claim should be dealt with separately from the application and other ancillary claims**

**18.10** (1) This rule applies when the court is considering whether to

(a) permit an ancillary claim to be made;

(b) strike out or dismiss an ancillary claim; or

- (c) require the ancillary claim to be dealt with separately from the claim and other ancillary claims.
- **Rules 26.1(2)(g) and (h) deal with the court's power to decide the order in which issues are to be tried or to order that part of the proceedings be dealt with separately.**
- (2) The court must have regard to all the circumstances of the case including
  - (a) the connection between the ancillary claim and the claim and any other ancillary claim;
  - (b) whether the ancillary claimant is seeking substantially the same remedy which some other party is claiming from him;
  - (c) whether the facts in the ancillary claim are substantially the same, or closely connected with, the facts in the claim; and
  - (d) whether the ancillary claimant wants the court to decide any question connected with the subject matter of the proceedings
    - (i) not only between the existing parties but also between existing parties and the proposed ancillary claim defendant; or
    - (ii) not only between existing parties including the proposed ancillary claim defendant in the capacities in which they are parties, but also between the proposed ancillary claim defendant in some further capacity and other existing parties.

#### **Effect of service of ancillary claim**

**18.11** (1) A person on whom an ancillary claim, other than a counterclaim is served becomes a party to the proceedings if he is not already a party.

(2) When an ancillary claim is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the ancillary claim.

**Special provisions relating to judgment  
on failure to file defence to ancillary claim**

**18.12** (1) This rule applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within the permitted time.

- **Rule 18.9(2) deals with the time for filing a defence to an ancillary claim.**

(2) The party against whom the ancillary claim is made

(a) is deemed to admit the ancillary claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim; and

(b) subject to sub-rule (5), if judgment under Part 12 is given against the ancillary claimant, he may apply to enter judgment in respect of the ancillary claim.

(3) Sub-rule (2) does not apply in ancillary proceedings against the Crown unless the court gives permission.

(4) An application for the court's permission under sub-rule (3) must be made on notice unless the court directs otherwise.

(5) An ancillary claimant may not enter judgment under sub-rule (2)(b) if he wishes to obtain judgment for any remedy other than a contribution or indemnity for a sum not exceeding that for which judgment has been entered against him.

- (6) The court may at any time set aside or vary a judgment entered under sub-rule (2) if it is satisfied that the ancillary defendant
- (a) applied to set aside or vary the judgment as soon as reasonably practicable after finding out that judgment had been entered;
  - (b) gives a good explanation for the failure to file a defence; and
  - (c) has a real prospect of successfully defending the ancillary claim.

**Procedural steps on service  
of ancillary claim on non-party**

**18.13** Where an ancillary claim is served on a person who is not already a party,

- (a) a copy of the following must also be served on that person:
  - (i) the application and every statement of case and other pleading which has already been served in the proceedings;
  - (ii) all affidavits or statements filed and served in the proceedings for the purposes of the final hearing; and
  - (iii) such other documents as the court directs; and
- (b) a copy of the ancillary claim must be served by the ancillary claimant on every existing party.

**Case management where there  
is defence to ancillary claim**

**18.14** (1) Where a defence is filed to an ancillary claim, the court must consider the future conduct of the proceedings and give appropriate directions.

(2) The court must fix a case management conference for all parties unless it is satisfied that such further directions as are required can be given in written form.

(3) In giving directions under this rule the court must ensure that, so far as is practicable, the ancillary claim and the main proceedings are managed together.

## Part 19

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### Addition and Substitution of Parties

#### Contents of this Part

Scope of this Part	Rule 19.1
Change of parties – general	Rule 19.2
Procedure for adding and substituting parties	Rule 19.3
Special provisions about adding and substituting parties after the end of a relevant limitation period	Rule 19.4

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#### Scope of this Part

**19.1** This Part deals with the addition and substitution of parties after proceeding have been commenced.

#### Change of parties – general

**19.2** (1) A claimant may add a new defendant to proceedings without permission at any time before the first case management conference.

(2) Subject to rule 19.3 (6), the claimant may do so by filing at the Registry an amended claim form and statement of claim and Parts 5 (service of claim form within jurisdiction) and 7 (service of court process out of the jurisdiction), 9 (acknowledgment of service and notice of intention to defend), 10 (defence) and 12 (default judgments) shall apply to the amended claim form as they do to a claim form.

(3) The court may add a new party to proceedings without an application having been made to do so, where

- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or



(b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

(4) The court may order that any person shall cease to be a party where the court considers that the inclusion of that person is not conducive to the resolution of the issues in the proceedings.

(5) The court may order a new party to be substituted for an existing one where

(a) the existing party's interest or liability has passed to the new party; or

(b) the court can resolve the matters in dispute more effectively by substituting the new party for the existing party.

(6) An application to add or substitute a party is to be made as soon as practicable at a case management conference unless the court directs otherwise.

### **Procedure for adding and substituting parties**

**19.3** (1) The court may add, substitute or remove a party on or without an application.

(2) An application for permission to add, substitute or remove a party may be made by

(a) an existing party; or

(b) a person who wishes to become a party.

(3) An application for an order under rule 19.2(5) must be made with notice and must be supported by evidence on affidavit.

- (4) No party may be added or substituted as a claimant unless
  - (a) the party has given his consent in writing; and
  - (b) that consent has been filed in the Registry.
- (5) An order for the addition, substitution or removal of a party must be served on
  - (a) all parties to the proceedings;
  - (b) any party added or substituted; and
  - (c) any other person affected by the order.
- (6) Where the court makes an order for the removal, addition or substitution of a party, the court may give consequential directions on
  - (a) filing and serving an amended claim form and statement of case on any new defendant;
  - (b) serving all pleadings and other relevant documents on the new party; and
  - (c) the management of the proceedings.
- (7) Where
  - (a) the court makes an order for the addition or substitution of a new defendant; and
  - (b) the claim form is served on the new defendant,

these Rules apply to the new defendant as they apply to any other defendant.

**Special provisions about adding and substituting parties after the end of a relevant limitation period**

**19.4** (1) This rule applies to a change of parties after the end of a relevant limitation period.

(2) The court may add or substitute a party only if the

(a) relevant limitation period was current when the proceedings were started; and

(b) addition or substitution is necessary.

(3) The addition or substitution of a party is necessary only if the court is satisfied that

(a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;

(b) the interest or liability of the former party has passed to the new party; or

(c) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant.

## Part 20

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### Changes to Statement of Case

#### Contents of this Part

Changes to statement of case	Rule 20.1
Changes to statement of case after the end of a relevant limitation period	Rule 20.2

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#### Changes to statement of case

**20.1** (1) A statement of case may be amended at any time prior to a case management conference and the filing of a defence without the court's permission.

(2) The court may give permission to amend a statement of case at a case management conference or, at any time after a case management conference, upon an application being made to the court.

(3) A statement of case may not be amended without permission under this rule if the amendment involves a change of parties which could not be made without permission under Part 19 or if rule 20.2 applies.

(4) Any amended statement of case must be filed promptly at the Registry and a sealed copy must be served on all other parties within 7 days.

(5) An amended statement of case must include a certificate of truth under rule 3.12.

**Changes to statement of case after  
the end of a relevant limitation period**

**20.2** (1) This rule applies to a change in a statement of case after the end of a relevant period of limitation.

(2) The court may allow an amendment, the effect of which will be to add or substitute a new claim, if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.

(3) The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was

(a) genuine; and

(b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.

(4) The court may allow an amendment to alter the capacity in which a party claims.

## Part 21

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### Representative Parties

#### Contents of this Part

Representative claimants and defendants – general	Rule 21.1
Appointment of representative claimant or defendant - procedure	Rule 21.2
Consequence of order appointing representative party	Rule 21.3
Representation of persons who cannot be ascertained in proceedings about estates, trusts and construction of written instruments	Rule 21.4
Compromise in proceedings to which rule 21.4 applies	Rule 21.5
Representation of beneficiaries by trustees	Rule 21.6
Proceedings against the estate of deceased person	Rule 21.7
Power of court to give directions to enable proceedings to be carried on after a party's death	Rule 21.8
Power of court to strike out action after death of claimant	Rule 21.9

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#### Representative claimants and defendants – general

**21.1** (1) This rule applies to any proceedings, other than proceedings falling within rule 21.4, where five or more persons have the same or a similar interest in the proceedings.

(2) The court may appoint

(a) one or more of those persons; or

(b) a body having a sufficient interest in the proceedings,

to represent all or some of the persons with the same or similar interest.

(3) A representative under this rule may be either a claimant or a defendant and may be appointed subject to such conditions as the court deems appropriate.

**Appointment of representative  
claimant or defendant – procedure**

**21.2** (1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.

(2) An application for such an order may be made by

(a) any party;

(b) any person or body who wishes to be appointed as a representative party; or

(c) any person or body who is likely to be a party to the proceedings.

(3) An application for such an order

(a) must be supported by affidavit evidence; and

(b) must identify every person to be represented, either

(i) individually; or

(ii) by description, if it is not practicable to identify a person individually.

(4) An application to appoint a representative defendant must be made on notice to the claimant and all defendants.

(5) An application to appoint a representative claimant must be made on notice to all defendants and proposed defendants.

(6) The court may direct that notice of an application be given to such other persons as it thinks fit.

(7) The court may order a person not already a party to be a representative defendant.

(8) A representative order may be rescinded at any time if the court considers that the order is not serving the interests of justice, and thereafter the proceedings shall continue as ordinary proceedings between the parties to it.

**Consequence of order  
appointing representative party**

**21.3** (1) Subject to sub-rule 21.4(6), where there is a representative claimant or defendant, an order of the court binds everyone whom he represents.

(2) The order may not be enforced against a person who is not a party to the proceedings unless the person wishing to enforce the order obtains permission from the court.

(3) An application for permission must be supported by evidence on affidavit and must be served on the person against whom it is desired to enforce the judgment.

**Representation of persons who cannot be  
ascertained in proceedings about estates,  
trusts and construction of written instruments**

**21.4** (1) This rule applies only to proceedings about

- (a) the administration of a deceased person's estate;
- (b) property subject to a trust; or
- (c) the construction of a written instrument, including a statute.



(2) The court may appoint one or more persons to represent any person or class of persons, including an unborn person or class of persons who is or may be interested in or affected by the proceedings, whether presently or for any future, contingent or unascertained interest, where

- (a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;
- (b) the person, or the class or some member of it, though ascertained cannot be found; or
- (c) it is expedient to do so for any other purpose.

(3) An application for an order to appoint a representative party under this rule may be made by

- (a) any party; or
- (b) any person who wishes to be appointed as a representative party.

(4) A representative appointed under this rule may be either a claimant or a defendant.

(5) A decision of the court binds everyone whom a representative claimant or representative defendant represents.

(6) A represented person may dispute liability to have the order enforced against him on the ground that by reason of facts and matters particular to his case, he is entitled to be exempted from such liability.

### **Compromise of proceedings to which rule 21.4 applies**

**21.5** (1) Where

- (a) a compromise is proposed in proceedings to which rule 21.4 applies;

- (b) some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings;
- (c) those persons are represented by a representative appointed under rule 21.4 when the court considers the proposed compromise; and
- (d) the court is satisfied that the compromise will be for the benefit of the absent persons,

the court may approve the compromise and order that it shall be binding on the absent persons.

(2) The persons for whose benefit the court may approve a compromise may be unborn or unascertained.

(3) The court's order approving the compromise binds the absent persons unless it has been obtained by fraud or non-disclosure of material facts.

### **Representation of beneficiaries by trustees**

**21.6** (1) A claim may be made by or against a person in his capacity as a trustee, executor or administrator.

(2) If a claim is so made, there is no need for a beneficiary also to be a party unless the court directs otherwise.

(3) The court may direct that notice of the proceedings be given to any beneficiary.

(4) A decision of the court in such proceedings is binding on a beneficiary unless the court otherwise orders.

(5) The grounds for an order that a decision is not binding on a beneficiary are that the trustee, executor or administrator

(a) could not; or

(b) did not in fact, represent the interest of the beneficiary; or

(c) has acted fraudulently.

### **Proceedings against the estate of a deceased person**

**21.7** (1) Where in any proceedings it appears that a deceased person was interested in the proceedings then, if the deceased person has no personal representative, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings.

(2) A person may be appointed as a representative if that person

(a) can fairly and competently conduct the proceedings on behalf of the estate of the deceased person; and

(b) has no interest adverse to that of the estate of the deceased person.

(3) The court may make such an order on or without an application.

(4) The claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule until the court has appointed someone to represent the deceased person's estate.

(5) A decision in proceedings where the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.

**Power of court to give directions to enable proceedings to be carried on after a party's death**

**21.8** (1) If a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.

(2) An order under this rule may be made on or without an application.

**Power of court to strike out action after death of claimant**

**21.9** (1) Where a claimant dies and his personal representative does not apply for an order under Part 19 to be substituted as claimant, the defendant may apply for the claim to be struck out.

(2) Notice of the defendant's application must be given to the personal representative of the claimant, if any, and such other persons as the court may direct.

(3) The general rule is that if the court makes an order on an application under this rule, it shall be that unless the personal representative or some other person on behalf of the estate applies to be substituted under rule 19.3 or for directions under rule 21.8 by a specified date, the claim shall be struck out.

(4) The court may give directions under rule 21.8 at the hearing of an application under this rule.

## Part 22

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### Miscellaneous Rules about Parties

#### Contents of this Part

Partners	Rule 22.1
Person carrying on business in another name	Rule 22.2
Bodies corporate	Rule 22.3

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#### Partners

**22.1** (1) Persons claiming to be entitled, or alleged to be liable, as partners may sue or be sued in the name of the firm where

- (a) the name of the firm is the name of the firm in which they were partners; and
- (b) when the cause of action accrued, they carried on business in that name within the jurisdiction.

(2) Where partners sue or are sued in the name of the firm, they must, if any other party so demands in writing, immediately

- (a) deliver to that party; and
- (b) file,

a statement of the names and residential addresses of all the persons who were partners in the firm when the cause of action accrued.

(3) Where the parties do not comply with a demand made under sub-rule (2), the court, on application by any other party may order them to provide the statement and to certify it to the court.

- (4) An application under sub-rule (3) may be made without notice.
- (5) The party making the application under sub-rule (3) must
  - (a) certify that he has made a demand in writing;
  - (b) state the date of the demand; and
  - (c) certify that the other party has not complied.
- (6) Where the partners do not comply within 21 days after service of the order any claim or defence brought by them shall be struck out.
- **Rules 26.3 deals with the procedure for striking out a statement of case.**
  - (7) A duly authorised employee of a partnership or firm may
    - (a) conduct proceedings on behalf of the partnership; or
    - (b) represent the partnership or firm in court with the court's permission.
  - (8) Permission under sub-rule 7(b) is to be given or refused at a case management conference.
- **Rule 43.9 deals with enforcement of a judgment against a partnership or by a firm against one of its members.**

### **Person carrying on business in another name**

**22.2** (1) A claim may be made by or against a person carrying on business within the jurisdiction in a name, whether or not it is that person's name, or who was carrying on business within the jurisdiction in such a name when the cause of action accrued

- (a) in his own name;

- (b) in his own name, followed by the words "trading as X.Y.";
- (c) as "X.Y." followed by the words "(a trading name)"; or
- (d) as "X.Y." followed by the words "a firm".

(2) Where a claim is made by or against a person in that person's business name, the rules about applications by or against partners apply as if that person had been a partner in a firm when the right to claim arose and his business name were the firm's name.

### **Bodies corporate**

**22.3** (1) Subject to any statute to the contrary, a duly authorised director, other officer or employee of a body corporate may

- (a) conduct proceedings on behalf of the body corporate; or
- (b) represent the body corporate in court with the permission of the court.

(2) A body corporate must be represented by an attorney-at-law at any hearing in open court unless the court permits it to be represented by a duly authorised director, other officer or employee.

(3) Permission to represent the body corporate at the trial is to be given or refused, wherever practicable, at a case management conference.

(4) In considering whether to give permission the court will take into account all the circumstances including the complexity of the case.

(5) In sub-rules (1) and (2), "duly authorised" means authorised by the body corporate to conduct the proceedings on behalf of the body corporate.

## Part 23

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### Minors and Patients

#### Contents of this Part

Scope of this Part	Rule 23.1
Requirement of next friend in proceedings by or against minors or patients	Rule 23.2
Stage of proceedings at which next friend becomes necessary	Rule 23.3
Who may be minor's next friend	Rule 23.4
Who may be patient's next friend	Rule 23.5
Conditions for being next friend	Rule 23.6
How person becomes next friend without court order	Rule 23.7
How person becomes next friend by court order	Rule 23.8
Court's power to terminate appointment of and substitute next friend	Rule 23.9
Appointment of next friend by court order – supplementary	Rule 23.10
Procedure where appointment of next friend ceases	Rule 23.11
Compromise etc., on behalf of minor or patient	Rule 23.12
Control of money recovered by or on behalf of minor or patient	Rule 23.13

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#### Scope of this Part

##### 23.1 (1) This Part

- (a) contains special provisions which apply in proceedings involving minors and patients; and
- (b) sets out how a person becomes the next friend of a minor or patient.

- **Rule 5.10 contains provisions about the service of documents on minors and patients.**



- **Rule 14.2 contains restrictions on entering judgment on an admission where a party is a minor or patient.**

(2) In this Part, "the Act" means any relevant enactment relating to mental health.

"patient" has the meaning assigned to it under section 2 of the *Mental Health Act*.

Cap. 45.

### **Requirement of next friend in proceedings by or against minors or patients**

**23.2** (1) Subject to sub-rule (2), a minor or patient must have a next friend to conduct proceedings on behalf of the minor or patient.

(2) The court may make an order permitting a minor to conduct proceedings without a next friend.

(3) An application for an order under sub-rule (2)

(a) may be made by the minor;

(b) where the minor has a next friend, notice of the application must be given to the next friend; and

(c) where there is no next friend, may be made without notice

unless the court considers otherwise.

(4) Where

(a) the court has made an order under sub-rule (2); and

(b) it subsequently appears to the court that it is desirable for a next friend to conduct the proceedings on behalf of the minor, the court may appoint a person to be the minor's next friend.

(5) A next friend must act by an attorney-at-law unless the court otherwise orders.

(6) The next friend must sign any certificate of truth under rule 3.12 on behalf of the minor or patient.

**Stage of proceedings at which next friend becomes necessary**

**23.3** (1) A minor or patient must have a next friend in order to file an application or otherwise commence proceedings except where the court has made an order under rule 23.2(2).

(2) A person may not

(a) seek any relief against a minor or patient before filing an application or otherwise commencing proceedings; or

(b) take any step in proceedings against a minor or patient except that of

(i) issuing and serving an application against him; or

(ii) applying for the appointment of a next friend under rule 23.8,

until the minor or patient has a next friend.

(3) Where a person other than a minor becomes a patient during proceedings, no party may take any step in the proceedings apart from applying to the court for the appointment of a next friend, until the patient has a next friend.

- (4) Any step other than
  - (a) an application under rule 23.2(2); or
  - (b) a step taken under sub-rule (2)(b) of this rule;

taken before a minor or patient has a next friend is of no effect unless the court otherwise orders.

#### **Who may be minor's next friend**

**23.4** A person who satisfies the conditions set out in rule 23.6 may act as a minor's next friend without a court order, unless the court

- (a) has already appointed a next friend; or
- (b) makes or has made an order under rule 23.9 (court's power to change next friend or to prevent a person acting as a next friend).

#### **Who may be patient's next friend**

**23.5** (1) Unless the court appoints some other person, a person authorised under the Act to conduct legal proceedings in the name of the patient or on the patient's behalf is entitled to be the next friend of the patient in any proceedings to which the authority extends.

(2) Where no person has been appointed by the court or authorised under the Act, a person who satisfies the conditions set out in rule 23.6 may be a patient's next friend without a court order.

#### **Conditions for being next friend**

**23.6** A person may act as a next friend where that person

- (a) can fairly and competently conduct proceedings on behalf of the minor or patient; and
- (b) has no interest adverse to that of the minor or patient.

### **How person becomes next friend without court order**

**23.7** (1) Where the court has not appointed a next friend, a person who wishes to act as next friend must follow the procedure set out in this rule.

(2) A person authorised under the Act must file an official copy of the order or other document which constitutes that person's authorisation to act.

(3) Any other person must file a certificate that he satisfies the conditions specified in rule 23.6.

(4) A person who is to act as a next friend for a claimant must file

(a) the authorisation referred to in sub-rule (2); or

(b) the certificate under sub-rule (3),

at the time when the application is filed or any preliminary application is made to the court.

(5) A person who is to act as a next friend for a defendant must file

(a) the authorisation referred to in sub-rule (2); or

(b) the certificate under sub-rule (3),

at the time when the next friend first takes a step in the proceedings on behalf of the defendant.

(6) Where sub-rule (3) applies, the next friend must

(a) serve a copy of the certificate under sub-rule (3) on every person on whom, in accordance with rule 5.10 (service on minors and patients) the claim form should be served; and

(b) file an affidavit of service.

**How person becomes next friend by court order**

**23.8** (1) The court may make an order appointing a next friend upon an application or of its own motion.

(2) An application for an order appointing a next friend may be made by

(a) a person who wishes to be a next friend; or

(b) a party.

(3) Where

(a) a person files an application against a minor or patient;

(b) the minor or patient has no next friend; and

(c) either

(i) someone who is not entitled to be a next friend files a defence; or

(ii) the claimant wishes to take some step in the proceedings,

the claimant must apply to the court for an order appointing a next friend for the minor or patient.

(4) An application for an order appointing a next friend must be supported by evidence on affidavit.

(5) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed fulfils the conditions specified in rule 23.6.

**Court's power to terminate appointment of and substitute next friend**

**23.9** (1) The court may

- (a) direct that a person may not act as a next friend;
- (b) terminate a next friend's authority to act; or
- (c) appoint a new next friend in substitution for an existing one.

(2) The court may make an order under sub-rule (1) upon an application or of its own motion.

(3) An application for an order under sub-rule (1) must be supported by evidence on affidavit.

(4) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed fulfils the conditions specified in rule 23.6.

**Appointment of next friend by court order – supplementary**

**23.10** (1) An application for an order under rule 23.8 or 23.9 must be served on every person who answers a description referred to in rule 23.7(6).

(2) An application for an order under rule 23.9 must also be served on the person who

- (a) is or who purports to act as next friend; and
- (b) it is proposed should act as next friend if that person is not the applicant.

(2) On an application for an order under rule 23.8 or 23.9, the court may appoint the person proposed or any other person who fulfils the conditions specified in rule 23.6.

**Procedure where appointment as next friend ceases**

**23.11** (1) The appointment of a minor's next friend ceases when a minor who is not a patient reaches the age of majority.

(2) When a party, other than a minor, ceases to be a patient during the course of proceedings, the next friend's appointment continues until it is ended by court order.

(3) An application for an order under sub-rule (2) may be made by

(a) the former patient;

(b) the next friend; or

(c) a party

and must be supported by evidence on affidavit.

(4) The minor or patient in respect of whom the appointment to act has ceased must serve notice on the other parties

(a) stating that the appointment of the next friend has ended;

(b) giving an address for service; and

(c) stating whether or not he intends to carry on the proceedings.

(5) Where the notice is not served within 28 days after the appointment of the next friend ceases, the court may on application, strike out any application or defence brought or filed by the former minor or patient.

- (6) The liability of a next friend for costs continues until
  - (a) the former minor or patient serves the notice referred to in sub-rule (4); or
  - (b) the next friend serves notice on the other parties that the appointment has ceased.

**Compromise etc., by or on behalf of minor or patient**

**23.12** (1) Where a claim is made

- (a) by or on behalf of a minor or patient; or
- (b) against a minor or patient,

no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of, or against the minor or patient, without the approval of the court.

(2) Where

- (a) before proceedings in which a claim is to be made by or on behalf of a minor or patient, whether alone or with any other person, are commenced, an agreement is reached for the settlement of the claim; and
- (b) the sole purpose of proceeding on that claim is to obtain the approval of the court to a settlement or compromise of the claim,

Form 2. the claim may be made by a fixed date claim form (Form 2) which may

- (i) include a request to the court for approval of the settlement; and
- (ii) be issued jointly by the claimant and defendant.



**Control of money recovered by  
or on behalf of minor or patient**

**23.13** (1) Where in any proceedings

- (a) money is recovered by or on behalf of or for the benefit of a minor or patient; or
- (b) money paid into court is accepted by or on behalf of a minor or patient,

that money must be dealt with in accordance with directions given by the court under this rule and not otherwise.

(2) Directions given under this rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

(3) Without limiting this rule, the court may direct the application of the whole or part of the money in any manner for the benefit of the minor or patient, including by the reimbursement of the next friend and other persons in respect of moneys paid on behalf of or for the benefit of the minor or patient and by the payment of the costs incurred by the next friend or otherwise payable to the attorney who conducted the proceedings.

(4) Where money is held in court or in investments pursuant to directions given under this rule, it shall not be paid out, nor shall any interest or income derived from it in whole or in part, except in accordance with an order of the court.

## Part 24

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### Security for Costs

#### Contents of this Part

Scope of this Part	Rule 24.1
Application for order for security for costs	Rule 24.2
Conditions to be satisfied	Rule 24.3
Security for costs against cross-claiming defendant	Rule 24.4
Enforcing order for security for costs	Rule 24.5

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#### Scope of this Part

**24.1** This Part deals with the power of the court to require a claimant to give security for the costs of the defendant, but it does not affect the provisions of any Act under which the court may require security for costs to be given in particular circumstances.

#### Application for order for security for costs

**24.2** (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.

(2) Where practicable such an application must be made at a case management conference and without delay.

(3) An application for security for costs must be supported by evidence on affidavit.

(4) The amount and nature of any security ordered shall be such as the court thinks appropriate.

**Conditions to be satisfied**

**24.3** The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order and that

- (a) the claimant is ordinarily resident out of the jurisdiction;
- (b) the claimant is an external company;
- (c) the claimant, with a view to evading the court's process or the enforcement of its orders
  - (i) failed to give an address for himself in the application;
  - (ii) gave an incorrect address in the application; or
  - (iii) has changed his address since the proceedings commenced;
- (d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21, and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;
- (e) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;
- (f) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover; or
- (g) the claimant has taken steps with a view to placing his assets beyond the jurisdiction or the reach of the court.

**Security for costs against  
counter-claiming defendant**

**24.4** Rules 24.2 and 24.3 shall apply where a defendant makes a counter-claim or any person makes a claim for relief in proceedings as if

- (a) references in those rules to a claimant were references to a defendant making a counter-claim or to any such person; and
- (b) references to a defendant were references to a claimant defending a counter-claim or to any such person against whom a claim for relief is made in proceedings.

**Enforcing order for security for costs**

**24.5** On making an order for security for costs, the court may also order that

- (a) the application or other claim be stayed until such time as security for costs is provided in accordance with the terms of the order; or
- (b) where security is not provided in accordance with the terms of the order by a specified date, the application or other claim, be struck out.

## **Part 25**

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### **Case Management – The Objective**

#### **Contents of this Part**

Court's duty to manage cases actively Rule 25.1

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#### **Court's duty to manage cases actively**

**25.1** (1) The court must further the overriding objective by actively managing cases.

- (2) The active management of cases includes
  - (a) identifying the issues at an early stage;
  - (b) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the other issues;
  - (c) encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, if the court considers it appropriate, and facilitating the use of such procedures;
  - (d) encouraging the parties to co-operate with each other in the conduct of proceedings;
  - (e) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;
  - (f) deciding the order in which issues are to be resolved;
  - (g) fixing timetables or otherwise controlling the progress of the case;

- (h) considering whether the likely benefits of taking a particular step will justify the cost of taking it;
  - (i) dealing with as many aspects of the case as is practicable on the same occasion;
  - (j) dealing with as many aspects of the case as it appears appropriate to do so, without requiring the parties to attend court;
  - (k) making appropriate use of technology;
  - (l) giving directions to ensure that the trial of the case proceeds quickly and efficiently; and
  - (m) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application.
- **The overriding objective is set out in Part 1.**

## Part 26

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### Case Management – The Court’s Powers

#### Contents of this Part

Court’s general powers of management	Rule 26.1
Court’s power to make orders of its own initiative	Rule 26.2
Sanctions – striking out statement of case	Rule 26.3
General power of the court to rectify matters where there has been a procedural error	Rule 26.4

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#### The court’s general powers of management

**26.1** (1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any enactment.

- (2) Except where these Rules provide otherwise, the court may
- (a) consolidate proceedings;
  - (b) extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed;
  - (c) adjourn or bring forward a hearing to a specific date;
  - (d) stay the whole or part of any proceedings generally or until a specified date or event;
  - (e) decide the order in which issues are to be tried;
  - (f) direct a separate trial of any issue;

- (g) try two or more claims on the same occasion;
- (h) direct that part of any proceedings, such as a counterclaim or other ancillary claim, be dealt with as separate proceedings;
- (i) dismiss or give judgment on a claim after a decision on a preliminary issue;
- (j) exclude an issue from determination if the court can do substantive justice between the parties on the other issues and determines that it would therefore serve no worthwhile purpose;
- (k) require the maker of an affidavit or witness statement to attend for cross-examination;
- (l) require any party or a party's attorney-at-law to attend the court;
- (m) deal with a matter without the attendance of any of the parties;
- (n) hold a hearing and receive evidence by telephone or use any other method of direct oral communication;
- (o) instead of holding an oral hearing, deal with a matter on written representations submitted by the parties;
- (p) direct that any evidence be given in written form;
- (q) where there is a substantial inequality in the proven financial position of each party, order any party having the greater financial resources who applies for an order to pay the other party's costs of complying with the order in any event;
- (r) where two or more parties are represented by the same attorney-at-law
  - (i) direct that they be separately represented; and



- (ii) if necessary, adjourn any hearing to a fixed date or take some other step to enable separate representation to be arranged; and
  - (iii) make any consequential order as to costs thrown away;
  - (s) give the conduct of any matter to any person it thinks fit and make any appropriate consequential order about costs;
  - (t) direct that notice of any proceedings or application be given to any person; or
  - (u) take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.
- (3) When the court makes an order or gives a direction, it may make the order or direction subject to conditions.
- (4) The conditions which the court may impose include a condition
- (a) requiring a party to give security;
  - (b) requiring a party to give an undertaking;
  - (c) requiring the payment of money into court or as the court may direct;
  - (d) requiring a party to pay all or part of the costs of the proceedings; and
  - (e) that a party permit entry to property owned or occupied by that party to another party or someone acting on behalf of another party.

(5) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.

(6) In special circumstances on the application of a party, the court may dispense with compliance with any of these rules.

### **Court's power to make orders of its own initiative**

**26.2** (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(2) Where the court proposes to make an order of its own initiative it must give any party likely to be affected a reasonable opportunity to make representations.

(3) Such opportunity may be to make representations orally, in writing, telephonically or by such other means as the court considers reasonable.

(4) Where the court proposes to

(a) make an order of its own initiative; and

(b) hold a hearing to decide whether to do so,

the Registry must give each party likely to be affected by the order at least 7 days notice of the date, time and place of the hearing.

### **Sanctions – striking out statement of case**

**26.3** (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case where it appears to the court that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings.

(2) An order under sub-rule (1) may be made on an application upon notice, and may include an order staying or dismissing the claimant's application or any part of it with costs, where the claimant was in default, or an order entering judgment for the claimant with costs against a defendant who was in default, such a judgment for the claimant to be of the same nature as a judgment in default of the filing of a defence would have been in respect of the same claim.

(3) The court may also, in addition to all other powers under these Rules, strike out, at a case management conference or otherwise upon an application on notice, a statement of case or part of a statement of case if it appears to the court

- (a) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;
- (b) that the statement of case or the part to be struck out discloses no reasonable ground for bringing or defending a claim; or
- (c) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

(4) Where

- (a) the court has struck out a claimant's statement of case;
- (b) the claimant is ordered to pay costs to the defendant; and
- (c) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts,

the court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid.

(5) Where a party fails to comply with an order of the court directing that party to take a step in the proceedings, any other party may move the court on notice for an order that the step in the proceedings be taken within the time limited in that order, or for relief of a kind referred to in sub-rules (1), (2), (3) and (4) of this rule, and the court may make an order as sought or any other order it thinks just.

(6) This rule does not limit the powers of the court to punish for contempt.

**General power of the court to rectify matters  
where there has been a procedural error**

**26.4** (1) This rule applies in relation to a matter in respect of which an order has not been sought, or if sought, has not been made under rule 26.3 striking out a statement of case or part of a statement of case.

(2) An error of procedure or failure to comply with a rule, practice direction or court direction or order does not invalidate any step taken in the proceedings, unless the court so orders.

(3) Where there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to rectify the error or failure.

(4) The court may make such an order on or without an application by a party.

## Part 27

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### Case Management Conferences – Procedure

#### Contents of this Part

Scope of this Part	Rule 27.1
Fixed date claims – first hearing	Rule 27.2
Case Management Conference	Rule 27.3
Attendance at case management conference or pre-trial review	Rule 27.4
Orders to be made at case management conference	Rule 27.5
Dispensing with case management conference in simple and urgent proceedings	Rule 27.6
Adjournment of case management conference	Rule 27.7
Variation of case management timetable	Rule 27.8
Listing questionnaire	Rule 27.9
Fixing trial date	Rule 27.10

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#### Scope of this Part

**27.1** This Part deals with the procedures by which the court will manage cases.

#### Fixed date claims – first hearing

**27.2** (1) When a fixed date claim is issued the court must fix a date for the first hearing of the claim.

(2) On the first hearing, in addition to any other powers that the court may have, the court shall have all the powers of a case management conference.

(3) The court may, however, treat the first hearing as the trial of the claim if

(a) it is not defended; or

(b) it considers that the claim can be dealt with summarily.

(4) Subject to sub-rule (5) or any other enactment, the court must give at least 14 days notice of any first hearing.

(5) The court may on or without an application direct that shorter notice be given

(a) where the parties agree; or

(b) in urgent cases.

(6) Unless the defendant files an acknowledgement of service the claimant must file evidence on affidavit of service of the claim form and the relevant documents specified in rule 5.2(3) at least 7 days before the first hearing.

### **Case Management Conference**

**27.3** (1) The Registrar must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.

(2) Where the defendant files a defence and also an admission of a specified sum of money, the case management conference is not to be fixed until the claimant gives notice under rule 14.6(3) that the claim is to continue.

(3) The case management conference must take place not less than 4 weeks nor more than 8 weeks after the defence is filed (or notice is given under rule 14.6(3)) unless any rule or practice direction prescribes a shorter or longer period or the case is urgent.

(4) Notwithstanding sub-rule (3) a party may apply to the court to fix a case management conference before a defence is filed.

(5) The application may be without notice but must state the reasons for the application.

(6) The Registrar must give all parties not less than 14 days notice of the date, time and place of the case management conference.

(7) The court may with or without an application direct that shorter notice be given

(a) if the parties agree; or

(b) in urgent cases.

**Attendance at case management conference or pre-trial review**

**27.4** (1) Where a party is represented by an attorney-at-law, that attorney-at-law or another attorney-at-law who is authorised to negotiate on behalf of the client and competent to deal with the case must attend the case management conference and any pre-trial review.

(2) The party or a person who is in a position to represent the interests of the party (other than an attorney-at-law) must attend the case management conference or pre-trial review.

(3) The court may dispense with the attendance of a party or representative (other than an attorney-at-law).

(4) Where the case management conference or pre-trial review is not attended by the attorney-at-law and the party or a representative, the court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under Part 26 (case management – the court’s powers) or Part 64 (costs – general).

**Orders to be made at  
case management conference**

**27.5** (1) At a case management conference the court must consider whether to give directions for

- (a) service of experts’ reports (if any);
- (b) service of witness statements; and
- (c) standard disclosure and inspection;

by dates fixed by the court.

(2) The court may also give directions for the preparation of an agreed statement

- (a) as to any relevant specialist area of law;
- (b) of facts;
- (c) of issues; and
- (d) of the basic technical, scientific or medical matters in issue,

which statement does not bind the trial judge.



(3) The court must fix a date for a pre-trial review unless it is satisfied that having regard to the value, importance and complexity of the case it may be dealt with justly without a pre-trial review.

(4) The court must in any event fix the

(a) date on which a listing questionnaire is to be sent by the Registrar to the parties; and

(b) period within which the trial is to commence or the trial date.

(5) The Registry must serve an order containing the directions made on all parties and give notice of the

(a) date of any pre-trial review;

(b) date on which the listing questionnaire is to be sent out by the Registrar; and

(c) trial date or trial period.

**Dispensing with case management  
conference in simple or urgent proceedings**

**27.6** (1) The court may, of its own motion or on the application of a party, make an order dispensing with a case management conference where it is satisfied that the

(a) case can be dealt with justly without a case management conference;

(b) case should be dealt with as a matter of urgency; or

(c) costs of a case management conference are disproportionate to the value of the proceedings or the benefits that might be achieved from a case management conference.

(2) Where the court dispenses with a case management conference, it must at the same time

- (a) fix a trial date or the period within which the trial is to take place;
- (b) give directions in writing about the preparation of the case; and
- (c) set a timetable for the steps to be taken before the date of trial.

(3) Where the court dispenses with a case management conference, it may

- (a) dispense with a listing questionnaire under rule 27.9;
- (b) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents under rule 39.1;
- (c) dispense with a pre-trial review under Part 38; and
- (d) give any other direction that may assist in the speedy and just trial of the claim, including any direction that might be given under Part 38.

### **Adjournment of case management conference**

**27.7** (1) The court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.

- (2) If the court is satisfied that the parties are
  - (a) attending, or have arranged to attend, a form of ADR procedure; or

- (b) in the process of negotiating, or are likely to negotiate a settlement,

the court may adjourn the case management conference to a suitable date, time and place to enable negotiations or the ADR procedure to continue.

- (3) Where the case management conference is adjourned under sub-rule (2), each party must notify the Registrar promptly if the claim is settled.

- (4) The court may give directions as to the preparation of the case for trial if the case management conference is adjourned.

- (5) So far as practicable any adjourned case management conference and procedural application made prior to a pre-trial review must be heard and determined by the judge, master or registrar who conducted the first case management conference.

#### **Variation of case management timetable**

**27.8** (1) A party must apply to the court if that party wishes to vary a date which the court has fixed for

- (a) a case management conference;
- (b) a party to do something where the order specifies the consequences of failure to comply;
- (c) a pre-trial review;
- (d) the return of a listing questionnaire; or
- (e) the trial date or trial period.

(2) Any date set by the court or these rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in sub-rule (1).

(3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the court, and that the party must do so before that date.

• **Rule 42.7 deals with consent orders.**

(4) A party who applies after that date must apply for

(a) an extension of time; and

(b) relief from any sanction to which the party has become subject under these Rules or any court order.

• **Rule 26.4 provides for applications for relief from sanctions.**

(5) The parties may agree to vary a date in the timetable other than one mentioned in sub-rule (1) or (2).

(6) Where the parties so agree, they must

(a) file a consent application for an order to that effect; and

(b) certify on that application that the variation agreed will not affect the date fixed for the trial or, if no date has been fixed, the period in which the trial is to commence,

and the timetable is accordingly varied unless the court directs otherwise.

### **Listing Questionnaire**

**27.9** (1) The Registrar must send the parties a listing questionnaire in Form 9 on the date fixed under rule 27.5(4)(a).

Form 9.

(2) Each party must file the completed listing questionnaire at the Registry within the period of 21 days after the date on which it is served on that party.

(3) Where

(a) a party fails to

(i) give all the information requested by the listing questionnaire; or

(ii) return the completed questionnaire to the Registry within the period of 21 days; or

(b) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete the preparation of the case;

the Registrar may fix a listing appointment and direct any or all of the parties to attend the listing hearing.

(4) The Registrar must give all parties at least 7 days notice of the date, time and place of the listing hearing.

(5) Any party at fault must attend the listing hearing.

(6) At the listing hearing the court must

(a) give any directions which may be needed to complete the preparation of the case for trial without any adjournment of the trial; and

(b) where the listing appointment has been fixed under sub-rule (3)(a), make a wasted costs order unless there is a special reason why it should not make such an order.

(7) Apart from the requirement to complete a listing questionnaire, the court may at any time require the parties to answer a questionnaire to assist it in the management of the case.

**Fixing trial date**

**27.10** (1) As soon as practicable after

(a) each party has returned a completed listing questionnaire to the Registrar; or

(b) the court has held a listing hearing under rule 27.9(3);

the Registrar must fix the date of the trial (or, if it has already done so, confirm that date) and notify the parties.

(2) The Registrar must give the parties at least 8 weeks' notice of the date of the trial.

(3) Notwithstanding sub-rule (2), the court may give shorter notice

(a) where the parties agree; or

(b) in urgent cases.

## Part 28

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### Disclosure and Inspection of Documents

#### Contents of this Part

Scope of this Part	Rule 28.1
Duty of disclosure limited to documents which are or have been in party's control	Rule 28.2
Disclosure of copies	Rule 28.3
Standard disclosure	Rule 28.4
Specific disclosure	Rule 28.5
Criteria for ordering specific disclosure	Rule 28.6
Procedure for disclosure	Rule 28.7
Duty of attorney-at-law	Rule 28.8
Requirement for party to certify that he understands duty of standard disclosure	Rule 28.9
Disclosure in stages	Rule 28.10
Inspection and copying of listed documents	Rule 28.11
Duty of disclosure continuous during proceedings	Rule 28.12
Consequence of failure to disclose documents under order for disclosure	Rule 28.13
Claim of right to withhold disclosure or inspection of document	Rule 28.14
Restriction on use of a privileged document inspection of which has been inadvertently allowed	Rule 28.15
Document referred to in statement of case, etc.	Rule 28.16
Subsequent use of disclosed documents	Rule 28.17
Notice to prove document	Rule 28.18

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#### Scope of this Part

**28.1** (1) This Part sets out rules about the disclosure or discovery and inspection of documents.

(2) In this Part,

"copy" in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly; and

"document" means anything on or in which information of any description is recorded whether in writing, electronically or howsoever.

(3) A party "discloses" a document by revealing that the document exists or has existed.

(4) For the purposes of this Part,

(a) a document is "directly relevant" if

(i) the party with control of the document intends to rely on it;

(ii) it tends to affect adversely that party's case; or

(iii) it tends to support another party's case;

(b) the rule of law known as "the rule in Peruvian Guano" does not apply to make a document "directly relevant".

**Duty of disclosure limited to documents  
which are or have been in party's control**

**28.2** (1) A party's duty to disclose documents is limited to documents which are or have been in the control of that party.

(2) For this purpose a party has or has had control of a document if

(a) it is or was in the physical possession of the party;



- (b) the party has or has had a right to possession of it ; or
- (c) the party has or has had a right to inspect or take copies of it.

**Disclosure of copies**

**28.3** (1) Except where required by sub-rule (2), a party need not disclose more than one copy of a document.

(2) A party must however disclose a copy if it contains a modification, obliteration or other marking or feature which is not present in the original or any copy of the document which is being disclosed, or if it is a copy in a different medium from that of the original or any copy which is being disclosed, for example, a written version of the words of a recording on tape.

**Standard disclosure – what documents are to be disclosed**

**28.4** Where a party is required by any direction of the court to give standard disclosure, that party must disclose all documents which are directly relevant to the matters in question in the proceedings or to any particular issue which may be specified by the court in the direction.

**Specific disclosure**

**28.5** (1) An order for specific disclosure is an order that a party must do one or more of the following things:

- (a) disclose documents or classes or categories of documents specified in the order;
- (b) disclose documents relevant within the principles relating to discovery of documents, or, alternatively, directly relevant, to a specified issue or issues in the proceedings; or

- (c) carry out a search to the extent stated in the order for
  - (i) documents relevant, in the sense indicated in paragraph (b), or directly relevant to the proceedings or to a specified issue or issues; or
  - (ii) documents of a particular description or class or in a particular category or identified in any other manner,and disclose any documents within the scope of the order located as a result of that search.

(2) An order for specific disclosure may be made on or without an application.

(3) An application for specific disclosure is to be made on notice and unless in special circumstances at a case management conference.

(4) An application for specific disclosure may identify documents

(a) by describing the class to which they belong; or

(b) in any other manner.

#### **Criteria for ordering specific disclosure**

**28.6** (1) When deciding whether to make any, and if so what, order for disclosure, the court must consider whether the contemplated order for disclosure is necessary, or necessary at that stage of proceedings, in order to dispose fairly of the litigation or to save costs.

(2) The court must have regard to

(a) the likely benefits of the disclosure contemplated by any party;

(b) the likely burden in time, cost and otherwise of such disclosure; and

- (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.

(3) Where, having regard to sub-rule (2)(c), and in all the circumstances, the court would otherwise refuse to make an order for disclosure sought by a party, it may make such an order on terms including that the party seeking that order must pay the other party's costs of such disclosure, either in any event or, alternatively, subject to further order.

(4) Where the court makes an order under sub-rule (3), it must assess the costs to be paid in accordance with rule 65.12.

(5) The party in whose favour an order for costs was made under sub-rule (3) may apply for a variation of the amount at which the costs were assessed.

#### **Procedure for disclosure**

**28.7** (1) Sub-rules (2) to (5) set out the procedure for disclosure.

(2) Each party must make, and serve on every other party, a list of documents in Form 8.

Form 8.

(3) The list must identify the documents and any class or category referred to in the order for disclosure to which a document belongs in a convenient order and manner and as concisely as possible.

(4) The list must state

(a) what documents are no longer in the party's control;

(b) what has happened to those documents; and

(c) where each document then is, to the best of the party's knowledge, information or belief.

(5) The list must include documents already disclosed.

(6) A list of documents served by a company, firm, association or other organisation must

Form 8.

(a) state the name and position of an officer authorised to sign the certificate contained in Form 8 who was also responsible for identifying individuals who might be aware of any document which should be disclosed; and

(b) identify those individuals who have been asked whether they are aware of any such document and state the position of those individuals.

#### **Duty of attorney-at-law**

**28.8** The attorney-at-law for a party must

(a) explain to the maker of the list of documents

(i) the necessity of making full disclosure in accordance with the terms of the order for disclosure and of these Rules; and

(ii) the possible consequences of failing to do so; and

(b) certify on the list of documents made under rule 28.6(2) that the explanation required by paragraph (a) has been given.

#### **Requirement for party to certify that he understands duty of disclosure**

Form 8.

**28.9** (1) Where the list of documents is served on behalf of a party who is a natural person, the party must, subject to sub-rule (2), sign the certificate contained in Form 8 personally.

(2) Where the list is served on behalf of a company, firm, association or other organisation, the certificate must be signed by the person identified pursuant to rule 28.7(6)(a).

(3) Where it is impracticable for a person referred to in sub-rule (1) or (2) to sign the certificate contained in Form 8, it may be given by an attorney-at-law. Form 8.

(4) A certificate given by an attorney-at-law must also certify

(a) the reasons why it is impracticable for the person referred to in sub-rule (1) or (2), as the case may be, to give the certificate; and

(b) that the certificate is given on the instructions of the relevant party, in the case of a body referred to in sub-rule (2) after confirmation from the person identified pursuant to rule 28.7(6)(a).

### **Disclosure in stages**

**28.10** The parties may agree in writing or the court may direct that disclosure or inspection or both may take place in stages.

### **Inspection and copying of listed documents**

**28.11** (1) When a party has served a list of documents on any other party, that party has a right to inspect any document on the list, except documents

(a) which are no longer in the physical possession of the party who served the list; or

(b) for which a right or privilege to withhold disclosure is claimed.

(2) The party wishing to inspect the documents must give the party who served the list written notice of his wish to inspect documents in the list.

(3) The party who is to permit inspection must do so not more than 7 days after the date on which the notice is received.

(4) Where the party giving the notice undertakes in writing to pay the reasonable cost of copying, the party who served the list must supply the other with a copy of each document requested not more than 7 days after the date on which the undertaking and request were received.

### **Duty of disclosure continuous during proceedings**

**28.12** (1) The duty of disclosure in accordance with any order for disclosure continues until the proceedings are concluded.

(2) Where documents to which that duty extends come to a party's notice at any time during the proceedings, that party must immediately notify every other party and afterwards serve a supplemental list of those documents.

(3) The supplemental list must be served not more than 14 days after the new documents have come to the notice of the party required to serve the list.

### **Consequence of failure to disclose documents under an order for disclosure**

**28.13** (1) A party who fails to give disclosure by the date ordered or any extension of it or to permit inspection or to comply with his duty under rule 28.11 may not at the trial, without an order granting relief from this rule, which may only be granted where the court finds it just to do so, rely on or produce any document not so disclosed or made available for inspection.

(2) A party seeking to enforce an order for disclosure may apply to the court

(a) for an order that the other party's statement of case or some part of it be struck out;

- (b) where the party in default is the claimant, that the application be stayed or dismissed,
- (c) where the party in default is a defendant, that there be judgment or an order against him; or
- (d) that a further specific order for disclosure and inspection be made.

(3) On an application under sub-rule (2), the court may make such order as it considers just.

