

## PART 1

### OVERRIDING OBJECTIVE OF THESE RULES

#### Contents of this Part

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

**The overriding objective.**

- 1.1 (1) The overriding objective of these Rules is to enable the court to deal with cases justly.
- (2) Dealing justly with the case includes –
- (a) ensuring, so far as is practicable, 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 the case is dealt with expeditiously; and
  - (e) allotting to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

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

- 1.2 The court must seek to give effect to the overriding objective when it –
- (a) exercises any discretion given to it by the Rules; or
  - (b) interprets any rule.

**Duty of parties.**

- 1.3 It is the duty of the parties to help the court to further the overriding objective.<sup>1</sup>

---

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

## PART 2

### APPLICATION AND INTERPRETATION OF THESE RULES

#### Contents of this Part

Citation and commencement.....	Rule 2.1
Application of these Rules.....	Rule 2.2
Application of Interpretation Act.....	Rule 2.3
Definitions.....	Rule 2.4
Who may exercise the powers of the court.....	Rule 2.5
Court staff.....	Rule 2.6
Court’s discretion as to where, when and how it deals with cases.....	Rule 2.7

- |                                    |        |     |   |
|------------------------------------|--------|-----|---|
| <b>Citation and commencement.</b>  | 2.1    | (1) | These Rules may be cited as the Supreme Court (Civil Procedure) Rules, 2005.  |
|                                    |        | (2) | They come into force, subject to the transitional provisions contained in Part 72, on the 4 <sup>th</sup> April, 2005.  |
|                                    |        | (3) | A reference to a Rule as CPR xx or Rule xx is a reference to a rule so numbered in these Rules.   |
| <b>Application of these Rules.</b> | 2.2    | (1) | Subject to paragraph (3), these Rules apply to all civil proceedings in the civil division of the Supreme Court of Judicature of Belize.  |
|                                    |        | (2) | “ <b>Civil proceedings</b> ” include:<br><br>(a) applications for judicial review; and<br><br>(b) applications under the Belize Constitution.   |
|                                    | CAP. 4 | (3) | These Rules do not apply to proceedings of the following kinds –<br><br>(a) insolvency (including winding up of companies);<br><br>(b) non-contentious probate proceedings;<br><br>(c) family proceedings;<br><br>(d) any other proceedings in the Supreme Court instituted under any enactment, in so far as Rules made under that enactment regulate those proceedings. |

**Application of Interpretation Act. CAP. 1**      2.3      The Interpretation Act applies to the interpretation of these Rules in those proceedings.

**Definitions.**      2.4      In these Rules –  
  
“**ADR procedure**” means any procedure for alternative dispute resolution including, in particular, mediation;

“**ancillary claim,**” “**ancillary claimant,**” “**ancillary defendant**” and “**second ancillary defendant**” have the meanings given in Rule 18.1;

“**application**” and “**applicant**” have the meanings given in Rule 11.2;

“**body corporate**” means a company or other body corporate wherever or however incorporated, and includes:

- (a) a limited liability company; or
- (b) a limited liability partnership; or
- (c) a protected cell company; or
- (d) an internaional business company,

unless a Rule otherwise provides;

“**certificate of value**” has the meaning given in Rule 8.8;

“**Chief Justice**” includes, in relation to any period when the Chief Justice is not present, or any period in which the office of Chief Justice is vacant, the person for the time being performing the functions of the Chief Justice;

“**claim**” and “**claim form**” are to be construed in accordance with Part 8;

“**claim for a specified sum of money**” means –

- (a) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract ; and
- (b) for the purposes of Parts 12 (default judgment) and 14 (judgment on admissions), a claim for –

- (i) the cost of repairs executed to a vehicle;
- (ii) the cost of repairs executed to any property in, on or abutting, a road; or
- (iii) any other actual financial loss other than loss of wages or other income,

claimed as a result of damage, which it 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, and "personal injuries" includes any disease and any impairment of a person’s physical or mental condition;

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

**CAP. 4** **“the Constitution”** means the Belize Constitution ;

**CAP. 4** **“court”** means the Supreme Court of Judicature established under section 94 of the Constitution;

**“Court Administrator”** includes the Registrar and the person in charge of the Court Office;

**“court office”** refers to –

- (a) the Registry of the Supreme Court , being the place where documents are filed;
- (b) members of the court staff who carry out work of a formal or administrative nature under Rule 2.6(1);

**“the Crown”** for the purpose of these Rules, means the Crown in right of Belize<sup>2</sup>;

**“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;

---

<sup>2</sup> See section 131 (1) of the Belize Constitution

“**external company**” means any incorporated body of persons that is formed under the laws of a country other than Belize;

“**FAX**” means the making of a facsimile copy of a document by the transmission of electronic signals;

“**filing**” is to be construed in accordance with Rule 3.7;

Form 2

“**fixed date claim form**” is a claim form in Form 2 upon which there is stated a date, time and place for the first hearing of the claim;

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

“**judge**” includes the Chief Justice and, in appropriate cases, a Judge of the Court of Appeal, and the Registrar, but does not include the Court Administrator except where required by the context;

“**judgment creditor**” and “**judgment debtor**” have the meanings given them in Rule 43.1;

“**jurisdiction**” means the jurisdiction of the Court as extending throughout Belize;

“**legal practitioner**” means an Attorney-at-Law and includes a Senior Counsel,

CAP. 270

“**limited company**” means a body corporate that is incorporated or continued under the International Business Companies Act;

CAP. 250

“**limited liability company**” means a body corporate that is incorporated under the Companies Act;

“**Minister with responsibility for Foreign Affairs**” means the Minister of Government for the time being with responsibility for Foreign Affairs;

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

“**month**” means a calendar month;

“**next friend**” has the meaning given by Part 23;

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

“**the overriding objective**” means the objective set out in Rule 1.1;

“**party**” includes both the party to the claim and any legal practitioner on record for that party unless any rule specifies otherwise or it is clear from the context that it relates to the lay client or to the legal practitioner only;

CAP 39.  
CAP. 122

“**patient**” includes a person of unsound mind within the meaning of the Medical Service and Institutions Act and the Unsoundness of Mind Act who is incapable of managing his own affairs;

“**period for filing a defence**” has the meaning given by Rule 10.3;

“**procedural appeal**” refers to an appeal referred to in Rule 61;

“**statement of case**” means –

- (a) a claim form, statement of claim, defence, counterclaim, ancillary 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 under any relevant enactment;

“**Supreme Court of Judicature**” or “**Supreme Court**” means the court –

CAP. 4  
CAP. 91

- (a) established under section 94 of the Constitution; and
- (b) referred to in the Supreme Court of Judicature Act;

Who may  
exercise the  
powers of the  
court.

2.5

- (1) Except where any enactment, rule or practice direction provides otherwise the functions of the Supreme Court may be exercised in accordance with these Rules and any direction made by the Chief Justice, by a single judge of the court assigned or not assigned to the civil division of the court or the Registrar sitting as a Registrar or as the Master of the Court.
- (2) An appeal from a magistrates court may be heard by a single judge of the court to whom the appeal is assigned by the Chief Justice or by the Registrar.
- (3) The Chief Justice may by direction allocate the work of the court between judges, and the Registrar and Deputy Registrars of the Court.
- (4) Where -
  - (a) a trial has been commenced but not completed by a judge; or

- (b) any enactment or rule requires an application to be made to, or jurisdiction exercised by, the judge by whom a claim was tried, then if –
  - (i) the judge dies or is incapacitated;
  - (ii) the judge ceases to be a judge of the Supreme Court; or
  - (iii) for any other reason it is impossible or inconvenient for the judge to act in the claim,

the Chief Justice may with the agreement of the parties nominate some other judge to retry or complete the trial of the claim or to hear any application.

**Court staff.**

- 2.6 (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) Where a step may be taken by a member of the court staff –
  - (a) that person may consult a judge, the Registrar, Deputy Registrar or Assistant Registrar before taking the step; and
  - (b) that step may be taken by a judge, the Registrar, Deputy Registrar or Assistant Registrar instead of a member of the court staff.

**Court's discretion as to where, when and how it deals with cases.  
CAP 91.**

- 2.7 (1) Subject to the Supreme Court of Judicature Act and any other Act, the court may deal with a case at any place and time that it considers appropriate.
- (2) In considering what place or time may be appropriate the court must consider the convenience of such place to the parties and their legal practitioners and to any witness.
- (3) The court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video-conference or any other form of electronic communication.
- (4) The court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communications or storage or retrieval of information, or any other technology it considers appropriate.

**PART 3**

**TIME AND DOCUMENTS**

**Contents of this Part**

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

**Time - court to state calendar date.** 3.1 When making any judgment, order or direction which imposes a time limit for doing any act the court must, wherever practicable, state

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

by which such act must be done.

**Time – computation.** 3.2 (1) This Rule shows how to calculate any period of time for doing any act which is fixed –

- (a) by these Rules;
- (b) by any practice direction; or
- (c) by any judgment or order of the court.

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

- (3) In this Rule “**clear days**” means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

**Examples**

- (a) Document served by post deemed to be served fourteen days after posting: Document posted on 1st September, deemed served on 16th September.
- (b) Document must be filed at least 3 days before the hearing - Application is to be heard on Friday 20 October: The last date for filing the document is Monday 16 October.
- (4) Where the specified period –
- (a) is 7 days or less; and
- (b) includes
- (i) a Saturday or Sunday; or
- (ii) any other day on which the court office is closed;
- that day does not count.

**Example**

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

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

**Vacations.** 3.3 There are three vacations in each year, that is to say-

- (a) the long vacation which begins on 1st August and ends on 15<sup>th</sup> September;
- (b) the Christmas vacation which begins on the 23rd December and ends on the 10<sup>th</sup> January; and
- (c) the Easter vacation which begins on the Thursday before and ends on the Saturday after Easter Sunday,

such dates are inclusive.

**Hearings in vacations.** 3.4 (1) During vacations, the Supreme Court may sit to hear and determine such trials or applications as the Chief Justice may direct.

(2) A party may apply to the Supreme Court for any trial or application to be heard in vacation.

(3) Any such application may be determined by a single judge of the Supreme Court assigned to the case by the Chief Justice.

**Time – vacations.** 3.5 (1) During the long vacation, time prescribed by these Rules for serving any statement of case other than the statement of claim does not run.

(2) However paragraph (1) does not override any order of the court which specifies a date for service of a statement of case.

**Documents.** 3.6 (1) So far as is practicable, every document prepared for use in the Supreme Court must be on “letter size” paper; approximately 11 inches (28cm) long by 8.5 inches (21.5cm) wide. Margins of 1 inch (2.5 cm) must be left at the top and bottom, and of 1.5 inches (3.5 cm) at each side.

(2) The Chief Justice may by practice direction –

(a) require any document filed or to be used at court to be in such format as he may prescribe to facilitate the 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 –

(i) the full title of the proceedings; and

(ii) the title of the document;

(b) state the -

- (i) name;
- (ii) business address (if any);
- (iii) reference (if any);
- (iv) telephone number; and
- (v) FAX number (if any)

of the person or persons filing it;

(c) contain the date of its filing;

(d) (except in the case of an affidavit) be signed by the person filing it; and

(e) state the name of the party on whose behalf it is filed.

(4) Where a document is signed, the full name of the signatory must be set out legibly below the signature.

**Filing of documents.**

3.7 (1) A document may be filed by –

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

to the court office where the claim is proceeding or intended to proceed.

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

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

- (a) the fee is paid; or
- (b) an undertaking to pay the fee acceptable to the Registrar is received.

**Filing and service by FAX.**

3.8 In addition to any conditions contained in a practice direction, any document

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

by FAX, must include a cover page stating –

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

**Sealing of documents issued by the court.**

- 3.9 (1) The court must seal the following documents on issue –
  - (a) the claim form; and
  - (b) all judgments, orders 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 means.
- (3) All judgments and orders and directions of the court must also be signed by the Registrar.
- (4) A document purporting to bear the court's seal shall be admissible in evidence without further proof.

**Forms Appendix.**

- 3.10 (1) The forms in the Appendix to these Rules and, where appropriate, practice direction 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) However, a form must not be varied so as to leave out any information or guidance which the form in the Appendix or practice direction gives to the intended recipient of the form.

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

(5) A form marked with the word 'Seal' must bear the seal of the Supreme Court.

**Statements of case – address for service.**

3.11 (1) Every statement of case must contain an address within Belize at which the party filing the statement of case will accept service of documents.

(2) That address for service must also state –

(a) (if given by a legal practitioner), the name or reference of the person who is dealing with the matter; and

(b) the telephone number and (if applicable) the FAX of the legal practitioner filing the document or of the party if in person.

(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 documents is regarded as validly served.

**Statements of case - certificate of truth.**

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

(2) The certificate of truth should be signed by the lay party.

(3) If it is impracticable for the lay party to sign the certificate required by paragraph (1) it may be given by that person's legal practitioner.

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

(a) the reasons why it is impractical for the lay party to give the certificate; and

(b) that the certificate is given on the party's instructions.

(5) Where a statement of case is changed under Part 20 the amended statement of case must be verified by a certificate of truth.<sup>3</sup>

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

(7) A certificate of truth by a lay party must be in the following form –

---

3. Statement of Case is defined in Rule 2.4 of these Rules.

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

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

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

- (a) the [claimant or as the case may be] believes that the facts stated in this [name document] are true; and
- (b) this certificate is given on the [claimant's or as the case may be] instructions.

The [claimant or as the case may be] cannot give the certificate because [state reason]"

**Failure to give certificate of truth.**

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

## PART 4

### PRACTICE DIRECTIONS AND GUIDES

#### Contents of this Part

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

**Who may issue practice directions.**

- 4.1 Practice directions may be issued only by the Chief Justice.

**Scope of practice directions.**

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

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

**Publication of practice directions.**

- 4.3 Practice directions and guides must forthwith be published in the *Gazette*.

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

- 4.4 A practice direction or guide takes effect from the date specified in the direction or, if no date is specified, from the date of its publication in the *Gazette*.

**Compliance with practice directions.**

- 4.5 (1) A party must comply with any relevant practice directions unless there are good reasons for not doing so.
- (2) The court may make an order under Part 26 (Case Management – The Court’s Powers) or Part 63 (Costs - General) against a party who fails to comply with a practice direction.

**PART 5**

**SERVICE OF CLAIM FORM WITHIN JURISDICTION**

**Contents of this Part**

Service of claim form, normal method.....	Rule 5.1
Statement of claim to be served with claim form.....	Rule 5.2
Method of personal service.....	Rule 5.3
Permitted place of service.....	Rule 5.4
Proof of personal service.....	Rule 5.5
Service on legal practitioner.....	Rule 5.6
Service on limited company or limited liability company.....	Rule 5.7
Service on firm or partnership.....	Rule 5.8
Service on body corporate.....	Rule 5.9
Service on minors and patients.....	Rule 5.10
Proof of postal service.....	Rule 5.11
Proof of service by FAX.....	Rule 5.12
Alternative methods of service.....	Rule 5.13
Power of court to make order for service by specified method.....	Rule 5.14
Proof of service by specified method.....	Rule 5.15
Service of claim form by contractually agreed method.....	Rule 5.16

Service of claim form on agent of principal who is out of jurisdiction Rule 5.17  
 Service of claim form for possession of vacant land..... Rule 5.18  
 Deemed date of service..... Rule 5.19

**Service of claim form, normal method.**

- 5.1 (1) The general rule is that a claim form must be served personally on each defendant.<sup>4</sup>
- (2) The Chief Justice may by practice direction authorise the use of electronic means of communication (including FAX and e-mail) for service of a claim form.

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

- 5.2 (1) The general rule is that the claimant's statement of claim must be served with the claim form.
- (2) However the claim form may be served without the statement of claim in accordance with Rule 8.2.
- (3) In this Part, reference to service of the claim form requires that –
- (a) the statement of claim; or
  - (b) where these Rules so require, an affidavit or other document;
  - (c) a copy of any order made under Rule 5.4; and
  - (d) a copy of any order or application made under Rule 8.2,
- must be served with the claim form unless the statement of claim is contained in the claim form.

**Method of personal service.**

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

**Permitted place of service.**

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

**Proof of personal service.**

- 5.5 (1) Personal service of the claim form is proved by an affidavit sworn by the server stating –
- (a) the date and time of service;

---

<sup>4</sup> Part 6 deals with service of other documents

- (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) Where 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) Where 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.

**Service on legal practitioner.**

5.6 Where a legal practitioner -

- (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 or she is so authorised;
- the claim form must be served on that legal practitioner.

**Service on limited company or limited liability company.**

5.7 Service on a limited company or a limited liability company may be effected –

- (a) by sending the claim form by telex, FAX or prepaid post or cable addressed to the registered office of the company;
- (b) by leaving the claim form at the registered office of the company;
- (c) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company;

- (d) by serving the claim form personally on an officer or manager of the company at any place of business of the company;
- (e) by serving the claim form personally on the registered agent of the company; or
- (f) in any other way allowed by any enactment.

**Service on firm or partnership.**

- 5.8 (1) Service on a firm or partnership may be effected –
- (a) by serving the claim form personally on any partner of the firm;
  - (b) by serving the claim form personally on a manager of the firm at any place of business of the firm or partnership; or
  - (c) in any other way allowed by any enactment.
- (2) Where the claimant knows that a partnership has been dissolved when the claim is issued, the claim form must be served personally on every person within the jurisdiction whom the claimant seeks to make liable.

**Service on body corporate.**

- 5.9 (1) Service on a body corporate (other than a limited company or limited liability company) may be effected –<sup>5</sup>
- (a) by sending the claim form by prepaid post to the principal officer 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 mayor, chairman or president of the body, or the town administrator, chief executive officer, clerk, secretary, treasurer or other similar officer of the body.

**Service on minors and patients.**

- 5.10 (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.<sup>6</sup>
- (2) A claim form which would otherwise be served on a minor who is not also a patient must be served on –

<sup>5</sup> Rule 59.2 deals with service on the Crown.

<sup>6</sup> Part 23 deals generally with parties who are minors or patients.

- (a) one of the minor's parents or guardians; or
  - (b) if there is no parent or guardian, on the person with whom the minor resides or in whose care the minor is.
- (3) If a person is authorised under any relevant enactment relating to mental health to conduct the proceedings in the name of the patient or on the patient's behalf, a claim form must be served on that person.
  - (4) If there is no person so authorised, a claim form must be served on the person with whom the patient resides or in whose care the patient is.
  - (5) The court may make an order permitting the claim form to be served on the minor or patient, or on some person other than the person specified in paragraphs (2) to (4).
  - (6) The court may order that, although paragraphs (2) to (5) 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.

**Proof of postal service.**

- 5.11 (1) Service by post is proved by an affidavit of service by the person responsible for posting the claim form to the person to be served.
- (2) The affidavit must exhibit a copy of the claim form and state –
  - (a) the date and time of posting: and
  - (b) the address to which it was sent.

**Proof of service by FAX.**

- 5.12 (1) Service by FAX is proved by an affidavit of service by the person responsible for transmitting the claim form on the person to be served.
- (2) The affidavit must exhibit –
  - (a) a copy of the document served;
  - (b) a copy of any cover sheet to that document; and
  - (c) a copy of the transmission record,
 and must state –
  - (i) the date and time of transmission; and

(ii) the FAX number to which it was sent.

**Alternative methods of service.**

- 5.13 (1) Instead of personal service a party may choose an alternative method of service.
- (2) Where a party –
- (a) chooses an alternative method of service; and
  - (b) the court is asked to take any step on the basis that the claim form has been served;
- the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.
- (3) An affidavit under paragraph (2) must –
- (a) give details of the method of service used;
  - (b) 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 or she would have been able to do so;
  - (c) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents; and
  - (d) exhibit a copy of the documents served.
- (4) The court office must immediately refer any affidavit filed under paragraph (2) to a judge, or to the 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 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 7 days notice to the claimant.

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

- 5.14 (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) specifying the method of service proposed; and
  - (b) 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.

**Proof of service by specified method.**

5.15 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.

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

- 5.16
- (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) Where the claim form is served within the jurisdiction in accordance with the contract, it is to be treated as having been served on the defendant.
  - (4) Where the claim form is served out of the jurisdiction in accordance with the contract, it is not to be treated as having been served on the defendant unless service out of the jurisdiction is permitted under Part 7.

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

- 5.17
- (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) the defendant cannot be served within the jurisdiction;
    - (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and
    - (c) at the time of the application –
      - (i) the agent's authority had not been terminated; or
      - (ii) the agent is still in business relations with the defendant.
  - (3) An application may be made without notice but must be supported by evidence on affidavit.

- (4) An order under this Rule must state the periods within which the defendant must file –
  - (a) an acknowledgment 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 order;
  - (b) the claim form; and
  - (c) the statement of claim;

and at the same time send to the defendant at his address out of the jurisdiction a copy of each of the above-cited documents.

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

- 5.18 (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 once in a specified newspaper of general circulation in the district in Belize 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 –
    - (i) there is no person in possession of the land; and
    - (ii) that there is no other method of serving the defendant.
- (4) This Rule is subject to any enactment making provisions to the contrary.

**Deemed date of service.**

- 5.19 (1) A claim form that has been served within the jurisdiction by pre-paid post 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 legal practitioner 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 legal practitioner certifies that he accepts service.
- (3) Where an acknowledgment of service is filed, whether or not the claim form has been duly served, the claimant may treat –
  - (a) the date of filing the acknowledgment of service; or
  - (b) (if earlier) the date shown on the acknowledgment 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**

**Contents of this Part**

Who is to serve documents other than claim form.....	Rule 6.1
Method of service .....	Rule 6.2
Address for serving such documents.....	Rule 6.3
Address for serving documents where no address for service is given.....	Rule 6.4
Service of documents on person who is not a party.....	Rule 6.5
Deemed date of service.....	Rule 6.6
Proof of service.....	Rule 6.7
Power of court to dispense with service.....	Rule 6.8
Service of Notices etc., on Attorney General.....	Rule 6.9

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

- 6.1 (1) Subject to paragraph (2), any judgment or order which requires service must be served by the court, unless –
  - (a) a Rule provides that a party must serve the document in question; or
  - (b) the court orders otherwise.

- (2) The following orders must be served by the party obtaining the order –
  - (a) an injunction;
  - (b) any order specified in Rule 17.1 (c),(d),(k) or (1);
  - (c) a freezing order under Rule 17. 1 (f);
  - (d) an order under Rule 17. 1 (g); and
  - (e) a search order under Rule 17. 1 (h).
- (3) Any other document must be served by a party, unless –
  - (a) a Rule otherwise provides; or
  - (b) the court orders otherwise.

**Method of service.**

- 6.2 Where these Rules require a document other than a claim form to be served on any person it may be served by any of the following methods –
- (a) any means of service in accordance with Part 5;
  - (b) leaving it at or sending it by prepaid post to any address for service in accordance with Rule 6.3(1);
  - (c) (where Rule 6.3(2) applies), by FAX; or
  - (d) other means of electronic communication if this is permitted by a relevant practice direction;
- unless a Rule otherwise provides or the court orders otherwise.

**Address for serving such documents.**

- 6.3 (1) Documents must be delivered or posted to a party at any address for service within the jurisdiction given by that party.
- (2) If a party's address for service includes a FAX number, documents may be sent by FAX to that number.
- (3) 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.

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

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

- (a) the business address of any legal practitioner who purports to act for the party in the proceedings;
  - (b) in the case of an individual, 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) in the case of a firm or partnership, either –
    - (i) the principal or last known address of the firm or partnership or any place where the firm or partnership carries on business; or
    - (ii) the usual or last known place of residence of one of the partners.
- (2) The provisions of Part 5 may be applied to such a document as if it was a claim form.

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

6.5 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.

**Deemed date of service.**

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

**Method of Service**

**Deemed date of service**

- (a) Post and Registered Post----- 14 days after posting;
- (b) Leaving document at a permitted address ----- day after leaving document;
- (c) FAX ----- (i) if it is transmitted on a business day before 4 pm, the day of transmission; or

(ii) in any other case, the business day after the day of transmission;

(d) Other electronic method -----the business day after transmission.

(2) Subject to paragraph (4) below, any document served after 5 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 day other than –

(a) Saturday, Sunday or public or bank holiday; or

(b) any other day on which the court office is closed.

(4) Reference to 5 p.m. in paragraph (2) shall be read as 4:30 p.m in respect of documents served on a Friday.

**Proof of service.**

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

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

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

(2) An application for an order to dispense with service may be made without notice.

**Service of notices, etc., on Attorney General.**

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

(2) Any such document must be served in accordance with Rule 59.2.

## **PART 7**

### **SERVICE OF COURT PROCESS OUT OF THE JURISDICTION**

#### **Contents of this Part**

Scope of this Part.....	Rule 7.1
General rule as to service out of jurisdiction.....	Rule 7.2
Service out of jurisdiction in specified proceedings.....	Rule 7.3
Proceedings which include other types of claims.....	Rule 7.4
Permission to serve out of jurisdiction.....	Rule 7.5

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

**Scope of this Part.**

- 7.1 (1) This Part contains provisions about –
- (a) the circumstances in which court process may be served out of the jurisdiction; and
  - (b) the procedure for serving court process out of the jurisdiction.
- (2) In this Part, references to service or filing copies of the claim form include-
- (a) the statement of claim (unless contained in the claim form); or
  - (b) if these Rules so require, an affidavit in support of the claim; and
  - (c) if permission has been given under Rule 8.2 to serve the claim form without the statement of claim, a copy of the order giving such permission.

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

- 7.2 A claim form may be served out of the jurisdiction only if –
- (a) Rule 7.3 or 7.4 allows; and
  - (b) the court gives permission.

**Service out of jurisdiction in specified proceedings.**

- 7.3 (1) The court may permit a claim form to be served out of the jurisdiction if the proceedings are listed in this Rule.

**Features which may arise in any type of claim**

- (2) A claim form may be served out of the jurisdiction where –

- (a) a claim is made for a remedy against a person domiciled or ordinarily resident within the jurisdiction;
- (b) a claim is made for an injunction ordering the defendant to do or refrain from doing some act within the jurisdiction; or
- (c) a claim is made against someone on whom the claim form has been or will be served, and –
  - (i) there is between the claimant and that person a real issue which it is reasonable for the court to try; and
  - (ii) the claimant now wishes to serve the claim form on another person who is outside the jurisdiction and who is a necessary and proper party to that claim.

**Claims about contracts**

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

**Claims in tort**

- (4) A claim form may be served out of the jurisdiction where a claim in tort is made and –
  - (a) the damage was sustained within the jurisdiction; or
  - (b) the damage sustained resulted from an act committed within the jurisdiction.

**Enforcement**

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

**Claims about property within the jurisdiction**

- (6) A claim form may be served out of the jurisdiction where –
- (a) the whole subject matter of the proceedings is –
    - (i) land; or
    - (ii) the perpetuation of testimony relating to land, located within the jurisdiction; or
  - (b) a claim is made in order to interpret, rectify, set aside or enforce a document, obligation or liability affecting land located within the jurisdiction; or
  - (c) a claim is made –
    - (i) for a debt secured on land;
    - (ii) to assert, declare or determine rights in or over land; or
    - (iii) to obtain authority to dispose of land;
- and in any of these cases the land is located within the jurisdiction.

**Claims about trusts, etc.**

- (7) A claim form may be served out of the jurisdiction where –
- (a) a claim is made for any remedy which might be obtained in proceedings to execute the trusts of a written instrument where –
    - (i) the trusts ought to be executed according to the laws of Belize; and
    - (ii) the person on whom the claim form is to be served is a trustee of the trusts; or
  - (b) a claim is made for –

- (i) any remedy which might be obtained in proceedings for the administration of the estate of; or
- (ii) in probate proceedings as defined in Part 67 relating to; a person who died domiciled within the jurisdiction; or
- (c) a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction.

**Admiralty proceedings**

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

**Miscellaneous Statutory Proceedings**

- (9) A claim form may be served out of the jurisdiction where the claim is brought under any enactment specifying that a claim form may be so served.

**Proceedings which include other types of claims.**

7.4

Where the claimant makes a claim which falls within –

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

**Permission to serve out of jurisdiction.**

7.5

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

- (a) the grounds on which the application is made;
- (b) that in the deponent's belief the claimant has a claim with a realistic prospect of success;
- (c) in what place, within what country, the defendant may probably be found; and
- (d) where the application is made under Rule 7.3(2)(c), the grounds for the deponent's belief that the conditions are satisfied.

- (2) An order granting permission to serve the claim form out of the jurisdiction must state the periods within which the defendant must –
  - (a) file an acknowledgment of service in accordance with Part 9; and
  - (b) file a defence in accordance with Part 10.
- (3) The periods for filing a document under paragraph (2) are to be determined by reference to a relevant practice direction.

**Acknowledgment of service and defence where claim form served out of the jurisdiction.**

- 7.6 A claim form to be served out of the jurisdiction must be amended to state the period within which –
- (a) the acknowledgment of service; and
  - (b) the defence,
- must be filed.

**Application to set aside service under Rule 7.3.**

- 7.7 (1) Any person on whom a claim form has been served out of the jurisdiction under Rule 7.3 may apply to set aside service of the claim form.
- (2) The court may set aside service under this Rule where –
- (a) service out of the jurisdiction is not permitted by these Rules;
  - (b) the case is not a proper one for the court's jurisdiction; or
  - (c) the claimant does not have a good cause of action.
- (3) This Rule does not limit the court's power to make an order under Rule 9.7 (procedure for disputing the court's jurisdiction).

**Mode of service - general provisions.**

- 7.8 (1) Subject to the following paragraphs of this Rule, where a claim form is to be served out of the jurisdiction, it may be served –
- (a) personally by the claimant or his agent;
  - (b) in accordance with the law of the country in which it is to be served; or
  - (c) by a method provided for by –
    - (i) Rule 7.9 (service through foreign governments etc); or
    - (ii) Rule 7.11 (service on a State or Crown).

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

**Service through  
foreign  
governments,  
judicial and  
consular  
authorities.** 7.9

- (1) This Rule does not apply to service in –
- (a) Belize;
  - (b) any independent Commonwealth country; or
  - (c) the Republic of Ireland,
- unless the claim form is to be served in accordance with paragraph (3).
- (2) The methods of service permitted by this Rule are in addition to any method of service permitted under Rule 7.8(1)(a) or (b).

**Service under the Hague Convention**

- (3) A claim form to be served on a defendant in any country which is a party to the Hague Convention may be served –
- (a) through the authority designated under the Hague Convention in respect of that country; or
  - (b) if the law of that country permits –
    - (i) through the judicial authorities of that country;
    - (ii) in the case of a claim form issued in Belize, through its consular authority in that country.

**Service under other Conventions**

- (4) A claim form to be served on a defendant in any country which is a party to a Civil Procedure Convention other than the Hague Convention providing for service in that country of court process may be served, if the law of that country permits –
- (i) through the judicial authorities of that country;
  - (ii) in the case of a claim form issued in Belize, through its consular authority in that country (subject to any provision of the Convention as to the nationality of persons who may be so served).

**Service where there is no applicable Convention**

- (5) A claim form to be served on a defendant in any country with respect to which there is no relevant Civil Procedure Convention providing for service in that country of court process may be served, if the law of that country so permits –
  - (i) through the government of that country, where that government is willing to serve it; or
  - (ii) in the case of a claim form issued in Belize, through its consular authority in that country.

**Procedure where service is to be effected through foreign governments, judicial authorities and consular authorities.**

- 7.10 (1) This Rule applies where the claimant wishes to serve the claim form –
- (a) through the judicial authorities of the country where the claim form is to be served;
  - (b) through the diplomatic authority of Belize in that country;
  - (c) through the authority designated under the Hague Convention or any other relevant Civil Procedure Convention in respect of that country; or
  - (d) through the government of that country.
- (2) Where this Rule applies, the claimant must file –
- (a) a request for service of the claim by his chosen method;
  - (b) a copy of the claim form;
  - (c) an additional copy of the claim form for each person to be served; and
  - (d) any translation required by Rule 7.12.
- (3) When the claimant files the documents specified in paragraph (2), the court office must –
- (a) seal the copy of the claim form; and
  - (b) send the documents filed to the Minister with responsibility for Foreign Affairs with a request that he arrange for the claim form to be served –
    - (i) by the method indicated in the request for service filed under paragraph (2); or

- (ii) where the request indicates alternative methods, by the most convenient method.
- (4) An official certificate which –
- (a) states that the claim form has been served in accordance with this Rule either personally or in accordance with the law of the country in which service was effected;
  - (b) specifies the date on which the claim form was served; and
  - (c) is made by –
    - (i) a diplomatic authority of Belize in the country where the claim form was served;
    - (ii) the government or judicial authorities in that country; or
    - (iii) any other authority designated in respect of that country under the Hague Convention or any other relevant Civil Procedure Convention;

is evidence of the facts stated in the certificate.

- (5) A document purporting to be an official certificate under paragraph (4) is to be treated as such a certificate, unless it is proved not to be.

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

- 7.11 (1) This Rule applies where a claimant wishes to serve a claim form on a State.
- (2) Where that State has agreed to a method of service other than a method permitted by this Part, the claim 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 request for service to be arranged by the Minister with responsibility for Foreign Affairs;
  - (b) a copy of the claim form; and
  - (c) any translation required by virtue of Rule 7.12.
- (4) The court office must send documents filed under this Rule to the Minister with responsibility for Foreign Affairs with a request that the Minister arrange for the claim form to be served.

- (5) 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 conclusive evidence of that fact .
- (6) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

**Translation of claim form.**

7.12

- (1) Except where paragraph (4) or (5) applies, every copy of the claim form filed under Rule 7. 10 or Rule 7. 11 must be accompanied by a translation of the claim form.
- (2) The translation must be –
  - (a) in the official language of the country in which it is to be served; or
  - (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the claim form is to be served.
- (3) Every translation filed under this Rule must be certified by the person making it to be a correct translation, and the certificate must state –
  - (a) the name of the person making the translation; and
  - (b) his –
    - (i) address; and
    - (ii) qualifications for making the translation.
- (4) Where the claim form is to be served –
  - (a) in a country of which English is an official language; or
  - (b) by a diplomatic authority of Belize on a citizen of Belize;

the claimant is not required to file a translation of a claim form filed under Rule 7.10 (service through judicial authorities, foreign governments etc..) unless a relevant Civil Procedure Convention expressly requires a translation.
- (5) The claimant is not required to file a translation of a claim form filed under Rule 7.11 (service on a State) where English is an official language of the State where the claim form is to be served.

- Undertaking to be responsible for expenses of Minister with responsibility for Foreign Affairs.**
- 7.13 (1) A person filing a request for service under Rule 7.10 (service through foreign governments, judicial authorities, etc.) or Rule 7.11 (service on a State) must undertake in the request –
- (a) to be responsible for all expenses incurred by the Minister with responsibility for Foreign Affairs; and
  - (b) on being informed of the amount of those expenses –
    - (i) to pay that amount forthwith to the Accountant General; and
    - (ii) to produce a receipt of the payment to the court office.
- (2) The claimant may take no further step in the proceedings until the claimant produces the receipt required by paragraph (1)(b)(ii).
- Service of court process other than a claim form.**
- 7.14 (1) An application, order or notice issued, 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 Rules 7.8 to 7.13 apply.

## **PART 8**

### **HOW TO START PROCEEDINGS**

#### **Contents of this Part**

The claimant – how to start proceedings.....	Rule 8.1
Statement of case to be issued and served with claim form.....	Rule 8.2
Where to start proceedings.....	Rule 8.3
Right to make a claim which includes two or more claims.....	Rule 8.4
Claim not to fail by adding or failing to add parties.....	Rule 8.5
What must be included in a claim form.....	Rule 8.6
Claimant's duty to set out case.....	Rule 8.7
Certificate of value (small claims).....	Rule 8.8
Special requirements applying to claims for personal injuries.....	Rule 8.9
Relator claims.....	Rule 8.10
Service of claim form.....	Rule 8.11
Time within which claim form may be served.....	Rule 8.12

Extension of time for serving a claim form.....	Rule 8.13
Defence form, etc., must be served with claim form.....	Rule 8.14

**The claimant  
- how to start  
proceedings.**

- 8.1 (1) A claimant starts proceedings by filing in the court office the original and one copy (for sealing) of –
- (a) the claim form; and (subject to Rule 8.2),
  - (b) the statement of claim; or
  - (c) where any Rule or practice direction so requires, an affidavit or other document.
- (2) A claim is issued on the date entered on the claim form by the court office.
- (3) For the purpose of any enactment relating to the limitation of proceedings, a claim is brought on the day on which the claim form is filed at the court office.<sup>7</sup>

**Form 1.**

- (4) A claim form must be in Form 1 except in the circumstances set out in paragraph (5).

**Form 2.**

- (5) Form 2 (fixed date claim form)<sup>8</sup> must be used –
- (a) in proceedings for possession of land;
  - (b) in claims arising out of hire-purchase or credit sale agreements;
  - (c) whenever its use is required by a Rule or practice direction; and
  - (d) where by any enactment proceedings are required to be commenced by originating summons or motion.
- (6) 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.

<sup>7</sup> Rule 3.7(2) defines when a document is filed.

<sup>8</sup> For the procedure under a fixed date claim see Rule 27.2.

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

- 8.2 (1) A claim form may be issued and served without the statement of claim (or affidavit or other document required by Rule 8.1 (1)(b) or (c)) only if –
- (a) the 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) However, in a case of emergency when it is not practicable 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(1)(b) or (c)) provided that the claimant: -
- (a) certifies in writing that the issue and service of the claim form is a matter of emergency, stating why; and
  - (b) serves a copy of –
    - (i) the certificate; and
    - (ii) the application for permission;with the claim form.
- (3) Where a claim form is issued under paragraph (2) the claimant may take no further steps except to serve the claim form until permission is given.
- (4) The court may give permission under paragraph (1) only if it is satisfied that –
- (a) the claim form must be issued as a matter of urgency and that it is not practicable for the claimant to prepare a statement of claim or affidavit; or
  - (b) a relevant limitation period is about to expire and the claimant has obtained legal advice relating to the claim for the first time within the 28 days prior to the date that the claimant wishes to file the claim.
- (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 served without a statement of claim (or affidavit or other document required by Rule 8.1 (1)(b) or (c)) must state a date by which that document must be served.

- (7) Such date must in no case be more than 56 days from the date of issue of the claim form.
- (8) A copy of the order (or the 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 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 address at, and manner in, which served.

**Where to start proceedings.**

- 8.3 (1) This Rule identifies the court office at which a claim form may be issued.
- (2) All proceedings shall be commenced only in the court office in Belize City at the Supreme Court Registry.

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

- 8.4 (1) 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.
- (2) A party may seek a declaratory judgment and the court may make a binding declaration of right whether or not any consequential relief can be claimed.

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

- 8.5 (1) The general rule is that a claim will not fail because –
- (a) a person was added as a party to the proceedings who should not have been added; or
  - (b) a person who should have been made a party was not made a party to the claim.
- (2) However –
- (a) where a claimant claims a remedy to which some other person is jointly entitled all persons jointly entitled to the remedy must be parties to the proceedings, unless the court orders otherwise; and
  - (b) if any person does not agree to be a claimant, that person must be made a defendant, unless the court orders otherwise.
- (3) This Rule does not apply in probate or administration proceedings.<sup>9</sup>

---

<sup>9</sup> Rules 67.3. and 66.2 deal with parties in such proceedings.

**What must be included in a claim form.**

- 8.6 (1) The claimant must in the claim form –<sup>10</sup>
- (a) include a short description of the nature of the claim;
  - (b) specify any remedy that the claimant seeks (though this does not limit the power of the court to grant any other remedy to which the claimant may be entitled); and
  - (c) give an address for service in accordance with Rule 3.11.
- (2) A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim form.
- (3) A claimant who is seeking interest must –
- (a) say so expressly in the claim form; and
  - (b) include details of –
    - (i) the basis of entitlement;
    - (ii) the rate;
    - (iii) the period for which it is claimed; and
    - (iv) where the claim is for a specified sum of money,
      - (aa) the total amount of interest claimed to the date of the claim; and
      - (bb) the daily rate at which interest will accrue after the date of the claim,
- in the claim form or statement of claim.
- (4) A claimant who claims in a representative capacity under Part 21 must state what that capacity is.
- (5) A claimant suing the defendant in a representative capacity under Part 21 must state what that capacity is.

**Claimant's duty to set out case.**

- 8.7 (1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.
- (2) Such statement must be as short as practicable.

---

<sup>10</sup> Rule 3.12 requires the claim form to include a statement of truth.

- (3) The claim form or the statement of claim must identify or annex a copy of any document which the claimant considers is necessary to his or her case.
- (4) Where the claim 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 3.12.

**Certificate of value (small claims).**

8.8 In any case in which the quantum of damages alone determines in which court the claim is to be brought and where the amount of any damages claimed is not specified, the claim form must include a certificate by the claimant that the damages claimed exceed the civil jurisdiction of the District Court.

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

- 8.9
- (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 a 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.
  - (5) The claimant must include in, or attach to, the claim form or statement of claim a schedule of any special damages claimed.

**Relator claims.**

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

**Service of claim form.**

8.11 After the claim form has been issued it may be served on the defendant in accordance with Part 5 (Service of Claim Form) or Part 7 (Service out of the jurisdiction).

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

- 8.12
- (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 <sup>11</sup> –

---

<sup>11</sup> Part 7 deals with service out of the jurisdiction, while Part 69 deals with Admiralty Proceedings

- (a) service of an Admiralty claim form *in rem*; or
- (b) service of a claim form out of the jurisdiction;

is twelve months.

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

- 8.13 (1) The claimant may apply for an order extending the period within which the claim form may be served.
- (2) The period by which the time for serving the 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 the 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 –
    - (i) to trace the defendant; and
    - (ii) to serve the claim form;
 but has been unable to do so; or
  - (b) there is some other special reason for extending the period.
- (5) If an order is made extending the validity of the claim form –
- (a) the claim form must be marked with an official stamp showing the period for which the validity of the claim form has been extended; and
  - (b) a sealed copy of any order made must be served with the claim form.

(6) No more than one extension may be allowed unless the court is satisfied that –

- (a) the defendant is deliberately avoiding service; or
- (b) there is some other compelling reason for so doing.

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

- 8.14 (1) When a claim form is served on a defendant, it must be accompanied by –
- Form 4 or 4A.** (a) a form of acknowledgment of service (Form 4 or 4A);
  - Form 5.** (b) a defence form (Form 5);
  - Form 1A.** (c) the prescribed notes for defendants (Form 1 A);
  - (d) a copy of any order made under Rule 8.2 or 8.13; and,
  - Form 3.** (e) if the claim is for money and the defendant is an individual, an application to pay by instalments (Form 3);

(2) There must be inserted on each form –

- (a) the address of the court office to which the defendant is to return the forms;
- (b) the title of the claim; and
- (c) the reference number of the claim.

(3) Where 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.

## **PART 9**

### **ACKNOWLEDGMENT OF SERVICE AND NOTICE OF INTENTION TO DEFEND**

#### **Contents of this Part**

Scope of this Part.....	Rule 9.1
Filing acknowledgment of service and consequence of not doing so.....	Rule 9.2

The period for filing acknowledgment of service.....	Rule 9.3
Notice to claimant of filing of acknowledgment of service.....	Rule 9.4
Contents of acknowledgment of service.....	Rule 9.5
Right to dispute jurisdiction of court not taken away by acknowledgment of service.....	Rule 9.6
Procedure for disputing court's jurisdiction,etc.....	Rule 9.7

- Scope of this Part.** 9.1 (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>12</sup>
- (2) The defendant does so:
- (a) by filing –
- Form 4.** (i) an acknowledgment of service in Form 4 or 4A containing  
**Form 4A.** a notice of intention to defend within the time limit under Rule 9.3; and
- (ii) a defence in accordance with Part 10; or
- (b) by filing a defence in accordance with Part 10 within the time limit under Rule 9.3.
- (3) The filing of an acknowledgment 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>13</sup>
- Filing acknowledgment of service and consequence of not doing so.** 9.2 (1) A defendant who wishes –
- (a) to dispute the claim; or
- (b) to dispute the court's jurisdiction;
- Form 4 or 4A.** must file at the court office an acknowledgment of service in Form 4 or 4A containing a notice of intention to defend.
- (2) The defendant files an acknowledgment of service by completing the form of acknowledgment of service and handing it in at, or sending it by post or FAX to, the court office.

