

**DISTRICT COURT  
(CRIMINAL AND MISCELLANEOUS) RULES 1992  
PARTS 2 AND 3**

The Rules and Schedules following below are subject to Rule 7 of the *District Court Variation Rules 2006* (in operation from September 4, 2006) which provides:

**7—Revocation of Parts II and III (but continuation of application for  
Parts V and VI)**

- (1) Parts II and III—delete Parts II and III
- (2) Despite the revocation of Parts II and III, those Parts will continue to apply *mutatis mutandis* for the purposes of any proceeding commenced or continued under Part V or VI of these rules.

This consolidation includes all applicable amendments up to and including the *Supreme Court Rules 1987 (Amendment No. 102)*, effective 1 October 2008.

revoked

## RULES APPLICABLE TO THE DISTRICT COURT CIVIL DIVISION

<i>Rule</i>	<i>Title</i>
1.	Transitional Provisions
1A.	e-Business Transactions
2.	Case Flow Management
2A.	Allocation of Complex and Ordinary Actions
3.	General Powers of the Court
4.	Resolution of Procedural Difficulties
5.	Interpretation
6.	Time
6A.	Notice Before Action
7.	Commencement of Actions
8.	Time For Notice of Address for Service
9.	Summonses
10.	Issue of Summonses
11.	Authority of Solicitors And Addresses For Service
12.	Service of Summons
13.	Proof of Service
14.	Substituted Service
15.	Service Upon Particular Parties
18.	Service Out of The Jurisdiction
19.	Service Under Convention
20.	Service Under A Letter of Request
21.	[Defendant's Notice of Address for Service]
22.	Submission To The Jurisdiction
23.	Default of Notice of Address for Service
24.	Default of [Filing of Notice of Address for Service] Out of The Jurisdiction
25.	Summary Judgment
26.	Joinder of Causes of Action
27.	Joinder of Parties
28.	Misjoinder and Non-Joinder
29.	Representation of Unascertained Persons
30.	Representation of Beneficiaries by Trustees
31.	Death Or Bankruptcy of A Party
32.	Conduct of Proceedings
33.	Intervention
34.	Representative Actions
35.	Parties Under Disability
36.	Firms And Societies
37.	Third Party Proceedings and Contribution Notices
38.	Experts' Reports And Paternity Tests
39.	Payment Into Court
40.	Offers To Consent To Judgment
41.	Offers By Plaintiff To Settle
42.	Interpleader
44.	Hearing of Interpleader Summons
45.	Trial Without Pleadings
46.	Pleadings Generally

- 46A. Pleadings and Affidavits of Loss
- 47. Defences
- 48. Counterclaims
- 49. Consent to Arbitration
- 50. The Expeditious Management of Commercial and Other Cases
- 51. Default of Pleading
- 52. Discontinuance And Withdrawal
- 53. Amendments
- 54. Admissions
- 55. Applications For Directions
- 55A. Tender Lists
- 56. Conferences
- 56B. Status Hearings and Settlement Conferences
- 57. Interrogatories
- 58. Discovery
- 58A. Modified Discovery
- 59. Production
- 60. Discovery Against A Person Not A Party And Before Action
- 61. Medical Examinations And Reports
- 62. Summonses
- 63. Special Orders And Declarations
- 64. Transfer of Proceedings Between Courts and Tribunals
- 65. Possession of Land
- 65A.
- 67. Interlocutory Applications
- 68. Interlocutory Injunctions And Interim Preservation of Property
- 69. Receivers
- 70. Sale of Land
- 71. Accounts And Inquiries
- 72. Reservation of Questions of Law to the Full Court of the Supreme Court
- 73. Consolidation
- 74. Place of Trial
- 74A. Entry for Trial
- 75. Mode of Trial
- 76. Trial by an Arbitrator
- 77. Assessments of Damages
- 78. Evidence
- 79. Obtaining Evidence For And From Foreign Tribunals
- 81. Subpoenas
- 82. Court Experts
- 83. Affidavits
- 84. Judgments And Orders
- 85. Proceedings Under Judgments And Orders
- 86. Investigation of a Debtor's Financial Position and Orders for Payment
- 87. Garnishee Orders
- 88. Warrants for Sale, Possession and Arrest
- 88A. Sheriff's Rules
- 89. Charging orders, Receivers, Execution of Documents and Absconding Debtors
- 90. Execution Against Unincorporated Associations
- 93. Contempt of Court

95. Applications to Review the Proceedings in Minor Civil Actions
97. Appeals from Masters, Mediators and Officers of the Court
100. Security For Costs
101. Costs
- 101A. Further Costs Rules
102. Documents
103. Administration of Estates: Execution of Trusts
106. Jurisdiction of Masters
107. Registrar and Deputy Registrar
108. Legal Practitioners
109. Suitors' Fund
110. Part III - General Matters
111. Aged and Infirm Persons Property Act 1940
113. Criminal Assets Confiscation Act 1996
- 113A. Proceedings under the Criminal Assets Confiscation Act 2005
- 114AA. Commonwealth Proceeds of Crime Act 2002
- 114A. Criminal Law (Legal Representation) Act 2001
115. Evidence Act 1929--Part VI Reciprocal Procedures for obtaining Evidence out of the State
- 115A. Evidence Act - Audio Visual Rule
116. Family Relationships Act 1975
120. Commercial Arbitration Act 1986
121. Unclaimed Goods Act 1987
122. Worker's Liens Act 1893
124. Minors Contracts (Miscellaneous Provisions) Act 1979
128. Warehouse Liens Act 1990
130. Strata Titles Act 1988
132. Associations Incorporation Act 1985
134. Consumer Credit (South Australia) Act 1995

Table of Forms  
First Schedule  
Second Schedule  
Third Schedule  
Fourth Schedule  
Fifth Schedule  
Sixth Schedule  
Seventh Schedule  
Eighth Schedule  
Ninth Schedule  
Tenth Schedule  
Eleventh Schedule

## **PART II - THE CIVIL DIVISION - GENERAL PROCEDURES**

### **Transitional Provisions**

- 1.01** In so far as actions are governed by these Rules:-
- (a) where any interlocutory step in an action pending at the commencement date has been completed by the commencement date it shall not be necessary to comply with these Rules in respect of any equivalent under these Rules of that interlocutory step;
  - (b) where under the former Local Court Rules the time for taking any step in an action pending at the commencement date shall not have expired at the commencement date, the time for taking that interlocutory step shall be the later of that prescribed by the former Local Court Rules or that prescribed by these Rules unless the Court otherwise directs.
- 1.02** Where there is any doubt or uncertainty about whether these Rules or the former Local Court Rules apply to any step in an action, the Court on the application of any party, or of the Registrar, may give directions about which Rules are to govern such step and generally to resolve any such doubt or uncertainty.

### **e-Business Transactions**

#### **Electronic record**

- 1A.01** Where an action is commenced in the Court in electronic form pursuant to R1A.28, the primary record of that action shall be in the form of an electronic file.

#### **Electronic communication**

- 1A.02** The primary method of communication by legal practitioners and parties in person with the Court shall be by an authorised electronic communication, utilising the relevant function on the Internet Website of the Courts Administration Authority (“the CAA Website”) established for the purpose.
- 1A.03** If a person is required or permitted to give information in writing or produce a document that is in the printed or typewritten form to either:
- (a) the Court; or
  - (b) a person who has advised either
    - (i) the Registrar, or
    - (ii) the person giving the information or producing the document,of their willingness to receive information by means of authorised electronic communication,
- that requirement is taken to have been met if the person gives the information, or produces the document, by means of an authorised electronic communication.
- 1A.04** If the Court is required to give information to a person in writing, and that person has advised the Registrar of their willingness to receive information by means of an authorised electronic communication, that requirement is taken to have been met if the Court gives the information by means of such a communication.
- 1A.05** A person who has an e-mail address shall state that address on any documents or communication filed, served or given. The publishing of an e-mail address in such a manner indicates a willingness, thereafter, to receive information, at that address, by means of an authorised electronic communication from both the Court and other parties or persons.

- 1A.06** The Registrar shall approve and promulgate a facsimile number for the purpose of receiving information authorised, by Practice Direction, to be received by such means.
- 1A.07** Information sent to the Registrar by facsimile transmission must be:
- (a) sent to the approved facsimile number for the Court; and
  - (b) accompanied by a cover sheet clearly stating:
    - (i) the sender's name, postal address, document exchange number (if any), telephone number, facsimile number and e-mail address (if any); and
    - (ii) the number of pages transmitted; and
    - (iii) what action is required in relation to the document.
- 1A.08** If the information comprises a document that is required to be signed or sealed by or on behalf of the Registrar, and is accepted, the Registrar must:
- (a) make one copy of it; and
  - (b) if the sender requests that the document be held for collection - hold it for collection for 7 days; and
  - (c) if the sender does not request the document to be held for collection, or having made a request does not collect the document within 7 days - return the document by facsimile transmission to the facsimile number stated on the cover sheet.
- 1A.09** A person who sends information to the Registrar by facsimile transmission must:
- (a) keep the original information and the transmission report evidencing successful transmission; and
  - (b) produce the original information or the transmission report as directed by the Court.
- 1A.10** If the Court directs that the original information be produced, the first page of it must be endorsed with:
- (a) a statement that the information is the original of that sent by facsimile transmission; and
  - (b) the date that the information was sent by facsimile transmission.

#### **Establishment of electronic filing system**

- 1A.11** The Registrar shall establish an electronic filing system and make provision for specified documents to be filed, served, delivered or otherwise conveyed using that service.

#### **Registered user**

- 1A.12**
- (1) Subject to these rules, a firm or sole legal practitioner may become a registered user of such system in accordance with the procedures prescribed in any Practice Direction for the time being issued by the Court.
  - (2) Registered user status will only be accorded to the holder for the time being of an L Code.
  - (3) The Registrar shall not permit registration unless satisfied that proper arrangements have been made, on application for registration, for timely payment of all court fees becoming due in respect of any electronic transactions initiated by the proposed registrant.

#### **Authorised Electronic Authentication**

- 1A.13**
- (1) Upon registration in manner prescribed by Practice Direction, a registered user shall nominate:
    - (a) the P Code of each practitioner for the time being authorised to operate the electronic filing system for and on behalf of that user; and

- (b) ensure that each such practitioner thereafter nominates a separate related password in respect of that person.
- (2) The last mentioned password shall conform with the technical requirements specified and be changed from time to time in manner stipulated by Practice Direction.
- (3) An authorised practitioner will not be permitted to operate the electronic filing system without first entering a current valid authorised electronic authentication code for that practitioner.

#### **Security of authentication code**

- 1A.14**
- (1) A registered user shall ensure the confidentiality and security of any authorised electronic authentication codes assigned by it to authorised practitioners and shall take reasonable steps to prevent unauthorised use of them.
  - (2) It shall be the responsibility of a registered user to ensure that, in accordance with any relevant Practice Direction, its registration details are forthwith amended when a practitioner ceases to be authorised to operate the electronic filing system on behalf of that user.
  - (3) Until any such amendment is made, the registered user shall be bound by the actions of each authorised practitioner nominated by it.

#### **Electronic filing**

- 1A.15**
- (1) Where a specified document or an affidavit is required to be filed with, served on, delivered or otherwise conveyed to the Registrar under any other provision of these Rules or any Practice Direction, it must be so filed, served, delivered or otherwise conveyed using the electronic filing system maintained by the Court in accordance with this Rule and any Practice Directions for the time being issued by the Registrar.
  - (2) Notwithstanding anything in paragraph (1), the Registrar may, for proper reason, allow a document, part of a document or any class of documents to be filed, served, delivered or otherwise conveyed other than by using the electronic filing system. The Registrar shall do so where satisfied that a person or legal practitioner is reasonably unable to become a registered user.
  - (3) All specified documents shall be entered into the electronic filing system, by inserting the data required to generate them, in the relevant electronic templates provided for the purpose through the CAA Website. Where no specific form is prescribed for a document proposed to be filed, it shall be filed by completing the input template for Form 45.
  - (4) An affidavit shall be filed by transmitting, by authorised electronic communication, an image of the original affidavit, duly sworn in accordance with the Rules, to the Court for filing in an electronic filing system maintained by the Court.
  - (5) In the case of a practitioner or party who is not a registered user, the original affidavit, duly sworn in accordance with the Rules, shall be delivered to the registry and scanned into the electronic filing system maintained by the Court.
  - (6) Each exhibit to an affidavit filed in the electronic filing system shall be filed as a separate document in the proceedings, except where it is impractical to convert a specific document into electronic format, it shall be filed and lodged in accordance with subrule (7).
  - (7) An affidavit, duly sworn in accordance with the Rules, together with any exhibits thereto, shall also be lodged in the registry in hard copy as soon as practicable after its filing in electronic format, or, in the case of documents of the nature referred to in Rule 83.08(3), dealt with as the Registrar shall direct.

### **Signing of electronic documents**

**1A.16** Where a specified document is filed, served, delivered or otherwise conveyed using an electronic filing system maintained by the Court, any requirement under any other provision of these Rules relating to signing by or the signature of:

- (a) the registered user, shall be deemed to be complied with if the authorised electronic authentication code of the registered user has been utilised to permit the transmission containing the document;
- (b) the Registrar, shall be deemed to be complied with if the authorised electronic authentication code of the Registrar or a duly authorised officer of the Registry has been utilised to permit the transmission containing the document, and the name of the Registrar or an image of the Registrar's signature is reproduced on the document by the electronic filing system.

### **Date and time of filing**

**1A.17** (1) Where a document is filed with, served on, delivered or otherwise conveyed to the Registrar using an electronic filing system maintained by the Court and is subsequently accepted by the Registrar, it shall be deemed to be filed, served, delivered or conveyed on the date and at the time that the final part of the transmission of that document is received into the Court electronic filing system;

- (2) Where an originating process is filed or otherwise conveyed using an electronic filing system maintained by the Court and it is subsequently accepted by the Registrar, it shall be deemed to be issued on the date and at the time that the last part of the transmission is received into the system.
- (3) The Registrar shall cause an electronic notification of receipt of each document and the time and date thereof to be sent to the transmitter of such document forthwith after such receipt. Such notification may be by means of authorised electronic communication.

### **When time for service begins to run**

**1A.18** (1) Where a document is filed with, served on, delivered or otherwise conveyed to the Registrar by electronic transmission, the time for service of that document shall only begin to run from the next business day after the time that the Registrar's notification of receipt of the document is sent to the transmitter.

- (2) If the Registrar's notification referred to in paragraph (1) is sent to a registered user on a Saturday, or on a Sunday or Public Holiday, it shall be deemed, for the purpose of this Rule, to have been sent on the business day next following that Saturday, Sunday or Public Holiday, as the case may be.

### **Service of documents**

**1A.19** (1) If an affidavit, or a specified document:

- (a) other than a document which is required by these Rules to be served personally; or
- (b) being a document which is required by these Rules to be served personally and which the party to be served has agreed, or is deemed to have agreed, may be served by means of an authorised electronic communication,

is required under any other provision of these Rules to be served, delivered or otherwise conveyed by a registered user (referred to in this Rule as the first registered user) on any other person and that person is a registered user or is represented by a legal practitioner who is a registered user (referred to in this Rule as the second registered user), such service, delivery or conveyance may be effected by means of an authorised electronic communication.

- (2) The affidavit or specified document shall be deemed to be served, delivered or otherwise conveyed on the next business day after it has been transmitted to the second registered user.



- (3) Where an affidavit or a specified document has to be served, delivered or conveyed by the first registered user on or to more than one person, some only of whom are registered users, the first registered user may effect such service, delivery or conveyance by electronic communication on such of those persons who are registered users, and paragraphs (1) and (2) of this Rule shall apply to such service.

#### **Notification or delivery by Registrar**

**1A.20** Where the Registrar is required by any other provision of these Rules to send a notice to or to deliver or furnish any document to a person who is a registered user, the Registrar may do so by an authorised electronic communication.

#### **Mode of amendment of electronic documents**

**1A.21** Amendments of specified documents shall be effected in the manner prescribed by these Rules or any relevant Practice Direction.

#### **Presumption**

**1A.23** Where a document is transmitted into an electronic filing system maintained by the Court by use of an authorised electronic authentication code of, or nominated by, a registered user:

- (a) with or without the authority of the registered user; and
  - (b) before the notification to the Registrar, in the manner specified in any relevant Practice Direction, of cancellation of the authorised electronic authentication code,
- it shall be presumed, unless proven otherwise, that:

- (i) the document has not been altered since the authorised authentication code was entered;
- (ii) the document was transmitted accurately;
- (iii) the document was made and transmitted by or on behalf of the registered user;
- (iv) the authorised electronic authentication code was used with the intention of approving the document; and
- (v) if the document is an affidavit, it was duly sworn by the person said to have sworn it.

#### **Discrepancy**

**1A.24** Where a specified document has been filed using an electronic filing system maintained by the Court, and there is any inconsistency between:

- (a) the information entered into the electronic template of the document or of the transmission containing the document; and
  - (b) the information contained in the document,
- the information in the electronic template shall prevail.

#### **Authentication of Documents**

**1A.25** Notwithstanding the provisions of any other Rule, any documents or classes of documents accepted for filing in, or issued by, the Court may be authenticated by means of an electronically generated unique identifier of a type approved by the Registrar, in lieu of being attested by the signature of an officer of the Court affixed to it. The Registrar may cause a computer-generated facsimile seal or other symbol to be affixed to a document as a means of indicating the authentication of it.

#### **Security of documents**

**1A.26** Any electronic filing system established by the Registrar must ensure that such system shall, upon the filing of a document in electronic form, automatically convert it to portable document format (pdf), so that it will, thereafter, be incapable of amendment, other than by the subsequent filing of another document. This Rule does not apply to draft minutes of

order submitted to the Court for its consideration or for settling.

### **Disclaimer**

**1A.27** A party or legal practitioner transmitting a document or information electronically either to the Court or to any other party shall be entitled to endorse at the foot of it an appropriate disclaimer to cater for the eventuality that a document or information is inadvertently sent to a transmittee not intended to receive it.

### **Operation**

**1A.28** (1) This Rule is enacted, in part, to support an interim pilot e-filing project commissioned by the Court.

(2) The following subrules shall apply to actions conducted pursuant to the pilot e-filing project and commenced on or after the pilot commencement date by legal practitioners who have registered for participation in the interim pilot e-filing project:

R1A.01

R1A.15

R1A.02

R81.11A

### **Case Flow Management**

**2.01** These Rules are made for the purpose of establishing orderly procedures for the conduct of litigation in the Court and of promoting the just and efficient determination of such litigation. They are not intended to defeat a proper claim or defence of a litigant who is genuinely endeavouring to comply with the procedures of the Court, and are to be interpreted and applied with the above purpose in view.

**2.02** With the object of:

- (a) promoting the just determination of litigation;
- (b) disposing efficiently of the business of the Court;
- (c) maximising the efficient use of available judicial and administrative resources; and
- (d) facilitating the timely disposal of business at a cost affordable by parties;

actions in the Court will be managed and supervised in accordance with a system of positive case flow management. These Rules are to be construed and applied and the processes and procedures of the Court conducted so as best to ensure the attainment of the above objects.

**2.03** The practice, procedure and interlocutory processes of the Court shall have as their goal the elimination of any lapse of time from the date of initiation of proceedings to their final determination beyond that reasonably required for pleadings, discovery and other interlocutory activities essential to the fair and just determination of the issues bona fide in contention between the parties, and the preparation of the case for trial.

**2.04** To these ends:

- (a) Parties to proceedings are required to be ready to proceed to trial by the date of reference for trial under Rule 74A.02;
- (b) Parties to proceedings are required to be ready to proceed with the hearing of any application at the time fixed for the hearing, or any adjourned hearing, of such application;
- (c) A trial date which has been fixed will not be cancelled or postponed unless the justice of the case, assessed having regard to the obligations of the parties pursuant to paragraph (a) hereof, so requires;
- (d) A trial will proceed on the date fixed, to conclusion, so far as practicable without interruption, unless the justice of the case, assessed having regard to the parties' obligation pursuant to paragraph (a) hereof, requires such interruption.

- 2.05** Each party is required positively to review the pleadings filed in the proceedings prior to the first hearing of any application to refer the action for trial so as to ensure their adequacy. Such steps as may be necessary to effect any amendments are to be taken prior to this application to refer the action for trial. In the event that any application is made thereafter for leave to amend a pleading, the Court may, and particularly if the amendment would cause the postponement or adjournment of the trial, if it sees fit, refuse such application, in order to protect the integrity of the caseload management system and to implement the Court's requirements that trials proceed at the time appointed for the trial, notwithstanding that any injustice to any other party may have been avoided by an order for costs or some other order.
- 2.07** The Court may, at any time, of its own motion on notice to the parties review the progress of proceedings and make such orders or give such directions to lead to their efficient and timely disposal and concerning time defaults committed by any party as it may consider just and expedient.
- 2.08** The parties are expected to consider alternative dispute resolution options including mediation at the earliest opportunity, and the Court will facilitate utilisation of such options to aid early disposal where appropriate.
- 2.09** Where any party does not proceed with the hearing of an action or application therein at the time fixed for such hearing, the Court may, on the application of the opposing party or of its own motion, revoke any order to proceed to trial, strike out the action or application or dismiss such action or application for want of prosecution, and may do so in order to protect the integrity of case flow management system and to implement the Court's requirement that matters proceed at the time fixed for hearing notwithstanding that any injustice to the opposing party might have been avoided by an order for costs or some other order.

#### **Allocation of Complex and Ordinary Actions**

- 2A.01** Rule 2A applies to all inter-partes actions commenced on and after 3 June 2000 and to such actions commenced earlier as the Court directs.
- 2A.02** (1) A complex action is one which is administratively designated as such at any time by the Chief Judge or his or her delegate by reason of its apparent complexity, importance or length or for other good reason.  
(2) An ordinary action is an action which does not have a current designation as a complex action.
- 2A.03** The Chief Judge or a Judge designated by him or her may for any good reason administratively cancel the designation of an action as a complex action and it then becomes an ordinary action.
- 2A.04** Parties may by a letter filed with their first pleading request that the action be designated as a complex action or may by later correspondence to the Chief Judge request that the action, if it is not already a complex action, be so designated or that such designation be cancelled.
- 2A.05** The Chief Judge or a Judge designated by him or her may administratively assign a particular Judge to supervise the interlocutory steps, and the same or a different Judge to conduct the trial, in a complex action.
- 2A.06** Judges to whom the supervision of complex actions are assigned may administratively determine whether they or a Master will deal with all or any of the interlocutory matters in the action.

- 2A.07** In a complex action the timetable and time limits imposed by Rule 2 apply insofar as a Judge or Master so directs.
- 2A.08** In a complex action the Judge or Master may exercise all or any of the powers in Rule 50.03.

### **General Powers of the Court**

- 3.01** The Court may at any time dismiss proceedings which disclose no cause of action known to the law or can not by amendment be made to disclose such a cause of action, or which are frivolous, vexatious or an abuse of the process of the Court and may at any time grant a stay or proceedings where the justice of the case so requires.
- 3.02** Where a summons is issued by or against a person who is dead at the time of issue, the process shall not be a nullity, but the personal representative of the deceased may by application be substituted in his stead, and the action shall proceed as if it had originally named such representative as a party. Nothing in this Rule affects the operation of Section 113 of the *Motor Vehicles Act 1959*.
- 3.03** Where a summons is issued by or against representative parties whose grant of representation has not been obtained or resealed as the case may be in South Australia the process shall not be a nullity, but shall be deemed to be irregular until a grant whether original or resealed has issued out of the Court or a representative has been appointed pursuant to Rule 30.03(1)(b).
- 3.04** The Court shall have power to act at any time to give effect to the purpose of these Rules and, without limiting the generality of this power, it may in any case in which it thinks it just to do so:
- (a) dispense with compliance with all or any part of these Rules including a Rule relating to or governing powers that the Court may exercise of its own motion;
  - (b) give leave to any party to amend, alter or withdraw any step in a proceeding;
  - (c) validate any proceeding or document which is invalid or informal;
  - (d) extend or abridge any prescribed periods of time within or by which any step in a proceeding may be taken whether or not such period of time has expired;
  - (e) strike out or dismiss any step in a proceeding which is vexatious, frivolous or an abuse of the process of the Court;
  - (f) correct, revoke or vary any order by a subsequent order;
  - (g) do all or any acts or give any directions relating to the conduct of an action subject to such terms as to costs or otherwise as it thinks proper;
  - (h) where there are several parties to an action, make such orders, or give such directions, for or against one or more of such parties as are appropriate for each party separately or together, as the Court thinks fit.
- 3.05**
- (1) Non-compliance with any of the Rules does not render a proceeding or a step in a proceeding void.
  - (2) Where proceedings do not, or any step in proceedings does not, comply with the provision of any applicable Rule, any other party may apply to set aside the proceedings or the step in proceedings, as the case may be.
  - (3) Any application to set aside shall be made within ten days after the receipt of the proceeding or the step which is claimed to be not in compliance with any applicable Rule.
  - (4) If on the hearing of the application the proceeding or the step as the case may be is shown to be not in compliance with any applicable Rule, the Court may make such order as it thinks just to ensure that such proceeding or step does thereafter comply with the Rule.

