

# SUPREME COURT CIVIL PROCEDURE RULES, 2022

## Arrangement of Rules

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## **SUPREME COURT (CHAPTER 53)**

### **SUPREME COURT CIVIL PROCEDURE RULES, 2022**

The Rules Committee, in exercise of the power conferred by section 76 of the Supreme Court Act (*Ch. 53*), makes the following rules —

#### **PRELIMINARY**

##### **1. Citation and commencement.**

- (1) These Rules may be cited as the Supreme Court Civil Procedure Rules, 2022.
- (2) These Rules shall come into operation on such date to be appointed by the Rules Committee by notice published in the *Gazette*.

##### **2. Application of Rules.**

- (1) Subject to paragraph (4), these Rules shall —
  - (a) apply to all civil proceedings commenced in the Court on or after the date of commencement of these Rules;
  - (b) not apply to civil proceedings commenced in the Court prior to the date of commencement of these Rules except where —
    - (i) a trial date has not been fixed for those proceedings; or
    - (ii) a trial date has been fixed for those proceedings and that trial date has been adjourned.
- (2) In the case of civil proceedings —
  - (a) referred to in paragraph (1)(b)(i) —
    - (i) the claimant 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 twenty-eight days' notice of the conference; and
    - (ii) these Rules apply from the date of the case management conference given under paragraph (i).
  - (b) referred to in paragraph (1)(b)(ii), 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 in proceedings commenced before the date of commencement of the Rules, the Court has to exercise its discretion, it may take into account the principles set out in these Rules and, in particular Part 1 and Part 25.
- (4) For the purposes of these Rules, “**civil proceedings**” include judicial review but does not include —
  - (a) bankruptcy and insolvency proceedings, including winding up of companies;
  - (b) family proceedings except proceedings under the Child Protection Act (*Ch. 132*);
  - (c) non-contentious probate proceedings;
  - (d) proceedings in which the Court is acting as a Prize Court;
  - (e) any other proceedings in the Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.

### **3. Revocation.**

The Rules of the Supreme Court (*S.I. No. 48 of 1978*) are hereby revoked.

## **PART 1 - OVERRIDING OBJECTIVE OF RULES**

### **1.1 The Overriding Objective.**

- (1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.
- (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;
  - (e) allotting to it an appropriate share of the Court’s resources, while taking into account the need to allot resources to other cases; and
  - (f) enforcing compliance with rules, practice directions and orders.

## 1.2 Application of overriding objective by the Court.

- (1) The Court must seek to give effect to the overriding objective when —
  - (a) exercising any powers under these Rules;
  - (b) exercising any discretion given to it by the Rules; or
  - (c) interpreting these Rules.
- (2) These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

## 1.3 Duty of parties.

- (1) It is the duty of the parties to help the Court to further the overriding objective.
- (2) In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure keep his duty under paragraph (1).<sup>1</sup>

# PART 2 - ADMINISTRATION AND INTERPRETATION OF RULES

## 2.1 Definitions.

In these Rules, unless otherwise provided for or the context otherwise requires

—  
“**ADR procedure**” means any procedure for alternative dispute resolution including, in particular, mediation;

“**additional claim**” has the meaning given in rule 18.2(2);

“**additional claimant**” means a person who makes an additional claim;

“**additional defendant**” has the meaning given in rule 18.2;

“**applicant**” has the meaning given in rule 11.2;

“**application**” has the meaning given in rule 11.1;

“**attorney**” means a counsel and attorney as defined in section 2 of the Legal Professions Act (*Ch. 64*);

“**body corporate**” means a company or other body corporate wherever or however incorporated, other than a corporation sole, and includes a limited company unless a rule otherwise provides;

“**Chief Justice**” means the Chief Justice of The Bahamas and includes, in relation to any period in which the office of Chief Justice is vacant,

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<sup>1</sup>Part 25 deals with the court's duty to forward the overriding objective by active case management.

the person for the time being performing the functions of the Chief Justice or any other Judge authorised to act as Chief Justice;

**“Civil Procedure Rules”** means the Supreme Court Civil Procedure Rules, 2022;

**“claim”** is to be construed in accordance with Part 8;

**“claim form”** is 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 and 14, 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 claim form or statement of claim;

**“claim for personal injuries”** means proceedings 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 and, in relation to any proceedings commenced before these Rules came into force, includes a claimant in an action or the petitioner or applicant in any proceedings commenced by petition, originating summons or motion;

**“Court”** means the Supreme Court of The Bahamas;

**“court office”** refers to —

- (a) the place where documents are to be filed, etc. and includes a Registry; and
- (b) members of the court staff who carry out work of a formal or administrative nature under rule 2.3(1);

**“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 State other than The Bahamas except such an incorporated body which has been either continued or registered in The Bahamas.

“**filing**” is to be construed in accordance with rule 3.4;

“**fixed date claim form**” is a claim form in Form G4 upon which there is stated a date, time and place for the first hearing of the claim;

“**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 November 15, 1965;

“**judge**” —

- (a) includes the Chief Justice and any justice appointed under Article 94 or 95 of the Constitution;
- (b) does not include a registrar unless the context otherwise requires;

“**judgment creditor**” has the meaning given in rule 43.1(2);

“**judgment debtor**” has the meaning given in rule 43.1(2);

“**jurisdiction**” means the jurisdiction of the Court as extending throughout The Bahamas and any part of its territorial waters;

“**limited company**” means a body corporate that is incorporated or continued under the relevant legislation relating to companies in The Commonwealth of the Bahamas;

“**litigation guardian**” —

- (a) means —
  - (i) a person who is authorised by or under an enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor but only in a proceeding to which the authority extends; or
  - (ii) a person who is appointed under rule 23.8 to conduct a proceeding; and
- (b) has the same meaning as the expression “**guardian ad litem**”;

“**minor**” means a person who has not attained the age of majority;

“**money lending action**” has the meaning assigned to it by Part 62, Section II;

“**month**” means a calendar month;

“**Northern Region**” means the Family Islands of Abaco Bimini and Grand Bahama;

“**order**” includes an award, declaration, decree, direction or judgment;



- “overriding objective”** means the objective set out in rule 1.1;
- “party”** means any person who is a claimant, defendant or a person added to a proceeding;
- “patient”** means a person who by reason of mental disorder is incapable of managing his or her 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 condition;
- “Registry”** means a Registry of the Supreme Court;
- “stamped”** in relation to the stamp of the Court may be effected manually or electronically;
- “statement of case”** means —
- (a) a claim form, statement of claim, defence, counterclaim, additional claim form or defence and a reply; and
  - (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 for the time being;
- “videoconference”** means a remote hearing where the hearing is by video-link, live television link, internet link or any other means that will allow the Court and the parties to engage in simultaneous visual and oral communication facilitated through the use of technology by the Court.

## **2.2 Who may exercise the powers of the Court.**

- (1) Except where any enactment, rule or practice direction provides otherwise, the functions of the Supreme Court may be exercised by the Chief Justice, any judge or registrar of that court in accordance with these Rules or any practice direction made by the Chief Justice.
- (2) Where
  - (a) a trial has been commenced but not completed by a judge;
  - (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 Court, or if for any other reason it is impossible or inconvenient for the judge to act in the matter; or
  - (c) a trial or the hearing of an application has been completed by a judge and the judge has completed the judgment but has not delivered it prior to ceasing to be a judge,

the Chief Justice may assign some other judge to retry or complete the trial of the claim or to hear any application or exercise the jurisdiction or to deliver the judgment.

- (3) The Chief Justice may by practice direction allocate the work of the Court between judges and registrars.

### **2.3 Court staff.**

- (1) Where these Rules refer to an act being done by the court office 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) If a step may be taken by a member of the court staff —
  - (a) that person may consult a judge or registrar before taking the step; and
  - (b) that step may be taken by a judge or registrar instead of a member of the court staff.

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

- (1) Claims and petitions shall be heard in open court and applications shall be heard in chambers except that —
  - (a) an originating application under section II of Part 8 may be held in chambers;
  - (b) any hearing except the trial of an action may be conducted in chambers if the Court so directs,  
and the Court shall in each case decide whether the application is a proper one to be made in open court or by application in chambers, and may at or before the hearing, if it shall think fit, remove the same into open court or into chambers, as the case may be; and
  - (c) a judge may direct that any proceedings be heard in private with the consent of the parties.
- (2) An order made in chambers shall have the same force and effect as an order made in open court, and the Court sitting in chambers shall have the same power to enforce, vary, or deal with any such order, as if sitting in open court.
- (3) The Court may order that any —

- (i) hearing be conducted in whole or in part by means of a telephone call, videoconference or any other form of electronic communication; or
  - (ii) trial be conducted in whole or in part by means of videoconferencing or any other form of electronic communication.
- (4) The Court may give directions to facilitate the conduct of a hearing by videoconference or the use of any other electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

## **PART 3 - TIME, DOCUMENTS, ETC.**

### **3.1 Court to state calendar date.**

When making any judgment, order or direction which imposes a time limit for doing any act the Court must, wherever practicable, state —

- (a) the calendar date; and
- (b) the time of day,

by which the act must be done.

### **3.2 Computation of time.**

- (1) This rule shall apply to the calculation of any period of time for doing any act which is fixed by —
  - (a) a judgment or order of the Court;
  - (b) a practice direction; or
  - (c) these Rules.
- (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) *Document served by post are deemed to be served 14 days after posting:  
A Document posted on 1st September is deemed to be served on 16th September.*
- (b) *Document must be filed at least 3 days before the hearing:*

*Application is to be heard on Friday 20th October. The last date for filing the document is Monday 16th October.*

- (4) When the specified period —
- (a) is seven days or less; and
  - (b) includes —
    - (i) a Saturday or Sunday; or
    - (ii) any other day on which the court office is closed,
- that day does not count.

*Example*

*Notice of application must be given not less than seven days before a hearing:*

*Hearing on Friday 20th October.*

*Notice must be given not later than Tuesday 10th October.*

- (5) If the period specified for doing any act at the court office ends on a day on which the Court is closed, the act is in time if done before close of business on the next day on which the Court is open.
- (6) If the period specified for doing any act which does not need to be done at Court ends on —
- (a) a Saturday or Sunday; or
  - (b) any public holiday,
- the act must be done before 4:00 p.m. on the next business day.

### **3.3 Documents.**

- (1) Unless otherwise prescribed by practice direction issued by the Chief Justice, every document, so far as is practicable, prepared for use in the Supreme Court must be on “letter size” paper and in a form to be prescribed by Practice Direction issued by the Chief Justice.
- (2) The Chief Justice may by practice direction —
- (a) require any document filed or to be used in Court to be in the format that 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 Court must —
- (a) be headed with the —
    - (i) full title of the proceedings; and

- (ii) title of the document;
  - (b) state, in relation to the person filing it, the —
    - (i) name;
    - (ii) business address;
    - (iii) reference if any;
    - (iv) telephone number; and
    - (v) email address, if any;
  - (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) If a document is signed, the full name of the signatory must be set out legibly below the signature.

### **3.4 Filing of documents.**

- (1) A document may be filed by —
  - (a) delivering it; or
  - (b) submitting it by the method of electronic filing or by any other electronic means approved by or under the Rules in accordance with a practice direction issued by the Chief Justice,to the court office where the claim is proceeding or intended to proceed.
- (2) A document is filed on the day when it is stamped, manually or electronically, by or on behalf of the court office.
- (3) If a fee is to be paid, a 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.

### **3.5 Sealing of documents issued by the Court.**

- (1) The Court must seal the following documents on issue —
  - (a) a claim form;
  - (b) a notices of appeal; and
  - (c) a judgment, except a default judgment, order or directions of the Court.
- (2) The Court 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 electronic means.

- (3) Subject to paragraph (4), all judgments, except default judgments, and orders and directions of the Court must be signed or initialled by the judge or registrar who made the order or judgment or given the directions.
- (4) If that judge or registrar has demitted office or is otherwise not available to sign or initial the order or judgment or directions another judge may do so.
- (5) A document purporting to bear the Court's seal is admissible in evidence without further proof.

### **3.6 Forms.**

- (1) The forms in the *First Schedule* and where appropriate, practice forms must be used in the cases to which they apply.
- (2) A form may be varied if the variation is required by the circumstances of a particular case.
- (3) A form must not be varied so as to leave out any information or guidance which the form in the *First Schedule* or practice form gives to the intended recipient of the form.
- (4) If these Rules require a party to send a blank form to any other party, the party must send it to the other party without variation except the insertion of the title of the case and the Court's address to which that document is to be returned.
- (5) A form marked with the word "Seal" must bear the seal of the Court.
- (6) A reference in the *First Schedule* to the CPR is a reference to these Rules.

### **3.7 Address for service.**

- (1) Every statement of case must contain an address, including a street address, within the jurisdiction at which the party filing the statement of case will accept service of documents.
- (2) The address for service must also state —
  - (a) if given by an attorney the name or reference of the person who is dealing with the matter; and
  - (b) the telephone number and the email address of the attorney filing the document or if filed by one of the parties the telephone number and email address, if any, of that party.
- (3) 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 is regarded as validly served.

### **3.8 Statement of truth.**

- (1) Every statement of case must be verified by a statement of truth.
- (2) The statement of truth should be signed by the party personally.
- (3) If it is impracticable for the party personally to sign the statement required by paragraph (1), it may be given by that person’s attorney.
- (4) A statement of truth given by the attorney must also certify —
  - (a) that the statement is given on the party’s instructions; and
  - (b) the reasons why it is impractical for the party to give the statement personally.
- (5) If a statement of case is amended under Part 20, the amended statement of case must be verified by a statement of truth.
- (6) Information given under Part 34 must be verified by a statement of truth.
- (7) A statement of truth given by a party personally must be in the following form —

*“I [name] certify that I believe that the facts stated in this [name document] are true.”*
- (8) A statement given by the attorney for a party must be in the following form —

*“I [name of the individual attorney giving the certificate] certify that —*
  - (a) the [claimant or party on whose behalf the attorney signs] believes that the facts stated in this [name document] are true; and*
  - (b) this statement is given on the [claimant’s or party on whose behalf the attorney signs ] instructions.*

*The [claimant or party on whose behalf the attorney signs ] cannot give the certificate because [state reason]”*

### **3.9 Failure to give statement of truth.**

- (1) The Court may strike out any statement of case which has not been verified by a statement of truth.
- (2) Any party may apply for an order under paragraph (1).

### **3.10 Right to inspect, etc. certain documents filed in court office.**

- (1) On payment of the prescribed fee, any person is entitled, during office hours, to search for, inspect and take a copy of any of the following documents filed in the court office with redactions, if any, deemed necessary by a registrar namely —
  - (a) a claim form;

- (b) a defence;
  - (c) a reply;
  - (d) a notice of appeal;
  - (e) a judgment or order given or made in Court; and
  - (f) with the leave of the Court, which may be granted on an application made without notice, any other document.
- (2) Nothing in paragraph (1) prevents a party in any proceedings from searching for, inspecting asking for a copy of any affidavit or other document filed in the court office in those proceedings or filed before the commencement of those proceedings but with a view to its commencement.
- (3) Notwithstanding paragraph (1) the Chief Justice may by practice direction restrict access to certain specified documents filed in the court office having regard to the content and subject matter of the document or the case.
- (4) Any document filed in or in the custody of a Registry must not be taken out of the Registry without the leave of the Court unless the document is to be sent to another Registry or to a judge or registrar.

## **PART 4 - PRACTICE DIRECTIONS AND GUIDES**

### **4.1 Who may issue practice directions.**

Practice directions may be issued only by the Chief Justice.

### **4.2 Scope of practice directions.**

- (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 Court.

### **4.3 Publication of practice directions.**

Practice directions and guides must forthwith be posted on the website of the Judiciary or made available in such other manner as the Chief Justice may direct.

### **4.4 Compliance with practice directions.**

- (1) A party must comply with any relevant practice direction unless there is good reason for not doing so.



- (2) The Court may make an order, pursuant to rules 26.7 or Part 71, against a party who fails to comply with a practice direction.

#### **4.5 Practice guides.**

- (1) The Chief Justice may issue practice guides (hereinafter referred to as “guides”) to assist parties in the conduct of litigation.
- (2) Parties must have regard to any relevant practice guide.
- (3) The Court may take into account the failure of any party to comply with any practice guide when deciding whether or not to make an order under rules 26.7 or Part 71.

#### **4.6 Date from which practice directions and guides take effect.**

A practice direction or guide takes effect from the date specified in the direction or guide.

## **PART 5 - SERVICE OF CLAIM FORM WITHIN JURISDICTION**

#### **5.1 Service of claim form – normal method.**

- (1) A claim form must be served personally on each defendant.
- (2) Notwithstanding any other provisions of this Part, the Chief Justice may by practice direction, authorise the use of electronic means of communication, including e-mail, for service of a claim form under this Part.<sup>2</sup>

#### **5.2 Statement of claim to be served with claim form.**

- (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) unless dispensed with under paragraph (2) above, the statement of claim; or
  - (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;

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<sup>2</sup>Part 6 deals with service of other documents.

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

### **5.3 Method of personal service.**

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

### **5.4 Permitted place of service.**

Except as permitted by Part 7, a claim form must be served at a place within the jurisdiction.

### **5.5 Proof of personal service.**

- (1) Personal service of the claim form is 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) the precise manner by which the person on whom the claim form was served was identified; and
  - (d) precisely how the claim form was served.
- (2) If the person served was identified by another person, there must also be filed where practicable an affidavit by that person —
  - (a) proving the identification of the person served; and
  - (b) stating how the maker of the affidavit was able to identify the person served.
- (3) If the server identified the person to be served by means of a photograph or description there must also be filed an affidavit by a person -
  - (a) verifying the description or photograph as being of the person intended to be served; and
  - (b) stating how the maker of the affidavit is able to verify the description or photograph as being of the person intended to be served.

### **5.6 Service on attorney.**

The claim form must be served on an attorney where that attorney —

- (a) is authorised to accept service of the claim form on behalf of a party; and
- (b) has notified the claimant in writing that he is so authorised.

### **5.7 Service on limited company.**

Service of the claim form on a limited company may be effected —

- (a) by leaving the claim form at the registered office of the company;
- (b) 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; or
- (c) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company;
- (d) in any other way allowed by any enactment.

### **5.8 Service on firm or partnership.**

(1) Service of the claim form on a firm or partnership may be effected —

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

### **5.9 Service on body corporate.**

(1) Service of the claim form on a body corporate, other than a limited company, may be effected —

- (a) by leaving the claim form at the principal office of the body corporate;
  - (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.
- (2) In this rule, “**principal officer**” means the chairman or president of the body, or the chief executive officer, secretary, treasurer or other similar officer of the body.<sup>3</sup>

### **5.10 Service on minors and patients.**

- (1) Paragraphs (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 —

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<sup>3</sup>Rule 65.3 deals with service on the Crown.

- (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 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 authorised under paragraph (3), 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 paragraphs (2) to (4).
- (6) The Court may order that, although paragraphs (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 paragraph (5) or (6) may be made without notice but must be supported by evidence on affidavit.<sup>4</sup>

#### **5.11 Proof of postal service.**

- (1) Service by post should be approved 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.

#### **5.12 Proof of service by electronic means.**

- (1) Service by electronic means of a claim form is 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 a copy of —
  - (a) the document served;
  - (b) any cover sheet or email to that document;
  - (c) the transmission record; and
  - (d) proof of electronic service of the document, and must state the —
    - (i) electronic means by which the document was served;
    - (ii) e-mail address to which the document was transmitted; and
    - (iii) date and time of the transmission.

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<sup>4</sup>Part 23 deals generally with parties who are minors or patients.

- (3) Electronic confirmation of delivery may be treated as proof of service for a document that is served electronically and may include a written e-mail response or a read receipt.

### **5.13 Alternative methods of service.**

- (1) A claim form a party may choose an alternative method of service after taking reasonable steps to personally serve the claim form.
- (2) Where a party —
  - (a) chooses an alternative method of service; and
  - (b) the Court is asked to take any step, including the filing of a default judgment, on the basis that the claim form has been served,the party who served the claim form must file evidence on affidavit proving that it was impracticable to personally serve the defendant and that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.
- (3) An affidavit under paragraph (2) must —
  - (a) exhibit a copy of the documents served;
  - (b) give details of the attempts made to personally serve the defendant;
  - (c) give details of the alternative method of service used;
  - (d) show that —
    - (i) the person intended to be served was able to ascertain the contents of the documents; or
    - (ii) it is likely that he would have been able to do so; and
  - (e) 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 attorney for the claimant must immediately refer any affidavit filed under paragraph (2) to the Listing Office for a hearing on the papers before a judge or registrar 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 it was impracticable to personally serve the defendant or that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the court office must fix a date, time and place to consider making an order under rule 5.14 and give at least seven days' notice to the claimant or the claimant's attorney.

### **5.14 Power of Court to deem alternative method of service to be good service.**

- (1) The Court may direct that a claim form served by a method specified in the court's order be deemed to be good service.
- (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) showing that it is impracticable to personally serve the defendant;
  - (b) specifying the method of service proposed; and
  - (c) showing that that method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim.

#### **5.15 Proof of service by specified method.**

Service is proved by an affidavit made by the person who served the document showing that the terms of the order have been carried out.

#### **5.16 Service of claim form by contractually agreed method.**

- (1) This rule applies where a contract contains a term specifying how any proceedings 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 that contract.
- (3) If 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) If 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.

#### **5.17 Service of claim form on agent of principal who is out of jurisdiction.**

- (1) Where the conditions specified in paragraph (2) are satisfied, the Court may permit a claim form relating to a contract to be served on a defendant's agent.
- (2) The Court may not make an order under this rule unless it is satisfied that—
  - (a) at the time of the application —
    - (i) the agent's authority had not been terminated; or
    - (ii) the agent is still in business relations with the defendant;
  - (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and
  - (c) the defendant cannot be served within the jurisdiction.
- (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 file —
  - (a) an acknowledgement of service; and
  - (b) a defence.
- (5) When the Court makes an order under this rule, the claimant must serve the agent with —
  - (a) the claim form;
  - (b) the order; and
  - (c) subject to rule 5.2(2) above, the statement of claim,and at the same time send to the defendant at the defendant's address out of the jurisdiction a copy of each document.

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

- (1) Paragraphs (2) to (3) deal with the service of a claim form for possession of land where —
  - (a) there is no person in occupation of the land; and
  - (b) service cannot otherwise be effected on the defendant.
- (2) The Court may direct that a claim form and statement of claim be served by affixing a copy of the claim form to some conspicuous part of the land and by publishing a notice of the claim at least once in one or more newspapers of general circulation in the island 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 —
    - (i) other method of serving the defendant; and
    - (ii) person in possession of the land.

#### **5.19 Deemed date of service.**

- (1) A claim form that has been served within the jurisdiction by an alternative method of service is deemed to be served, unless the contrary is shown, on the day shown in the table in rule 6.6.
- (2) If a claim is sent to the attorney of a party 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 attorney certifies that he accepts service.
- (3) If an acknowledgement of service is filed, whether or not the claim form has been duly served, the claimant may treat —
  - (a) the date of filing the acknowledgement of service; or

- (b) if earlier, the date shown on the acknowledgement of service for receipt of the claim form; as the date of service.
- (4) A claimant may file evidence on affidavit to prove that service was in fact effected on a date earlier than the date on which it is deemed to be effected.

## **PART 6 - SERVICE OF OTHER DOCUMENTS**

### **6.1 Who is to serve documents other than the claim form.**

- (1) Every order must be served by the party obtaining the order unless the Court orders otherwise.
- (2) Any other document must be served by the party who filed it unless —
  - (a) a rule or practice direction otherwise provides; or
  - (b) the Court orders otherwise.

### **6.2 Method of service.**

If 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 any address for service in accordance with rule 6.3(1);  
or
- (c) other means of electronic communication if this is permitted by a relevant practice direction;

unless a rule otherwise provides or the Court orders otherwise.

### **6.3 Address for service.**

- (1) Documents must be delivered or, if allowed, sent by electronic communication or posted to a party at any address for service within the jurisdiction given by that party.
- (2) If a party to be served has not given an address within the jurisdiction at which documents for that party may be served, documents must be served at the address indicated in rule 6.4.

### **6.4 Serving documents where no address for service is given.**

- (1) If no address is given for service the document may be served by leaving it —
  - (a) in the case of a firm or partnership, either —



- (i) at 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; or
  - (ii) the usual or last known place of residence of one of the partners;
  - (b) in the case of an individual – that person’s usual or last known place of residence;
  - (c) in the case of a proprietor of a business, that person’s —
    - (i) usual or last known place of residence; or
    - (ii) place of business or last known place of business; or
  - (d) the business address of any attorney who purports to act for the party in the proceedings.
- (2) Part 5 may be applied to such a document as if it were a claim form.

**6.5 Service of documents on person who is not a party.**

If the Court or a party is to serve documents on a person who is not a party, such documents must be served by one of the methods specified in Part 5 or as the Court shall otherwise direct.

**6.6 Deemed date of service.**

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

<b>Method of Service</b>	<b>Deemed date of service</b>
Post	28 days after posting;
Registered Post	21 days after the date indicated on the Post Office or courier receipt;
Leaving document at a permitted address	the day after leaving the document;
Other electronic method of service	4:00 p.m. on the same day of transmission or if transmission is after 4:00 p.m. the following business day at 9:00 a.m.

- (2) Any document served after 4 p.m. on a business day or at any time on a day other than a business day is treated as having been served on the next business day.
- (3) In this rule, “**business day**” means any —

- (a) day other than a Saturday, Sunday or public holiday; or
- (b) other day on which the court office is closed.

### **6.7 Proof of service.**

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

### **6.8 Power of Court to dispense with service.**

- (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 but must be supported by evidence on affidavit.

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

- (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 where express provision as to service is not made by any enactment or rule.
- (2) Any such document must be served in accordance with rule 65.3.

## **PART 7 – SERVICE OF COURT PROCESS OUT OF JURISDICTION**

### **7.1 Scope of this Part.**

- (1) This Part contains provisions about the —
  - (a) circumstances in which court process may be served out of the jurisdiction; and
  - (b) procedure for serving court process out of the jurisdiction, when under these Rules it is required to serve a party but such service cannot be served in The Bahamas.
- (2) In this Part references to “service” or “filing copies of the claim form” include —
  - (a) the statement of claim, unless contained in the claim form; or
  - (b) an affidavit in support of the claim, if these Rules so require; and
  - (c) if permission has been given under rule 8.2(2) to serve the claim form without the statement of claim, a copy of the order giving permission.

## **7.2 When service allowed without leave.**

A claim form may be served out of The Bahamas without leave in the following cases —

- (a) when a claim is founded on a tort, fraud or breach of duty whether statutory at law or in equity and —
  - (i) any act or omission in respect of which damage was sustained was done or occurred in The Bahamas; or
  - (ii) the damage was sustained in The Bahamas;
- (b) when a contract sought to be enforced or rescinded, dissolved, annulled, cancelled, otherwise affected or interpreted in any proceeding, or for the breach of which damages or other relief is demanded in the proceeding —
  - (i) was made or entered into in The Bahamas; or
  - (ii) was made by or through an agent trading or residing within The Bahamas; or
  - (iii) was to be wholly or in part performed in The Bahamas; or
  - (iv) was by its terms or by implication to be governed by the law of The Bahamas;
- (c) there has been a breach in The Bahamas of any contract, wherever made;
- (d) when the claim is for a permanent injunction to compel or restrain the performance of any act in The Bahamas;
- (e) when the subject matter of the proceeding is land or other property situated in The Bahamas, or any act, deed, will, instrument, or thing affecting such land or property;
- (f) when the proceeding relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee or beneficiary or protector and which ought to be carried out or discharged according to the laws of The Bahamas;
- (g) when any relief is sought against any person domiciled or ordinarily resident in The Bahamas;
- (h) when any person out of the jurisdiction is —
  - (i) a necessary or proper party to proceedings properly brought against another defendant served or to be served, whether within The Bahamas or outside The Bahamas under any other provision of these rules, and there is a real issue between the claimant and that defendant that the Court ought to try; or
  - (ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by proceedings in the Court;

- (i) when the proceeding is for the administration of the estate of any deceased person who at the time of his or her death was domiciled in The Bahamas;
- (j) when the claim arises under an enactment and either —
  - (i) any act or omission to which the claim relates was done or occurred in The Bahamas; or
  - (ii) any loss or damage to which the claim relates was sustained in The Bahamas; or
  - (iii) the enactment applies expressly or by implication to an act or omission that was done or occurred outside The Bahamas in the circumstances alleged;
- (k) if the claim is one in respect of which an enactment expressly confers jurisdiction on the Court over persons outside The Bahamas, in which case any requirements of the enactment relating to service must be complied with;
- (l) when the person to be served has submitted to the jurisdiction of the Court;
- (m) when it is sought to enforce any judgment or arbitral award;
- (n) when a claim is made for restitution or for the remedy of a constructive trust and the defendant's alleged liability arises out of acts committed within the jurisdiction or out of acts which, wherever committed, were to the detriment of a person domiciled or ordinarily resident within the jurisdiction;
- (o) when a claim is made under an enactment which confers jurisdiction on the Court and the proceedings are not covered by any of the other grounds referred to in this rule;
- (p) when the subject matter of a claim relates to the constitution, administration, management or conduct of the affairs or the ownership or control of a company incorporated, continued or registered within the jurisdiction;
- (q) when a claim is made for interim relief in support of judicial or arbitral proceedings commenced or to be commenced outside the jurisdiction;
- (r) when the claim is brought for any relief or remedy in respect of any trust, whether express, implied or constructive, that is governed by or ought to be executed according to the laws of The Bahamas or in respect of the status, rights or duties of any trustee thereof in relation thereto; or
- (s) when the claim is brought against a person who is or was a director, officer or member of a company incorporated or registered within the jurisdiction or who is or was a partner of a partnership, whether

general or limited, which is governed by the laws of The Bahamas and the subject matter of the claim relates in any way to such company or partnership or to the status, rights or duties of such director, officer, member or partner in relation thereto.

### **7.3 When service is allowed with leave.**

- (1) In any proceeding when service is not allowed under rule 7.2, a claim form may be served outside of The Bahamas with the leave of the Court.
- (2) An application for leave under this rule must be made on notice to every party other than the party intended to be served.
- (3) A sealed copy of every order made under this rule must be served with the document to which it relates.
- (4) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the Court assuming jurisdiction under rule 7.4, including the grounds on which the application is made, the place or country in which the person to be served is or possibly may be found, whether or not the person to be served is a citizen of The Bahamas and a statement that in the deponents belief there is a serious issue to be tried on the merits.
- (5) The Court may grant an application for leave if the applicant establishes —
  - (a) that the claim has a real and substantial connection with The Bahamas; and
  - (b) that there is a serious issue to be tried on the merits; and
  - (c) that The Bahamas is the appropriate forum for the trial; and
  - (d) any other relevant circumstances to support an assumption of jurisdiction.

### **7.4 Court's discretion whether to assume jurisdiction.**

- (1) If service of process has been effected out of The Bahamas without leave, and the Court's jurisdiction is protested under rule 9.7, the Court must dismiss the proceeding unless the party effecting service establishes —
  - (a) that —
    - (i) there is a good arguable case that the claim falls wholly within one or more of the paragraphs of rule 7.2; and
    - (ii) the Court should assume jurisdiction by reason of the matters set out in rule 7.3(5)(b) to (d); or
  - (b) that, had the party applied for leave under rule 7.3 —
    - (i) leave would have been granted; and

- (ii) it is in the interests of justice that the failure to apply for leave should be excused.
- (2) If service of process has been effected outside of The Bahamas under rule 7.3, and the Court's jurisdiction is protested under rule 9.7, and it is claimed that leave was wrongly granted under rule 7.3, the Court must dismiss the proceeding unless the party effecting service establishes that in the light of the evidence now before the Court leave was correctly granted.
- (3) When service of process has been validly effected out of The Bahamas, but The Bahamas is not the appropriate forum for trial of the action, the defendant may apply for a stay, or for a dismissal of the proceeding under rule 9.8 or under the Court's inherent jurisdiction to stay proceedings.

### **7.5 Service of other documents outside The Bahamas.**

Any document other than a claim form required by any rule to be served personally may be served abroad with the leave of the Court, upon an application without notice and supported by an affidavit, which may be given with any directions that the Court thinks just.

### **7.6 Acknowledgement of service and defence where claim form served out of the jurisdiction.**

A claim form to be served out of the jurisdiction must be amended to state the period within which the acknowledgement of service and defence must be filed.

### **7.7 Notice to defendant served outside The Bahamas.**

If a defendant is to be served out of The Bahamas with a claim form, the Claimant must attach a notice to the claim form, which may be in Form G7 informing the defendant of—

- (a) the scope of the jurisdiction of the Court in respect of claims against persons who are not resident in The Bahamas; and
- (b) the grounds alleged by the claimant in relying on that jurisdiction; and
- (c) the defendant's right to enter an acknowledgement of service and objection to the jurisdiction of the Court under Part 9.

### **7.8 Service outside The Bahamas.**

- (1) Subject to paragraph (3) and (4), a claim form permitted under these rules to be served outside The Bahamas may be served by a method —
  - (a) specified in Part 5; or
  - (b) permitted by the law of the country in which it is to be served; or
  - (c) provided for in rules 7.9 and 7.10.

- (2) When a convention relating to service of process is in force between The Bahamas and the country where service is to be effected, service must be effected in accordance with a method provided for, or permitted by, that convention.
- (3) No service outside The Bahamas is valid if effected contrary to the law of the country where service is effected.

### **7.9 Service through official channels.**

- (1) When a party seeks service outside The Bahamas through official channels, the request must be sent by the Registrar to the Attorney-General for further transmission to the appropriate authorities in the foreign country.
- (2) Proof of service must be returned to the Registrar through the same channels.
- (3) In respect of each person to be served, the request for service must be accompanied by —
  - (a) the document to be served; and
  - (b) a copy of the document to be exhibited to the evidence verifying service; and
  - (c) when the language of the person to be served is not English,—
    - (i) a translation of the document into the language, verified as correct to the satisfaction of the Registrar, of the person to be served for service with the document; and
    - (ii) a copy of that translation, which must be exhibited to the evidence verifying service.
- (4) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a The Bahamas consular officer, is sufficient proof of that fact and date.
- (5) This rule is subject to any relevant convention that requires or permits any other method of service through official channels.

### **7.10 Service in convention countries.**

- (1) This rule applies when —
  - (a) a convention is in force between The Bahamas and any other country relating to the service of documents in proceedings in the courts of the respective countries; and
  - (b) a party to a proceeding in The Bahamas desires to take advantage of any provision made in the convention for service in that other country by official means.

- (2) When this rule applies, the party seeking service may file a request in Form G8 stating the official means of service desired and containing the undertaking set out in that form covering the payment of expenses.
- (3) Paragraph (2) is subject to the provisions of the convention.
- (4) In respect of each person to be served, the request for service must be accompanied by —
  - (a) the document to be served; and
  - (b) a copy of it exhibited to the evidence verifying service; and
  - (c) when the language of the person to be served is not English —
    - (i) a translation of the document into his or her language, verified as correct to the satisfaction of the Registrar, for service with the document; and
    - (ii) a copy of that translation to be exhibited to the evidence verifying service.
- (5) The document and translation to be served must be sealed by the Registrar with the seal of the Court and the documents required to accompany the request for service forwarded by the Registrar to the Attorney-General for transmission through the appropriate channels to the country concerned for service in accordance with the request for service.
- (6) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a Bahamas consular officer, and transmitted by the Attorney-General to the Registrar is sufficient proof of that service.
- (7) A certificate filed by the Registrar is equivalent to an affidavit of service of the documents referred to in the certificate.

#### **7.11 Time for filing defence.**

Except when the Court otherwise orders, a defendant who has been served out of The Bahamas must file a statement of defence or acknowledgment of service within 30 working days from the date of service.

#### **7.12 Mode of service – alternative method.**

- (1) Where service on the defendant under rule 7.8 is impracticable, the claimant may apply for an order under this rule that the claim form be served by a method specified by the Court.
- (2) An order made under this rule shall specify the date on which service of the claim form shall be deemed to have been effected.
- (3) Where an order is made under this rule, service by the method specified in the court's order shall be deemed to be good service.



- (4) An application for an order under this rule may be made without notice but must be supported by evidence on affidavit —
  - (a) specifying the method of service proposed;
  - (b) providing full details as to why service under rule 7.7 is impracticable;
  - (c) showing that such method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim; and
  - (d) certifying that the method of service proposed is not contrary to the law of the country in which the claim form is to be served.
- (5) Where any method of service specified in an order made under this rule is subsequently shown to be contrary to the law of the country in which the claim was purportedly served, such service shall be invalid.

### **7.13 Power of Court to dispense with service of the claim form.**

- (1) The Court may dispense with service of a claim form in exceptional circumstances.
- (2) An application for an order to dispense with service may be made without notice at any time and must be supported by evidence on affidavit.

### **7.14 Service of claim form on a State where Court permits service out of jurisdiction.**

- (1) This rule applies where a claimant wishes to serve a claim form on a State.
- (2) If the 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 court office —
  - (a) a copy of the claim form;
  - (b) any translation required by virtue of rule; and
  - (c) a request for service to be arranged by the Attorney-General.
- (4) The court office must send documents filed under this rule to the Attorney-General with a request that the Attorney-General arrange for the claim form to be served.
- (5) If a State has under any enactment relating to state immunity agreed to a method of service the claim form may be served either by the method agreed or in accordance with this rule.

- (6) An official certificate by the minister with responsibility for 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.
- (7) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

### **7.15 Service of Court process other than claim form.**

- (1) An application, order or notice made or given in any proceedings may be served out of the jurisdiction without the court's permission if it is served in proceedings in which permission has been given to serve the claim form out of the jurisdiction.
- (2) The procedure by which a document specified in paragraph (1) is to be served is the same as that applicable to the service of a claim form and accordingly the rules under Part 5 shall apply.

## **PART 8 – HOW TO START PROCEEDINGS**

### **SECTION I - GENERAL PROVISIONS**

#### **8.1 How to start proceedings.**

- (1) Depending upon the nature of the proceedings and the provisions of any statutory provision or rule or practice direction, there are three methods by which a claimant may start proceedings namely, by —
  - (a) standard claim form in Form G3;
  - (b) fixed date claim form in Form G4; or
  - (c) originating application form using Form G5 or Form G6.
- (2) A claimant starts proceedings by filing in the court office the original and not less than two copies of —
  - (a) the claim form; and
  - (b) subject to rule 8.2, the statement of claim; or
  - (c) an affidavit or other document, where any rule or practice direction so requires.
- (3) A claim form is issued on the date when it is stamped by or on behalf of the court office.
- (4) For the purpose of any enactment relating to limitation periods, an action is brought on the day on which the claim form is stamped as received in, by or on behalf of the court office.<sup>5</sup>
- (5) A standard claim form is to be used except where —

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<sup>5</sup>Rule 3.4(2) defines when a document is filed.

- (a) rule 8.1(6) requires that the claim must be started using a fixed date claim form; or
  - (b) where an originating application form under this Part is the more appropriate method of starting and thereafter conducting the claim.
- (6) A fixed date claim form must be used —
- (a) in claims arising out of hire-purchase or credit sale agreements;
  - (b) in money lending actions under Part 62;
  - (c) in proceedings for possession of land; and
  - (d) whenever its use is required by a rule or practice direction.<sup>6</sup>
- (7) A person who seeks a remedy —
- (a) before proceedings have been started; or
  - (b) in relation to proceedings which are taking place, or will take place, in another jurisdiction must seek that remedy by an application under Part 11.

## **8.2 Statement of claim, etc. to be issued and served with claim form.**

- (1) A claim form may be issued and served without the statement of claim, affidavit or other document required by rule 8.1(2)(b) or (c) only if the —
  - (a) claimant has included in the claim form, all the information required by rules 8.6, 8.7, 8.8 and 8.9; or
  - (b) the Court gives permission.
- (2) In a case of urgency when it is not practicable to include in the claim form all the information required by rules 8.6, 8.7, 8.8 and 8.9 or first to obtain the permission of the Court a claimant may issue and serve the claim form without a statement of claim or affidavit or other document required by rule 8.1(2)(b) or (c), provided that the claimant —
  - (a) certifies in writing that the issue and service of the claim form is a matter of urgency, stating why; and
  - (b) serves with the claim form a copy of —
    - (i) the certificate; and
    - (ii) an application for permission.
- (3) If a claim form is issued under paragraph (2), unless the Court otherwise orders, pending the granting of permission by the Court, the claimant may take no further steps in the action except to file and serve the claim form, together with the certificate and application for permission, and to take such steps as are necessary to pursue the application for permission.
- (4) The Court may give permission under paragraph (1)(b) only if it is satisfied that —

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<sup>6</sup>Rule 27.2 (fixed date claims - first hearing) deal with the procedure under a Fixed Date Claim Form.

- (a) a relevant limitation period is or was about to expire and the claimant has obtained legal advice relating to the claim for the first time within the twenty-eight days prior to the date that the claimant wishes to file the claim; or
  - (b) the claim form requires or required to be issued as a matter of urgency and that it is or was not practicable for the claimant to prepare a statement of claim or affidavit.
- (5) An application for permission may be made without notice but must be supported by evidence on affidavit.
- (6) Any order giving permission for the claim form to be filed and served without a statement of claim, affidavit or other document required by rule 8.2(1)(b) or (c), must state a date by which the statement of claim or other document must be filed and served.
- (7) Such date must in no case be more than twenty-eight days from the date of the order giving permission.
- (8) A copy of the order, or certificate and application under paragraph (2), must be served with the claim form.
- (9) The claimant must file a copy of the statement of claim, or affidavit or other document required by rule 8.1(1)(b) or (c), served in accordance with paragraph (6) endorsed with a certificate stating the date of service and the address at which and manner in which it was served.

### **8.3 Where to start proceedings.**

- (1) This rule identifies the court office at which a claim form may be issued.
- (2) Where proceedings relate to land in the Northern Region they shall be commenced in the court office in Grand Bahama.
- (3) In all other cases relating to land, the court proceedings shall be commenced in the court office in New Providence.
- (4) In the case of any other proceedings where —
  - (a) either the cause of action arose or the defendant resides or carries on business in the Northern Region, they shall be commenced in the court office in Grand Bahama; or
  - (b) the cause of action arose or the defendant resides or carries on business in any place outside the Northern Region, they shall be commenced in the court office in New Providence.
- (5) In any case the court can, either on its own motion or on an application without notice supported by an affidavit, order that the proceedings are to be commenced in or transferred to any court office which it deems appropriate.

- (6) In the case of an application under paragraph (4) above, the affidavit shall set out the grounds of the application and all circumstances relevant thereto.

#### **8.4 Right to make claim which includes two or more claims.**

A claimant may use a single claim form to include all or any other claims which can be conveniently disposed of in the same proceedings.

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

- (1) The general rule is that a claim will not fail because a person —
  - (a) who should have been made a party was not made a party to the proceedings; or
  - (b) was added as a party to proceedings who should not have been added.
- (2) Notwithstanding paragraph (1) —
  - (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) if any such 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.

#### **8.6 What must be included in claim form.**

- (1) The claimant must in the claim form —
  - (a) include a short description of the nature of the claim;
  - (b) specify any remedy that the claimant seeks; and
  - (c) give an address for service in accordance with rule 3.7.
- (2) Notwithstanding paragraph (1)(b) the Court may grant any other remedy to which the claimant may be entitled.
- (3) A claimant who seeks aggravated damages or exemplary damages must say so in the claim form.
- (4) A claimant who is seeking interest must —
  - (a) say so expressly in the claim form, and
  - (b) include, in the claim form or statement of claim, details of the —
    - (i) basis of entitlement;
    - (ii) rate; and

- (iii) period for which it is claimed.
- (5) If the claim is for a specified sum of money, the total amount of interest claimed to the date of the claim, and the daily rate at which interest will accrue after the date of the claim must be expressly stated in the claim form.
- (6) A claimant who claims in a representative capacity under Part 21 must state what that capacity is.
- (7) A claimant suing a defendant in a representative capacity under Part 21 must state what that capacity is.<sup>7</sup>

### **8.7 Claimants duty to set out case.**

- (1) The claimant must include in the claim form or in the statement of claim a statement of all the relevant facts on which the claimant relies.
- (2) The statement must be as short as practicable.
- (3) The claim form or the statement of claim must identify any document known to the claimant which the claimant considers to be necessary to his or her case.
- (4) If the claimant seeks 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 3.8.

### **8.8 Permission to rely on allegation or factual argument not pleaded.**

The claimant may not rely on any allegation or factual argument which is not set out in the claim, but which could have been set out there, unless the Court gives permission or the parties agree.

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

- (1) This rule sets out additional requirements with which a claimant making a claim for personal injuries must comply.
- (2) The claimant's date of birth or age must be stated in the claim form or statement of claim.
- (3) If the claimant intends to rely at trial on the evidence of a medical practitioner, the claimant must attach to the claim form a report from the medical practitioner on the personal injuries alleged in the claim.
- (4) Paragraph (3) does not restrict the right of the claimant to call other or additional medical evidence at the trial of the claim.

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<sup>7</sup>Rule 3.8 requires the claim form to include a statement of truth.

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

### **8.10 Realtor claims.**

A person's name may not be used in any claim as a relator unless that person has given written authority to that effect and the authority is filed at the court office before the claim is issued.

### **8.11 Service of claim form.**

After the claim form has been issued it may be served on the defendant in accordance with Part 5 or Part 7.

### **8.12 Time within which claim form may be served.**

- (1) The general rule is that a claim form must be served within six months after the date when the claim was issued.
- (2) The period for —
  - (a) service of a claim form out of the jurisdiction; or
  - (b) service of an Admiralty claim form in rem;is six months.<sup>8</sup>

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

- (1) The claimant may apply for an order extending the period within which a claim form may be served.
- (2) The period by which the time for serving a claim form is extended may not be longer than six months on any one application.
- (3) An application under paragraph (1) —
  - (a) must be made within the period —
    - (i) for serving a claim form specified by rule 8.12; or
    - (ii) of any subsequent extension permitted by the Court; and
  - (b) may be made without notice but must be supported by evidence on affidavit.
- (4) The Court may make an order under paragraph (1) only if it is satisfied that —
  - (a) the claimant has taken all reasonable steps to, but has been unable to —
    - (i) trace the defendant; and
    - (ii) serve the claim form;

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<sup>8</sup>Part 7 deals with service out of the jurisdiction; Part 59 deals with Admiralty proceedings.

- (b) there is some other special reason for extending the period.
- (5) If an order is made extending the validity of the claim form for the purposes of service —
  - (a) the claim form must be marked with an official stamp or endorsement by the court office showing the period for which its validity 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 —
  - (a) the defendant is deliberately avoiding service; or
  - (b) there is some other compelling reason for so doing.

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

- (1) When a claim form is served on a defendant, it must be accompanied by —
  - (a) a copy of any order made under rules 8.2 or 8.13;
  - (b) a defence form in Form G10;
  - (c) a form of acknowledgement of service in Form G8)
  - (d) if the claim is for money, an application to pay by instalments in Form G13; and
  - (e) the prescribed notes for defendants.
- (2) There must be inserted on each form the —
  - (a) the address of the court office to which the defendant is to return the forms;
  - (b) the reference number of the claim; and
  - (c) the title of the claim.
- (3) If there is a standard defence form appropriate to the particular case set out in a practice guide, the form sent to the defendant must be in a standard form of that type.

### **ALTERNATIVE PROCEDURE FOR CLAIMS – ORIGINATING FORM**

#### **8.15 Alternative procedure of an originating application form.**

The alternative procedure of an originating application form for commencing proceedings under this Part instead of by standard claim form or a fixed date claim form is intended for use where —



- (1) the Court's decision is sought on a question which is unlikely to involve a substantial dispute of fact: or
- (2) a statute, rule or practice direction requires or permits the use of this procedure for commencing proceedings of a specified type.

### **8.16 Approval of settlement.**

An originating application form under this Part must be used where there is a claim by or against a child, protected party or a patient which has been settled before the commencement of proceedings and the sole purpose of the claim is to obtain the approval of the Court to the settlement.

### **8.17 Claim Form.**

An originating application brought under this Part —

- (a) must be in Form G5; or
- (b) if in relation to an International Request for Assistance, must be in Form G6.

### **8.18 No default judgment.**

Where the claimant uses an originating application form under this Part, he may not obtain default judgment under Part 12.

### **8.19 The general procedure in a claim using an originating application form.**

- (1) The Court may at any stage, either on application or on its own initiative, order a claim commenced by originating application form to continue as if the proceedings had been commenced using a standard claim form and where the Court takes this course it will give such directions as it considers appropriate.
- (2) The Court may give directions either on its own initiative or on the application of a party immediately after the originating application form is issued and such directions may include fixing a hearing date where the Court will give directions for the disposal of the claim as soon as practicable after the defendant has acknowledged service.
- (3) A rule or practice direction may, in relation to a specified type of proceedings —
  - (a) require or permit the use of an originating application form; and
  - (b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

## **8.20 Contents of the originating application form.**

- (1) Where the claimant uses an originating application form it must state —
  - (a) that this Part applies;
  - (b) the question which the claimant wants the Court to decide or the remedy which the claimant is seeking and the legal basis for the claim to that remedy;
  - (c) if the claim is being made under an enactment, what that enactment is;
  - (d) if the claimant is claiming in a representative capacity, what that capacity is; and
  - (e) if the defendant is sued in a representative capacity, what that capacity is.
- (2) Every originating application form must be verified by a certificate of truth in compliance with Rule 3.8 as amended to apply to such a form.

## **8.21 Issue of claim form without naming defendants.**

- (1) A practice direction may set out the circumstances in which an originating application form may be issued under this Part without naming a defendant.
- (2) The practice direction may set out those cases in which an application for permission must be made by application notice before the claim form is issued.
- (3) The application notice for permission —
  - (a) need not be served on any other person; and
  - (b) must be accompanied by a copy of the claim form that the applicant proposes to issue.
- (4) Where the Court gives permission it will give directions for the future management of the claim.

## **8.22 Acknowledgement of service.**

- (1) The defendant must—
  - (a) file an acknowledgement of service in the relevant practice form not more than fourteen days after service of the claim form; and
  - (b) serve the acknowledgement of service on the claimant and any other party.
- (2) The acknowledgement of service must state—
  - (a) whether the defendant contests the claim; and
  - (b) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.