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

<sup>13</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.

- (3) The acknowledgment of service has no effect until it is received at the court office.
- (4) However, the defendant need not file an acknowledgment of service if a defence is filed within the period specified in Rule 9.3 for filing an acknowledgement of service.
- (5) If the defendant fails to do either judgment may be entered if Part 12 allows it.

**The period for filing acknowledgment of service.**

- 9.3
- (1) The general rule is that the period for filing an acknowledgment of service is the period of 14 days after the date of service of the claim form.
  - (2) Where permission has been given under Rule 8.2 for a claim form to be served without a statement of claim, the period for filing an acknowledgment of service is to be calculated from the date when the statement of claim is served.
  - (3) A defendant may file an acknowledgment of service at any time before a request for default judgment is received at the court office.
  - (4) Paragraph (1) does not apply where –
    - (a) the claim form is served outside the jurisdiction in accordance with Part 7; or
    - (b) the claim form is served on an agent of an overseas principal under Rule 5.17.

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

- 9.4
- (1) The court office must forthwith notify the claimant in writing that an acknowledgment of service has been filed.
  - (2) A copy of the acknowledgment of service must be annexed to the notice.

**Contents of acknowledgment of service.**

- 9.5
- (1) A defendant acknowledging service -
    - (a) must state in the acknowledgment of service the date on which the defendant received the claim form;
    - (b) may state in the acknowledgment of service that all or part of the claim is admitted;<sup>14</sup>

---

<sup>14</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.

- (c) and who admits part of the claim under paragraph (b), must state the amount admitted; and
- (d) and who admits all or part of a claim for a specified sum of money, may file with the acknowledgment of service –
  - (i) proposals for payment of any sums admitted; and
  - (ii) details of the defendant's financial circumstances.<sup>15</sup>

- (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.<sup>16</sup>
- (3) The defendant or the defendant's legal practitioner must sign the acknowledgment of service.
- (4) The defendant must include in the acknowledgment of service an address for service within the jurisdiction to which documents may be sent.

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

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

**Procedure for disputing court's jurisdiction, etc.**

- 9.7 (1) A defendant who -
- (a) disputes the court's jurisdiction to try the claim; or
  - (b) argues that the court should not exercise its jurisdiction;
- 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 acknowledgment of service.
  - (3) An application under this Rule must be made within the period for filing a defence.
  - (4) An application under this Rule must be supported by evidence on affidavit.

<sup>15</sup> Part 14 deals with the ways in which such proposals are decided.

<sup>16</sup> Rule 10.3 sets out the time for filing a defence.

- (5) A defendant who –
- (a) files an acknowledgment of service; and
  - (b) does not make such an application within the period for filing a defence,
- is treated as having accepted that the court has jurisdiction to try the claim.
- (6) Any order under this Rule may also –
- (a) strike out any statement of claim;
  - (b) set aside service of the claim form; and
  - (c) discharge any order made before the claim was commenced or the claim form served.
- (7) If on application under this Rule the court does not make a declaration, it
- (a) must make an order as to the period for filing a defence; and
  - (b) may –
    - (i) treat the hearing of the application as a case management conference; or
    - (ii) fix a date for a case management conference.<sup>17</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)(a) and such period may be extended only by an order of the court.<sup>18</sup>

## **PART 10**

### **DEFENCE**

#### **Contents of this Part**

---

<sup>17</sup> Part 26 sets out powers which the court may exercise on a case management conference.

<sup>18</sup> Rule 10.3(4) deals with an application to stay proceedings where there is a binding agreement to arbitrate.

Scope of this Part.....	Rule 10.1
The defendant – filing defence and the consequences of not doing so.....	Rule 10.2
The period for filing a defence.....	Rule 10.3
Service of copy of defence.....	Rule 10.4
Defendant’s duty to set out case.....	Rule 10.5
Special requirements applying to claims for personal injuries.....	Rule 10.6
Consequences of not setting out defence.....	Rule 10.7
Defence of tender.....	Rule 10.8
Reply to a defence.....	Rule 10.9

**Scope of this Part.**

10.1 The Rules in this Part set out the procedure for disputing the whole or part of a claim.<sup>19</sup>

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

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

(2) However, where –

**Form 2.** (a) a claim is commenced by a fixed date claim form in Form 2 and there is served with that claim form an affidavit instead of a statement of claim; or

(b) where 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) In particular, a defendant who admits liability but wishes to be heard on the issue of quantum must file and serve a defence dealing with that issue.<sup>20</sup>

(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.

**The period for filing defence.**

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

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

<sup>19</sup> Part 18 deals with the procedure for making a counterclaim.

<sup>20</sup> Part 14 deals with procedure to admit all or part of the claim.

- (3) Where 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 claim on the grounds that there is a binding agreement to arbitrate, the period for filing a defence is extended to 14 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 56 days.
- (7) The defendant must file details of such an agreement.
- (8) A defendant may apply for an order extending the time for filing a defence.
- (9) The general rule is subject to –
  - (a) Rule 5.17(4) (service of claim form on agent of overseas principal);
  - (b) Rule 7.5(2) (service of claim form outside jurisdiction);
  - (c) Rule 9.7 (procedure for disputing court's jurisdiction); and
  - (d) Rule 59.3 (claims against the Crown).

**Service of copy of defence.**

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

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

- 10.5
- (1) The defence must set out all the facts on which the defendant relies to dispute the claim.
  - (2) Such statement must be as short as practicable.
  - (3) In the defence, the defendant must say –
    - (a) which (if any) allegations in the claim form or statement of claim are admitted;
    - (b) which (if any) are denied; and

- (c) which (if any) are neither admitted nor denied, because the defendant does not know whether they are true, but which the defendant wishes the claimant to prove.
- (4) Where 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 or a copy thereof 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 3.12.

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

- 10.6
- (1) This Rule sets out additional requirements with which a defendant to a claim for personal injuries must comply.
  - (2) Where the claimant has attached to the claim form or statement of claim a report from a medical practitioner on the personal injuries which the claimant is alleged to have suffered, the defendant must 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) Where the defendant intends to rely on a report from a medical practitioner to dispute any part of the claimant's claim for personal injuries and the defendant has obtained such a report, the defendant must attach that report to the defence.
- Consequences of not setting out defence.** 10.7 (1) 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.
- (2) The court may give the defendant such permission at the case management conference.
- (3) The court may not give the defendant such permission after the case management conference unless the defendant can satisfy the court that there has been a significant change in circumstances which became known only after the date of the case management conference.
- Defence of tender.** 10.8 (1) The defence of tender is not available unless the defendant pays into <sup>21</sup> –
- (a) court; or
- (b) an interest bearing account, with the agreement of the claimant or the permission of the 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 28 days of service of the defence, the defendant may apply for payment out of the monies.
- Reply to a defence.** 10.9 (1) A claimant may file or serve a reply to a defence only <sup>22</sup> –
- (a) at any time not less than 14 days before the case management conference; or
- (b) with the permission of the court given at the case management conference.
- (2) A reply must contain a certificate of truth in accordance with Rule 3.12.

<sup>21</sup> Rule 10.3 states the period for filing a defence, while Part 36 deals with payments into court.

<sup>22</sup> Rule 18.9 deals with service of a defence to counterclaim.

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

## PART 11

### GENERAL RULES ABOUT APPLICATIONS FOR COURT ORDERS

#### Contents of this Part

Scope of this Part.....	Rule 11.1
Applicants and respondents.....	Rule 11.2
Applications to be dealt with at case management conference.....	Rule 11.3
Time when an application is made.....	Rule 11.4
Where to make an application.....	Rule 11.5
Application to be in writing.....	Rule 11.6
What an application must include.....	Rule 11.7
Notice of application and evidence in support.....	Rule 11.8
Evidence in support of application.....	Rule 11.9
Contents of notice of application.....	Rule 11.10
Service of notice of application.....	Rule 11.11
Powers of court in relation to the conduct of application.....	Rule 11.12
Consequence of not asking for order in application.....	Rule 11.13
Applications which may be dealt with without hearing.....	Rule 11.14
Service of application where application made without notice.....	Rule 11.15
Applications to set aside or vary order made on application made without notice.....	Rule 11.16
Power of court to proceed in the absence of a party.....	Rule 11.17
Application to set aside order made in the absence of a party.....	Rule 11.18

**Scope of this Part.**

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

**Applicants and respondents.**

11.2 In this Part –

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

**"application"** means an application made to the court by an applicant;

**"respondent"** means –

		(a)	the person against whom the order is sought and any other person on whom the applicant considers it just to serve with the application; and
		(b)	such other person as the court may direct is to be served with the application.
<b>Applications to be dealt with at case management conference.</b>	11.3	(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.
		(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.
<b>Time when an application is made.</b>	11.4		Where an application must be made within a specified period, it is so made if it is received by the court office or made orally to the court within that period.
<b>Where to make an application.</b>	11.5	(1)	The general rule is that an application must be made to the court office where the claim was issued.
		(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 issued must be made to the court office where it is likely that the claim to which the application relates will be made.
<b>Application to be in writing. Form 6</b>	11.6	(1)	The general rule is that an application must be in writing, in Form 6.
		(2)	An application may be made orally if –
		(a)	this is permitted by a Rule or practice direction; or
		(b)	the court dispenses with the requirement for the application to be made in writing.
<b>What an application must include.</b>	11.7	(1)	An application must state –
		(a)	what order the applicant is seeking; and
		(b)	briefly, the grounds on which the applicant is seeking the order.

- (2) The applicant must file with the application or not less than 3 days before the hearing of the application, a draft of the order sought and serve a copy on all respondents to whom notice is given.
- (3) However, if the application is made without notice, the draft order must be filed with the application.
- Notice of application and evidence in support.** 11.8 (1) The general rule is that the applicant must give notice of the application to each respondent.
- (2) An applicant may make an application without giving notice if this is permitted by –
- (a) a Rule; or
- (b) a practice direction.
- (3) The applicant need not give evidence in support of an application unless it is required by –
- (a) a Rule;
- (b) a practice direction; or
- (c) a court order.
- Form 6.** (4) Notice of the application must be included in the form used to make the application (Form 6).
- Evidence in support of application.** 11.9 Evidence in support of an application must be contained in an affidavit<sup>23</sup> unless –
- (a) a Rule;
- (b) a practice direction; or
- (c) a court order,
- otherwise provides.
- Contents of notice of application.** 11.10 (1) The notice must state the date, time and place when the application is to be heard.
- (2) If there is not to be a hearing but notice of the application is required, the notice must state how the court will deal with the application.<sup>24</sup>

<sup>23</sup> Part 30 deals with affidavit evidence.

<sup>24</sup> Rule 11.14 sets out the circumstances in which there may not be a hearing.

**Service of notice of application.**

- 11.11 (1) The general rule is that a notice of an application must be served –
- (a) as soon as practicable after the day on which it is issued; and
  - (b) at least 7 days before the court is to deal with the application.
- (2) However, the period in paragraph (1)(b) does not apply where any Rule or practice direction specifies some other period for service.
- (3) If –
- (a) notice of an application has been given; but
  - (b) the period of notice is shorter than the period required,
- the court may nevertheless direct that, in all the circumstances of the case, sufficient notice has been given and may accordingly deal with the application.
- (4) The notice must be accompanied by –
- (a) any evidence in support; and
  - (b) a copy of any draft order which the applicant has attached to his application.
- (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.

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

- 11.12 (1) The court may –
- (a) issue a witness summons requiring a party or other person to attend the court on the hearing of the application;
  - (b) require a party to produce documents or things at such a hearing; and
  - (c) question any party or witness at such a hearing.
- (2) The court may question a party or witness –
- (a) orally; or

(b) by putting written questions and asking the witness to give written answers.

(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.

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

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

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

11.14 The court may deal with an application without a hearing if –

(a) no notice of the application is required;

(b) the parties agree;

(c) the court considers that the application can be dealt with over the telephone or by other means of communication<sup>25</sup>;

(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 legal practitioners to all parties to the application<sup>26</sup>; or

(e) the court does not consider that a hearing would be appropriate.

**Service of application where application made without notice.**

11.15 After the court has disposed of an application made without notice, the applicant must serve a copy of the application and any evidence in support on all other parties.

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

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

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

<sup>25</sup> Rules 2.7(3) & (4) contain powers to enable the court to deal with applications by electronic means.

<sup>26</sup> Rule 42.7 deals with consent orders

- (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.

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

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

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

- 11.18 (1) A party who was not present when an order was made may apply to set aside that order.
- (2) The application must be made not more than 14 days after the date on which the order was served on the applicant.
- (3) The application to set aside the order must be supported by evidence 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**

**Contents of this Part**

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

<b>Scope of this Part.</b>	<p>12.1 (1) This Part contains provisions under which a claimant may obtain judgment without trial where a defendant -</p> <p style="margin-left: 40px;">(a) has failed to file an acknowledgment of service giving notice of intention to defend in accordance with Part 9; or</p> <p style="margin-left: 40px;">(b) has failed to file a defence in accordance with Part 10.</p> <p>(2) Such a judgment is called a "<b>default judgment</b>".</p>
<b>Claims in which default judgment may not be obtained.</b>	<p>12.2 A claimant may not obtain default judgment where the claim –</p> <p style="margin-left: 40px;">(a) is a fixed date claim;</p> <p style="margin-left: 40px;">(b) is an admiralty claim <i>in rem</i>; or</p> <p style="margin-left: 40px;">(c) a claim in probate proceedings<sup>27</sup>.</p>
<b>Cases in which permission required.</b>	<p>12.3 (1) A claimant who wishes to obtain a default judgment on any claim which is<sup>28</sup> –</p> <p style="margin-left: 40px;">(a) a claim against the Crown in any relevant enactment relating to Crown immunity; or</p> <p style="margin-left: 40px;">(b) a claim against a minor or patient as defined in Rule 2.4;<sup>29</sup></p> <p style="margin-left: 40px;">must obtain the court's permission.</p> <p>(2) A claimant who wishes to obtain judgment in default of acknowledgment 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.</p> <p>(3) An application under paragraph (1) or (2) must be supported by evidence on affidavit.</p>
<b>Conditions to be satisfied - judgment for failure to file acknowledgment of service.</b>	<p>12.4 The court office, at the request of the claimant, must enter judgment for failure to file an acknowledgment of service, if -</p>

---

<sup>27</sup> Rule 67.6 deals with probate proceedings. Rule 69.26 makes special provision for default judgment in admiralty cases for personal injury arising out of a collision between two ships.

<sup>28</sup> Rule 12.9 (2) contains restrictions on a default judgment where it is sought against some but not all defendants.

<sup>29</sup> Part 59 deals with proceedings by and against the Crown; Part 23 deals with proceedings involving a minor or patient.

- (a) the claimant proves service of the claim form and statement of claim<sup>30</sup>;
- (b) the period for filing an acknowledgment of service under Rule 9.3 has expired;
- (c) the defendant has not filed –
  - (i) an acknowledgment of service; or
  - (ii) a defence to the claim or any part of it;
- (d) 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, where the only claim is for a specified sum of money, apart from costs and interest;
- (e) the defendant has not satisfied in full the claim on which the claimant seeks judgment; and
- (f) the claimant has permission to enter judgment (where necessary).

**Conditions to be satisfied - judgment for failure to defend.**

- 12.5 The court office must enter judgment for failure to defend at the request of the claimant if -
- (a) the claimant proves service of the claim form and statement of claim; or
  - (b) an acknowledgment of service has been filed by the defendant against whom judgment is sought; and
  - (c) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired; and
  - (d) the defendant has not -
    - (i) filed a defence to the claim or any part of it (or such defence has been struck out or is deemed to have been struck out under Rule 22.1(6)); or
    - (ii) where 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

---

<sup>30</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.

- (iii) satisfied the claim on which the claimant seeks judgment; and
  - (e) the claimant has the permission of the court to enter judgment (where necessary).
- Admission of part - request for time to pay.**
- 12.6 (1) This Rule deals with the situation where -
- (a) the defendant is an individual who has admitted liability to pay either -
    - (i) part only of a claim for a specified sum; or
    - (ii) a specified sum towards a claim for an unspecified sum of money; or
  - (b) the defendant has not filed a defence; and
  - (c) the claimant does not accept the sum admitted.
- (2) Subject to any restriction imposed by this Part, the claimant may apply for judgment to be entered for -
- (a) the whole amount of the claim for a specified sum together with interest and fixed costs under Rule 64.4, or
  - (b) where 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 -
- (a) if the claim is for a specified sum, in accordance with Rules 14.9, 14. 10, and 14.11; or
  - (b) if the claim is for an unspecified sum, when damages are assessed, in accordance with Rule 16.3.
- Procedure. Form 7.**
- 12.7 A claimant applies for default judgment by filing a request in Form 7 <sup>31</sup>.
- Claim for specified sum of money.**
- 12.8 (1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money.

---

<sup>31</sup> Rule 16.2 sets out additional information that must be provided where the claim is for an unspecified sum of money.

- (2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for either -
  - (a) the sum of money claimed together with interest at the statutory rate from the date of the claim to the date of entering judgment; or
  - (b) the sum of money claimed and for interest to be assessed.
- (3) Where 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>32</sup>

**Claim against more than one defendant.**

12.9

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

---

<sup>32</sup> Rule 2.4 defines the expression "claim for a specified sum of money".

**Nature of  
default  
judgment.**

- 12.10 (1) Default judgment -
- (a) on a claim for a specified sum of money, shall be judgment for payment of that amount or, where part has been paid, the amount certified by the claimant as outstanding-
    - (i) (where 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>33</sup>
  - (b) on a claim for an unspecified sum of money, shall be judgment for the payment of an amount to be decided by the court<sup>34</sup>,
  - (c) on a claim for goods shall 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 him 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 acknowledgment 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.

---

<sup>33</sup> Rule 2.4 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 64 deals with the quantification of costs.

<sup>34</sup> Rule 16.2 deals with the procedure for assessment of damages where judgment is entered under this paragraph.

- Interest.** 12.11 (1) A default judgment shall include judgment for interest for the period claimed where -
- (a) the claim form includes a claim for interest;
  - (b) the claim form or statement of claim includes the details required by Rule 8.6(3); and
  - (c) the request states the amount of interest to the date it was made.
- (2) If the claim includes any other claim for interest, default judgment shall include judgment for an amount of interest to be decided by the court.
- Costs.** 12.12 (1) A default judgment shall include fixed costs under Rule 64.4 unless the court assesses the costs.
- (2) An application to assess costs must be on notice to the defendant.<sup>35</sup>
- Defendant's rights following default judgment.** 12.13 Unless the defendant applies for and obtains an order for the judgment to be set aside<sup>36</sup>, the only matters on which a defendant against whom a default judgment has been entered may be heard are -
- (a) costs;
  - (b) the time of payment of any judgment debt;
  - (c) enforcement of the judgment; and
  - (d) an application under Rule 12.10(2).

## **PART 13**

### **SETTING ASIDE OR VARYING DEFAULT JUDGMENTS**

#### **Contents of this Part**

Scope of this Part.....	Rule 13.1
Cases where the court must set aside default judgment.....	Rule 13.2
Cases where the court may set aside or vary default judgment.....	Rule 13.3

<sup>35</sup> Rule 64.12 deals with the assessment of costs.

<sup>36</sup> Part 13 deals with setting aside or varying default judgments.

Applications to vary or set aside judgment – procedure.....	Rule 13.4
Court to impose condition as to filing of defence.....	Rule 13.5
Hearing to be treated as case management conference.....	Rule 13.6
Abandoned claims to be restored if judgment set aside.....	Rule 13.7

<b>Scope of this Part.</b>	13.1	The Rules in this Part set out the procedure for setting aside or varying a default judgment entered under Part 12 (default judgments). <sup>37</sup>
<b>Cases where the court must set aside default judgment.</b>	13.2	<p>(1) The court must set aside a judgment entered under Part 12 if judgment was wrongly entered because –</p> <p>(a) in the case of a failure to file an acknowledgment of service, any of the conditions in Rule 12.4 was not satisfied; or</p> <p>(b) in the case of judgment for failure to defend, any of the conditions in Rule 12.5 was not satisfied.</p> <p>(2) The court may set aside judgment under this Rule on, or without an, application.</p>
<b>Cases where the court may set aside or vary default judgment.</b>	13.3	<p>(1) Where Rule 13.2 does not apply, the court may set aside a judgment entered under Part 12 only if the defendant –</p> <p>(a) applies to the court as soon as reasonably practicable after finding out that judgment had been entered;</p> <p>(b) gives a good explanation for the failure to file an acknowledgment of service or a defence, as the case may be; and</p> <p>(c) has a real prospect of successfully defending the claim.</p> <p>(2) Where this Rule gives the court power to set aside a judgment, the court may instead vary it.<sup>38</sup></p>
<b>Applications to vary or set aside judgment – procedure.</b>	13.4	<p>(1) An application may be made by any person who is directly affected by the entry of judgment.</p> <p>(2) The application must be supported by evidence on affidavit.</p> <p>(3) The affidavit must exhibit a draft of the proposed defence.</p>
<b>Court to impose condition as to filing of defence.</b>	13.5	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.

<sup>37</sup> Part 47 deals with variation of the terms of a judgment as to time and method of payment.

<sup>38</sup> Rule 26.1(3) enables the court to attach conditions to any order.

- Hearing to be treated as case management conference.**
- 13.6 (1) When 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>39</sup>
- Abandoned claims to be restored if judgment set aside.**
- 13.7 Where the claimant has abandoned any remedy sought in the claim form in order to enter a default judgment, the abandoned claim is restored if judgment is set aside.

## **PART 14**

### **JUDGMENT ON ADMISSIONS**

#### **Contents of this Part**

Making an admission.....	Rule 14.1
Satisfaction.....	Rule 14.2
Admission where party a minor or patient.....	Rule 14.3
Admission by notice in writing – application for judgment.....	Rule 14.4
Admission in whole or in part of money claim.....	Rule
14.5	
Admission of claim for specified sum of money.....	Rule 14.6
Admission of part of claim for money only.....	Rule 14.7
Admission of liability to pay whole of claim for unspecified sum of money.....	Rule 14.8
Requests for time to pay.....	Rule 14.9
Requests for time to pay – procedure where time and rate agreed..	Rule 14.10
Requests for time to pay – procedure where time and rate not agreed	Rule 14.11
Right of redetermination.....	Rule 14.12
Variation of order.....	Rule 14.13

---

<sup>39</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.

**Making an admission.**

- 14.1 (1) A party may admit the truth of the whole or any part of any other party's case.
- (2) A party may do this by giving notice in writing (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 acknowledgment of service containing the admission.
- (4) The defendant may do this in accordance with the following Rules: –
- (a) Rule 14.6 (admission of claim for specified sum of money);
  - (b) Rule 14.7 (admission of part of claim for money only); or
  - (c) Rule 14.8 (admission of liability to pay whole of claim for unspecified sum of money).
- (5) A defendant may file an admission under paragraph (4) at any time before default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgment of service has expired.<sup>40</sup>

**Satisfaction.**

- 14.2 (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 acknowledgment of service under Rule 9.3 :–
- (a) the claim is stayed; and
  - (b) the claimant must forthwith file and serve a notice of discontinuance.
- (2) Rule 37.6 (liability for costs) 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 7 days of payment, the defendant may apply in writing to the court for the claim to be recorded as satisfied.
- (4) The court office must serve a copy of the application on the claimant with a notice requiring the claimant to notify the court within 14 days whether the claimant disputes that the claim has been satisfied.

---

<sup>40</sup> Rule 9.3 specifies the time for filing an acknowledgment of service. Rules 64.11 and 64.12 deal with assessed costs

- (5) If there is no dispute the court office must record that the claim has been satisfied.
- (6) If the claimant disputes satisfaction, the court office must fix a hearing to consider the application and give not less than 7 days notice of such hearing to the claimant and defendant.

- Admission where party a minor or patient.** 14.3 Judgment may not be entered on an admission where –
- (a) the defendant is a minor or patient; or
  - (b) the claimant is a minor or patient and the admission is made under Rule 14.7 or 14.8.<sup>41</sup>
- Admission by notice in writing - application for judgment.** 14.4 (1) Where a party makes an admission under Rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.
- (2) The terms of the judgment shall be such as it appears to the court that the applicant is entitled to on the admission.
- Admission in whole or in part of money claim.** 14.5 On receipt of an admission of the whole or part of a claim for money under Rule 14.1(3), the court office must send a copy of such admission and any request for time to pay under Rule 14.9 to the claimant.
- Admission of claim for specified sum of money.** 14.6 (1) This Rule applies where –
- (a) the only remedy which the claimant is seeking is payment of a specified sum of money<sup>42</sup>;
  - (b) the defendant admits the whole of the claim in the acknowledgment of service; and
  - (c) the defendant has not requested time to pay.
- Form 8.** (2) The claimant may file a request for judgment (in Form 8) for the amount claimed, interest and fixed costs under Rule 64.4 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 if by instalments.

---

<sup>41</sup> Rule 23.12 deals with compromise of claims made by or against a minor or patient.

<sup>42</sup> Rule 2.4 defines the expression "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.

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

- 14.7 (3) The court office must enter judgment in accordance with the request.
- (1) This Rule applies where –
- (a) the only remedy which the claimant is seeking is payment of money;
  - (b) the defendant admits –
    - (i) a specified sum of money; or
    - (ii) a specified proportion of a claim for an unspecified sum of money,in the acknowledgment of service or defence; and
  - (c) the defendant has filed a defence as to the amount not admitted.<sup>43</sup>
- (2) The court office must serve a notice on the claimant requiring him to file a notice stating that –
- (a) the amount or proportion admitted in satisfaction of the claim is accepted; or
  - (b) the proceedings are to continue.
- (3) The claimant must –
- (a) file the notice under paragraph (2); and
  - (b) serve a copy on the defendant,
- within 14 days after service of the court's notice.
- (4) If the claimant does not file the notice within 14 days after service of the court's notice –
- (a) the claim is stayed until the notice is filed; and
  - (b) any party may apply for the stay to be lifted.
- Form 8.** (5) If the defendant has not requested time to pay under Rule 14.9, the claimant may file a request for judgment in Form 8 for the amount admitted, interest and fixed costs and may specify –

---

<sup>43</sup> If the defendant does not file a defence the claimant will be entitled to default judgment in accordance with Rule 12.5.

- (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.
- (6) The court office must enter judgment in accordance with the request.
- (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 court must enter judgment for that proportion of an amount to be decided by the court and costs.
- (8) If the claimant files notice under paragraph (2) that the claim is to continue, the court office must fix a date, time and place for a case management conference.<sup>44</sup>

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

- 14.8 (1) This Rule applies where –
- (a) the only remedy the claimant seeks is the payment of money;
  - (b) the amount of the claim is not specified;
  - (c) the defendant admits liability in the acknowledgment of service to pay the whole of the claim and does not –
    - (i) offer to pay a specified sum of money or proportion of the claim in satisfaction of the claim; or
    - (ii) file a defence stating the grounds on which the amount of the claim is disputed; and
  - (d) the defendant has not requested time to pay under Rule 14.9.

**Form 8.**

- (2) The claimant may file a request for judgment in Form 8.
- (3) The court office must enter judgment in accordance with the request.
- (4) Judgment will be for an amount to be decided by the court and costs.<sup>45</sup>

**Requests for time to pay.**

- 14.9 (1) A defendant who –
- (a) makes an admission under Rule 14.6, 14.7 or 14.8; and

<sup>44</sup> Part 27 sets out the procedure relating to a case management conference. Rule 64.4 deals with fixed costs.

<sup>45</sup> Rule 16.3 deals with how the court decides the amount of the judgment. Part 64 deals with the quantification of costs.

(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) filed with the admission;

(b) accompanied by a statement of his financial position in the appropriate practice direction form.

(4) The statement under paragraph (3)(b) 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) Where –

(a) the request for time to pay relates to a claim for an unspecified sum of money; and

(b) the court must assess damages under Rule 14.8(4);

the court must deal with the request for time to pay when it assesses damages.

**Requests for  
time to pay -  
procedure  
where time and  
rate agreed.**

14.10 (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

**Form 8.**

(c) the claimant in the request for judgment on the admission in Form 8 accepts the defendant's offer as to the amount, time and rate of payment.

(2) Where this Rule applies, judgment on the admission shall be judgment for the specified sum of money admitted (less any payments made), interest and fixed costs under Rule 64.4 to be paid at the agreed time and rate.

**Requests for time to pay - procedure where time and rate not agreed.**

14.11 (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 admission but does not accept the defendant's offer as to the amount, time and rate of payment.

**Form 8.**

(2) Where this Rule applies, the claimant must state in the request for judgment in Form 8 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 Rule 64.4 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 give the parties at least 7 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 Rule 64.11.<sup>46</sup>

---

<sup>46</sup> The claimant is entitled to fixed costs on the judgment in accordance with Appendix A to Part 64.

**Right of redetermination.**

- 14.12 (1) Where 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 redetermined by the court at a hearing.
- (2) An application for redetermination must be made within 14 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, by whom the costs should be paid and assess such costs under Rule 64.11.<sup>47</sup>

**Variation of order.**

- 14.13 (1) Either party may apply to vary an order made under this Part.
- (2) An application by a defendant must be made in accordance with Part 47.

**PART 15**

**SUMMARY JUDGMENT**

**Contents of this Part**

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

**Scope of this Part.**

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

**Grounds for summary judgment.**

- 15.2 The court may give summary judgment on the claim or on a particular issue if it considers that -
  - (a) the claimant has no real prospect of succeeding on the claim or the issue; or
  - (b) the defendant has no real prospect of successfully defending the claim or the issue.<sup>48</sup>

<sup>47</sup> Rule 64.11 deals with the assessment of costs.

**Types of proceedings for which summary judgment is not available.  
CAP. 4**

- 15.3 The court may give summary judgment in any type of proceedings except -
- (a) proceedings for redress under the Constitution;
  - (b) proceedings by way of fixed date claim;
  - (c) proceedings for -
    - (i) false imprisonment;
    - (ii) malicious imprisonment; and
    - (iii) defamation;
  - (d) claims against the Crown;
  - (e) admiralty proceedings *in rem*; and
  - (f) probate proceedings.

**Procedure.**

- 15.4 (1) Notice of an application for summary judgment must be served not less than 14 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>49</sup>

**Evidence for the purposes of summary judgment hearing.**

- 15.5 (1) The applicant must -
- (a) file affidavit evidence in support with the application; and
  - (b) serve copies on each party against whom summary judgment is Sought;
- not less than 14 days before the date fixed for hearing the application.
- (2) If the respondent wishes to rely on evidence he must -
- (a) file affidavit evidence; and
  - (b) serve copies on the applicant and any other respondent to the Application;

---

<sup>48</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.

<sup>49</sup> Part II contains general Rules about applications.

at least seven (7) days before the summary judgment hearing.

**Powers of the court on application for summary judgment.**

- 15.6 (1) The court may give summary judgment on any issue of fact or law whether or not such judgment will bring the proceedings to an end.
- (2) Where the proceedings are not brought to an end the court must also treat the hearing as a case management conference.

## **PART 16**

### **ASSESSMENT OF DAMAGES**

#### **Contents of this Part**

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

**Scope of this Part.**

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

**Assessment of damages after default judgment.**

- 16.2 (1) An application for a default judgment to be entered under Rule 12.10(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 give the claimant at least 14 days notice of 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 and a date on which a listing questionnaire shall be sent to the claimant.<sup>50</sup>

**Assessment of damages after admission of liability on claim for unspecified sum of money.**

16.3 (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

(b) give an estimate of the time required to deal with the assessment; or

(c) 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 of damages and give the parties at least 14 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 period within which the assessment of damages will take place and a date on which a listing questionnaire is to be sent to the claimant; or

(b) a case management conference, and give notice to the parties<sup>51</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 he has filed a defence setting out the facts the defendant seeks to prove.

<sup>50</sup> Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for a trial.

<sup>51</sup> Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for trial. Rule 27.3 deals with a case management conference.

- (7) The court must also deal with any request under Part 14 for time to pay.
- Assessment of damages after direction for trial of issue of quantum.**
- 16.4 (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;
  - (c) service of expert reports under Part 32; and
  - (d) proof of damages by affidavit evidence.
- (4) The court must also fix –
- (a) a date on which the court office is to send a listing questionnaire to the parties; and
  - (b) a period within which the assessment of damages is to commence.<sup>52</sup>

## **PART 17**

### **INTERIM REMEDIES**

#### **Contents of this Part**

Orders for interim remedies.....	Rule 17.1
Time when order for interim remedy may be made.....	Rule 17.2

---

<sup>52</sup> Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for trial.

How to apply for interim remedy.....	Rule 17.3
Interim injunctions and similar orders.....	Rule 17.4
Interim payments – general procedure.....	Rule 17.5
Interim payments – conditions to be satisfied and matters to be taken into account.....	Rule 17.6
Powers of court where it has made order for interim payment...	Rule 17.7
Power of court to order early trial, etc.....	Rule 17.8

**Orders for interim remedies.**

- 17.1 (1) The court may grant interim remedies including -
- (a) an interim injunction;
  - (b) an interim declaration;
  - (c) an order
    - (i) for the detention, custody or preservation of relevant property;
    - (ii) for the inspection of relevant property;
    - (iii) for the taking of a sample of relevant property;
    - (iv) for the carrying out of an experiment on or with relevant property;
    - (v) for the sale of relevant property (including land) which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
    - (vi) for the payment of income from a relevant property until a claim is decided;
  - (d) 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 sub-paragraph (c);
  - (e) an order to deliver up goods;
  - (f) an order (referred to as a **“freezing order”**) –
    - (i) restraining a party from removing from the jurisdiction assets located there; or
    - (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;
  - (g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order;

- (h) an order (referred to as a “**search order**”) requiring a party to admit another party to premises for the purpose of preserving evidence, etc.;
- (i) an order (referred to as an “**order for interim payment**”) under Rules 17.5 and 17.6 for payment by a defendant on account of any damages, debt or other sum which the court may find the defendant liable to pay;
- (j) an order for interim costs;
- (k) 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;
- (l) 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 he does so, the property shall be given up to him;
- (m) an order directing a party to prepare and file accounts relating to the dispute.

(2) In paragraph (1)(c) and (g), “**relevant property**” means property which is the subject of a claim or as to which any question may arise on a claim.

(3) The fact that a particular type of interim remedy is not listed in 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 as to the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

**Time when order for interim remedy may be made.**

- 17.2 (1) An order for an interim remedy may be made at any time, including -
- (a) before a claim has been made; and
  - (b) after judgment has been given.
- (2) However -

- (a) paragraph (1) is subject to any Rule which provides otherwise;
  - (b) the court may grant an interim remedy before a claim has been made only if -
    - (i) the matter is urgent; or
    - (ii) it is otherwise necessary to do so in the interests of justice;
  - (c) unless the court otherwise orders, a defendant may not apply for any of the orders listed in Rule 17.1(1) before filing an acknowledgment of service under Part 9.
- (3) Where the court grants an interim remedy before a claim has been issued, it must require an undertaking from the claimant to issue and serve a claim form by a specified date.
  - (4) If no claim has been issued, the application must be made in accordance with the general Rules about applications contained in Part 11.

**How to apply for interim remedy.**

- 17.3 (1) An application for an interim remedy must be supported by evidence on affidavit unless the court otherwise orders.
- (2) 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.
- (3) The evidence in support of an application made without giving notice must state the reasons why notice has not been given.

**Interim injunctions and similar orders.**

- 17.4 (1) This Rule deals with applications for -
  - (a) an interim injunction under Rule 17. 1 (1)(a);
  - (b) an order for the detention, custody or preservation of relevant property under Rule 17. 1 (1)(c)(i);
  - (c) an order authorising a person to enter any land or building for the purpose of carrying out an order under Rule 17.1 (1) (d);
  - (d) a freezing order under Rule 17. 1 (1 )f); and
  - (e) a search order under Rule 17. 1 (1 )(h).

- (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 3 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 28 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 paragraph (a)) on which the injunction will terminate unless a further order is made on the further consideration of the application.
- (6) When an order is made under paragraph (4), the applicant must serve the respondent personally with -
  - (a) the application for an interim order;
  - (b) the evidence on affidavit in support of the application;
  - (c) any interim order made without notice; and
  - (d) notice of the date and time on which the court will further consider the application under paragraph (5) (a);

not less than seven (7) days before the date fixed for further consideration of the application.
- (7) An application to extend an interim order under this Rule must be made on notice to the respondent unless the court otherwise orders.
- (8) A person against whom an interim order is made or extended under this Rule shall be at liberty at any time to make an application to the court to discharge the interim order or vary its terms.

**Interim payments - general procedure.**

- 17.5 the
- (1) The claimant may not apply for an order for an interim payment before end of the period for entering an acknowledgment of service applicable to the defendant against whom the application is made<sup>53</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 14 days before the hearing of the application; and
    - (b) supported by evidence on affidavit.
  - (4) The affidavit must -
    - (a) state the claimant's assessment of the amount of damages or other monetary judgment that are likely to be awarded;
    - (b) set out the grounds of the application;
    - (c) exhibit any documentary evidence relied on by the claimant in support of the application; and
    - (d) if the claim is made under any relevant enactment in respect of injury resulting in death, contain full particulars of -
      - (i) the person or persons for whom and on whose behalf the action is brought; and
      - (ii) the nature of the claim in respect of which the damages are sought to be recovered.
  - (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 7 days before the hearing of the application.
  - (6) The court may order an interim payment to be made in one sum or by instalments.

---

<sup>53</sup> Rule 9.3 sets out the period for entering an acknowledgment of service.

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

- 17.6 (1) The court may make an order for an interim payment only if -
- (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;
  - (b) the claimant has obtained an order for an account to be taken as between the claimant and the defendant and judgment for any amount certified due on taking the account to be paid;
  - (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 addition, in a claim for personal injuries the court may make an order for the interim payment of damages only if the defendant is -
- (a) insured in respect of the claim;
  - (b) a public authority; or
  - (c) a person whose means and resources are such as to enable him to make the interim payment.

- (3) In a claim for damages for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if -
  - (a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants (even if the court has not yet determined which of them is liable); and
  - (b) 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.

**Powers of court where it has made order for interim payment.**

- 17.7 (1) Where a defendant has been ordered to make an interim payment, or has in fact voluntarily made an interim payment, the court may make an order to adjust the interim payment.
- (2) The court may in particular -
  - (a) order all or part of the interim payment to be repaid;
  - (b) vary or discharge the order for interim payment; or
  - (c) order a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment.
- (3) The court may make an order under this Rule -
  - (a) without an application by a party if it makes the order when it disposes of the claim or any part of it; or
  - (b) on an application by a party made at any time.

**Power of court to order early trial, etc.**

- 17.8 On hearing any application under this Part, the court may exercise any of its case management powers under Parts 26 and 27 and may in particular give directions for an early trial of the claim or any part of the claim.

**PART 18**

**ANCILLARY CLAIMS**

**Contents of this Part**

Meaning of 'ancillary claim' .....	Rule 18.1
Ancillary claim to be treated as claim for the purposes of these Rules.	Rule 18.2
Defendant's claim for contribution or indemnity from co-defendant..	Rule 18.3
Procedure for making ancillary claim.....	Rule 18.4
Service of ancillary claim form.....	Rule 18.5
Counterclaim may survive claim.....	Rule 18.6
Restrictions on right to make counterclaim or set-off in proceedings by or against the Crown.....	Rule 18.7
Adding other defendants to counterclaim.....	Rule 18.8
Defence to ancillary claim.....	Rule 18.9
Matters relevant to whether ancillary claim should be dealt with separately from main claim.....	Rule 18.10
Effect of service of ancillary claim form.....	Rule 18.11
Special provisions relating to judgment on failure to file defence to ancillary claim.....	Rule 18.12
Procedural steps on service of ancillary claim form on person who is not a party.....	Rule 18.13
Case management where there is defence to ancillary claim.....	Rule 18.14

**Meaning of ancillary claim.**

- 18.1 (1) An "**Ancillary Claim**" is any claim other than a claim by a claimant against a defendant or a claim for a set off contained in a defence and includes -
- (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
  - (b) a claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and
  - (c) a claim by an ancillary defendant against any other person (whether or not already a party).

(2) In this Part -

**"ancillary claimant"** means a person who makes an ancillary claim; and

**"ancillary defendant"** means the defendant to that claim.

(3) Where an ancillary defendant makes an ancillary claim against a further person, that person is to be called the **"second (or as the case may be) ancillary defendant"**.

**Ancillary claim to be treated as claim for the purposes of these Rules. Form 9.**

18.2 (1) An ancillary claim is to be treated as if it were a claim for the purposes of these Rules except as provided by this Rule.

(2) Particulars of an ancillary claim must be contained in or served with the ancillary claim form in Form 9.

(3) An ancillary claim form must include -

(a) the ancillary claimant's address for service in accordance with Rule 3.11; and

(b) a certificate of truth in accordance with Rule 3.12.

(4) The following Rules do not apply to ancillary claims -

(a) Rules 8.12 and 8.13 (time within which a claim form may be served);

(b) Part 12 (default judgments); and

(c) Part 14 (admissions) other than Rule 14.1 (1) and Rule 14.1 (2), Rule 14.3 and Rule 14.4

(5) Where the ancillary claim is a counterclaim by the defendant against a claimant (with or without any other person), the claimant is not required to file an acknowledgment of service and therefore Part 9 (Acknowledgment of Service) does not apply to the claimant.

**Defendant's claim for contribution or indemnity from co-defendant.**

18.3 (1) A defendant who has filed an acknowledgment of service or a defence<sup>54</sup> may make an ancillary claim for contribution or indemnity against another defendant by -

(a) filing a notice containing a statement of the nature and grounds of the claim; and

---

<sup>54</sup> Part 9 deals with filing an acknowledgment of service and Part 10 with filing a defence.

**Procedure  
for making  
ancillary  
claim.**

- (b) serving the notice on the other defendants.
- (2) Rule 18.4 does not apply to an ancillary claim under this Rule.
- 18.4 (1) A defendant may make an ancillary claim (other than a claim falling within Rule 18.3) without the court's permission if -
  - (a) in the case of a counterclaim, it is filed with the defence; or
  - (b) in any other case, the ancillary claim form is filed before the case management conference.
- (2) Where paragraph (1) does not apply, an ancillary claim may be made only if the court gives permission.
- (3) An application for permission under paragraph (2) may be made without notice unless the court directs otherwise.
- (4) The applicant must attach to the application a draft of the proposed ancillary claim form and ancillary statement of claim.
- (5) The court may give permission at the case management conference.
- (6) The court may not give permission after the first case management conference to any person who was a party at the time of that conference unless it is satisfied that there has been a significant change in circumstances which became known after the case management conference.
- (7) The ancillary claim is made -
  - (a) in the case of a counterclaim, when it is filed; and
  - (b) in any other case, when the court issues the ancillary claim form.

**Service of  
ancillary  
claim form.**

- 18.5 (1) An ancillary claim which may be made without the court's permission must be served on the person against whom it is made within 14 days after the date the defendant files a defence.
- (2) Where the court gives permission to make an ancillary claim it must at the same time give directions as to the service of the ancillary claim form.
- (3) A copy of the ancillary claim form and ancillary statement of claim (if any) must be served on all other parties.