**3.06** The provisions of these Rules are in addition to, and shall not derogate from, any inherent jurisdiction of the Court.

**3.07** (1) Reference in these Rules to a numbered form is a reference to the appropriate form in the First Schedule to these Rules.

**Note:** italics indicate suspension of that part of the sub-Rule below, from 12 June 2003.

(2) The prescription of any appropriate form is directory only, and the form may be altered or varied as the nature of the case may require. *However, where a document is to be filed using an electronic filing system maintained by the Court, the prescribed form and the input template related to it shall be used, unless there is good reason not to do so. If the circumstances of a case require departure from the prescribed form, the document shall be input using Form 45 and the input template related to it.*

### **Resolution Of Procedural Difficulties**

**4.01** Where circumstances occur for which no provision is made by the Act or these Rules, the previous practice of the Court, if any, immediately prior to the coming into force of these Rules shall be followed.

**4.02** (1) In any case, if there is any doubt as to what is the correct procedure, the Court may direct (and *ex parte* if it thinks fit) what shall be done in any particular instance; or that the procedure which has been adopted shall be sufficient: Provided that every such direction shall be subject to review at any time by the Court, and that further or other directions may be given from time to time as the Court may think necessary or proper in the interests of justice.

(2) Notwithstanding the powers of review and further direction given in subrule (1) hereof the original direction given under the powers in that subrule shall be a sufficient protection to the party who obtains that direction and acts upon it.

**4.03** (1) When a Judge has reserved judgment in any proceeding and:  
(a) dies without giving judgment, or  
(b) becomes so incapacitated that he cannot give judgment  
the proceeding shall be relisted with the concurrence of the Chief Judge before another Judge.

(2) If the other Judge is satisfied that the Judge who originally reserved judgment has written reasons for judgment in a final form, then the other Judge shall give judgment in accordance with those reasons and publish them as his judgment, or if the other Judge is not so satisfied, he shall rehear the proceeding either de novo or in such other manner as he may direct and the justice of the case may require.

(3) If the proceeding be relisted, the Judge before whom it is relisted shall give all such directions, and make all such orders, as may be necessary and expedient for the just determination of such rehearing.

### **Interpretation**

**5.** Unless a contrary intention appears in a Rule or the context otherwise requires:-

“**action**” includes any form of proceedings in the Civil Division of the Court, but does not include an application to review made pursuant to Rule 95.

“**address for service**” means an address of a place at which an application or other document may be sent or left for the party giving such address. Such address must be a physical address and:

(a) shall be within 50 km of the Adelaide General Post Office, or in any proceedings that have been commenced in a District Registry within 50 km of that District

Registry, and, if it is of a building or property which is divided into parts which are capable of separate occupation, shall also specify which part of the building or property is the address for service;

- (b) may be outside the above radius where it is a place, within Australia, at which a legal practitioner filing the address for service carries on practice and where a number for facsimile transmission is included in the address for service;
- (c) may include such a number where the party giving the address for service is prepared to receive service of documents by facsimile transmission at the number, under Rule 12.05(1)(g) and may also contain a box number and a branch of the Document Exchange where the party giving that address for service is prepared to receive documents in accordance with the provisions of Rule 12.05(1)(c);
- (d) may specify, in addition to a physical address an e-mail address to which documents may electronically be directed to the party giving it and the party initiating the proceedings has also indicated, on a document filed by such party, that it has an e-mail address. This sub-paragraph shall apply only to all actions commenced on or after the pilot commencement date, by legal practitioners who register for participation in an interim e-Filing pilot project commissioned by the Court.

**“administrator”** means a person or body appointed to manage the property of another and includes:

- (a) an administrator appointed by the Guardianship Board under Section 28 of the *Mental Health Act 1935* provided that he has power so to act or the Board itself when acting under Section 27(1)(d) of that Act;
- (ab) an administrator appointed under section 35 of the *Guardianship and Administration Act, 1993*;
- (b) a manager appointed by a Court pursuant to the *Aged and Infirm Persons’ Property Act 1940* provided that he has power so to act;
- (c) an executor company and a syndic;
- (d) Public Trustee when acting under Sections 45, 65, 83, 85 or 88 of the *Administration and Probate Act 1919* or under any order of the Court.

**“appeal”** includes a cross appeal.

**“authorised electronic communication”** means:

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both, including an e-mail or an e-mail attachment; or
- (b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed, at its destination, by an automated speech recognition system;

in accordance with information technology requirements specified by the Court by Practice Direction.

**“authorised electronic authentication code”** means any P code and related password nominated by a registered user, from time to time, in accordance with Rules 1A.12 and 1A.13, for the purpose of identifying an authorised legal practitioner and indicating the appointment of that person as the agent of a registered user, thereby authenticating access by him or her, as such agent, to an electronic system maintained by the Court. It also includes any Personal Identification Number (PIN) allocated to a non-registered user and associated password, as provided for by Practice Direction.

**“company”** means any body corporate whose status as a corporate entity is recognized by the law of South Australia.

**“concurrent summons”** includes an alias or pluries writ or summons.

**“defend”** means to take part in any proceedings whether as defendant, respondent, intervener or in any like capacity.

“**defendant**” includes a defendant to a counterclaim and a defendant to a third or subsequent party claim.

“**deliver**” includes electronic transmission to the e-mail address of the deliverer by an authorised electronic communication.

“**document**” includes, in addition to a document in writing:-

- (a) any book, map, plan, graph or drawing;
- (b) any photograph;
- (c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatever;
- (d) any disc, tape, sound track, computer or device whether of the same kind or any kind whatsoever in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film (including a microfilm) negative tape disc or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

and -

- (f) anything whatsoever on which is marked any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them.

“**Document Exchange**” means the document exchange conducted by Toll Priority Pty Ltd which was formerly known as the Adelaide Document Exchange and any other Document Exchange approved by the Registrar as a Document Exchange for the purposes of these Rules at the request of the Law Society of South Australia Inc.

“**e-mail address**” means the mailing address to and from which an authorised electronic communication may be sent and received, using the World Wide Web.

“**EDX**” means any service to which the Court is a party whereby documents may be transmitted electronically between the Court and solicitors and between solicitors and the Court and other solicitors respectively.

“**examiner**” means an officer of the Court or other person appointed under Rules 78 or 79 for the examination on oath before him of any person.

“**file**” includes delivery to the Registry, by authorised electronic communication, and receipt into an electronic file of the Court as a record of proceedings.

“**firm**” includes:

- (a) persons carrying on business in a partnership;
- (b) for the purposes of these Rules, a proprietary club;
- (c) any person carrying on business within the jurisdiction in a name or style other than his own name or style.

“**grant of representation**” includes an order appointing a representative.

“**image**” means a picture that has been created, copied, stored or transmitted in electronic form.

“**issued**” includes sending by means of an authorised electronic communication.

“**information**” means information in the form of data, text, images or speech.

“**L Code**” means the alpha/numeric designator (commonly referred to as ‘the Law Firm number’), issued by the Law Society of South Australia (‘the Society’) to a firm or sole legal practitioner for practice identification purposes.

“**notice**” means notice in writing.

“**P Code**” means the alpha/numeric designator (commonly referred to as ‘the practitioner number’) issued by the Society to each individual legal practitioner entitled to practice in South Australia for personal identification purposes.

“**person under a disability**” means an infant, and any person, who by reason of physical weakness or intellectual or mental impairment or other condition, whether temporary or permanent, is unable to give instructions to take, defend or compromise proceedings.

“**personal representative**” means a person who has a grant of Probate or Letters of Administration which has been granted or resealed, or has an order to administer granted, by the Supreme Court in its Testamentary Causes Jurisdiction.

“**pilot commencement date**” means the date referred to in the Practice Directions for the commencement of the pilot e-filing project commissioned by the Court.

“**plaintiff**” includes an applicant and a plaintiff by counterclaim.

“**proceedings**” means an action, suit, cause, matter, review or appeal, and includes a counterclaim.

“**registered user**” means a person who has registered to gain access to and use any electronic filing or other system maintained or operated by the Courts Administration Authority.

“**representative party**” means a person who is acting in the capacity of a legal representative or guardian of the person or property of another person or persons, and includes a trustee, executor, administrator, committee, guardian, manager, or representative appointed by statute or by order of Court and a syndic, attorney, agent, director, manager or secretary appointed out of court when acting in a representative capacity.

“**responsible officer**” means a director, manager, secretary, treasurer, public officer, mayor, chairman, president or chief executive officer or a duly authorised officer of a body corporate or society.

“**society**” means any society, fellowship, club (other than a proprietary club), association or combination of persons which is not a partnership or a body corporate.

“**specified document**” means a document which is specified in any Practice Direction as being a document which may, or must, be filed in the Court using an electronic filing system maintained or operated by it.

“**statute**” includes an instrument made under and by authority of a statute.

“**transmit**” includes sending by means of an authorised electronic communication.

“**trustee**” includes a manager appointed under the provisions of the *Aged and Infirm Persons’ Property Act, 1940*, or the Guardianship Board, an administrator appointed by the Guardianship Board pursuant to the provisions of the *Mental Health Act, 1935*, (provided that he or she has power so to act) or an administrator appointed under section 35 of the *Guardianship and Administration Act, 1993*.

## Time

**6.01** Unless a contrary intention appears, the computation of time under these Rules, or under an order of the Court, is governed by the following provisions:

- (a) The word “month” means calendar month.
- (b) Where clear days are prescribed by these Rules, or fixed by any statute, judgment, order or direction, the time shall be reckoned exclusively of the first and last day.
- (c) Where a period of time is prescribed by these Rules or any order for doing any act is not greater than seven days, any day on which the Registry is closed for business shall not be reckoned in computing the period.
- (d) Where the time prescribed for doing any act expires on a day on which the Registry is closed, the time for doing such act shall be extended to the day on which the Registry is next open.
- (e) Unless otherwise directed by the Court, the period of the Christmas vacation shall not be reckoned in the computation of the time appointed or allowed by these Rules for filing, amending or delivering any pleading.
- (f) Pleadings may be filed or amended during the Christmas vacation on days when the Registry is open for business, but the time for filing any consequential pleading or for taking any other consequential action shall only run from the first day after the Christmas vacation.



- 6.02** (1) The Court may extend or abridge the period within which a person is required or authorized by Statute, by Rules or by an order of the Court, to do or abstain from doing any act.
- (2) Where anything is by these Rules or any judgment, order or direction of the Court directed to be done within a fixed period of time after 6 July 1992 that period of time shall be calculated in accordance with the criteria in Section 27(1) of the *Acts Interpretation Act 1915*.
- 6.03** Where no time is fixed by statute, by Rules or by any judgment or order of the Court for the doing of any thing in connection with any proceeding, the Court may, by order, fix the time within which the thing is to be done.
- 6.04** Where twelve months or more have elapsed since the last step in the proceeding, the party who desires to proceed shall, unless the Court otherwise orders, give to every other party not less than one month's notice of his intention to proceed. A summons on which no order has been made shall not be deemed a proceeding within this subrule.
- 6.05** An application to set aside or remit an award may be made at any time within twenty-one days after such award has been made and published to the parties.
- 6.06** The Registry shall be open for public business except on Saturdays, Sundays, public holidays and the days between Christmas and New Year's Day and at such times as may be fixed by the Registrar, with the approval of the Chief Judge, by practice direction.
- 6.07** The Registry may be opened at other times for urgent business.
- 6.08** The Chief Judge may direct that the Registry shall not be open between 1 p.m. and 2 p.m.
- 6.09** (1) There shall be a Christmas vacation in every year commencing on the 25th of December (or the 23rd or 24th day of December if the 25th day of December is a Saturday or Sunday) and ending on the Sunday before the second Monday in January of the following year.
- (2) One or more of the Judges shall be selected before the commencement of the vacation for the hearing, during the vacation, of all such applications as may require to be immediately or promptly heard. Any other Judge may sit in vacation for the transaction of judicial business in addition to, or in substitution for, the vacation Judge.

#### **Notice Before Action**

- 6A.01** (1) Rule 6A applies to *inter partes* actions commenced on and after 3 September 2000 and to the exclusion of Rule 101.01(1)(b) in relation to those actions.
- (2) Rule 6A does not apply to actions:
- (a) if the claims made do not include any liquidated or unliquidated monetary sum other than costs;
  - (b) if urgent relief is sought;
  - (c) if the Court so directs; or
  - (d) in the Land and Valuation Division.
- 6A.02** (1) At least 90 days before commencing an action the plaintiff is to post or send to the defendants at their last known address a notice of the proposed claim with sufficient detail so that the defendants have a reasonable opportunity to make an offer to settle the claim before it is commenced.

- (2) Where the claim is for any unliquidated amount the notice is to state the sum which the plaintiff will accept in satisfaction of such unliquidated claim or why, with brief reasons, such sum cannot be stated.
- 6A.03** Where the plaintiff believes that an insurer is likely to indemnify any proposed defendant against the claim the notice under Rule 6A.02 is also to be sent to that insurer.
- 6A.04** Where the claim is supported by expert evidence the plaintiff is also to send to the defendants and the insurers copies of any relevant reports from any expert which are relied upon with the notice under Rule 6A.02 unless such reports have already been supplied.
- 6A.05** The Court may deprive a plaintiff who does not comply with Rule 6A of the whole or part of the costs of the action.
- 6A.06** (1) Within 60 days of receipt of any notice under Rule 6A.02 the defendants or their insurers are to post or send to its sender a response to it and copies of any relevant reports from any expert on which they intend to rely unless such reports have already been supplied.
- (2) The response under (1) is to include whether liability for the claim is denied, and, if so, briefly state the grounds of such denial.
- 6A.07** In any order for the costs of the action the Court is to have regard to any failure of a defendant or insurer to make any, or a reasonable, response under Rule 6A.06 and it may as a result of it order costs as between solicitor and client to the plaintiff for the whole or part of the action.
- 6A.08** Where a proposed party to an action or an insurer has any relevant report of an expert which has not been supplied under Rules 6A.04 or 6A.06 such reports must be sent to the other parties by plaintiffs on the commencement of the action and by defendants on the filing of their notices of address for service.
- 6A.09** The summons or other originating process is to include an endorsement stating that a claim has been notified in accordance with Rule 6A, or that no such claim has been notified as the plaintiff believes that there are good grounds to relieve the plaintiff of the consequences of failing to make such a notification, or for such other reason as may be briefly stated in the endorsement.

### **Commencement Of Actions**

- 7.01** Every action under these Rules shall be commenced by summons.
- 7.02** A summons under these Rules shall be deemed to be, and be treated as, a writ, motion, petition, originating summons or any other form of originating process which is referred to in any Statute or statutory instrument.
- 7.03** Where it is not intended to serve a summons on any person such summons shall be in Form 2 and shall be supported by an affidavit setting out the facts relied upon for the relief sought.
- 7.04** (1) Where it is necessary to serve a Summons, it shall be in Form 3 and shall be supported by a Statement of Claim in Form 4, pleading the plaintiff's cause of action in accordance with the requirements of Rules 9 and 46A, provided that, where in the circumstances of the case it is more convenient to do so, a Statement of Claim need not be filed and the Summons may be supported by an affidavit or affidavits filed in lieu thereof that sufficiently set out the facts relied upon for the relief sought.

- (2) Notwithstanding the provisions of sub-rule (1), a Summons seeking an Order for Possession, pursuant to Part XVII of the Real Property Act shall be in Form 5 and be supported by an Affidavit in Form 5A.
- (3) An urgent application for an injunction may be supported by affidavit without the prior filing of a Statement of Claim.

**7.05** If a summons is issued pursuant to Rule 7.03, but the Court subsequently directs that it should be served on some other party, the Court may direct that a summons in accordance with Rule 7.04 be substituted for that summons, and that the proceedings shall continue thereafter as if they had been instituted pursuant to Rule 7.04.

**7.06** If a summons under Rule 7.04 is supported by an affidavit the Court may direct either of its own motion or on application of any other party that the summons shall continue thereafter on pleadings and make directions relating thereto.

**7.07** If a summons is supported by an affidavit under Rule 7.04, and no directions for pleadings have been given under Rule 7.06 each other party to the proceedings shall file an affidavit in answer dealing with the matters raised in the affidavit filed on behalf of the plaintiff and setting out any facts on which that party wishes to rely in opposition to the claim within 14 days of the filing of its notice of address for service.

**7.08** Where a defendant files an affidavit pursuant to Rule 7.04 above deposing to any matter not dealt with in the affidavit already filed by the plaintiff the plaintiff shall file a further affidavit in answer to such matter within 14 days of the service of the affidavit of the defendant.

- 7.09**
- (1) Unless a statute or Rule otherwise provides, an *inter partes* summons shall require the defendant to file an address for service and shall warn the defendant that, if that party does not file such a notice within the prescribed time, the plaintiff may proceed in the action without further notice.
  - (2) Where any statute expressly contemplates or requires that an appearance be entered by a defendant or other party to an action a document in conformity with Form 6 may be filed and shall thereupon stand as an appearance by such defendant or other party.

**Note:** italics indicate suspension of a Rule (partially or in full) from 12 June 2003.

**7.10** *The proper officer shall:*

- (a) *ensure that all documents which are required to be filed in or issued from the Court are entered in the relevant electronic or other record of the Court maintained in respect of proceedings, in which each action shall be distinguished by a unique numeric designator;*
- (b) *cause one or more hard copies of any document which is required to be served personally, to be prepared, authenticated by computer-generated, or other, imprinted seal or official designation thereon, and issued to the party filing the document; and*
- (c) *ensure that a true copy of such document is retained in the record of the Court, in either electronic or hard copy form.*

- 7.11**
- (1) Any action may be commenced by filing all such documents as are required to be filed in the Principal Registry.
  - (2) If:-
    - (a) the place where a cause of action arose is nearer to a District Registry than to the Principal Registry;

- (b) the place where the defendant or one of the defendants resides or carries on business at the time when the action is commenced is nearer to a District Registry than to the Principal Registry; or
  - (c) in an action arising out of a contract made between the parties, the place where the plaintiff resided or carried on business at the time when the contract was made was nearer to a District Registry than to the Principal Registry;
- the action may be commenced by filing all such documents as are required to be filed in that District Registry.

### **Time For Notice of Address for Service**

- 8.** The time limits stipulated in an *inter partes* summons for filing a notice of address for service shall be as follows:
- (a) Where the place for service is within any State of the Commonwealth, or in the Australian Capital Territory or the Northern Territory – 21 days; and
  - (b) Where service is to be in any other place - 60 days.

### **Summonses**

**9.01** The summons may, except in any action to which Rule 7.03 applies or in which, pursuant to these rules, a statement of claim is not required, have endorsed on it, or annexed to it, the statement of claim of the plaintiff.

- 9.04**
- (1) If any party sues, or is being sued, in a representative capacity, such capacity shall be endorsed on the summons.
  - (2) The summons shall have endorsed on it:
    - (a) the name and address of the plaintiff
    - (b) where the plaintiff sues by a solicitor, the name, address and telephone number of the solicitor
    - (c) where a solicitor is acting as agent for a principal solicitor, the name, address and telephone number of that principal solicitor
    - (d) an address for service of all documents.

### **Issue Of Summonses**

- 10.01**
- (1) The summons shall be prepared and signed by the plaintiff or his solicitor and shall be tendered to the proper officer who shall seal and number the summons, and thereupon the summons shall be deemed to be issued.
  - (2) At the same time as the plaintiff presents a summons to be issued he shall file and serve a case information sheet in such form as may be prescribed by Practice Direction.
  - (3) Either party is to be at liberty to amend or supplement the case information sheet by lodging and serving a further sheet where a need to do so arises.
- 10.02**
- (1) Where there is more than one defendant in an action the plaintiff may at the time of the issue of the summons or thereafter issue one or more concurrent summonses.
  - (2) A concurrent summons:
    - (a) shall be marked “concurrent summons”;
    - (b) shall bear the same heading and the same date as the original summons;
    - (c) in its body need only refer to the name and address of the particular defendant upon which it is intended to be served;

- (d) may carry endorsements under the *Service Execution of Process Act 1901* which are not shown on the original summons;
  - (e) may state the appropriate number of days for the filing of a notice of address for service by the defendant upon which it is intended to be served in lieu of the number of days shown in the original summons;
  - (f) shall otherwise be in the same form as the original summons.
- (3) Any variation to the form of a concurrent summons permitted by subrule (2) above may be carried out without exercising any right of amendment under Rule 53.
  - (4) The service or production of a concurrent summons on or to a defendant named in the body of that concurrent summons shall be of the same effect as the service or production of the original summons on or to that defendant.

**10.03** (1) A summons shall be in force for a period of 3 months from its date of issue, but it may be renewed for a further period by order of the Court made pursuant to the following provisions of this Rule.

(2) Without limiting the provisions of subrules (3), (4) and (5), if any defendant in an action is to be served outside the State, the plaintiff may apply within 1 month of the date of the issue of the summons for its renewal. If satisfied that the period that would otherwise be allowed for service may well be inadequate, the Court may extend such period by such time not exceeding 3 months as it shall think fit.

(3) Without limiting the provisions of subrules (2), (4) and (6), if any defendant named in a summons shall not be served therewith the plaintiff may, within 4 months of the issue of the summons, apply to the Court for renewal of the summons. The Court, if satisfied that reasonable efforts have been made to serve such defendant or for other good cause, may renew the summons for such period not exceeding 3 months as it shall think fit.

(4) Without limiting the provisions of subrules (2), (3) and (6), if any defendant named in a renewed summons shall not be served therewith the plaintiff may, within 4 months of the renewal of the summons, apply to the Court for further renewal of the summons. The provisions of subrule (3) shall, *mutatis mutandis*, apply to the determination of such application.

(5) Notwithstanding the provisions of subrules (2), (3) and (4), the Court in the exercise of its discretion may renew a summons for such period not exceeding 3 months as it thinks fit at any time prior to the action being dismissed for want of prosecution pursuant to Rule 10.06(5) if the circumstances are such that the commencement of fresh proceedings in respect of the same cause of action would require an extension of time pursuant to Section 48 of the *Limitation of Actions Act 1936*.

(6) Upon an order being made under subrules (2), (3), (4) or (5) and before the summons is served the summons shall be endorsed by the plaintiff with a notation to the following effect:

‘Renewed until.....day of .....20.....by order of the Court made on.....day of ..... 20....’

(7) If in any action commenced under the former Local Court Rules on or before the 31st December 1990:-

- (a) the summons shall not have been served upon a defendant by that date; and
- (b) under the provisions of the former Local Court Rules that were in force at the time when the summons was issued, service on that defendant could lawfully have been made on that date;

the date of the issue of the summons shall, for the purposes of the previous provisions of this Rule, be deemed to have been the 1st January 1991.

**10.03A** (1) This rule applies to all actions commenced on or after the gazettal of Supreme Court Rule 1987 Amendment No 92 to the exclusion of Rule 10.03.

- (2) A summons shall be in force for a period of six months from its date of issue, or if it is to be served out of the state, for such longer period as may be fixed by the Court.
- (3) The Court may, from time to time, extend the period for serving a summons for a period of six months.
- (4) The Court's discretion to extend the time for serving a summons may be exercised
  - (a) even though the time for service by or under this rule has expired; and
  - (b) even though the time for commencing an action has expired.
- (5) Upon an order being made under subrule (2) and before the summons is served the summons shall be endorsed by the plaintiff with a notation to the following effect:  
 'Renewed until ..... 20..... by order of the Court made on ..... day of ..... 20.....'

**10.04** Where a summons of which the production is necessary has been lost, the Court, upon being satisfied of the loss and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original summons.