(4) This rule does not limit the powers of the court to punish for contempt.

**Claim of right to withhold disclosure  
or inspection of a document**

**28.14** (1) A person who claims a right or privilege to withhold disclosure or inspection of a document or part of a document must

- (a) make that claim for the document; and
- (b) state the grounds on which such a right or privilege is claimed,

in his list of documents, or otherwise in writing to the person wishing to inspect the document.

(2) Notwithstanding sub-rule (1) and anything in this Part, this Part does not affect any rule of law which authorises or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest, and a person may apply to the court, without notice, for an order permitting that person not to disclose the existence of a document on the ground that disclosure of the existence of the document would damage the public interest.

- (3) A person who applies to the court under sub-rule (2) must
  - (a) identify the document, documents or parts of a document or documents for which a right, privilege or duty to withhold disclosure is claimed; and
  - (b) give evidence on affidavit showing
    - (i) that the applicant has a right, privilege or duty to withhold disclosure; and
    - (ii) the grounds on which that right, privilege or duty is claimed.
- (4) Unless the court orders otherwise, the application, affidavit and order of the court under sub-rule (2) are not to be
  - (a) served on; nor
  - (b) open for inspection by,  
any person.
- (5) A person who does not accept a claim of a right or privilege to withhold disclosure or inspection of a document may apply to the court for an order that the document be disclosed or made available for inspection.
- (6) On the hearing of such an application the onus is on the party resisting disclosure or inspection.



- (7) Where a person
- (a) claims a right or privilege to withhold inspection; or
  - (b) applies for an order permitting that person not to disclose the existence of a document or part of a document,

the court may require the person to produce that document to the court to enable it to decide whether the claim is justified.

(8) On considering any application under this rule, the court may invite any person to make representations on the question whether the document ought to be withheld.

**Restrictions on use of a privileged document  
inspection of which has been inadvertently allowed**

**28.15** A party who claims to have inadvertently allowed a privileged document to be inspected may apply for an order that the party who has inspected it may use it only with

- (a) the permission of the court; or
- (b) the agreement of the party disclosing the document,

and upon proof of the circumstances, the court may make such order as seems just.

**Document referred to in statement of case etc.**

**28.16** (1) A party may inspect and copy a document mentioned in

- (a) the application;
- (b) a statement of case;

- (c) a witness statement or summary;
- (d) an affidavit; or
- (e) an expert's report.

(2) A party who wishes to inspect and copy such a document must give written notice to the party who, or whose witness, mentioned the document.

(3) The party to whom the notice is given must comply with the notice not more than 7 days after the date on which the notice is served, unless the document is not in his possession or control, in which case he must disclose within the same period to the best of his knowledge, information and belief where it is.

#### **Subsequent use of disclosed documents**

**28.17** (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed except where

- (a) the document has been read to or by the court, or referred to, in open court; or
- (b) (i) the party disclosing the document and the person to whom the document belongs; or
- (ii) the court,  
gives permission.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to in open court.

(3) An application for an order under sub-rule (1)(b) should be made on notice to the party disclosing the document and the person to whom the document belongs.

(4) An application for an order under sub-rule (2) may be made on such notice as the court may direct

(a) by a party; or

(b) by any person to whom the document belongs.

**Notice to prove a document**

**28.18** (1) A party shall be deemed to admit the authenticity of any document disclosed to him under this Part unless notice is served that the document must be proved at trial, or unless the authenticity of the document has been disputed in a pleading or affidavit filed on behalf of the party.

(2) A notice to prove a document must be served not less than 30 days before the trial.

## Part 29

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### Evidence

#### Contents of this Part

Power of court to control evidence	Rule 29.1
Evidence at trial – general rule	Rule 29.2
Evidence by video link or other means	Rule 29.3
Requirement to serve witness statements	Rule 29.4
Form of witness statements	Rule 29.5
Witness summaries	Rule 29.6
Procedure where one party does not serve witness statement by date directed	Rule 29.7
Witness to give evidence unless court otherwise orders	Rule 29.8
Amplifying witness statements at trial	Rule 29.9
Cross-examination on witness statement	Rule 29.10
Consequence of failure to serve witness statement or summary	Rule 29.11
Use of witness statements for other purposes	Rule 29.12
Notice to admit facts	Rule 29.13

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#### Power of court to control evidence

**29.1** (1) The court may control the evidence to be given at any trial or hearing by giving appropriate directions as to

- (a) the issues on which it requires evidence; and
- (b) the way in which any matter is to be proved,

at a case management conference or by other means.

(2) In particular, the court may direct that evidence in chief is to be given by affidavit, the affidavits to be filed and served as directed by the court, or that witness statements of evidence in chief are to be filed and served.

### **Evidence at trial – general rule**

**29.2** Subject to these Rules and to any direction under rule 29.1 or other order, any fact which needs to be proved by the evidence of witnesses is to be proved

- (a) at trial, by their oral evidence given in public; and
- (b) at any other hearing, by affidavit.

- **Part 30 deals with affidavit evidence.**

### **Evidence by video link or other means**

**29.3** The court may allow a witness to give evidence without being present in the courtroom, through a video link, by telephone, or by any other means.

### **Requirement to serve witness statements**

**29.4** (1) The court may order a party to serve on any other party a statement of the evidence of any witness upon which the first party intends to rely in relation to any issues of fact to be decided at the trial.

(2) A statement of evidence referred to in sub-rule (1) is known as a witness statement.

(3) A party's obligation to serve a witness statement is independent of any other party's obligation to serve such a statement.

- **Rule 29.7 provides a procedure that may be adopted when one party is and the other party is not prepared to serve witness statements.**

- (4) The court may give directions as to
  - (a) the order in which witness statements are to be served; and
  - (b) when they are to be filed.

**Form of witness statements**

**29.5** (1) A witness statement must

- (a) give the name, address and occupation of the witness;
- (b) so far as reasonably practicable, be in the intended witness's own words;
- (c) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document;
- (d) not include any matters of information or belief which are not admissible and, where admissible, must state the source of any matters of information or belief;
- (e) be dated and signed or otherwise authenticated by the intended witness; and
- (f) include a statement by the intended witness that he believes the statements of fact in it to be true.

(2) The court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.

(3) A party may apply for permission to file supplemental witness statements.

**Witness summaries**

**29.6** (1) A party who is required to provide but is not able to obtain a witness statement may serve a witness summary instead.

(2) A party who serves a witness summary must certify on the witness summary the reason why a witness statement could not be obtained.

(3) A "witness summary" is a summary of

(a) the evidence, so far as is known, which would otherwise be included in a witness statement; or

(b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.

(4) Unless the court orders otherwise, a witness summary must include the name and address of or other sufficient means of identifying the intended witness.

(5) A witness summary must be served within the period in which a witness statement would have had to be served.

(6) Where a party provides a witness summary, so far as practicable, rules 29.4 (requirement to serve witness statements), 29.7 (procedure where one party does not serve witness statements by the date directed) and 29.9 (amplifying witness statements at trial) apply to the summary.

**Procedure where one party does not serve witness statement by date directed**

**29.7** (1) This rule applies where under rule 29.4(4) the court has not directed sequential filing and service of witness statements, but an exchange of them, and

- (a) one party is able and prepared to comply with the order to serve witness statements; but
- (b) the other party fails to make reasonable arrangements to exchange statements.

(2) The party referred to in paragraph (a) of sub-rule (1) may comply with the requirements of this Part by

- (a) filing the witness statements in a sealed envelope at the Registry by the date directed; and
- (b) giving notice to all other parties that he has done so.

(3) The filed statements must not be disclosed to the other party until that party certifies that the witness statements or summaries have been served in respect of all witnesses upon whose evidence that party intends to rely.

**Witness to give evidence unless court otherwise orders**

**29.8** (1) Where a party

- (a) has served a witness statement or summary; and
- (b) wishes to rely on the evidence of that witness,

that party must call the witness to give evidence unless the court orders otherwise.



- (2) Where a party
  - (a) has served a witness statement or summary; and
  - (b) does not intend to call that witness at the trial,

that party must give notice to that effect to the other parties not less than 28 days before the trial.

### **Amplifying witness statements at trial**

**29.9** A witness giving oral evidence may with the permission of the court

- (a) amplify the evidence as set out in a witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;
- (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties; or
- (c) comment on evidence given by other witnesses.

### **Cross-examination on witness statement**

**29.10** The witness statement of a witness called to give evidence at trial may be referred to in cross-examination, whether or not the statement or any part of it was referred to during the witness's evidence in chief.

### **Consequence of failure to serve witness statement or summary**

**29.11** Where a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, then the witness may not be called unless the court considers it just in all the circumstances to give permission.

### **Use of witness statements for other purposes**

**29.12** (1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

- (2) Sub-rule (1) does not apply if and to the extent that
  - (a) the witness gives consent in writing to some other use of it;
  - (b) the court gives permission for some other use; or
  - (c) the witness statement has been put in evidence.

### **Notice to admit facts**

**29.13** (1) A party may serve notice on another party requiring that party to admit the facts or the part of the first party's case specified in the notice.

(2) A notice to admit facts must be served no later than 42 days before the trial.

(3) Where the other party makes any admission in response to the notice, the admission may be used against that party only

- (a) in the proceedings in which the notice to admit is served; and
- (b) by the party who served the notice.

(4) Where the party served with the notice to admit does not admit the facts set out in the notice within 21 days of service of the notice upon that party, the court may assess the costs incurred by the party serving the notice in proving such facts and order the party served with the notice to pay such costs.

- **Rule 65.11 deals with assessment of costs.**

## Part 30

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### Affidavits

#### Contents of this Part

Affidavit evidence	Rule 30.1
Form of affidavits	Rule 30.2
Contents of affidavits	Rule 30.3
Documents to be used in conjunction with affidavit	Rule 30.4
Making of affidavits	Rule 30.5
Service of affidavits	Rule 30.6

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#### Affidavit evidence

**30.1** (1) The court may require evidence to be given by affidavit instead of, or in addition to, oral evidence throughout a trial or upon particular issues.

(2) The question whether evidence at trial should be adduced by affidavit is to be the subject of directions at the first or an early case management conference.

(3) Whenever an affidavit is to be used in evidence and subject to any order of the court, any party may serve notice on the party who filed the affidavit requiring the deponent to attend to be cross-examined.

(4) The notice referred to in sub-rule (3) must be given not less than

(a) in the case of a trial, 28 days; or

(b) in the case of any other hearing, 7 days,

before the date of the hearing at which it is intended to cross-examine the deponent.

(5) Where the deponent does not attend as required by the notice, the affidavit may not be used by the party who filed it as evidence unless the court permits.

(6) An affidavit must be filed before it may be used in any proceedings.

(7) Notwithstanding sub-rule (6), the court may permit an affidavit which has not been filed to be relied on, if the party tendering it undertakes to file it and the court considers no injustice is thereby caused to any other party.

### **Form of affidavits**

#### **30.2** Every affidavit must

- (a) be headed with the title of the proceedings;
- (b) be in the first person and must state the name, address and occupation of the deponent and, if more than one, of each of them;
- (c) state whether any deponent is employed by a party to the proceedings;
- (d) divided into paragraphs numbered consecutively; and
- (e) be marked on the backsheet of the affidavit with
  - (i) a reference to the party on whose behalf it is filed;
  - (ii) the name of the deponent;
  - (iii) where the deponent swears more than one affidavit in any proceeding, the number of the affidavit in relation to the deponent;

- (iv) the identifying reference of each exhibit referred to in the affidavit;
- (v) the date when sworn, and
- (vi) the date when filed.

### **Contents of affidavits**

**30.3** (1) An affidavit shall contain only such facts as the deponent is able to prove from the deponent's own knowledge.

(2) Notwithstanding sub-rule (1), an affidavit may contain statements of information and belief where

- (a) any of these Rules so allow; and
- (b) it is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application provided that the affidavit indicates
  - (i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and
  - (ii) the source of any matters of information and belief.

(3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit, or, where an affidavit contains scandalous or oppressive matter, the court may order that the affidavit be taken off the file.

(4) No affidavit containing any alteration may be used in evidence except by permission of the court unless the alteration has been initialled by the person before whom the affidavit was sworn.

**Documents to be used in conjunction with affidavit**

**30.4** (1) Any document to be used in conjunction with an affidavit must be exhibited to it.

(2) Where there are two or more documents to be so used, they may be included in a bundle which is

- (a) in chronological order or some other convenient order; and
- (b) is marked and numbered.

(3) Clearly legible photo copies of original documents may be annexed or exhibited, where the originals are made available for inspection by other parties before the hearing and by the court at the hearing.

(4) Each exhibit or bundle of exhibits must be

- (a) produced to and verified by the deponent;
- (b) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by the person before whom the affidavit is sworn or affirmed; and
- (c) marked in accordance with rule 30.2(e).

**Making of affidavits**

**30.5** (1) The affidavit must

- (a) be signed by each deponent;
- (b) be sworn or affirmed by each deponent;
- (c) be completed and signed by the person before whom the affidavit was sworn or affirmed; and
- (d) contain the full name, address and qualification of the person before whom it was sworn or affirmed.

(2) The statement authenticating the affidavit ("the jurat") must follow immediately after the conclusion of the text and not be on a separate page.

(3) No affidavit may be admitted into evidence if sworn or affirmed before the attorney-at-law of the party on whose behalf it is to be used or before any agent, partner, employee or associate of that attorney-at-law.

(4) Where it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the jurat that

(a) the affidavit was read aloud by him or in his presence to the deponent;

(b) the deponent appeared to understand it; and

(c) the deponent signed or made his mark in the presence of the certifier.

(5) A person may make an affidavit outside the jurisdiction in accordance with

(a) this Part; or

(b) the rule of the place where he makes the affidavit.

(6) Subject to section 87 of the Act, any affidavit which purports to have been sworn or affirmed in accordance with the rule and procedure of any place outside the jurisdiction is presumed to have been so sworn or affirmed.

**Service of affidavits**

**30.6** (1) A party who is adducing evidence by affidavit must serve a copy of the affidavit on every other party, together with copies of all documents exhibited to the affidavit.

(2) Sub-rule (1) applies whether the affidavit was made in the proceedings or in some other proceedings.

(3) Sub-rule (1) does not apply if the affidavit is being used in support of an application that may be made without notice.



## Part 31

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### Miscellaneous rules about evidence

#### Contents of this Part

Use of plans, photographs etc., as evidence	Rule 31.1
Evidence on questions of foreign law	Rule 31.2
Evidence of consent of trustee to act	Rule 31.3

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#### Use of plans, photographs etc., as evidence

**31.1** (1) A party who intends to rely at a trial on evidence that is not

- (a) to be given orally; and
- (b) which is not contained in a witness statement, affidavit or expert report

must disclose that intention to the other parties in accordance with this rule.

(2) Where a party fails to disclose the intention to rely on the evidence as required by this rule, the evidence may not be given without the permission of the court.

(3) Subject to sub-rules (4) and (5), a party who intends to use the evidence referred to in sub-rule (1) to prove any fact must disclose such intention not later than the latest date for serving affidavits or witness statements, as the case may be.

(4) Where there is no order for service of affidavits or witness statements, the party proposing to tender the evidence must disclose it at least 21 days before the hearing.

(5) Where the evidence forms part of expert evidence, the intention to put in the evidence must be disclosed when the expert's report is served on the other party.

(6) Where a party has disclosed the intention to put in evidence under this rule, that party must give every other party an opportunity to inspect it and to agree to its admission without proof, or to submit it to any reasonable examination, including expert examination.

(7) Unless the notice given has been sufficient for the purposes of any reasonable examination and testing of the evidence, the court may refuse to receive the evidence or make some special order to ensure justice to all parties.

(8) On an application for permission under sub-rule (2), the matters referred to in sub-rule (7) apply.

### **Evidence on questions of foreign law**

**31.2** (1) This rule sets out the procedure which must be followed by a party who intends to adduce evidence on a question of foreign law.

(2) A party who intends to adduce evidence on questions of foreign law must first give any other party notice of the intention.

(3) Notice under sub-rule (2) must be given not less than 28 days before the hearing at which the party proposes to adduce the evidence.

(4) The notice must

- (a) specify the question on which the evidence is to be adduced; and
- (b) have attached a document which sets out the substance of the evidence.

**Evidence of consent of trustee to act**

**31.3** A document purporting to contain the written consent of a person to act as a trustee and to bear that person's signature verified by some other person, is evidence of such consent.

## Part 32

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### Experts and Assessors

#### Contents of this Part

Scope of this Part	Rule 32.1
General scope of expert evidence	Rule 32.2
Expert's overriding duty to court	Rule 32.3
Way in which expert's duty to court is to be carried out	Rule 32.4
Expert's right to apply to court for directions	Rule 32.5
Court's power to restrict expert evidence	Rule 32.6
General requirement for expert evidence to be given in written report	Rule 32.7
Written questions to experts	Rule 32.8
Court's power to direct evidence by single expert	Rule 32.9
Instructions to single expert	Rule 32.10
Power of court to direct party to provide expert report	Rule 32.11
Contents of report	Rule 32.12
Meeting of experts	Rule 32.13
Consequence of failure to disclose expert's report	Rule 32.14
Appointment of assessors	Rule 32.15
Cross examination of court experts	Rule 32.16
Expert's reports to be addressed to Court	Rule 32.17

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#### Scope of this Part

**32.1** (1) This Part deals with the provision of expert evidence to assist the court.

(2) In this Part "expert witness" is a reference to an expert who has been instructed to prepare or give evidence for the purpose of court proceedings.

### **General scope of expert evidence**

**32.2** Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.

### **Expert's overriding duty to court**

**32.3** (1) It is the duty of an expert witness to help the court impartially on the matters relevant to the expert's expertise.

(2) This duty overrides any obligation to the person by whom the expert is instructed or paid.

### **Way in which expert's duty to court is to be carried out**

**32.4** (1) Expert evidence presented to the court must be and should be seen to be the independent product of the expert, uninfluenced as to form or content by any partisan demand of the litigation.

(2) An expert witness must provide independent assistance to the court by way of objective unbiased opinion in relation to matters within the expert's expertise.

(3) An expert witness must state the facts or assumptions upon which his opinion is based and must consider and include material facts which could detract from his concluded view.

(4) An expert witness must state if a particular matter or issue falls outside his area of expertise.

(5) Where an expert's opinion is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.

(6) Where the expert cannot assert that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.

(7) Where after service of reports an expert's opinion changes on a material matter, the change of opinion must be communicated to all parties.

### **Expert's right to apply to court for directions**

**32.5** (1) An expert may apply in writing to the court for directions to assist him in carrying out his

- (a) functions as an expert; or
- (b) duty to the court.

(2) An expert may file a written request for directions to assist in carrying out functions as an expert.

(3) An expert may request directions under sub-rule (2) without giving notice to any party.

(4) The court, when it gives directions, may also direct that a party be served with

- (a) a copy of the directions; and
- (b) a copy of the request for directions.

### **Court's power to restrict expert evidence**

**32.6** (1) No party may call or tender a report from more than one expert witness on the same question without the court's permission.

(2) The court's permission is to be given at a case management conference.

- (3) When a party applies for permission under this rule,
  - (a) that party must name each expert and identify the nature of the question and the nature of each expert's expertise; and

(b) any permission granted shall be in relation to those experts only.

(4) No oral or written expert's evidence may be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert intends to give.

(5) The court shall direct by what date the report must be served.

(6) The court may give directions in special circumstances limiting the extent or nature of the disclosure of an expert's report, or of part of it.

**General requirement for expert evidence to be given in written report**

**32.7** Expert evidence in chief is to be given in the form of a written report unless the court directs otherwise.

**Written questions to experts**

**32.8** (1) A party may put written questions to an expert instructed by another party or jointly about his report.

(2) Written questions under sub-rule (1)

(a) may be put once only;

(b) must only be in order to clarify the report; and

(c) must be put within 28 days of service of that expert's report;

unless

(i) the court permits; or

(ii) the other party agrees.

(3) An expert's answers to questions under this rule shall be treated as part of that expert's report.

(4) Where

- (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
- (b) the expert does not answer the question,

the court may make one or more of the following orders in relation to the party who instructed the expert, namely that

- (i) that party may not rely on the evidence of the expert;
- (ii) that party may not recover the fees and expenses of the expert from any other party; or
- (iii) the party asking the questions may seek to obtain answers from another expert, including a second expert of his own on the same question.

(5) This rule also applies where evidence from a single expert is to be used under rule 32.9.

### **Court's power to direct evidence by single expert**

**32.9** (1) Where two or more parties, in this rule and in rule 32.10 called "the instructing parties", wish to submit expert evidence on a particular issue, the court may direct that expert evidence on this issue be given by one expert.

(2) Where the instructing parties cannot agree who should be the expert, the court may

- (a) select the expert from a list prepared or accepted by the instructing parties; or



(b) direct that the expert be selected in such other manner as the court may direct.

(3) The court may vary a direction given under this rule.

(4) A single expert may be appointed instead of the parties instructing their own experts or to replace or supplement experts instructed by the parties.

### **Instructions to single expert**

**32.10** (1) Where the court gives directions under rule 32.9 for a single expert to be used, each instructing party may give instructions to the expert.

(2) When an instructing party gives instructions to the expert, that party must at the same time send a copy of the instructions to each other's instructing party.

(3) The court may give directions about the arrangements for

(a) the payment of the expert's fees and expenses; and

(b) any inspection, examination or experiments which the expert wishes to carry out.

(4) The court may, before an expert is instructed,

(a) limit the amount that can be paid by way of fees and expenses to the expert; and

(b) direct that the instructing parties pay that amount into court or to the expert in such proportions as may be directed.

(5) Unless the court has otherwise directed, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.

**Power of Court to direct party to provide an expert report**

**32.11** (1) Where a party has access to information which is not reasonably available to the other party, the court may direct the party who has access to the information to

- (a) prepare and file a document recording the information; and
- (b) serve a copy of that document on the other party.

(2) The court's powers under this rule may be exercised only on the application of a party.

**Contents of report**

**32.12** (1) An expert's report must give details of the expert's qualifications and

- (a) give details of any literature or other material which the expert has used in making the report;
- (b) explain who carried out any test or experiment which the expert has used for the report;
- (c) give details of the qualifications and experience of the person who carried out any test or experiment referred to in paragraph (b);
- (d) where there is a range of opinion among experts on questions significant for the matters dealt with in the report
  - (i) summarise the range of opinion; and
  - (ii) give reasons for his own opinion; and
- (e) contain a summary of the conclusions reached.

- (2) At the end of an expert's report there must be a statement that
  - (a) the expert understands his duty to the court as set out in rules 32.3 and 32.4;
  - (b) the expert has complied with that duty;
  - (c) the report includes all matters within the expert's knowledge and area of expertise relevant to the issue on which the expert evidence is given; and
  - (d) the expert has given details in the report of any matters which to his knowledge might affect the validity of the report.
- (3) There must also be attached to an expert's report copies of
  - (a) all written instructions given to the expert;
  - (b) any supplemental instructions given to the expert since the original instructions were given; and
  - (c) a note of any oral instructions given to the expert,

and the expert must certify that no instructions other than those disclosed have been received by him from the instructing party, the party's attorney-at-law or any other person acting on behalf of the party.

(4) Where expert evidence refers to photographs, plans, calculations, survey reports or other fundamental or supplementary documents, plainly legible copies of these must be provided to the other parties at the same time as a copy of the report is served.

(5) Where it is not practicable to provide a copy of the documents referred to in sub-rule (4), these documents must be made available for inspection by the other party or any expert instructed by that party within 7 days of a request to do so.

### **Meeting of experts**

**32.13** (1) The court may direct a meeting of experts of like speciality.

(2) The court may specify the issues which the experts must discuss.

(3) The contents of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(4) The meeting may take place personally, by telephone or by any other suitable means.

(5) After the meeting the experts must prepare for the court a statement of

(a) any issues within their expertise on which they agree; and

(b) any such issues on which they disagree and their reasons for disagreeing.

(6) Instead of or in addition to the statement prepared under sub-rule (5), the court may direct that the experts prepare an agreed statement of the basic science which is the foundation of the matters relevant to their expertise.

(7) The agreed statement referred to in sub-rule (6) must be as short as practicable.

### **Consequence of failure to disclose expert's report**

**32.14** (1) A party who fails to comply with a direction to disclose an expert's report may not use the report at the trial or call the expert unless the court gives permission.

(2) Permission will not be given except in special or compelling circumstances.

### **Appointment of assessors**

**32.15** (1) The court may appoint an assessor to

- (a) assist the court in understanding technical or scientific evidence;
- (b) provide a written report; or
- (c) advise the judge at the trial with regard to evidence of expert witnesses called by the parties.

(2) On making an order under sub-rule (1), the court must decide

- (a) what fee is to be paid to the assessor; and
- (b) by whom.

(3) This does not affect any decision as to the party who is ultimately to bear the costs of the assessor.

(4) All communications apart from written instructions, copies of which will be sent by the Registrar to the parties, between the court and an assessor must be in open court.

(5) Before requesting a written report or opinion from an assessor, the court must allow the parties to make submissions in respect of the form and content of the questions to be asked.

(6) Before giving judgment, the court must provide the parties with any written question asked of and any answer given by the assessor and afford them an opportunity to make submissions.

**Cross-examination of court experts**

**32.16** Where an expert appointed by the court gives oral evidence or furnishes a written opinion on an issue in the case, the expert may be cross-examined by any party.

**Expert's reports to be addressed to Court**

**32.17** An expert witness must address his report to the court and not to any person from whom the expert witness has received instructions.

## Part 33

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### Court Attendance by Witnesses and Depositions

#### Contents of this Part

Scope of this Part	Rule 33.1
Witness summonses ( <i>subpoenas</i> )	Rule 33.2
Issue of witness summons	Rule 33.3
Witness summonses in aid of inferior court or tribunal	Rule 33.4
Time for serving witness summons	Rule 33.5
Right of witness to travelling expenses and compensation for loss of time	Rule 33.6
Evidence by deposition before examiner	Rule 33.7
Conduct of examinations	Rule 33.8
Evidence without examiner being present	Rule 33.9
Enforcing attendance of witnesses	Rule 33.10
Special reports	Rule 33.11
Fees and expenses of examiner	Rule 33.12
Order for payment of examiner's fees	Rule 33.13
Use of deposition at hearing	Rule 33.14
Where person to be examined is out of jurisdiction – letter of request	Rule 33.15
Early appointment to produce documents	Rule 33.16

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#### Scope of this Part

**33.1** (1) This Part provides

- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
- (b) for a party to obtain evidence prior to a hearing.

(2) In this Part, reference to a hearing includes a reference to the trial.

**Witness summonses (subpoenas)**

**33.2** (1) A witness summons is a document issued by the court, also known as a subpoena, requiring a witness to attend court

- (a) to give evidence; or
- (b) to produce documents to the court.

Form 12.

(2) A witness summons must be in Form 12.

(3) There must be a separate witness summons for each witness.

(4) A witness summons may require a witness to produce documents to the court either on

(a) the date fixed for the trial or the hearing of any application in the proceedings; or

Form 12.

(b) such other date as the court may direct, in which case Form 12 should be altered accordingly.

**Issue of witness summons**

**33.3** (1) A witness summons is issued on the date entered on the summons by the Registrar.

(2) A party must obtain permission from the court when that party wishes to have

- (a) a witness summons issued less than 21 days before the date of the hearing; or
- (b) a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial or the hearing of any application.



(3) An application for permission under sub-rule (2)(b) will generally be made orally at a case management conference under rule 27.5(1); otherwise, an application under sub-rule (2) may be made without notice and must be supported by affidavit.

(4) The court may set aside or vary a witness summons.

**Witness summonses in aid of inferior court or tribunal**

**33.4** (1) The court may issue a witness summons in aid of an inferior court or tribunal.

(2) The court may set aside a witness summons issued under this rule.

(3) In this rule, "inferior court or tribunal" means any court or tribunal which does not have power to issue a witness summons in relation to proceedings before it.

**Time for serving witness summons**

**33.5** (1) A witness summons is binding only if it is served at least 14 days before the date on which the witness is required to attend before the court or tribunal.

(2) Notwithstanding sub-rule (1) the court may direct that a witness summons shall be binding where it has been served less than 14 days before the date on which the witness is required to attend before the court or tribunal.

(3) An application under sub-rule (2) may be made without notice and must be supported by evidence on affidavit.

(4) A witness summons issued pursuant to sub-rule (2) must be endorsed as follows: "Issued pursuant to a direction of the Court given this ..... day of ..... 20..... ."

- (5) A witness summons which is
  - (a) served in accordance with this rule; and
  - (b) requires the witness to attend court to give evidence,

is binding until the conclusion of the hearing at which the attendance of the witness is required.

**Right of witness to travelling expenses  
and compensation for loss of time**

**33.6** At the time of service of a witness summons, the witness must be offered or paid

- (a) a sum reasonably sufficient to cover subsistence of the witness and expenses of travelling to and from the court; and
- (b) such sum by way of compensation for loss of time as may be specified in a practice direction.

**Evidence by deposition before examiner**

**33.7** (1) A party may apply for an order for a person to be examined before the trial or the hearing of any application in the proceedings, and the court may make such an order where it appears to the court to be just and convenient to do so, and to be necessary in order to dispose fairly of the proceedings or to save costs.

(2) A person from whom evidence is to be obtained following any order under this rule is referred to as a "deponent" and the evidence is referred to as a "deposition".

(3) An order under this rule shall be for a deponent to be examined on oath before

- (a) a judge;
- (b) a master;
- (c) a registrar;
- (d) a magistrate; or
- (e) an attorney-at-law who has practised for at least ten years, ("the examiner").

(4) The order must state

- (a) the name of the examiner; and
- (b) the date, time and place of the examination.

(5) The order may require the production of any document which the court considers may be necessary for the purposes of the examination.

(6) Rule 2.6 (court's discretion as to when, where and how it deals with cases) applies to an examination under this rule.

(7) At the time of service of the order the deponent must be offered or paid subsistence, travelling expenses and compensation for loss of time in accordance with rule 33.6.

(8) An application may be made by any party whether or not that party would otherwise call the witness.

(9) Where the application is made by the party who would call the witness to give evidence, the court may order that party to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

- **Part 29 contains general rules about witness statements and witness summaries**

### **Conduct of examinations**

**33.8** (1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the deponent were giving evidence at a trial.

(2) Where all the parties are present, the examiner may with the consent of the parties, conduct the examination of a person not named in the order for examination.

(3) The examiner may conduct the examination in private if the examiner considers it appropriate to do so.

(4) The examiner must ensure that a full record is taken of the evidence given by the witness.

(5) Where any person being examined objects to answer any question put to that person, the ground of the objection and the answer to the question must be set out in the deposition or in a statement annexed to the deposition.

(6) The examiner must send the original deposition to the Registry and a copy of the deposition to

(a) every party to the proceedings; and

(b) the deponent.

(7) Where the deponent or any attorney-at-law present at the hearing is of the opinion that the deposition does not accurately represent the evidence, the deponent or the attorney-at-law may

(a) endorse on the copy of the deposition the corrections which in his opinion should be made;

- (b) file the endorsed copy deposition; and
- (c) serve a copy of it on all other parties.

**Evidence without examiner being present**

**33.9** (1) With the consent of the parties, the court, in a case falling within rule 33.7(1), may order that the evidence of a witness be taken as if before an examiner, but without an examiner being appointed or present.

(2) Where such an order is made then, subject to any direction that may be contained in the order,

- (a) the party by whom the examination was requested ("the requesting party") must provide a means of recording the evidence of the deponent;
- (b) an attorney-at-law for any party may administer the oath to a deponent;
- (c) any person transcribing evidence given need not be sworn but must certify as a correct deposition the transcript of the evidence and deliver it to the attorney-at-law for the requesting party;
- (d) the attorney-at-law for the requesting party must file the original deposition and deliver a true copy to all other parties and to the deponent; and
- (e) where the deponent or any attorney-at-law present at the hearing is of the opinion that the deposition does not accurately represent any evidence given the deponent or the attorney-at-law may;
  - (i) endorse on the copy of the deposition the corrections which in his opinion should be made;

- (ii) file the endorsed copy of the deposition; and
- (iii) serve a copy of it on all other parties.

**Enforcing attendance of witnesses**

**33.10** (1) Where a person served with a witness summons to attend before an examiner

- (a) fails to attend;
- (b) refuses to be sworn or to affirm for the purpose of the examination; or
- (c) refuses to answer any lawful question or to produce any document at the examination,

the party requesting the deposition may file a certificate signed by the examiner of the failure or refusal.

(2) On the certificate being filed, the party requesting the deposition may apply to the court for an order requiring the person to attend, to be sworn or to affirm, to answer any question or to produce any document as the case may be.

(3) An application for an order under this rule may be made on 3 days' notice to the person and to each interested party, supported by evidence on affidavit.

(4) Any order made by the court must be served personally on the witness and be endorsed with a notice in the first form given in rule 53.3(b).

(5) A person who wilfully disobeys an order made against him under sub-rule (2) which complies with sub-rule (4) is guilty of contempt of court.

(6) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.

- **Part 53 deals with the procedure to apply to commit a person for contempt of court**

### **Special reports**

**33.11** The examiner may make a special report to the court with regard to

- (a) the absence; or
- (b) the conduct,

of any person present when the deposition was taken.

### **Fees and expenses of examiner**

**33.12** (1) On appointing an examiner, the court must fix the fee to be paid to the examiner for carrying out the examination.

(2) The party who obtained the order must pay the fee and also all reasonable travelling and other expenses including charges for a room, other than the examiner's own chambers or office, where the examination takes place.

(3) Notwithstanding sub-rule (1) and (2), the court may ultimately order any party to bear the costs of the examination.

### **Order for payment of examiner's fees**

**33.13** (1) The examiner may report to the court the fact that any fees or expenses due have not been paid and the court may make an order that the party who obtained the order for the examination pay such fees and expenses.

(2) An order under sub-rule (1) may be enforced as a money judgment.

#### **Use of deposition at hearing**

**33.14** (1) A deposition ordered under rule 33.7 or 33.9 may be given in evidence at the trial unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must serve notice of such intention on every other party at least 28 days before the day fixed for the hearing.

(3) The court may require a deponent to attend the hearing and give evidence orally.

#### **Where a person to be examined is out of the jurisdiction – letter of request**

**33.15** (1) Where a party wishes to take a deposition from a person outside the jurisdiction, the court may direct the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(2) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(3) Where the government of the country to which the letter is sent allows a person appointed by the court to examine a person in that country, the court may make an order appointing an examiner for that purpose.

(4) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.



(5) Where the court makes an order for the issue of a letter of request, the party who sought the order must file

- (a) the following documents and, except where sub-rule (6) applies, a translation of them into an official language of the country referred to in sub-rule (1)
  - (i) a draft letter of request;
  - (ii) a statement of the issues relevant to the proceedings; and
  - (iii) a list of questions or the subject matter of questions to be put to the person to be examined; and
- (b) an undertaking to be responsible for the expenses of the Minister with responsibility for foreign affairs.

(6) There is no need to file a translation if English is one of the official languages of the country referred to in sub-rule (1).

### **Early appointment to produce documents**

**33.16** (1) The court may permit a party to issue a witness summons requiring any person to attend prior to the date of trial at a time and place (a "production hearing") specified in the summons for the purpose of producing one or more documents.

(2) The only documents that a summons under this rule can require a person to produce are documents which that person could be compelled to produce at the trial.

(3) An application for permission under this rule may be made orally at a case management conference.

## Part 34

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### Requests for information

#### Contents of this Part

Right of parties to obtain information	Rule 34.1
Orders compelling reply to request for information	Rule 34.2
Information obtained under Part 34 not to be used in other proceedings	Rule 34.3
Certificate of Truth	Rule 34.4

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#### Right of parties to obtain information

**34.1** (1) This Part enables a party to obtain from any other party information about any matter which is in dispute in the proceedings.

(2) To obtain the information referred to in sub-rule (1), the party must serve on the other party a request specifying the information sought.

#### Orders compelling reply to request for information

**34.2** (1) Where a party does not within a reasonable time provide information which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.

(2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.

(3) When considering whether to make an order, the court must have regard to

- (a) the likely benefit which will result if the information is provided;
- (b) the likely cost of providing it; and
- (c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with such an order.

**Information obtained under Part 34  
not to be used in other proceedings**

**34.3** A party may use information which that party obtains

- (a) in response to a request under rule 34.1; or
- (b) in compliance with an order under rule 34.2,

only for the purpose of the proceedings in which the request or order was made.

**Certificate of Truth**

**34.4** Any information provided under this Part must be verified by a certificate of truth in accordance with rule 3.12.

## Part 35

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### Offers to settle

#### Contents of this Part

Scope of this Part	Rule 35.1
Introductory	Rule 35.2
Making offer to settle	Rule 35.3
Time when offer to settle may be made	Rule 35.4
Procedure for making offer to settle	Rule 35.5
Extent to which offer to settle includes interest, costs or counterclaim	Rule 35.6
Offer to settle made after interim payment	Rule 35.7
Offer to settle part of claim	Rule 35.8
Time limit for accepting offer to settle	Rule 35.9
Procedure for acceptance	Rule 35.10
Effect of acceptance – generally	Rule 35.11
Costs where offer not accepted – general rules	Rule 35.12

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#### Scope of this Part

**35.1** (1) This Part contains rules relating to

- (a) offers to settle which a party may make to another party; and
- (b) the consequences of those offers.

(2) This Part does not limit a party's right to make an offer to settle otherwise than in accordance with this Part.

(3) The rules in this Part are subject to rule 23.12 (compromise etc., by or on behalf of a minor or patient).

- **Part 36 deals with payments into court.**

### **Introductory**

**35.2** (1) An offer to settle may be made in any proceedings whether or not there is a claim for money.

- (2) The party who makes the offer is called the "offeror".
- (3) The party to whom the offer is made is called the "offeree".
- (4) An offer to settle is made when it is served on the offeree.

### **Making offer to settle**

**35.3** (1) A party may make an offer to another party which is expressed to be "without prejudice" but in which the offeror reserves the right to make the terms of the offer known to the court after judgment is given with regard to

- (a) the allocation of the costs of the proceedings; and
- (b) the question of interest on damages.

(2) The offer may relate to the whole of the proceedings or to part of them or to any issue that arises in them.

### **Time when offer to settle may be made**

**35.4** A party may make an offer to settle under this Part at any time before the beginning of the trial.

### **Procedure for making offer to settle**

**35.5** (1) An offer to settle under this Part must be in writing.

(2) The offeror must serve the offer on the offeree and a copy on all other parties.

(3) Neither the fact nor the amount of the offer or of any payment into court in support of the offer may be communicated to the court until after all questions relating to liability and the amount of money to be awarded, other than costs and interest, have been decided.

(4) Sub-rule (3) does not apply to

(a) an offer which has been accepted; or

(b) any defence of tender before claim which has been pleaded.

**Extent to which offer to settle  
includes interest, costs or counterclaim**

**35.6** (1) An offer to settle a claim for damages under this Part must state whether or not the amount offered includes

(a) interest; or

(b) costs.

(2) Where the offer includes interest or costs or both it must state any amount which is included for each.

(3) Where there is a counterclaim as well as a claim, the offer must state

(a) in the case of an offer by the claimant to accept a settlement of his claim, whether or not it takes into account the counterclaim;  
or

(b) in the case of an offer by the defendant to settle the claimant's claim, whether or not it takes into account the counterclaim,

and in each case what provision it makes with respect thereto.

**Offer to settle made after interim payment**

**35.7** If an interim payment has been made, whether voluntarily or under an order under Part 17 (Interim Remedies), any subsequent offer to settle under this Part must state whether it is in addition to the interim payment or whether it is intended that the interim payment will be deducted from any amount paid under the settlement.

**Offer to settle part of a claim**

**35.8** (1) An offer to settle under this Part must state whether or not it relates to the whole or part of the claim.

(2) Where it does not clearly state otherwise, it is to be taken to relate to the whole claim.

(3) Where the offer relates only to part or parts of the claim it must

(a) identify the part or parts of the claim in respect of which it is made; and

(b) where there is more than one part, state what is offered in respect of each part to which the offer relates.

**Time limit for accepting an offer to settle**

**35.9** (1) The offeror may state in the offer that it is open for acceptance until a specified date.

(2) For the purposes of this Part, the offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is open for acceptance for at least 21 days.

(3) Acceptance of the offer after the beginning of the trial shall have no effect on any decision that the court makes as to the consequences of such acceptance.

**Procedure for acceptance**

**35.10** (1) To accept an offer for the purposes of this Part, a party must

- (a) serve written notice of acceptance on the offeror; and
- (b) send a copy of the notice to any other party.

(2) The offeree accepts the offer when notice of acceptance is served on the offeror.

(3) Where an offer or payment into court under Part 36 is made in proceedings to which rule 23.12 applies,

- (a) the offer or payment may be accepted only subject to the permission of the court; and
- (b) no payment out of any sum paid into court may be made without a court order.

- **Rule 23.12 deals with compromises etc. by or on behalf of a minor or patient.**



**Effect of acceptance – generally**

**35.11** (1) Where the offeree accepts an offer which is not limited in accordance with rule 35.8, the claim is stayed upon the terms of the offer.

(2) Where the offer relates to a claim and a counterclaim, both the claim and the counterclaim are stayed on the terms of the offer.

(3) In any other case, the proceedings are stayed to the extent that they are covered by the terms of the offer.

(4) Where the approval of the court is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only if and when the court gives its approval.

• **Rule 23.12 deals with the settlement of proceedings involving minors and patients.**

(5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.

(6) Where money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect proceedings to obtain payment out of court.

• **Part 36 deals with payments into court.**

(7) Where an offer is accepted but its terms are not complied with, either party may apply to the court for an order

- (a) removing the stay under this paragraph to enable the proceedings to be determined;
- (b) enforcing the terms of the settlement agreement; or
- (c) granting such other relief as may be appropriate.

(8) Where a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an accepted offer, that party may do so by applying to the court without the need to commence new proceedings unless the court orders otherwise.

### **Costs where offer not accepted – general rules**

**35.12** (1) Where the defendant makes an offer to settle that is not accepted and

- (a) in the case of an offer to settle a claim for damages, the court awards less than the full amount of the defendant's offer; or
- (b) in any other case, the court considers that the claimant acted unreasonably in not accepting the defendant's offer,

the claimant must pay any costs incurred by the defendant after the latest date on which the offer could have been accepted in accordance with its terms.

(2) Where a claimant makes an offer to settle that is not accepted and

- (a) in the case of an offer to settle a claim for damages, the court awards an amount which is equal to or more than the amount of the offer; or
- (b) in any other case, the court considers that the defendant acted unreasonably in not accepting the claimant's offer,

the court may, in exercising its discretion as to interest, take into account the failure of the defendant to accept the claimant's offer.

(3) The court may decide that the general rule under sub-rule (1) is not to apply in a particular case.

(4) In deciding whether the general rule should not apply and in considering the exercise of its discretion under sub-rule (2), the court may take into account

- (a) the terms of any offer;
- (b) the stage in the proceedings at which the offer was made;
- (c) the information available to the offeror and the offeree at the time that the offeror made the offer; and
- (d) the conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated.

(5) This rule applies to offers to settle at any time, including before proceedings were started.

## Part 36

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### Payments into court to support offers under Part 35 and under order of court

#### Contents of this Part

Scope of this Part	Rule 36.1
Payments into court to support offers to settle	Rule 36.2
Right to payment out on acceptance of offer	Rule 36.3
Cases where payment out requires court order	Rule 36.4
Money paid into court under order	Rule 36.5
Money paid into court as condition for permission to defend or to continue to defend	Rule 36.6
Proceedings under the Accident (Compensation Reform) Act, Cap. 193A and the Law Reform (Miscellaneous Provisions) Act, Cap. 205	Rule 36.7

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#### Scope of this Part

**36.1** (1) This Part deals with payments into court made

- (a) to support an offer of settlement whether or not made under Part 35;
- (b) in accordance with an order of court; or
- (c) to support a defence of tender.

(2) A defendant is not obliged to make a payment into court to support an offer under Part 35.

#### Payments into court to support offers to settle

**36.2** (1) A defendant who offers to settle the whole or part of a claim may pay money into court in support of the offer.

- (2) A defendant may not pay money into court unless the
  - (a) defendant certifies that the payment is in support of an offer to settle;
  - (b) payment is made to support a defence of tender; or
  - (c) payment is made under a court order.
- (3) A payment into court may not be made until a claim is issued.
- (4) A payment into court to support an offer may be made
  - (a) when the offer is made; or
  - (b) at any time while the offer is continuing.
- (5) A defendant who pays money into court must
  - (a) serve notice of payment on the claimant; and
  - (b) file a copy of the notice with a statement of the date, if any, by which the offer is open for acceptance under rule 35.9(1) (time limit for accepting offer to settle).
- (6) With
  - (a) the permission of the court; or
  - (b) the agreement of the claimant,

a defendant may pay money in support of an offer of settlement into an interest bearing account on such terms as to

- (i) the name or names of the account holder or holders; and
- (ii) the terms on which money may be paid out of the account,

as may be ordered by the court or agreed between the parties.

**Right to payment out on acceptance of offer**

**36.3** (1) Subject to rule 36.4, a claimant who accepts an offer to settle

- (a) within the period stated for accepting it; or
- (b) where no period is stated in the defendant's offer, before any withdrawal of the offer,

is entitled to payment of the sum which the defendant paid into court to support the offer, without the requirement of a court order.

(2) To obtain payment, the claimant must file and serve on the defendant a request for payment certifying that the offer has been accepted within any period stated in the offer for accepting it and before any withdrawal of the offer; and where the defendant does not file and serve within 14 days an objection to payment out, payment must be made to the claimant.

**Cases where payment out requires court order**

**36.4** (1) Where a claimant accepts money paid into court

- (a) by one or more, but not all, of a number of defendants;
- (b) with a defence of tender before claim;
- (c) to settle a claim to which
  - (i) Part 23 (claims by minors and patients); or
  - (ii) Rule 36.7 (proceedings in respect of accident compensation) applies; or
- (d) after the end of the period stated for accepting it,

the money in court may only be paid out under an order of the court.

(2) In a case within sub-rule (1)(c), an order may not be made by consent.

(3) Where

(a) after the trial has begun, a claimant accepts money paid into court; and

(b) all further proceedings on the claim or that part of it to which the acceptance relates are stayed,

the money in court may only be paid out under an order of the court.

(4) An order under this rule must deal with the costs of the proceedings which have been stayed.

#### **Money paid into court under order**

**36.5** (1) When a party makes a payment into court under a court order, that party must give notice of the payment to every other party.

(2) Money paid into court under a court order may not be paid out unless the court gives permission.

(3) Sub-rule (2) does not apply where

(a) the money is paid into court by a defendant;

(b) in accordance with rule 36.6(2), that defendant chooses to treat the money paid into court as if it were a payment into court in support of an offer to settle; and

(c) the claimant accepts the offer to settle.

**Money paid into court as condition for permission to defend or to continue to defend**

**36.6** (1) This rule applies where the court makes an order permitting a defendant

- (a) to defend; or
- (b) to continue to defend,

on condition that the defendant makes a payment into court.

(2) Where

- (a) a defendant makes a payment into court; and
- (b) makes an offer to settle, whether before or after the order to pay money into court,

the defendant may choose to treat the whole or any part of the money paid into court as if it were a payment into court made in support of the offer to settle.

(3) Where under sub-rule (2), the defendant chooses to treat the whole or any part of the money paid into court as if it were a payment into court made in support of the offer to settle, the defendant must

- (a) file a notice that he so chooses; and
- (b) serve a copy of it on every other party to the proceedings.



**Proceedings under the *Accident (Compensation Reform) Act*, Cap. 193A and the *Law Reform (Miscellaneous Provisions) Act*, Cap. 205**

**36.7 (1) Where**

(a) a claim includes claims arising under

(i) the *Accident (Compensation Reform) Act*; and Cap. 193A.

(ii) the *Law Reform (Miscellaneous Provisions) Act*, Cap. 205.

(b) a single sum of money is paid into court in satisfaction of those claims; and

(c) the money is accepted,

the court shall apportion the money between the different claims.

(2) The court shall apportion money under sub-rule (1)

(a) when it gives directions under rule 23.13 (control of money recovered by or on behalf of a minor or patient); or

(b) if rule 23.13 does not apply, when it gives permission for the money to be paid out of court.

(3) Where in an action in which a claim under the *Accident (Compensation Reform) Act* is made by or on behalf of more than one person,

(a) a sum in respect of damages is ordered or agreed to be paid in satisfaction of the claim; or

(b) a sum of money is accepted in satisfaction of the claim,

the court shall apportion the sum between the persons entitled to the sum unless the sum has already been apportioned by the court, or by agreement between the parties.

## Part 37

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### Discontinuance

#### Contents of this Part

Scope of this Part	Rule 37.1
Right to discontinue claims	Rule 37.2
Procedure for discontinuing	Rule 37.3
Right to apply to have notice of discontinuance set aside	Rule 37.4
Effect of discontinuance	Rule 37.5
Liability for costs	Rule 37.6
Quantification of costs	Rule 37.7
Discontinuance and subsequent proceedings	Rule 37.8

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#### Scope of this Part

**37.1** (1) The rules in this Part set out the procedure by which a claimant may discontinue all or any part of a claim.