- Counterclaim may survive claim.** 18.6 The defendant may continue a counterclaim even if -
- (a) the court gives judgment on the claim for the claimant and does not dismiss the counterclaim; or
  - (b) the claim is stayed, discontinued or dismissed.
- Restrictions on right to make counterclaim or set-off in proceedings by or against the Crown.** 18.7 (1) No counterclaim may be made or set-off pleaded in proceedings by or against the Crown if -
- (a) the proceedings are for the recovery of; or
  - (b) the counterclaim or set-off arises out of,
 

a right or claim to repayment in respect of any taxes, duties or penalties, or in respect of any matter relating to land disputes or to public administration.
- (2) No counterclaim may be made or set-off pleaded in any other proceedings by or against the Crown without the permission of the court or the consent of the Attorney General.
- Adding other defendants to counterclaim.** 18.8 (1) If the defendant to the claim says that someone else is liable on the counterclaim as well as the claimant, he may add that other person as a defendant to the counterclaim.
- (2) If a person so added is not already a party, the defendant must add the person's name to the title of the claim as "defendant to the counterclaim".<sup>55</sup>
- Defence to ancillary claim.** 18.9 (1) A person against whom an ancillary claim is made may file a defence.
- (2) The period for filing a defence is the period of 28 days after the date of service of the ancillary claim.
- (3) The Rules relating to a defence to a claim apply to a defence to an ancillary claim except Part 12 (Default Judgment).
- (4) An ancillary defence must include -
- (a) the ancillary defendant's address for service in accordance with Rule 3.11; and

---

<sup>55</sup> Rule 18.13 deals with the documents to be served on a defendant who is not already a party.

**Matters relevant to whether ancillary claim should be dealt with separately from the main claim.**

- (b) a certificate of truth in accordance with Rule 3.12.
- 18.10 (1) This Rule applies when the court is considering whether to -
- (a) permit an ancillary claim to be made;
  - (b) dismiss an ancillary claim; or
  - (c) require the ancillary claim to be dealt with separately from the claim.<sup>56</sup>
- (2) The court must have regard to all the circumstances of the case including -
- (a) the connection between the ancillary claim and the claim;
  - (b) whether the ancillary claimant is seeking substantially the same remedy which some other party is claiming from the ancillary claimant;
  - (c) whether the facts in the ancillary claim are substantially the same, or closely connected with, the facts in the claim; and
  - (d) whether the ancillary claimant wants the court to decide any question connected with the subject matter of the proceedings -
    - (i) not only between the existing parties but also between existing parties and the proposed ancillary defendant; or
    - (ii) to which the proposed ancillary defendant is already a party but also in some further capacity.

**Effect of service of ancillary claim form.**

- 18.11 (1) A person on whom an ancillary claim form (other than a counterclaim) is served becomes a party to the proceedings if that person is not already a party.
- (2) When an ancillary claim form 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 notice.

**Special provisions relating to judgment on failure to file defence to ancillary claim.**

---

<sup>56</sup> Rules 26. 2 (g) and (h) deal with the court's power to decide the order in which issues are to be tried or to order that part of the proceedings be dealt with separately.

- 18.12 (1) This Rule applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within the permitted time<sup>57</sup>.
- (2) The party against whom the ancillary claim is made -
- (a) is deemed to admit the ancillary claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim; and
- (b) subject to paragraph (5), if judgment under Part 12 is given against the ancillary claimant, he or she may apply to enter judgment in respect of the ancillary claim.
- (3) However, paragraph (2) does not apply in ancillary proceedings against the Crown unless the court gives permission, subject to Rule 18.7.
- (4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.
- (5) The ancillary claimant may not enter judgment under paragraph (2)(b) if the ancillary claimant wishes to obtain judgment for any remedy other than a contribution or indemnity for a sum not exceeding that for which judgment has been entered against the ancillary claimant.
- (6) The court may at any time set aside or vary a judgment entered under paragraph (2) if it is satisfied that the ancillary defendant -
- (a) applied to set aside or vary the judgment as soon as reasonably practicable after finding out that judgment had been entered;
- (b) gives a good explanation for the failure to file a defence; and
- (c) has a real prospect of successfully defending the ancillary claim.

**Procedural steps on service of ancillary claim form on person who is not party.**

- 18.13 An ancillary claimant who serves an ancillary claim form on a person who is not already a party must also serve a copy of -
- (a) every statement of case which has already been served in the proceedings; and
- (b) such other documents as the court may direct.

**Case management where there is defence to ancillary claim.**

- 18.14 (1) Where a defence is filed to an ancillary claim the court must consider the

<sup>57</sup> Rule 18.9(2) deals with the time for filing a defence to an ancillary claim.

future conduct of the proceedings and give appropriate directions.

- (2) The court must fix a case management conference for all parties unless it is satisfied that such further directions as are required can be given in written form.
- (3) In giving directions under this Rule the court must ensure that, so far as is practicable, the ancillary claim and the main claim are managed together.

## **PART 19**

### **ADDITION AND SUBSTITUTION OF PARTIES**

#### **Contents of this Part**

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

**Scope of this Part.**

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

**Change of parties – general.**

- 19.2 (1) A claimant may add a new defendant to proceedings without permission at any time before the 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 and 7 (service of claim form), Part 9 (acknowledgment of service and notice of intention to defend), Part 10 (defence) and Part 12 (default judgments) apply to the amended claim form as they do to a claim form<sup>58</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.

---

<sup>58</sup> Part 18 deals with counterclaims and the adding of additional parties by a defendant.

- (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) the existing party's interest or liability has passed to the new party; or
  - (b) the court can resolve the matters in dispute more effectively by substituting the new party for the existing party.
- (6) 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.

**Procedure for adding or substituting parties.**

- 19.3
- (1) The court may add, substitute or remove a party on, or without an, application.
  - (2) An application for permission to add, substitute or remove a party may be made by -
    - (a) an existing party; or
    - (b) a person who wishes to become a party.
  - (3) An application for an order under Rule 19.2(5) (a) (substitution of new party where existing party's interest or liability has passed) may be made without notice but must be supported by evidence on affidavit.
  - (4) No person may be added or substituted as a claimant unless that person's written consent is filed with the court office.
  - (5) An order for the addition, substitution or removal of a party must be served on -
    - (a) all parties to the proceedings;
    - (b) any party added or substituted; and
    - (c) any other person affected by the order.

- (6) Where the court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about-
- (a) filing and serving the claim form and any statements of case on any new defendant;
  - (b) serving relevant documents on the new party; and
  - (c) the management of the proceedings;
- and subject to such directions, Rule 19.2(2) applies.

- (7) Where -
- (a) the court makes an order for the addition or substitution of a new defendant; and
  - (b) the claim form is served on the new defendant;
- these Rules apply to the new defendant as they apply to any other defendant.

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

- 19.4 (1) This Rule applies to a change of parties after the end of a relevant limitation period.
- (2) The court may add or substitute a party only if -
- (a) the relevant limitation period was current when the proceedings were started; and
  - (b) the addition or substitution is necessary.
- (3) The addition or substitution of a party is necessary only if the court is satisfied that -
- (a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party; or
  - (b) the interest or liability of the former party has passed to the new party; or
  - (c) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant.

**PART 20**

**CHANGES TO STATEMENTS OF CASE**

**Contents of this Part**

Changes to statement of case..... Rule 20.1

Changes to statement of case after end of relevant  
limitation period..... Rule 20.2

**Changes to  
statement of  
case.**

- 20.1 (1) A party may change a statement of case at any time before the case management conference without the court's permission unless the change is one to which -
- (a) Rule 19.4 (special provisions about changing parties after the end of a relevant limitation period); or
  - (b) Rule 20.2 (changes to statements of case after the end of a relevant limitation period);  
applies.
- (2) An application for permission to change a statement of case may be made at the case management conference.
- (3) The court may not give permission to change a statement of case after the first case management conference unless the party wishing to make the change can satisfy the court that the change is necessary because of some change in the circumstances which became known after the date of that case management conference.
- (4) The party amending a statement of case must forthwith -
- (a) serve a copy on all other parties; and
  - (b) file at the court office the amended statement of case endorsed with a certificate of service.
- (5) An amended statement of case must include a certificate of truth in accordance with Rule 3.12.

**Changes to  
statement of  
case after end  
of relevant  
limitation  
period.**

- 20.2 (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 -
  - (a) was genuine; and
  - (b) is not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.
- (4) The court may allow an amendment to alter the capacity in which a party claims<sup>59</sup>.

## PART 21

### REPRESENTATIVE PARTIES

#### Contents of this Part

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

**Representative claimants and defendants – general.**

- 21.1 (1) This Rule applies to any proceedings, other than proceedings falling within Rule 21.4, where five or more persons have the same or a similar interest in the proceedings.
- (2) The court may appoint -

---

<sup>59</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.

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

- (a) one or more of those persons; or
- (b) a body having a sufficient interest in the proceedings;
- to represent all or some of the persons with the same or similar interest.
- (3) A representative under this Rule may be either a claimant or a defendant.
- 21.2 (1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.
- (2) An application for such an order may be made by -
- (a) any party;
- (b) any person or body who wishes to be appointed as a representative party; or
- (c) any person who is likely to be a party to proceedings.
- (3) An application for such an order –
- (a) must be supported by affidavit evidence; and
- (b) must identify every person to be represented, either
- (i) individually; or
- (ii) by description, if it is not practicable to identify a person individually.
- (4) An application to appoint a representative defendant must be 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.

- Consequence of order appointing representative party.** 21.3
- (1) Where 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 who is not a party to the proceedings unless the person wishing to enforce it obtains permission from the court.
  - (3) An application for permission under this Rule must be supported by evidence on affidavit and must be served on the person against whom it is wished to enforce the judgment.
- Representation of persons who cannot be ascertained, etc., in proceedings about estates, trusts and construction of written instruments.** 21.4
- (1) This Rule applies only to proceedings about -
    - (a) the estate of someone who is dead;
    - (b) property subject to a trust; or
    - (c) the construction of a written instrument.
  - (2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether presently or for any future, contingent or unascertained interest) where -
    - (a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;
    - (b) the person, or the class or some member of it, though ascertained, cannot be found; or
    - (c) it is expedient to do so for any other reason.
  - (3) An application for an order to appoint a representative party under this Rule may be made by -
    - (a) any party; or
    - (b) any person who wishes to be appointed as a representative party.
  - (4) A representative appointed under this Rule may be either a claimant or a defendant.
  - (5) A decision of the court binds everyone whom a representative claimant or representative defendant represents.

**Compromise of proceedings to which Rule 21.4 applies.**

- 21.5 (1) Where –
- (a) a compromise is proposed in proceedings to which Rule 21.4 applies;
  - (b) some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings;
  - (c) those persons are represented by a representative appointed under Rule 21.4 when the court considers the proposed compromise; and
  - (d) the court is satisfied that the compromise will be for the benefit of the absent persons;
- the court may approve the compromise.
- (2) The persons for whose benefit the court may approve a compromise may be unborn or unascertained.
- (3) The court's order approving the compromise binds the absent persons unless it has been obtained by fraud or non-disclosure of material facts.

**Representation of beneficiaries by trustees.**

- 21.6 (1) A claim may be made by or against a person in his capacity as a trustee, executor or administrator.
- (2) If a claim is so made, there is no need for a beneficiary also to be a party.
- (3) The court may direct that notice of the proceedings be given to any 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) (i) could not; or
  - (ii) did not in fact; represent the interest of the beneficiary; or
  - (b) has acted fraudulently.

**Proceedings against estate of dead person.**

- 21.7 (1) Where in any proceedings it appears that a dead person was interested in the proceedings then, if the dead person has no personal representatives, the court may make an order appointing someone to represent the dead 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 dead person.
- (3) The court may make such an order on or without an application.
- (4) Until the court has appointed someone to represent the dead 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.

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

- 21.8 (1) If a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.
- (2) An order under this Rule may be made on, or without an, application.

**Power of court to strike out action after death of claimant.**

- 21.9 (1) If a claimant dies and his 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 may direct.
- (3) The general rule is that if the court makes an order on an application under this Rule it shall be that unless the personal representatives or some other person 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 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

### Contents of this Part

Partners.....	Rule 22.1
Person carrying on business in a name not his own.....	Rule 22.2
Bodies corporate.....	Rule 22.3

- Partners.** 22.1 (1) Persons claiming to be entitled, or alleged to be liable, as partners may sue or be sued in the firm's name if -
- (a) the firm's 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) Where 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 they 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) certify that he has made a demand in writing;
  - (b) state the date of the demand; and
  - (c) certify that the other party has not complied.

- (6) If the partners do not comply within 21 days after service of the order any claim or defence brought by them is deemed to be struck out.<sup>60</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>61</sup>

**Person carrying on business in a name not his own.**

22.2

- (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 XY.";
    - (iii) as "X.Y." followed by the words "(a trading name)" or "(a business name)";
    - (iv) as "X.Y." followed by the words "a firm" or words to a like effect.
- (2) Where 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.

**Bodies corporate.**

22.3

- (1) Subject to any statutory provision to the contrary, a duly authorised director or other officer of a body corporate may conduct proceedings on its behalf.
- (2) A body corporate must be represented by a legal practitioner at any hearing in open court unless the court permits it to be represented by a duly authorised director or other officer.

<sup>60</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.

<sup>61</sup> Rule 43.9 deals with enforcement of a judgment against a partnership or by a firm against one of its members.

- (3) Permission 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 by a resolution passed for that purpose.

**PART 23**

**MINORS AND PATIENTS**

**Contents of this Part**

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

**Scope of this Part.**

- 23.1 (1) This Part -
- (a) contains special provisions which apply in proceedings involving minors and patients; and

(b) sets out how a person becomes a minor's or patient's next friend <sup>62</sup>.

**CAP 39.  
CAP. 122**

(2) In this Part, "**the Act**" means the Medical Service and Institutions Act or the Unsoundness of Mind Act, as the case may be.

**Requirement  
of next friend  
in proceedings  
by or against  
minors or  
patients.**

23.2

(1) A minor or patient must have a next friend to conduct proceedings on his or her behalf.

(2) However the court may, on the application of a minor, make an order permitting the minor to conduct proceedings without a next friend.

(3) An application for an order under paragraph (2) -

(a) may be made by the minor;

(b) if the minor has a next friend, must be on notice to that next friend; and

(c) if there is no next friend, may be made without notice.

(4) Where -

(a) the court has made an order under paragraph (2); and

(b) it subsequently appears to the court that it is desirable for a next friend to conduct the proceedings on behalf of the minor;

the court may appoint a person to be the minor's next friend.

(5) A next friend must act by a legal practitioner unless the court otherwise orders.

(6) The next friend must sign any certificate of truth under Rule 3.12 on behalf of the minor or patient.

**Stage of  
proceedings at  
which next  
friend becomes  
necessary.**

23.3

(1) A minor or patient must have a next friend in order to 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

---

<sup>62</sup> Rule 5.10 contains provisions about the service of documents on minors and patients. Rule 14.3 contains restrictions on entering judgments on an admission where a party is a minor or patient.

- (b) take any step in proceedings except -
  - (i) issuing and serving a claim form against a minor or patient; or
  - (ii) applying for the appointment of a next friend under Rule 23.8;

until the minor or patient has a next friend.

- (3) If a person, other than a minor, becomes a patient during proceedings, no party may take any step in the proceedings apart from applying to the court for the appointment of a next friend until the patient has a next friend.
- (4) Any step other than
  - (a) an application under Rule 23.2(2); or
  - (b) under paragraph (2)(b);

taken before a minor or patient has a next friend is of no effect unless the court otherwise orders.

**Who may be a minor's next friend.**

- 23.4 A person who satisfies the conditions set out in Rule 23.6 may act as a minor's next friend without a court order, unless -
- (a) the court has already appointed a next friend; or
  - (b) the court makes or has made an order under Rule 23.9 (court's power to change next friend or to prevent a person acting as a next friend).

**Who may be a patient's next friend.**

- 23.5 (1) Unless the court appoints some other person, a person authorised under the Act to conduct legal proceedings in the name of the patient or on the patient's behalf is entitled to be the next friend of the patient in any proceedings to which the authority extends.
- (2) If 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 next friend without a court order.

**Conditions for being next friend.**

- 23.6 A person may act as a next friend 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.

**How a person can become a next friend without a court order.**

- 23.7
- (1) If the court has not appointed a next friend, a person who wishes to act as a next friend must follow the procedure set out in this Rule.
  - (2) A person authorised under the Act must file an official copy of the order or other document which constitutes his authorisation to act.
  - (3) Any other person must file a certificate that he satisfies the conditions specified in Rule 23.6.
  - (4) A person who is to act as a next friend for a claimant must file -
    - (a) the authorisation; or
    - (b) the certificate under paragraph (3);
 at the time when the claim is made.
  - (5) A person who is to act as a next friend for a defendant must file -
    - (a) the authorisation; or
    - (b) the certificate under paragraph (3);
 at the time when the next friend first takes a step in the proceedings on behalf of the defendant.
  - (6) The next friend must -
    - (a) serve a copy of the certificate under paragraph (3) on every person on whom in accordance with Rule 5. 10 (service of claim form on minors or patients) the claim form should be served; and
    - (b) file an affidavit of service.

**How a person can become a next friend by a court order.**

- 23.8
- (1) The court may make an order appointing a next friend with or without an application.
  - (2) An application for an order appointing a next friend may be made by -
    - (a) a person who wishes to be a next friend, or

- (b) a party.
- (3) Where -
  - (a) a person makes a claim against a minor or patient;
  - (b) the minor or patient has no next friend; and
  - (c) either -
    - (i) someone who is not entitled to be a next friend files a defence; or
    - (ii) the claimant wishes to take some step in the proceedings;

the claimant must apply to the court for an order appointing a next friend for the minor or patient.

- (4) An application for an order appointing a next friend must be supported by evidence on affidavit.
- (5) The court may not appoint a next friend under this Rule unless it is satisfied that the person to be appointed complies with the conditions specified in Rule 23.6.

**Court's power to terminate appointment of and substitute next friend.**

23.9

- (1) The court may -
  - (a) direct that a person may not act as a next friend; or
  - (b) terminate a next friend's authority to act; or
  - (c) appoint a new next friend in substitution for an existing one.
- (2) The court may make an order under 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 next friend under this Rule unless it is satisfied that the person to be appointed complies with the conditions specified in Rule 23.6.

**Appointment of next friend by court order – supplementary**

23.10

- (1) An application for an order under Rule 23.8 or 23.9 must be served on every person on whom, in accordance with Rule 5. 10 (service of claim form on minors or patients) the claim form should have been served.

- (2) An application for an order under Rule 23.9 (substitution of next friend) must also be served on: -
  - (a) the person who is or who purports to act as next friend; and
  - (b) the person who it is proposed should act as next friend 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 person proposed or any other person.

**Procedure where appointment as next friend ceases.**

- 23.11
- (1) The appointment of a minor's next friend ceases when a minor who is not a patient reaches the age of majority.
  - (2) When a party, other than a minor, ceases to be a patient during the course of proceedings, the next friend's appointment continues until it is ended by court order.

- (3) An application for an order under paragraph (2) may be made by -
  - (a) the former patient;
  - (b) the next friend; or
  - (c) a party;

and must be supported by evidence on affidavit.

- (4) The minor or patient in respect of whom the appointment to act has ceased must serve notice on the other parties -
  - (a) stating that the appointment of the next friend has ceased;
  - (b) giving an address for service; and
  - (c) stating whether or not he chooses to carry on the proceedings.

- (5) If the notice is not served within 28 days after the appointment of the next friend 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 next friend for costs continues until -
  - (a) the minor or patient serves the notice referred to in paragraph (4); or

(b) the next friend serves notice on the other parties that the appointment has ceased.

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

23.12 (1) Where a claim is made -

- (a) by or on behalf of a minor or patient; or
- (b) against a minor or patient;

no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of, or against the minor or patient, without the approval of the court.

(2) Where -

- (a) before proceedings in which a claim is to be made by or on behalf of a minor or patient (whether alone or with any other person) are 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 2) which may -
  - (i) include a request to the court for approval of the settlement; and
  - (ii) be issued jointly by the claimant and defendant.

Form 2

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

23.13 (1) Where in any proceedings -

- (a) money is recovered by or on behalf of or for the benefit of a minor or patient; or
- (b) money paid into court is accepted by or on behalf of a minor or patient;

that money must be dealt with in accordance with directions given by the court under this Rule and not otherwise.

(2) Directions given under this Rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

**PART 24**

**SECURITY FOR COSTS**

**Contents of this Part**

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

**Scope of this Part.**

24.1 This Part deals with the power of the court to require a claimant to give security for the costs of the defendant.

**Application for order for security for costs.**

- 24.2 (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.
- (2) Where practicable, such an application must be made at a case management conference or pre-trial review.
- (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.

**Conditions to be satisfied.**

- 24.3 The court may make an order for security for costs under Rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that -
- (a) the claimant is ordinarily resident out of the jurisdiction; or
  - (b) the claimant is an external company; or
  - (c) the claimant -
    - (i) failed to give his address in the claim form; or
    - (ii) gave an incorrect address in the claim form; or
    - (iii) has changed his address since the claim was commenced, with a view to evading the consequences of the litigation; or

- (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; or
- (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; or
- (f) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover; or
- (g) the claimant has taken steps with a view to placing the claimant's assets beyond the jurisdiction of the court.

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

- 24.4 Rules 24.2 and 24.3 shall apply where a defendant makes a counterclaim as if-
- (a) references in those Rules to a claimant were references to a defendant making a counterclaim; and
  - (b) references to a defendant were references to a claimant defending a counterclaim.

**Enforcing order for security for costs.**

- 24.5 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; and/or
  - (b) that 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**

**TABLE OF CASE MANAGEMENT - THE OBJECTIVE**

**Contents of this Part**

Court's duty to actively manage cases..... Rule 25.1

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

The court must further the overriding objective<sup>63</sup> by actively managing cases, and this may include -

- (a) identifying the issues at an early stage;
- (b) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (c) encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, (if the court considers that appropriate) and facilitating the use of such procedures;
- (d) encouraging the parties to co-operate with each other in the conduct of proceedings;
- (e) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;
- (f) deciding the order in which issues are to be resolved;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step will justify the cost of taking it;
- (i) dealing with as many aspects of the case as is practicable on the same occasion;
- (j) dealing with the case or any aspect of it, where it appears appropriate to do so, without requiring the parties to attend court;
- (k) making appropriate use of technology;
- (l) giving directions to ensure that the trial of the case proceeds quickly and efficiently; and
- (m) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application.

---

<sup>63</sup> The overriding objective is set out in Part I.

**PART 26**

**CASE MANAGEMENT - THE COURT'S POWERS**

**Contents of this Part**

Court's general powers of management.....	Rule 26.1
Court's power to make orders of its own initiative.....	Rule 26.2
Sanctions – striking out statement of case.....	Rule 26.3
Court's general power to strike out statement of case.....	Rule 26.4
Judgment without trial after striking out.....	Rule 26.5
Setting aside judgment entered after striking out.....	Rule 26.6
The court's powers in cases of failure to comply with Rules, etc.	Rule 26.7
Relief from sanctions.....	Rule 26.8
General power of the court to rectify matters where there has been a procedural error.....	Rule 26.9

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

- 26.1 (1) The list of powers in this Rule is in addition to any powers given to the court by any other Rule, practice direction or by any enactment.
- (2) Except where these Rules provide otherwise, the court may -
- (a) transfer proceedings to the Family Court or the District Court;
  - (b) consolidate proceedings;
  - (c) 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 or shortening of the time is made after the time for compliance has passed or before it has commenced;
  - (d) adjourn or bring forward a hearing to a specific date;
  - (e) stay the whole or part of any proceedings generally or until a specified date or event;
  - (f) decide the order in which issues are to be tried;
  - (g) direct a separate trial of any issue;
  - (h) try two or more claims on the same occasion;

- (i) direct that part of any proceedings (such as a counterclaim or other ancillary claim) be dealt with as separate proceedings;
- (j) dismiss or give judgment on a claim after a decision on a preliminary issue;
- (k) exclude an issue from determination if it can do substantive justice between the parties on the other issues and where determining the excluded issue would therefore serve no worthwhile purpose;
- (l) require the maker of an affidavit or witness statement to attend for cross-examination;
- (m) require any party or a party's legal practitioner to attend the court;
- (n) hold a hearing and receive evidence by telephone or use any other method of direct oral communication;
- (o) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;
- (p) direct that any evidence be given in written form;
- (q) where there is a substantial inequality in the proven financial position of each party, order any party having the greater financial resources who applies for an order to pay the other party's costs of complying with the order in any event;
- (r) where two or more parties are represented by the same legal practitioner;
  - (i) direct that they be separately represented; and
  - (ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged and make any consequential order as to costs thrown away;
- (s) give the conduct of any matter to any legal practitioner it thinks fit and make any appropriate consequential order about costs;
- (t) direct that notice of any proceedings or application be given to any person; or

- (u) take any other step, give any other direction, or make any other order, for the purpose of managing the case and furthering the overriding objective.
- (3) When the court makes an order or gives a direction, it may make the order or direction subject to conditions.
- (4) The conditions which the court may impose include -
  - (a) a condition requiring a party to give security;
  - (b) a condition requiring a party to give an undertaking;
  - (c) a condition requiring the payment of money into court or as the court may direct;
  - (d) a condition requiring a party to pay all or part of the costs of the proceedings; and
  - (e) a condition that a party permit entry to property owned or occupied by him to another party or someone acting on behalf of another party.
- (5) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.
- (6) In special circumstances, on the application of a party, the court may dispense with compliance with any of these Rules.

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

- 26.2
- (1) Except where a Rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.
  - (2) Where the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations.
  - (3) Such opportunity may be to make representations orally, in writing, telephonically or by such other means as the court considers reasonable.
  - (4) Where the court proposes -
    - (a) to make an order of its own initiative; and
    - (b) to 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 7 days' notice of the date, time and place of the hearing.

**Sanctions - striking out statement of case.**

- 26.3 (1) In addition to any other powers 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 -
- (a) that there has been a failure to comply with a Rule or practice direction or with an order or direction given by the court in the proceedings;
  - (b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;
  - (c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or
  - (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 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.

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

- 26.4 (1) Where 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) identifies the Rule or order which has not been complied with;
  - (b) states the nature of the breach; and
  - (c) contains a certificate that the other party is in default.

- (3) The court office must refer any such application immediately to a Judge, or to the Registrar, who may -
  - (a) grant the application;
  - (b) seek the views of the other party; or
  - (c) direct that an appointment be fixed to consider the application and that the court office give to all parties notice of the date, time and place for such appointment.
- (4) If an appointment is fixed, the court must give 7 days notice of the time, date and place of such 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.
- (8) Rule 26.9 (general power to rectify) shall not apply.<sup>64</sup>

**Judgment  
without trial  
after striking  
out.**

- 26.5
- (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 an "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 ask for judgment to be entered and for prescribed costs 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 -
    - (i) prove service of the "unless order";
    - (ii) certify that the right to enter judgment has arisen because the court's order was not complied with; and

---

<sup>64</sup> Rule 11.16 deals with applications to set aside or vary any order made on an application made without notice.

(iii) state the facts which entitle the party to judgment.

- (5) Where the party wishing to obtain judgment is the claimant and the claim is for -
- (a) a specified sum of money;
  - (b) an amount of money to be decided by the court;
  - (c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
  - (d) any combination of these remedies;

judgment shall 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) Where the party wishing to obtain judgment is the claimant and the claim is for some other remedy, the judgment shall be such as the court considers that the claimant is entitled to.
- (7) Where the party wishing to obtain judgment is a defendant, judgment shall be for assessed costs.
- (8) Where 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>65</sup>

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

- 26.6 (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 the judgment.
- (3) If the application to set aside a judgment is made for any other reason, Rule 26.8 (relief from sanctions) applies.

**The court's powers in cases of failure to comply with Rules, etc.**

- 26.7 (1) Where the court makes an order or gives directions, the court must whenever practicable also specify the consequences of failure to comply.
- (2) Where a party has failed to comply with any of these Rules, a direction or any order, any sanction for non-compliance imposed by the Rule,

---

<sup>65</sup> Part 64 deals with the quantification of costs.

direction or the order has effect unless the party in default applies for and obtains relief from the sanction, and Rule 26.9 shall not apply.

- (3) Where 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.

**Relief from sanctions.**

- 26.8 (1) An application for relief from any sanction imposed for a failure to comply with any Rule, order or direction must be -
  - (a) made promptly; and
  - (b) supported by evidence on affidavit.
- (2) The court may grant relief only if it is satisfied that -
  - (a) the failure to comply was not intentional;
  - (b) there is a good explanation for the failure; and
  - (c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.
- (3) In considering whether to grant relief, the court must have regard to-
  - (a) the interests of the administration of justice;
  - (b) whether the failure to comply was due to the party or his legal practitioner;
  - (c) whether the failure to comply has been or can be remedied within a reasonable time;
  - (d) whether the trial date or any likely trial date can still be met if relief is granted; and
  - (e) the effect which the granting of relief or not would have on each party.

- (4) 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.
- General power of the court to rectify matters where there has been a procedural error.** 26.9
- (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 or court order.
- (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) Where there has been an error of procedure or failure to comply with a Rule, practice direction, court order or direction, the court may make an order to 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

#### Contents of this Part

Scope of this Part.....	Rule 27.1
Fixed date claims – first hearing.....	Rule 27.2
Case management conference.....	Rule 27.3
Attendance at case management conference or pre-trial review.....	Rule 27.4
Orders to be made at case management conference.....	Rule 27.5
Simple and urgent proceedings.....	Rule 27.6
Adjournment of case management conference.....	Rule 27.7
Variation of case management timetable.....	Rule 27.8
Listing questionnaire.....	Rule 27.9
Fixing trial date.....	Rule 29.10

- Scope of this Part.** 27.1 This Part deals with the procedures by which the court will manage cases.
- Fixed date claims - first hearing.** 27.2 (1) When a fixed date claim form is issued the court must fix 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, however, treat the first hearing as the trial of the claim if it is not defended or if the court considers that the claim can be dealt with summarily.
- (4) The general rule is that the court must give at least 14 days notice of any first hearing.
- (5) However, this is subject to any Rule or statutory provision which specifies a different period.
- (6) The court may, on or without an application, direct that shorter notice be given -
  - (a) if the parties agree; or
  - (b) in urgent cases.
- (7) Unless the defendant files an acknowledgment of service, the claimant must file evidence on affidavit of service of the fixed date claim form and the relevant documents specified in Rule 5.2(3) at least 7 days before the first hearing.

**Case management conference.**

- 27.3
- (1) The general rule is that the court office must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.
  - (2) Where the defendant files a defence and also an admission of a specified sum of money, the case management conference is not to be fixed until the claimant gives notice under Rule 14.7(3) that the claim is to continue.
  - (3) The case management conference must take place not less than four weeks nor more than eight 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) However, 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 in a supporting affidavit.
  - (6) The court office must give all parties not less than 14 days notice of the date, time and place of the case management conference.

- (7) However, the court may, with or without an application, direct that shorter notice be given -
  - (a) if the parties agree; or
  - (b) in urgent cases.

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

- 27.4
- (1) If a party is represented by a legal practitioner, that legal practitioner or another legal practitioner who is fully 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 legal practitioner) must attend the case management conference or pre-trial review.
  - (3) However, the court may dispense with the attendance of a party or representative (other than a legal practitioner).
  - (4) If the case management conference or pre-trial review is not attended by the legal practitioner and the party or a representative, the court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under Part 26 (Case management - the court's powers) or Part 64 (Costs - Quantification).

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

- 27.5
- (1) The general rule is that at a case management conference the court must consider whether to give directions for -
    - (a) standard disclosure and inspection;
    - (b) service of witness statements; and
    - (c) service of expert's reports (if any);by dates fixed by the court.
  - (2) The court may also give directions for the preparation of -
    - (a) an agreed statement of facts;
    - (b) an agreed statement of issues;
    - (c) an agreed statement of the basic technical, scientific or medical matters in issue; and

- (d) an agreed statement as to any relevant specialist area of law, 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 -
  - (a) the trial date; or
  - (b) the period within which the trial is to commence; and
  - (c) the date on which a listing questionnaire is to be sent by the court office to the parties.
- (5) The court office must serve an order containing the directions made on all parties and give notice of -
  - (a) the trial date or trial period;
  - (b) the date of any pre-trial review; and
  - (c) the date on which the listing questionnaire is to be sent out by the court office.

**Simple and urgent proceedings.**

27.6 Where the court is satisfied that a claim -

- (a) can be dealt with justly in a summary manner; or
- (b) requires an early trial;

the court may

- (i) fix the trial date and dispense with a listing questionnaire under Rule 27.9;
- (ii) dispense with a pre-trial review under Part 38;
- (iii) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents under Rule 39.1; and
- (iv) 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.

**Adjournment of case management conference.**

- 27.7 (1) The court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.
- (2) Where the court is satisfied that -
- (a) the parties are in the process of negotiating, or are likely to negotiate, a settlement; or
  - (b) the parties are attending, or have arranged to attend, a form of ADR procedure;
- the court may adjourn the case management conference to a suitable date, time and place to enable negotiations or the ADR procedure to continue.
- (3) Where the case management conference is adjourned under paragraph (2), 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 applications made prior to a pre-trial review must be heard and determined by the judge or the Registrar who conducted the first case management conference.

**Variation of case management timetable.**

- 27.8 (1) A party must apply to the court if that party wishes to vary a date which the court has fixed for -
- (a) a case management conference;
  - (b) a party to do something where the order specifies the consequences of failure to comply;
  - (c) a pre-trial review;
  - (d) the return of a listing questionnaire; or
  - (e) the trial date or trial period.
- (2) No date set by the court or these Rules for doing any act may 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>66</sup>
- (4) A party who applies after that date must apply -
  - (a) for relief from any sanction to which the party has become subject under these Rules or any court order; and
  - (b) for an extension of time.<sup>67</sup>
- (5) The parties may agree to vary a date in the timetable other than one mentioned in paragraphs (1) or (2).
- (6) Where the parties so agree, they must -
  - (a) file a consent application for an order to that effect; and
  - (b) certify on that application that the variation agreed will not affect the date fixed for the trial or, if no date has been fixed, the period in which the trial is to commence, and the timetable is accordingly varied unless the court directs otherwise.

**Listing  
questionnaire.  
Form 10.**

- 27.9
- (1) The court office must send the parties a listing questionnaire in Form 10 on the date fixed under Rule 27.5(4)(c).
  - (2) Each party must file the completed listing questionnaire at the court office within the period of 21 days after the date on which it is served on that party.
  - (3) If –
    - (a) a party –
      - (i) fails to return the completed questionnaire to the court office within the period of 21 days; or
      - (ii) fails to give all the information requested by the listing questionnaire; or
    - (b) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete the preparation of the case;

<sup>66</sup> Rule 42.7 deals with consent orders.

<sup>67</sup> Rule 26.8 provides for applications for relief from sanctions.

the court office may fix a listing appointment and direct any or all of the parties to attend the appointment.

- (4) The court office must give all parties at least 7 days notice of the date, time and place of the listing appointment.
- (5) Any party to the proceedings must attend the listing appointment.
- (6) At the appointment the court must -
  - (a) give any directions which may be needed to complete the preparation of the case for trial without any adjournment of the trial; and
  - (b) where the listing appointment has been fixed under paragraph (3)(a), make a wasted costs order unless there is a special reason that it should not make such an order.
- (7) Apart from the requirement to complete a listing questionnaire, the court may at any time require the parties to answer a questionnaire to assist it in the management of the case.

**Fixing trial date.**

- 27.10 (1) As soon as practicable after -
- (a) each party has returned a completed listing questionnaire to the court office, or
  - (b) the court has held a listing appointment under Rule 27.9(3);
- the court office must fix the date of the trial (or, if it has already done so, confirm that date) and notify the parties.
- (2) The general rule is that the court office must give the parties at least 8 weeks' notice of the date of the trial.
  - (3) The court may, however, give shorter notice -
    - (a) if the parties agree; or
    - (b) in urgent cases.

**PART 28**

**DISCLOSURE AND INSPECTION OF DOCUMENTS**

**Contents of this Part**

Scope of this Part..... Rule 28.1  
 Duty of disclosure limited to documents which are or have  
 been in party’s control..... Rule 28.2  
 Disclosure of copies..... Rule 28.3  
 Standard disclosure: what documents are to be  
 disclosed..... Rule 28.4  
 Specific disclosure..... Rule 28.5  
 Criteria for ordering specific disclosure..... Rule 28.6  
 Procedure for disclosure..... Rule 28.7  
 Duty of legal practitioner..... Rule 28.8  
 Requirement for party to certify that he understands duty  
 of disclosure..... Rule 28.9  
 Disclosure in stages..... Rule 28.10  
 Inspection and copying of listed documents..... Rule 28.11  
 Duty of disclosure continuous during proceedings..... Rule 28.12  
 Consequence of failure to disclose document under order  
 for disclosure..... Rule 28.13  
 Claim of right to withhold disclosure or inspection of  
 document..... Rule 28.14  
 Restrictions on use of a privileged document inspection of  
 which has been inadvertently allowed..... Rule 28.15  
 Documents referred to in statement of case, etc..... Rule 28.16  
 Subsequent use of disclosed documents..... Rule 28.17  
 Notice to prove document..... Rule 28.18

**Scope of this Part.**

- 28.1 (1) This Part sets out Rules about the disclosure and inspection of documents.  
 (2) In this Part
- CAP. 95.** “**document**” means, subject to the Evidence Act, anything on or in which information of any description is recorded; and
- “**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.
- (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.

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

28.2 (1) A party's duty to disclose documents is limited to documents which are or have been in the control of that party.

(2) For this purpose, a party has or has had control of a document if –

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

**Disclosure of copies.**

28.3 (1) Except where required by 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.

**Standard disclosure: what documents are to be disclosed.**

28.4 Where a party is required by any direction of the court to give standard disclosure, that party must disclose all documents which are directly relevant to the matters in question in the proceedings.

**Specific disclosure.**

28.5 (1) An order for specific disclosure is an order that a party must do one or more of the following things –

- (a) disclose documents or classes of documents specified in the order;  
or
- (b) carry out a search for documents to the extent stated in the order;  
and
- (c) disclose any documents located as a result of that search.

- (2) An order for specific disclosure may be made with or without an application.
- (3) An application for specific disclosure may be made without notice 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.

**Criteria for ordering specific disclosure.**

28.6

- (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) Where, having regard to paragraph (2)(c), the court would otherwise refuse to make an order for specific disclosure, it may however make such an order on terms that the party seeking that order must pay the other party's costs of such disclosure in any event.
- (4) Where the court makes an order under paragraph (3), it must assess the costs to be paid in accordance with Rule 64.11.
- (5) The party in whose favour such order for costs is made may apply to vary the amount of costs so assessed.

**Procedure for disclosure.**

28.7

- (1) Paragraphs (2) to (5) set out the procedure for disclosure.

**Form 11.**

- (2) Each party must make, and serve on every other party, a list of documents in Form 11.

- (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 –
  - (a) what documents are no longer in the party’s control;
  - (b) what has happened to those documents; and
  - (c) 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.

**Duty of legal practitioner.**

- 28.8 The legal practitioner for a party must –
- (1) explain to the maker of the list of documents –
    - (a) the necessity of making full disclosure in accordance with the terms of the order for disclosure and these Rules; and
    - (b) the possible consequences of failing to do so; and
  - (2) certify on the list of documents under Rule 28.7(2) that the explanation required by paragraph (1) has been given.

**Requirement for party to certify that he understands duty of disclosure.**

- 28.9 (1) The lay party must certify in the list of documents –
- (a) that he understands the duty of disclosure; and
  - (b) that to the best of the lay party's knowledge 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 must be made by the person identified in Rule 28.7(6)(a).
- (3) If it is impracticable for the lay party to sign the certificate required by paragraph (1), the certificate may be given by that person's legal practitioner.
- (4) A certificate given by the legal practitioner must also certify –
  - (a) the reasons why it is impractical for the lay party to give the certificate; and
  - (b) that the certificate is given on the instructions of the lay party.

**Disclosure in stages.**

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

**Inspection and copying of listed documents.**

- 28.11 (1) When a party has served a list of documents on any other party, that party has a right to inspect any document on the list, except documents –
- (a) which are no longer in the physical possession of the party who served the list; or
  - (b) for which the right to withhold from disclosure is claimed.
- (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 7 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 7 days after the date on which the notice was received.

**Duty of disclosure continuous during proceedings.**

- 28.12 (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 list of those documents.
- (3) The supplemental list must be served not more than 14 days after the new documents have come to the notice of the party required to serve it.

**Consequence of failure to disclose document under order for disclosure.**

- 28.13 (1) A party who fails to give disclosure by the date ordered or to permit inspection may not rely on or produce any document not so disclosed or made available for inspection at the trial.
- (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.<sup>68</sup>

**Claim of right to withhold disclosure or inspection of document.**

- 28.14 (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 of the document or documents 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 such right or duty is claimed.
- (4) Unless the court orders otherwise, an order of the court under paragraph (2) is not to be –

---

<sup>68</sup> Rule 26.8 provides for applications for relief from sanctions.

- (a) served on; nor
  - (b) open for inspection by;  
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 such document be disclosed or made available for inspection.
- (6) On the 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.
- (7) If a person –
- (a) claims a right to withhold inspection; or
  - (b) applies for an order permitting that person not to disclose the existence of a document or part of a document;
- the court may require the person to produce that document to the court to enable it to decide whether the claim is justified.
- (8) In 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.

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

- 28.15 Where a party inadvertently allows a privileged document to be inspected the party who has inspected it may use it only with –
- (a) the permission of the court; or
  - (b) the agreement of the party disclosing the document.

**Documents referred to in statement of case, etc.**

- 28.16 (1) A party may inspect and copy a document mentioned in –
- (a) the claim form;
  - (b) a statement of case;
  - (c) a witness statement or summary;

(d) an affidavit; or

(e) an expert's report.

(2) A party who wishes to inspect and copy such a document must give written notice to the party who, or whose witness, mentioned the document.

(3) The party to whom the notice is given must comply with the notice not more than 7 days after the date on which the notice is served.

**Subsequent  
use of disclosed  
documents.**

28.17 (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed except where-

(a) the document has been read to or by the court, or referred to, in open court; or

(b) (i) the party disclosing the document and the person to whom the document belongs; or

(ii) the court;

gives permission.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to in open court.

(3) An application for such an order may be made –

(a) by a party; or

(b) by any person to whom the document belongs.

**Notice to prove  
document.**

28.18 (1) A party shall be deemed to admit the authenticity of any document disclosed to him under this Part unless that party serves notice that the document must be proved at trial.

(2) A notice to prove a document must be served not less than 42 days before the trial.

**PART 29**

## EVIDENCE

### Contents of this Part

Power of court to control evidence.....	Rule 29.1
Evidence at trial - general rule.....	Rule 29.2
Evidence by video link or other means.....	Rule 29.3
Requirement to serve witness statements.....	Rule 29.4
Form of witness statements.....	Rule 29.5
Witness summaries.....	Rule 29.6
Procedure where one party will not serve witness statement by date directed.....	Rule 29.7
Witness to give evidence unless court otherwise orders.....	Rule 29.8
Amplifying witness statements at trial.....	Rule 29.9
Cross-examination on witness statement.....	Rule 29.10
Consequence of failure to serve witness statement or summary.....	Rule 29.11
Use of witness statements for other purposes .....	Rule 29.12
Notice to admit facts.....	Rule 29.13

- Power of court to control evidence.** 29.1 The court may control the evidence to be given at any trial or hearing by giving appropriate directions as to –
- (a) the issues on which it requires evidence; and
  - (b) the way in which any matter is to be proved,
- at a case management conference or by other means.
- Evidence at trial - general rule.** 29.2 (1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved –
- (a) at trial, by their oral evidence given in public; and
  - (b) at any other hearing, by affidavit.
- (2) This is subject –
- (a) to any provision to the contrary contained in these Rules or any statutory provision or elsewhere; and
  - (b) to any order of the court.