**10.05** Rules 10.02, 10.03 (1) to (4) inclusive and 10.04 shall also apply to writs issued prior to 1st January 1987.

- 10.06** (1) In any action in which within 4 months of the date of the summons or of any renewal thereof:-
- (a) an application shall not have been taken out for an order pursuant to Rule 10.03 extending the time for service of the summons by the renewal thereof;
  - (b) a notice of address for service shall not have been filed by any defendant; or
  - (c) the plaintiff being entitled to do so shall not have applied for judgment in default of the filing of a notice of address for service;
- the Registrar shall enter the action in a list to be known as the List of Inactive Cases.
- (2) Where an application which is referred to in subrule (1)(a) above is refused the Registrar shall enter the action in the List of Inactive Cases.
  - (3) One month before entering any action in the List of Inactive Cases the Registrar shall give notice to the plaintiff of his intention so to do if after 4 months from the issue of the summons the action falls within Rule 10.06(1).
  - (4) The Registrar shall remove from the List of Inactive Cases any action in respect of which:-
    - (a) a notice of address for service is filed by a defendant;
    - (b) a judgment in default of filing a notice of address for service is obtained; or,
    - (c) the Court in the exercise of its discretion orders such removal;
 within 2 months of the entry of the action in the List of Inactive Cases.
  - (5) Upon an action remaining in the List of Inactive Cases for a period of 2 months after the date upon which it was entered in that List, it shall at 4.00 p.m. upon the last day of that period thereupon stand dismissed for want of prosecution, but such dismissal shall not operate as a bar to the commencement by the plaintiff of fresh proceedings in respect of the same cause of action.
  - (6) Where an action has been dismissed by the operation of clause (5) hereof the Court may reinstate the action in special or exceptional circumstances.

- 10.06A** (1) This Rule applies to all actions commenced on or after the gazettal of Supreme Court Rules 1987 Amendment No 92 to the exclusion of Rule 10.06.
- (2) In any action in which within seven months of the date of the summons or of any renewal thereof:
    - (a) an application shall not have been taken out for an order pursuant to Rule 10.03A extending the time for service of the summons by the renewal thereof;

- (b) a notice of address for service shall not have been filed by any defendant; or
  - (c) the plaintiff being entitled to do so shall not have applied for judgment in default of the filing of a notice of address for service;
- the Registrar shall enter the action in a list to be known as the List of Inactive Cases.
- (3) Where an application which is referred to in subrule (2)(a) above is refused the Registrar shall enter the action in the List of Inactive Cases.
  - (4) One month before entering any action in the List of Inactive Cases the Registrar shall give notice to the plaintiff of intention so to do if after seven months from the issue of the summons the action falls within Rule 10.06A(2).
  - (5) The Registrar shall remove from the list of Inactive Cases any action in respect of which:
    - (a) a notice of address for service is filed by a defendant;
    - (b) a judgment in default of filing a notice of address for service is obtained; or
    - (c) the Court in the exercise of its discretion orders such removal;within two months of the entry of the action in the List of Inactive Cases.
  - (6) Upon an action remaining in the List of Inactive Cases for a period of two months after the date upon which it was entered in that List, it shall be at 4 pm upon the last day of that period thereupon stand dismissed for want of prosecution, but such dismissal shall not operate as a bar to the commencement by the plaintiff of fresh proceedings in respect of the same cause of action.
  - (7) Where an action has been dismissed by the operation of clause (6) hereof the Court may reinstate the action in special circumstances.

#### **Authority Of Solicitors And Addresses For Service**

**11.01** Every solicitor whose name appears endorsed on a summons shall be deemed to have authority to issue it, or accept service of proceedings in relation to it, unless the contrary is proved by either party upon application to the Court.

**11.02** (1) A party who changes its:

- (a) address for service;
- (b) solicitor;
- (c) number for facsimile transmission;
- (d) DX number; or
- (e) e-mail address;

shall forthwith file a notice of change in the Registry and serve a copy of such a notice upon each other party.

(2) A notice of change shall be in Form 7.

**11.03** Where:

- (a) any document is served by post to an address for service is returned unclaimed; or
- (b) on an attempted service at an address for service the party or his representative cannot be found, and there is nothing at the address to suggest that there is any connection with the party who has given the address for service; or
- (c) the relevant internet service provider, notifies a party attempting service by e-mail that an e-mail properly addressed to an e-mail address of another party as set out in a Form 1 or notice of address for service filed by that last mentioned party, that, for any reason, the e-mail cannot be delivered,

any other party shall apply to the Court either to strike out the address for service or for directions as to how service should be effected on the party who has given such address for service.

- 11.04** Where a party who has sued or defended by a solicitor intends and is entitled to act in person, he may file and serve a notice in Form 7 for that purpose stating that henceforth he is acting in person and giving an address for service of notices and proceedings.
- 11.05**
- (1) Where a notice of change has not been filed under Rule 11.04, any other party may apply to the Court for an order declaring that the solicitor acting for a party entitled to give notice under Rule 11.04 has ceased to act for that party.
  - (2)
    - (a) Any application under this Rule must be served on all other parties to the action and upon the party to whose solicitor the application relates;
    - (b) the application shall be supported by an affidavit stating the grounds of the application;
    - (c) where an order is made under this Rule it shall be drawn up and filed and served upon every other party except a party who has not filed a notice of address for service;
    - (d) the party procuring the order shall file in the Registry a certificate signed by him or his solicitor that the order has been duly served as required by subrule (c) hereof.
  - (3) An order made under this Rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.
- 11.06**
- (1) Where a solicitor who has acted for a party in an action has in fact ceased to act, and the party has not given notice under either Rule 11.02 or 11.04, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor for the party in the action.
  - (2) Any application under this rule shall be made by an application in the action and be served on the solicitor's former client and every party to the action.
  - (3) The application shall be supported by an affidavit stating the grounds of the application which shall be served with the application on the solicitor's former client. Unless otherwise ordered the affidavit shall not be served on any other party to the action and may be filed in a sealed envelope or handed to the Judge or Master hearing the application.
  - (4) The Court shall consider the application and may in its discretion make a declaration that the solicitor has ceased to be the solicitor for the party in the action.
  - (5) If an order is made on the application, the solicitor shall continue to be considered as the solicitor for the party until the solicitor has:
    - (a) caused the order to be settled and entered and also to serve a copy of it on the former client and every other party except a party who has not filed an address for service; and
    - (b) filed in the Registry a certificate signed by the solicitor that the requirements of subrule (a) have been complied with.

### **Service of Summons**

- 12.01** The summons shall be deemed to have been duly served where:
- (a) the defendant is served personally;
  - (b) the defendant's solicitor endorses a statement on the summons that he accepts service of it;
  - (c) the plaintiff proves that the summons although not personally served has actually been received by the defendant; or
  - (d) the defendant files a notice of address for service after service of the summons by whatever means.



- 12.02** Unless the Court otherwise orders personal service shall be required:
- (a) for the service of the summons in any proceeding and also where any party or person is served with their first document indicating their involvement in, or involvement in a new capacity, in the proceeding to which the document relates.
  - (b) where it is intended to enforce obedience to a judgment or order by process of attachment.
  - (c) in any case where personal service is required by statute or by these Rules or by an order of the Court.
- 12.03** Any document required to be served personally shall be deemed to have been personally served where:
- (a) the document is served personally by leaving a copy of the document with the person to be served, or, if he does not accept the copy or renders it impossible or impracticable to hand the copy to him, by placing the copy as near as is practicable to him and informing him of the nature of the document;
  - (b) the solicitor of the party served endorses a statement on the document that he accepts service of it;
  - (c) the party required to serve the document proves that although the document was not personally served it has actually been received by the party served;
  - (d) an answering document is filed or served after service;
  - (e) service was in accordance with an agreement made between the parties as to:
    - (i) place of service
    - (ii) mode of service, and
    - (iii) the person upon whom service may be effected.
- 12.04** Subject to the provisions of any statute, where a summons is endorsed with a claim for possession of land the Court may, if satisfied upon an *ex parte* application that no person appears to be in actual possession of the land, and that service cannot otherwise be effected on any defendant, authorise service on that defendant or on all defendants, as the case may require, by fixing a copy of the summons to some conspicuous part of the land and may direct that service by affixing as aforesaid shall be deemed good service on that defendant or those defendants.
- 12.05** (1) Service of any document not being a document which by virtue of these Rules, or any order of the Court, is required to be served personally may be effected:
- (a) by leaving a copy of the document within the prescribed hours (if any) at the proper address of the person to be served, with any adult person who normally resides, works or is present at such place; or
  - (b) by sending a copy of the document by prepaid post, addressed to the person to be served at his proper address; or
  - (c) where the solicitor for a party is a member of or is entitled to the use of the facilities provided by a Document Exchange, entitling such solicitor to the exclusive use of a box or receptacle for the deposit and collection of documents or at a box referred to in the address for service given by such solicitor, by delivering a copy of the document into that box or receptacle;
  - (d) by personal service;
  - (e) where the parties to the proceedings have before or after the commencement of the proceedings, agreed on
    - (i) a place of service
    - (ii) a mode of service, and
    - (iii) a person upon whom service may be affected;
  - (f) in such manner as the Court may direct.

- (g) by facsimile transmission to a number given in the address for service for that purpose, but only where the address for service is that of a solicitor and contains a number for facsimile transmission.
  - (h) where the solicitor for a party has specified an e-mail address in a notice of address for service, or other document filed in the action, by transmitting a copy of the document by means of an authorised electronic communication to such solicitor at the nominated e-mail address.
- (2) The “proper address” referred to in subrule (1) shall be:
- (a) the address for service as endorsed on the summons, notice of address for service, pleading or given in a notice of change of address served pursuant to Rule 11.02;
  - (b) where the person to be served is not a party, or being a party has no address for service on record:
    - (i) in any case the business address of the solicitor, who is acting for him in the proceeding in which service of the document in question is to be effected;
    - (ii) in the case of service on an individual, his usual or last known address;
    - (iii) in the case of any of the parties mentioned in Rule 15 the address of the person or place specified in that Rule.
- (3) Where a document is not required to be served personally and the person to be served is in default of filing a notice of address for service or has no address for service the document need not be served on that person unless the Court otherwise orders or a rule otherwise provides.
- (4) Notices from any officer of the Court may be served by post, through a document exchange by authorised electronic communication via EDX or in such other manner as the Court may direct.
- (5) Where any document received by authorised electronic communication under subrule (1)(g) is not sufficiently clear and legible the party serving it shall forthwith upon request serve another copy of it by means other than by authorised electronic communication.

**12.06** Service shall be deemed to have been effected:

- (a) where service by post, in the normal course of post;
- (b) where service is made by delivery into document exchange facilities pursuant to Rule 12.05(1)(c), on the next day on which the Registry is open after delivery;
- (c) where service is made via EDX pursuant to Rule 12.05(1)(h) on the day of transmission.
- (d) where the document is served under (b) or (c) hereof after 5.00p.m. on Monday to Friday or after 12.00 noon on Saturday on the next day that the Registry is open.

**Proof Of Service**

**13.** Personal service of a summons or other document on another party shall be proved by the person so serving such document swearing and filing an affidavit containing the following facts:

- (a) the time, date and place of service;
- (b) the person upon whom service was effected and the capacity in which he was served; and
- (c) sufficient facts to prove the identity of the person served with the party named in the document.

## Substituted Service

- 14.01** Where reasonable efforts have been made but have failed to effect service of a summons or other document, the party wishing to serve it may apply to the Court by application supported by affidavit for an order for substituted service.
- 14.02** An order may be made for substituted service if the justice of the case so requires notwithstanding that the applicant for the order cannot show that the mode of substituted service directed by the order will probably bring the document, notice or order of which substituted service is ordered to the notice of the party against whom the order is made.
- 14.03** If it appears that a party not served is insured against liability in respect of the claim sought to be made against that party, substituted service may be ordered to be made upon the insurer where reasonable efforts to serve or locate the party personally have failed.
- 14.04** Where an insurer which receives a summons pursuant to an order made under Rule 14.03 does not intend to conduct the defence of the claim or to indemnify the party not personally served against it, the insurer may apply to the Court to set aside the order for substituted service.

## Service Upon Particular Parties

- 15.01** Where a party is to be served with a summons or other document, and that party is:
- (a) a person under disability;
  - (b) an aged or infirm person in relation to whom a protection order has been made under the *Aged and Infirm Persons Property Act 1940* where the relief sought may affect property which is the subject of the protection order;
  - (c) a body corporate or a society;
  - (d) a firm
- then personal service shall be deemed to have been duly effected when such documents are served:
- (i) upon such of the father, mother or guardian of the person under disability who then has legal custody of that person under disability, or if he has none, any other person with whom the person under disability normally resides; or
  - (ii) if the person is of unsound mind upon the administrator appointed pursuant to the *Mental Health Act 1935* provided that he has the power to defend the proceedings or, if he has none, upon Public Trustee or upon the person with whom the person of unsound mind normally resides or under whose care he is; or
  - (iii) in the case of a protected person under an order made under the *Aged and Infirm Persons Property Act 1940* upon the manager of such person's property provided that he has the power to defend the proceedings; or
  - (iv) in the case of a person under the protection of the Guardianship Board, upon that Board; or
  - (v) in the case of a body corporate or a society, in the manner provided by any Act making provision for service of documents or, in the absence of statutory provision, upon a responsible officer of the body corporate or a society; or
  - (vi) in the case of persons sued as partners in the name of their firm, either upon any one or more of the partners, or at the principal place within the jurisdiction of the business of the partnership upon any person appearing to have the control or management of the partnership business, provided that where the partnership has been dissolved to the knowledge of the plaintiff before the commencement of the action, the summons or other document shall be served upon every person within the jurisdiction sought to be made liable.

- 15.02** (1) Where a contract has been entered into within the jurisdiction by or through an agent who is either an individual residing or carrying on business within the jurisdiction, or a body corporate having a registered office or a place of business within the jurisdiction, by leave of the Court given before the determination of the agent's authority or of his business relations with the principal, a summons or other document in a proceeding relating to or arising out of the contract may be served on the agent.
- (2) For the purposes of the last preceding paragraph the authority of the agent shall be deemed to include authority to receive service of process.
- (3) A copy of the order giving leave and of the summons or other document shall be sent forthwith by post to the principal at his address out of the jurisdiction if such address is known to the plaintiff.
- 15.03** Nothing in this Rule affects any provision in any Statute facilitating the service of a document. This Rule is to be read as cumulative upon such provision.

### **Service Out Of The Jurisdiction**

- 18.02** A summons may be served out of Australia without leave of the Court whenever the subject matter of the claim is or relates to:
- (a) real or personal property situate within the jurisdiction; or
  - (b) relief against or in respect to any person domiciled or ordinarily resident within the jurisdiction, or the estate of such a person;
  - (c) the construction or interpretation of any document or instrument relating to real or personal property situate within the jurisdiction; or
  - (d) the rectification, setting aside or enforcement of any act, deed, will, contract, obligation or liability affecting real or personal property situate within the jurisdiction; or
  - (e) a contract:
    - (i) made within the jurisdiction
    - (ii) made by or through an agent residing within the jurisdiction on behalf of a principal trading or residing outside the jurisdiction
    - (iii) under which the parties expressly agree to submit to the jurisdiction of the Courts of this State; or
    - (iv) by its terms or by implication to be governed by the laws of this State; or
    - (v) a breach of which was committed within the jurisdiction wherever the contract was made, even though a breach out of the jurisdiction rendered impossible the performance of the part of the contract which ought to have been performed within the jurisdiction.
  - (f) a tort committed wholly or partly within the jurisdiction; or
  - (fa) where the proceedings, wholly or partly, are founded on, or are for the recovery of damages in respect of damage suffered in the State caused by a tortious act or omission wherever occurring; or
  - (g) the administration of the personal estate of any deceased person, who at the time of his death was domiciled within jurisdiction, or the execution as to property within the jurisdiction of the trusts of a written instrument, being trusts which ought to be executed, and of which the person to be served with the summons is a trustee, and any consequential relief or remedy; or
  - (h) a claim for an injunction ordering the defendant to do or refrain from doing anything within the jurisdiction whether or not any claim for damages is also made for doing or failing to do that thing; or
  - (i) an action properly brought against a person duly served within the jurisdiction to which a person out of the jurisdiction is a necessary or proper party; or

- (j) an action for the grant of probate of the will or other testamentary instrument or of a document complying with Section 12(2) of the *Wills Act 1936* purporting to embody the testamentary intention of or letters of administration of the estate of a deceased person with or without the will annexed in all cases where such a grant might lawfully be made by the Court in its testamentary causes jurisdiction or for the revocation of such a grant or for an order pronouncing for or against the validity of an alleged will;
- (k) or where the parties agree, or have agreed, that the Court will have jurisdiction to entertain any action arising out of the transaction the subject matter of the action which apart from such agreement the Court could entertain if the defendant were served within the State; or
- (l) where by any Statute of the Commonwealth or of the State, it is declared that the Courts of South Australia have jurisdiction in respect of any person or subject matter; or
- (m) an action by a mortgagee or mortgagor in relation to a mortgage of personal property situate within the jurisdiction which seeks relief of the nature or kind following, that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under subparagraphs (d) and (e) of this Rule) any personal judgment or order for payment of any moneys due under the mortgage. In this subparagraph the expression "Personal property situate within the jurisdiction" means personal property which, on the death of an owner thereof intestate, would form the subject-matter for the grant of letters of administration to his estate by the Court; the expression 'mortgage' means a mortgage charge or lien of any description; the expression 'mortgagee' means a party for the time being entitled to or interested in a mortgage; and the expression 'mortgagor' means a party for the time being entitled to or interested in property subject to a mortgage;
- (n) a claim for a declaration in relation to any matter contained in any one or more of the preceding thirteen subparagraphs.

- 18.04** (1) Service outside the Commonwealth of Australia and its dependent Territories shall be effected by service of:
- (a) notice of the summons or originating process and not the summons or originating process itself. The notice shall be in Form 11.
  - (b) copies of all documents in respect to any further step in the proceedings with an intimation that process in the form of the copy has been issued.

- 18.05** Service out of Australia shall be:
- (a) in accordance with Rule 12 of these Rules as long as such service is not contrary to the law of the country in which such service is effected; or alternatively
  - (b) if the person to be served is not an Australian citizen, or a company incorporated in Australia, in accordance with the law of the country in which service is to be effected; or
  - (c) by such other mode as the Court may authorise upon application made to it for that purpose.

- 18.06** Proof of service out of Australia shall be:
- (a) in accordance with Rule 13; or
  - (b) by an official certificate from an embassy, high commission, consular or government authority or a foreign court setting out the mode and date of service.

- 18.07** (1) An originating process which does not come within Rule 18.02, or other process of the Court, may be served out of the State with the leave of the Court.
- (2) Rule 18.04 shall apply to any originating process served pursuant to subrule (1) above.

- (3) Rules 18.05 and 18.06 shall apply to any service effected pursuant to leave granted under subrule (1) above.
- (4) Nothing herein contained shall in any way prejudice or affect any practice or power of the Court under which, when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without affecting to exercise jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing, or otherwise intervening.

#### **Service Under Convention**

- 19.** Where a summons, application or other document is to be served in any foreign country with which a Convention in that behalf has been or shall be made and extended to the Commonwealth of Australia or the State of South Australia the following procedure shall, subject to any special conditions contained in the Convention, be adopted:
- (a) The party requesting such service shall file:
    - (i) a request in the form set out in Form 12 stating whether service is to be effected through an embassy, a high commission, a consul or a foreign judicial authority;
    - (ii) the original and required number of copies of the document and a certified translation thereof in the language of the country in which service is to be effected.
  - (b) The document to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be forwarded by the Registrar to the Attorney-General for South Australia for transmission through the proper diplomatic channel to the foreign country in which the document is to be served.
  - (c) An official certificate from the foreign judicial authority or the embassy, high commission or consul, establishing the date of service of the document shall be deemed sufficient proof of such service and shall be filed in the Registry.

#### **Service Under A Letter of Request**

- 20.** Where notice of a summons or other document is to be served in any foreign country with which a Convention in that behalf does not subsist, the following procedure shall be adopted:
- (a) The notice may be served:
    - (i) through the government of that country
    - (ii) through the embassy, high commission or consulate of Australia, or a protecting power for Australia in that country, except where such service is contrary to the law of that country.
  - (b) The party requesting such service shall proceed according to Rule 19 sub-rules (a), (b) and (c).

#### **[Defendant's Notice of Address for Service]**

##### **Filing and service of a notice of address for service**

- 21.01** A party upon whom a summons has been served shall, within the time stipulated in the summons, file a notice of address for service and serve copies thereof on the plaintiff and all other parties who have already filed a notice of address for service, of which the party served has notice.

##### **Filing and service of a notice of address for service**

- 21.02** Where two or more defendants to a proceeding file a notice of address for service at the same time either personally or by the same solicitor, it shall only be necessary to file and serve one set of documents.

### **Content of notice of address for service**

- 21.03** (1) A notice of address for service must specifically acknowledge service of the relevant summons on the party filing the notice and otherwise conform with Form 6.
- (2) Where a solicitor files such a notice as agent for a principal solicitor, whether within South Australia or elsewhere, the name, address, telephone number, facsimile number and e-mail address of that principal shall be specified.
- (3) Where a person named in a summons as the defendant becomes aware of the issue of that summons, such person may cause a notice of address to be filed in the action prior to receipt of service of the summons. In such event the summons shall be deemed to have been duly served on the person immediately prior to the filing of the notice.
- 21.04** A defendant may not file a notice of address for service after final judgment has been obtained except by leave of the Court.
- 21.05** If the Court is satisfied on application by the plaintiff that an address specified in a notice of address for service is not genuine the Court may set aside the notice of address for service.
- 21.06** The filing of a notice of address for service shall not constitute a submission to the jurisdiction of the Court.
- 21.07** Except with the leave of the Court no person other than a plaintiff shall be heard on any summons, other than a summons for possession under Part XVII of the *Real Property Act 1886* or Rule 65.07, or on any application, unless he has first filed a notice of address for service.
- 21.08** (1) Where it is in the interests of justice to do so the Court may give leave to a defendant to be represented in an action by more than one solicitor upon such terms as shall be just, and may at any time revoke or vary such leave or its terms.
- (2) The part to be played in the action by each solicitor representing a defendant pursuant to leave granted under subrule (1) shall be clearly set out in the order granting such leave and in the notice of address for service filed by that solicitor.
- (3) Where leave is granted under subrule (1) a separate notice of address for service under Rule 21 shall be filed by each solicitor who is representing that defendant.
- (4) Unless the Court shall order to the contrary where leave is granted under subrule (1) all Rules, orders and directions requiring or permitting the defendant to take any interlocutory step in the action shall be read as applying separately to each solicitor representing the defendant as if each such solicitor represented a separate defendant.
- (5) Where leave has been granted under subrule (1) no judgment or order shall be entered against that defendant by reason of a default of that defendant unless the default shall be common to all solicitors representing that defendant or the leave under subrule (1) shall have been first revoked.
- (6) At any trial of the action a defendant who is represented by more than one solicitor or counsel pursuant to leave granted under subrule (1) shall only be permitted to take such part in the trial as if he was represented by one solicitor or counsel unless the trial Judge thinks fit to allow that defendant's counsel to take any greater part in the trial.
- (7) (a) Unless the Court otherwise orders any additional costs of the action incurred by any other party in consequence of an order under subrule (1) shall be that party's costs in any event against the defendant obtaining the leave.
- (b) Unless the Court otherwise orders nothing done under Rule 21.08 shall make any other party to the action liable to pay to a defendant who is represented by more than one solicitor under subrule (1) any greater amount for costs than would be payable if that defendant was only represented by one solicitor.

- (8) Except with the leave of the Court no defendant shall act or appear in person while any leave granted under subrule (1) remains in force.

### **Submission To The Jurisdiction**

- 22.01** If the defendant intends to dispute, deny or discharge:
- (a) the jurisdiction of the Court in the matter or with respect to any relief or remedy sought;
  - (b) the validity of the service of the summons;
  - (c) that the summons discloses a cause of action known to the law;
  - (d) any order of the Court extending the validity of the summons;
  - (e) an order of the Court giving leave to serve the proceedings out of the jurisdiction;
  - (f) any order of the Court made to prevent any dealing with any property of the defendant;
  - (g) that the Court is the proper forum for the trial of the action he shall:
    - (i) where the action is proceeding on pleadings expressly raise that in his defence;
    - (ii) where the action is proceeding on affidavit state that in his affidavit in answer filed pursuant to Rule 7.07.
- 22.02** If a defendant does not so plead in his defence or state in his affidavit any of the matters referred to in Rule 22.01, he will be deemed to have submitted to the jurisdiction unless the Court gives him leave at any later time to raise a question of jurisdiction.
- 22.03** (1) If a defendant by his defence or affidavit raises any of the questions set out in Rule 22.01, he shall within fourteen days apply to the Court for the determination of such questions.
- (2) Nothing in Rule 22 shall prevent the party before the filing of his defence or affidavit from bringing on for hearing an application to deal with any of the questions set out in Rule 22.01.
- 22.04** Upon hearing an application under Rule 22.03 the Court may make such order or give such directions for its disposal as the Court thinks fit.
- 22.05** If the question of jurisdiction is decided adversely to the defendant on the hearing of the application, he will, unless he appeals from that decision, be deemed to have submitted to the jurisdiction.