### **8.23 Consequence of not filing an acknowledgement of service.**

- (1) This rule applies where —
  - (a) the defendant has failed to file an acknowledgement of service; and
  - (b) the time period for doing so has expired.
- (2) The defendant may attend the hearing of the claim but may not take part in the hearing unless the Court gives permission.

### **8.24 Filing and serving written evidence.**

- (1) The claimant must file any written evidence on which he intends to rely when he files his claim form.
- (2) The claimant's evidence must be served on the defendant with the claim form.
- (3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgement of service unless otherwise ordered by the Court on an application without notice.
- (4) If a defendant files written evidence he must forthwith serve a copy of his evidence on the other parties.
- (5) Any evidence filed at the time of filing his acknowledgement of service must be served when the acknowledgement of service is served on the claimant and any other party.
- (6) The claimant may, within fourteen days of service of the defendant's evidence on him, file further written evidence in reply.
- (7) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.
- (8) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.

### **8.25 Evidence – general.**

- (1) No written evidence may be relied on at the hearing of the claim unless—
  - (a) it has been served in accordance with rule 8.24; or
  - (b) the Court gives permission.
- (2) The Court may require or permit a party to give oral evidence at the hearing.
- (3) The Court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

### **8.26 Additional claims.**

Where the procedure under this Section is used, Part 18 applies except that a party may not without the Court's permission make an additional claim against a person who is not already a party to the proceedings.

### **8.27 Procedure where defendant objects to use of the Part 8 procedure.**

- (1) Where the defendant contends that the procedure under this Section should not be used because—
  - (a) there is a substantial dispute of fact; and
  - (b) the use of this procedure is not required or permitted by a rule or practice direction,he must state his reasons when he files his acknowledgement of service.
- (2) When the Court receives the acknowledgement of service and any written evidence it will give directions as to the future management of the case.

## **PART 9 – ACKNOWLEDGEMENT OF SERVICE AND NOTICE OF INTENTION TO DEFEND**

### **9.1 Scope of this Part.**

- (1) This Part deals with the procedure to be used by a defendant who wishes to contest proceedings and avoid a default judgment being entered.<sup>9</sup>
- (2) The defendant does so —
  - (a) by filing —
    - (i) a defence in accordance with Part 10; and
    - (ii) an acknowledgement of service in Form G9 containing a notice of intention to defend within the time limit under rule 9.3; or
  - (b) by filing a defence in accordance with Part 10 within the time limit under rule 9.3 or
  - (c) where applicable, by filing an acknowledgement of service in accordance with rule 8.22.
- (3) The filing of an acknowledgement of service is to be treated as the entry of an appearance for the purpose of any enactment referring to the entry of such an appearance.<sup>10</sup>

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<sup>9</sup>Part 12 deals with default judgments.

<sup>10</sup>Part 14 deals with the cases where the defendant wishes to admit all or part of the claim and enables the defendant to make an offer as to the time and rate of payment.

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## **9.2 Filing acknowledgement of service and consequence of not doing so.**

- (1) A defendant who wishes to —
  - (a) dispute the claim; or
  - (b) dispute the Court’s jurisdiction,must file at the Court office at which the claim form was issued an acknowledgement of service in Form G9 containing a notice of intention to defend.
- (2) A defendant files an of service by completing the form of acknowledgement of service and handing it in at or electronic filing to the court office.
- (3) An acknowledgement of service has no effect until it is filed at the court office.
- (4) A defendant need not file an acknowledgement of service if a defence is filed within the period specified in rule 9.3.
- (5) If a defendant fails to file an acknowledgement of service or a defence, judgment may be entered if Part 12 allows it.

## **9.3 The period for filing acknowledgement of service.**

- (1) The period for filing an acknowledgement of service is the period of 14 days after the date of service of the claim form.
- (2) If permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing an acknowledgement of service is to be calculated from the date when the statement of claim is served.
- (3) A defendant may file an acknowledgement of service at any time before a default judgment is filed at the court office out of which the claim form was issued.
- (4) Paragraph (1) does not apply where the claim is served —
  - (a) outside the jurisdiction in accordance with Part 7; or
  - (b) on an agent of an overseas principal under rule 5.17.<sup>11</sup>

## **9.4 Notice to claimant of filing of acknowledgement of service.**

- (1) The defendant must forthwith notify the claimant in writing that an acknowledgement of service has been filed.
- (2) A copy of the acknowledgement of service must be annexed to the notice.

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<sup>11</sup>Rules 7.6 and 5.17(4) deal with the time for filing an acknowledgement of service in those cases. Rule 65.2(3) makes special provision for extending the time for the Crown to acknowledge service.

## **9.5 Contents of acknowledgement of service.**

- (1) A defendant acknowledging service —
  - (a) may state in the acknowledgement of service that all or part of the claim is admitted;
  - (b) must state in the acknowledgement of service the date on which the defendant received the claim form;
  - (c) who admits all or part of a claim for a specified sum of money may file with the acknowledgement of service —
    - (i) details of the defendant's financial circumstances;
    - (ii) proposals for payment of any sums admitted; and
  - (d) who admits part of the claim under paragraph (a), must state the amount admitted.
- (2) A defendant who admits part of the claim must also file a defence as to the disputed part of the claim within the time for filing a defence.
- (3) The defendant or the defendant's attorney must sign the acknowledgement of service.
- (4) The defendant must include in the acknowledgement of service an address for service within the jurisdiction to which documents may be sent.<sup>12</sup>

## **9.6 Right to dispute jurisdiction of Court not taken away by acknowledgement of service.**

A defendant who files an acknowledgement of service does not by doing so lose any right to dispute the Court's jurisdiction.

## **9.7 Procedure for disputing Court's jurisdiction etc.**

- (1) A defendant who disputes the Court's jurisdiction to try the claim may apply to the Court for a declaration to that effect.
- (2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgement of service.
- (3) An application under paragraph (1), must be made within the period for filing a defence; the period for making an application under this rule includes any period by which the time for filing a defence has been extended where the Court has made an order, or the parties have agreed, to extend the time for filing a defence.<sup>13</sup>
- (4) An application under this rule must be supported by evidence on affidavit.
- (5) A defendant who —
  - (a) files an acknowledgement of service; and

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<sup>12</sup>Rule 10.3 sets out the time for filing a defence.

<sup>13</sup>Rule 10.3 sets out the period for filing a defence.

- (b) does not make an application under this rule within the period for filing a defence,  
is treated as having accepted that the Court has jurisdiction to try the claim.
- (6) An order under this rule may also —
  - (a) discharge an order made before the claim was commenced or the claim form served;
  - (b) set aside service of the claim form; and
  - (c) strike out a statement of claim.
- (7) If on application under this rule the Court does not make a declaration, it —
  - (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.<sup>14</sup>
- (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 paragraph (7)(b) and such period may be extended only by an order of the Court.

### **9.8 Procedure for applying for a stay etc.**

- (1) A defendant who contends that the Court should not exercise its jurisdiction in respect of any proceedings may apply to the Court for a stay and a declaration to that effect.
- (2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgement of service if he has not previously done so.
- (3) An application under paragraph (1) of this rule may be made at any time.
- (4) An application under this rule must be supported by evidence on affidavit.
- (5) If on application under this rule the Court does not make a declaration, it —
  - (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 if none has yet been filed.<sup>15</sup>

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<sup>14</sup>Part 26 sets out powers which the court may exercise on a case management conference.

<sup>15</sup>Part 26 sets out powers which the court may exercise on a case management conference.

- (6) Where a defendant makes an application under this rule, the period for filing a defence, where none has yet been filed, is extended until the time specified by the Court under paragraph (5)(b) and such period may be extended only by an order of the Court.

## **PART 10 – DEFENCE**

### **10.1 Scope of this Part.**

The Rules in this Part set out the procedure for disputing the whole or part of a claim.<sup>16</sup>

### **10.2 The defendant - filing defence and the consequences of not doing so.**

- (1) A defendant who wishes to defend all or part of a claim must file a defence which may be in Form G10.
- (2) If —
- (a) a claim is commenced by a fixed date claim form in Form G4 and there is served with that claim form an affidavit instead of a statement of claim; or
- (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 expression “**defence**” includes an affidavit filed under paragraph (2).
- (4) A defendant who admits liability and wishes to be heard on the issue of quantum must file and serve a defence dealing with that issue.
- (5) If a defendant fails to file a defence within the period for filing a defence, judgment for failure to defend may be entered if Part 12 allows it.<sup>17</sup>

### **10.3 The period for filing defence.**

- (1) The general rule is that the period for filing a defence is the period of twenty-eight days after the date of service of the claim form.
- (2) If 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 twenty-eight days after the service of the statement of claim.
- (3) If the defendant within the period set out in paragraph (1) or (2) makes an application under any relevant legislation relating to arbitration to stay the

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<sup>16</sup>Part 18 deals with the procedure for making a counterclaim.

<sup>17</sup>Part 14 deals with the procedure to admit all or part of the claim.



claim on the grounds that there is a binding agreement to arbitrate, the period for filing a defence is extended to fourteen days after the determination of that application.

- (4) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2) or (3).
- (5) The parties may not make more than two agreements under paragraph (4).
- (6) The maximum total extension of time that may be agreed is fifty-six days.
- (7) The defendant must file details of an agreement made pursuant to this rule.
- (8) A defendant may apply for an order extending the time for filing a defence.
- (9) The general rule referred to in paragraph (1) is subject to —
  - (a) rule 5.17(4);
  - (b) rule 7.6;
  - (c) rule 9.7; and
  - (d) rule 65.2.

#### **10.4 Service of copy of defence.**

On filing a defence, the defendant must also serve a copy on every other party.

#### **10.5 Defendant's duty to set out case.**

- (1) The defence must set out all the facts on which the defendant relies to dispute the claim.
- (2) The statement of facts referred to in paragraph (1) must be as short as practicable.
- (3) In the defence the defendant must say which, if any, allegations in the claim form or statement of claim —
  - (a) are admitted;
  - (b) are denied; and
  - (c) are neither admitted nor denied, because the defendant does not know whether they are true;
  - (d) the defendant wishes the claimant to prove.
- (4) If the defendant denies any of the allegations in the claim form or statement of claim —
  - (a) the defendant must state the reasons for doing so; and
  - (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.

- (5) If, 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 the reasons for resisting the allegation.
- (6) The defendant must identify in or annex to the defence any document known to the defendant which is considered to be necessary to the defence.
- (7) A defendant who defends in a representative capacity, must say —
  - (a) what that capacity is; and
  - (b) whom the defendant represents.
- (8) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with rule 3.8.

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

- (1) This rule sets out additional requirements with which a defendant to a claim for personal injuries must comply.
- (2) If 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 state in the defence —
  - (a) 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) If 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.

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

The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the Court gives permission or the parties agree.<sup>18</sup>

#### **10.8 Defence of tender.**

- (1) The defence of tender is not available unless the defendant pays into —
  - (a) an interest bearing account with the agreement of the claimant or the permission of the Court, an interest bearing account; or

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<sup>18</sup>Rule 20.1 contains provisions about amendments to statements of claim.

- (b) Court,  
the amount alleged to have been tendered within the period for filing a defence.
- (2) If the claimant does not give notice accepting the payment into Court within twenty-eight days of service of the defence, the defendant may apply for payment out of the monies.<sup>19</sup>

### **10.9 Reply to defence.**

- (1) A claimant may file and serve a reply to a defence —
  - (a) fourteen days after the date of service of the defence; or
  - (b) at any time with the permission of the Court.
- (2) Where the defence contains a counterclaim, Part 18 shall apply.<sup>20</sup>

## **PART 11 – GENERAL RULES ABOUT APPLICATION FOR COURT ORDERS**

### **11.1 Scope of this Part.**

This Part deals with interlocutory applications for court orders being applications made before, during or after the course of proceedings.

### **11.2 Applicants and respondents.**

In this Part —

“**applicant**” means a person who seeks a court order by making an application;

“**respondent**” means —

- (a) the person against whom the order is sought and any other person on whom the applicant considers it just to serve the application; and
- (b) any other person whom the Court directs is to be served with the application.

### **11.3 Applications to be dealt with at case management conference.**

- (1) So far as is practicable all applications relating to pending proceedings must be listed for hearing at a case management conference or pre-trial review.

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<sup>19</sup>Rule 10.3 states the period for filing a defence, Part 36 deals with payments into court.

<sup>20</sup>Part 18 deals with a defence to an additional claim including counterclaims.

- (2) Where an application is made which could have been dealt with at a case management conference or pre-trial review the Court must order the applicant to pay the costs of the application unless there are special circumstances.

#### **11.4 Time when application is made.**

If an application must be made within a specified period, it is so made if it is filed at the court office or, where allowed under rule 11.6(2), if made orally to the court within that period.

#### **11.5 Where to make application.**

- (1) The general rule is that an application must be made to the court office where the claim was filed.
- (2) If the claim has been transferred to another court office the application must be made to that court office.
- (3) An application made before a claim has been filed must be made to the court office where it is likely that the claim to which the application relates will be made.

#### **11.6 Application to be in writing.**

- (1) Subject to paragraph (2), an application must be in writing in Form G14.
- (2) An application may be made orally if —
  - (a) the Court dispenses with the requirement for the application to be made in writing; or
  - (b) this is permitted by a rule or practice direction.

#### **11.7 What application must include.**

- (1) An application must state —
  - (a) briefly, the grounds on which the applicant is seeking the order; and
  - (b) what order the applicant is seeking.
- (2) The applicant must file with the application not less than three 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) If the application is made without notice, the draft order must be attached to the application when it is filed.

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

- (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 practice direction or
  - (b) a rule.
- (3) The applicant need not give evidence in support of an application unless it is required by a —
  - (a) court order;
  - (b) practice direction; or
  - (c) rule.
- (4) Notice of the application must be included in the form used to make the application.

### **11.9 Evidence in support of application.**

Evidence in support of an application must be contained in an affidavit unless otherwise provide by —

- (a) court order;
- (b) a practice direction; or
- (c) rule.<sup>21</sup>

### **11.10 Contents of notice of applicant.**

- (1) The notice must state the date, time and place when the application is to be heard.
- (2) If there is not going 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.<sup>22</sup>

### **11.11 Service of notice of application.**

- (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 seven days before the Court is to deal with the application.
- (2) The period in paragraph (1)(b) does not apply if any rule or practice direction specifies some other period for service.
- (3) If —
  - (a) notice of an application has been given; and
  - (b) the period of notice is shorter than the period required,

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<sup>21</sup>Part 30 deals with affidavit evidence.

<sup>22</sup>Rule 11.14 sets out the circumstances in which there may not be a hearing.

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) a copy of any draft order which the applicant has attached to the application; and
  - (b) any evidence in support.
- (5) The notice must be served in accordance with Part 6 unless any respondent is not a party, in which case the notice must be served in accordance with Part 5 or Part 7, as the case may be.

#### **11.12 Evidence on application.**

- (1) The respondent must file and serve on the applicant any evidence in opposition to the application at least three days before the Court is to deal with the application.
- (2) If any such evidence is filed and served within a shorter period than required, the Court may nevertheless, in all the circumstances of the case, proceed to deal with the application.

#### **11.13 Powers of Court in relation to the conduct of application.**

- (1) The Court may of its own motion or on application by any party require a party to produce any document or documents or things at any hearing or on some specified date prior to any hearing.
- (2) The Court in an exceptional case and where circumstances require such a step so that justice may be done —
  - (a) issue a witness summons requiring a party or other person to attend the Court on the hearing of the application;
  - (b) examine any party or witness at such a hearing whether by putting written questions to the witness and asking the witness to give written answers or orally.
- (3) Any party may then cross examine the witness.
- (4) The Court may exercise any power which it might exercise at a case management conference.
- (5) A party asking for an order under this rule must give the Court and the respondent as much notice as possible of his application for the order.

#### **11.14 Consequence of not asking for order in application.**

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

### **11.15 Applications which may be dealt with without an oral hearing.**

The Court may deal with an application without an oral hearing if —

- (a) no notice of the application is required;
- (b) the Court does not consider that an oral hearing would be appropriate;
- (c) the parties agree; or
- (d) the parties have agreed to the terms of an order —
  - (i) which does not come within rule 27.8(1); and
  - (ii) the application, or a copy of the application, is signed by the attorney for all parties to the application.

### **11.16 Hearing by telephone, etc.**

The Court may, if it deems just, deal with the application over the telephone or by any other means of communication.<sup>23</sup>

### **11.17 Service of application where order made on application made without notice.**

- (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.

### **11.18 Applications to set aside a very order made an application made without notice.**

- (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 fourteen days after the date on which the order was served on the respondent.
- (3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this rule, and the time within which it must be made.

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<sup>23</sup>Rules 2.6 (3) and (4) contain powers to enable the court to deal with applications by electronic means. Rule 42.7 deals with consent orders.

### **11.19 Power of a card to proceed in absence of party.**

If 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 the absence of that party.

### **11.20 Application to set aside all made an absence of party.**

- (1) A party who was not present when an order was made may apply to set aside or vary the order.
- (2) The application must be made not more than fourteen 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 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 order might have been made.

## **PART 12 – DEFAULT JUDGMENTS**

### **12.1 Scope of this part.**

- (1) This Part contains provisions under which a claimant may obtain judgment without trial where the defendant has failed to file —
  - (a) a defence in accordance with Part 10; or
  - (b) an acknowledgement of service giving notice of intention to defend in accordance with Part 9.
- (2) A judgment referred to in paragraph (1) is called a “**default judgment**”.

### **12.2 Claims in which default judgment may not be obtained.**

A claimant may not obtain default judgment if the claim is —

- (a) a claim in probate proceedings;
- (b) a fixed date claim;
- (c) a claim under Section II of Part 8; or
- (d) an admiralty claim in rem.<sup>24</sup>

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<sup>24</sup>Part 63 deals with probate proceedings.

Rule 59.21 makes special provision for default judgment in admiralty cases for personal injury arising out of a collision between two ships.

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### **12.3 Cases in which permission required.**

- (1) A claimant who wishes to obtain a default judgment on any claim which is —
  - (a) a claim against a minor or patient as defined in rule 2.3; or
  - (b) a claim against a State as defined in any relevant enactment relating to state immunity,must obtain the Court’s permission.<sup>25</sup>
- (2) A claimant who wishes to obtain judgment in default of acknowledgement of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges must obtain the Court’s permission.
- (3) An application under paragraph (1) or (2) must be supported by evidence on affidavit.<sup>26</sup>

### **12.4 Conditions to be satisfied – judgment for failure to file acknowledgement of service.**

The claimant may enter judgment for failure to file an acknowledgement of service if —

- (a) evidence has been filed proving service of the claim form and statement of claim on the defendant;
- (b) the defendant has not filed —
  - (i) an acknowledgement of service; or
  - (ii) a defence to the claim or any part of it;
- (c) the defendant has not satisfied in full the claim on which the claimant seeks judgment;
- (d) where the only claim is for a specified sum of money, apart from costs and interest, and the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;
- (e) the period for filing an acknowledgement of service under rule 9.3 has expired; and
- (f) where necessary the claimant has the permission of the Court to enter judgment.<sup>27</sup>

### **12.5 Conditions to be satisfied – judgment for failure to defend.**

The claimant may enter judgment for failure to defend if —

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<sup>25</sup>Part 65 deals with proceedings against the Crown.

Part 2.3 deals with proceedings involving a minor or patient.

<sup>26</sup>Rule 12.8(2) contains restrictions on a default judgment where it is sought against some but not all defendants.

<sup>27</sup>Rules, 5.5, 5.11, 5.12 and 5.15 deal with how to prove service of the claim form and statement of claim.

- (a) the claimant proves service of the claim form and statement of claim or an acknowledgement of service has been filed by the defendant against whom judgment is sought;
- (b) the period for filing a defence and any extension agreed by the parties or ordered by the Court has expired;
- (c) the defendant has not —
  - (i) filed a defence to the claim or any part of it, or the defence has been struck out or is deemed to have been struck out under rule 22.1(6);
  - (ii) if the only claim is for a specified sum of money, 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; or
  - (iii) satisfied the claim on which the claimant seeks judgment;
- and
- (d) necessary, the claimant has the permission of the Court to enter judgment.

## **12.6 Admission of part – request for time today.**

- (1) This rule deals with the situation where the —
  - (a) defendant is an individual who has admitted liability to pay either —
    - (i) a specified sum towards a claim for an unspecified sum of money; or
    - (ii) part only of a claim for a specified sum;
  - (b) defendant has not filed a defence; and
  - (c) 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 fixed costs under Part 71.
  - (b) if the claim is for an unspecified sum, the payment of an amount to be decided by the Court.
- (3) If the defendant has requested time to pay, that request must be dealt with if the claim is for —
  - (a) a specified sum in accordance with rules 14.9 and 14.10 or 14.11; or
  - (b) an unspecified sum, when damages are assessed in accordance with rule 16.3.

### **12.7 Claim for a specified sum of money.**

- (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 the sum of money claimed —
  - (a) and for interest to be assessed; or
  - (b) together with interest at the statutory rate from the date of the claim to the date of entering judgment.
- (3) If a claim is partly for a specified sum and partly for an unspecified sum the claimant may abandon the claim for the unspecified sum and enter default judgment for the specified sum.<sup>28</sup>

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

- (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) If a claimant applies for a default judgment against one of two or more defendants then if the claim —
  - (a) can be dealt with separately from the claim against the other defendants —
    - (i) the Court may enter judgment against that defendant; and
    - (ii) the claimant may continue the proceedings against the other defendants; or
  - (b) cannot be dealt with separately from the claim against the other defendants, the Court —
    - (i) may not enter judgment against that defendant; and
    - (ii) must deal with the application at the same time as it disposes of the claim against the other defendants.
- (3) If a claim for delivery of goods is made against more than one defendant, with or without any other claim, the claimant may not enforce any judgment for delivery entered under this Part against a defendant unless —
  - (a) the claimant has obtained a judgment for delivery against all the defendants to the claim; or
  - (b) the court gives permission.

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<sup>28</sup>Rule 2.3 defines “claim for a specified sum of money.”

## 12.9 Nature of the fault judgment.

- (1) Default judgment on a claim for —
  - (a) a specified sum of money, must be judgment for payment of that amount or, if a part has been paid, the amount certified by the claimant as outstanding —
    - (i) if the defendant has applied for time to pay under Part 14, at the time and rate ordered by the Court; or
    - (ii) in all other cases, at the time and rate specified in the request for judgment;<sup>29</sup>
  - (b) an unspecified sum of money, must be judgment for the payment of an amount to be decided by the Court;<sup>30</sup>
  - (c) goods, must be —
    - (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 the defendant the alternative of paying their assessed value.
- (2) An application for permission to enter a default judgment under paragraph (1)(c)(iii) must be supported by evidence on affidavit.
- (3) A copy of the application and the evidence under paragraph (2) must be served on the defendant against whom judgment has been sought even though that defendant has failed to file an acknowledgement of service or a defence.
- (4) Default judgment where the claim is for some other remedy shall be in such form as the Court considers the claimant to be entitled to on the statement of claim.
- (5) An application for the Court to determine the terms of the judgment under paragraph (4) need not be on notice but must be supported by evidence on affidavit and rule 11.15 does not apply.

## 12.10 Interest.

- (1) A default judgment must include judgment for interest to the date it is filed if the —
  - (a) claim form includes a claim for interest; and

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<sup>29</sup>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 72 deals with the quantification of costs.

<sup>30</sup>Rule 16.2 deals with the procedure for assessment of damages where judgment is entered under this paragraph.

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- (b) claim form or statement of claim includes the details required by rule 8.6(4).
- (2) If the claim form includes any other claim for interest, then unless such claim for interest is abandoned by the claimant, the default judgment must include judgment for an amount of interest to be decided by the Court.

### **12.11 Costs.**

- (1) A default judgment must include fixed costs under rule 71 unless the Court assesses the costs.
- (2) An application to assess costs must be on notice to the defendant.<sup>31</sup>

### **12.12 Defendants rights following default judgment.**

Unless the defendant applies for and obtains an order for the judgment to be set aside, 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(2);
- (b) costs;
- (c) enforcement of the judgment; and
- (d) the time of payment of any judgment debt.<sup>32</sup>

## **PART 13 – SETTING ASIDE OR VARYING DEFAULT JUDGMENT**

### **13.1 Scope of this part.**

The Rules in this Part set out the procedure for setting aside or varying a default judgment entered under Part 12.<sup>33</sup>

### **13.2 Cases where Court must set aside default judgment.**

- (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.

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<sup>31</sup>Rule 72 deals with the assessment of costs.

<sup>32</sup>Part 13 deals with setting aside or varying default judgments.

<sup>33</sup>Rule 42.9 deals with variation of the terms of a judgment as to time and method of payment.

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

### **13.3 Cases where Court may set aside or vary default judgment.**

- (1) If rule 13.2 does not apply, the Court may set aside a judgment entered under Part 12 only if the defendant —
  - (a) applies to the Court as soon as reasonably practicable after finding out that judgment had been entered;
  - (b) gives a good explanation for the failure to file an acknowledgement of service or a defence as the case may be; and
  - (c) has a real prospect of successfully defending the claim.
- (2) In any event the Court may set aside a judgment entered under Part 12 if the defendant satisfies the Court that there are exceptional circumstances.
- (3) Where this rule gives the Court power to set aside a judgment, the Court may instead vary it.<sup>34</sup>

### **13.4 Applications to vary or set aside judgment – procedure.**

- (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

### **13.5 Court to impose condition as the filing of the funds.**

If 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.

### **13.6 Hearing to be treated as case management conference.**

- (1) If 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) If it is not possible to deal with the matter justly at that time, the Court office must fix a date, time and place for a case management conference and give notice to the parties.<sup>35</sup>

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<sup>34</sup>Rule 26.1(3) enables the court to attach conditions to any order.

<sup>35</sup>Part 26 deals with the powers of the court on a case management conference, Part 27 deals with the procedure for case management conferences.

### **13.7 Abandoned claims to be restored if judgment set aside.**

If 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 – JUDGMENT ON ADMISSIONS**

### **14.1 Making on admission.**

- (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, such as in a statement of case or by 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 acknowledgement of service containing the admission.
- (4) The defendant may do this in accordance with the following rules —
  - (a) rule 14.6;
  - (b) rule 14.7; or
  - (c) rule 14.8.
- (5) A defendant may file an admission under paragraph (4) at any time before a default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgement of service has expired.<sup>36</sup>

### **14.2 Satisfaction.**

- (1) If the defendant pays the claimant the sum claimed together with interest at the statutory rate, if claimed, and the fixed costs as set out on the claim form within the period for filing an acknowledgement of service under rule 9.3 the —
  - (a) claim is stayed; and
  - (b) claimant must forthwith file and serve a notice of discontinuance in Form G15.
- (2) Rule 37.6 does not apply to a notice of discontinuance served under this rule.
- (3) If the claimant does not file and serve a notice of discontinuance in accordance with paragraph (1) within seven days of payment, the defendant may file and serve a notice in the form specified in Form G16 to request that the claim be recorded as satisfied.

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<sup>36</sup> Rule 9.3 specifies the time for filing an acknowledgment of service.

- (4) If there is no dispute the court office must record that the claim has been satisfied.
- (5) If the claimant disputes satisfaction, the court office must fix a hearing to consider the application by the defendant and the defendant must give not less than seven days' notice of the hearing to the claimant.

#### **14.3 Admissions were partly on minor or patient.**

Judgment may not be entered on an admission if the —

- (a) defendant is a minor or patient; or
- (b) claimant is a minor or patient and the admission is made under rule 14.7 or 14.8.<sup>37</sup>

#### **14.4 Admission by notice in writing – application for attachment.**

- (1) Where a party makes an admission under rule 14.1(2), any other party may apply for judgment on the admission.
- (2) The terms of the judgment must be such as it appears to the Court that the applicant is entitled to on the admission.

#### **14.5 Admission in whole or in part of money claim.**

On making an admission of the whole or part of a claim for money under rule 14.1(3), the defendant must send a copy of the admission and any request for time to pay under rule 14.9 to the claimant.

#### **14.6 Admission of claim for specified sum of money.**

- (1) This rule applies where the —
  - (a) defendant admits the whole of the claim in the acknowledgement of service;
  - (b) defendant has not requested time to pay; and
  - (c) only remedy which the claimant is seeking is payment of a specified sum of money.
- (2) The claimant may file judgment in Form G17 for the amount claimed, interest and fixed costs under Part 71 and may specify the —
  - (a) date on which the judgment debt is to be paid; or
  - (b) time and rate at which it is to be paid if by instalments.<sup>38</sup>

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<sup>37</sup>Rule 23.12 deals with compromise of claims made by or against a minor or patient.

<sup>38</sup>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.



### **14.7 Admission of part of claim for money only.**

- (1) This rule applies where —
  - (a) the only remedy which the claimant is seeking is the payment of money;
  - (b) the defendant admits a specified —
    - (i) sum of money; or
    - (ii) proportion of a claim for an unspecified sum of money, in the acknowledgement of service or defence; and
  - (c) defendant has filed a defence as to the amount not admitted.
- (2) If the defendant does not file a defence the claimant will be entitled to default judgment in accordance with rule 12.5.
- (3) The claimant must serve a notice on the defendant stating that —
  - (a) the amount or proportion admitted in satisfaction of the claim is accepted; or
  - (b) the claimant intends to continue the claim.
- (4) The claimant must —
  - (a) file the notice under paragraph (3); and
  - (b) serve a copy on the defendant, within fourteen days after service of the defendant’s acknowledgement of service or defence, as the case may be.
- (5) If the claimant does not file the notice within fourteen days after service of the defendant’s acknowledgement of service or defence —
  - (a) the claim is stayed until the notice is filed; and
  - (b) any party may apply for the stay to be lifted.
- (6) If the defendant has not requested time to pay under rule 14.9, the claimant may file judgment in Form G17 for the amount admitted, interest and fixed costs and may specify —
  - (a) the date on which the judgment debt is to be paid; or
  - (b) the time and rate at which it is to be paid by instalments.
- (7) If 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 claimant may file judgment for that proportion of an amount to be decided by the Court and costs.
- (8) If the claimant files notice under paragraph (3)(b) the court office must fix a date, time and place for a case management conference.<sup>39</sup>

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<sup>39</sup>Part 27 sets out the procedure relating to a case management conference. Part 71 deals with fixed costs.

#### **14.8 Admission of liability to pay whole of claim for unspecified sum of money.**

- (1) This rule applies where the —
  - (a) amount of the claim is not specified;
  - (b) defendant admits liability in the acknowledgement of service to pay the whole of the claim and does not offer to pay a specified sum of money or proportion of the claim in satisfaction of the claim;
  - (c) defendant has not requested time to pay under rule 14.9; and
  - (d) only remedy the claimant seeks is the payment of money.
- (2) The claimant may file judgment in Form G17.
- (3) Judgment will be for an amount to be decided by the Court and costs.<sup>40</sup>

#### **14.9 Request for time to pay.**

- (1) A defendant who —
  - (a) makes an admission under rules 14.6, 14.7 or 14.8; and
  - (b) is an individual,may make a request for time to pay.
- (2) A request for time to pay is a proposal —
  - (a) about the date of payment; or
  - (b) to pay by instalments at a rate specified in the request.
- (3) The defendant's request for time to pay must be —
  - (a) accompanied by a statement of his or her financial position in the appropriate practice form; and
  - (b) filed with the admission.
- (4) The statement under paragraph (3)(a) must be certified 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 enforcement of the judgment.
- (5) If the —
  - (a) request for time to pay relates to a claim for an unspecified sum of money; and
  - (b) Court must assess damages under rule 14.8(3);the Court must deal with the request for time to pay when it assesses damages.

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<sup>40</sup>Rule 16.3 deals with how the court decides the amount of the judgment.  
Part 72 deals with the quantification of costs.

**14.10 Request for time to pay – procedure with time and rate agreed.**

- (1) This rule applies where the —
  - (a) only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;
  - (b) defendant —
    - (i) admits the whole of a claim for a specified sum of money; or
    - (ii) offers to pay a specified sum; and
    - (iii) requests time to pay or makes an offer to pay by instalments; and
  - (c) claimant accepts the defendant's offer as to the amount, time and rate of payment.
- (2) If this rule applies, the claimant can file judgment on the admission for the specified sum of money admitted, less any payments made, interest and fixed costs under Part 71 to be paid at the agreed time and rate.

**14.11 Request for time to pay – procedure with time and rate not agreed.**

- (1) This rule applies where —
  - (a) the only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;
  - (b) the defendant —
    - (i) admits the whole of a claim for a specified sum of money; or
    - (ii) offers to pay a specified sum; and
    - (iii) 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) If this rule applies, the claimant must apply by notice to the registrar for judgment in Form G17 supported by an affidavit stating the reasons for objecting to the defendant's proposals as to payment.
- (3) The Court must consider the defendant's request and the claimant's objections and enter judgment for the amount of the claim, interest and fixed costs under Part 71 on such terms as it sees fit.
- (4) The general rule is that the Court should enter judgment under paragraph (3) without a hearing.
- (5) If the Court decides to deal with the matter at a hearing, it must fix a date and the claimant must give the parties at least seven days' notice of the hearing.

- (6) If there is a hearing, the Court must determine whether to make an order for the costs of the application, by whom the costs should be paid and assess such costs under Part 72.<sup>41</sup>

#### **14.12 Right of re-determination.**

- (1) If the Court has determined the time and rate of payment under rule 14.11 without a hearing, either party may apply for the decision to be re-determined by the Court at a hearing.
- (2) An application for re-determination must be made within fourteen days after service of the judgment on the applicant.
- (3) At the hearing the Court may confirm the judgment or make such other order as to the time and rate of payments as it considers just.
- (4) The Court must determine whether to make an order for costs, and by whom the costs should be paid and assess such costs under rule Part 72.

#### **14.13 Variation of order.**

Either a claimant or a defendant may apply to vary an order made under this Part.

## **PART 15 – SUMMARY JUDGMENT**

### **15.1 Scope of this Part.**

This Part sets out a procedure by which the Court may decide a claim or a particular issue without a trial.

### **15.2 Grounds for summary judgment.**

The Court may give summary judgment on the claim or on a particular issue if it considers that the —

- (a) claimant has no real prospect of succeeding on the claim or the issue; or
- (b) defendant has no real prospect of successfully defending the claim or the issue.<sup>42</sup>

### **15.3 Types of proceedings for which summary judgment is not available.**

The Court may give summary judgment in any type of proceedings except —

- (a) admiralty proceedings in rem;

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<sup>41</sup>The claimant is entitled to fixed costs on the judgment in accordance with Part 71.

<sup>42</sup>Rule 26.3 gives the court power to strike out the whole or part of statement of case if it discloses no reasonable ground for bringing or defending the claim.

- (b) probate proceedings;
- (c) proceedings by way of a fixed date claim;
- (d) proceedings for —
  - (i) claims against the Crown;
  - (ii) defamation;
  - (iii) false imprisonment;
  - (iv) malicious imprisonment; and
  - (v) redress under the Constitution.

#### **15.4 Procedure.**

- (1) Notice of an application for summary judgment must be served not less than fourteen days before the date fixed for hearing the application.
- (2) The notice under paragraph (1) must identify the issues which it is proposed that the Court should deal with at the hearing.
- (3) The Court may exercise its powers without such notice at any case management conference.<sup>43</sup>

#### **15.5 Evidence for the purpose of summary judgment hearing.**

- (1) The applicant must —
  - (a) file affidavit evidence in support with the application; and
  - (b) serve copies of the application and the affidavit evidence on each party against whom summary judgment is sought,at less than fourteen days before the date fixed for hearing the application.
- (2) A respondent who wishes to rely on evidence must —
  - (a) file affidavit evidence; and
  - (b) serve copies on the applicant and any other respondent to the application;at least seven days before the summary judgment hearing.

#### **15.6 Powers of Court on application for summary judgment.**

- (1) The Court may give summary judgment on any issue of fact or law whether or not the 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.

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<sup>43</sup>Part 11 contains general rules about applications.

## **PART 16 – ASSESSMENT OF DAMAGES**

### **16.1 Scope of this part.**

This Part deals with the procedure by which a hearing to assess damages is fixed.

### **16.2 Assessment of damages after default judgment.**

- (1) An application for a default judgment to be entered under rule 12.9(1)(b), must state —
  - (a) whether 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; or
  - (c) that the claimant is not yet in a position to prove the amount of the damages.
- (2) Unless the application states that the claimant is not in a position to prove the amount of damages, the court office must fix a date for the assessment of damages and inform the claimant at least fourteen days prior to the date time and place fixed for the hearing.
- (3) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.
- (4) The court office must then fix a period within which the assessment of damages will take place.<sup>44</sup>

### **16.3 Assessment of damages after admission of liability and claim for unspecified sum of money.**

- (1) This rule applies where the defendant has admitted liability for the whole or a specified proportion of a claim for an unspecified sum of money.
- (2) An application for judgment to be entered for damages to be assessed on an admission under Part 14 must —
  - (a) state whether the claimant is in a position to prove the amount of damages and if so give an estimate of the time required to deal with the assessment; or
  - (b) state that the claimant is not yet in a position to prove the amount of damages.
- (3) Unless the application states that the claimant is not in a position to prove the amount of damages, the court office must fix a date for the assessment

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<sup>44</sup>Rule 27.9 deals with the fixing of a date for a trial.

of damages and the claimant must give the parties at least fourteen days' notice of the date time and place fixed for the hearing.

- (4) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.
- (5) The court office must then fix either —
  - (a) a case management conference; or
  - (b) a period within which the assessment of damages will take place.<sup>45</sup>
- (6) The defendant is entitled to cross examine any witness called on behalf of the claimant and to make submissions to the Court but is not entitled to call any evidence unless the defendant has filed a defence setting out the facts the defendant seeks to prove.
- (7) The Court must also deal with any request under Part 14 for time to pay.

#### **16.4 Assessment of damage after direction for trial of issue of quantum.**

- (1) This rule applies where the Court makes a direction for the trial of an issue of quantum.
- (2) The direction may be given at —
  - (a) a case management conference;
  - (b) the hearing of an application for summary judgment; or
  - (c) the trial of the claim or of an issue, including the issue of liability.
- (3) On making such a direction 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 witness statements under Part 29; and
  - (c) service of expert reports under Part 32.
- (4) The Court must also fix a period within which the assessment of damages is to commence.<sup>46</sup>

## **PART 17 – INTERIM REMEDIES**

### **SECTION I - INTERIM REMEDIES: GENERAL PROVISIONS**

#### **17.1 Orders for interim remedies: relief which may be granted.**

- (1) The Court may grant interim remedies including —
  - (a) an interim declaration;

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<sup>45</sup>Rule 27.9 deals with the fixing of a date for trial.

<sup>46</sup>Rule 27.9 deals with the fixing of a date for trial.

- (b) an interim injunction;
- (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 subparagraph (h);
- (d) an order directing a party to prepare and file accounts relating to the dispute;
- (e) 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;
- (f) 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;
- (g) an order for interim costs;
- (h) an order for the —
  - (i) carrying out of an experiment on or with relevant property;
  - (ii) detention, custody or preservation of relevant property;
  - (iii) inspection of relevant property;
  - (iv) payment of income from relevant property until a claim is decided;
  - (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;
  - (vi) taking of a sample of relevant property;
- (i) an order permitting a party seeking to recover personal property to pay a specified sum of money into court pending the outcome of the proceedings and directing that, if the party does so, the property must be given up to the party;
- (j) a “freezing order”, restraining a party from —
  - (i) dealing with any asset whether located within the jurisdiction or not;
  - (ii) removing from the jurisdiction assets located there;
- (k) an order to deliver up goods;
- (l) a “search order” requiring a party to admit another party to premises for the purpose, among other things, of preserving evidence;
- (m) an “order for interim payment” under rules 17.14 and 17.15 for payment by a defendant on account of any damages, debt or other sum which the Court may find the defendant liable to pay.



- (2) In paragraph (1)(e) and (h), “**relevant property**” means property which is the subject of a claim or in relation to which any question may arise on a claim.
- (3) The fact that a particular type of interim remedy is not listed in paragraph (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.
- (5) The Chief Justice may issue a practice direction in respect of the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

## **17.2 Interim injunctions and similar orders including search orders and freezing orders.**

- (1) This rule deals with applications for —
  - (a) an interim injunction under rule 17.1(1)(b);
  - (b) a search order under rule 17.1(1)(l);
  - (c) a freezing order under rule 17.1(1)(j);
  - (d) an order authorising a person to enter any land or building for the purpose of carrying out an order under rule 17.1(1)(h); and
  - (e) an order for the detention, custody or preservation of relevant property under rule 17.1(1)(h)(ii).
- (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 or extension of the order.
- (3) An application for an interim order under this rule may in the first instance be made on three days’ notice to the respondent.
- (4) The Court may grant an interim order under this rule on an application made without notice for a period of not more than twenty-eight days, unless any of these Rules permits a longer period, if it is satisfied that —
  - (a) in a case of urgency no notice is possible; or
  - (b) that to give notice would defeat the purpose of the application.
- (5) On granting an order under paragraph (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 subparagraph (a), on which the interim order will terminate unless a further order is made on the further consideration of the application.

- (6) When an order is made under paragraph (4), the applicant must, not less than seven days before the date fixed for further consideration of the application, serve the respondent personally with —
  - (a) the application for an interim order;
  - (b) the evidence in support of the application;
  - (c) a copy of the transcript of the hearing, if any, or if there is no such transcript a copy of attorney's note of the hearing;
  - (d) a copy of any written submissions or skeleton arguments used at the hearing;
  - (e) any interim order made without notice; and
  - (f) notice of the date and time on which the Court will further consider the application under paragraph (5).
- (7) An application to extend an interim order under this rule must be made on notice to the respondent unless the Court otherwise orders.

### **17.3 Time when an order for interim remedy may be made.**

- (1) An order for an interim remedy may be made at any time, including —
  - (a) after judgment has been given; and
  - (b) before a claim has been filed.
- (2) Paragraph (1) is subject to any rule which provides otherwise.
- (3) The Court may grant an interim remedy before a claim has been made only if —
  - (a) the matter is urgent; or
  - (b) it is otherwise necessary to do so in the interests of justice.
- (4) Unless the Court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before filing an acknowledgement of service under Part 9.
- (5) If the Court grants an interim remedy before a claim has been filed, it must require an undertaking from the claimant to file and serve a claim form by a specified date.
- (6) If no claim has been filed the application must be made in accordance with the general rules about applications contained in Part 11.

### **17.4 How to apply for interim remedy.**

- (1) An application for an interim remedy must be supported by evidence on affidavit unless the Court otherwise orders.
- (2) Where, in support of any application under this rule, it is not practicable to produce evidence on affidavit then the application may be heard on the basis of either —

- (i) information given orally to the Court with an undertaking to file an affidavit within a specified date setting out the oral information; or
  - (ii) evidence given by witness statement and, in such event, the Court may at any time give such directions as it thinks fit in relation to the filing, in due course, of evidence by affidavit.
- (3) The Court may grant an interim remedy on an application made without notice if it appears to the Court that there are good reasons for not giving notice.
- (4) The evidence in support of an application made without giving notice must state the reasons why notice has not been given.

### **17.5 Costs.**

- (1) The Court may make any order as to costs that it considers just in relation to any order made under this Part.
- (2) Without limiting the generality of paragraph (1), an order as to costs includes an order as to the costs of any person affected by a search order or freezing order.

## **SECTION II – SEARCH ORDERS: ADDITIONAL PROVISIONS**

### **17.6 Interpretation.**

In this Section, unless the context otherwise requires —

“**applicant**” means an applicant for a search order;

“**described**” includes described generally, whether by reference to a class or otherwise;

“**premises**” includes a vehicle or vessel of any kind;

“**record**” includes a document, copy, photograph, film, or sample;

“**respondent**” means a person against whom a search order is sought or made;

“**search order**” means an order made under rule 17.7.

### **17.7 Search order: evidence, notice and form of order.**

- (1) This rule applies only if the evidence is, or may be, relevant to an issue in the proceeding or anticipated proceeding.
- (2) The Court may make a search order in a proceeding or before a proceeding commences, with or without notice to the respondent, to —
  - (a) secure or preserve evidence; and
  - (b) require a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence.
- (3) Form G18 must be used but may be varied as the circumstances require.

- (4) A search order must be served on the respondent.

### **17.8 Requirement for grant of search order.**

The Court may make a search order under rule 17.7 only if the Court is satisfied that —

- (a) an applicant seeking the order has a strong *prima facie* case on an accrued cause of action; and
- (b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and
- (c) there is sufficient evidence in relation to a respondent that—
  - (i) the respondent possesses relevant evidentiary material; and
  - (ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

### **17.9 Restriction on entrants.**

- (1) The permitted persons identified under rule 17.11(1)(a) must not include the applicant in person, or, if the applicant is not a natural person, any director, officer, employee, partner, or other person associated with the applicant, other than the applicant's attorney.
- (2) The number of those permitted persons must be as small as is reasonably practicable in the circumstances.

### **17.10 Applicant's undertaking and duty.**

- (1) As a condition of the making of the order, the applicant must undertake to the Court to pay the reasonable costs and disbursements of any independent attorney appointed under rule 17.12.
- (2) The Court must require the applicant for a search order to give appropriate undertakings, including an undertaking as to damages.
- (3) If the applicant has, or may later have, insufficient assets within the jurisdiction to discharge the obligation created by an undertaking as to damages, the Court may require the applicant to provide security for that obligation in a form and in an amount fixed by a judge or, if the judge so directs, the Registrar.
- (4) An applicant for a search order without notice to a respondent must fully and frankly disclose to the Court all material facts, including —
  - (a) any possible defences known to the applicant; and
  - (b) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages.

### **17.11 Terms of search order.**

- (1) A search order may direct a named or described person —
  - (a) to permit, or arrange to permit, another or other named or described person or persons specified —
    - (i) to enter specified premises;
    - (ii) to take other steps including searching for, inspecting, or removing a listed or described thing and making or obtaining a record of it or information contained in it; and
  - (b) to provide, or arrange to provide, named or described persons with any described information, thing, or service;
  - (c) to allow other named or described persons, including computer specialists not associated with either the applicant or the respondent, to take and retain in their custody, or copy, any described thing or information;
  - (d) not to disclose any information about the order, for up to three working days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and
  - (e) to do or refrain from doing any specified act.
- (2) A search order may contain whatever other incidental provisions the Court considers just.
- (3) A search order must fix a date on which the Court will consider a report on the search from the independent attorneys, and any applications related to the matters listed in rule 17.13.

### **17.12 Independent attorneys.**

- (1) If the Court makes a search order, the Court must appoint one or more attorneys, each of whom is independent (hereinafter “the independent attorneys”), to supervise the execution of the order, and to do whatever things in relation to the order the Court considers appropriate.
- (2) The Court may appoint an independent attorney to supervise the carrying out of the order at any one or more premises, and a different independent attorney or attorneys to supervise execution of the order at other premises, with each independent attorney having power to do whatever things in relation to the order the Court considers appropriate.
- (3) Service of a search order, or of any other document ordered to be served on a respondent, on a person appearing to an independent attorney to be responsible and in charge of premises, is to be treated as service on the respondent.

- (4) A search order must fix a date on which the Court will consider a report on the search from the independent attorneys, and any applications related to the matters in rule 17.13.

### **17.13 Review of search.**

- (1) On the date fixed under rule 17.12(4) the applicant and the respondent and the independent attorneys are entitled to appear, and the Court may make any order it considers just.
- (2) In making an order under paragraph (1), the Court must consider the following —
  - (a) what is to happen to any goods removed from the premises or to any documents or copies that have been made;
  - (b) how the confidentiality to which the respondent is entitled is to be maintained;
  - (c) any claim to privilege;
  - (d) any application by a party;
  - (e) any issue raised by an independent attorney.

## **SECTION III - INTERIM PAYMENTS**

### **17.14 Interim payments - general procedure.**

- (1) The claimant may not apply for an order for an interim payment before the end of the period for entering an acknowledgement of service applicable to the defendant against whom the application is made.<sup>47</sup>
- (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 fourteen days before the hearing of the application; and
  - (b) supported by evidence on affidavit.
- (4) The affidavit must —
  - (a) exhibit any documentary evidence relied on by the claimant to support of the application;
  - (b) state the claimant's assessment of the amount of damages or other monetary judgment that are likely to be awarded; and
  - (c) if the claim is made under any relevant enactment in respect of injury resulting in death, contain full particulars of the —

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<sup>47</sup>Rule 9.3 sets out the period for filing a acknowledgement of service.

- (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) If 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 seven days before the hearing of the application.
- (6) The Court may order an interim payment to be made in one sum or by instalments.

**17.15 Interim payments - conditions to be satisfied and matters to be taken into account.**

- (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 the claimant and the defendant and for 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 paragraph (3) applies, it is satisfied that, if the claim went to trial, the claimant would obtain judgment against the defendant from whom an order for interim payment is sought 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 fails, 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 a claim for personal injuries the Court may make an order for the interim payment of damages only if the defendant is —

- (a) a person whose means and resources are such as to enable that person to make the interim payment;
  - (b) insured in respect of the claim; or
  - (c) a public authority.
- (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) paragraph (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.

#### **17.16 Powers of Court where it has made order for interim payment.**

- (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 a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment;
  - (b) order all or part of the interim payment to be repaid; or
  - (c) vary or discharge the order for interim payment.
- (3) The Court may make an order under this rule —
- (a) on an application by a party made at any time; or
  - (b) without an application by a party if it makes the order when it disposes of the claim or any part of it.

#### **17.17 Power of Court to order early trial, etc.**

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.



## **PART 18 – COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS**

### **18.1 Purpose of this Part.**

The purpose of this Part is to enable counterclaims and other additional claims to be managed in the most convenient and effective manner.

### **18.2 Scope and interpretation.**

- (1) This Part applies to—
  - (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
  - (b) an additional claim by a defendant against any person, whether or not already a party, for contribution or indemnity or some other remedy; and
  - (c) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person, whether or not already a party.
- (2) In these Rules —
  - (a) **“additional claim”** means any claim other than the claim by the claimant against the defendant or a claim for a set off contained in a defence; and
  - (b) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim.