- (3) Any evidence taken at the trial or other hearing of any proceedings may be used subsequently in those proceedings.<sup>69</sup>

**Evidence by video link or other means.** 29.3 The court may allow a witness to give evidence without being present in the courtroom, through a video link or by any other means.

**Requirement to serve witness statements.** 29.4 (1) The court may order a party to serve on any other party a statement of the evidence of any witness upon which the first party intends to rely in relation to any issues of fact to be decided at the trial (“**a witness statement**”).

- (2) A party’s obligation to serve a witness statement is independent of any other party’s obligation to serve such a statement.<sup>70</sup>

(3) The court may give directions as to –

- (a) the order in which witness statements are to be served; and
- (b) when they are to be filed.

**Form of witness statements.** 29.5 (1) A witness statement must –

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

<sup>69</sup> Part 30 deals with affidavit evidence.

<sup>70</sup> Rule 29.7 provides a procedure that may be adopted when one party is and the other party is not prepared to serve witness statements.

- Witness summaries.**
- 29.6 (2) The court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.
- (1) A party who is –
- (a) required to provide; but
  - (b) not able to obtain,
- a witness statement may serve a witness summary instead.
- (2) That party must certify on the witness summary the reason why a witness statement could not be obtained.
- (3) A “**witness summary**” is a summary of –
- (a) the evidence, so far as is known, which would otherwise be included in a witness statement; or
  - (b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.
- (4) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness or other sufficient means of identifying him.
- (5) A witness summary must be served within the period in which a witness statement would have had to be served.
- (6) Where a party provides a witness summary, so far as practicable, Rules 29.4 (requirement to serve witness statements), 29.7 (procedure where party will not serve witness statements), 29.8 (witness to give evidence) and 29.9 (amplifying witness statements at trial) apply to the summary.

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

- 29.7 (1) This Rule applies where –
- (a) one party is able and prepared to comply with the order to serve witness statements; but
  - (b) the other party fails to make reasonable arrangements to exchange statements.
- (2) The 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 he has done so.

(3) The filed statements must not be disclosed to the other party until that party certifies that it has served its witness statements or summaries in respect of all witnesses upon whose evidence that party intends to rely.

**Witness to give evidence unless court otherwise orders.**

29.8

(1) If a party –

(a) has served a witness statement or summary; and

(b) wishes to rely on the evidence of the witness who made the statement,

that party must call the witness to give evidence unless the court orders otherwise.

(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 28 days before the trial.

**Amplifying witness statements at trial.**

29.9

A witness giving oral evidence may, with the permission of the court –

(a) amplify the evidence as set out in his witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;

(b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties; or

(c) comment on evidence given by other witnesses.

**Cross-examination on witness statement.**

29.10

Where a witness is called to give evidence at trial, he may be cross-examined on the witness statement, whether or not the statement or any part of it was referred to during the witness's evidence in chief.

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

- 29.11 (1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, then the witness may not be called unless the court 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.
- Use of witness statements for other purposes.** 29.12 (1) Except as provided by this Rule, a witness statement may be used only for the purpose of the proceedings in which it is served.
- (2) Paragraph (1) does not apply if and to the extent that –
- (a) the witness gives consent in writing to some other use of it;
- (b) the court gives permission for some other use; or
- (c) the witness statement has been put in evidence.
- Notice to admit facts.** 29.13 (1) A party may serve notice on another party requiring that party to admit the facts or the part of the first party's case specified in the notice.
- (2) A notice to admit facts must be served no later than 42 days before the trial.
- (3) Where the other party makes any admission in response to the notice, the admission may be used against that party only –
- (a) in the proceedings in which the notice to admit is served; and
- (b) by the party who served the notice.
- (4) Where the party served with the notice to admit does not admit the facts set out in the notice within 21 days of service of the notice upon him, 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>71</sup>

## **PART 30**

### **AFFIDAVITS**

---

<sup>71</sup> Rule 64.11 deals with assessment of costs.

## Contents of this Part

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

### **Affidavit evidence.**

- 30.1 (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, 21 days; or
  - (b) in the case of any other hearing, 7 days,
- before the date of the hearing at which it is intended to cross-examine the deponent.
- (5) 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 however make an order on an affidavit which has not been filed if the party tendering it undertakes to file it.

### **Form of affidavits .**

- 30.2 Every affidavit must –
- (a) be headed with the title of the proceedings;
  - (b) be in the first person and state the name, address and occupation of the deponent and, if more than one, of each of them;
  - (c) state if any deponent is employed by a party to the proceedings;

- (d) be divided into paragraphs numbered consecutively; and
- (e) be marked on the top right hand corner of the affidavit (and of the backsheet) with –
  - (i) 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; and
  - (vi) the date when filed.

**Contents of affidavits.**

- 30.3 (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his own knowledge.
- (2) However an affidavit may contain statements of information and belief –
- (a) where any of these Rules so allow; and
  - (b) where it is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application:

Provided that the affidavit indicates –

- (i) which of the statements in it are made from the deponent’s own knowledge and which are matters of information or belief, and
  - (ii) the source of any matters of information and belief.
- (3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.
- (4) No affidavit containing any alteration may be used in evidence unless all such alterations have been initialled by the person before whom the affidavit was sworn.

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

- 30.4 (1) Any document to be used in conjunction with an affidavit must be exhibited to it.
- (2) Where there is more than one such document it may be included in a bundle which is in chronological or some other convenient order and is properly paginated.

- (3) Clearly legible photographic copies of original documents may be exhibited, provided that the originals are made available for inspection by other parties before the hearing and by the court at the hearing.
- (4) Each exhibit or bundle of exhibits must be –
  - (a) produced to and verified by the deponent; and
  - (b) accurately identified by an endorsement on the exhibit or on a certificate which is attached to it signed by the person before whom the affidavit is sworn or affirmed;
  - (c) marked in accordance with Rule 30.2(e).

**Making of affidavits.**

- 30.5
- (1) The 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 was sworn or affirmed; and
    - (d) contain the full name, address and qualifications of the person before whom it was 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) No affidavit may be admitted into evidence if sworn or affirmed before the legal practitioner of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such legal practitioner.
  - (4) Where it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the jurat that –
    - (a) the affidavit was read by him or in his presence to the deponent;
    - (b) the deponent appeared to understand it; and
    - (c) the deponent signed or made his mark in his presence.
  - (5) A person may make an affidavit outside the jurisdiction in accordance with-

- (a) this Part; or
  - (b) the law of the place where he makes the affidavit.
- (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.
- Service of affidavit.** 30.6 (1) The general rule is that a party who is giving evidence by affidavit must serve a copy on every other party.
- (2) This applies whether the affidavit was made in the proceedings or in some other proceedings.
- (3) This 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**

**Contents of this Part**

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

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

- 31.1 (1) A party who wishes to rely on evidence at a trial which –
- (a) is not to be given orally; and
  - (b) which is not contained in a witness statement, affidavit or expert report,
- must disclose his intention to the other parties in accordance with this Rule.
- (2) If a party fails to disclose his 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 to prove any fact must disclose such intention not later than the latest date for serving witness statements.
- (4) If-
  - (a) there is no order for service of witness statements; or
  - (b) a party intends to put in the evidence solely in order to disprove an allegation made in a witness statement,

that party must disclose the evidence at least 21 days before the hearing at which it is proposed to put in the evidence.
- (5) Where the evidence forms part of expert evidence, the intention to put in the evidence must be disclosed when the expert's report is served on the other party.
- (6) Where a party has disclosed the intention to put in the evidence, that party must give every other party an opportunity to inspect it and to agree to its admission without proof.

**Evidence on question of foreign law.**

- 31.2
- (1) This Rule sets out the procedure which must be followed by a party who intends to adduce evidence on a question of foreign law.
  - (2) That party must first give any other party notice of the intention.
  - (3) Notice under paragraph (2) must be given not less than 42 days before the hearing at which the party proposes to adduce the evidence.
  - (4) The notice must –
    - (a) specify the question on which the evidence is to be adduced; and
    - (b) have attached a document which forms the basis of the evidence.

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

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

**PART 32**

**EXPERTS AND ASSESSORS**

**Contents of this Part**

Scope of this Part..... Rule 32.1  
 General duty of court and of parties..... Rule 32.2  
 Expert’s overriding duty to court..... Rule 32.3  
 Way in which expert’s duty to court is to be carried out..... Rule 32.4  
 Expert’s right to apply to court for directions..... Rule 32.5  
 Court's power to restrict expert evidence..... Rule 32.6  
 General requirement for expert evidence to be given in  
 written report..... Rule 32.7  
 Written questions to experts..... Rule 32.8  
 Court's power to direct evidence by single expert..... Rule 32.9  
 Instructions to single expert..... Rule 32.10  
 Power of court to direct party to provide expert report..... Rule 32.11  
 Expert's report to be addressed to court..... Rule 32.12  
 Contents of expert report..... Rule 32.13  
 Meeting of experts..... Rule 32.14  
 Consequence of failure to disclose expert's report..... Rule 32.15  
 Appointment of assessor..... Rule 32.16  
 Cross examination of court expert..... Rule 32.17

<b>Scope of this Part.</b>	32.1	(1) This Part deals with the provision of expert evidence to assist the court.
		(2) In this Part, “expert witness” is a reference to an expert who has been instructed to prepare or give evidence for the purpose of court proceedings.
<b>General duty of court and of parties.</b>	32.2	Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.
<b>Expert’s overriding duty to court.</b>	32.3	(1) It is the duty of an expert witness to help the court impartially on the matters relevant to his expertise.
		(2) This duty overrides any obligations to the person by whom he is instructed or paid.
<b>Way in which expert's duty to court is to be carried out.</b>	32.4	(1) Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by 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 his expertise.
- (3) An expert witness must state the facts or assumptions upon which his opinion is based. The expert must not omit to consider material facts which could detract from his concluded view.
- (4) An expert witness must state if a particular matter or issue falls outside his expertise.
- (5) If an expert's opinion is not properly researched, then this must be stated with an indication that the opinion is no more than a provisional one.
- (6) If the expert cannot assert that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.
- (7) If, after exchange of reports, an expert changes his view on a material matter, such change of view must be communicated to all parties.

**Expert's right to apply to court for directions.**

- 32.5 (1) An expert may apply in writing to the court for directions to assist him in carrying out his –
- (a) functions as an expert; or
  - (b) duty to the court.
- (2) An expert 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 be given to any party; or
  - (b) a copy of the application and any directions given be sent to any party.

**Court's power to restrict expert evidence.**

- 32.6 (1) No party may call an expert witness or put in an expert's report 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 and identify the nature of the expert's expertise; and
  - (b) any permission granted shall be in relation to that expert only.
- (4) No oral or written expert's evidence may be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert intends to give.
- (5) The court must direct by what date such report must be served.
- (6) The court may direct that part only of an expert's report be disclosed.
- General requirement for expert evidence to be given in written report.** 32.7
- (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".
- Written questions to experts.** 32.8
- (1) A party may put written questions to an expert instructed by another party or jointly about his report.
  - (2) Written questions under paragraph (1) –
    - (a) may be put once only;
    - (b) must only be in order to clarify the report; and
    - (c) must be put within 28 days of service of that expert's report, unless–
      - (i) the court permits; or
      - (ii) the other party agrees.
  - (3) An expert's answers to questions under this Rule shall be treated as part of that expert's report.
  - (4) Where –
    - (a) a party has put a written question to an expert instructed by another party in accordance with this Rule; and
    - (b) the expert does not answer the question,

the court may make one or more of the following orders in relation to the party who instructed the expert, namely that –

- (i) that party may not rely on the evidence of the expert;
- (ii) that party may not recover the fees and expenses of the expert from any other party; or
- (iii) the party asking the questions may seek to obtain answers from another expert.

(5) This Rule also applies where evidence from a single expert is to be used under Rule 32.9.

**Court's power to direct evidence by single expert.**

32.9

- (1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that expert evidence be given by one expert.
- (2) The parties wishing to submit the expert evidence are called "**the instructing parties**".
- (3) Where the instructing parties cannot agree who should be the expert, the court may -
  - (a) select the expert from a list prepared or identified by the instructing parties; or
  - (b) direct that the expert be selected in such other manner as the court may direct.
- (4) The court may vary a direction given under this Rule.
- (5) A single expert may be appointed –
  - (a) instead of the parties instructing their own experts; or
  - (b) to replace experts instructed by the parties.

**Instructions to single expert.**

32.10

- (1) Where the court gives directions under Rule 32.9 for a single expert to be used, each instructing party may give instructions to the expert.
- (2) When an instructing party gives instructions to the expert that party must, at the same time, send a copy of the instructions to the other instructing parties.
- (3) The court may give directions about the arrangements for –
  - (a) the payment of the expert's fees and expenses; and
  - (b) any inspection, examination or experiment which the expert wishes to carry out.

- (4) The court may, before an expert is instructed –
  - (a) limit the amount that can be paid by way of fees and expenses to the expert; and
  - (b) direct that the instructing parties pay that amount into court in such proportions as may be directed.
- (5) Unless the court has otherwise directed, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.

**Power of court to direct party to provide expert report.**

- 32.11 (1) Where 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 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.

**Expert's report to be addressed to court.**

- 32.12 An expert must address his report to the court and not to any person from whom the expert has received instructions.

**Contents of expert report.**

- 32.13 (1) An expert's report must give details of the expert's qualifications and;
- (a) give details of any literature or other material which the expert has used in making the report;
  - (b) say who carried out any test or experiment which the expert has used for the report; and
  - (c) give details of the qualifications of the person who carried out any such test or experiment;
  - (d) where there is a range of opinions on the matters dealt within the report –
    - (i) summarise the range of opinions; and
    - (ii) give reasons for his opinion, and

- (e) contain a summary of the conclusions reached.
- (2) At the end of an expert's report there must be a statement that –
- (a) the expert understands his duty to the court as set out in Rules 32.3 and 32.4;
  - (b) he has complied with that duty;
  - (c) the report includes all matters within the expert's knowledge and area of expertise relevant to the issue on which the expert evidence is given; and
  - (d) the expert has given details in the report of any matters which to his knowledge might affect the validity of the report.
- (3) There must be also attached to an expert's report copies of –
- (a) all written instructions given to the expert;
  - (b) any supplemental instructions given to the expert since the original instructions were given; and
  - (c) a note of any oral instructions given to the expert,
- and the expert must certify that no other instructions 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) Where expert evidence refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports.
- (5) If it is not practicable to provide a copy of the documents referred to in paragraph (4), such documents must be made available for inspection by the other party or any expert instructed by that party within 7 days of a request so to do.

**Meeting of experts.**

- 32.14 (1) The court may direct a meeting of experts of like speciality.
- (2) The court may specify the issues which the experts must discuss.
- (3) The contents of the discussion between the experts shall not be referred to at the trial unless the parties agree.

- (4) The meeting may take place personally, over the telephone or by any other suitable means.
- (5) After the meeting, the experts must prepare for the court a statement of -
  - (a) any issues within their expertise on which they agree; and
  - (b) any such issues on which they disagree and their reasons for disagreeing.
- (6) Instead of, or in addition to, such statement the court may direct that the experts prepare an agreed statement of the basic 'science' which applies to the matters relevant to their expertise.
- (7) Such a statement must be as short as practicable.

**Consequence of failure to disclose expert's report.**

- 32.15 (1) A party who fails to comply with a direction to disclose an expert's report may not use the report at the trial or call the expert unless the court gives permission.
- (2) 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>72</sup>

**Appointment of assessor.**

- 32.16 (1) The court may appoint an assessor to –
- (a) assist the court in understanding technical evidence;
  - (b) provide a written report; or
  - (c) advise the judge at the trial with regard to evidence of expert witnesses called by the parties.
- (2) On making an order under paragraph (1), the court must decide
- (a) what fee is to be paid to the assessor; and
  - (b) by whom.
- (3) This does not affect any decision as to the party who is ultimately to bear the cost of the assessor.
- (4) All communications apart from written instructions between the court and an assessor must be in open court.

---

<sup>72</sup> Rule 26.8 deals with applications for relief.

- (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.

**Cross-examination of court expert.**

32.17 Where an expert appointed by the court gives oral evidence, the expert may be cross-examined by any party.

### **PART 33**

#### **COURT ATTENDANCE BY WITNESSES AND DEPOSITIONS**

##### **Contents of this Part**

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

**Scope of this Part.**

- 33.1 (1) This Part provides –
- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document;
  - (b) for a party to obtain evidence prior to a hearing.

- (2) In this Part, reference to “a hearing” includes a reference to the trial.
- Witness summonses.** 33.2 (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.
- Form 12 (2) A witness summons must be in Form 12.
- (3) There must be a separate witness summons for each witness.
- (4) A witness summons may require a witness to produce documents to the court either on-
- (a) the date fixed for the trial or the hearing of any application in the proceedings; or
  - (b) such other date as the court may direct.
- Form 12.**
- Issue of witness summons.** 33.3 (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 21 days before the date of the hearing; or
  - (b) a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial or the hearing of any application.
- (3) An application for permission under 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.
- Witness summons in aid of inferior court or tribunal.** 33.4 (1) The court may issue a witness summons in aid of the Family Court, a District Court, or some other court or tribunal.
- (2) The court may set aside a witness summons issued under this Rule.

**Time for serving witness summons.**

- 33.5 (1) The general Rule is that a witness summons is binding only if it is served at least 14 days before the date on which the witness is required to attend before the court or tribunal.
- (2) The court may direct that a witness summons may be binding although it will be served less than 14 days before the date on which the witness is required to attend before the court or tribunal.
- (3) An application under paragraph (2) may be made without notice but must be supported by evidence on affidavit.
- (4) A witness summons which is –
- (a) served in accordance with this Rule; and
  - (b) requires the witness to attend court to give evidence,
- is binding until the conclusion of the hearing at which the attendance of the witness is required.

**Compensation for loss of time.**

- 33.6 At the time of service of a witness summons, the witness must be offered or paid–
- (a) a sum reasonably sufficient to cover his 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.

**Evidence by deposition before examiner.**

- 33.7 (1) A party may apply for an order for a person to be examined before the trial or the hearing of any application in the proceedings.
- (2) A person from whom evidence is to be obtained following any order under this Rule is referred to as a “**deponent**” and the evidence is referred to as a “**deposition**”.
- (3) An order under this Rule shall be for a deponent to be examined on oath before “an examiner” who may be –
- (a) a judge;
  - (b) the Registrar;
  - (c) the Deputy Registrar;

- (d) a magistrate;
  - (e) a legal practitioner who has practised in Belize for at least three years; or
  - (f) a Commissioner of the Supreme Court.
- (4) The order must state -
    - (a) the name of the examiner; and
    - (b) the date, time and place of the examination.
  - (5) The order may require the production of any document which the court considers may be necessary for the purposes of the examination.
  - (6) Rule 2.7 applies to an examination under this Rule.
  - (7) 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.
  - (8) An application may be made by any party whether or not that party would otherwise call the witness.
  - (9) Where the application is made by the party who would call the witness to give evidence, the court may order that party to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.<sup>73</sup>

**Conduct of examination.**

- 33.8 (1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the 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.

---

<sup>73</sup> Part 29 contains general Rules about witness statements and witness summaries.

- (5) If any person being examined objects to answering any question put to him, the grounds 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) to the deponent.
- (7) If the witness or any legal practitioner 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 opinion should be made;
  - (b) file the endorsed copy deposition; and
  - (c) serve a copy of it on all other parties.

**Evidence without examiner being present.**

- 33.9
- (1) With the consent of the parties, the court 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) the party whose witness is to be examined must provide a means of recording the evidence of the witness;
    - (b) a legal practitioner of any party may administer the oath to a witness;
    - (c) any person transcribing evidence given need not be sworn but must certify as correct the transcript of the evidence and deliver it to the legal practitioner for the party whose witness was examined;
    - (d) the legal practitioner 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; and

- (e) if the witness or any legal practitioner 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 opinion should be made;
  - (ii) file the copy transcript; and
  - (iii) serve a copy of it on all other parties.

**Enforcing attendance of witness.**

- 33.10 (1) If a person served with a witness summons to attend before an examiner -
- (a) fails to attend;
  - (b) refuses to be sworn or to affirm for the purpose of the examination; or
  - (c) refuses to answer any lawful question or produce any document at 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, or to be sworn or 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 witness and be endorsed with a notice in the first form given in Rule 53.3(b).
  - (5) A person who wilfully disobeys an order made against him under paragraph (4) is guilty of contempt of court<sup>74</sup>.
  - (6) The court may order the person against whom an order is made under this Rule to pay any costs resulting from his failure or refusal.

**Special report.**

- 33.11 The examiner may make a special report to the court with regard to –
- (a) the absence; or
  - (b) the conduct

---

<sup>74</sup> Part 53 deals with the procedure to apply to commit a person for contempt of court.

of any person when the deposition was taken.

**Fees and expenses of examiner.**

- 33.12 (1) On appointing an examiner, the court must fix the fee to be paid to the examiner for carrying out the examination.
- (2) The party who obtained the order must 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.
- (3) This does not affect any decision as to the party who is ultimately to bear the costs of the examination.

**Order for payment of examiner's fees.**

- 33.13 (1) The examiner may report to the court the fact that any fees or expenses due to him 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.

**Use of deposition at hearing.**

- 33.14 (1) A deposition ordered under Rule 33.8 or 33.9 may be given in evidence at the trial unless the court orders otherwise.
- (2) A party intending to put in evidence a deposition at a hearing must serve notice of such intention on every other party.
- (3) That party must serve the notice at least 21 days before the day fixed for the hearing.
- (4) The court may require a deponent to attend the hearing and give evidence orally.

**Where person is out of jurisdiction - letter of request**

- 33.15 (1) Where 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 to 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 statement of the issues relevant to the proceedings; and
    - (iii) a list of questions or the subject matter of questions to be put to the person to be examined; and
  - (b) an undertaking to be responsible for the expense of the Minister with responsibility for Foreign Affairs.
- (6) There is no need to file a translation if English is one of the official languages of the country where the examination is to take place.

**Early appointment to produce documents.**

- 33.16 (1) The court may permit a party to issue a witness summons requiring any person to attend at a date, time or place (a “production hearing”) specified in the summons other than the date of the trial for the purpose of producing one or more documents.
- (2) The only documents that a summons under this Rule can require a person to produce are documents which that person could be compelled to produce at the trial.

## **PART 34**

### **REQUESTS FOR INFORMATION**

#### **Contents of this Part**

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

**Right of parties to obtain information.**

- 34.1 (1) This Part enables a party to obtain from any other party information about any matter which is in dispute in the proceedings.
- (2) To do so the party must serve a request identifying the information sought on the other party.

**Orders compelling reply to request for information.**

- 34.2 (1) If a party does not give information which another party has requested under Rule 34.1 within a reasonable time, 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 such an order.

**Information obtained under Part 34 not to be used in other proceedings.**

- 34.3 A party may use information which he obtains –
- (a) in response to a request under Rule 34. 1; or
  - (b) in compliance with an order under Rule 34.2,
- only* for the purpose of the proceedings in which the request or order was made.

**Certificate of Truth.**

- 34.4 Any information provided under this Part must be verified by a certificate of truth in accordance with Rule 3.12.

**PART 35**

**OFFERS TO SETTLE**

**Contents of this Part**

Scope of this Part.....	Rule 35.1
Introductory.....	Rule 35.2
Making offer to settle .....	Rule 35.3
Time when offer to settle may be made.....	Rule 35.4
Procedure for making offer to settle.....	Rule 35.5
Extent to which offer to settle covers interest, costs or counterclaim .....	Rule 35.6

Offer to settle made after interim payment.....	Rule 35.7
Offer to settle part of claim.....	Rule 35.8
Time limit for accepting offer to settle.....	Rule 35.9
Procedure for acceptance.....	Rule 35.10
Effect of acceptance – generally.....	Rule 35.11
Effect of acceptance - more than two parties.....	Rule 35.12
Costs of offeror and offeree where offer is accepted – defendant’s offer.....	Rule 35.13
Costs of offeror and offeree where offer is accepted – claimant’s offer .....	Rule 35.14
Position where offer not accepted - general rules.....	Rule 35.15
How costs are to be dealt with.....	Rule 35.16

**Scope of this Part.**

- 35.1 (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 <sup>75</sup>.
- (3) The Rules in this Part are subject to Rule 23.12 (compromise etc., by or on behalf of a minor or patient).

**Introductory.**

- 35.2 (1) An offer to settle may be made in any proceedings whether or not there is a claim for money.
- (2) The party who makes the offer is called the “**offeror**”.
- (3) The party to whom the offer is made is called the “**offeree**”.
- (4) An offer to settle is made when it is served on the offeree.

**Making offer to settle.**

- 35.3 (1) A party may make an offer to another party which is expressed to be “without prejudice” but in which the offeror reserves the right to make the terms of the offer known to the court after judgment is given with regard to –
- (a) the allocation of the costs of the proceedings; and

---

<sup>75</sup> Part 36 deals with payments into court.

- (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.
- Time when offer to settle may be made.** 35.4 A party may make an offer to settle under this Part at any time before the beginning of the trial.
- Procedure for making offer to settle.** 35.5
- (1) An offer to settle must be in writing.
  - (2) The offeror must serve the offer on the offeree and a copy on all other parties.
  - (3) Neither –
    - (a) the fact; nor
    - (b) the amount,

of the offer or any payment into court in support must be communicated to the court before all questions of liability and the amount of money to be awarded (other than costs and interest) have been decided.
  - (4) Paragraph (3) does not apply –
    - (a) to an offer which has been accepted; or
    - (b) where a defence of tender before claim has been pleaded.
- Extent to which offer to settle covers interest, costs or counterclaim.** 35.6
- (1) An offer to settle a claim for damages must state whether or not the amount offered includes –
    - (a) interest; or
    - (b) 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 –
    - (a) in the case of an offer by the claimant, whether or not it takes into account the counterclaim; or

(b) in the case of an offer by the defendant, whether or not it takes into account the claim,

and in each case in what amount.

- Offer to settle made after interim payment.** 35.7 If an interim payment has been made, whether voluntarily or under an order under Part 17, any subsequent offer to settle must state whether it is in addition to the interim payment or whether it is intended to replace it.
- Offer to settle part of a claim.** 35.8 (1) An offer to settle must state whether or not it covers the whole or part of the claim.
- (2) If it does not, 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.
- Time limit for accepting an offer to settle.** 35.9 (1) The offeror may state in the offer that it is open for acceptance until a specified date.
- (2) The offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is open for acceptance for at least 21 days.
- (3) Acceptance of the offer after the beginning of the trial shall have no effect on any decision that the court makes as to the consequences of such acceptance.
- (4) The court may permit an offeree to accept an offer after the specified date on such terms as the court considers just.
- Procedure for acceptance.** 35.10 (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) Where an offer or payment into court under Part 36 is made in proceedings to which Rule 23.12 applies - <sup>76</sup>
  - (a) the offer or payment may be accepted only with the permission of the court; and
  - (b) no payment out of any sum in court may be made without a court order.

**Effect of acceptance – generally.**

- 35.11 (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.
- (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>77</sup>
- (5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.
- (6) Where money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect any proceedings to obtain payment out of court. <sup>78</sup>
- (7) Where an offer is accepted but 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.

<sup>76</sup> Rule 23.12 deals with compromises etc. by or on behalf of a minor or patient.

<sup>77</sup> Rule 23.12 deals with the settlement of proceedings involving minors and patients.

<sup>78</sup> Part 36 deals with payments into court.

**Effect of acceptance where there are more than two parties.**

- 35.12 (1) Where there is more than one defendant whom the claimant says are jointly and severally or severally liable and –
- (a) the claimant agrees to settle the claim as against one or more, but not all of them; and
  - (b) the claimant discontinues the claim against any other defendant,
- the claimant is liable to pay the costs of that defendant unless the court otherwise orders.<sup>79</sup>
- (2) Where a claimant accepts an offer made by one of a number of joint defendants –
- (a) paragraph (1) shall not apply; and
  - (b) the defendant who made the offer is liable for the costs of the other joint defendants.
- (3) Where –
- (a) there is more than one claimant; and
  - (b) one or more, but not all, of them agree to settle,
- the others may continue the proceedings.

**Costs of offeror and offeree where offer is accepted – defendant's offer.**

- 35.13 (1) Where –
- (a) the defendant makes an offer to settle; and
  - (b) the claimant accepts the offer within any period stated for accepting it and before the beginning of the trial,
- the claimant is entitled to his costs to the day when he accepts the offer.
- (2) If the court or the defendant permits a claimant to accept an offer after the time stated for accepting it, the general rule is that –
- (a) the claimant is entitled to costs to the end of the period stated for accepting the offer; and

---

<sup>79</sup> Part 37 deals with discontinuance.

- (b) the 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.

**Costs of offeror and offeree where offer is accepted – claimant’s offer.**

35.14 Where 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.

**Position where offer not accepted – general rules.**

35.15 (1) The general rule for defendant's offers is that, where the defendant makes an offer to settle which is not accepted and -

- (a) in the case of an offer to settle a claim for damages, the court awards less than 85% of the amount of the defendant’s offer; or
- (b) in any other case, the court considers that the claimant acted unreasonably in not accepting the defendant’s offer,

the claimant must pay any costs incurred by the defendant after the latest date on which the offer could have been accepted without the court’s permission.

(2) Where a claimant makes an offer to settle and –

- (a) in the case of an offer to settle a claim for damages, the court awards an amount which is equal to or more than the amount of the offer; or
- (b) in any other case, the court considers that the defendant acted unreasonably in not accepting the claimant’s offer,

the court may, in exercising its discretion as to interest, take into account the higher rates set out in the following table:

<u>net amount of damages</u>	<u>rate of interest</u>
(a) not exceeding BZ\$100,000	15% per annum.
(b) for the next BZ\$150,000	12% per annum.
(c) for the next BZ\$500,000	10% per annum.
(d) in excess of BZ\$800,000	8% per annum.

Appendix B and C "net" means the amount of damages on the claim less the amount (if any) awarded on any counterclaim.

**Example:**

One year since the offer  
Damages - BZ\$400,000, the court might award –  
15% on the first \$100,000 for one year (\$15,000);  
plus 12% interest on the next \$150,000 for one year (\$18,000)  
plus 10% interest on the remaining \$150,000 for one year (\$15,000), a  
total of BZ\$48,000 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 general rule should not apply and in considering the exercise of its discretion under paragraph (2), the court may take into account -
  - (a) the terms of any offer;
  - (b) the stage in the proceedings at which the offer was made;
  - (c) the information available to the offeror and the offeree at the time that the offeror made the offer; and
  - (d) the conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated.
- (5) This rule applies to offers to settle at any time, including before proceedings were started.

**How costs are to be dealt with.**

- 35.16 (1) Where an offer to settle is accepted the parties may agree to the amount of costs that are due to be paid under this Part.
- (2) Where the amount of costs falls to be quantified by the court, then the general rule is that, unless an order has been made for budgeted costs under Rule 64.8, the costs shall be determined in accordance with the scale of prescribed costs contained in Appendix B and C to Part 64.
- (3) Where 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, and in assessing the costs, the court must take into account the scale of prescribed costs or the amount of the budgeted costs, as the case may be.
- (4) In determining the appropriate amount of costs to be paid where an order has been made under Rule 64.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

Appendix B and C  
Part 64

## **PART 36**

### **PAYMENTS INTO COURT TO SUPPORT OFFERS UNDER PART 35 AND UNDER ORDER**

#### **Contents of this Part**

Scope of this Part.....	Rule 36.1
Payments into court to support offers to settle.....	Rule 36.2
Right to payment out on acceptance of offer.....	Rule 36.3
Cases where payment out requires court order.....	Rule 36.4
Money paid into court under order.....	Rule 36.5
Money paid into court as condition for permission to defend or to continue to defend.....	Rule 36.6
Proceedings under the Torts Act.....	Rule 36.7

- Scope of this Part.**
- 36.1 (1) This Part deals with payments into court made –
- (a) to support an offer of payment under Part 35;
  - (b) in accordance with an order of court; or
  - (c) to support a defence of tender.
- (2) A defendant is not obliged to make a payment into court to support an offer under Part 35.
- (3) With –
- (a) the permission of the court; or
  - (b) the agreement of the claimant,
- a defendant may pay money in support of an offer of payment into an interest bearing account on such terms as to –
- (i) the names of the account holders; and
  - (ii) the terms on which money may be paid out of the account,
- as may be ordered by the court or agreed between the parties.
- Payments into court to support offers to settle.**
- 36.2 (1) A defendant who offers to settle the whole or part of proceedings may pay money into court in support of the offer.
- (2) A defendant may not pay money into court unless –
- (a) he certifies that such payment is in support of an offer to settle;
  - (b) the payment is made under a court order; or
  - (c) the payment is made to support a defence of tender.
- (3) No payment into court may be made until a claim is issued.
- (4) A payment into court to support an offer may be made –
- (a) when the offer is made; or
  - (b) at any time while the offer is outstanding.

- (5) A defendant who pays money into court must -
  - (a) serve notice of payment in on the claimant; and
  - (b) file a copy of such notice with a statement of the date (if any) by which the offer is open for acceptance under Rule 35.9(1).

**Right to payment out on acceptance of offer.**

- 36.3 (1) The general rule is that a claimant who accepts an offer to settle –
  - (a) within the period stated for accepting it; or
  - (b) where no such period is stated in the defendant's offer, within a reasonable time,

CAP.172

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 within any period stated in the offer for accepting it.

CAP. 172

- (3) The general rule is qualified by Rule 36.4.

**Cases where payment out requires court order.**

- 36.4 (1) Where a claimant accepts money paid into court –
  - (a) by one or more, but not all, of a number of defendants;
  - (b) with a defence of tender before claim;
  - (c) to settle a claim to which -
    - (i) Part 23 (claims by minors and patients); or
    - (ii) Rule 36.7 (proceedings under Torts Act)
 apply; or
  - (d) after the end of the period stated for accepting it, the money in court may only be paid out under an order of the court.
- (2) An order under paragraph (1) (c) may not be made by consent.
- (3) Where –
  - (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 an order of the court.

- (4) An order under this Rule must deal with the costs of the proceedings which have been stayed.

**Money paid into court under order.**

36.5

- (1) When a party makes a payment into court under a court order that party must give notice of the payment to every other party.
- (2) Money paid into court under a court order may not be paid out unless the court gives permission.
- (3) 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.

**Money paid into court as condition for permission to defend or to continue to defend.**

36.6

- (1) This rule applies where the court makes an order permitting a defendant –
  - (a) to defend; or
  - (b) to continue to defend,on condition that he makes a payment into court.
- (2) Where –
  - (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) To do this the defendant must –

- (a) file a notice that the defendant so chooses; and
- (b) at the same time, serve a copy of it on every other party to the proceedings.

**Proceedings under the Torts Act. CAP. 172**

36.7 (1)

Where –

- (a) a single sum of money is paid into court in satisfaction of proceedings arising under the Torts Act; and
- (b) that sum is accepted,

the court must apportion that sum between the different causes of action either when –

- (i) giving directions under Rule 23.13; or
- (ii) when authorising its payment out of court.

(2) Where in such proceedings –

- (a) a claim is made by more than one person; and
- (b) 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

#### Contents of this Part

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

**Scope of this Part.**

37.1 (1) The Rules in this Part set out the procedure by which a claimant may discontinue all or any part of a claim.

- (2) A claimant who –
  - (a) claims more than one remedy; and
  - (b) subsequently abandons a claim to one or more remedies but continues with the claim for the other remedies,
 is not treated as discontinuing part of a claim for the purposes of this Part.<sup>80</sup>

**Right to discontinue claim.**

- 37.2 (1) The general rule is that a claimant may discontinue all or part of his claim without the permission of the court.
- (2) However –
- (a) a claimant needs permission from the court if he wishes to discontinue all or part of a claim in relation to which –
    - (i) the court has granted an interim injunction; or
    - (ii) any party has given an undertaking to the court;
  - (b) where a claimant has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 17) he may discontinue only if –
    - (i) the defendant who made the payment consents in writing; or
    - (ii) the court gives permission; and
  - (c) where there is more than one claimant, a claimant may not discontinue unless –
    - (i) every other claimant consents in writing; or
    - (ii) the court gives permission.
- (3) Where there is more than one defendant, the claimant may discontinue all or part of his claim against all or any of the defendants.

**Procedure for discontinuing.**

- 37.3 (1) To discontinue proceedings or any part of proceedings, a party must–
- (a) serve a notice of discontinuance on every other party to the proceedings; and

---

<sup>80</sup> Rule 43.7 deals with consent orders which may include orders bringing an action to an end by way of a consent judgment or otherwise. This Part deals with discontinuance.

(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 proceedings.
- (3) Where 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) Where the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.
- (5) Where there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the claim is discontinued.

**Right to apply to have notice of discontinuance set aside.**

37.4

- (1) Where the claimant discontinues without the consent of the defendant or the permission of the court, any defendant who has not consented may apply to have the notice of discontinuance set aside.
- (2) The defendant may not apply under this Rule more than 28 days after the date when the notice of discontinuance was served on him.

**Effect of discontinuance.**

37.5

- (1) Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on that defendant under Rule 37.3(1)(a).
- (2) The proceedings are brought to an end as against that defendant on that date.
- (3) However, this does not affect –
  - (a) the right of the defendant under Rule 37.4 to apply to have the notice of discontinuance set aside; or
  - (b) any proceedings relating to costs.

**Liability for costs.**

37.6

- (1) Unless –
  - (a) the parties agree; or
  - (b) the court orders otherwise,

a claimant who discontinues is liable for the costs incurred by the defendant against whom the claim is discontinued incurred on or

before the date on which notice of discontinuance was served.

- (2) If proceedings are only partly discontinued –
- (a) the claimant is only liable for the costs relating to that part of the proceedings which are discontinued; and
  - (b) unless the court orders otherwise, the costs which the claimant is liable to pay are not to be quantified until the conclusion of the rest of the proceedings.

**Quantification of costs. Appendices B and C to Part 64.**

- 37.7
- (1) The general rule is that, unless an order has been made for budgeted costs under Rule 64.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Appendices B and C to Part 64.
  - (2) Where 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.
  - (3) In determining the appropriate amount of costs to be paid where an order has been made under Rule 64.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

**Discontinuance and subsequent proceedings.**

- 37.8
- Where –
- (a) a claimant discontinued a claim after the defendant against whom he discontinued filed a defence; and
  - (b) the claimant makes a subsequent claim –
    - (i) against the same defendant;
    - (ii) arising out of facts which are the same or substantially the same as those relating to the discontinued claim, and
    - (iii) the claimant has not paid the defendant's costs of the discontinued claim,

the court may stay the subsequent claim until such time as the costs of the discontinued proceedings are paid.

**PART 38**

**PRE-TRIAL REVIEW**

**Contents of this Part**

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

**Scope of this Part.**

38.1 This Part deals with the pre-trial review which is to be held shortly before trial if the court so orders.

**Direction for pre-trial review.**

- 38.2 (1) At any case management conference and at any subsequent hearing in the proceedings other than the trial, the court must consider whether a pre-trial review should be held to enable the court to deal justly with the proceedings.
- (2) A party may apply for a direction that a pre-trial review be held.
- (3) An application for a pre-trial review must be made at least 60 days before the trial date or the beginning of any trial period fixed under Rule 27.5(4).
- (4) The court office must give each party at least 14 days notice of the date, time and place for the pre-trial review.

**Rules relating to case management conference to apply.**

38.3 Parts 25 and 26 where appropriate apply to a pre-trial review as they do to a case management conference.

**Who is to conduct pre-trial review.**

38.4 Wherever practicable, the pre-trial review is to be conducted by the trial judge.

**Parties to prepare pre-trial memorandum.**

- 38.5 (1) The parties must seek to agree and file at the court office a pre-trial memorandum not less than 7 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 3 days before the date fixed for the pre-trial review.
- (3) A pre-trial memorandum must contain –
- (a) a concise statement of the nature of the proceedings,

- (b) details of any admissions made;
- (c) the factual and legal contentions of the party or parties filing it; and
- (d) a statement of the issues to be determined at the trial.

**Directions at pre-trial review.** 38.6

- (1) The court 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) direct either party to provide further information to the other;
  - (b) give directions for the filing by each party and service on all other parties of one or more of –
    - (i) a skeleton argument;
    - (ii) a chronology of relevant events;
    - (iii) a summary of any legal propositions to be relied on at the trial; and
    - (iv) a list of authorities which it is proposed to cite in support of those propositions;
  - (c) direct the parties jointly to prepare-
    - (i) a core bundle of documents (that is, a bundle containing only such documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial);
    - (ii) an agreed statement of facts;
    - (iii) an agreed statement of the basic technical, scientific or medical matters in issue, or
    - (iv) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge,

and direct when and by whom such documents should be filed at the court;
  - (d) give directions as to the extent to which evidence may be given in written form;
  - (e) direct whether or not there shall be any opening or closing addresses and the time to be allocated to each;

- (f) give directions as to the procedure to be followed at the trial;
- (g) decide on the total time to be allowed for the trial; or
- (h) direct how that time shall be allocated between the parties.

**PART 39**

**TRIAL**

**Contents of this Part**

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

**Documents  
for use at  
trial.**

- 39.1 (1) At least 21 days before the date fixed for hearing, 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 10 days before the date fixed for the trial, the claimant must file at the court office –
- (a) a bundle comprising copies of –
- (i) the claim form;
  - (ii) all statements of case;
  - (iii) any requests for information and the replies;
  - (iv) any documents which the parties were ordered to file under Rule 38.6(2)(b); and

- (v) the pre-trial memorandum or memoranda;
- (b) a second bundle comprising copies of –
  - (i) all witness statements;
  - (ii) all expert reports;
  - (iii) any agreed statements under Rule 38.6(2)(c)(ii)-(iv);
- (c) a third bundle comprising the documents referred to in paragraph (2); and
- (d) if the bundles exceed 100 pages of documents in total, a core bundle (that is, a bundle containing only such documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial).
- (6) There must be excluded from the bundles prepared under this Rule-
  - (a) any applications or orders relating to interim payments under Part 17; and
  - (b) any offers to settle under Part 35 or notice of payment into court under Part 36, and any reference to any such payments or offers 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 reference to the defendant.<sup>81</sup>

**Cross-examination.** 39.2 The court may limit examination, cross-examination or re-examination of any witness.

**Written submissions.** 39.3 (1) The parties may, with the consent of the judge, file written submissions –

- (a) instead of; or
- (b) in addition to,

closing speeches.

(2) Such written submissions must be filed within 7 days of the conclusion of the trial or such shorter period as the judge may direct.

---

<sup>81</sup> Rule 42.7 deals with consent orders which may include orders bringing an action to an end by way of a consent judgment or otherwise.