### **Default Of Notice Of Address For Service**

- 23.01** Where a defendant fails to file his notice of address for service within the prescribed time and:
- (a) the relief or portion of the relief claimed is for a liquidated sum the plaintiff may enter final judgment against any such defendant in default for a sum not exceeding the liquidated sum, interest and costs; or
  - (b) the relief or portion of the relief claimed is for pecuniary damages, or for detention of goods with or without a claim for pecuniary damages, the plaintiff may enter interlocutory judgment for assessment of his claim for damages or detention. The assessment shall be made by a Master, unless the Court otherwise directs; or
  - (c) where the relief or portion of the relief claimed is for possession of land and the defendant is in immediate possession of the land or any part thereof the Court may order possession to be given immediately or at some subsequent time and with or without conditions. Where the defendant is not in immediate possession of the whole



or some part of such land the Court may require notice of the application for judgment to be served on the person so in possession; or

- (d) where the plaintiff claims any other remedy it shall be sought either by application under Rule 25 or by an application made returnable in open Court under Rule 75.19.

**23.02** Where the summons contains more than one cause of action the plaintiff may proceed under the above Rule in respect of any cause of action to which no notice of address for service has been filed.

**23.03** In actions against several defendants where one or more of such defendants have failed to file a notice of address for service, the plaintiff may proceed against those defendants under Rules 23.01 and 23.02 and the action shall proceed in the ordinary way against the other defendants who have filed a notice of address for service.

**23.04** Any judgment obtained by default may be set aside or varied by the Court by application and upon such terms as the Court thinks fit.

**23.05** When a person under disability has not filed a notice of address for service then the plaintiff may obtain a default judgment only by leave of the Court upon satisfying the Court that:

- (a) the summons was duly served;
- (b) notice of the application for judgment was duly served on the person under disability and on his next friend or guardian *ad litem* at least six clear days before the date set out in the notice for hearing the same;
- (c) the provisions of Rule 35.07 have been complied with;
- (d) such service was effected pursuant to the requirements of Rule 15.01 subparagraphs (i), (ii), (iii) or (iv); and
- (e) the prescribed time limits for any step in the proceedings have elapsed.

#### **Default Of [Filing Of Notice Of Address For Service] Out Of The Jurisdiction**

**24.01** Where the defendant has been served with a summons, or notice of the summons, out of the jurisdiction and has failed to file a notice of address for service within the prescribed time the plaintiff may apply by application to the Court for such directions as the Court may think fit.

**24.02** Upon proper affidavit evidence the Court *ex parte* may give leave to the plaintiff to enter judgment in default of notice of address for service or give such other directions as the justice of the case may require.

#### **Summary Judgment**

**25.01** Where a plaintiff wishes to obtain an order to dispose of the action, or any part thereof, summarily he may:

- (a) endorse a statement to that effect on the summons prior to its issue; and
- (b) at the time of issuing his summons file an affidavit setting out in detail the particulars of the plaintiff's claim; and
- (c) inform the defendant that unless within the time specified in the summons for filing a notice of address for service the defendant files an affidavit that he has a good defence to the action on the merits specifying the grounds of such defence the plaintiff may apply to enter judgment summarily on the claim without further notice to the defendant.

**25.02** (1) In the alternative to Rule 25.01 the plaintiff may after the time of issuing his summons take out an application for immediate relief.

- (2) The application shall be supported by an affidavit verifying the plaintiff's claim and exhibiting all relevant documents.
- (3) The application shall be returnable not less than two days after service.

**25.03** On the summons under Rule 25.01, or on the hearing of an application under Rule 25.02, the Court may make an order that judgment be entered for the plaintiff for the whole or any part of the relief claimed in the action and may order that the proceedings continue in relation to any issue or part of the action not disposed of, or may treat any application as an application for directions in the action.

- 25.04** (1) Where a defendant wishes to obtain summary judgment in an action or for any part thereof he shall:
- (a) file his defence or affidavit in answer to the plaintiff's affidavit;
  - (b) make an application for summary judgment in the action;
  - (c) file an affidavit showing why the plaintiff's claim cannot succeed or cannot succeed in this Court as the case may be on any possible view of the facts or the law.
- (2) On the hearing of the application the Court may if it is satisfied that the defendant's contentions are correct enter judgment for the defendant, stay the action or make any other order which the justice of the case may require or treat the application as an application for directions.

#### **Joinder Of Causes Of Action**

**26.01** Subject to Rule 27.05 a plaintiff may, in any proceedings, claim relief against a defendant in respect of more than one cause of action and whether the plaintiff's claims are in the same or different capacities and whether the defendant is sued in the same or different capacities.

**26.02** In any action, the Court may grant, either absolutely or on such reasonable terms and conditions as it deems just, all such remedies as any of the parties thereto may appear to be entitled to in respect of every legal or equitable claim properly brought forward by them respectively in such cause or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

#### **Joinder of Parties**

- 27.01** Two or more persons may be joined as plaintiffs or defendants in any proceedings:
- (a) where:
    - (i) if separate proceedings were brought by or against each of them, a common question of law or of fact would arise in all the proceedings; or
    - (ii) all rights to relief claimed in the proceedings, whether they are joint, several or alternative, are in respect of, or arise out of, the same transaction or series of transactions;
  - (b) where the Court gives leave to do so.
- 27.02** Unless the Court otherwise orders, a plaintiff who claims any relief to which any other person is jointly entitled shall join as parties to the proceeding all persons so entitled, and any of them who do not consent to be joined as a plaintiff shall be made a defendant.
- 27.03** Where all of the persons who should or could be parties in those proceedings are not joined as parties, any party may apply to the Court for such order as may be just to join any person who is not already a party or is not already a party in that capacity.

- 27.04** Where any joinder of parties or of causes of action or any matter raised by a counterclaim will unduly complicate, embarrass or delay a fair trial of the proceedings or is otherwise inconvenient, the Court may disjoin parties or may order separate trials or make such other order as is just.
- 27.05** The Court may upon application, or of its own motion, join any person to the proceedings as a party upon such terms and conditions as the Court may prescribe at any time including after the determination of the plaintiff's entitlement to relief, but before the grant of remedy, if:
- (a) that person claims an interest in the subject matter of the proceedings;
  - (b) that person has a claim or defence that raises a question of law or fact the decision of which might affect the proceedings;
  - (c) the Court will require that person's co-operation to implement an effective decree;
  - (d) that person has a right to joinder under an enactment or Rule;
  - (e) that person ought to be joined as a party, or his presence before the Court is necessary, to ensure all matters in dispute in the proceedings may be effectually determined and adjudicated upon;
  - (f) there exists between that person and a party to the proceedings a question or issue arising out of, relating to or connected with any relief or remedy sought in the proceedings, which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the proceedings.
- 27.06** Where an application is made pursuant to the above Rule:
- (a) it shall be accompanied by an affidavit setting out the precise grounds and terms upon which joinder is sought;
  - (b) it together with any supporting affidavits shall be served on all parties;
  - (c) on its hearing the Court may:
    - (i) determine whether joinder is appropriate at that stage of the proceedings or at all;
    - (ii) determine upon what terms and conditions any joinder shall be permitted;
    - (iii) direct that security be given for costs;
    - (iv) give all necessary directions.
  - (d) the Court may give directions to allow a person who is proposed to be joined as a party to be heard on the application, and if so such person shall be bound by any order then made for his joinder as a party.
- 27.07** Any order for joinder made pursuant to this rule may be varied or discharged at any time before judgment.

#### **Misjoinder And Non-Joinder**

- 28.01** No proceedings shall be defeated by reason of mis-joinder or non-joinder of any person as a party, and the Court may determine the issues in dispute so far as they affect the rights and interests of the parties actually before it.
- 28.02** The Court may either upon or without the application of any party order that any party who is not, or has ceased to be a proper or necessary party, cease to be a party.
- 28.03** No person shall be added as a plaintiff without his consent.
- 28.04** An application by any person to be added under Rule 27.05 must, except with the leave of the Court, be supported by an affidavit showing his interest in the matter in dispute in the

proceeding or the question or issue to be determined as between him and any party to the proceeding.

- 28.05** Every person who is added as a defendant shall be served with the amended summons or with notice in lieu thereof as the case may require, and the proceedings as against such party shall be deemed to have begun from the date of such service being effected.

### **Representation Of Unascertained Persons**

**29.01** In any proceedings concerning:

- (a) the administration of the estate of a deceased person;
- (b) property subject to a trust; or
- (c) the construction of a written instrument including a Statute regulation order in council or other statutory instrument

the Court may appoint one or more persons to represent any person (including an unborn person) (whether presently or for any future, contingent or unascertained interest) who may have a relevant interest or who may be affected by the proceedings where:

- (i) the person, class or some member of the class cannot be ascertained or cannot readily be ascertained;
- (ii) that the person, class or some member of the class though ascertained, cannot be found;
- (iii) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient to exercise the power for the purpose of saving expense.

**29.02** Where such an appointment is made, a judgment or order of the Court shall be binding on the person or class represented unless the Court otherwise orders.

**29.03** Where in such proceedings a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings but:

- (a) there is a party in the same interest who assents to the compromise;
- (b) the absent persons are represented by a person appointed under Rule 29.01 and he assents,

the Court may approve the compromise and may order that it shall be binding on the absent persons and they shall be bound accordingly except where the order has been obtained by fraud or non disclosure of material facts.

**29.04** Where an order has been made under Rule 29.03 binding absent persons an application to set aside such order may be made by the representative appointed under Rule 29.01, or, if the representative fails to make the application to set aside, by any one of the absent persons bound by the order.

### **Representation of Beneficiaries By Trustees**

**30.01** Any summons, including a summons to enforce a security, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate.

- 30.02**
- (1) Any judgment or order given or made in proceedings shall be binding on the persons represented unless the Court otherwise orders on the ground that the representative could not, or did not, in fact represent the interest of those persons.
  - (2) Rule 30.01 shall not limit the power of the Court to order any person having a beneficial interest to be made a party whether on his own application or otherwise.

- 30.03** (1) Where a deceased person was before his death interested, or where the estate of a deceased person has an interest, in a matter in question in any proceedings but there is no representative, the Court may on such notice (if any) as it thinks fit:
- (a) proceed in the absence of a person representing the estate;
  - (b) appoint a person to represent the estate for the purposes of the proceedings.
- (2) An order made in the proceedings shall unless otherwise ordered by the Court, bind the estate to the same extent as it would have been bound had a representative of the deceased person been a party to the proceedings.

### **Death Or Bankruptcy Of A Party**

- 31.01** Where a party dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.
- 31.02** Where the interest or liability of any party is assigned, transmitted or devolved upon some other person, an application may be made to the Court for an order:
- (a) that the other person be substituted as a party in the place of an existing party to the action; or
  - (b) that the other person be added as an additional party and the proceedings be carried on thereafter with him as a party.
- Nothing in this Rule affects the operation of Section 60 of the *Bankruptcy Act 1966* of the Parliament of the Commonwealth.
- 31.03** An order may be made under Rule 31.01 notwithstanding that the person ordered to be a party is already a party to the proceedings but in a different capacity.
- 31.04** An order made under this Rule must be served on all parties, including any new party.
- 31.05** Upon receipt of notice of the order any person so made a party may apply within seven days to have such order varied or discharged.
- 31.06** Where a party has died and the person entitled to proceed fails to proceed the opposite party may by application seek an order that unless the person entitled proceeds within the time specified in the order the applicant may:
- (a) if the plaintiff in the proceedings, have such judgment as is just on his claim and any counterclaim dismissed;
  - (b) if the defendant, have the plaintiff's proceedings dismissed for want of prosecution and judgment on his counterclaim.

### **Conduct Of Proceedings**

- 32.01** The Court may give the conduct of any action or proceeding to such person as it thinks fit.
- 32.02** The Court may vary any such order at any stage of the proceedings on such terms as seem just.

### **Intervention**

- 33.01** Any person:
- (a) claiming an interest in the subject matter of proceedings; or
  - (b) whose claim or defence raises a question of law or fact, in common with the subject proceedings or the decision of which might affect the proceedings; or

- (c) claiming that his participation in the proceedings will provide the Court with information relevant to the decision of the case or the choice of a remedy that will not be presented by an existing party,

may by application to the Court in the proceedings seek:

- (i) permission to intervene; and  
(ii) directions.

**33.02** Such application shall be accompanied by an affidavit setting out:

- (a) the precise grounds upon which intervention is sought;  
(b) the extent of intervention considered appropriate.

**33.03** The application together with any supporting affidavits shall be served on all parties.

**33.04** The Court on hearing the summons may:

- (a) determine whether intervention is appropriate either at that stage of the proceedings or at all;  
(b) determine the extent to which intervention will be permitted;  
(c) direct that security be given for costs;  
(d) give all necessary directions.

**33.05** Any order permitting intervention under Rule 33.04 may be varied or discharged.

**33.06** Where the applicant is a person who may be affected by the implementation of the remedial decree of the Court and:

- (a) it is not necessary that the applicant be joined as a party under Rule 27.05;  
(b) the applicant's participation will provide the Court with information relevant to the choice of remedy, that will not be presented by an existing party; or  
(c) the Court will require the applicant's co-operation to implement an effective decree  
the Court upon application may permit that person to intervene in the proceeding after the determination of the plaintiff's entitlement to relief and before the grant of a remedy upon such terms as to the Court may seem just.

### **Representative Actions**

- 34.01** (1) Where numerous persons have common questions of fact or law requiring adjudication, one or more members of that group of persons may commence an action as representative parties on behalf of all or some of the group.  
(2) Without derogating from the general words of subrule (1), in actions for the protection of property including actions by remaindermen or reversioners, and in actions in the nature of waste or a devastavit, one person may sue on behalf of himself and of all persons having the same interest.

**34.02** The representative parties must within twenty-eight days after the day upon which the defendant filed a notice of address for service, or after the date of the defendant's default in doing so, apply to the Court for:

- (a) an order authorising the action to be maintained as a representative action;  
(b) directions as to the conduct of the action.

**34.03** Authorisation shall not be refused on the ground:

- (a) that the relief claimed includes claims for damages that would require individual assessment;

- (b) that separate contracts or transactions made with or entered into between the members of the group represented and the defendant are involved.
- 34.04** An order that an action is to be maintained as a representative action shall:
- (a) define the group on whose behalf the action is brought;
  - (b) define the nature of the claim or claims made on behalf of members of the group and specify the relief claimed;
  - (c) define the questions of law or fact common to the claims of members of the group and make such other orders and give such directions as the nature of the proceedings may require.
- 34.05** An order that an action be maintained as a representative action may be varied upon the application of any party at any time before judgment in the action.
- 34.06** Questions which are common to the group shall be determined in common proceedings, and questions that require the participation of individual members of the group may be directed to be dealt with either in separate actions or by separate trials within the action.
- 34.07** Nothing in this Rule affects the bringing of derivative actions in relation to bodies corporate.
- 34.08** In addition to the rights and remedies given by the preceding subrules, where numerous persons have the same interest in any proceedings, the proceedings may be brought, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.
- 34.09** At any stage of proceedings under Rule 34.08 the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing the defendants who are sued, to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this Rule, the Court appoints a person not named as a defendant, it shall make an order adding that person as a defendant.
- 34.10** A judgment or order given in proceedings under Rule 34.08 shall be binding on all the persons as representing whom the plaintiffs sue, or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.
- 34.11** An application for leave under Rule 34.10 shall be served personally on the person or persons against whom it is sought to enforce the judgment or order.
- 34.12**
- (1) Any person served with an application under Rule 34.11 may, notwithstanding the binding nature of any order made under Rule 34.10, dispute his liability to have the judgment or order enforced against him on the ground that by reason of facts or matters particular to his case, he is entitled to be exempted from liability.
  - (2) Any question which arises as to whether a judgment or order made or sought to be made under Rule 34.10 is or ought to be enforceable against the person, or any of the persons, against whom the application is made, may be tried and determined in any manner in which an issue or question in an action may be tried or determined.

#### **Parties Under Disability**

- 35.01**
- (1) A person under disability shall commence proceedings by his next friend and shall defend proceedings by his guardian *ad litem*.
  - (2) Subject to Subrule (3) hereof a next friend shall not be liable for the costs of the proceedings as between party and party.

- (3) The Court may if it thinks it just order a next friend to pay the costs of any proceedings instituted without reasonable cause or incurred by reason of some impropriety in the conduct of the proceedings.
- (4) The Court may if it thinks it just strike out or stay any proceedings on the ground that it would be unjust to allow the proceedings to continue where the next friend is not liable for costs.
- 35.02** A next friend or guardian *ad litem* shall not have any interest in the proceedings adverse to that of the person under disability.
- 35.03** (1) No person shall be named as a next friend or a guardian *ad litem* of any person under disability in any proceedings unless the solicitor on the record for the party under disability has filed an affidavit stating that to the best of his knowledge, information and belief there is no reason why that person is not a fit and proper person to act as the next friend or the guardian *ad litem* of the person under disability as the case may be and that such person has consented so to act.
- (2) If any solicitor on the record for any person under disability considers that any next friend or guardian *ad litem* for such person under disability may not be acting in the best interests of the person under disability, or that such next friend or guardian *ad litem* is no longer a fit and proper person to act as such, he shall forthwith apply to the Court for directions.
- 35.04** Except with the leave of the Court, and on such terms as the Court upon granting leave may impose, no person under disability may act in person in any proceedings.
- 35.05** Subject to the provisions of these Rules, anything which in the ordinary conduct of any proceedings is required or authorised to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian *ad litem*.
- 35.06** Where a person is appointed, or is deemed to have been appointed, the administrator of a mentally incompetent person's estate pursuant to the provisions of the *Mental Health Act 1935* or the *Guardianship and Administration Act, 1993*, or a person is appointed to be a manager of a protected estate under the *Aged and Infirm Persons Property Act 1940*, or where the Public Trustee is authorised by any Act or Rule to act on behalf of any person under disability, that person shall, unless the Court orders or an Act otherwise provides, provided he has power so to act, be the next friend or guardian *ad litem* of the person under disability in any proceedings.
- 35.07** Where no notice of address for service has been filed on behalf of a person under disability to any originating proceedings, the person who commenced the proceedings shall before continuing the proceedings against the person under disability obtain an order from the Court appointing a guardian *ad litem* for him.
- 35.08** Where after any proceedings have been commenced a party to the proceedings becomes or is found to be a person under disability, an application shall be made to the Court for the appointment of a person as next friend or guardian *ad litem*, as the case may be, of that party.
- 35.09** When it is in the interest of a person who is under disability, the Court may remove, appoint, or substitute, a next friend or guardian *ad litem*.
- 35.10** No failure to appoint a next friend or guardian *ad litem* shall invalidate any proceedings.
- 35.11** Where in any proceedings a claim is made by or on behalf of a person under disability, no settlement, compromise, payment, or acceptance of money paid into Court, whenever entered into or made so far as it relates to that person's claim, is binding without the approval of the Court. Nothing in this Rule prevents the payment, with the consent of the next friend,



prior to the trial of an action, of the medical or hospital expenses or any other expenses necessary for the treatment or rehabilitation of the person under disability.

**35.12** Where before proceedings are commenced an agreement is reached for the settlement or compromise of a claim of a person under disability, whether alone or with others, and it is desired to obtain the Court's approval, a summons may be issued for such approval.

**35.13** Where in any proceedings:

- (a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability; or
- (b) money paid into Court is accepted by or on behalf of a plaintiff who is a person under disability

the money shall be dealt with in accordance with directions given by the Court from time to time.

**35.14** Nothing in the preceding Rules derogates from any power to take or defend proceedings given by any statute to any Board, committee or manager in relation to a person under disability.

### **Firms And Societies**

**36.01** (1) Any two or more persons claiming to be entitled, or alleged to be liable, as partners and carrying on business within the jurisdiction may sue or be sued in the name of the firm of which they were partners when the breach giving rise to the cause of action occurred, but no persons shall sue in a name which they are not entitled to use at the time of the commencement of the proceedings.

(2) Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all Rules relating to proceedings against firms shall apply.

(3) For the purposes of these Rules the proprietors of a proprietary club shall be deemed to be persons carrying on business in partnership and may sue and be sued in the name of the club which for the purposes of these Rules shall be deemed a firm.

(4) The members of any society which, at the time when a cause of action arises, carries out its objects within the state, may sue or be sued in the name of the society.

**36.02** (1) Any proceedings may be brought by or against a firm or society, notwithstanding that the other party is or was at any material time, a member of such firm or society.

(2) Where persons are liable to be sued under Rule 36.01 the summons shall be served in the manner prescribed by Rule 15.01.

(3) Where a person is served as manager he shall be served with notice in writing at the time of serving informing him of that fact. In default of service of such a notice, the person served shall be deemed to be served as a partner.

**36.03** (1) Where a firm or society is a party to a proceeding any other party may deliver a notice requiring the firm or society as the case may be to deliver forthwith a list setting out the names and addresses of all persons who were partners or members when the alleged right or liability arose.

(2) Where the details requested under paragraph (1) are not provided within a reasonable time, the Court may upon application order delivery of the details so requested or may:

- (a) where the details were requested from the plaintiff order that all proceedings in the action be stayed on such terms as the Court may direct, or

- (b) where the details were requested from the defendant order that any defence by the firm in its firm name be struck out.
- 36.04** (1) Where persons are sued as partners in the name of the firm they shall file a notice of address for service in their own names, but all subsequent proceedings shall continue in the name of the firm.
- (2) Where an originating proceeding is served under Rule 15.01 upon a person having the control or management of the business no notice of address for service shall be necessary unless he is a member of the firm sued.
- 36.05** Any person who has been served as a partner who denies that he was a partner or liable as such at any material time, may file a notice of address for service stating that he was not a partner or liable as such at any material time.
- 36.06** Where a notice of address for service is filed in accordance with Rule 36.05:
- (a) the plaintiff may apply to strike out the notice of address for service on the ground that the person who filed it was a partner or liable as such; or
- (b) the person filing the notice of address for service may apply to set aside service on him on the ground that he was not a partner or liable as such, or he may at the proper time deliver a defence denying either or both:
- (i) his liability as a partner
- (ii) the liability of the defendant firm in respect of the plaintiff's claim.
- 36.07** (1) A claim by or against an officer of a society as such may be joined in the one action with a claim by or against the society.
- (2) Claims by or against any person may be joined with claims by or against a society in cases where joinder would be permissible under Rule 27.01.
- 36.08** (1) Where a society sues or is sued as such, judgment may be entered or orders made in favour of or against a society as if it were a corporation.
- (2) Judgment for the payment of money, other than for costs, shall only be entered against a society where the plaintiff's cause of action is one in which the society would have been liable as principal if it had been at all material times a corporation.
- 36.10** Where an injunction or other mandatory order is granted against a society, the plaintiff may apply for leave to enforce the injunction or mandatory order against an officer or member of the society.
- 36.11** (1) A company may apply for leave to act in an action in person and to appear in Court or in Chambers by a managing or governing director or other person in whom by the articles of association of the company the powers of the board of directors are vested between board meetings if he is authorised by a resolution of the company so to do.
- (2) Where a company seeks to issue a summons other than through a solicitor such summons shall be filed together with an application for leave under Subrule (1), but the summons shall only be issued if the Court gives leave under Subrule (1) upon a hearing of the application.
- (3) On the hearing of an application the company must satisfy the Court:
- (a) that the person seeking to represent the company is authorised by the company to do so and has power to bind the company;
- (b) that that person has authority to make admissions and give undertakings which will bind the company;
- (c) that that person has power on behalf of the company to sign originating process or notices to defend or set aside process as the case may be;

- (d) that it is otherwise proper that the order be made.
- (4) Any signature to any process or document filed in the Registry by a person in whose favour an order is made under subparagraph (1) hereof shall be valid and shall bind the company.
- (5) Any document filed under this Rule shall state the capacity in which the party signed the document signs it and that he has the authority of the company to do so.