(2) A claimant who

(a) claims more than one remedy; and

(b) subsequently abandons a claim to one or more remedies but continues with the claim for the other remedies,

is not treated as discontinuing part of a claim for the purposes of this Part.

**Right to discontinue claims**

**37.2** (1) A claimant may discontinue all or part of his claim without the permission of the court.

(2) Notwithstanding sub-rule (1),

(a) a claimant needs permission from the court if he wishes to discontinue all or part of a claim in relation to which

(i) the court has granted an interim injunction; or

(ii) any party has given an undertaking to the court;

(b) where a claimant has received an interim payment in relation to a claim, whether made voluntarily or pursuant to an order under Part 17 (Interim Remedies), the claimant may discontinue only if

(i) the defendant who made the payment consents in writing; or

(ii) the court gives permission; and

(c) where there is more than one claimant, a claimant may not discontinue unless

(i) every other claimant consents in writing; or

(ii) the court gives permission.

(3) Where there is more than one defendant, the claimant may discontinue all or part of the claimant's claim against all or any of the defendants.

### **Procedure for discontinuing**

**37.3** (1) To discontinue proceedings or any part of proceedings, a party must

- (a) file a notice of discontinuance; and
- (b) serve a copy of the notice on every other party to the proceedings.

(2) The claimant must file a notice certifying that notice of discontinuance has been served on every other party to the proceedings.

(3) Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the filed notice of discontinuance.

(4) Where the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.

(5) Where there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the proceedings are discontinued.

### **Right to apply to have notice of discontinuance set aside**

**37.4** (1) Where the claimant discontinues without the consent of a co-claimant or of the defendant or the permission of the court, any co-claimant or defendant who has not consented may apply to have the notice of discontinuance set aside.

(2) An application under this rule should be made within 28 days after the date when the notice of discontinuance was served on the applicant.

**Effect of discontinuance**

**37.5** (1) Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on that defendant under rule 37.3(1)(b).

(2) The proceedings are brought to an end as against that defendant on the date referred to in sub-rule (1). This does not affect

- (a) the right of the defendant under rule 37.4 to apply to have the notice of discontinuance set aside; or
- (b) any proceedings relating to costs.

**Liability for costs**

**37.6** (1) Unless

- (a) the parties agree otherwise; or
- (b) the court orders otherwise,

a claimant who discontinues is liable for the costs incurred by the defendant against whom the proceeding is discontinued before the service of the notice of discontinuance.

(2) Where the proceedings are only partly discontinued,

- (a) the claimant is only liable for the costs relating to that part of the proceedings which is discontinued; and
- (b) unless the court orders otherwise, the costs which the claimant is liable to pay are not to be quantified until the conclusion of the rest of the proceedings.

**Quantification of costs**

**37.7** (1) Where the claimant discontinues part of the case only, the amount of costs must be assessed by the court when the remainder of the proceedings are resolved.

(2) In determining the appropriate amount of costs to be paid where an order has been made under rule 65.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

**Discontinuance and subsequent proceedings**

**37.8** Where

- (a) a claimant discontinued a claim after the defendant against whom he discontinued filed a defence; and
- (b) the claimant makes a subsequent claim
  - (i) against the same defendant;
  - (ii) arising out of facts which are the same or substantially the same as those relating to the discontinued proceedings; and
  - (iii) the claimant has not paid the defendant's costs of the discontinued proceedings,

the court may stay the subsequent claim until such time as the costs of the discontinued proceedings are paid.

## Part 38

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### Pre-trial Review

#### Contents of this Part

Scope of this Part	Rule 38.1
Direction for pre-trial review	Rule 38.2
Rules relating to case management conference to apply	Rule 38.3
Who is to conduct pre-trial review	Rule 38.4
Parties to prepare pre-trial memorandum	Rule 38.5
Directions at pre-trial review	Rule 38.6

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#### Scope of this Part

**38.1** This Part deals with the pre-trial review which is to be held shortly before trial if the court so orders.

#### Direction for pre-trial review

**38.2** (1) At any case management conference and at any subsequent hearing in the proceedings other than the trial, the court must consider whether a pre-trial review should be held to enable the court to deal justly with the proceedings.

(2) A party may apply for a direction that a pre-trial review be held.

(3) An application for a pre-trial review must be made at least 60 days before the trial date or the beginning of any trial period fixed under rule 27.5(3).

(4) The Registrar must give each party at least 21 days notice of the date, time and place for the pre-trial review.

**Rules relating to case management conference to apply**

**38.3** Parts 25 and 26 where appropriate, apply to a pre-trial review as they do to a case management conference.

**Who is to conduct pre-trial review**

**38.4** Wherever practicable the pre-trial review is to be conducted by the trial judge.

**Parties to prepare pre-trial memorandum**

**38.5** (1) The parties must seek to agree upon a pre-trial memorandum and file it at the Registry not less than 7 days before the pre-trial review.

(2) Where the parties are not able to agree upon a pre-trial memorandum, a separate memorandum is to be filed by each party, a copy of which is to be served on each other party not less than 3 days before the date fixed for the pre-trial review.

(3) A pre-trial memorandum must contain

(a) a concise statement of the nature of the proceedings;

(b) details of any admissions made;

(c) a brief statement of the factual and legal contentions of the party or parties filing it; and

(d) a statement of the issues to be determined at the trial.

**Directions at pre-trial review**

**38.6** (1) The court may give directions as to the conduct of the trial in order to ensure the fair, expeditious and economic trial of the issues.



- (2) In particular the court may
  - (a) direct either party to provide further information to the other and permit inspection of documents, things or premises;
  - (b) give directions for the filing by each party and for the service on all other parties of one or more of
    - (i) a skeleton argument;
    - (ii) a chronology of relevant events;
    - (iii) a summary of any legal propositions to be relied on at the trial; and
    - (iv) a list of authorities which it is proposed to cite in support of these propositions;
  - (c) direct the parties jointly to prepare and file by a specified date
    - (i) a core bundle of documents, that is, a bundle containing only those documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial;
    - (ii) an agreed statement of facts;
    - (iii) an agreed statement of the basic technical, scientific or medical matters in issue; or
    - (iv) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge;
  - (d) give directions as to the extent to which evidence may be given in written form;

- (e) direct the times to be allowed for any opening or closing addresses;
- (f) give directions as to the procedure to be followed at the trial;
- (g) decide the total time to be allowed for the trial; and
- (h) direct how that time shall be allocated between the parties.

## Part 39

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### Trial

#### Contents of this Part

Documents for use at trial	Rule 39.1
Cross-examination	Rule 39.2
Written submissions	Rule 39.3
Failure of party to attend trial	Rule 39.4
Applications to set aside judgments given in party's absence	Rule 39.5
Adjournment of trial	Rule 39.6
Inspection	Rule 39.7

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#### Documents for use at trial

**39.1** (1) At least 21 days before the date fixed for hearing all parties must inform the claimant which documents they wish to have included in the bundle of documents to be used at the trial.

(2) The claimant must prepare a bundle including all the documents which any party wishes to make use of at the trial.

(3) The bundle of documents should separate those which are agreed and those which are not agreed.

(4) The claimant must paginate and index the bundle of documents.

(5) At least 10 days before the date fixed for the trial, the claimant must file at the Registry

(a) a bundle comprising copies of

(i) the claim form;

- (ii) all statements of case;
  - (iii) any requests for information and the replies;
  - (iv) any documents which the parties were ordered to file under rule 38.6(2)(b); and
  - (v) the pre-trial memorandum or memoranda.
- (b) a second bundle comprising copies of
- (i) all affidavits or witness statements filed for the purpose of the trial;
  - (ii) all expert reports; and
  - (iii) any agreed statements under rule 38.6(2)(c)(ii)-(iv);
- (c) a third bundle comprising the documents referred to in sub-rule (2); and
- (d) where the bundles exceed 100 pages of documents in total, a core bundle, that is, a bundle containing only those documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial.
- (6) There must be excluded from the bundles prepared under this rule
- (a) any applications or orders relating to interim payments under Part 17; and
  - (b) any offers to settle under Part 35 or notice of payment into court under Part 36, and any reference to those offers or payments must be excised from any document contained in the bundles.

(7) Where only a counterclaim is to be tried, references in this rule to the "claimant" should be construed as references to the defendant.

- **Rule 27.6 allows the court to dispense with all or some of the requirements of this rule in simple and urgent cases**

### **Cross-examination**

**39.2** The court may limit examination, cross-examination or re-examination of any witness.

### **Written submissions**

**39.3** (1) The parties may, with the consent of the judge, file written submissions instead of or in addition to, closing speeches.

(2) Written submissions must be filed within 7 days after the conclusion of the trial, or such other period as the judge may direct.

### **Failure of party to attend trial**

**39.4** Where the judge is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules and

- (a) where neither party appears at the trial, the judge may strike out the claim; or
- (b) where only one party appears, the judge may proceed in the absence of the other.

### **Application to set aside judgment given in party's absence**

**39.5** (1) A party who was not present at a trial at which judgment was given or an order made in the absence of that party, may apply to set aside that judgment or order.

(2) The application must be made within 14 days after the date on which the judgment or order was served on the applicant.

(3) The application to set aside the judgment or order must be supported by evidence on affidavit showing

(a) good reason for the failure to attend the hearing; and

(b) that it is likely that had the party attended, some other judgment or order might have been given or made.

### **Adjournment of trial**

**39.6** The judge may adjourn a trial on such terms as the judge thinks just.

### **Inspection**

**39.7** The judge may inspect any place, process or thing that may be relevant to any issue or question in the proceedings.

## Part 40

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### Appointment of Referee to Inquire and Report

#### Contents of this Part

Power to order trial before referee	Rule 40.1
Reference to referee to inquire and report	Rule 40.2
Appointment of referee	Rule 40.3
Conduct of reference	Rule 40.4
Report following reference	Rule 40.5
Consideration of report by court	Rule 40.6
Restrictions on appointment of referee in proceedings by or against Crown	Rule 40.7

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#### Power to order trial before referee

##### 40.1 Where

- (a) the parties agree;
- (b) the court considers that the claim requires
  - (i) prolonged examination of documents; or
  - (ii) scientific or local investigation which cannot conveniently be carried out by the court; or
- (c) the matters in dispute are wholly or mainly matters of account,

then, subject to rule 40.7, the court may order the claim or any issue or allegation to be tried by a referee.

### **Reference to referee for inquiry and report**

**40.2** The court may refer to a referee for inquiry and report any question or issue of fact arising in a claim.

### **Appointment of referee**

**40.3** (1) A referee must be appointed at a case management conference or pre-trial review.

(2) The referee shall be a person agreed by the parties.

(3) Where the parties cannot agree who should be the referee, the court may

(a) select the referee from a list prepared or accepted by the parties;  
or

(b) direct that the referee be selected in such other manner as the court may direct.

(4) The court must specify the question or issue upon which the referee is to report.

(5) The court must decide

(a) what fee is to be paid to the referee; and

(b) by whom.

(6) This does not affect any decision as to the party who is ultimately to bear the referee's fee.

### **Conduct of reference**

**40.4** (1) For the purpose of the inquiry, the referee has the same powers as the court other than the power to commit for contempt of court.



(2) Unless the court otherwise orders, the referee must adopt what appears to the referee to be the simplest, least expensive, most expeditious and just method of conducting the reference.

(3) The referee may hold the trial or conduct the inquiry at any place and at any time which appears to the referee to be convenient to the parties.

(4) Where a person served with a witness summons to appear before a referee

(a) fails to attend;

(b) refuses to be sworn or to affirm for the purposes of the inquiry;  
or

(c) refuses to answer any lawful question or produce any document at the inquiry,

the referee may sign and file a certificate of such failure or refusal.

(5) Any party may apply to the court for an order requiring the witness to attend, to be sworn or to affirm, to answer any question or to produce any document as the case may be.

(6) An application for an order under sub-rule (5) may be made on 3 days notice to the witness and to each interested party, supported by evidence on affidavit.

(7) In the case of non-attendance, the affidavit must prove

(a) service of an appropriate witness summons; and

(b) that the person served with the witness summons was paid or offered the payments required by rule 33.7(7).

(8) An order made under sub-rule (5) must be served personally on the witness and be endorsed with a notice in accordance with the first form in rule 53.3(b).

(9) A person who wilfully disobeys an order made against that person under sub-rule (5) which complies with sub-rule (8) is guilty of contempt of court.

(10) The court may order the person against whom an order is made under this rule to pay any costs resulting from the

(a) failure to attend before a referee;

(b) refusal to answer any lawful question or produce any document at the inquiry; or

(c) refusal to be sworn or to affirm for the purpose of the inquiry.

- **Part 53 deals with the procedure to apply to commit a person for contempt of court.**

### **Reports following reference**

**40.5** (1) The report of the referee appointed under this Part is to be made to the court.

(2) The referee must supply a copy of the report to each party.

(3) The referee may in his report

(a) submit any question for the decision of the court; or

(b) make a special statement of facts from which the court may draw inferences.

**Consideration of report by the court**

**40.6** (1) Upon receipt of the report, the Registrar must fix a date, time and place for its consideration by the court.

(2) The Registrar must give 21 days notice thereof to the parties.

(3) The court may

(a) adopt the report in whole or in part;

(b) vary the report;

(c) ask the referee to explain any part of the report;

(d) remit any question or issue for further consideration;

(e) decide the question or issue on the evidence taken by the referee;  
or

(f) direct that additional evidence be given to the court.

**Restrictions on appointment of referee  
in proceedings by or against Crown**

**40.7** In proceedings by or against the Crown, a referee may not be appointed under this Part without the consent of the Attorney-General.

## Part 41

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### Accounts and Inquiries

#### Contents of this Part

Scope of this Part	Rule 41.1
Directions for account	Rule 41.2
Verification of account	Rule 41.3
Omissions etc.	Rule 41.4
Allowances	Rule 41.5
Delay	Rule 41.6
Distribution before entitlement ascertained	Rule 41.7

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#### Scope of this Part

**41.1** (1) This Part deals with claims

(a) for an account; or

(b) for some other relief which requires the taking of an account.

(2) A claim for an account must be made by a fixed date application supported by evidence on affidavit.

- **Rule 8.1 deals with the issue of a fixed date application and rule 27.2 deals with the first hearing of such an application.**

#### Directions for account

**41.2** (1) Where a claim or counterclaim is made for an account or requires the taking of an account, an application for directions relating to the taking of the account must be made at the case management conference or first hearing.

(2) The court may

(a) direct that any preliminary issue of fact be tried;

(b) order an account to be taken;

(c) order that inquiries be made; and

(d) order that any amount shown to be due to a party on the account be paid by a date specified in the order.

(3) Every direction that an account be taken must be so numbered that each distinct account and inquiry may be designated by that number.

(4) On directing that an account be taken, or subsequently, the court must direct how it shall be taken or verified.

(5) The court may direct that any relevant books of account shall be evidence of the matters contained in them, subject to any objection that any party may properly take.

#### **Verification of account**

**41.3** (1) When there has been a direction for an account to be taken, the accounting party must prepare an account and verify it by affidavit exhibiting the account.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the court otherwise orders, the accounting party must file the affidavit and the account and serve a copy of each on all other parties.

**Omissions etc.**

**41.4** Any party who claims that there are omissions or who challenges any item in the account must give written notice to the accounting party with

- (a) the best particulars that the party who so claims can give of the omission or error; and
- (b) the grounds for alleging it.

**Allowances**

**41.5** In taking any account all just allowances shall be made without any express directions to that effect.

**Delay**

**41.6** Where there is undue delay in taking the account, the court may

- (a) require the accounting party, or any other party, to explain the delay;
- (b) give directions to expedite the taking of the account;
- (c) direct any other party to take over the taking of the account; or
- (d) make such other order, including an order as to costs, as is just.

**Distribution before entitlement ascertained**

**41.7** Where some of the persons entitled to share in a fund are known but there is, or is likely to be, difficulty or delay in ascertaining other persons so entitled, the court may direct or allow immediate payment of their shares to the known persons without reserving any part of those shares to meet the subsequent costs of ascertaining the other persons.

## Part 42

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### Judgments and Orders

#### Contents of this Part

Scope of this Part	Rule 42.1
Parties present when order made or notified of its terms to be bound	Rule 42.2
Practice forms to be used where available	Rule 42.3
Standard requirements	Rule 42.4
Drawing up of judgments and orders	Rule 42.5
Service of orders	Rule 42.6
Consent judgments and orders	Rule 42.7
Time when judgment or order takes effect	Rule 42.8
Time for complying with judgment or order	Rule 42.9
Correction of error in judgment or order	Rule 42.10
Cases where court gives judgment both on claim and counterclaim	Rule 42.11
Service of copy of order on person not a party	Rule 42.12

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#### Scope of this Part

**42.1** (1) This Part contains rules about judgments and orders made by the court.

(2) This Part does not apply to the extent that any other rule makes a different provision in relation to the judgment or order in question.

**Parties present when order made  
or notified of terms to be bound**

**42.2** A party is bound by the terms of the judgment or order whether or not the judgment or order is served where that party

- (a) is present whether in person or by a legal practitioner when the judgment is given or the order is made; or
- (b) is notified of the terms of the judgment or order by telephone, FAX, e-mail or otherwise.

**Practice forms to be used where available**

**42.3** Where there is a practice form for a judgment or order of any description, a judgment or order of that description should generally be in that form.

**Standard requirements**

**42.4** (1) Every judgment or order must state the name and judicial title of the person who gave or made it, unless it is

- (a) a default judgment under Part 12;
- (b) a judgment entered by the Registrar on an admission or following a court order under Part 14; or
- (c) a consent judgment or order under rule 42.7.

(2) Every judgment or order must

- (a) be signed by the Registrar;
- (b) be sealed by the court; and
- (c) bear the date on which it is given or made.



### **Drawing up of judgments and orders**

**42.5** (1) Every judgment or order must be drawn up by the party having carriage of the order or judgment unless

- (a) the court directs someone else to draft it;
- (b) the court dispenses with the need to do so; or
- (c) it is a consent order under rule 42.7.

(2) Where a draft of an order is directed to be produced by a party, it must be filed no later than 14 days from the date on which the direction was given so that the Registrar may seal the order.

(3) Where a party fails to file a draft of an order within 14 days after the direction was given, any other party may draft and file the order.

(4) A party who drafts an order must file sufficient copies for service on all parties who are to be served.

### **Service of orders**

**42.6** (1) Unless the court otherwise directs, every judgment or order must be served on

- (a) every party to the proceedings in which the judgment or order is made; and
- (b) any other person on whom the court orders it to be served.

• **Part 6 deals with service of other documents.**

(2) Where a party is acting by an attorney-at-law, the court may direct that any judgment or order be served on the party in person as well as on the legal representative.

**Consent judgments and orders**

**42.7** (1) This rule applies where

- (a) none of these Rules prevents the parties agreeing to vary the terms of any court order; and
- (b) all relevant parties agree upon the terms in which judgment should be given or an order made.

(2) Except as provided by sub-rules (3) and (4), this rule applies to the following kinds of judgment or order:

- (a) a judgment for
  - (i) the payment of a debt or damages, including a judgment or order for damages or the value of goods to be assessed;
  - (ii) the delivery up of goods with or without the option of paying the value of the goods to be assessed or the agreed value; or
  - (iii) costs;
- (b) an order for
  - (i) the dismissal of any proceedings, wholly or in part;
  - (ii) the stay of proceedings on terms which are attached as a schedule to the order but which are not otherwise part of it (a "Tomlin Order");
  - (iii) the stay of enforcement of a judgment, either unconditionally or on condition that money due under the judgment is paid on a stated date or by instalments specified in the order;

- (iv) the setting aside of a default judgment under Part 13;
  - (v) the payment out of money which has been paid into court;
  - (vi) the discharge from liability of any party;
  - (vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed; or
  - (viii) any procedural order other than one falling within rule 27.8(1) and (2).
- (3) This rule does not apply
- (a) where any party is a litigant in person;
  - (b) where any party is a minor or patient;
  - (c) in Admiralty proceedings; or
  - (d) where the court's approval is required by these Rules or by any enactment before an agreed order can be made.
- (4) This rule does not allow the making of a consent order by which any hearing date fixed by the court is to be adjourned.
- (5) Where this rule applies the order must be
- (a) drawn in the terms agreed;
  - (b) expressed as being "By Consent";
  - (c) signed by the attorney-at-law acting for each party to whom the order relates; and
  - (d) filed at the Registry for sealing.

**Time when judgment or order takes effect**

**42.8** A judgment or order takes effect on and from the day it is given or made, unless the court specifies that it is to take effect on a different date.

**Time for complying with judgment or order**

**42.9** A party must comply with a judgment or order immediately, unless

- (a) the judgment or order specifies some other date for compliance;
- (b) the court varies the time for compliance including specifying payment by instalments; or
- (c) the claimant, on requesting default judgment under Part 12 or judgment on an admission under Part 14, specifies a different time for compliance.

**Correction of error in judgment or order**

**42.10** (1) The court may at any time, without an appeal, correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.

(2) A party applying for a correction must give notice to all other parties.

**Cases where court gives judgment both on claim and counterclaim**

**42.11** (1) This rule applies where the court gives judgment for specified amounts both for the claimant on a claim and the defendant on a counterclaim.

(2) If there is a balance in favour of one of the parties, the court may order the party whose judgment is for the lesser amount to pay the balance.

(3) In a case to which this rule applies, the court may make against the claimant and the defendant, whether or not it makes an order under sub-rule (2),

(a) a separate order as to damages; and

(b) a separate order as to costs.

### **Service of copy of order on person not a party**

**42.12** (1) Without limiting the rules as to the joinder of necessary parties, where in any proceeding an order is made which may affect the rights of persons who are not parties to the action, the court may at any time direct that a copy of any judgment or order be served on any such person.

(2) Service must be effected in accordance with Part 5 and the court may direct which party is to be responsible for service.

(3) The copy of the order must be endorsed with a notice in Form 13.

Form 13.

(4) The court may dispense with service of the copy of the order or judgment if it appears impracticable to serve that person.

(5) Any person so served, or on whom service is dispensed with,

(a) is bound by the terms of the judgment or order; but

(b) may apply within 28 days of being served, to discharge, vary or add to the judgment or order; and

(c) may take part in any proceedings under the judgment or order.

## Part 43

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### Enforcement – General Provisions

#### Contents of this Part

Scope of this Part	Rule 43.1
Procedure for beginning enforcement	Rule 43.2
Judgment subject to conditions	Rule 43.3
Separate enforcement of costs	Rule 43.4
Effect of order setting aside judgment or order	Rule 43.5
Court's powers where person ordered to do act fails to comply	Rule 43.6
Judgment for sum in foreign currency	Rule 43.7
Enforcement by or against person who is not a party	Rule 43.8
Enforcement against partnerships	Rule 43.9
Enforcement of awards, etc., made by outside bodies	Rule 43.10

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#### Scope of this Part

**43.1** (1) This Part deals generally with the enforcement of judgments and orders.

(2) In this Part and in Parts 44 to 53,

"judgment creditor" means the person who is entitled to enforce a judgment or order; and

"judgment debtor" means the person who is liable to enforcement under the judgment or order, even though the judgment or order is not a money judgment.

**Procedure for beginning enforcement**

**43.2** (1) Where a judgment or order has become enforceable, the court must issue an enforcement order if the judgment creditor files the appropriate request.

(2) Where any of these rules requires the permission of the court to begin enforcement proceedings, the judgment creditor must first obtain that permission.

**Judgment subject to conditions**

**43.3** (1) A person who has obtained a judgment or order subject to the fulfilment of a condition may not enforce the judgment or order unless

- (a) the condition is fulfilled; or
- (b) the court gives permission for the judgment or order to be enforced.

(2) Where a person has obtained a judgment or order subject to the fulfilment of a condition and there is a failure to fulfil that condition, then, unless the court otherwise orders

- (a) that person loses the benefit of the judgment or order; and
- (b) any other person interested may take any steps which
  - (i) are warranted by the judgment or order; or
  - (ii) might have been taken if the judgment or order had not been given or made.

**Separate enforcement of costs**

**43.4** A judgment creditor who has judgment with costs may enforce the judgment and the costs separately.

**Effect of order setting aside judgment or order**

**43.5** (1) Where the court sets aside a judgment or order, any order made for the purpose of enforcing it ceases to have effect.

(2) The court may however, direct that an order remain in force.

**Court's powers where person ordered to do act fails to comply**

**43.6** (1) Where

(a) the court orders a person to do an act; but

(b) that person does not comply;

the judgment creditor may apply for an order that

(i) the judgment creditor; or

(ii) some person appointed by the court,

may do the act.

(2) The court may order the judgment debtor to pay the costs of the application and the costs and expenses incurred pursuant to the order made under this rule.

(3) This rule does not affect any other mode of enforcement of the judgment or order or the powers of the court to punish for contempt.

**Judgment for sum in foreign currency**

**43.7** (1) This rule has effect where the court gives judgment for a sum expressed in a currency of a country other than that in use in Barbados.



(2) The judgment creditor must, when commencing enforcement proceedings in Barbados, file a certificate stating the current exchange rate in Barbados at the close of business on the previous business day for the purpose of the unit of foreign currency in which the judgment is expressed.

#### **Enforcement by or against person who is not a party**

**43.8** (1) A judgment or order in favour of a person who is not a party may be enforced in the same way as a judgment or order in favour of a party.

(2) A judgment or order against a person who is not a party may be enforced in the same way as a judgment or order against a party.

#### **Enforcement against partnerships**

**43.9** (1) This rule has effect where the court gives a judgment or makes an order against a firm or partnership.

(2) The judgment creditor may enforce the judgment or order against

(a) any of the firm's property; or

(b) any person who

(i) has acknowledged service as a partner in the firm;

(ii) has admitted in a statement of case to being a partner in the firm;

(iii) was adjudged by the court to be a partner.

(3) In a case to which sub-rule (2) does not apply, the judgment creditor may issue enforcement proceedings against a person whom he claims to be a partner if he has the court's permission to do so.

(4) Notice of an application for permission must be served on the person against whom the judgment creditor seeks to enforce judgment and must be supported by evidence on affidavit.

(5) A judgment or order given or made

(a) on a claim by a member of a firm against the firm, or by a firm against a member of the firm; or

(b) on a claim by another firm against a firm, where the two firms have one or more partners in common,

may not be enforced without the permission of the court.

**Enforcement of awards, etc., made by outside bodies**

**43.10** (1) This rule has effect

(a) in relation to the enforcement of an award not made by the court but which is enforceable by virtue of a statutory provision as if it were an order of the court; and

(b) in relation to the registration of such an award, so that it may be enforceable as if it were an order of the court.

(2) In this rule,

"award" means the award, order or decision which it is sought to enforce; and

"outside body" means any authority other than the court.

(3) The general rule is that an application

(a) for permission to enforce an award; or

(b) to register an award,

is to be made on notice supported by evidence on affidavit.

(4) The applicant must

(a) exhibit or annex to the affidavit the award or a copy of it;

(b) where the award is for the payment of money, certify the amount remaining due to the applicant; and

(c) give an address for service on the person against whom the applicant seeks to enforce the award.

## Part 44

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### Oral Examination in Aid of Enforcement

#### Contents of this Part

Scope of this Part	Rule 44.1
Who may be orally examined	Rule 44.2
Procedure to obtain order for oral examination	Rule 44.3
Order for oral examination	Rule 44.4
Conduct of oral examination	Rule 44.5
Order for payment by instalments	Rule 44.6
Financial position notice	Rule 44.7

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#### Scope of this Part

**44.1** This Part deals with the oral examination of a judgment debtor to obtain information to assist in enforcing a judgment.

#### Who may be orally examined

**44.2** The following persons may be ordered to attend an oral examination and are called in this Part "examinees":

- (a) the judgment debtor; or
- (b) an officer or former officer of a judgment debtor which is a body corporate.

#### Procedure to obtain order for oral examination

**44.3** (1) An application for an order that a person attend an oral examination may be made without notice.

(2) Where permission is required to enforce the judgment a copy of the permission must be attached to the application.

(3) Where the application for the order is against an officer or former officer of a body corporate the application must be supported by evidence on affidavit showing that the person to be orally examined is or was such an officer.

(4) An application under this Rule may be considered by the Registrar.

### **Order for oral examination**

**44.4** (1) The order will be in Form 13A, and must state the date, Form 13A. time and place of the examination.

(2) The judgment creditor must serve the order personally on the examinee at least 7 days before the date fixed for the examination.

(3) The judgment creditor must file an affidavit of service not less than 3 days before the date fixed for the examination.

### **Conduct of oral examination**

**44.5** (1) The examination may take place before the Registrar or an officer of the court authorised by the Chief Justice ("the examiner").

(2) The examination must be on oath or affirmation.

(3) The statement made by the examinee must be taken down and read by or to the examinee, who must be asked to sign it.

(4) Where the examinee refuses to read and sign the statement it must be signed by the examiner and certified to be a true record of the examination.

(5) Where the examinee

(a) fails to attend;

(b) refuses to be sworn or to affirm; or

(c) refuses to answer any question,

the examiner may adjourn the examination to a judge.

Form 13B. (6) The notice of the adjourned hearing will be in Form 13B.

(7) The judgment creditor must

(a) serve the examinee personally with the notice of the adjourned hearing endorsed with the first form of notice set out in rule 53.3(b) at least 7 days before the date of the adjourned examination; and

(b) file an affidavit proving service of the notice.

### **Order for payment by instalments**

**44.6** Where the parties agree upon terms involving the payment of the judgment debt by instalments, or at some future date, the Registrar may draw up an order accordingly.

### **Financial position notice**

Form 14. **44.7** (1) Where the judgment to be enforced is a money judgment, the judgment creditor may serve, in addition to an order for an oral examination, a financial position notice in Form 14 requiring the judgment debtor to complete a statement of his financial position in accordance with the requirements of the notice and serve it on the judgment creditor within 14 days of service of the notice.

(2) The judgment creditor may notify the court if satisfied with the information provided by the judgment debtor.

(3) The Registrar must then notify the person to be examined that attendance at the examination is not now necessary.

(4) Where the judgment debtor is a body corporate, the financial position notice may require an officer of the body corporate to comply with sub-rule (1).

## Part 45

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### How Judgments may be Enforced

#### Contents of this Part

Scope of this Part	Rule 45.1
How money judgments may be enforced	Rule 45.2
Enforcement of orders for payment of money into court	Rule 45.3
Enforcement of judgments and orders for possession of land	Rule 45.4
Enforcement of judgments and orders for delivery of goods	Rule 45.5
Enforcement of judgments and orders requiring persons to do act within specified time or not to do act	Rule 45.6
Enforcement of judgments and orders requiring body corporate to do an act within specified time or not to do an act	Rule 45.7

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#### Scope of this Part

**45.1** This Part sets out the ways in which judgments may be enforced. It has effect subject to any enactment, as to enforcement of judgments in force for the time being.

#### How money judgments may be enforced

**45.2** A judgment or order for payment of a sum of money other than an order for payment of money into court may be enforced by

- (a) an order for the seizure and sale of goods under Part 46;
- (b) a charging order under Part 48;



- (c) a garnishee order under Part 50;
- (d) the appointment of a receiver under Part 51; or
- (e) subject to the restrictions of the *Debtors Act*, a judgment Cap. 198. summons under Part 52.

**Enforcement of orders for  
payment of money into court**

**45.3** (1) An order for the payment of money into court may be enforced by

- (a) the appointment of a receiver under Part 51;
- (b) an order for sequestration of assets under Part 53; or
- (c) a committal order under Part 53.

(2) An order for sequestration of assets or committal under paragraph (b) or (c) of sub-rule (1) may be made only if the order requires payment to be made within a specified time or by a specified date.

**Enforcement of judgments and  
orders for possession of land**

**45.4** (1) A judgment or order for the possession of land may be enforced by

- (a) a writ of possession of land;
- (b) an order for sequestration of assets under Part 53; or
- (c) an order for committal to prison under Part 53.

(2) An order for sequestration of assets or committal under paragraph (b) or (c) of sub-rule (1) may be made only if the court has given a judgment or made an order requiring possession of land to be given within a specified time or by a specified date.

### **Enforcement of judgments and orders for delivery of goods**

**45.5** (1) The ways in which an order for delivery of goods may be enforced depend on whether or not the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods.

(2) Where the judgment or order gives the judgment debtor the choice, the means of enforcement are a writ of

(a) delivery to recover the goods or their assessed value under Part 46; or

(b) specific delivery for the recovery of specified goods under Part 46.

(3) Where the judgment or order gives the judgment debtor the choice referred to in sub-rule (1), that judgment or order may not be enforced by order of committal under Part 53.

(4) Where the judgment or order does not give the judgment debtor the choice of paying the assessed value of the goods, the means of enforcing the order is an order

(a) for recovery of specified goods under Part 46;

(b) for committal under Part 53; or

(c) for sequestration of assets under Part 53.

(5) The judgment creditor may obtain an order for sequestration of assets or committal under sub-rule (4) only if the court has given a judgment or made an order requiring delivery within a specified time or by a specified date.

**Enforcement of judgments and orders  
requiring persons to do an act within  
specified time or not to do an act**

**45.6** A judgment or order which requires a person to

- (a) abstain from doing an act; or
- (b) do an act within a specified time or by a specified date,

may be enforced by an order under Part 53 for

- (i) committal; or
- (ii) sequestration of assets.

**Enforcement of judgments and orders  
requiring body corporate to do an act  
within specified time or not to do an act**

**45.7** (1) Where the court

- (a) gives a judgment or makes an order such as is mentioned in rule 45.6; and

- (b) the judgment or order requires a body corporate to do or abstain from doing the relevant act,

the court may make an order under Part 53

- (i) for committal to prison or for sequestration of assets against an appropriate person; or
- (ii) for sequestration of assets of the body corporate.

(2) In this rule, "appropriate person" means a director or other officer of the body corporate having personal responsibility for the failure of the body corporate to comply with the order of the court.

## Part 46

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### General Rules about Writs of Execution

#### Contents of this Part

Meaning of "writ of execution"	Rule 46.1
Permission required to enforce in certain cases	Rule 46.2
Application for permission to enforce	Rule 46.3
Amount to be recovered on enforcement	Rule 46.4
Enforcement of judgment or order requiring judgment debtor to do two or more different things	Rule 46.5
No writ of execution against the Crown	Rule 46.6
Enforcement of judgment for payment by instalments	Rule 46.7
No writ of execution for goods or payment of assessed value unless court has assessed value	Rule 46.8
Order for specific delivery	Rule 46.9
Period for which writ of execution is valid	Rule 46.10
Renewal of writ of execution	Rule 46.11
Period for which court may renew writ of execution	Rule 46.12
Effective date of renewed writ unchanged	Rule 46.13
Claims to goods seized under writ of execution	Rule 46.14
Suspension of writ of execution at request of judgment creditor	Rule 46.15
Return to writ of execution	Rule 46.16

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#### Meaning of "writ of execution"

**46.1** In these Rules a "writ of execution" means any of the following:

- (a) a writ for the seizure and sale of goods (writ of *feri facias*) (Form 15);

Form 15.

- Form 16. (b) a writ of possession (Form 16);
- (c) a writ for the sale of land;
- Form 17. (d) a writ of delivery, (in Form 17) whether it is
- Form 18. (i) an order for the recovery of specified goods (Form 18); or
- (ii) an order for the recovery of goods or their assessed value
- Form 18A. (Form 18A); and
- (e) an order for sequestration of assets.

- **Enforcement by an order for sequestration of assets is dealt with under Part 53**

### **Permission required to enforce in certain cases**

**46.2** A writ of execution may not be issued without permission where

- (a) six years have elapsed since the judgment or the order was made;
- (b) the judgment creditor is no longer entitled to enforce the judgment or order;
- (c) any person against whom a judgment or order was capable of being enforced is no longer liable to have it enforced against that person;
- (d) the judgment debtor has died and the judgment creditor wishes to enforce the judgment or order against assets of the deceased person which have passed to that person's personal representatives since the date of the judgment or order;

- (e) the goods against which the enforcement of the judgment or order is sought, are in the hands of a receiver or sequestrator appointed by the court;
- (f) the judgment was given or the order was made subject to conditions; or
- (g) any statutory provision requires the permission of the court to be obtained before the judgment or order may be enforced.

### **Application for permission to enforce**

**46.3** (1) An application for permission may be made without notice unless the court otherwise directs, but must be supported by evidence on affidavit.

(2) On an application for permission, the applicant must satisfy the court that the applicant is entitled to proceed to enforce the judgment or order and in particular

- (a) where the judgment is a money judgment, as to the amount
  - (i) originally due; and
  - (ii) due together with interest at the date of the application;
- (b) where rule 46.2 (a) applies, the reasons for the delay;
- (c) where rule 46.2 (b) or (c) apply, as to the change that has taken place;
- (d) where rule 46.2 (d) or (e) apply, that a demand to satisfy the judgment or order has been made on the person holding the assets, and that that person has refused or failed to do so;
- (e) that the person against whom enforcement is sought is liable to satisfy the judgment.

(3) An application under this rule may be considered by the Registrar or the Master.

**Amount to be recovered on enforcement**

**46.4** (1) A judgment creditor may recover on a writ of execution

- (a) the balance of any money judgment;
- (b) fixed costs in accordance with rule 65.4; and
- (c) interest on a money judgment.

(2) The rate of interest payable on a judgment debt is the prescribed rate of interest unless the court has directed that some other rate shall apply.

(3) Unless the court otherwise orders, the amount for which a writ of execution may be issued, may include the unpaid fixed costs and fees of any previous enforcement proceedings relating to the same judgment.

**Enforcement of judgment or order requiring the judgment debtor to do two or more different things**

**46.5** Where a judgment or order requires the judgment debtor to do two or more different things, the judgment creditor may obtain

- (a) a single writ of execution to enforce every part of the judgment or order; or
- (b) separate writs of execution to enforce one or more parts of it.

**No writ of execution against the Crown**

**46.6** No writ of execution may be issued where the judgment debtor is the Crown.



### **Enforcement of judgment for payment by instalments**

**46.7** (1) This rule has effect where the court has made an order for payment by instalments of

- (a) a sum of money; or
- (b) the value of goods assessed after the court has made an order for the recovery of goods or their assessed value,

and the judgment debtor has failed to pay one or more of the instalments.

(2) The judgment creditor may issue an order for the seizure and sale of goods in Form 17A, including the goods the subject of an order under sub-rule (1)(b) for the purpose of recovering the whole of the amount recoverable under the judgment and not merely the instalment or instalments due and unpaid.

### **No writ of execution for goods or payment of assessed value unless court has assessed value**

**46.8** A judgment creditor may not issue a writ of delivery in Form 17 Form 17. for the recovery of goods or payment of their assessed value unless that value has previously been assessed by the court.

### **Order for specific delivery**

**46.9** (1) If the court makes an order for delivery of goods or payment of their assessed value, the judgment creditor may apply to the court for permission to issue an order for delivery of specified goods in Form 18 without the alternative of payment of the assessed value. Form 18.

(2) An application for permission must be served on the defendant whether or not that defendant has filed an acknowledgement of service.

**Period for which writ of execution is valid**

**46.10** (1) A writ of execution is valid for a period of 12 months from the date of its issue.

(2) After that period the judgment creditor may not take any step under the writ unless the court has renewed it.

**Renewal of writ of execution**

**46.11** (1) The judgment creditor may apply for the renewal of a writ of execution.

(2) The general rule is that an application for renewal must be made within the period for which the writ is valid.

(3) If the judgment creditor applies for renewal after the end of that period, the court may renew the writ only if it is satisfied that the judgment creditor has

- (a) taken reasonable steps to execute the writ or some part of it; and
- (b) been unable to do so.

(4) An application for renewal may be made without notice but must be supported by evidence on affidavit.

(5) The judgment creditor must state in his evidence under sub-rule (4) whether the judgment creditor is aware of any other judgment creditor and, if so, give such details as he can of the money due from the judgment debtor to each such judgment creditor.

(6) On such an application, the court must have regard to the interests of any other judgment creditor of whose existence it is aware.

**Period for which the court may renew writ of execution**

**46.12** On an application for renewal of a writ of execution, the court may renew it for a period of not more than 6 months.

**Effective date of renewed writ unchanged**

**46.13** (1) The renewal of a writ of execution does not change its effective date.

(2) The priority of the renewed writ and of any other writ of execution must be determined accordingly.

**Claims to goods seized under writ of execution**

**46.14** Where

- (a) goods are seized under a writ of execution; and
- (b) some person other than the judgment creditor or judgment debtor subsequently claims any of them,

the validity of the writ of execution is extended until the end of 12 months from the conclusion of interpleader proceedings on that claim.

- **Part 54 deals with interpleader proceedings**

**Suspension of writ of execution  
at request of judgment creditor**

**46.15** (1) The judgment creditor may request the Chief Marshal in writing to suspend execution.

(2) Where the judgment creditor suspends execution, neither the judgment creditor nor the Chief Marshal may take any further step under the writ of execution unless the judgment creditor gives written notice to the Chief Marshal to resume the execution.

(3) Where a Writ of Execution has been suspended under this Part or Part 47, the period of suspension shall not be counted in determining the validity of the duration of the Writ.

**Return to writ of execution**

**46.16** (1) A judgment creditor who has issued a writ of execution may serve a notice on the Chief Marshal requiring the Chief Marshal to make a return of the manner in which it has been executed.

(2) If the Chief Marshal fails to comply with the notice within 14 days, the judgment creditor may apply to the court for an order directing the Chief Marshal to comply.

## Part 47

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### Variation of Terms of Judgments and Suspension of Writs of Fi Fa and Writs of Delivery

#### Contents of this Part

Scope of this Part	Rule 47.1
Applications to vary time and method of payment or suspend writs for seizure and sale of goods or delivery	Rule 47.2
Where there is no objection except as to terms - procedure	Rule 47.3
Where judgment creditor objects to variation or suspension	Rule 47.4
Pre-suspension costs	Rule 47.5

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#### Scope of this Part

**47.1** This Part deals with

- (a) variation of the terms of a judgment for payment of a specified sum of money as to the time and method of payment; and
- (b) suspension of writs for the seizure and sale of goods and writs of delivery.

#### Applications to vary time and method of payment or to suspend order for seizure and sale of goods or writ of delivery

**47.2** (1) This rule applies to

- (a) judgments for payment of a sum of money;

- (b) judgments for the delivery of goods or payment of their value;
- (c) writs or orders for seizure and sale of goods; and
- (d) writs of delivery where the defendant has the alternative of paying the assessed value.

(2) An application by the judgment debtor to vary the terms of the judgment as to the time or method of payment or to suspend a writ of execution under this rule must be supported by evidence.

**Where there is no objection except as to terms – procedure**

**47.3** (1) The judgment debtor must serve on the judgment creditor the application to vary or suspend.

(2) The judgment creditor may file and serve on the judgment debtor objections to the application.

(3) Where the judgment creditor does not file and serve an objection to the application before the end of 14 days from the date of service of the application, the court may make an order in the terms for which the judgment debtor asks.

(4) Where the judgment creditor objects only to the rate and time of any payment proposed by the judgment debtor, the court may

- (a) decide the rate and time of payments; and
- (b) where appropriate make an order suspending the writ of execution on those terms.

(5) The judgment debtor must serve a copy of the order made under sub-rule (3) or (4) on the judgment creditor.

**Where judgment creditor objects to variation or suspension**

**47.4** Where the judgment creditor gives the court notice that he does not agree to any variation of the time or method of payment, or to suspension of the writ of execution on any terms, the Registrar must fix a date for a hearing and give the judgment creditor and judgment debtor at least 7 days notice of the date, time and place of the hearing.

**Pre-suspension costs**

**47.5** Where the court hears an application to vary the judgment or suspend a writ of execution, it may assess and add to the judgment debt

- (a) the costs of the application for variation or suspension; and
- (b) any costs or fees incurred by the judgment creditor in connection with any writ of execution.

- **Rule 65.11 deals with assessed costs**

## Part 48

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### Charging Orders

#### Contents of this Part

Scope of this Part and definitions	Rule 48.1
How to apply for charging order	Rule 48.2
Evidence in support of application for charging order	Rule 48.3
Single charging order for more than one judgment debt	Rule 48.4
Procedure for making provisional charging order	Rule 48.5
Interested persons	Rule 48.6
Service of provisional charging order and of copies	Rule 48.7
Making of final charging order	Rule 48.8
Effect of provisional or final charging order	Rule 48.9
Discharge or variation of final charging order	Rule 48.10
Enforcement of charging order by sale	Rule 48.11

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#### Scope of this Part and definitions

**48.1** (1) This Part deals with the enforcement of a judgment debt by charging

- (a) land;
- (b) stock, including stock held in court; and
- (c) other personal property.



(2) In this Part,

"stock" includes shares, securities and dividends arising therefrom; and

"proper officer" means the Registrar who is responsible for the custody of funds in court.

### **How to apply for charging order**

**48.2** (1) An application for a charging order may be made without notice but must be supported by evidence on affidavit.

(2) An application for a charging order relating to stock may incorporate an application for an order for sale of the stock under rule 48.11.

### **Evidence in support of application for charging order**

**48.3** (1) This rule sets out the nature of the evidence required to support an application for a charging order.

(2) The affidavit must

(a) state the name and address of the judgment debtor;

(b) state that to the best of the deponent's information and belief the judgment debtor is beneficially entitled to the stock or personal property as the case may be;

(c) identify the judgment or order to be enforced;

(d) state that the applicant is entitled to enforce the judgment;

(e) certify the amount remaining due under the judgment;

(f) state the name and address of every person who is believed by the applicant to be an unsecured creditor of the judgment debtor;

- (g) where the application relates to stock
  - (i) identify the company and the stock of that company to be charged;
  - (ii) identify any person who has responsibility for keeping a register of the stock;
  - (iii) state whether any person other than the judgment debtor is believed by the applicant to have an interest in that stock, whether as
    - (A) a joint owner;
    - (B) a trustee; or
    - (C) a beneficiary; and
  - (iv) if so, give the names and addresses of all those persons and details of their interests; and
- (h) in the case of any other personal property,
  - (i) identify that property; and
  - (ii) state whether any other person is believed by the applicant to have an interest in the property; and
  - (iii) if there is a person who is believed by the applicant to have an interest in the property, paragraphs (g)(iii) and (iv) shall apply.

**Single charging order for more than one judgment debt**

**48.4** A judgment creditor may apply for a single charging order in respect of more than one judgment or order against a judgment debtor.

**Procedure for making provisional charging order**

**48.5** (1) In the first instance, the court must deal with an application for a charging order without a hearing and may make a provisional charging order.

(2) On the application of the judgment creditor the court may grant an injunction to secure the provisional charging order.

(3) An application for an injunction may be made without notice and the injunction may be granted to remain in force until 7 days after the making of an order under rule 48.8(4).

**Interested persons**

**48.6** (1) The persons specified in sub-rule (2) as well as the judgment creditor and the judgment debtor have an interest in proceedings for a charging order, and they are referred to in this Part as "the interested persons".

(2) The interested persons are

(a) any unsecured creditor;

(b) any person who owns the stock to be charged jointly with the judgment debtor;

(c) the company whose stock is to be charged;

(d) any person who is responsible for keeping the register of stock for that company;

- (e) where the stock is held under a trust, the trustees or such of them as the court may direct should be notified;
- (f) where any part of or any interest in the stock is held by the judgment debtor as a trustee, such of the other trustees and the beneficiaries as the court may direct should be notified;
- (g) where the stock is held in court, the proper officer;
- (h) any other person who has an interest in the personal property to be charged; and
- (i) any other person who has an interest in land to be charged.

**Service of provisional charging orders and of copies**

**48.7** (1) Where the court makes a provisional charging order, the judgment creditor must serve on the judgment debtor in accordance with Part 5

- (a) the order; and
- (b) a copy of the affidavit in support of the application for the order.

(2) The judgment creditor must also serve copies of the order and affidavit on the interested persons revealed by the evidence filed in support of the application.

(3) Any interested person other than the company, in a case involving stock, and a person responsible for keeping a register of stock, must be served personally.

(4) The provisional charging order must state the date, time and place when the court will consider making a final charging order.

(5) The order and any copies in support of the application must be served at least 28 days before the hearing.

(6) The judgment creditor must file an affidavit of service not less than 7 days before the hearing.

**Making of final charging order**

**48.8** (1) This rule deals with

- (a) the filing of objections to a provisional charging order; and
- (b) the making of a final charging order.

(2) The following persons may file objections to a provisional charging order:

- (a) the judgment creditor;
- (b) the judgment debtor; and
- (c) any interested person.

(3) Any objection must be filed not less than 14 days before the hearing under sub-rule (4).

(4) At the hearing, where the court is satisfied that the provisional charging order has been served on the judgment debtor, the court may

- (a) make a final charging order;
- (b) discharge the provisional charging order; or
- (c) give directions for the resolution of any objection that cannot be fairly resolved summarily.