- Failure of party to attend trial.** 39.4 Where the judge is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules –
- (a) if neither party appears at the trial, the judge may strike out the claim; or
  - (b) if only one party appears, the judge may proceed in the absence of the other.
- Application to set aside judgment given in party's absence.** 39.5 (1) A party who was not present at a trial at which judgment was given or an order made in his absence may apply to set aside that judgment or order.
- (2) The application must be made within 14 days after the date on which the judgment or order was served on the applicant.
- (3) The application to set aside the judgment or order must be supported by evidence on affidavit showing –
- (a) 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.
- Adjournment of trial.** 39.6 (1) The judge may adjourn a trial on such terms as he thinks just.
- (2) The judge may only adjourn a trial to a date and time fixed by him or to be fixed by the court office.
- Inspection.** 39.7 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**

#### **Contents of this Part**

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

**Power to order trial before referee.**

40.1 Where –

- (a) the parties agree;
  - (b) the court considers that the claim requires –
    - (i) prolonged examination of documents; or
    - (ii) scientific or local investigation which cannot conveniently be carried out by the court; or
  - (c) the matters in dispute are wholly or mainly a matter of account,
- then, subject to Rule 40.7, the court may order the claim or any issue or allegation to be tried by a referee.

**Reference to referee to inquire and report.**

40.2 The court may refer to a referee for inquiry and report any question or issue of fact arising in a claim.

**Appointment of referee.**

- 40.3
- (1) 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 shall be such person as may be agreed by the parties or, if they fail to agree, by the court.
  - (3) Where the parties cannot agree who should be the referee, the court may –
    - (a) select the referee from a list prepared or identified by the parties; or
    - (b) direct that the referee be selected in such other manner as the court may direct.
  - (4) The court must identify the question or issue upon which the referee is to report.
  - (5) The court must decide –
    - (a) what fee is to be paid to the referee; and

- (b) by whom.
- (6) This does not affect any decision as to the party who is ultimately to bear the referee's fee.
- Conduct of reference.** 40.4 (1) For the purpose of the inquiry, the referee has the same powers as the court, other than the power to commit.
- (2) Unless the court otherwise orders, the referee must adopt the simplest, least expensive and most expeditious method of conducting the reference.
- (3) The referee may hold the trial or conduct the inquiry at any place and at any time which appears to the referee to be convenient to the parties.
- (4) If 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 must 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, or to be sworn or to affirm, or answer any question or produce any document, as the case may be.
- (6) An application for an order under this Rule may be made without notice but must be supported by evidence on affidavit.
- (7) In the case of non-attendance, the affidavit must prove –
- (a) service of the witness summons; and
- (b) that the person served with the witness summons was paid or offered the payments required by Rule 33.7.
- (8) Such an order must be served personally on the witness and be endorsed with a notice in accordance with the first form in Rule 53.3(b).
- (9) A person who willfully disobeys an order made against him under paragraph (5) is guilty of contempt of court<sup>82</sup>.

---

<sup>82</sup> Part 53 deals with the procedure to apply to commit a person for 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 his failure or refusal.

**Report following reference.**

- 40.5 (1) The report of the referee appointed under Rule 40.3 is to be made to the court.
- (2) The referee must supply a copy of the report to each party.
- (3) The referee may in his report –
- (a) submit any question for the decision of the court; or
  - (b) make a special statement of facts from which the court may draw inferences.

**Consideration of report by the court.**

- 40.6 (1) Upon receipt of the report, the court office must fix a date, time and place for consideration by the court.
- (2) The court office must give 14 days notice to the parties of such consideration.
- (3) The court may –
- (a) adopt the report in whole or in part;
  - (b) vary the report;
  - (c) ask the referee to explain any part of the report;
  - (d) remit any question or issue for further consideration;
  - (e) decide the question or issue on the evidence taken by the referee; or
  - (f) direct that additional evidence be given to the court.

**Restrictions on appointment of referee in proceedings by or against Crown.**

40.7 In proceedings by or against the Crown, no appointment of a referee under Rule 40.1 or 40.2 may be made without the written consent of the Attorney General.

## PART 41

### ACCOUNTS AND INQUIRIES

#### Contents of this Part

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

**Scope of  
this Part.**

- 41.1 (1) This Part deals with claims –
- (a) for an account; or
  - (b) for some other relief which requires the taking of an account.
- (2) A claim for an account must be made by a fixed date claim form supported by evidence on affidavit <sup>83</sup>.

**Directions for  
account.**

- 41.2 (1) Where a claim or counterclaim is made for an account or requires the taking of an account, an application for directions relating to the taking of the account must be made at the case management conference or first hearing.
- (2) The court may –
- (a) direct that any preliminary issue of fact be tried;
  - (b) order an account to be taken;
  - (c) order inquiries to be made; or

---

<sup>83</sup> Rule 8.1 deals with the issue of a fixed date claim and Rule 27.2 deals with the first hearing of such a claim.

- (d) order that any amount shown to be due to a party on the account be paid by a date specified in the order.
  - (3) Every direction that an account be taken must be so numbered that each distinct account and inquiry may be designated by that number.
  - (4) On directing that an account be taken, or subsequently, the court must direct how it shall be taken or vouched.
  - (5) The court may direct that any relevant books of account shall be evidence of the matters contained in them, subject to any objections that any party may take.
- Verification of account.** 41.3 (1) When there has been a direction for an account to be taken, the accounting party must make out its 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 on all other parties.
- Notice of omissions.** 41.4 Any party who claims that there are omissions or challenges any item in the account must give notice to the accounting party with –
- (a) the best particulars that it can give of the omission or error; and
  - (b) the grounds for alleging it.
- Allowances.** 41.5 In taking any account, all just allowances shall be made.
- Delay.** 41.6 If 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 order for costs as is just.
- Distribution before entitlement is ascertained.** 41.7 (1) This Rule applies where some, but not all, of the persons entitled to share in a fund are ascertained and there is likely to be delay in ascertaining the other persons, to be entitled to share in the fund..

- (2) The court may order immediate payment of their shares to the persons who have been ascertained.
- (3) The court need not reserve any part of those shares to meet any subsequent costs of ascertaining the other persons.

## PART 42

### JUDGMENTS AND ORDERS

#### Contents of this Part

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

<b>Scope of this Part.</b>	42.1	(1)	This Part contains Rules about judgments and orders made by the court.
		(2)	They do not apply to the extent that any other Rule makes a different provision in relation to the judgment or order in question.
<b>Parties present when order made or notified of terms to be bound.</b>	42.2		A party is bound by the terms of the judgment or order whether or not the judgment or order is served where that party – <ol style="list-style-type: none"> <li>(a) is present whether in person or by legal practitioner when the judgment given or order was made; or</li> <li>(b) is notified of the terms of the judgment or order by telephone, fax, or otherwise.</li> </ol>
<b>Practice forms to be used where available.</b>	42.3		Where there is a practice form for a judgment or order of any description, a judgment or order of that description must be in that form.

- Standard requirements.** 42.4 (1) Every judgment or order must state the name and judicial title of the person who made it, unless it is –
- (a) a default judgment under Part 12;
  - (b) a judgment entered on an admission or following a court order under Rules 14.6, 14.7, 14.8, 14.10 and 14.11; or
  - (c) a consent order under Rule 42.7.
- (2) Every judgment or order must be –
- (a) signed by the Registrar;
  - (b) sealed by the court; and
  - (c) bear the date on which it is given or made.
- Drawing of judgments and orders.** 42.5 (1) Every judgment or order must be drawn by the court, unless –
- (a) the court directs a party to draft it ;
  - (b) a party with the permission of the court agrees to draft it;
  - (c) the court dispenses with the need to do so; or
  - (d) it is a consent order under Rule 42.7.
- (2) Where a draft of an order is directed, it must be filed no later than 7 days from the date on which the direction was given so that the court office may seal the order.
- (3) If a party fails to file a draft of an order within 7 days after the direction was given, any other party may draw and file the order.
- (4) A party who drafts an order must file sufficient copies for service on all parties who are to be served.
- Service of orders.** 42.6 (1) Unless the court otherwise directs, the court office must serve every judgment or order on –
- (a) every party to the proceedings in which the judgment or order is made; and

**Consent judgments and orders.**

- (b) any other person on whom the court orders it to be served.<sup>84</sup>
- (2) Where a party is acting by a legal practitioner, the court may direct that any judgment or order be served on the lay party as well as on the legal representative.
- 42.7 (1) This Rule applies where -
  - (a) none of these Rules prevents the parties agreeing to vary the terms of any court order; and
  - (b) all relevant parties agree the terms on which judgment should be given or an order made.
- (2) Except as provided by paragraphs (3) and (4), it 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 the money due under the judgment is payable 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

---

<sup>84</sup> Part 6 deals with service.

(viii) any procedural order other than one falling within Rules 26.7(3) or 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 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 legal practitioner acting for each party to whom the order relates; and
  - (d) filed at the court office for sealing.

**Time when judgment or order takes effect.** 42.8 A judgment or order takes effect from the day it is given or made, unless the court specifies that it is to take effect on a different date.

**Time for complying with judgment or order.** 42.9 A party must comply with a judgment or order immediately, unless –

- (a) the judgment or order specifies some other date for compliance;
- (b) the court varies the time for compliance including specifying payment by installments; or
- (c) the claimant, on requesting judgment in default under Part 12 or judgment on an admission under Part 14, specifies a different time for compliance.

**Correction of errors in judgments or orders.**

- 42.10 (1) The court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.
- (2) A party may apply for a correction without notice.
- Cases where court gives judgment both on claim and counterclaim.**
- 42.11 (1) This Rule applies where the court gives judgment for specified amounts both for the claimant on the claim and the defendant on the counterclaim.
- (2) If there is a balance in favour of one of the parties, it 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.
- Service of copy order on person not a party.**
- 42.12 (1) Where in any proceedings an order is made which may affect the rights of persons who are not parties to the action, the court may at any time direct that a copy of any judgment or order be served on any such person.
- (2) Service must be effected in accordance with Part 5 and the court may direct which party is to be responsible for service.
- Form 13**
- (3) The copy order must be endorsed with a notice in Form 13.
- (4) The court may dispense with service of the copy order or judgment if it appears impracticable to serve that person.
- (5) Any person so served, or on whom service is dispensed with: -
- (a) is bound by the terms of the judgment or order; but
- (b) may apply within 28 days of being served to discharge, vary or add to the judgment or order; and
- (c) may take part in any proceedings under the judgment or order.

## **PART 43**

### **ENFORCEMENT - GENERAL PROVISIONS**

## Contents of this Part

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

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

- 43.1 (1) This Part deals generally with the enforcement of judgments and orders.
- (2) In this Part and in Parts 44 to 53:

“**judgment creditor**” means the person who is entitled to enforce a judgment or order; and

“**judgment debtor**” means the person who is liable to enforcement under the judgment or order, even though the judgment or order is not a money judgment.

### **Procedure for beginning enforcement.**

- 43.2 (1) The general rule is that, once 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 permission to begin enforcement proceedings, the judgment creditor must first obtain that permission.

### **Judgment subject to conditions.**

- 43.3 (1) A person who has a judgment or order subject to the fulfillment 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 the benefit of a judgment or order subject to fulfillment of a condition and there is a failure to fulfill 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 under the judgment or order 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.

<b>Separate enforcement of costs.</b>	43.4	A judgment creditor who has judgment with costs may enforce the judgment and the costs separately.
<b>Effect of setting aside judgment or order.</b>	43.5	<p>(1) The general rule is that if the court sets aside a judgment or order, any order made for the purpose of enforcing it ceases to have effect.</p> <p>(2) The court may however direct that an enforcement order remains in force.</p>
<b>Courts powers where person ordered to do act fails to comply.</b>	43.6	<p>(1) If –</p> <ul style="list-style-type: none"> <li>(a) the court orders a party to do an act; but</li> <li>(b) that party does not do it,</li> </ul> <p>the judgment creditor may apply for an order that –</p> <ul style="list-style-type: none"> <li>(i) the judgment creditor; or</li> <li>(ii) some person appointed by the court,</li> </ul> <p>may do the act.</p> <p>(2) The court may order the judgment debtor to pay the costs and expenses of the person who does it.</p> <p>(3) If it does so, it must assess the costs under Rule 64.11 and determine the amount of expenses to be allowed.<sup>85</sup></p>
<b>Judgment for sum in foreign currency.</b>	43.7	<p>(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 Belize.</p> <p>(2) The judgment creditor must, when commencing enforcement proceedings, file a certificate stating the exchange rate current in Belize for the purpose</p>

---

<sup>85</sup> Part 53 deals with enforcement by committal or seizure of assets.

of the unit of foreign currency in which the judgment is expressed at the close of business on the previous business day.

- Enforcement by or against a person who is not a party.** 43.8 (1) A judgment or order in favour of a person who is not a party may be enforced in the same way as a judgment or order in favour of a party.
- (2) A judgment or order against a person who is not a party may be enforced in the same way as a judgment or order against a party.

- Enforcement against a partnership.** 43.9 (1) This Rule has effect where the court gives a judgment or makes an order against a firm or partnership.
- (2) The judgment creditor may enforce the judgment or order against –
- (a) any of the firm’s property; or
  - (b) any person who –
    - (i) has acknowledged service as a partner in the firm;
    - (ii) has admitted in a statement of case to being a partner in the firm;
    - (iii) was adjudged by the court to be a partner;
    - (iv) was served within the jurisdiction or, with the permission of the court under Part 7, out of the jurisdiction with the claim form as a partner.
- (3) In a case to which paragraph (2) does not apply, the judgment creditor may issue enforcement proceedings against a person whom it claims to be a partner if it has the court’s permission to do so.
- (4) Notice of an application for permission must be served on the person against whom the judgment creditor seeks to enforce judgment and must be supported by evidence on affidavit.
- (5) A judgment or order given or made –
- (a) on a claim by or against a firm against or by a member of the firm; or
  - (b) on a claim by another firm against a firm where the two firms have one or more partners in common,
- may not be enforced without the permission of the court.

- Enforcement of awards, etc., made by outside bodies.** 43.10 (1) This Rule has effect –

- (a) as 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) as 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,
- may be made without notice but must be supported by evidence on affidavit.
- (4) The general rule does not apply where a Rule or statutory provision requires notice to be given.
- (5) The applicant must –
- (a) exhibit to the affidavit the award or a copy of it;
  - (b) if the award is for the payment of money, certify the amount remaining due to the applicant; and
  - (c) give an address for service on the person against whom the applicant seeks to enforce the award.

## **PART 44**

### **ORAL EXAMINATION IN AID OF ENFORCEMENT**

#### **Contents of this Part**

Scope of this Part.....	Rule 44.1
Who may be orally examined.....	Rule 44.2

Procedure to obtain order for oral examination.....	Rule 44.3
Order for oral examination.....	Rule 44.4
Conduct of oral examination.....	Rule 44.5
Order for payment by instalments.....	Rule 44.6
Financial position notice.....	Rule 44.7

<b>Scope of this Part.</b>	44.1	This Part deals with the examination of a judgment debtor to obtain information to assist in enforcing a judgment. Such an examination is called an “ <b>oral examination</b> ”.
<b>Who may be orally examined.</b>	44.2	The following persons may be ordered to attend an oral examination – <ul style="list-style-type: none"> <li>(a) the judgment debtor; or</li> <li>(b) an officer or former officer of a judgment debtor which is a body corporate. (“<b>the examinee</b>”)</li> </ul>
<b>Procedure to obtain order for oral examination.</b>	44.3	(1) An application for an order that a person attend an oral examination may be made without notice. (2) Where permission is required to enforce the judgment, a copy of the permission must be attached to the application. (3) Where the application for the order is against an officer of a body corporate, the application must be supported by evidence on affidavit showing that the person to be orally examined is such an officer.
<b>Order for oral examination. Form 14.</b>	44.4	(1) The order for oral examination must be in Form 14, and it must state the date, time and place of the examination. (2) The judgment creditor must serve the order personally on the examinee at least 7 days before the date fixed for the examination. (3) The judgment creditor must file an affidavit of service not less than 3 days before the date fixed for the examination.
<b>Conduct of oral examination.</b>	44.5	(1) The examination may take place before the Registrar or an officer of the court authorised by the Chief Justice (“ <b>the examiner</b> ”). (2) The examination must be on oath or affirmation. (3) The statement made by the examinee must be taken down, and read to the examinee who must be asked to sign it.

- (4) If the examinee refuses to sign the statement it must be signed by the examiner and certified to be a true record of the examination.
- (5) If the examinee –
  - (a) fails to attend;
  - (b) refuses to be sworn or to affirm; or
  - (c) to answer any question,
 the examiner may adjourn the examination to a judge.

**Form 15.**

- (6) The notice of the adjourned hearing must be on Form 15.
- (7) The judgment creditor must –
  - (a) serve the examinee personally with the notice of the adjourned hearing endorsed with the first form of notice set out in Rule 53.3(b) at least 7 days before the adjourned examination; and
  - (b) file an affidavit proving service of Form 15 and that the examinee was offered his travelling expenses to and from the court.

**Form 15.**

**Order for payment by instalments.**

- 44.6 If the parties agree that the judgment debt should be paid by instalments or at some future date, the court office may draw an order to that effect.

**Financial position notice. Form 16.**

- 44.7
- (1) Where the judgment to be enforced is a money judgment, the judgment creditor may serve, in addition to or in place of an order for an oral examination, a financial position notice in Form 16 requiring a judgment debtor to complete a statement of his financial position in the practice form and serve it on the judgment creditor within 14 days of service.
  - (2) The judgment creditor may notify the court if satisfied with the information provided by the judgment debtor.
  - (3) The court office must then notify the person to be examined that he need not then attend the examination.
  - (4) If the judgment debtor is a body corporate, the financial position notice must require an officer of the body corporate to comply with paragraph (1).

**PART 45**

## HOW JUDGMENTS MAY BE ENFORCED

### Contents of this Part

Scope of this Part.....	Rule 45.1
How money judgments may be enforced.....	Rule 45.2
Enforcement of orders for payment of money into court.....	Rule 45.3
Enforcement of judgments and orders for possession of land....	Rule 45.4
Enforcement of judgments and orders for delivery of goods .....	Rule 45.5
Enforcement of judgments and orders requiring person to do act within specified time or not to do act.....	Rule 45.6
Enforcement of judgments and orders requiring body corporate to do act within specified time or not to do act.....	Rule 45.7

**Scope of this Part.**

45.1 This Part sets out the ways in which judgments may be enforced. It has effect subject to any enactment as to enforcement of judgments in force for the time being in Belize.

**How money judgments may be enforced.**

45.2 A judgment or order for payment of a sum of money other than an order for payment of money into court may be enforced by –

- (a) an order for the seizure and sale of goods under Part 46;
- (b) a charging order under Part 48;
- (c) a garnishee order under Part 50;
- (d) the appointment of a receiver under Part 51; or

**CAP. 168.**

- (e) (subject to the restrictions of the Debtors Act) a judgment summons under Part 52.

**Enforcement of orders for payment of money into court.**

45.3 (1) An order for the payment of money into court may be enforced by-

- (a) the appointment of a receiver under Part 51;
- (b) an order for seizure of assets under Part 53; or
- (c) a committal order under Part 53.

(2) An order for seizure of assets or committal under paragraph (b) or (c) may be made only if the order requires payment to be made within a specified time or by a specified date.

**Enforcement of judgments and orders for possession of land.**

- 45.4 (1) A judgment or order for the possession of land may be enforced by-
- (a) a writ of possession of land; or
  - (b) a seizure of assets order under Part 53; or
  - (c) an order for committal to prison under Part 53.
- (2) An order for seizure of assets or committal under paragraph (b) or (c) may be made only if the court has given a judgment or made an order requiring possession of land to be given within a specified time or by a specified date.

**Enforcement of judgments and orders for delivery of goods.**

- 45.5 (1) The ways in which an order for delivery of goods may be enforced depend on whether or not the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods.
- (2) If it gives the judgment debtor the choice, the means of enforcement are –
- (a) a writ of delivery to recover the goods or their assessed value under Part 46; or
  - (b) a writ of specific delivery for the recovery of specified goods under Part 46.
- (3) A judgment creditor may only obtain a writ of specific delivery under paragraph (2)(b) if the court gives permission under Rule 46.9.
- (4) Where the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods, that judgment or order may not be enforced by order of committal under Part 53.
- (5) If the judgment or order does not give the judgment debtor the choice of paying the assessed value of the goods or an order is made under Rule 46.9, the means of enforcing the order are orders –
- (a) for recovery of specified goods under Part 46;
  - (b) for committal under Part 53; or
  - (c) for seizure of assets under Part 53.
- (6) The judgment creditor may obtain an order for seizure of assets or committal under paragraph (2) or (5) only if the court has given a judgment or made an order requiring delivery within a specified time.

**Enforcement of judgments and orders requiring person to do act within specified time or not to do act.**

- 45.6 A judgment or order which requires a person –
- (a) to do an act within a specified time or by a specified date; or
  - (b) to abstain from doing an act,
- may be enforced by an order –
- (i) for committal to prison; or
  - (ii) for seizure of assets,
- under Part 53.

**Enforcement of judgments and orders requiring body corporate to do act within specified time or not to do act.**

- 45.7 (1) If the court –
- (a) gives a judgment or makes an order such as is mentioned in Rule 45.6; and
  - (b) the judgment or order requires a body corporate to do or abstain from that act, it may make an order under Part 53 –
- (i) for the committal to prison or for seizure of assets against an appropriate person; or
  - (ii) for seizure of assets of the body corporate.
- (2) In this Rule, “**appropriate person**” means a director or other officer of the body corporate.

## **PART 46**

### **GENERAL RULES ABOUT WRITS OF EXECUTION**

#### **Contents of this Part**

Meaning of “writ of execution”.....	Rule 46.1
Permission required to enforce in certain cases.....	Rule 46.2
Application for permission to enforce.....	Rule 46.3
Amount to be recovered on enforcement.....	Rule 46.4
Enforcement of judgment or order requiring judgment debtor to do two or more different things .....	Rule 46.5
No writ of execution against Crown.....	Rule 46.6
Enforcement of judgment for payment by instalments.....	Rule 46.7

No writ of delivery for goods or payment of assessed value unless court has assessed value.....	Rule 46.8
Order for specific delivery.....	Rule 46.9
Period for which writ of execution is valid.....	Rule 46.10
Renewal of writ of execution .....	Rule 46.11
Period for which court may renew writ of execution .....	Rule 46.12
Effective date of renewed writ unchanged.....	Rule 46.13
Claims to goods seized under writ of execution.....	Rule 46.14
Suspension of writ of execution at request of judgment creditor	Rule 46.15
Return to writ of execution.....	Rule 46.16

**Meaning of “writ of execution”.**

46.1 In these Rules, a “**writ of execution**” means any of the following –

- Form 17** (a) an order for the seizure and sale of goods (Writ of Fieri–Facias) in Form 17;
- Form 18** (b) a writ of possession in Form 18;
- (c) an order for the sale of land;
- (d) a writ of delivery, whether it is –
  - Form 20** (i) an order for recovery of specified goods in Form 20; or
  - Form 19** (ii) an order for the recovery of goods or their assessed value in Form 19; and
- (e) an order for seizure of assets.<sup>86</sup>

**Permission required to enforce in certain cases.**

46.2 A writ of execution may not be issued without permission where –

- (a) six years have elapsed since the judgment was entered;
- (b) the judgment creditor is no longer entitled to enforce the order;
- (c) any party against whom a judgment or order was liable to be enforced is no longer liable to have it enforced against it;
- (d) the judgment debtor has died and the judgment creditor wishes to enforce against assets of the dead person which have passed to that person’s personal representatives since the date of the order;

<sup>86</sup> Enforcement by an order for seizure of assets is dealt with under Part 53.

- (e) the goods against which it is wished to enforce the judgment or order are in the hands of a receiver or confiscator appointed by the court;
- (f) the judgment was made subject to conditions; or
- (g) any statutory provision requires the permission of the court to be obtained before judgment is enforced.

**Application for permission to enforce.**

46.3

- (1) An application for permission may be made without notice unless the court otherwise directs but must be supported by evidence on affidavit.
- (2) On an application for permission the applicant must satisfy the court that it is entitled to proceed to enforce the judgment or order, and, in particular
  - (a) where the judgment is a money judgment, as to –
    - (i) the amount originally due; and
    - (ii) the amount due and the amount of interest due at the date of the application;
  - (b) where Rule 46.2 (a) applies, the reasons for the delay;
  - (c) where Rule 46.2 (b) or (c) applies, as to the change that has taken place;
  - (d) where Rule 46.2 (d) or (e) applies, that a demand to satisfy the judgment or order has been made on the person holding the assets and that that person has refused or failed to do so;
  - (e) that the applicant is entitled to enforce the judgment; and
  - (f) that the person against whom enforcement is sought is liable to satisfy the judgment.

**Amount to be recovered on enforcement.**

46.4

- (1) A judgment creditor may recover on a writ of execution –
  - (a) the balance of any money judgment;
  - (b) fixed costs in accordance with Rule 64.4; and
  - (c) interest on a money judgment.
- (2) The rate of interest payable on a judgment debt is the statutory rate of interest unless the court has directed that some other rate shall apply.

- (3) Unless the court otherwise orders, the amount for which a writ of execution may be issued may include the unpaid fixed costs and fees of any previous enforcement proceedings on the same judgment.

**Enforcement of judgment or order requiring a judgment debtor to do two or more different things.**

- 46.5 Where a judgment or order requires the judgment debtor to do two or more different things, the judgment creditor may obtain –
- (a) a single writ of execution to enforce every part of the judgment or order; or
  - (b) separate writs of execution to enforce one or more parts of it.

**No writ of execution against the Crown.**

- 46.6 No writ of execution may be issued where the judgment debtor is the Crown.

**Enforcement of judgment for payment by instalments.**

- 46.7 (1) This Rule has effect where the court has made an order for payment by instalments of –
- (a) a sum of money; or
  - (b) the value of goods assessed after the court has made an order for the recovery of goods or their assessed value,
- and the judgment debtor has failed to pay one or more instalments.
- (2) The judgment creditor may issue an order for the seizure and sale of the goods for the purpose of recovering the whole of the amount recoverable under the judgment and not merely the instalment(s) in arrear(s).

**No writ of delivery for goods or payment of assessed value unless court has assessed value.**

- 46.8 A judgment creditor may not issue a writ of delivery for the recovery of goods or payment of their assessed value unless that value has previously been assessed by the court or an order has been made under Rule 46.9.

**Order for specific delivery.**

- 46.9 (1) Where the court makes an order for delivery of goods or payment of their assessed value, the judgment creditor may apply to the court for permission to issue an order for delivery of specified goods without the alternative of payment of the assessed value.
- (2) An application for permission must be served on the defendant whether or not that defendant has filed an acknowledgment of service.

**Period for which writ of execution is valid.**

- 46.10 (1) A writ of execution is valid for a period of twelve months beginning with the date of its issue.
- (2) After that period the judgment creditor may not take any step under the writ unless the court has renewed it.
- Renewal of writ of execution.** 46.11 (1) The judgment creditor may apply for the renewal of a writ of execution.
- (2) The general rule is that an application for renewal must be made within the period for which the writ is valid.
- (3) If the judgment creditor applies for renewal after the end of that period, the court may renew the writ only if it is satisfied that the judgment creditor has –
- (a) taken all reasonable steps to execute the writ or some part of it; and
- (b) been unable to do so.
- (4) An application for renewal may be made without notice but must be supported by evidence on affidavit.
- (5) The judgment creditor must state in his evidence under paragraph (4) whether or not he is aware of any other judgment creditor and, if so, give such details of which he is aware as to the money due from the judgment debtor to each such judgment creditor.
- (6) On such an application the court must have regard to the interests of any other judgment creditor of whose existence it is aware.
- Period for which the court may renew writ of execution.** 46.12 On an application for renewal of a writ of execution the court may renew it for a period of not more than 6 months.
- Effective date of renewed writ unchanged.** 46.13 (1) The renewal of a writ of execution does not change its effective date.
- (2) The effective date is therefore still that of the writ as originally issued.
- (3) The priority of the renewed writ and of any other writ of execution must be determined accordingly.
- Claims to goods seized under writ of execution.** 46.14 If –
- (a) goods are seized under a writ of execution; and

- (b) some person other than the judgment creditor or judgment debtor subsequently claims any of them,

the validity of the writ of execution is extended until the end of twelve months from the conclusion of interpleader proceedings on that claim.<sup>87</sup>

- |   |       |     |  |
|---|-------|-----|--|
| <b>Suspension of writ of execution at request of judgment creditor.</b> | 46.15 | (1) | The judgment creditor may ask the marshall to suspend execution.   |
|   |       | (2) | If the judgment creditor does so, neither the judgment creditor nor the marshall may take any further step under the writ of execution unless the court first renews it.       |
| <b>Return to writ of execution.</b>                                     | 46.16 | (1) | A judgment creditor who has issued a writ of execution may serve a notice on the marshall requiring the marshall to make a return of the manner in which it has been executed. |
|   |       | (2) | If the marshall fails to comply with the notice within 14 days the judgment creditor may apply to the court for an order directing the marshall to comply.                     |

## PART 47

### VARIATION OF TERMS OF JUDGMENTS AND SUSPENSION OF WRITS OF FI FA AND WRITS OF DELIVERY

#### Contents of this Part

Scope of this Part.....	Rule 47.1
Applications to vary time and method of payment or suspend order for seizure and sale of goods or writ of delivery.....	Rule 47.2
Where no objection except as to terms – procedure.....	Rule 47.3
Application for re-determination of court’s decision.....	Rule 47.4
Where judgment creditor objects to variation or suspension....	Rule 47.5
Pre-suspension costs.....	Rule 47.6
Judgment creditor's right to re-issue writ of execution.....	Rule 47.7

- |                            |      |                        |
|----------------------------|------|------------------------|
| <b>Scope of this Part.</b> | 47.1 | This Rule deals with – |
|----------------------------|------|------------------------|

---

<sup>87</sup> Enforcement by an order for seizure of assets is dealt with under Part 53.

- (a) variation of the terms of a judgment for payment of a specified sum of money as to the time and method of payment; and
- (b) suspension of orders for the seizure and sale of goods and writs of delivery.

**Applications to vary time and method of payment or suspend order for seizure and sale of goods or writ of delivery.**

- 47.2 (1) This Rule applies to –
- (a) judgments for payment of a sum of money;
  - (b) judgments for the delivery of goods or payment of their value;
  - (c) orders for seizure and sale of goods; and
  - (d) writs of delivery where the defendant has the alternative of paying the assessed value.
- (2) An application by the judgment debtor to vary the terms of the judgment as to the time or method of payment or to suspend a writ of execution under this Rule must be supported by evidence in the appropriate practice form.

**Where no objection except as to terms – procedure.**

- 47.3 (1) The court must serve the application to vary or suspend on the judgment creditor.
- (2) The judgment creditor may file and serve on the judgment debtor objections to the application.
- (3) If the judgment creditor does not do so before the end of 14 days from the date of service of the application, the court may make an order in the terms for which the judgment debtor asks.
- (4) If the judgment creditor objects only to the rate and time of any payment proposed by the judgment debtor, the court –
- (a) may decide the rate and time of payments; and where appropriate,
  - (b) may make an order suspending the writ of execution on those terms.
- (5) The court may make this decision without a hearing.
- (6) The court office must serve a copy of the order made under paragraph (3) or (4) on the judgment creditor and judgment debtor.

**Application for re-determination of court's decision.**

- 47.4 (1) The judgment creditor or the judgment debtor may apply to the court to redetermine the decision.
- (2) The application may not be made more than 14 days after the date of service of the court's order under Rule 47.3(6).
- (3) The court office must fix a hearing and give the judgment creditor and judgment debtor at least 7 days notice of the date, time and place of the hearing.

**Where judgment creditor objects to variation or suspension.**

- 47.5 If the judgment creditor gives the court notice that he, she or it does not agree to any variation as to the time or method of payment or suspension of the writ of execution on any terms, the court office must fix a hearing and give the judgment creditor and judgment debtor at least 7 days notice of the date, time and place of the hearing.

**Pre-suspension costs.**

- 47.6 Where the court hears an application to vary the judgment or suspend a writ of execution, it may add to the judgment debt –
- (a) the costs of the application for variation or suspension; and
- (b) any costs or fees incurred by the judgment creditor in connection with any writ of execution, such costs to be assessed by the court.<sup>88</sup>

**Judgment creditor's right to re-issue writ of execution.**

- 47.7 (1) A judgment creditor may re-issue a writ of execution where –
- (a) execution has been suspended on terms; and
- (b) the judgment debtor has not complied with those terms.
- (2) The re-issued order has the same priority as the original order.

## **PART 48**

### **CHARGING ORDERS**

#### **Contents of this Part**

---

<sup>88</sup> Rule 64.11 deals with assessed costs.

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

**Scope of this Part and definitions.**

- 48.1 (1) This Part deals with the enforcement of a judgment debt by charging –
- (a) stock (including stock held in court); and
  - (b) other personal property.
- (2) In this Part –
- “**stock**” includes shares, securities and dividends arising therefrom; and
- “**proper officer**” means the court officer who is responsible for the custody of funds in court.

**How to apply for a charging order.**

- 48.2 (1) An application for a charging order must be made on the appropriate practice form.
- (2) The application is to be made without notice but must be supported by evidence on affidavit.
- (3) An application for a charging order relating to stock may incorporate an application for an order for sale of such stock under Rule 48.11.

**Evidence in support of an application for a charging order.**

- 48.3 (1) This Rule sets out the evidence required to support an application for a charging order.
- (2) The affidavit must –
- (a) state the name and address of the judgment debtor;
  - (b) state that to the best of his information and belief the debtor is beneficially entitled to the stock or personal property, as the case may be;

- (c) identify the judgment or order to be enforced;
- (d) state that the applicant is entitled to enforce the judgment;
- (e) certify the amount remaining due under the judgment;
- (f) state the name and address of every person who is believed to be an unsecured creditor of the judgment debtor;
- (g) where the application relates to stock –
  - (i) identify the company and the stock of that company to be charged;
  - (ii) identify any person who has responsibility for keeping a register of the stock;
  - (iii) state whether any person other than the judgment debtor is believed to have an interest in that stock whether as –
    - (aa) a joint owner;
    - (bb) a trustee; or
    - (cc) a beneficiary; and
  - (iv) if so, give the names and addresses of such persons and details of their interest; and
- (h) in the case of any other personal property –
  - (i) identify that property; and
  - (ii) state whether any other person is believed to have an interest in the property.

**Single charging order for more than one judgment debt.** 48.4 A judgment creditor may apply for a single charging order in respect of more than one judgment or order against a judgment debtor.

**Procedure for making provisional charging order.** 48.5 (1) In the first instance, the court must deal with an application for a charging order without a hearing and may make a provisional charging order.

(2) On the application of the judgment creditor, the court may grant an injunction to secure the provisional charging order.

(3) An application for an injunction may be made without notice and may remain in force until 7 days after the making of an order under Rule 48.8(4).

**Interested persons.**

- 48.6 (1) The persons specified in paragraph (2) have an interest in the charging order proceedings as well as the judgment creditor and the judgment debtor and are referred to in this Part as “the interested persons”.
- (2) The interested persons are –
- (a) any unsecured creditor;
  - (b) any person who owns the stock to be charged jointly with the judgment debtor;
  - (c) the company whose stock is to be charged;
  - (d) any person who is responsible for keeping the register of stock for that company;
  - (e) if the stock is held under a trust, the trustees or such of them as the court may direct;
  - (f) if the stock is held by the judgment debtor as a trustee, such of the other trustees and beneficiaries as the court may direct;
  - (g) if the stock is held in court, the proper officer; and
  - (h) any other person who has an interest in the personal property to be charged .

**Service of provisional charging orders and of copies.**

- 48.7 (1) If the court makes a provisional charging order, the judgment creditor must serve on the judgment debtor in accordance with Part 5 –
- (a) the order; and
  - (b) a copy of the evidence in support of the application for the order.
- (2) The judgment creditor must also serve a copy of the order on the interested persons listed in the evidence filed in support of the application.
- (3) Any interested person other than the company and the person responsible for keeping the register must be served personally.
- (4) The provisional charging order must state the date, time and place when the court will consider making a final charging order.
- (5) The order and copy orders must be served at least 28 days before the hearing.

**Making of  
final charging  
order.**

- (6) The judgment creditor must file an affidavit of service not less than 7 days before the hearing.
- 48.8 (1) This Rule deals with –
- (a) the filing of objections to a provisional charging order; and
  - (b) the making of a final charging order.
- (2) The following persons may file objections to a provisional charging order–
- (a) the judgment creditor;
  - (b) the judgment debtor; and
  - (c) any interested person.
- (3) The objection must be filed not less than 14 days before the hearing, if satisfied that the provisional charging order has been served on the judgment debtor, under paragraph (4).
- (4) At the hearing, if satisfied that the provisional charging order has been served on the judgment debtor, the court has power to –
- (a) make a final charging order;
  - (b) discharge the provisional charging order; or
  - (c) give directions for the resolution of any objections that cannot be fairly resolved summarily.
- (5) If the court makes an order under paragraph (4)(c), it may continue any injunction made under Rule 48.5 until 7 days after the application is finally determined.
- (6) A copy of the charging order must be served by the court office on –
- (a) the judgment creditor;
  - (b) the judgment debtor;
  - (c) any interested person who has filed an objection; and
  - (d) in the case of stock –

- (i) the company; and
- (ii) any person who has responsibility for keeping a register of the stock.

(7) Every copy of the charging order served on –

- (a) the company; and
- (b) any person who has responsibility for keeping a register of the stock,

must contain a stop notice.<sup>89</sup>

**Effect of provisional or final charging order.**

- 48.9 (1) No disposition by a judgment debtor of an interest in property subject to a provisional or final charging order is valid against the judgment creditor.
- (2) No person or body on whom an order was served under Rule 48.6(2)(c) or (d) may permit the transfer of any stock specified in the order or pay any interest or dividend payable out of the stock to any person while the order remains in force.
- (3) If after service of the order the person or body listed in Rule 48.6(2)(c) or (d) makes a transfer or payment prohibited by paragraph (2) it is liable to pay the judgment creditor an amount equivalent to the value of the stock transferred or payment made or as much of it as is necessary to satisfy the judgment debt and costs.

**Discharge or variation of final charging order.**

- 48.10 (1) An application to discharge or vary a final charging order may be made by–
- (a) the judgment creditor;
  - (b) the judgment debtor; or
  - (c) any interested person.
- (2) Notice of application must be served on the –
- (a) judgment creditor if made by the judgment debtor;
  - (b) judgment debtor if made by the judgment creditor; or

---

<sup>89</sup> Part 49 deals with the effect of a stop notice.

(c) judgment creditor and judgment debtor if made by an interested person.

(3) Any order must be served on every person on whom the final charging order was served.

**Enforcement of charging order by sale.**

48.11 (1) This Rule applies where a judgment creditor wishes to enforce a charging order of stock or personal property by sale.

(2) He may apply to the court for an order for sale of the stock or personal property.

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

(4) Notice must be served on the judgment debtor.

(5) The court may give such directions as seem appropriate to secure the expeditious sale of the stock or property charged at a price that is fair to both judgment creditor and debtor.

**PART 49**

**STOP NOTICES AND STOP ORDERS**

**Contents of this Part**

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

**Scope of this Part.**

49.1 (1) This Part enables a person –

- (a) by obtaining a stop notice, to be notified of proposed dealings relating to stock; or
- (b) by obtaining a stop order, to prevent certain specified steps to be taken with regard to stock or funds in court.

(2) In this Part –

**“proper officer”** means the officer of the court who is responsible for the custody of funds in court;

**“stop notice”** means a notice requiring any person or body on whom it is served to refrain from taking, in respect of any of the stock specified in the notice, any of the specified steps without first notifying the person by whom, or on whose behalf, the notice was served;

**“stop order”** means an order of the court prohibiting the taking, in respect of any of the stock or funds in court specified in the order, any of the specified steps; and

**“the specified steps”** mean –

- (a) the registration of any transfer of the stock;
- (b) in the case of stock or funds in court, the transfer, sale or other dealing with the stock or funds or the payment out of the income thereof; or
- (c) the making of any payment by way of dividend, interest or otherwise in respect of the stock.

**Right to apply for a stop notice.**

49.2 Any person who claims to be beneficially entitled to an interest in stock may apply for a stop notice.

**Procedure for obtaining a stop notice.**

49.3 (1) Anyone who wants the court office to issue a stop notice (**“the applicant”**) may obtain one by filing a notice in the practice form.

(2) The applicant must also file an affidavit which –

- (a) identifies the stock;
- (b) identifies the applicant's interest in it; and
- (c) gives an address for service for the applicant.

(3) The court office must then issue a stop notice.

**Service.**

49.4 (1) The applicant must serve a copy of –

(a) the stop notice; and

(b) his affidavit,

on the company and any keeper of the register on whom he would have had to serve a charging order relating to the stock in accordance with Rule 48.6.

(2) After that, so long as the stop notice is in force, neither the company or the keeper of the register may register any transfer of the stock or take any step mentioned in the stop notice until 14 days after sending a notification of the proposed registration or other step to the applicant.

**Amendment of a stop notice.**

49.5 (1) If a stop notice describes any stock incorrectly, the applicant may ask the court office to issue an amended notice.

(2) The application may be made without notice.

(3) Rule 49.4 applies to an amended notice as it applies to the original notice.

**Withdrawal or discharge of a stop notice.**

49.6 (1) The person on whose behalf the court office issued a stop notice may withdraw it by serving a notification of withdrawal on the court and every person on whom the stop notice was served.

(2) On the application of any person claiming to be beneficially interested in the stock to which a stop notice relates, the court may by order discharge or vary the notice.

(3) An application for such an order must be served on the person on whose behalf the court originally issued the stop notice.

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

**Stop orders.**

49.7 (1) The court may make a stop order relating to –

(a) stock; or

(b) funds in court.

(2) The stop order may prohibit the taking of any of the specified steps.

**Procedure on application for a stop order.**

- 49.8 (1) Any person claiming to be beneficially entitled to stock may apply for a stop order.
- (2) In the case of money in court any person –
- (i) who has a mortgage or charge on the interest of any person in funds in court;
  - (ii) to whom that interest has been assigned; or
  - (iii) who is a judgment creditor of the person entitled to that interest,
- may apply for a stop order.
- (3) Notice of an application for a stop order must be served by the applicant at least 7 days before the hearing on any person whose interest may be affected by the order and, in the case of funds in court, on the proper officer.
- Power to vary or discharge a stop order.** 49.9 The court may vary or discharge a stop order on the application of any person claiming to be entitled to any interest in the stock to which the order relates.

## **PART 50**

### **ATTACHMENT OF DEBTS**

#### **Contents of this Part**

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

- Scope of this Part.** 50.1 (1) This Part provides a procedure under which a judgment creditor can obtain payment of all or part of a judgment debt from a person who owes the judgment debtor money.
- (2) The person who is said to owe the judgment debtor money is called “**the garnishee**”.
- (3) An order of the court is required. This order is called an “**attachment of debts order**”.
- (4) The attachment of debts order may require the garnishee to pay enough money to satisfy the fixed costs of the attachment of debts proceedings as well as the judgment debt.<sup>90</sup>
- (5) In this Part, “**proper officer**” means the officer of the court who is responsible for the custody of funds in court.
- Circumstances in which court may make order for attachment of debt.** 50.2 (1) The attachment of debt procedure may not be used where the order is to pay money into court.
- (2) An attachment of debt order can be made only against a garnishee who is within the jurisdiction.
- (3) An attachment of debt order may not be made to attach debts due from the Crown.<sup>91</sup>
- (4) A debt may be attached if it is –
- (a) due or accruing to the judgment debtor from the garnishee on the date that the provisional order under Rule 50.3 is served on the garnishee; or
- (b) becomes due or accrues due to the judgment debtor at any time between the service of the provisional order under Rule 50.3 and the date of the hearing.
- Procedure - making of provisional order.** 50.3 (1) An application by a judgment creditor for an attachment of debt order must be in the appropriate practice form.
- (2) The application may be made without notice but must be supported by evidence on affidavit.