**36.12** Any incorporated body other than a company may act in person and be represented in Court by its president, chairman, or other proper officer, provided that the Court or Judge or Master in Chambers, as the case may be, is satisfied:

- (a) that the person seeking to represent the body in question has the authority by the constitution or rules of the body to exercise the powers of the governing committee (by whatever name called) of the body and is able to bind it;
- (b) and that it is proper in all the circumstances to allow that person to represent such a body,

and the preceding provisions of Rule 36 shall apply *mutatis mutandis* to any such body and to the signature of any document on its behalf with its authority.

**36.13** A person who is, or has been, admitted as a legal practitioner in this State or elsewhere, or who holds any legal qualifications, shall not be appointed to represent a company under this Rule.

#### **Third Party Proceedings and Contribution Notices**

- 37.01** (1) A defendant within the earlier of 14 days of filing the defence or 14 days of the last day according to the Rules for the filing of a defence may without leave issue a third party notice in Form 13 against any person who is not then a party to the action claiming:
- (a) An entitlement to contribution or indemnity;
  - (b) Relief related to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
  - (c) The determination of any question or issue relating to or connected with the original subject matter which is substantially the same as some question or issue arising between the plaintiff and the defendant and which should also be properly determined as between the defendant and the third party.
- (2) By leave of the Court a defendant who has filed a notice of address for service may issue a third party notice under Subrule (1) above at a time other than that laid down in Subrule (1), but subject to such terms and conditions as the Court may impose either at the time of granting such leave or subsequently.
- (3) At the time of issuing a third party notice the defendant is also to file either a statement of claim pleading the defendant's cause of action against the third party in accordance with Rules 9 and 46 or an affidavit setting out the facts relied upon for the relief sought in the third party notice.
- (4) If a third party notice is supported by affidavits under Subrule (3) above, the Court may direct either on its own motion, or on application by the third party, that the third party proceedings continue thereafter on pleadings and make directions relating thereto.
- (5) Unless the Court otherwise allows a third party notice is to be served within 21 days of its issue.
- (6) A defendant issuing a third party notice is forthwith to serve copies upon the plaintiff and all defendants to the action who have filed a notice of address for service.
- (7) The Rules relating to the service of summonses are to apply to the service of a third party notice as if it was a summons.

- (8) Rules 8, 21, and 22 are to apply to a third party filing a notice of address for service to a third party notice as if the third party notice was a summons for the purpose of those Rules.
- 37.02**
- (1) Upon service being duly effected a third party becomes a party to the proceedings as if it had been joined as an additional defendant in the proceedings and it is to have all of the duties, obligations and rights of such a party.
  - (2) Where the third party notice is supported by a statement of claim pleadings are to proceed under Rule 46, and discovery under Rule 58, on the third party claim as if the third party notice had been a summons.
  - (3) Where the third party notice is supported by an affidavit and if no order has been made under Rule 37.01(4), Rule 7.07 shall apply, *mutatis mutandis*, as to affidavits in answer.
  - (4) By leave of the Court a third party may file a defence to the plaintiff's statement of claim dealing with matters not pleaded by the defendant to that statement of claim and the plaintiff may file a reply to any such defence.
- 37.03** The Rules relating to the powers of the Court on proceedings instituted by summons are to apply to third party proceedings as if the third party notice was a summons, the defendant issuing the third party notice was a plaintiff and the third party was a defendant.
- 37.04** Where a third party does not file a notice of address for service or makes default in the delivery of any pleading the Court may order:
- (a) That the third party is to be deemed to admit the validity of any judgment given, or to be given, in the action, whether by consent or otherwise, against the defendant issuing the third party notice;
  - (b) That the defendant have judgment against the third party in such terms as the Court directs.
- 37.05** Unless the Court otherwise directs either at or before the trial where a third party is defending any part of the proceedings:
- (a) The third party proceedings will be tried together with the trial of the plaintiff's action;
  - (b) The third party is to be at liberty at such trial to cross-examine the witnesses of the other parties to the extent permitted by the trial Judge;
  - (c) The third party is to be at liberty to adduce evidence at that trial on the issues as between the plaintiff and the defendant and between the defendant and the third party;
  - (d) The third party issues are to be determined at such trial;
  - (e) The third party is to be bound by the result of the trial between the plaintiff and the defendant.
- 37.06** At any time the Court may give directions on matters desirable for the conduct and determination of the third party issues whether on the application for directions in the proceedings or otherwise.
- 37.07**
- (1) A defendant within 7 days of filing the defence may without leave issue a contribution notice in Form 14 against any person who is already a defendant or a third or subsequent party to the action claiming:
    - (a) An entitlement to contribution or indemnity;
    - (b) Relief related to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
    - (c) The determination of any question or issue relating to or connected with the original subject matter which is substantially the same as some question or issue

arising between the plaintiff and a defendant and which should also be properly determined as between other parties.

- (2) By leave of the Court a defendant who has filed a notice of address for service may issue a contribution notice under Subrule (1) at a time other than that laid down in Subrule (1) above, but subject to such terms and conditions as the Court may impose either at the time of granting such leave or subsequently.
- (3) Unless the Court otherwise directs a contribution notice need not be supported by either an affidavit or a statement of claim.
- (4) A defendant issuing a contribution notice is forthwith to serve a copy upon the plaintiff and upon all other defendants to the action who have filed a notice of address for service.

**37.08** At any time the Court may give directions on matters desirable for the conduct and determination of the issues raised by any contribution notices.

**37.09** Unless the Court otherwise directs the issues raised by any contribution notice are to be dealt with at the trial of the action between the plaintiff and the defendant in such manner as the Court may direct.

**37.10** Where there are third party proceedings or contribution proceedings the Court may enter such judgment for either a defendant or a third party, and on such terms as to execution or otherwise, as the nature of the case may require.

**37.11** Where a third or subsequent party could make a claim against a person who is not a party to the action under Rule 38.01 if they were a defendant to the action that party may issue a subsequent party notice and Rule 37.01 to 37.06 and 37.10 are to apply to such subsequent proceedings *mutatis mutandis* as if they were third party proceedings.

#### **Experts' Reports and Paternity Tests**

- 38.01**
- (1) Within 28 days after the time limited by the Rules for making discovery in the action each party in an action shall deliver to all other parties a full copy of every expert report in the party's possession or power relating to any matter in issue in the action.
  - (2) Where a party has complied with Subrule (1) and further expert reports then come into the possession or power of the party, that party shall immediately deliver to all other parties a full copy of such further expert reports.
  - (3) A party shall obtain all expert reports which the party wishes to obtain for the purposes of the action and comply with Subrules (1) and (2) above in respect of all such reports no later than 21 days before the date fixed by the Court or by the Rules for the first hearing of any application to refer the action for trial, provided that the party may obtain supplementary reports from experts from whom previous reports have been obtained which are confined to matters upon which a report could not reasonably have been obtained within that time.
  - (4) Where a party contends that the party's case would be unfairly prejudiced by the disclosure of a particular expert report, the party may, before or within 7 days after the party is required to deliver that report, file a copy of that report in a sealed envelope which is not to be opened except by the authority of the Court and apply *ex parte* to the Court for an order that the party be not required to deliver that report pursuant to Rule 38.01.
  - (5) Rule 38.01 does not require delivery to a party of any expert report which has previously been delivered to that party or its insurer pursuant to Rule 61, Section 127 of the *Motor Vehicles Act 1959*, Section 28 of the *Workers' Compensation Act 1971* or any other statutory provision requiring delivery of such reports.
  - (6) For the purposes of Rule 38.01 "expert report":

- (a) means a written report which contains or includes the opinion of any expert (which expression includes any of the persons described in Subrule (6)(b) hereof) on any matter in issue in the action, and includes a report in which the expert comments upon the report or reports of any other expert; and
  - (b) includes a report from any medical practitioner, dentist, psychologist, physiotherapist, chiropodist, chiropractor or any other person who has examined, treated or tested any party to the action or otherwise offered any professional opinion in connection with any injury or illness in issue in the action.
- (7) Other than with the leave of the Court, no party is to adduce expert evidence at a trial unless:
- (i) prior to preparing the expert report the expert has been provided with a copy of the current practice direction issued by the Registrar entitled “Guidelines for Expert Witnesses in Proceedings in the Supreme Court of South Australia”;
  - (ii) the expert includes an acknowledgment at the commencement of the expert report that he or she has been provided with and has read the copy practice direction referred to in (i) prior to preparing the expert report; and
  - (iii) the following matters are set out in the report or reports delivered or disclosed in accordance with this Rule, or in particulars delivered in accordance with subrule (8):
    - (a) the substance of that expert’s evidence;
    - (b) the qualifications of the expert; and
    - (c) particulars identifying the material upon which the expert bases his or her expert opinion.
- (8) When the substance of the expert's evidence or any of the other matters referred to in Subrule (7) is or are not fully set out in the report or reports delivered or disclosed under this Rule, particulars in writing (which may be furnished by letter from a party or the solicitor for that party) setting out those matters, or which when read together with any report or reports which have previously been disclosed, adequately canvass those matters, shall be delivered to all parties no later than the date upon which the report, or if more than one report, the last report, must be delivered pursuant to this Rule.

**38.01A Further Requirements for Experts’ Reports**

- (1) Rule 38.01A applies only to actions in which the pleadings have closed on or after 3 June 2000 and to such other actions as the Court directs.
- (2) Any report of an expert obtained by a party and which is to be delivered under Rule 38.01 is to:
  - (a) set out with reasonable particularity all of the qualifications of the expert which are relied upon to qualify him or her to give the report;
  - (b) set out separately each of the factual findings or assumptions upon which the opinions are based;
  - (c) set out separately from the factual findings or assumptions each of the opinions which the expert expresses; and
  - (d) comply with any Practice Direction published about the contents and form of reports from experts.
- (3) Any subsequent report of an expert need only refer to a previous report from that expert and where any part of the contents of the previous report are not to be altered they should not be repeated in the subsequent report.
- (4) Upon a request to that effect by another party a party must in relation to an expert’s report delivered under Rule 38.01:

- (a) provide to the other party a list of all documents which have been referred to, or prepared by or at the direction of, the expert in the course of preparing the report;
  - (b) provide to the other party copies of any of the documents referred to in a list supplied under (a);
  - (c) disclose to the other party details of any fee, disbursement or benefit received, or receivable, by the expert, or any one on his or her behalf, for the preparation of the report and for services provided, or to be provided, by the expert, or by any one on his or her behalf, in connection with the expert giving expert evidence for the party in the action;
  - (d) provide a list of all conversations in which the expert has taken part with any party, any legal representative of a party or any other expert consulted in relation to the matter relevant to the opinions expressed in the report stating when and with whom each such conversation occurred and the topics discussed;
  - (e) provide copies of all notes made by or on behalf of the party, or by or on behalf of the expert, concerning any of the conversations referred to in a list provided under (d).
- (5) Unless the trial Judge otherwise allows expert evidence-in-chief at the trial is to be given only by tendering reports from the expert which comply with the Rules and the expert swearing that the reports are correct.

**38.02** Where a party fails to comply with any of the requirements of Rule 38.01 in respect of a report of an expert:

- (1)
  - (a) The Court at any time may adjourn any hearing or trial at the cost of the party in default or his solicitor;
  - (b) The Court at any time may direct that evidence from that expert not be adduced by that party at the trial of the action;
  - (c) The trial Judge may award costs to the other parties or reduce costs otherwise to be awarded to the party in default;
  - (d) The trial Judge may take that failure, if it be by a plaintiff, into account in assessing the award of damages to the plaintiff.
- (2) In action under subrules (1)(c) or (d) above the trial Judge may take into account:
  - (a) the effect that the failure to comply has had on the proper conduct of the case by any other party;
  - and
  - (b) what effect the failure to comply may have had on the possibility of settling the action before trial.
- (3) Notwithstanding Rule 67.01(6), the Court at any time may dispense with compliance with Rule 38.01 in whole or in part and upon such terms as it sees fit.

**38.03** The obligations of a party to make disclosure of or to deliver reports under Rule 38.01 are not in substitution for or in derogation from, or to be construed as being in conflict with, any statutory obligation of a party to supply reports or to submit to medical examinations.

**38.05** (1) Where the paternity of any person is in issue in any proceedings the Court may direct any party to the proceedings, or any child who is the subject of the proceedings, to submit to a blood test at such time and place and on such other conditions, as the Court shall think fit.

- (2) Where a person who is directed to submit to such a blood test is capable of consenting to that test, but fails to comply with the direction, he shall not be liable to any penalty in respect of that failure, but the Court may draw such inferences from his failure to comply as appear proper in the circumstances.

- (3) Where a person who is directed to submit to a blood test is not capable of consenting to that test, and any parent or guardian of that person who could consent to that test on his behalf fails to do so, neither the person, the parent nor guardian shall be liable to any penalty in respect of that failure, but the Court may draw such inferences against the parent or guardian as appear proper in the circumstances.

### **Payment Into Court**

- 39.01** Any party may at any time pay money into Court in satisfaction of a cause of action. Such payment may be increased, but shall not be otherwise amended or withdrawn without the leave of the Court or the consent of the parties.
- 39.02** No payment into Court under this Rule shall amount to an admission of liability except to the extent that liability is expressly admitted in the notice of payment in.
- 39.03** Money may be paid into Court by one or more of several defendants sued jointly or in the alternative.
- 39.04** A party paying money into Court shall:
- (a) file a notice in Form 15;
  - (b) forthwith deliver a copy of the notice to all other parties;
  - (c) where there is more than one cause of action specify which causes of action the payment relates to;
  - (d) if allotting specific sums to specific causes of action, state the amount allocated for each cause of action;
  - (e) where a set-off, counterclaim or counterclaims have been taken into account in computing the amount paid in, state that fact and the amount thereof brought into computation;
  - (f) state whether the payment is made with an admission or denial of liability.
- 39.05** (1) Whether the defendant admits or denies liability, the plaintiff may within fourteen days of receipt of a notice of payment into Court accept the whole or any one or more specified sums in satisfaction of all or any of the causes of action by giving notice of acceptance to every other party. If the plaintiff does not accept the sum within the time specified and the defendant does not thereafter withdraw the payment, the plaintiff may accept the sum at any time before judgment but may be ordered to pay any costs occasioned by the late acceptance.
- (2) Upon acceptance all proceedings in respect of that or those causes of action shall be stayed as against the defendant making the payment and any other defendant sued jointly or in the alternative with him on that or those causes of action.
- (3) If a set-off, counterclaim or counterclaims have been brought into account under Rule 39.04(e), the plaintiff may by application seek an order that any set-off so brought into account is extinguished and any counterclaim so brought in is stayed.
- 39.06** (1) If the plaintiff accepts the money paid in, payment out shall be made to the plaintiff, or on his written authority, to his solicitor.
- (2) If the plaintiff does not accept the money paid in, the money shall after judgment has been given in the action, be repaid to the defendant paying it in unless the Court otherwise orders.
- 39.07** (1) Where a plaintiff wishes to accept money in satisfaction of a cause of action, the money shall not be paid out except by order of the Court where:
- (a) payment in was made by some, but not all, of the defendants sued jointly or in the alternative by him;



- (b) a defence of tender before action was raised;
  - (c) the payment was made in or towards satisfaction of a cause of action pursuant to section 10 of the Wrongs Act;
  - (d) the payment was made in satisfaction of a claim under Part II of that Act where one or more of the parties for whose benefit the action is brought is an infant;
  - (e) the plaintiff is a person under disability;
  - (f) the plaintiff accepts the money after the beginning of the trial.
- (2) A plaintiff in an action for libel or slander who takes money out of Court may by application to a Judge in Chambers seek leave to make in open Court a statement in terms approved by the Judge.
- 39.08** (1) Subject to Rule 39.07 where the plaintiff:
- (a) accepts money brought into Court by a defendant in answer to a cause of action; and
  - (b) abandons all his other causes of action (if any) against that defendant then after payment out, he may, unless the Court otherwise orders, tax his costs incurred to the time of payment into Court, and if the costs are not paid within four days after taxation, enter judgment against that defendant for the taxed costs.
- (2) In respect of any causes of action abandoned pursuant to (1)(b) above a defendant may apply to the Court for an order that the plaintiff pay his costs of such causes of action.
- 39.09** Money paid into Court shall bear interest from the date of payment in, in the same manner as any other funds held in Court by the Registrar and the party entitled to payment out, shall unless the Court otherwise directs, be entitled to the interest accrued whilst the money was in Court.
- 39.10** Where in any action for personal injuries notice is given to a defendant pursuant to:
- (a) Section 53 of the *Hospitals Act 1934*,
  - (b) Section 84 of the *Workmen's Compensation Act, 1971*,
  - (c) Section 102 of the *Compensation (Commonwealth Employees') Act, 1971*,
  - (d) Section 115 of the Social Services Act of the Commonwealth, or
  - (e) any statutory provision of a like nature,
- the defendant may, in addition to, or without any payment into Court, pay the amount claimed to the person giving notice.
- 39.11** Such payment:
- (a) shall not be deemed to be an admission of liability
  - (b) shall to the extent that the person giving notice was entitled to the money claimed, be deemed to be a payment into Court for all purposes relating to costs.
- 39.12** Notice of the payment shall within seven days be given to all other parties to the action.
- 39.13** Where a Statute directs that the purchase money of any property sold is to be paid into Court, any person claiming to be entitled to the money so paid in or to any part thereof shall make and file an affidavit:
- (a) verifying his title or claim to the whole or part of the money claimed by him;
  - (b) stating that he is not aware of any right in or claim by any other person to the whole of the money or the part thereof claimed by him; or
  - (c) if he is aware of any right in or claim by another person, giving full particulars of such right or claim so far as known to him.

## Offers To Consent To Judgment

- 40.01** (1) A defendant may, at any time up to 21 days prior to trial, lodge with the Registrar and serve upon all other parties a notice offering to consent to judgment in satisfaction or part satisfaction of the plaintiff's claim:-
- (a) for a nominated sum of money;
  - (b) for a proportion of the plaintiff's claim expressed as a percentage;
  - (c) for an order giving the plaintiff such relief as the defendant contends is sufficient to dispose of the whole action or of one or more causes of action;
  - (d) for costs on a particular scale.
- (2) Such an offer may be made by a defendant or by several defendants jointly.
- (3) This Rule shall apply *mutatis mutandis* to offers by third or subsequent parties to the party seeking relief against them.
- (4) At any time up to 21 days prior to trial and before acceptance of such offer, a defendant may in like manner increase, reduce or withdraw his offer.
- (5) Where several causes of action are joined, the offer shall specify the cause or causes of action to which the offer relates.

**Note:** italics indicate suspension of a Rule (partially or in full) from 12 June 2003.

- (6) *Any document required to be lodged with the Registrar pursuant to the foregoing subrules shall be lodged by transmitting the same to the Registrar as an attachment to an e-mail transmission directed to such e-mail address as shall be approved by the Registrar of the purpose, unless, in the opinion of the Registrar, it shall be unreasonable or impractical to do so.*

**40.02** The plaintiff may at any time after receipt of an offer to consent to judgment, and up to 7 days prior to trial, file and serve on all other parties a notice of acceptance. Where an offer has been made with respect to several causes of action, such notice shall specify the cause or causes of action to which the acceptance relates.

**40.03** Where the offer to consent is for a particular sum, unless the Court otherwise orders:-

- (a) The plaintiff may:
  - (i) sign judgment for the amount offered;
  - (ii) tax his costs against the consenting defendant incurred up to 14 days after the service of the notice on him together with the costs of filing and serving his notice of acceptance and signing judgment;
  - (iii) proceed to enforce such judgment.
- (b) The action shall proceed in respect of any other cause of action or any other defendant but the plaintiff shall not be entitled to recover a second time the money or percentage of claim accepted by him.
- (c) Where a plaintiff accepts any offer to consent to judgment later than 14 days after it was served upon him the Court may, on the application of any other party, if it is just so to do, order that the plaintiff pay to that other party his costs of action incurred after the expiration of 14 days, or such other period as the Court may fix, from the service of the offer.
- (d) The costs to be taxed under (a)(ii) above are to be on any scale stated in the offer pursuant to Rule 40.01(1)(d) but, if no scale is contained in the offer, then upon the scale which would apply under the Rules to a judgment for that amount in the Court.

**40.04** Where the offer to consent is for a proportion of the plaintiff's claim, unless the Court otherwise orders, the plaintiff shall be entitled to enter interlocutory judgment for that proportion of his debt, or of damages to be assessed.

- 40.05** Where a plaintiff has not accepted a payment into Court or an offer to consent to judgment and:
- (a) the sum recovered, or as the case may be, the proportion of the debt, the damages or the relief recovered by the plaintiff, is no greater than that offered or paid into Court; or
  - (b) the Court is of the opinion that the amount, percentage or relief offered was adequate the Court, unless it thinks proper to order otherwise shall order:
    - (i) that the plaintiff recover against the defendant his costs incurred until 14 days after the service of the offer or the notice of the payment into Court.
    - (ii) that the defendant making such offer, recover against the plaintiff his costs incurred 14 days after the service of the offer, or the notice of the payment into Court.
- 40.06** (1) A party who is served with an offer or an acceptance under this Rule which that party considers is ineffective because it is out of time under this Rule must give immediate notice of that to the party serving the offer or the acceptance.
- (2) The Court may upon an application summarily determine whether an offer or an acceptance under this Rule has been lodged or filed in accordance with the Rules and whether it is therefore effective.
- 40.07** Wherever in this Rule a time period is stipulated of a number of days prior to trial in respect of the lodgement of an offer or the filing of an acceptance:
- (a) The date of trial is to be calculated with reference to any listing, and the normal course of listing practice, as they existed at the lodgement of the offer or the filing of the acceptance;
  - (b) No change in the date of trial after the lodging of an offer or the filing of an acceptance is to extend that time period retrospectively provided that where a trial has been adjourned, not reached or postponed an offer may be lodged or an acceptance filed under this Rule with reference to a subsequent trial date.
- 40.08** The fact that money has been paid into Court, or an offer to consent to judgment has been made, shall not be pleaded or disclosed to the Court at the trial or hearing of the action until all questions as to liability and amount of debt or damages have been decided unless:
- (a) a defence of tender before action is raised;
  - (b) a plea under Section 10 of the Wrongs Act has been filed;
  - (c) the Court gives leave for the disclosure to be made where a declaratory judgment has been entered pursuant to Section 30b of the Supreme Court Act.
- 40.09** Where:
- (a) a single sum of money paid into Court or a single sum of money offered under an offer to consent to judgment is accepted in satisfaction of a cause of action arising under Part II of the Wrongs Act; or
  - (b) in an action in which a claim under Part II of the Wrongs Act is made by or on behalf of more than one person, a sum is adjudged, ordered or agreed to be paid in satisfaction of the claim, or a sum paid into Court or offered under an offer to consent to judgment is accepted in satisfaction of the cause of action under the said Act,
- the Court shall apportion such sum between those causes of action or those persons (as the case may be).
- 40.10** (1) Where in any proceedings a defendant makes a claim to recover contribution or indemnity against any person, whether a defendant to the proceedings or not, in respect of any claim for a debt or damages made by the plaintiff in the proceedings,

any party to that contribution claim may lodge and serve on any other party to the contribution claim an offer to contribute towards the claim made by the plaintiff on the terms specified in the offer.

- (2) The Court may take an offer to contribute under Subrule (1) above into account in determining whether it should order that the party on whom the offer to contribute was served should pay the whole or part of:
  - (a) the costs of the party who made the offer;
  - (b) any costs which that party is liable to pay to the plaintiff.
- (3) The other Rules in Rule 40 shall, with any necessary modification, apply to an offer to contribute under Subrule (1) as if it were an offer to consent to judgment under Rule 40.01.

#### **Offers by Plaintiff to settle**

- 41.01**
- (1) A plaintiff may at any time up to 21 days prior to trial lodge with the Registrar and serve on all other parties a notice offering to accept a stated amount, or a judgment for a stated amount where it is necessary to enter judgment, together with his costs of action, in satisfaction of the plaintiff's cause of action or where there are more causes of action than one, of one, some or all designated causes of action.
  - (2) A plaintiff may at any time up to 21 days prior to trial lodge with the Registrar and serve on all other parties a notice offering to accept a stated percentage of liability or to accept a stated sum after giving credit to the defendant for any set-off counterclaim or cross-demand claimed by the defendant against the plaintiff, and in each case stating whether the offer requires the defendant to pay the whole or some stated proportion of the plaintiff's costs of action and that the offer so made is in satisfaction in the first case of the plaintiff's claim as to liability and in the second case in satisfaction of all nominated liabilities by the plaintiff and the defendant to each other.
  - (3) A plaintiff may at any time up to 21 days prior to trial lodge with the Registrar and serve on all other parties a notice offering to limit the relief claimed in his statement of claim in order to bring about a settlement.
  - (4) At any time up to 21 days prior to trial and before the acceptance of such an offer the plaintiff may in like manner increase, reduce or withdraw his offer.