### **18.3 Application of these Rules to additional claims.**

- (1) An additional claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.
- (2) Rule 8.12 time does not apply to an additional claim.
- (3) Part 12 applies to a counterclaim but not to other additional claims.
- (4) Part 14 applies to a counterclaim, but only —
  - (a) rules 14.1(1); and
  - (b) rule 14.4,apply to other additional claims.

### **18.4 Defendant’s counterclaim against the claimant.**

- (1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim in Form G11.
- (2) A defendant may make a counterclaim against a claimant—

- (a) without the Court's permission if he files it with his defence; or
  - (b) at any other time with the Court's permission.
- (3) Part 9 does not apply to a claimant who wishes to defend a counterclaim.

### **18.5 Counterclaim against a person other than the claimant.**

- (1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the Court for an order that that person be added as an additional party.
- (2) An application for an order under paragraph (1) may be made without notice unless the Court directs otherwise.
- (3) Where the Court makes an order under paragraph (1), it will give directions as to the management of the case.

### **18.6 Defendant's additional claim for contribution or indemnity from another party.**

- (1) A defendant who has filed an acknowledgement of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by —
  - (a) filing a notice in Form G12 containing a statement of the nature and grounds of his additional claim; and
  - (b) serving the notice on that party.
- (2) A defendant may file and serve a notice under this rule —
  - (a) without the court's permission, if he files and serves it —
    - (i) with his defence; or
    - (ii) if his additional claim for contribution or indemnity is against a party added to the claim later, within twenty-eight days after that party files his defence; or
  - (b) at any other time with the Court's permission.

### **18.7 Procedure for making any other additional claim.**

- (1) This rule applies to any additional claim except —
  - (a) a counterclaim only against an existing party; and
  - (b) a claim for contribution or indemnity made in accordance with rule 18.6.
- (2) An additional claim is made when Form G12 is filed in the court office.<sup>48</sup>
- (3) A defendant may make an additional claim —

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<sup>48</sup>Rule 8.1(2) provides that a claim form is issued on the date when it is stamped (manually or electronically) by or on behalf of the court office).

- (a) without the court's permission if the additional claim is issued before or at the same time as he files his defence;
  - (b) at any other time with the court's permission.<sup>49</sup>
- (4) Particulars of an additional claim must be contained in or served with the additional claim.
- (5) An application for permission to make an additional claim may be made without notice, unless the Court directs otherwise.

### **18.8 Service of claim form.**

- (1) Where an additional claim may be made without the Court's permission, any claim form must—
- (a) in the case of a counterclaim against an additional party only, be served on every other party when a copy of the defence is served;
  - (b) in the case of any other additional claim, be served on the person against whom it is made within fourteen days after the date on which the additional claim is issued by the Court.
- (2) Paragraph (1) does not apply to a claim for contribution or indemnity made in accordance with rule 18.6.
- (3) Where the Court gives permission to make an additional claim it will at the same time give directions as to its service.

### **18.9 Matters relevant to question of whether an additional claim should be separate from the claim.**

- (1) This rule applies where the Court is considering whether to—
- (a) permit an additional claim to be made;
  - (b) dismiss an additional claim; or
  - (c) require an additional claim to be dealt with separately from the claim by the claimant against the defendant.<sup>50</sup>
- (2) The matters to which the Court may have regard include —
- (a) the connection between the additional claim and the claim made by the claimant against the defendant;
  - (b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him; and
  - (c) whether the additional claimant wants the Court to decide any question connected with the subject matter of the proceedings —

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<sup>49</sup>Rule 10.3 sets out the period for filing a defence.

<sup>50</sup>Under its case management powers the court may order that part of proceedings be dealt with as separate proceedings and to decide the order in which issues are to be tried).

- (i) not only between existing parties but also between existing parties and a person not already a party; or
- (ii) against an existing party not only in a capacity in which he is already a party but also in some further capacity.

**18.10 Effect of service of an additional claim.**

- (1) A person on whom an additional claim is served becomes a party to the proceedings if he is not a party already.
- (2) When an additional 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 additional claim.

**18.11 Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice.**

- (1) This rule applies if —
  - (a) the additional claim is not —
    - (i) a counterclaim; or
    - (ii) a claim by a defendant for contribution or indemnity against another defendant under rule 18.6; and
  - (b) the party against whom an additional claim is made fails to file an acknowledgement of service or defence in respect of the additional claim.
- (2) The party against whom the additional claim is made —
  - (a) is deemed to admit the additional claim, and is bound by any judgment or decision in the proceedings in so far as it is relevant to any matter arising in the additional claim;
  - (b) subject to paragraph (3), if default judgment under Part 12 is given against the additional claimant, the additional claimant may obtain judgment in respect of the additional claim by filing a request in the relevant practice form.
- (3) An additional claimant may not enter judgment under paragraph (2)(b) without the Court's permission if —
  - (a) he has not satisfied the default judgment which has been given against him; or
  - (b) he wishes to obtain judgment for any remedy other than a contribution or indemnity.
- (4) An application for the Court's permission under paragraph (3) may be made without notice unless the Court directs otherwise.

- (5) The Court may at any time set aside or vary a judgment entered under paragraph (2)(b).

### **18.12 Procedural steps on service of an additional claim form on a non-party.**

- (1) Where an additional claim form is served on a person who is not already a party it must be accompanied by —
  - (a) a form for defending the claim;
  - (b) a form for admitting the claim;
  - (c) a form for acknowledging service; and
  - (d) a copy of —
    - (i) every statement of case which has already been served in the proceedings; and
    - (ii) such other documents as the Court may direct.
- (2) A copy of the additional claim form must be served on every existing party.

### **18.13 Case management where a defence to an additional claim is filed.**

- (1) Where a defence is filed to an additional claim the Court must consider the future conduct of the proceedings and give appropriate directions.
- (2) In giving directions under paragraph (1) the Court must ensure that, so far as practicable, the original claim and all additional claims are managed together.<sup>51</sup>

## **PART 19 – ADDITION AND SUBSTITUTION OF PARTIES**

### **19.1 Scope of this Part.**

This Part deals with the addition or substitution of parties after proceedings have been commenced.

### **19.2 Change of parties – general.**

- (1) A claimant may add a new defendant to proceedings without permission at any time before the case management conference.
- (2) The claimant does so by filing at the court office an amended claim form and statement of claim and Parts 5, 7, 9, 10 and 12 apply to the amended claim form as they do to a claim form.<sup>52</sup>

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<sup>51</sup>Part 52 contains provisions about counterclaims and other Part 18 claims in relation to proceedings by or against the Crown.

<sup>52</sup>Part 18 deals with counterclaims and the adding of additional parties by a defendant.

- (3) The Court may add a new party to proceedings without an application, if —
  - (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 any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.
- (5) The Court may order a new party to be substituted for an existing one if —
  - (a) Court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or
  - (b) existing party's interest or liability has passed to the new party.
- (6) The Court may add, remove or substitute a party at the case management conference.
- (7) The Court may not add a party, except by substitution, after the case management conference on the application of an existing party unless that party can satisfy the Court that the addition is necessary because of some change in circumstances which became known after the case management conference.

### **19.3 Procedure for adding and substituting parties.**

- (1) A claimant may add a new defendant to proceedings without permission at any time before the case management conference.
- (2) The claimant does so by filing at the Court office an amended claim form and statement of claim and Parts 5, 7, 9, 10 and 12 apply to the amended claim form as they do to a claim form.<sup>53</sup>
- (3) The Court may add a new party to proceedings without an application, if —
  - (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 any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.

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<sup>53</sup>Part 18 deals with counterclaims and the adding of additional parties by a defendant.

- (5) The Court may order a new party to be substituted for an existing one if —
  - (a) Court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or
  - (b) existing party's interest or liability has passed to the new party.
- (6) The Court may add, remove or substitute a party at the case management conference.
- (7) The Court may not add a party, except by substitution, after the case management conference on the application of an existing party unless that party can satisfy the Court that the addition is necessary because of some change in circumstances which became known after the case management conference.

**19.4 Special provisions about adding or substituting parties after end of relevant limitation period.**

- (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) addition or substitution is necessary; and
  - (b) relevant limitation period was current when the proceedings were started.
- (3) The addition or substitution of a party is necessary only if the Court is satisfied that —
  - (a) 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;
  - (b) the interest or liability of the former party has passed to the new party; or
  - (c) the new party is to be substituted for a party who was named in the claim form in mistake for the new party.

## **PART 20 – CHANGES TO STATEMENT OF CASE**

**20.1 Changes to statement of case.**

- (1) A statement of case may be amended once, without the Court's permission, at any time prior to the date fixed by the Court for the first case management conference.
- (2) The Court may give permission to amend a statement of case at a case management conference or at any time on an application to the Court.

- (3) When considering an application to amend a statement of case pursuant to paragraph (2), the factors to which the Court must have regard are —
  - (a) how promptly the applicant has applied to the Court after becoming aware that the change was one which he wished to make;
  - (b) the prejudice to the applicant if the application was refused;
  - (c) the prejudice to the other parties if the change were permitted;
  - (d) whether any prejudice to any other party can be compensated by the payment of costs and or interest;
  - (e) whether the trial date or any likely trial date can still be met if the application is granted; and
  - (f) the administration of justice.
- (4) A statement of case may not be amended without permission under this rule if the change is one to which any of the following applies —
  - (a) rule 19.4; or
  - (b) rule 20.2.
- (5) An amended statement of case must include a certificate of truth under rule 3.8.
- (6) The Chief Justice may, by practice direction, set out additional factors to which the Court must have regard when considering an application under this rule.<sup>54</sup>

## **20.2 Changes to statements of case after end of relevant limitation period.**

- (1) This rule applies to a change in a statement of case after the end of a relevant limitation period.
- (2) The Court may allow an amendment the effect of which will be to add or substitute a new claim but only if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party wishing to change the statement of case 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.

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<sup>54</sup>Rule 27.3 (1) deals with the fixing of case management conference.



- (4) The Court may allow an amendment to alter the capacity in which a party claims.<sup>55</sup>

### **20.3 Filing an amended statement of case.**

A party who amends his statement of case must file in the court office the original amended statement of case and one copy of the amended statement of case and, after filing, serve a copy of it on every other party.

### **20.4 Amendments to statements of case and time for service.**

- (1) Where an amended statement of claim is served on a defendant —
- (a) the defendant, if he has already served a defence on the claimant, may file and serve an amended defence;
  - (b) the period for filing and serving an amended defence is the period of twenty-eight days after the date of service of the amended statement of claim;
  - (c) if the defendant has not already served a defence on the claimant, the period for filing and serving a defence is the period of twenty-eight days after the date of service of the amended statement of claim.
- (2) Where an amended defence is served on the claimant by a defendant —
- (a) the claimant, if he has already served a reply on the defendant, may file and serve an amended reply; and
  - (b) the period for filing and serving an amended reply is the period of fourteen days after the date of service of the amended defence;
  - (c) if the claimant has not already served a reply on the defendant, the period for filing and serving a reply is the period of twenty-eight days after the date of service of the amended defence.
- (3) In paragraphs (1) and (2), reference to a defence and a reply include references to a counterclaim and a defence to a counterclaim respectively.
- (4) Where a party has filed a statement of case in answer to another statement of case which subsequently amended and served on him or her under this rule, then, if that party does not amend his or her statement of case in accordance with this rule, he shall be taken to rely on it in answer to the amended statement of case.
- (5) This rule shall apply *mutatis mutandis* to an amended ancillary claim.

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<sup>55</sup>Rule 19.4 specifies the circumstances in which the court may allow a new party to be added or substituted after the end of a relevant limitation period.

## **PART 21 – REPRESENTATIVE PARTIES**

### **21.1 Representative claimants and defendants – general.**

- (1) This rule applies to any proceedings, other than proceedings falling within rule 21.4, in which five or more persons have the same or a similar interest in the proceedings.
- (2) The Court may appoint —
  - (a) a body having a sufficient interest in the proceedings; or
  - (b) one or more of those persons;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.

### **21.2 Appointment of representative claimant or defendant – procedure.**

- (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 any —
  - (a) party;
  - (b) person or body who wishes to be appointed as a representative party; or
  - (c) person who is likely to be a party to proceedings.
- (3) An application for such an order must —
  - (a) be supported by affidavit evidence; and
  - (b) 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 on notice to the claimant.
- (5) An application to appoint a representative claimant may be made without notice.
- (6) The Court may direct that notice of an application be given to such other persons as it thinks fit.
- (7) If the Court directs that a person not already a party is to be a representative defendant, it must make an order adding that person as a defendant.

### **21.3 Consequence of order appointing representative party.**

- (1) If there is a representative claimant or defendant, an order of the Court binds everyone whom that party represents.
- (2) It may not however be enforced against a person not a party to the proceedings unless the person wishing to enforce it 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 wished to enforce the judgment.

### **21.4 Representation of persons who cannot be ascertained, etc., in proceedings about estates, trusts and construction of written instruments.**

- (1) This rule applies only to proceedings about —
  - (a) the construction of a written instrument;
  - (b) the estate of someone who is deceased; or
  - (c) property subject to a trust.
- (2) The Court may appoint one or more persons, whether or not a party, to represent any person or class of persons, including an unborn person, 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, including a person who may be ascertained only in the future;
  - (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 reason.
- (3) An application for an order to appoint a representative party under this rule may be made by any —
  - (a) party; or
  - (b) 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.

### **21.5 Compromise in proceedings to which rule 21.4 applies.**

- (1) If—

- (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 referred to in paragraph (b) 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.
- (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.

### **21.6 Representation of beneficiaries by trustees.**

- (1) A claim may be made by or against a person in that person's 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.
- (3) The Court may direct that notice of the proceedings be given to an beneficiary.
- (4) A decision of the Court in such proceedings binds a beneficiary unless the Court otherwise orders.
- (5) The only grounds for an order that a decision is not binding on a beneficiary is that the trustee, executor or administrator —
  - (a) could not or did not in fact represent the interest of the beneficiary; or
  - (b) has acted fraudulently.

### **21.7 Proceedings against estate of deceased person.**

- (1) If in any proceedings it appears that a deceased person was interested in the proceedings then, but the deceased person has no personal representatives, 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 proceedings on behalf of the estate of the dead 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) Until the Court has appointed someone to represent the deceased person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.
- (5) A decision in proceedings in which 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.

### **21.8 Power of Court to give directions to enable proceedings to be carried on after party's death.**

- (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.

### **21.9 Power of Court to strike out claim after death of claimant.**

- (1) If a claimant dies and the claimant's personal representatives do not apply for an order under rule 19.3 to be substituted as claimants, the defendant may apply for the claim to be struck out.
- (2) Notice of the application must be given to the personal representatives of the claimant, if any, and such other persons as the Court directs.
- (3) The general rule is that if the Court makes an order on an application under this rule it will be that unless the personal representatives or some other persons on behalf of the estate apply to be substituted under rule 19.3 or for directions under rule 21.8 by a specified date, the claim is to be struck out.
- (4) The Court may give directions under rule 21.8 at the hearing of an application under this rule.

## **PART 22 – MISCELLANEOUS RULES ABOUT PARTIES**

### **22.1 Partners.**

- (1) Persons claiming to be entitled, or alleged to be liable, as partners may sue or be sued in the firm name if —
  - (a) the firm name is the name of the firm in which they were partners; and
  - (b) they carried on business in that name within the jurisdiction, when the right to claim arose.
- (2) If partners sue or are sued in the firm's name, 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 right to claim arose.
- (3) If the partners do not comply, the Court on application by any other party may order them to provide such a statement and to certify it to the Court.
  - (4) An application under paragraph (3) may be made without notice.
  - (5) The party making the application must —
    - (a) state the date of the demand;
    - (b) certify that the party has made a demand in writing; and
    - (c) certify that the other party has not complied.
  - (6) If the partners do not comply within twenty-one days after service of the order any claim or defence brought by them is deemed to be struck out.<sup>56</sup>
  - (7) A duly authorised employee of a partnership or firm may —
    - (a) conduct proceedings on behalf of the partnership or firm; or
    - (b) represent it in Court with the Court's permission.
  - (8) Permission under paragraph (7)(b) is to be given or refused at a case management conference.<sup>57</sup>

## **22.2 Person carrying on business in another name.**

- (1) A claim may be made by or against a person —
  - (a) carrying on business within the jurisdiction; or
  - (b) who was carrying on business within the jurisdiction when the right to claim arose —
    - (i) in that person's own name;
    - (ii) in that person's own name, followed by the words "trading as X.Y.";
    - (iii) as "X.Y." followed by the words "(a trading name)"; or
    - (iv) as "X.Y." followed by the words "a firm".
- (2) If a claim is made by or against a person in his or her business name, the Rules about claims by or against partners apply as if that person had been a partner in a firm when the right to claim arose and the business name were the firm's name.

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<sup>56</sup>Rule 26.5 deals with the procedure for striking out a statement of case.

<sup>57</sup>Rule 46.2 deals with enforcement of a judgment against a partnership or by a firm against one of its members.

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### **22.3 Bodies corporate.**

- (1) Except as expressly provided by or under any enactment, a body corporate may not begin or carry on any court proceedings otherwise than by an attorney unless the Court permits it to be represented by a duly authorised director or other officer.
- (2) Permission for a duly authorised director or other officer to represent the body corporate at the trial should wherever practicable be sought at a case management conference or pre-trial review.
- (4) In considering whether to give permission the Court must take into account all the circumstances including the complexity of the case.
- (5) In paragraphs (1) and (2) “duly authorised” means authorised by the body corporate to conduct the proceedings on its behalf.

## **PART 23 – MINORS AND PATIENTS**

### **23.1 Scope of this part.**

- (1) This Part —
  - (a) contains special provisions which apply in proceedings involving minors and patients; and
  - (b) sets out how a person becomes a litigation guardian of a minor or patient.<sup>58</sup>
- (2) In this Part, “Act” means the Mental Health Act.

### **23.2 Requirement of litigation guardian in proceedings by or against minors or patients.**

- (1) The general rule is that a minor or patient must have a litigation guardian to conduct proceedings on his or her behalf.
- (2) The Court may, on the application of a minor, make an order permitting the minor to conduct proceedings without a litigation guardian.
- (3) An application for an order under paragraph (2) —
  - (a) may be made by the minor;
  - (b) if the minor has a litigation guardian, must be on notice to that litigation guardian; and
  - (c) if there is no litigation guardian, may be made without notice.
- (4) The Court may appoint a person to be the minor's litigation guardian if —

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<sup>58</sup>Rule 5.10 contains provisions about the service of documents on minors and patients.  
Rule 14.3 contains restrictions on entering judgment on an admission where a party is a minor or patient.

- (a) the Court has made an order under paragraph (2); and
  - (b) it subsequently appears to the Court that it is desirable for a litigation guardian to conduct the proceedings on behalf of the minor.
- (5) A litigation guardian must act by an attorney unless the Court otherwise orders.
- (6) The litigation guardian must sign any certificate of truth under rule 3.8 on behalf of the minor or patient.

### **23.3 Stage of proceedings at which litigation guardian becomes necessary.**

- (1) A minor or patient must have a litigation guardian in order to issue a claim except where the Court has made an order under rule 23.2(2).
- (2) A person may not —
- (a) make any application against a minor or patient before proceedings have started; or
  - (b) take any step in proceedings except —
    - (i) applying for the appointment of a litigation guardian under rule 23.8; or
    - (ii) issuing and serving a claim form against a minor or patient; until the minor or patient has a litigation guardian.
- (3) If a person other than a minor becomes a patient during proceedings, any party may not take any step in the proceedings apart from applying to the Court for the appointment of a litigation guardian until the patient has a litigation guardian.
- (4) Any step taken before a minor or patient has a litigation guardian, other than an application under rule 23.2(2) or (b) paragraph (2)(b), is of no effect unless the Court otherwise orders.

### **23.4 Who may be minor's litigation guardian.**

A person who satisfies the conditions set out in rule 23.6 may act as a minor's litigation guardian without a court order, unless —

- (a) the Court has already appointed a litigation guardian; or
- (b) makes or has made an order under rule 23.9.

### **23.5 Who may be patient's litigation guardian.**

- (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 litigation guardian of the patient in any proceedings to which the authority extends.



- (2) Where nobody 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 litigation guardian without a court order.

### **23.6 Conditions to act as litigation guardian.**

A person may act as a litigation guardian if 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.

### **23.7 How person becomes litigation guardian without court order.**

- (1) If the Court has not appointed a litigation guardian, a person who wishes to act as litigation guardian 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 that person satisfies the conditions specified in rule 23.6.
- (4) A person who is to act as a litigation guardian for a claimant must, at the time when the claim is made, file the authorisation or certificate under paragraph (3).
- (5) A person who is to act as a litigation guardian for a defendant must file the —
  - (a) authorisation; or
  - (b) certificate under paragraph (3),at the time when the litigation guardian first takes a step in the proceedings on behalf of the defendant.
- (6) The litigation guardian must —
  - (a) serve a copy of the certificate under paragraph (3) on every person on whom in accordance with rule 5.10 the claim form should be served; and
  - (b) file an affidavit of service.

### **23.8 How person becomes litigation guardian by court order.**

- (1) The Court may make an order appointing a litigation guardian with or without an application.
- (2) An application for an order appointing a litigation guardian may be made by a —
  - (a) party, or
  - (b) person who wishes to be a litigation guardian.

- (3) If —
  - (a) a person makes a claim against a minor or patient;
  - (b) the minor or patient has no litigation guardian; and
  - (c) either —
    - (i) someone who is not entitled to be a litigation guardian 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 litigation guardian for the minor or patient.
- (4) An application for an order appointing a litigation guardian must be supported by evidence on affidavit.
- (5) The Court may not appoint a litigation guardian under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

**23.9 Court's power to terminate appointment of and substitute litigation guardian.**

- (1) The Court may —
  - (a) appoint a new litigation guardian in substitution for an existing one;
  - (b) direct that a person may not act as a litigation guardian ; or
  - (c) terminate a litigation guardian's authority to act.
- (2) The Court may make an order under paragraph (1) with or without an application.
- (3) An application for an order under paragraph (1) must be supported by evidence on affidavit.
- (4) The Court may not appoint a litigation guardian under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

**23.10 Appointment of litigation guardian by court order – supplementary.**

- (1) An application for an order under rule 23.8 or 23.9 must be served on every person on whom, in accordance with rule 5.10 the claim form should have been served.
- (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 litigation guardian; and
  - (b) it is proposed should act as litigation guardian if that person is not the applicant.
- (3) On an application for an order under rule 23.8 or 23.9, the Court may appoint the proposed person or any other person.

### **23.11 Procedure where appointment as litigation guardian ceases.**

- (1) The appointment of a minor's litigation guardian ceases when a minor who is not a patient reaches the age of majority.
- (2) When a party ceases to be a patient during the course of proceedings, the litigation guardian's appointment continues until it is ended by court order.
- (3) An application for an order under paragraph (2) may be made by —
  - (a) a party; and
  - (b) the former patient; or
  - (c) the litigation guardian ;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) giving an address for service;
  - (b) stating that the appointment of the litigation guardian has ceased; and
  - (c) stating whether or not he chooses to carry on the proceedings.
- (5) If the notice is not served within twenty-eight days after the appointment of the litigation guardian ceases the Court may, on application, strike out any claim or defence brought or filed by the minor or patient.
- (6) The liability of a litigation guardian for costs continues until the —
  - (a) minor or patient serves the notice referred to in paragraph (4); or
  - (b) litigation guardian serves notice on the other parties that the appointment has ceased.

### **23.12 Compromise, etc. by or on behalf of minor or patient.**

- (1) If a claim is made —
  - (a) against a minor or patient; or
  - (b) by or on behalf of a minor or patient;any settlement, compromise or payment and any acceptance of money is not 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) If —
  - (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 begun, an agreement is reached for the settlement of the claim; and
  - (b) the sole purpose of proceedings on that claim is to obtain the approval of the Court to a settlement or compromise of the claim,

the claim may be made by a fixed date claim form Form G4 which may

- (i) be issued jointly by the claimant and defendant; and
- (ii) include a request to the Court for approval of the settlement.

### **23.13 Control of money recovered by or on behalf of minor or patient.**

- (1) If, in any proceedings money —
  - (a) is recovered by or on behalf of or for the benefit of a minor or patient; or
  - (b) 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.

## **PART 24 – SECURITY FOR COSTS**

### **24.1 Scope of this Part.**

This Part deals with the power of the Court to require a claimant to give security for the costs of the defendant.<sup>59</sup>

### **24.2 Application for order for security for costs.**

- (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 should be made at or before a case management conference.
- (3) An application for security for costs must be supported by evidence on affidavit.
- (4) The amount and nature of the security shall be such as the Court thinks fit.

### **24.3 Conditions to be satisfied.**

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) 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;

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<sup>59</sup>Additional provision is made in relevant enactments relating to limited companies for security to be ordered against an insolvent claimant company.

- (b) the claimant —
  - (i) failed to give his or her address in the claim form;
  - (ii) gave an incorrect address in the claim form; or
  - (iii) has changed his or her address since the claim was commenced;  
with a view to evading the consequences of the litigation;
- (c) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him;
- (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) the claimant is an external company; or
- (g) the claimant is ordinarily resident out of the jurisdiction.

#### **24.4 Security for costs against counter-claiming defendant.**

Rules 24.2 and 24.3 apply where a defendant makes a counterclaim as if a reference in those rules —

- (a) to a claimant, were a reference to a defendant making a counterclaim;
- (b) to a defendant, were a reference to a claimant defending a counterclaim.

#### **24.5 Enforcing order for security for costs.**

On making an order for security for costs the Court must also order that —

- (a) the claim, or counterclaim, be stayed until such time as security for costs is provided in accordance with the terms of the order;
- (b) if security is not provided in accordance with the terms of the order by a specified date, the claim, or counterclaim, be struck out.

## **PART 25 – CASE MANAGEMENT – THE OBJECTIVE**

### **25.1 Court's duty actively to manage cases.**

The Court must further the overriding objective by actively managing cases including —

- (a) identifying the issues at an early stage;

- (b) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;
- (c) considering whether the likely benefits of taking a particular step will justify the cost of taking it;
- (d) dealing with as many aspects of the case as is practicable on the same occasion;
- (e) dealing with as many aspects of the case, as it appears appropriate to do, without requiring the parties to attend Court;
- (f) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (g) deciding the order in which issues are to be resolved;
- (h) encouraging the parties to co-operate with each other in the conduct of proceedings;
- (i) encouraging the parties to use any appropriate form of ADR procedure including, in particular, mediation, if the Court considers it appropriate and facilitating the use of such procedures;
- (j) 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;
- (k) fixing timetables or otherwise controlling the progress of the case;
- (l) giving directions to ensure that the trial of the case proceeds quickly and efficiently; and
- (m) making appropriate use of technology.<sup>60</sup>

## **PART 26 – CASE MANAGEMENT – THE COURT'S POWERS**

### **26.1 Court's general powers of management.**

- (1) The list of powers in this rule is in addition to any powers given to the Court by any other rule, practice directions or any enactment.
- (2) Except where these rules provide otherwise, the Court may —
  - (a) adjourn or bring forward a hearing to a specific date;
  - (b) consolidate proceedings;
  - (c) deal with a matter without the attendance of any of the parties;
  - (d) decide the order in which issues are to be tried;
  - (e) direct a separate trial of any issue;

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<sup>60</sup>Part 1 sets out the overriding objective.

- (f) direct that any evidence be given in written form;
- (g) direct that notice of any proceedings or application be given to any person;
- (h) direct that part of any proceedings, such as a counterclaim or other additional third party 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 it would therefore serve no worthwhile purpose;
- (k) 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;
- (l) give the conduct of any matter to any person it thinks fit and make any appropriate consequential order about costs;
- (m) hold a hearing and receive evidence by telephone or use any other method of direct oral communication;
- (n) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;
- (o) require any party or a party's attorney to attend the Court;
- (p) require the maker of an affidavit or witness statement to attend for cross-examination;
- (q) stay the whole or part of any proceedings generally or until a specified date or event;
- (r) transfer the whole or any part of any proceedings to another court office in the Bahamas from the court office where the proceedings were filed;
- (s) try two or more claims on the same occasion;
- (t) 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;
- (u) where two or more parties are represented by the same attorney —
  - (i) direct that they be separately represented;
  - (ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged; and
  - (iii) make any consequential order as to costs thrown away; and
- (v) 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, including hearing an Early Neutral Evaluation,

or directing that such a hearing take place before a Court appointed neutral third party, with the aim of helping the parties settle the case.

- (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) requiring a party to give an undertaking;
  - (b) requiring a party to give security;
  - (c) requiring a party to pay all or part of the costs of the proceedings;
  - (d) requiring the payment of money into Court or as the Court may direct; 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.

## **26.2 Court's power to make orders of its own initiative.**

- (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) If 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) The opportunity may be to make representations orally, in writing, telephonically or by any other means as the Court considers reasonable.
- (4) If the Court proposes to —
  - (a) make an order of its own initiative; and
  - (b) hold a hearing to decide whether to do so;the court office must give each party likely to be affected by the order at least seven days' notice of the date, time and place of the hearing.

## **26.3 Sanctions – striking out statement of case.**

- (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 if it appears to the Court that —
  - (a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;
  - (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;



- (c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
  - (d) 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.
- (2) 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.

#### **26.4 Court's general power to strike out statement of case.**

- (1) If a party has failed to comply with any of these rules or any Court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the Court for an “unless order”.
- (2) Such an application may be made without notice but must be supported by evidence on affidavit which —
  - (a) contains a certificate that the other party is in default;
  - (b) identifies the rule or order which has not been complied with; and
  - (c) states the nature of the breach.
- (3) The judge or registrar may —
  - (a) grant the application;
  - (b) direct that an appointment be fixed to consider the application and that the applicant give to all parties notice of the date, time and place for such appointment; or
  - (c) seek the views of the other party.
- (4) If an appointment is fixed the applicant must give seven days' notice of the date, time and place of the appointment to all parties.
- (5) An “unless order” must identify the breach and require the party in default to remedy the default by a specified date.
- (6) The general rule is that the respondent should be ordered to pay the assessed costs of such an application.
- (7) If the defaulting party fails to comply with the terms of any “unless order” made by the Court, that party's statement of case shall be struck out subject to an order under rule 26.8.

#### **26.5 Judgment without trial after striking out.**

- (1) This rule applies where the Court makes an order which includes a term that the statement of case of a party be struck out if the party does not comply with the “unless order” by the specified date.
- (2) If the party against whom the order was made does not comply with the order, any other party may apply for a judgment to be entered and for costs to be assessed appropriate to the stage that the proceedings have reached.
- (3) A party may obtain judgment under this rule by filing a request for judgment.
- (4) The request must —
  - (a) certify that the right to enter judgment has arisen because the Court’s order was not complied with;
  - (b) prove service of the “unless order”; and
  - (c) state the facts which entitle the party to judgment.
- (5) If the party wishing to obtain judgment is the claimant and the claim is for —
  - (a) an amount of money to be decided by the Court;
  - (b) a specified sum of money;
  - (c) delivery of goods and the claim form gives the defendant the alternative of paying their value; or
  - (d) any combination of these remedies,judgment must be in accordance with the terms of the statement of claim plus any interest and costs after giving credit for any payment that may have been made.
- (6) If the party wishing to obtain judgment is the claimant and the claim is for some other remedy the judgment must be such as the Court considers that the claimant is entitled to.
- (7) If the party wishing to obtain judgment is a defendant, judgment must be for assessed costs.
- (8) If a decision of the Court is necessary in order to decide the terms of the judgment the party making the request must apply for directions.<sup>61</sup>

#### **26.6 Setting aside judgment entered after striking out.**

- (1) A party against whom the Court has entered judgment under rule 26.5 when the right to enter judgment had not arisen may apply to the Court to set it aside.
- (2) If the right to enter judgment had not arisen at the time when judgment was entered, the Court must set aside judgment.

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<sup>61</sup> Part 72 deals with the quantification of costs.

- (3) If the application to set aside is made for any other reason, rule 26.8 applies.

### **26.7 The Court's powers in cases of failure to comply with rules, etc.**

- (1) If the Court makes an order or gives directions the Court must whenever practicable also specify the consequences of failure to comply.
- (2) If a party has failed to comply with any of these rules, a direction or any order, any express sanction for non-compliance imposed by the rule, direction or the order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.9 does not apply.
- (3) If a rule, practice direction or order —
  - (a) requires a party to do something by a specified date; and
  - (b) specifies the consequences of failure to comply,the time for doing the act in question may not be extended by agreement between the parties.
- (4) If a party has failed to comply with any of these rules, a direction or any order, where no express sanction for non-compliance is imposed by the rule, direction or the order the party in default may make an application under rule 26.9.
- (5) If a rule, practice direction or order —
  - (a) requires a party to do something by a specified date; and
  - (b) does not specify the consequences of failure to comply,the time for doing the act in question may be extended by agreement in writing between the parties provided that the extension does not affect the date of any hearing or the trial.

### **26.8 Relief from sanctions.**

- (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or Court order, the Court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need —
  - (a) for litigation to be conducted efficiently and at proportionate cost; and
  - (b) to enforce compliance with rules, practice directions and orders.
- (2) An application for relief must be supported by evidence.
- (3) The Court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

### **26.9 General power of the Court to rectify matters.**

- (1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction, court order or direction.
- (2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the Court so orders.
- (3) If 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 put matters right.
- (4) The Court may make such an order on or without an application by a party.

## **PART 27 – CASE MANAGEMENT CONFERENCES – PROCEDURE**

### **27.1 Scope of this Part.**

This Part deals with the procedures by which the Court will manage cases.

### **27.2 Fixed date claims – first hearing.**

- (1) When a fixed date claim is filed the claimant must obtain from the court office a date for the first hearing of the claim.
- (2) On that 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 treat the first hearing as the trial of the claim if it is not defended or it considers that the claim can be dealt with summarily.
- (4) Subject to any rule or statutory provision which specifies a different period, all parties must be given at least fourteen days' notice of any first hearing.
- (5) The Court may on or without an application direct that shorter notice be given —
  - (a) if the parties agree; or
  - (b) in urgent cases.
- (6) Unless the defendant files an acknowledgement of service the claimant must file evidence by affidavit of service of the claim form and the relevant documents specified in rule 5.2(3) at least seven days before the first hearing.

### **27.3 Case management conference.**

- (1) The general rule is that the claimant must apply for a date for a case management conference as soon as practicable upon the filing of a defence to a claim other than a fixed date claim.
- (2) If 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 14.7(3) that the claim is to continue.
- (3) The case management conference must take place not less than four weeks nor more than twelve weeks after the defence is filed, or notice is given under rule 14.7(3), unless any rule or practice direction prescribes a shorter or longer period or the case is urgent.
- (4) Notwithstanding paragraph (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 applicant must give all parties' not less than fourteen 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.
- (8) Notwithstanding any provisions of this rule, the Court shall at the first case management conference consider mediation either by agreement between the parties or by Court referral.

#### **27.4 Attendance at case management conference or pre-trial review.**

- (1) If a party is represented by an attorney, that attorney or another attorney 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 general rule is that the party or a person who is in a position to represent the interests of the party, other than the attorney, 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.
- (4) If the case management conference or pre-trial review is not attended by the attorney 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 or Part 71.

#### **27.5 Orders to be made at case management conference.**

- (1) The general rule is that 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) period within which the trial is to commence; or
  - (b) trial date.
- (5) The claimant must serve an order containing the directions made on all parties in Form G19 and give notice of the —
  - (a) date of any pre-trial review; and
  - (b) trial date or trial period.

### **27.6 Dispensing with case management conference in simple and urgent proceedings.**

- (1) The Court may, of its own motion or on the application of a party, make an order dispensing with a case management conference if 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) cost of a case management conference is disproportionate to the value of the proceedings or the benefits that might be achieved from a case management conference.
- (2) If 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) If the Court dispenses with a case management conference, it may —
  - (a) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents under rule 39.1;
  - (b) dispense with a pre-trial review under Part 38; and
  - (c) give any other direction that will assist in the speedy and just trial of the claim, including any direction that might be given under Part 38.

### **27.7 Adjournment of case management conference.**

- (1) The Court may adjourn a case management conference whenever it deems it appropriate to do so including when it 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.
- (2) The Court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.
- (3) If the case management conference is adjourned under paragraph (1) each party must notify the court office 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 or registrar who conducted the first case management conference.

### **27.8 Variation of case management timetable.**

- (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; or
  - (d) 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 paragraph (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 the general rule is that the party must do so before that date.<sup>62</sup>
- (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 or an order under rule 26.9.<sup>63</sup>
- (5) The parties may agree to vary a date in the timetable other than one mentioned in paragraph (1) or (2).
- (6) Where the parties so agree, they must —
  - (a) submit a draft consent order for the consideration of the Court; and
  - (b) certify on the draft consent order 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 Court will determine without a hearing whether or not to accept and sign it.

### **27.9 Fixing trial date.**

- (1) As soon as practicable after the case management conference fix a trial date if one was not fixed under rule 27.5(4).
- (2) The general rule is that the court office must give the parties at least eight weeks' notice of the date of the trial.
- (3) The Court may, notwithstanding paragraph (1) give shorter notice —
  - (a) if the parties agree; or
  - (b) in urgent cases.

## **PART 28 – DISCLOSURE AND INSPECTION OF DOCUMENTS**

### **28.1 Scope of this Part.**

- (1) This Part sets out rules about the disclosure 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

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<sup>62</sup>Rule 42.7 deals consent orders.

<sup>63</sup>Rule 26.8 provides for application for relief from sanctions.



**“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 document is “directly relevant” if —
  - (a) the party with control of the document intends to rely on it;
  - (b) it tends to adversely affect that party’s case; or
  - (c) it tends to support another party’s case,but the rule of law known as “the rule in Peruvian Guano” does not apply to make a document “directly relevant”.

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

- (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 inspect or take copies of it; or
  - (c) the party has or has had a right to possession of it.

### **28.3 Disclosure of copies.**

- (1) Except where required by paragraph (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.

### **28.4 Standard disclosure – what documents are to be disclosed.**

If 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.

### **28.5 Specific disclosure.**

- (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.
  - (5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.

#### **28.6 Criteria for ordering specific disclosure.**

- (1) When deciding whether to make an order for specific disclosure, the Court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (2) The Court must have regard to —
  - (a) the likely benefits of specific disclosure;
  - (b) the likely cost of specific 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) If, having regard to paragraph (2)(c), the Court would otherwise refuse to make an order for specific disclosure it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event.
- (4) If the Court makes an order under paragraph (3) it must assess the costs to be paid in accordance with rule 71.6.
- (5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed.

#### **28.7 Procedure for disclosure.**

- (1) Paragraphs (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 G20.
- (3) The list must identify the documents or categories of documents in a convenient order and manner and as concisely as possible.
- (4) The list must state what documents are no longer in the party's control, and —
  - (a) what has happened to those documents; and
  - (b) where each such 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 —
  - (a) state the name and position of the person 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 documents and state the position of those individuals.

### **28.8 Duty of attorney.**

The attorney for a party must —

- (a) explain to the maker of the list of documents the —
  - (i) necessity of making full disclosure in accordance with the terms of the order for disclosure and these Rules; and
  - (ii) possible consequences of failing to do so; and
- (b) certify on the list of documents made pursuant to rule 28.7(2) that the explanation required by paragraph (a) has been given.

### **28.9 Requirement for maker to certify understanding of duty of disclosure.**

- (1) The maker of the list of documents must certify in the list of documents that —
  - (a) the maker understands the duty of disclosure; and
  - (b) to the best of the knowledge of the maker the duty has been carried out.
- (2) In the case of a list served on behalf of a company, firm, association or other organisation the certificate referred to in paragraph (1) must be made by the person identified in rule 28.7(6)(a).
- (3) If it is impracticable for the maker of the list of documents to sign the certificate required by paragraph (1), it may be given by that person's attorney.

- (4) A certificate given by the attorney must also certify —
  - (a) that the certificate is given on the instructions of the maker; and
  - (b) the reasons why it is impractical for the maker of the list of documents to give the certificate.

#### **28.10 Disclosure in stages.**

The parties may agree in writing or the Court may direct that disclosure or inspection or both may take place in stages.

#### **28.11 Inspection and copying of listed documents.**

- (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) for which the right or privilege to withhold from disclosure is claimed; or
  - (b) which are no longer in the physical possession of the party who served the list.
- (2) The party wishing to inspect the documents must give the party who served the list written notice of the wish to inspect documents in the list.
- (3) The party who is to give inspection must permit inspection not more than seven days after the date on which the notice is received.
- (4) If the party giving the notice undertakes 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 seven days after the date on which the notice was received.

#### **28.12 Duty of disclosure continuous during proceedings.**

- (1) The duty of disclosure in accordance with any order for standard or specific disclosure continues until the proceedings are concluded.
- (2) If 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 serve a supplemental list of those documents.
- (3) The supplemental list must be served not more than fourteen days after the documents to which that duty extends have come to the notice of the party required to serve it.

#### **28.13 Consequence of failure to disclose documents under order for disclosure.**

- (1) A party who fails to give disclosure by the date ordered or to permit inspection, may not rely on or produce at the trial 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 for an order that the other party's statement of case or some part of it be struck out.

- (3) An application under paragraph (2) relating to an order for specific disclosure may be made without notice but must be supported by evidence on affidavit that the other party has not complied with the order.
- (4) On an application under paragraph (2) the Court may order that unless the party in default complies with the order for disclosure by a specific date that party's statement of case or some part of it be struck out.

#### **28.14 Claim of right to withhold disclosure or inspection of a document.**

- (1) A person who claims a right to withhold disclosure or inspection of a document or part of a document must —
  - (a) make such claim for the document; and
  - (b) state the grounds on which such a right is claimed, in the list or otherwise in writing to the person wishing to inspect the document.
- (2) A person may however 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 under paragraph (2) must —
  - (a) identify the document, documents or parts thereof for which a right to withhold disclosure is claimed; and
  - (b) give evidence on affidavit showing —
    - (i) that the applicant has a right or duty to withhold disclosure; and
    - (ii) the grounds on which the right or duty is claimed.
- (4) Unless the Court orders otherwise, an order of the Court under paragraph (2) is not to be open for inspection by, nor served on any person.
- (5) A person who does not agree with a claim of right to withhold inspection or disclosure of a document may apply to the Court for an order that the document be disclosed or made available for inspection.
- (6) On hearing such an application the Court must make an order that the document be disclosed unless it is satisfied that there is a right to withhold disclosure.<sup>64</sup>
- (7) If a person —
  - (a) applies for an order permitting that person not to disclose the existence of, a document or part of a document; or
  - (b) claims a right to withhold inspection,

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<sup>64</sup>Rule 11.16 deals with applications to set aside an order made on application without notice.  
Rule 26.5 deals with judgment without trial after striking out.  
Rule 26.8 deals with relief from sanctions.

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 of whether the document ought to be withheld.

### **28.15 Restrictions on use of a privileged document inspection of which has been inadvertently allowed.**

Where a party inadvertently allows a privileged document to be inspected the party who has inspected it may use it only with the —

- (a) the agreement of the party disclosing the document; or
- (b) the permission of the Court.

### **28.16 Documents referred to in statements of case, etc.**

- (1) A party may inspect and copy a document mentioned in —
  - (a) an affidavit;
  - (b) an expert's report;
  - (c) a statement of case;
  - (d) a witness statement or summary; or
  - (e) the claim form.
- (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 seven days after the date on which the notice is served.

### **28.17 Subsequent use of disclosed documents.**

- (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, unless —
  - (a) the document has been read to or by the Court, or referred to, in open court; or
  - (b) the party disclosing the document and the person to whom the document belongs; or
  - (c) 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 such an order may be made by any —
  - (a) party; or
  - (b) person to whom the document belongs.

**28.18 Notice to prove a document Notice to prove a document.**

- (1) A party shall be deemed to admit the authenticity of any document disclosed to that party under this Part unless that party serves notice that the documents must be proved at trial.
- (2) A notice to prove a document must be served not less than forty-two days before the trial.

## **PART 29 – EVIDENCE**

**29.1 Power of Court to control evidence.**

The Court may control the evidence to be given at any trial or hearing by giving appropriate directions, at a case management conference or by other means, as to the —

- (a) issues on which it requires evidence; and
- (b) way in which any matter is to be proved.

**29.2 Evidence at trial – general rule.**

- (1) Any fact which needs to be proved by evidence of witnesses is to be proved at —
  - (a) trial, by their oral evidence given in public; and
  - (b) any other hearing, by affidavit.
- (2) Paragraph (1) is subject to any order of the Court or provision to the contrary contained in these Rules or elsewhere.
- (3) Any evidence taken at the trial or other hearing of any proceedings may be used subsequently in those proceedings.<sup>65</sup>

**29.3 Evidence by video link or other means.**

The Court may allow a witness to give evidence without being present in the courtroom, through a video link or by any other means.

**29.4 Requirement to serve witness statements.**

- (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 issue of fact to be decided at the trial.
- (2) A statement of the evidence referred to in paragraph (1) is known as a “**witness statement**”.

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<sup>65</sup>Part 30 deals with affidavits.

- (3) A party's obligation to serve a witness statement is independent of any other party's obligation to serve such a statement.<sup>66</sup>
- (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.

### **29.5 Form of witness statements.**

- (1) A witness statement must —
  - (a) be dated;
  - (b) be signed or otherwise authenticated by the intended witness;
  - (c) give the name, address and occupation of the witness;
  - (d) include a statement by the intended witness that he believes the statements of fact in it to be true;
  - (e) not include any matters of information or belief which are not admissible or, where admissible, must state the source of any matters of information or belief;
  - (f) so far as reasonably practicable, be in the intended witness's own words; and
  - (g) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document.
- (2) The Court may order that any inadmissible scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.

### **29.6 Witness summaries.**

- (1) A party who is required to provide and is not able to obtain a witness statement may serve a witness summary instead.
- (2) The 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 the —
  - (a) evidence, so far as is known, which would otherwise be included in a witness statement; or
  - (b) matters about which the party serving the witness summary proposes to question the witness, if the evidence is not known.
- (4) Unless the Court orders otherwise, a witness summary must include the name and address of the intended witness or other sufficient means of identifying the intended witness.

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<sup>66</sup> Rule 29.7 provides a procedure that may be adopted when one party does not serve witness statements by the date directed.



- (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, 29.7, 29.8 and 29.9 apply to the witness summary.

**29.7 Procedure where one party will not serve witness statement by date directed.**

- (1) This rule applies where —
  - (a) one party (the “first party”) is able and prepared to comply with the order to serve witness statements; and
  - (b) the other party fails to make reasonable arrangements to exchange statements.
- (2) The first party may comply with the requirements of this Part by —
  - (a) filing the witness statements in a sealed envelope at the court office by the date directed; and
  - (b) giving notice to all other parties that the witness statements have been filed.
- (3) Statements filed pursuant to paragraph (2) must not be disclosed to the other party until the other party certifies that the witness statements or summaries in respect of all witnesses upon whose evidence the other party intends to rely have been served.

**29.8 Witness to give evidence unless Court otherwise orders.**

- (1) Unless the Court orders otherwise, a party must call a witness to give evidence where that party —
  - (a) has served a witness statement or summary; and
  - (b) wishes to rely on the evidence of that witness.
- (2) If 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 twenty-eight days before the trial.

**29.9 Amplifying witness statements at trial.**

A witness giving oral evidence may with the permission of the Court —

- (a) amplify the evidence as set out in his or her 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.

### **29.10 Cross-examination on witness statement.**

If a witness is called to give evidence at trial, that witness may be cross-examined on the evidence as set out in his or her witness statement, whether or not the statement or any part of it was referred to during the witness's evidence in chief.

### **29.11 Consequence of failure to serve witness statement or summary.**

- (1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the Court, the witness may not be called unless the Court permits.
- (2) The Court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.

### **29.12 Use of witness statement for other purposes.**

- (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) Paragraph (1) does not apply if and to the extent that the —
  - (a) Court gives permission for some other use of it;
  - (b) witness gives consent in writing to some other use of it; or
  - (c) witness statement has been put in evidence.

### **29.13 Notice to admit facts.**

- (1) A party may serve notice on another party requiring that other 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 forty-two days before the trial.
- (3) If the other party makes any admission in response to the notice to admit facts, the admission may be used against that party only —
  - (a) by the party who served the notice; and
  - (b) in the proceedings in which the notice is served.
- (4) If the party served with the notice to admit does not admit the facts set out in the notice within twenty-one 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.<sup>67</sup>

## **PART 30 – AFFIDAVITS**

### **30.1 Affidavit evidence.**

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<sup>67</sup>Part 7 deals with assessment of costs.

- (1) The Court may require evidence to be given by affidavit instead of, or in addition to oral evidence.
- (2) In this Part, “**deponent**” means the maker of an affidavit.
- (3) Whenever an affidavit is to be used in evidence, any party may apply to the Court for an order requiring the deponent to attend to be cross-examined.
- (4) Such an application must be made not less than —
  - (a) in the case of a trial, twenty-one days; or
  - (b) any other hearing, seven days,before the date of the hearing at which it is intended to cross-examine the deponent.
- (5) If the deponent does not attend as required by the Court order, the affidavit may not be used as evidence unless the Court permits.
- (6) The general rule is that an affidavit must be filed before it may be used in any proceedings.
- (7) In a case of urgency the Court may make an order on an affidavit which has not been filed if the party tendering it undertakes to file it.

### **30.2 Form of affidavits.**

Every affidavit must —

- (a) be headed with the title of the proceedings;
- (b) be divided into paragraphs numbered consecutively;
- (c) be in the first person and state the name, address and occupation of the deponent and, if more than one, of each of them;
- (d) be marked on the top right hand corner of the affidavit and of the back-sheet with —
  - (i) the name of the party on whose behalf it is filed;
  - (ii) the initials and surname of the deponent;
  - (iii) where the deponent swears more than one affidavit in any proceedings, 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;
  - (vi) the date when filed; and

*Example: Claimant: N. Berridge: 2nd: NB 3 and 4: 1.10.98: 3.10.98.*
- (e) state if any deponent is employed by a party to the proceedings.

### **30.3 Contents of affidavits.**

- (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.
- (2) An affidavit may contain statements of information and belief —
  - (a) if any of these Rules so allows; and
  - (b) if the affidavit 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.
- (4) An affidavit containing any alteration may not be used in evidence unless all such alterations have been initialled both by the deponent and the person before whom the affidavit is sworn.