<sup>90</sup> The fixed costs are set out in Appendix A to Part 64.

<sup>91</sup> Rule 59.4 provides an alternative procedure in this situation.

- (3) If the court considers that on the evidence submitted, the judgment creditor is entitled to an attachment of debts order it must make a provisional order.
  - (4) It is to do this without a hearing.
  - (5) The court office must state in the provisional order the date, time and place of the hearing.
- Money in bank accounts, etc.** 50.4
- (1) An attachment of debts order may be made in respect of any type of debt but includes money standing to the credit of any account of the judgment debtor with a bank or financial institution, other deposit taking institution, or a building society.
  - (2) An attachment of debts order must not require a payment that would reduce below \$100 the amount standing in the name of a judgment debtor in an account with a bank, building society or other financial institution.
- Joint funds.** 50.5
- (1) This Rule applies where an application is made to attach a fund which is owned jointly by the judgment debtor and another person or persons.
  - (2) The evidence in support of the application must state –
    - (a) the names and addresses of the person or persons who own the fund jointly with the judgment debtor;
    - (b) details of the joint fund; and
    - (c) if the applicant claims that the judgment debtor is entitled to more than an equal share in the fund, the grounds for that claim.
  - (3) Each owner of the fund must be served with the provisional attachment of debts order and the evidence in support.
- Presumption of equal shares in a joint fund.** 50.6
- (1) The general rule is that a fund held jointly by the judgment debtor and another person or persons is to be presumed to be owned in equal shares.
  - (2) Any person served under Rule 50.5(3) may apply to the court to determine the actual beneficial entitlement of each owner of the joint fund.
- Attachment of debts owed by firm.** 50.7
- (1) This Rule applies to the attachment of debts due or accruing from a firm carrying on business within the jurisdiction.
  - (2) Such debts may be attached even if one or more members of the firm is resident outside the jurisdiction.

- (3) A provisional order under Rule 50.3 must be served on –
  - (a) a member of the firm; or
  - (b) some other person having the control or management of the partnership business,
 in the jurisdiction.
- (4) Any member of the garnishee may attend a hearing of an application for an attachment of debts order.

**Service of provisional order.**

- 50.8 (1) The judgment creditor must serve the provisional attachment of debts order.
- (2) It must be served first on the garnishee at least 21 days before the hearing.
- (3) It must be served personally on the garnishee unless the garnishee is a body corporate.
- (4) If the garnishee is a bank, building society or other financial institution, the provisional attachment of debts order must be served on its principal or registered office and also the branch at which the judgment debtor's account is kept if that address is known to the judgment creditor.
- (5) Secondly, it must be served on the judgment debtor.
- (6) It must be served on him at least 7 days after it has been served on the garnishee and not less than 7 days before the hearing.

**Effect of provisional order.**

- 50.9 (1) This Rule sets out the effect of a provisional attachment of debts order.
- (2) It becomes binding on the garnishee as soon as it is served on him.
- (3) The garnishee does not then have to pay the judgment creditor anything except to the extent that his debt to the judgment debtor is greater than the amount of the attachment of debts order.
- (4) However, it means that if he pays anyone but the judgment creditor he may have to make further payment to the judgment creditor in accordance with the terms of any final attachment of debts order that the court may make.

**Hearing to consider making final order.**

- 50.10 At the hearing fixed by the provisional order the court, if satisfied that the order has been properly served, may –

- (a) make a final attachment of debts order;
- (b) discharge the provisional order; or
- (c) give directions for the resolution of any dispute.

**Claim to a debt  
by a person other  
than a judgment  
debtor.**

- 50.11 (1) This Rule has effect where the court is aware from information supplied by the garnishee or from any other source that someone other than the judgment debtor –
- (a) is or claims to be entitled to the debt; or
  - (b) has or claims to have a charge or lien on it.
- (2) In this Rule, “**lien**” means a right to retain possession of goods to protect the debt.
- (3) Where this Rule has effect, the court may require the judgment creditor to serve notice of –
- (a) the application for an attachment of debts order; and
  - (b) any hearing fixed by the court,
- on any person who may have such an interest as is set out in paragraph (1).
- (4) The notice must be served personally unless the person is a body corporate.
- (5) Notice must also be served on –
- (a) the judgment debtor; and
  - (b) the garnishee.
- (6) A notice under this Rule must contain a warning to every person on whom it is served that, if he does not attend court, it may proceed to decide the issue in his absence.

**Enforcement  
against  
garnishee.**

- 50.12 If a garnishee does not fulfill the terms of an attachment of debts order, the judgment creditor may issue enforcement proceedings against the garnishee.

**Discharge of  
garnishee's debt  
to judgment  
debtor.**

- 50.13 (1) This Rule has effect where –

- (a) the garnishee pays money to the judgment creditor in compliance with an attachment of debts order; or
  - (b) the attachment of debts order is enforced against the garnishee.
- (2) The garnishee's liability to the judgment debtor is then discharged to the extent of the amount paid by, or recovered from, him.
- (3) This Rule has effect even if the court later sets aside the attachment of debt order or the original judgment or order.
- Costs of attachment of debt proceedings.** 50.14 (1) This Rule contains general provisions about the costs of attachment of debt proceedings.
- Appendix A Part 64.** (2) The judgment creditor's costs are those fixed by Appendix A to Part 64 unless the court makes some other order in which case it must assess the amount of his costs.
- (3) The judgment creditor may retain the costs out of the money which he recovers through the attachment of debts order.
- (4) The costs are to be taken to have been paid to the judgment creditor before any payment in respect of the judgment debt.
- (5) A garnishee who appears at attachment of debts proceedings may deduct his costs before paying any sum over to the judgment creditor in pursuance of the attachment of debts order.
- (6) Costs payable under paragraph (5) must be assessed under Rule 64.11 if not agreed.
- Money in court.** 50.15 (1) No attachment of debts order may be made in respect of money in court standing to the credit of the judgment debtor.
- (2) The judgment creditor may however apply for an order that sufficient of the money in court to satisfy his judgment and the fixed costs <sup>92</sup> of the application be paid to the judgment creditor.
- (3) Notice of the application must be given to the proper officer and any person who has an interest in the fund.
- (4) Until hearing of the application the money to which it relates must not be paid out of court.

---

<sup>92</sup> The fixed costs are set out in Appendix A to Part 64.

## PART 51

### APPOINTMENT OF RECEIVER

#### Contents of this Part

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

**Scope of this Part.**

51.1 This Part deals with the appointment of a receiver and includes an application to appoint a receiver to obtain payment of the judgment debt from the income or capital assets of the judgment debtor.

**Application for appointment of a receiver and injunction.**

- 51.2 (1) An application for the appointment of a receiver must be supported by evidence on affidavit.
- (2) The applicant may also apply for an injunction to restrain the judgment debtor or other respondent from assigning, charging or otherwise dealing with any property identified in the application.<sup>93</sup>
- (3) Where an application for an immediate injunction is made, the application for the appointment of a receiver and for an injunction may be made without notice.

**Conditions for appointment of a receiver.**

- 51.3 In deciding whether to appoint a receiver to recover a judgment debt, the court must have regard to –
- (a) the amount of the judgment debt;
  - (b) the amount likely to be obtained by the receiver; and
  - (c) the probable cost of appointing and remunerating the receiver.

**Giving of security by receiver.**

51.4 (1) The general rule is that a person may not be appointed receiver until that person has given security.

---

<sup>93</sup> The fixed costs are set out in Appendix A to Part 64.

- (2) The court may however dispense with security.
- (3) The order appointing the receiver must state the amount of the security.
- (4) The security must be by guarantee unless the court allows some other form of security.
- (5) The guarantee or other security must be filed at the court.

**Remuneration of receiver.**

51.5 The receiver may be allowed such remuneration as the court may direct.

**Receiver's powers.**

51.6 A receiver's powers operate to the exclusion of the powers of the judgment debtor for the duration of the receiver's appointment.

**Accounts of receiver.**

- 51.7
- (1) The order appointing a receiver must direct on what dates the receiver must file accounts.
  - (2) Unless the court orders otherwise the account must be verified by affidavit.
  - (3) The receiver must serve a copy of the account on the applicant.
  - (4) The applicant must obtain an appointment to pass the account.
  - (5) The passing of the account must be verified by the Registrar.

**Payment of balance into court.**

51.8 The receiver must pay into court any balance shown on the accounts under Rule 51.7 as due from the receiver within 7 days of the passing of any account.

**Default by receiver.**

- 51.9
- (1) This Rule applies if the receiver –
    - (a) fails to submit an account by the date ordered;
    - (b) fails to attend for the passing of any account; or
    - (c) fails to pay into court any balance shown on the account as due from him.
  - (2) The applicant must ask the court office to fix a hearing for the receiver to show cause for the receiver's failure.
  - (3) The court office must issue a notice stating the date, time and place of the hearing to show cause.

- (4) The applicant must serve the notice on the receiver at least 7 days before the hearing.
- (5) At the hearing the court may –
  - (a) give directions to remedy the default; or
  - (b) give directions for the discharge of the receiver; and
  - (c) appoint another receiver; and
  - (d) disallow any remuneration claimed by the receiver; and
  - (e) order the receiver to –
    - (i) pay the costs of the applicant as assessed by the court; and
    - (ii) pay interest at the statutory rate on any monies which may appear from a subsequent account to be due from the receiver.

**PART 52**

**JUDGMENT SUMMONS**

**Contents of this Part**

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

**Scope of this Part.**

52.1 This Part deals with applications to commit a judgment debtor for non-payment of a debt where this is not prohibited by any relevant enactment.

**Issue of judgment summons. Form 21.**

52.2 (1) An application to commit a judgment debtor for failing to pay all or part of the judgment debt must be made by way of judgment summons in Form 21 and must state –

- (a) the date and details of the judgment or order requiring payment of the debt;
- (b) what payment has been made by the judgment debtor; and

(c) the amount of interest claimed to the date of the application and the daily rate thereafter.

(2) The court office must –

(a) fix a date for hearing of the judgment summons;

(b) seal the judgment summons; and

(c) return the order to the judgment creditor for service.

**Service of judgment summons.**

52.3 (1) The judgment creditor must serve the judgment debtor with the judgment summons in accordance with Part 5 not less than 7 days before the date fixed for the hearing of the application to commit.

(2) The judgment creditor must file an affidavit of service not less than 3 days before the hearing.

**Hearing of judgment summons.**

52.4 At the hearing of the judgment summons, the court may –

(a) if satisfied that all reasonable efforts have been made to serve the judgment debtor and –

(i) the summons has come to the knowledge of the judgment debtor; or

(ii) that the judgment debtor is wilfully evading service,

proceed in the absence of the judgment debtor as if he had been personally served;

(b) receive evidence as to the means of the debtor in any manner that it thinks fit; and

(c) if satisfied that all statutory requirements have been met –

(i) commit the judgment debtor for such fixed term as is permitted by law;

(ii) suspend such committal upon payment of the judgment debt on such dates and by such instalments as the court may order;

(iii) make an order for payment of the judgment debts by a particular date or by specified instalments and adjourn the hearing of the judgment summons to a date to be fixed on the application of the judgment creditor;

(iv) adjourn the hearing of the summons to a fixed date; or

(v) dismiss the judgment summons.

**Failure to  
comply with  
terms of  
instalment  
order.**

- 52.5 If the judgment debtor fails to comply with the terms of the judgment summons the judgment creditor may -
- (a) where a suspended committal order has been made, apply to commit the judgment debtor in accordance with the provisions of Part 53 (committal orders);
  - (b) where an order has been made under Rule 52.4(c)(iv), apply to the court in writing to restore the judgment summons; or
  - (c) issue a further judgment summons.

**Restored  
hearing of  
judgment  
summons.**

- 52.6 (1) The judgment creditor must –
- (a) serve the notice of the restored hearing of a judgment summons in accordance with Part 5 at least 7 days before the date fixed for hearing; and
  - (b) file an affidavit of service at least 3 days before the hearing.
- (2) At the restored hearing the court may exercise any of its powers under Rule 52.4.

## **PART 53**

### **COMMITTAL AND SEIZURE OF ASSETS**

#### **Contents of this Part**

Scope of this Part.....	Rule 53.1
Order specifying time for act to be done.....	Rule 53.2
When committal order or seizure of assets order may be made.....	Rule 53.3
Committal order or seizure of assets order against officer of body corporate .....	Rule 53.4
Making committal order or seizure of assets order when judgment or order not served.....	Rule 53.5
Undertakings .....	Rule 53.6
Application for committal order or seizure of assets order....	Rule 53.7
Service of notice of hearing.....	Rule 53.8
Powers of the court .....	Rule 53.9
Restoration of adjourned hearing.....	Rule 53.10
Application for enforcement of suspended committal order	

or order for seizure of assets .....	Rule 53.11
Special provisions relating to order for seizure.....	Rule 53.12

<b>Scope of this Part.</b>	53.1	This Part deals with the power of the court to commit a person to prison or to make an order seizing assets for failure to comply with - <ul style="list-style-type: none"> <li>(a) an order requiring that person to do; or</li> <li>(b) an undertaking by that person to do, <p>an act within a specified time or by a specific date or not to do an act.</p> </li> </ul>
<b>Order specifying time for act to be done.</b>	53.2	<p>(1) Where a judgment or order specifies the time or date by which an act must be done, the court may by order specify another time or date by which the act must be done.</p> <p>(2) Where a judgment or order does not specify the time or date by which an act must be done, the court may by order specify a time or date by which it must be done.</p> <p>(3) The time by which the act must be done may be specified by reference to the day on which the order is served on the judgment debtor.</p> <p>(4) An application for an order under this Rule may be made without notice but the court may direct that notice be given to the judgment debtor.</p> <p>(5) Any order made under this Rule must be served in the manner required by Rule 53.3 (in the case of an individual judgment creditor) or Rule 53.4 (enforcement against an officer of a body corporate).</p>
<b>When committal order or seizure of assets order may be made.</b>	53.3	Subject to Rule 53.5, the court may not make a committal order or a seizure of assets order unless - <ul style="list-style-type: none"> <li>(a) the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the judgment debtor;</li> <li>(b) at the time that order was served it was endorsed with a notice in the following terms: <p><b>“NOTICE: If you fail to comply with the terms of this order you will be in contempt of court and may be liable to be imprisoned or to have your assets seized.”</b></p> or, in the case of an order served on a body corporate, in the following terms:</li> </ul>

**"NOTICE: If you fail to comply with the terms of this order you will be in contempt of court and may be liable to have your assets seized.";** and

- (c) where the order requires the judgment debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

**Committal order or seizure of assets order against officer of body corporate.**

53.4 Subject to Rule 53.5, the court may not make a committal order or a seizure of assets order against an officer of a body corporate unless –

- (a) a copy of the order requiring the judgment debtor to do an act within a specified time or to not to do an act has been served personally on the officer against whom the order is sought;
- (b) at the time that order was served it was endorsed with a notice in the following terms:  
**"NOTICE: If [name of body corporate] fails to comply with the terms of this order it will be in contempt of court and you [name of officer] may be liable to be imprisoned or have your assets seized.";** and
- (c) where the order required the judgment debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

**Making committal order or seizure of assets order when judgment or order not served.**

- 53.5
- (1) This Rule applies where the judgment or order has not been served.
  - (2) Where the order required the judgment debtor not to do an act, the court may make a committal order or seizure of assets order only if it is satisfied that the person against whom the order is to be enforced has had notice of the terms of the order by: –
    - (a) being present when the order was made; or
    - (b) being notified of the terms of the order by post, telephone, FAX or otherwise.
  - (3) The court may make an order dispensing with service of the judgment or order under Rule 53.3 or 53.4 if it thinks it just to do so.

**Undertakings.**

53.6 An undertaking given to the court must if practicable be given in writing in the appropriate practice form and a copy of this form endorsed with a notice in

accordance with Rule 53.3(b) or 54.4(b) must, if practicable, be served on the person giving the undertaking.

**Application for committal order or seizure of assets order.**

- 53.7 (1) The application must specify -
- (a) the precise term of the order or undertaking which it is alleged that the judgment debtor has disobeyed or broken; and
  - (b) the exact nature of the alleged breach or breaches of the order or undertaking by the judgment debtor.
- (2) The application must be verified by affidavit.
- (3) The applicant must prove -
- (a) service of the order endorsed with the appropriate notice under Rule 53.3(b) or Rule 54.3(b);
  - (b) if the order required the judgment debtor not to do an act, that the person against whom it is sought to enforce the order had notice of the terms of the order under Rule 53.5; or
  - (c) that it would be just for the court to dispense with service.

**Service of notice of hearing.**

- 53.8 (1) The judgment creditor must serve on the judgment debtor or, in the case of a body corporate, the officer against whom it is sought to make a committal order or seizure of property order notice of the application for the committal order at least 7 days before the date fixed for hearing.
- (2) If the notice of application is served on the judgment debtor less than 7 days before the hearing, the court may direct that in all the circumstances of the case, sufficient notice has been given and may accordingly deal with the application.
- (3) The notice of application must be served in accordance with Part 5.
- (4) A copy of the application and of the evidence in support must be served with the notice.

**Powers of the court.**

- 53.9 If satisfied that the notice of application has been duly served, the court may -
- (a) make a committal order against a judgment debtor who is an individual;
  - (b) make a seizure of assets order against a judgment debtor who is an individual or a body corporate;

- (c) make a committal order against an officer of a judgment debtor which is a body corporate;
- (d) make a seizure of assets order against an officer of a judgment debtor which is a body corporate;
- (e) adjourn the hearing of the application to a fixed date;
- (f) accept an undertaking from the judgment debtor or an officer of a body corporate who is present in court and adjourn the application generally;
- (g) make a suspended committal order or seizure of assets order on such terms as the court considers just; or
- (h) dismiss the application,

and may make such order as to assessed costs under Rule 64.11 as it considers to be just.

**Restoration of  
adjourned  
hearing.**

- 53.10 (1) Where an application for a committal order or a seizure of assets order has been adjourned under Rule 53.9(f), the court office may fix a date for the adjourned hearing.
- (2) An application for a date to be fixed -
- (a) may be made without notice; but
  - (b) must be supported by evidence on affidavit specifying –
    - (i) the precise term or terms of the undertaking which it is alleged that the judgment debtor has disobeyed; and
    - (ii) the exact nature of the alleged breach or breaches of the undertaking by the judgment debtor.
- (3) The notice of the restored hearing must -
- (a) state the date, time and place of the restored hearing; and
  - (b) be served on the judgment debtor or the officer of a body corporate personally at least 3 days before the adjourned hearing.
- (4) A copy of the evidence under paragraph (2) must be served with the notice.

**Application for  
enforcement of  
suspended  
committal  
order or order  
for seizure of  
assets.**

- 53.11 (1) Where the court has imposed terms under Rule 53.9(g) and the judgment creditor alleges that the judgment debtor has failed to comply with the terms imposed, the judgment creditor may apply for the suspended order to be enforced.
- (2) The application must specify -
- (a) the precise term or terms of the suspended order which it is alleged that the judgment debtor has disobeyed; and
- (b) the exact nature of the alleged breach or breaches of the terms of the suspended order by the judgment debtor.
- (3) The application must be verified by affidavit.
- (4) The court office must fix a hearing of the application.
- (5) The notice of hearing must be served on the judgment creditor or the officer of a body corporate personally at least 3 days before the adjourned hearing.
- (6) A copy of the evidence under paragraph (2) must be served with the application.
- 53.12 (1) The judgment creditor may not sell any property seized under an order for seizure without the permission of the court.
- (2) An application for permission must be supported by evidence on affidavit.

**Special provisions relating to order for seizure.**

## **PART 54**

### **INTERPLEADER**

#### **Contents of this Part**

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

**Scope of this Part.**

- 54.1 (1) This Part deals with the situation where -
- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and proceedings are taken against him, or are likely to be taken against him by two or more persons making adverse claims in respect of the debt, money, goods or chattels; or
  - (b) a claim is made to any money, goods or chattels seized or intended to be seized by the marshal or the proceeds or value of such goods or chattels.
- (2) The person under a liability under paragraph (1)(a) or the marshal may apply for relief.
- (3) That procedure is called an “**interpleader**”.

**Claim to goods taken in execution.**

- 54.2 (1) A person who makes a claim against any money, goods or chattels seized or about to be seized by the marshal must give written notice to the marshal.
- (2) The notice must -
- (a) give that person's name and address for service;
  - (b) identify the money, goods or chattels claimed; and
  - (c) set out the grounds of the claim.
- (3) Forthwith on receipt of the claim the marshal must give written notice to the judgment creditor.
- (4) Within 7 days after receiving the notice the judgment creditor must give notice to the marshal admitting or disputing the claim.
- (5) Where the judgment creditor gives notice admitting the claim -
- (a) he is liable only for the fees and expenses of the marshal incurred before the marshal receives the notice;
  - (b) the marshal must withdraw from possession of the money, goods or chattels; and

- (c) the marshal may apply to the court for an order restraining any action being brought in respect of having taken possession of the money, goods or chattels.
  - (6) Where the judgment creditor gives notice disputing the claim or fails to give notice and the claim is not withdrawn, the marshal may apply to the court for relief under this Part.
- How to interplead.** 54.3
- (1) A person interpleads by filing an application for relief by way of interpleader.
  - (2) The application must be filed in the court office.
  - (3) An application other than by the marshal must be supported by evidence on affidavit that the applicant -
    - (a) claims no interest in the subject matter in dispute other than for charges or costs;
    - (b) does not collude with any of the claimants to that subject-matter; and
    - (c) is willing to pay or transfer that subject-matter into court or dispose of it as the court may direct.
- Service of interpleader application.** 54.4
- (1) An application by the marshal must be served on the judgment creditor and on the person claiming the money, goods or chattels.
  - (2) An application by any other person must be served on all persons making a claim to t
  - (3) The application must be served not less than 14 days before the date fixed for hearing of the application.
- Powers of the court.** 54.5
- (1) On an application by the marshal the court may, unless any claimant objects, summarily determine the question in issue between the parties.
  - (2) On any other application the court may order that -
    - (a) any person claiming the money, goods or chattels be made a defendant in any pending claim relating to such money, goods or chattels either in addition to, or in substitution for, the applicant for relief; or
    - (b) the issue between two or more persons claiming the money, goods or chattels be tried, and may direct which person claiming is to be the claimant in those proceedings and which the defendant.

- (3) Where a person making a claim to any money, goods or chattels who has been served with the application -
- (a) fails to attend the hearing; or
  - (b) fails to comply with any order made by the court,
- the court may make an order barring that person and any persons claiming under that person forever from prosecuting any claim to the money, goods or chattels as against the applicant and all persons claiming under the applicant.
- (4) An order under paragraph (3) does not affect the rights as between the persons claiming the money, goods or chattels.

**Power to order sale of goods taken in execution.**

- 54.6 On an application by a marshal who has seized any goods or chattels where a person claims to be entitled to such goods by way of security, the court may order that all or part of such goods or chattels be sold and the proceeds applied in accordance with the order.

## PART 55

### SALE OF LAND BY ORDER OF COURT

#### Contents of this Part

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

**Scope of this Part.**

- 55.1 (1) This Part deals with the sale of land –
- (a) under any enactment which authorises the court to order a sale; and
  - (b) when it appears to the court to be necessary or expedient that the land should be sold.
- (2) In this Part, "**land**" includes any interest in, or right over, land.

- Application for order for sale.** 55.2 (1) An application for an order for sale must be supported by affidavit evidence.
- (2) The evidence under paragraph (1) must -
- (a) identify the land in question; and
  - (b) state -
    - (i) the reason for seeking an order for sale;
    - (ii) the grounds on which it is said that the court should order a sale of the land;
    - (iii) the full names and addresses of all persons who to the knowledge or belief of the applicant have an interest in the land;
    - (iv) the nature and extent of each such interest;
    - (v) the proposed method of sale and why such method will prove most advantageous;
    - (vi) any restrictions or conditions that should be imposed on the sale for the benefit of any adjoining land of the judgment debtor or otherwise; and
    - (vii) whom it is proposed should have conduct of the sale; and
  - (c) exhibit a current valuation of the land by a qualified land valuer or surveyor.
- (3) The application and copies of the evidence in support must be served in accordance with Part 5 on the judgment debtor and every person who has an interest in the land.

- Hearing of application.** 55.3 The court on hearing the application may -
- (a) direct that notice be given to any person who appears to have an interest in the land but has not been served with the application and adjourn the application to a fixed date;
  - (b) order the sale of the land or a specified part of the land;
  - (c) direct who shall have conduct of the sale; and
  - (d) order that any person –
    - (i) in possession; or
    - (ii) in receipt of the rents or profits,

of the land or any part of the land deliver up possession of the land or receipt of the rents and profits to such person and on such date as the court may direct;

- (e) suspend any such order on such terms as the court thinks fit; or
- (f) dismiss the application.

**Order for sale.** 55.4 On making an order for sale, the court may -

- (a) permit the person having conduct of the sale to sell the land in such manner as he thinks fit; or
- (b) direct the manner in which the land is to be sold.

**Directions.** 55.5 The court may give directions for the purpose of the sale, including -

- (a) fixing any reserve or minimum price for such sale;
- (b) obtaining further evidence as to the valuation of the land;
- (c) settling the particulars and conditions of sale;
- (d) fixing the remuneration of the auctioneer or estate agent dealing with the sale;
- (e) requiring payment of the net proceeds of sale into court or otherwise;
- (f) an inquiry into what interests any interested persons may have in the land and the extent of such interests in the net proceeds of sale;
- (g) how the net proceeds of sale should be applied; and
- (h) certification of the result of the sale.

**Further directions.** 55.6 Any party or the person having the conduct of the sale may apply to the court to vary the directions or to make further directions.

## **PART 56**

### **CONSTITUTIONAL AND ADMINISTRATIVE LAW**

#### **Contents of this Part**

Scope of this Part.....	Rule 56.1
Who may apply for judicial review.....	Rule 56.2
Judicial review - application for permission.....	Rule 56.3
Judicial review - hearing of application for permission.....	Rule 56.4
Delay .....	Rule 56.5
Proceedings by way of claim which should be application for an administrative order.....	Rule 56.6
How to make an application for an administrative order.....	Rule 56.7
Joinder of claims for other relief.....	Rule 56.8
Service of claim form for constitutional and administrative law...	Rule 56.9
Evidence in answer.....	Rule 56.10
First hearing.....	Rule 56.11
Procedural applications.....	Rule 56.12
Hearing of an application for an administrative order.....	Rule 56.13
Special provisions relating to <i>certiorari</i> .....	Rule 56.14

**Scope of this Part.**

- 56.1 (1) This Part deals with applications -
- (a) for judicial review;
  - (b) for relief under the Constitution;
  - (c) for a declaration in which a party is the Crown, a court, a tribunal or any other public body; and
  - (d) where the court has power by virtue of any enactment to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a Minister or Government Department or any action on the part of a Minister or Government Department.
- (2) In this Part such applications are referred to generally as "**applications for an administrative order**".
- (3) "**Judicial Review**" includes the remedies (whether by way of writ or order) of -
- (a) *certiorari*, for quashing unlawful acts;
  - (b) *prohibition*, for prohibiting unlawful acts; and
  - (c) *mandamus*, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.

- (4) In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant -
  - (a) an injunction;
  - (b) restitution or damages; or
  - (c) an order for the return of any property, real or personal.

**Who may apply for judicial review.**

- 56.2 (1) An application for judicial review may be made by any person, group or body which has *sufficient interest* in the subject matter of the application.
- (2) This includes -
- (a) any person who has been adversely affected by the decision which is the subject of the application;
  - (b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);
  - (c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;
  - (d) any statutory body where the subject matters falls within its statutory ambit;
  - (e) any body or group that can show that the matter is of *public interest* and that the body or group possesses expertise in the subject matter of the application; or
  - (f) any other person or body who has a right to be heard under the terms of any relevant enactment or the Constitution.

**Judicial review - application for permission.**

- 56.3 (1) A person wishing to apply for judicial review must first obtain permission.
- (2) An application for permission may be made without notice.
- (3) The application shall state -
- (a) the name, address and description of the applicant and respondent;
  - (b) the relief, including in particular details of any interim relief, sought;

- (c) the grounds on which such relief is sought;
  - (d) the applicant's address for service;
  - (e) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;
  - (f) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant;
  - (g) whether any time limit for making the application has been exceeded and, if so, why;
  - (h) whether the applicant is personally or directly affected by the decision about which complaint is made; or
  - (i) where the applicant is not personally or directly affected, what public or other interest the applicant has in the matter;
  - (j) the name and address of the applicant's legal practitioners (if applicable); and
  - (k) the applicant's address for service.
- (4) The application must be verified by evidence on affidavit which must include a short statement of all the facts relied on.

**Judicial review  
- hearing of  
application for  
permission.** 56.4

- (1) An application for permission to make a claim for judicial review must be considered forthwith by a judge of the Supreme Court.
- (2) The judge may give permission without hearing the applicant.
- (3) However, if -
  - (a) the judge is minded to refuse the application; or
  - (b) the application includes a claim for immediate interim relief; or
  - (c) it appears that a hearing is desirable in the interests of justice,
 he must direct that a hearing in open court be fixed.
- (4) The judge may direct that notice of the hearing be given to the respondent or the Attorney General.

- (5) Where the application relates to any judgment, order, conviction or other proceedings which are subject to appeal, the judge may adjourn consideration of the application to a date after the appeal has been determined.
- (6) The judge may allow the application to be amended.
- (7) The judge may grant permission on such conditions or terms as he considers just.
- (8) Where the application is for an order (or writ) of prohibition or *certiorari* the judge must direct whether or not the grant of permission operates as a stay of the proceedings to which the application relates.
- (9) The judge may grant such interim relief as appears just.
- (10) On granting permission, the judge must direct when the first hearing or, in case of urgency, the full hearing of the claim for a judicial review should take place.
- (11) Permission must be conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting permission.

**Delay.**

56.5

- (1) In addition to any time limits imposed by any enactment, the judge may refuse permission to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.
- (2) When considering whether to refuse permission or to grant relief because of delay the judge must consider whether the granting of permission or relief would be likely to -
  - (a) cause substantial hardship to, or substantially prejudice, the rights of any person; or
  - (b) be detrimental to good administration.
- (3) An application for permission to apply for judicial review shall be made promptly and in any event within three 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.

**Proceedings by way of claim which should be application for an administrative order.**

56.6

- (1) This Rule applies where a claimant issues a claim for damages or other relief other than an administrative order but where the facts supporting such claim are such that the only or main relief is an administrative order.

- (2) The court may at any stage direct that the claim is to proceed by way of an application for an administrative order.
- (3) Where the appropriate administrative order would be for judicial review, the court may give permission for the matter to proceed as if an application had been made under Rule 56.3.
- (4) If the court makes an order under paragraph (2), it must give such directions as are necessary to enable the claim to proceed under this Part.

**How to make an application for an administrative order. Form 2.**

**CAP. 4**

- 56.7 (1) An application for an administrative order must be made by a fixed date claim in Form 2 identifying whether the application is -
- (a) for judicial review;
  - (b) for relief under the Constitution;
  - (c) for a declaration; or
  - (d) for some other administrative order (naming it),
- and must identify the nature of any relief sought.

**CAP. 4**

- (2) The claim form in an application under the Constitution requiring an application to be made by originating motion should be headed 'Originating Motion'.
- (3) The claimant must file with the claim form evidence on affidavit.
- (4) The affidavit must state -
  - (a) the name, address and description of the claimant and the defendant;
  - (b) the nature of the relief sought identifying –
    - (i) any interim relief sought; and
    - (ii) whether the claimant seeks damages, restitution, recovery of any sum due or alleged to be due or an order for the return of property, setting out the facts on which such claim is based and, where practicable, specifying the amount of any money claimed;

**CAP. 4**

- (c) in the case of a claim under the Constitution, setting out the provision of the Constitution which the claimant alleges has been, is being, or is likely to be breached;
  - (d) the grounds on which such relief is sought;
  - (e) the facts on which the claim is based;
  - (f) the claimant's address for service; and
  - (g) giving the names and addresses of all defendants to the claim.
- (5) The general rule is that the affidavit must be made by the claimant or where the claimant is not an individual by an appropriate officer of the body making the claim.
- (6) If the claimant is unable to make the affidavit it may be made by some other person on his behalf but must state why the claimant is unable to make the affidavit.
- (7) On issuing the claim form the court office must fix a date for a first hearing which must be endorsed on the claim form.
- (8) The general rule is that the first hearing must take place no later than four weeks after the date of issue of the claim.
- (9) However, any party may apply to a judge in chambers for that date to be brought forward or for an early date to be fixed for the hearing of the application for an administrative order.
- (10) The application may be without notice but must be supported by evidence on affidavit.

**Joinder of claims for other relief.**

- 56.8 (1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that -
- (a) arises out of; or
  - (b) is related or connected to,
- the subject matter of an application for an administrative order.
- (2) In particular the court may award -
- (a) damages;

- (b) restitution; or
  - (c) an order for return of property, to the claimant on a claim for Judicial Review or for relief under the Constitution if -
    - (i) the claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or
    - (ii) the facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief; and
    - (iii) the court is satisfied that, at the time when the application was made, the claimant could have issued a claim for such remedy.
- (3) The court may however at any stage -
- (a) direct that any claim for other relief be dealt with separately from the claim for an administrative order; or
  - (b) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and
  - (c) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this Part.

**Service of claim form for constitutional and administrative law.**  
**CAP. 4**

- 56.9
- (1) The claim form and the affidavit in support must be served on the defendants not less than 14 days *before* the date fixed for the first hearing.
  - (2) A claim form relating to an application for relief under the Constitution or for judicial review must be served on the Attorney General.
  - (3) Where permission has been given to make a claim for judicial review the claimant must also serve a copy of -
    - (a) the application for permission;
    - (b) the affidavit in support; and
    - (c) the order giving permission,
 on the Attorney General and on each defendant.
  - (4) The claimant must file at the court office not less than 7 days before the date fixed for the first hearing an affidavit which -

- (a) gives the names and addresses of all defendants who have been served with the claim;
  - (b) states the date and place of service on each such defendant;
  - (c) where applicable, states when the claim form was served on the Attorney General; and
  - (d) if any defendant has not been served, states that fact and the reason for it.
- (5) If the judge considers that any person who should have been served has not been served, the judge may adjourn the first hearing to a fixed date and give directions for service<sup>94</sup>.

**Evidence in answer.**

56.10 Any evidence filed in answer to a claim for an administrative order must be by affidavit but the provisions of Part 10 apply to such affidavit.

**First hearing.**

56.11 (1) At the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.

(2) In particular the judge may -

(a) make orders for -

- (i) witness statements or affidavits to be served;
- (ii) cross-examination of witnesses; and
- (iii) disclosure of documents;

(b) allow the claimant to -

- (i) amend any claim for an administrative order;
- (ii) substitute another form of application for that originally made; or
- (iii) add or substitute a claim for relief other than an administrative order;

(c) allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;

---

<sup>94</sup> Part 5 deals generally with the service of claims

- (d) direct whether any person or body having such interest-
  - (i) is to make submissions by way of written brief; or
  - (ii) may make oral submissions at the hearing; and
- (e) direct that claims by one or more persons or bodies or against one or more persons in respect of the same office made on the same grounds be consolidated or heard together.

**Procedural applications.**

- 56.12 (1) Wherever practicable, any procedural application during a claim for an administrative order must be made to the judge who dealt with the first hearing unless that judge orders otherwise.
- (2) Without limiting the generality of Rule 56.12(1), that Rule applies in respect of proceedings -
- (a) to set aside permission granted without notice;
  - (b) to take preliminary objections on any matter.

**Hearing of an application for an administrative order.**

- 56.13 (1) At the hearing of the application, the judge may allow any person or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not served with the claim form.
- (2) Such a person or body must make submissions by way of a written brief unless the judge orders otherwise.
- (3) The judge may grant any relief that appears to be justified by the facts proved before him whether or not such relief should have been sought by an application for an administrative order.
- (4) The judge may, however, make such orders as to costs as appear to him to be just including a wasted costs order.
- (5) Where the judge makes any order as to costs he must assess them.<sup>95</sup>
- (6) The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.<sup>96</sup>

**Special provisions relating to certiorari.**

- 56.14 (1) Where the claimant seeks an order or writ of *certiorari* to remove any proceedings for the purpose of quashing them, the claimant may not

<sup>95</sup> Rules 64.11 and 12 deal with the assessment of costs.

<sup>96</sup> Part 63 deals with the court's general discretion as to the award of costs.

question the validity of any order, warrant, commitment, conviction or record unless -

- (a) before the trial the claimant has lodged with the court office a copy of the order, etc., verified by affidavit; or
  - (b) can account for the failure to do so to the satisfaction of the court.
- (2) Where the claim is for an order or writ of *certiorari*, the judge may if satisfied that there are reasons for quashing the decision to which the claim relates -
- (a) direct that the proceedings be quashed on their removal to the Supreme Court; and
  - (b) may in addition, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it in accordance with the findings of the Supreme Court.

## **PART 57**

### **HABEAS CORPUS**

#### **Contents of this Part**

Scope of this Part.....	Rule 57.1
Application for issue of a writ of Habeas Corpus.....	Rule 57.2
Powers of court.....	Rule 57.3
Service of writ.....	Rule 57.4
Return to writ .....	Rule 57.5
Powers of court on hearing writ.....	Rule 57.6
Bringing up prisoner to give evidence, etc.,.....	Rule 57.7

**Scope of this Part.**

57.1 This Part deals with applications for the issue of a Writ of *Habeas Corpus* and proceedings upon such a Writ.

**Application for issue of a Writ for Habeas Corpus.**

- 57.2 (1) The general rule is that an application for the issue of a Writ of *Habeas Corpus ad subjiciendum* must be made to the court.
- (2) An application under paragraph (1) may be made without notice but must be supported by evidence on affidavit.

- (3) Such evidence must be given by the person restrained stating how he is restrained.
- (4) However, if the person restrained is not able to make the affidavit it may be made by some person on his behalf and must state why the person restrained is not able to make the affidavit.
- (5) The application must be heard in open court unless it is made on behalf of a minor when it must be heard in chambers, or if it is made in cases of emergency then it can be made by a judge at any place as the justice of the case requires.

**Powers of court.**  
**Form 22.**

- 57.3 (1) The court may –
- (a) forthwith make an order for the Writ in Form 22 to issue; or
  - (b) adjourn the application and give directions for notice to be given -
    - (i) to the person against whom the issue of the Writ is sought; and
    - (ii) to such other person as the judge may direct.
- (2) The court may also order that the person restrained be released.
- (3) An order under paragraph (2) is sufficient warrant to any person for the release of the person under restraint.
- (4) On making an order for the Writ to issue the court must give directions as to the date, time and place of hearing.

**Service of writ.**

- 57.4 (1) The general rule is that the Writ must be served personally on the person to whom it is directed.
- (2) If it is not possible to serve that person personally or if that person is the keeper of a prison or other public official the Writ may instead be served personally on a servant or agent of the person to whom it is directed at the place where the person restrained is confined or restrained.
- (3) If the Writ is directed to more than one person it must be served on the person first named and copies served on each of the other persons named in accordance with paragraph (1) or (2).
- (4) Each person served must also be served with –
- (i) a copy of the evidence filed under Rule 57.2(2); and

- Form 22.** (ii) a notice in the form included in Form 22 of the date and time on, and place at, which the person restrained is to be brought and containing a warning that in default of compliance with the Writ proceedings for committal may be taken.
- Return to writ.** 57.5 (1) Each person served must endorse on or annex to the Writ a return stating each cause of detention of the person restrained.
- (2) The return may be amended or another substituted with the permission of the court.
- Powers of court on hearing writ.** 57.6 On the date fixed for the person detained to be brought before the court, the court must make such orders as are just and, in particular, may give directions as to the manner in which any claim for compensation is to be dealt with by the court without requiring the issue of any further process.
- Bringing up prisoner to give evidence, etc.** 57.7 An application for –
- (1) a Writ of *habeas corpus ad testificandum*;
- (2) a Writ of *habeas corpus ad respondendum*; or
- (3) an order to bring up a prisoner to give evidence otherwise than by Writ of *habeas corpus*, may be made without notice to judge in chambers but must be supported by evidence on affidavit.

## PART 58

### BAIL APPLICATIONS

#### Contents of this Part

Scope of this Part.....	Rule 58.1
How to apply to the court.....	Rule 58.2
Hearing of application.....	Rule 58.3

- Scope of this Part.** 58.1 (1) This Part deals with applications to the court to review a decision by a magistrate about bail.
- (2) “**Magistrate**” includes a Justice of the Peace; and

“**the Superintendent**” means the Superintendent of Prisons or other person responsible for the administration of prisons in Belize.

**How to apply to the court.**

- 58.2 (1) An application under this Part must be in the appropriate practice form.
- (2) Where the applicant is in custody and is not represented by a legal practitioner, the application must be lodged with the Superintendent.
- (3) The Superintendent must forthwith file the application at the court office.
- (4) Where the applicant is –
- (a) represented by a legal practitioner; or
  - (b) not in custody,
- the applicant must file the application at the court office.
- (5) The court office must immediately-
- (a) send a copy of the application to the Director of Public Prosecutions and the Solicitor General;
  - (b) fix a date, time and place to hear the application; and
  - (c) give notice of such time, date and place to –
    - (i) the applicant;
    - (ii) the Director of Public Prosecutions and the Solicitor General; and
    - (iii) if the applicant is in custody, to the Superintendent.
- (6) No application shall proceed if it does not comply with paragraph (5) (a) or (c) (ii).

**Hearing of application.**

- 58.3 (1) The court may confirm, modify or reverse the decision of the magistrate.
- (2) The court office must serve a copy of any order on –
- (a) the Superintendent;
  - (b) the magistrate who made the decision under review;
  - (c) the Chief Magistrate; and
  - (d) the Director of Public Prosecutions and the Solicitor General.

**PART 59**

**PROCEEDINGS BY AND AGAINST THE CROWN**

**Contents of this Part**

Scope of this Part.....	Rule 59.1
Service of claim form .....	Rule 59.2
Claimant's duty to give particulars.....	Rule 59.3
Enforcement against Crown.....	Rule 59.4

**Scope of this Part.**

59.1 (1) This Part deals with claims to which the Crown is a party.

**CAP. 167.**

(2) In this Part, “**the Act**” means the Crown Proceedings Act.

(3) References in these Rules to an action or claim for possession of land are to be construed as including references to proceedings against the Crown for an order declaring that the claimant is entitled as against the Crown to the land or to possession of the land.

**CAP. 31.**

(4) The Public Authorities Protection Act applies to proceedings under this Part.

**Service of claim form.**

59.2 (1) Part 5 (service of claim form) and Part 6 (service of other documents) *do not apply* in civil proceedings against the Crown.

(2) Service of any document including a claim form on the Crown must be effected in accordance with the relevant Act.

**Claimant's duty to give particulars.**

59.3 (1) Where a claim is made in proceedings against the Crown the claim form or statement of claim must contain reasonable information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the Government Department and officers of the Crown involved.

(2) At any time during the period for entering an acknowledgment of service under Rule 9.3(1) the defendant may request information under Part 35.1.

(3) The defendant's time for filing an acknowledgment of service is then extended until 7 days after –

(a) the defendant gives notice in writing to the claimant that it is satisfied with the information supplied; or

(b) the court on the application of the claimant decides that no further information is reasonably required,

whichever shall first occur.

(4) The defendant's time for filing a defence is extended to 21 days after the earlier event in paragraph (3).

**Enforcement  
against Crown.**

59.4 (1) Parts 44 to 53 do not apply to any order against, or money due or accruing due, or alleged to be due or accruing due from, the Crown.

(2) Any application under the Act for a direction that a separate certificate be issued with respect to costs (if any) ordered to be paid to the applicant may be made without notice.