**Note: italics indicate suspension of a Rule (partially or in full) from 12 June 2003.**

- (5) *Any document required to be lodged with the Registrar pursuant to the foregoing subrules shall be lodged by transmitting the same to the Registrar as an attachment to an e-mail transmission directed to such e-mail address as shall be approved by the Registrar for the purpose unless, in the opinion of the Registrar, it shall be unreasonable or impractical to do so.*
- 41.02**
- (1) A defendant may at any time after receipt of a notice under this Rule, and up to 7 days prior to trial, file and serve on all other parties a notice of acceptance of that offer. Where such an offer has been made with respect to several causes of action such notice shall specify the cause or causes of action to which the acceptance relates.
  - (2) The Registrar may enter judgment in the proceedings in the terms of the acceptance lodged by the defendant pursuant to subrule (1).
  - (3) Any party may apply to the Court in respect of any question of costs or other ancillary relief in the proceedings which needs to be determined upon the acceptance of an offer under this Rule.
- 41.03** The giving of a notice pursuant to this Rule shall not be communicated to the trial Judge until after judgment, or judgment on liability where applicable, has been pronounced.

- 41.04** Where a defendant has not accepted a plaintiff's offer made pursuant to this Rule and the sum recovered or, as the case may be, the proportion of the debt or damages or the relief recovered by the plaintiff is equal to or greater than that contained in the plaintiff's offer, the Court, unless it thinks proper to order otherwise, shall order the defendant to pay the whole of the plaintiff's costs of action to be taxed as between solicitor and client.
- 41.05** Rules 40.06 and 40.07 are to apply *mutatis mutandis* to offers and acceptances under Rule 41.

### **Interpleader**

- 42.01** Where a person (hereinafter called the "applicant") is or is about to be sued, or could be sued, in respect of property in his possession or under his control or in respect of the proceeds from a disposition of the property and is uncertain as to whom the property or proceeds belongs, or he receives a claim in respect of the property or proceeds by or from two or more persons making adverse claims, the applicant may apply to the Court by summons or by application in existing proceedings.
- 42.02** Forthwith after the issue of the interpleader proceedings the applicant shall apply to the Court for directions as to the parties to be served and as to the procedure to be followed.
- 42.03** This Rule applies only where the applicant expressly disclaims any personal interest in, or claim to, any part of the property in dispute.
- 42.04** A judgment in interpleader shall for the purposes of appeal be deemed to be a final order.

### **Hearing Of Interpleader Summons**

- 44.01** On the hearing of a summons or an application for interpleader relief under Rules 42 or 43, the Court may make such orders and directions as it thinks fit for the hearing and determination of all the matters in dispute. In particular the Court may:
- (a) order a claimant to be made a party in the proceedings in substitution for or in addition to the applicant.
  - (b) order an issue between the claimants to be stated and tried, and may direct which claimant is to have the carriage of proceedings.
  - (c) where a claimant has been served with a summons or application for interpleader relief and has failed to file a notice of address for service, or files such a notice and fails or refuses to comply with an order in the proceedings, order the claimant, and all persons claiming under the claimant, to be for ever barred from prosecuting their claims against the applicant and all persons claiming under the applicant.
  - (d) stay any further step in the proceedings.
  - (e) where:
    - (i) the applicant is the Sheriff, or
    - (ii) all the claimants consent, or any of them so requests, or
    - (iii) the question at issue between the claimants is a question of law and the facts are not in disputesummarily determine the question at issue between the claimants and make such order as is just.
  - (f) Where there are interpleader proceedings pending in several actions relating to the same or a related subject matter, make orders binding on all the parties to the various proceedings.
  - (g) Where an application for relief is made by a Sheriff who has taken possession of any goods or chattels in execution under any process, and a claimant alleges that he is entitled under a debenture, chattel mortgage, bill of sale or otherwise, to the goods or

chattels by way of security for debt, or the goods are perishable, may order those goods or chattels or any part thereof be sold and may direct that the proceeds of the sale be applied in such manner and on such terms as may be just.

- (h) Make such order as to costs or any other matter as it sees fit.

### **Trials Without Pleadings**

**45.01** Where in any proceedings the Court is of the opinion on the hearing of the application for directions:

- (a) that the issues between the parties can be defined without pleadings or further pleadings; or  
(b) for any other reason the proceedings can properly be tried without pleadings or further pleadings

the Court may, on application by a party or of its own motion, order that the proceedings be so tried.

**45.02** Where the Court makes an order under Rule 45.01 the Court may direct:

- (a) the parties to prepare a statement of the issues or, if the parties do not agree on a statement of the issues, may settle the statement itself; or  
(b) that affidavits be filed and served in lieu of pleadings.

**45.03** Where an application is made to the Court pursuant to Rule 45.01 the proceedings shall be before the Court as on an application for directions.

**45.04** Where affidavits are filed and served in lieu of pleadings, the plaintiff shall not without the leave of the Court be entitled to rely on any cause of action not disclosed in the plaintiff's affidavit and the defendant shall not without the leave of the Court be entitled to rely on any defence or counterclaim not disclosed to the plaintiff in the defendant's affidavit.

### **Pleadings Generally**

**46.01** (1) Subject to subclause (2) hereof a defendant who has filed an appearance shall file and deliver his defence within 28 days after service on him of the statement of claim, provided that no defendant shall be required to file his defence before he is required to file his appearance.

(2) Where a summons seeking summary judgment is served on a defendant:

- (a) paragraph (1) shall not apply to that defendant, but  
(b) the Court on hearing the summons may give the defendant leave to defend within fourteen days after the hearing or within such other period as may be specified.

**46.02** A plaintiff shall file and deliver any reply within fourteen days after the date of delivery of the defence and any subsequent pleading shall be filed and delivered within fourteen days of the date of delivery of the previous pleading. A reply shall be in Form 9.

**46.03** No costs shall be allowed of any pleading subsequent to a reply unless the Court otherwise directs.

**46.04** (1) A pleading shall:

- (a) be as brief as the nature of the case permits;  
(b) contain a statement in a summary form of the material facts on which the party relies, but not the evidence by which the facts are to be proved and when necessary be divided into paragraphs, numbered consecutively, with each matter, so far as convenient, put in a separate paragraph;

- (c) state the specific relief claimed;
  - (d) be marked on the face with the date of the day on which it is filed, the reference to the number of the action, the title of the action, and the description of the pleading;
  - (e) be endorsed with the name and place of business of the solicitor and agent (if any) filing the same or the name and address of the party filing the same if he does not act by solicitor;
  - (f) subject to Rule 46.15 contain sufficient particulars of the claim, defence or other matter pleaded including:
    - (i) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleadings relies;
    - (ii) where a party pleading alleges any condition of the mind of any person, whether insanity automatism or any other disorder or disability of the mind, or any malice, fraudulent intention or other condition of the mind except knowledge, particulars of the facts on which the party relies.
    - (iii) where a party alleges as a fact that a person had knowledge or notice of some fact matter or thing, then, without prejudice to the generality of subrule (ii):
      - (a) where he alleges knowledge, particulars of the facts upon which he relies, and
      - (b) where he alleges notice, particulars of the notice.
  - (g) Each pleading including each more explicit pleading and amended pleading shall be signed by counsel or the solicitor having the primary conduct of the action as having been settled by the solicitor or named counsel prior to the filing and delivery thereof. This subparagraph does not apply to a pleading filed by a party conducting a case in person.
  - (h) In cases to which Rule 46.15 applies, it shall not be necessary for the plaintiff in his or her statement of claim:
    - (i) to set out particulars of injury other than particulars as to the primary injuries alleged to have been suffered and a brief description of the major sequelae alleged to have ensued;
    - (ii) to plead particulars of special damage.
- (2)
- (a) No technical objection shall be raised to any pleading on the ground of alleged want of form.
  - (b) It shall be sufficient in any summons, pleading or document to designate any party or other person referred to by any initial letter or other contraction of a name other than the surname where the full name of the party or person so designated is unknown to the party using it and the fact is so stated in the pleading or document.
- (3)
- (a) Where a plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct facts they shall be stated, so far as may be, separately and distinctly.
  - (b) The same rule applies where a defendant relies upon several distinct grounds of defence, set-off or counterclaim, founded on separate and distinct facts.
- (4)
- (a) At the trial, subject to subrule (b) hereof, the court:
    - (i) shall grant all such relief on any cause of action to which the parties might be entitled on the evidence whether or not the relief granted is expressly requested in the pleadings;
    - (ii) will apply the rules as to admissibility of evidence, insofar as they require a consideration of the issues raised on the pleadings, without undue technicality and with regard to the substantial merits of the case, and, while having regard to the issues raised on the pleadings, will not refuse

to admit an item of evidence solely on the ground that it relates to facts or matters not expressly pleaded;

- (b) nothing in subrule (a) hereof allows the court to grant relief or admit evidence if to do so would infringe the principles of caseflow management as set out in Rule 2 or if by reason of surprise, the course of the trial or for any other reason, it would otherwise be unfair to do so.

**46.05** (1) The effect of any document or conversation referred to in a pleading shall, if material, be briefly stated, but the precise words of the document or conversation shall not be stated except insofar as those words are themselves material.

- (2) If a contract or any relation between any persons is sought to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact and to refer generally to such letters conversations or circumstances without setting out details thereof. If the person so pleading relies in the alternative upon more contracts or relations than one to be implied from such circumstances he shall state them in the alternative.

**46.06** A party need not plead a fact if:

- (a) the fact is presumed by law to be true; or
- (b) the burden of disproving the fact lies on the other party,

except insofar as it may be necessary to meet a specific denial of that fact by the other party in his pleading.

**46.07** Averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading and any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be).

**46.08** Subject to Rule 46.09, a party may plead a matter which has arisen since the commencement of the proceeding.

**46.09** (1) A party shall not plead an allegation of fact or a new ground or claim inconsistent with his previous pleading.

- (2) Subclause (1) hereof does not affect the right of a party to make allegations in the alternative or to amend or apply for leave to amend a pleading.

**46.10** (1) Where a party proposes to rely on a cause of action or defence arising by Statute, he or she shall clearly identify in his or her pleading the particular provision in the Statute upon which he or she relies and the statement of relief claimed in the action must indicate what specific relief is sought pursuant to such Statute.

- (2) A party may raise a point of law by his or her pleading, but there is no requirement upon the opposing party to join issue with the same, and any party may advance any point of law at the trial whether or not the same has been pleaded.

**46.11** A statement of claim must in all cases in which it is proposed that the trial should be elsewhere than in Adelaide state the proposed place of trial.

**46.12** A party in his or her defence or any subsequent pleading:

- (1) Shall not plead a mere joinder of issue on any question of fact.
- (2) Shall specifically admit or deny every allegation of fact (including particulars) in the pleading to which the defence or subsequent pleading relates, and allegations which are not specifically denied shall be deemed to be admitted.
- (3) May state that the party does not know and therefore cannot admit a particular fact alleged, in which case the particular fact shall be deemed to be denied.



- (4) Shall specifically plead any fact or matter which:
- (a) might make any claim or defence of the opposing party not maintainable;
  - (ab) in an action to which section 72 of the *Development Act, 1993*, applies would but for the operation of section 72 make any person who is not a party to the action jointly and severally liable for the amount claimed.
  - (b) if not specifically pleaded might take the opposing party by surprise;
  - (c) raises issues of fact or any mixed question of fact and law not arising out of the preceding pleading.

- 46.15** (1) In any cause or matter in which the plaintiff claims damages for or in respect of personal injury, the plaintiff shall file and deliver within 21 days of the filing of the defence or of the first defence (if there shall be more than one defence filed or more than one defendant) such of the following details as may be known to the plaintiff at that stage or as are capable of being ascertained by the plaintiff with reasonable diligence:-
- (a) Full details of all damages in the nature of special damage, including an itemised list of all expenses and outgoings associated with any treatment administered with respect of such personal injury, and including as to each item the name of the person or institution to whom the expense or outgoing was paid or is payable;
  - (b) If the plaintiff claims that he has suffered or will suffer a loss of, or reduction in, earning capacity:-
    - (i) His date of birth;
    - (ii) The nature of the business, employment or occupation (if any) followed by him at the time of the injury and the nature of the business, employment or occupation followed by him during the period of 3 years prior to the date upon which such injury was sustained;
    - (iii) In respect of the period referred to in sub-clause (ii) hereof, the name and address of every person by whom he was employed and the period of each business, employment or occupation stating the commencement and termination dates;
    - (iv) The gross amount received by him from each source from which he received income during each year commencing on the first day of July and terminating on the next succeeding 30th day of June in respect of the period of 3 years ending on the 30th day of June last prior to the injury and during the period from the 1st day of July last prior to the injury to the date of the injury;
    - (v) The amounts paid by him in respect of income taxation in respect of each of the periods referred to in sub-clause (iv) hereof;
    - (vi) The periods (specifying the commencement and termination dates) since the injury during which he alleges that he has been wholly unable to perform his normal business, employment or occupation or any other business, employment or occupation referred to in sub-clause (ii) hereof, stating the reasons for such inability;
    - (vii) The periods (specifying the commencement and termination dates) since the injury during which he alleges that he has been partially unable to perform his normal business, employment or occupation or any business, employment or occupation referred to in sub-clause (ii) hereof, describing the nature and extent of such partial incapacity and the reasons therefor;
    - (viii) The periods (specifying the commencement and termination dates) since the injury during which he has been employed or otherwise engaged in any business or remunerative occupation, stating the nature of the business or occupation, the address from which it was conducted or at

which it was performed, the name of any employer, and the gross and net income after taxation received by the plaintiff from each such source during each such period;

- (ix) The actual amount of income which he alleges that he has lost to the date of the filing and delivery of the details;
  - (x) Whether as a result of the injury, he has been in receipt of any benefit from the Department of Social Security or compensation from an employer and, if so, from whom such benefit or compensation has been received and the period or periods (stating the commencement and termination dates) during which such benefit or compensation has been received and the amount or amounts thereof;
  - (xi) Whether he has made any attempt to obtain alternative employment since the injury, stating the nature of each such attempt, the time at which it was made, the name of the person or company to whom he applied for employment, the nature of any work attempted by him and the outcome of each such attempt.
- (c) Any physical, mental or other disability from which he is suffering as a result of such injury and the effect, if any, of each such disability on his normal enjoyment of life;
- (d) Whether prior to or subsequent to the injury which is the subject of the action, he had sustained or has sustained injury in any other accident or incident and if so:-
- (i) Stating the date and place of each such accident or incident;
  - (ii) Describing the nature of each such accident or incident;
  - (iii) Stating what injuries he sustained as a result of each such accident or incident;
  - (iv) Stating from what disabilities (if any) he now suffers as a result of each such accident or incident.
- (2) The defendant may subsequently request by letter that the plaintiff furnish such details revised to the date of such request. The defendant may make more than one such request, but in no case shall a further request be made within three months after sufficient details shall have been supplied pursuant to subrule (1) or in answer to a prior request.
- (3) The plaintiff within 21 days after the receipt of each such request shall file and deliver the details sought, or, as the case may be, such further details as may be reasonably necessary to extend or update the details previously furnished pursuant to this Rule.
- (4) Where a second or subsequent set of details under this Rule is to be filed it shall be sufficient for the plaintiff only to refer to the previous details filed, to set out any additional information or variations to the details previously filed and to swear that apart from any such additional information and variations the previous particulars are still correct.
- (5) All details required by this Rule to be provided shall be verified by the plaintiff on oath.
- (6) The judge at the trial shall in accordance with the rules of evidence and otherwise may in his or her discretion admit into evidence the details or any part of the details filed pursuant to this Rule.
- 46.16** (1) Particulars of a claim shall not be ordered under Rule 46.20 to be delivered before defence unless the Court shall be of opinion that they are necessary or desirable to enable the defendant to plead or ought for any other special reason to be so delivered.
- (2) Where further particulars of a pleading are furnished pursuant to Rule 46.20 or otherwise after its filing they are to be treated as part of that pleading and the other party shall be entitled without leave within 14 days of service to amend his pleading in answer to plead to the further particulars.

**46.17** Where the Court is of the opinion that any allegation of fact that is denied or not admitted ought to have been admitted, the Court shall except in special circumstances make an order with respect to any extra costs occasioned by its having been denied or not admitted.

**46.18** Where a pleading:

- (a) discloses no reasonable cause of action or defence;
- (b) does not comply with the Rules as to pleadings;
- (c) has a tendency to cause prejudice, embarrassment or delay in the proceedings;
- (d) is scandalous, frivolous, or vexatious or contains scandalous matter; or
- (e) is otherwise an abuse of the process of the Court,

the Court may at any stage of the proceedings, order that the whole or any part of the pleadings be struck out, on such terms as it thinks just or may direct that the scandalous matter be expunged.

- 46.19**
- (1) In an action for defamation where the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning he shall give particulars of the facts and matters on which he relies in support of such sense.
  - (2) In an action for defamation where a defendant alleges that in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion they are fair comment on a matter of public interest, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.
  - (3) In an action for defamation where the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published on a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must file and serve a reply giving particulars of the facts and matters from which malice is to be inferred.
  - (4) This rule shall apply in relation to a counterclaim for defamation as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

- 46.20**
- (1) Within 21 days of the receipt of a pleading any party may by notice filed and served require the opposite party to file and serve, within seven days after the service of such notice, a more explicit statement of claim, defence or other pleading. Such notice shall indicate clearly the point in which the pleading which has been served is considered defective.
    - (1A) A party may file a more explicit statement of claim, defence or other pleading in compliance with a notice under subrule (1), but not otherwise amending his pleading, within fourteen days of service of the notice without obtaining leave to do so or amending under Rule 53.01(1)(a) provided that Rule 53.05(2) shall apply in respect of the superseded pleading.
    - (1B) Unless the Court otherwise orders the party filing a more explicit pleading under subrule (1A) shall pay in any event the costs of the notice under subrule (1) and of the more explicit pleading.
    - (1C) A party may file and serve only one notice under subrule (1) in respect of a particular pleading and no further particulars of any such pleading need be furnished other than pursuant to an order of the Court.

- (2) If the party on whom such notice is served neglects or refuses to comply with the same an application may be made to the Court for an order that a fuller and more explicit pleading be filed.

- 46.21** (1) When a party:
- (a) has joined the issue upon the preceding pleading of the opposite party, without adding any further or other pleading thereto; or
  - (b) has failed to deliver a reply or any subsequent pleading within the time allowed for that purpose,
- the pleadings shall be deemed to be closed, and the material statement of fact in the pleading last delivered shall be deemed to have been denied and put in issue.
- (2) Subparagraph (1) shall not apply to a defence to a counterclaim, and, unless the plaintiff delivers a defence to a counterclaim, the statements of fact contained in the counterclaim shall, at the expiration of twenty-eight days from the delivery of the counterclaim (or of such time (if any) as is by order allowed for delivery of the defence), be deemed to be admitted, but the Court may at any subsequent time give leave to the plaintiff to deliver a defence.
- (3) Subject to subparagraphs (1) and (2) hereof the pleadings shall be closed as between any plaintiff and any defendant on the date of the expiry of the last of the times fixed by or under these Rules for serving a defence, reply or subsequent pleading.
- 46.22** (1) Where a party gives evidence he may be cross-examined as to his knowledge or belief in the truth of his pleadings and the Court may draw an inference adverse to his credit from any discrepancy between what it finds proved and what he has pleaded.
- (2) Rule 46.22 does not apply to any pleading filed prior to 6 July 1992.

#### **Pleadings and Affidavits of Loss**

- 46A.01** (1) Rule 46A is to apply to all actions proceeding on pleadings commenced on and after 3 June 2000 and to such actions commenced earlier as the Court directs.
- (2) Rule 46A applies to the exclusion of Rules 46 and 47.
- (3) A statement of claim shall be in Form 4, a defence and/or counterclaim shall be in Form 8 and a reply in Form 9.
- 46A.02** All pleadings are to:
- (a) be as brief as the nature of the case permits;
  - (b) plead only the material facts relied upon and not the evidence or arguments by which they are to be proved;
  - (c) be divided into discrete numbered paragraphs so that admissions and cross references may be made readily by referring to the paragraph numbers;
  - (d) bear the proper action heading and an endorsement of by whom and for whom they are filed;
  - (e) bear the following certificate signed by a legal practitioner except where the party has no solicitor on the record:

‘Certificate:

This pleading is put forward in accordance with the instructions of the [nature of party/parties] [name(s)] by [name of file principal], who certifies that it complies with the Rules concerning pleadings.

[Signed] .....

Print Name .....

Date .....

If filed electronically the signature, printed name and date shall be omitted.’

- 46A.03** In an action where damages for personal injuries are not claimed the Statement of Claim must plead, but plead only:
- (a) the material facts relied upon to constitute any cause of action, or grounds for an extension of time or other relief sought;
  - (b) such further material facts as are necessary to give other parties fair notice of the case which they will have to answer;
  - (c) the general nature of the legal causes of action;
  - (d) any statutory provisions relied upon; and
  - (e) the general nature of the relief sought.
- 46A.04** In an action where damages for personal injuries are claimed the Statement of Claim is to be pleaded in accordance with Rule 46A.03, and in addition:
- (a) where liability has been agreed, only the fact of that agreement is to be pleaded and not why the defendant is liable to the plaintiff;
  - (b) the plaintiff must plead, but plead only:
    - (i) the general nature of the injuries suffered;
    - (ii) the general nature of the major treated received;
    - (iii) the general nature of any resulting disabilities;
    - (iv) the general effect, if any, of the injuries and disabilities on the plaintiff's capacity to work; and
    - (v) the general effect of the injuries and disabilities on the plaintiff's activities which would give rise to damages for economic or non economic loss;
  - (c) the plaintiff is not to plead the history of the treatment, items of special damage or topics which will be covered by the Affidavit of Loss.
- 46A.05** (1) Unless the summons is endorsed under Rule 25.01 for summary judgment the defendant must file a Defence within 28 days of service of the Statement of Claim, but if it is endorsed under R25.01 within such time as the Court directs.
- (2) The Defence must plead, but plead only:
- (a) what parts, if any, of the Statement of Claim are admitted;
  - (b) the material facts relied upon to constitute any ground of defence on which the defendant bears an evidentiary or a legal onus of proof;
  - (c) such further material facts as are necessary to give other parties fair notice of the defendant's case which they will have to meet;
  - (d) any defences in law; and
  - (e) any statutory provisions to be relied upon by the defendant.
- (3) Where none of the matters in (2) are properly pleadable the defendant must within the time limited for the Defence obtain leave of the Court to defend the action without filing a Defence. Such leave will not be granted unless the defendant shows bona fide grounds to put the plaintiff to proof of the claim.
- (4) A counterclaim under Rule 48 may be added to the Defence as if it was a Statement of Claim under Rule 46A.
- 46A.06** (1) A plaintiff may file a Reply, and must file any Defence to Counterclaim, within 14 days of service of the Defence.
- (2) Any Reply or a Defence to Counterclaim must plead, but only plead:
- (a) what parts, if any, of the Defence of any Counterclaim are admitted;
  - (b) the material facts necessary to constitute any ground of reply or of defence to counterclaim;

- (c) any further material facts necessary to give the other parties fair notice of the case which they will have to meet by way of reply or of defence to counterclaim; and
  - (d) any points of law or statutes relied upon by way of reply or defence to counterclaim.
- (3) Where none of the matters in (2) are properly pleadable a plaintiff is not to file a Reply, and where there is a defence to counterclaim leave to defend it is to be obtained in accordance with Rule 46A.05(3).
- (4) Where a Defence to Counterclaim is filed the defendant may within 14 days of service of it file a Reply to it in accordance with subrule (2).
- 46A.07** Any pleading subsequent to a Reply is only to be filed in accordance with leave of the Court granted for its filing.
- 46A.08** Where an allegation of fact in a pleading is not admitted by the opposing party it is required to be proved at trial by the party alleging it.
- 46A.09** (1) No order is to be made that any further material facts are to be pleaded other than where the material facts pleaded do not disclose facts sufficient to give the other parties fair notice of the case which they will have to meet and the party seeking them would be significantly prejudiced in the conduct of its case by not having them. (The intent of Rule 46A is that parties should include all material facts in their pleadings as initially filed so that there is no unfairness to another party by any lack of particularity and if they have not done so the trial Judge may refuse to allow that party to present a case which is outside the terms of its pleading.)
- (2) No pleading is embarrassing for want of particularity unless the missing particulars would be ordered under (1).
- (3) Where an order is made under (1) the pleading is to be amended.
- (4) No costs are to be allowed to the party making any amendment under (3) in respect of it unless the Court or a taxing officer for good reason allows them.
- 46A.10** (1) At trial a party is not without leave of the Court to cross examine witnesses (other than on credit) or to adduce evidence about matters not properly raised on the pleadings where that course would be likely to prejudice or embarrass other parties in the conduct of their cases.
- (2) In determining what issues are properly raised on the pleadings the trial Judge:
- (a) will act without undue technicality and with regard to the substantial merits of the case so that no party suffers any injustice thereby; and
  - (b) in considering whether another party is likely to suffer prejudice or to be embarrassed may have regard to the contents of any Affidavit of Loss, experts' reports or discovered documents, but they are not to be treated as if they were pleadings.
- 46A.11** (1) In actions for personal injuries the plaintiff is to swear and file an affidavit known as an "Affidavit of Loss" at such time as is directed on the Status Hearing but in any event by no later than 14 days before the first Settlement Conference.
- (2) The Affidavit of Loss is to contain the information required by Rule 46.15 except for such matters as the defendant may notify to the plaintiff in writing prior to the Status Hearing are not required to be included in it.
- (3) After the Status Hearing and before the action is referred for trial the Court may direct the plaintiff to file a supplementary Affidavit of Loss updating the information contained in the previous Affidavit of Loss.
- (4) At such times as the Court may direct, but in any event before the action is referred for trial, the defendant must file a document, entitled "Answer to Affidavit of Loss",

stating what parts of the Affidavit of Loss and any supplementary Affidavit of Loss are admitted or denied.