#### **30.4 Documents to be used in conjunction with affidavits.**

- (1) Any document to be used in conjunction with an affidavit must be exhibited with it.
- (2) If there is more than one such document those documents may be included in a bundle which is arranged chronologically or in some other convenient order and is properly paginated.
- (3) Clearly legible photocopies of original documents may be exhibited, provided that the originals are made available for inspection by the 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(d).

#### **30.5 Making of affidavits.**

- (1) An affidavit must —
  - (a) be signed by all deponents;
  - (b) be sworn or affirmed by each deponent;
  - (c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and

- (d) contain the full name, address and qualifications of the person before whom it is sworn or affirmed.
- (2) The statement authenticating the affidavit (“the jurat”) must follow immediately from the text and not be on a separate page.
- (3) An affidavit may not be admitted into evidence if sworn or affirmed before the attorney of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such attorney.
- (4) If 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 the —
  - (a) affidavit was read to the deponent by him;
  - (b) deponent appeared to understand it; and
  - (c) deponent signed or made his mark in his presence.
- (5) A person may make an affidavit outside the jurisdiction in accordance with —
  - (a) the law of the place where he makes the affidavit; or
  - (b) this part.
- (6) Any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.

### **30.6 Service of affidavits.**

- (1) A party who is giving evidence by affidavit must serve a copy of the affidavit on every other party.
- (2) Paragraph (1) applies whether the affidavit was made in the proceedings or in some other proceedings.
- (3) The general rule does not apply if the affidavit is being used in support of an application that may be made without notice.

## **PART 31 – MISCELLANEOUS RULES ABOUT EVIDENCE**

### **31.1 Use of plans, photographs etc., as evidence.**

- (1) A party who intends to rely at a trial on evidence which is not —
  - (a) to be given orally, and
  - (b) contained in a witness statement, affidavit or expert report,must disclose that intention to the other parties in accordance with this rule.
- (2) If a party fails to disclose the intention to rely on the evidence as required by this rule, the evidence may not be given.

- (3) Subject to paragraphs (4) and (5), a party who intends to use the evidence referred to in paragraph (1) to prove any fact must disclose such intention not later than the latest date for serving witness statements.
- (4) Where there is no order for service of witness statements, the party proposing to tender the evidence must disclose it at least twenty-one days before the hearing.
- (5) If the evidence referred to in paragraph (1) 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 the evidence referred to in paragraph (1) that party must give every other party an opportunity to inspect the evidence and to agree to its admission without proof.

### **31.2 Evidence on questions of foreign law.**

- (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 a question of foreign law must first give every other party notice of that intention.
- (3) Notice under paragraph (2) must be given not less than forty-two days before the hearing at which the party proposes to adduce the evidence.
- (4) The notice must —
  - (a) have attached a document which forms the basis of the evidence; and
  - (b) specify the question on which the evidence is to be adduced.

### **31.3 Evidence of consent of trustee to act.**

A document purporting to contain the written consent of a person to act as trustee and to bear that person's signature verified by some other person is evidence of such consent.

## **PART 32 – EXPERTS AND ASSESSORS**

### **32.1 Scope of this Part.**

- (1) This Part deals with the provision of expert evidence to assist the Court.
- (2) In this Part, “**expert witness**” means an expert who has been instructed to prepare or give evidence for the purpose of court proceedings.

### **32.2 General duty of Court and of parties.**

Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.

### **32.3 Expert's overriding duty to Court.**

- (1) It is the duty of an expert witness to help the Court impartially on the matters relevant to his or her expertise.
- (2) This duty overrides any obligation to the person by whom he is instructed or paid.

#### **32.4 Way in which expert's duty to Court is to be carried out.**

- (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 the demands 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 witness's expertise.
- (3) An expert witness must state the facts or assumptions upon which his or her opinion is based and must consider and include any material fact which could detract from his or her conclusion.
- (4) An expert witness must state if a particular matter or issue falls outside his or her expertise.
- (5) If the opinion of an expert witness is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.
- (6) If an expert witness cannot assert that his or her report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.
- (7) If after service of a report, an expert witness changes his or her opinion on a material matter, that change of opinion must be communicated to all parties.

#### **32.5 Expert's right to apply to Court for directions.**

- (1) An expert witness may apply in writing to the Court for directions to assist him or her in carrying out his or her functions and duty to the Court as an expert witness.
- (2) An expert witness who applies for directions under paragraph (1) need not give notice of the application to any party.
- (3) The Court may direct that —
  - (a) notice of an application under paragraph (1) be given to any party;  
or
  - (b) a copy of the application and any directions given be sent to any party.

#### **32.6 Court's power to restrict expert evidence.**

- (1) A party may not call an expert witness or put in the report of an expert witness without the court's permission.

- (2) The general rule is that 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 the expert witness and identify the nature of his or her expertise; and
  - (b) any permission granted shall be in relation to that expert witness only.
- (4) The oral or written expert witness' evidence may not 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 witness intends to give.
- (5) The Court must direct by what date the report must be served.
- (6) The Court may direct that part only of an expert witness' report be disclosed.

**32.7 General requirement for expert evidence to be given in written report.**

- (1) Expert evidence is to be given in a written report unless the Court directs otherwise.
- (2) This rule is subject to any enactment restricting the use of hearsay evidence.

**32.8 Written questions to experts.**

- (1) A party may put written questions to an expert witness instructed by another party or jointly about his or her report.
- (2) Written questions under paragraph (1) —
  - (a) may be put once only;
  - (b) must be put within twenty-eight days of service of that expert witness' report; and
  - (c) must only be in order to clarify the report; unless —
    - (i) the Court permits; or
    - (ii) the other party agrees.
- (3) An expert witness' answers to questions under this rule must be treated as part of that expert witness' report.
- (4) If a party has put a written question to an expert witness instructed by another party in accordance with this rule and the expert witness 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 —
  - (a) that party may not recover the fees and expenses of the expert witness from any other party;
  - (b) that party may not rely on the evidence of the expert witness;



- (c) the party asking the questions may seek to obtain answers from another expert.
- (5) This rule also applies where evidence from a single expert witness is to be used under rule 32.9.

### **32.9 Court's power to direct evidence by single expert.**

- (1) If two or more parties wish to submit expert evidence on a particular issue (hereinafter referred to as “the instructing parties”), the Court may direct that expert evidence be given by one expert witness.
- (2) If the instructing parties cannot agree who should be the expert witness, the Court may —
  - (a) select the expert witness from a list prepared or identified by the instructing parties; or
  - (b) direct that the expert witness be selected in such other manner as the Court may direct.
- (3) The Court may vary a direction given under this rule.
- (4) The Court may appoint a single expert witness instead of the parties instructing their own expert witnesses or may replace expert witnesses instructed by the parties.

### **32.10 Cross-examination of Court expert.**

If an expert appointed by the Court under rule 32(9) gives oral evidence, the expert may be cross-examined by any party.

### **32.11 Instructions to single expert.**

- (1) If the Court gives directions under rule 32.9 for a single expert witness to be used, each instructing party may give instructions to the expert witness.
- (2) When an instructing party gives instructions to the expert witness that party must, at the same time, send a copy of the instructions to the other instructing parties.
- (3) The Court may give directions about the arrangements for —
  - (a) any inspection, examination or experiment which the expert witness wishes to carry out; and
  - (b) the payment of the expert witness' fees and expenses.
- (4) The Court may, before an expert witness is instructed —
  - (a) limit the amount that can be paid by way of fees and expenses to the expert witness; and
  - (b) direct that the instructing parties pay that amount into Court in such proportions as may be directed.
- (5) Unless the Court directs otherwise, the instructing parties are jointly and severally liable for the payment of the expert witness' fees and expenses.

### **32.12 Power of Court to direct party to provide expert report.**

- (1) If a party has access to information which is not reasonably available to the other party, the Court may order that party —
  - (a) to arrange for an expert witness to prepare a report on any matter;
  - (b) if appropriate, to arrange for an examination to be carried out in relation to that matter; and
  - (c) to file the report and serve a copy on any other party.
- (2) The Court's powers under this rule may be exercised only on the application of a party.

### **32.13 Expert's reports to be addressed to Court.**

An expert must address his or her report to the Court and not to any person from whom the expert witness has received instructions.

### **32.14 Contents of report.**

- (1) An expert witness' report must —
  - (a) give details of the expert witness' qualifications;
  - (b) give details of any literature or other material which the expert witness has used in making the report;
  - (c) say who carried out any test or experiment which the expert witness has used for the report;
  - (d) give details of the qualifications of the person who carried out any such test or experiment;
  - (e) if there is a range of opinion on the matters dealt with in the report —
    - (i) summarise the range of opinion; and
    - (ii) give reasons for his or her opinion; and
  - (f) contain a summary of the conclusions reached.
- (2) At the end of an expert witness' report there must be a statement that the expert witness —
  - (a) understands his or her duty to the Court as set out in rules 32.3 and 32.4;
  - (b) has complied with that duty;
  - (c) has included in the report all matters within the expert witness' knowledge and area of expertise relevant to the issue on which the expert evidence is given; and
  - (d) has given details in the report of any matter which to his or her knowledge might affect the validity of the report.
- (3) There must also be attached to an expert witness' report copies of —
  - (a) all written instructions given to the expert witness;

- (b) any supplemental instructions given to the expert witness since the original instructions were given; and
  - (c) a note of any oral instruction given to the expert witness, and the expert must certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert, the party's legal practitioner or any other person acting on behalf of the party.
- (4) If a report refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the other party at the same time as the service of the report.
  - (5) If it is not practicable to provide a copy of the documents referred to in paragraph (4), those documents must be made available for inspection by the other party or any expert witness instructed by that party within seven days of a request to do so.

### **32.15 Meeting of experts.**

- (1) The Court may direct a meeting of expert witnesses of like speciality.
- (2) The Court may specify the issues which the expert witnesses must discuss.
- (3) The contents of the discussion between the expert witnesses must not be referred to at the trial unless the parties agree.
- (4) The meeting may take place personally, over the telephone or by any other suitable means.
- (5) After the meeting, the expert witnesses must prepare for the Court a statement of any issue within their expertise on which they —
  - (a) agree; and
  - (b) disagree, with their reasons for disagreeing.
- (6) Instead of, or in addition to such statement, the Court may direct that the expert witnesses prepare an agreed statement of the basic 'science' which applies to the matters relevant to their expertise.
- (7) The statement referred to in paragraph (6) must be as short as practicable.

### **32.16 Consequence of failure to disclose expert's report.**

- (1) A party who fails to comply with a direction to disclose an expert witness' report may not use the report at the trial or call the expert witness unless the Court gives permission.
- (2) The Court may not give permission at the trial unless the party asking for permission can show that it was not reasonably practicable to have applied for relief at an earlier stage.<sup>68</sup>

### **32.17 Appointment of assessor.**

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<sup>68</sup>Rule 26.8 deals with relief from sanctions.

- (1) The Court may appoint an assessor to —
  - (a) advise the judge at the trial with regard to evidence of expert witnesses called by the parties;
  - (b) assist the Court in understanding technical evidence; or
  - (c) provide a written report.
- (2) On making an order under paragraph (1), the Court must decide —
  - (a) what fee is to be paid to the assessor; and
  - (b) by whom.
- (3) Notwithstanding paragraph (2), the Court may ultimately order any party to pay the fee of the assessor.
- (4) All communications apart from written instructions 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 the questions asked of, and any opinion given by the assessor and give them an opportunity to make submissions.

## **PART 33 – COURT ATTENDANCE BY WITNESSES AND DEPOSITIONS**

### **33.1 Scope of this Part.**

- (1) This Part provides —
  - (a) for a party to obtain evidence prior to a hearing; and
  - (b) for the circumstances in which a person may be required to attend Court to give evidence or to produce a document.<sup>69</sup>
- (2) In this Part, reference to a hearing includes a reference to the trial.

### **33.2 Witness summonses.**

- (1) A witness summons is a document issued by the Court requiring a witness to attend Court —
  - (a) to give evidence; or
  - (b) to produce documents to the Court.
- (2) A witness summons must be in Form G21.
- (3) There must be a separate witness summons for each witness.

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<sup>69</sup>Rule 26.8 deals with relief from sanctions.

- (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
  - (b) any other date the Court may direct.

### **33.3 Issue of witness summons.**

- (1) A witness summons is issued on the date entered on the summons by the court office.
- (2) A party must obtain permission from the Court when that party wishes to have —
  - (a) a witness summons issued less than twenty-one 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 paragraph (2) may be without notice but must be supported by evidence on affidavit.
- (4) The Court may set aside or vary a witness summons.

### **33.4 Witness summons in aid of inferior Court or tribunal.**

- (1) The Court may issue a witness summons in aid of an inferior court or of a 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.

### **33.5 Time for serving witness summons.**

- (1) The general rule is that a witness summons is binding only if it is served at least fourteen days before the date on which the witness is required to attend before the court or tribunal.
- (2) The Court may direct that a witness summons shall be binding although it will be served less than fourteen days before the date on which the witness is required to attend before the court or tribunal.
- (3) An application under paragraph (2) may be made without notice but must be supported by evidence on affidavit.
- (4) A witness summons which —
  - (a) is 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.

### **33.6 Compensation for loss of time.**

At the time of service of a witness summons the witness must be offered or paid

- (a) a sum reasonably sufficient to cover his or her subsistence and expenses in 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.

### **33.7 Evidence by deposition before examiner.**

- (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.
- (2) In this rule —  
“**deponent**” means a person from whom evidence is to be obtained following any order under this rule; and  
“**deposition**” means the evidence given by the deponent.
- (3) An order under this rule shall be for a deponent to be examined on oath before —
  - (a) a judge;
  - (b) an attorney who has practised for at least five years;
  - (c) a magistrate; or
  - (d) a registrar.
- (4) A person listed in paragraph (3) is referred to as an “examiner”.
- (5) The order must state —
  - (a) the date, time and place of the examination; and
  - (b) the name of the examiner.
- (6) The order may require the production of any document which the Court considers may be necessary for the purposes of the examination.
- (7) Rule 2.6 applies to an examination under this rule.
- (8) At the time of service of the order the deponent must be offered or paid travelling expenses and compensation for loss of time in accordance with rule 33.6.
- (9) An application may be made by any party whether or not that party would otherwise call the witness.
- (10) If 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.<sup>70</sup>

### **33.8 Conduct of examination.**

- (1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.
- (2) If 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 he 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) If any person being examined objects to answer any question put to him or her, the ground of the objection and the answer to any such 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 court office and a copy of the deposition to —
  - (a) every party to the proceedings; and
  - (b) the deponent.
- (7) If the witness or any attorney present at the hearing is of the opinion that the deposition does not accurately represent the evidence, he may —
  - (a) endorse on the copy deposition the corrections which in his or her opinion should be made;
  - (b) file the endorsed copy deposition; and
  - (c) serve a copy of it on all other parties.

### **33.9 Evidence without examiner being present.**

- (1) With the consent of the parties, the Court 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 directions that may be contained in the order —
  - (a) an attorney for any party may administer the oath to a witness;
  - (b) any person transcribing evidence given need not be sworn but must certify as correct the transcript of the evidence and deliver it to the attorney for the party whose witness was examined;

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<sup>70</sup>Part 29 commits general rules about written statements and witness summaries.

- (c) the attorney for the party whose witness was examined must file the original transcript and deliver a true copy to all other parties and to the witness who was examined;
- (d) the party whose witness is to be examined must provide a means of recording the evidence of the witness; and
- (e) if the witness or any attorney present at the hearing is of the opinion that the transcript does not accurately represent any evidence given, he may —
  - (i) endorse on the copy transcript the corrections which in his or her opinion should be made;
  - (ii) file the endorsed copy transcript; and
  - (iii) serve a copy of it on all other parties.

### **33.10 Enforcing attendance of witness.**

- (1) If a person served with a witness summons to attend before an examiner —
  - (a) fails to attend;
  - (b) refuses to answer any lawful question or produce any document at the examination; or
  - (c) refuses to be sworn or to affirm for the purpose of the examination, the party requiring the deposition may file a certificate signed by the examiner of such failure or refusal.
- (2) On the certificate being filed, the party requiring the deposition may apply to the Court for an order requiring the person to attend, to be sworn, to affirm or to answer any question or produce any document, as the case may be.
- (3) An application for an order under this rule may be made without notice.
- (4) Any order made by the Court must be served personally on the person served with the witness summons and be endorsed with a notice prescribed by practice direction.
- (5) 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.<sup>71</sup>

### **33.11 Special report.**

The examiner may make a special report to the Court with regard to the —

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<sup>71</sup> Part 51 deals with the procedure relating to committal for contempt of court.



- (a) absence of any person; or
- (b) conduct of any person present,

when the deposition was taken.

### **33.12 Fees and expenses of examiner.**

- (1) On appointing an examiner the Court must fix the fee to be paid the examiner for carrying out the examination.
- (2) If an examination is carried out by a person other than an attorney, the fee must be paid into the court office.
- (3) The party who obtained the order must also pay the fee and 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.
- (4) Notwithstanding paragraphs (1) and (3), the Court may ultimately order any party to bear the costs of the examination.

### **33.13 Order for payment of examiner's fees.**

- (1) The examiner may report to the Court the fact that any fees or expenses due to him or her have not been paid and the Court may make an order that the party who obtained the order for the examination should pay such fees and expenses.
- (2) An order under paragraph (1) may be enforced as a money judgment.

### **33.14 Use of deposition at hearing.**

- (1) A deposition ordered under rule 33.7 or 33.9 maybe 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 twenty-one days before the day fixed for the hearing.
- (3) The Court may require a deponent to attend the hearing and give oral evidence.

### **33.15 Where person to be examined is out of the jurisdiction — letter of request.**

- (1) If a party wishes to take a deposition from a party 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) If 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) If 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 paragraph (6) applies, a translation of them —
    - (i) a draft letter of request
    - (ii) a list of questions or the subject matter of questions to be put to the person to be examined; and
    - (iii) a statement of the issues relevant to the proceedings; and
  - (b) an undertaking to be responsible for the expenses of the minister with responsibility for foreign affairs in relation to the request.
- (6) There is no need to file a translation if English is one of the official languages of the country where the examination is to take place.

### **33.16 Early appointment to produce documents.**

- (1) The Court may permit a party to issue a witness summons requiring any person to attend at a date, time or place specified in the summons prior to the date of the trial for the purpose of producing one or more documents.
- (2) The only type of document that a summons under this rule can require a person to produce is a document which that person could be compelled to produce at the trial.

## **PART 34 – REQUESTS FOR INFORMATION**

### **34.1 Right of parties to obtain information.**

- (1) This Part enables a party to obtain from any other party information relevant to the determination of any matter which is in dispute in the proceedings.
- (2) To obtain the information referred to in paragraph (1), the party must serve on the other party a request identifying the information sought.

### **34.2 Orders compelling reply to request for information.**

- (1) If a party does not, within fourteen days, give information or agree to give such information within a reasonable period thereafter 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 given;
  - (b) the likely cost of giving 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 the order.

### **34.3 Information obtained under Part 34 not to be used in other proceedings.**

A party may use information obtained —

- (a) in compliance with an order under rule 34.2; or
- (b) in response to a request under rule 34.1,

only in the proceedings in which the request or order was made unless otherwise ordered by the Court.

### **34.4 Statement of truth.**

Any information provided under this Part must be verified by a statement of truth in accordance with rule 3.8.

## **PART 35 – OFFERS TO SETTLE**

### **35.1 Scope of this Part.**

- (1) This Part contains Rules about —
  - (a) offers to settle which a party may make to another party; and
  - (b) the consequences of such 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.<sup>72</sup>

### **35.2 Introductory.**

- (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.

### **35.3 Making offer to settle.**

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<sup>72</sup> Part 36 deals with payments into court.

- (1) A party may make an offer to another party which is expressed to be “without prejudice” and 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) (in the case of an offer by the claimant) 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.

### **35.4 Time when offer to settle may be made.**

A party may make an offer to settle under this Part at any time before the beginning of the trial.

### **35.5 Procedure for making offer to settle.**

- (1) An offer to settle 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 any payment into Court in support of the offer must be communicated to the Court before all of liability and the amount of money to be awarded, other than and interest, have been decided.
- (4) Paragraph (3) does not apply to an offer which has been accepted or where a defence of tender before claim has been pleaded.

### **35.6 Extent to which offer to settle covers interest, costs or counterclaim.**

- (1) An offer to settle a claim for damages must state whether or not the amount offered includes interest or costs.
- (2) If the offer covers interest or costs it must state the amount which is included for each.
- (3) If there is a counterclaim as well as a claim, the offer must state in the case of an offer by the —
  - (a) claimant, whether or not it takes into account the counterclaim; or
  - (b) defendant, whether or not it takes into account the claim,and in each case in what amount.

### **35.7 Offer to settle made after interim payment.**

If an interim payment has been made, whether voluntarily or under an order under Part 17, any subsequent offer to settle must state whether it is in addition to the interim payment or whether it is intended to replace it.

### **35.8 Offer to settle part of claim.**

- (1) An offer to settle must state whether or not it covers the whole or part of the claim.
- (2) If it does not state that it covers part of the claim, it is to be taken to cover the whole claim.
- (3) If the offer covers only 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) if more than one, state what is offered in respect of each part covered by the offer.

### **35.9 Time limit for accepting offer to settle.**

- (1) The offeror may state in the offer that it is open for acceptance until a specified date.
- (2) The offer shall have no effect on any decision that the Court makes as to the consequences of the offer unless it is made at least twenty-two days prior to the commencement of the trial and that it is open for acceptance for at least twenty-one days.
- (3) Acceptance of the offer after the commencement of the trial shall have no effect on any decision that the Court makes as to the consequences of such acceptance.
- (4) The Court may permit an offeree to accept an offer after the specified date on such terms as the Court considers just.

### **35.10 Procedure for acceptance.**

- (1) To accept an offer 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) If 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 with the permission of the Court; and
  - (b) no payment out of any sum paid into Court may be made without a Court order.<sup>73</sup>

### **35.11 Effect of acceptance – generally.**

- (1) If 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.

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<sup>73</sup>Rule 23.12 deals with compromises, etc. by or on behalf of a minor or patient.

- (2) If the offer covers 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) If the Court's approval is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only when the Court gives its approval.<sup>74</sup>
- (5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of interest on damages or any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.
- (6) If money has been paid into Court in support of an offer, a stay arising out of the acceptance of the offer does not affect any proceedings to obtain payment out of Court.
- (7) If an offer is accepted and its terms are not complied with, any stay arising on acceptance ceases to have effect and —
  - (a) the proceedings or the part which was stayed may continue; and
  - (b) either party may apply to the Court to enforce those terms.
- (8) If a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an agreed offer, that party may do so by applying to the Court without the need to commence new proceedings unless the Court orders otherwise.

### **35.12 Effect of acceptance – more than two parties.**

- (1) If there is more than one defendant whom the claimant claims are jointly and severally, or severally, liable and the claimant —
  - (a) agrees to settle the claim as against one or more, but not all of them; and
  - (b) discontinues the claim against any other defendant,  
the claimant is liable to pay the costs of the defendant against whom the claim has been discontinued unless the Court otherwise orders.
- (2) If a claimant accepts an offer made by one of a number of joint defendants —
  - (a) paragraph (1) does not apply; and
  - (b) the defendant who made the offer is liable for the costs of the other joint defendants.
- (3) If —
  - (a) there is more than one claimant and

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<sup>74</sup>Rule 23.12 deals with the settlement of proceedings involving minors and patients.

- (b) one or more, but not all, of them agree to settle,  
the other claimants may continue the proceedings.

**35.13 Costs of offeror and offeree where offer is accepted – defendant’s offer.**

- (1) If the —
  - (a) defendant makes an offer to settle; and
  - (b) claimant accepts the offer within any period stated for accepting it and before the beginning of the trial,  
the claimant is entitled to the costs of the proceedings up to the date of acceptance of the offer.
- (2) If the defendant permits a claimant to accept an offer after the time stated for accepting it, the general rule is that the —
  - (a) claimant is entitled to costs to the end of the period stated for accepting the offer; and
  - (b) defendant is entitled to any costs incurred between the end of the period stated for accepting the offer and the date when the offeree accepts the offer,  
unless the Court orders otherwise.
- (3) If the settlement relates only to part of the proceedings and the remaining part or parts of the proceedings continue —
  - (a) the claimant is entitled under this rule only to the costs relating to that part of the proceedings which has been settled; and
  - (b) unless the Court orders otherwise or the defendant agrees, the claimant may not recover any such costs, nor have them quantified, until the conclusion of the rest of the proceedings, when the Court can deal with the costs of the whole of the proceedings including any costs relating to those parts of the proceedings that were not settled.

**35.14 Costs of offeror and offeree where offer is accepted – claimant’s offer.**

If the claimant makes an offer which is accepted by the defendant, the claimant is entitled to costs up to the time when notice of acceptance of the offer is served.

**35.15 Costs where offer not accepted – general rules.**

- (1) The general rule for defendants’ offers is that, if the defendant makes an offer to settle which is not accepted and in —
  - (a) the case of an offer to settle a claim for damages, the Court awards less than 90% of the amount of the defendant’s offer;

(b) any other case, the Court considers that the claimant acted unreasonably in not accepting the defendant’s offer, the claimant must pay any assessed costs incurred by the defendant after the latest date on which the offer could have been accepted without the court’s permission.

- (2) If a claimant makes an offer to settle and in —
- (a) 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;
  - (b) 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 rates set out in the following table —

Net amount of damages	Rate of Interest
Not exceeding B\$100,000	12% per annum
For the next B\$150,000	10% per annum
For the next B\$500,000	9% per annum
In excess of B\$800,000	7% per annum

'net' means the amount of damages on the claim less the amount, if any, awarded on any counter-claim.

*Example*

*One year since the offer. Damages – B\$400,000;*

*The Court might award —*

- (a) 12% on the first \$100,000 for one year (\$12,000);*
- (b) plus 10% interest on the next \$150,000 for one year (\$15,000); and*
- (c) plus 9% interest on the remaining \$150,000 for one year (\$13,500), for a total of B\$40,500 interest on damages.*

- (3) The Court may decide that the general rule under paragraph (1) is not to apply in a particular case.
- (4) In deciding whether the rule in paragraph (1) above should not apply and in considering the exercise of its discretion the Court may take into account the —
  - (a) 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;
  - (b) information available to the offeror and the offeree at the time that the offer was made;
  - (c) stage in the proceedings at which the offer was made; and



- (d) terms of any offer.
- (5) This rule applies to offers to settle at any time, including before proceedings were started.

**35.16 How costs are to be dealt with.**

- (1) If an offer to settle is accepted, the parties may agree the amount of costs that are due to be paid under this Part.
- (2) If an offer to settle —
  - (a) is accepted after the time originally stated for accepting it under rule 35.10(2); or
  - (b) deals only with part of the case in accordance with rule 35.13(3), the amount of costs to be paid to the party entitled to such costs must be assessed by the Court.

**PART 36 - PAYMENTS INTO COURT TO SUPPORT OFFERS UNDER PART 35 AND UNDER COURT ORDER**

**36.1 Scope of this part.**

- (1) This Part deals with payments into Court made —
  - (a) in accordance with an order of Court;
  - (b) to support a defence of tender; and
  - (c) to support an offer of payment under Part 35.
- (2) A defendant is not obliged to make a payment into Court to support an offer under Part 35.
- (3) With the —
  - (a) agreement of the claimant; or
  - (b) permission of the Court,a defendant may pay money in support of an offer of payment into an interest bearing account on such terms as to the —
  - (i) names of the account holders; and
  - (ii) terms on which money may be paid out of the account as may be ordered by the Court or agreed between the parties.

**36.2 Payments into Court to support offers to settle.**

- (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 such 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 filed.
- (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 outstanding.
- (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).

### **36.3 Right to payment out on acceptance of offer.**

- (1) The general rule is that a claimant who accepts an offer to settle —
- (a) within the period stated; or
  - (b) where no period is stated,
- for accepting it in the defendant's offer is entitled to payment of the sum which the defendant paid into court to support the offer, without needing a court order.
- (2) To obtain payment, the claimant must file a request for payment certifying that the offer has been accepted in accordance with paragraph (1)(a) or (b).
- (3) The general rule is qualified by rule 36.4.

### **36.4 Cases where payment out requires court order.**

- (1) If a claimant accepts money paid into court —
- (a) after the end of the period stated for accepting it;
  - (b) by one or more, but not all, of a number of defendants;
  - (c) to settle a claim to which —
    - (i) Part 23 applies; or
    - (ii) rule 36.7 applies; or
  - (d) with a defence of tender before claim,
- the money in court may only be paid out under an order of the court.
- (2) An order under paragraph (1)(c) may not be made by consent.
- (3) If —
- (a) a claimant accepts money paid into court after the trial has begun; 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 a court order.
- (4) An order under this rule must deal with the costs of the proceedings which have been stayed.

**36.5 Money paid into court under order.**

- (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) Paragraph (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 payment into court in support of an offer to settle; and
  - (c) the claimant accepts the offer to settle.

**36.6 Money paid into court as condition for permission to defend or to continue to defend.**

- (1) This rule applies where the Court makes an order permitting a defendant to —
  - (a) continue to defend; or
  - (b) defend,on condition that the defendant makes a payment into court.
- (2) If —
  - (a) a defendant makes such 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) If the defendant chooses to act in accordance with paragraph (2), he must —
  - (a) file a notice that the defendant so chooses; and
  - (b) serve a copy of it on every other party to the proceedings.

**36.7 Proceedings under Fatal Accidents Act.**

- (1) If a single sum of money is paid into court in satisfaction of proceedings arising under a Fatal Accidents Act (*Ch. 71*) and that sum is accepted, the

court must, where there is more than one cause of action, apportion that sum between the different causes of action when —

- (a) giving directions under rule 23.13; or
  - (b) authorising its payment out of court.
- (2) If in proceedings arising under a Fatal Accidents Act (*Ch. 71*) a claim is made by more than one person and a single sum of money is paid into or apportioned by the court to the cause of action under the Act and is accepted by such persons, the court must apportion the payment between those persons.

## **PART 37 – DISCONTINUANCE**

### **37.1 Scope of this Part.**

- (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.<sup>75</sup>

### **37.2 Right to discontinue claim.**

- (1) The general rule is that a claimant may discontinue all or part of a claim without the permission of the court.
- (2) Notwithstanding paragraph (1) —
  - (a) a claimant needs permission from the court to discontinue all or part of a claim in relation to which —
    - (i) any party has given an undertaking to the court; or
    - (ii) the court has granted an interim injunction;
  - (b) a claimant who has received an interim payment in relation to a claim, whether voluntarily or pursuant to an order under Part 17, may discontinue only if the —
    - (i) court gives permission; or
    - (ii) defendant who made the payment consents in writing;
  - (c) if there is more than one claimant, a claimant may not discontinue unless —

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<sup>75</sup>Rule 42.7 deals with consent orders which may include orders bringing a claim to an end by way of a consent judgment or otherwise.

- (i) every other claimant consents in writing; or
  - (ii) the court gives permission, judgment or otherwise.
- (3) If there is more than one defendant the claimant may discontinue all or part of the claim against all or any of the defendants.

### **37.3 Procedure for discontinuing.**

- (1) To discontinue a claim or any part of a claim a claimant must —
  - (a) serve a notice of discontinuance on every other party to the claim in Form G15; and
  - (b) file a copy of it.
- (2) The claimant must certify on the filed copy that notice of discontinuance has been served on every other party to the claim.
- (3) If the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the filed copy of the notice of discontinuance.
- (4) If the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.
- (5) If there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the claim is discontinued.

### **37.4 Right to apply to have notice of discontinuance set aside.**

- (1) If the claimant discontinues without the consent of the defendant or the permission of the court, where such consent or permission is required, any defendant who has not consented may apply to have the notice of discontinuance set aside.
- (2) A defendant may not apply under this rule more than twenty-eight days after the date when the notice of discontinuance was served on that defendant.

### **37.5 Effect of discontinuance.**

- (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)(a).
- (2) A claim or the relevant part of a claim is brought to an end as against that defendant on that date.
- (3) Paragraphs (1) and (2) do not affect —
  - (a) any proceedings relating to costs; or
  - (b) the right of the defendant under rule 37.4 to apply to have the notice of discontinuance set aside.

### **37.6 Liability for costs.**

- (1) Unless the —

- (a) parties agree; or
- (b) court orders otherwise,

a claimant who discontinues is liable for the costs incurred by the defendant against whom the claim is discontinued, up to the date on which notice of discontinuance was served.

- (2) If a claim is only partly discontinued —
  - (a) the claimant is only liable for the costs relating to that part of the claim 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 claim.

### **37.7 Quantification of costs.**

If the claimant discontinues part of the case only, the amount of costs must be assessed by the court when the remainder of the claim is resolved.

### **37.8 Discontinuance and subsequent proceedings.**

If the claimant —

- (a) discontinues a claim after the defendant against whom the claim is discontinued has filed a defence; and
  - (b) makes a subsequent claim against the same defendant arising out of facts which are the same or substantially the same as those relating to the discontinued claim; and
  - (c) has not paid the defendant's costs of the discontinued claim,
- the court may stay the subsequent claim until the costs of the discontinued claim are paid.

## **PART 38 – PRE-TRIAL REVIEW**

### **38.1 Scope of this Part.**

This Part deals with the pre-trial review which is to be held shortly before trial if the court so orders.

### **38.2 Direction for pre-trial review.**

- (1) At any case management conference and at any subsequent hearing in the claim 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 claim.
- (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 sixty days before the trial date or the beginning of any trial period fixed under rule 27.5(4).

- (4) The court office must give each party at least fourteen days' notice of the date time and place for the pre-trial review.

### **38.3 Rules relating to case management conferences to apply.**

Parts 25 and 26, where appropriate, apply to a pre-trial review as they do to a case management conference.

### **38.4 Who is to conduct pre-trial review.**

Wherever practicable the pre-trial review is to be conducted by the trial judge.

### **38.5 Parties to prepare pre-trial memorandum.**

- (1) The parties must seek to agree on and file at the court office a pre-trial memorandum not less than seven days before the pre-trial review.
- (2) If the parties are not able to agree on such a memorandum each party must file its own memorandum and serve a copy on all other parties not less than three 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) a statement of the issues to be determined at the trial;
  - (c) details of any admissions made; and
  - (d) the factual and legal contentions of the party or parties filing it.

### **38.6 Directions at pre-trial review.**

- (1) At the pre-trial review the judge must 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) decide on the total time to be allowed for the trial;
  - (b) direct either party to provide further information to the other;
  - (c) direct how that time shall be allocated between the parties;
  - (d) direct the parties jointly to prepare one or more of —
    - (i) a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial (hereinafter referred to as “a core bundle”);
    - (ii) an agreed statement of facts;
    - (iii) an agreed statement of the basic technical, scientific or medical matters in issue;
    - (iv) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge;

- (e) direct when and by whom the documents should be filed at the court;
- (f) direct whether or not there are to be any opening or closing addresses and the time to be allocated to each;
- (g) give directions as to the extent to which evidence may be given in written form;
- (h) give directions as to the procedure to be followed at the trial; and
- (i) give directions for the filing by each party and service on all other parties of one or more of the following —
  - (i) a chronology of relevant events;
  - (ii) a list of authorities which it is proposed to cite in support of those propositions;
  - (iii) a skeleton argument; and
  - (iv) a summary of any legal propositions to be relied on at the trial.

## **PART 39 – TRIAL**

### **39.1 Documents for use at trial.**

- (1) At least twenty-one days before the date fixed for the trial all parties must inform the claimant of the documents that 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 ten days before the date fixed for the trial the claimant must file at the Registry —
  - (a) a bundle comprising copies of —
    - (i) all statements of case;
    - (ii) any document which the parties were ordered to file under rule 38.6(2)(b);
    - (iii) any requests for information and the replies;
    - (iv) the claim form; and
    - (v) the pre-trial memorandum or memoranda;
  - (b) a second bundle comprising copies of —



- (i) all expert reports;
  - (ii) all witness statements or affidavits filed for the purpose of the trial; and
  - (iii) any agreed statements under rule 38.6(2) (d) (ii)-(iv);
- (c) a third bundle comprising the documents referred to in paragraph (2); and
- (d) where the bundles exceed one hundred pages of documents in total, a core bundle (that is, a bundle containing only the 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 any —
- (a) applications or order relating to interim payments under Part 17; and
  - (b) offer to settle under Part 35 or notice of payment into court under Part 36, and any reference to any such payment or offer 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.
- (8) The Court may direct that all or some of the bundles required under this rule are to be electronic bundles prepared in accordance with practice directions issued by the Chief Justice.<sup>76</sup>

### **39.2 Cross-examination.**

The court may limit examination, cross-examination or re-examination of any witness.

### **39.3 Written submissions.**

- (1) The parties may with the consent of the judge file written submissions —
  - (a) instead of; or
  - (b) in addition to closing speeches.
- (2) Such written submissions must be filed within seven days of the conclusion of the trial or such other period as the judge directs.

### **39.4 Failure of party to attend trial.**

If the judge is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules —

- (a) if no parties appear at the trial, the judge may strike out the claim;
- (b) if one or more but not all parties appear, the judge may proceed in the absence of the parties who do not appear.

### **39.5 Application to set aside judgment given in party's absence.**

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<sup>76</sup>Rule 27.6 allows the court to dispense with all or some of the requirements of this rule in simple and urgent cases.

- (1) A party who was not present at a trial at which judgment was given or an order made may apply to set aside that judgment or order.
- (2) The application must be made within fourteen 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) a good reason for failing to attend the hearing; and
  - (b) that it is likely that had the applicant attended some other judgment or order might have been given or made.

### **39.6 Adjournment of trial.**

- (1) The judge may adjourn a trial on such terms as the judge thinks just.
- (2) The judge may only adjourn a trial to a date and time fixed by the judge or to be fixed by the court office.

### **39.7 Inspection.**

The judge trying a claim may inspect any place or thing that may be relevant to any issue in the claim.

## **PART 40 – APPOINTMENT OF REFEREE TO INQUIRE AND REPORT**

### **40.1 Power to order trial before referee.**

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.

### **40.2 Reference to referee for inquiry and report.**

The Court may refer to a referee for inquiry and report any question or issue of fact arising in a claim.

### **40.3 Appointment of referee.**

- (1) The general rule is that the appointment of a referee under rule 40.1 or 40.2 must be made at a case management conference or pre-trial review.

- (2) The referee must be a person agreed on by the parties or, if they fail to agree, a person selected by the court in accordance with paragraph (3).
- (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) Notwithstanding paragraph (5), the Court may ultimately order any party to pay the fee of the referee.
- (7) The Court may on application by either party or of its own motion revoke the appointment of any person as referee and may appoint another person as referee.

#### **40.4 Conduct of referee.**

- (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 by videoconference or by in person hearings 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 paragraph (5) may be made on three 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 33.6.
- (8) Any order made by the court must be served personally on the witness and be endorsed with the following notice —

“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.”
- (9) A person who wilfully disobeys an order made against that person under paragraph (5) which complies with paragraph (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.

#### **40.5 Reports following reference.**

- (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.

#### **40.6 Consideration of report by the court.**

- (1) Upon receipt of the report, the court must fix a date, time and place for its consideration by the court.
- (2) The court must give twenty-one days' notice thereof to the parties.
- (3) The court may, after hearing the parties —
  - (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;
- (f) direct that additional evidence be given to the court; or
- (g) reject the report.

#### **40.7 Restrictions on appointment of referee in proceedings by or against Crown.**

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 – ACCOUNTS AND INQUIRIES**

### **41.1 Scope of this Part.**

- (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 —
  - (a) in existing proceedings, by an application under Part 11 supported by evidence on affidavit
  - (b) where there are no existing proceedings, by a fixed date statement of claim supported by evidence on affidavit.<sup>77</sup>

### **41.2 Directions for account**

- (1) 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.
- (2) Every direction that an account be taken must be so numbered that each distinct account and inquiry may be designated by that number.
- (3) On directing that an account be taken, or subsequently, the court must direct how it shall be taken or verified.

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<sup>77</sup>Rule 8.1 deals with the issue of a Fixed Date Claim Form and rule 27.2 deals with the first hearing of fixed date claims.

- (4) 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.

#### **41.3 Verification of account.**

- (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.

#### **41.4 Omissions etc.**

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.

#### **41.5 Allowances.**

In taking any account all just allowances shall be made without any express directions to that effect.

#### **41.6 Delay.**

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.

#### **41.7 Distribution before entitlement ascertained.**

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 - JUDGMENTS AND ORDERS**

### **42.1 Scope of this Part.**

- (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.

### **42.2 Parties present when order made or notified of terms to be bound.**

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, by videoconference or by an attorney when the judgment is given or the order is made; or
- (b) is notified of the terms of the judgment or order by telephone or email.

### **42.3 Practice forms to be used where available.**

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.

### **42.4 Standard requirements.**

- (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 a Registrar on an admission or following a court order under rule 14.6, 14.7, 14.8, 14.10, or 14.11.
  - (c) a consent judgment or order under rule 42.7.
- (2) Every judgment, except a default judgment, and every order must —
  - (a) be signed or initialled by the Judge or Registrar who made the judgment or order; or
  - (b) where such Judge or Registrar is unavailable, be signed by a Registrar; and
  - (c) be sealed, either electronically or manually, by the court; and
  - (d) bear the date on which it is given or made.
- (3) A judgment, order or direction which imposes a time limit for doing any act must, wherever practicable, express the last day for compliance as a calendar date and include the time of day by which the act must be done.

#### **42.5 Drawing up of judgments and orders.**

- (1) Every judgment or order must be drawn up by the party on whose claim or application the judgment or order was made, 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 such an order or judgment is required to be produced by a party, that party shall send to all other parties represented at the hearing for approval a draft of such order and shall submit the same to the Judge or Registrar for their signature or initialling no later than fourteen days from the date on which the order was made.
- (3) Where an objection is taken to the draft of the order, or no approval is given within seven days of receipt of such draft, the party required to produce such draft shall submit such draft to the Judge or Registrar who made the judgment or order with the objections, if any, attached or written confirmation that no approval has been received and the Judge or Registrar shall settle the order.
- (4) Where a party fails to file a draft of an order within fourteen days after the direction was given, any other party may draft and file the approved order.
- (5) A party who drafts an order must file sufficient copies for service on all parties who are to be served.

#### **42.6 Service of orders.**

- (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.<sup>78</sup>
- (2) Where a party is acting by an attorney, the court may direct that any judgment or order be served on the party in person as well as on the attorney.

#### **42.7 Consent judgments and orders.**

- (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.

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<sup>78</sup>Part 6 deals with service.



- (2) Except as provided by paragraphs (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 26.7(3), 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 acting for each party to whom the order relates; and
  - (d) filed at the Registry for sealing.

#### **42.8 Time when judgment or order takes effect.**

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.

#### **42.9 Time for complying with judgment or order.**

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.

#### **42.10 Correction of error in judgment or order.**

- (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.

#### **42.11 Cases where court gives judgment both on claim and counterclaim.**

- (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 paragraph (2) —
  - (a) a separate order as to damages; and
  - (b) a separate order as to costs.

#### **42.12 Service of copy of order on person not a party.**

- (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 6 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 G22.

- (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; and
  - (b) may apply within twenty-eight 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 – ENFORCEMENT OF JUDGMENTS OR ORDERS: GENERAL PROVISIONS**

### **43.1 Scope of this Part and interpretation.**

- (1) This Part contains general rules about enforcement of judgments and orders.
- (2) In this Part, in Parts 44, 45, 47, 48, 50, 51 and in Section II of Part 53 —
  - “judgment creditor”** means a person who has obtained or is entitled to enforce a judgment or order;
  - “judgment debtor”** means a person against whom a judgment or order was given or made;
  - “judgment or order”** includes an award which the court has —
    - (i) registered for enforcement;
    - (ii) ordered to be enforced; or
    - (iii) given permission to enforce as if it were a judgment or order of the court, and in relation to such an award;
  - “the court which made the judgment or order”** means the court which registered the award or made such an order;
  - “judgment or order for the payment of money”** includes a judgment or order for the payment of costs, but does not include a judgment or order for the payment of money into court; and
  - “Provost Marshal”** includes one of his Deputies.

### **43.2 Procedure for beginning enforcement.**

- (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.

### **43.3 Judgment subject to conditions.**

- (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.

### **43.4 Separate enforcement of costs.**

A judgment creditor who has judgment with costs may enforce the judgment and the costs separately.

### **43.5 Effect of order setting aside judgment or order.**

- (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.

### **43.6 Court's powers where person ordered to do act fails to comply.**

- (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.

#### **43.7 Judgment for sum in foreign currency.**

- (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 The Bahamas.
- (2) The judgment creditor must, when commencing enforcement proceedings in The Bahamas, file a certificate stating the current exchange rate in The Bahamas 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.

#### **43.8 Enforcement of judgment or order by or against non-party.**

If a judgment or order is given or made in favour of or against a person who is not a party to proceedings, it may be enforced by or against that person by the same methods as if he were a party.

#### **43.9 Execution by or against person not being a party.**

- (1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.
- (2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

#### **43.10 Enforcement of awards, etc. made by outside body.**

- (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.

## SECTION II

### **43.11 Methods of enforcing judgments or orders.**

- (1) A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods —
  - (a) a writ of fieri facias or warrant of execution under Part 48;
  - (b) a third party debt order under Part 45;
  - (c) in relation to securities, a charging order, stop order or stop notice under Part 47;
  - (d) in relation to land, by a fixed date claim form to enforce the equitable charge created by section 63 of the Act under (Part 50);
  - (e) the appointment of a receiver under Part 53;
  - (f) a writ of sequestration under Part 50.
- (2) A judgment creditor may, except where an enactment or rule provides otherwise —
  - (a) use any method of enforcement which is available; and
  - (b) use more than one method of enforcement, either at the same time or one after another.
- (3) If a judgment creditor is claiming interest on a judgment debt, he must include in his application or request to issue enforcement proceedings in relation to that judgment details of —
  - (a) the amount of interest claimed and the sum on which it is claimed;
  - (b) the dates from and to which interest has accrued; and
  - (c) the rate of interest which has been applied and, where more than one rate of interest has been applied, the relevant dates and rates.

### **43.12 Matters occurring after judgment: stay of execution, etc.**

Without prejudice to rule 48.1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

#### **43.13 Forms of writs.**

- (1) A writ of fieri facias must be in Form EX1.
- (2) A writ of delivery must be in Form EX2.
- (3) A writ of possession must be in Form EX3.
- (4) A writ of sequestration must be in Form EX4.

#### **43.14 Writ and praecipe where Ch. 360 applies.**

- (1) Where any party entitled to enforce a judgment or order for the payment of money is resident outside the scheduled territories, then, unless the Central Bank of The Bahamas has given permission under the Exchange Control Regulations Act (*Ch. 360*) for payment of the money to him unconditionally or on conditions which have been complied with, any writ of execution to enforce that judgment or order must direct the Provost Marshal to pay the proceeds of execution into court.
- (2) Notice of a payment into court in compliance with such a direction must be given by the Provost Marshal to the party by whom the writ of execution was issued or to his attorney or agent.
- (3) Where the Central Bank of The Bahamas has given such permission unconditionally or on conditions which have been complied with, the praecipe for the issue of a writ of execution to enforce the judgment or order in question must be endorsed with a certificate of that fact.

#### **43.15 Duration and renewal of writ of execution.**

- (1) For the purpose of execution, a writ of execution is valid in the first instance for twelve months beginning with the date of its issue.
- (2) Where a writ has not been wholly executed, the Court may by order extend the validity of the writ from time to time for a period of twelve months at any time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire.
- (3) Before a writ the validity of which has been extended under this rule is executed either the writ must be sealed with the seal of the court showing the date on which the order extending its validity was made or the applicant for the order must serve a sealed notice in Form EX5 on the Provost Marshal to whom the writ is directed informing him of the making of the order and the date thereof.
- (4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the Provost Marshal.

- (5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3), purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ or, as the case may be, of the writ, referred to in that notice, has been extended under this rule.

#### **43.16 Return to a writ of execution.**

- (1) Any party at whose instance a writ of execution was issued may serve a notice on the Provost Marshal to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.
- (2) If a Provost Marshal on whom such a notice is served fails to comply with it, the party by whom it was served may apply to the Court for an order directing the Provost Marshal to comply with the notice.

## **PART 44 – ORDERS TO OBTAIN INFORMATION FROM JUDGMENT DEBTORS**

### **44.1 Scope of this Part.**

This Part contains rules which provide for a judgment debtor to be required to attend court to provide information, for the purpose of enabling a judgment creditor to enforce a judgment or order against him.

### **44.2 Notice to judgment debtor to complete financial statement.**

- (1) A judgment creditor may serve on the judgment debtor a notice in Form EX6 with two copies of Form EX7.
- (2) A notice in Form EX6 requires the judgment debtor to complete and serve on the judgment creditor a statement in Form EX7 of the judgment debtor's —
  - (a) receipts and payments for the preceding twelve months; and
  - (b) assets and liabilities; and
  - (c) income and expenditure; and
  - (d) means of satisfying the judgment.
- (3) The judgment debtor must serve the statement in Form EX7 on the judgment creditor within fourteen days after the date on which the notice in EX6 is served on him.



#### **44.3 Order to attend court.**

- (1) Whether or not a notice has been served under 44.2 above, a judgment creditor may apply for an order requiring —
  - (a) a judgment debtor; or
  - (b) if a judgment debtor is a company or other corporation or legal entity, an officer of that body,to attend court, either in person or by videoconference, to provide information about —
  - (i) the judgment debtor’s receipts and payments for the preceding twenty-four months, assets and liabilities, income and expenditure; and
  - (ii) any other matter about which information is needed to enforce a judgment or order.
- (2) An application under paragraph (1) may be made without notice.
- (3) The application notice must be in the Form EX8.
- (4) An application under paragraph (1) may be dealt with by a Registrar without a hearing.
- (5) If the application notice complies with paragraph (3), an order to attend court will be issued in the terms of paragraph (6).
- (6) The judgment debtor or officer served with an order issued under this rule must —
  - (a) attend court, either in person or by videoconference as provided in the order, at the time and place specified in the order;
  - (b) when he does so, produce at court documents in his control which are described in the order; and
  - (c) answer on oath or affirmation such questions as the court may require.
- (7) An order under this rule must be in Form EX9 and will contain a notice in the following terms —

*“You must obey this order. If you do not, you may be arrested and then sent to prison for contempt of court.”*

#### **44.4 Service of order.**

An order to attend court must, unless the court otherwise orders, be served personally on the judgment debtor or officer ordered to attend court not less than fourteen days before the hearing.