(5) Where the court makes an order under sub-rule (4)(b), it may continue any injunction made under rule 48.5 until 7 days after the application is finally determined.

(6) A copy of the charging order must be served by the judgment creditor on

- (a) the judgment debtor;
- (b) any interested person who has filed an objection; and
- (c) in the case of stock,
  - (i) the company; and
  - (ii) any person who has responsibility for keeping a register of the stock.

(7) Every copy of the charging order served on

- (a) the company; and
- (b) any person who has responsibility for keeping a register of the stock,

must contain a stop notice.

- **Part 49 deals with the effect of a stop notice**

### **Effect of provisional or final charging order**

**48.9** (1) No disposition by a judgment debtor of an interest in property subject to a provisional or final charging order is valid against the judgment creditor.

(2) No person or body on whom or on which a copy of an order was served under rule 48.8 (6)(c) may permit the transfer of any stock specified in the order or pay any interest or dividend payable out of the stock to any person while the order remains in force.

(3) Any person or body that makes a transfer or payment prohibited by sub-rule (2), is liable to pay the judgment creditor an amount equivalent to the value of the stock transferred or payment made or as much of it as is necessary to satisfy all amounts outstanding in respect of the judgment debt, interest and costs.

**Discharge or variation of final charging order**

**48.10** (1) An application to discharge or vary a final charging order may be made by

- (a) the judgment creditor;
- (b) the judgment debtor ; or
- (c) any interested person.

(2) Notice of application must be served on

- (a) the judgment creditor and all interested persons of whom the applicant is aware, where the application is made by the judgment debtor;
- (b) the judgment debtor and all interested persons of whom the applicant is aware, where the application is made by the judgment creditor; or
- (c) the judgment creditor and judgment debtor and all other interested persons of whom the applicant is aware, where the application is made by an interested person.

(3) Any order must be served on every person on whom the final charging order was served.

**Enforcement of charging order by sale**

**48.11** (1) This rule applies where a judgment creditor wishes to enforce a charging order in respect of land, stock or personal property by sale.

(2) The judgment creditor may apply to the court for an order for sale of the land, stock or personal property.

(3) The application must be supported by evidence on affidavit.

(4) Notice must be served on the judgment debtor and, subject to any direction of the court, on all interested persons of whom the judgment creditor is aware.

(5) The court may give such directions as seem appropriate to secure the expeditious sale of the land, stock or property charged at a price that is fair to both the judgment creditor and the judgment debtor.



## Part 49

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### Stop Notices and Stop Orders

#### Contents of this Part

Scope of this Part	Rule 49.1
Right to apply for stop notice	Rule 49.2
Procedure for obtaining stop notice	Rule 49.3
Service	Rule 49.4
Amendment of stop notice	Rule 49.5
Withdrawal or discharge of stop notice	Rule 49.6
Stop orders	Rule 49.7
Procedure on application for stop order	Rule 49.8
Power to vary or discharge stop order	Rule 49.9

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#### Scope of this Part

**49.1** (1) This Part enables a person by obtaining

- (a) a stop notice or stop order, to require that that person be notified of proposed dealings relating to stock; or
- (b) a stop order to prevent certain specified steps being taken with regard to stock or funds in court.

(2) In this Part,

"proper officer" means the Registrar who is responsible for the custody of funds in court;

"stop notice" means a notice requiring any person or body on whom it is served to refrain from taking, in respect of any of the stock specified in the notice, any of the specified steps without first notifying the person by whom, or on whose behalf, the notice was served;

"stop order" means an order of the court prohibiting the taking, in respect of any of the stock or funds in court specified in the order, of any of the specified steps; and

"the specified steps" means

- (a) the registration of any transfer of the stock;
- (b) in the case of stock or funds in court, the transfer, sale or other dealing with the stock or funds or the payment out of the income thereof; or
- (c) the making of any payment by way of dividend, interest or otherwise in respect of the stock.

**Right to apply for stop notice**

**49.2** Any person who claims to be beneficially entitled to an interest in stock may apply for a stop notice.

**Procedure for obtaining stop notice**

**49.3** (1) An applicant for the issue of a stop notice must file in the Registry a notice in accordance with the practice form.

- (2) The applicant must also file an affidavit which
  - (a) identifies the stock;
  - (b) identifies the applicant's interest in it; and
  - (c) gives an address for service for the applicant.
- (3) The Registry must then issue a stop notice.

## **Service**

**49.4** (1) The applicant must serve a copy of

(a) the stop notice; and

(b) his affidavit,

on the company and on any keeper of the register on whom a charging order relating to the stock would have had to be served in accordance with rule 48.8(6) and (7).

(2) Thereafter, so long as the stop notice is in force, neither the company nor the keeper of the register may register any transfer of the stock or take any step mentioned in the stop notice until 8 days after sending a notification of the proposed registration or other step to the applicant.

## **Amendment of stop notice**

**49.5** (1) Where a stop notice describes any stock incorrectly, the applicant may ask the Registrar to issue an amended notice.

(2) The application may be made without notice.

(3) Rule 49.4 applies to an amended notice as it applies to the original notice.

## **Withdrawal or discharge of stop notice**

**49.6** (1) The person on whose behalf the Registry issued a stop notice may withdraw it by serving a notification of withdrawal on the court and on every person on whom the stop notice was served.

(2) On the application of any person claiming to be beneficially interested in the stock to which a stop notice relates, the court may by order discharge or vary the notice.

(3) An application for such an order must be served on the person on whose behalf the court originally issued the stop notice.

(4) The application must be supported by evidence on affidavit.

### **Stop orders**

**49.7** (1) The court may make a stop order relating to

(a) stock; or

(b) funds in court.

(2) The stop order may prohibit the taking of any of the specified steps.

### **Procedure on application for stop order**

**49.8** (1) Any person claiming to be beneficially entitled to an interest in stock may apply for a stop order by a fixed date application supported by an affidavit setting out the grounds of the application.

(2) In the case of money in court, any person

(a) who has a mortgage or charge on or over the interest of any person with respect to funds in court;

(b) to whom that interest has been assigned; or

(c) who is a judgment creditor of the person entitled to that interest,

may apply for a stop order.

(3) Notice of an application for a stop order together with a copy of the affidavit in support must be served by the applicant at least 7 days before the hearing on any person whose interest may be affected by the order and, in the case of funds in court, on the proper officer.

**Power to vary or discharge stop order**

**49.9** The court may vary or discharge a stop order on the application of any person claiming to be entitled to any interest in any stock or funds to which the order relates.

## Part 50

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### Attachment of Debts

#### Contents of this Part

Scope of this Part	Rule 50.1
Circumstances in which court may make order for attachment of debt	Rule 50.2
Procedure – making of provisional order	Rule 50.3
Money in bank accounts, etc.	Rule 50.4
Joint funds	Rule 50.5
Presumption of equal shares in joint funds	Rule 50.6
Attachment of debts owed by a firm	Rule 50.7
Service of provisional order	Rule 50.8
Effect of provisional order	Rule 50.9
Hearing to consider making final order	Rule 50.10
Claim to debt by person other than judgment debtor	Rule 50.11
Enforcement against garnishee	Rule 50.12
Discharge of garnishee's debt to judgment debtor	Rule 50.13
Costs of attachment of debt proceedings	Rule 50.14
Money in court	Rule 50.15

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#### Scope of this Part

**50.1** (1) This Part provides a procedure under which a judgment creditor can obtain payment of all or part of a judgment debt from a person who owes the judgment debtor money.

(2) In this Part,

"attachment of debt order" means the order served on a garnishee attaching a debt in the garnishee's hands;

"garnishee" means a debtor in whose hands a debt has been attached;  
and

"proper officer" means the officer of the court who is responsible for the custody of funds in court.

(3) The attachment of debt order may require the garnishee to pay enough to satisfy the fixed costs of the attachment of debt proceedings as well as the judgment debt.

- **Part 65, Appendix A sets out the fixed costs**

### **Circumstances in which court may make order for attachment of debt**

**50.2** (1) The attachment of debt procedure may not be used where the order is to pay money into court.

(2) An attachment of debt order can be made only against a garnishee who is within the jurisdiction.

(3) An attachment of debt order may not be made to attach a debt due from the Crown.

- **Part 59 may provide an alternative procedure in this situation**

(4) A debt may be attached if it

(a) is due or accruing to the judgment debtor from the garnishee on the date that the provisional order under rule 50.3 is served on the garnishee; or

(b) becomes due or accrues due to the judgment debtor at any time between the service of the provisional order under rule 50.3 and the date of the hearing.

### **Procedure – making of provisional order**

**50.3** (1) An application by a judgment creditor for an attachment of debt order may be made without notice but must be supported by evidence on affidavit.

(2) Where the court considers that on the evidence submitted the judgment creditor is entitled to an attachment of debt order, the court must make a provisional order.

(3) The court shall state in the provisional order the date, time and place of the hearing.

(4) An application made under this rule may be considered by the Registrar or the Master

### **Money in bank accounts, etc.**

**50.4** (1) An attachment of debt order may be made in respect of any type of debt, including, without limiting the generality of this sub-rule, money standing to the credit of any account of the judgment debtor with a bank or other financial institution.

(2) An attachment of debt order must not require a payment that would reduce below \$100 the amount standing in the name of a judgment debtor in an account with a bank or other financial institution.

### **Joint funds**

**50.5** (1) This rule applies where an application is made to attach a fund which is owned jointly by the judgment debtor and another person or persons.

(2) The evidence in support of the application must state

(a) the names and addresses of the person or persons who are entitled to the fund jointly with the judgment debtor;

(b) details of the joint fund; and

(c) where the applicant claims that the judgment debtor is entitled to more than an equal share in the fund, the grounds for that claim.



(3) Each person entitled to a share of the fund must be served with the provisional attachment of debt order and the evidence in support.

### **Presumption of equal shares in a joint fund**

**50.6** (1) Where a fund is held jointly by the judgment debtor and another person or other persons, it is to be presumed that they are entitled in equal shares.

(2) Any person served under rule 50.5(3) may apply to the court to determine the actual beneficial entitlement of each person having an entitlement in the joint fund.

### **Attachment of debts owed by a firm**

**50.7** (1) This rule applies to the attachment of debts due or accruing due from a firm carrying on business within the jurisdiction.

(2) These debts may be attached even if one or more of the members of the firm is resident outside the jurisdiction.

(3) A provisional order under rule 50.3 must be served on

(a) a member of the firm; or

(b) some other person having the control or management of the partnership business in the jurisdiction.

(4) Any member of the garnishee may attend and be heard at the hearing of an application for an attachment of debt order.

### **Service of provisional order**

**50.8** (1) The judgment creditor must serve the provisional attachment of debt order.

(2) The order must be served first on the garnishee at least 21 days before the hearing.

(3) The order must be served personally on the garnishee unless the garnishee is a body corporate.

(4) Where the garnishee is a bank or other financial institution, the provisional attachment of debt order must be served at its principal or registered office and also at the branch at which the judgment debtor's account is kept if that branch is known to the judgment creditor.

(5) The order must be served on the judgment debtor.

(6) The order must be served on the judgment debtor at least 7 days after it has been served on the garnishee and not less than 7 days before the hearing.

#### **Effect of provisional order**

**50.9** (1) This rule sets out the effect of a provisional attachment of debt order.

(2) The debt order becomes binding on the garnishee as soon as it is served on him.

(3) The garnishee does not then have to pay the judgment creditor anything except to the extent that the garnishee's debt to the judgment debtor is greater than the amount indicated in the provisional order.

(4) Where the garnishee pays anyone but the judgment creditor, the garnishee may have to make further payment to the judgment creditor in accordance with the terms of any final attachment of debt order that the court may make.

#### **Hearing to consider making final order**

**50.10** At the hearing fixed by the provisional order, where the court is satisfied that the order has been properly served, may

(a) discharge the provisional order;

- (b) make a final attachment of debt order; or
- (c) give directions for the resolution of any dispute.

**Claim to a debt by person other than judgment debtor**

**50.11** (1) This rule has effect where the court is aware from information supplied by the garnishee or from any other source that someone other than the judgment debtor

- (a) is or claims to be entitled to the debt; or
- (b) has or claims to have a charge or lien over or on it.

(2) In this rule, "lien" means a right to retain possession of goods to protect a debt.

(3) Where this rule has effect, the court may require the judgment creditor to serve on any person who may have such an interest as is set out in sub-rule (1) notice of

- (a) the application for an attachment of debt order; and
- (b) any hearing fixed by the court.

(4) The notice must be served personally unless the person is a body corporate, or the court directs otherwise.

(5) Notice must also be served on

- (a) the garnishee; and
- (b) the judgment debtor.

(6) A notice under this rule must contain a warning to every person on whom it is served that if he does not attend court, the court may proceed to decide the issue in his absence.

**Enforcement against garnishee**

**50.12** Where a garnishee does not fulfil the terms of an attachment of debt order the judgment creditor may issue enforcement proceedings against the garnishee.

**Discharge of garnishee's debt to judgment debtor**

**50.13** (1) This rule has effect where

- (a) the garnishee pays money to the judgment creditor in compliance with an attachment of debt order; or
- (b) the attachment of debt order is enforced against the garnishee.

(2) The garnishee's liability to the judgment debtor is then discharged to the extent of the amount paid by or recovered from the garnishee.

(3) This rule has effect even if the court later sets aside the attachment of debt order or the original judgment or order.

**Costs of attachment of debt proceedings**

**50.14** (1) This rule contains general provisions about the costs of an attachment of debt proceeding.

(2) The judgment creditor's costs are those fixed by Appendix A to Part 65 unless the court makes some other order in which case it must assess the amount of the costs.

(3) The judgment creditor may retain the costs out of the money which he recovers through the attachment of debt order.

(4) The costs are to be taken to have been paid to the judgment creditor before any payment in respect of the judgment debt.

(5) Subject to any order the court may make, a garnishee who appears at an attachment of debt proceedings may deduct his costs before paying any sum over to the judgment creditor in pursuance of the attachment of debt order.

(6) Costs payable under sub-rule (5) must be assessed under rule 65.11 if not agreed.

### **Money in court**

**50.15** (1) No attachment of debt order may be made in respect of money in court standing to the credit of the judgment debtor.

(2) The judgment creditor may apply for an order that a sufficient amount of the money in court to satisfy his judgment and the costs of the application be paid to the judgment creditor.

(3) Notice of the application must be given to the proper officer and any person who has an interest in the fund.

(4) Until the hearing of the application, the money to which it relates must not be paid out of court.

## Part 51

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### Appointment of Receiver

#### Contents of this Part

Scope of this Part	Rule 51.1
Application for appointment of receiver and injunction	Rule 51.2
Conditions for appointment of a receiver	Rule 51.3
Giving of security by receiver	Rule 51.4
Remuneration of receiver	Rule 51.5
Receiver's powers	Rule 51.6
Accounts of receiver	Rule 51.7
Payment of balance into court	Rule 51.8
Default by receiver	Rule 51.9

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#### Scope of this Part

**51.1** This Part deals with the appointment of a receiver and includes an application to appoint a receiver to obtain payment of a judgment debt from the income or capital assets of the judgment debtor.

#### Application for appointment of a receiver and injunction

**51.2** (1) An application for the appointment of a receiver must be supported by evidence on affidavit.

(2) The applicant may also apply for an injunction to restrain the judgment debtor or other respondent from assigning, charging or otherwise dealing with any property identified in the application.

(3) Where an application for an interim injunction is made, the application for the appointment of a receiver and for an injunction may be made without notice.

- **Rules 17.3 and 17.4 deal with applications for interim injunctions**

### **Conditions for appointment of a receiver**

**51.3** In deciding whether to appoint a receiver to recover a judgment debt, the court must have regard to

- (a) the amount of the judgment debt;
- (b) the amount likely to be obtained by the receiver; and
- (c) the probable cost of appointing and remunerating the receiver.

### **Giving of security by receiver**

**51.4** (1) A person may not be appointed receiver until that person has given security.

(2) The court may however dispense with security.

(3) The order appointing the receiver must state the amount and nature of any security.

(4) The security must be by guarantee unless the court allows some other form of security.

(5) The guarantee or other security must be filed at the court.

### **Remuneration of receiver**

**51.5** The receiver may be allowed such remuneration as the court may direct.

### **Receiver's powers**

**51.6** A receiver's powers operate to the exclusion of the powers of the judgment debtor or other respondent for the duration of the receiver's appointment.

### **Accounts of receiver**

**51.7** (1) The order appointing a receiver must direct on what dates the receiver must file accounts.

(2) Unless the court orders otherwise, an account must be verified by affidavit.

(3) The receiver must serve a copy of the account on the applicant and on the judgment debtor or other respondent.

(4) The applicant must obtain an appointment before the Registrar to pass the account.

(5) The passing of the account must be verified by the Registrar.

### **Payment of balance into court**

**51.8** The receiver must pay into court any balance shown on the accounts under rule 51.7 as due from the receiver within 7 days of the passing of any account.

### **Default by receiver**

**51.9** (1) This rule applies where the receiver fails to

(a) submit an account by the date ordered;

(b) attend before the Registrar for the passing of any account; or

(c) pay into court any balance shown on the account as due from the receiver.

(2) The applicant must ask the Registrar to fix a hearing for the receiver to show cause for his failure.

(3) The Registrar must issue a notice stating the date, time and place of the hearing to show cause.



- (4) The applicant must serve the notice on the receiver at least 7 days before the hearing.
- (5) At the hearing the court may do any of the following:
  - (a) give directions to remedy the default;
  - (b) give directions for the discharge of the receiver;
  - (c) appoint another receiver;
  - (d) disallow any remuneration claimed by the receiver;
  - (e) order the receiver to pay
    - (i) the costs of the applicant which may be assessed by the court;
    - (ii) interest at the statutory rate on any monies which may appear from a subsequent account to be due from the receiver.

## Part 52

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### Judgment summons

#### Contents of this Part

Scope of this Part	Rule 52.1
Issue of judgment summons	Rule 52.2
Service of judgment summons	Rule 52.3
Hearing of judgment summons	Rule 52.4
Failure to comply with instalment order	Rule 52.5
Restored hearing of judgment summons	Rule 52.6

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#### Scope of this Part

**52.1** This Part deals with applications to commit a judgment debtor for non-payment of a debt where this is not prohibited by any relevant enactment.

#### Issue of judgment summons

**52.2** (1) An application to commit a judgment debtor for failing to pay all or part of the judgment debt must be made by way of judgment summons in Form 18B and must state

Form 18B.

- (a) any payment that has been made by the judgment debtor;
- (b) the date and details of the judgment or order requiring payment of the debt; and
- (c) the amount of interest claimed to the date of the application and the daily rate thereafter.

- (2) The court order must
  - (a) fix a date for hearing of the judgment summons;
  - (b) seal the judgment summons; and
  - (c) return the judgment summons to the judgment creditor for service.

### **Service of judgment summons**

**52.3** (1) The judgment creditor must serve the judgment debtor with the judgment summons in accordance with Part 5 not less than 7 days before the date fixed for the hearing of the application to commit.

(2) The judgment creditor must file an affidavit of service not less than 3 days before the hearing.

### **Hearing of judgment summons**

**52.4** At the hearing of the judgment summons, the court may

- (a) where satisfied that all reasonable efforts have been made to serve the judgment debtor and
  - (i) the judgment debtor is wilfully evading service; or
  - (ii) the summons has come to the knowledge of the judgment debtor,

proceed in the absence of the judgment debtor as if the judgment debtor had been personally served;

- (b) receive evidence as to the means of the debtor in any manner that it thinks fit; and

- (c) where satisfied that all statutory requirements have been met
  - (i) adjourn the hearing of the summons to a fixed date;
  - (ii) commit the judgment debtor for such fixed term as is permitted by law;
  - (iii) suspend the committal upon payment of the judgment debt on such dates and by such instalments as the court may order;
  - (iv) dismiss the judgment summons; or
  - (v) make an order for payment of the judgment debt by a particular date or by specified instalments and adjourn the hearing of the judgment summons to a date to be fixed on the application of the judgment creditor.

**Failure to comply with instalment order**

**52.5** Where the judgment debtor fails to comply with the terms of the judgment summons, the judgment creditor may

- (a) issue a further judgment summons;
- (b) where a suspended committal order has been made, apply to commit the judgment debtor in accordance with the provisions of Part 53 (committal and sequestration of assets); or
- (c) where an order has been made under rule 52.4(c)(v), apply to the court in writing to restore the judgment summons.

**Restored hearing of judgment summons**

**52.6** (1) The judgment creditor must

- (a) serve the notice of the restored hearing of a judgment summons in accordance with Part 5 at least 7 days before the date fixed for hearing; and
- (b) file an affidavit of service at least 3 days before the hearing.

(2) At the restored hearing the court may exercise any of its powers under rule 52.4.

## Part 53

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### Committal and Sequestration of Assets

#### Contents of this Part

Scope of this Part	Rule 53.1
Order specifying time for act to be done	Rule 53.2
When committal order or sequestration of assets order may be made	Rule 53.3
Committal order or sequestration of assets order against officer of body corporate	Rule 53.4
Making committal order or sequestration of assets order when judgment or order not served	Rule 53.5
Undertakings	Rule 53.6
Application for committal order or sequestration of assets order	Rule 53.7
Service of notice of hearing	Rule 53.8
Powers of the court	Rule 53.9
Restoration of adjourned hearing	Rule 53.10
Application for enforcement of suspended committal order or order for sequestration of assets	Rule 53.11
Special provisions relating to order for sequestration	Rule 53.12

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#### Scope of this Part

**53.1** This Part deals with the power of the court to commit a person to prison or to make a sequestration order for failure to comply with an

- (a) order requiring that person to do; or
- (b) undertaking by that person to do,

an act within a specified time or by a specified date or not to do an act.

**Order specifying time for act to be done**

**53.2** (1) Where a judgment or order specifies the time or date by which an act must be done, the court may by order specify another time or date by which the act must be done.

(2) Where a judgment or order does not specify the time or date by which an act must be done, the court may by order specify a time or date by which it must be done.

(3) The time by which the act must be done may be specified by reference to the day on which the order is served on the judgment debtor.

(4) An application for an order under this rule may be made without notice but the court may direct that notice be given to the judgment debtor.

(5) Any order made under this rule must be served in the manner required by rule 53.3 in the case of an individual, or 53.4 enforcement against an officer of a body corporate.

**When committal order or sequestration of assets order may be made**

**53.3** Subject to rule 53.5, the court may not make a committal order or a sequestration order unless

- (a) a certified copy of the order or of the undertaking to the court requiring the judgment debtor to do an act within a specified time or by a specified date or not to do an act, was served personally on the judgment debtor;

- (b) at the time that copy of the order or undertaking to the court was served, it was endorsed with a notice in the following terms:

"NOTICE: If you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned."; or,

in the case of an order served on a body corporate, in the following terms:

"NOTICE: If you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court."; and

- (c) where the order requires the judgment debtor to do an act within a specified time or by a specified date, the order was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

**Committal order or sequestration of assets  
order against officer of body corporate**

**53.4** Subject to rule 53.5, the court may not make a committal order or a sequestration order against an officer of a body corporate unless

- (a) a certified copy of the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the officer against whom the order is sought;



- (b) at the time the order was served it was endorsed with a notice in the following terms:

"NOTICE: If [*name of body corporate*] fails to comply with the terms of this order, proceedings may be commenced for contempt of court and you [*name of officer*] may be liable to be imprisoned or to have an order of sequestration made in respect of your property."; and

- (c) where the order required the judgment debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

**Making committal order or sequestration of assets order when judgment or order not served**

**53.5** (1) This rule applies where the judgment or undertaking to the court has not been served.

(2) The court may make a committal order or sequestration order where it is satisfied that the person against whom the order or undertaking to the court is to be enforced has had notice of its terms by

- (a) being present when the order was made or the undertaking was given to the court; or
- (b) being notified of the terms of the order or of the undertaking to the court by post, telephone, FAX or otherwise.

(3) The court may make an order dispensing with service of a copy of the order or of the undertaking to the court under rule 53.3 or 53.4 where the court thinks it is just to do so.

## **Undertakings**

**53.6** Where practicable, an undertaking given to the court shall be reduced to writing and a copy endorsed with a notice in accordance with rule 53.3 (*b*) or 53.4(*b*) should be served on the person who gave the undertaking to the court.

## **Application for committal order or sequestration of assets order**

- 53.7** (1) The application must specify
- (a) the precise terms of the order or undertaking to the court which it is alleged that the judgment debtor has disobeyed or broken; and
  - (b) the exact nature of the alleged breach or breaches of the order or undertaking to the court by the judgment debtor and when and where each breach occurred.
- (2) The application must be supported by evidence on affidavit.
- (3) The applicant must prove
- (a) service of a certified copy of the order or undertaking to the court endorsed with the notice under rule 53.3(*b*) or rule 54.3(*b*);
  - (b) that the person against whom it is sought to enforce the order or undertaking to the court had notice of the terms of the order or undertaking to the court under rule 53.5; or
  - (c) that it would be just for the court to dispense with service.

**Service of notice of hearing**

**53.8** (1) The judgment creditor must serve notice of the application for the committal order at least 14 days before the date fixed for the hearing

- (a) on the judgment debtor; or
- (b) in the case of a body corporate on an officer of that body where it is sought to make a committal order or an order for the confiscation of property against an officer of the body corporate.

(2) Where the notice of application is served on the judgment debtor less than 14 days before the hearing, the court may direct that in all the circumstances of the case, sufficient notice has been given and may accordingly deal with the application.

(3) The notice of application must be served in accordance with Part 5.

(4) A certified copy of the application and of the affidavit in support must be served with the notice.

**Powers of the court**

**53.9** Where the court is satisfied that notice of the application has been duly served, the court may

- (a) make a committal order against a judgment debtor who is an individual;
- (b) make a sequestration order against a judgment debtor who is an individual or a body corporate;
- (c) make a committal order against an officer of a judgment debtor which is a body corporate;

- (d) make a sequestration order against an officer or a judgment debtor which is a body corporate;
- (e) adjourn the hearing of the application to a fixed date;
- (f) accept an undertaking from the judgment debtor or an officer of a body corporate who is present in court and adjourn the application;
- (g) make a suspended committal order or sequestration order on such terms as the court considers just;
- (h) dismiss the application and may make such order as to costs as it considers just; or
- (i) make such other order as the court considers just.

### **Restoration of adjourned hearing**

**53.10** (1) Where an application for a committal order or an order for the sequestration of assets has been adjourned under rule 53.9(e), the Registrar may on the application of either party fix an early date for the adjourned hearing ("the restored hearing").

- (2) An application for a date to be fixed
  - (a) may be made without notice; but
  - (b) must be supported by evidence on affidavit specifying, where applicable
    - (i) the precise term or terms of the undertaking which it is alleged that the judgment debtor or officer has failed to comply with; and
    - (ii) the exact nature of the alleged breach or breaches of the undertaking by the judgment debtor or officer and when and where each breach occurred.

- (3) The notice of the restored hearing must
  - (a) state the date, time and place of the restored hearing; and
  - (b) be served personally on the judgment debtor or the officer of a body corporate, or the judgment creditor where the judgment debtor sought the restored hearing, at least 3 days before the date of the adjourned hearing.
- (4) A copy of the affidavit referred to in sub-rule (2) must be served with the notice of the restored hearing.

**Application for enforcement of suspended committal order or order for sequestration of assets**

**53.11** (1) Where the court has imposed terms under rule 53.9(g) and the judgment creditor alleges that the judgment debtor or an officer of a body corporate judgment debtor has failed to comply with the terms imposed, the judgment creditor may apply for the suspended order to be enforced.

- (2) The application for the enforcement of a suspended committal order must specify
  - (a) the precise term or terms of the suspended order which it is alleged that the judgment debtor or officer has disobeyed; and
  - (b) the exact nature of the alleged breach or breaches of the terms of the suspended order by the judgment debtor or officer and when and where each breach occurred.
- (3) The application must be supported by evidence on affidavit.
- (4) The Registrar must fix a hearing of the application.
- (5) Notice of the hearing and a copy of the application must be served on the judgment debtor or the officer of a body corporate personally, at least 3 days before the date of the hearing.

(6) A copy of the affidavit under sub-rule (3) must be served with the application.

**Special provisions relating to order for sequestration**

**53.12** (1) The judgment creditor may not sell any property seized under an order for sequestration without the permission of the court.

(2) An application for permission must be supported by evidence on affidavit.

## Part 54

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### Interpleader

#### Contents of this Part

Scope of this Part	Rule 54.1
Claim to goods taken in execution	Rule 54.2
How to interplead	Rule 54.3
Service of interpleader application	Rule 54.4
Powers of the court	Rule 54.5
Power to order sale of goods taken in execution	Rule 54.6

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#### Scope of this Part

- 54.1** (1) This Part deals with the situation where
- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and proceedings are taken against him, or are likely to be taken against him by two or more persons making adverse claims in respect of the debt, money, goods or chattels; or
  - (b) a claim is made to any money, goods or chattels seized or intended to be seized by the Chief Marshal or the proceeds or value of such goods or chattels.
- (2) The person under a liability under sub-rule (1)(a) or the Chief Marshal may apply for relief.
- (3) The procedure by which relief is sought is called an "interpleader".

**Claim to goods taken in execution**

**54.2** (1) A person who makes a claim in respect of any money, goods or chattels seized or about to be seized by the Chief Marshal must give written notice to the Chief Marshal.

(2) The notice given under sub-rule (1) must

(a) give that person's name and address for service;

(b) identify the money, goods or chattels claimed; and

(c) set out the grounds of the claim.

(3) Forthwith on receipt of the claim, the Chief Marshal must give written notice to the judgment creditor.

(4) Within 7 days after receiving the notice, the judgment creditor must give notice to the Chief Marshal admitting or disputing the claim.

(5) Where the judgment creditor gives notice admitting the claim,

(a) the judgment creditor is liable only for the fees and expenses of the Chief Marshal incurred before the Chief Marshal receives the notice;

(b) the Chief Marshal must withdraw from possession of the money, goods or chattels; and

(c) the Chief Marshal may apply to the court for an order restraining any action being brought in respect of his having taken possession of the money, goods or chattels.

(6) Where the judgment creditor gives notice disputing the claim or fails to give notice and the claim is not withdrawn, the Chief Marshal may apply to the court for relief under this Part.



### **How to interplead**

**54.3** (1) A person interpleads by filing an application for relief by way of interpleader.

(2) The application for relief under sub-rule (1) must be filed in the Registry.

(3) An application other than by the Chief Marshal must be supported by evidence on affidavit that the applicant

- (a) claims no interest in the subject matter in dispute other than for charges or costs;
- (b) does not collude with any of the claimants to that subject-matter; and
- (c) is willing to pay or transfer the subject-matter into court or dispose of it as the court may direct.

### **Service of interpleader application**

**54.4** (1) An application by the Chief Marshal must be served on the judgment creditor and on the person claiming the money, goods or chattels.

(2) An application by any other person must be served on all persons making a claim to the money, goods or chattels.

(3) The application must be served not less than 14 days before the date fixed for its hearing.

### **Powers of the court**

**54.5** (1) On an application by the Chief Marshal the court may, unless any claimant objects, summarily determine the question in issue between the parties.

- (2) On any other application the court may order that
- (a) any person claiming the money, goods or chattels be made a party in any pending claim relating to such money, goods or chattels either in addition to, or in substitution for, the application for relief; or
  - (b) the issue between two or more persons claiming the money, goods or chattels be tried and the court may direct which person claiming is to be the claimant in the proceedings and which the defendant.
- (3) Where a person making a claim to any money, goods or chattels and who has been served with the application fails to
- (a) to attend the hearing; or
  - (b) comply with any order made by the court,

the court may make an order barring that person and any person claiming under that person forever from prosecuting any claim to the money, goods or chattels as against the applicant or any person claiming under the applicant.

- (4) An order under sub-rule (3) does not affect any right as between the persons claiming the money, goods or chattels.

#### **Power to order sale of goods taken in execution**

**54.6** Where on an application by the Chief Marshal who has seized any goods or chattels a person claims to be entitled to the goods or chattels by way of security, the court may order that all or part of such goods or chattels be sold and the proceeds applied in accordance with the order.

## Part 55

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### Sale of Land by Order of Court

#### Contents of this Part

Scope of this Part	Rule 55.1
Application for order for sale	Rule 55.2
Hearing of application	Rule 55.3
Order for sale	Rule 55.4
Directions	Rule 55.5
Further directions	Rule 55.6

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#### Scope of this Part

- 55.1** (1) This Part deals with the sale of land
- (a) under any enactment which authorises the court to order a sale;  
or
  - (b) when it appears to the court to be necessary or expedient that the land should be sold.
- (2) In this Part "land" includes any interest in, or right over, land.

#### Application for order for sale

- 55.2** (1) An application for an order for sale must be supported by evidence on affidavit.
- (2) The evidence on affidavit under sub-rule (1) must
- (a) identify the land in question; and

- (b) state
  - (i) the reason for seeking an order for sale;
  - (ii) the grounds on which it is said that the court should order a sale of the land;
  - (iii) the full names and addresses of all persons who, to the knowledge or belief of the applicant, have or claim to have an interest in the land;
  - (iv) the nature and extent of each such interest or claimed interest;
  - (v) the proposed method of sale and why such method will prove most advantageous;
  - (vi) any restrictions or conditions that should be imposed on the sale for the benefit of any adjoining land of the judgment debtor, where applicable, or otherwise;
  - (vii) who it is proposed should have the conduct of the sale; and
- (c) exhibit a current valuation of the land by a qualified land valuer.

(3) The application and a copy of the affidavit in support must be served in accordance with Part 5 on the judgment debtor and every person who has or claims an interest in the land.

### **Hearing of application**

**55.3** The court, on hearing the application, may

- (a) direct that notice be given to any person who appears to have or claims an interest in the land but has not been served with the application and adjourn the application to a fixed date;

- (b) order the sale of the land or a specified part of the land;
- (c) direct who shall have conduct of the sale; and
- (d) order that any person
  - (i) in possession; or
  - (ii) in receipt of the rents or profits

of the land or any part of the land do deliver up possession of the land or receipt of the rents and profits to such person and on such date as the court may direct;

- (e) suspend any order referred to in this rule on such terms as the court thinks fit;
- (f) dismiss the application; or
- (g) make such other order as the court considers just.

**Order for sale**

**55.4** On making an order for sale under Rule 55.3, the court may

- (a) permit the person having conduct of the sale to sell the land in such manner as he thinks fit; or
- (b) direct the manner in which the land is to be sold.

**Directions**

**55.5** The court may give directions for the purpose of the sale, including directions relating to

- (a) the fixing of any reserve or minimum price for the sale;
- (b) the obtaining of further evidence as to the valuation of the land;
- (c) the settling of the particulars and conditions of sale;
- (d) the fixing of the remuneration of the auctioneer or estate agent conducting the sale;
- (e) the requirement of payment of the net proceeds of sale into court or otherwise;
- (f) an inquiry into what interests any interested persons may have in the land and the extent of such interests in the net proceeds of sale;
- (g) how the net proceeds of sale should be applied; and
- (h) the certification of the result of the sale.

**Further directions**

**55.6** Any party or the person having the conduct of the sale may apply to the court to vary the directions or to make further directions.

## Part 56

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### Judicial Review

#### Contents of the Part

Scope of this Part	Rule 56.1
Who may apply for judicial review	Rule 56.2
The application for judicial review	Rule 56.3
Service of the application	Rule 56.4
Delay	Rule 56.5
Proceedings by way of ordinary application which should be application for judicial review	Rule 56.6
Joinder of claims for other relief	Rule 56.7
Defence and evidence in answer	Rule 56.8
Directions Hearing	Rule 56.9
Procedural applications	Rule 56.10
Hearing of application for judicial review and costs	Rule 56.11
Special provisions relating to certiorari	Rule 56.12

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#### Scope of this Part

**56.1** (1) This Part deals with applications

- (a) for judicial review under the *Administrative Justice Act*; Cap. 109B.
- (b) for a declaration in which a party is the Crown, a court, a tribunal or any other public body; and
- (c) where the court has power by virtue of any enactment to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.

(2) In this Part, the applications referred to are referred to generally as "applications for judicial review".

(3) "Judicial review" includes the remedies of

(a) certiorari, for quashing unlawful acts;

(b) prohibition, for prohibiting unlawful acts;

(c) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.

(4) In addition to or instead of making an order for judicial review, the court may without requiring the issue of any further proceedings, grant

(a) an injunction;

(b) a declaration;

(c) restitution or damages; or

(d) an order for the return of any property, real or personal.

### **Who may apply for judicial review**

**56.2** An application for judicial review may be made by

(a) any person, group or body whose interests have been adversely affected by the decision which is the subject of the application;  
or

(b) any other person, group or body who satisfies the court that an application is justifiable in the public interest and in the circumstances of the case.



**The application for judicial review**

**56.3** (1) It is not necessary first to obtain permission for an application for judicial review.

(2) A person desiring to apply for judicial review must file an application in the Registry.

(3) The application must set out

(a) the name, address and description of the applicant and respondent;

(b) the applicant's address for service;

(c) the grounds on which relief is sought in accordance with section 4 of the Act;

(d) full particulars of the facts and matters relied on in support of the grounds;

(e) the relief, including interim relief, sought;

(f) the name and address of the applicant's attorney-at-law, where applicable.

(4) The application must be supported by an affidavit including a short statement of the facts and matters relied on and the affidavit must verify the contents of the application.

(5) As a general rule the affidavit must be sworn by the applicant or, in the case of an incorporated or corporate entity, by an appropriate officer of the entity making the claim.

(6) Where the applicant is unable to make the affidavit, it must be made by some other person who must state why the applicant is unable to make the affidavit.

(7) Where an application is for damages, restitution, the recovery of money alleged to be due or an order for the return of property, the affidavit must specify, as far as practicable, the facts in support and the amount of money claimed.

### **Service of the application**

**56.4** (1) The applicant must serve a certified copy of the application on every person who is a respondent not later than 14 days before the date fixed for hearing.

(2) A copy of the application must also be served on the Attorney-General within 7 days of its filing.

(3) The applicant must file at the Registry not later than 3 days before the date fixed for hearing an affidavit of service which

- (a) states the date and place of service of each respondent served;
- (b) the date on which the Attorney-General was served; and
- (c) if any respondent has not been served, states that fact and the reason for it.

(4) Where the judge considers that any person who should have been served has not been served, the judge may adjourn the hearing and give such directions as are considered just.

### **Delay**

**56.5** (1) Apart from any time limit imposed by any enactment, relief may be refused in any case in which the judge considers that there has been unreasonable delay before the making of the application.

(2) When considering whether to refuse or grant relief because of delay, the judge must consider whether the granting of relief would be likely

(a) to cause substantial hardship to or to substantially prejudice the rights of any person; or

(b) to be detrimental to good administration.

**Proceedings by way of ordinary application  
which should be application for judicial review**

**56.6** (1) This rule applies where a claimant issues an application for relief, such as damages, other than relief being an order for judicial review, but where, on the facts alleged in support of the application, the only or main relief that could be available is an order for judicial review.

(2) The court may at any stage direct that the application is to proceed by way of an application for an order for judicial review.

(3) Where the appropriate order for judicial review would be an order granting judicial review, the court may give permission for the matter to proceed as if an application had been made under rule 56.3.

(4) Where the court makes an order under sub-rule (2), it must give such directions as are necessary to enable the claim to proceed under this Part.

**Joinder of claims for other relief**

**56.7** (1) The general rule is that where permitted by the substantive law, a claimant may include in an application for an order for judicial review a claim for any other relief or remedy that

(a) arises out of; or

- (b) is related or connected to,  
the subject matter of the application for an order for judicial review.
- (2) In particular the court may award
- (a) a declaration;
  - (b) damages;
  - (c) restitution; or
  - (d) an order for return of property
- to the claimant on an application for an order for judicial review if
- (i) the claimant has included in the application a claim for that remedy arising out of any matter to which the claim for an order for judicial review relates; or
  - (ii) the facts set out in the claimant's affidavit or statement of case justify the granting of that remedy; and
  - (iii) the court is satisfied that, at the time when the application was made, the claimant could have issued an application for that remedy.
- (3) The court may at any stage
- (a) direct that any claim for other relief be dealt with separately from the claim for an order for judicial review; or
  - (b) direct that the whole application be dealt with as an ordinary application and give appropriate directions under Parts 26 and 27.

(4) Where paragraph (a) or (b) of sub-rule 3 applies, the court may make any order it considers just as to costs that have been wasted because of any unreasonable use of the procedure under this Part.

### **Defence and evidence in answer**

**56.8** Any evidence filed in answer to a claim for an order for judicial review must be by affidavit but the provisions of Part 10 (Defence) apply to such affidavit.

### **Directions Hearing**

**56.9** (1) At the pre-trial review, the judge or master may give any directions that may be required to ensure the expeditious and just final hearing of the application and the provisions of Parts 25 to 27 of these Rules apply.

(2) In particular, the judge or master may

(a) make an order for

- (i) witness statements or affidavits to be served;
- (ii) cross-examination of witnesses; and
- (iii) disclosure of documents;

(b) allow the claimant to

- (i) amend any claim for an order for judicial review;
- (ii) substitute another form of application for that originally made; or
- (iii) add or substitute a claim for relief other than an order for judicial review;

- (c) allow any person, group or body appearing to have a sufficient interest in the subject matter of the application to be heard whether or not served with the application;
- (d) direct whether any person, group or body having such an interest
  - (i) is to make submissions in writing; or
  - (ii) may make oral submissions at the hearing; and
- (e) direct that claims made on the same grounds by one or more persons, groups or bodies or against one or more persons in respect of the same office, be consolidated or heard together or sequentially by the same judge.

### **Procedural Applications**

**56.10** Wherever practicable, any procedural application during an application for an order for judicial review must be made to the judge or master who dealt with the first hearing unless that judge or master orders otherwise.

### **Hearing of application for order for judicial review and costs**

**56.11** (1) At the hearing of the application, the judge may allow any person, group or body who appears to have a sufficient interest in the subject matter of the claim to make submissions, whether or not served with the application.

(2) The submissions of such a person, group or body must be made in writing unless the judge orders otherwise.

(3) The judge may grant any relief that appears to be justified by the facts proved, whether or not that relief should have been sought by an application for an order for judicial review.

(4) The judge may make such orders as to costs as appear to be just, including a wasted costs order.

**Special provisions relating to certiorari**

**56.12** Where the application is for an order or writ of certiorari, the judge may, if satisfied that there are reasons for quashing the decision to which the application relates

- (a) direct that the proceeding be quashed; and
- (b) in addition, remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it in accordance with the findings of the court.

## Part 57

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### Habeas Corpus

#### Contents of this Part

Scope of this Part	Rule 57.1
Application for issue of writ of Habeas Corpus	Rule 57.2
Powers of court	Rule 57.3
Service of writ	Rule 57.4
Return to writ	Rule 57.5
Powers of court on person detained being brought before the court	Rule 57.6
Bringing up prisoner to give evidence etc.	Rule 57.7

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#### Scope of this Part

**57.1** This Part deals with applications for the issue of a writ of Habeas Corpus and proceedings upon such a writ.

#### Application for issue of writ of Habeas Corpus

**57.2** (1) An application for the issue of a writ of Habeas Corpus ad subjiciendum must be made to the court.

(2) An application under sub-rule (1) may be made without notice but must be supported by evidence on affidavit.

(3) Where practicable, the affidavit is to be that of the person restrained, stating how he is restrained.

(4) Where the person restrained is not able to make the affidavit, it may be made by some other person on his behalf who must state why the person restrained is not able to make the affidavit.



(5) The application must be heard in open court unless it is made on behalf of a minor and in that case it must be heard in chambers.

### **Powers of court**

**57.3** (1) The court may

(a) forthwith make an order for the writ to issue in Form 19; or Form 19.

(b) adjourn the application and give directions for notice to be given to

(i) the person against whom the issue of the writ is sought;  
and

(ii) such other person as the judge may direct.

(2) The court may also order that the person restrained be released.

(3) An order under sub-rule (2) is sufficient warrant to any person for the release of the person under restraint.

(4) On making an order for the writ to issue, the court must give directions as to the date, time and place of hearing.

### **Service of writ**

**57.4** (1) The general rule is that the writ must be served personally on the person to whom it is directed.

(2) Where it is not possible to serve that person personally or where that person is the keeper of a prison or other public official, the writ may instead be served personally on a servant or agent of the person to whom it is directed at the place where the person restrained is confined or otherwise restrained.

(3) Where the writ is directed to more than one person, it must be served on the person first named and a copy must be served on each of the other persons named in accordance with sub-rule (1) or (2).

(4) Each person served with a writ must also be served with

(a) a copy of the affidavit filed under rule 57.2(2); and

Form 13. (b) a notice in accordance with Form 13 stating the date, time and place at which the person restrained is to be brought and containing a warning that in default of compliance with the writ, proceedings for committal may be taken.

### **Return to writ**

**57.5** (1) Each person served must endorse on or annex to the writ or copy of the writ served on him, a return stating each cause of detention of the person restrained.

(2) The return may be amended or another substituted with the permission of the court.

### **Powers of court on person detained being brought before the court**

**57.6** On the date fixed for the person detained to be brought before the court, the court must make such orders as are just and, in particular, may give directions as to the manner in which any claim for compensation is to be dealt with by the court without requiring the issue of any further process.

**Bringing up prisoner to give evidence, etc.**

**57.7** An application for

- (a) a writ of habeas corpus ad testificandum;
- (b) a writ of habeas corpus ad respondendum; or
- (c) an order to bring up a prisoner to give evidence may be made without notice to a judge or master in chambers but must be supported by evidence on affidavit.

## Part 58

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### Bail Applications

#### Contents of this Part

Scope of this Part	Rule 58.1
How to apply to the court	Rule 58.2
Service of application	Rule 58.3
Hearing of application	Rule 58.4
Bail pending appeal	Rule 58.5
Taking of recognizance	Rule 58.6
Release of person detained	Rule 58.7
Forfeiture of recognizance	Rule 58.8
How to forfeit recognizance	Rule 58.9
Use of forms	Rule 58.10

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#### Scope of this Part

**58.1** (1) This Part deals with applications to the Supreme Court to review a decision by a magistrate regarding bail.

(2) In this Part,

"magistrate" has the meaning assigned to it by section 2(1) of the  
 Cap. 116A. *Magistrate's Court Act*;

"the Superintendent" means the Superintendent of Prisons;

S.I. 2001  
 No. 23.  
 Cap. 122A. "the Bail Rules" means the *Bail Rules, 2000*, made under the *Bail Act*.

### **How to apply to the court**

**58.2** (1) An application for bail must be made to a Judge in Chambers in the prescribed form.

(2) Where the application is made by an attorney-at-law representing a defendant or by the prosecution in respect of a variation of bail, the application must be made by summons supported by affidavit.

(3) Where an application is made by a person not represented by an attorney-at-law, it must be in the prescribed form but no affidavit is necessary.

(4) Applications for bail must be filed at the Registry.

### **Service of application**

**58.3** The summons mentioned in rule 58.2(2) must be served at least 24 hours before the date of hearing

(a) on the Director of Public Prosecutions, in the case of an application made by a defendant; and

(b) on the defendant, in the case of an application made by the Director of Public Prosecutions.

### **Hearing of application**

**58.4** (1) Every applicant for bail must inform the court of any previous application in any court relating to bail in the same proceedings.

(2) Where a Judge grants bail, a copy of the order must be sent forthwith to the clerk of the court which did not grant bail.

(3) Where a Judge varies the arrangements under which an applicant has been granted bail, a copy of the order must be sent forthwith to the clerk of the court which did not grant bail.

(4) Where an application is refused, the applicant cannot make a new application to another judge unless there has been a change in the circumstances of the applicant or new considerations have arisen.

### **Bail pending appeal**

**58.5** Where a person is released from custody on bail pending the hearing of an appeal or an application for an order of certiorari, then where

- (a) the appeal or application is abandoned; or
- (b) the decision of the court is given

a magistrate may order enforcement of the decision relating to the appeal or application, as the case may be.

### **Taking of recognizance**

**58.6** (1) Where a court orders a surety as a condition of bail, the surety must bind himself to perform the condition by entering into a recognizance.

(2) Where a person is in prison, the recognizance may be entered into before the Superintendent.

(3) A court may impose a requirement to be satisfied before a person can be released and may give such directions as the court thinks fit.

(4) Where a person proposes to enter into a recognizance pursuant to an order of a Judge, that person must give at least 24 hours notice to the prosecutor before entering into the recognizance unless the Judge orders otherwise.

(5) Where a recognizance has been entered into, the person before whom the recognizance is entered must send the recognizance to the Registrar or clerk of the magistrate's court as the case may be.

(6) A copy of the recognizance must also be sent to the Superintendent.

### **Release of person detained**

**58.7** Where the Superintendent

(a) receives a certificate signed by the Registrar verifying that a recognizance has been entered into and that any other conditions imposed by the court have been complied with; and

(b) is satisfied that all requirements of bail have been fulfilled,

the Superintendent must release the person from custody.