(3) Every application for an order under the Act restraining any person from receiving money payable to that person by the Crown and directing payment to the applicant or some other person must be served on the Crown at least 14 days before the date of hearing and, unless the court otherwise orders, on the person to be restrained.

(4) Every application under paragraph (3) must be supported by evidence on affidavit –

(a) of the facts giving rise to it; and

(b) identifying the particular debt from the Crown in respect of which it is made.

**PART 60**

**APPEALS TO THE SUPREME COURT**

**Contents of this Part**

Scope of this Part.....	Rule 60.1
How to appeal to the court.....	Rule 60.2
Effect of appeal.....	Rule 60.3
Persons on whom claim form must be served.....	Rule 60.4
Time within which claim form must be served.....	Rule 60.5
Amendment of statement of claim.....	Rule 60.6
First hearing.....	Rule 60.7
Hearing of appeal.....	Rule 60.8
Right of Minister to be heard .....	Rule 60.9

**Scope of this Part.**

- 60.1 (1) This Part deals with appeals to the Supreme Court from any tribunal or person under any enactment other than an appeal by way of case stated.
- (2) In this Part
- “**tribunal**” means any tribunal other than a court of law established under an enactment;
- “**clerk to the tribunal**” means the clerk, secretary or other person responsible for the administration of the tribunal; and
- “**decision**” means the order, determination, decision or award appealed against.
- (3) This Part takes effect subject to any provisions in the relevant enactment.

**How to appeal to the court. Form 23.**

- 60.2 (1) An appeal to the Court is made by issuing a Notice of Appeal Form in Form 23 to which must be annexed the grounds of appeal.
- (2) The appellant’s grounds of appeal must state –
- (a) the decision against which the appeal is made;
  - (b) the name of the tribunal or person whose decision is being appealed;
  - (c) the enactment enabling an appeal to be made to the Court;
  - (d) the facts found by that tribunal; and
  - (e) the grounds of the appeal identifying –
    - (i) any finding of fact; and
    - (ii) any finding of law, which the claimant seeks to challenge.
- (3) The date for the first hearing must not be less than 28, nor more than 56, days after issue of the Notice of Appeal which will operate as a fixed date claim form.<sup>97</sup>

**Effect of appeal.**

---

<sup>97</sup> The procedure relating to fixed date claims is dealt with in Rules 8.1(5) and 27.2. Part 56 deals with applications to quash a decision by way of *certiorari*.

- 60.3 The making 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 being appealed,
- so orders.
- Persons on whom claim form must be served.** 60.4 The claimant must serve the Notice of Appeal and grounds of appeal on –
- (a) the clerk to the tribunal, Minister or other person by whom the decision appealed against was made; and
  - (b) every other party to the proceedings in which the decision was made.
- Time within which claim form must be served.** 60.5 The Notice of Appeal and grounds of appeal must be served within 28 days of the date on which notice of the decision was given to the claimant. This Rule is subject to any time limit for serving the Notice of Appeal specified in the enactment enabling the appeal.
- Amendment of statement of claim.** 60.6
- (1) The appellant may amend his grounds of appeal without permission not less than 7 days before the first hearing.
  - (2) Permission to amend the grounds of appeal may be given at the first hearing.
  - (3) The court may not give permission to amend the grounds of appeal after the first hearing unless the appellant satisfies the court that the change is necessary because of some change in circumstance which became known after the first hearing.
- First hearing.** 60.7
- (1) The appellant must file at the court office a signed copy of any note made by the person presiding at the proceedings in which the decision was made not less than 7 days before the first hearing.
  - (2) If the court does not hear the appeal at the first hearing it must fix a date, time and place for the full hearing.
- Hearing of appeal.** 60.8
- (1) Unless an enactment otherwise provides, the appeal is to be by way of rehearing.
  - (2) The court may receive further evidence on matters of fact.

- (3) The court may draw any inferences of fact which might have been drawn in the proceedings in which the decision was made.
- (4) The court may –
  - (a) give any decision or make any order which ought to have been given or made by the tribunal or person whose decision is appealed;
  - (b) make such further or other order as the case requires; or
  - (c) remit the matter with the opinion of the court for rehearing and determination by the tribunal or person.
- (5) The court is not bound to allow an appeal because of –
  - (a) a misdirection; or
  - (b) the improper admission or rejection of evidence,

unless it considers that a substantial wrong or a miscarriage has been caused.
- (6) The Registrar shall issue a Certificate of Result of Appeal in Form 24.

**Form 24.**

**Right of Minister to be heard.**

60.9 A Minister is entitled to be heard on any appeal against a decision made by him.

## **PART 61**

### **APPEALS TO THE COURT BY WAY OF CASE STATED**

#### **Contents of this Part**

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

**Scope of this Part.**

- 61.1 (1) This Part deals with the way in which the Supreme Court determines –
- (a) (i) a case stated; or
  - (ii) a question of law referred to it by a Minister, (including the Attorney General), magistrate, judge of a tribunal, a tribunal or other person; or
  - (b) an application for an order directing a Minister, (including the Attorney General), magistrate, judge of a tribunal, tribunal or other person to refer a question of law to the court by way of case stated, where under any enactment the Supreme Court has power to determine such matters.

- (2) In this Part –

“**case**” includes a special case; and  
“**clerk to the tribunal**” means the clerk, secretary or other person responsible for the administration of the tribunal; and

“**court**” means the Supreme Court as required by the particular enactment;

“**enactment**” includes the Constitution,

“**tribunal**” means –

- (a) in relation to proceedings brought under the Constitution, a court other than the Supreme Court, the Court of Appeal or a court martial; and

- (b) in relation to any other proceedings,

any tribunal other than a court of law constituted by or under any enactment.

**CAP. 4**

**Application for order to state a case.**

- 61.2 (1) An application to the court –
- (a) for an order directing a Minister, magistrate, judge of tribunal, tribunal or other person to state a case for determination by the court; or
  - (b) to refer a question of law to the court by way of case stated, is made by a fixed date claim in Form 2 which must –

**Form. 2.**

- (i) state the grounds of the application;
- (ii) identify the question of law upon which it is sought to have a case stated; and

(iii) set out any reasons given by the Minister, magistrate, judge of tribunal, tribunal or other person for the refusal to state a case.

(2) The court office must fix a date for a hearing of the application and endorse on the claim form the date, time and place of that hearing.

(3) The claimant must file at the court office a copy of the proceedings to which the claim relates not less than 7 days before the date fixed for the hearing.

**Persons on whom application must be served.  
CAP. 4.**

61.3 The claimant must serve the claim form –

(a) where the application relates to proceedings brought under the Constitution on –

- (i) the Attorney General<sup>\*</sup>;
- (ii) the clerk to the tribunal; and
- (iii) every other party to the proceedings to which the application relates; and

(b) in any other proceedings on –

- (i) the Minister and the Attorney General<sup>98</sup>;
- (ii) the clerk to the tribunal; or
- (iii) any other person whose decision is questioned; and
- (iv) every other party to the proceedings to which the application relates.

**Time within which application must be served.**

61.4 The claimant must serve the claim form within 14 days of the date on which notice of refusal to state a case was given to the claimant.

**Signing and service of case.**

61.5 (1) A case stated by a tribunal must be signed by the magistrate, judge, chairman or president of the tribunal.

(2) A case stated by any other person must be signed by that person.

(3) The case must be served –

---

<sup>\*98</sup> Service on the Crown or State and on the Attorney General is dealt with in Rule 6.9 and Rule 59.2.

**CAP. 4**

- (a) if it relates to proceedings brought under the Constitution, on the Attorney General and on all parties to the proceedings to which the case relates; or
- (b) if it relates to other proceedings, on all parties to the proceedings to which the case relates.

**How to commence proceedings to determine a case.**

- 61.6 (1) Proceedings to determine a case must be commenced by issuing a fixed date claim in Form 2.
- Form 2.
- (2) The claim form may be issued by –
    - (a) any party on whom a case was served under Rule 61.5(3); or
    - (b) where a Minister, magistrate, judge of a tribunal, a tribunal, arbitrator or other person is entitled by any enactment to state a case or to refer a question of law by way of case stated to the court, that person or tribunal.
  - (3) The claim form must have the case stated annexed.
  - (4) The claim form, or a statement of claim issued and served with it, must set out the claimant's contentions on the question of law to which the case relates.
  - (5) Such contentions may be in the form of skeleton arguments.
  - (6) The court office must fix a date, time and place for the determination of the case.
  - (7) The claim form must be served on the persons set out in Rule 61.5(3).
- 61.7 (1) Not less than 7 days before the date fixed to determine the case, the claimant must file a copy of the proceedings to which the case relates.
- (2) The court may amend the case or order it to be returned to the person or tribunal stating the case for amendment.
  - (3) The court may draw inferences of fact from the facts stated in the case.
  - (4) A Minister is entitled to be heard on any case stated by him.

**PART 62**

## CHANGE OF LEGAL PRACTITIONERS

### Contents of this Part

Scope of this Part.....	Rule 62.1
Change of legal practitioner.....	Rule 62.2
Notice of appointment of legal practitioner.....	Rule 62.3
Party acting in person.....	Rule 62.4
Application by another party to remove legal practitioner from the record.....	Rule 62.5
Application by legal practitioner to be removed from the record....	Rule 62.6
Time when notice or order takes effect.....	Rule 62.7

**Scope of  
this Part.**

62.1 This Part deals with the procedure where -

- (a) there is a change of legal practitioner;
- (b) a legal practitioner acts in the place of a party in person; or
- (c) a party who has previously acted by a legal practitioner acts in person.

**Change of  
legal  
practitioner.**

62.2 When a party changes a legal practitioner the new legal practitioner must -

- (a) file a notice of acting which states his business name, address, telephone number and FAX number (if any);
- (b) serve a copy of the notice on every other party and the former legal practitioner; and
- (c) file a certificate of service.

**Notice of  
appointment  
of legal  
practitioner.**

62.3 Where a person who has previously acted in person instructs a legal practitioner, that legal practitioner must -

- (a) file notice of acting at the court office which states his business name, address, telephone number and FAX number (if any);
- (b) serve a copy of the notice on every other party; and
- (c) file a certificate of service.

- Party acting in person.** 62.4 Where a party who has previously been represented by a legal practitioner decides to act in person that party must -
- (a) file notice of acting in person at the court office which states the address, an address for service within the jurisdiction, telephone number and FAX number (if any) of that party;
  - (b) serve a copy of the notice on every other party and the former legal practitioner; and
  - (c) file a certificate of service.
- Application by another party to remove name of legal practitioner from the record.** 62.5 (1) Where -
- (a) a legal practitioner on record for a party has -
    - (i) died; or
    - (ii) become bankrupt; or
    - (iii) failed to take out a practising certificate; or
    - (iv) been removed or suspended from the roll; and
  - (b) notice of the appointment of a new legal practitioner under Rule 62.2 or of the party acting in person under Rule 62.4 has not been received,
- any other party may apply to the court for an order declaring that the legal practitioner 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 legal practitioner (if practicable) and personally on his client.
  - (3) Any order made must be served by the applicant on the legal practitioner or former legal practitioner (if practicable) and personally on his client.
  - (4) The applicant must file a certificate of service of the order.
- Application by legal practitioner to be removed from the record.** 62.6 (1) A legal practitioner 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) The application must be on notice to the client or former client and to 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' legal practitioners and personally on the former client.
- (5) The applicant must file a certificate of service of the order.

**Time when notice or order takes effect.**

62.7 No notice under Rule 62.2, 3 or 4, or order under Rule 62.5 or 6 takes effect until service.

**PART 63**

**COSTS – GENERAL**

**Contents of this Part**

Scope of this Part.....	Rule 63.1
Definitions and application.....	Rule 63.2
Orders about costs.....	Rule 63.3
Costs where there is an appeal.....	Rule 63.4
Entitlement to recover costs .....	Rule 63.5
Successful party generally entitled to costs.....	Rule 63.6
Two or more parties having the same interest.....	Rule 63.7
Wasted costs orders .....	Rule 63.8
Wasted costs orders – procedure.....	Rule 63.9
Costs against person who is not a party.....	Rule 63.10

**Scope of this Part.**

63.1 This Part contains general rules about costs and the entitlement to costs. Part 64 deals with the quantification of such costs.

**Definitions and application.**

63.2 (1) In this Part and in Part 64, unless the context otherwise requires -

**"costs"** include a legal practitioner's charges and disbursements, fixed costs, prescribed costs, budgeted costs or assessed costs;

**"fixed costs"** has the meaning placed on it by Rule 64.4;

**"prescribed costs"** has the meaning placed on it by Rule 64.5;

**"budgeted costs"** has the meaning placed on it by Rule 64.8; and

"assessed costs" and "assessment" have the meanings placed on them respectively by Rules 64.11 and 64.12.

- (2) Where costs of -
- (a) arbitration proceedings; or
  - (b) proceedings before a tribunal or other statutory body; or
  - (c) a legal practitioner to his client,

are to be taxed or assessed by the court, they must be assessed in accordance with Rule 64.12.

- (3) Where in any enactment there is a reference to the taxation of any costs, this is to be construed as referring to the assessment of such costs in accordance with Rule 64.12.

- |  |      |   |
|--|------|---|
| <b>Orders about costs.</b>                           | 63.3 | The court's powers to make orders about costs include power to make orders requiring a party to pay the costs of another person arising out of or related to all or any part of any proceedings.  |
| <b>Costs where there is an appeal.</b>               | 63.4 | The court hearing an appeal may make orders about the costs of the proceedings giving rise to the appeal as well as to the costs of the appeal.   |
| <b>Entitlement to recover costs.</b>                 | 63.5 | <p>A person may not recover the costs of proceedings from any other party or person except by virtue of -</p> <ul style="list-style-type: none"><li>(a) an order of the court;</li><li>(b) a provision of these Rules; or</li><li>(c) an agreement between the parties.</li></ul>   |
| <b>Successful party generally entitled to costs.</b> | 63.6 | <ul style="list-style-type: none"><li>(1) If 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.</li><li>(2) The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.</li><li>(3) This Rule gives the court power in particular -</li></ul> |

- (a) to order a person to pay only a specified proportion of another person's costs;
  - (b) to order a person to pay costs from or up to a certain date only; or
  - (c) to order a person to pay costs relating only to a certain distinct part of the proceedings.
- (4) The court may not make an order under paragraphs 3(b) or 3(c) unless it is satisfied that an order under paragraph 3(a) would not be more practicable.
- (5) In deciding who should be liable to pay costs, the court must have regard to all the circumstances.
- (6) In particular it 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 he has not been successful in the whole of the proceedings;
  - (c) whether it was reasonable for a party -
    - (i) to pursue a particular allegation; and/or
    - (ii) to raise a particular issue;
  - (d) the manner in which a party has pursued -
    - (i) his case; or
    - (ii) a particular allegation; or
    - (iii) a particular issue; and
  - (e) whether the claimant gave reasonable notice of intention to issue a claim.<sup>99</sup>

**Two or more parties having the same interest.**

63.7 Where two or more parties having the same interest in relation to proceedings are separately represented the court may disallow more than one set of costs.

**Wasted costs orders.**

63.8 (1) In any proceedings the court may by order -

---

<sup>99</sup> Rule 64.11 sets out the way in which the court must deal with the costs of procedural hearings other than a case management conference or pre-trial review.

(a) disallow as against the legal practitioner's client; or

(b) direct the legal practitioner to pay,

the whole or part of any wasted costs.

(2) **"Wasted costs"** means any costs incurred by a party -

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal practitioner or any employee of such legal practitioner; 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.

**Wasted costs orders – procedure.**

63.9 (1) This Rule applies where -

(a) an application is made for; or

(b) the court is considering whether to make,

an order under Rule 63.8(1) except where Rule 27.9(6)(b) applies.

(2) Any application by a party must be on notice to the legal practitioner 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) If the court is considering making such an order the court must give the legal practitioner notice of the fact that it is minded to make such an order.

(4) Notice under paragraph (3) must state the grounds 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 the legal practitioner may attend to show cause why the order should not be made.

(6) Seven (7) days notice of the hearing must be given to the legal practitioner against whom the costs order is sought and to all parties to the proceedings.

**Costs against a person who is not a party.**

63.10 (1) This Rule applies where -

- (a) an application is made for; or
  - (b) the court is considering whether to make,  
  
an order that a person who is not a party to the proceedings nor the legal practitioner 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) If the court is considering making an order 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) Fourteen (14) days notice of the hearing must be given to the person against whom the costs order is sought and to all parties to the proceedings.

## **PART 64**

### **COSTS – QUANTIFICATION**

#### **Contents of this Part**

Scope of this Part.....	Rule 64.1
Basis of quantification.....	Rule 64.2
Ways in which costs are to be quantified.....	Rule 64.3
Fixed costs.....	Rule 64.4
Prescribed costs.....	Rule 64.5
Applications to determine the value of a claim for the purpose of prescribed costs .....	Rule 64.6
What is included in prescribed costs .....	Rule 64.7
Budgeted costs.....	Rule 64.8
Client's consent to application for budgeted costs.....	Rule 64.9
What is included in budgeted costs.....	Rule 64.10
Assessed costs of procedural applications.....	Rule 64.11
Assessment of costs – general.....	Rule 64.12

Appendix A - Fixed Costs

Appendix B - Prescribed Costs

Appendix C - Prescribed Costs: Percentage to be allowed at various stages of claim

- |                                 |      |  |
|---------------------------------|------|--|
| <b>Scope of this Part.</b>      | 64.1 | This Part deals with the way in which any costs awarded by the court are quantified.   |
| <b>Basis of quantification.</b> | 64.2 | <p>(1) Where the court has any discretion as to the amount of costs to be allowed to a party, the sum to be allowed is -</p> <ul style="list-style-type: none"><li>(a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and</li><li>(b) which appears to the court to be fair both to the person paying and the person receiving such costs.</li></ul> <p>(2) Where the court has any discretion as to the amount of costs to be paid to a legal practitioner by his client, the sum allowed is -</p> <ul style="list-style-type: none"><li>(a) the amount that the court deems to be reasonable; and</li><li>(b) which appears to be fair both to the legal practitioner and the client concerned.</li></ul> <p>(3) In deciding what would be reasonable the court must take into account all the circumstances, including -</p> <ul style="list-style-type: none"><li>(a) any orders that have already been made;</li><li>(b) the conduct of the parties before as well as during the proceedings;</li><li>(c) the importance of the matter to the parties and the value thereof;</li><li>(d) the time reasonably spent on the case;</li><li>(e) the degree of responsibility accepted by the legal practitioner;</li><li>(f) the care, speed and economy with which the case was prepared;</li><li>(g) the novelty, weight and complexity of the case; and</li><li>(h) in the case of costs charged by a legal practitioner to his client -</li></ul> |

- (i) any agreement that may have been made as to the basis of charging;
- (ii) any agreement about what grade of legal practitioner should carry out the work;
- (iii) whether the legal practitioner advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.

**Ways in which costs are to be quantified.**

64.3 Costs of proceedings under these Rules are to be quantified as follows -

- (a) where Rule 64.4 applies, in accordance with the provisions of that Rule;
- (b) in all other cases if, having regard to Rule 63.6, 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 64.5 ("prescribed costs");
  - (ii) costs in accordance with a budget approved by the court under Rule 64.5 ("budgeted costs"); or
  - (iii) where neither prescribed nor budgeted costs are applicable, by assessment in accordance with Rule 64.11 and Rule 64.12.

**Fixed costs. Appendix A.**

64.4 (1) A party is entitled to the costs set out in Table 1 of Appendix A and where applicable in Table 2 of Appendix A to this Part in the circumstances and for the claims set out in Part 1 of that Appendix.

**Appendix A.**

(2) The court may however direct that some other additional amount of costs be allowed for the work covered by any item in Part 2 of Appendix A.

(3) If so, the court must assess such costs.<sup>100</sup>

**Prescribed costs. Appendices B and C.**

64.5 (1) The general rule is that where Rule 64.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2) to (5) of this Rule.

(2) In determining such 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

<sup>100</sup> Rule 64.11 and Rule 64.12 deal with the assessment of costs.

- (b) in the case of a defendant -
  - (i) by the amount claimed by the claimant in his claim form; or
  - (ii) if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the party liable to, such costs or, if not agreed, a sum stipulated by the court as the value of the claim; or
  - (iii) if the claim is not for a monetary sum, it is to be treated as a claim for \$50,000 unless the court makes an order under Rule 64.6(1)(a).

**Appendix B.**

- (3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentages specified in Column 2 of Appendix B against the appropriate value.
- (4) The court may however -
  - (a) award a proportion only of such sum having taken into account the matters set out in Rule 63.6(5) and 63.6 (6);
  - (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 Appendix C.

**Appendix C.**

**Applications to determine the value of a claim for the purpose of prescribed costs.**

- 64.6 (1) A party may apply to the court at a case management conference -
  - (a) to determine the value to be placed on a case which has no monetary value; or
  - (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 if it is satisfied that the costs as calculated in accordance with Rule 64.5 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 costs to be prescribed at a higher level, Rules 64.8(4)(a) and 64.9 apply.

**What is included in prescribed costs.**

64.7 Prescribed costs include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in instructing any expert, in considering and disclosing any report made by him or arranging his attendance at trial and for attendance and advocacy at the trial including attendance at any case management conference or pre-trial review but exclude -

(a) the making or opposing of any application except at a case management conference or pre-trial review;

(b) expert's fees for preparing a report and attending any conference, hearing or trial;

(c) the cost of obtaining a daily transcript of the evidence where the trial judge certifies this as a reasonable disbursement in all the circumstances of the case; and

(d) costs incurred in enforcing any order (which are generally fixed in accordance with Rule 64.4 but may, in certain cases, be assessed in accordance with Rule 64.12).

**Budgeted costs.**

64.8 (1) A party may apply to the court to set a costs budget for the proceedings.

(2) An application for such a costs budget must be made at or before the first case management conference.

(3) The application may be made by either or both parties but an order setting a costs budget may not be made by consent unless all relevant parties are bodies corporate.

(4) An application for a costs budget must be accompanied by -

(a) the written consent from the client in accordance with Rule 64.9;

(b) a statement of the amount that the party seeking the order wishes to be set as the costs budget;

(c) a statement showing how such budget has been calculated and setting out in particular -

- (i) the hourly rate charged by the legal practitioner (or other basis of charging);
- (ii) a breakdown of the costs incurred to date;
- (iii) the fees for advocacy (including advocacy by a Senior Counsel, a Crown Counsel or more than one counsel), or advising or settling any document, that are anticipated to be paid to any legal practitioner other than the legal practitioner on record;
- (iv) the disbursements, other than expert witness fees that are included in the budget;
- (v) the anticipated amount of any expert fees and whether or not such fees are included in the budget;
- (vi) a statement of the number of hours of preparation time (including attendances upon the party, any witnesses and on any other parties to the proceedings) that the legal practitioner for the party making the application has already spent and anticipates will be required to bring the proceedings to trial; and
- (vii) what procedural steps or applications are or are not included in the budget.

(5) A party may apply to vary the terms of an order made under this Rule at any time prior to the commencement of the trial but no order may be made increasing the amount of the budgeted costs unless the court is satisfied that there has been a change of circumstances which became known after the order was made.

**Client's consent to application for budgeted costs.**

- 64.9 (1) The court may not make an order for budgeted costs unless-
- (a) the lay party seeking the order is present when the application is made except where -
    - (i) that party is a body corporate; or
    - (ii) for some exceptional reason this is impracticable;
  - (b) the court satisfies itself that each party fully understands the consequences of the order that is being sought as to -
    - (i) the lay party's liability for costs to his own legal practitioner whether he obtains an order for costs against any other party or not;
    - (ii) his liability to pay costs in the budgeted sum to the other party if that party obtains an order for costs against him; and

(iii) what his liability might be under paragraphs (i) and (ii) if Rule 64.5 applied;

(c) there has been filed a document recording the express consent of the lay party to the application and to any order made as a consequence of the application; and

(d) the consent under sub-paragraph (c) is in a separate document which -

(i) is signed by the lay party;

(ii) deals only with the question of budgeted costs;

(iii) states the legal practitioner's estimate of what the prescribed costs appropriate to the proceedings would be;

(iv) gives an estimate of the total costs of the proceedings as between the legal practitioner and client; and

(v) sets out the basis of that estimate including the amount of any hourly charge.

(2) The written consent of the client must not be disclosed to the other party.

(3) This Rule also applies to any other lay party who consents to or does not oppose an order for a costs budget.

**What is included in budgeted costs.**

64.10 Unless the costs budget approved by the court specifies otherwise, Rule 64.7 applies to budgeted costs as it does to prescribed costs.

**Assessed costs of procedural applications.**

64.11 (1) On determining any application except at a case management conference, pre-trial review or the trial, the court must -

(a) decide which party, if any, should pay the costs of that application;

(b) assess the amount of such costs; and

(c) direct when such costs are to be paid.

(2) In deciding what party, if any, should pay the costs of the application, the general rule is that the unsuccessful party must pay the costs of the successful party.

(3) The court must however take account of all the circumstances including the factors set out in Rule 63.6(6) but where the application is -

- (a) one that could reasonably have been made at a case management conference or pre-trial review;
- (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 to amend a statement of case; or
- (d) an application for relief under Rule 26.8;

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 disbursements incurred;
  - (b) any counsel's fees incurred; and
  - (c) how that party's legal representative's costs are calculated.

(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.

**Assessment of costs – general.**

- 64.12 (1) This Rule applies where costs fall to be assessed in relation to any matter or proceedings, or part of a matter or proceedings other than a procedural application.
- (2) Where the assessment relates to part of court proceedings, it must be carried out by the judge or the Registrar on the directions of the judge.
  - (3) Where the assessment does not fall to be carried out at the hearing of any proceedings, then the person entitled to the costs must apply to the 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 such application the Registrar must either -
  - (a) assess the costs if there is sufficient material available for him 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.

## **APPENDIX A**

### **PART 1**

This Part of the Appendix sets out the fixed costs applicable to a claim for a specified sum of money

- (a) **Table 1** - 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 claim form. The Table also deals with claims for possession of land or delivery of goods and an application for an attachment of debts order.
- (b) **Table 2** - which a claimant is entitled to include as costs in any default judgment under Part 12 in addition to the costs set out in Table 1.

-----

### **Scale of Fixed Costs**

#### **Table 1**

1. This Table shows the amounts to be entered on a claim form or provisional attachment of debts order in respect of legal practitioner's charges -
  - (a) in an action for payment of a specified sum of money; or
  - (b) in attachment of debt proceedings; or
  - (c) in an action for the recovery of land.
  
2. In addition to the fixed costs, the appropriate court fee is to be allowed together with the sum of \$ 100.00 for personal service of the claim form
  - (1) Claim exceeding \$15,000 but not exceeding \$25,000  
or a claim for recovery of land or delivery of goods. .... \$2,000
  - (2) Claim exceeding \$25,000 but not exceeding \$100,000..... \$3,000
  - (3) Claim exceeding \$100,000 but not exceeding \$500,000..... \$5,000
  - (4) Claim exceeding \$500,000..... \$7,500

**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.

(1)	Basic costs .....	\$100.00
(2)	Where there is more than one defendant, in respect of each additional defendant served against whom judgment is entered. ....	\$100.00
(3)	Where an order is made under Rule 5.12 (specified method of service), for each defendant served .....	\$500.00
(4)	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) .....	\$500.00
(5)	Where judgment is entered on an admission and the claimant accepts the defendant's proposals as to method of payment under Rule 14.9.....	\$500.00
(6)	Where judgment is entered on an admission and the time and rate of payment are not agreed under Rule 14.11.....	\$500.00

-----

**PART 2**

**Miscellaneous Enforcement Proceedings**

The following Table shows the amount to be allowed in respect of legal practitioner's charges 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.

(1)	For filing a request for the issue of a writ of execution.....	\$100.00
(2)	For each attendance at a hearing of -	
	(i) an oral examination;	
	(ii) an application to suspend a writ of execution; or	
	(iii) an application for time to pay where the debt is admitted .....	\$350.00
(3)	For the costs of the judgment creditor where allowed in proceedings for an attachment of debts order or an application for payment out of money in court under Rule 50.15 -	
	(i) where the amount recovered does not exceed \$1000 .....	\$250.00
	(ii) where the amount recovered exceeds \$1000 .....	\$500.00
(4)	For the costs of the judgment creditor where allowed in an application for a charging order .....	\$500.00
(5)	In addition, for the personal service of any application requiring such service .....	\$100.00

-----

**APPENDIX B**

**SCALE OF PRESCRIBED COSTS:**

<u>Value of Claim</u>	<u>Percentage</u>
not exceeding \$50,000	25%
exceeding \$50,000 but not exceeding \$100,000	20%
exceeding \$100,000 but not exceeding \$250,000	15%
exceeding \$250,000 but not exceeding \$500,000	10%
exceeding \$500,000 but not exceeding \$ 1m	5%
exceeding \$1m but not exceeding \$2m	3%
exceeding \$2m but not exceeding \$10m	..5%
exceeding \$10m	.25%

- Notes:** (a) The above scale is expressed in Belize dollars and must be adjusted for damages in US\$ or in any other currency in accordance with the rate of exchange applicable at the date of judgment as prescribed in a relevant enactment.
- (b) The costs for each stage of the scale are cumulative.

**Example**

Claim for \$750,000

first \$ 50,000 .....	\$ 12,500.00
next \$ 50,000 .....	\$ 10,000.00
next \$ 150,000 .....	\$22,500.00
next \$250,000 .....	\$25,000.00
next \$250,000 .....	\$12,500.00
<b>Total</b> .....	<b>\$82,500.00</b>

---

**APPENDIX C**

**PRESCRIBED COSTS: PERCENTAGE TO BE ALLOWED AT VARIOUS STAGES OF CLAIM**

This Table shows the percentage of the prescribed costs to be allowed under Appendix B where an action concludes prior to trial.

<b><u>Stage</u></b>	<b><u>Percentage</u></b>
Up to and including service of Defence .....	45%
After defence and up to and including the case management conference .....	55%
After case management conference and up to and including listing questionnaire .....	70%
After listing questionnaire and up to and including pre-trial review (if any) .....	75%
To trial .....	100%
Up to default judgment and including assessment of damages	60%

**Example**

Claim for \$750,000 - full costs as in Appendix B - \$82,500.  
claim discontinued after case management conference  
Defendant entitled to 70% of total costs = \$57,750.

**PART 65**

**MORTGAGE CLAIMS**

**Contents of this Part**

Scope of this Part.....	Rule 65.1
Mortgage claim to be by fixed date claim.....	Rule 65.2
Evidence at first hearing.....	Rule 65.3
Claim for possession or payment of mortgage debt.....	Rule 65.4

**Scope of this Part.**

65.1 (1) This Part deals with claims by a mortgagor or mortgagee for any of the following forms of relief -

- (a) payment of moneys secured by a mortgage;
- (b) sale of a mortgaged property;
- (c) foreclosure;
- (d) possession of a mortgaged property;
- (e) redemption of a mortgage;
- (f) reconveyance of the property or release from the mortgage; and
- (g) delivery of possession by the mortgagee;

which are referred to in this Part as **“mortgage claims”**.

(2) In this part -

**“mortgage”** includes a legal or equitable mortgage and a legal or equitable charge;

**“mortgagor”** means the person who has granted a mortgage of the mortgaged property; and

**“mortgagee”** means the person to whom the mortgage was granted.

(3) This Part does not affect any procedure under any enactment relating to the registration of title to land unless court proceedings are taken.

**Mortgage claim to be by fixed date claim. Form 2.**

65.2 (1) A mortgage claim is made by issuing a fixed date claim in Form 2.

(2) Notice of the claim must be given to all other mortgagees of the land.<sup>101</sup>

**Evidence at first hearing.**

65.3 A claimant who seeks final judgment at the first hearing must -

- (a) file evidence on affidavit in support of the claim; and
- (b) serve –

---

<sup>101</sup> The procedure relating to fixed date claims is dealt with in Rules 8.1 and 27.2

- (i) a copy of the evidence but not the exhibits; and
- (ii) a notice stating what relief is sought,

with the claim form; and

- (c) file a certificate of service not less than 7 days before the first hearing.<sup>102</sup>

**Claim for possession or payment of mortgage debt.**

- 65.4 (1) On a claim for possession of the mortgaged property or for payment of the mortgage debt the claimant must file with the claim form evidence by affidavit -
- (a) exhibiting a copy of the original mortgage;
  - (b) exhibiting a copy of any other document which sets out the terms of the mortgage;
  - (c) giving particulars of -
    - (i) the amount of the advance;
    - (ii) the interest payable under the mortgage;
    - (iii) the amount of any periodic payments required to be made stating whether or not such payments include interest;
    - (iv) the amount of repayments that have been made;
    - (v) the amount of any repayments or interest due but unpaid at the date of the claim and at the date of the affidavit;
    - (vi) the amount remaining due under the mortgage; and
    - (vii) where the claim includes a claim for interest to judgment, the daily rate at which such interest accrues; and
  - (d) where the claimant seeks possession of the mortgaged property -
    - (i) stating the circumstances under which the right to possession arises; 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) If the mortgage creates 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 by service of a notice when and how that notice was served.

---

<sup>102</sup> Rule 28.16 enables a party to require copies of any document referred to in an affidavit.

**PART 66**

**ADMINISTRATION CLAIMS**

**Contents of this Part**

Scope of this Part.....	Rule 66.1
Parties .....	Rule 66.2
Claims by third parties.....	Rule 66.3
Determination of questions without administration claim.....	Rule 66.4
Judgments and orders in administration claims.....	Rule 66.5
Conduct of sale of trust property.....	Rule 66.6

**Scope of this Part.**

- 66.1 (1) This Part deals with -
- (a) claims for -
    - (i) the administration of the estate of a dead person; or
    - (ii) the execution of a trust under the direction of the court,
- and such claims are referred to as "**administration claims**"; and
- (b) claims to determine any question or grant any relief relating to the administration of the estate of a dead person or the execution of a trust.

**Form 2.**

- (2) Such claims must be brought by a fixed date claim in Form 2.

**Parties.**

- 66.2 (1) An administration claim or a claim under Rule 66.4 may be brought by -
- (a) any executor or administrator of the relevant estate;
  - (b) any trustee of the relevant trust; or
  - (c) any person having or claiming to have a beneficial interest in the estate of a dead person or under a trust.
- (2) Any executor or administrator of the relevant estate or trustee of the relevant trust who is not a claimant must be a defendant to the claim.

- (3) The general rule is that the claimant need not join any person having a beneficial interest under the estate or trust as a defendant.
- (4) However -
  - (a) the claimant may make any such person a defendant; and
  - (b) the court may direct that any such person be made a defendant.

**Claims by third parties.**

- 66.3 (1) This Rule applies where -
- (a) there are proceedings under a judgment or order made in an administration claim relating to the estate of a dead person; and
  - (b) a person not a party to the claim makes a claim against the estate.
- (2) No person other than the executors or administrators may appear in proceedings relating to that claim unless the court otherwise directs.

**Determination of questions without administration claim.**

- 66.4 (1) An executor, administrator or trustee may issue a claim for -
- (a) the determination of any question; or
  - (b) any relief,
- without bringing an administration claim.
- (2) The “**determination of any question**” includes -
- (a) any question arising in the administration of the estate of a dead person;
  - (b) any question arising in the execution of, or under, a trust;
  - (c) any question as to the composition of any class of persons having a claim against -
    - (i) the estate of a dead person;
    - (ii) a beneficial interest in the estate of a dead person; or
    - (iii) any property subject to a trust; and
  - (d) any question as to the rights or interests of a person claiming to be-

- (i) a creditor of the estate of a dead person;
- (ii) entitled under a will or on the intestacy of a dead person; or
- (iii) beneficially entitled under a trust.

(3) **“Any relief”** includes an order -

- (a) requiring an executor, administrator or trustee to furnish and verify accounts;
- (b) requiring the payment into court of money held by a person in the capacity of executor, administrator or trustee;
- (c) directing a person to do or abstain from doing a particular act in the capacity as executor, administrator or trustee;
- (d) approving any sale, purchase, compromise or other transaction by a person in the capacity as executor, administrator or trustee; or
- (e) directing any act to be done in the administration of the estate of a dead person or in the execution of a trust,

which the court could order to be done if the estate or trust were being administered or executed under the direction of the court.

**Judgments and orders in administration claims.**

66.5 (1) The court need not make any judgment or order in an administration claim unless satisfied that the question in issue cannot be determined by other means.

(2) Where an administration claim is brought by -

- (a) a creditor of the estate of a dead person;
- (b) a person claiming to be entitled under the will or the intestacy of a dead person; or
- (c) a person claiming to be beneficially entitled under a trust,

and the claimant alleges that no, or no sufficient, accounts have been furnished by the executors, administrators or trustees, the court may -

- (i) stay the proceedings until a specified date and direct the executors, administrators or trustees to supply proper accounts to the claimant; or
- (ii) if it is necessary to prevent proceedings by other creditors or claimants, give judgment or make an order for the

administration of the estate and include an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed without the court's permission.

**Conduct of sale of trust property.** 66.6 Where in an administration claim an order is made for the sale of any property vested in executors, administrators or trustees they are to have conduct of the sale unless the court otherwise directs.

## **PART 67**

### **CONTENTIOUS PROBATE PROCEEDINGS**

#### **Contents of this Part**

Scope of this Part.....	Rule 67.1
How to commence probate proceedings.....	Rule 67.2
Parties to proceedings for revocation of grant.....	Rule 67.3
Lodgment of grant in proceedings for revocation.....	Rule 67.4
Affidavit of testamentary scripts.....	Rule 67.5
Failure to enter acknowledgment of service.....	Rule 67.6
Counterclaim.....	Rule 67.7
Contents of statement of claim.....	Rule 67.8
Discontinuance and dismissal.....	Rule 67.9
Compromise of action: trial on affidavit evidence.....	Rule 67.10
Application for order to bring in will, etc.....	Rule 67.11
Probate counterclaim in other proceedings.....	Rule 67.12

**Scope of this Part.** 67.1 (1) This Part applies to probate causes and matters, including applications for the rectification of a will, and the other provisions of these Rules apply to those causes and matters subject to this Part.

(2) In this Part -

**“probate action”** means an action for the grant of probate of the will, or letters of administration of the estate of a dead person or for the revocation of such a grant or for 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; and

**CAP. 203.** **“will”** has the meaning assigned to in by section 2 of the Wills Act.

- How to commence probate proceedings.** 67.2 (1) Probate proceedings must be begun by issuing a fixed date claim form in Form 2.
- (2) The claim form must state the nature of the interest of the claimant and of the defendant in the estate of the dead person to which the action relates.
- (3) The claimant must file a statement of claim with the claim form.
- Parties to proceedings for revocation of grant.** 67.3 Every person who is entitled or claims to be entitled to administer the estate of a dead person under or by virtue of an unrevoked grant of probate of the dead person's will or letters of administration of the estate must be made a party to any proceedings for revocation of the grant.
- Lodgment of grant in proceedings for revocation.** 67.4 (1) Where, at the commencement of proceedings for the revocation of a grant of probate of the will or letters of administration of the estate of a dead person, the probate or letters of administration, as the case may be, have not been lodged in court, then -
- (a) if the proceedings are commenced by a person to whom the grant was made, the claimant must lodge the probate or letters of administration at the court within 7 days after the issue of the claim; or
- (b) if the probate or letters of administration are in the possession or under the control of any defendant, that defendant must lodge it or them at the court within 14 days after the service of the claim form.
- (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 within a specified time.
- (3) Where an order is made under paragraph (2), a person against whom such an order is made may not take any step in the proceedings without the permission of the court until that person has complied with the order.
- Affidavit of testamentary scripts.** 67.5 (1) Unless the court otherwise directs, the claimant and every defendant who has entered an acknowledgment of service in probate proceedings must swear an affidavit -
- (a) describing any testamentary script of the dead person, whose estate is the 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 the defendant has knowledge of any such script which is not in his possession or under his control -
  - (i) giving the name and address of the person in whose possession or under whose control it is; or
  - (ii) that he does not know the name or address of that person.
  
- (2) Any affidavit required by this Rule must be filed and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged at the court -
  - (i) within 14 days after the filing of an acknowledgment of service by a defendant to the proceedings; or
  - (ii) if no defendant files an acknowledgment of service and the court does not otherwise direct, before the first hearing.
  
- (3) Where any testamentary script required by this Rule to be lodged or any part thereof is written in pencil, then, unless the court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be lodged and the words which appear in pencil in the original must be underlined in red ink in the copy.
  
- (4) Except with the permission of the court, no party to probate proceedings may be allowed to inspect an affidavit filed, or any testamentary script lodged, by any other party to the proceedings under this Rule, until an affidavit sworn by the first party containing the information referred to in paragraph (1) has been filed.
  
- (5) In this Rule, **“testamentary script”** means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

**Failure to enter acknowledgment of service.**

- 67.6
- (1) Part 12 does not apply to probate proceedings.
  - (2) Where any of several defendants to probate proceedings fail to file an acknowledgment of service or to file and serve a defence, the claimant may
    - (a) after the time for entering an acknowledgment of service or filing a defence has expired; and
    - (b) upon filing an affidavit proving due service of the claim form and statement of claim on that defendant,

proceed with the claim as if that defendant had entered an acknowledgment of service.

- (3) Where the defendant, or all the defendants, to probate proceedings, fails or fail to file an acknowledgment of service or file and serve a defence, then, unless on the application of the claimant the court orders the claim to be dismissed or discontinued, the claimant may apply to the court at the first hearing -
  - (a) for the claim to be dealt with summarily at that hearing; or
  - (b) for a trial date to be fixed and any necessary directions to be given.
- (4) Before applying for an order under paragraph (3), the claimant must file an affidavit proving due service of the claim form and his statement of claim on the defendant.
- (5) Where the court grants an order under paragraph (3), it may direct the proceedings to be tried on affidavit evidence.

**Counter-claim.**

67.7 A defendant to probate proceedings who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the dead person which is the subject of the proceedings must add to the defence a counterclaim for that relief or remedy.

**Contents of statement of claim.**

- 67.8
- (1) Where the claimant in probate proceedings disputes the interest of a defendant the claimant must -
    - (a) deny the interest of that defendant; and
    - (b) state the claimant's reasons for so doing,in the statement of claim.
  - (2) In probate proceedings in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in that party's statement of case that if the allegations made therein are proved 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 proceedings, 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; or
- (c) that the execution of the will was obtained by undue influence or fraud,

may be made by that party unless that other plea is also set out in his statement of case.

**Discontinuance and dismissal.**

- 67.9 (1) Part 37 does not apply in relation to probate proceedings.
- (2) At any stage of the proceedings the court may, on the application of the claimant or of any party to the proceedings who has entered an acknowledgment of service -
- (a) order the proceedings to be discontinued;
  - (b) order the proceedings to be 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 dead person, as the case may be, be made to the person entitled.

**Compromise of action: trial on affidavit evidence.**

- 67.10 Where, whether before or after the service of the defence in probate proceedings, the parties to the proceedings agree to a compromise, the court may order the trial of the proceedings on affidavit evidence.

**Application for order to bring in will, etc.**

- 67.11 (1) Any application in probate proceedings for an order requiring a person to bring a will or other testamentary paper into court or to attend in court for examination may be made without notice but must be supported by evidence on affidavit setting out the grounds of the application.
- (2) Any person against whom an order made under paragraph (1) and who denies that the will or other testamentary paper referred to in the order is in his possession or under his control may file an affidavit to that effect.

**Probate counterclaim in other proceedings.**

- 67.12 (1) In this Rule, “**probate counterclaim**” means a counterclaim in any claim other than probate proceedings by which the defendant claims any such relief as is mentioned in Rule 67.1(2).