- 46A.12** With the leave of the Court a party may incorporate into a pleading facts giving rise to a cause of action or any matter which have arisen after the institution of the proceedings where that is not unjust to any other party.
- 46A.13** Insofar as a document or conversation, or parts of them, need to be pleaded under Rule 46A only the effect of them need be pleaded and verbatim quotations are to be included only if that is necessary for proper pleading.
- 46A.14** (1) A fixed fee only is to be allowed as between party and party and as between solicitor and client for drawing any pleading unless the complexity or difficulty of the exercise is such that a taxing officer considers that some greater fee is justified.
- (2) Any counsel fee properly payable for settling a pleading is to be in addition to the fee in (1).
- (3) "page rate" means the cost allowable under the Rules at the rate applicable when the pleading was prepared for drawing 1 full page of a pleading.
- (4) The fees allowable under (1) are:
- (a) Statement of Claim - 4 times the page rate.
- (b) Defence of Defence to Counterclaim - twice the page rate.
- (c) Reply - the page rate.
- (d) Counterclaim - twice the page rate and in addition to the fee for the Defence.
- 46A.15** (1) Where a party unreasonably fails to admit in its pleading any part of an earlier pleading of another party it may be ordered to pay the costs incurred in proving that which should have been so admitted.
- (2) A legal practitioner who improperly or without reasonable cause gives any certificate under rule 46A.02(e) may be ordered to pay costs personally in accordance with Rule 101.06.
- 46A.16** Except insofar as they are inconsistent with Rule 46A, Rules 46.05(2), 46.06, 46.07, 46.09, 46.11, 46.12(4)(a) and (ab), 46.18, 46.22, 47.02, 47.03, 47.06, 47.07 and 47.08 are to apply to pleadings governed by Rule 46A.

### **Defences**

- 47.01** A defendant must plead specifically every ground of defence on which he relies, together with the facts upon which the ground of defence arises. A defence shall be in Form 8.
- 47.02** Where a defence of tender before the commencement of an action is pleaded, the defence may not be relied upon until the sum alleged to have been tendered is paid into Court and notice of payment is delivered to the parties.
- 47.03** Where a claim by a party to a sum of money, whether the amount is ascertained or not, is relied on as a defence to the whole or part of a claim made by an opposing party, it may be included in a defence and set-off against the claim, whether or not it is also added as a counterclaim.
- 47.04** No evasive denial or negative pregnant shall be pleaded in any defence.
- 47.05** A denial of a contract promise or agreement contained in any pleading shall be construed as a denial only of the making of such contract promise or agreement. If a defendant denies the legality or sufficiency in law of such contract promise or agreement he must do so specifically.

- 47.06** No plea or defence shall be pleaded in abatement.
- 47.07** Where a defendant pleads and establishes a set-off the Court may give judgment for the balance and make such order as to costs as it thinks fit.
- 47.08**
- (1) A ground of defence or counterclaim that has arisen after the issue of proceedings but before the defendant has pleaded his defence may be pleaded either alone or with other grounds of defence.
  - (2) If after a counterclaim has been delivered a ground of defence arises in relation thereto it may be pleaded in answer to the counterclaim.
  - (3) A ground of defence or counterclaim which arises after the delivery of the defence or counterclaim may be pleaded without leave as an amendment to the defence or counterclaim provided notice thereof is given to the opposite party within twenty-one days after the ground of the defence or counterclaim has arisen. The same rule applies *mutatis mutandis* to a ground of defence to a counterclaim so arising.
  - (4) Where a defendant pleads any ground of defence or counterclaim that has arisen since the commencement of the action the plaintiff may within fourteen days thereafter file a confession of such defence or counterclaim and shall thereupon be entitled to his costs of action up to the time of the pleading of the defence or counterclaim unless the Court shall otherwise order.

### **Counterclaims**

- 48.01** Where a defendant has a claim against a plaintiff whenever or however arising, which does not amount to a set-off, he may instead of bringing an action, make a counterclaim in respect of that claim.
- 48.02** The counterclaim shall be added to the defence. Where the action is proceeding on affidavits a counterclaim may be filed as a separate document, and is to be supported by an affidavit. A counterclaim shall be in Form 8.
- 48.03** A counterclaim is a separate proceeding and the Court may:
- (a) proceed with the counterclaim notwithstanding that judgment is given for the plaintiff in the action, or that the plaintiff's action is stayed, discontinued or dismissed;
  - (b) where a counterclaim is established against the claim of the plaintiff and there is a balance in favour of one of the parties, give judgment for the balance, but nothing herein shall affect the Court's discretion as to costs;
  - (c) where either the original claim or the counterclaim is not disputed, stay that proceeding until the opposing counterclaim or claim, as the case may be, is disposed of;
  - (d) where the counterclaim cannot be conveniently disposed of along with the original action, order that the counterclaim be excluded or tried separately.
- 48.04** The provisions of these Rules shall apply, with any necessary modification, to a counterclaim as if the counterclaim were a statement of claim and the defendant making it the plaintiff and to the defence to the counterclaim, as if it were a defence and the party making it a defendant.
- 48.05** Where a defendant sets up a counterclaim which raises questions between himself and the plaintiff along with any other person, the defendant may join that person as a party against whom the counterclaim is made.
- 48.06** Where the person referred to in Rule 48.05 is not a party to the original action:



- (a) his name shall be added to the title of the action as “defendant by counterclaim”;
- (b) he shall be served with the defence containing the counterclaim.
- (c) the counterclaim shall bear an indorsement that a defendant by counterclaim who is not a plaintiff in the action must file a notice of address for service in the Registry within the time limited by Rule 8, and also file a defence to the counterclaim within 28 days of service of the counterclaim upon him, provided that no defendant by counterclaim shall be required to file his defence before he is required to file his notice of address for service.
- (d) A defendant by counterclaim who is not a plaintiff shall file his notice of address for service and defence in accordance with subparagraph (c) above.
- (e) The defendant issuing the counterclaim shall also serve upon such defendant by counterclaim a copy of the application for directions and notice of the next directions hearing.

**48.07** A person served with a defence and counterclaim becomes a defendant to the counterclaim from the time of service, with the same rights and obligations in respect of his defence to the counterclaim or otherwise, as a defendant.

### **Consent to Arbitration**

**49.01** Parties to an action may, at any time prior to the conclusion of the pre-trial conference, consent to the hearing and determination of any issue or issues or all issues of fact or law arising between them in an action by a process of Court-sponsored arbitration.

**49.02** Upon the giving of such consent the following provisions shall apply:

- (a) The application for directions shall forthwith be set down for hearing at such time as shall be appointed by the Registrar for the purpose, if the consent is not arrived at in the course of a conference convened in accordance with Rule 56.
- (b) If formal pleadings shall not have been closed as to the issue or issues to be arbitrated, directions shall be given by the Court as to the manner in which such issue or issues is or are to be defined. Such directions may require the parties to file and deliver simple statements, expressed in plain English, of the issue or issues to be determined and the facts related thereto.
- (c) The Court may, in its discretion, further give all such other directions as may fairly be requisite to ensure that the issue or issues for arbitration is or are ready for disposal in the most expeditious and economic manner appropriate to the circumstances. Without prejudice to the generality of the foregoing such directions may include:
  - (i) directions limiting the nature, scope and method of discovery;
  - (ii) directions requiring parties to file and deliver one or more books of relevant proofs of evidence and documentary material relied upon and/or copies of briefs of the nature referred to in Rule 55.12(g);
  - (iii) directions as to the preparation of any requisite memorandum of agreed facts, with or without agreed supporting documentary evidence;
  - (iv) any other directions of the nature authorised by section 59j of the *Evidence Act 1929*;
  - (v) directions specifying or limiting other interlocutory processes necessary for the preparation of the issue or issues for arbitration.
- (d) With the consent of the relevant parties the Court may further order that, upon the arbitration, times be limited within which those parties respectively may present evidence in amplification of proofs or otherwise, examine or cross examine witnesses upon proofs or otherwise, or make submissions to the arbitrator.

- (e) The Court shall, upon being satisfied that the arbitration is ready to proceed, refer the same to the Registrar for hearing by a Judge at the earliest available date, as if the arbitration constituted a case in the civil list coming on for trial in the normal course.
- (f) The arbitration shall be conducted in accordance, as nearly as may be possible, with and subject to the provisions of the *Commercial Arbitration Act 1986*. The Judge embarking upon the arbitration shall not be an arbitrator for the purposes of section 33 of Act.
- (g) Rule 76 shall not apply to an arbitration conducted pursuant to this Rule.

### **The Expeditious Management of Commercial and Other Cases**

- 50.01**
- (1) In any cause or matter, any party may apply for an order that the proceedings be dealt with pursuant to this Rule.
  - (2) Unless the Court otherwise orders:
    - (a) Any such application by the plaintiff shall be filed with the summons by which the proceedings are commenced, and shall be supported by an affidavit filed at the same time, which application and affidavit shall be served with the said summons.
    - (b) Any such application by a defendant shall be filed and served within 7 days of the notice of address for service, and shall be supported by an affidavit filed and served within the same time.
  - (3) An affidavit filed pursuant to subrule (2) shall contain a short statement of the grounds upon which the applicant asserts that it is appropriate that the proceedings be dealt with pursuant to this Rule.
  - (4) The Court may on its own motion at any stage of the proceedings before trial direct that any action be dealt with pursuant to this Rule.
  - (5) The Court shall, on the application of any party or on its own motion, order that the action no longer be dealt with pursuant to this Rule, if it is satisfied:-
    - (a) that the parties are not conducting the proceedings with due expedition, or
    - (b) that for any other reason the matter is not fit to be dealt with further pursuant to this Rule.
- 50.02** In determining whether to make an order that any proceedings be dealt with pursuant to this Rule, the Court shall have regard to the following matters:-
- (a) The likely length of trial.
  - (b) The complexity of the legal and factual issues.
  - (c) The volume of material the subject of discovery.
  - (d) Whether for any reason peculiar to the parties or having regard to other cases likely to come before the Court, or because of the importance of the matter to the commercial community or to any other section of the community, or for any other reason whatsoever, the disposal of the proceedings should be expedited.
- 50.03** In proceedings to which this Rule applies, in addition to the exercise of any other power to make directions pursuant to Rule 55 or otherwise, the Court shall give all such directions as may seem desirable in the interests of justice and in order to secure a speedy and economical determination of the proceedings. Without limiting the generality of the foregoing, the Court may:
- (a) Direct that the issues be defined by such means as the Court may think fit other than by the delivery of formal pleadings.
  - (b) Direct on such terms and conditions as the Court may in its discretion impose that any party deliver to any other party or parties not later than such date before trial as shall be specified in such direction a written statement setting out the evidence intended to

be adduced from all proposed witnesses or any particular proposed witness or witnesses, which statement shall, subject to any further order or direction including any order or direction by the trial Judge;

- (i) be signed by the proposed witness  
and
  - (ii) be received at the trial as the evidence in chief of the witness giving the statement.
- (c) Dispense with or abridge the time for the taking of any interlocutory proceeding or step.
- (d) Direct the use of any litigation support system or any other computer process considered appropriate by the Court.
- 50.04** (1) Proceedings to which this Rule applies shall, without the need for an order for early trial, be given such priority in the trial list as will ensure that they are assigned the earliest available date for hearing, and may be given a specific date for hearing by the Registrar or other proper officer without any order or direction by the Court.
- (2) Nothing in this Rule is to be taken to permit an action to proceed to trial or to be the subject of a listing conference without the furnishing beforehand of a report that the proceedings are ready for trial given in accordance with Rule 75.04.
- 50.05** Any Commercial Proceeding commenced before this Rule came into operation shall continue to be dealt with under this Rule, unless the Court otherwise directs.”

#### **Default Of Pleading**

- 51.01** Subject to Rules 23, 24, 25 and 46.01 where a party has not filed a pleading within the time fixed by these Rules the following Rules shall apply:
- 51.02** Where a defendant has not filed a defence within the time prescribed by these Rules the plaintiff may:
- (a) where the plaintiff's claim against a defendant is solely for recovery of a debt or liquidated demand, enter final judgment against the defendant for a sum not exceeding that claimed together with interest if entitled thereto and costs. For the purpose of this Rule, a claim may be treated as a claim for liquidated damages notwithstanding that part of the claim is for interest accruing after the date of the summons, and the interest shall be computed from the date of the summons or such other date as the Court directs to the date of entering judgment;
  - (b) where the relief or portion of the relief claimed is for pecuniary damages, or for detention of goods with or without a claim for pecuniary damages, the plaintiff may enter interlocutory judgment for assessment of the claim for damages or detention. The assessment shall be made by a Master, unless the Court otherwise directs;
  - (c) where the plaintiff's claim against a defendant relates solely to the detention of goods, enter either:
    - (i) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs, or
    - (ii) judgment for the value of the goods to be assessed and costs.
  - (d) carry on the proceedings against any other party to the proceedings who is not in default, in which case if the claim includes a claim for damages the plaintiff's damages against all defendants shall be assessed at trial unless the Court otherwise directs.
- 51.03** (1) Where the plaintiff's claim against a defendant is solely for the possession of land, the plaintiff may apply in Chambers for judgment for possession of land against that defendant and for costs.

- (2) Where the defendant is not in immediate possession of the land or some part thereof the Court may require notice of the application to be served upon the person immediately in possession.

- 51.04** Where the plaintiff's claim against a defendant includes two or more of the claims mentioned in Rule 51.02 subparagraphs (a) to (c) thereof and no other claim, the plaintiff may enter such judgment against that defendant on any of those claims for relief as he would be entitled to enter if there were only one claim for relief by the plaintiff against that defendant.
- 51.05** Where there is a default of pleading by a defendant in an action for which provision is not otherwise made in Rule 51 the plaintiff may apply to the Court for the relief claimed, or such relief as to the Court may seem just, either pursuant to Rule 25 or as provided in Rule 75.19.
- 51.06** The Court may on such terms as it thinks just, set aside or vary any default judgment entered in pursuance of the above Rules.
- 51.07** Where a defendant admits liability in his defence for the whole or some part of the plaintiff's claim the Court may enter such judgment as may be proper upon the basis of such admission.
- 51.08** Where the default is that of a third or subsequent party the same rules shall apply as where default is made by a defendant.
- 51.09** Where judgment is obtained against one of several defendants for default of pleading such judgment shall be no bar to the plaintiff's right to proceed against any other defendant for the same relief or against any defendant for any other relief.

#### **Discontinuance And Withdrawal**

- 52.01** A plaintiff may at any time before the commencement of the trial, discontinue his claim, either wholly or in part, against a defendant. After that time a plaintiff may discontinue only with the leave of the Court, or with the written consent of all parties filed in the Court.
- 52.02** A party raising any matter in a statement of claim, defence or subsequent pleading may withdraw that matter at any time on written notice to the other parties. This Rule does not enable a party to withdraw without the leave of the Court or the consent of the other party, an admission or any other matter operating for the benefit of that other party.
- 52.03** Unless the Court otherwise orders or the parties consent, the party discontinuing or withdrawing shall pay the costs up until the date of delivery of the notice, of the party against whom the claim or defence was discontinued or withdrawn. No further order shall be required to enable the party against whom the claim or defence was discontinued to tax his costs.
- 52.04** A discontinuance or withdrawal shall be made by filing, and forthwith serving on all other parties, a notice stating the extent of the discontinuance or withdrawal.
- 52.05** The discontinuance of an action before trial shall not be a defence to any subsequent action for the same, or substantially the same, cause of action, provided that the costs of the previous action have been paid. If the costs have not been paid, the subsequent action may be stayed until payment. If an action is discontinued at trial the Court may direct that the discontinuance have the effect of a final judgment against the party discontinuing.

#### **Amendments**

- 53.01** Right to amend

- (1) A party may amend any document, other than an order, filed by such party in a proceeding once without leave of the court at any time up to 14 days after discovery of documents has been made by all parties pursuant to Rule 58A, or at any time by consent of all other parties, or, subject to Rule 67.01(6), with the leave of the Court.
- (2) An offer to consent to judgment shall not be capable of amendment once a notice of acceptance has been filed, nor shall this Rule authorise amendment of such a notice.

**Note: italics indicate suspension of a Rule (partially or in full) from 12 June 2003.**

- (3) *An affidavit or electronic statement may not be amended pursuant to Rule 53.01 but, should there be any error or omission in such a document, including an affidavit or electronic statement in answer to interrogatories, the party filing it shall:*
  - (a) *file a further affidavit or electronic statement by the same deponent or maker setting out the error or omission, the true position and how the error or omission came to be made;*
  - (b) *include at the top of the first page of the last-mentioned affidavit or electronic statement an endorsement to the following effect - "Affidavit [Electronic statement] by way of correction of affidavit [electronic statement] of same deponent [maker] filed on..... 20..."*
  - (c) *serve copies of the affidavit or electronic statement so endorsed on all interested parties.*

#### **53.02** Method of making amendments

- (1) Where a document is amended, or further amended, a fresh copy of it, with the new amendments included, shall be prepared and transmitted to the Court for separate filing, regardless of the number and length of the amendments made.
- (2) A fresh amended copy of the document is to be titled so as to indicate that it is an amended, or further amended, version and the date as at which it has last been amended. It will thereafter stand in the proceedings in lieu of the document amended.
- (3) The changes made in the document from the last version filed are to be indicated in the following manner:
  - (a) deletions are to be made by drawing a single line across any words to be deleted; and
  - (b) insertions are to be underlined or shaded.

**Note: italics indicate suspension of Rule (partially or in full) from 12 June 2003.**

- (4) *The fresh amended copy of the document is to be submitted through the electronic filing system for filing as a new document or, if not prepared by a registered user, lodged in the Registry in hard copy for filing, notwithstanding that it is in substitution for a document filed on an earlier date.*

#### **53.03** Amendment where limitation period has expired

Where an application for leave to amend is made after any relevant period of limitation has expired, the court may, nevertheless, grant leave, on such terms as it thinks fit:

- (a) to correct the name of a party, notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party, if the Court is satisfied that the mistake was genuine and not intended to mislead;
- (b) to alter the capacity in which a party brings or opposes a proceeding, if the capacity after the amendment is made is one in which, at the date of issue of the originating proceeding, a party might have brought or opposed the proceeding; or

- (c) to add or substitute a new cause of action, if the new cause of action arises out of the same, or substantially the same, facts as the original cause of action.
- 53.06** Where a party has amended a document without leave, the opposing party may within fourteen days of service of the amended document or of notice of the making of the amendment, apply to the Court, to disallow the amendment or any part thereof.
- 53.07** Where any party has amended his pleading, the opposite party may without requiring leave, plead to the amended pleading or amend his pleading already delivered within the time allowed under these Rules to plead, or within fourteen days from the amendment, whichever expires later.
- 53.08** Where the opposite party has pleaded before the amendment and does not plead again or amend within the time allowed he shall be deemed to rely upon his original pleading in answer to the amendment.
- 53.09** Whilst the provisions of Rule 53.01 will normally apply, for the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in proceedings, the Court may at any stage of the proceedings, and either of its own motion or on the application of any party to the proceedings, order any document in the proceedings, not being a judgment or order, to be amended on such terms and in such manner as the Court thinks fit.
- 53.10** (1) Mistakes in judgments or orders, or errors arising therein from any slip or omission, may be corrected by the Court at any time either on the application of a party or of its own motion.
- (2) Where a judgment or order requires amendment in any particular on which the Court did not adjudicate, it may be amended in an application.
- 53.11** (1) Unless the Court otherwise orders, and subject to (2) below, the costs of and occasioned by any amendment shall be borne by the party making the same.
- (2) Unless the Court otherwise orders, where a party makes an amendment which is solely consequent upon, and necessitated by, an earlier amendment made by another party, the costs of and occasioned by that consequential amendment shall be borne by the party making that first amendment.
- 53.12** Where in any order leave is given by the Court to amend, but no time is stated in the order within which such amendment is to be made, it shall be made within fourteen days from the making of the order.

### **Admissions**

- 54.01** (1) A party may request any other party to admit in writing the truth of any relevant fact or the authenticity or admissibility of any relevant document specified in the notice.
- (2) Such notice shall be in Form 16 and shall be filed and served.
- (3) Unless the Court otherwise orders where a party seeks in such notice an admission in relation to a document a true copy of the document shall be annexed to the notice.
- (4) Any such notice shall be filed and served not more than 28 days after the last party to the action has filed a list of documents. No such notice may thereafter be filed or served except by leave of the Court.
- (5) A party shall not file and serve more than two notices to admit without first having the leave of the Court to so do.
- 54.02** (1) Unless the Court otherwise orders, the truth of a fact or the authenticity or admissibility of a document specified in a notice to admit shall be deemed to be

admitted unless within fourteen days, or such extended time as may be agreed between the parties, the party receiving the notice files and delivers to the party giving the notice a written statement that:

- (a) specifically denies the truth of that fact or the authenticity or admissibility of that document and sets forth in detail the reasons why he cannot make the admission; or
  - (b) states that the refusal to admit the truth of that fact, or the authenticity or admissibility of that document, is made on the grounds of privilege or irrelevancy or that the request is otherwise improper, and sets forth in detail the reasons for the refusal.
- (2) Within 21 days of the receipt of a written statement under subrule (1) the Court upon application by the party giving the notice to admit may order:
- (a) that the party giving the written statement file a further and better statement within such time as is allowed by the Court;
  - (b) that the written statement, or some part of it, be struck out.
- (3) The Court may make an order pursuant to subrule (2)(b) if it is satisfied that the truth of any fact, the execution of any document or the authenticity of any document as sought in the notice to admit is not bona fide disputed by the party giving the written statement.
- (4) An order made under subrule (2)(b) striking out a written statement, or part thereof, shall take effect as though the said statement, or such part thereof, had never been filed and delivered.
- 54.03** Any admission made in pursuance of a notice to admit is deemed to be made only for the purposes of the particular proceeding and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving notice.
- 54.04** No party may amend or withdraw an admission except by leave of the Court.
- 54.05** Where an admission of the truth of a fact, or the authenticity of a document, is made by a party, either by his pleadings or otherwise, any other party may apply to the Court for such orders as he may be entitled to on the admission, without the determination of any other question between the parties, and the Court may make such order as it thinks just.
- 54.06** Where any party unreasonably denies or refuses to admit the truth of a fact, or the authenticity or admissibility of a document, the Court shall, unless good cause is shown to the contrary, order that party to pay the costs occasioned by the denial or refusal.
- 54.07** Where any party unreasonably requests admissions, he shall pay the costs occasioned thereby.
- 54.08**
- (1) An affidavit by a solicitor or his clerk of the service of the notice to admit, and of the date and time of its service, shall be prima facie evidence of those matters.
  - (2) Where any notice of admission is filed by any party the Court may act upon the admissions contained therein.
- 54.09**
- (1) A party may, not less than twenty-eight days prior to the Pre Trial Conference in an action, serve upon another party a notice in writing:
    - (a) exhibiting one or more proof or proofs of facts and/or opinions, signed by the person or persons who would need to be called to establish those facts and/or opinions, asserted to be formal or beyond reasonable contention.
    - (b) identifying the witness or witnesses who would need to be called to establish those facts and/or opinionsand

- (c) requesting the other party to consent to the tender of the proof or proofs without calling such witness or witnesses or, alternatively, upon an undertaking to call such person or persons for cross examination on his or her proof or proofs.
- (2) In the event that objection in writing is not made within twenty-one days thereafter by the party in receipt of the notice to the tender of a proof on either basis referred to in paragraph (1)(c) of this Rule, it may be tendered without further formality.
- (3) If, within twenty-one days of receipt of the notice, the party to whom the notice is addressed does not object in writing but requires the person whose proof is proposed to be tendered to attend for cross examination, the proof may be tendered without further formality, upon attendance of the person concerned for cross examination.
- (4) Where any party unreasonably takes objection to a tender on either of the aforesaid bases, the Court shall, unless good cause is shown to the contrary, order that party to pay the costs occasioned by the objection.