### **Forfeiture of recognizance**

**58.8** Where a person has been granted bail and a recognizance has been entered into, the court may forfeit the recognizance where

(a) the person granted bail fails to appear at court; or

(b) it appears that default has been made in satisfying any of the conditions of the recognizance.

### **How to forfeit recognizance**

**58.9** (1) An application to forfeit a recognizance must be made by summons to a Judge in Chambers and must be supported by an affidavit showing how the recognizance was breached.

(2) The summons referred to in sub-rule (1) must be served at least 2 clear days before the date of hearing and service must be proved on affidavit evidence.

(3) When an application is made to forfeit a recognizance, the Registrar must notify the person who entered into the recognizance of the time and place for the hearing of the application.

(4) The court must not make an order for forfeiture unless 7 days have elapsed after the notice referred to in sub-rule (3) was given by the Registrar.

### **Use of Forms**

S.I. 2001  
No. 23.

**58.10** The forms set out in the *Schedule* to the *Bail Rules, 2001* must be used in respect of the matters to which they relate under this Part.



## Part 59

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### Proceedings by and Against the Crown

#### Contents of this Part

Scope of this Part	Rule 59.1
Service of application	Rule 59.2
Claimant's duty to give particulars	Rule 59.3
Proceedings relating to postal packets	Rule 59.4
Enforcement against Crown	Rule 59.5

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#### Scope of this Part

**59.1** (1) This Part deals with claims to which the Crown is a party.

(2) In this Part, "the Act" means the *Crown Proceedings Act*. Cap. 197.

(3) References in these Rules to an action or claim for possession of land are to be construed as including references to proceedings against the Crown for an order declaring that the claimant is entitled as against the Crown to land or to possession of land.

#### Service of application

**59.2** (1) Part 5 and Part 6 do not apply in civil proceedings against the Crown.

(2) Service of any document including a claim form on the Crown must be effected in accordance with the Act and served on the Attorney-General.

- **Part 5 deals with service of claim form within jurisdiction**
- **Part 6 deals with service of other documents**

### **Claimant's duty to give particulars**

**59.3** (1) Where a claim is made in proceedings against the Crown, the claim form or statement of claim must contain information making reasonably clear the circumstances in which it is alleged that the liability of the Crown has arisen and the identity of the government department and officer of the Crown involved.

(2) At any time during the period for entering an acknowledgment of service under rule 9.3(1), the defendant may request information under Part 34.1.

(3) Where sub-rule (2) applies, the defendant's time for filing an acknowledgement of service is extended until 7 days after

- (a) the defendant gives notice in writing to the claimant that the defendant is satisfied with the information supplied; or
- (b) the court on the application of the claimant decides that no further information is reasonably required

whichever shall first occur.

(4) The defendant's time for filing a defence is extended to 21 days after the earlier of the events set out in sub-rule (3).

### **Proceedings relating to postal packets**

**59.4** (1) This rule deals with applications under the Act for leave to bring proceedings in the name of a sender or addressee of a postal packet or his personal representative.

Form 2. (2) A claim form must be by fixed date application in Form 2.

(3) The defendants to the claim must be the Attorney-General and the person whose name the claimant seeks to use as that of a defendant to the proceedings.

- (4) No acknowledgment of service need be entered to the claim.
- **The procedure relating to fixed date claims is dealt with in rules 8.1(5) and 27.2**

**Enforcement against Crown**

**59.5** Parts 44 to 53 do not apply to

- (a) any order against; or
- (b) any money due or accruing due, or alleged to be due or accruing due from the Crown.

## Part 60

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### Appeals to the High Court

#### Contents of this Part

Scope of this Part	Rule 60.1
How to appeal to the court	Rule 60.2
Effect of appeal	Rule 60.3
Persons on whom claim form must be served	Rule 60.4
Time within which claim form must be served	Rule 60.5
Amendment of statement of case	Rule 60.6
First hearing	Rule 60.7
Hearing of appeal	Rule 60.8

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#### Scope of this Part

**60.1** (1) This Part deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated.

(2) In this Part,

"appellant" means any person challenging the decision of a tribunal or person under this Part;

"clerk to the tribunal" means the clerk, secretary or other person responsible for the administration of the tribunal;

"decision" means the order, determination, decision or award appealed against; and

"tribunal" means any tribunal other than a court of law established under an enactment.

(3) This Part takes effect subject to any provisions in the relevant enactment.

### **How to appeal to the court**

**60.2** (1) An appeal to the court is made by issuing a fixed date claim form in Form 2 to which must be annexed to the formal document entitled "Grounds of Appeal". Form 2.

- (2) The appellant's grounds of appeal must show
- (a) details of the decision against which the appeal is made;
  - (b) the name of the tribunal or person whose decision is under appeal;
  - (c) the enactment and section enabling an appeal to be made to the court;
  - (d) the facts found by that tribunal or person; and
  - (e) the grounds on which it is contended the decision should be reversed, varied or set aside, identifying
    - (i) any finding of fact; and
    - (ii) any finding of law

which the appellant seeks to challenge.

(3) The date fixed for the first hearing must not be less than 28 nor more than 56 days after the issue of the application.

- **The procedure relating to fixed date claims is dealt with in rules 8.1(5) and 27.2**
- **Part 56 deals with applications to quash a decision by way of certiorari**

### **Effect of appeal**

**60.3** The filing of an appeal does not operate as a stay of proceedings on or pursuant to the decision against which the appeal is brought unless

- (a) the court; or
- (b) the tribunal or person whose decision is under appeal

so orders.

### **Persons on whom claim form must be served**

**60.4** The appellant must serve the application and grounds of appeal on

- (a) the clerk to the tribunal, minister or other person by whom the decision appealed against was made; and
- (b) every other party to the proceedings in which the decision was made.

### **Time within which claim form must be served**

**60.5** The claim form and grounds of appeal must be served within 28 days of the date on which the decision was given to the appellant.

### **Amendment of statement of case**

**60.6** (1) The appellant may amend his grounds of appeal without permission not less than 7 days before the first hearing.

(2) Permission to amend the grounds of appeal may be given after the 7 days specified in sub-rule (1) where the court considers that the interests of justice so require.

### **First hearing**

**60.7** (1) The appellant must file at the Registry, not less than 7 days before the first hearing, a copy of the transcript of the proceedings in which the decision was made.

(2) Where the court does not hear the appeal at the first hearing, the court must fix a date, time and place for the full hearing.

### **Hearing of appeal**

**60.8** (1) Unless an enactment otherwise provides, the appeal is to be by way of rehearing.

(2) The court may receive further evidence on matters of fact.

(3) The court may draw any inferences of fact which might have been drawn in the proceedings in which the decision was made.

(4) The court may

(a) give any decision or make any order which ought to have been given or made by the tribunal or person whose decision is under appeal;

(b) make such further or other order as the case requires; or

(c) remit the matter with the opinion of the court for rehearing and determination by the tribunal or person.

(5) The court is not bound to allow an appeal as a result of

(a) a misdirection; or

(b) the improper admission or rejection of evidence

unless it considers that a substantial wrong or a miscarriage of justice has been caused.

## Part 61

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### Appeals to the Court by way of Case Stated

#### Contents of this Part

Scope of this Part	Rule 61.1
Application for order to state a case	Rule 61.2
Persons on whom claim form must be served	Rule 61.3
Time within which claim form must be served	Rule 61.4
Signing and service of case	Rule 61.5
How to commence proceedings to determine a case	Rule 61.6
Determination of case	Rule 61.7

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#### Scope of this Part

**61.1** (1) This Part deals with the way in which the High Court or the Court of Appeal determines

- (a) a case stated;
- (b) a question of law referred to it by a Minister, magistrate, judge of a tribunal, a tribunal or other person; or
- (c) an application for an order directing a Minister, magistrate, judge of a tribunal, tribunal or other person to refer a question of law to the court by way of case stated

where under any enactment the High Court or the Court of Appeal has power to determine such matters.



(2) In this Part,

"case" includes a special case;

"clerk to the tribunal" means the clerk, secretary or other person responsible for the administration of the tribunal;

"court" means the High Court or the Court of Appeal as required by the particular enactment;

"enactment" includes the *Constitution*; and

"tribunal" means

(a) in relation to proceedings brought under the *Constitution*, a court other than the High Court, the Court of Appeal or a court martial; and

(b) in relation to any other proceedings, any tribunal other than a court of law constituted by or under any enactment.

#### **Application for order to state a case**

**61.2** (1) An application to the court for an order directing a Minister, magistrate, judge of a tribunal, tribunal, or other person

(a) to state a case for determination by the court; or

(b) to refer a question of law to the court by way of case stated

is made by a fixed date claim in Form 2 which must

Form 2.

(i) state the grounds of the application;

(ii) identify the question of law upon which it is sought to have a case stated or which it is sought to have referred to the court; and

(iii) set out any reasons given by the Minister, magistrate, judge of tribunal, a tribunal or other person for the refusal to state a case, or to refer the question of law to the court.

(2) The Registrar must fix a date for a hearing of the application and endorse on the claim form the date, time and place of that hearing.

(3) The claimant must file at the Registry a copy of the proceedings to which the application relates not less than 7 days before the date fixed for the hearing.

### **Persons on whom claim form must be served**

#### **61.3** The claimant must serve the claim form

(a) where the application relates to proceedings brought under the *Constitution*, on

(i) the Attorney-General;

(ii) the clerk to the tribunal; and

(iii) every other party to the proceedings to which the application relates; and

(b) in any other case, on

(i) the clerk to the tribunal; and

(ii) every other party to the proceedings to which the application relates.

- **Service on the Crown and on the Attorney-General is dealt with in rule 6.9 and rule 59.2**

### **Time within which claim form must be served**

**61.4** The claimant must serve the claim form within 14 days of the date on which notice of refusal to state a case or refer a question of law was given to the claimant.

### **Signing and service of case**

**61.5** (1) A case stated by a tribunal must be signed by the magistrate, judge or chairman or president of the tribunal.

(2) A case stated by any other person must be signed by that person.

(3) The case must be served

(a) where it relates to proceedings brought under the *Constitution*, on the Attorney-General and on all parties to the proceedings to which the case relates; or

(b) where it relates to some other proceedings, on all parties to the proceedings to which the case relates.

### **How to commence proceedings to determine a case**

**61.6** (1) Proceedings to determine a case must be commenced by issuing a fixed date claim form in Form 2.

Form 2.

(2) The claim form may be issued by

(a) any party on whom a case was served under rule 61.5(3); or

(b) a person or tribunal, where a Minister, magistrate, judge of a tribunal, a tribunal, or other person is entitled by any enactment to state a case or to refer a question of law by way of case stated to the court.

(3) The claim form must have the case stated annexed.

(4) The claim form, or a statement of case issued and served with it, must set out the claimant's contentions on the question of law to which the case relates.

(5) The contentions referred to in sub-rule (4), may be in the form of a skeleton argument.

(6) The Registrar must fix a date, time and place for the determination of the case.

(7) The claim form must be served on the persons set out in rule 61.5(3).

(8) The claim form must be served within 14 days after the service of the case stated.

#### **Determination of case**

**61.7** (1) Not less than 7 days before the date fixed to determine the case, the claimant must file a copy of the proceedings to which the case relates.

(2) The court may amend the case or order it to be returned for amendment to the person or tribunal stating the case for amendment.

(3) The court may draw inferences of fact from the facts stated in the case.

## Part 62

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### Appeals to the Court of Appeal

#### Contents of this Part

Scope of this Part	Rule 62.1
How to obtain leave to appeal	Rule 62.2
How to appeal	Rule 62.3
Contents of notice of appeal	Rule 62.4
Nature of appeal and some incidents of the right of appeal	Rule 62.5
Time for filing notice of appeal	Rule 62.6
Service of notice of appeal	Rule 62.7
Cross-appeal and notice of contention	Rule 62.8
Action by court on receiving notice of appeal	Rule 62.9
Procedural appeal	Rule 62.10
Skeleton arguments	Rule 62.11
The record – appeal from High Court	Rule 62.12
The record – appeals from magistrates’ courts	Rule 62.13
Case management	Rule 62.14
Procedural applications to the Court of Appeal	Rule 62.15
Powers of single Judge, Master and Registrar	Rule 62.16
Security for costs of appeal	Rule 62.17
Non-disclosure of payments into court, etc.	Rule 62.18
Stay of execution	Rule 62.19
Failure of party to attend appeal	Rule 62.20
Application to set aside a decision made in party’s absence	Rule 62.21
Adjournment of appeal	Rule 62.22
Fresh evidence	Rule 62.23
Certificate of result of appeal	Rule 62.24

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**Scope of this Part**

**62.1** (1) This Part deals with appeals to the Court of Appeal from

(a) the High Court;

(b) a magistrate's court; or

(c) a tribunal, not being

(i) appeals or applications to the court for which other provision is made by these Rules; nor

(ii) appeals by way of case stated on a question of law for determination by the court.

- **Part 60 deals with appeals to the High Court and cases stated are dealt with in Part 61**

(2) Without limiting its powers conferred otherwise, the court may direct a departure from this Part whenever that is required in the interests of justice.

(3) In this Part,

"appellant" means the party who first files a notice of appeal;

"core bundle" means a bundle containing only those documents listed in rule 62.12 which the court will need to pre-read or to which it will be necessary to refer repeatedly at the appeal;

"court" means the Court of Appeal;

"court below" means the court or tribunal from which the appeal is brought;

"procedural appeal" means an appeal from a decision of a judge, Master or Registrar which does not directly decide the substantive issues in a claim but excludes

- (a) any such decision made during the course of the trial or final hearing of the proceedings;
- (b) an order granting any relief made on an application for judicial review, including an application for leave to make the application or under the *Constitution*;
- (c) the following orders under Part 17:
  - (i) an interim injunction;
  - (ii) a freezing order as defined under Part 17;
  - (iii) a search order as defined under Part 17;
  - (iv) an order to deliver up goods; and
  - (v) any order made before proceedings are commenced or against a non-party;
- (d) an order granting or refusing an application for the appointment of a receiver; and
- (e) an order for committal or confiscation of assets under Part 53;

"respondent" means any party to the appeal other than the appellant whether or not the respondent files a cross-appeal when, for the purposes of the cross-appeal, the respondent shall be called "the cross-appellant" and the appellant "the cross-respondent".

**How to obtain leave to appeal**

**62.2** (1) Where an appeal may be brought only with the leave of the court below or the Court of Appeal, a party wishing to appeal must apply for leave within 21 days of the order against which leave to appeal is sought.

(2) The application for leave to appeal must be made in writing and must

(a) set out concisely the grounds of the proposed appeal, or preferably have attached to it a draft of the proposed notice of appeal; and

(b) be supported by an affidavit showing

(i) the nature of the case;

(ii) the questions involved; and

(iii) the reason why leave should be given.

(3) An application for leave to appeal made to the court may be considered by a single judge of the court.

(4) The judge may give leave without hearing the applicant.

(5) However, where the judge is minded to refuse leave he will direct

(a) that a hearing be fixed, which may or may not deal with all issues in advance of deciding the question of leave; and

(b) that that hearing be before the court.



## How to appeal

**62.3** An appeal is brought by filing a notice of appeal in Form 20 Form 20. at the Registry.

### Contents of Notice of Appeal

**62.4** (1) The appellant must in the notice of appeal state whether the appeal is from the whole or part only, and if so, which part or parts of the judgment or order of the court below, and state specifically

(a) the decision from which the appeal is brought, identifying so far as practicable any error alleged to have affected it and

(i) any finding of fact; or

(ii) any finding or direction of law

which the appellant seeks to challenge;

(b) the grounds of the appeal;

(c) the precise order the appellant seeks; and

(d) any power which the appellant asks the court to exercise.

(2) A copy of the judgment or order which is the subject of the appeal must wherever practicable be attached to the notice of appeal.

(3) Where leave to appeal is required, a copy of the order giving leave to appeal must be attached to the notice of appeal.

(4) The notice of appeal must

(a) be signed by the appellant or the appellant's attorney-at-law;

(b) give the details required by rule 3.11; and

(c) state the names and addresses of the attorneys-at-law and the addresses for service of all other parties affected by the appeal.

(5) The grounds of appeal under sub-rule (1)(b) must show

(a) concisely;

(b) under distinct heads; and

(c) in consecutively numbered paragraphs,

the grounds on which the appellant relies without any argument or narrative.

(6) The court may, on or without an application, strike out any ground which

(a) is vague and general in terms; or

(b) discloses no reasonable ground of appeal.

(7) The appellant may amend the grounds of appeal once without permission at any time within 28 days from receiving notice that a transcript of the evidence and judgment is available, or at any time by permission of the court.

(8) The appellant may not rely on any ground not mentioned in his notice of appeal without the permission of the court.

(9) The court is not confined to the grounds set out in the notice of appeal, although it may not make its decision on any ground not set out in the notice of appeal unless the respondent has had sufficient opportunity to contest that ground.

**Nature of appeal and some incidents of the right of appeal**

- 62.5** (1) An appeal to the court shall be by way of rehearing.
- (2) No interlocutory order or ruling from which there has been no appeal shall prevent the court deciding the appeal as may be just.
- (3) At any time before the commencement of the hearing of an appeal, the appellant may file and serve a notice of discontinuance without the permission of the court, whereupon the appeal shall stand dismissed with costs.
- (4) Where an appeal lies from a judgment or order to the court by leave or as of right, the officer of the court below who has custody of the exhibits in the proceedings shall, unless the court below otherwise orders, retain the exhibits
- (a) for 28 days after the pronouncement of the judgment or making of the order; or
- (b) where leave to appeal is sought within that period, until 14 days after any grant of leave.
- (5) Upon an appeal being instituted, the proper officer of the court below shall
- (a) make a certified list of exhibits and deliver the list, the exhibits and any other document before the court below to the Registrar of the court;
- (b) make reference in his certificate to any exhibit that cannot be so delivered, stating the circumstances, so as to enable the Registrar to have the exhibit made available to the court.
- (6) The Registrar shall retain control of the exhibits and documents until the disposal of the appeal and then return them to the proper officer or persons from whom they were obtained.

### **Time for filing Notice of Appeal**

**62.6** (1) The notice of appeal must be filed at the Registry

- (a) in the case of a procedural appeal, within 14 days of the date on which the decision appealed against was made;
- (b) where leave is required, within 14 days of the date when leave was granted; or
- (c) in the case of any other appeal within 28 days of the date when the order or judgment appealed against was made or given, or any later date fixed by the court below.

(2) Any of the times stated in sub-rule (1) may be extended by the court or a judge (the judge, if minded to refuse, shall, or for any other reason may, refer the question to the court) pursuant to an application upon notice filed within the relevant time.

(3) Notwithstanding anything in this rule, the court or a judge (the judge, if minded to refuse, shall, or for any other reason, may refer the question to the court) may at any time for special reasons give leave to file and serve a notice of appeal.

### **Service of notice of appeal**

**62.7** (1) The notice of appeal must be served

- (a) on all parties to the proceedings; and
- (b) on any other person if the court so directs.

(2) Before taking any step, a respondent to an appeal must enter an appearance before the Registrar giving the details specified in rule 3.11.

**Cross-appeal and notice of contention**

**62.8** (1) Any party upon whom a notice of appeal is served may file a cross-appeal.

(2) The cross-appeal must comply with rule 62.4.

(3) The cross-appeal must be filed at the Registry in accordance with rule 62.3 within 21 days of service of the notice of appeal.

(4) The party filing a cross-appeal must serve a copy on all other parties to the proceedings.

(5) Where a respondent proposes to contend that some matter of fact or law has been erroneously decided against the respondent, but does not seek a discharge or variation of any part of the judgment or order of the court below, the respondent need not give a notice of the cross-appeal, but shall

(a) file and serve on the appellant and all other respondents notice of his contention prior to the date notified under rule 62.12 for settlement of the appeal papers;

(b) give notice to the appellant of the record of evidence and documents before the court below that are relevant to his contention, for inclusion in the draft index to be prepared by the appellant under rule 62.12; and

(c) at the appointment to settle the appeal papers, request the Registrar to include any such record of evidence and documents in the appeal papers.

(6) A respondent may apply on notice at any time for an order that an appeal be dismissed as being incompetent.

(7) On an application under sub-rule (6), the burden of establishing competency is on the appellant.

(8) Where a respondent does not apply under this sub-rule, but at the hearing the court dismisses the appeal as being incompetent, the respondent shall not, unless the court otherwise orders, receive any costs of the appeal, and the court may order that the respondent pay the appellant any costs of the appeal proven to be useless or unnecessary.

**Action by court on receipt of notice of appeal**

**62.9** (1) Upon the notice of appeal being filed, the Registrar must forthwith,

- (a) where the appeal is a procedural appeal appoint a date, time and place for the hearing and give notice to all parties; and
  - (b) where the appeal is from the High Court,
    - (i) arrange for the court below to prepare a transcript of the notes of evidence and of the judgment; and
    - (ii) when the notes and judgment referred to in sub-rule (1) are prepared, give notice to all parties that copies of the transcript are available on payment of the prescribed fee; or
  - (c) where the appeal is from a magistrate's court or a tribunal, apply to the clerk or other officer of the court or tribunal for a certified copy of the
    - (i) record of the proceedings;
    - (ii) notes of the evidence given; and
    - (iii) record of the judgment, the reasons for the decision and of any finding on any question of law under appeal.
- (2) Upon receipt of the documents referred to in sub-rule (1)(c), the Registrar must notify all parties that copies of the record and of the documents are available on payment of the prescribed fee.

**Procedural appeal**

**62.10** (1) On a procedural appeal the appellant must file and serve written submissions in support of the appeal with the notice of appeal.

(2) The respondent may within 14 days of receipt of the notice of appeal, file and serve on the appellant any written submissions in opposition to the appeal or in support of any cross-appeal.

(3) A procedural appeal must be listed before the court on the earliest available date and the court may

(a) restrict each party's time for oral argument as may seem to it appropriate; and

(b) direct the filing of supplementary written submissions on any question.

(4) At or before the time of the listing of a procedural appeal for hearing, a judge may dispense with some or all of the requirements of the Rules in relation to appeal papers and procedures preparatory to the hearing of an appeal.

**Skeleton arguments**

**62.11** (1) Within 42 days of receipt of the notice under rule 62.9(1)(a) or (b) or 62.9(2) the appellant must file with the Registry and serve on all other parties a skeleton argument.

(2) Within 28 days of service of the appellant's skeleton argument, any other party wishing to be heard on the appeal must file his skeleton argument and serve a copy on all other parties.

(3) The appellant may file and serve a skeleton argument in reply within 14 days of service of a skeleton argument by any other party.

- (4) A skeleton argument must
  - (a) set out concisely the nature of the appellant's, or other party's arguments on each ground of appeal;
  - (b) in the case of a point of law, state the point and cite the principal authorities in support with references to the particular page where the principle concerned is set out;
  - (c) in the case of a question of fact, state briefly the basis on which it is contended that the Court of Appeal can interfere with, or should sustain, as the case may be, the finding of fact concerned with references to the passages in the transcript or notes of evidence which bear on the point.
- (5) The appellant's skeleton argument must be accompanied by a written chronology of events relevant to the appeal and shall be cross-referenced to the core bundle or record.

#### **The Record – appeal from High Court**

**62.12** (1) This rule applies to all appeals from the High Court but is subject to rule 62.10 as regards procedural appeals.

(2) The appellant shall, on filing his notice of appeal, obtain from the proper officer in the Registry, an appointment to settle the appeal papers.

(3) The appellant shall serve notice of the appointment on each person on whom the Notice of Appeal is served.

(4) The notice of appointment may be subscribed to the Notice of Appeal.

(5) Before the date appointed for settling the appeal papers, the appellant shall obtain and file in the Registry

- (a) the reasons for judgment or the summing up of the court or judge below certified by the proper officer below; and



(b) a copy of the official transcript of the proceedings below or, where there is none, of the judge's notes or other record of those proceedings.

(6) In a case of doubt as to the accuracy of any part of the transcript or record of the proceedings below, the appellant or a respondent may apply, with notice to all other parties, to the Registrar or a judge for directions;

(7) Before the date appointed for settling the appeal papers, the appellant must

(a) prepare and file in the Registry

(i) a draft index of the appeal papers; and

(ii) a separate, chronological list of all documents received in evidence and proposed to be reproduced in the appeal papers, including documents exhibited to, or annexed to affidavits, and

(b) serve the draft index and list on all respondents in a reasonable time before the appointment to settle the appeal papers.

(8) At the appointment to settle the appeal papers, the Registrar shall

(a) determine what documents and matters shall be included in the appeal papers and the order of inclusion and such other matters as the Registrar thinks fit concerning the preparation of copies of the appeal papers;

(b) settle the index in accordance with sub-rule (10);

(c) determine the number of copies of the appeal papers required;

(d) obtain an estimate of the duration of the hearing; and

- (e) where practicable, fix a date for hearing or list the appeal for hearing in a particular period.
- (9) The title page of the appeal papers shall give the title of the proceedings, including the title of the court below, and the names of the attorneys for each party and their addresses for service.
- (10) Following the title page, there must be
  - (a) an index of the documents comprising the appeal papers, showing the date and page number of each document; and
  - (b) a chronological list of all documents received in evidence, including documents exhibited to or annexed to affidavits showing the date and page number of each document.
- (11) The appeal papers must be paginated and the documents arranged in the following order:
  - (a) process and pleading;
  - (b) evidence, as follows:
    - (i) oral evidence;
    - (ii) affidavit evidence in which, after each affidavit, documents exhibited to or annexed to that affidavit are to be arranged in the order in which they have been lettered or numbered in the affidavit;
    - (iii) other exhibits, other than affidavits and documents exhibited or annexed to each affidavit, arranged in the order in which they have been lettered or numbered as exhibits in the court below, and any list of exhibits appearing in the transcript;
  - (c) testimony taken before an examiner and received in evidence;

- (d) where the court or judge below was hearing an appeal from a tribunal or board,
  - (i) reasons for the decision of the tribunal or board;
  - (ii) the formal decision of the tribunal or board; and
  - (iii) any notice of appeal to the court below;
- (e) reasons for the judgment of the court below;
- (f) the formal order of the court below;
- (g) notice of appeal;
- (h) any notice of cross-appeal or notice of contention;
- (i) a list of all parts of the transcript of the hearing in the court below or documents that were before the court below not reproduced because they were not considered relevant to the subject matter of the appeal or any cross-appeal;
- (j) a note by the Registrar of any objections to the inclusion of documents made by any party, and of the responses of other parties, where those documents are nevertheless included in the appeal papers at the insistence of a party;
- (k) the certificate required by sub-rule (14).

(12) The date and a short description of the nature of each document shall precede it, but so far as is consonant with economy, formal headings shall not be printed or copied, and jurats, formal identification of exhibits and the like shall be omitted.

(13) Interrogatories and answers and affidavits of documents shall not be copied except so far as they were put in evidence.

(14) A copy of the appeal papers shall be filed in the Registry with a certificate by the parties or their attorneys that they have been examined and are correct.

(15) The appeal papers need not be in bound and printed form but shall be clear and legible and securely fastened.

(16) The appeal papers shall be prepared to the satisfaction of the Registrar.

(17) The requirements of this rule shall be subject to any direction which may be given by the court or a judge.

(18) The appellant shall file such number of copies of the appeal papers as the Registrar directs pursuant to sub-rule (8)(c).

(19) Where the text of an oral judgment or summing up of a judge is to be included in the appeal papers, it shall first be submitted to the judge for correction and shall, when included in the appeal papers, be accompanied by a certificate from the Registrar that this has been done.

(20) The Registrar or a judge may direct the appellant, where there are lengthy or complex appeal papers, to prepare a core bundle, to file four copies for the use of the court, and to serve one copy on each respondent to the appeal.

### **The Record – appeals from magistrates’ courts**

**62.13** (1) This rule applies to appeals from magistrates’ courts.

(2) In the case of an appeal from a magistrate’s court, the record subject to any direction of the Registrar or a judge, will consist of the documents referred to in rule 62.9(c) or 62.9(2) together with the notice of appeal and any cross-appeal that has been served on the appellant.

(3) Within 28 days of receipt of the notice under rule 62.9(c) or 62.9(2), and subject to any direction referred to in sub-rule (2), the appellant must file at the Registry six copies of the record for the use of the court.

(4) The appellant must forthwith serve one copy of the record on each respondent to the appeal.

### **Case management**

**62.14** (1) Parts 25 to 27 so far as relevant, apply to case management of an appeal as they do to case management of a trial.

(2) A judge, the Master or the Registrar may

(a) give written directions;

(b) direct that a case management conference be fixed; or

(c) direct that a date for the hearing of the appeal be fixed.

(3) Directions, whether or not given at a case management conference, may include directions

(a) that the parties agree and file a statement summarising the facts found at the trial;

(b) that the parties agree and file a statement of issues for the appeal;

(c) that the parties agree a core bundle for use at the appeal;

(d) as to the length of time to be allocated to the hearing of the appeal;

(e) as to the filing of written briefs and as to the length of time allowed to each party for oral argument; or

- (f) where all parties consent, that the appeal be considered solely on written briefs without oral argument and as to the time by which such briefs are to be filed.
- (4) A judge, the Master or the Registrar, except for good reason, must when giving directions whether in writing or at the case management conference, either fix a date

  - (a) for the hearing of the appeal; or
  - (b) by which a listing questionnaire shall be sent to all parties.
- (5) Where a judge, the Master or the Registrar directs that a listing questionnaire be sent to all parties, rules 27.9 and 27.10 apply as if the references to trial were references to the hearing of the appeal.
- (6) The Master or the Registrar may at any time refer the appeal to a judge to exercise case management powers, and shall do so if the appellant or a cross-appellant is in default for more than 7 days in the taking of any step required by these Rules.
- (7) Where the appeal has been referred to a judge under sub-rule (6), the judge shall wherever practicable be a member of the court likely to hear the appeal.
- (8) A judge to whom an appeal has been referred under sub-rule (6) for the default of a party, may make such order as appears just including the referral of the matter to the court to consider the dismissal of the appeal or cross-appeal for non-prosecution.
- (9) An appeal or cross-appeal dismissed for non-prosecution may be restored for hearing upon application on notice, on such terms as the court considers appropriate.

(10) Where, and having regard to all the circumstances, including the position of the respondent or cross-respondent, and the merits of the appeal or cross-appeal, as the case may be, the court decides that justice requires the restoration of the appeal or cross-appeal, the court may restore the appeal or cross-appeal.

### **Procedural applications to the Court of Appeal**

**62.15** (1) Any application, other than an application for leave to appeal to the court must be made in writing in the first instance and be considered by a judge, the Master or the Registrar.

(2) So far as practicable and just to all parties, a procedural application is to be dealt with on paper or by telephonic or other means of communication.

(3) The judge, Master or Registrar may direct that an application be heard by the court.

(4) The Registry must give the parties to the appeal at least 7 days notice of any hearing, unless all parties consent to shorter notice.

### **Powers of a single judge, Master and Registrar**

**62.16** (1) A judge, Master or the Registrar may make orders for

- (a) the giving of security for any costs occasioned by an appeal;
- (b) a stay of execution on any judgment or order against which an appeal has been made pending the determination of the appeal; and
- (c) an injunction restraining any party from disposing of or parting with the possession of the subject matter of an appeal pending the determination of the appeal.

(2) An order made by a Master or the Registrar may be varied or discharged by a single judge.

(3) Any order made by a judge, Master or the Registrar may be varied or discharged by the court.

**Security for costs of an appeal**

**62.17** (1) The court in special circumstances within section 61(1)(h) of the Act may order

- (a) an appellant; or
- (b) a cross-appellant

to give such security for the costs of the appeal or cross-appeal, as the case may be, as appears just.

(2) No application for security may be made unless the applicant has made a prior written request for security.

(3) In deciding whether, in such a case, to order a party to give security for the costs of the appeal, the court must consider

- (a) the likely ability of that party to pay the costs of the appeal or cross-appeal if ordered to do so; and
- (b) whether in all the circumstances it is just to make the particular order sought.

**Non-disclosure of payment into court, etc.**

**62.18** (1) Where

- (a) any question on an appeal in an action for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof; and



- (b) an offer of settlement was made under Part 35 or payment into court in support of such an offer was made under Part 36 in the proceedings in the court below before judgment

neither the fact nor the amount of the offer or payment is to be stated in any notice of appeal or cross-appeal or to be communicated to the court until all such questions have been decided.

(2) For the purpose of complying with this rule, the appellant must cause to be omitted from the copies of the documents lodged by the appellant every part which states or refers to the fact that money was paid into court or an offer to settle was made in the proceedings in the court below before judgment.

- (3) This rule does not apply to an appeal relating only to costs.

#### **Stay of execution**

**62.19** Except so far as the court below or the court or a judge may otherwise direct,

- (a) an appeal does not operate as a stay of execution or of proceedings under the decision of the court below; and
- (b) no intermediate act or proceedings are invalidated by an appeal.

#### **Failure of a party to attend hearing of appeal**

**62.20** (1) Where neither party appears at the hearing of the appeal and the court is satisfied that the parties have received notice of the hearing in accordance with these Rules, the court may strike out the appeal and any cross-appeal.

(2) Where only one party appears, the court may proceed in the absence of the other if satisfied that the party who does not appear has received notice of the hearing in accordance with these Rules.

### **Application to set aside decision made in party's absence**

**62.21** (1) A party who was not present at an appeal at which a decision was made or the appeal was struck out in his absence, may apply to set aside that order.

(2) The application must be made within 14 days after the date on which the judgment was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing

(a) a good reason for failing to attend the hearing; and

(b) that it is likely that had the applicant attended, some other decision might have been made;

the court, after taking into account the circumstances including the position of the respondent to the application, and the merits of the appeal, shall make such order as appears to it to be just.

### **Adjournment of appeal**

**62.22** The court may adjourn an appeal on such terms as it thinks just.

### **Fresh evidence**

**62.23** (1) This rule applies to any application to the court to receive evidence in proceedings on an appeal additional to evidence in the court below, as in an appeal in which a new trial is sought on the ground of fresh evidence.

(2) This rule applies unless the court otherwise directs.

(3) The application shall be made by motion on the hearing of the appeal without filing or serving notice of the motion.

- (4) The grounds of the application shall be stated in an affidavit.
- (5) Any evidence necessary to establish the grounds of the application, and the evidence which the applicant wishes the court to receive shall be given by affidavit.
- (6) The applicant shall file any affidavit not later than 28 days before the hearing of the appeal.
- (7) The evidence of any other party to the appeal shall, unless the court or a judge otherwise orders, be given by affidavit filed not later than 14 days before the hearing of the appeal.
- (8) A party to the appeal shall, not later than the time limited for him to file an affidavit under this rule
  - (a) lodge as many copies of the affidavit as the Registrar may direct; and
  - (b) serve three copies of the affidavit on each other party to the appeal.

**Certificate of result of appeal**

**62.24** At the conclusion of each appeal the Registrar must prepare a certificate of result of the appeal in Form 21 and

Form 21.

- (a) file a copy at the Registry or in the case of an appeal from a magistrate's court or a tribunal, send a copy to the office of the magistrate's court or tribunal; and
- (b) serve a copy on each party to the appeal.

## Part 63

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### Change of attorney-at-law

#### Contents of this Part

Scope of this Part	Rule 63.1
Change of attorney-at-law	Rule 63.2
Notice of appointment of attorney-at-law	Rule 63.3
Party acting in person	Rule 63.4
Application by another party to remove attorney-at-law from record	Rule 63.5
Application by attorney-at-law to be removed from record	Rule 63.6
Time when notice takes effect	Rule 63.7

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#### Scope of this Part

**63.1** This Part deals with the procedure where

- (a) there is a change of attorney-at-law;
- (b) an attorney-at-law acts in the place of a party in person; or
- (c) a party who has previously acted by an attorney-at-law acts in person.

#### Change of attorney-at-law

**63.2** (1) A party to any cause or matter who sues or defends by an attorney-at-law may change his attorney-at-law without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served in accordance with this rule, the former attorney-at-law shall subject to rules 63.5 and 63.6, be considered the attorney-at-law of the party until the final determination of the cause or matter, whether in the High Court or the Court of Appeal.

(2) Where a party changes his attorney-at-law, the new attorney-at-law must

- (a) file a notice of change of attorney-at-law which states his business name, address, telephone number, FAX number and email address, if any; and
- (b) serve a copy of the notice on every other party and the former attorney-at-law.

**Notice of appointment of attorney-at-law**

**63.3** Where a person who has previously acted in person instructs an attorney-at-law, that attorney-at-law must

- (a) file a notice of change at the Registry which states his business name, address, telephone number, FAX number and email address, if any; and
- (b) serve a copy of the notice on every other party.

**Party acting in person**

**63.4** (1) Where a party who has previously been represented by an attorney-at-law decides to act in person that party must

- (a) file notice of that fact at the Registry stating the address, an address for service within the jurisdiction, telephone number, FAX number and email address, if any, of that party; and
- (b) serve a copy of the notice on every other party and the former attorney-at-law.

(2) The former attorney-at-law must also, promptly on his instructions being withdrawn, file a notice that he has ceased to act and serve a copy of that notice on every other party and on his former client.

**Application by another party to remove  
name of attorney-at-law from the record**

**63.5** (1) Where

- (a) an attorney-at-law on record for a party has
  - (i) died;
  - (ii) become bankrupt;
  - (iii) failed to take out a practising certificate;
  - (iv) been removed from the roll; and
- (b) notice of the appointment of a new attorney-at-law under rule 63.2 or of the party acting in person under rule 63.4 has not been received,

any other party may apply to the court for an order declaring that the attorney-at-law in question has ceased to act.

(2) An application under this Part must be supported by evidence on affidavit and must be served on the attorney-at-law, if practicable, and personally on his client.

(3) Any order made must be served by the applicant on the attorney-at-law or former attorney-at-law, if practicable, and personally on his client.

(4) The applicant must file a certificate of service of the order.

**Application by attorney-at-law  
to be removed from the record**

**63.6** (1) An attorney-at-law who wishes to be removed from the record as acting for a party may apply to the court for an order that he be removed from the record.

(2) Notice of the application must be served on the client or former client and all other parties.

(3) The application must be supported by evidence on affidavit which must be served on the client but must not be served on any other party to the proceedings.

(4) Any order made must be served by the applicant on the other parties' attorneys-at-law and on the former client.

(5) The applicant must file a certificate of service of the order.

**Time when notice takes effect**

**63.7** A notice under the foregoing rules of this Part does not take effect until it has been served.

## Part 64

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### Costs – General

#### Contents of this Part

Scope of this Part	Rule 64.1
Definitions and application	Rule 64.2
Orders about costs	Rule 64.3
Costs where there is an appeal	Rule 64.4
Entitlement to recover costs	Rule 64.5
Successful party generally entitled to costs	Rule 64.6
Two or more parties having same interest	Rule 64.7
Wasted costs orders	Rule 64.8
Wasted costs orders – procedure	Rule 64.9
Costs against person who is not a party	Rule 64.10

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#### Scope of this Part

**64.1** This Part contains general rules about costs and the entitlement to costs and Part 65 deals with the quantification of such costs.

#### Definitions and application

**64.2** (1) In this Part and in Part 65, unless the context otherwise requires,

"assessed costs" and "assessment" have the meanings given them by rules 65.11 and 65.12.

"budgeted costs" has the meaning placed on it by rule 65.8;

"costs" include an attorney-at-law's charges and disbursements, fixed costs, prescribed costs, budgeted costs and assessed costs;



"fixed costs" has the meaning placed on it by rule 65.4;

"prescribed costs" has the meaning given it by rule 65.5;

(2) Where costs

(a) of arbitration proceedings;

(b) of proceedings before a tribunal or other statutory body; or

(c) payable to an attorney-at-law by a client

are to be taxed or assessed by the court they must be assessed in accordance with rule 65.12.

(3) Where in any enactment there is a reference to the taxation of any costs, this is to be construed as referring to the assessment of such costs in accordance with rule 65.12, unless the enactment otherwise provides.

### **Orders about costs**

**64.3** The court's powers to make orders about costs include power to make orders requiring a party to pay the costs of another person arising out of or related to all or any part of any proceedings.

### **Costs where there is an appeal**

**64.4** The court hearing an appeal may make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

**Entitlement to recover costs**

**64.5** A person may recover the costs of proceedings from some other party or person by virtue of

- (a) an order of the court;
- (b) a provision of these Rules; or
- (c) an agreement between the parties.

**Successful party generally entitled to costs**

**64.6** (1) In exercising its discretion under section 85 of the Act, the general rule is that the court will order the unsuccessful party to pay the costs of the successful party.

(2) The court may, however, while acting judicially, make no order as to costs or, in an exceptional case, order a successful party to pay all or part of the costs of an unsuccessful party.

(3) Without limiting the court's discretion or the range of orders open to it, the court may order a person to pay

- (a) only a specified proportion of another person's costs;
- (b) costs from or up to a certain date only; or
- (c) costs relating only to a certain distinct part of proceedings.

(4) In deciding who, or if any person should be liable to pay costs, the court must have regard to all the circumstances.

(5) Without limiting the factors which may be considered, the court must have regard to

- (a) the conduct of the parties both before and during the proceedings;

- (b) whether a party has succeeded on particular issues, even if not ultimately successful in the case, although success on an issue that is not conclusive of the case confers no entitlement to a costs order;
  - (c) whether it was reasonable for a party to
    - (i) pursue a particular allegation; or
    - (ii) raise a particular issue
 and whether the successful party increased the costs of the proceedings by the unreasonable pursuit of issues;
  - (d) the manner in which a party has pursued
    - (i) the case;
    - (ii) a particular allegation;
    - (iii) a particular issue
 and whether that manner increased the costs of the proceedings; and
  - (e) whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.
- **Rule 65.11 sets out the way in which the court must deal with the costs of procedural hearings other than a case management conference or pre-trial review**

### **Two or more parties having the same interest**

**64.7** Where two or more parties having the same interest in relation to proceedings are separately represented, the court may disallow more than one set of costs.

### **Wasted costs orders**

- 64.8** (1) In any proceedings, the court may by order
- (a) disallow as against an attorney-at-law's client; or
  - (b) direct the attorney-at-law to pay the whole or part of any wasted costs.
- (2) "Wasted costs" means any costs incurred by a party
- (a) as a result of an improper, unreasonable or negligent act or omission on the part of any attorney-at-law or any employee of an attorney-at-law; or
  - (b) which, in the light of any act or omission occurring before or after they were incurred, the court considers it unreasonable to expect that party to pay.

### **Wasted costs orders – procedure**

- 64.9** (1) This rule applies where
- (a) an application is made for; or
  - (b) the court is considering whether to make
- an order under rule 64.8(1) except where rule 27.9(6)(b) applies.
- (2) Any application by a party must be on notice to the attorney-at-law against whom the costs order is sought and must be supported by evidence on affidavit setting out the grounds on which the order is sought.
- (3) Where the court is considering whether to make such an order, the court must give the attorney-at-law notice of the fact that it is considering whether to do so.

(4) Notice under sub-rule (3) must state the grounds on which the court is minded to consider making the order.

(5) A notice under sub-rule (2) or (3) must state a date, time and place at which the attorney-at-law may attend to show cause why the order should not be made.

(6) At least 7 days notice of the hearing must be given to the attorney-at-law against whom the costs order is sought, or its making is being considered and all parties to the proceedings.

**Costs against person who is not a party**

**64.10** (1) This rule applies where

- (a) an application is made for; or
- (b) the court is considering whether to make

an order that a person who is not a party to the proceedings nor the attorney-at-law of a party, should pay the costs of some other person.

(2) Any application by a party must be on notice to the person against whom the order for costs is sought and must be supported by evidence on affidavit.

(3) Where the court is considering making an order in respect of costs against a person, the court must give that person notice of the fact that it is considering the making of such an order.

(4) A notice under sub-rule (3) must state the grounds of the application or on which the court is minded to consider the making of the order.

(5) A notice under sub-rule (2) or (3) must state a date, time and place at which that person may attend to show cause why the order should not be made.

(6) At least 14 days notice of the hearing must be given to the person against whom the costs order is sought and to all parties to the proceedings.

## Part 65

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### Costs – Quantification

#### Contents of this Part

Scope of this Part	Rule 65.1
Basis of quantification	Rule 65.2
Ways in which costs are to be quantified	Rule 65.3
Fixed costs	Rule 65.4
Prescribed costs	Rule 65.5
Applications to determine value of claim for purpose of prescribed costs	Rule 65.6
What is included in prescribed costs	Rule 65.7
Budgeted costs	Rule 65.8
Client's consent to application for budgeted costs	Rule 65.9
What is included in budgeted costs	Rule 65.10
Assessed costs of procedural applications	Rule 65.11
Assessment of costs – general	Rule 65.12
Costs of proceedings in Court of Appeal	Rule 65.13
Appendix A – Fixed Costs	
Appendix B – Prescribed Costs	
Appendix C – Prescribed Costs: Percentage to be allowed at various stages of claim	

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#### Scope of this Part

**65.1** This Part deals with the way in which any costs awarded by the court are quantified.

**Basis of quantification**

**65.2** (1) Where the court has any discretion as to the amount of costs to be allowed to a party, the sum to be allowed is the amount

- (a) that the court deems would be reasonable were the work to be carried out by an attorney-at-law of reasonable competence; and
- (b) which appears to the court to be fair both to the person paying and the person receiving such costs.

(2) Where the court has any discretion as to the amount of costs to be paid to an attorney-at-law by his client, the sum allowed is the amount

- (a) that the court deems to be reasonable; and
- (b) which appears to be fair both to the attorney-at-law and the client concerned.

(3) In deciding what would be reasonable, the court must take into account all the circumstances including

- (a) any orders that have already been made;
- (b) the conduct of the parties before as well as during the proceedings;
- (c) the importance of the matter to the parties;
- (d) the time reasonably spent on the case;
- (e) the degree of responsibility accepted by the attorney-at-law;
- (f) the care, speed and economy with which the case was prepared;
- (g) the novelty, weight and complexity of the case; and



- (h) in the case of costs charged by an attorney-at-law to his client,
  - (i) any agreement that may have been made as to the basis of charging;
  - (ii) any agreement about what grade of attorney-at-law should carry out the work; and
  - (iii) whether the attorney-at-law advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.

#### **Ways in which costs are to be quantified**

**65.3** Costs of proceedings under these Rules are to be quantified as follows:

- (a) where rule 65.4 applies, in accordance with the provisions of that rule;
- (b) in all other cases if, having regard to rule 64.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways:
  - (i) costs determined in accordance with rule 65.5 (prescribed costs);
  - (ii) costs in accordance with a budget approved by the court under rule 65.8 (budgeted costs); or
  - (iii) where neither prescribed nor budgeted costs are applicable, by assessment in accordance with rules 65.11 and 65.12.

**Fixed Costs**

**65.4** (1) A party is entitled to the costs set out in column 3 of Appendix A to this Part in the circumstances set out in column 2 of that Appendix.

(2) The court may direct that some other amount of costs be allowed for the work covered by any item in Part 2 of Appendix A.

(3) Where the court so directs, the court must assess such costs.

- **Rules 65.11 and 65.12 deal with the assessment of costs**

**Prescribed Costs**

**65.5** (1) The general rule is that where rule 65.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with Appendices B and C to this Part and sub-rules (2) to (4) of this rule.

(2) In determining prescribed costs, the value of the claim is to be decided

(a) in the case of a claimant, by the amount agreed or ordered to be paid; or

(b) in the case of a defendant,

(i) by the amount claimed by the claimant in his claim form;

(ii) where the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the party liable to such costs or if not agreed, a sum stipulated by the court as the value of the claim; or

(iii) where the claim is not for a monetary sum it is to be treated as a claim for \$50,000 unless the court makes an order under rule 65.6(1)(a).

(3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentages specified in column 3 of Appendix B against the appropriate value.

(4) The court may however

(a) award a proportion only of the sum referred to in sub-rule (3) having taken into account the matters set out in rule 64.6(4) and (5);

(b) order a party to pay costs

(i) from or to a certain date; or

(ii) relating only to a certain distinct part of the proceedings

in either of which cases it must specify the proportion of the fixed costs which is to be paid by the party liable to pay such costs, and in so doing may take into account the table set out in Appendix C.

**Applications to determine value of claim for purpose of prescribed costs**

**65.6** (1) A party may apply to the court at a case management conference

(a) to determine the value to be placed on a case which has no monetary value or the monetary value of which is not apparent on the face of the proceedings; or

(b) where the monetary value is known, to direct that the prescribed costs be calculated on the basis of some higher or lower value.

(2) The court may make an order under sub-rule (1)(b) only where it is satisfied that the costs as calculated in accordance with rule 65.5 are likely to be either

- (a) excessive; or
- (b) substantially inadequate

taking into account the nature and circumstances of the particular case.

(3) Where an application is made for prescribed costs to be calculated on the basis of a higher value, rules 65.8(4)(a) and 65.9 apply.

#### **What is included in prescribed costs**

**65.7** (1) Prescribed costs include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in

- (a) instructing any expert;
- (b) considering and disclosing any report made by the expert;
- (c) arranging the attendance of the expert at trial; and
- (d) the attendance and advocacy at the trial including attendance at any case management conference or pre-trial review.