- (2) Subject to the following paragraph, this Part applies with the necessary modifications to a probate counterclaim as it applies to probate proceedings.
- (3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the claimant in the estate of the dead person to which the counterclaim relates.

## **PART 68**

### **DEFAMATION CLAIMS**

#### **Contents of this Part**

Scope of this Part.....	Rule 68.1
Claimant's statement of claim .....	Rule 68.2
Defendant's statement of case .....	Rule 68.3
Ruling on meaning.....	Rule 68.4
Payments into court and offers.....	Rule 68.5
Statement in open court.....	Rule 68.6
Requests for information.....	Rule 68.7
Evidence to mitigate damages.....	Rule 68.8

<b>Scope of this Part.</b>	68.1	These Rules apply to claims for libel or slander subject to the Rules in this Part.
<b>Claimant's statement of claim.</b>	68.2	<p>The statement of claim (or counterclaim) in a defamation claim must, in addition to the matters set out in Part 8 -</p> <ol style="list-style-type: none"> <li>(a) give sufficient particulars of the publications in respect of which the claim is brought to enable them to be identified; and</li> <li>(b) where the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, give particulars of the facts and matters relied on in support of such sense; and</li> <li>(c) where the claimant alleges that the defendant maliciously published the words or matters, give particulars in support of the allegation.</li> </ol>
<b>Defendant's statement of case.</b>	68.3	A defendant (or in the case of a counterclaim, the claimant) who alleges that,

- (a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and
- (b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or
- (c) pleads to like effect,

must give particulars stating -

- (i) which of the words complained of he alleges are statements of fact; and
- (ii) the facts and matters relied on in support of the allegation that the words are true.

**Ruling on meaning.**

- 68.4 (1) At any time after the service of the statement of claim, either party may apply to a judge sitting in chambers for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statements of case.
- (2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statements of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.

**Payments into court and offers.**

- 68.5 Where the claimant claims against several defendants sued jointly and accepts money paid into court under Part 36 or a written offer under Part 35 by any one or more but not all of those defendants, the claim must be stayed against that defendant or defendants only, but -
- (a) the sum recoverable under any judgment in favour of the claimant against any other defendant must not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court or the offer by the defendant or defendants against whom the claim has been stayed; and
  - (b) the claimant is not entitled to any costs after the date of acceptance of the payment into court or the offer to settle unless either -
    - (i) the damages awarded exceed the amount paid into court or offered; or
    - (ii) the court is satisfied that there were reasonable grounds to continue the claim against the other defendant or defendants.

- Statement in open court.** 68.6 Where a defamation claim is settled before trial either party may apply to a judge in chambers for permission to make a statement in open court in terms agreed by the judge.
- Requests for information.** 68.7 In a defamation claim where the defendant states that the words or matters complained of -
- (a) are fair comment on a matter of public interest; or
  - (b) were published on a privileged occasion,
- the claimant may not make a request for information under Part 34 as to the defendant's sources of information or grounds of belief.
- Evidence to mitigate damages.** 68.8 A defendant who does not in the defence assert the truth of the statement of which complaint is made may not give evidence in chief -
- (a) as to the circumstances under which the libel or slander was published; or
  - (b) as to the character of the claimant,
- with a view to mitigating damages unless particulars are given in a witness statement served at least 42 days before the trial.

## **PART 69**

### **ADMIRALTY PROCEEDINGS**

#### **Contents of this Part**

General.....	Rule 69.1
Application.....	Rule 69.2
Definition of admiralty proceedings.....	Rule 69.3
General definitions.....	Rule 69.4
What will be the dealt with by the Admiralty Court.....	Rule 69.5
Where claim form to issue.....	Rule 69.6
Registrar to issue directions.....	Rule 69.7
Criteria to guide Registrar.....	Rule 69.8
Cases placed before Admiralty judge.....	Rule 69.9
Cases to be dealt with by Admiralty court.....	Rule 69.10
Admiralty proceedings to be allocated to multi-track.....	Rule 69.11
Claim in <i>rem</i> .....	Rule 69.12

Service of <i>in rem</i> claim form.....	Rule 69.13
Who is to effect service of claim form <i>in rem</i> .....	Rule 69.14
Acknowledgement of service to claim form <i>in rem</i> .....	Rule 69.15
Procedure after acknowledgement of service.....	Rule 69.16
Additional requirements - acknowledgment of service.....	Rule 69.17
Claims <i>in personam</i> .....	Rule 69.18
Claim form for claims <i>in personam</i> .....	Rule 69.19
Acknowledgement of service – <i>in personam</i> claim.....	Rule 69.20
Special provisions relating to collision claims.....	Rule 69.21
Arrest, release, interveners, etc.....	Rule 69.22
Caveats Form.....	Rule 69.23
Arrests, by whom to be effected.....	Rule 69.24
Release of property from arrest.....	Rule 69.25
Default.....	Rule 69.26
Sale by the court, priorities and payment out.....	Rule 69.27
Limitation claims.....	Rule 69.28
Claims against the fund.....	Rule 69.29
References to the Registrar.....	Rule 69.30
Inspection of ship, etc.....	Rule 69.31
Drawing up of orders.....	Rule 69.32
Assessors.....	Rule 69.33

**General.**

69.1 This Part applies to all admiralty proceedings.

**Application.**

69.2 The provisions of these Rules and any practice directions that supplement them apply to admiralty proceedings subject to the provisions of this Part.

**Definition of admiralty proceedings.**

69.3 “**admiralty proceedings**” means proceedings in the civil division of the Supreme Court exercising admiralty jurisdiction.

**General definitions.**

69.4 In this Part:

- (a) “**the Admiralty Court**” means the Supreme Court sitting and exercising jurisdiction as provided in Rule 69.3.
- (b) “**claim in rem**” means an admiralty claim *in rem*;
- (c) “**claim in personam**” means an admiralty claim *in personam*;
- (d) a “**collision claim**” means any action to enforce a claim for damage, loss of life, or personal injury arising out of –
  - (i) a collision between ships; or

- (ii) the carrying out or omission to carry out any manoeuvre in the case of one or more of two or more ships; or
  - (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations applicable in Belize;
- (e) a “**salvage claim**” includes any claim in the nature of salvage, any claim for special compensation, any claim for the apportionment of salvage and any claim arising out of or connected with any contract for salvage services;
  - (f) “**caveat against arrest**” means a caveat entered in the caveat book under Rule 69.23;
  - (g) “**caveat against release**” means a caveat entered in the caveat book under Rule 69.24 (6);
  - (h) “**caveat book**” means the book kept in the court office in which caveats under this Part are entered;
  - (i) “**limitation claim**” means a claim by shipowners or other persons for the limitation of the amount of their liability in connection with a ship or other property;
  - (j) “**Marshall**” means a Marshall of the Supreme Court performing admiralty functions;
  - (k) “**ship**” includes any description of vessel used in navigation;
  - (l) “**the Admiralty Registrar**” means the Registrar discharging responsibility for admiralty proceedings;
  - (m) “**in rem claim form**” means a claim form by which an *in rem* claim is brought.

**What will be dealt with by the Admiralty Court.**

69.5 (1) The following claims must be commenced in the Admiralty Court -

- (a) any claim *in rem*;
- (b) any collision claim;
- (c) any limitation claim;

**CAP. 236.  
CAP. 2.**

- (d) any application to the court under the Registration of Merchant Ships Act or under any imperial statute applicable to Belize by virtue of the Imperial Laws (Extension) Act;

- (e) any salvage claim; or
  - (f) any other claim within the admiralty jurisdiction of the Supreme Court.
- (2) Any claim may be transferred from one division of the Supreme Court to the Admiralty Court with the consent of the Admiralty Court.
- (3) A claim within any other court wrongly commenced in that other court will be transferred automatically to the Admiralty Court.

**Where claim form to issue.** 69.6 A claim form by which a claim within Rule 69.5 is begun may be issued out of the court office.

**Registrar to issue directions.** 69.7 The Admiralty Registrar shall after the issue of a claim form referred to in Rule 69.6, issue a direction in writing stating -

- (a) whether the claim should remain in the Admiralty Court or should be transferred to another court or another division of the court; and
- (b) if the claim is to remain in the Admiralty Court, whether it should be in the Admiralty judge's list or should be placed in the Admiralty Registrar's list.

**Criteria to guide Registrar.** 69.8 In issuing the directions referred to in Rule 69.7, the Admiralty Registrar will have regard to the nature of the issues in dispute and any other issues so far as they are applicable.

**Cases placed before Admiralty judge.** 69.9 Where the Admiralty Registrar directs that the claim should be placed in the judge's list, case management directions will be given and any case management conference or pre-trial review will be heard by the Admiralty judge.

**Cases to be dealt with by Admiralty Court. CAP. 236.** 69.10 All matters concerning the arrest, detention, sale of property and the determination of priorities in a claim *in rem*; all proceedings concerning the ownership or the mortgage of a vessel registered under the Registration of Merchant Ships Act; all proceedings in a limitation claim and proceedings under any imperial statute referred to in Rule 69.5 shall be dealt with only by the Admiralty Court.

**Admiralty proceedings to be allocated to multi-track.** 69.11 All admiralty proceedings will be allocated to the multi-track and in so far as these Rules provide for the allocation questionnaires and track allocation they shall not apply.

**Claim *in rem*.  
Form No. 25.**

- 69.12 (1) A claim *in rem* is begun by issuing an *in rem* claim form in Form 25.
- (2) Subject to paragraph (4), the particulars of an *in rem* claim must –
- (a) be contained in or served with the *in rem* claim form; or
  - (b) be served on the defendant by the claimant within 75 days after service of the *in rem* claim form.
- (3) The claimant to a claim *in rem* may be named or may be described, but if not named in the *in rem* claim form shall upon the request of any other party, identify himself by name.
- (4) The defendant must be described in the claim form.
- (5) An acknowledgment of service must be filed in every *in rem* claim. The period for filing the acknowledgment of service is 14 days after service of the claim form irrespective of whether the claim form contains particulars of the claim. The person who acknowledges service must identify himself by name therein.
- (6) The period within which an *in rem* claim form must be served is 12 months from the date of issue.

**Service of *in rem* claim form.**

- 69.13 Service of an *in rem* claim form must be made in one of the following ways:
- (a) upon the property against which the claim *in rem* is brought by fixing the *in rem* claim form, or a copy of it, on the outside of the property proceeded against in a position which may reasonably be expected to be seen;
  - (b) where the property is freight, service may be made either on the cargo in respect of which the freight was earned or on the ship upon which that cargo was carried;
  - (c) if the property to be served is in the custody of a person who will not permit access to it, by leaving a copy of the *in rem* claim form with that person;
  - (d) where the property has been sold by the Marshall, by filing the *in rem* claim form in the court office;
  - (e) where there is a caveat against arrest, on the person named in the caveat as being authorised to accept service;

- (f) on any legal practitioner who has authority to accept service;
- (g) on such person and in such manner as is stated to constitute effective service in any agreement providing for service of the proceedings;
- (h) in any other manner directed under any practice direction issued under these Rules provided that the *res* or part thereof is within the jurisdiction of the court.

**Who is to effect service of claim form *in rem*.**

69.14 In cases where the property is to be arrested, or in cases where the property is already under arrest in current proceedings, the Marshall will effect service of the *in rem* claim form if the claimant requests the court to do so. In all other cases, admiralty *in rem* claim forms are to be served by the claimant, not the court office.

**Acknowledgment of service to claim form *in rem*.**

69.15 Where an *in rem* claim form has been issued, any person who wishes to defend the claim may file an acknowledgment of service notwithstanding that the *in rem* claim form has not been served.

**Procedure after acknowledgment of service.**

69.16 Except as otherwise provided in this Part, after acknowledgment of service has been filed, the procedure relating to the claim shall be the procedure applicable to a claim *in personam*, but the claim continues to be a claim *in rem*.

**Additional requirements – acknowledgment of service.**

- 69.17 (1) Where the defendants are described and not named on the claim form, for example as “The Owners of the Ship X,” any acknowledgment of service in addition to stating the description appearing on the claim form, shall also state the full names of the persons acknowledging service and the nature of their ownership. In the event of there being insufficient space on the acknowledgment of service form itself, such additional information shall appear on a separate document to accompany and be lodged with the acknowledgment of service form.
- (2) A defendant who files an acknowledgment of service to an *in rem* claim form does not by doing so lose any right that he may have to dispute the court's jurisdiction.

**Claims *in personam*. Form 26.**

- 69.18 (1) A claim form by which a claim *in personam* is brought (an *in personam* claim form in Form 26 may be served within the jurisdiction as provided in these Rules and, except in the case of a collision claim, may be served out of the jurisdiction as provided in these Rules.
- (2) Without prejudice to paragraph (1), an *in personam* claim form may also be served out of the jurisdiction where:

- (a) the defendant has agreed to submit the claim to the jurisdiction of the court; or
- (b) the claim is in the nature of salvage and any part of the services took place within the jurisdiction; or
- (c) the court grants permission to serve the claim out of the jurisdiction.

(3) *In personam* claim forms are to be served by the claimants, not by the court office.

**Claim form for claims *in personam*.**

- 69.19 (1) An *in personam* claim form may seek judgment on liability alone and request that the amount of the claim be referred to the Admiralty Registrar, or be dealt with as the Admiralty Registrar may direct.
- (2) The claimant in a claim *in personam* may be named or may be described in the claim form, but if not named, shall, upon the request of any other party, identify himself by name.
- (3) The defendant in a claim *in personam* must be named in the claim form.
- (4) Subject to Rule 69.23, the particulars of an *in personam* claim must –
- (a) be contained in or served with the claim form; or
  - (b) be served on the defendant by the claimant within 75 days after service of the claim form.
- (5) The person who files a defence must identify himself by name in the defence.

**Acknowledgment of service-  
*in personam*  
claim.**

69.20 An acknowledgment of service must be filed in every *in personam* claim. The period for filing the acknowledgment of service is 14 days after service of the claim form irrespective of whether the claim form contains particulars of the claim.

**Special provisions relating to collision claims.**

- 69.21 (1) A collision claim is begun by issuing a claim form. The claim form need not contain or be followed by particulars of claim.
- (2) An acknowledgment of service must be filed in every collision claim.
- (3) In any collision claim each party shall, within 2 months after the filing by the defendant of the acknowledgment of service or, in the event that the

defendant makes an application disputing the jurisdiction or the exercise by the court of its jurisdiction, within 2 months of the determination of the defendant's application, file in the court office a completed Admiralty Form in Form 27 ("a Preliminary Act").

- (4) A Preliminary Act shall contain-
  - (a) in Part One of the Form, answers to the questions set out in that Part; and
  - (b) in Part Two of the Form, a statement-
    - (i) that the information in Part One is incorporated in Part Two;
    - (ii) of any other facts and matters upon which the party filing the Preliminary Act relies;
    - (iii) of all allegations of negligence or other fault which the party filing the Preliminary Act makes;
    - (iv) of the relief or remedy which the party filing the Preliminary Act claims.
- (5) Each party must verify his Preliminary Act by a statement of truth.
- (6) Upon filing this Preliminary Act each party must give notice that he has done so to each other party. Within 14 days after the last Preliminary Act is filed each party must serve on every other party a copy of his Preliminary Act
- (7) After each party has filed his Preliminary Act, the claim shall proceed as any other admiralty claim.
- (8) In any collision claim an application disputing the court's jurisdiction must be made within 2 months of the filing of the acknowledgment of service.
- (9) A claim form in a collision claim may not be served out of the jurisdiction unless the defendant has submitted to or agreed to submit to the jurisdiction of the court.
- (10) Where, in a collision claim *in rem*, ("the original claim") -
  - (a) a cross claim *in rem* arising out of the same collision or occurrence is made; and

(b) (i) the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest, and

(ii) the party bringing the cross claim is unable to arrest a ship or otherwise to obtain security,

then the party bringing the cross claim may apply to the Admiralty Court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party.

(11) In collision claims the skeleton arguments of each party should be accompanied by a plot or plots of that party's case or alternative cases as to the navigation of vessels during and leading to the collision. All plots must contain a sufficient indication of the assumptions used in the preparation of the plot.

(12) Where the authenticity of any document or entry in any document is challenged or where it will be suggested at trial that a document or entry in a document was not made at the time or by the person stated or is in any other way challenged in a manner which may require a witness to be produced at trial to support the document or entry in the document, such challenge must be made in good time in advance of the trial to enable any such witness to be produced. In addition, the skeleton argument should make it plain what challenges to documents or entries in documents will be made.

Arrest, release,  
interveners,  
etc.

69.22 (1) Except as provided in this Part, the claimant in a claim *in rem* and a judgment creditor in a claim *in rem* is entitled to have the property proceeded against or arrested by the Admiralty Court by filing an application to arrest in Form 28 (which shall also contain an undertaking) accompanied by a declaration in Form 29 upon which the Admiralty Court will issue an arrest warrant.

Form 28  
Form 29

(2) An application for arrest may be made by filing the application notice at the court office.

(3) When the court office is closed an application for arrest shall be dealt with in such manner (if any) as may be provided in admiralty practice directions.

(4) Any party making an application for arrest must –

(i) request a search to be made in the caveat book before the warrant is issued in order to ascertain whether there is a caveat in force with respect to that property; and

Form 29

- (ii) file a declaration in Form 29 containing the particulars required in paragraph (5). However the Admiralty Court may, if it thinks fit, give permission for the issue of the arrest warrant notwithstanding that the declaration does not contain all those particulars.
- (5) The declaration required by paragraph (4) must be sworn as an affidavit and state-
- (a) in every case:
    - (i) the nature of the claim or counterclaim and that it has not been satisfied and if it arises in connection with a ship, the name of that ship; and
    - (ii) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry; and
    - (iii) the amount of the security sought, if any;
  - (b) in all other cases against a ship -
    - (i) the name of the person who would be liable on the claim if it were commenced *in personam* (“the relevant person”); and
    - (ii) that the relevant person was when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose, specifying which ; and
    - (iii) that at the time when the claim form was issued, the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise, as the case may be; and
  - (c) in the cases set out in paragraphs (7) and (8), that the relevant notice has been sent or served, as appropriate.
- (6) The court office shall issue an arrest warrant. Thereafter the arrest shall be administered by the Marshall and all applications in respect thereof and in respect of the property under arrest other than an order for sale before judgment shall be made to and considered by the Admiralty Registrar himself or as he may direct.
- (7) A warrant of arrest may not be issued as of right in the case of property in respect of which the beneficial ownership, as a result of a sale or disposal by any court exercising admiralty jurisdiction, has changed since the claim form was issued.

**Form 30**

- (8) No warrant of arrest will be issued against a ship owned by a State where, by any convention or treaty, Belize has undertaken to minimize the possibility of arrest of ships of that State until notice in Form 30 has been served on a consular officer at the consular office of that State in Belize or the port at which it is intended to cause the ship to be arrested and a copy of the notice is exhibited to the declaration filed under paragraph (4).

**Caveats  
Form  
Form 31**

- 69.23 (1) Any person may file in the court office a notice requesting a caveat against arrest in Form 31, undertaking to file an acknowledgement of service and to give sufficient security to satisfy the claim with interest and costs. Upon filing the notice of request, a caveat shall be entered in the caveat book. The record of such caveats shall be open for inspection as provided in admiralty practice directions. Caveats shall be valid for a period of 12 months but may be renewed for a similar period or periods. The entry of a caveat against arrest shall not be treated as a submission to the jurisdiction of the court.

- (2) Property may be arrested notwithstanding that a caveat against arrest has been filed, but in such a case the Admiralty Court may if it considers that it is appropriate to do so, order that the arrest be discharged and that the party procuring the arrest do pay compensation to the owner of or other person interested in the property arrested.

**Arrests, by  
whom to be  
effected.**

**Form 32**

- 69.24 (1) The arrest of property may only be effected by the Marshall or his substitute.
- (2) Arrest is effected by service on the property of an arrest warrant in Form 32 in the manner set out in this Rule or, where it is not reasonably practicable to serve the warrant, by service of a notice of the issue of the warrant in that manner upon the property or by giving notice to those in charge of the property.
- (3) Property under arrest may not be moved without an order of the Admiralty Court and the property may be immobilised or otherwise prevented from sailing in such manner as the Marshal or his substitute may decide is appropriate.

**Form 33**

- (4) Upon arrest, standard directions will be issued by the Admiralty Registrar in Form 33.
- (5) Where property is under arrest an *in rem* claim form may be served upon it and, in addition, it may be arrested by any other person claiming to have an *in rem* claim against it.

**Form 34**

- (6) Any person claiming to have an *in rem* right against any property under arrest who wishes to be given notice of any application to the court in respect of that property or its proceeds of sale may file in the court office a notice requesting a caveat against release in Form 34. Upon the filing of the notice of request, a caveat shall be entered in the caveat book. The record of such caveats shall be open for inspection as provided in admiralty practice directions.

**Release of property from arrest.**

69.25 (1)

Property will be released from arrest if-

(a) it is sold by the Admiralty Court; or

(b) the Admiralty Court orders release upon application made by any party; or

**Form 35**

(c) the arresting party and all caveators, if any, file in the court office a request for release in Form 35; or

**Form 35**

(d) any party files in the court office a request for release in Admiralty Form 35 (which shall also contain an undertaking) together with a consent to the release of the arresting party and all caveators, if any.

(2) Any application for release made when the court office is closed shall be made in any manner as may be provided in admiralty practice directions.

(3) Where the release of any property under arrest is delayed by the entry of a caveat under this Rule, any person having an interest in the property may apply to the Admiralty Court for an order requiring the person who procured the entry of the caveat to pay damages to the applicant in respect of losses suffered by the applicant by reason of the delay and the Court may make such an order unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for doing so and for maintaining the caveat.

(4) Where an *in rem* claim form has been issued and security sought, any person who has filed an acknowledgment of service may apply to the Admiralty Court for an order specifying the amount and form of security to be provided.

(5) Where in relation to a claim *in rem* security has been provided to obtain the release of property under arrest or to prevent the arrest of property the Admiralty Court may at any stage:

- (a) order that the amount of security be reduced, and may stay the claim pending compliance with such order;
  - (b) order that the claimant be permitted to arrest or re-arrest the property proceeded against for the purposes of obtaining further security; provided that the total security provided shall not exceed the value of the property at the time of the original arrest or at the time security was first given if the property was not arrested.
- (6) Any person interested in property under arrest or in the proceeds of sale of property sold by the Admiralty Court or whose interests are affected by any order sought or made may be made a party to any claim *in rem* against the property or proceeds of sale where the court considers it would be just and convenient and upon such terms as the court may think fit.
  - (7) Any application to the Admiralty Court concerning the sale of the property under arrest or the proceeds of sale of property sold by the court shall be heard in public and the application notice served on all parties to the claim and caveators against the property or the proceeds of sale.
  - (8) Where a ship is not under arrest but cargo on board her is, and those interested in the ship wish to discharge the cargo which is under arrest, they may, without intervening in the action, request the Marshal to take the appropriate steps. If the Marshal considers the request reasonable and if the applicant gives an undertaking in writing satisfactory to the Marshal to pay on demand the fees of the Marshal and all expenses to be incurred by him or on his behalf in taking the desired steps, the Marshal will apply to the court for the appropriate order.
  - (9) Where those interested are unable or unwilling to arrange for such an undertaking to be given they may intervene in the action in which the cargo is under arrest and apply to the Admiralty Registrar for an order for discharge of the cargo and for directions as to the fees and expenses of the Marshal in and about the discharge and storage of the cargo pursuant to such order.
  - (10) Where a ship is under arrest but cargo on board her is not, and those interested in the cargo wish to secure its discharge, one or other of the procedures outlined in paragraphs (8) and (9) may be followed.

**Default.**

- 69.26 (1) If no acknowledgment of service and/or defence to a claim *in rem* (other than one to which Rule 69.21 applies) is filed within the time required by this Part a claimant may apply for judgment in default by filing an application in Form 36, a certificate proving proper service of the claim form and evidence proving the claim to the satisfaction of the Admiralty

**Form 36**

Court. Where the claim form has been served by the court it shall be presumed to have been properly served unless proved not to have been.

- (2) In the case of a claim to which Rule 69.21 applies, where any party fails to file a Preliminary Act within the time specified any other party who has filed a Preliminary Act may apply for judgment in default:

**Form 36.**

- (a) in a claim *in rem*, by filing an application in Form 36, a certificate proving proper service of the claim form and evidence proving the claim to the satisfaction of the Admiralty Court. Where the claim form has been served by the court it shall be presumed to have been properly served unless it is proved not to have been;
- (b) in a claim *in personam*, in accordance with these Rules far as applicable.
- (3) In the case of any other claim *in personam*, the rules as to judgment in default in these Rules will apply so far as applicable.
- (4) The Admiralty Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of paragraphs (1) or (2).
- (5) Where a claim form has been served upon a party at whose instance a caveat against arrest was issued the claimant may, after filing evidence to the satisfaction of the Admiralty Court verifying the facts on which the claim is based, apply to the court for judgment in default provided that:
- (a) the sum claimed in the claim form does not exceed the amount specified in the undertaking given by that party or his legal practitioner to procure the entry of the caveat; and
- (b) that party or his legal practitioner does not within 14 days after service of the claim form fulfil the undertaking given by him as aforesaid.

**Sale by the court, priorities and payment out.**

- 69.27 (1) An order for the survey, appraisalment, or sale of a ship may be made in a claim *in rem* at any stage of the proceedings on the application of any party.
- (2) An order for sale before judgment may only be made by the Admiralty Judge.

**Form 37**

- (3) Unless the Admiralty Court otherwise orders, an order for sale will be in Form 37.

- (4) In giving directions for sale, the Admiralty Court may fix a time within which notice of claims against the proceeds of sale must be filed, and the time and manner in which notice of that time must be advertised.
- (5) Any party with a judgment against the property or proceeds of sale may at any time after the time referred to in paragraph (4) apply to the Admiralty Court for the determination of priorities. The application notice must be served on all persons who have filed a claim against the property.
- (6) Unless otherwise ordered by the Admiralty Judge, a determination of priorities may only be made by the Admiralty Judge.
- (7) Payment out of the proceeds of sale will be made only to judgment creditors and in accordance with the determination of priorities or as the Admiralty Court may otherwise order.
- (8) When proceeds of sale are paid into court by the Marshall and such payment is in a foreign currency, the funds will be placed on one day call interest bearing account unless otherwise ordered by the court.
- (9) An application to place foreign currency on longer term deposit, unless made at the same time as the application for sale, or other prior application, may be made to the Admiralty Registrar. Notice of the placement of foreign currency in an interest bearing account shall be given to all parties interested in the fund by the party at whose instance the foreign currency is invested.
- (10) Any interested party who wishes to object to the mode of investment of foreign currency paid into court may apply to the Admiralty Registrar for directions.

**Limitation claims.**

- 69.28 (1) Limitation may be relied upon by way of defence to any claim.
- (2) A limitation claim may be brought by counterclaim with the permission of the Admiralty Court.

**Form 38**

- (3) A limitation claim is begun by the issue of a claim form in Form No. 38 (“a limitation claim form”). The limitation claim form must be accompanied by a declaration sworn as an affidavit:
- (a) proving the facts upon which the claimant relies;
  - (b) stating the names and addresses (if known) of all persons who to the knowledge of the claimant have claims against him in respect of the occurrence to which the claim relates, other than named defendants.

- (4) The claimant and at least one of the defendants must be named in the limitation claim form, but all other defendants may be described.
- (5) The limitation claim form must be served on all named defendants.
- (6) The limitation claim form may not be served out of the jurisdiction, unless:
  - (a) the defendant has submitted to or agreed to submit to the jurisdiction of the court; or
  - (b) the court has jurisdiction over the claim under any applicable Convention.
- (7) Every defendant upon whom a limitation claim form is served must either:
  - (a) within 28 days of service file a defence to the limitation claim in Form 39 or file a notice in Form 40 that he admits the right of the claimant to limit liability; or
  - (b) if he wishes to dispute the jurisdiction of the court or to argue that the court should not exercise its jurisdiction, file within 14 days of service or, if the limitation claim form is served out of the jurisdiction, within 28 days, an acknowledgment of service in Form 41.
- (8) In the event that the defendant files an acknowledgment of service pursuant to paragraph (7) (b), he will be treated as having accepted that the court has jurisdiction to hear the limitation claim unless he makes an application within 14 days of filing his acknowledgment of service.
- (9) Where one or more named defendants admits the right to limit, the claimant may file in the court office an application for a restricted limitation decree in Form 42 and the court will issue a decree in Form 43 limiting liability only against such named defendants as have admitted the claimant's right to limit liability.
- (10) A restricted limitation decree may be obtained against any named defendant failing to file a defence within the time specified for doing so.
- (11) A restricted decree need not be advertised, but a copy must be served on the defendants to whom it applies.

**Form 39**  
**Form 40.**

**Form 41**

**Form 42.**  
**Form 43.**

**Form 43.**

- (12) Where the right to limit is not admitted or the claimant seeks a general limitation decree in Form No. 43, he must within 7 days of the date of the filing of the defence of the named defendant last served or the expiry of the time for doing so, apply for an appointment before the Admiralty Registrar for a case management conference at which directions will be given for the further conduct of the proceedings.
- (13) When a limitation decree is granted, the Admiralty Court:
  - (a) may order that any proceedings relating to any claim arising out of the occurrence be stayed;
  - (b) may order the claimant to establish a limitation fund if one has not been established or make such other arrangements for payment of claims against which liability is limited as the court considers appropriate;
  - (c) may, if the decree is a restricted limitation decree, distribute the limitation fund;
  - (d) shall, if the decree is a general limitation decree, give directions as to advertisement of the decree and fix a time within which notice of claim against the fund must be filed or an application made to set aside the decree.
- (14) When the Admiralty Court grants a general limitation decree the claimant must:
  - (a) advertise it in such manner and within such time as the court shall direct;
  - (b) file in the court office a declaration that the decree has been advertised in accordance with sub-paragraph (a) and copies of the advertisements.
- (15) Any person other than a named defendant may apply to the court within the time fixed in the decree to have a general limitation decree set aside. Any such application must be supported by a declaration proving that the person has a good faith claim against the claimant arising out of the occurrence and sufficient grounds for contending that the claimant is not entitled to the decree obtained, either in the amount of limitation or at all.
- (16) A limitation fund may be established before or after a limitation claim has been commenced.

- (17) If a limitation claim is not commenced within 75 days of the date the fund was established, the fund will lapse and all monies in court, including any interest accrued herein, will be repaid to the person making the payment into court. The lapsing of a limitation fund shall not prevent the establishment of a new fund.
- (18) The claimant may constitute a limitation fund by paying into court the Belize dollar equivalent of the number of special drawing rights to which he claims to be entitled to limit his liability together with interest thereon from the date of the occurrence giving rise to his liability to the date of payment into court.
- (19) Where the claimant does not know the Belize dollar equivalent of the said number of special drawing rights on the date of payment into court he may calculate the same on the basis of the latest available published Belize dollar equivalent of a special drawing right as fixed by the International Monetary Fund, and in the event of the Belize dollar equivalent of a special drawing right on the date of payment into court under paragraph (16) being different from that used for calculating the amount of that payment into court, the claimant may –
- (a) make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court under paragraph (16), shall be treated, except for the purposes of the Rules relating to the accrual of interest on money paid into court, as if it has been made on the date of that payment into court, or
  - (b) apply to the Admiralty Court for payment out of any excess amount (together with any interest accrued thereon) paid into court under paragraph (16).
- (20) An application under paragraph 19(b) may be made without notice to any party and must be supported by evidence to the satisfaction of the court proving the Belize dollar equivalent of the appropriate number of special drawing rights on the date of payment into court.
- (21) On making any payment into court under this Rule, the claimant shall give notice thereof in writing to every named defendant, specifying the date of payment in, the amount paid in, the amount of interest included therein, the rate of such interest, and the period to which it relates. The claimant shall also give notice in writing to every defendant of any excess amount (and any interest thereon) paid out to him under paragraph 19(b).
- (22) Money paid into court under this Rule shall not be paid out except under an order of the court.

- Claims against the fund. Form 43.** 69.29 (1) A claim against the fund must be in Form 43.
- (2) No later than the time fixed in the decree for filing claims, each of the defendants must file and serve his statement of case on the limiting party and on all other defendants. The statement of case must contain the particulars of the defendant's claim. Any defendant unable to do so must file a declaration stating the reason for his inability. The declaration must be sworn as an affidavit.
- (3) Within 7 days of the time for filing claims or declarations, the Admiralty Registrar will fix a date for a case management conference at which directions will be given for the further conduct of the proceedings.
- References to the Registrar.** 69.30 (1) The Admiralty Court may at any stage in the claim refer any question or issue for determination by the Admiralty Registrar (a "reference").
- (2) Unless otherwise ordered, where a reference has been ordered:
- (a) the claimant must file and serve particulars of claim on all other parties within 14 days of the date of the order; and
- (b) any party opposing the claim must file a defence to the claim within 14 days of service of the particulars of claim upon him.
- (3) Within 7 days of the filing of the defence, the claimant must apply for an appointment before the Admiralty Registrar for a case management conference at which directions will be given for the further conduct of the proceedings.
- Form 44.** (4) Any decision of the Admiralty Registrar on the hearing of the reference may be appealed to the Admiralty Judge, by Notice in Form 44 filed within 75 days of the decision on the reference appealed against.
- Inspection of ship, etc.** 69.31 The Admiralty Court may, on the application of any interested person or on its own initiative, make an order for the inspection by any person 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 a claim or proposed claim whether *in rem* or *in personam*.
- Drawing up of orders.** 69.32 All orders made in Admiralty proceedings will be drawn up by the parties unless otherwise ordered by the court.

- Assessors.** 69.33 (1) The usual practice in the Admiralty Court is to sit with Assessors when hearing collision claims or other cases involving issues of navigation or seamanship and the parties will not normally be permitted to call expert witnesses on matters of navigation or seamanship where the court sits with Assessors. Parties should indicate at the case management conference whether they consider that the case is suitable for Assessors.
- (2) The provisions of these Rules relating to Assessors shall apply to Assessors appointed under this Part.

## **PART 70**

### **OBTAINING EVIDENCE FOR FOREIGN COURTS**

#### **Contents of this Part**

Scope of this Part.....	Rule 70.1
Application for order.....	Rule 70.2
Application by Attorney General in certain cases.....	Rule 70.3
Person to take and manner of taking examination.....	Rule 70.4
Dealing with depositions.....	Rule 70.5
Claim to privilege.....	Rule 70.6

- Scope of this Part.** 70.1 (1) This Part deals with the procedure by which evidence may be obtained from a witness in Belize for the purpose of proceedings in a court or tribunal outside the jurisdiction.
- (2) The power of the Supreme Court to make an order under any relevant enactment may be exercised by a judge in chambers, or by the Registrar .
- Application for order.** 70.2 (1) Subject to paragraph (3) and Rule 70.3, an application for an order under this Part may be made without notice but be supported by affidavit evidence.
- (2) There must be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation of the request into English.
- (3) After an application has been made under paragraph (1), any application for a further order or directions must be on notice.
- Application by Attorney General in certain cases.** 70.3 Where a request –

- (a) is received by the Minister with responsibility for Foreign Affairs and sent by him to the court office with an intimation that effect should be given to the request without requiring an application for that purpose; or
- (b) is received by the court in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Belize 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 party,

the court office must send the document to the Attorney General.

**Person to take and manner of taking examination.**

- 70.4 (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 an examiner of the court or before such other qualified person as to the court seems fit.
- (2) Subject to Rule 70.6 and to any special directions contained in any order made in pursuance of this Part for the examination of any witness, the examination must be taken in manner provided by Rules 33.8 to 33.11 and an order may be made under Rule 33.12, for payment of the fees and expenses due to the examiner.

**Dealing with depositions.**

- 70.5 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 court, and the court must –
- (a) give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the request, the order of the court for examination and the deposition taken in pursuance of the order; and
  - (b) send the certificate with the documents annexed thereto to the Minister with responsibility for Foreign Affairs, or, where the request was sent to the court office by some other person in accordance with a Civil Procedure Convention, to that other person, for transmission to the court or tribunal out of the jurisdiction requesting the examination.

**Claim to privilege**

- 70.6 (1) This Rule applies where –
- (a) a witness claims a right to withhold evidence; and
  - (b) that claim is contested.

- (2) The examiner may require the witness to give the evidence to which the claim relates.
- (3) If the examiner does not do so the person who obtained the order under Rule 70.2 or 70.3 may apply to the court to do so.
- (4) Such application may be made without notice.
- (5) If such evidence is taken –
  - (a) it must be recorded in a document separate from that witnesses' deposition;
  - (b) the examiner must send to the court office with the deposition –
    - (i) that document; and
    - (ii) a statement signed by the examiner setting out the claim and the ground on which it was made;
  - (c) on receipt of the document the court office must, notwithstanding anything in Rule 70.5 –
    - (i) retain the document containing the evidence to which the claim related; and
    - (ii) send the statement with a request to determine the claim to the foreign court or tribunal with the documents mentioned in Rule 70.5.
- (6) If the claim is rejected by the foreign court or tribunal, the court office must send to that court or tribunal the document containing the evidence to which the claim related.
- (7) If the claim is upheld, the court must send the document to the witness.
- (8) In either case the court must notify the witness and the person who obtained the order under Rule 70.2 or 70.3 of the court or tribunal's determination.

## **PART 71**

### **RECIPROCAL ENFORCEMENT OF JUDGMENTS**

## **Contents of this Part**

Scope of this Part.....	Rule 71.1
Application for registration.....	Rule 71.2
Security for costs.....	Rule 71.3
Order for registration .....	Rule 71.4
Register of judgments .....	Rule 71.5
Notice of registration .....	Rule 71.6
Application to set aside registration.....	Rule 71.7
Issue of execution.....	Rule 71.8
Certified copy of Supreme Court judgment for enforcement in another country.....	Rule 71.9

### **Scope of this Part. CAP. 171**

71.1 This Part deals with the procedure under which under the provisions of the Reciprocal Enforcement of Foreign Judgments Act a judgment of a foreign court or tribunal may be registered in the Supreme Court for enforcement within Belize.

### **Application for registration.**

71.2 (1) An application to have a judgment registered in the Supreme Court may be made without notice to the court but must be supported by evidence -

- (a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and, where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by affidavit;
- (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;
- (c) stating to the best of the information or belief of the deponent -
  - (i) that the judgment creditor is entitled to enforce the judgment; and either
  - (ii) that at the date of the application the judgment has not been satisfied; or
  - (iii) the amount in respect of which it remains unsatisfied; and, in either case,
  - (iv) that the judgment may be ordered to be registered for enforcement under the Reciprocal Enforcement of Foreign Judgments Act; and
  - (v) that the registration would not be, or be liable to be, set aside under the said Act; and

- (d) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration.

<b>Security for costs.</b>	71.3	The court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.
<b>Order for registration.</b>	71.4	<ul style="list-style-type: none"><li>(1) An order giving permission to register a judgment must be drawn up by, or on behalf of, the judgment creditor.</li><li>(2) Except where the order is made following an application on notice, it need not be served on the judgment debtor.</li><li>(3) The order must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period.</li><li>(4) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.</li><li>(5) The court hearing the application may however direct that notice be given to any person.</li></ul>
<b>Register of judgments.</b>	71.5	<ul style="list-style-type: none"><li>(1) A register of the judgments ordered to be registered must be kept in the court office.</li><li>(2) There must be included in each such register particulars of any execution issued on a judgment ordered to be so registered.</li></ul>
<b>Notice of registration.</b>	71.6	<ul style="list-style-type: none"><li>(1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to him personally or in such other manner as the court may direct.</li><li>(2) Service of such a notice out of the jurisdiction is permissible without permission, and Rules 7.8, 7.9 and 7.10 apply in relation to such a notice as they apply in relation to a claim form.</li><li>(3) The notice of registration must state –<ul style="list-style-type: none"><li>(a) full particulars of the judgment registered and the order for registration;</li></ul></li></ul>

- (b) the name and address of the judgment creditor or of his legal practitioner or agent on whom, and at which, any summons issued by the judgment debtor may be served;
- (c) the right of the judgment debtor to apply to have the registration set aside; and
- (d) the period within which an application to set aside the registration may be made.

**Application to set aside registration.**

- 71.7 (1) An application to set aside the registration of a judgment must be supported by affidavit evidence.
- (2) Where the court hearing an application to set aside the registration of a judgment is satisfied that –
- (a) the judgment falls within any of the cases in which a judgment may not be registered under the provisions of any relevant enactment ;or
  - (b) it is not just or convenient that the judgment should be enforced within the jurisdiction,

it may order the registration of the judgment to be set aside on such terms as it directs.

**Issue of execution.**

- 71.8 (1) Execution may not issue on a judgment registered under the Act until after the expiration of the period which, in accordance with Rule 71.4(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the court, until after the expiration of that period as so extended.
- (2) If an application is made to set aside the registration of a judgment, execution on the judgment may not issue until after such application is finally determined.
- (3) Any party wishing to issue execution on a registered judgment must produce to the court office an affidavit of service of the notice of registration of the judgment and any order made by the court in relation to the judgment.

**Certified copy of Supreme Court judgment for enforcement in another country. CAP.171**

- 71.9 (1) An application under the Reciprocal Enforcement of Judgments Act for a certified copy of a judgment entered in the Supreme Court for the purpose of enforcement in some other country must be made without notice supported by affidavit evidence.

- CAP.171 (2) The certified copy of the judgment must be an office copy sealed with the seal of the Supreme Court and indorsed with a certificate signed by the Registrar that it is a true copy of a judgment obtained in the Supreme Court and that it is issued in accordance with the Reciprocal Enactment of Judgments Act.

## PART 72

### TRANSITIONAL PROVISIONS

#### Contents of this Part

Scope of this Part.....	Rule 72.1
New proceedings.....	Rule 72.2
Old proceedings.....	Rule 72.3
Exercise of discretion .....	Rule 72.4

**Scope of this Part.**  
**Sub.Leg.**  
**1991 Edn.**  
**Vol. 111**  
**CAP.82**  
**P3/26**  
**P3/29**  
**G.355/19655**

- 72.1 (1) This Part deals with the extent to which the
- (a) Supreme Court (Constitutional Redress) Rules, 1982
  - (b) Supreme Court Rules, 1926;
  - (c) the Prize Court (Fees) Rules (No.2), 1940 of the United Kingdom, dealing with the Admiralty Jurisdiction of the Supreme Court;
- as amended, remain in force after these Rules.
- (2) In this Part “**commencement date**” means the 4<sup>th</sup> April, 2005.

**New proceedings.**

- 72.2 These Rules apply to all proceedings commenced on or after the commencement date.

**Old proceedings.**

- 72.3 (1) These Rules do not apply to any proceedings in which a trial date has been fixed unless that date is adjourned.

- (2) Any application to adjourn a trial date is to be treated as a pre-trial review and these Rules apply from the date that such application is heard.
- (3) Where a trial date has not been fixed it is the duty of the plaintiff to apply for a date for a case management conference to be fixed.
- (4) When an application under paragraph (3) is received the court office must fix a date, time and place for the case management conference under Part 27 and give all parties at least 28 days notice of the conference.
- (5) These Rules apply to such proceedings from the date of the case management conference.
- (6) If no application for a case management conference to be fixed is made by 1<sup>st</sup> June 2005 the proceedings (including any counterclaim, third party or similar proceedings and any claim for an indemnity) are stayed and no further step may be taken without the permission of the court.

**Exercise of discretion.**

- 72.4 When in proceedings commenced before 4<sup>th</sup> April, 2005 the court has to exercise its discretion it may take into account the principles set out in these Rules and, in particular, Parts 1 and 25.

-----OO-----