#### **44.5 Travelling expenses.**

- (1) A judgment debtor or officer resident in another island of The Bahamas who is ordered to attend court in person in New Providence or Grand Bahama may, within seven days of being served with the order, ask the judgment creditor to pay him a sum not exceeding a sum reasonably sufficient to cover his travelling expenses to and from court and in any event an amount not exceeding three hundred dollars.
- (2) The judgment creditor, if requested to pay a sum mentioned in paragraph (1), must pay the same in sufficient time for the judgment debtor to be able to attend the examination in person.

#### **44.6 Judgment creditor's affidavit.**

- (1) The judgment creditor must file an affidavit or affidavits —
  - (a) by the person who served the order giving details of how and when it was served;
  - (b) stating either that —
    - (i) in the event that the person is ordered to attend court in person, he has not requested payment of his travelling expenses; or
    - (ii) the judgment creditor has paid a sum in accordance with such a request; and
  - (c) stating how much of the judgment debt remains unpaid.
- (2) The judgment creditor must either —
  - (a) file the affidavit or affidavits not less than two days before the hearing; or
  - (b) produce it or them at the hearing.

#### **44.7 Conduct of the hearing.**

- (1) The judgment debtor or officer served —
  - (a) must appear either in person or by videoconference as directed by the order;
  - (b) may be represented by an attorney, who may examine the judgment debtor or officer and be heard on the matter of the judgment debtor's means;
  - (c) may be cross examined by the judgment creditor or his attorney;
  - (d) may be examined by a Registrar or a Judge.

- (2) The information given by the person must be given on oath or affirmation, taken down and read to the judgment debtor or officer who shall be given an opportunity to correct any information incorrectly recorded.

#### **44.8 Adjournment of hearing.**

If the hearing is adjourned, the Registrar or Judge must give directions about the manner in which notice of the new hearing is to be served on the judgment debtor or officer, if necessary.

#### **44.9 Orders by court.**

- (1) After an examination is completed, the Registrar or Judge who conducted the hearing may, after giving all parties or persons an opportunity to be heard, do any one or more of the following —
  - (a) direct that enforcement proceedings be commenced or continued, direct any steps to be taken in those proceedings, and issue any summons or make any order for the purpose of those proceedings;
  - (b) make an order that the money owing under the judgment be paid by instalments payable at times fixed by the court;
  - (c) stay any proceeding for the enforcement of the judgment;
  - (d) make an order varying any order relating to the enforcement of the judgment.
- (2) The Registrar or Judge may do any one or more of the things referred to in paragraph (1), even though —
  - (a) no application was made for the particular direction, order, or stay; or
  - (b) that application was made for a different direction, order, or stay.

#### **44.10 Failure to comply with order for examination.**

- (1) A Judge may issue a warrant, to be made in Form EX10, for the arrest of the judgment debtor or officer who fails to attend the examination.
- (2) A warrant for arrest under paragraph (1) must not be made unless the judgment creditor has filed the affidavit(s) required by rule 44.6.
- (3) If a warrant for arrest is made, the Judge must direct that the warrant is suspended provided the judgment debtor or officer attends the court in person for examination at a time and place specified in the order.
- (4) If a judgment debtor or officer who has been served with an arrest order fails to attend in person the examination or fails to comply with any other term on which the arrest order was suspended, the Registrar or Judge may issue a certificate to that effect.

- (5) Upon the Registrar or Judge certifying under (4) above that the judgment debtor or officer named is in breach of the warrant of arrest, the judgment debtor or officer shall be arrested and brought before a Judge so that the Judge may consider whether to commit the judgment debtor or officer named to prison.

#### **44.11 Discharge of arrest order.**

- (1) When an judgment debtor or person named is brought before a Judge, the Judge must discharge the arrest order unless the Judge is satisfied beyond reasonable doubt that —
- (a) the judgment debtor or officer has failed to comply with —
    - (i) the original order to attend court; and
    - (ii) the terms on which the warrant of arrest was suspended; and
  - (b) both orders have been served on the judgment debtor or officer.
- (2) If the judge does not discharge the warrant of arrest, the judge may fine the judgment debtor or officer a sum not exceeding five thousand dollars or commit the judgment debtor or officer to prison for a term of imprisonment of not more than one month.

#### **44.12 Refusal by judgment debtor or officer to be sworn, etc.**

If at any hearing under this Part, a judgment debtor or officer refuses —

- (a) to be sworn or to affirm;
- (b) to answer one or more of the questions put to him;
- (c) refuses to produce or permit to be inspected any document or property after being ordered to do so by the Registrar or Judge,

the Judge may commit the judgment debtor or officer to prison for a term of imprisonment not exceeding one month.

## **PART 45 – THIRD PARTY DEBT ORDERS**

### **45.1 Scope of this Part and interpretation.**

- (1) This Part contains rules which provide for a judgment creditor to obtain an order for the payment to him of money which a third party who is within the jurisdiction owes to the judgment debtor.
- (2) In this Part, “**bank or credit union**” includes any person carrying on a business in the course of which he lawfully accepts deposits in The Bahamas.

#### **45.2 Third party debt order.**

- (1) Upon the application of a judgment creditor, the court may make an order (a “final third party debt order”) in Form EX13 requiring a third party to pay to the judgment creditor —
  - (a) the amount of any debt due or accruing due to the judgment debtor from the third party; or
  - (b) so much of that debt as is sufficient to satisfy the judgment debt and the judgment creditor’s costs of the application.
- (2) The court will not make an order under paragraph (1) without first making an “interim third party debt order” pursuant to rule 45.4(2).

#### **45.3 Application for third party debt order.**

An application for a third party debt order must be in Form EX11 and may be made without notice.

#### **45.4 Interim third party debt order.**

- (1) An application for a third party debt order will initially be dealt with by a judge without a hearing.
- (2) The judge may make an interim third party debt order in Form EX12 —
  - (a) fixing a hearing date to consider whether to make a final third party debt order; and
  - (b) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order.
- (3) An interim third party debt order will specify the amount of money which the third party must retain, which will be the total of —
  - (a) the amount of money remaining due to the judgment creditor under the judgment or order; and
  - (b) an amount for the judgment creditor’s fixed costs of the application, as specified in the relevant practice direction.
- (4) An interim third party debt order becomes binding on a third party when it is served on him.
- (5) The date of the hearing to consider the application shall be not less than twenty-eight days after the interim third party debt order is made.

#### **45.5 Service of interim order.**

- (1) Copies of an interim third party debt order, the application notice and any documents filed in support of it must be served —

- (a) on the third party, not less than twenty-one days before the date fixed for the hearing; and
- (b) on the judgment debtor not less than —
  - (i) seven days after a copy has been served on the third party; and
  - (ii) seven days before the date fixed for the hearing.
- (2) If the judgment creditor serves the order, he must either —
  - (a) file a certificate of service not less than two days before the hearing; or
  - (b) produce a certificate of service at the hearing.

#### **45.6 Obligation of third parties served with interim order.**

- (1) A bank or credit union served with an interim third party debt order must carry out a search to identify all accounts held with it by the judgment debtor.
- (2) The bank or credit union must disclose to the court and the creditor within seven days of being served with the order, in respect of each account held by the judgment debtor —
  - (a) the number of the account;
  - (b) whether the account is in credit; and
  - (c) if the account is in credit —
    - (i) whether the balance of the account is sufficient to cover the amount specified in the order;
    - (ii) the amount of the balance at the date it was served with the order, if it is less than the amount specified in the order; and
    - (iii) whether the bank or credit union asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.
- (3) If —
  - (a) the judgment debtor does not hold an account with the bank or credit union; or
  - (b) the bank or credit union is unable to comply with the order for any other reason, for example, because it has more than one account holder whose details match the information contained in the order, and cannot identify which account the order applies to,the bank or credit union must inform the court and the judgment creditor of that fact within seven days of being served with the order.

- (4) Any third party other than a bank or credit union served with an interim third party debt order must notify the court and the judgment creditor in writing within seven days of being served with the order, if he claims —
  - (a) not to owe any money to the judgment debtor; or
  - (b) to owe less than the amount specified in the order.

#### **45.7 Arrangements for debtors in hardship.**

- (1) If —
  - (a) a judgment debtor is an individual;
  - (b) he is prevented from withdrawing money from his account with a bank or credit union as a result of an interim third party debt order; and
  - (c) he or his family is suffering hardship in meeting ordinary living expenses as a result,the court may, on an application by the judgment debtor, make an order permitting the bank or credit union to make a payment or payments out of the account (“a hardship payment order”).
- (2) An application notice seeking a hardship payment order must —
  - (a) include detailed evidence explaining why the judgment debtor needs a payment of the amount requested; and
  - (b) be verified by a statement of truth.
- (3) Unless the court orders otherwise, the application notice —
  - (a) must be served on the judgment creditor at least two days before the hearing; but
  - (b) does not need to be served on the third party.
- (4) A hardship payment order may —
  - (a) permit the third party to make one or more payments out of the account; and
  - (b) specify to whom the payments may be made.

#### **45.8 Further consideration of the application.**

- (1) If the judgment debtor or the third party objects to the court making a final third party debt order, he must file and serve written evidence stating the grounds for his objections.
- (2) If the judgment debtor or the third party knows or believes that a person other than the judgment debtor has any claim to the money specified in the interim order, he must file and serve written evidence stating his knowledge of that matter.
- (3) If —

- (a) the third party has given notice under rule 45.6 that he does not owe any money to the judgment debtor, or that the amount which he owes is less than the amount specified in the interim order; and
  - (b) the judgment creditor wishes to dispute this,  
the judgment creditor must file and serve written evidence setting out the grounds on which he disputes the third party's case.
- (4) Written evidence under paragraphs (1), (2) or (3) must be filed and served on each other party as soon as possible, and in any event not less than three days before the hearing.
  - (5) If the court is notified that some person other than the judgment debtor may have a claim to the money specified in the interim order, it will serve on that person notice of the application and the hearing.
  - (6) At the hearing the court may —
    - (a) make a final third party debt order;
    - (b) discharge the interim third party debt order and dismiss the application;
    - (c) decide any issues in dispute between the parties, or between any of the parties and any other person who has a claim to the money specified in the interim order; or
    - (d) direct a trial of any such issues, and if necessary give directions.

#### **45.9 Effect of final third party order.**

- (1) A final third party debt order shall be enforceable as an order to pay money.
- (2) If —
  - (a) the third party pays money to the judgment creditor in compliance with a third party debt order; or
  - (b) the order is enforced against him,  
the third party shall, to the extent of the amount paid by him or realised by enforcement against him, be discharged from his debt to the judgment debtor.
- (3) Paragraph (2) applies even if the third party debt order, or the original judgment or order against the judgment debtor, is later set aside.

#### **45.10 Money in court.**

- (1) If money is standing to the credit of the judgment debtor in court —
  - (a) the judgment creditor may not apply for a third party debt order in respect of that money; but



- (b) he may apply for an order that the money in court, or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him.
- (2) An application notice seeking an order under this rule must be served on —
  - (a) the judgment debtor; and
  - (b) the Registrar.
- (3) If an application notice has been issued under this rule, the money in court must not be paid out until the application has been disposed of.

#### **45.11 Costs.**

If the judgment creditor is awarded costs on an application for an order under rule 45.2 or 45.10 —

- (a) he shall, unless the court otherwise directs, retain those costs out of the money recovered by him under the order; and
- (b) the costs shall be deemed to be paid first out of the money he recovers, in priority to the judgment debt.

#### **45.12 Judgment creditor resident outside scheduled territories.**

- (1) The Court shall not make an order under this part requiring the third party to pay any sum to or for the credit of any judgment creditor resident outside the scheduled territories unless that creditor produces a certificate that the Central Bank of The Bahamas has given permission under the Exchange Control Regulations Act (*Ch. 360*), for the payment unconditionally or on conditions which have been complied with.
- (2) If it appears to the Court that payment by the third party to the judgment creditor will contravene any provision of the said Act, it may order the third party to pay into court the amount due to the judgment creditor and the costs of the proceedings under this Part after deduction of his own costs, if the Court so orders.

## **PART 46 – ENFORCEMENT AGAINST FIRM OR PERSON CARRYING ON BUSINESS IN ANOTHER NAME**

### **46.1 General.**

- (1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.

- (2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 46.2 and to the next following paragraph, issue against any person who —
  - (a) entered an acknowledgement of service in the action as a partner; or
  - (b) having been served as a partner with the statement of claim, failed to enter an acknowledgement of service in the action; or
  - (c) admitted in any pleading that he is a partner; or
  - (d) was adjudged to be a partner.
- (3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the claim was issued unless he —
  - (a) entered an acknowledgement of service in the action as a partner; or
  - (b) was served within the jurisdiction with the statement of claim as a partner; or
  - (c) was, with the leave of the Court, served out of the jurisdiction with the statement of claim, or notice of the statement of claim, as a partner,and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the statement of claim was issued.
- (4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, the application to be made by application notice which must be served personally on that person.
- (5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3), give leave to issue execution against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

#### **46.2 Enforcing judgment or order in actions between partners, etc.**

- (1) Execution to enforce a judgment or order given or made in —
  - (a) an action by or against a firm in the name of the firm against or by a member of the firm; or

- (b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common, shall not issue except with the leave of the Court.
- (2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

#### **46.3 Attachment of debts owed by firm.**

- (1) An order may be made under Part 45 in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.
- (2) An order to show cause under Part 45 must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.
- (3) Where an order made under Part 45 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

#### **46.4 Actions begun by originating application or fixed date claim form.**

This Part shall, with any necessary modification, apply in relation to an action by or against partners in the name of their firm begun by originating application or fixed date claim form as they apply in relation to such an action begun by standard claim form.

#### **46.5 Application to person carrying on business in another name.**

An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and this Part shall, so far as practicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

#### **46.6 Applications for orders charging partner's interest in partnership property, etc.**

- (1) Every application to the Court by a judgment creditor of a partner for an order under section 24 of the Partnership Act (*Ch. 310*) (which authorises the Supreme Court to make on the application of a judgment creditor of a partner an order charging the partner's interest in the partnership property), and every application to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application must be made by interlocutory application.

- (2) The Registrar may exercise the powers conferred on a judge by in accordance with section 24 of the Partnership Act (Ch. 310).
- (3) Every application issued by a judgment creditor under this rule, and every order made on such application, must be served on the judgment debtor and on such of his partners as are within the jurisdiction or, if the partnership is a cost book company, on the judgment debtor and the purser of the company.
- (4) Every application issued by a partner of a judgment debtor under this rule, and every order made on such application, must be served —
  - (a) on the judgment creditor; and
  - (b) on the judgment debtor; and
  - (c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.
- (5) An application notice or order served in accordance with this rule on the purser of a cost book company or, in the case of a partnership not being such a company, on some only of the partners thereof, shall be deemed to have been served on that company or on all the partners of that partnership, as the case may be.

## **PART 47 – SECURITIES: CHARGING ORDERS, STOP ORDERS AND STOP NOTICES**

### **47.1 Order imposing charge on securities.**

- (1) The Court may, for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money, impose on any interest to which the judgment debtor is beneficially entitled in such of the securities to which this rule applies a charge for securing payment of the amount due under the judgment or order and interest thereon.
- (2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.
- (3) The securities to which this rule applies are —
  - (a) any government stock, and any stock of any company registered under any general Act of Parliament; and
  - (b) any dividend of or interest payable on such stock.
- (4) In this Part —

**“government stock”** means any stock issued by, any funds of or annuity granted by the Government; and

“stock” includes shares, debentures and debenture stock.

#### **47.2 Application for order under 47.1.**

An application for an order under rule 47.1 must be made by application supported by an affidavit —

- (a) identifying the judgment or order to be enforced, stating the amount unpaid under it at the date of the application, and showing that the applicant is entitled to enforce the judgment order;
- (b) specifying the securities on the judgment debtor’s interest in which it is sought to impose a charge and in whose name they stand;
- (c) stating that to the best of the information or belief of the witness the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest, and stating the sources of the deponent’s information or the grounds for his belief.

#### **47.3 Service of notice of order to show cause.**

- (1) Unless the Court otherwise directs, a copy of the order under rule 47.1 to show cause must, at least seven days before the time appointed thereby for the further consideration of the matter, be served on the judgment debtor, and if he does not attend on such consideration proof of service must be given.
- (2) Notice of the making of the order to show cause, with a copy of that order, must as soon as practicable after the making of the order be served —
  - (a) where the order relates to government stock, on the Public Treasury;
  - (b) where the order relates to other stock, on the company concerned.

#### **47.4 Effect of order to show cause.**

- (1) No disposition by the judgment debtor of his interest in any securities to which an order under rule 47.1 to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.
- (2) Until such order is discharged or made absolute, the Accountant-General or, as the case may be, a company shall not permit any transfer of any such stock as is specified in the order, or pay to any person any dividend thereof, or interest payable thereon, except with the authority of the Court.
- (3) If after notice of the making of such order is served on the Public Treasury or a company, the Public Treasury or company permits any transfer or makes any payment prohibited by paragraph (2), it shall be liable to pay the judgment creditor the value of the stock transferred or, as the case may be, the amount of the payment made or, if that value or amount is more

than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

## **PART 48 – WRIT OF FIERI FACIAS**

### **48.1 Power to stay execution by writ of fieri facias.**

- (1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied —
  - (a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or
  - (b) that the applicant is unable from any cause to pay the money,then, notwithstanding anything in rule 48.2 or 48.3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court thinks fit.
- (2) An application under this rule, if not made at the time the judgment is given or order made, must be made by application notice and may be so made notwithstanding that the party liable to execution did not enter an appearance in the action.
- (3) An application made by application notice must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.
- (4) The application notice and a copy of the supporting affidavit must, not less than four clear days before the return day, be served on the party entitled to enforce the judgment or order.
- (5) An order staying execution under this rule may be varied or revoked by a subsequent order.

### **48.2 Separate writs to enforce payment of costs, etc.**

- (1) Where only the payment of money, together with costs to be assessed, is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been assessed, the party entitled to enforce that judgment or order may issue a writ of fieri facias in Form EX 1 to enforce payment of the sum, other than for costs, adjudged or ordered and, not less than eight days after the issue of that writ, he may issue a second writ to enforce payment of the assessed costs.

- (2) A party entitled to enforce a judgment or order for the delivery of possession of any property, other than money, may, if he so elects, issue a separate writ of fieri facias to enforce payment of any damages or costs awarded to him by that judgment or order.

#### **48.3 No expenses of execution in certain cases.**

Where a judgment or order is for less than such sum as shall be specified from time to time by the Chief Justice by practice direction the claimant shall not be entitled to costs against the person against whom the writ of fieri facias to enforce the judgment or order is issued, the writ may not authorise the Provost Marshal to whom it is directed to levy any fees, poundage or other costs of execution.

#### **48.4 Order for sale otherwise than by auction.**

- (1) An order of the Court under the Bankruptcy Act (*Ch. 69*) that a sale under an execution may be made otherwise than by public auction may be made on the application of the judgment creditor or the judgment debtor or the Provost Marshal to whom it was issued.
- (2) Such an application must be made by application notice and the application notice must contain a short statement of the grounds of the application.
- (3) Where the applicant for an order under this rule is not the Provost Marshal, the Provost Marshal must, on the demand of the applicant send to the applicant a list containing the name and address of every person at whose instance any other writ of execution against the goods of the judgment debtor was issued and delivered to the Provost Marshal (hereinafter referred to as “the Provost Marshal’s list”) and where the Provost Marshal is an applicant, he must prepare such a list.
- (4) Not less than four clear days before the return day the applicant must serve the application notice on each of the other persons by whom the applicant might have been made and on every person named in the Provost Marshal’s list.
- (5) The applicant must produce the Provost Marshal’s list to the Court on the hearing of the application.
- (6) Every person on whom the application notice was served may attend and be heard on the hearing of the application.

## **PART 49 – INTERPLEADER**

### **49.1 Interpretation.**

In this rule and rules 49.1 to 49.8, unless the context otherwise requires —

“**applicant**” means a person entitled under rule 49.2 to apply to the court for relief under rule 49.7;

“**claimant**” means a person claiming against an applicant in terms of rule 49.2.

### **49.2 Right to interplead.**

- (1) When a person who is under a liability in respect of a debt or in respect of any money or chattels is, or expects to be, sued for or in respect of the debt, money, or chattels by two or more persons making adverse claims, that person may apply to the court, on notice to the persons making the adverse claims, for relief under rule 49.7.
- (2) A person who claims money or chattels taken or intended to be taken by the Provost Marshal may apply to the court, serving notice on the judgment creditor, the judgment debtor, and the Provost Marshall for relief under rule 49.7 and shall serve notice of his application on the judgment creditor, the judgment debtor and the Provost Marshal.
- (3) Paragraph (2) applies —
  - (a) whether or not there has been a return of the order; and
  - (b) whether or not a proceeding has been commenced against the officer in respect of the money or chattels.

### **49.3 Form of application.**

- (1) When a claimant has issued a proceeding against the applicant in respect of the debt or money or chattels referred to in rule 49.2(1), and in cases within rule 49.2(2), the application must be an interlocutory application in the proceeding.
- (2) Subject to rules 49.5 to 49.8, Part 11 of these rules applies to the application.
- (3) In other cases the application must be made by filing and serving a fixed date statement of claim and notice of proceeding under Part 8.

### **49.4 Affidavit in support.**

- (1) An application under rule 49.2 must be supported by an affidavit stating —  
—



- (a) that the applicant claims no interest in the subject matter in dispute other than the charges or costs;
  - (b) that adverse claims, of which details must be given, have been made by the claimants and the steps already taken by the respective claimants in support of their claims;
  - (c) that the applicant is not colluding with any of the claimants to that subject matter; and
  - (d) that the applicant is willing to pay or transfer that subject matter into court or dispose of it as the court may direct.
- (2) A copy of the affidavit must be served on each claimant when the application under rule 49.2 is served.

#### **49.5 Time for applying.**

- (1) If a claimant has commenced a proceeding against the applicant to enforce the claim, an application under rule 49.2 must be made before a statement of defence has been filed by the applicant.
- (2) If no statement of defence has been filed by the applicant, it must be made before judgment has been entered against the applicant.

#### **49.6 Claimants to file affidavits.**

- (1) Subject to paragraphs (2) and (3), a claimant who wishes to justify a claim must, within five working days after service of an application made under paragraph (1) or (2) of rule 49.2, file and serve on other claimants and on the applicant an affidavit stating the facts and matters relied on.
- (2) When, in accordance with rule 49.3(3), a statement of claim and notice of proceeding have been filed and served together with an affidavit under rule 49.4, the claimant must file and serve a statement of defence with the claimant's affidavit.
- (3) If the claimant, had the claimant been a defendant, might have filed an acknowledgment of service under Part 9, the claimant may, instead of filing and serving an affidavit under paragraph (1), file and serve an appearance.
- (4) An acknowledgment of service filed and served under paragraph (3), for all the purposes of rules 49.7 and 49.8, has effect as though the claimant were a defendant in a proceeding brought by the applicant or by any other claimant referred to in the appearance.

#### **49.7 Powers of court.**

- (1) Upon hearing an application under rule 49.2, the court may make whatever orders and directions justice requires.

- (2) In particular, and without limiting paragraph (1), the court may —
  - (a) stay a proceeding commenced by a claimant;
  - (b) bar the claim of a claimant who has not filed and served either —
    - (i) an affidavit justifying the claim under rule 49.6(2); or
    - (ii) an acknowledgment of service under rule 49.6(3);
  - (c) adjudicate upon the competing claims on the affidavits filed, or adjourn the application for that purpose;
  - (d) if the question appears to be one of law only, direct that the question be determined by the court;
  - (e) direct the trial of the issues involved by the method that the court directs;
  - (f) order that one of the claimants commence a proceeding against any other or others to try the question involved or, if a proceeding has been commenced by a claimant, order that any other claimant be joined as a defendant to that proceeding;
  - (g) order that the chattels in dispute or any part of them be sold, and that the proceeds of the sale be applied in such manner and on such terms as are just.
- (3) Paragraph (4) applies to a claimant who has been served with an application and —
  - (a) does not appear on the hearing of the application; or
  - (b) having appeared, fails or refuses to comply with an order.
- (4) The court may make an order declaring that the claimant and all persons claiming under that claimant may not continue or subsequently prosecute that claim against the applicant and all persons claiming under the applicant but that order does not affect the rights of the claimants as between themselves.

#### **49.8 Costs of applicant.**

- (1) An applicant shall be entitled to such costs as the court may direct and such costs may comprise the entirety of the costs incurred by the applicant.
- (2) The court may order that the applicant's costs be paid by any one or more of the claimants and may apportion the liability between any two or more claimants, as it thinks just.
- (3) The court may charge any property in dispute, or the proceeds of the sale of it, or both, with payment of the costs of the applicant.

## **PART 50 – ENFORCEMENT IN RELATION TO POSSESSION OF LAND, DELIVERY OF GOODS AND INJUNCTION**

### **50.1 Enforcement of judgment for possession of land.**

- (1) A judgment or order for the giving of possession of land may be enforced by one or more of the following —
  - (a) writ of possession;
  - (b) in a case in which rule 50.3 applies, an order of committal; or
  - (c) in such a case, writ of sequestration.
- (2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Part 62 applies.
- (3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.
- (4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

### **50.2 Enforcement of judgment for delivery of goods.**

- (1) A judgment or order for the delivery of any goods which does not provide the alternative of paying the assessed value of the goods may be enforced by one or more of the following —
  - (a) writ of delivery to recover the goods without alternative provisions for recovery of their assessed value (hereafter in this rule referred to as a “writ of specific delivery”);
  - (b) in a case in which rule 3 applies, an order of committal;
  - (c) in such a case, writ of sequestration.
- (2) A judgment or order for the delivery of any goods or payment of their assessed value may be enforced by —
  - (a) writ of delivery to recover the goods or their assessed value;
  - (b) with the leave of the Court, writ of specific delivery;
  - (c) in a case in which rule 50.3 applies, writ of sequestration.
- (3) A writ of specific delivery and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of

any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

- (4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

### **50.3 Enforcement of judgment to do or abstain from doing any act.**

- (1) Where —
- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time, or, as the case may be, within that time as extended or abridged under these Rules; or
  - (b) a person disobeys a judgment or order requiring him to abstain from doing an act; then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means —
    - (i) with the leave of the Court, a writ of sequestration against the property of that person;
    - (ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;
    - (iii) subject to the provisions of the Debtors Act (*Ch. 70*) an order of committal against that person or, where that person is a body corporate, against any such officer.
- (2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 50.4 requiring the act to be done within some other time, references in paragraph (1), to a judgment or order shall be construed as references to that order made under rule 50.4.
- (3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1) but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the person so liable to deliver the goods to the applicant within a time specified in that order, and that order may be so enforced.
- (4) An application for committal or sequestration under this rule is to be made in the proceedings in which the judgment or order was made or the undertaking was given by an application in accordance with Part 11.
- (5) Where an application to commit or for sequestration under paragraph (4) is made against a person who is not an existing party to the proceedings,

then the committal application is made against that person by an application under Part 11.

- (6) The application must —
  - (a) set out in full the grounds on which the application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
  - (b) be supported by one or more affidavits containing all the evidence relied upon.
- (7) Subject to paragraph (8), the application notice and the evidence in support must be served personally on the respondent.
- (8) The court may —
  - (a) dispense with service under paragraph (8) if it considers it just to do so; or
  - (b) make an order in respect of service by an alternative method or at an alternative place.

#### **50.4 Judgment, etc. requiring act to be done: order fixing time for doing it.**

- (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall have power to make an order requiring the act to be done within some other time.
- (2) Where a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time as the court may specify.
- (3) An application for an order under this rule must be made by application under Part 11 and the application must be served on the person required to do the act in question.

#### **50.5 Service of copy of judgment, etc. prerequisite to enforcement under rule 3.**

- (1) In this rule references to an order shall be construed as including references to a judgment.
- (2) Subject to rule 28.2, and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 50.3 unless —
  - (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and

- (b) in the case of an order requiring a person to do an act, the copy has been served before the expiration of the time within which he was required to do the act.
- (3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 50.3(1)(ii) or (iii) unless —
  - (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought; and
  - (b) in the case of an order requiring the body corporate to do an act, a copy has been so served before the expiration of the time within which the body was required to do the act.
- (4) There must be endorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served —
  - (a) in the case of service under paragraph (2), that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the Order, he is liable to process of execution to compel him to obey it; and
  - (b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.
- (5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under rule 26.1(2)(k), extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 50.3(3) or rule 50.4, a copy of the previous order requiring the act to be done.
- (6) An order requiring a person to abstain from doing an act may be enforced under rule 50.3 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either —
  - (a) by being present when the order was made; or
  - (b) by being notified of the terms of the order, whether by telephone, email, text message or otherwise.
- (7) The Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

### **50.6 Court may order act to be done at expense of disobedient party.**

If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to any other power it may have including its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

## **PART 51 – COMMITTAL**

### **51.1 Committal for contempt of court.**

- (1) The power of the Court to punish for contempt of court may be exercised by an order of committal.
- (2) Where contempt of court —
  - (a) is committed in connection with—
    - (i) any proceedings before the Court including but not limited to the making of a false statement of truth in a witness statement or breach of duty of a party or his attorney in relation to disclosure; or
    - (ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or
  - (b) is committed otherwise than in connection with any proceedings, then, subject to paragraph (4), an order of committal may be made by the Court.
- (3) Where contempt of court is committed in connection with any proceedings in the Court, then, subject to paragraph (2), an order of committal may be made by a judge of the Court.
- (4) Where by virtue of any enactment the Court has power to punish or take steps for the punishment of any person charged with having done any thing in relation to a court, tribunal or person which would, if it had been done in relation to the Court, have been a contempt of that Court, an order of committal may be made by a judge of the Court.
- (5) An application for committal under rule 51.1(2)(a)(i) may be made only with the permission of the court dealing with the claim.

### **51.2 Application for order.**

- (1) The application for the order must be made by originating application to the Court and, unless the Court or Judge granting leave has otherwise directed, there must be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.
- (2) Unless within fourteen days after such leave was granted the motion is entered for hearing the leave shall lapse.
- (3) Subject to paragraph (4), the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under this rule, must be served personally on the person sought to be committed.
- (4) The Judge may dispense with service of the notice of motion under this rule if he thinks it just to do so.

### **51.3 Saving for power to commit without application for purpose.**

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of court.

### **51.4 Provisions as to hearing.**

- (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say —
  - (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
  - (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act;
  - (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
  - (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private, but, except as aforesaid, the application shall be heard in open court.
- (2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state —
  - (a) the name of that person;
  - (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and



- (c) if he is being committed for a fixed period, the length of that period.
- (3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the originating application under rule 51.2.
- (4) The foregoing provision is without prejudice to the powers of the Court to amend a statement of case, make case management orders and rectify matters under rule 26.9.
- (5) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

#### **51.5 Power to suspend execution of committal order.**

- (1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended, for such period or on such terms or conditions as it may specify.
- (2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

#### **51.6 Discharge of person committed.**

- (1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.
- (2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

### **51.7 Saving for other powers.**

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

## **PART 52 – SALES, ETC., OF LAND BY ORDER OF COURT**

### **52.1 Power to order sale of land.**

- (1) Where in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.
- (2) In this Part , “**land**” includes any interest in, or right over, land.

### **52.2 Manner of carrying out sale.**

- (1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or under paragraph (4) direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.
- (2) The party entitled to prosecute the order must —
  - (a) leave a copy of the order at the judge’s chambers with a certificate that it is a true copy of the order; and
  - (b) subject to paragraph (3), take out an application to proceed with the order.
- (3) Where an order for sale contains directions with regard to effecting the sale, the party entitled to prosecute the order shall not take out a summons under paragraph (2) unless and until he requires the further directions of the Court.

- (4) On the hearing of the application the Court may give such directions, as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions —
  - (a) appointing the party or person who is to have the conduct of the sale;
  - (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;
  - (c) fixing a reserve or minimum price;
  - (d) requiring payment of the purchase money into court or to trustees or other persons;
  - (e) for settling the particulars and conditions of sale;
  - (f) for obtaining evidence of the value of the property;
  - (g) fixing the security, if any, to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him;
  - (h) requiring an abstract of the title to be referred to conveyancing attorney of the Court or some other conveyancing attorney for his opinion thereon and to settle the particulars and conditions of sale.

### **52.3 Certifying result of sale.**

- (1) If either the Court has directed payment of the purchase money into court or the Court so directs, the result of a sale by order of the Court must be certified —
  - (a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and
  - (b) in any other case, by the attorney of the party or person having the conduct of the sale,and the Court may require the certificate to be verified by the affidavit of the auctioneer or attorney, as the case may be.
- (2) The attorney of the party or person having the conduct of the sale must leave a copy of the certificate and affidavit, if any, at the judge's chambers and, not later than two days after doing so, file the certificate and any affidavit in the Registry.

### **52.4 Mortgage, exchange or partition under order of the court.**

Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the mortgage, exchange or partition of any land under an order of the Court as they apply in relation to the sale of any land under such an order.

## SECTION II - CONVEYANCING ATTORNEY OF THE COURT

### **52.5 Reference of matters to conveyancing attorney of court.**

The Court may appoint and refer to a conveyancing attorney of the Court —

- (a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof;
- (b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument; and
- (c) any other matter it thinks fit, and may act upon his opinion in the matter referred.

### **52.6 Objection to conveyancing attorney's opinion.**

Any party may object to the opinion given by any conveyancing attorney on a reference under rule 52.5, and if he does so the point in dispute shall be determined by the judge either in chambers or in court as he thinks fit.

### **52.7 Distribution of references among conveyancing attorney.**

The Court may direct or transfer a reference to a particular conveyancing attorney of the Court.

### **52.8 Obtaining attorney's opinion on reference.**

- (1) When any matter is referred to conveyancing attorney of the Court, a minute of the order of reference shall be prepared and signed by the Registrar.
- (2) A minute signed as mentioned in paragraph (1) is sufficient authority for attorney to proceed with the reference.

## **PART 53 – RECEIVERS BY APPLICATION; RECEIVERS BY EQUITABLE EXECUTION; DEBENTURE HOLDERS' ACTION AND RECEIVER'S REGISTER**

### SECTION I – RECEIVERS BY APPLICATION

#### **53.1 Application for receiver and injunction.**

- (1) An application for the appointment of a receiver must be made by application.
- (2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

- (3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so without notice.
- (4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of an application for the appointment of the receiver and may require such application to be issued and to be returnable on such date as the Court may direct.

### **53.2 Giving of security by receiver.**

- (1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment, or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.
- (2) Where by virtue of paragraph (1), or of any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.
- (3) Unless the Court otherwise directs, the security shall be by guarantee or by an undertaking.
- (4) The guarantee or undertaking must be filed in the Registry, and it shall be kept as of record until duly vacated.

### **53.3 Remuneration of receiver.**

A person appointed receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

### **53.4 Receiver's accounts.**

- (1) A receiver must submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.
- (2) Unless the Court otherwise directs, each account submitted by a receiver must be accompanied by an affidavit verifying it.
- (3) The receiver's account and affidavit, if any, must be filed in at the Registry, and the party having the conduct of the cause or matter must thereupon obtain an appointment for the purpose of passing such account.
- (4) The passing of a receiver's account must be certified by the Registrar.

### **53.5 Payment of balance, etc., by receiver.**

The receiver must pay into court any balance shown on the accounts under rule 53.4 as due from him, or such part thereof as the Court may certify as proper to be paid in by him, within fourteen days of the passing of any account or within such other period as fixed by the Court.

### **53.6 Default by receiver.**

- (1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.
- (2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charge him with interest at the rate of twelve per cent per annum on that sum while in his possession as receiver.

## **SECTION II – RECEIVERS BY WAY OF EQUITABLE EXECUTION**

### **53.7 Appointment of receiver by way of equitable execution.**

- (1) Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.
- (2) Where on an application for the appointment of a receiver by way of equitable execution it appears to the Court that the judgment creditor is resident outside the scheduled territories, or is acting by order or on behalf of a person so resident, then, unless the permission of the Central Bank of The Bahamas required by the Exchange Control Regulations has been given unconditionally or on conditions that have been complied with, any order for the appointment of a receiver shall direct that the receiver shall pay into court to the credit of the cause or matter in which he is appointed any balance due from him after deduction of his proper remuneration.

### **53.8 Application of rules as to appointment of receiver, etc.**

An application for the appointment of a receiver by way of equitable execution may be made in accordance with rule 53.1 and rules 53.2 to 53.6 shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.

## **SECTION III – DEBENTURE HOLDERS' ACTION AND RECEIVER'S REGISTER**

### **53.9 Receiver's register.**

Every receiver appointed by the Court in an action to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (hereinafter referred to as “the receiver's register”).

### **53.10 Registration of transfers, etc.**

- (1) Where a receiver is required by rule 53.9 to keep a receiver's register then, on the application of any person entitled to any debentures or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.
- (2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address, or by email if there is a registered email address for the holder of the debentures or debenture stock, a notice stating —
  - (a) that an application for the registration of the transfer has been made; and
  - (b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,and no transfer shall be registered until the period so specified has elapsed.
- (3) The period to be specified in the notice shall in no case be less than seven days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

- (4) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the action and to the order appointing him receiver.

### **53.11 Application for rectification of receiver's register.**

- (1) Any person aggrieved by anything done or omission made by a receiver under rule 53.10 may apply to the Court for rectification of the receiver's register, the application to be made by application notice in the action in which the receiver was appointed.
- (2) The summons shall in the first instance be served only on the claimant or other party having the conduct of the action but the Court may direct that the application notice be served on any other person appearing to be interested.
- (3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

### **53.12 Receiver's register evidence of transfers, etc.**

Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

### **53.13 Proof of title of holder of bearer debenture, etc.**

- (1) This rule applies in relation to an action to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.
- (2) Notwithstanding that judgment has been given in the action and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall, in the absence of notice of any defect in title, be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or



certificate identifying the debenture or certificate produced and certifying the person, giving his name and address, who is the holder thereof.

- (3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the chambers of the judge, the attorney of the claimant in the action must cause to be endorsed thereon a notice stating —
  - (a) that the person whose name and address is specified in the notice, being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2), has been recorded in the chambers of the judge as the holder of the debenture or debenture stock certificate, as the case may be; and
  - (b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2); and
  - (c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.
  - (4) The attorney of the claimant in the action must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by an affidavit.

#### **53.14 Requirements in connection with payments.**

- (1) Where in an action to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Accountant-General shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.
- (2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the attorney of the claimant in the action or to such other person as the Court may direct, and that attorney or person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been endorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Accountant-General.

## **PART 54 – JUDICIAL REVIEW**

### **54.1 Cases appropriate for application for judicial review.**

- (1) An application for —
  - (a) an order of mandamus, prohibition or certiorari; or
  - (b) an injunction under section 18 of the Act restraining a person from acting in any office of a public nature in which he is not entitled to act,shall be made by way of an application for judicial review in accordance with the provisions of this Part.
- (2) An application for a declaration or an injunction, not being an injunction mentioned in paragraph (1)(b), may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to —
  - (a) the nature of the matters in respect of which relief may be granted by way of an order or mandamus, prohibition or certiorari;
  - (b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and
  - (c) all the circumstances of the case,it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

### **54.2 Joinder of claims for relief.**

On an application for judicial review any relief mentioned in rule 54.1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

### **54.3 Grant of leave to apply for judicial review.**

- (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.
- (2) An application for leave shall be made without notice to a judge by filing in the Registry —
  - (a) a notice in Form JR1 containing a statement of —
    - (i) the name and description of the applicant;
    - (ii) the relief sought and the grounds upon which it is sought;
    - (iii) the name and address of the applicant’s attorney, if any;
    - (iv) the applicant’s address for service; and
  - (b) an affidavit which verifies the facts relied on.

- (3) The judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court provided that in no case shall leave be refused or granted on terms not sought in the application without giving the applicant a hearing.
- (4) Where the application for leave in any criminal cause or matter is refused by the judge, or is granted on terms, the applicant may renew it by applying to the Court of Appeal.
- (5) In order to renew his application for leave the applicant shall, within ten days of being served with notice of the judge's refusal, file in the Registry notice of his intention in Form JR2.
- (6) The Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit provided that if the applicant shall fail to amend his statement within the time specified by the order of the court then such order shall cease to have effect unless the court orders otherwise.
- (7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
- (9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.
- (10) Where leave to apply for judicial review is granted, then —
  - (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
  - (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

#### **54.4 Delay in applying for relief.**

- (1) An application for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.
- (2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds

for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

- (3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

#### **54.5 Mode of applying for judicial review.**

- (1) In any criminal cause or matter, where leave has been granted to make an application for judicial review, the application shall be made to a judge sitting in open Court by an originating application.
- (2) In any other such cause or matter, the application shall be made by an originating application to a judge sitting in open Court, unless the Court directs that it shall be made to a judge in Chambers.
- (3) The originating application shall be served on all persons directly affected and where it relates to any proceedings in or before a magistrates court or tribunal and the object of the application is either to compel the magistrates court or tribunal or an officer of the magistrates court or tribunal to do any act in relation to the proceedings or to quash them or any order made therein, the originating application shall also be served on the Clerk or Registrar of the magistrates court or tribunal and, where any objection to the conduct of the magistrate or tribunal is to be made, on the magistrate or the president of the tribunal.
- (4) Unless the Court granting leave has otherwise directed, there must be at least ten clear days between the service of the originating application and the hearing.
- (5) The originating application must be entered for hearing within fourteen days after the grant of leave.
- (6) An affidavit giving the names and addresses of, and the places and dates of service on all persons who have been served with the originating application shall be filed before the originating application is entered for hearing and, if any person who ought to be served, under this rule has not been served, the affidavit shall state that fact and the reason for it and the affidavit shall be before the Court on the hearing of the originating application.
- (7) If on the hearing of the originating application the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms, if any, as it may direct in order that the originating application may be served on that person.

#### **54.6 Statements and affidavits.**

- (1) Copies of the statement in support of an application for leave under rule 54.3 shall be served with the originating application and, subject to paragraph (2) no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.
- (2) The Court may on the hearing of the application allow the applicant to amend his statement, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.
- (3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.
- (4) Any respondent who intends to use an affidavit at the hearing shall file it in the Registry as soon as practicable and in any event, unless the Court otherwise directs, within six weeks after service upon him of the documents required to be served by paragraph (1).
- (5) Each party to the application shall supply to every other party on demand copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 54.3.

#### **54.7 Claim for damages.**

- (1) On an application for judicial review the Court may, subject to paragraph (2) award damages to the applicant if —
  - (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and
  - (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.
- (2) Any rule and any practice direction relating to the contents and form of a statement of case shall apply to a statement relating to a claim for damages in any application under this Part.

#### **54.8 Application for disclosure, further information, cross-examination, etc.**

- (1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to a judge in chambers, notwithstanding that the application for judicial review is to be heard by a judge in open court.

- (2) In this paragraph ‘interlocutory application’ includes an application for an order discontinuing the application or for cross-examination of the maker of an affidavit.
- (3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

#### **54.9 Hearing of application for judicial review.**

- (1) On the hearing of any application under rule 54.5, any person who desires to be heard in opposition to the application, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with the originating application.
- (2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the application he has filed in the Registry a copy thereof verified by affidavit accounting for his failure to do so to the satisfaction of the Court hearing the originating application.
- (3) Where an order for certiorari is made in any such case as is referred to in paragraph (2) the order shall, subject to paragraph (4) direct that the proceedings shall be quashed forthwith on their removal into the Court.
- (4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.
- (5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by a claim form by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by a claim form and the court shall give such directions as it considers appropriate pursuant to its case management powers.
- (6) No action or proceedings shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

#### **54.10 Appeal from Judge’s order.**

No appeal shall lie from an order made under paragraph (3) of rule 54.3 on an application for leave which may be renewed under paragraph (4) of that rule.

### **54.11 Meaning of Court.**

In relation to the hearing by a judge of an application for leave under rule 54.3 or of an application for judicial review, any reference in this Part to “the Court” shall, unless the context otherwise requires, be construed as a reference to the judge.

## **PART 55 – APPLICATION FOR WRIT OF HABEAS CORPUS**

### **55.1 Application for writ of habeas corpus ad subjiciendum.**

- (1) An application for a writ of habeas corpus ad subjiciendum must be made to a judge in open court except that in cases where the application is made on behalf of an infant, it must be made in the first instance to a judge in chambers.
- (2) An application for such writ may be made without notice and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.
- (3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

### **55.2 Powers of court to whom application without notice is made.**

- (1) The judge to whom an application under rule 55.1 is made without notice may make an order forthwith for the writ to issue, or may —
  - (a) where the application is made to a judge otherwise than in court, direct that an originating application applying for the writ be issued;
  - (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given.
- (2) The originating application must be served on the person against whom the issue of the writ is sought and on such other persons as the judge may direct, and, unless the judge otherwise directs, there must be at least eight clear days between the service of the originating application and the date named therein for the hearing of the application.

### **55.3 Copies of affidavits to be supplied.**

Every party to an application under rule 55.1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

### **55.4 Power to order release of person restrained.**

Without prejudice to rule 55.2(1), the judge hearing an application for a writ of habeas corpus ad subjiciendum may in his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any superintendent of a prison, constable or other person for the release of the person under restraint.

### **55.5 Directions as to return to writ**

Where a writ of habeas corpus ad subjiciendum is ordered to issue, the judge by whom the order is made shall give directions as to the judge before whom, and the date on which, the writ is returnable.

### **55.6 Service of writ and notice.**

- (1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.
- (2) If it is not possible to serve such writ personally, or if it is directed to a superintendent of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.
- (3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.
- (4) There must be served with the writ a notice in Form HC1 stating the judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.
- (5) A copy of the writ must be served on the Attorney-General.

### **55.7 Return to the writ.**

- (1) The return to a writ of habeas corpus ad subjiciendum must be endorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.
- (2) The return may be amended, or other return substituted therefor, by leave of the judge before whom the writ is returnable.



### **55.8 Procedure at hearing of writ.**

When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his attorney shall be heard first, then the attorney for the Crown, and then one attorney for the person restrained in reply.

### **55.9 Application to be made on affidavit.**

- (1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made on affidavit to a judge in chambers.
- (2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal, before any court, tribunal or justice, must be made on affidavit to a judge in chambers.

### **55.10 Form of Writ.**

A writ of habeas corpus must be in Form HC2, HC3 or HC4 whichever is appropriate.

## **PART 56 – APPLICATIONS BY THE ATTORNEY-GENERAL**

### **56.1 Attorney-General's application.**

- (1) Every application to the Court by the Attorney-General under section 29 of the Act shall be heard and determined by a judge.
- (2) The application must be made by an originating application, notice of which, together with an affidavit in support, shall be filed in the Registry and served on the person against whom the order is sought who in this Part is referred to as the respondent.

### **56.2 Affidavit in support of application.**

- (1) The affidavit required under rule 56.1(2) must list the legal proceedings previously instituted by the respondent which form the basis of the originating application giving the name of the parties, the date when each of the proceedings were instituted, the outcome of each of the proceedings and such other particulars as may be relevant to the application.
- (2) An affidavit in response by the respondent may be filed and served within fourteen days of receiving the affidavit under paragraph (1) above.

- (3) An application under section 29(2) of the Act by the respondent to have attorney assigned to him can be made without notice to the Registrar or a judge in chambers supported by an affidavit setting out his financial means.

## **PART 57 – APPEALS, ETC., TO SUPREME COURT BY CASE STATED: APPEAL FROM MAGISTRATE'S COURT BY CASE STATED**

### **57.1 General provisions regarding appeals.**

- (1) All appeals from a magistrate's court by case stated shall be heard and determined by a judge of the Court.
- (2) An appeal from a magistrate's court by case stated shall not be set down for hearing unless and until the case and a copy of the judgment, order or decision in respect of which the case has been stated have been served on the office of the Attorney-General.
- (3) No such appeal shall be filed after the expiration of six months from the date of the judgment, order or decision in respect of which the case was stated unless the delay is accounted for to the satisfaction of a judge of the Court.
- (4) Notice of intention to apply for an extension of time for filing the appeal must be served on the respondent at least three clear days before the day named in the notice for the hearing of the application.
- (5) Where any such appeal has not been filed by reason of a default in complying with the provisions of this rule, the magistrate's court may proceed as if no case had been stated.

### **57.2 Form of case.**

Where the judgment, order or decision of the magistrate's court in respect of which a case is to be stated states all the relevant facts found by that court and the questions of law to be determined by the Court, a copy of the judgment, order or decision signed by the person who presided at the hearing in the magistrate's court must be annexed to the case, and the facts so found and the questions of law to be determined shall be sufficiently stated in that case by referring to the statement thereof in the judgment, order or decision.

### **57.3 Notice of filing of appeal.**

Within four days after an appeal from the magistrate's court by case stated is filed the appellant must serve notice of the appeal on the respondent.

#### **57.4 Appeals relating to affiliation proceedings.**

Appeals from the magistrate's court by case stated which relate to affiliation proceedings shall be heard and determined by a judge of the Court, and the foregoing provisions of this Part shall accordingly apply to such appeals.

#### **57.5 Case stated by Ministers, tribunal, etc.**

- (1) The jurisdiction of the Supreme Court under any enactment to hear and determine a case stated by a Minister of the Crown, government department, tribunal or other person, or a question of law referred to that Court by such a Minister or department or tribunal or other person by way of case stated, shall be exercised by a judge of the Supreme Court.
- (2) The jurisdiction of the Supreme Court under any enactment to hear and determine an application for an order directing such a Minister or department or tribunal or other person to state a case for determination by the Supreme Court, or to refer a question of law to that Court by way of case stated, shall be exercised by a judge of the Supreme Court.
- (3) The following rules of this Part shall apply to proceedings for determination of such a case, question or application and, in relation to any such proceedings, shall have effect subject to any provision made in relation to those proceedings by any other provision of these Rules by or under any enactment.
- (4) In this Part, references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.
- (5) In this Part, a reference to a Minister shall be construed as including references to a government department, and in those rules and this rule "case" includes a special case.