(2) Prescribed costs exclude

- (a) the making or opposing of any interlocutory application except at a case management conference or pre-trial review;
- (b) expert's fees for preparing a report and attending any conference, hearing or trial;

- (c) the cost of obtaining a daily transcript of the evidence where the trial judge certifies this as a reasonable disbursement in all the circumstances of the case; and
- (d) costs incurred in enforcing any order which are generally fixed in accordance with rule 65.4 but may, in certain cases, be assessed in accordance with rule 65.12.

### **Budgeted costs**

**65.8** (1) A party may apply to the court to set a costs budget for the proceedings.

(2) An application for a costs budget must be made at or before the first case management conference.

(3) The application may be made by either or both parties but an order setting a costs budget may not be made by consent unless all relevant parties are bodies corporate.

- (4) An application for a costs budget must be accompanied by
  - (a) the written consent of the client in accordance with rule 65.9;
  - (b) a statement of the amount that the party seeking the order wishes to be set as the budget;
  - (c) a statement showing how that budget has been calculated and setting out in particular
    - (i) the hourly rate charged by the attorney-at-law, or other basis of charging;
    - (ii) a breakdown of the costs incurred to date;

- (iii) the fees for advocacy, including advocacy by a Queen's Counsel or more than one counsel, advising or settling any documents that are anticipated to be paid to any attorney-at-law other than the attorney-at-law on record;
- (iv) the disbursements other than expert witnesses' fees that are included in the budget;
- (v) the anticipated amount of any expert witnesses' fees and whether or not those fees are included in the budget;
- (vi) a statement of the number of hours of preparation time, including attendances upon the party, any witnesses and on any other parties to the proceedings, that the attorney-at-law for the party making the application has already spent and anticipates will be required to bring the proceedings to trial; and
- (vii) what procedural steps or applications are or are not included in the budget.

(5) A party may apply to vary the terms of an order made under this rule at any time prior to the commencement of the trial but no order may be made increasing the amount of the budgeted costs unless the court is satisfied that there has been a change of circumstances which became known only after the order was made.

**Client's consent to application for budgeted costs**

**65.9** (1) The court may not make an order for budgeted costs unless

- (a) the litigating party seeking the order is present when the application is made except where
  - (i) that party is a body corporate; or
  - (ii) for some exceptional reason this is impracticable;

- (b) the court satisfies itself that each party fully understands the consequences of the order that is being sought as to
    - (i) the litigating party's liability for costs to his own attorney-at-law whether he obtains an order for costs against any other party or not;
    - (ii) his liability to pay costs in the budgeted sum to the other party if that party obtains an order for costs against him; and
    - (iii) what his liabilities referred to in sub-paragraphs (i) and (ii) might be if rules 65.5, 65.11 and 65.12, or one or more of them, applied;
  - (c) there has been filed a document recording the express consent of the litigating party to the application and to any order made as a consequence of the application; and
  - (d) the consent under paragraph (c) is in a separate document which
    - (i) is signed by the litigating party;
    - (ii) deals only with the question of budgeted costs;
    - (iii) states the attorney-at-law's estimate of what the prescribed costs appropriate to the proceedings would be;
    - (iv) gives an estimate of the total costs of the proceedings as between the attorney-at-law and client; and
    - (v) sets out the basis of that estimate, including the amount of any hourly charge.
- (2) The written consent of the client must not be disclosed to the other party.

(3) This rule also applies to any other litigating party who consents to or does not oppose an order for budgeted costs.

### **What is included in budgeted costs**

**65.10** Unless the budget of costs approved by the court specifies otherwise, rule 65.7 applies to budgeted costs as it does to prescribed costs.

### **Assessed costs of procedural applications**

**65.11** (1) On determining any interlocutory application except at a case management conference, pre-trial review or the trial, the court must

- (a) decide which party, if any, should pay the costs of that application;
- (b) assess the amount of such costs; and
- (c) direct when such costs are to be paid.

(2) In deciding what party, if any, should pay the costs of the application, the general rule is that the unsuccessful party must pay the costs of the successful party.

(3) The court must however take account of all the circumstances including the factors set out in rule 64.6(5) but where the application is one that could reasonably have been made at a case management conference or pre-trial review, the court will order the applicant to pay the costs of the respondent unless there are special circumstances.

(4) In assessing the amount of costs to be paid by any party, the court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.



(5) A party seeking assessed costs must supply to the court and to all other parties a brief statement showing

- (a) the disbursements incurred;
- (b) the attorney-at-law's fees incurred; and
- (c) how that party's attorney-at-law's costs are calculated.

(6) The statement under sub-rule (5) must comply with any relevant practice direction.

(7) The costs allowed under this rule may not exceed one tenth of the amount of the prescribed costs appropriate to the principal application unless the court considers that there are special circumstances of the case justifying a higher amount.

**Assessment of costs – general**

**65.12** (1) This rule applies where costs fall to be assessed in relation to any matter or proceedings, or part of a matter or proceedings other than a procedural application.

(2) Where the assessment relates to part of court proceedings, it must be carried out by the judge, Master or Registrar hearing the proceedings.

(3) Where the assessment does not fall to be carried out at the hearing of any proceedings, then the person entitled to the costs must apply to the Master or Registrar for directions as to how the assessment is to be carried out.

(4) The application must be accompanied by a bill or other document showing the sum in which the court is being asked to assess the costs and how such sum was calculated.

(5) On hearing an application under sub-rule (4) the Master or Registrar must either

(a) assess the costs if there is sufficient material available for the Master or Registrar to do so; or

(b) fix a date time and place for the assessment to be carried out.

(6) The Master or Registrar may direct that the party against whom the bill is assessed pay the costs of the party whose bill is being assessed and, if so, must assess such costs and add them to the costs ordered to be paid.

(7) The Master or Registrar may direct either party to pay the costs of the other on the ground of unreasonable conduct in respect of the bill or otherwise in respect of the assessment and, if so, must assess such costs and make an appropriate adjustment to the costs ordered to be paid.

### **Costs of proceedings in Court of Appeal**

**65.13** Unless

(a) the Court of Appeal on an application made in accordance with rules 65.8 and 65.9 makes an order for budgeted costs; or

(b) the parties to the appeal agree otherwise,

the costs of any appeal must be determined in accordance with rules 65.5, 65.6 and 65.7 and Appendix B, but the costs must be limited to two thirds of the amount that would otherwise be allowed.

## Appendix A

### Fixed Costs

#### Part 1

This part of the Appendix sets out the fixed costs applicable to a claim for a specified sum of money:

- (a) **Table 1** – costs which a defendant who does not defend must pay to the claimant, in addition to the amount claimed and interest and the court fees paid by the claimant, in order to avoid judgment being entered under Part 12. These sums are to be entered on the application. The Table also deals with claims for possession of land or delivery of goods and an application for an order for the attachment of debts.
- (b) **Table 2** – costs which a claimant is entitled to include as costs in any default judgment under Part 12 in addition to the costs set out in the Table.

#### Scale of Fixed Costs

##### Table 1

1. This Table shows the amounts to be entered on an application or provisional order for the attachment of debt in respect of the charges of an attorney-at-law in

- (a) an action for payment of a specified sum of money;
- (b) attachment of debt proceedings; or
- (c) an action for the recovery of land.

2. In addition to the fixed costs, the appropriate court fee is to be allowed together with the sum of \$75 for personal service of the application:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
(a)	claim exceeding \$5,000 but not exceeding \$15,000 or a claim for recovery of land or delivery of goods	\$ 750
(b)	claim exceeding \$15,000 but not exceeding \$50,000	\$1,200
(c)	claim exceeding \$50,000 but not exceeding \$100,000	\$2,000
(d)	claim exceeding \$100,000 but not exceeding \$500,000	\$3,500
(e)	claim exceeding \$500,000	\$5,000

**Table 2**

This Table shows additional costs which may be added on the entry of a default judgment under Part 12 or a judgment on admissions under Part 14 for a specified sum of money.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
(a)	Basic costs	\$ 500
(b)	Where there is more than one defendant, in respect of each additional defendant served, against whom judgment is entered	\$ 100
(c)	Where an order is made under rule 5.14 (specified method of service), for each defendant served	\$ 750
(d)	Where an order is made under Part 7, for service out of the jurisdiction (to cover the obtaining of an order under Part 7 and service)	\$ 750
(e)	Where judgment is entered on an admission and the claimant accepts the defendant's proposals as to method of payment under rule 14.9	\$ 500
(f)	Where judgment is entered on an admission and the time and rate of payment are not agreed under rule 14.10	\$ 750

**Part 2****Miscellaneous enforcement proceedings****Table 3**

This table shows the amount to be allowed in respect of the charges of an attorney-at-law's in the circumstances set out. The appropriate court fee is to be added.

The court may order that the costs of any such matter be assessed.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
(a)	For filing a request for the issue of a writ of execution	\$ 250
(b)	For each attendance at a hearing of an <ul style="list-style-type: none"> <li>(i) oral examination;</li> <li>(ii) application to suspend a writ of execution; or</li> <li>(ii) application for time to pay where the debt is admitted</li> </ul>	\$ 500

**Table 3 (Concl'd)**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
(c)	For the costs of the judgment creditor where allowed in proceedings for an order for the attachment of debts or an application for payment out of money in court under rule 50.15 where the amount recovered  (i) does not exceed \$1000  (ii) exceeds \$1000	one half of the amount recovered  \$ 500
(d)	For the costs of the judgment creditor where allowed in an application for a charging order	\$ 750
(e)	In addition, for the personal service of any application requiring such service	\$ 150

**Appendix B****Prescribed Costs****Scale of prescribed costs**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
	<i>Value of Claim</i>	<i>Percentage</i>
(a)	not exceeding \$30,000	30%
(b)	exceeding \$30,000 but not exceeding \$50,000	25%
(c)	exceeding \$50,000 but not exceeding \$100,000	20%
(d)	exceeding \$100,000 but not exceeding \$250,000	15%
(e)	exceeding \$250,000 but not exceeding \$500,000	10%
(f)	exceeding \$500,000 but not exceeding \$1m	5%
(g)	exceeding \$1m but not exceeding \$2m	3%
(h)	exceeding \$2m but not exceeding \$5m	1.5%
(i)	exceeding \$5m but not exceeding \$10m	.5%
(j)	exceeding \$10m	.25%



Notes: (a) The above scale is expressed in BDS\$ and must be adjusted for damages in US\$.

(b) The costs for each stage of the scale are cumulative.

**Example:**

Claim value \$750,000

on the first	\$ 30,000	\$ 9,000
on the next	\$ 20,000	\$ 5,000
on the next	\$ 50,000	\$10,000
on the next	\$150,000	\$22,500
on the next	\$250,000	\$25,000
on the last	\$250,000	\$12,500
Total	<u>\$750,000</u>	<u>\$84,000</u>

### Appendix C

#### Prescribed Costs: Percentage to be allowed at various stages of claim

Table showing the percentage of the prescribed costs to be allowed under Appendix B where an action concludes prior to trial.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
	<i>Stage</i>	<i>Percentage</i>
(a)	Up to and including service of defence	45%
(b)	After defence and up to and including the case management conference	55%
(c)	From case management conference and up to and including listing questionnaire	70%
(d)	From listing questionnaire and up to and including pre-trial review (if any)	75%
(e)	To trial	100%
(f)	Up to default judgment and including assessment of damages	60%

**(Example:**

Claim for \$750,000 – full costs as in Appendix B -	\$84,000.
Claim discontinued after case management conference:	
Defendant entitled to 70% of full costs =	\$58,800)

## Part 66

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### Mortgage Claims

#### Contents of this Part

Scope of this Part	Rule 66.1
Mortgage claim to be brought by fixed date claim	Rule 66.2
Evidence at first hearing	Rule 66.3
Claim for possession or payment of mortgage debt	Rule 66.4

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#### Scope of this Part

**66.1** (1) This Part deals with a claim by a mortgagor or mortgagee for any of the following forms of relief:

- (a) payment of moneys secured by a mortgage;
- (b) sale of a mortgaged property;
- (c) foreclosure;
- (d) possession of a mortgaged property;
- (e) redemption of a mortgage;
- (f) reconveyance of the property or release from the mortgage;  
and
- (g) delivery of possession by the mortgagee.

(2) In this Part

"mortgage" includes a legal or equitable mortgage and a legal or equitable charge;

"mortgage claims" means the claims by a mortgagee or mortgagor for any of the forms of relief referred to in sub-rule (1);

"mortgagee" means the person to whom the mortgage was granted; and

"mortgagor" means the person who has granted a mortgage of the mortgaged property.

(3) This Part does not affect any procedure under any enactment relating to the registration of title to land unless court proceedings are taken.

### **Mortgage claim to be brought by fixed date claim**

Form 2. **66.2** (1) A mortgage claim is brought by issuing a fixed date claim in Form 2.

(2) In addition to serving the claim on all defendants, the claimant must give notice of the claim to all mortgagees of the land who may not be parties.

- **The procedure relating to fixed date claims is dealt with in rules 8.1 and 27.2**

**Evidence at first hearing**

**66.3** A claimant who seeks final judgment at the first hearing must

- (a) file evidence on affidavit in support of the claim; and
- (b) serve
  - (i) a copy of the affidavit but not necessarily any exhibit; and
  - (ii) a notice stating what relief is sought;with the claim form; and
- (c) file a certificate of service not less than 7 days before the first hearing.

- **Rule 28.16 enables a party to inspect copies of all documents referred to in an affidavit**

**Claim for possession or payment of mortgage debt**

**66.4** (1) On a claim for possession of the mortgaged property or for payment of the mortgage debt the claimant must file with the claim form, evidence on affidavit

- (a) exhibiting a copy of the original mortgage;
- (b) exhibiting a copy of any other document which sets out the terms of the mortgage;
- (c) giving particulars of
  - (i) the amount of the advance;
  - (ii) the interest payable under the mortgage;

- (iii) the amount of all periodic payments required to be made stating whether or not such payments include interest;
  - (iv) the repayments that have been made and their total;
  - (v) the amount of any principal or interest due but unpaid at the date of the application and at the date of the affidavit, identifying all repayments not fully made, the dates they were due and all payments made in respect of them;
  - (vi) the amount remaining due under the mortgage; and
  - (vii) where the claim includes a claim for interest to judgment, the daily rate at which such interest accrues; and
- (d) where the claimant seeks possession of the mortgaged property,
- (i) stating the circumstances under which the right to possession has arisen; and
  - (ii) giving details of any person other than the defendant and his family who to the claimant's knowledge is in occupation of the mortgaged property.
- (2) Where the mortgage created a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if the tenancy was determined by service of a notice, a copy of the notice must be annexed and the affidavit must state when and how the notice was served.

## Part 67

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### Administration Claims

#### Contents of this Part

Scope of this Part	Rule 67.1
Parties	Rule 67.2
Claims by third parties	Rule 67.3
Determination of questions without administration claim	Rule 67.4
Judgments and orders in administration claims	Rule 67.5
Conduct of sale of trust property	Rule 67.6

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#### Scope of this Part

**67.1** (1) This Part deals with

(a) claims (referred to as "administration claims") for

- (i) the administration of the estate of a deceased person; or
- (ii) the execution of a trust under the direction of the court;  
and

(b) claims for the determination of any question or to obtain any relief relating to the administration of the estate of a deceased person or the execution of a trust.

(2) Claims referred to under sub-rule (1) must be brought by a fixed date claim in Form 2.

Form 2.

**Parties**

**67.2** (1) An administration claim or a claim under rule 67.4 may be brought by any

- (a) executor or administrator of the relevant estate;
- (b) trustee of the relevant trust; or
- (c) person having or claiming to have a beneficial interest in the estate of a deceased person or under a trust.

(2) Any executor or administrator of the relevant estate or trustee of the relevant trust who is not a claimant must be a defendant to the claim.

(3) The claimant need not join as a defendant any person having a beneficial interest under the estate or trust, but

- (a) in a proper case, the claimant may make any such person a defendant; and
- (b) the court may direct that any such person be made a defendant.

**Claims by third parties**

**67.3** (1) This rule applies where

- (a) there are proceedings under a judgment or order made in an administration claim relating to the estate of a deceased person; and
- (b) a person who is not a party to the proceedings makes a claim against the estate.

(2) No person other than the executor or administrator may appear in proceedings relating to that claim unless the court otherwise directs.



**Determination of questions  
without administration claim**

**67.4** (1) An executor, administrator or trustee may issue a claim form for

- (a) the determination of any question; or
- (b) any relief

without bringing an administration claim.

(2) The "determination of any question" includes the determination of any question

- (a) arising in the administration of the estate of a deceased person;
- (b) arising in the execution of, or under, a trust;
- (c) as to the composition of any class of persons having
  - (i) a claim against the estate of a deceased person;
  - (ii) a beneficial interest in the estate of a deceased person; or
  - (iii) a claim against any property subject to a trust; and
- (d) as to the rights or interests of a person claiming to be
  - (i) a creditor of the estate of a deceased person;
  - (ii) entitled under a will or on the intestacy of a deceased person; or
  - (iii) beneficially entitled under a trust.

- (3) "relief" includes an order
  - (a) requiring an executor, administrator or trustee to furnish and verify accounts;
  - (b) enabling or requiring the payment into court of money held by a person in the capacity of executor, administrator or trustee;
  - (c) directing a person to do or abstain from doing a particular act in the capacity of executor, administrator or trustee;
  - (d) approving any sale, purchase, compromise or other transaction by a person in the capacity of executor, administrator or trustee; or
  - (e) directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust, which the court could order to be done if the estate or trust were being administered or executed under the direction of the court.

**Judgments and orders in  
administration claims**

**67.5** (1) The court need not make any order sought in an administration claim if it considers that the question at issue can be determined by other means.

- (2) Where an administration claim is brought by
  - (a) a creditor of the estate of a deceased person;
  - (b) a person claiming to be entitled under the will or upon the intestacy of a deceased person; or

(c) a person claiming to be beneficially entitled under a trust and the claimant alleges that no, or no sufficient, accounts have been furnished by the executor, administrator or trustee, the court may

- (i) stay the proceedings until a specified date and direct the executor, administrator or trustee to supply proper accounts to the claimant; or
- (ii) where it is necessary to prevent proceedings by other creditors or claimants, give judgment or make an order for the administration of the estate or due performance of the duties of the trustee, and include an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the court's permission.

### **Conduct of sale of trust property**

**67.6** Where in an administration claim an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees shall have the conduct of the sale unless the court otherwise directs.

## Part 68

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### Contentious Probate Proceedings

#### Contents of this Part

Scope of this Part	Rule 68.1
How to commence probate proceedings	Rule 68.2
Parties to proceedings for revocation of grant	Rule 68.3
Lodgment of grant in proceedings for revocation	Rule 68.4
Affidavit of testamentary scripts	Rule 68.5
Failure to enter acknowledgment of service	Rule 68.6
Counterclaim	Rule 68.7
Contents of statement of case	Rule 68.8
Discontinuance and dismissal	Rule 68.9
Compromise of action: trial on affidavit evidence	Rule 68.10
Application for order to bring in will, etc.	Rule 68.11
Probate counterclaim in other proceedings	Rule 68.12

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#### Scope of this Part

**68.1** (1) This Part applies to probate causes and matters, including applications for the rectification of a will, and the other provisions of these rules apply to those causes and matters subject to this Part.

(2) In this Part,

"probate proceedings" means proceedings for the grant of probate of the will, or letters of administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of a will, not being proceedings which are non-contentious or common form probate business;

"will" includes a codicil.

### **How to commence probate proceedings**

**68.2** (1) Probate proceedings must be begun by issuing a fixed date claim form in Form 2.

Form 2.

(2) The claim form must state the nature of the interest of the claimant and of the defendant in the will or estate of the deceased person to which the proceedings relate.

(3) The claimant must file a statement of claim with the claim form.

### **Parties to proceedings for revocation of grant**

**68.3** Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of the deceased person's will or letters of administration of his estate must be made a party to any proceedings for revocation of the grant.

### **Lodgment of grant in proceedings for revocation**

**68.4** (1) Where, at the commencement of proceedings for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration, as the case may be, has or have not been lodged in court, then

- (a) where the proceedings were commenced by a person to whom the grant was made, the claimant must lodge the probate or letters of administration at the court within 7 days after the issue of the claim; or
- (b) where any defendant has possession or control of the probate or letters of administration, the defendant must lodge the original document at the court within 14 days after the service of the claim form.

(2) Any person who fails to comply with sub-rule (1) may, on the application of any party to the proceedings, be ordered by the court to lodge the probate or letters of administration within a specified time.

(3) Where an order is made under sub-rule (2), a person against whom such an order is made may not take any step in the proceedings without the permission of the court until that person has complied with the order.

### **Affidavit of testamentary scripts**

**68.5** (1) Unless the court otherwise directs, the claimant and every defendant who has entered an acknowledgement of service in probate proceedings must make an affidavit

- (a) describing any testamentary script of the deceased person, whose will or estate is the subject of the proceedings, of which he has any knowledge, or stating, if it be the case, that he knows of no such script; and
- (b) where the deponent has knowledge of any script referred to in paragraph (a) which is not in his possession or under his control
  - (i) giving the name and address, or otherwise the identity, of the person in whose possession or under whose control it is; or
  - (ii) stating that he does not know the name, address or identity of that person.

(2) Any affidavit required by this rule must be filed and any testamentary script referred to in the affidavit which is in the possession or under the control of the deponent must be lodged at the court

- (a) in the case of a defendant who has filed an acknowledgment of service at least 15 days before the first hearing, within 14 days of his doing so; or

(b) in the case of the claimant and any defendant who has not filed an acknowledgment of service at least 15 days before the first hearing, where the court does not otherwise direct, before the first hearing.

(3) Where any testamentary script required by this rule to be lodged or any part of the script is written in pencil, then, unless the court otherwise directs, a facsimile copy of that script or of the page or pages of the script containing the part written in pencil, must also be lodged and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the court, no party to probate proceedings may be allowed to inspect an affidavit filed, or any testamentary script lodged, by any other party to the proceedings under this rule, until an affidavit sworn by the first party containing the information referred to in sub-rule (1) has been filed.

(5) In this rule, "testamentary script" means a will or copy or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy of a will which is alleged to have been lost or destroyed.

#### **Failure to enter acknowledgment of service**

**68.6** (1) Part 12 does not apply to probate proceedings.

(2) Where any of several defendants to probate proceedings fails to file an acknowledgment of service or to file and serve a defence, the claimant may

(a) after the time for entering an acknowledgment of service or filing a defence has expired; and

- (b) upon filing an affidavit proving due service of the claim form and statement of claim on that defendant,

proceed with the claim as if that defendant had entered an acknowledgment of service.

(3) Where the defendant or all the defendants to probate proceedings fails to file an acknowledgment of service or fails to file and serve a defence, then, unless on the application of the claimant the court orders the claim to be dismissed or gives leave for it to be discontinued, the claimant may apply to the court at the first hearing for

- (a) the claim to be dealt with summarily at that hearing; or
- (b) a trial date to be fixed and any necessary directions to be given.

(4) Before applying for an order under sub-rule (3), the claimant must file an affidavit proving due service of the claim form and statement of claim on the defendant.

(5) Where the court grants an order under sub-rule (3), the court may direct the proceedings to be tried on affidavit evidence.

### **Counterclaim**

**68.7** A defendant to probate proceedings who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will or letters of administration of the estate of the deceased person whose will or estate is the subject of the proceedings, may add to the defence a counterclaim for that relief or remedy.



**Contents of statement of case**

**68.8** (1) Where the claimant in probate proceedings disputes the interest of a defendant, the claimant must

- (a) deny the interest of that defendant; and
- (b) state the claimant's grounds for so doing

in the statement of claim.

(2) In probate proceedings in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in that party's statement of case that if the allegations made therein are proved the party would be entitled to an interest in the estate.

(3) Any party who pleads that at the time when a will, the subject of the proceedings, is alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas that is to say,

- (a) that the will was not duly executed;
- (b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; or
- (c) that the execution of the will was obtained by undue influence or fraud,

may be made by that party unless that other plea is also set out in his statement of case.

**Discontinuance and dismissal**

**68.9** (1) Part 37 does not apply in relation to probate proceedings.

(2) At any stage of proceedings the court may, on the application of the claimant or of any party to the proceedings who has entered an acknowledgment of service, order that the proceedings

(a) may be discontinued; or

(b) dismissed

on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate of the deceased person, as the case may be, be made to the person entitled.

**Compromise of action: trial on affidavit evidence**

**68.10** Where, whether before or after the service of the defence in probate proceedings, the parties to the proceedings agree to a compromise, the court may order the trial of the proceedings on affidavit evidence.

**Application for order to bring in will, etc.**

**68.11** (1) Any application in probate proceedings for an order requiring a person to bring a will or other testamentary document into court or to attend in court for examination may be made without notice but must be supported by evidence on affidavit setting out the grounds of the application.

(2) Any person against whom an order was made under sub-rule (1) who denies that the will or other testamentary document referred to in the order is in his possession or under his control may file an affidavit to that effect.

**Probate counterclaim in other proceedings**

**68.12** (1) In this rule, "probate counterclaim" means a counterclaim in any claim other than probate proceedings by which the defendant claims any relief as is mentioned in rule 68.1(2).

(2) Subject to sub-rule (3), this Part applies with the necessary modifications to a probate counterclaim as it applies to probate proceedings.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the claimant in the will or estate of the deceased person to which the counterclaim relates.

## Part 69

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### Defamation Claims

#### Contents of this Part

Scope of this Part	Rule 69.1
Statements of Case	Rule 69.2
Claimant's statement of claim	Rule 69.3
Pleading the defence of truth	Rule 69.4
Pleading the defence of comment	Rule 69.5
Pleading Privilege	Rule 69.6
Pleading in Rebuttal	Rule 69.7
Allegations of Malice	Rule 69.8
Claims for damages	Rule 69.9
Ruling on meaning	Rule 69.10
Offer of amends	Rule 69.11
Statement in open court	Rule 69.12

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#### Scope of this Part

**69.1** This Part applies to claims for defamation.

#### Statements of Case

**69.2** Statements of Case should be confined to the information necessary to inform the other party of the nature of the case he has to meet. Such information should be set out concisely.

**Claimant's statement of claim**

**69.3** The statement of claim must, in addition to the matters set out in Part 8,

- (a) state the precise words complained of and give sufficient particulars of the publication to enable it to be identified;
- (b) where the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must specify in the particulars of his claim, the defamatory meaning which he alleges the words or matters complained of conveyed
  - (i) as to their natural and ordinary meaning; and
  - (ii) as to any innuendo meaning (that is to say, a meaning alleged to be conveyed to some person because of that person's knowledge of facts extraneous to the words complained of);
- (c) where an innuendo meaning is alleged, the claimant must also identify the relevant extraneous facts.

**Pleading the defence of truth**

**69.4** Where a defendant alleges that the words complained of are true in substance and in fact the defendant must

- (a) specify the defamatory meanings which he seeks to justify; and
- (b) give particulars of the matters on which he relies in support of the allegation.

### **Pleading the defence of comment**

**69.5** Where a defendant alleges that the matters complained of are comment the defendant must

- (a) specify the defamatory meaning he seeks to defend as comment; and
- (b) give particulars of the matters on which he relies in support of the allegation.

### **Pleading Privilege**

**69.6** Where a defendant alleges that the words complained of were published on a privileged occasion, the defendant must specify the circumstances relied on in support of that contention.

### **Pleading in Rebuttal**

**69.7** Where a defendant pleads the defences of truth or comment, the claimant must serve a reply specifically admitting or denying the allegations and giving the facts on which he relies.

### **Allegations of Malice**

**69.8** Where a defendant contends that any of the words or matters are comment or were published on a privileged occasion, and the claimant intends to allege that the defendant acted with malice, the claimant must serve a reply giving particulars of the facts or matters relied on.

### **Claims for damages**

**69.9** (1) A claimant must give full details of the facts and matters on which the claimant relies in support of a claim for damages.

(2) Where a claimant seeks aggravated or exemplary damages the claimant must include in his statement of claim, a prayer for such damages and the grounds for making such a claim.

### **Ruling on meaning**

**69.10** (1) At any time after the service of the statement of claim, either party may apply to a judge for an order determining whether or not the words complained of are capable of having a meaning or meanings attributed to them in a Statement of Case.

(2) An application for a ruling on meaning may be made at any time after service of particulars of claim and should be made promptly.

(3) Where an application is made for a ruling on meaning, it must state that it is an application for such purpose made in accordance with this rule.

(4) The application must identify clearly the statement and the meaning attributed to it which the court is being asked to consider.

### **Offer of amends**

**69.11** (1) An application for the court's assistance in determining any question concerning the fulfilment of an offer of amends must be supported by evidence on affidavit.

(2) The evidence on affidavit must include

(a) a copy of the offer of amends;

(b) details of the steps taken to fulfil the offer of amends;

(c) a copy of the text of any correction and apology;

(d) details of the publication of the correction and apology;

- (e) a statement of the amount of any sum paid as compensation;
- (f) a statement of the amount of any sum paid as costs;
- (g) a statement as to why the offer is unsatisfactory.

**Statement in open court**

**69.12** (1) Where a party wishes to accept an offer under Part 36 or other offer of settlement in relation to a claim for defamation, that party may apply for permission to make a statement in open court.

(2) The proposed statement in open court must be submitted to the court for the approval of the court and must accompany the application.

(3) The court may postpone the time for the making of the statement in open court if other claims relating to the subject matter of the proposed statement are still proceeding.



## Part 70

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### Admiralty Proceedings

#### Contents of this Part

Scope of this Part	Rule 70.1
Proceedings to be dealt with under this Part	Rule 70.2
Admiralty proceedings <i>in rem</i>	Rule 70.3
How to bring Admiralty proceedings	Rule 70.4
Service of claim form <i>in rem</i>	Rule 70.5
How service on ships is to be effected	Rule 70.6
Service of claim form out of jurisdiction	Rule 70.7
Acknowledgment of service	Rule 70.8
Warrant of arrest	Rule 70.9
Caveat against arrest	Rule 70.10
Committal of attorney-at-law for failing to comply with undertaking	Rule 70.11
Execution of warrant of arrest	Rule 70.12
Directions with respect to property under arrest	Rule 70.13
Release of property under arrest	Rule 70.14
Caveat against release, etc.	Rule 70.15
Duration of caveats	Rule 70.16
Bail	Rule 70.17
Interveners	Rule 70.18
Preliminary acts	Rule 70.19
Failure to file preliminary act: proceedings against party in default	Rule 70.20
Special provisions as to statement of case in collision, etc., proceedings	Rule 70.21
Judgment by default	Rule 70.22
Order for sale of ship: determination of priority of claims	Rule 70.23
Appraisal and sale of property	Rule 70.24
Undertakings as to expenses, etc.	Rule 70.25
Payment into and out of court	Rule 70.26

Case management conference	Rule 70.27
Trial	Rule 70.28
Stay of proceedings in collision, etc., proceedings until security given	Rule 70.29
Inspection of ship, etc.	Rule 70.30
Examination of witnesses: affidavit evidence	Rule 70.31
Proceeding for apportionment of salvage	Rule 70.32
Application in proceedings in rem	Rule 70.33
Limitation proceedings: parties	Rule 70.34
Limitation proceedings: payment into court	Rule 70.35
Application for decree or directions in limitation proceedings	Rule 70.36
Limitation proceedings: proceedings under decree	Rule 70.37
Limitation proceedings: proceedings to set aside decree	Rule 70.38

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### Scope of this Part

**70.1** (1) This Part applies to Admiralty proceedings including those proceedings listed in rule 70.2 and proceedings in any other Admiralty jurisdiction which the High Court has had in the past.

(2) The other provisions of these Rules apply to Admiralty proceedings subject to the provisions of this Part.

(3) In this Part,

"Act" means any relevant enactment relating to merchant shipping in force at any relevant time;

"claim *in rem*" means any claim mentioned in rule 70.3;

"caveat against arrest" means a caveat entered in the caveat book under rule 70.10;

"caveat against release and payment" means a caveat entered in the caveat book under rule 70.15;

"caveat book" means the book in which caveats issued under this Part are entered;

"collision regulations" means regulations made under the Act or in accordance with any international convention;

"limitation claim" means any proceedings by a shipowner or other person under the Act for the limitation of the amount of the liability of the shipowner or other person in connection with a ship or other property;

"ship" includes every description of vessel used in navigation not propelled by oars and, where the context so admits, includes an aircraft.

#### **Proceedings to be dealt with under this Part**

**70.2** The following claims, questions and proceedings are to be dealt with under this Part as Admiralty proceedings, namely

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein, including any application to
  - (i) settle any account outstanding and unsettled between the parties in relation to the ship; or
  - (ii) direct that the ship, or any share thereof, be sold, and other orders be made in relation thereto;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of the ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any interest therein;
- (d) any claim for damage sustained by a ship;
- (e) any claim for damage done by a ship;

- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of
  - (i) the owner, charterer or person in possession or control of a ship; or
  - (ii) the master or crew of a ship, or any other person for whose wrongful act, neglect or default the owner, charterer or person in possession or control of a ship is responsible, being an act, neglect or default in the navigation or management of the ship or in the loading, carriage or disembarkation of persons on, in or from the ship;
- (g) all proceedings to enforce a claim for damage, loss of life or personal injury arising out of
  - (i) a collision between ships;
  - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
  - (iii) failure, on the part of one or more of two or more ships, to comply with the collision regulations;
- (h) any claim for loss or damage to goods carried in a ship;
- (i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (j) any claim
  - (i) under the *International Convention on Salvage, 1989*; or
  - (ii) under any contract for or in relation to salvage services; or

- (iii) in the nature of salvage not falling within (i) or (ii) above, or any corresponding claim in connection with an aircraft;
- (k) any claim relating to or in the nature of a claim relating to towage in respect of a ship or an aircraft;
- (l) any claim relating to or in the nature of a claim relating to pilotage in respect of a ship or an aircraft;
- (m) any claim in respect of goods or materials supplied to or for a ship for her operation or maintenance;
- (n) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (o) subject to any limitations imposed by the Act, any claim by a master or member of the crew of a ship for wages, including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages;
- (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (q) any claim arising out of an act which is or is claimed to be a general average act;
- (r) any claim arising out of bottomry;
- (s) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty;
- (t) any application to the court under the Act; and

- (u) any limitation claim, in relation to
  - (i) any ship, including aircraft, whether of Barbados or not and whether registered or not and wherever the residence or domicile of her owner may be;
  - (ii) any claim wherever arising, including, in the case of cargo or wreck salvage, a claim in respect of cargo or wreck found on land; and
  - (iii) any mortgage or charge, or so far as it relates to any mortgage or charge, whether registered or not and whether legal or equitable, including a mortgage or charge created under foreign law.

#### **Admiralty proceedings *in rem***

**70.3** (1) In the case of any such claim or question as is mentioned in rule 70.2(a),(b), (c) or (t) an application *in rem* may be brought against the ship or property in connection with which the claim or question arises.

(2) In any case in which there is or is claimed to be a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an application *in rem* may be brought against that ship, aircraft or property.

(3) In the case of any such claim as is mentioned in rule 70.2(e), (f) and (h) to (s) where

- (a) the claim arises in connection with a ship; and

- (b) the person who would be liable on the claim in proceedings *in personam* ("the relevant person") was, when the cause of action arose, the owner or charterer, or in possession or in control of the ship, a claim *in rem* may, whether or not the claim gives rise to a maritime lien on that ship, be brought against
- (i) that ship, if at the time when the claim is made the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
  - (ii) any other ship of which, at the time when the claim is made, the relevant person is the beneficial owner as respects all the shares in it.

(4) In the case of a claim relating to or in the nature of a claim relating to towage or pilotage in respect of an aircraft, an application *in rem* may be brought against that aircraft where, at the time when the claim is made, it is beneficially owned by the person who would be liable on the claim in proceedings *in personam*.

(5) For the purpose of determining under sub-rules (3) and (4) whether a person would be liable on a claim in proceedings *in personam* it shall be assumed that he has an habitual residence or place of business within the jurisdiction.

(6) In this rule, "the time when the claim is made" means the date on which the application is issued in accordance with rule 8.1(2).

(7) Where, as regards any such claim as is mentioned in rule 70.3(3), a ship has been served with a claim form or arrested in proceedings *in rem* brought to enforce that claim, no other ship may be

- (a) served with a claim form; or
- (b) arrested

in that or any other proceedings *in rem* brought to enforce that claim.

(8) Sub-rule (7) does not prevent the issue, in respect of any one such claim, of a claim form naming more than one ship or two or more applications each naming a different ship.

(9) No proceedings *in rem* may be brought against the Crown.

### **How to bring Admiralty proceedings**

Form 22. **70.4** (1) Admiralty proceedings *in rem* are begun by a claim form (Form 22).

Form 1. (2) Admiralty proceedings *in personam* are begun by a claim form (Form 1).

Form 23. (3) A limitation claim is begun by a claim form (Form 23).

(4) A claim *in rem* and a claim *in personam* may not be combined in the same claim form.

- **Part 8 deals with the issue of a claim form; Part 5 deals with the service of a claim form, but see also rules 70.5 and 70.6 as regards Admiralty proceedings.**



**Service of claim form *in rem***

**70.5** (1) Subject to sub-rule (2), a claim form by which a claim *in rem* is begun must be served on the property against which the claim is brought, except

- (a) where the property is freight, the claim form must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried; or
- (b) where the property has been sold by the marshal, the claim form may not be served on that property but a sealed copy of it must be filed and the claim shall be deemed to have been duly served on the day on which the copy was filed.

(2) A claim form need not be served or filed as mentioned in sub-rule (1) if it is deemed to have been duly served on the defendant by virtue of rule 5.19(2) or (3).

(3) Where by virtue of this rule a claim form is required to be served on any property, the claimant may request that service of the claim form be effected by the marshal only if a warrant of arrest has been issued for service against the property or the property is under arrest.

(4) Where sub-rule (3) applies, the claimant must file a request in the appropriate practice form and lodge

- (a) the claim form and a copy thereof; and
- (b) an undertaking to pay on demand all expenses incurred by the marshal in respect of the service of the claim form

and thereupon the marshal must serve the claim form on the property described in the request.

(5) Where a claim form is served on any property by the marshal or his substitute, the person effecting service must endorse on the claim form the following particulars:

- (a) where it was served;
- (b) the property on which it was served;
- (c) the day of the week and the date and time when it was served;
- (d) the manner in which it was served; and
- (e) the name and the address of the person effecting service,

and the endorsement is evidence of the facts stated.

(6) Where

- (a) the claimant; or
- (b) the claimant's attorney-at-law in proceedings *in rem* becomes aware that there is in force a caveat against arrest with respect to the property against which the proceedings are brought, the attorney-at-law must serve the claim form forthwith on the person at whose instance the caveat was entered.

(7) The general rule is that where a claim form by which a proceeding *in rem* are begun is amended after service under Part 20, the amended claim form must be served on any

- (a) intervener; and
- (b) defendant who has acknowledged the issue or service of the claim

Form 22A. in Form 22A.

(8) However, if no defendant has acknowledged the issue or service of the claim form, it must be served or filed in accordance with sub-rule (1), subject to any direction otherwise of the court.

(9) An application for a direction under sub-rule (8) may be made without notice but must be supported by evidence on affidavit.

### **How service on ships is to be effected**

**70.6** (1) The general rule is that service of a warrant of arrest or claim form in proceedings *in rem* against a ship, freight or cargo is to be effected by

- (a) affixing the warrant or claim form for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and
- (b) on removing the warrant or claim form, leaving a copy of it affixed
  - (i) in the case of the warrant, in its place; or
  - (ii) in the case of the claim form, on a sheltered and conspicuous part of the ship.

(2) However, service of a warrant of arrest or claim form in proceedings *in rem* against freight or cargo or both, if the cargo has been landed or transhipped, is to be effected

- (a) by placing the warrant or claim form for a short time on the cargo and on removing the warrant or claim form, leaving a copy of it on the cargo; or
- (b) where the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or claim form with that person.

### **Service of claim form out of jurisdiction**

**70.7** (1) A claim form under rule 70.2(e), (f) or (g) other than an application *in rem* may be served out of the jurisdiction with the permission of the court where

- (a) the defendant's habitual residence or place of business is within the jurisdiction;
- (b) the events out of which the claim arises took place within the waters or within the limits of a port of Barbados; or
- (c) a claim arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

(2) An application to serve a claim form out of the jurisdiction must be made in accordance with rule 7.5.

(3) In this rule, "port" includes a place and a harbour.

### **Acknowledgment of service**

**70.8** A defendant to a claim form *in rem* which has not been served, or a defendant to a limitation claim who has not been served with the claim form, who desires to take part in the proceedings, may acknowledge the issue of the claim form by filing an acknowledgment of service in Form 22A substituting for the references to service of the claim form, references to issue of the claim form.

Form 22A.

### **Warrant of arrest**

**70.9** (1) In proceedings *in rem* the claimant or a defendant who counterclaims may, after the issue of the claim form and subject to the provisions of this rule, issue a warrant in Form 24 for the arrest of the property against which the claim or counterclaim is brought.

Form 24.

(2) The party intending to issue the warrant must first cause a search to be made in the caveat book to see whether there is a caveat against arrest in force with respect to that property.

(3) The general rule is that a warrant of arrest may not be issued until the party intending to issue it has filed an affidavit made by him or his agent containing the following particulars and information:

- (a) in every case,
  - (i) the nature of the claim or counterclaim and that it has not been satisfied;
  - (ii) where the claim arises in connection with a ship, the name of that ship;
  - (iii) the nature of the property to be arrested; and
  - (iv) where the property is a ship, the name of the ship and her port of registry; and
- (b) in the case of a claim against a ship under any of paragraphs (e), (f) and (h) to (s) of rule 70.2,
  - (i) the name of the person who would be liable on the claim in a proceeding *in personam* ("the relevant person");
  - (ii) that the relevant person was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship in connection with which the claim arose; and
  - (iii) that at the time of the issue of the claim form, the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required, or the charterer of it under a charter by demise as the case may be; and

(c) in the case of a claim for possession of a ship or for wages,

(i) the nationality of the ship in respect of which the warrant is required; and

(ii) that the notice, if any, required by sub-rule (7) has been sent.

(4) Where appropriate, a copy of any notice sent to a consul under sub-rule (7) must be annexed or exhibited to an affidavit required by sub-rule (3).

(5) The court may, however, give its permission to enable the issue of the warrant notwithstanding that the affidavit does not contain all of the required particulars.

(6) A warrant of arrest may not be issued without the permission of the court in the case of property whose beneficial ownership has since the issue of the claim, changed as a result of a sale or disposal by the court.

(7) The general rule is that a warrant of arrest may not be issued in a proceeding *in rem* being a claim for possession of the ship or for wages, against a foreign ship registered at a port of a State having a consulate in the jurisdiction, until notice that the proceedings have been begun has been sent to the consul or the court gives permission.

(8) Issue of a warrant of arrest takes place upon its being sealed by the Registrar.

### **Caveat against arrest**

**70.10** (1) Except in a case to which sub-rule (2) applies, a person who wishes to prevent the arrest of any property must file a request in Form 24A signed by that person or his attorney-at-law containing an undertaking Form 24A.

- (a) to acknowledge issue or service, as may be appropriate, of the claim form in any claim that may be made against the property described in the request; and
- (b) within 3 days after receiving notice that such a claim has been made, to give bail in that claim in a sum not exceeding an amount specified in the request or to pay the amount so specified into court.

(2) On the filing of the request under sub-rule (1), the Registrar must enter a caveat against the issue of a warrant to arrest the property described in the request in the caveat book.

- (3) Where a claimant in limitation proceedings
  - (a) has constituted a limitation fund in accordance with Article 11 of the *Convention on Limitation of Liability for Maritime Claims 1976* and rule 70.35; and
  - (b) desires to prevent the arrest of any property for a claim which may be or has been made against the fund,

the claimant may file in the Registry a request in Form 24A signed by Form 24A. him or his attorney-at-law

- (i) stating that a limitation fund in respect of damage arising from the relevant incident has been constituted; and

- (ii) undertaking to acknowledge the issue or the service, as may be appropriate, of the claim form in any claim that may be begun against the property described in the request,

and on the filing of the request, a caveat against the issue of a warrant to arrest the property described in the request must be entered in the caveat book.

(4) The fact that there is a caveat against arrest in force does not prevent the issue of a warrant to arrest the property to which the caveat relates.

(5) Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the court for an order discharging the warrant.

(6) On the hearing of an application under sub-rule (5), the court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may

- (a) by order discharge the warrant; and
- (b) order the party procuring the arrest to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

#### **Committal of attorney-at-law for failing to comply with undertaking**

**70.11** Where the attorney-at-law for a party to proceedings *in rem* fails to comply with a written undertaking given by him to any other party or attorney-at-law to

- (a) acknowledge the issue or service of the claim form;
- (b) give bail; or



(c) pay money into court *in lieu* of bail,

the attorney-at-law for a party to proceedings *in rem* is liable to committal.

• **Part 53 deals with committal orders**

**Execution of warrant of arrest**

**70.12** (1) A warrant of arrest is valid for 12 months beginning on the date of its issue.

(2) A warrant of arrest may be executed only by the marshal.

(3) A warrant of arrest may not be executed until an undertaking has been lodged in the marshal's office to pay on demand

(a) the fees of the marshal; and

(b) all expenses incurred by the marshal in respect of the arrest of the property, and the care and custody of it while under arrest.

(4) A warrant of arrest may not be executed where the party at whose instance it was issued lodges a written request to that effect with the marshal.

(5) The general rule is that a warrant of arrest must be served on the property against which it is issued.

(6) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(7) Within 7 days after the service of a warrant of arrest, the warrant must be filed.

**Directions with respect to property under arrest**

**70.13** (1) The marshal may at any time apply to the court for directions with respect to property under arrest in any proceedings.

(2) The marshal may, and if the court so directs must, give notice of an application under sub-rule (1) to any or all of the persons referred to in sub-rule (3).

(3) The marshal must send by post a copy of any order made on an application under sub-rule (1) to all those persons who in relation to that property have

- (a) entered a caveat which is still in force;
- (b) caused a warrant for the arrest of the property to be executed by the marshal;
- (c) acknowledged the issue or service of the claim form in any proceedings in which the property is under arrest; or
- (d) intervened in any proceedings in which the property is under arrest.

(4) A person other than the marshal may make an application under this rule.

(5) The application together with a copy of any affidavit in support must be served upon the marshal and all persons referred to in sub-rule (3) unless the court otherwise directs.

(6) An application for an order dispensing with service may be made without notice.

**Release of property under arrest**

**70.14** (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the court, that property may only be released under the authority of a release in the Form 24B. Form 24B.

(2) A release may not be issued with respect to property as to which a caveat against release is in force, unless

(a) at the time of the issue of the release, the property is under arrest in one or more proceedings; or

(b) the court so orders.

(3) A release may be issued at the instance of any party to the proceedings in which the warrant of arrest was issued where

(a) the court so orders; or

(b) subject to sub-rule (2), all the other parties, except a defendant who has not acknowledged issue or service of the claim form, consent.

(4) Before a release is issued, the party applying for its issue must, unless paragraph (a) of sub-rule (2) applies, give notice to any person at whose instance a subsisting caveat against release has been entered, or to his attorney-at-law, requiring the caveat to be withdrawn.

(5) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance the release was issued must, in accordance with the direction of the marshal, either

(a) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand all other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or

(b) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(6) Rule 70.25 shall apply to any direction or determination of the marshal under sub-rule (5).

**Caveat against release, etc.**

**70.15** (1) A person

(a) claiming to have a right to claim *in rem* against any property which is under arrest or the proceeds of sale thereof; and

(b) who wishes to be served with notice of any application to the court in respect of that property or those proceeds,

Form 24C. may file a request in the Form 24C.

(2) On the filing of a request under sub-rule (1), the Registrar must enter a caveat in the caveat book.

(3) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the court for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay.

(4) On hearing an application under sub-rule (3), the court unless it is satisfied that the person who procured the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

(5) At the hearing of an application under sub-rule (3), the court may make such order as to the costs of the application as it considers just.

### **Duration of caveats**

**70.16** (1) A caveat entered in the caveat book is valid for 12 months from the date of its entry.

(2) The person at whose instance a caveat was entered may withdraw it by filing a request in the Form 24D.

Form 24D.

(3) The period of validity of a caveat may not be extended, but this provision is not to be taken to prevent the entry of successive caveats.

### **Bail**

**70.17** (1) Unless a ship or aircraft which has been arrested was arrested in respect of a claim falling within rule 70.2(a) or (b), the court must permit the release of the ship or aircraft upon sufficient bail being provided.

(2) Where a ship or aircraft has been arrested in respect of a claim falling within rule 70.2(a) or (b), the court may

(a) permit the person in possession of the ship or aircraft at the time of the arrest to continue trading upon such person providing sufficient bail; or

(b) deal otherwise with the operation of the ship or aircraft during the period of arrest.

(3) In default of agreement between the parties, the court must determine the nature and amount of any bail.

(4) Bail on behalf of a party to proceedings *in rem* may be given by

- (a) bond in the appropriate practice form; or
- (b) a bank guarantee or other security from a reputable financial institution acceptable to the marshal.

(5) Sureties to a bond must enter into the bond before a justice of the peace or commissioner for oaths not being a commissioner who, or whose partner or associate, is acting as attorney-at-law or agent for the party on whose behalf the bail is to be given.

(6) Subject to sub-rule (7), a surety to a bail bond must make an affidavit deposing that the surety is able to pay the sum for which the bond is given.

(7) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit need be made under sub-rule (6) on behalf of the corporation unless a party requires it, but where such an affidavit is required, it must be made by a director, manager, secretary or similar officer of the corporation.

(8) The party on whose behalf bail is given must serve on any other party to the proceedings a notice of bail containing the names and addresses of the persons who have given bail on that party's behalf and of the notary public or justice of the peace before whom the bail bond was entered into.

(9) After the expiration of 24 hours from the service of the notice, or sooner with the consent of all other parties, the party on whose behalf bail is given may file the bond and must at the same time file

- (a) all affidavits, if any, made under sub-rule (6); and
- (b) an affidavit proving due service of the notice of bail to which a copy of that notice must be annexed or exhibited.

### **Interveners**

**70.18** (1) Where property against which proceedings *in rem* are brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the proceedings may, with the permission of the court, intervene in the proceedings.

(2) An application for permission may be made without notice.

(3) An application for permission must be supported by an affidavit showing the interest of the applicant in the property against which the proceedings are brought or in the money in court.

(4) A person to whom leave is granted under this rule becomes a party to the proceedings.

(5) The court may order that a person to whom it grants leave to intervene in proceedings must, within such period or periods as may be specified in the order, serve on any other party to the proceedings such notice of his intervention and such pleading as may be specified.

### **Preliminary acts**

**70.19** (1) This rule deals with proceedings relating to damage, loss of life or personal injury arising out of a collision between ships.

(2) The following provisions apply unless the court otherwise orders.

(3) The claimant must within two months after service of the claim form on any defendant, and the defendant must within two months of acknowledging the issue or service of the claim form, file in the Registry a document in two parts (in these rules referred to as a "preliminary act") containing a statement of the following:

Part One:

- (a) the names of the ships which came into collision and their ports of registry;
- (b) the length, breadth, gross tonnage, horsepower and draught at the material time, of the ship and the nature and tonnage of any cargo carried by her;
- (c) the date and time, including the time zone of the collision;
- (d) the place of the collision;
- (e) the direction and force of the wind;
- (f) the state of the weather;
- (g) the state, direction and force of the tidal or other current;
- (h) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (i) the lights or shapes, if any, carried by the ship;
- (j)
  - (i) the distance and bearing of the other ship if and when her echo was first observed by radar; and
  - (ii) the distance, bearing and approximate heading of the other ship when first seen;



- (*k*) what lights or shapes or combinations of lights or shapes, if any, of the other ship were first seen;
- (*l*) what other lights or shapes or combinations of lights or shapes, if any, of the other ship were subsequently seen before the collision, and when;
- (*m*) what alterations, if any, were made to the course and speed of the ship after the earlier of the two times referred to in paragraph (*h*) up to the time of the collision, and when, and what measures, if any, other than alterations of course or speed, were taken to avoid the collision and when;
- (*n*) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (*o*) what sound signals, if any, were given and when; and
- (*p*) what sound signals, if any, were heard from the other ship and when.

Part Two:

- (*a*) that the particulars in Part One are incorporated in Part Two;
- (*b*) any other facts and matters upon which the party filing the preliminary act relies;
- (*c*) all allegations of negligence or other fault which the party filing the preliminary act makes; and
- (*d*) the remedy or relief which the party filing the preliminary act claims.

(4) Part Two of the preliminary act shall be deemed to be the statement of claim of the person filing the preliminary act including, in the case of the defendant, a counterclaim, and rules 8.3 to 8.7 and 10.5 to 10.9 apply to it save insofar as this rule and rule 70.21 provide otherwise.

(5) The court may order that Part Two of the preliminary act need not be filed by the claimant or defendant and give directions for the further conduct of the proceedings.

(6) Every preliminary act must be sealed before filing and be filed in a sealed envelope which must not be opened except as provided in sub-rule (8) or by order of the court.

(7) A claimant must serve notice of his filing of his preliminary act on every defendant who acknowledges the issue or service of the claim form within 3 days of receiving notice of that acknowledgment or upon the filing of the preliminary act, whichever is the later; and a defendant must, upon filing his preliminary act, serve notice that he has done so on the claimant and on every other defendant who has acknowledged the issue or service of the claim form.

(8) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing a consent signed by that other party or his attorney-at-law, or after the service of a copy of the preliminary act under sub-rule (9).

(9) Within 14 days after the last preliminary act in the proceedings is filed, each party must serve on every other party a copy of his preliminary act.

(10) At any time after all preliminary acts have been filed, any party may apply to the court for an order that

- (a) one or more parties file a schedule of the damages claimed by him or them and serve a copy thereof on every other party; and
- (b) that the damages be assessed prior to or at the trial on liability.

(11) Wherever practicable, the application under sub-rule (10) must be dealt with at a case management conference.

**Failure to file preliminary act:  
proceedings against party in default**

**70.20** (1) Where in an application to which rule 70.19 applies, the claimant fails to file a preliminary act within the prescribed period

- (a) any defendant who has filed a preliminary act may apply to the court for an order to dismiss the proceedings; and
- (b) the court may
  - (i) dismiss the proceedings; or
  - (ii) make such other order and on such terms, as it thinks fit.

(2) Where in proceeding *in personam* to which rule 70.19 applies, a defendant fails to file a preliminary act within the prescribed period, Part 12 applies as if the defendant's failure to file the preliminary act within that period were a failure to file a defence within the period fixed for the filing of a defence, and the claimant, where he has filed a preliminary act may, subject to rule 12.3(1)(a), enter judgment against that defendant.

• **Rule 12.3(1)(a) deals with default judgment in proceedings against a State.**

(3) Where in proceedings *in rem* to which rule 70.19 applies a defendant fails to file a preliminary act within the prescribed period, the claimant, where he has filed a preliminary act

- (a) may apply to the court for judgment against that defendant;
- (b) need not, as against that defendant, file or serve a statement of case or an affidavit before the hearing.

- (4) On the hearing of an application under sub-rule (3) where the
- (a) defendant does not appear at the hearing; and
  - (b) court is of the opinion that judgment should be given for the claimant provided he proves his case,

the court must order the claimant's preliminary act to be opened and require the claimant to satisfy the court that his claim is well founded.

(5) Where sub-rule (4) applies, the claimant's evidence may, unless the court otherwise orders, be given by affidavit without any order or direction to that effect.

(6) Where the claimant satisfies the court that the claim is well founded, the court may

- (a) give judgment on the claim;
- (b) at the same time order the property against which the claim is brought to be appraised and sold and the proceeds to be paid into court; or
- (c) make such other order as it thinks fit.

(7) The court may, on such terms as it thinks fit, set aside any judgment entered in pursuance of this rule in the absence of the defendant.

(8) In this rule, references to the prescribed period are to be construed as references to the period within which by virtue of

- (a) rule 70.19(3); or
- (b) any order of the court

a party is required to file a preliminary act.

**Special provisions as to statement of case in collision proceedings**

**70.21** (1) The claimant in any claim as referred to in rule 70.2(g) may not serve on the defendant a reply or a defence to counterclaim without the permission of the court.

(2) Subject to sub-rule (3), in any proceedings there is an implied joinder of issue on the facts set out in the preliminary acts which shall stand as the statements of case of the claimant and the defendant.

(3) Sub-rule (2) does not apply to a counterclaim where the claimant has served a defence to counterclaim pursuant to leave given under sub-rule (1).

**Judgment by default**

**70.22** (1) Where a claim form is served under rule 70.5(6) on a party at whose instance a caveat against arrest was issued, then where

- (a) the sum claimed in the proceedings begun by the claim does not exceed the amount specified in the undertaking given by that party or his attorney-at-law to procure the entry of that caveat; and
- (b) that party or his attorney-at-law does not within 14 days after service of the claim fulfil the undertaking given by him as aforesaid

the claimant may, after filing an affidavit verifying the facts on which the proceedings are based, apply to the court for judgment by default.

(2) Judgment given under sub-rule (1) may be enforced subject to any outstanding claims by the arrest and an order for sale of the property against which the proceedings were brought and it may be enforced by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to a proceedings *in rem* fails to acknowledge service of the claim within the time limited for doing so, then

- (a) on the expiration of 14 days after service of the claim form;  
and
- (b) upon filing
  - (i) an affidavit proving due service of the claim form;
  - (ii) an affidavit verifying the facts on which the proceedings are based; and
  - (iii) where a statement of claim was not filed and served with the claim form, the statement of claim,

the claimant may apply to the court for judgment by default and an order for sale.

(4) Where the claim is deemed to have been duly served on the defendant by virtue of rule 5.19(2) (deemed service where defendant's attorney-at-law accepts service), or was served by the marshal or his substitute under rule 70.5(4), an affidavit proving due service of the application need not be filed, but the certificate of service of the defendant's attorney-at-law or the endorsement of the marshal under rule 70.5(5) must be lodged with the affidavit verifying the facts on which the claim is based.

(5) Where a defendant to proceedings *in rem* fails to serve a defence before the expiration of the period fixed by or under these rules for service of the defence, the claimant, upon filing

- (i) an affidavit deposing that no defence has been served by that defendant;
- (ii) an affidavit verifying the facts on which the proceedings are based; and

- (iii) where a statement of claim was not served with the claim, the statement of claim,

may apply to the court for judgment by default and an order for sale.

(6) Where a defendant to a counterclaim in proceedings *in rem* fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to sub-rule (7),

- (a) after the expiration of the period fixed by or under these rules for service of the defence to counterclaim; and
- (b) upon filing an affidavit
  - (i) deposing that no defence to counterclaim has been served on him by the defendant to a counterclaim in proceedings *in rem*; and
  - (ii) verifying the facts on which the counterclaim is based,

the defendant making the counterclaim may apply to the court for judgment by default.

(7) No application may be made under sub-rule (6) against the claimant in any proceedings as referred to in rule 70.2(g).

(8) Where the court is satisfied in an application under this rule that the applicant's claim is well founded, it may

- (a) give judgment upholding the claimant's application or the counterclaim, whichever is in question;
- (b) order the property against which the claim or counterclaim, as the case may be, is brought to be appraised and sold and the proceeds to be paid into court; or
- (c) make such other order as it thinks just.

(9) In default proceedings *in rem* evidence may, unless the court otherwise orders, be given by affidavit without any order or direction to that effect.

(10) The court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(11) Part 12 does not apply to a claim *in rem*.

### **Order for sale of ship: determination of priority of claims**

**70.23** (1) Where in proceedings *in rem* against a ship, the court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may

(a) in a case where the order for sale contains the further order referred to in sub-rule (2), after the expiration of the period specified in the order under sub-rule (2)(a); or

(b) in any other case, after obtaining judgment,

apply to the court for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in a proceeding *in rem* against a ship, the court orders the ship to be sold, it may further order that

(a) the order of priority of the claims against the proceeds of sale of the ship is not to be determined until after the expiration of 90 days, or such other period as the court may specify, from the day on which the proceeds of sale are paid into court;

(b) any party to the proceedings or to any other proceedings *in rem* against the ship or the proceeds of sale thereof may apply to the court in the proceedings to which he is a party to extend the period specified in the order; and



- (c) within 7 days after the date of payment into court of the proceeds of sale, the marshal must send for publication in the *Official Gazette* and such newspaper of general circulation, if any, as the court may direct, a notice complying with sub-rule (3).
- (3) The notice referred to in sub-rule (2)(c) must state
- (a) that the ship, naming her, has been sold by order of the High Court in proceedings *in rem*, identifying the proceedings;
  - (b) that the gross proceeds of the sale as specified have been paid into court;
  - (c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period specified in the order for sale; and
  - (d) that any person with a claim against the ship or the proceeds of sale thereof on which he intends to proceed to judgment, should do so before the expiration of that period.
- (4) The marshal must lodge in the court a copy of the *Official Gazette* and each newspaper in which the notice referred to in sub-rules (2)(c) and (3) appeared.
- (5) The expenses incurred by the marshal in complying with an order of the court under this rule are to be included in the marshal's expenses relating to the sale of the ship.
- (6) A copy of any application to the court to extend the period referred to in sub-rule (2)(a) must be served, at least 7 days before the day fixed for its hearing, on each party who has begun a claim *in rem* against the ship or the proceeds of sale thereof.

### **Appraisement and sale of property**

**70.24** (1) A commission for the appraisement and sale of any property under an order of the court may not be issued until the party applying for it has filed a request in the Form 24E.

Form 24E. (2) A commission referred to in sub-rule (1), unless the court otherwise orders, must be in the Form 24F and be executed by the marshal.

(3) A commission for appraisement and sale may not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the Registry.

(4) The sale must be by public auction unless the court gives permission for a sale by private treaty.

(5) The court may allow the sale to be completed at a price lower than the value shown in the appraisement.

(6) The marshal must pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and bring into court the account relating to the sale, with vouchers in support, for assessment.

(7) On the assessment of the marshal's account relating to a sale, any person interested in the proceeds of the sale is entitled to be heard.

### **Undertakings as to expenses, etc**

**70.25** (1) Every undertaking under rule 70.5(4), 70.12(3), 70.14(5) or 70.24(3) must be given in writing to the satisfaction of the marshal.

(2) Where a party is required by any of the rules mentioned in sub-rule (1) to give to the marshal an undertaking to pay any fees or expenses, the marshal may accept instead of an undertaking the deposit with the marshal of such sum as the marshal considers reasonable to meet those fees and expenses.

(3) The court, on the application of any party who is dissatisfied with a direction or determination of the marshal under this rule or under any of the rules mentioned in sub-rule (1), may vary or revoke the direction or determination.

#### **Payment into and out of court**

**70.26** (1) Parts 35 and 36 apply in relation to Admiralty proceedings (other than limitation proceedings).

(2) Money paid into court may not be paid out except in pursuance of an order of a Judge of the High Court.

#### **Case management conference**

**70.27** (1) Parts 25 to 27 and 39 apply to Admiralty proceedings, except that

- (a) the date, time and place for the case management conference must be fixed by the Registrar on the happening of the following events:
  - (i) in any proceedings other than one to which rule 70.19 or 70.36 applies, on the filing of a defence;
  - (ii) where rule 70.19 applies, on the filing of the second preliminary act;

(b) where rule 70.36 applies then, if the court does not make a decree limiting the claimant's liability, it must treat the hearing of the application under that rule as a case management conference, or fix a date, time and place for that purpose before a judge or master.

(2) At the case management conference the court must consider whether the trial is to be without assessors or with one or more assessors and the qualifications for such assessors.

(3) Rules 38.5, 38.6 and 39.1 apply to Admiralty claims subject to the following and any other necessary modifications:

(a) the bundles referred to in rules 38.6 and 39.1 must include any preliminary acts; and

(b) where trial with one or more assessors has been ordered, an additional copy of each of the bundles of documents referred to in rule 39.1(5) as amended by paragraph (a) must be lodged for the use of each assessor.

## **Trial**

**70.28** (1) Part 39 applies to the trial of Admiralty proceedings.

(2) Where the proceedings have been ordered to be tried with an assessor or assessors the attorney-at-law of the party with conduct of the proceedings must file in the Registry an undertaking to pay the proper fees and expenses of the assessor or assessors.

(3) Where all the parties to proceedings consent, the proceedings may be withdrawn without the leave of the court at any time before trial by producing to the court a written consent to the proceedings being withdrawn signed by all the parties or their attorneys.

**Stay of proceedings in collision proceedings until security given**

**70.29** Where a claim *in rem*, being proceedings to enforce any such claim as is referred to in rule 70.2(g), is begun and further proceedings *in rem* in the nature of a cross-claim arising out of the same collision event or occurrence as did the proceedings to enforce any claim referred in rule 70.2(g), is subsequently begun, or a counterclaim arising out of that collision event or occurrence is made in the proceedings to enforce any claim referred to in rule 70.2(g), then where

- (a) the ship, in respect of or against which the proceedings to enforce any claim referred to in rule 70.2(g), is brought has been arrested or security given to prevent her arrest; but
- (b) the ship in respect of or against which the further proceedings are brought or the counterclaim is made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the further proceedings or making the counterclaim,

the court may stay the proceedings in the claim to enforce any claim referred to in rule 70.2(g) until security is given to satisfy any judgment given in favour of that party.

**Inspection of ship, etc**

**70.30** The court may, on the application of any party, make an order for the inspection by the assessor or assessors, where the proceedings are tried with an assessor or assessors, or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be desirable for the purpose of obtaining full information or evidence in connection with any issue in the proceedings.

**Examination of witnesses: affidavit evidence**

**70.31** (1) The powers conferred by rules 33.7 to 33.16 extend to the making of an order authorising the examination of a witness or person on oath or affirmation before a judge sitting in court as if for the trial of the proceedings.

(2) In proceedings in which preliminary acts fall to be filed under rule 70.19, an order shall not be made authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the court otherwise orders.

(3) Unless the court otherwise directs, affidavits made for the purposes of rule 70.20(5), 70.22(3) or 70.36(2) may contain statements made on information and belief provided that the sources and grounds of the information and of the belief are clearly stated and the deponent deposes that he does so believe.

**Proceedings for apportionment of salvage**

**70.32** (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained must be commenced by a fixed date claim.

(2) The claimant need not file or serve a statement of claim but must file an affidavit in support of the claim.

(3) At the first hearing, the judge may exercise any jurisdiction conferred by the Act or may give directions as on a case management conference.

**Application in proceedings *in rem***

**70.33** (1) The affidavits, if any, in support of an application in proceedings *in rem* must be filed at least 14 days before the hearing, unless the court directs otherwise.

(2) Notice of an application, except an application for judgment in default, must be served on all caveators together with copies of all affidavits, if any, in support of the application at least 14 days before the hearing, unless the court directs otherwise.

**Limitation proceedings: parties**

**70.34** (1) In limitation proceedings the person seeking relief is to be the claimant and must be named in the claim by name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The claimant must make one of the persons with a claim against him in respect of the casualty to which the proceedings relate, a defendant to the proceedings and may also make any or all of the others defendants.

(3) At least one of the defendants to the proceedings must be named in the claim by name but the other defendants may be described generally and not named by their names.

(4) The claim form must be served on one or more of the defendants who are named by their names therein but need not be served on any other defendant.

(5) In this rule and rules 70.36, 70.37 and 70.38, "name" includes a firm name or the name under which a person carries on his business.

(6) Where any person with a claim against the claimant in respect of the casualty to which the proceedings relate has described himself for the purposes of his claim merely as

(a) the owner of; or

(b) bearing some other relation to

a ship or other property, that person may be so described as the defendant in the application and, if so described, shall be deemed for the purposes of this rule and the rules mentioned in sub-rule (5) to have been named in the claim by his name.

**Limitation proceedings: payment into court**

**70.35** (1) The claimant may constitute a limitation fund by paying into court the dollar equivalent of the number of special drawing rights to which he claims to be entitled to limit his liability under the Act, together with interest thereon from the date of the occurrence giving rise to the liability to the date of payment into court.

(2) Where the claimant does not know the appropriate equivalent of the number of special drawing rights on the date of payment into court he may calculate the same on the basis of the latest available published dollar equivalent of a special drawing right as fixed by the International Monetary Fund.

(3) In the event of the appropriate dollar equivalent of a special drawing right on the date of the payment into court being different from that used by the claimant in pursuance or in purported pursuance of sub-rule (2), the claimant may

- (a) make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court under sub-rule (1) ("the original payment"), shall be treated, except for the purposes of the rules relating to the accrual of interest on money paid into court, as if it had been made on the date of the original payment into court; or
- (b) apply to the court for payment out of any excess in the amount paid into court under sub-rule (1) (together with any interest accrued thereon).



(4) An application under sub-rule (3)(b) may be made without notice.

(5) An application under sub-rule (3)(b) must be supported by evidence on affidavit proving the appropriate dollar equivalent of the appropriate number of special drawing rights on the date of the payment into court.

(6) On making any payment into court under this rule, the claimant must give notice thereof in writing to every defendant, specifying the

- (a) date of the payment in;
- (b) amount paid in;
- (c) amount of interest included therein;
- (d) rate of such interest; and
- (e) period to which such interest relates.

(7) The claimant must also within 7 days, give notice in writing to every defendant of any payment out (specifying any amount of interest included therein) made to him under sub-rule (3)(b).

**Application for decree or directions in limitation proceedings**

**70.36** (1) The claimant must within 7 days after the

- (a) acknowledgment of issue or service of the claim by one of the defendants identified by name; or

- (b) expiry of the time limited for entering an acknowledgment of service if none of the defendants identified by name acknowledges issue or service,

apply to the court for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the application.

(2) The application under sub-rule (1) must be supported by an affidavit

- (a) verifying the claimant's case in the proceedings;
- (b) proving service of the application on at least one of the defendants identified by name (if no such defendant has acknowledged service); and
- (c) stating the
  - (i) names of all the persons who, to the knowledge of the claimant, have claims against him in respect of the casualty to which the proceeding relates, not being defendants to the application who are identified in the application by their names; and
  - (ii) address of each of those persons if known to the claimant.

(3) The application under sub-rule (1) and every affidavit in support must be served, at least 14 days before the hearing of the application, on every defendant who has acknowledged issue or service of the claim.

(4) Any defendant who

- (a) disputes the claimant's claim to limit his liability; or

(b) alleges that he is unable to decide whether to dispute that claim must, within 14 days of the service upon that defendant of the application and any affidavit in support, serve upon the claimant an affidavit setting out

- (i) the grounds upon which the defendant relies to dispute the claimant's claim to limit his liability; or
- (ii) such facts and matters as could justify the court in giving a direction under sub-rule (7) of this rule.

(5) The claimant may, within 7 days of service upon him of any affidavit under sub-rule (4), serve further affidavit evidence upon any defendant who has served such an affidavit.

(6) Where on the hearing of the application it appears to the court that the claimant's claim to limit his liability is not disputed, it shall make an order limiting the claimant's liability to a specified amount.

(7) Where on the hearing of the application the court is satisfied that any defendant has not sufficient information to enable him to decide whether to dispute that the claimant has a right to limit his liability, it may, on such terms as seem just

- (a) give such directions as appear to be appropriate to enable the defendant to obtain such information; and
- (b) adjourn the hearing to a specified date, time and place.

(8) Any defendant who thereafter disputes the claimant's claim to limit his liability must

- (a) file an affidavit setting out the grounds upon which the defendant relies; and
- (b) serve such affidavit on the claimant at least 14 days before the adjourned hearing of the application.

(9) Where on the adjourned hearing of the application, the court does not make an order limiting the claimant's liability or does not dismiss the application, it shall proceed to deal with the application as on a case management conference.

(10) Any defendant who, after the court has given directions under sub-rule (7) or (9), decides not to dispute or ceases to dispute the claimant's right to limit his liability must

- (a) forthwith file a notice to that effect; and
- (b) serve a copy on the claimant and on any other defendant who has acknowledged the issue or service of the claimant's application.

(11) Where every defendant who disputes the claimant's right to limit his liability serves a notice on the claimant under sub-rule (10), the claimant may apply to the court for an order limiting his liability, and sub-rules (3) and (6) shall apply to such an application.

#### **Limitation proceedings: proceedings under decree**

**70.37** (1) Where

- (a) the only defendants in limitation proceedings are those named in the claim form by name; and
- (b) all the persons so named have either been served with the claim form or acknowledged the issue thereof, any order in the claim limiting the claimant's liability
  - (i) need not be advertised; but
  - (ii) operates only to protect the claimant in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within sub-rule (1), any order in the claim limiting the claimant's liability must

- (a) be advertised by the claimant in such manner and within such time as may be provided by the order;
- (b) fix, having regard to sub-rule (5), a time within which persons with claims against the claimant in respect of the casualty to which the proceedings relate may file their claims, and, in cases to which rule 70.38 applies, apply to set the order aside.

(3) The advertisement to be required under sub-rule (2)(a) shall, unless for special reasons the court otherwise directs, be a single advertisement in newspapers specified in the order

- (a) identifying the claim, the casualty and the relation of the claimant thereto (whether as owner of a ship involved in the casualty or otherwise, as the case may be);
- (b) stating that the order has been made; and
- (c) specifying the
  - (i) amounts fixed by the order as the limits of the claimant's liability; and
  - (ii) time allowed by the order for the filing of claims and the making of applications to set the order aside.

(4) The claimant must within the time fixed under sub-rule (2)(b) file a copy of each newspaper in which the advertisement required by sub-rule (2)(a) appears.

(5) The time to be allowed under sub-rule (2)(b) must, unless for special reasons the court otherwise directs, be not less than 2 months from the latest date allowed for the appearance of the advertisement (or an advertisement, where the court under sub-rule (3) directs that there be other than a single advertisement).

(6) After the expiration of the time allowed under sub-rules (2)(b) and (5), no claim may be filed, and no application may be made to set aside the order, except with the permission of the court.

(7) Save as aforesaid, on the making of any order limiting the claimant's liability arising out of an occurrence the court may

(a) distribute the limitation fund; and

(b) stay any proceedings relating to any claim arising out of that occurrence which are pending against the claimant.

**Limitation proceedings: proceedings to set aside decree**

**70.38** (1) Where an order limiting the claimant's liability fixes a time in accordance with rule 70.37(2), any person with a claim against the claimant in respect of the casualty to which the proceedings relate, who

(a) was not named by name in the claim as a defendant; or

(b) if so named, was neither served with nor has acknowledged the issue of the claim form,

may, within that time, after acknowledging the issue of the claim form, apply for the order to be set aside.

(2) The application must be supported by affidavit evidence showing that the defendant in question has

(a) a *bona fide* claim against the claimant in respect of the casualty in question; and

(b) sufficient *prima facie* grounds for the contention that the claimant is not entitled to the relief given him by the order.

(3) At least 14 days before the hearing of the application, the application and every affidavit in support thereof must be served on the claimant and any defendant who has acknowledged the issue or service of the claimant's application.

(4) On the hearing of the application, the court if satisfied that the defendant in question has a *bona fide* claim against the claimant and sufficient *prima facie* grounds for the contention that the claimant is not entitled to the relief given him by the order, must set the order aside and give directions as if the hearing were a case management conference.

## Part 71

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### Obtaining Evidence for Foreign Courts

#### Contents of this Part

Scope of this Part	Rule 71.1
Application for order	Rule 71.2
Application by Attorney-General in certain cases	Rule 71.3
Examiner and manner of examination	Rule 71.4
Dealing with depositions	Rule 71.5
Claim to privilege	Rule 71.6

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#### Scope of this Part

**71.1** (1) This Part deals with the procedure by which evidence may be obtained from a witness in Barbados for the purpose of proceedings in a court or tribunal outside the jurisdiction.

(2) The power of the High Court to make an order under any relevant enactment may be exercised by a judge in chambers, Master or Registrar.

#### Application for order

**71.2** (1) Subject to sub-rule (3) and rule 71.3, an application for an order under this Part may be made without notice but must be supported by evidence on affidavit.

(2) There must be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a certified translation of the request into English.

(3) After an application has been made under sub-rule (1), any application for a further order or directions must be on notice.



**Application by Attorney-General in certain cases**

**71.3** Where a request is received by

- (a) the Minister with responsibility for Foreign Affairs and sent by the Minister to the Registrar with an intimation that effect should be given to the request without requiring an application for that purpose; or
- (b) the court in pursuance of an international agreement providing for the taking of the evidence of any person in Barbados for the assistance of a court or tribunal in a foreign country,

and no person is named in the request as the person who will make an application on behalf of any party, the Registrar must send the request to the Attorney-General for such application to be made as is considered appropriate.

**Examiner and manner of examination**

**71.4** (1) Any order made in pursuance of this Part for the examination of a witness may direct that the examination takes place before any fit and proper person nominated by the applicant or before an examiner of the court or before such other qualified person as to the court seems fit.

(2) Subject to rule 71.6 and to any special direction contained in any order made in pursuance of this Part for the examination of any witness, the examination must be conducted in the manner provided for by rules 33.8, 33.10 and 33.11, so far as they may be applicable.

(3) The order referred to in sub-rule (1) may make provision for the payment of the fees and expenses due to the examiner, including fees under rule 33.12 where appropriate.

**Dealing with deposition**

**71.5** Unless an order made in pursuance of this Part for the examination of any witness otherwise directs, the examiner before whom the examination was held must send the deposition of the witness to the court, and the court must

- (a) give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the request, the order of the court for the examination and the deposition taken in pursuance of the order, together with any certificate or special report furnished by the examiner under rule 33.10 or 33.11; and
- (b) send the certificate with the documents annexed thereto to the Minister with responsibility for Foreign Affairs, or, where the request was sent to the Registrar by some other person in accordance with an international agreement, to that other person, for transmission to the court or tribunal out of the requesting jurisdiction.

**Claim to privilege**

**71.6** (1) This rule applies where

- (a) a witness claims a right to withhold evidence; and
- (b) that claim is contested.

(2) The examiner may require the witness to give evidence to which the claim relates; but that requirement is subject to review by the court where an application is made within 3 days by the witness or any party represented at the examination.

(3) Where the examiner does not require the witness to give evidence to which the claim relates, the person who obtained the order under rule 71.2 or 71.3 may apply to the court to do so.

(4) An application under sub-rule (3) shall be made on at least 7 days' notice to any party represented at the examination and to the witness.

(5) Subject to the terms of any order made by the court on an application under sub-rule (2) or (3), where evidence is taken

- (a) it must be recorded in a document separate from the deposition of the witness;
- (b) the examiner must send to the Registry with the deposition
  - (i) that document; and
  - (ii) a statement signed by the examiner setting out the claim and the ground on which it was made; and
- (c) on receipt of the document the Registrar must, notwithstanding anything in rule 71.5,
  - (i) retain the document containing the evidence to which the claim related; and
  - (ii) send the statement of the examiner under paragraph (b)(ii), with a request to determine the claim, to the foreign court or tribunal with the documents mentioned in rule 71.5.

(6) Subject to the terms of any order made by the court on an application under sub-rule (2) or (3), where the claim is rejected by the foreign court or tribunal, the Registrar must send to that court or tribunal the document containing the evidence to which the claim related.

(7) Where the claim under this Rule is upheld, the court must send the document to the witness.

(8) In either case, the court must notify the witness and the person who obtained the order under rule 71.2 or 71.3 of the determination of the foreign court or tribunal.

## Part 72

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### Reciprocal Enforcement of Judgments

#### Contents of this Part

Scope of this Part	Rule 72.1
Application for registration	Rule 72.2
Security for costs	Rule 72.3
Order for registration	Rule 72.4
Register of judgments	Rule 72.5
Notice of registration	Rule 72.6
Application to set aside registration	Rule 72.7
Issue of execution	Rule 72.8
Certified copy of High Court judgment for enforcement in another country	Rule 72.9

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#### Scope of this Part

**72.1** (1) This Part deals with the procedure by which under the provisions of any enactment a judgment of a foreign court or tribunal may be registered in the High Court for enforcement within Barbados.

(2) In this Part, "relevant enactment" means any enactment in force in Barbados which relates to the reciprocal enforcement of judgments.

(3) This Part takes effect subject to the requirements of any relevant enactment.

**Application for registration**

**72.2** (1) An application to have a judgment registered in the High Court may be made without notice to the court but must be supported by evidence on affidavit

- (a) annexing or exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and where the judgment is not in the English language, a translation of the judgment into English certified by a notary public or verified by affidavit;
- (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as is known to the deponent;
- (c) stating to the best of the information and belief of the deponent and giving the source and grounds of that information and belief,
  - (i) that the judgment creditor is entitled to enforce the judgment;
  - (ii) that at the date of the application the judgment has not been satisfied;
  - (iii) the amount in respect of which it remains unsatisfied;
  - (iv) that the judgment may be ordered to be registered for enforcement under a specified relevant enactment; and
  - (v) that the registration would not be, or be liable to be, set aside under any relevant enactment; and
- (d) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the date of the application for registration.

(2) Where the sum payable under a judgment sought to be registered is expressed in a currency other than the currency of Barbados, the affidavit must also state the amount that sum represents in the currency of Barbados, calculated at the rate of exchange prevailing at the date of the judgment.

### **Security for costs**

**72.3** The court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

### **Order for registration**

**72.4** (1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.

(2) Except where the order is made following an application on notice, it need not be served on the judgment debtor.

(3) The order must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The court may, on an application made within the period stated pursuant to sub-rule (3) or any extension of it, or in special circumstances at any time, extend the period, either as originally fixed or as subsequently extended, within which an application to have the registration set aside may be made.

(5) The court hearing the application may however direct that notice be given to any person.

**Register of judgments**

**72.5** (1) A register of judgments that are the subject of an order granting leave to so register those judgments pursuant to rule 72.4 must be kept in the Registry.

(2) There must be included in each such register particulars of any execution issued on a judgment ordered to be so registered.

**Notice of registration**

**72.6** (1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to him personally or in such other manner as the court may direct.

(2) Service of a notice under sub-rule (1) out of the jurisdiction is permissible without leave, and rules 7.8, 7.9 and 7.10 apply in relation to such a notice as they apply in relation to an application.

(3) The notice of registration must state

- (a) full particulars of the judgment registered and the order giving leave for registration;
- (b) the name and address of the judgment creditor or of his attorney-at-law or agent on whom, and at which, any application issued by the judgment debtor may be served;
- (c) the right of the judgment debtor to apply to have the registration set aside; and
- (d) the period within which an application to set aside the registration may be made.

**Application to set aside registration**

**72.7** (1) An application to set aside the registration of a judgment must be supported by evidence on affidavit.

(2) The court hearing an application under sub-rule (1) may order any issue between the judgment creditor and judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) Where the court hearing an application to set aside the registration of a judgment is satisfied that

- (a) the judgment falls within any of the cases in which a judgment may not be registered under the provisions of any relevant enactment; or
- (b) it is not just or convenient that the judgment should be enforced within the jurisdiction,

it may order the registration of the judgment to be set aside on such terms as it directs.

**Issue of execution**

**72.8** (1) Execution may not issue on a judgment registered under the relevant enactment until after the expiration of the period which, in accordance with rule 72.4(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the court, until after the expiration of that period as so extended.

(2) Where an application is made to set aside the registration of a judgment, execution on the judgment may not issue, or, if it is issued, no further steps may be taken to carry it out, until after such application is finally determined.



(3) Any party wishing to issue execution on a registered judgment must produce to the Registrar an affidavit of service of the notice of registration of the judgment and any order made by the court in relation to the judgment.

**Certified copy of High Court judgment  
for enforcement in another country**

**72.9** (1) An application under any relevant enactment for a certified copy of a judgment entered in the High Court for the purpose of enforcement in some other country may be made without notice but must be supported by evidence on affidavit.

(2) The certified copy of the judgment must be an office copy sealed with the seal of the Supreme Court and endorsed with a certificate signed by a Master or Registrar that it is a true copy of a judgment obtained in the High Court and that it is issued in accordance with the relevant enactment.

## Part 73

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### Transitional Provisions

#### Contents of this Part

Scope of this Part	Rule 73.1
New proceedings	Rule 73.2
Old proceedings	Rule 73.3
Exercise of discretion	Rule 73.4

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#### Scope of this Part

**73.1** This Part deals with the extent to which the former *Rules of the Supreme Court, 1982* and any amendments heretofore made to them remain in force after these Rules come into force and the way in which actions, matters and other proceedings in existence as at the commencement date become subject to these Rules.

#### New Proceedings

**73.2** These Rules apply to all proceedings commencing on or after the commencement date.

#### Old Proceedings

**73.3** (1) These Rules do not apply to proceedings commenced before the commencement date in which a trial date has been fixed unless that date is adjourned.

(2) In proceedings commenced before the commencement date, an application to adjourn a trial date is to be treated as a pre-trial review and these Rules apply from the date that such application is heard.

(3) Where a trial date has not been fixed in proceedings that commenced before the commencement date,

(a) the Registry must fix a date, time and place for a case management conference under Part 27 after a defence has been filed and give all parties at least 28 days notice of the conference; and

(b) these Rules apply from the date of the case management conference given under paragraph (a).

(4) Where a Summons for Directions has been taken out in proceedings commenced before the commencement date, the parties may agree in writing to have the case referred to a case management conference; and if the parties so agree, these Rules will apply to govern the future conduct of the case from the date of the case management conference.

### **Exercise of discretion**

**73.4** Where in proceedings commenced before the commencement date the court has to exercise its discretion, it may take into account the principles set out in these Rules and, in particular Parts 1 and 25.

## Part 74

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### Commencement and Revocation

#### Contents of this Part

Commencement	Rule 74.1
Revocation	Rule 74.2

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#### Commencement

**74.1** These Rules shall come into operation on such day as the Chief Justice may appoint by Notice published in the *Official Gazette*.

#### Revocation

S.I. 1982  
No. 51.

**74.2** Subject to the provisions of Part 73, the *Rules of the Supreme Court, 1982* shall be revoked on the day when these Rules come into operation.

**APPENDIX TO RULES OF THE  
SUPREME COURT OF BARBADOS**

**PRESCRIBED FORMS**

Form 1:	Claim Form	Rules 8.1(4), 70.4(2)
Form 1A:	Prescribed Notes for Dependents (Claim Form)	Rule 8.12(1)(c)
Form 2:	Fixed Date Claim Form	Rules 8.1(5), 23.12(2), 27.2, 59.4(2), 60.2(1), 61.2, 61.6(1)
Form 3:	Acknowledgement of Service of Claim Form	Rules 8.12(1)(a), 9.1(2)(a), 9.2(1)(b)
Form 4:	Acknowledgment of Service of Fixed Date Claim Form	Rules 8.12(1)(a), 9.1(2)(a), 9.2(1)
Form 4A:	Application to Pay by Instalments	Rule 8.12(1)(e)
Form 5:	Defence and Counterclaim	Rules 8.12(1)(b), 10.2(1)
Form 6:	Request for Default Judgment	Rule 12.7
Form 7:	Request for Entry of Judgment on Admissions	Rule 14.5(2)
Form 8:	List of Documents	Rules 28.7, 28.9(1)
Form 9:	Listing Questionnaire	Rule 27.9(1)
Form 10:	Application for Court Orders During or After the Course of Court Proceedings	Rule 11.4(4)
Form 11:	Ancillary Claim Form	Rule 18.2(2)
Form 12:	Witness Summons	Rule 33.2

**PRESCRIBED FORMS (Cont'd)**

Form 13:	Notice to Non-Party Served with Order	Rules 42.12, 57.4(4)(b)
Form 13A:	Order for Oral Examination	Rule 44.4(1)
Form 13B:	Notice of Adjourned Hearing	Rule 44.5(6)
Form 14:	Financial Position Notice	Rule 44.7
Form 15:	Writ of Execution Against Goods (FIFA)	Rule 46.1(a)
Form 16:	Writ of Possession	Rule 46.1(b)
Form 17:	Writ of Delivery of Value	Rules 46.1(d)(ii), 46.8
Form 17A:	Order for Seizure and Sale of Goods	Rule 46.7(2)
Form 18:	Writ of Specific Delivery	Rules 46.1(d)(i), 46.9
Form 18A:	Order for Recovery of Goods or Their Assessed Value	Rule 46.1(d)(ii)
Form 18B:	Judgment Summons	Rule 52.2(1)
Form 19:	Writ of Habeas Corpus	Rule 57.3(1)(a)
Form 20:	Notice of Appeal	Rule 62.3
Form 21:	Certificate of Result of Appeal	Rule 62.24
Form 22:	Admiralty Claim In Rem	Rule 70.4(1)
Form 22A:	Acknowledgement of Service of Claim of Admiralty Claim Form in Rem	Rules 70.5(7), 70.8
Form 23:	Admiralty Limitation Application	Rule 70.4(3)
Form 24:	Warrant of Arrest (Admiralty)	Rule 70.9(1)
Form 24A:	Request for Caveat Against Arrest	Rule 70.10
Form 24B:	Request for Undertaking for Release	Rule 70.14(1)

**PRESCRIBED FORMS (Concl'd)**

Form 24C:	Request for Caution Against Release	Rule 70.15(1)
Form 24D:	Request for Withdrawal of Caution Against Release	Rule 70.16(2)
Form 24E:	Application for Appraisal and Sale	Rule 70.24(1)
Form 24F:	Order for Sale of a Ship	Rule 70.24(2)



## CLAIM FORM

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Form 1 (Rules 8.1(4), 70.4(2))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

CLAIMNO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

The Claimant, A.B. (full name), of (full address) claims against the Defendant C.D. (full names), of (full address)  
(Set out briefly the nature of the claim, any specific amount claimed and any other remedy sought from the Court)

(The following is to be completed only where the claim is for a specified amount)

	\$
Amount Claimed	
Together with interest at _____ per cent per annum from to date (Daily rate thereafter = \$ _____ per day)	
Court fees	
Attorney's Fixed Costs on issue	
Total Amount Claimed	



I certify that all facts set out in this Claim Form are true to the best of my knowledge, information and belief.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
Claimant's signature

**NOTICE TO THE DEFENDANT**

**See the notes in Form 1A served with this Claim Form.**

This Claim Form must contain or have served with it either a Statement of Claim or a copy of a court order entitling the Claimant to serve the Claim Form without a Statement of Claim.

If you do not complete the form of Acknowledgment of Service served on you with this Claim Form and deliver or send it to the Registry (address below) so that it is received there within FOURTEEN DAYS of service of the Claim Form on you, the Claimant will be entitled to apply to have judgment entered against you. See Rules 9.2(4) and 9.3(1).

The form of Acknowledgment of Service may be completed by you or by an attorney-at-law acting for you.

You should consider obtaining legal advice with regard to this Claim.

**This Claim Form has no validity if it is not served within twelve months of the date below unless it is accompanied by an order extending that time.**

The Court has fixed the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ am/pm, as the time and date for a directions hearing in this Claim. You or your representative must attend that hearing, unless the Court dispenses with your attendance, or orders may be made against you in your absence.

You are referred to Part 27, and particularly rule 27.4, of the Rules of the Supreme Court.

[SEAL]

The Registry is located at The Law Courts, Bridgetown, telephone number 246-426-3461, FAX (246)426-2405. The office is open to the public between 8.15 a.m. and 3.30 p.m. Mondays to Fridays except on public holidays.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

The Claimant's address for service is..... /or is that of his attorney-at-law (specify address of Claimant or name of attorney-at-law having conduct of the case as appropriate with telephone and facsimile numbers).

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).



## **PRESCRIBED NOTES FOR DEFENDANTS (CLAIM FORM)**

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### **Form 1A (Rule 8.12(1)(c))**

#### **This Form is important**

**When you get this Form, you should consider getting legal advice**

#### **ACTION TO BE TAKEN ON RECEIPT OF THIS FORM**

The Claimant is making a claim against you in the Court. **If you do nothing, judgment may be entered against you.** That means that the Claimant will be entitled to take steps to enforce payment from you of any money claimed in the Claim Form and you will have no right to be heard except as to the amount of any costs claimed or as to the way in which you can pay the judgment unless you apply to set judgment aside (and it may not be possible for you to succeed in having it set aside).

#### **WHAT YOU CAN DO**

You can

#### **A. Defend the Claim**

**If you intend to do this you must:**

- (i) Complete the form of Acknowledgment of Service and return it to the Registry so that it is received there within **FOURTEEN DAYS** of the date on which you received this Form; and
- (ii) if a Statement of Claim was served on you with the Claim Form, complete the form of Defence, Form 5, or submit some other form of Defence showing why you dispute the claim and giving full details of all the facts on which you intend to rely if there is a trial. This must be delivered or sent to the Registry so that it is received there within **TWENTY-EIGHT** days of the date on which you received this Form and a copy must be served on the claimant's attorney-at-law (or the Claimant if he has no attorney-at-law) at the address given.

Note, where permission has been given under rule 8.2 for a Claim Form to be served with a Statement of Claim, the period for filing a Defence is the period of TWENTY-EIGHT days after the service of the Statement of Claim.

**B. Admit the whole of the Claim**

Complete the form of Acknowledgment of Service stating that you admit the claim and return it to the Registry so that it is received there within FOURTEEN DAYS of the date on which you received this Form.

If you can pay the amount stated on the Form including fees, costs and interest, you should pay this to the Claimant within FOURTEEN DAYS and no further step can be taken against you. You must add interest at the daily rate shown from the date stated on the Claim Form in calculating the amount to pay.

If you cannot pay this sum in full you may apply to the Court to pay by instalments. If you wish to do that, you must complete the Financial Particulars Form, Form 4A, and return it to the Court with your Acknowledgment of Service.

**C. Admit part of the claim and defend the rest**

Complete the form of Acknowledgment of Service stating how much you admit and return it to the Registry so that it is received there within FOURTEEN DAYS of the date on which you received this Form AND complete the Defence Form, Form 5, as indicated in section A above.

**You may also:**

Pay the amount that you admit directly to the Claimant OR apply to pay that sum by instalments. If so you should follow the procedure indicated in section B.

**D. Make a claim against the Claimant**

If you **would like** to do this you must:

- (i) Complete the form of Acknowledgment of Service and return it to the Registry so that it is received there within FOURTEEN DAYS of the date on which you received this Form; and
- (ii) if a Particulars of Claim was served with the Claim Form, complete the Defence Form giving details of your defence, if any, to the claim as indicated under A above and also the claim that you are making against the Claimant and return it to the Registry so that it is received there within TWENTY-EIGHT DAYS of the date on which you received this Form.

Note, where permission has been given under Rule 8.2 for a Claim Form to be served without a Particulars of Claim, the period for filing a Defence is the period of TWENTY-EIGHT DAYS after the service of the Statement of Claim.

If you admit the Claim but wish to counterclaim you should say so. If your counterclaim is for a lower sum than the claim you may pay the difference between the amount that the Claimant claims from you and the amount that you claim from him directly to the Claimant OR apply to pay that sum by instalments. If you wish to pay by instalments, you should follow the procedure indicated under B.

You will then be given details of the date, time and place of a case management conference at which a judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried. You must attend that hearing.

**REMEMBER, IF YOU DO NOTHING, JUDGMENT MAY BE ENTERED AGAINST YOU WITH COSTS WITHOUT ANY FURTHER WARNING.**



**FIXED DATE CLAIM FORM**

Form 2 (Rules 8.1(5), 23.12(2), 27.2, 59.4(2)  
60.2(1), 61.2(1) and 61.6(1))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

The Claimant, A.B. (full name), of (full address) claims against the Defendant C.D. (full names), of (full address)  
(Set out briefly the nature of the claim, any specific amount claimed and any other remedy sought from the Court)

I certify that all facts set out in this Claim Form are true to the best of my knowledge, information and belief.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
Claimant's signature

**NOTICE TO THE DEFENDANT**

The first hearing of this Claim will take place at [ \_\_\_\_\_ ] on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ am/pm.

If you do not attend at that hearing, judgment may be entered against you in accordance with the Claim.

If you do attend, the judge may

- (a) deal with the claim; or
- (b) give directions for the preparation of the case for a further hearing.

A Statement of Claim or an affidavit giving full details of the Claimant's claim should be served on you with this Claim Form. If this has not been done and there is no order permitting the Claimant not to serve the Particulars of Claim or affidavit, you should contact the Registry immediately.

You should complete the form of Acknowledgment of Service served on you with this Claim Form and deliver or send it to the Registry (address below) so that it is received there within FOURTEEN DAYS of service of this Claim Form on you. The form of Acknowledgment of Service may be completed by you or by an attorney-at-law acting for you.

**You should consider obtaining legal advice with regard to this Claim Form. See the notes on the back of this document or on the next page.**

**This Claim Form has no validity if it is not served within twelve months of the date below unless it is accompanied by an order extending that time.**

[SEAL]

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

Dated the

The Claimant's address for service is:

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

**NOTICE FOR DEFENDANT (FIXED DATE CLAIM)**

The Claimant is seeking an order from the Court as set out in the Claim Form herewith on the basis of the facts asserted in the Particulars of Claim or affidavit which was served with it. The Claimant will not be entitled to enter judgment against you without a hearing.

You may:

**A. Admit the Claim**

If so, you should complete and return the form of Acknowledgment of Service to the Registry within FOURTEEN DAYS, adding a statement that you admit the claim. You may also attend the first hearing if you wish to do so.

**B. Dispute the Claim**

If so, you should complete and return the form of Acknowledgment of Service within the time indicated in section A. You should also file at the Registry and serve on the Claimant's attorney-at-law (or the Claimant if he has no attorney-at-law):

- (a) a Defence, if the Claim Form is accompanied by the Claimant's Particulars of Claim; OR
- (b) an affidavit in answer, if the Claim Form is accompanied by an affidavit sworn by or on behalf of the Claimant,

within TWENTY-EIGHT DAYS of the day on which the Claim Form was served on you.

Your defence or affidavit must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

You should also attend the first hearing. If you do not, the judge may deal with the Claim in your absence.