#### **57.6 Application for order to state a case.**

- (1) An application to the Court for an order directing a Minister, tribunal or other person to state a case for determination by the Court or to refer a question of law to the Court by way of case stated must be made by originating application, a copy of which shall be served on the Minister, secretary of the tribunal or other person, as the case may be, and every party, other than the applicant, to the proceedings to which the application relates.
- (2) The originating application must state the grounds of the application, the question of law on which it is sought to have the case stated and any reasons given by the Minister, tribunal or other person for his or its refusal to state a case.

- (3) The application must be set down for hearing, and the notice thereof served, within fourteen days after receipt by the applicant of notice of the refusal of his request to state a case.

### **57.7 Signing and service of case.**

- (1) A case stated by a tribunal must be signed by the chairman or president of the tribunal, and a case stated by any other person must be signed by him or by a person authorised in that behalf to do so.
- (2) The case must be served on the party at whose request, or as a result of whose application to the Court, the case was stated and if a Minister, tribunal, arbitrator or other person is entitled by virtue of any enactment to state a case, or to refer a question of law by way of case stated, for determination by the Supreme Court without request being made by any party to the proceedings before that person, the case must be served on such party to those proceedings as the Minister, tribunal, arbitrator or other person, as the case may be, thinks appropriate.
- (3) When a case is served on any party under paragraph (2), notice must be given to every other party to the proceedings in question that the case has been served on the party named, and on the date specified, in the notice.

### **57.8 Proceedings for determination of case.**

- (1) Proceedings for the determination by the Court of a case stated, or a question of law referred by way of case stated, by a Minister, tribunal, arbitrator or other person must be begun by originating application by the person on whom the case was served in accordance with rule 57.7(2).
- (2) The persons to be served with the originating application are —
  - (a) the Minister, secretary of the tribunal, arbitrator or other person by whom the case was stated; and
  - (b) any party, other than the applicant, to the proceedings in which the question of law to which the case relates arose, and a copy of the case stated must be served with the originating application on any such party.
- (3) The originating application must set out the applicant's contentions on the question of law to which the case stated relates.
- (4) The originating application must be set down for hearing, and the notice thereof served, within fourteen days after the case stated was served on the applicant.
- (5) If the applicant fails to enter the application within the period specified in paragraph (4), then, after obtaining a copy of the case from the Minister, tribunal, arbitrator or other person by whom the case was stated, any other party to the proceedings in which the question of law to which the case

relates arose may, within fourteen days after the expiration of the period so specified, begin proceedings for the determination of the case, and paragraphs (1) to (4) shall have effect accordingly with the necessary modifications.

- (6) The references in paragraph (5) to the period specified in paragraph (4) shall be construed as including references to that period as extended by any order of the Court.
- (7) Unless the Court otherwise directs, the motion shall not be heard sooner than seven days after service of the originating application.

### **57.9 Amendment of case.**

The Court hearing a case stated by a Minister, tribunal, arbitrator or other person may amend the case or order it to be returned to that person for amendment, and may draw inferences of fact from the facts stated in the case.

### **57.10 Right of Minister to appear and be heard.**

A Minister shall be entitled to appear and be heard in proceedings for the determination of a case stated, or a question of law referred by way of case stated, by him.

## **PART 58 – APPEALS FROM THE REGISTRAR**

### **58.1 Appeals from certain decisions of the registrar to judge in chambers.**

- (1) Except as provided by rule 58.2, an appeal shall lie to a judge in chambers from any judgment, order or decision of the Registrar.
- (2) The appeal shall be brought by filing a Notice of Appeal and serving a copy thereof on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice.
- (3) Unless the Court otherwise orders, the Notice must be filed —
  - (a) if it is made by a party who was present or represented when the judgment, order or decision of the Registrar was given within five working days after the judgment, order or decision; or
  - (b) if it is made by a party who was not present or represented when the judgment, order or decision of the Registrar was given within five working days after receipt by the party of notice of the judgment, order or decision.

- (4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

## **58.2 Appeals from certain decisions of registrar to Court of Appeal.**

- (1) An appeal shall lie to the Court of Appeal from any judgment, order or decision of a registrar, other than an interlocutory judgment, order or decision, given or made —
- (a) on the hearing or determination of any cause, matter, question or issue tried before or referred to him; or
  - (b) on an assessment of damages under Part 16 or otherwise; or
  - (c) on the hearing or determination of any proceedings under Part 45 or Part 49; or
  - (d) on the hearing or determination of any other proceedings whereby such an appeal is provide for in any enactment, provision or practice direction.
- (2) In the case of an appeal in proceedings under Part 45 or Part 49 the time within which notice of appeal must be filed and served shall be the same as in the case of an appeal from an interlocutory order.

## **PART 59 – ADMIRALTY PROCEEDINGS**

### **59.1 Application and interpretation.**

- (1) This Part applies to Admiralty causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Part.
- (2) In this Part —
- “**action in rem**” means an Admiralty action in rem;
  - “**caveat against arrest**” means a caveat entered in the caveat book under rule 59.6;
  - “**caveat against release and payment**” means a caveat entered in the caveat book under rule 59.14;
  - “**caveat book**” means the book kept in the Registry in which caveats issued under this Part are entered;
  - “**limitation action**” means an action by shipowners or other persons under the Merchant Shipping Act (*Ch. 268*) for the limitation of the amount of their liability in connection with a ship or other property;
  - “**marshal**” means the Admiralty Marshal;
  - “**pleading**” means statement of claim, defence or reply;

“ship” includes any description of vessel used in navigation.

### **59.2 Certain Admiralty actions.**

- (1) Every action to enforce a claim for damage, loss of life or personal injury arising out of —
  - (a) a collision between ships; or
  - (b) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two ships; or
  - (c) non-compliance, on the part of one or more of two or more ships, with the collision regulation; and
  - (d) every limitation action, shall be heard by the Court.
- (2) In this rule “**collision regulations**” means regulations made under section 189 of the Merchant Shipping Act or any such rules as are mentioned in subsection (3) of section 289 of that Act.

### **59.3 Issue of claim and appearance.**

- (1) An action in rem must be begun by statement of claim; and the statement of claim must be in Form ADM2 or ADM3, whichever is appropriate.
- (2) Rule 8.11 shall apply in relation to a statement of claim by which an Admiralty action is begun, and Part 9 shall apply in relation to such an action.

### **59.4 Service of statement of claim out of the jurisdiction.**

- (1) Subject to the following provisions of this rule, service out of the jurisdiction of a statement of claim containing any such claim as is mentioned in rule 59.2(1) is permissible with the permission of the Court if, but only if —
  - (a) the defendant has his habitual residence or a place of business within The Bahamas; or
  - (b) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court; or
  - (c) the defendant has submitted or agreed to submit to the jurisdiction of the Court.
- (2) Part 7 shall apply in relation to an application for the grant of leave under this rule.
- (3) Paragraph (1) shall not apply to an action in rem.

### **59.5 Warrant of arrest.**

- (1) After a statement of claim has been issued in an action in rem a warrant in Form ADM4 for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the claimant or of the defendant, as the case may be.
- (2) A party applying for the issue out of the Registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.
- (3) A warrant of arrest shall not be issued until the party applying for it has filed a praecipe in Form ADM5 requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (6), (7) and (8) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.
- (4) Except with the leave of the Court, or where notice has been given under paragraph (11), a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in New Providence, being an action for the possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.
- (5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.
- (6) Every affidavit must state —
  - (a) the name and address of the applicant for the warrant;
  - (b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and
  - (c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.
- (7) Every affidavit in an action in rem for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by paragraph (5) has been sent.
- (8) A copy of any such notice must be annexed to the affidavit.
- (9) An affidavit in such an action as is referred to in paragraph (6), must have exhibited thereto a certified copy of the bottomry bond, or of the translation thereof.



### **59.6 Caveat against arrest.**

- (1) A person who desires to prevent the arrest of any property must file in the Registry a praecipe, in Form ADM6, signed by him or his attorney undertaking —
  - (a) to enter an appearance in any action that may be begun against the property described in the praecipe; and
  - (b) within three days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court; and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.
- (2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

### **59.7 Remedy where property protected by caveat is arrested (without good and sufficient reason).**

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 by motion for an order under this rule and, on the hearing of the application, 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 by order discharge the warrant and may also order the last mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

### **59.8 Service of statement of claim in action in rem.**

- (1) Subject to paragraph (2), a statement of claim by which an action in rem is begun must be served on the property against which the action is brought except —
  - (a) where the property is freight, in which case it 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 that property has been sold and the proceeds of sale paid into court, in which case it must be served on the Registrar.
- (2) A statement of claim need not be served on the property or Registrar mentioned in paragraph (1) if —
  - (a) the defendant's attorney endorses on the statement of claim a statement that he accepts service of the statement of claim on behalf of that defendant, in which event the statement of claim shall be

- deemed to have been duly served on that defendant and to have been so served on the date on which the endorsement was made; or
- (b) a statement of claim is not duly served on a defendant but he unconditionally acknowledged service in the action begun by the statement of claim, the statement of claim shall be deemed to have been duly served on him and to have been so served on the date on which he entered the Acknowledgment of Service.
- (3) Where by virtue of this rule a statement of claim is required to be served on any property, the claimant may request service of the statement of claim to be effected by the marshal if, but only if, a warrant of arrest has been issued for service against the property or the property is under arrest, and in that case the claimant must file in the Registry and lodge —
    - (a) the statement of claim and a copy thereof; and
    - (b) an undertaking to pay on demand all expenses incurred by the marshal or his substitute in respect of the service of the statement of claim, and thereupon the marshal or his substitute shall serve the claim form on the property described in the praecipe.
  - (4) Where the claimant in an action in rem, or his attorney, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the statement of claim forthwith on the person at whose instance the caveat was entered.
  - (5) Where a statement of claim by which an action in rem is begun is amended under rule 20.4, after service thereof, then, unless the Court otherwise directs on an application made without notice, the amended statement of claim must be served on any defendant who has entered an acknowledgement of service in the action or, if no defendant has acknowledged service therein, on the property or Registrar mentioned in paragraph (1) of this rule.

### **59.9 Committal of attorney failing to comply with undertaking.**

Where the attorney of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his attorney to enter an acknowledgement of service in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

### **59.10 Execution, etc. of warrant of arrest.**

- (1) A warrant of arrest is valid for twelve months beginning with the date of its issue.
- (2) A warrant of arrest may be executed only by the marshal or his substitute.

- (3) A warrant of arrest shall not be executed until an undertaking in writing, satisfactory to the marshal to pay the fees and expenses of the marshal has been lodged in the marshal's office.
- (4) A warrant of arrest shall be not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.
- (5) 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.
- (6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.
- (7) Within seven days after the service of a warrant of arrest, the warrant must be filed in the Registry by the marshal.

#### **59.11 Service on ships, etc.: how effected.**

- (1) Subject to paragraph (2), service of a warrant of arrest or statement of claim in an action in rem against a ship, freight or cargo shall be effected by —
  - (a) affixing the warrant or statement of claim 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 statement of claim, leaving a copy of it affixed, in the case of the warrant, in its place or, in the case of the statement of claim, on a sheltered conspicuous part of the ship.
- (2) Service of a warrant of arrest or statement of claim in an action in rem against freight or cargo or both shall, if the cargo has been landed or transshipped, be effected —
  - (a) by placing the warrant or statement of claim for a short time on the cargo, and, on removing the warrant or statement of claim, leaving a copy of it on the cargo; or
  - (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or statement of claim with that person.

#### **59.12 Applications with respect to property under arrest.**

- (1) The marshal may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the parties to every action against the property.

- (2) The marshal shall send a copy of any order made under paragraph (1), to all the parties to every action against the property to which the order relates.

### **59.13 Release of property under arrest.**

- (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall be released only under the authority of an instrument of release (hereinafter referred to as a “release”), in Form ADM7, issued out of the Registry.
- (2) A party at whose instance any property was arrested may, before an acknowledgement of service is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (5), be issued with respect to that property.
- (3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.
- (4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.
- (5) Before a release is issued the party entitled to its issue must —
  - (a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his attorney requiring the caveat to be withdrawn; and
  - (b) file a praecipe in Form ADM8 requesting issue of a release.
- (6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions 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 the 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.
- (7) The Court, on the application of any party who objects to directions given to him by the marshal under paragraph (6), may vary or revoke the directions.

### **59.14 Caveat against release and payment.**

- (1) A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of the court of any money in court

representing the proceeds of sale of that property, must file in the Registry a praecipe as caveat against the issue of a release in Form ADM 9 with respect to that property and the payment out of court of that money shall be entered in the caveat book.

- (2) 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 by motion 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, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

#### **59.15 Duration of caveats.**

- (1) Every caveat entered in the caveat book is valid for six months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form ADM10.
- (2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

#### **59.16 Bail.**

- (1) Bail on behalf of a party to an action in rem must be given by bond in Form ADM11 and the sureties to the bond must enter into the bond before a notary public not being a notary public who, or whose partner, is acting as attorney or agent for the party on whose behalf the bail is to be given, or before the registrar or any deputy or assistant registrar.
- (2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.
- (3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.
- (4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the notary public or the registrar before whom the bail bond was entered into; and after the expiration of twenty-four hours from the service of the notice, or sooner with the consent of the opposite party, he may file the bond and must at the same time file the affidavits, if any, made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

### **59.17 Interveners.**

- (1) Where property against which an action in rem is 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 action may, with the leave of the Court, intervene in the action.
- (2) An application for the grant of leave under this rule must be made without notice by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.
- (3) A person to whom leave is granted to intervene in an action must file an acknowledgment of service therein in the Registry within the period specified in the order granting leave; and rules 9.1 to 9.5 shall, with the necessary modifications, apply in relation to that acknowledgment of service by an intervener as if he were a defendant named in the statement of claim.
- (4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

### **59.18 Preliminary acts.**

- (1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the claimant must, within two months after issue of the statement of claim, and the defendant must, within two months after acknowledging service or filing a defence, in accordance with rule 9.1(2), and before any pleading is served, lodge in the Registry a document (hereinafter referred to as “a preliminary act”) containing a statement of the following particulars —
  - (a) the names of the ships which came into collision and their ports of registry;
  - (b) the date and time of the collision;
  - (c) the place of the collision;
  - (d) the direction and force of the wind;
  - (e) the state of the weather;
  - (f) the state, direction and force of the tidal or other current;
  - (g) 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;
  - (h) the lights, if any, carried by the ship;
  - (i) the —

- (A) distance and bearing of the other ship if and when her echo was first observed by radar;
  - (B) distance, bearing and approximate heading of the other ship when first seen;
  - (j) what light or combination of lights, if any, of the other ship was first seen;
  - (k) what other lights or combinations of lights, if any, of the other ship were subsequently seen before the collision, and when;
  - (l) what alterations, if any, were made to the course and speed of the ship after the earlier of the two times referred to in subparagraph (g) 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;
  - (m) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
  - (n) what sound signals, if any, were given, and when;
  - (o) what sound signals, if any, were heard from the other ship, and when.
- (2) Every preliminary act shall be sealed by the proper officer and shall be filed in a closed envelope, stamped with an official stamp showing the date of filing, and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the parties or his attorney to the opening of the preliminary acts is filed with the proper officer.
- (3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without statements of case but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within seven days after the opening of the preliminary acts.
- (4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.
- (5) In an action in which preliminary acts are required, the claimant must serve a particulars of claim on each defendant within fourteen days after the latest date on which the preliminary act of any party to the action is filled unless the Court orders the action to be tried without pleadings.

**59.19 Failure to lodge preliminary act: proceedings against party in default.**

- (1) Where in such an action as is referred to in rule 59.18(1) the claimant fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by interlocutory application for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.
- (2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Part 12 shall apply as if the defendant's failure to lodge the preliminary act within that period was a failure by him to serve a defence on the claimant within the period fixed by or under these Rules for service thereof, and the claimant, if he has lodged a preliminary act may, subject to Part 65, accordingly enter judgment against the defendant in accordance with Part 12.
- (3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the claimant, if he has lodged such an act, may apply to the Court by interlocutory application apply for judgment against that defendant, and it shall not be necessary for the claimant to file or serve a particulars of claim or an affidavit before the hearing of the application.
- (4) On the hearing of an application under paragraph (3), the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the claimant provided he proves his case, it shall order the claimant's preliminary act to be opened and require the claimant to satisfy the Court that his claim is well founded.
- (5) The claimant's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.
- (6) Where the claimant in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.
- (7) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.
- (8) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 59.18(1) or of any order of the Court the claimant or defendant, as the context of the reference requires, is required to lodge a preliminary act.



### **59.20 Special provisions as to pleadings in collision, etc., actions.**

- (1) Notwithstanding any provision in these Rules to the contrary, the claimant in any such action as is referred to in rule 59.2(1) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.
- (2) If in such an action there is a counterclaim and no defence to counterclaim by the claimant, then, there shall be an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

### **59.21 Judgment by default.**

- (1) Where a statement of claim is served under rule 59.8(4) on a party at whose instance a caveat against arrest was issued, then if —
  - (a) the sum claimed in the action begun by the statement of claim does not exceed the amount specified in the undertaking given by that party or his attorney to procure the entry of the caveat; and
  - (b) that party or his attorney does not within fourteen days after service of the statement of claim fulfil the undertaking given by him as aforesaid, the claimant may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.
- (2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.
- (3) Where a defendant to an action in rem fails to file an acknowledgment of service within the time limited for appearing, then, on the expiration of fourteen days after service of the statement of claim and upon filing an affidavit proving due service of the statement of claim, an affidavit verifying the facts on which the action is based and, if a particulars of claim was not endorsed on the statement of claim, a copy of the particulars of claim, the claimant may apply to the Court for judgment by default.
- (4) Where the statement of claim is deemed to have been duly served on the defendant by reason that the defendant's attorney has endorsed on the statement of claim a statement that he accepts service of the statement of claim on behalf of that defendant or was served on the Registrar under rule 59.8, an affidavit proving due service of the statement of claim need not be filed under this paragraph, but the statement of claim endorsed as mentioned in rule 59.1(2) or endorsed by the Registrar with a statement

that he accepts service of the statement of claim must be lodged with the affidavit verifying the facts on which the action is based.

- (5) Where a defendant to an action in rem fails to serve a defence on the claimant, then, after the expiration of the period fixed by or under these Rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a particulars of claim was not endorsed on the statement of claim, a copy of the particulars of claim, the claimant may apply to the Court for judgment by default.
- (6) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (7), after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court or judgment by default.
- (7) No application may be made under paragraph (6) against the claimant in any such action as is referred to in rule 59.2(1)(a).
- (8) An application to the Court under this rule must be made by interlocutory application and if, on the hearing of the application, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.
- (8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.
- (9) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.
- (10) Part 12 shall not apply to actions in rem.

#### **59.22 Order for sale of ship: determination of priority of claims.**

- (1) Where in an action 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 paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a); or

- (b) in any other case, after obtaining judgment, apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.
- (2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order —
  - (a) that the order of priority of the claims against the proceeds of the sale of the ship shall not be determined until after the expiration of ninety days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court;
  - (b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the order;
  - (c) that within seven days after the date of payment into court of the proceeds of sale the marshal shall send for publication in Lloyd's List and Shipping Gazette and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).
- (3) The notice referred to in paragraph (2)(c) must state —
  - (a) that the ship, naming her, has been sold by order of the Supreme Court in an action in rem, identifying the action;
  - (b) that the gross proceeds of the sale, specifying the amount thereof, 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 Registry a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.
- (5) The expenses incurred by the marshal in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.
- (6) An application to the Court to extend the period referred to in paragraph (2)(a) must be made by interlocutory application, and a copy of the application notice, must, at least three days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

### **59.23 Appraisalment and sale of property.**

- (1) A commission for the appraisalment and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form ADM12.
- (2) Such a commission must, unless the Court otherwise orders, be executed by the marshal and must be in Form ADM13.
- (3) A commission for appraisalment and sale shall 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 marshal's office.
- (4) The marshal shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale, with vouchers in support, for taxation.
- (5) On the taxation of the marshal's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the assessment to which objection is taken may be reviewed in the same manner and by the same persons as any decisions of the Registrar made in assessment proceedings under Part 16.

### **59.24 Payment into and out of court.**

- (1) Parts 35 and 36 shall apply in relation to an Admiralty action as they apply to an action for debt or damages.
- (2) Subject to paragraph (3), money paid into court shall not be paid out except in pursuance of an order of a judge in person.
- (3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say —
  - (a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;
  - (b) where property has been sold and the proceeds of sale thereof paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;
  - (c) where in any other case there is no dispute between the parties.

- (4) Where, in an Admiralty action, money has been paid into court pursuant to an order made under Section III of Part 17, the Registrar may make an order for the money to be paid out to the person entitled thereto.

#### **59.25 Application of Parts 25, 26, 27 and 38.**

- (1) Parts 25, 26, 27 and 38 shall apply to Admiralty actions, other than limitation actions and actions ordered to be tried as Admiralty short causes, as it applies to other actions, except that —
  - (a) the interlocutory application for directions shall be returnable in not less than seven weeks; and
  - (b) unless a judge otherwise directs, the interlocutory application for directions shall be heard by a judge in person.
- (2) An order made at a case management conference shall determine whether the trial is to be without assessors or with one or more assessors, nautical assessors or other assessors.
- (3) The trial shall be in the Supreme Court before a judge without a jury unless, on the ground that there are special reasons to the contrary, an order made on the interlocutory application for directions otherwise provides.
- (4) An order may be made on the case management conference, or a direction may be given at the trial, limiting the witnesses who may be called at the trial, whether they are expert witnesses or not.
- (5) Any such order or direction as is referred to in paragraph (2), (3) or (4), including an order made on appeal, may be varied or revoked by a subsequent order or direction made or given at or before the trial by a judge in person or, with the judge's consent, by the Registrar.

#### **59.26 Fixing date for trial, etc.**

- (1) The Court may at any stage of an action, either on an application made by interlocutory application by any party or by order made by virtue of rule 59.30, fix a date for the trial and vacate or alter any such date.
- (2) Not later than seven days after a date for the trial of the action has been fixed, the action must be set down for trial —
  - (a) where the date was fixed on an application made under paragraph (1), by the applicant;
  - (b) where the date was fixed by order made under any other rule, by the claimant.
- (3) Where the applicant or claimant does not, within the period fixed by this paragraph, set the action down for trial, any other party may set it down or an application may be made to the Court to dismiss the action for want of

prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or make such other order as it thinks just.

- (4) Not less than seven days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Chief Justice, the party by whom the action was set down for trial must, unless the Court otherwise orders, file in the Registry —
  - (a) if trial with one or more assessors has been ordered, a praecipe for his or their attendance; and
  - (b) five copies of any pleadings, preliminary acts, notices given under rule 59.18(3) and statements filed under rule 59.18(4).
- (5) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the Registry of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.
- (5) Part 37 shall not apply to Admiralty actions.

#### **59.27 Stay of proceedings in collision, etc. actions until security given.**

Where an action in rem, being an action to enforce any such claim as is referred to in rule 59.2(1)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then —

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest; but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim, the Court may stay proceedings in the first-mentioned action until security is given to satisfy any judgment given in favour of that party.

#### **59.28 Inspection of ship, etc.**

The Court may, on the application of any party, make an order for the inspection by the assessors, if any, or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

### **59.29 Examination of witnesses and other persons.**

- (1) The power conferred Part 33, shall extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.<sup>79</sup>
- (2) The power conferred by Part 33 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.
- (3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect —
  - (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
  - (b) any representative, being the attorney, of either of the parties shall have authority to administer the oath to the witness;
  - (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the attorney for the party whose witness was examined, and that attorney shall file it in the Registry;
  - (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the attorney or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.
- (4) In actions in which preliminary acts fall to be filed under rule 59.18, 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 thinks fit so to direct.
- (5) The Chief Justice may appoint such number of attorneys as he thinks fit to act as examiners of the Court in connection with Admiralty causes and matters, and may revoke any such appointment.

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<sup>79</sup>Rule 33.16 provides that 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 specified in the summons for the purposes of producing one or more documents.

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### **59.30 Trial as an Admiralty short cause.**

- (1) Where any defendant has entered an acknowledgment in an Admiralty action, the claimant or that defendant may, within seven days after the filing of the same, apply by an interlocutory application, returnable before the Registrar for an order that the action be tried as an Admiralty short cause.
- (2) The interlocutory application shall be served on every other party to the action not less than seven days before the hearing.
- (3) On the hearing of the application the Registrar may, if he decides to make an order under paragraph (1) —
  - (a) direct that the trial of the action be heard without pleadings or further pleadings;
  - (b) abridge the period within which a person is required or authorised by these Rules to do any act in the proceedings;
  - (c) in the case of such an action as is referred to in rule 59.18(1), fix the time within which, notwithstanding the provisions of that rule, preliminary acts are to be lodged;
  - (d) require the parties to the action to make mutual disclosure of documents notwithstanding that the action is ordered to be tried without pleadings;
  - (e) if the parties so agree, order that the evidence in support of their respective cases may be given in whole or in part by the production of documents or entries in books;
  - (f) give such directions as could be given on an interlocutory application for directions in the action; and
  - (g) fix a date for the trial of the action.
- (4) The party issuing an interlocutory application under this rule shall include in it an application for such orders or directions as he desires the Registrar to make or give in the exercise of the powers set out in paragraph (3), and any party on whom the application is served shall, within three days after service of the interlocutory application on him, give notice to every other party of any other order or direction he desires the Registrar to make or give as aforesaid and lodge a copy of such notice in the Registry.
- (5) An application for an order that an Admiralty action be tried without pleadings or further pleadings shall be made by way of an application for an order under paragraph (1) and not otherwise.
- (6) Where an order is made under paragraph (1), the statement of claim by which the action was begun shall be marked in the top left-hand corner “Admiralty Short Cause”.



- (7) Any application subsequent to an interlocutory application under paragraph (1) and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made by an interlocutory application by two clear days' notice to the other party stating the grounds of the application.

### **59.31 Further provisions with respect to evidence.**

Unless the Court otherwise directs, an affidavit for the purposes of rules 59.19(4), 59.21 or 59.37(2) may, except in so far as it relates to the service of a statement of claim, contain statements of information or belief with the source and grounds thereof.

### **59.32 Proceedings for apportionment of salvage.**

- (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by a fixed date claim form.
- (2) The application notice, together with the affidavits in support thereof, must be filed in the Registry seven days at least before the hearing of the application, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.
- (3) On the hearing of the application the judge may exercise any of the jurisdiction conferred by the Merchant Shipping Act (*Ch. 268*).

### **59.33 Filing and service of interlocutory application.**

- (1) The application notice in any action, together with the affidavits, if any, in support thereof, must be filed in the Registry three days at least before the hearing of the application unless the Court gives leave to the contrary.
- (2) A copy of the application notice and of the affidavits, if any, in support thereof must be served on all the other parties to the proceedings before the originals are filed.

### **59.34 Agreement between attorneys may be made order of court.**

Any agreement in writing between the attorneys of the parties or a cause or matter, dated and signed by those attorneys, may, if the Registrar thinks it reasonable and such as a judge would under the circumstances allow, be filed in the Registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by a judge in person.

**59.35 Originating application notice procedure.**

- (1) An originating application notice in Admiralty may be issued out of the Registry.
- (2) Rule 59.26, except paragraph (3), shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating application.

**59.36 Limitation action: parties.**

- (1) In a limitation action the person seeking relief shall be the claimant and shall be named in the statement of claim by his 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 claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.
- (3) At least one of the defendants to the action must be named in the statement of claim by his name but the other defendants may be described generally and not named by their names.
- (4) The statement of claim must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.
- (5) In this rule and rules 59.37, 59.38 and 59.39 ‘name’ includes a firm name or the name under which a person carries on his business, and where any person with a claim against the claimant in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the statement of claim and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the statement of claim by his name.

**59.37 Limitation action: application for decree or directions.**

- (1) Within seven days after the entry of acknowledgment of service by one of the defendants named by their names in the statement of claim, or, if none of them enters an acknowledgment of service, within seven days after the time limited for appearing, the claimant, without serving a particulars of claim, must issue an interlocutory application returnable in chambers before the Registrar, asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.
- (2) The application must be supported by an affidavit or affidavits proving —
  - (a) the claimant’s case in the action; and

- (b) if none of the defendants named in the statement of claim by their names has filed an acknowledgement of service, the service of the statement of claim on at least one of the defendants so named.
- (3) The affidavit in support of the application must state —
- (a) the names of all the persons who, to the knowledge of the claimant, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the statement of claim by their names; and
- (b) the address of each of those persons, if known to the claimant.
- (4) The application notice and every affidavit in support thereof must, at least seven clear days before the hearing of the application, be served on any defendant who has filed an acknowledgement of service.
- (5) On the hearing of the application the Registrar, if it appears to him that it is not disputed that the claimant has a right to limit his liability, shall make a decree limiting the claimant's liability and fix the amount to which the liability is to be limited.
- (6) On the hearing of the application the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the claimant has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.
- (7) If on the hearing or resumed hearing of the application the Registrar does not make a decree limiting the claimant's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of an interlocutory application for directions under Part 27.
- (8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the claimant's right to limit his liability must forthwith file a notice to that effect in the Registry and serve a copy on the claimant and on any other defendant who has filed an acknowledgement of service.
- (9) If every defendant who disputes the claimant's right to limit his liability serves a notice on the claimant under paragraph (8), the claimant may take out an interlocutory application returnable in chambers before the Registrar asking for a decree limiting his liability.
- (10) Paragraphs (4) and (5) shall apply to an application under this paragraph as they apply to an application under paragraph (1).

**59.38 Limitation action: proceedings under decree.**

- (1) Where the only defendants in a limitation action are those named in the statement of claim by their names and all the persons so named have either been served with the statement of claim or filed an acknowledgement of service, any decree in the action limiting the claimant's liability, whether made by the Registrar or on the trial of the action —
  - (a) need not be advertised; but
  - (b) shall only operate 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 paragraph (1), any decree in the action, limiting the claimant's liability, whether made by the Registrar or on the trial of the action —
  - (a) shall be advertised by the claimant in such manner and within such time as may be provided by the decree;
  - (b) shall fix a time within which persons with claims against the claimant in respect of the casualty to which the action relates may take part in the action by filing an acknowledge service as if they were a defendant in the action, if they have not already done so, and file their claims, and, in cases to which rule 59.39 applies, take out an interlocutory application if they think fit, to set the order aside.
- (3) The advertisement to be required under paragraph (2)(a), shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, 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), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the claimant's liability and the time allowed thereby for filing an acknowledgement of service, the filing of claims and the taking out of an interlocutory application to set the decree aside.
- (4) The claimant must within the time fixed under paragraph (2)(b) file in the Registry a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.
- (5) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be not less than two months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no acknowledgment of service may be entered, claim filed or interlocutory application taken out to set aside the decree except with the leave of the Registrar or, on appeal, of the judge.

- (6) Save as aforesaid, any decree limiting the claimant's liability (whether made by the Registrar or on the trial of the action) may make any such provision as is authorised by the Merchant Shipping Act (*Ch. 268*).

### **59.39 Limitation action: proceedings to set aside decree.**

- (1) Where a decree limiting the claimant's liability (whether made by the Registrar or on the trial of the action) fixes a time in accordance with rule 59.38(2), any person with a claim against the claimant in respect of the casualty to which the action relates, who —
  - (a) was not named by his name in the statement of claim, as a defendant to the action; or
  - (b) if so named, neither was served with the statement of claim nor filed an acknowledgement of service, may, within that time, after filing an acknowledgement of service, take out an interlocutory application returnable in chambers before the Registrar asking that the decree be set aside.
- (2) The application must be supported by an affidavit or affidavits showing that the defendant in question has a *bona fide* claim against the claimant in respect of the casualty in question and that he has sufficient *prima facie* grounds for the contention that the claimant is not entitled to the relief given to him by the decree.
- (3) The interlocutory application and every affidavit in support thereof must, at least seven clear days before the hearing of the application, be served on the claimant and any defendant who has entered an acknowledgment of service.
- (4) On the hearing of the application the Registrar, if he is 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 decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of an interlocutory application for directions at a case management conference under rule 27.3.

### **59.40 References to Registrar.**

- (1) Any claim by a claimant which is referred to the Registrar for decision must, within two months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

- (2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than twenty-eight days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by interlocutory application for directions as to the proceedings on the reference, and the Registrar shall give such directions, if any, as he thinks fit including without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim.
- (3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an interlocutory application made by any party to the cause or matter.
- (4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.
- (5) Not later than seven days after an appointment for the hearing of a reference has been made, the claimant or, where the reference is in a limitation action, the claimant must enter the reference for hearing by lodging in the Registry a praecipe requesting the entry of the reference in/ the list for hearing on the day appointed.
- (6) Not less than fourteen days before the day appointed for the hearing of the reference the claimant must file —
  - (a) a list, signed by him and every, other party, of the items, if any, of his claim which are not disputed, stating the amount, if any, which he and the other parties agree should be allowed in respect of each such item; and
  - (b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed, and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.
- (7) If the claimant fails to comply with paragraph (1) or (6)(b), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

#### **59.41 Hearing of reference.**

- (1) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

- (2) At or before the hearing of a reference, the Registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.
- (3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon.
- (4) When the hearing of the reference has been concluded, the Registrar shall —
  - (a) reduce to writing his decision on the questions arising in the reference (including any order as to costs) and cause it to be filed;
  - (b) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit; and
  - (c) send to the parties to the reference notice that he has done so.
- (5) Where no statement of the grounds of the Registrar’s decision is filed with his decision and no intimation has been given up by the Registrar that he intends to file such a statement later, any party to the reference may, within fourteen days after the filing of the decision, make a written request to the Registrar to file such a statement.

#### **59.42 Objection to decision on reference.**

- (1) Any party to a reference to the Registrar may, by an interlocutory application in objection, apply to a judge in court to set aside or vary the decision of the Registrar on the reference, but the application notice specifying the points of objection to the decision must be filed within fourteen days after the date on which notice of the filing of the decision was sent to that party under rule 59.41(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within fourteen days after the date on which that notice was sent.
- (2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing an interlocutory application in objection thereto, or while such an application is pending or remains undisposed of.
- (3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 59.41 (4).

**59.43 Drawing up and entry of judgments and orders.**

Every judgment given or order made in an Admiralty cause or matter shall be drawn up in the Registry and shall be entered by an officer of the Registry in the book kept for the purpose.

**PART 60 – ARBITRATION PROCEEDINGS**

**SECTION I – ARBITRATION ACT**

**60.1 Applications to the Court under the Arbitration Act.**

- (1) The rules in this section of this Part are to be applied subject to the provisions of section 4 of the Arbitration Act, 2009 (*No. 42 of 2009*).
- (2) Every application to the Court pursuant to the Arbitration Act, 2009 (*No. 42 of 2009*) under—
  - (a) section 12;
  - (b) section 21;
  - (c) section 53;
  - (d) section 55;
  - (e) section 56;
  - (f) section 72;
  - (g) section 85;
  - (h) section 86;
  - (i) section 88;
  - (j) section 89;
  - (k) section 90;
  - (l) section 91;
  - (m) section 98; or
  - (n) section 100,shall be made by a fixed date claim form with a statement of claim and subject to paragraph (7) below returnable before a judge in chambers.
- (3) The fixed date claim form in respect of an application under rules 60.1(2) (b), (d), (e), (f), (g), (h), (j), (k), (l) or (n) shall be served on the arbitrator.
- (4) An applicant under section 88 may, at the same time as applying for leave and subject to the court granting leave, apply for an order or orders in relation to the enforcement of the award.
- (5) An applicant who is additionally applying for an order for enforcement under paragraph (4) of this rule shall include in the fixed date claim form,



statement of claim or his affidavit all such particulars and evidence as may be necessary in relation to such order or orders for enforcement for which he is applying and the court may, on the hearing of such application for leave, make such order in relation to enforcement as it thinks fit.

- (6) In the case of every application other than an application under section 88, the fixed date claim form or statement of claim must state in general terms the grounds of the application and, where the application is founded on evidence by affidavit, a copy of every affidavit intended to be used must be served with the statement of claim.
- (7) The Chief Justice may from time to time direct which applications under the Arbitration Act shall or may be heard by the Registrar.

### **60.2 Special provisions as to applications to challenge or to appeal in respect of an award.**

An application to the court —

- (a) under section 89 of the Arbitration Act to challenge an award of the arbitral tribunal as to its substantive jurisdiction; or
  - (b) under section 90 of the Arbitration Act to challenge an award on the ground of serious irregularity;
  - (c) under section 91 of the Arbitration Act appeal on point of law,
- may be made at any time within twenty-eight days after the award has been published to the parties.

## **SECTION II – ENFORCEMENT OF AN ARBITRATION AWARD**

### **60.3 Registration in Supreme Court of foreign awards.**

Where an award is made in proceedings on an arbitration to which section 6 of the Reciprocal Enforcement of Judgments Act (*Ch. 57*) applies, the Rules of Court (Reciprocal Enforcement of Judgments) shall apply in relation to the award as it applies in relation to a judgment given by a court in that place, subject, however, to the following modifications —

- (a) for references to the country of the original court there shall be substituted references to the place where the award was made; and
- (b) the affidavit required by rule 3 of the said Rules must state, in addition to the other matters required by that rule, that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

## SECTION III – ARBITRATION (FOREIGN ARBITRAL AWARDS) ACT, ETC.

### **60.4 Application to enforce a foreign arbitral award.**

- (1) An application to enforce an award under this Section of this Part shall be made by fixed date claim form and subject to rule 60.1(7) returnable before a judge in chambers and supported by affidavit.
- (2) The applicant shall exhibit to his affidavit —
  - (a) the duly authenticated original award or a duly certified copy of it;
  - (b) the original arbitration agreement or a duly certified copy of it; and
  - (c) a translation of the award or agreement certified by an official or sworn translator or by a diplomatic or consular agent, if the award or agreement is in a language other than English.
- (3) The applicant may include in the fixed date statement of claim and in his affidavit all such particulars and evidence as may be necessary in relation to such order or orders for enforcement for which he is applying and the court may, on the hearing of such application, make such order in relation to enforcement as it thinks fit.
- (4) The applicant shall file the affidavit with the court and shall serve a copy of the affidavit on every respondent.
- (5) The Chief Justice may from time to time direct which applications under the Arbitration Act shall or may be heard by the Registrar.

### **60.5 Respondent's response.**

A respondent who proposes to oppose an application to enforce under Arbitration (Foreign Arbitral Awards) Act shall, within fourteen days after service upon him of the applicant's affidavit, file and serve an affidavit setting out the grounds upon which the enforcement of the award is opposed.

## **PART 61 – DEFAMATION ACTIONS**

### **61.1 Application.**

These Rules apply to actions for libel or slander subject to the following rules of this Part.

### **61.2 Content of statement of claim in libel action.**

Before a statement of claim in an action for libel is issued it must contain sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

### **61.3 Obligation to give particulars.**

- (1) Where in an action for libel or slander the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.
- (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.
- (3) Where in an action for libel or slander the claimant alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the claimant intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.
- (4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the claimant and the party against whom it is made the defendant.

### **61.4 Provisions as to payment into court.**

- (1) Where in an action for libel or slander against several defendants sued jointly the claimant, in accordance with Part 35, accepts an offer to settle by any of those defendants in satisfaction of his cause of action against that defendant, then the action shall be stayed as against that defendant only, but —
  - (a) the sum recoverable under any judgment given in the claimant's favour against any other defendant in the action by way of damages shall not exceed the amount, if any, by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed; and
  - (b) the claimant shall not be entitled to his costs of the action against the other defendant after twenty-one days after the date of the offer unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

- (2) Where in an action for libel a party pleads the defence for which, section 3 of the Libel Act (*Ch. 72*) provides, rule 35.5(3), shall not apply in relation to that pleading.

### **61.5 Statement in open court.**

- (1) Where a party accepts, in satisfaction of a cause of action for libel or slander, an offer to settle then the claimant or defendant, as the case may be, may apply to a judge in chambers by application for leave to make in open court a statement in terms approved by the judge.
- (2) Where a party to an action for libel or slander which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that the action be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the judge before whom it is to be made.

### **61.6 Interrogatories not allowed in certain cases.**

In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no request for further information under Part 34 as to the defendant's sources of information or grounds of belief shall be allowed.

### **61.7 Evidence in mitigation of damages.**

In an action for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the claimant, without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the claimant of the matters as to which he intends to give evidence.

## **PART 62 – MORTGAGE CLAIMS AND MONEY-LENDING ACTIONS**

### **SECTION I – MORTGAGE CLAIMS**

#### **62.1 Scope of this Section.**

- (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) re-conveyance 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 paragraph (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.

### **62.2 Mortgage claim to be brought by fixed date statement of claim.**

- (1) A mortgage claim is brought by issuing a fixed date claim form and statement of claim.
- (2) In addition to serving the statement of claim on all defendants, the claimant must give notice of the claim to all mortgagees of the land who may not be parties.

### **62.3 Evidence at first hearing.**

A claimant who seeks final judgment at the first hearing must —

- (a) file evidence on affidavit in support of the claim; and
- (b) serve, with the claim form —
  - (i) a copy of the affidavit but not necessarily any exhibit; and
  - (ii) a notice stating what relief is sought;
- (c) file a certificate of service not less than seven days before the first hearing.

### **62.4 Claim for possession or payment of mortgage debt.**

- (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 remaining due under the mortgage; and
    - (ii) 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.

## SECTION II – MONEY LENDING ACTIONS

### 62.5 Application and interpretation.

- (1) These Rules apply to a money-lending action subject to the following rules of this Part.
- (2) In these Rules —
  - “**the Act**” means the Money Lending Act (*Ch. 340*); and
  - “**money-lending action**” means any action for the recovery of money lent or for the enforcement of any agreement or security relating to money so lent, being an action brought by the lender or an assignee, and includes any action to which section 3 of that Act applies.

### 62.6 Commencing proceedings and Particulars to be included in a statement of claim.

- (1) Every action to which this Part applies must be commenced using a fixed date claim form under rule 8.1(5).
- (2) Every statement of claim in a money-lender’s action must state —
  - (a) the date on which the loan was made;
  - (b) the amount actually lent to the borrower;
  - (c) the rate per cent, per annum of interest charged;
  - (d) the date when the contract for repayment was made;

- (e) the fact that a note or memorandum of the contract was made and was signed by the borrower;
- (f) the date when a copy of the note or memorandum was delivered or sent to the borrower;
- (g) the amount repaid;
- (h) the amount due but unpaid;
- (i) the date upon which such unpaid sum or sums became due; and
- (j) the amount of interest accrued due and unpaid on every such sum.

### **62.7 Judgment in default of acknowledgement of service or of defence.**

- (1) In a money-lender's action judgment in default of acknowledgement of service or in default of defence shall not be entered except with the leave of the Court.
- (2) An application for the grant of leave under this rule must be made by application notice served on the defendant.
- (3) If the application is for leave to enter judgment in default of acknowledgement of service, the application notice shall not be issued until after the time limited for acknowledging service or serving a defence under rule 9.1(2) has expired.
- (4) On the hearing of such an application, whether the defendant appears or not, the Court —
  - (a) may exercise the powers of the court under section 3 of the Money Lending Act (*Ch. 340*);
  - (b) where it refuses leave under this rule to enter judgment on a claim or any part of a claim, may make or give any such order or directions as it thinks fit.

## **PART 63 – CONTENTIOUS PROBATE PROCEEDINGS**

### **63.1 Interpretation.**

In these Rules —

**“grant of probate”** means a grant issued by the Court to administer the will of a deceased person;

**“probate action”** means an action, other than a non-contentious action for —

- (a) the grant of probate of the will or of letters of administration of the estate of a deceased person;
- (b) the revocation of a grant; or

- (c) for a decree pronouncing for or against the validity of an alleged will;

**“Probate Registry”** means the registry of the Probate Division in the Supreme Court situate in New Providence and includes a subregistry;

**“sub-registry”** means a registry of the Probate Division situate elsewhere than in New Providence.

### **63.2 Scope and Interpretation.**

- (1) This Part sets out the procedure for obtaining —
  - (a) a grant of —
    - (i) probate of a will;
    - (ii) letters of administration, of the estate of a deceased person;
  - (b) a revocation of a grant referred to under paragraph (a);
  - (c) a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.
- (2) In this Part, a **“will”** includes a codicil.

### **63.3 Application for contentious probate.**

- (1) A person who seeks to begin a contentious probate action must do so by a fixed date form and statement of claim issued out of the Probate Registry and endorsed with —
  - (a) a statement of the nature of the interest of the claimant and of the defendant in the estate of the deceased to which the action relates; and
  - (b) a memorandum signed by the Registrar showing that the statement of claim has been produced to him for examination and that two copies of the will have been lodged with the Probate Registrar.
- (2) Part 12 shall not apply in relation to a probate action.

### **63.4 Parties to an action for revocation of grant.**

A 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 his will or letters of administration of his grant shall be made a party to any action for revocation of the grant.



### **63.5 Lodgment of grant for revocation.**

- (1) Where, at the commencement of an action for the revocation of a grant of —
  - (a) probate of the will; or
  - (b) letters of administration,of the estate of a deceased person, the probate or letters of administration as the case may be, have not been lodged in court, then —
  - (i) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Probate Registry within seven days after the issue of the writ;
  - (ii) if any defendant to the action has the probate or letters of administration in his possession or under his control, he shall lodge it or them in the Probate Registry within fourteen days after the service of the writ upon him.
- (2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the court to lodge the probate or letters of administration in the Probate Registry within a specified time and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the court until he has complied with the order.

### **63.6 Affidavit of testamentary scripts.**

- (1) Unless the court otherwise directs, the claimant and every defendant who has filed a defence or an acknowledgement of service in a probate action must swear an affidavit —
  - (a) describing any testamentary script of the deceased person, whose estate is subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and
  - (b) if any such script of which he has knowledge, is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.
- (2) Any affidavit required by this rule must be filed, and an office copy thereof and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged in the Probate Registry within fourteen days after the filing of a defence or acknowledgement of service by a defendant to the action or, if no defendant enters an acknowledgement of service therein and the court

does not otherwise direct, before an order is made for the trial of the action.

- (3) Where any testamentary script or any part thereof required by this rule to be lodged in the Probate Registry is written in pencil, then, unless the court otherwise directs, a photostat copy of that script, of the page or pages thereof containing the part written in pencil, must also be lodged in the Probate Registry 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, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.
- (5) In this rule, “**testamentary script**” means—
  - (a) a will or draft thereof;
  - (b) written instructions for a will made by or at the request or under the instructions of the testator; or
  - (c) 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.

### **63.7 Counterclaim.**

A defendant to a probate action 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 which is the subject of the action must add to his defence a counterclaim in respect of that matter.

### **63.8 Contents of statement of case.**

- (1) Where the claimant in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.
- (2) In a probate action 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 his statement of case that if the allegations made therein are proved he 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 action, was 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; and
  - (c) that the execution of the will was obtained by undue influence or fraud,
- shall be made by that party unless that other plea is also pleaded.

### **63.9 Discontinuance and probate dismissal.**

- (1) Part 37 shall not apply in relation to a probate action.
- (2) At any stage of the proceedings in a probate action the court may on the application of —
  - (a) the claimant; or
  - (b) of any party to the action who has entered an acknowledgement of service therein, order the action to be discontinued or 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, which is the subject of the action, be made to the person entitled thereto.
- (3) An application for an order under this rule may be made by application.

### **63.10 Compromise of action: trial on affidavit evidence.**

Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the court may order the trial of the action on affidavit evidence.

### **63.11 Application for order to bring in will, etc.**

- (1) An application for an order under section 33 of the Probate and Administration of Estates Act shall be for an order requiring a person to bring a will or other testamentary paper into the Probate Registry or to attend in court for examination.
- (2) An application under paragraph (1) shall be made by application in the action, which must be served on the person against whom the order is sought.
- (3) An application for the issue of a subpoena under section 32 of the Probate and Administration of Estates Act shall be for the issue of a subpoena requiring a person to bring into the Probate Registry a will or other testamentary paper.
- (4) An application under paragraph (3) may be made without notice and must be supported by an affidavit setting out the grounds of the application.

- (5) An application under paragraph (3) shall be made to the Registrar who may, if the application is granted, authorise the issue of a subpoena accordingly.
- (6) A person against whom a subpoena is issued under this rule and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

### **63.12 Administration pendente lite.**

- (1) An application under section 6 of the Probate and Administration of Estates Act for an order for the grant of administration shall be made by application if there are existing proceedings or otherwise by fixed date statement of claim.
- (2) Where an order for a grant of administration is made under section 9 of the Act, rules 53.2, 53.4 and 53.6 and subject to subsection 9(2), rule 53.3, shall apply as if the administrator were a receiver appointed by the court.

### **63.13 Deposits to credit of a deceased persons.**

The manager of a bank may, in accordance with section 40 of the Act, pay any sum not exceeding two thousand five hundred dollars standing to the credit of a deceased person without the production of a grant of probate or letters of administration.

## **PART 64 – ADMINISTRATION AND SIMILAR ACTIONS**

### **64.1 Interpretation.**

Administration action means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

### **64.2 Mode of commencement.**

- (1) Where any proceedings under this Part are unlikely to involve substantial disputes of fact then such proceedings may be brought under Section II of Part 8.
- (2) Where any proceedings under this Part are likely to involve substantial disputes of fact or allegations of breach of trust then such proceedings must be brought by a fixed date claim form with a statement of claim.

### **64.3 Determination of questions, etc., without administration.**

- (1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.
- (2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions —
  - (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
  - (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
  - (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.
- (3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs —
  - (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
  - (b) an order requiring the payment into court of money held by a person in his capacity of executor, administrator or trustee;
  - (c) an order directing a person to do or abstain from doing a particular act in his capacity of executor, administrator or trustee;
  - (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity of executor, administrator or trustee;
  - (e) an order 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, as the case may be, under the direction of the Court.

### **64.4 Parties.**

- (1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 64.3 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a claimant must be made a defendant.

- (2) All the persons having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action but the claimant may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.
- (3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

#### **64.5 Grant of relief in action begun by originating application.**

In an administration action or such an action as is referred to in rule 64.3, the Court may make any certificate or order and grant any relief to which the claimant may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun original application, but the foregoing provision is without prejudice to the power of the Court to order that the action shall continue as if begun by a fixed date claim and statement of claim.

#### **64.6 Judgments and orders in administration actions.**

- (1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.
- (2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the claimant alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may —
  - (a) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the claimant with proper accounts;
  - (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make

an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the judge in person.

#### **64.7 Conduct of sale of trust property.**

Where in an administration action an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

## **PART 65 – PROCEEDINGS BY AND AGAINST THE CROWN**

#### **65.1 Application and interpretation.**

- (1) These Rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Part.
- (2) In this Part —
  - “**civil proceedings by the Crown**”, “**civil proceedings against the Crown**” and “**civil proceedings by or against the Crown**” have the same respective meanings as in Part II of the Crown Proceedings Act (*Ch. 68*) and do not include any of the proceedings specified in section 23(1) of that Act;
  - “**civil proceedings to which the Crown is a party**” has the same meaning as it has for the purposes of section 15 of the Crown Proceedings Act (*Ch. 68*);
  - “**Order against the Crown**” means any order, including an order for costs, made in any civil proceedings by or against the Crown or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a Government department or against an officer of the Crown as such;
  - “**order**” includes a judgment, decree, rule, award or declaration.

#### **65.2 Particulars to be included in statement of claim.**

- (1) In the case of a statement of claim in civil proceedings against the Crown there shall be included in the statement of claim a statement of the circumstances in which the Crown’s liability is alleged to have arisen and as to the Government department and officers of the Crown concerned.

- (2) If in civil proceedings against the Crown a defendant considers that the statement of claim does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for filing an acknowledgment of service, apply to the claimant by notice for a further and better statement containing such information as may be specified in the notice.
- (3) Where a defendant gives a notice under this rule, the time limited for acknowledging service shall not expire until four days after the defendant has notified the claimant in writing that the defendant is satisfied with the statement supplied in compliance with the notice or four days after the Court has, on the application of the claimant by interlocutory application served on the defendant not less than seven days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

### **65.3 Service on the Crown.**

- (1) Part 6 and any other provision of these Rules relating to service within or out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.
- (2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite but where the proceedings are by or against the Crown service on the Crown must be effected by leaving the document at the office of the Attorney-General.

### **65.4 Counterclaim and set-off.**

- (1) Notwithstanding any provision in these Rules, a person may not in any proceedings by the Crown make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.
- (2) Notwithstanding any provision in these Rules, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown —
  - (a) if the Crown is sued or sues in the name of a Government department and the subject-matter of the counterclaim or set-off does not relate to that department; or
  - (b) if the Crown is sued or sues in the name of the Attorney-General.
- (3) Any application for leave under this rule must be made by interlocutory application.



### **65.5 Summary judgment.**

- (1) No application against the Crown shall be made under Part 15 for summary judgment or for specific performance in any proceedings against the Crown.
- (2) Where an application is made by the Crown under Part 15 for summary judgment or specific performance, the affidavit required in support of the application must be made by an officer duly authorised by the attorney acting for the Crown or by the department concerned, and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim with a real prospect of success to which the application relates at all or only except as to the amount of any damages claimed.

### **65.6 Judgment in default.**

- (1) Except with the leave of the Court, no judgment in default of an acknowledgment of service or of pleading shall be entered against the Crown in civil proceedings against the Crown.
- (2) Except with the leave of the Court a party may not enter default judgment against the Crown in third party proceedings.
- (3) An application for leave under this rule may be made by interlocutory application and the same must be served not less than seven days before the return day.

### **65.7 Third party proceedings.**

- (1) A party may not issue or serve a third party notice on the Crown without the leave of the Court, and the application for the grant of such leave must be made by interlocutory application, and the application notice must be served on the claimant and the Crown.
- (2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

### **65.8 Interpleader: application for order against crown.**

No order shall be made against the Crown under Part 49, except upon an application in Form G13 served not less than seven days before the return day.

### **65.9 Disclosure.**

- (1) Part 28 shall not apply in civil proceedings to which the Crown is a party unless the Court orders otherwise.
- (2) In any civil proceedings to which the Crown is a party any order of the Court made under the powers conferred by section 22(1) of the Crown Proceedings Act (*Ch. 68*), shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of a Minister of the Government, be injurious to the public interest to disclose.
- (3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for disclosure against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.
- (4) Where in any such proceedings an order is made under the said section 22 for further information to be answered by the Crown, the Court shall direct by what officer of the Crown the request for information is to be answered.

### **65.10 Evidence.**

- (1) Civil proceedings against the Crown may be instituted in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.
- (2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

### **65.11 Execution and satisfaction of orders.**

- (1) Except as expressly provided in this Part, nothing in Parts 43 – 45, 47 – 48, 51 and 53 shall apply in respect of any order against the Crown.
- (2) An application under the proviso to section 19(1) of the Crown Proceedings Act (*Ch. 68*) for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court without notice.
- (3) Any such certificate must be in the form prescribed by practice direction.

### **65.12 Attachment of debts, etc.**

- (1) Every application to the Court for an order under section 21 of the Crown Proceedings Act (*Ch. 68*), restraining any person from receiving money payable to him by the Crown and directing payment of the money to the

applicant or some other person must be made by interlocutory application served at least four days before the return day on the Crown and, unless the Court otherwise orders, on the person to be restrained or his attorney and the application must be supported by an affidavit setting out the facts giving rise to it, and in particular identifying the particular debt from the Crown in respect of which it is made.

- (2) Rule 45.8(6)(c) shall apply in relation to such an application as is mentioned in paragraph (1) for an order restraining a person from receiving money payable to him by the Crown as that rule applies to an application under rule 45.2, for an order for the third party debt order, except that the Court shall not have power to order execution to issue against the Crown.

## **PART 66 – APPLICATIONS AND APPEALS TO THE SUPREME COURT UNDER VARIOUS ACTS**

### **66.1 Scope of this Part.**

- (1) This Part deals with appeals to the 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.

### **66.2 How to appeal to the court.**

- (1) An appeal to the court under this Part must be brought by originating application.
- (2) Every originating application by which such an appeal is brought must have attached to it a formal document entitled “Grounds of Appeal”.
- (3) 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.

### **66.3 Effect of appeal.**

The filing of an appeal does not operate as a stay of proceedings on 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.

### **66.4 Persons on whom originating application must be served.**

The appellant must serve the originating 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.

### **66.5 Time within which originating application must be served.**

The originating application and grounds of appeal must be filed and served within twenty-eight days of the date on which the decision was given to the appellant.

### **66.6 Amendment of grounds of appeal, etc.**

- (1) The appellant may amend the originating application and the grounds of appeal without permission by filing and serving not less than ten days before the first hearing of the appeal an amended originating application and grounds of appeal on each of the persons on whom the initial originating application was served.
- (2) Except with the permission of the Court, no grounds other than those stated in the originating application and grounds of appeal or amended originating application and grounds of appeal by which the appeal is brought may be relied upon by the appellant at the hearing; but the Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

- (3) The foregoing provisions of this rule are without prejudice to the powers of the Court under rule 20.4, rule 26.2 and rule 26.9.
- (4) Permission to amend the grounds of appeal may be given after the ten days specified in paragraph (1) where the court considers that the interests of justice so require.

### **66.7 First hearing.**

- (1) Unless the Court otherwise directs, the date fixed for the first hearing must not be less than twenty-eight nor more than fifty-six days after the issue of the originating application.
- (2) The appellant must file at the Registry, not less than seven days before the first hearing, a copy of the transcript of the proceedings in which the decision was made.
- (3) 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.

### **66.8 Hearing of appeal.**

- (1) An appeal to which this Part applies shall be heard and determined by a judge of the Court.
- (2) Unless an enactment otherwise provides, the appeal is to be by way of rehearing.
- (3) The court may receive further evidence on matters of fact and the evidence may be given in such manner as the Court may direct either by oral examination in court, by affidavit, by deposition taken before an examiner or in some other manner.
- (4) The court may draw any inferences of fact which might have been drawn in the proceedings in which the decision was made.
- (5) It shall be the duty of the appellant to apply to the person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him of the proceedings and to furnish that copy for the use of the Court and in default of production of such a note, or, if such note is incomplete, in addition to such note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient.
- (6) Except where the Court otherwise directs, an affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his comments.
- (7) 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.
- (8) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.
- (9) 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 67 – LODGEMENT, INVESTMENT, ETC., OF FUNDS IN COURT; APPLICATIONS WITH RESPECT TO FUNDS IN COURT**

### **67.1 Payment into court under Trustee Act.**

- (1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 75 of the Trustee Act (*Ch. 176*) must make and file an affidavit setting out —
- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose;
  - (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him;
  - (c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct; and
  - (d) an address where he may be served with any application notice, statement of claim order or notice of any proceedings, relating to the money or securities paid into court.
- (2) Where the money or securities represent a legacy, or residue or any share thereof, to which an infant or a person resident outside The Bahamas is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court.

### **67.2 Notice of lodgement.**

Any person who has lodged money or securities in court in accordance with rule 67.1 must forthwith send notice of the lodgement to every person appearing from the affidavit on which the lodgement was made to be entitled to, or to have an interest in the money or securities lodged.

### **67.3 Applications with respect to funds in court.**

- (1) Where an application to the Court —
  - (a) for the payment or transfer to any person of a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;
  - (b) for the investment, or change of investment, of any funds in court;
  - (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or
  - (d) for the payment or transfer out of court of any such funds as are mentioned in subparagraph (c), is made the application may be disposed of in chambers.
- (2) Subject to paragraph (3), any such application must be made by originating application, unless the application is made in a pending cause or matter in which event it shall be made by interlocutory application in those proceedings.
- (3) Where an application under paragraph (1)(d) is made in relation to funds which do not exceed five thousand dollars in value, the application may be made without notice to the Registrar and the Registrar may dispose of the application or give directions for the disposal of the application.
- (4) Unless otherwise directed, the without notice application under this paragraph shall be made by affidavit.
- (5) This rule does not apply to any application for an order under Part 36.

## **PART 68 – PROCEEDINGS CONCERNING MINORS; APPLICATION FOR DECLARATION AFFECTING MATRIMONIAL STATUS**

### **SECTION I – PROCEEDINGS CONCERNING MINORS**

#### **68.1 Application to make minor a ward of court.**

- (1) An application to make a minor a ward of court must be made by fixed date claim form with a statement of claim.

- (2) Where there is no person other than the minor who is a suitable defendant, an application may be made without notice to the Registrar for leave to issue a fixed date claim form with a statement of claim with the minor named as defendant thereto; and, except where such leave is granted, the minor shall not be made a defendant to a claim under this rule in the first instance.

### **68.2 Applications under the Child Protection Act.**

Where there is pending any proceeding by reason of which a minor is a ward of court, any application under the Child Protection Act (*Ch. 132*) (hereinafter in this Section of this Part referred to as “the Act”) with respect to that minor may be made by application notice in that proceeding, but except in that case any such application must be made by originating application.

### **68.3 Defendants to guardianship applications.**

- (1) Where the minor with respect to whom an application under the Act is made is not the claimant, he shall not, unless the Court otherwise directs, be made a defendant to the claim nor, if the application is made by application notice, be served with the application notice, but subject to paragraph (2) any other person appearing to be interested in, or affected by, the application shall be made a defendant or be served with the claim form or application notice, as the case may be.
- (2) The Court may dispense with service of a fixed date claim form and statement of claim or originating application on any person and may order it to be served on any person not originally served.

### **68.4 Guardianship proceedings may be in chambers.**

Applications under the Act may be disposed of in chambers.

### **68.5 Jurisdiction of Registrar.**

In proceedings to which this Section of this Part applies the Chief Justice by practice direction may direct that the Registrar may transact such business and exercise such authority and jurisdiction as may be transacted and exercised by a judge in chambers.



## SECTION II – APPLICATION FOR DECLARATION AFFECTING MATRIMONIAL STATUS

### **68.6 Application for declaration affecting matrimonial status.**

- (1) Where, apart from costs, the only relief sought in any proceedings is a declaration with respect to the matrimonial status of any person, the proceedings shall be begun by originating application.
- (2) Unless the court otherwise directs, it shall not be necessary for any person to be named as a defendant to the application nor shall it be served on any person.
- (3) The application notice shall state —
  - (a) the names of the parties and the residential address of each of them at the date of presentation of the application notice;
  - (b) the place and date of any ceremony of marriage to which the application relates;
  - (c) whether there have been any previous proceedings between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them and, if so, the nature of those proceedings;
  - (d) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the Court has jurisdiction to make it, and shall conclude with a prayer setting out the declaration sought and any claim for costs.
- (4) Nothing in the foregoing provisions shall be construed —
  - (a) as conferring any jurisdiction to make a declaration in circumstances in which the Court could not otherwise make it; or
  - (b) as affecting the power of the Court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.
- (5) This rule does not apply to proceedings to which rule 67.3 applies.

## **PART 69 – OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.**

### **69.1 Jurisdiction of Registrar to make order.**

- (1) Subject to paragraph (2), the power of the Supreme Court or a judge thereof under any Act to make, in relation to a matter pending before a court or tribunal in a place outside the jurisdiction, orders for the examination of witnesses and for attendance and for production of documents and to give directions may be exercised by the Registrar.

- (2) The Registrar may not make such an order if the matter in question is a criminal matter.

### **69.2 Application for order.**

- (1) Subject to paragraph (3) and rule 69.3, an application for an order under rule 69.1 may be made without notice by a person duly authorised to make the application on behalf of the court or tribunal in question and must be supported by affidavit.
- (2) There must be exhibited to the affidavit in support the letter of request, certificate or other document evidencing the desire of the court or tribunal to obtain for the purpose of a matter pending before it the evidence of the witness to whom the application relates or the production of any documents and, if that document is not in the English language, a translation thereof in that language.
- (3) After an application for such an order as is mentioned in paragraph (1) has been made in relation to a matter pending before a court or tribunal, an application for a further order or directions in relation to the same matter must be made by interlocutory application.

### **69.3 Application by Attorney-General in certain cases.**

Where a letter or request, certificate or other document requesting that the evidence of a witness within the jurisdiction in relation to a matter pending before a court or tribunal in a foreign country be obtained —

- (a) is received by a Minister of the Government and sent by him to the Registrar with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in The Bahamas of any party to the matter pending before the court or tribunal; or
- (b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in The Bahamas for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such a party,

the Registrar shall send the document to the Attorney-General and the Attorney-General may make an application for an order and take such other steps as may be necessary, to give effect to the request.

### **69.4 Person to take and manner of taking examination.**

- (1) Any order made in pursuance of this Part for the examination of a witness may order the examination to be taken before any fit and proper person

nominated by the person applying for the order or before such other qualified person as to the Court seems fit.

- (2) Subject to any special directions contained in any order made in pursuance of this Part for the examination of any witness, the examination shall be taken in manner provided by Part 33, and an order may be made under rule 33.12, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

### **69.5 Dealing with deposition.**

Unless any order made in pursuance of this Part for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Registrar, and the Registrar shall —

- (a) give a certificate sealed with the seal of the Court identifying the documents annexed thereto, that is to say, the letter of request, certificate, or other document from the court or tribunal out of the jurisdiction requesting the examination, the order of the Court for examination and the deposition taken in pursuance of the order; and
- (b) send the certificate with the documents annexed thereto to the appropriate Government Minister, or, where the letter of request, certificate or other document was sent to the Registrar by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to that court or tribunal.

### **69.6 Claim to privilege.**

- (1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 6(1)(b) of the Evidence (Proceedings in Other Jurisdictions) Act (*Ch. 66*) is not supported or conceded as mentioned in subsection (2) of that section.
- (2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the court may do so, on the application without notice of the person who obtained the order under section 5 of the Evidence Proceedings in Other Jurisdictions) Act (*Ch. 66*).
- (3) If such evidence is taken —
  - (a) it must be contained in a document separate from the remainder of the deposition of the witness;

- (b) the examiner shall send to the Registrar with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
- (c) on receipt of the statement the Registrar shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
- (d) and if the claim is rejected by the foreign court or tribunal, the Registrar shall send to that court or tribunal the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld the Registrar shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 5 of the Evidence (Proceedings in Other Jurisdictions) Act (*Ch. 66*), the court or tribunal's determination.

## **PART 70 – CHANGE OF ATTORNEY**

### **70.1 Scope of this Part.**

This Part deals with the procedure where —

- (a) there is a change of attorney;
- (b) an attorney acts in the place of a party in person; or
- (c) a party who has previously acted by an attorney acts in person.

### **70.2 Change of attorney.**

- (1) A party to any cause or matter who sues or defends by an attorney may change his attorney 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 shall subject to rules 70.5 and 70.6, be considered the attorney of the party until the final determination of the cause or matter in the Court.
- (2) Where a party changes his attorney, the new attorney must —
  - (a) file a notice of change of attorney which states his business name, address, telephone number and email address; and
  - (b) serve a copy of the notice on every other party and the former attorney.

### **70.3 Notice of appointment of attorney.**

Where a person who has previously acted in person instructs an attorney, that attorney must —

- (a) file a notice of change at the Registry which states his business name, address, telephone number and email address; and
- (b) serve a copy of the notice on every other party.

### **70.4 Party acting in person.**

- (1) Where a party who has previously been represented by an attorney 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 and email address of that party; and
  - (b) serve a copy of the notice on every other party and the former attorney.
- (2) The former attorney 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.

### **70.5 Application by another party to remove name of attorney from the record.**

- (1) Where —
  - (a) an attorney on record for a party has —
    - (i) died;
    - (ii) become bankrupt;
    - (iii) been removed from the roll; and
  - (b) notice of the appointment of a new attorney under rule 70.2 or of the party acting in person under rule 70.4 has not been received,  
any other party may apply to the court for an order declaring that the attorney 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, if practicable, and personally on his client.
- (3) Any order made must be served by the applicant on the attorney or former attorney, if practicable, and personally on his client.
- (4) The applicant must file a certificate of service of the order.

### **70.6 Application by attorney to be removed from the record.**

- (1) An attorney 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 and on the former client.
- (5) The applicant must file a certificate of service of the order.

### **70.7 Time when notice takes effect.**

A notice under the foregoing rules of this Part does not take effect until it has been served.

## **PART 71 – COSTS: GENERAL PROVISIONS**

### **71.1 Scope of this Part.**

This Part contains general rules about costs and the entitlement to costs and Part 72 deals with the quantification of such costs.

### **71.2 Definitions and application.**

- (1) In this Part and in Part 72, unless the context otherwise requires —  
“**assessed costs**” and “**assessment**” have the meanings given them by rules 72.8 and 72.9;  
“**costs**” include an attorney’s fees, charges and disbursements, fixed costs, prescribed costs or assessed costs;  
“**fixed costs**” has the meaning given it by rule 72.4; and  
“**prescribed costs**” has the meaning given it by rule 72.5.
- (2) When costs of —
  - (a) an attorney to his or her client;
  - (b) arbitration proceedings; or
  - (c) proceedings before a tribunal or other statutory body;are to be taxed or assessed by the court, they must be assessed in accordance with rule 72.9.

- (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 72.9, unless the enactment otherwise provides.

### **71.3 Orders about costs.**

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.

### **71.4 Costs where there is an appeal.**

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.

### **71.5 Entitlement to recover costs.**

A person may recover the costs of proceedings from any other party or person by virtue of —

- (a) an agreement between the parties;
- (b) an order of the court; or
- (c) a provision of these Rules.

### **71.6 Successful party generally entitled to costs.**

- (1) Where the court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.
- (2) The court may, however, 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) costs from or up to a certain date only;
  - (b) costs relating only to a certain distinct part of the proceedings; or
  - (c) only a specified proportion of another person's costs.
- (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) the manner in which a party has pursued —
  - (i) a particular allegation;
  - (ii) a particular issue; or
  - (iii) the case;
- (d) whether the manner in which the party has pursued a particular allegation, issue or the case, has increased the costs of the proceedings;
- (e) 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; and
- (f) whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.<sup>80</sup>

### **71.7 Two or more parties having same interest.**

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.

### **71.8 Wasted costs orders.**

- (1) In any proceedings the court may by order —
  - (a) direct the attorney to pay; or
  - (b) disallow as against an attorney’s client, the whole or part of any wasted costs.
- (2) In this rule, “**wasted costs**” means any costs incurred by a party —
  - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any attorney or any employee of an attorney; or
  - (b) which, in the light of any act or omission occurring after they were incurred the court considers it unreasonable to expect that party to pay.

### **71.9 Wasted costs orders — procedure.**

- (1) This rule applies where —

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<sup>80</sup>Rule 71.8 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.



- (a) an application is made for; or
  - (b) the court is considering whether to make an order under rule 71.8(1).
- (2) Any application by a party must be on notice to the attorney 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 notice of the fact that it is considering whether to do so.
  - (4) Notice under paragraph (3) must state the grounds on which the court is minded to consider making the order.
  - (5) A notice under paragraph (2) or (3) must state a date, time and place at which the attorney may attend to show cause why the order should not be made.
  - (6) At least seven days notice of the hearing must be given to the attorney against whom the costs order is sought, or its making is being considered and all parties to the proceedings.

#### **71.10 Costs against person who is not a party.**

- (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 to 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 costs order 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 minded to make such an order.
- (4) A notice under paragraph (3) must state the grounds of the application on which the court is minded to make the order.
- (5) A notice under paragraph (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) The person against whom the costs order is sought and all parties to the proceedings must be given fourteen days notice of the hearing.

## **PART 72 – PROCEDURE FOR DETAILED ASSESSMENT OF COSTS**

### **72.1 Scope of this Part.**

This Part deals with the way in which any costs awarded by the court are quantified.

### **72.2 Basis of quantification.**

- (1) Where the court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed —
  - (a) is the amount that the court deems to be reasonable were the work to be carried out by an attorney 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 a discretion as to the amount of costs to be paid to an attorney by his or her client the sum allowed is —
  - (a) the amount that the court deems to be reasonable; and
  - (b) Which appears to be fair both to the attorney and the client.
- (3) In deciding what would be reasonable the court must take into account all the circumstances, including —
  - (a) any order that has already been made;
  - (b) the care, speed and economy with which the case was prepared;
  - (c) the conduct of the parties before as well as during the proceedings;
  - (d) the degree of responsibility accepted by the attorney;
  - (e) the importance of the matter to the parties;
  - (f) the novelty, weight and complexity of the case;
  - (g) the time reasonably spent on the case; and
  - (h) in the case of costs charged by an attorney to his or her client —
    - (i) any agreement about what grade of attorney should carry out the work;
    - (ii) any agreement that may have been made as to the basis of charging; and
    - (iii) whether the attorney 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.

### **72.3 Ways in which costs are to be quantified.**

Costs of proceedings under these Rules are to be quantified as follows —

- (a) where rule 72.4 applies, in accordance with the provisions of that rule; and
- (b) in all other cases if, having regard to rule 71.6, 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 72.5; or
  - (ii) by assessment in accordance with rules 72.8 and 72.9.

#### **72.4 Fixed costs.**

- (1) A party is entitled to the costs set out in column 3 of Table 1 in the *Second Schedule* to this Part in the circumstances set out in column 2 of that same Table.
- (2) The court may however direct that some other amount of costs be allowed for the work covered by any item in Part 2 of the *Second Schedule*.
- (3) Where the court so directs, the court must assess such costs.<sup>81</sup>

#### **72.5 Prescribed costs.**

- (1) The general rule is that where rule 72.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with the *Third Schedule* and paragraphs (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; or
    - (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 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 fifty thousand dollars unless the court makes an order under rule 72.6(1)(a).
- (3) The general rule is that the amount of costs to be paid is to be calculated accordance with the percentages specified in column 3 of the Table in Part A of the *Third Schedule* against the appropriate value.
- (4) The court may however —

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<sup>81</sup>Rule 72.8 and 72.9 deals with the assessment of costs.

- (a) award a proportion only of the sum referred to in paragraph (3) of this rule having taken into account the matters set out in rule 71.6(4) and (5); and
- (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 which case 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 Part B of the *Third Schedule*.

## **72.6 Applications to determine value of claim for purpose of prescribed costs.**

- (1) A party may apply to the court at any time before trial —
  - (a) to determine the value to be placed on a case which has no monetary value; or
  - (b) where the likely 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 paragraph (1)(b) only where it is satisfied that the costs as calculated in accordance with rule 72.5 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 —
  - (a) the court may not make an order unless 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
  - (b) the consent under subparagraph (a) is in a separate document which —
    - (i) is signed by the litigating party;
    - (ii) states the attorney's estimate of what the prescribed costs appropriate to the proceedings would be;
    - (iii) gives an estimate of the total costs of the proceedings as between the attorney and client; and
    - (iv) sets out the basis of that estimate, including the amount of any hourly charge.
- (4) The written consent of the client must not be disclosed to the other party.

- (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 prescribed costs unless the court is satisfied that there has been a change of circumstances which became known only after the order was made.

### **72.7 What is included in prescribed costs.**

- (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 expert witness' attendance at trial; and
  - (d) attendance and advocacy at the trial including attendance at any case management conference or pre-trial review.
- (2) Prescribed costs exclude —
  - (a) expert's fees for preparing a report and attending any conference, hearing or trial;
  - (b) costs incurred in enforcing any order, which are generally fixed in accordance with rule 72.4 but may, in certain cases, be assessed in accordance with rule 72.9;
  - (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) the making or opposing of any interlocutory application except at a case management conference or pre-trial review.

### **72.8 Assessed costs – procedural applications.**

- (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 which 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 into account all the circumstances including the factors set out in rule 71.6(5) but where the application is —
  - (a) an application to amend a statement of case;

- (b) an application to extend the time specified for doing any act under these Rules or an order or direction of the court;
  - (c) an application for relief under rule 26.8; or
  - (d) one that could reasonably have been made at a case management conference or pre-trial review;
  - (e) the court must 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 attorney’s fees incurred;
  - (b) how that party’s attorney’s costs are calculated; and
  - (c) the disbursements incurred.
- (6) The statement under paragraph (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 claim unless the court considers that there are special circumstances of the case justifying a higher amount.

### **72.9 Assessment of costs – general.**

- (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 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 a 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 any application under paragraph (4) the registrar must either —
  - (a) assess the costs if there is sufficient material available to do so; or
  - (b) fix a date, time and place for the assessment to take place.

- (6) The 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.

#### **72.10 Costs capping orders – General.**

- (1) A costs capping order is an order limiting the amount of future costs, including disbursements, which a party may recover pursuant to an order for costs subsequently made.
- (2) In this Rule, “**future costs**” means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.
- (3) A cost capping order may be in respect of —
  - (a) the whole litigation; or
  - (b) any issues which are ordered to be tried separately.
- (4) The Court may at any stage of proceedings make a costs capping order against all of any of the parties, if —
  - (a) it is in the interests of justice to do so;
  - (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
  - (c) it is not satisfied that the risk in sub-paragraph (b) can be adequately controlled by —
    - (i) case management directions or orders made under Part 26; and
    - (ii) detailed assessment of costs.
- (5) In considering whether to exercise its discretion under this rule, the Court will consider all the circumstances of the case, including —
  - (a) whether there is a substantial imbalance between the financial position of the parties;
  - (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
  - (c) the stage which have been incurred to date and the future costs.
- (6) A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order.
- (7) No such variation will be made unless —
  - (a) there has been a material and substantial change of circumstances since the date when the order was made; or
  - (b) there is some other compelling reason why a variation should be made.

### **72.11 Application for a costs capping order.**

- (1) An application for a costs capping order must be made on notice in accordance with Part 11.
- (2) The application must set out —
  - (a) whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and
  - (b) why a costs capping order should be made; and
  - (c) be accompanied by an estimate of cost setting out —
    - (i) the costs and disbursements incurred by the applicant to date; and
    - (ii) the costs and disbursements which the applicant is likely to incur in the future conduct of the proceedings.
- (3) The Court may give directions for the determination of the application and such directions may —
  - (a) direct any party to the proceedings —
    - (i) to file a schedule of costs;
    - (ii) to file written submissions on all or any part of the issues arising;
  - (b) fix the date and time estimate of the hearing of the application;
  - (c) include any further directions as the Court sees fit.

### **72.12 Application to vary a costs capping order.**

An application to vary a costs capping order must be made by application notice pursuant to Part 11.



**FIRST SCHEDULE**

**FORMS**

*(Rule 3.6)*

*(Rule 3.3(3)(a))*

**FORM G1: General Heading for documents filed in a proceeding**

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In the Commonwealth of The Bahamas

In the Supreme Court

.....Division

Claim No.                      *[No of Proceeding including year]*

In the Matter of *[specify matter to which proceeding relates, such as the name of the Act under which the proceeding is made, if relevant]*

Between:

*[full name in bold, upper  
case letters]*

Claimant(s)

And

*[full name in bold upper  
case letters]*

Defendant(s)

*[where there are additional  
claims, list each party in order of  
addition as follows]*

And

*[full name in bold upper  
case letters]*

Third Party

And

*[full name in bold upper  
case letters]*

Fourth Party

*(Rule 3.3(b))*

**FORM G2: Last Page of Documents filed in a proceeding**

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*(General Heading)*  
*(TITLE OF DOCUMENT)*

*Filing Attorney: Name*

*Firm (if relevant)*

*Business Address*

*E mail address*

*Telephone number*

*Filed on behalf of: Name*

*Address Contact Information*

*(The information above is to be given for each person who filed the document)*

*(Rules 8.1(1)(a); 8.1(5))*

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**FORM G3: Standard Claim Form**

*(Attach General Heading Form G1)*

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**STANDARD CLAIM**

1. The claimant claims: *(State here the specific remedies that the claimant seeks in accordance with Rule 8.6 of the Rules)*

*(Where claim is for a specified sum of money, set it out as below)*

Amount claimed \$.....

Court fees \$.....

Legal practitioner's fixed costs on issue \$.....

Together with interest from [date] to [date] \$.....

(Daily rate of interest thereafter = \$.....

per day)

**Total Claim** \$.....

2. *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the basis upon which the claim is made, in accordance with Rules 8.6, 8.7 and 8.9 as applicable)*

*(Include here a statement of truth in accordance with rule 3.8 of the Rules)*

Dated the                      day of                      20....

.....

Signature of claimant/claimant's attorney

**NOTICE TO THE DEFENDANT**

The claimant is making a claim against the defendant as set out above on the basis of the facts asserted in this Claim Form and in the affidavit and/or any other document which was served with it.

**IF YOU DO NOTHING JUDGMENT MAY BE ENTERED AGAINST YOU IN ACCORDANCE WITH THE CLAIM WITHOUT ANY FURTHER WARNING.**

IF the Claim Form above does not include all of the information required by rules 8.6, 8.7 and 8.9 of the Rules, as applicable, the following should be served on you with this Claim Form:

- (a) a statement of claim or an affidavit or other document giving full details of the claimant's claim, OR
- (b) an order of the court permitting the claimant to issue and serve the Claim Form without the document(s) referred to in (a) above, OR
- (c) a copy of —
  - (i) a certificate stating that the issue and service of the Claim Form is a matter of urgency and why this is so, and

- (ii) an application for permission to issue and serve the Claim Form without the document(s) referred to in (a) above.

If the Claim Form does not include the said information and it was not served with any of the document(s) required above, you should contact the court office immediately.

You –

(a) should complete the form of acknowledgment of service served on you with this Claim Form and deliver or send it to the court office (address below) so that they receive it within 14 days of service of this claim form on you, UNLESS

(b) complete the defence form served on you with this Claim Form and deliver or send it to the court office in the time required for the filing of the form of acknowledgement of service.

You should consider obtaining legal advice with regard to this claim, including to file the form of acknowledgment of service or the defence form as required. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time in accordance with Rule 8.13 of the CPR.

#### **NOTES FOR DEFENDANT**

You may:

##### **A. Defend the claim**

1. If so, you should file at the court office and serve on the claimant and any other party:

(a) a defence in accordance with Part 10 of the CPR, if an acknowledgment of service has been filed and served in accordance with Part 9 of the CPR, OR

(b) a defence in accordance with Part 10 of the CPR within the time limit under Rule 9.3, OR

(c) an affidavit in answer in accordance with Part 10 of the CPR if this Claim Form is served with an affidavit instead of a statement of claim.

2. Your defence or affidavit must be filed within 28 days after the service of this Claim Form, or the service of the statement of claim if permission was given for the Claim Form to be served without a statement of claim, and it must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

3. After you have filed your defence you will 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.

4. You must attend the case management conference.

##### **B. Admit the whole of the claim**

1. If so, you should do this in accordance with Rule 14.1 and in the form of acknowledgment of service, to be completed and filed as indicated above and served on the claimant and any other party.

2. If the claim includes a claim for a sum of money and you can pay the amount stated on the Claim Form, including fees, costs and interest, you should pay this to the claimant in the period allowed for the filing of the acknowledgment of service and no further steps can be taken against you. You must add interest at the daily rate shown from the date stated on the claim form.

3. If you cannot pay that sum in full you may make a request for time to pay in accordance with Rule 14.9 of the CPR and by completing and submitting the form for Application to Pay by Instalments with your acknowledgment of service.

C. Admit part of the claim and defend the rest

1. If so, you should –

(a) indicate how much of the claim you admit in accordance with Rule 14.1 and in the form of acknowledgment of service, to be completed and filed as indicated above and served on the claimant and any other party, AND

(b) complete and submit a defence or affidavit in answer as under section A above.

2. If the claim includes a claim for a sum of money and you can pay the amount that you admit, including fees, costs and interest, you should pay this to the claimant in the period allowed for the filing of the acknowledgment of service. You must add interest at the daily rate shown from the date stated on the claim form.

3. If you cannot pay that sum in full you may make a request for time to pay in accordance with Rule 14.9 of the CPR and by completing and submitting the form for Application to Pay by Instalments with your acknowledgment of service.

D. Make a Counterclaim

1. If so, you should include the particulars of this after your defence in the same form as in section A, in which case the title of the form will be ‘Defence and Counterclaim’.

Date: .....

Registry:

.....

Address of Court Office:

.....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant’s Address for Service: .....

*(Attach Last Page – Form G2)*

*(Rule 8.1(1)(b), 8.1(6))*

---

**FORM G4: Fixed Date Claim Form**

*(Attach General Heading Form G1)*

---

**FIXED DATE CLAIM**

1. The claimant claims: *(State here the specific remedies that the claimant seeks in accordance with Rule 8.6 of the CPR)*

2. *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the basis upon which the claim is made, in accordance with Rules*

*8.6, 8.7 and 8.9 as applicable)*

*(Include here a statement of truth in accordance with Rule 3.8 of the CPR)*

Dated the            day of    20....

.....  
Signature of claimant/claimant’s attorney

**NOTICE TO THE DEFENDANT**

The claimant is making a claim against the defendant as set out above on the basis of the facts asserted in this Claim Form and in the affidavit and/or any other document which was served with it. The claimant will not be entitled to enter judgment against you without a hearing.

The first hearing of this Claim will take place at (insert address of the courthouse) 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 set out above.

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.

If the Claim Form above does not include all of the information required by Rules 8.6, 8.7 and 8.9 of the CPR, as applicable, the following should be served on you with this Claim Form:

- (a) a statement of claim or an affidavit or other document giving full details of the claimant’s claim, OR
- (b) an order of the court permitting the claimant to issue and serve the Claim Form without the document(s) referred to in (a) above, OR
- (c) a copy of —
  - (i) a certificate stating that the issue and service of the Claim Form is a matter of urgency and why this is so, and
  - (ii) an application for permission to issue and serve the Claim Form without the document(s) referred to in (a) above.

If the Claim Form does not include the said information and it was not served with any of the document(s) required above, you should contact the court office immediately.

You —

- (a) should complete the form of acknowledgment of service served on you with this Claim Form and deliver or send it to the court office (address below) so that they receive it within 14 days of service of this claim form on you, UNLESS
- (b) complete the defence form served on you with this Claim Form and deliver or send it to the court office in the time required for the filing of the form of acknowledgement of service.

You should consider obtaining legal advice with regard to this claim, including to file the form of acknowledgment of service or the defence form as required. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time in accordance with Rule 8.13 of the CPR.

#### **NOTES FOR DEFENDANT**

You may:

##### **A. Admit the claim**

1. If so, you should do this in accordance with Rule 14.1 and in the form of acknowledgment of service, to be completed and filed as indicated above and served on the claimant and any other party.
2. You may attend the first hearing if you wish to do so.

##### **B. Dispute the claim**

1. If so, you should file at the court office and serve on the claimant and any other party:
  - (a) a defence in accordance with Part 10 of the CPR, if an acknowledgment of service has been filed and served in accordance with Part 9 of the CPR, OR
  - (b) a defence in accordance with Part 10 of the CPR within the time limit under Rule 9.3, OR
  - (c) an affidavit in answer in accordance with Part 10 of the CPR if this Claim Form is served with an affidavit instead of a statement of claim.
2. Your defence or affidavit must be filed within 28 days after the service of this Claim Form, or the service of the statement of claim if permission was given for the Claim Form to be served without a statement of claim, and it must set out briefly ALL the facts on which you will rely to dispute the claim made against you.
3. **You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.**

##### **C. Make a Counterclaim**

1. If so, you should include the particulars of this after your defence in the same form as

in section B above, in which case the title of the form will be ‘Defence and Counterclaim’.

2. You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

Date: ..... Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant’s Address for Service: .....

*(Attach Last Page – Form G2)*



*(Rules 8.1(1)(c); 8.15; 8.17)*

---

**FORM G5: Originating Application Form**

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*(Attach General Heading – Form G1)*

**ORIGINATING APPLICATION**

1. The claimant makes application for: *(State here the specific remedies that the claimant seeks in accordance with Rule 8.20(b) of the CPR)*

2. *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the basis upon which the application is made and the other matters specified by Rule 8.20 of the CPR)*

3. The following written evidence will be used at the hearing of the application: *(List here the written evidence to be relied on, and attach copies of the evidence to this Form)*

*(Include here a statement of truth in accordance with Rule 3.8 of the CPR)*

Dated the                      day of    20....

.....

Signature of claimant/claimant’s attorney

**NOTICE TO THE DEFENDANT**

The claimant is making a claim against the defendant as set out above on the basis of the facts asserted in this Form and in any written evidence listed in and served with it. The claimant will not be entitled to enter judgment against you without a hearing.

The court may give directions in accordance with Rule 8.19(2) of the CPR, including to set a hearing date where the court will give directions for the disposal of the claim as soon as practicable after you have acknowledged service.

If you do not acknowledge service in the time required, you may attend the hearing but may not take part in the hearing unless the court gives permission.

You should –

- (a) complete the form of acknowledgment of service served on you with this Originating Application and deliver or send it to the court office (address below) so that they receive it within 14 days of service of this claim form on you; and
- (b) state in the completed acknowledgement of service —
  - (i) whether you contest the claim, and
  - (ii) you seek a different remedy from that set out in the claim; and
- (c) where you intend to rely on written evidence, file this together with your acknowledgement of service unless otherwise ordered by the court on an application made without notice. Note that the court may give directions requiring the attendance of a witness who has given written evidence; and
- (d) where you object to the use of the Part 8 procedure as provided for in Rule 8.27(1), state your reasons for such objection in your acknowledgement of service.

The acknowledgment of service, and any written evidence filed together with it, must also be served on the claimant and any other party.

You should consider obtaining legal advice with regard to this claim, including to file the form of acknowledgment of service as required. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time in accordance with Rule 8.13 of the CPR.

Date: ..... Registry: ..... Address  
of Court Office: ..... Tel. No.:  
.....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant's Address for Service: .....

*(Attach Last Page – Form G2)*

*(Rule 8.1, 8.17)*

**FORM G6: ORIGINATING APPLICATION FORM**

---

*(Attach General Heading Form - G1)*

**INTERNATIONAL REQUESTS FOR LEGAL ASSISTANCE IN CRIMINAL MATTERS**

In the Commonwealth of The Bahamas  
In the Supreme Court  
Civil Division

Claim No. *[No of Proceeding Including Year]*

In the Matter of *[specify name(s) of the Act(s) under which the request for legal assistance applies and any additional Acts which may be relevant to these proceedings]*

Between:

*[full name in bold, upper case letters]*

Applicant

AND

*[full name in bold upper case letters]*

Respondent(s)

**ORIGINATING APPLICATION**

The Applicant makes application without notice pursuant to a request for legal assistance for *(state what is being requested i.e. production of documents/records, restraint order and any other specific requirements.)*

Set out what is being requested in separate, consecutively numbered paragraphs, ensuring to provide the relevant law of the requesting jurisdiction, the nexus to The Bahamas, any relevant documents along with the Letter of Request and any other relevant information that provides a basis for the application.

Attached hereto is the Certificate of the Attorney General verifying compliance with the respective request for legal assistance in criminal matters.

Dated the                      day of                      20..

---

Signature of Applicant

(Rule 7.7)

**FORM G7: Notice of Overseas Service Form**

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*(Attach General Heading – Form G1)*

**NOTICE OF OVERSEAS SERVICE**

1. The claimant asserts that the court has jurisdiction to: *(State here the scope of the jurisdiction of the court in respect of the specific claims made against the specific defendant(s))*
2. The grounds upon which the claimant asserts that the court has jurisdiction are: *(Set out here the grounds alleged by the claimant in relying on that jurisdiction)*

Dated the                      day of                      20....

.....  
Signature of claimant/claimant’s attorney

**NOTICE TO THE DEFENDANT**

The claimant is asserting that the court has jurisdiction to hear and determine the claim against the defendant indicated above and set out in greater detail in the claim form served with this notice.

You should –

- (a) complete the form of acknowledgment of service served on you with this Originating Application and deliver or send it to the court office (address below) so that they receive it within 14 days of service of the claim form on you; and
- (b) state in the completed acknowledgement of service whether you dispute —
  - (i) the claim, and
  - (ii) the court’s jurisdiction to hear the claim; and
- (c) where you dispute the court’s jurisdiction, make an application to the court for a declaration to that effect within 28 days of service of the claim form on you, or such other time as specified by the court in an order, or agreed to by the parties, to extend the time for filing a defence.

Any application made under (c) above must be supported by evidence on affidavit.

Where an application is made under (c), the period for filing a defence is extended until the time specified by the court if it does not make the declaration applied for.

**If you file an acknowledgment of service but do not make an application under (c) above within the period required, you will be treated as having accepted that the court has jurisdiction to try the claim.**

Date: ..... Registry: .....  
Address of Court Office: .....  
Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant’s Address for Service: .....

*(Attach Last Page – Form G2)*

(Rule 7.9(2))

**FORM G8: Request for Service in Convention Countries**

(Attach General Heading – Form G1)

**REQUEST FOR SERVICE IN (NAME OF COUNTRY)**

1. The *(identify applicant)* seeks service of the *(identify document)* by: *(State here the official means of service desired in accordance with the relevant convention)*
2. The *(identify applicant)* undertakes to: *(Set out here the undertaking covering the payment of expenses)*

Dated the     day of     20....

.....

Signature of *(identify applicant)/(identify applicant)*'s attorney

Date: .....

Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant’s Address for Service:

.....

*(Attach Last Page – Form G2)*

(Rule 8.14(1)(c))

**FORM G9: Acknowledgment of Service Form**

(Attach General Heading – Form G1)

---

**ACKNOWLEDGMENT OF SERVICE**

**WARNING:** This form is to be fully completed and returned to the court at the address below within 14 days (or the period specified in the order granting permission for service out of The Bahamas) of service of the claim form on you, otherwise, if served with —

- (a) a Standard Claim Form, unless you have filed a defence or affidavit in answer within this time, **the claimant will be entitled to apply to have judgment entered against you**. If the claimant 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 judgment aside.
- (b) a Fixed Date Claim Form, unless you have filed a defence or affidavit in answer within this time, **the claimant will be entitled to apply to have judgment entered against you**. If the claimant 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 judgment aside.
- (c) an Originating Application Claim Form, **you may attend the hearing but may not take part in the hearing** unless the court gives permission.

1 Have you received the claim form with the above claim number? YES/NO

2 If so, when?   /  /  

3 Did you also receive the claimants Statement of Claim (or were the YES/NO details of the claim set out in the claim form?)

4 If so, when?   /  /  

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 28 days (or the period specified in the order granting permission for service out of The Bahamas) of the service of the details or the statement of claim on you.

7 Do you admit the whole of the claim? YES/NO

If you do and the claim includes a claim for a sum of money, you should either —

(a) pay the amount claimed to the claimant, or



*(Rule 8.14(1)(b))*

**FORM G10: Defence Form**

---

**DEFENCE**

1. The defendant admits the allegations contained in: *(Indicate here any paragraphs of the claim which the defendant admits in the sequential order in which they appear)*
2. The defendant has no knowledge of the allegations contained in: *(Indicate here any paragraphs of the claim of which the defendant has no knowledge in the sequential order in which they appear)*
3. The defendant denies the allegations contained in: *(Indicate here the paragraphs of the claim which the defendant denies in the sequential order in which they appear)*
4. *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the reasons for denying the allegations of fact identified above so far as practicable in the sequential order in which they appear)*
5. *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, each allegation of fact relied on to dispute the claim) (Include here a statement of truth in accordance with Rule 3.8 of the CPR)*

Dated the     day of                                  20....

.....  
Signature of defendant/defendant's attorney

TO:

Name of claimant's attorney-at-law: ..... Address of claimant's attorney-at-law: .....

Date: ..... Registry: .....

Address of Court Office: ..... Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant's Address for Service: .....

*(Attach Last Page – Form G2)*





*(Rules 18.6(1)(a), 18.7(2))*

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**FORM G12: Additional Claim Form**

---

*(Attach General Heading – Form G1)*

**ADDITIONAL CLAIM**

1. The defendant claims against the *(insert number of defendant or party added, for example ‘second defendant’ or ‘third party’)*: *(State here the specific remedies that the defendant seeks against the party identified)*
2. *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the basis upon which the additional claim is made)*

*(Include here a statement of truth in accordance with Rule 3.8 of the CPR)*

Dated the                      day of                      20....

.....  
Signature of defendant/defendant’s attorney

*(Where the additional claim is made against a person who is not already a party, include the following)*

**NOTICE TO THE (insert number of party added, for example ‘THIRD PARTY’)**

The claimant is making a claim against the defendant as set out in the claim form served on you with this form. Also served with this form are copies of the defence filed by the defendant [and] *(insert name of all other documents served in accordance with Rule 18.12(1)(d))*.

**IF YOU DO NOTHING YOU WILL BE DEEMED TO ADMIT THE CLAIM ABOVE AND WILL BE BOUND BY ANY JUDGMENT IN SO FAR AS IT IS RELEVANT TO ANY MATTER ARISING IN THAT CLAIM.**

You –

- (a) should complete the form of acknowledgment of service served on you with this Claim Form and deliver or send it to the court office (address below) so that they receive it within 14 days of service of this claim form on you, UNLESS
- (b) complete the defence form served on you with this Claim Form and deliver or send it to the court office in the time required for the filing of the form of acknowledgement of service.

You should consider obtaining legal advice with regard to this claim, including to file the form of acknowledgment of service or the defence form as required. See the notes on the back of this form or on the next page.

**NOTES FOR THE (insert number of party added, for example ‘THIRD PARTY’)**

You may:

**A. Defend the claim**

1. If so, you should file at the court office and serve on the all other parties —

- (a) a defence in accordance with Part 10 of the CPR, if an acknowledgment of service has been filed and served in accordance with Part 9 of the CPR, OR
- (b) a defence in accordance with Part 10 of the CPR within the time limit under Rule 9.3.

- 2. Your defence must be filed within 28 days after the service of this Claim Form and it must set out briefly ALL the facts on which you will rely to dispute the claim made against you.
- 3. After you have filed your defence you will be given details of the date, time and place of a case management conference at which a judge will decide how to manage the claim.
- 4. You must attend the case management conference.

**B. Admit the whole of the claim**

- 1. If so, you should do this in accordance with Rule 14.1 and in the form of acknowledgment of service, to be completed and filed as indicated above and served on all other parties.

**C. Admit part of the claim and defend the rest**

- 1. If so, you should —
  - (a) indicate how much of the claim you admit in accordance with Rule 14.1 and in the form of acknowledgment of service, to be completed and filed as indicated above and served on the claimant and any other party, AND
  - (b) complete and submit a defence as under section A above.

Date: ..... Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open on weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Defendant's Address for Service: .....

*(Attach Last Page – Form G2)*

(Rule 8.14(1)(d))

**FORM G13: Request For Time To Pay Form**

---

(Attach General Heading – Form G1)

**REQUEST FOR TIME TO PAY**

The defendant owes the claimant the amount of \$..... of the sum claimed on the claim form and cannot pay the amount in one lump sum.

The claimant applies to the court for an order to pay the above amount by —

- (a) (state the date by which you are asking to pay), and/or
- (b) by instalments of \$..... per week/month; and

provides the following information:

- 1. Marital status:  Married  Single  Other (specify) .....
- 2. Age: .....
- 3. Dependents:
  - (a) Children: (state names and ages)  
.....
  - (b) Other: (state names, ages and give details)  
.....
- 4. If employed: (state nature of employment and name and address of employer)  
.....
- 5. If self-employed: (give particulars of annual receipts of the business)
- 6. Give details of any job other than main job:  
.....
- 7. Give details of —
  - (a) contracts and other work in hand  
.....
  - (b) any sums due for work done  
.....
- 8. If unemployed, say how long unemployed .....
- 9. Pensioner:  Yes  No
- 10. List cash assets:
  - (a).....
  - (b).....
- 11. I live on:  My own property  Jointly owned property  Rented property  
Other (specify) .....

12. My monthly income is:

- (a) Usual take home pay \$ .....
- (b) Pension \$ .....
- (c) Other \$ .....
- TOTAL INCOME \$.....**

13. My regular expenses are:

- (a) Mortgage \$ .....
- (b) Rent \$ .....
- (c) Electricity \$ .....
- (d) Water \$ .....
- (e) Cooking gas \$ .....
- (f) Telephone \$ .....
- (g) Hire purchase \$ .....
- (h) Food \$ .....
- (i) School fees \$ .....
- (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) \$ .....
- ..... \$ .....
- ..... \$ .....
- ..... \$ .....
- TOTAL EXPENSES**

14. I am in arrears as follows —

- (a) Mortgage \$ .....
- (b) Rent \$ .....
- (c) Electricity \$ .....
- (d) Water \$ .....
- (e) Telephone \$ .....
- (f) Hire purchase \$ .....
- (g) Maintenance payments \$ .....