**C. Make a claim against the Claimant**

If so, you should complete and return the form of Acknowledgment of Service within the time indicated under section A. You must file a Particulars of Claim (a Counterclaim) setting out full details of what you claim against the Claimant and the facts on which you will rely. This must be done within TWENTY-EIGHT DAYS of the date on which the Claim Form was served on you. The counterclaim should set out ALL the facts on which you reply in disputing any part of the Claimant's claim against you.

You should all attend the first hearing. If you do not, the judge may deal with the Claim in your absence.





**ACKNOWLEDGEMENT OF SERVICE  
OF CLAIM FORM**

Form 3 (Rules 8.12(1)(a), 9.1(2)(a) and 9.2(1)(b))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

**CLAIMNO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**WARNING:** If this document is not fully completed and returned to the Registry at the address below within **FOURTEEN DAYS** of service of the Claim Form on you, the Claimant will be entitled to apply to have judgment entered against you. If he does so you will have no right to be heard by the Court except as to costs or the method of paying any judgment unless you apply to set the judgment aside (and it may not be possible for you to succeed in having it set aside).

- 1. Have you received the Claim Form with the above Claim number? YES/NO
- 2. If so, when? \_\_\_\_/\_\_\_\_/\_\_\_\_  
Date
- 3. Did you also receive the Claimant's Statement of Claim? YES/NO
- 4. If so, when? \_\_\_\_/\_\_\_\_/\_\_\_\_  
Date
- 5. Are your names properly stated in the Claim Form?  
If not, what are your full names? YES/NO

.....

- 6. Do you intend to defend the Claim? YES/NO  
(If so you must file a Defence within 28 days of the date of service of the Claim Form on you.)
  
- 7. Do you admit the whole of the claim made in the Claim Form? YES/NO  
(If you do you should either  
(a) pay the claim directly to the Claimant or his attorney-at-law, or  
(b) complete the form of application to pay the claim by instalments.  
If you pay the whole debt together with the costs and interest as shown in the Claim Form within FOURTEEN DAYS you will have no further liability for costs.)
  
- 8. If you do not admit the whole of the claim, do you admit any part of the claim? YES/NO  
(If you do you may  
(a) pay the money that you admit direct to the Claimant or his attorney-at-law; or  
(b) complete the form of application to pay the claim by instalments.)
  
- 9. If so, how much do you admit? .....  
(If you dispute the balance of the claim you must also file a Defence within TWENTY-EIGHT DAYS of the date of service of the Claim Form on you or judgment may be entered against you for the whole amount claimed.)
  
- 10. What is your own address? .....  
.....  
.....

11. What is your address for service?  
(If you are acting in person you must give an address to which documents may be sent either from other parties or from the court. You should also give your telephone number and FAX number, if any.)

.....  
.....  
.....

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
Attorney-at-Law for the Defendant  
Defendant in person

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the Acknowledgement of Service).



**ACKNOWLEDGEMENT OF SERVICE  
OF FIXED DATE CLAIM FORM**

Form 4 (Rules 8.12(1)(a), 9.1(2)(a) and 9.2(1))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**WARNING:** This form should be completed and returned to the Registry at the address below within **FOURTEEN DAYS** of service of the Claim Form on you. However, the Claimant will not be entitled to have judgment entered against you except at the first or subsequent hearing of the Claim.

- 1. Have you received the Claim Form with the above number? YES/NO
- 2. If so, when did you receive it? \_\_\_/\_\_\_/\_\_\_  
Date
- 3. Did you also receive the Claimant's Particulars of Claim or affidavit in support? YES/NO
- 4. If so, on what date did you receive it? \_\_\_/\_\_\_/\_\_\_  
Date
- 5. Are your names properly stated in the Claim Form? YES/NO

If not, what are your full names?

.....





**APPLICATION TO PAY BY INSTALMENTS**

Form 4A (Rule 8.12(1)(e))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

**CLAIM NO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

The Applicant, A.B. (full names) , of (full address) owes the Claimant the amount of \$..... claimed on the Claim Form and cannot pay the amount in one lump sum.

The Applicant applies to the court for an order to pay the amount due by instalments of \$..... per week/month and provides the following information:

1. Marital status: Married  Single  Other  (specify)
2. Age:
3. Dependants: Children: (state names and ages)
4. Other Dependants: (state names and give details)
5. If employed state nature of employment and name and address of employer
6. If self-employed, give particulars of annual receipts of the business
7. Give details of any job other than main job



(j) Travelling expenses	\$.....
(k) Children's clothing	\$.....
(l) Maintenance payments	\$.....
(m) Others (do not include court orders and debts listed in 14, 15 and 16 hereunder)	
.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
Total expenses	\$.....

14. I am in arrears as follows:

(a) Rent arrears	\$.....
(b) Mortgage arrears	\$.....
(c) Water arrears	\$.....
(d) Electricity arrears	\$.....
(e) Telephone arrears	\$.....
(f) Maintenance arrears	\$.....
(g) Others	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
Total arrears	\$.....

15. I am making court ordered payments as follows:  
(specify particulars of case(s) and instalments or amounts ordered to be paid)

\$.....







**DEFENCE AND COUNTER CLAIM**

Form 5 (Rules 8.12(1)(b) and 10.2(1))

*SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE*

CLAIMNO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

I dispute the Claim on the following grounds:

I [full name of defendant] certify that I believe that the facts stated in this Defence are true.

My address for service is:

Telephone no.

Dated the                      day of                      20

Signed.....  
Defendant

We are acting for the defendant, and our address for service is:

Dated the                      day of                      20

Signed.....  
Attorney-at-Law for the Defendant

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

**COUNTERCLAIM**

I claim against the Claimant  
(Set out details of the remedy or relief sought)

on the following grounds:

I [full name of Defendant] certify that I believe that the facts stated in this Counterclaim are true. My address for service is:

Signed .....  
Defendant

Dated the .....

[SEE NOTE ON DEFENCE FORM]

We are acting for the Defendant, and our address for service is:

Signed .....  
Attorney-at-Law for the Defendant

Dated the .....

**Files by** (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Defence)

**NOTES:**

- (a) The Defendant may set out his defence in any way he chooses – it is not necessary to use this form.
- (b) The Defendant must:
  - state which allegations in the Claim Form he admits;
  - which he denies;
  - which he neither admits nor denies because he does not know whether they are true; and
  - identify any documents which he considers necessary to his case

- (c) The Defendant must give his reasons for denying any allegations made by the Claimant.
- (d) The Defendant must set out clearly all the facts on which he relies to dispute the Claim and must set out any different version of events on which he relies.
- (e) The Defendant may not be allowed to give evidence about any fact which is not set out in the Defence.
- (f) Where the Defendant wishes to counterclaim he must:
  - specify any remedy that he seeks against the Claimant;
  - include a short statement of all facts on which he relies; and
  - identify any documents which he considers necessary to his case.
- (g) Where the Defendant is represented by an attorney-at-law he must also sign the Form and give his address for service.
- (h) These notes are not exhaustive – see the Rules and particular Part 10.

[UNLESS THE FORM OF COUNTERCLAIM IS CLEARLY PART OF THE FORM OF DEFENCE, THESE NOTES WILL NEED TO BE ON BOTH.]



**REQUEST FOR DEFAULT JUDGMENT**

Form 6 (Rule 12.7(1))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

**CLAIM NO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

I/We \_\_\_\_\_ the Claimant/Claimant’s Attorneys-at-law request entry of judgment against the Defendant in default of

Acknowledgment of service YES/NO

Defence YES/NO

(In case of failure to enter Acknowledgment of Service)  
Evidence of service of the Claim Form and Statement of Claim is filed with this Request.

(In case of failure to serve Defence)  
I/We certify  
(a) that the time for the Defendant to file and serve his Defence has expired (including any extension of time agreed between the parties);  
(b) that no Defence or Counterclaim has been served on me/us;  
(c) that the Defendant has not paid any monies in settlement of the claim made in the Claim Form except such sum, if any as is stated below; and  
(d) (where appropriate) permission to enter judgment was given by the court on ..... (date)

Judgment should be entered for:

Amount claimed	\$.....
Court fees on Claim Form	\$.....
Attorney's-at-law fixed costs on issue	\$.....
Together with interest from date of issue to today	
at            per cent per annum	\$.....
Court fees on entering judgment	\$.....
Attorney's-at-law fixed costs on entering judgment	\$.....
 Total	 \$.....
 Less amount paid since issue of Claim Form	 \$.....
Amount for which judgment is to enter	\$.....

to be paid [forthwith] [on            (state date)            ] or by weekly/monthly instalments of \$..... commencing on (state date)

Dated the            day of            20

Signed.....  
[Attorney-at-Law for the Claimant]

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

**NOTES:**

Where the Request for Default Judgment concerns an unspecified sum of money, the following additional information is required:

- (a) whether or not the Claimant is in a position to prove the amount of the damages; and, if so
- (b) the Claimant's estimate of the time required to deal with the assessment

A Claimant who is not in a position to prove damages must state the period of time that will lapse before this can be done.

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



**REQUEST FOR ENTRY OF JUDGMENT  
ON ADMISSIONS**

Form 7 (Rule 14.5(2))

*SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE*

**CLAIMNO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

I/We \_\_\_\_\_ the Claimant/Claimant's Attorney(s)-at-law request entry of judgment against the Defendant on his admission

(Admission of whole debt)

A. Judgment should be entered for:

Amount claimed	\$.....
Court fees on Claim	\$.....
Attorney's-at-law fixed costs on issue	\$.....
Together with interest from date of issue to today at _____ percent per annum	\$.....
Court fees on entering judgment	\$.....
Attorney's-at-law fixed costs on entering judgment	\$.....
<b>Total</b>	<b>\$.....</b>
Less amount paid since issue of Claim Form	\$.....
Amount for which judgment is to enter	\$.....





OR

(iii) I/We do not accept the Defendant's proposals as to payment and ask for judgment to be entered for the balance due to be paid forthwith.

D. In paragraphs (ii) and (iii) above) my/our reasons for objecting to the Defendant's proposals are:

I/We do not accept that the Defendant's financial statement is correct. In particular, I/we dispute that

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signed.....  
[Attorneys-at-Law for the Claimant]

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



I am the \_\_\_\_\_ of the  
 Claimant/Defendant.

I accept responsibility for identifying any individuals who might be aware of any document which should be disclosed. I have asked the following individuals whether they are aware of any such documents :

NAME	POSITION
------	----------

The following (as set out in the Schedules hereto) is a numbered list of ALL the documents

- (a) which are or were in the physical possession of the claimant/defendant; or
- (b) of which the claimant/defendant has or has had a right to possession; or
- (c) which the claimant/defendant has or has had a right to inspect or of which the claimant/defendant has or has had a right to take copies,

on which the claimant/defendant relies or intends to rely in these proceedings, [together with all documents which the claimant/defendant was ordered to disclose by the order of the court dated \_\_\_\_\_ including all documents falling within any class or category of documents referred to in that order, which last-mentioned documents are grouped by reference to each such class or category and identified as being in that class or category.]

I/We claim a right to withhold disclosure and inspection of the documents listed in Part 2 of Schedule 1 on the basis stated in the Schedule.

The Claimant/Defendant is not in physical possession of the documents listed in Schedule 2 and the Schedule states what has happened to those documents.

Neither the Claimant/Defendant nor his attorney-at-law nor anyone else on his behalf has now, or ever has had in his physical possession nor has the Claimant/Defendant now nor has the Claimant/Defendant ever had the right to possession or the right to take copies of any documents which should be disclosed and inspected under the terms of the court's order other than those listed in this List of Documents.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
 Claimant/Defendant or named  
 representative for Claimant/Defendant

**SCHEDULE 1**

**PART 1**

No. Details of document, including its class or category (if any)

**PART 2**

No.	Details of document including its class or category (if any); or where a large number of documents are of the same kind, forming a class, details of the class.	Reason or reasons for claiming a right not to disclose, identifying each document to which each reason applies.
-----	---	---

**SCHEDULE 2**

No.	Details of document including its class or category (if any).	What has happened to the document including (to the best of my/our information and belief) where it is.
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**NOTICE TO INSPECT**

The documents listed in Part One of Schedule 1 may be inspected at on any normal working day between the hours of \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m. until \_\_\_\_\_ (date).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
Attorney's-at-Law for the Claimant/Defendant

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



# LISTING QUESTIONNAIRE

Form 9 (Rule 27.9(1))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**WARNING:** This is an important document. The information is required by the Court to list your case accurately. Inaccurate information may lead to a waste of Court time and delays to other people's cases. Failure to return the form to the Registry within **FOURTEEN DAYS** or to complete it fully will lead to a Listing Hearing being fixed. You may have to pay the costs of this hearing.

1. Have all the directions given by the Court been carried out? YES/NO
2. If not, which directions have not been carried out?

Disclosure of Documents	YES/NO
Inspection of Documents	YES/NO
Service of Affidavits or Witness Statements	YES/NO
Service of Expert Reports	YES/NO
Other (state which)	.....
3. Why have they not been carried out?
4. When can the direction be complied with?

- 5. Will any application for relief be made by you? YES/NO
- 6. Has ADR been tried? YES/NO
- 7. If not, why not?
  
- 8. Is ADR likely to be tried, or tried again? YES/NO
- 9. Are you ready for trial? YES/NO
- 10. If not, why not?
- 11. How many witnesses do you intend to call? .....
- 12. What is your present estimate for trial length? ..... hours  
..... days
- 13. What dates within the stated trial period will cause difficulty to the Claimant/Defendant?  
  
Attorney-at-Law  
  
His advocate?  
  
Any non-expert witness?  
  
Any expert witness?
- 14. Please give names, addresses and telephone numbers of any trial attorney-at-law that you propose to instruct and any expert witness whom you are entitled to call to give oral evidence.

15. Please state the name of the attorney-at-law who has conduct of this matter and give his direct telephone number and FAX number.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signed.....  
Attorney-at-Law for the Claimant/Defendant  
[Claimant/Defendant in person]

This form must be returned to the Registry within 21 days.

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

The Registry is located at The Law Courts, Bridgetown telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.





**APPLICATION FOR COURT ORDERS  
DURING OR AFTER THE COURSE OF  
COURT PROCEEDINGS**

---

Form 10 (Rule 11.4(4))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**NOTICE OF APPLICATION**

The Claimant/Defendant applies to the court for an order that:

A draft of the order that I seek is attached.  
The grounds of the application are:

[An affidavit in support accompanies this application]

Dated the                      day of                      20

.....  
Attorney-at-Law for the Claimant/Defendant

**NOTICE:**

This application will be heard by [the Judge in Chambers][Master] on the day of \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m.

If you do not attend this hearing an order may be made in your absence.

OR

The [Judge in Chambers][Master] will deal with this application by:

**NB:** This notice of application must be served as quickly as possible on the respondent to the application.

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



## ANCILLARY CLAIM FORM

Form 11 (Rule 18.2(2))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

To: \_\_\_\_\_ of \_\_\_\_\_

This claim has been brought by the claimant against the defendant in accordance with the Claim Form and Particulars of Claim served with this Notice. Copies of the defendant's Statement of Case (his defence) and of all other statements of case that have been filed in the proceedings are also served with this Notice.

The defendant claims against you

on the grounds that

[The defendant will also ask the court to determine the following matters not only between the claimant and himself but also between himself and you:

If you wish to dispute the claimant's claim against the defendant or the defendant's claim against you, you must

- (a) send or deliver a completed form of Acknowledgment of Service to the Registry (address below) so that it is received there within FOURTEEN DAYS; and
- (b) also send or deliver a defence to this Third Party Notice to the Registry so that it is received there within TWENTY-EIGHT DAYS of the day on which this Third Party Notice was served on you. You must also serve a copy of your defence on the defendant's Attorneys-at-Law [or the defendant, if in person] whose address for service is given below.

If you do not file a defence you will

- (a) be deemed to have admitted the defendant's claim against you; and
- (b) will be bound by any judgment or decision in the main proceedings in so far as it is relevant to any claim made against you and judgment may be entered against you.

Signed .....

Dated the .....

[SEAL]

This Notice was issued by  
of

Attorneys-at-Law for the Defendant

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



**WITNESS SUMMONS**

Form 12 (Rule 33.2)

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

**CLAIMNO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

To (Witness's name)

of (Witness's address)

You are summoned to attend at the High Court of Justice at The Law Courts, Bridgetown at a.m./p.m on the day of 20 , the day fixed for the hearing of this Claim or and from day to day as required until the end of the trial to give evidence [and to bring with you and produce the following documents:

]

Sum to be paid to the witness \$

Dated the day of 20

[SEAL]

This summons was issued on the authority of the claimant/defendant whose  
Attorney-at-Law is \_\_\_\_\_ of \_\_\_\_\_

Tel. \_\_\_\_\_ Fax. \_\_\_\_\_

The Registry is located at The Law Courts, Bridgetown, telephone number  
(246)426-3461, FAX (246)426-2405. The Office is open to the public between  
8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

[If issued pursuant to Rule 33.5(2)]:

Issued pursuant to a direction of the Court given this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ .

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law  
filing the claim).



**NOTICE OF JUDGMENT OR ORDER TO  
PERSON NOT A PARTY**

Form 13 (Rules 42.12 and 57.4(4)(b))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

To: [insert name and address of person ordered to be served]

Notice is hereby given to you of the Judgment or Order of the Honourable [insert name of the Judge who gave Judgment or made the Order and who gave direction for service] given or made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ a copy of which is attached.

You should not also that by Rule 42.12(5) of the Civil Procedure Rules, 2007, you are bound by the terms of the Judgment or Order to the same extent as you would have been a party to the proceedings in which the judgment was given or order made but you may apply to the Court within 28 days of being served to discharge, vary or add to the Judgment or Order and may also take part in any proceedings under the Judgment or Order.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signed.....  
[Claimant/Defendant]

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).





**ORDER FOR ORAL EXAMINATION**

Form 13A (Rule 44.4(1))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

On the application of the Judgment Creditor [here insert the name of the Judgment Creditor] made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ you [here insert the name of the Judgment Debtor or other person to be examined] are hereby ordered to attend at the Supreme Court, The Law Courts, Bridgetown on \_\_\_\_\_ the day of 20\_\_\_\_ at \_\_\_\_\_ in the morning/afternoon to be examined under oath as to what property or means you [or insert the name of the Judgment Debtor if the person to be examined is its officer or former officer] have and as to any debts which are owing to you [or insert the name of the Judgment Debtor if the person to be examined is its officer or former officer].

You are directed to produce such books or documents as are in your [or insert the name of the Judgment Debtor if the person to be examined is its officer or former officer] possession which are relevant to such property or means and to any debts owing to you [or insert the name of Judgment Debtor if the person to be examined is its officer or former officer] upon attending for the examination.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
[JUDGE]

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



**NOTICE OF ADJOURNED HEARING**

Form 13B (Rule 44.5(6))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

**CLAIMNO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

To:

Notice is hereby given to you of the adjournment of the Oral Examination which was fixed for hearing the  day of  20  at  o'clock in the morning/afternoon.

You are hereby ordered to attend the adjourned hearing to be heard by a Judge in Chambers at the Supreme Court, The Law Courts, Bridgetown, on  the day of  20  at  o'clock in the morning/afternoon.

The examination has been adjourned because\*:

- (a) you  [here insert the name of the examinee]:
  - (i) failed to attend;
  - (ii) refused to be sworn or affirm; or
  - (iii) refused to answer a question or questions; or
- (b) I,  [insert the name of the examiner] consider a freezing order to be appropriate in all the circumstances.

\* Appropriate reason to be certified.

Dated the  day of  20

.....  
EXAMINER

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



**FINANCIAL POSITION NOTICE**

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Form 14 (Rule 44.7)

***SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE***

**CLAIM NO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

To:

An application has been made to examine you orally as to your income assets and liabilities [the income, assets and liabilities of the claimant/defendant/company] and the means by which the judgment debt may be paid. There is served with this Notice an order giving the date, time and place of the oral examination.

You are required to complete and return within 10 days the attached questionnaire as to your means [the means of the company]. When you have done so, a copy will be sent to the judgment creditor and the judgment creditor may withdraw his application for an oral examination if he is satisfied with the information that you provide.

Unless you are notified by the court that your attendance is not required, you must attend court on the date, time and place stated in the attached order. If you fail to do so, further proceedings may be taken which may result in your being imprisoned.

Signed .....

Dated the .....

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

If you telephone or write to the Court you must quote the number at the top right hand corner of this form.

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).



**WRIT OF EXECUTION AGAINST GOODS  
(FI FA)**

Form 15 (Rule 46.1(a))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**REQUEST FOR ISSUE OF WRIT OF EXECUTION (FI FA)**

To the Court

We [I] of (Tel Fax ) Attorneys-at-Law for the Claimant/  
Defendant or the Claimant/Defendant in person] apply for the issue of a Writ of  
Execution against the judgment debtor to recover the sum stated below.

Amount of Judgment	\$.....
Costs	\$.....
Interest to date at percent per annum from	\$.....
Total sum due	\$.....
Less: Amount paid since judgment	\$.....
Balance of judgment now due	\$.....
Plus: fee on issue	\$.....
Attorney's-at-Law costs on issue	\$.....
Amount for which writ to issue	\$.....

We[I] certify that

- (a) the whole of the judgment or of an instalment due on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, under the judgment, [or part thereof being \$ \_\_\_\_\_ ] has not been paid; and
- (b) the balance of the judgment now due is as shown above.

Signed ..... Dated .....

Attorney-at-Law for the  
Claimant/Defendant in person

WRIT OF EXECUTION

To: The Marshal [Deputy Marshal]  
 You are required to levy the sum stated above together with interest at the rate of \_\_\_\_\_ % per annum from the day of \_\_\_\_\_ 20\_\_\_\_, until payment together with marshal's poundage fees, costs of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the Claimant/Defendant.

You are also required to endorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the Claimant/Defendant.

Signed .....

Attorney-at-Law for the  
Claimant/Defendant in person

Dated the .....

[SEAL]



## NOTICE TO JUDGMENT DEBTOR

### **Notice of levy**

The marshal has levied on your goods. This means that you must not dispose of them as the marshal may have to take them and sell them at a public auction.

### **Payment of the judgment debt**

If you pay the total amount due under this Writ including the marshal's poundage fees, costs of levying and any other legal incidental expenses, your goods will not be taken and you will not have to pay any more costs. You must pay the money to the Marshal and you will be given a receipt.

**If you do not want the Marshal to remove your goods**, you can ask the marshal not to do so but you must sign the walking possession agreement below.

If your goods are removed

- you will be given a list of the goods removed;
- the goods will not be sold for at least [ ] days – unless they are perishable;
- you will be given [ ] days notice of the date and place of sale, except in relation to perishable goods;
- further fees may be charged and added to the debt;
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

**When the goods are sold**, you will be given a written statement as to the sale and the distribution of the proceeds of sale.

**If the sale is stopped**, you will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

### **Walking Possession Agreement**

(request **not** to remove goods)

Please do not take my goods listed here:

I agree that until payment is made or the writ is withdrawn, I will:

- not remove or damage the goods or allow anyone to do so;
- show this form to anyone who calls and tries to take these goods;
- tell you immediately if anyone tries to do so; and;
- allow you to re-enter the premises at any time, and as often as you want, to see the goods or to complete the enforcement of this writ.

Signed .....

Dated the .....

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**WRIT OF POSSESSION**

Form 16 (Rule 46.1(b))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**Request for Issue of Writ of Possession**

To the Court

We [I] of

(Tel Fax ) [Attorneys-at-Law for the Claimant/Defendant or the Claimant/Defendant in person] apply for the issue of a Writ of Possession against the judgment debtor to recover possession of the land and property known as (description of property) and also to recover the sum stated below:

Amount of Judgment (if any)		\$.....
Costs		\$.....
Interest from at percent per annum		
to 20		\$.....
Rent/mesne profits to date from at \$ per		\$.....
Total sum due		\$.....
Less: amount paid since judgment		\$.....
Balance of judgment now due		\$.....
Plus: fee on issue		\$.....
Attorney's-at-Law costs on issue		\$.....
Amount for which writ to issue		\$.....

We[I] certify that the

- (a) Claimant is entitled to possession and that the Defendant has not complied with all conditions upon which the order for possession was suspended
- (b) balance of the judgment and rent/mesne profits now due is as shown above.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signed.....  
 Attorneys-at-Law for the Claimant/Claimant  
 or the Claimant/Defendant  
 in person

**WRIT OF POSSESSION**

To: The Marshal (Deputy Marshal)

You are required to take possession of the property known as (description of property) \_\_\_\_\_ and to deliver the same to the Claimant or his representative and also to levy the sum stated above together with interest at the rate of \_\_\_\_\_ % per annum from the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, until payment together with marshal's poundage fees, costs of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the Claimant.

You are also required to endorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the Claimant.

Signed .....

Dated the .....

[SEALED]

### **Notice to Judgment Debtor**

#### **Notice of taking possession**

You have failed to give up possession of the property described overleaf and the Marshal is authorised to enter the land to take possession of the property and to deliver such possession to the Claimant.

#### **Notice of levy**

The Marshal has levied on your goods in order to discharge the judgment for [arrears of rent][damages][rent][mesne profits] and [costs]. This means that you must not dispose of your goods as the Marshal may have to take them and sell them at a public auction.

#### **Payment of the money judgment**

If you are able to pay the money judgment in full the Marshal will not need to remove your goods. You will have to pay the full amount of the judgment plus interest and the costs of issuing this writ together with the Marshal's fees. You will be given a receipt for any money that you pay.

#### **If your goods are removed**

- (i) you will be given a list of the goods removed;
- (ii) the goods will not be sold for at least [ ] days – unless they are perishable;
- (iii) you will be given [ ] days notice of the date and place of sale, except in relation to perishable goods;
- (iv) further fees may be charged and added to the debt; and
- (v) these fees could include the costs of removing the goods and the fees charged by the auctioneer.

#### **When the goods are sold**

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

#### **If the sale is stopped**

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except public on holidays.



**WRIT OF DELIVERY OF VALUE**

Form 17 (Rules 46.1(d)(ii), 46.8)

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**Request for Writ of Delivery or Value**

To the Court  
We [I] of  
(Tel Fax ) [Attorneys-at-Law for the Claimant/  
Defendant or the Claimant/Defendant] in person apply for the issue of a Writ of  
Delivery against the judgment debtor to recover possession of (description of goods)  
or to recover the assessed value of the goods, namely \$

And also to recover

Damages	\$.....
Interest [as in previous forms where applicable]	\$.....
Costs	\$.....
Total sum due	\$.....
Less: amount paid since judgment	\$.....
Balance of judgment now due	\$.....
Plus: fee on issue	\$.....
Attorney's-at-Law costs on issue	\$.....
Amount for which writ to issue	\$.....

We[I] certify that the

- (a) Claimant is entitled to recover the goods which are the subject of the court's order or their value of \$ \_\_\_\_\_ assessed by the court; and
- (b) balance of judgment now due is as shown above.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
Attorneys-at-Law for the Claimant/Claimant  
or the Claimant/Defendant in person

**WRIT OF DELIVERY OR VALUE**

To: The Marshal (Deputy Marshal)

You are required to cause the goods \_\_\_\_\_ (description of goods) to be delivered to the Claimant, \_\_\_\_\_ A.B, \_\_\_\_\_ and if you are not able to do so to levy the sum of \$ \_\_\_\_\_ the assessed value of the goods.

You are also required to levy the sum of \$ \_\_\_\_\_ as stated above together with interest at the rate of \_\_\_\_\_ % per annum from the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, until payment together with Marshal's poundage fees, costs of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the Claimant.

You are also required to endorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the Claimant.

Signed .....

Dated the .....

[SEAL]

## **Notice to Judgment Debtor**

### **Notice of taking possession**

You have failed to deliver up the goods described overleaf and the Marshal is authorised to take possession of the goods and deliver them to the Claimant. If the Marshal is not able to take possession of the goods he is authorised to levy the sum stated overleaf being the value of the goods as assessed by the court.

### **Notice of levy**

The Marshal has levied on your goods in order to

- (a) discharge the claim for the assessed value of the goods; and
- (b) discharge the judgment for [damages] and [costs].

This means that you must not dispose of your goods as the marshal may have to take them and sell them at a public auction.

### **Payment of the money judgment**

If you are able to

- (a) deliver the goods described overleaf;
- (b) pay the assessed value of the goods; and
- (c) pay the money judgment in full,

the Marshal will not need to remove your goods. You will have to pay the full amount of the judgment plus interest and the costs of issuing this writ together with the Marshal's fees. You will be given a receipt for any money that you pay.

### **If you do not want the Marshal to remove your goods**

You can ask the marshal not to do so but you must sign the walking possession agreement below.

### **If your goods are removed**

- (i) you will be given a list of the goods removed;
- (ii) the goods will not be sold for at least [ ] days – unless they are perishable;
- (iii) you will be given [ ] days notice of the date and place of sale;
- (iv) further fees may be charged and added to the debt; and
- (v) these fees could include the cost of removing the goods and the fees charged by the auctioneer.

### **When the goods are sold**

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

### **If the sale is stopped**

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.



**Walking Possession Agreement**

(request not to remove goods)

Please do not take my goods listed here:

I agree that until payment is made or the writ is withdrawn, I will:

- not remove or damage the goods or allow anyone to do so;
- show this form to anyone who calls and tries to take these goods;
- tell you immediately if anyone tries to do so; and
- allow you to re-enter the premises at any time, and as often as you want, to see the goods or to complete the enforcement of this writ.

Signed .....

Dated the .....

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).



**ORDER FOR SEIZURE AND SALE  
OF GOODS**

Form 17A (Rule 46.7(2))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

The [Claimant] [Defendant] on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ having  
obtained judgment against the [Defendant] [Claimant] in this action for \$  
and \$ \_\_\_\_\_ for costs

And it having been made to appear to the satisfaction of the court that the said  
judgment remains wholly or partially unsatisfied

The Marshall **IS HEREBY ORDERED** to seize and sell such of the goods and  
chattels of the [Defendant] [Claimant] as shall be subject to execution and apply the  
proceeds of such sale in satisfaction of the said judgment under the further order of  
the court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
JUDGE

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

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**WRIT OF SPECIFIC DELIVERY**

Form 18 (Rules 46.1(d)(i) and 46.9)

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**Request for Writ of Specific Delivery**

To the Court  
 We [I] \_\_\_\_\_ of \_\_\_\_\_  
 (Tel \_\_\_\_\_ Fax \_\_\_\_\_) [Attorneys-at-Law for the Claimant/Defendant or the  
 Claimant/Defendant in person] apply for the issue of a Writ of Delivery against the  
 judgment debtor to recover possession of (description of goods).

And also to recover

Damages	\$.....
Interest [as in previous forms, where applicable]	\$.....
Costs	\$.....
Total sum due	\$.....
Less: amount paid since judgment	\$.....
Balance of judgment now due	\$.....
Plus: fee on issue	\$.....
Attorney's-at-Law costs on issue	\$.....
Amount for which writ to issue	\$.....

We[I] certify that

- (a) the Claimant is entitled to recover the goods which are the subject of the court's order and that the court has given permission for the issue of a writ of specific delivery on \_\_\_\_\_ (date);

(b) the balance of judgment now due is as shown above.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
Attorney-at-Law for the Claimant/Defendant  
or the Claimant/Defendant in person

**WRIT OF SPECIFIC DELIVERY**

To: The Marshal (Deputy Marshal)

You are required to cause the goods \_\_\_\_\_ (description of goods) to be delivered to the Claimant, A.B.

You are also required to levy the sum of \$ \_\_\_\_\_ as stated above together with interest at the rate of % per annum from the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, until payment together with Marshal's poundage fees, costs of levying and all other legal and incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the Claimant.

You are also required to endorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the Claimant.

Signed.....

Dated the.....

[SEAL]

## **Notice to Judgment Debtor**

### **Notice of taking Possession**

You have failed to deliver up the goods described overleaf and the Marshal is authorised to take possession of the goods and deliver them to the Claimant.

### **Notice of levy**

The Marshal has levied on your goods in order to discharge the judgment for damages and costs. This means that you must not dispose of them as the marshal may have to take them and sell them at a public auction.

### **Payment of the money judgment**

If you are able to pay the money judgment in full, the Marshal will not need to remove your goods. You will have to pay the full amount plus interest and the costs of issuing this writ together with the Marshal's fees. You will be given a receipt for any money that you pay.

### **If you do not want the Marshal to remove your goods**

Other than the goods which the court ordered you to deliver up to the Claimant, you can ask the Marshal not to do so but you must sign the walking possession agreement below.

### **If your goods are removed**

- (i) you will be given a list of the goods removed;
- (ii) the goods will not be sold for at least [ ] days – unless they are perishable;
- (iii) you will be given [ ] days notice of the date and place of sale, except in relation to perishable goods;
- (iv) further fees may be charged and added to the debt; and
- (v) these fees could include the cost of removing the goods and the fees charged by the auctioneer.

### **When the goods are sold**

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

### **If the sale is stopped**

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

**Walking Possession Agreement**

(request not to remove goods)

Please do not take my goods listed here:

I agree that until payment is made or the Writ withdrawn, I will:

- (i) not remove or damage the goods or allow anyone to do so;
- (ii) not show this form to anyone who calls and tries to take these goods;
- (iii) tell you immediately if anyone tries to take the goods; and
- (iv) allow you to re-enter the premises at any time and as often as you want to see the goods or to complete the enforcement of this Writ.

Signed.....

Dated the.....

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**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).



**ORDER FOR RECOVERY OF GOODS OR  
THEIR ASSESSED VALUE**

Form 18A (Rule 46.1(d)(ii))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

The [Claimant] [Defendant] on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ having obtained judgment in this action against the [Defendant [Claimant]] for the delivery of goods or payment of their assessed value

And it having been made to appear to the satisfaction of the Court that the said judgment remains wholly or partially unsatisfied

And the Court having been satisfied that the value of the goods the subject of the judgment have been assessed in the sum of \$ \_\_\_\_\_,

The Marshal **IS HEREBY ORDERED** to seize and sell such of the goods and chattels of the [Defendant] [Claimant] as shall to execution and apply the proceeds of such sale in satisfaction of the judgment or any balance outstanding not exceeding the assessed value of the goods the subject of the judgment, under the further order of the court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
JUDGE



**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

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## JUDGMENT SUMMONS

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Form 18B (Rule 52.2(1))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIMNO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

To the defendant [if the summons is issued against only one or some of several defendants, name that defendant or those defendants]

On [date] the claimant obtained a judgment or order against you.

And as you have failed to pay as ordered, the claimant has requested this judgment summons be issued against you.

You are therefore summoned to appear [personally] in this court on [date] at..... a.m./p.m. to be examined on oath as to the means you have had since the date of the judgment or order to comply with the terms of the judgment or order and also to give good reasons why you should not be committed to prison for failing to comply.



**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



**WRIT OF HABEAS CORPUS**

Form 19 (Rule 57.3(1)(a))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

**CLAIMNO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

To: the Superintendent of Prisons:

You are required to produce to the High Court on the            day of  
20    , at            a.m./p.m., the body of            by whatsoever name he is  
called, said to be detained in your custody, and be prepared to state the day and  
cause of his being taken and detained so that the Court may then and there examine  
whether such cause is legal.

**TAKE NOTICE** that if you fail to produce the body of  
before the Court on the date and at the time stated above the Court may commit you  
to prison for your contempt in not obeying the order contained in the Application.

Signed .....

Dated the .....

[SEAL]

Issued by            of  
Attorneys-at-Law for the Claimant

**Filed by** (specify name and address of attorney-at-law or firm of attorneys-at-law filing the claim).

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



## NOTICE OF APPEAL

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Form 20 (Rule 62.3)

***SUPREME COURT OF BARBADOS***  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**TAKE NOTICE** that the appellant (being the claimant/defendant in the court below hereby appeals to the Court of Appeal against the decision of [Mr/Madam Justice           ] [Master           ] [the            Magistrates Court] [            ] contained in the order dated            [a copy of which is attached to this Notice].

1. Details of order appealed from:

2. Details of:

(a) any finding of fact; or

(b) any holding of law

which is challenged.

3. Grounds of Appeal:

(a)

(b)

(c)

4. Order sought:
5. Any specific power which the court is asked to exercise:
6. Details of the other parties to the proceedings in the court below:  
Name and capacity in which each was a party

Address for service

Signed .....  
Attorneys-at-Law for the appellant

Dated the .....

whose address for service is:

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**ADMIRALTY CLAIM FORM IN REM**

Form 22 (Rule 70.4(1))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

**CLAIMNO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**CLAIMINREM**

Admiralty claim *in rem* against [The ship "X" or other res]

The Claimant A.B. (full names), of (full address)  
claims against  
the Defendant, C.D. (full names), of (full address)

[Set out briefly the nature of the claim and state any specific sum that is claimed.]

	\$
Amount Claimed	
Together with interest from the day of at day of % per annum to the	
Court fees	
Attorney's Fixed Costs on Issue	
Total Amount Claimed	

**NOTICE TO THE DEFENDANT(S)**, the owner(s) of and other persons interested in the ship "X" registered at the port of [or cargo or as may be]





**ACKNOWLEDGEMENT OF SERVICE OF ADMIRALTY CLAIM FORM IN REM**

Form 22A (Rules 70.5(7), 70.8)

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**WARNING:** If this form is not fully completed and returned to the court at the address below within FOURTEEN DAYS of service of the Claim Form on you, the Claimant will be entitled to apply to have the judgment entered against you. If he does so you will have no right to be heard by the court except as to the costs or the method of paying any judgment unless you apply to set judgment aside.

- 1. Have you received the Claim form with the above claim number? YES/NO
  - 2. If so, when? / /   
Date
  - 3. Did you also receive the Claimant's Statement of Claim? YES/NO
  - 4. If so, when? / /   
Date
  - 5. Are your names properly stated on the Claim Form YES/NO
- If not, what are your full names?

.....

6. Do you intend to defend the claim? YES/NO  
 If so you must file a Defence within 42 days of the service if this claim on you.
7. Do you admit to the whole of the claim? YES/NO  
 If you do you should consider to either:  
 (a) pay the claim directly to the Claimant or his attorney-at-law; or  
 (b) complete the application form to pay the claim by instalments.  
 If you pay the whole claim together with the costs and interest as shown on the Claim Form within 14 days, you will have no further liability for costss
8. Do you admit any part of the claim? YES/NO  
 If you do you may -  
 (a) pay the money that you admit directly to the Claimant or his attorney-at-law; or  
 (b) complete the application form to pay him by instalments
9. If so how much do you admit? .....
10. What is your own address? .....  
 .....  
 .....
11. What is your address for service?  
 If you are acting in person you must give an address to which documents may be sent either from other parties or from the court. You should also give your telephone number and fax number if any.  
 .....  
 .....  
 .....

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signed.....  
 [Defendant in Person] [Defendant's Attorney-at-Law]

**Filed by** (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the claim)

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



## ADMIRALTY LIMITATION CLAIM FORM

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Form 23 (Rule 70.4(3))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**LIMITATION CLAIM FORM**

The Claimant,	A.B.	(full names), of	(full address)
claims against			
the Defendant,	C.D.	(full names), of	(full address)

Set out briefly the nature of the claim

### **NOTICE TO THE DEFENDANT**

Unless you admit the claim against you, you must complete the form of Acknowledgment of Service served on you with this Claim Form and deliver or send it to the Registry (address below) so that it is received there within **FOURTEEN DAYS** of service of this Claim Form on you.

If you fail to do so the Claimant may proceed with the Claim without further notice to you. The form of Acknowledgment of Service may be completed by you or by an Attorney-at-Law acting for you.

You should consider obtaining legal advice with regard to this Claim.

This Claim Form has no validity if it is not served within twelve months of the date below unless you are also served with an order that extends the time for service.

Signed .....

Dated the .....

[SEAL]

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

The Claimant's address for service is:





**WARRANT OF ARREST (ADMIRALTY )**

Form 24 (Rule 70.9(1))

**SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE**

**CLAIMNO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**Request of Warrant of Arrest**

Admiralty Claim in rem against

[The ship "X" or other res]

**REQUEST FOR WARRANT OF ARREST**

We \_\_\_\_\_ of  
Attorneys-at-Law for the Claimant request a warrant to arrest (description of  
property, giving name and port of registration if a ship)

Signed .....

Dated the .....

**WARRANT OF ARREST**

To: the Marshal (Deputy Marshal)

You are required to arrest the ship \_\_\_\_\_ of the port of  
[and the cargo now or lately laden in her together with the freight due for the  
transportation of it] or [and the freight due for the transportation of the cargo now or  
lately laden in her] and to keep the same under safe arrest until you receive further  
orders from the Court.

The Claimant claims:

[SEAL]

Taken out by \_\_\_\_\_ of \_\_\_\_\_  
(Tel \_\_\_\_\_ ) (Fax \_\_\_\_\_ ) Attorneys-at-Law for the Claimant

[Marshal's endorsement as to service]

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(246)426-3461, FAX (246)426-2405. The Office is open to the public between  
8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



**REQUEST FOR CAVEAT AGAINST  
ARREST**

---

Form 24A (Rule 70.10)

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

**CLAIMNO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

[Description of property giving name, if a ship]

I/We [give name]  
of

[Attorneys-at Law for  
of

request a caveat against the arrest of [description of property giving name, if a ship] ]

[and undertake to acknowledge service of the claim form in any claim that may be begun in the High Court of Justice against [give name] and, within 3 days after receiving notice that a claim has been issued, to give security in the claim in the sum not exceeding [enter amount] or to pay that sum into court.]

[having constituted a Limitation Fund in Claim No. [give number]  
in respect of damage arising from the relevant incident, namely [describe briefly the  
incident]

and undertake to acknowledge service of the claim form in any claim that may be  
begun against the property described in this request.]

I/We consent that the claim form and any other documents in the claim may be left  
for me/us at [enter address]

Date

Signed.....

The Registry is located at The Law Courts, Bridgetown, telephone number  
(246)426-3461, FAX (246)426-2405. The Office is open to the public between  
8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



**REQUEST AND UNDERTAKING FOR  
RELEASE**

---

Form 24B (Rule 70.14(1))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**Admiralty Claim in rem against:**

The Admiralty Marshal is requested to release from arrest in the above claim the  
[give details]

lying [give details]

I/(We) personally undertake to pay the fees of the Marshal and all expenses incurred, or to be incurred, by him or on his behalf in respect of:

1. the arrest, or endeavours to arrest the property; and
2. the care and custody of it while under arrest; and
3. it's release, or endeavours to release it.

Date

Signed.....

To be signed by Attorney-at-Law

---

**Official use only:**

I confirm that at: \_\_\_\_\_ on: \_\_\_\_\_ no cautions  
have been filed or entered against release of the above property.

Signed.....

---

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**REQUEST FOR CAUTION AGAINST  
RELEASE**

---

Form 24C (Rule 70.15(1))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

[Description of property giving name, if ship]

I/We  
of

[Attorneys-at-Law for  
of

request the entry of a caution against the release of the above-named property or it's  
proceeds of sale paid into court by the Admiralty Marshal. ]

The applicant for a caution claims to have an in rem right against the above-  
mentioned property or proceeds of sale for [state nature of claim in rem and the approximate  
amount claimed, if known]

Date

Signed.....

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.





**REQUEST FOR WITHDRAWAL OF  
CAUTION AGAINST RELEASE**

---

Form 24D (Rule 70.16(2))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

Admiralty claim in rem against:

I/We  
of

[Attorneys-at-Law for  
of

]

request that the caution entered on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
against the release of the above-named property or the proceeds of its sale into court  
by the Admiralty Marshal, be withdrawn





**APPLICATION FOR APPRAISAL AND  
SALES**

---

Form 24E (Rule 70.24(1))

***SUPREME COURT OF BARBADOS  
IN THE HIGH COURT OF JUSTICE***

**CLAIM NO**

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**Admiralty claim in rem against:**

To the Defendant(s) and/or all persons who have entered cautions against release:

TAKE NOTICE that the claimant(s) will make an application on the \_\_\_\_\_ day  
of \_\_\_\_\_ at \_\_\_\_\_ am/pm, at

- (1) Judgment in default of filing an acknowledge of service [and/or defence] [or collision statement of case] be given for the claimant(s) in the sum of \_\_\_\_\_ with interest [or in an amount to be assessed] and for the costs of this claim including the costs of this application to be [summarily] assessed if not agreed.
- (2) [if applicable] The vessel [give name] be appraised and sold by the Admiralty Marshal.

Date

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.



## ORDER FOR SALE OF A SHIP

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Form 24F (Rule 70.24(2))

*SUPREME COURT OF BARBADOS*  
**IN THE HIGH COURT OF JUSTICE**

CLAIM NO

**BETWEEN**

**CLAIMANT**

**AND**

**DEFENDANT**

**Admiralty claim in rem against:**

BEFORE

UPON HEARING

and upon reading the written evidence of [give details]

[And no acknowledgement of service and/or defence or collision statement of case having been filed on behalf of the defendant(s)]

IT IS ORDERED that:

- (1) the ship [give details]  
be appraised and sold by the Admiralty Marshal [before judgment  
[if applicable]]
- (2) the Admiralty Marshal shall sell the vessel choose one or more experienced  
persons to appraise the vessel and certify the true value in writing.

- (3) the Admiralty Marshal sell the vessel on his conditions of sale for the highest price that can be obtained for it, but not for less than the certified value without an order of the court.
- (4) the Admiralty Marshal pay the proceeds of sale of the vessel into court.
- (5) on completion of the sale the Admiralty Marshal countersign and file the certificate of value together with an account of his fees and expenses.
- (6) the Solicitor on behalf of the claimant [or as my be] with [give details] give to the admiralty Marshal a personal undertaking to pay on demand the fees and expenses of the Marshal incurred by him or on his behalf in respect of the appraisal and sale of the property, or of endeavours to appraise or to sell the property.

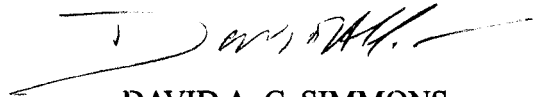
[OR BE SOLD IN SUCH OTHER WAY AS THE COURT MAY ORDER

]


Date

The Registry is located at The Law Courts, Bridgetown, telephone number (246)426-3461, FAX (246)426-2405. The Office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

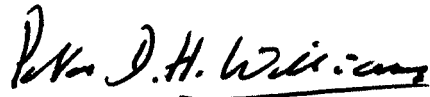
Made by the Rules Committee this 8<sup>th</sup> day of AUGUST,  
2008.



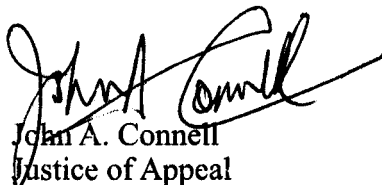
DAVID A. C. SIMMONS  
Chief Justice



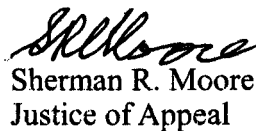
Frederick L. A. Waterman  
Justice of Appeal



Peter D. H. Williams  
Justice of Appeal



John A. Connell  
Justice of Appeal



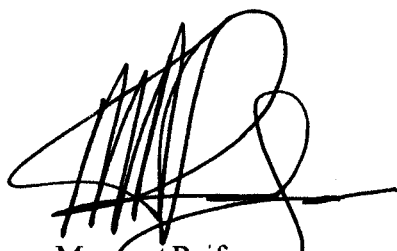
Sherman R. Moore  
Justice of Appeal



Elneth Kentish  
Judge of the High Court



William J. Chandler  
Judge of the High Court



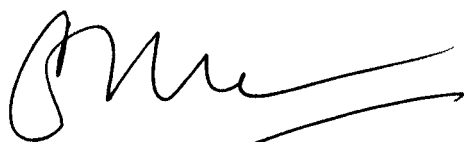
Margaret Reifer  
Judge of the High Court



Kaye Goodridge  
Judge of the High Court



Randall I. Worrell  
Judge of the High Court



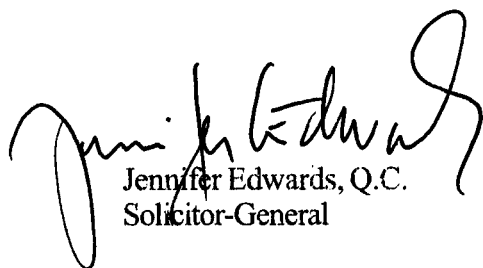
Jacqueline Cornelius  
Judge of the High Court



Sonia Richards  
Judge of the High Court



Maureen Crane-Scott  
Judge of the High Court



Jennifer Edwards, Q.C.  
Solicitor-General



Shirley V. Bell, Q.C.  
Chief Parliamentary Counsel



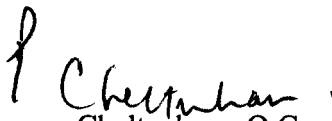
Wilfred Abrahams  
President, Bar Association



Alair Shepherd, Q.C.  
Attorney-at-Law



Leslie Haynes, Q.C.  
Attorney-at-Law



Patterson Cheltenham, Q.C.  
Attorney-at-Law



MARVA CLARKE  
Registrar (Ag)  
and  
Secretary of the Rules Committee