(h) Others \$ .....

I [*name of defendant*] certify that the statement of my financial position, as detailed above in this Request for Time to Pay, are correct.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20....

Signature of defendant/defendant’s attorney

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant’s Address for Service: .....

(Attach Last Page – G2)



(Rule 14.2(1)(b))

**FORM G15: Notice of Discontinuance Form**

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(Attach General Heading – G1)

**NOTICE OF DISCONTINUANCE**

1. The claimant wholly discontinues (*Where the proceeding is not discontinued against all defendants, add the following*, against the (*identify defendant(s)*),) this proceeding.

OR

1 The claimant discontinues (*Where the proceeding is not discontinued against all defendants, add the following*, against the (*identify defendant(s)*),) the claim for:  
(*specify the part(s) of the claim that is/are no longer being pursued*)

2. This notice of discontinuance has been served on every other party to the claim.

(*Include any of the following as applicable, in accordance with Rule 37.3(3) and (4)*)

3. The claimant has obtained the consent of: (*Identify any party from whom consent was required and attach a copy of any such consent*)

4. The claimant has obtained an order of court giving permission to: (*State here the details of the order by which the court gave permission*)

Dated the                      day of                      20.....

.....  
Signature of claimant/claimant’s attorney

**NOTICE TO THE DEFENDANT**

The claimant has discontinued the [aspects of the] claim [against (*identify defendant(s)*)] as indicated above.

You may apply to have the discontinuance set aside in accordance with Rule 37.4 of the CPR.

Date: ..... Registry: .....

Address of Court Office:.....

Tel. No.:.....

Unless the Chief Justice otherwise directs, the court office is open on weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant’s Address for Service: .....

(Attach Last Page – G2)



*(Rule 14.2(3))*

**FORM G16: Request that Claim be Recorded as Satisfied**

---

*(Attach General Heading – Form G1)*

**REQUEST THAT CLAIM BE RECORDED AS**

1. The defendant seeks that the claim filed on the day of 20.... by the claimant for the sum of *(Insert here the total sum claimed by the claimant)* be recorded as satisfied.
2. The defendant, on the        day of 20...., paid the sum of: *(State here the sum paid by the defendant, indicating the sum claimed, interest (if claimed) and fixed costs as set out on the claim form)*
3. At the date of the filing of this request, the claimant has failed to file and serve a notice of discontinuance in accordance with Rule 14.2(1)(b), and the defendant therefore makes this request as provided for under Rule 14.2(3).

Dated the                    day of                    20.....

.....  
Signature of defendant/defendant's attorney

**NOTICE TO THE CLAIMANT**

The defendant is seeking to have the claim made against him by the claimant be recorded as satisfied.

**If you do not dispute this request the court office will record that the claim has been satisfied.**

Date: ..... Registry: .....

Address of Court Office:..... Tel. No.:

.....  
Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant's Address for Service: .....

*(Attach Last Page – G2)*

(Rules 14.6(1) and (2), 14.7(1), (5) and (6), 14.8(1) and (2), 14.11(1) and (2))

**FORM G17: Request For Entry of Judgment on Admission**

---

(Attach General Heading – G1)

**REQUEST FOR ENTRY OF JUDGMENT ON ADMISSION**

(A. **(Rule 14.6(1))** Where the claim is only for a specified amount of money and the defendant has admitted the whole claim without requesting time to pay, use the following)

1. The claimant(s) has/have claimed against the defendant(s) the sum of: (State sum of money specified, including interest and costs claimed as set out in the claim form)
2. The claim for the sum of money stipulated above is the only remedy sought by the claimant in the claim form filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20....
3. The defendant(s) has admitted the whole of the claim in the acknowledgement of service filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20....
4. The defendant has not requested time to pay the amount owed on the claim.

(B. **(Rule 14.7(1)(b)(i) and (5))** Where the claim is only for a specified amount of money and the defendant has admitted a part of that claim without requesting time to pay, use the following)

1. The claimant(s) has/have claimed against the defendant(s) the sum of: (State sum of money specified, including interest and costs claimed as set out in the claim form)
2. The claim for the sum of money stipulated above is the only remedy sought by the claimant in the claim form filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20....
3. The defendant(s) has admitted (insert here the sum of money admitted by the defendant) in the [acknowledgement of service/defence] filed on the day of \_\_\_\_\_, 20....
4. The defendant has not requested time to pay the amount admitted on the claim.

(Include either of the following if desired, in accordance with Rule 14.6(2) and (5)) 5. The claimant requests that the judgment sum indicated below be paid on the \_\_\_\_\_ day of \_\_\_\_\_, 20....

OR

5. The claimant requests that the judgment sum indicated below be paid in (indicate here the number of instalments to cover the amount to be paid) [weekly/monthly] instalments of (indicate here the amount to be paid as periodic payments)

(C. **(Rule 14.11(1) and (2))** Where the claim is only for a specified amount of money and the defendant has admitted the whole or a part of that claim with a request for time to pay but the claimant does not accept the offer in the request for time to pay filed by the defendant, use the following)

1. The claimant(s) has/have claimed against the defendant(s) the sum of: (State sum of money specified, including interest and costs claimed as set out in the claim form)
2. The claim for the sum of money stipulated above is the only remedy sought by the claimant in the claim form filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20....
3. The defendant(s) has admitted (insert here the sum of money admitted by the defendant) in the [acknowledgement of service/defence] filed on the day of \_\_\_\_\_, 20....
4. The defendant has requested time to pay the amount owed on the claim as follows: (Set out here the details of the request as set out in the form for the request for time to pay)
5. The claimant does not accept the proposal by the defendant as to payment, for the reasons set out in the affidavit filed with this request.

(In the case of A, B and C above, use the following)

6. The claimant thus requests entry of judgment against the defendant in the sum below (in the case of C, add ‘on such terms as the court sees fit’).

Judgment should be entered for:

(a)	Amount claimed	\$ .....
(b)	Court fees on claim	\$ .....
(c)	Legal practitioner’s fixed costs on issue	\$ .....
(d)	Interest from date of issue to today	\$ .....
(e)	Court fees on entering judgment	\$ .....
	Legal practitioner’s fixed costs on entering judgment	\$ .....
(f)	<b>TOTAL</b>	<b>\$ .....</b>

Less amount paid since issue of claim \$ .....

**Amount for which judgment is to enter \$ .....**

**(D. (Rule 14.7(1)(b)(ii) and (6))** Where the claim is only for an unspecified amount of money and the defendant has admitted a specified proportion of that claim, use the following)

1. The claimant(s) has/have claimed against the defendant(s) the payment of: (State the details of the debt claimed in the claim form)
2. The claim for the money stipulated above is the only remedy sought by the claimant in the claim form filed on the day of , 20....
3. The defendant(s) has admitted (insert here the specified proportion of the debt admitted by the defendant) in the [acknowledgement of service/defence] filed on the day of , 20....
4. The claimant thus requests that the court —
  - (a) determine the amount of the debt claimed, and
  - (b) enter judgment against the defendant for the proportion of that amount as admitted by the defendant.

**(E. (Rule 14.8(1) and (2))** Where the claim is only for an unspecified amount of money and the defendant has admitted the whole claim but did not offer to pay a specified sum or proportion of the claim and had not requested time to pay, use the following)

1. The claimant(s) has/have claimed against the defendant(s) the payment of: (State the details of the debt claimed in the claim form)
2. The claim for the money stipulated above is the only remedy sought by the claimant in the claim form filed on the day of , 20....
3. The defendant(s) has admitted the whole claim in the [acknowledgement of service/defence] filed on the day of , 20....
4. The claimant thus requests that the court —
  - (a) determine the amount of the debt claimed, and
  - (b) enter judgment against the defendant for that amount.

Dated the day of 20....

.....

Signature of claimant/claimant's attorney

Address of Court Office: .....

Tel. No: .....

Unless the Chief Justice otherwise directs, the court office is open on weekdays between 9:30 a.m. 4:30 p.m. except on public holidays.

Claimant's Address for Service:.....

*(Attach Last Page – G2)*



*(Rule 27.5(5))*

**FORM G19: Case Management Conference Order Form**

---

*(Attach General Heading – G1)*

Before *(State the name of the judge)*

On the        day of                    , 20....

*(Name(s) of attorney(s)-at-law present at the hearing)* for the claimant *OR* The claimant appearing in person

*(Name(s) of attorney(s)-at-law present at the hearing)* for the defendant *OR* The defendant appearing in person

**ORDER**

ON this matter being called for a case management conference on the    day of 20....

AND ON READING the *(State the particulars of material filed in relation to the claim by the parties)*

AND ON HEARING *(Identify the party/parties, or attorney(s)-at-law on behalf of the party/parties, appearing and heard at the case management conference)* This Court orders that:

1. *(List in separate, consecutively numbered paragraphs the specific orders of the court, including in relation to the date of any pre-trial review and the trial date or trial period)*

**NOTICE**

The trial of this claim will be conducted [during *(State the period within which the trial is to commence)*] *OR* on [*(State the trial date)*] *(If applicable, add the following)*

A pre-trial review will be held on the                    day of                    , 20....

Date: .....                    Signature of Judge or Registrar: .....

*(Attach Last Page G2)*



**Attorney-at-law's Certificate**

I CERTIFY that I have explained to the (*identify the party*),

- (a) the necessity of making full disclosure in accordance with the terms of the order for disclosure and the Civil Procedure Rules 2022, and
- (b) the possible consequences of failing to do so.

Dated the                  day of    20

.....

Signature of party's attorney

Date: ..... Registry: .....

Address of Court Office:..... Tel. No.:  
.....

Unless the Chief Justice otherwise directs, the court office on weekdays is open between 9:30 a.m. and 4:30 p.m.] except on public holidays.

(*Identify the party*)'s Address for Service: .....

(*Attach Last Page – G2*)



(Rule 33.2(2))

**FORM G20: Witness Summons Form**

---

(Attach General Heading – G1)

**WITNESS SUMMONS**

To: (Insert name of witness)

Of: (Insert address of witness)

You are summoned to attend at the Supreme Court located at (insert address of the courthouse)

on the day of , 20...., the day fixed for the hearing of this claim, and on each subsequent day until your attendance is no longer required, to give evidence.

You are required to bring with you and produce the following documents:

(List here by setting out the name, date and such other feature of each document sufficient to accurately identify them)

Sum to be paid to the witness: (Set out below the amount to be paid as applicable)

(a) Attendance allowance of per day for .....days \$ .....  
\$.....

(b) Travel allowance \$ .....

(c) Overnight accommodation \$ ..... and meal allowance

**TOTAL** \$ .....

NOTE: If further attendance is required you will be entitled to additional allowances as necessary.

This witness summons is binding only if it is served on you at least 14 days before the date on which you are required to attend before the court, unless it is accompanied by an order of the court directing that it is binding although it is served less than 14 days before the date on which you are required to attend.

**IF YOU FAIL TO ATTEND OR REMAIN IN ATTENDANCE AS REQUIRED BY THE SUMMONS, AN ORDER OF COMMITTAL MAY BE MADE AGAINST YOU BY THE COURT**

Date: ..... Registry: .....

Address of Court Office: .....

Tel. No.:.....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. to 4:30 p.m. except on public holidays.

Claimant's Address for Service.....

(Attach Last Page – G2)

(Rule 42.12(3))

**FORM G22: Notice to Non-Party Served With Order Form**

(Attach General Heading – G1)

**NOTICE TO NON-PARTY SERVED WITH ORDER**

TO: *(name of person to be served)*

OF: *(address of person to be served)*

TAKE NOTE that a judgment or order of this court was given or made on the      d a y      o f 20...., a copy of which is attached to this notice.

AND TAKE NOTE also that you are bound by the terms of the judgment or order to the same extent as you would have been had you been a party to the proceedings in which the judgment was given or order made.

You may apply to the court within 28 days after service of this notice to —

- (a) discharge, vary, or add to the judgment or order and
- (b) take part in any proceedings under the judgment or order.

You may do this by completing and issuing a form of application at the court office whose address is given below saying what order you want the court to make and the grounds on which you make the application.

Dated the                      day of                      20.....

.....  
Signature of *(identify party issuing the order)*/ *(identify party issuing the order)*'s attorney

Date: ..... Registry: .....

Address of Court Office: ..... Tel.

No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Identify party issuing the order)*'s Address for Service:.....

(Attach Last Page – G2)

(Rules 43.13(1), 48.2(1))

---

**FORM EX1: Writ of Fieri Facias Form**

(Attach General Heading – G1)

**WRIT OF FIERI FACIAS**

TO: The Provost Marshal

UNDER an Order of this Court made on the \_\_\_\_\_ day of \_\_\_\_\_, 20...., in favour of *(name of the judgment creditor)*,

You are required to levy the sum of \$....., together with interest at the rate of .....% per annum from the day of , 20....., until payment together with the marshal’s poundage fees, cost 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 *(name of judgment creditor)*

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the *(identify judgment creditor)* and *(identify judgment debtor)*

Date: .....

Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

(Attach Last Page – G2)

*(Rules 43.13(2), 50.2(1)(a), 50.2(2)(a))*

**FORM EX2: Writ of Delivery Form**

*(Attach General Heading – G1)*

**WRIT OF DELIVERY**

TO: The Provost Marshal

UNDER an Order of this Court made on the \_\_\_\_\_ day of \_\_\_\_\_, 20....., in favour of  
*(name of the judgment creditor),*

*(For a Writ of Specific Delivery, use the following)*

You are required to seize from *(name of the judgment debtor)* and to deliver without delay to *(name of the judgment creditor)* possession of the following personal property:

*(Set out here a description of the property to be delivered)*

*(For a Writ of Delivery to recover the goods or their assessed value, ADD the following)*

Alternatively, you may levy the sum of \$....., being the assessed value of the goods described above, together with interest at the rate of .....% per annum from the day of

, 20....., until payment together with the marshal's poundage fees, cost 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 *(name of judgment creditor)*

*(In either of the cases above, ADD the following where the judgment or order to be enforced by this writ also includes judgment or order for a sum of money)*

You are also required to levy the sum of \$....., together with interest at the rate of .....% per annum from the day of , 20....., until payment together with the marshal's poundage fees, cost 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 *(name of judgment creditor)*

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the *(identify judgment creditor)* and *(identify judgment debtor)*

Date: ..... Registry: .....

Address of Court Office: ..... Tel.

No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page – G2)*

*(Rules 43.13(3), 50.1(1)(a))*

**FORM EX3: Writ of Possession Form**

*(Attach General Heading – G1)*

**WRIT OF POSSESSION**

TO: The Provost Marshal

UNDER an Order of this Court made on the        day of        , 20...., *in favour of (name of the judgment creditor),*

You are required to enter and take possession and to deliver without delay to *(name of the judgment creditor)* the property known as:

*(Set out here a description of the property to be delivered)*

*(ADD the following where the judgment or order to be enforced by this writ also includes judgment or order for a sum of money)*

You are also required to levy the sum of \$....., together with interest at the rate of ..... % per annum from the day of , 20...., until payment together with the marshal's poundage fees, cost 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 *(name of judgment creditor)*

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the *(identify judgment creditor)* and *(identify judgment debtor)*

Date: ..... Registry: .....

Address of Court Office: ..... Tel. No.:  
.....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page – G2)*

*(Rules 43.13(4), 50.1(1)(c), 50.2(1)(c), 50.2(2)(c), 50.3(1)(b)(i) and (ii))*

**FORM EX4: Writ of Sequestration Form**

---

*(Attach General Heading – G1)*

**WRIT OF SEQUESTRATION**

TO: The Provost Marshal

UNDER an Order of this Court made on the day of     , 20...., in favour of *(name of the judgment creditor)*,

You are required to enter and take possession of the property known as:

*(Set out here a description of the property to be delivered)*

You are also required to collect and hold any income from the property until further order of this court.

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the *(identify judgment creditor)* and *(identify judgment debtor)*

Date: ..... Registry: .....

Address of Court Office: ..... Tel. No.:  
.....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page – G2)*

*(Rule 43.15(3))*

**FORM EX5: Notice of Extension of Validity of Writ Form**

---

*(Attach General Heading – G1)*

**NOTICE OF EXTENSION OF VALIDITY OF WRIT**

TO: The Provost Marshal

BY an Order of this Court made on the day of , 20...

The validity of the *(name of writ)* served on you, dated the day of , 20..., has been extended for a further period of 12 months from the date of this Order.

Date: ..... Registry: .....

Address of Court Office: ..... Tel.

No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page – G2)*

(Rule 44.2(1))

**FORM EX6: Notice to Complete Financial Statement Form**

---

*(Attach General Heading – G1)*

**NOTICE TO COMPLETE FINANCIAL STATEMENT**

TAKE NOTICE THAT the *(identify judgment creditor)* seeks to examine you orally as to your income, assets and liabilities and the means by which the judgment debt may be paid. The date, time and place of the oral examination is set out in the Notice of Examination that is served with this notice.

YOU ARE REQUIRED to complete and serve the Financial Statement form, that is served with this notice, on the judgment creditor within 14 days of the date on which this notice is served on you. When you have done so, the judgment creditor may cancel the oral examination if he is satisfied with the information that you provide.

UNLESS YOU ARE NOTIFIED by the judgment creditor that your attendance is not required, you must attend on the date, time and place stated in the Notice of Examination. **If you fail to do so, further proceedings may be taken which may result in your being imprisoned.**

Dated the                      day of                      20.....

.....

Signature of claimant/claimant's attorney

Date: ..... Registry: .....

*Address of Court Office:* ..... *Tel. No.:*  
.....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant's Address for Service: .....

*(Attach Last Page – G2)*



(Rule 44.2)

**FORM EX7: Financial Statement Form**

(Attach General Heading – G1)

**FINANCIAL STATEMENT**

---

I, (name of judgment debtor), certify that the following is an accurate summary of my financial position:

1. Marital status:     Married  Single     Other (specify) .....
2. Age: .....
3. Dependents:
  - (a) Children: (state names and ages) .....
  - (b) Other: (state names, ages and give details) .....
4. If employed: (state nature of employment and name and address of employer)  
.....
5. If self-employed: (give particulars of annual receipts of the business)
6. Give details of any job other than main job:  
.....
7. Give details of —
  - (a) contracts and other work in hand  
.....
  - (b) any sums due for work done  
.....
8. If unemployed, say how long unemployed .....
9. Pensioner:  Yes  No
10. List cash assets:
  - (a) .....
  - (b) .....
11. I live on:  My own property  Jointly owned property  Rented property  
 Other (specify) .....
12. My monthly income is:
  - (a) Usual take home pay                      \$ .....
  - (b) Pension    \$ .....
  - (c) Other    \$ .....
  - TOTAL INCOME                                      \$ .....**
13. My regular expenses are:
  - (a) Mortgage    \$ .....

- (b) Rent \$ .....
- (c) Electricity \$ .....
- (d) Water \$ .....
- (e) Cooking gas \$ .....
- (f) Telephone \$ .....
- (g) Hire purchase \$ .....
- (h) Food \$ .....
- (i) School fees \$ .....
- (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)

.....  
 .....  
 .....

**TOTAL EXPENSES** \$ .....

14. I am in arrears as follows:

- (a) Mortgage \$ .....
- (b) Rent \$ .....
- (c) Electricity \$ .....
- (d) Water \$ .....
- (e) Telephone \$ .....
- (f) Hire purchase \$ .....
- (g) Maintenance payments \$ .....
- (h) Others \$ .....

..... \$ .....  
 ..... \$ .....  
 ..... \$ .....

**TOTAL ARREARS** \$ .....

In the past 12 months, I have made the following payments, for which receipts are attached: *(Set out here*

*the payments made by the judgment debtor in the preceding 12 months)*

I hereby certify that the means by which I can satisfy the judgment are as follows:

*(State the means by which the judgment debtor can satisfy the judgment)*

Dated the      day of              20....

.....

*Signature of judgment debtor/judgment debtor's attorney*

*Address of Court Office: .....*

*Tel. No.: .....*

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page – G2)*

(Rule 44.3(3))

**FORM EX8: Application for Order to Attend Court Form**

(Attach General Heading – G1)

**APPLICATION FOR ORDER TO ATTEND COURT**

1. The (*identify applicant*) makes application for (*identify judgment debtor or officer of company, corporation or other legal entity*) to attend court, either in person or by videoconference, to provide information under oath about —
  - (a) the judgment debtor’s —
    - (i) receipts and payments for the preceding 24 months,
    - (ii) assets and liabilities,
    - (iii) income and expenditure, and
  - (b) any other matter about which information is needed to enforce the judgment or order against the judgment debtor.
2. The (*identify applicant*) also makes application for (*identify judgment debtor or officer of company, corporation or other legal entity*) to produce such documents as are in their control as are described below:  
(*Set out here the documents required to be produced by the examinee*)
3. The grounds of the application are: (*Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the grounds to be argued, including any statutory provision or Rule to be relied upon*)
4. The following written evidence will be used at the hearing of the application: (*List here the written evidence to be relied on, and attach copies of the evidence to this Form*)
5. A draft of the order that the (*identify applicant*) seeks is attached.

Dated the                      day of    20.....

.....  
Signature of (*identify applicant*)/(*identify applicant*)’s attorney

Date: ..... Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

(Attach Last Page – G2)

*(Rule 44.3(7))*

**FORM EX9: Order to Attend Court Form**

*(Attach General Heading – G1)*

**ORDER TO ATTEND COURT**

TO *(name of person to be examined)*

YOU ARE REQUIRED TO ATTEND, on the day of , 20...., at am/pm, before an examiner of this court, either in person or by videoconference, to provide information under oath about —

- (a) the judgment debtor’s —
  - (i) receipts and payments for the preceding twenty-four months,
  - (ii) assets and liabilities,
  - (iii) income and expenditure, and
- (b) any other matter about which information is needed to enforce the judgment or order against the judgment debtor.

YOU ARE FURTHER REQUIRED TO PRODUCE such documents in your control as are described below:

*(Set out here the documents required to be produced by the examinee)*

Where you are resident in another island of The Bahamas and you are required to attend court in person in New Providence or Grand Bahama, you may, within 7 days of being served with this order, ask the judgment creditor to pay you a sum not exceeding a sum reasonably sufficient to cover your travelling expenses to and from court and in any event an amount not exceeding \$300.00.

**YOU must OBEY THIS ORDER. IF YOU DO NOT, YOU MAY BE ARRESTED AND THEN SENT TO PRISON FOR CONTEMPT OF COURT.**

Dated the      day of                      20....

.....

Signature of *(identify applicant)/(identify applicant)*’s attorney

Date: ..... Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page –G2)*

*(Rule 44.10(1))*

**FORM EX10: Warrant For Arrest Form**

---

*(Attach General Heading – G1)*  
**WARRANT FOR ARREST**

TO ALL POLICE OFFICERS

AND TO the officers of all correctional institutions

WHEREAS it appears that *(name of person who failed to attend the examination)*, of *(address of the said person)* may be in contempt of this court,

AND WHEREAS I am of the opinion that attendance of *(name of person who failed to attend the examination)* at the hearing of the application for a contempt order is necessary in the interest of justice and it appears that he/she is not likely to attend voluntarily,

YOU ARE ORDERED TO ARREST and bring *(name of person who failed to attend the examination)* before the court for the hearing of the application for a contempt order, and if the court is not then sitting or if he/she cannot be brought forthwith before the court, you are ordered to deliver him/her to a correctional institution or other secure facility, to be admitted and detained there until he/she can be brought before the court.

Date: ..... Signature of Judge: .....

*(Attach Last Page – G2)*

*(Rule 45.3(2))*

**FORM EX11: Application for Third Party Debt Order Form**

---

*(Attach General Heading – G1)*

**APPLICATION FOR THIRD PARTY DEBT ORDER**

UNDER an Order of this Court made on the day of , 20...., *(name of the judgment debtor)* was ordered to pay to *(name of judgment creditor)* the sum of *(insert the amount of the judgment debt)*

1. The *(identify judgment creditor)* makes application for *(name of third party)* to be ordered to pay —
  - (a) the amount of the judgment debt stated above, and
  - (b) the sum of *(insert fixed costs of this application)*, being the costs of this application.
2. The grounds of the application are: *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the facts upon which the judgment creditor relies in making the application)*
3. The following written evidence will be used at the hearing of the application: *(List here the written evidence to be relied on, and attach copies of the evidence to this Form)*
4. A draft of the order that the *(identify applicant)* seeks is attached.

Dated the        day of                                  20....

.....

Signature of *(identify judgment creditor)/(identify judgment creditor)*'s attorney

Date: ..... Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page –G2)*

*(Rule 45.4(2) and (3))*

**FORM EX12: Interim Third Party Debt Form**

*(Attach General Heading – G1)*

**INTERIM THIRD PARTY DEBT ORDER**

To: *(Insert name of third party)*

Of: *(Insert address of third party)*

UNDER an Order of this Court made on the day of , 20...., *(name of the judgment debtor)* was ordered to pay a sum of money to *(name of judgment creditor)*.

TAKE NOTE that *(name of judgment creditor)* claims that you owe a debt to *(name of judgment debtor)*, and has made application for you to pay to him/her instead — (a) the amount of that debt, or

(b) so much of that debt as is sufficient to satisfy the judgment debt and the costs of the application for this order.

A hearing to consider whether a final third party debt order would be made will be held on the day of , 20.... *(date to be at least 28 days after the date of this order)*

YOU ARE REQUIRED to attend the hearing and, until that hearing, not make any payment which reduces the amount you owe to *(name of judgment debtor)* to less than the amount of *(insert the combined amount of the judgment debt and the fixed costs of the application)*, which is the sum of —

- (a) the amount of money remaining due to *(name of judgment creditor)*, and
- (b) the costs of the application for this order.

If the amount you owe is less than the total amount above, then you are not to make any payment on that debt prior to the hearing.

*(Where the third party is a bank or credit union, insert the following)*

YOU ARE REQUIRED to search all accounts held with your institution by *(name of judgment debtor)* and disclose to the court and *(name of judgment creditor)* within 7 days of being served with this order, in respect of each account held by *(name of judgment debtor)*, the following information —

- (a) the number of the account;
- (b) whether the account is in credit; and
- (c) if the account is in credit —
  - (i) whether the balance of the account is sufficient to cover the amount specified in the order;
  - (ii) the amount of the balance at the date it was served with the order, if it is less than the amount specified in the order; and
  - (iii) whether the bank or credit union asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.

IF *(name of judgment debtor)* does not hold an account with your institution, or you are unable to comply with the order for any other reason *(for example, because you have more than one account holder whose details match the information contained in the order; and cannot identify which account the order applies to)*, you must inform the court and *(name of judgment creditor)* of that fact within 7 days of this order.

*(Where the third party is not a bank or credit union, insert the following)*

YOU ARE REQUIRED to notify the court and *(name of judgment creditor)* within 7 days of this order if



you —

- (a) do not owe any money to (name of the judgment debtor), or
- (b) owe less than the amount specified in the order.

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Date: ..... Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Identify judgment creditor)*'s Address for Service: .....

*(Attach Last Page – G2)*

(Rule 45.2(1))

**FORM EX13: Third Party Debt Order Form**

---

(Attach General Heading – G1)

**THIRD PARTY DEBT ORDER**

To: (Insert name of third party)

Of: (Insert address of third party)

UNDER an Order of this Court made on the day of , 20...., (name of the judgment debtor) was ordered to pay to (name of judgment creditor) the sum of (insert the amount of the judgment debt)

TAKE NOTE that the court has determined that you owe a debt to (name of judgment debtor), and (name of judgment creditor) has obtained this order for you to pay the sum below to him/her instead of to (name of judgment debtor)

YOU ARE REQUIRED TO PAY to (name of the judgment creditor) the sum of (insert the amount to be paid by the third party, whether the amount owed by the third party to the judgment debtor or the judgment debt, whichever is less) within 14 days after this order is served on you.

IF YOU FAIL TO OBEY THIS ORDER, THE COURT MAY MAKE AND ENFORCE AN ORDER AGAINST YOU for payment of the amount set out above and the costs of an application for such an order by (name of judgment creditor)

**Any payment made in response to this order should be recorded in the form of the Third Party Payment Notice below, which must be signed by (name of judgment creditor) and filed at the court.**

**IF YOU FAIL TO FILE SUCH A NOTICE FOLLOWING PAYMENT, YOU MAY BE LIABLE TO PAY AGAIN.**

Date: ..... Registry: .....

Address of Court Office: ..... Tel. No.:  
.....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant's Address for Service: .....

(Attach Last Page – G2)

**THIRD PARTY PAYMENT NOTICE**

*Court:* ..... *File no:* .....

*Office at:* .....

*Creditor:* .....

*Debtor:* .....

*Third Party:* .....

**TO BE COMPLETED BY THIRD PARTY FOR EACH PAYMENT**

*Date of payment:* .....

*Amount enclosed: \$* .....

*Signature of Creditor:* .....

*(Rule 47.10(2)(b))*

**FORM EX14: Stop Notice Form**

*(Attach General Heading – G1)*

---

**STOP NOTICE**

TO: The Public Treasury or *(name of company concerned)*

OF: *(address of Public Treasury or company)*

TAKE NOTICE THAT the *(identify applicant)*, having undertaken to be bound by any order this Court makes in respect of costs or damages caused by this Stop Notice, requires you to provide them with at least 8 days’ written notice of any intended transfer, disposition of or other dealing with the property or securities of the *(name of judgment debtor)*.

Date: ..... Registry: .....

Address of Court Office: ..... Tel. No.:  
.....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Judgment creditor)*’s Address for Service: .....

*(Attach Last Page – G2)*

*(Rules 55.6(4))*

**FORM HC1: Notice of Writ of Habeas Corpus Ad Subjiciendum Form**

---

*(Attach General Heading – G1)*

NOTICE OF WRIT OF HABEAS CORPUS AD SUBJICIENDUM

TO: The Superintendent of Prisons

TAKE NOTICE that you are required to produce to the Supreme court, before *(name of judge before whom the person is to be brought)*, on the day of , 20...., the body of *(name of person)*, by whatever name he/she is called, as stated in the Writ served with this Notice.

**AND TAKE NOTICE that if you fail to do so, the court may commit you to prison for your contempt in not obeying the order**

Date: .....

Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page – G2)*

*(Rule 55.10)*

**FORM HC2: Writ of Habeas Corpus Ad Subjiciendum Form**

---

*(Attach General Heading – G1)*

**WRIT OF HABEAS CORPUS AD SUBJICIENDUM**

TO: The Superintendent of Prisons

You are required to produce to the Supreme court, before *(name of judge before whom the person is to be brought)*, on the day of , 20....,the body of *(name of person)*, by

whatever name he/she is called, said to be detained in your custody, and be prepared to state the day and cause of his/her being taken and detained so that the Court may then and there examine whether such cause is illegal.

*Date:* .....

*Registry:* .....

*Address of Court Office:* .....

*Tel. No.:* .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page – G2)*

*(Rule 55.10)*

**FORM HC3: Writ of Habeas Corpus Ad Testificandum Form**

---

*(Attach General Heading – G1)*

**WRIT OF HABEAS CORPUS AD TESTIFICANDUM**

TO: The Superintendent of Prisons

You are required to produce to the Supreme court, before *(name of judge before whom the person is to be brought)*, the body of *(name of person)*, by whatever name he/she is called, said to be detained in your custody, to testify the truth and give evidence on our behalf in the matter of *(title of proceedings in which testimony of the person is required)*, on the d a y o f 20...., the day fixed for the hearing of this claim, and on each subsequent day until his/her attendance is no longer required.

*Date:* .....

*Registry:* .....

*Address of Court Office:* ..... *Tel. No.:*  
.....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Attach Last Page – G2)*

*(Rule 55.10)*

**FORM HC4: Writ of Habeas Corpus Ad Respondendum Form**

---

*(Attach General Heading – G1)*

**WRIT OF HABEAS CORPUS AD RESPONDENDUM**

TO: The Superintendent of Prisons

You are required to produce to the Supreme court, before *(name of judge before whom the person is to be brought)*, the body of *(name of person)*, by whatever name he/she is called, said to be detained in your custody, on the day of , 20...., then and there to answer the charge of *(state the charge)* to be then and there made against him/her, and on each subsequent day until he/she has answered the said charge, and to be dealt with according to the law.

Date: .....

Registry: .....

Address of Court Office:..... Tel. No.:  
.....

*Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.*

*(Attach Last Page – G2)*



*(Rule 54.3(2)(a))*

**FORM JRI: Application for Leave to Apply for Judicial Review Form**

---

*(Attach General Heading – G1)*

**APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

1. The *(identify applicant)* makes application for: *(State here the specific remedies that the claimant seeks, specifying the judgment, order, decision or other proceeding in respect of which relief is sought including any legal principle, statutory provision, or Rule to be relied upon)*
2. *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the grounds and reasons upon which the application is made)*
3. An affidavit verifying the facts relied upon for this application is attached.
4. A draft of the orders sought is to be filed with the application

Dated the                      day of                      20....

.....  
Signature of *(identify applicant)*/*(identify applicant)* s attorney

Date: ..... Registry: .....

*(Identify applicant)*'s Address for Service: .....

*(Attach Last Page – G2)*

*(Rule 54.3(5))*

**FORM JR2: Application for Leave to Apply for Judicial Review Form**

---

*(Attach General Heading – G1)*

**NOTICE OF INTENTION TO RENEW APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

The *(identify applicant)* intends to renew his application for leave to apply for judicial review, first applied for on the        day of        , 20....

Dated the        day of        20....

.....

Signature of *(identify applicant)*/*(identify applicant)*'s attorney

Date: .....

Registry: .....

*(Identify applicant)*'s Address for Service: .....

*(Attach Last Page – G2)*

*(Rule 59.3(1))*

**FORM ADM2: Admiralty Claim in Rem Form**

*(Attach General Heading (Admiralty)– G1)*

**ADMIRALTY CLAIM IN REM**

1. The Claimant claims: *(State here the specific remedies that the Claimant seeks in accordance with Rule 8.6 of the CPR)*

*(Where claim is for a specified sum of money, set it out as below)*

Amount claimed	\$.....
Court fees	\$.....
Legal practitioner’s fixed costs on issue	\$.....
Together with interest from [date] to [date]	\$.....
(Daily rate of interest thereafter = \$..... per day)	
<b>Total Claim</b>	<b>\$.....</b>

2. *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the basis upon which the claim is made, in accordance with Rules 8.6, 8.7 and 8.9 as applicable)*

*(Include here a statement of truth in accordance with Rule 3.8 of the CPR)*

.....

*Signature of Claimant/Claimant’s Attorney*

**NOTICE TO THE DEFENDANT(S)**

Being the owner(s) of *[and other persons interested in]* the *[ship named (insert name of ship)]* and/or *[cargo or other res]*

**IF YOU DO NOTHING JUDGMENT MAY BE ENTERED AGAINST YOU IN ACCORDANCE WITH THE CLAIM WITHOUT ANY FURTHER WARNING. IF THE RES DESCRIBED IN THIS CLAIM FORM IS THEN UNDER ARREST OF THE COURT IT MAY BE SOLD BY ORDER OF THE COURT.**

You —

(a) should complete the form of acknowledgment of service served on you with this Claim Form and deliver or send it to the court office (address below) so that they receive it within 14 days of service of this claim form on you, UNLESS

(b) complete the defence form served on you with this Claim Form and deliver or send it to the court office in the time required for the filing of the form of acknowledgement of service.

You should consider obtaining legal advice with regard to this claim, including to file the form of acknowledgment of service or the defence form as required. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time in accordance with Rule 8.13 of the CPR.

**NOTES FOR DEFENDANT**

You may:

**A. Defend the claim**

1. If so, you should file at the court office and serve on the claimant and any other party:
  - (a) a defence in accordance with Part 10 of the CPR, if an acknowledgment of service has been filed and served in accordance with Part 9 of the CPR, OR
  - (b) a defence in accordance with Part 10 of the CPR within the time limit under Rule 9.3, OR
  - (c) an affidavit in answer in accordance with Part 10 of the CPR if this Claim Form is served with an affidavit instead of a statement of claim.
2. Your defence or affidavit must be filed within 28 days after the service of this ClaimForm, or the service of the statement of claim if permission was given for the Claim Form to be served without a statement of claim, and it must set out briefly ALL the facts on which you will rely to dispute the claim made against you.
3. After you have filed your defence you will 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.
4. You must attend the case management conference.

**B. Admit the whole of the claim**

1. If so, you should do this in accordance with Rule 14.1 and in the form of acknowledgment of service, to be completed and filed as indicated above and served on the claimant and any other party.
2. If the claim includes a claim for a sum of money and you can pay the amount stated on the Claim Form, including fees, costs and interest, you should pay this to the claimant in the period allowed for the filing of the acknowledgment of service and no further steps can be taken against you. You must add interest at the daily rate shown from the date stated on the claim form.
3. If you cannot pay that sum in full you may make a request for time to pay in accordance with Rule 14.9 of the CPR and by completing and submitting the form for Application to Pay by Instalments with your acknowledgment of service.

**C. Admit part of the claim and defend the rest**

1. If so, you should —
  - (a) indicate how much of the claim you admit in accordance with Rule 14.1 and in the form of acknowledgment of service, to be completed and filed as indicated above and served on the claimant and any other party, AND
  - (b) complete and submit a defence or affidavit in answer as under section A above.
2. If the claim includes a claim for a sum of money and you can pay the amount that you admit, including fees, costs and interest, you should pay this to the claimant in the period allowed for the filing of the acknowledgment of service. You must add interest at the daily rate shown from the date stated on the claim form.
3. If you cannot pay that sum in full you may make a request for time to pay in accordance with Rule 14.9 of the CPR and by completing and submitting the form for Application to Pay by Instalments with your acknowledgment of service.

**D. Make a Counterclaim**

1. If so, you should include the particulars of this after your defence in the same form as in section A, in which case the title of the form will be ‘Defence and Counterclaim’.

Date: ..... Registry: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant's Address for Service: .....

*(Attach Last Page – G2)*

(Rule 59.3(1))

**FORM ADM3:Admiralty Limitation Claim Form**

*(Attach General Heading (Admiralty) – G1)*

**ADMIRALTY LIMITATION CLAIM**

1. *The Claimant claims: (State here the specific remedies that the Claimant seeks in accordance with Rule 8.6 of the CPR)*
2. *(Set out here, as concisely as possible and in separate, consecutively numbered paragraphs, the basis upon which the claim is made, in accordance with Rules 8.6, 8.7 and 8.9 as applicable)*  
*(Include here a statement of truth in accordance with Rule 3.8 of the CPR)*

Dated the                      day of                      20.....

.....

Signature of Claimant/Claimant's attorney

**NOTICE TO THE DEFENDANT(S)**

**IF YOU DO NOTHING THE CLAIMANT MAY PROCEED WITH THE CLAIM WITHOUT FURTHER NOTICE TO YOU.**

You —

- (a) should complete the form of acknowledgment of service served on you with this Claim Form and deliver or send it to the court office (address below) so that they receive it within 14 days of service of this claim form on you, UNLESS
- (b) complete the defence form served on you with this Claim Form and deliver or send it to the court office in the time required for the filing of the form of acknowledgement of service.

You should consider obtaining legal advice with regard to this claim, including to file the form of acknowledgment of service or the defence form as required. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time in accordance with Rule 8.13 of the CPR.

**NOTES FOR DEFENDANT**

You may:

- A Admit the claim
  1. If so, you should do this in accordance with Rule 14.1 and in the form of acknowledgment of service, to be completed and filed as indicated above and served on the claimant and any other party.
- B. Dispute the claim
  1. If so, you should file at the court office and serve on the claimant and any other party:

- (a) a defence in accordance with Part 10 of the CPR, if an acknowledgment of service has been filed and served in accordance with Part 9 of the CPR, OR
  - (b) a defence in accordance with Part 10 of the CPR within the time limit under rule 9.3, OR
  - (c) an affidavit in answer in accordance with Part 10 of the CPR if this Claim Form is served with an affidavit instead of a statement of claim.
2. Your defence or affidavit must be filed within 28 days after the service of this Claim Form, or the service of the statement of claim if permission was given for the Claim Form to be served without a statement of claim, and it must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Date: ..... Registry: .....

Address of Court Office: ..... Tel.

No.: .....

Claimant's Address for Service: .....

*(Attach Last Page – G2)*

*(Rule 59.5(1))*

**FORM ADM4: Warrant of Arrest Form**

*(Attach General Heading (Admiralty) – G1)*

**WARRANT OF ARREST**

TO: The Admiralty Marshal

YOU ARE ORDERED TO ARREST

*(Where it is a ship, USE) the ship named (name of ship) of the port of (name of port),*

*(Where applicable, ADD) [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,]*

*(Where it is not a ship, USE) [the cargo now or lately laden in the ship named (name of ship) of the port of (name of port) together with the freight due for the transportation of it,] OR [the freight due for the transportation of the cargo now or lately laden in the ship named (name of ship) of the port of (name of port).]*

*(In any case, ADD) and to keep the same under safe arrest until you receive further orders from the Court.*

The Claimant claims: *(Set out the claim here as in the Claim Form)*

Dated the      day of                      20....

.....

Signature of Claimant/Claimant's attorney

Date: ..... Registry: .....

[Marshal's endorsement as to service]

Address of Court Office: ..... Tel.  
No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m.  
and 4:30 p.m. except on public holidays.

Claimant's Address for Service: .....

*(Attach Last Page – G2)*





(Rule 59.6(1))

**FORM ADM6: Praecipe to Prevent Arrest Form**

*(Attach General Heading (Admiralty) – G1)*

---

**REQUEST TO PREVENT ARREST**

We [the attorney(s)-at-law for] the *(identify person(s))*, being the owners of

*(Where it is a ship, USE)* the ship named *(name of ship)* of the port of *(name of port)*,

*(Where applicable, ADD)* [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,]

*(Where it is not a ship, USE)* [the cargo now or lately laden in the ship named *(name of ship)* of the port of *(name of port)* together with the freight due for the transportation of it,] OR [the freight due for the transportation of the cargo now or lately laden in the ship named *(name of ship)* of the port of *(name of port)*.]

request that a caveat be entered against the issue of a/the warrant of arrest against the property described above.

We undertake to —

- (a) enter an appearance in any action against the property described above; and
- (b) give bail in such action or pay into court the sum of *(insert sum of money to be paid)*.

Dated the                    day of                    20....

.....

Signature of *(identify person)/(identify person)*'s Attorney

Address of Court Office: ..... Tel.  
No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Identify person)*'s Address for Service: .....

*(Attach Last Page – G2)*

*(Rule 59.13(1))*

**FORM ADM7: Instrument of Release Form**

*(Attach General Heading (Admiralty) – G1)*

---

**INSTRUMENT OF RELEASE**

TO: The Admiralty Marshal

YOU ARE ORDERED TO RELEASE

*(Where it is a ship, USE)* the ship named *(name of ship)* of the port of *(name of port)*,

*(Where applicable, ADD)* [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,]

*(Where it is not a ship, USE)* [the cargo now or lately laden in the ship named *(name of ship)* of the port of *(name of port)* together with the freight due for the transportation of it,] OR [the freight due for the transportation of the cargo now or lately laden in the ship named *(name of ship)* of the port of *(name of port)*,]

*(In any case, ADD)* and to return possession to *(identify person(s))*.

Dated the      day                      of      20....

.....  
Signature of *(identify person)/(identify person)* s Attorney

Date: ..... Seal of Registry: .....

[Marshal's endorsement as to service]

Address of Court Office: ..... Tel.  
No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Identify person)*'s Address for Service: .....

*(Attach Last Page – G2)*

(Rule 59.13(5))

**FORM ADM8: Praecipe to Request Release Form**

---

*(Attach General Heading (Admiralty) – G1)*

**REQUEST FOR RELEASE**

We [the attorney(s)-at-law for] the *(identify person(s))*, being the owners of *(give details of property as set out in Warrant of Arrest)*, arrested pursuant to the Warrant of Arrest dated the

day of , 20.....,

request that the said property be released.

Dated the day of 20....

.....  
Signature of *(identify person)/(identify person)* s Attorney

Address of Court Office: ..... Tel.  
No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Identify person)* s Address for Service: .....

*(Attach Last Page – G2)*

*(Rule 59.14(1))*

**FORM ADM9: Praecipe as Caveat Against Release Form**

---

*(Attach General Heading (Admiralty) – G1)*

**CAVEAT AGAINST RELEASE**

We [the attorney(s)-at-law for] the *(identify person(s))*, request the entry of a caveat against the release of *(give details of property as set out in Warrant of Arrest)*, arrested pursuant to the Warrant of Arrest dated the day of , 20...., or against the money representing the proceeds of the sale of that property.

Dated the                      day of    20....

.....

Signature of *(identify person)/(identify person)*'s Attorney

Address of Court Office: ..... Tel.  
No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Identify person)*'s Address for Service: .....

*(Attach Last Page – G2)*

*(Rule 59.15(1))*

**FORM ADM10: Praecipe to Withdraw Caveat Form**

*(Attach General Heading (Admiralty) – G1)*

---

**REQUEST TO WITHDRAW CAVEAT**

We [the attorney(s)-at-law for] *(identify party/parties or person(s))* request the withdrawal of the caveat against the release of *(give details of property as set out in Warrant of Arrest)*, entered on the day of , 20....

Dated the                                    day of                                    20....

.....

*Signature of (identify person)/(identify person) § Attorney*

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Identify person) § Address for Service: .....*

*(Attach Last Page – G2)*

*(Rule 59.16(1))*

**FORM ADM11: Bail Bond Form**

*(Attach General Heading (Admiralty) – G1)*

---

**BAIL BOND**

1. We, *(identify person(s))*, of *(give address(es) of the person(s))*, hereby submit to the jurisdiction of the court.
2. We consent that if the *(identify party/parties)* does/do not satisfy any judgment in this proceeding, then execution may issue against me/us for a sum not exceeding \$.....
3. We confirm that we are able to pay the amount specified above, as evidenced by the affidavit accompanying this bail bond.

Dated the                      day of    20....

.....

Signature of *(identify person)/(identify person) s Attorney*

Date: ..... Signature of Notary Public or Registrar: .....

*(If applicable, insert)*

Address of Notary Public: .....

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

*(Identify person) s Address for Service: .....*

*(Attach Last Page – G2)*

(Rule 59.23(1))

**FORM ADM12: Praecipe for Appraisalment and Sale Form**

---

*(Attach General Heading (Admiralty) – G1)*

**REQUEST FOR APPRAISEMENT AND SALE**

We [*the attorney(s)-at-law for*] the Claimant(s) request the appraisalment and sale of (*Where it is a ship, USE*) the ship named (*name of ship*) of the port of (*name of port*).

(*Where applicable, ADD*) [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.]

(*Where it is not a ship, USE*) [the cargo now or lately laden in the ship named (*name of ship*) of the port of (*name of port*) together with the freight due for the transportation of it.] OR [the freight due for the transportation of the cargo now or lately laden in the ship named (*name of ship*) of the port of (*name of port*).]

Dated the                      day of                      20.....

.....  
Signature of Claimant/Claimant's Attorney

Address of Court Office: .....

Tel. No.: .....

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant's Address for Service: .....

*(Attach Last Page – G2)*





**SECOND SCHEDULE**

(rule 72.4)

**Fixed Costs**

**Part 1**

This part of this Schedule sets out the fixed costs applicable to a claim for a specified sum of money.

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.

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**

This Table shows the amounts to be entered on an application or a provisional order for the attachment of debts in respect of the charges of an attorney 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.

In addition to the fixed costs, the appropriate court fee is to be allowed together with the sum of \$100 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.	\$1,500.00
(b)	claim exceeding \$15,000 but not exceeding \$50,000	\$3,000.00
(c)	claim exceeding \$50,000 but not exceeding \$100,000	\$5,000.00
(d)	claim exceeding \$100,000 but not exceeding \$500,000	\$7,500.00
(e)	claim exceeding \$500,000	\$10,000.00

**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.

Column 1	Column 2	Column 3
(a)	Basic Costs	\$1,000.00
(b)	Where there is more than one defendant, in	\$200.00

	respect of each additional defendant served, against whom judgment is entered	
(c)	Where an order is made under rule 5.14 (specified method of service), for each defendant served	\$1,500.00
(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)	\$1,000.00
(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	\$1,000.00
(f)	Where judgment is entered on an admission and the time and rate of payment are not agreed under rule 14.10	\$1,500.00

**Part 2**  
**Miscellaneous enforcement proceedings**  
**Table 3**

This table shows the amount to be allowed in respect of the charges of an attorney 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	400
(b)	For each attendance at a hearing of an —	0
	(i) oral examination;	
	(ii) application to suspend a writ of execution; or	
	(iii) application for time to pay where the debt is admitted	
(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 45.10 where the amount recovered	One half of the amount recovered \$800.00
	(i) does not exceed 1000	
	(ii) exceeds 1,000	
(d)	For the costs of the judgment	1000

	creditor where allowed in an application for a charging order	
(e)	In addition, for the personal service of any application requiring such service	100

**THIRD SCHEDULE**

(rule 72.5 )

**PART A**

Scale of Prescribed Costs

<i>Column 1</i>	<i>Column 2 Value of Claim</i>	<i>Column 3 Percentage</i>
(a)	Not exceeding 20000	30%
(b)	Exceeding 20000 but not exceeding 40000	25%
(c)	Exceeding 40000 but not exceeding 80000	20%
(d)	Exceeding 80000 but not exceeding 200000	15%
(e)	Exceeding 200000 but not exceeding 500000	10%
(f)	Exceeding 500000 but not exceeding 1 million	5%
(g)	Exceeding 1 million but not exceeding 2 million	3%
(h)	Exceeding 2 million but not exceeding 5 million	1 1/2 %
(i)	Exceeding 5 million but not exceeding 10 million	1/2 of 1 %
(j)	Exceeding 10 million	1/4 of 1 %

Note: The costs for each stage of the scale are cumulative.

**PART B**

Prescribed Costs

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 a claim concludes prior to trial.

<i>Column 1</i>	<i>Column 2 Stage</i>	<i>Column 3 Percentage</i>
(a)	Up to and including service of defence	45%
(b)	After defence and up to and including the case	60%

	management conference	
(c)	From case management conference and up to and including first pre-trial review	80%
(d)	To trial	100%
(e)	Up to default judgment and including assessment of damages	60%

**Made this                      day of    , 2022**

**RULES COMMITTEE**