### **Applications For Directions**

- 55.01** (1) Except where the Court directs to the contrary upon the filing of an *inter partes* summons the plaintiff is to file in the Registry an application for directions in Form 17.
- (2) The application for directions shall seek general directions and shall set out any directions which the plaintiff at the time of the issue of the application may seek, but the Court may give directions under Rule 55.11(a) to (i) upon a claim for general directions being sought in the application without such directions being specifically set out therein, provided that the Court may always adjourn the application upon any such directions being sought if it considers that any party may be prejudiced by not having had sufficient prior notice of the particular directions which are then sought.
- 55.02** Dates of hearing
- (1) An application for directions which only seeks general directions shall be filed without specifying a hearing date in it.
  - (2) If the application for directions seeks other than general directions the party filing it shall obtain a hearing date and time from the Court in manner stipulated by Practice Direction and insert them in the application.
- 55.03** After it has been filed the plaintiff shall serve a true copy of the application for directions on each defendant as soon as practicable after that defendant has served his notice of address for service on the plaintiff.
- 55.05** *Ex parte* summons
- Unless the Court shall otherwise direct, it shall not be necessary to file an application for directions in proceedings commenced by issue of an *ex parte* summons. The party issuing the *ex parte* summons shall, as soon as practicable after such issue, file a request that the matter be heard and determined as a non-contentious application in accordance with the Practice Direction issued by the Registrar with regard to applications of the type.
- 55.06** Directions sought on other than normal return date for case flow management purposes
- (1) Any party seeking directions in an action prior to trial, other than general directions of the nature specified in Rule 55.11, shall file and serve a separate notice for directions in Form 18. The return date for such notice shall be obtained by the applicant from the Court in such manner as the Registrar shall from time to time direct.
  - (2) Any party may, if the circumstances warrant so doing, cause the application for directions to be set down for hearing on a return date obtained by the applicant from the Court in such manner as the Registrar shall from time to time direct, for general



directions of the nature specified in Rule 55.11. Not less than two clear days' notice of the hearing and the relief sought shall be given to all other parties.

- (3) The Registrar may, at any time, at discretion, set down the application for directions (or, if none has been filed, file and set down an application for directions) on notice to the parties, if of the opinion that a case flow management or other consideration requires review of the status of the action, or any issue in it, by the Court.

**55.07** On the hearing of an application for directions the Court shall give such directions as seem appropriate to deal with all interlocutory matters which should be dealt with at that stage of the action.

**55.09** No further order shall be made on an application for directions after the making of the order to proceed to trial unless special circumstances shall be shown to exist which require such order to be made in the interests of justice.

**55.10** In dealing with an application for directions at any time and in the course of any conference held pursuant to Rule 56, the Court shall give all such directions as shall seem appropriate with a view to promoting the expeditious and economical prosecution of the action and as may best define and resolve the issues between the parties.

**55.11** On any hearing of an application for directions the Court may give such directions as are then proper with respect to:

- (a) the pleadings or dispensing with pleadings;
- (b) discovery of documents;
- (c) inspection of documents;
- (d) interrogatories;
- (e) extensions, or abridgments, of time;
- (f) third party, or subsequent party, directions;
- (g) the holding of a pretrial conference;
- (i) the action proceeding to trial;
- (k) an amendment of any pleadings or documents;
- (l) the joinder of any further parties;
- (m) consolidation and deconsolidation with any other action;
- (n) a more explicit pleading under Rule 46.20;
- (o) the trial of any issue;
- (p) security;
- (q) a stay of proceedings;
- (r) the inspection, detention or preservation of any property;
- (s) the appointment of a receiver;
- (t) the mode of trial;
- (u) the time and place of the trial and any adjournment thereof including an early trial;
- (v) the giving of evidence at the trial by affidavit or document filed in the action or the making of any other order authorised by section 59j of the *Evidence Act 1929*;
- (w) the striking out of any pleading, affidavit or document filed in the action;
- (x) any other matter within the power of the Court which can be conveniently dealt with on the hearing of an application for directions.
- (y) the use of any litigation support system or any other computer process considered appropriate by the Court.

- 55.12** On any hearing of an application for directions the Court shall have the following powers in addition to any other powers conferred on it by any Statute or Rule and which it has under the inherent jurisdiction of the Court:
- (a) to call upon any party to prove by affidavit or otherwise such matters as the Court thinks proper;
  - (b) to call upon any party to produce any document provided that such document would be admissible in evidence at the trial of the action;
  - (c) to direct any party or person to attend and to be examined or cross-examined upon oath or otherwise;
  - (d) to order the preparation and delivery of a Scott or Scott-type schedule by any parties;
  - (e) to modify the general practice prescribed by the Rules of Court;
  - (f) to revoke or vary any order or direction which has been made or given upon the application for directions unless such direction or order shall have been confirmed upon appeal and the effect of the revocation or variation of the direction would be to affect the result of the appeal;
  - (g) to direct the parties on a date to be specified, being not earlier than 14 days before the date on which the action is listed for trial, to file and exchange copies of briefs for the use of the trial Judge containing a summary of the facts, issues and law which are likely to be before the Court on the trial;
  - (h) to order that a final or interlocutory judgment be entered in default of filing a notice of address for service or defence when any party is in default in doing so where such a judgment may be entered in default of filing a notice of address for service or defence under Rules 23 and 51;
  - (i) to limit the number of expert witnesses or the issues covered by their evidence;
  - (j) (1) To order the parties or any of them to file and serve a list of all documents to be proffered by the party filing and serving the list as exhibits at the trial, which list may be directed to be numbered or marked to correspond with the marking of the documents to be tendered at the trial, and which may be directed to include a reference to the number by which such documents are designated in any list of documents made on discovery,  
(2) Any such list may be ordered to be filed and served either in the form of a typewritten engrossment or in such electronic computer readable form as the Court may specify, or both.
  - (k) to direct any litigation support facility or any other computer process considered appropriate by the Court be used in the conduct of the action.
- 55.13** No affidavit shall be used upon any hearing of an application for directions except with the leave of the Court unless it shall be required by the Act or the Rule under which a particular direction is sought.
- 55.14** On any hearing of an application for directions the Court may in its discretion inform itself about any matter which is relevant to the determination of the application from anything which is said in the course of the hearing by any counsel, solicitor or party in person or from any document produced by any party without requiring formal proof of same.
- 55.15** (1) Where an application for directions is adjourned to a particular date without a time on that date then being set for the hearing each party then attending on the application whose attendance is required on the adjourned hearing shall ascertain for himself the time of the adjourned hearing, but otherwise the plaintiff shall give notice to all other parties of the date and time of any adjourned hearing in accordance with Rule 67.04(2).

- (2) Where a party other than a plaintiff sets an application for directions or a notice for further directions down for any hearing he shall give notice to all other parties of the date and the time set for the hearing.

**55.16** On the hearing of any application for directions the fiat may either be indorsed onto the application or, at the direction of the Court, entered direct into the relevant computer file record for the action in the electronic field provided for the purpose of recording outcomes of interlocutory proceedings, without regard to which party issued the application and on whose application, or for whose benefit, the direction is given.

**55.17** Any directions given by the Court on an application for directions and indorsed onto the application or entered direct into the relevant computer file record in manner referred to in Rule 55.16 shall be proof of those directions having been given provided that if any fiat has been incorporated into a sealed order that sealed order shall supersede the fiat.

**55.19** If the Court is of the opinion that an application made by any party for further directions on the hearing of an application for directions could more conveniently have been dealt with at an earlier hearing of the application the party applying for such further directions may be ordered to pay the costs of the further hearing.

### **Tender Lists**

**55A.01** The Court may, on the application of any party or of its own motion, order that this rule apply to the action.

**55A.02** Within 14 days of the making of an order pursuant to Rule 55A.01, or within such other time as may be directed by the Court, the plaintiff will file and serve on all other parties a list of the documents which the plaintiff proposes to tender as exhibits at the trial (“the plaintiff’s tender list”).

**55A.03** Within 7 days of receipt of the plaintiff’s tender list, all other parties will serve on every other party a list of such other documents (apart from any document which appears in the plaintiff’s tender list), which that other party proposes to tender at the trial.

**55A.04** Where this rule applies, the trial Judge may reject the tender at the trial of any document not included in a tender list filed by that party or by any other party.

**55A.05** Format of tender lists

The Court may direct that any list of documents to be filed and served pursuant to Rule 55A.02 or 55A.03 shall be in such electronic format and be filed and served in such manner as it shall stipulate.

### **Conferences**

**56.01** For the purposes of this Rule:

“file principal” means the solicitor having the primary responsibility or the detailed conduct of an action on behalf of a party;

“party” in the case of a party other than a natural person, or where the case for a party is being conducted on his behalf by an insurer, shall, where the context so permits, mean a representative of such party or the insurer who has authority to make decisions binding upon and generally to enter into a compromise on behalf of such party and/or insurer;

“counsel” means counsel retained to appear at trial on behalf of a party.

**56.02** Conference convened pursuant to this Rule shall be held at such times and places as the Court or the Registrar shall appoint. Notice in writing of each such conference shall be served by the Registrar on each party who shall have filed an address for service.

- 56.03**
- (1)
    - (a) The Court may of its own motion direct the Registrar to convene; or
    - (b) The Registrar may of his or her own motion convene; and
    - (c) The Registrar shall if so requested by all parties in writing convene; a conciliation conference pursuant to this Rule.
  - (2) The aim of a conciliation conference shall be, at an early stage, to conduct a detailed review of the action with the parties with particular reference to:
    - (a) The conduct of negotiations for the settlement of the action or of issues arising within the action;
    - (b) The possibility of resolving all or some of the issues arising in the action by conciliation, arbitration or other means than the trial of those issues by the Court;
    - (c) Whether any question of a technical nature should be referred to an expert in the relevant field for investigation and report pursuant to Section 34 of the Act;
    - (d) A consideration of whether any variations to the periods of time referred to in Rule 2.03 should be made in the circumstances of the particular case.
  - (3) A conciliation conference shall be presided over by a Judge, a Master or an officer of the Court nominated by the Registrar for that purpose.
  - (4) Unless the Court shall otherwise direct, a conciliation conference shall be held and concluded within 35 days of the filing of an appearance by the defendant (or by the first defendant to do so if there shall be more than one defendant).
  - (5) Conciliation conferences convened pursuant to this Rule shall be attended by the parties and by file principals who shall come fully prepared to discuss or deal with the matters referred to in this Rule.
- 56.04**
- (1) Except in any action in which a return date is inserted in a summons upon its issue and in any action to which Rule 119.16 applies, a case evaluation conference shall be held in every action.
  - (2) The aim of a case evaluation conference shall be to conduct a detailed review of the action with the parties with particular reference to:
    - (a) The conduct of negotiations for the settlement of the action or of issues arising within the action;
    - (b) The possibility of resolving all or some of the issues arising in the action by conciliation, arbitration or other means than the trial of those issues by the Court;
    - (c) The state of the pleadings and the need for any special directions as to pleadings or aspects ancillary to them, interrogatories, discovery, admissions of fact, details pursuant to Rule 46.15, the reports of experts and other relevant interlocutory matters;
    - (d) An evaluation of the need and scope for special directions:
      - (i) Pursuant to Section 59j of the *Evidence Act 1929*;
      - (ii) As to timing, mode and extent of notices to admit and any desirable dispensation in relation thereto;
      - (iii) As to the manner or extent of discovery of documents.
    - (e) Whether any question of a technical nature should be referred to an expert in the relevant field for investigation and report pursuant to Section 34 of the Act;
    - (f) A consideration of whether any variations to the periods of time referred to in Rule 2.03 should be made in the circumstances of the particular case;
    - (g) The probable length of the trial and whether the action is likely to give rise to special resource implications, including a need for computer support facilities.
  - (3) A case evaluation conference shall be presided over by a Judge or a Master unless the Court shall otherwise direct.

- (4) Unless the Court shall otherwise direct a case evaluation conference shall be held within 98 days of the filing of an appearance by the defendant (or by the first defendant to do so if there shall be more than one defendant).
- (5) Case evaluation conferences convened pursuant to this Rule shall be attended by the parties (unless their attendance shall have been excused by prior order of the Court) and by file principals who shall come fully prepared to discuss or deal with the matters referred to in this Rule and who must ensure that, so far as is reasonably possible, they have complied with the provisions of the Rules applicable to interlocutory processes.
- 56.05**
- (1) Except in any action in which a return date is inserted in a summons upon its issue and in any action to which Rule 119.16 applies, a pre-trial conference shall be held in every action.
- (2) The aim of a pre-trial conference shall be to conduct a detailed review of the action with the parties with particular reference to:
- (a) The final possibility of the conduct of negotiations for the settlement of the action or of issues arising within the action;
- (b) The final possibility of resolving all or some of the issues arising in the action by conciliation, arbitration or other means than the trial of those issues by the Court;
- (c) Any difficulty that may arise with respect to the availability of necessary witnesses at the trial;
- (d) Whether agreement may be reached between the parties with regard to such matters as the quantum of special damages, the tendering by consent of medical or other reports of expert witnesses and admissions as to facts not in contention in the interests of expediting the trial of the action;
- (e) Fixing the date for the trial of the action.
- (3) A pre-trial conference shall be presided over by a Judge, a Master or an officer of the Court nominated by the Registrar for that purpose.
- (4) Unless the Court shall otherwise direct, a pre-trial conference shall be held and concluded within 133 days of the filing of an appearance by the defendant (or by the first defendant to do so if there shall be more than one defendant).
- (5) Pre-trial conferences convened pursuant to this Rule shall be attended by file principals who shall come prepared to discuss or deal with the matters referred to in this Rule and who must ensure that, so far as is reasonably possible, they have complied with the provisions of all of the Rules applicable to the action by that time. It shall not be necessary for the parties to attend a pre-trial conference unless they have been previously directed by the Court to do so.
- (6) At the conclusion of a pre-trial conference, the Judge, Master or officer of the Court who has presided at the pre-trial conference shall:
- (a) Fix a day for the trial of the action; or
- (b) Where the amount claimed is at the time of the conference within the jurisdictional limit of the Magistrates Court and the person presiding is a Judge, at his or her discretion transfer the action to such Court.
- 56.06**
- (1) Each conference held by a Judge or Master pursuant to this Rule 56 shall, if the Judge or Master shall so direct and subject to Rule 55.09, constitute a hearing of the application for directions within the meaning and for the purposes of Rule 55. At any such hearing of the application for directions, orders may be made:
- (a) Striking out the action, a pleading or any other document of a party in default;
- (b) As to costs thrown away by reason of any default, whether as between party and party, on a full indemnity basis, as against any solicitor in default or otherwise as the case may require;

- (c) As to any necessary adjournment of the conference and/or the trial of the action, or stay of the action, until the party in default has complied with any rule or directions given, as to which that party is in default;
  - (d) Otherwise resolving any matter of difficulty which may have arisen, due regard being had to the concepts expressed in Rule 2;
  - (e) Initiating proceedings in respect of any contempt which may have been committed.
- (2) An officer of the Court presiding over a conciliation conference or a case evaluation conference may:
- (a) If satisfied that it is appropriate so to do, conduct a hearing of the application for directions in order to exercise any of the following powers of the Court with respect thereto:
    - (i) To extend the time for making any discovery of documents;
    - (ii) To extend the time for allowing inspection of any documents;
    - (iii) To extend the time for answering any interrogatories administered pursuant to the leave of the Court;
    - (iv) To extend the time for filing and delivering any details pursuant to Rule 46.15;
    - (v) To enlarge any of the prescriptions as to time contained in Rule 2.03 or to expedite the action whether pursuant to Rule 50 or otherwise;
    - (vi) To grant any non-contentious application for leave to amend any pleading upon such terms as may be thought fit.
  - (b) Appoint a time for a hearing of the application for directions by a Judge or Master.
- (3) Not less than two days before a conference held pursuant to this Rule 56, each party shall deliver to the Registrar copies of the reports of all experts which that party has been required to provide to any other party pursuant to these Rules or the provisions of Section 127 of the *Motor Vehicles Act 1959*, Section 28 of the *Workers Compensation Act 1971*, Section 109 of the *Workers Rehabilitation and Compensation Act 1986* or any other statutory provision requiring delivery of such reports, provided that nothing in this Rule shall require a party to deliver a copy of any such report to the Registrar on more than one occasion.
- (4) Where reports are delivered to the Registrar pursuant to sub-rule (3) above, the Registrar, at the conclusion of the pre-trial conference shall either return those reports to the party who provided them or make such arrangements for their future custody as will ensure that they do not come to the attention of the trial Judge other than with the consent of the parties.

**56.07** A Judge, Master or officer of the Court presiding over a conference may adjourn such conference from time to time and from place to place (but to a fixed time and place unless exceptional circumstances shall otherwise require) as he or she thinks fit. He or she may also adjourn such conference for further hearing before a different Judge, Master or officer of the Court if such course is considered desirable. It shall not be necessary for any notice of the adjournment to be given to any party who was present or represented at the conference when the time of the adjournment was fixed, but the plaintiff shall notify all other parties forthwith in writing of the adjourned date. If the plaintiff has not attended, the Judge, Master or officer of the Court may direct another party present to notify the plaintiff of the adjourned date and, unless the Court otherwise orders, the plaintiff is to pay to that party the costs of that notification. All persons in attendance, or who ought to have been in attendance, at the conference shall attend upon the adjournment thereof unless expressly excused from so doing.

- 56.08** The discussions at a conference as to settlement, compromise or agreement of all or any of the issues in dispute between the parties shall be conducted without prejudice to the legal rights of the parties and, save as may be agreed between the parties and certified by the Judge, Master or officer of the Court presiding over the conference, evidence shall not be given at the trial of the action or otherwise communicated to the trial Judge of anything said or done in an attempt at compromise at a conference or at any attempt to resolve the differences between the parties arranged at a conference until after judgment or judgment on liability, as may be appropriate, has been pronounced in the action.
- 56.09** (1) If the parties at a conference agree upon terms of settlement or compromise, the Judge, Master or officer of the Court presiding over the conference may enter up such judgment as the parties shall agree upon.
- (2) If during the conduct of a conference or an attempt at resolving all or some of the issues arising in the action by means other than a trial, the parties or some of them shall come to agreement as to any matter or thing relevant to the hearing and determination of the action or an interlocutory question arising in relation to it, the presiding officer shall forthwith sign and file a memorandum thereof. Upon such filing the memorandum shall be deemed to be an order of the Court as to the agreed matters recorded therein and be enforceable as if a formal order had been made as to the substance of the agreement. This Rule does not authorise the making of any agreement which is inconsistent with the provisions of Rule 2.
- 56.10** No Judge or Master shall by reason of having conducted a conference be disqualified from taking any other part in the proceedings unless such Judge or Master shall think it proper in the circumstances to disqualify himself or herself.
- 56.11** (1) On every occasion upon which a conference shall be adjourned, the Judge, Master or officer of the Court presiding over such conference shall place upon the Court file relating to the action a report as to the reason for such adjournment and if the person presiding shall be a Judge or Master he or she may make such order as may be thought fit as to the costs of the adjournment, but if the person presiding shall not be a Judge or Master there shall be endorsed upon such report a recommendation as to what should be the respective liabilities of the parties or their solicitors for the costs of the adjournment.
- (2) Upon any order being made in respect of the costs of any proceeding in an action, a Judge or Master may have regard to any report filed pursuant to the provisions of sub-rule (1) of this Rule.
- 56.12** Notwithstanding the provisions of Rule 56.05, the Chief Judge or a Judge delegated by the Chief Judge to perform that function, may give such directions as may be considered appropriate for the hearing of any action.
- 56.13** If the parties shall not reconcile all of their differences at a mediation arranged pursuant to Rule 56 or Rule 56A, the mediator shall fix a day for the trial of the action or refer it back to the Registrar to fix such day or to convene a further conference, as the Registrar shall consider appropriate.

#### **Status Hearings and Settlement Conferences**

- 56B.01** (1) Rule 56B applies to the exclusion of Rule 56 to all actions commenced on and after 3 June 2000 and to such actions commenced earlier as the Court directs.
- (2) Rule 56B does not apply to:
- (a) *ex parte* proceedings
  - (b) actions governed by the Corporations Law Rules 2000 (South Australia) unless the Court otherwise directs;

- (c) proceedings under the *Inheritance (Family Provision) Act 1972* where Rules 119.15 and 119.16 apply;
- (d) actions in the Land and Valuation Division;
- (e) actions for possession under Rule 65;
- (f) actions under Rule 60 for discovery before action;
- (g) actions for Judicial Review;
- (h) actions where the Rules do not require the filing of notices of address for service; and
- (i) actions where the Court so directs.

**56B.02** In Rule 56B:

- (a) “complex action” and “ordinary action” have the meanings set out in Rule 2A.02.
- (b) “alternative dispute resolution procedures” means mediations, arbitrations, conciliations or references to experts as referred to in these Rules.
- (c) “the close of pleadings” means the earliest of:
  - (i) the filing of the last Reply;
  - (ii) the time limited for the filing of the last Reply, or
  - (iii) any interlocutory judgment being obtained against all defendants.

**56B.03** A Status Hearing will be held on a date to be notified by the Registrar:

- (a) in complex actions when directed by the supervising Judge;
- (b) in ordinary actions not later than 7 weeks after the filing of the first notice of address for service by any defendant;
- (c) where so requested by a party before any date has been set under (a) or (b).

**56B.04** Unless the Court for good reason otherwise permits the only directions to be given at a Status Hearing are to deal with:

- (a) the holding of a Settlement Conference at the earliest practicable date;
- (b) dispensing with the holding of any settlement conference;
- (c) deferring consideration of whether any Settlement Conference is to be held until later in the action;
- (d) the filing of such further pleadings and making disclosure to other parties of documents and reports before the Settlement Conference as are desirable for its proper conduct;
- (e) when any Affidavit of Loss is to be filed;
- (f) identifying the particular persons who are to attend in person at the Settlement Conference or those who are to be available at the time of it by telephone or by video link;
- (g) whether any time limits for taking further steps in the action are to run against parties before the close of the Settlement Conference;
- (h) the use in conjunction with the Settlement Conference of any alternative dispute resolution procedures.
- (i) in complex actions whether the supervising Judge is to conduct the Settlement Conference;
- (j) what documents are to be filed for the use of the Judicial Officer who is to conduct the settlement conference, which party is to file them and when they are to be filed.

**56B.05** It is the intention of Rule 56B that:

- (a) other than for good reason a Settlement Conference is to be held within 4 weeks of the holding of the Status Hearing;



- (b) a Settlement Conference will ascertain whether the parties can reach a settlement before they have incurred more expense in pursuing the litigation, or, if not, whether it is appropriate to seek to resolve any of the issues by some procedures of alternative dispute resolution;
- (c) all persons will attend at a Settlement Conference:
  - (i) who are parties to the action;
  - (ii) who are required to give instructions for any settlement of the action;
  - (iii) whose assistance is required for others to negotiate any settlement (including file principals, counsel and interpreters); and
  - (iv) whose presence would be beneficial in the conference achieving its objectives.
- (d) in complex actions a Judge or Master other than the Supervising Judge is to conduct the Settlement Conference unless the Supervising Judge will not be disqualified from taking the trial through having conducted the conference.

**56B.06** A Settlement Conference is to be closed as soon as there is no reasonable possibility of it achieving the objectives set out in Rule 56B.05(b).

- 56B.07** (1) Upon closing a Settlement Conference:
- (a) the time limits for taking further steps in the action are to run from that day;
  - (b) general directions may thereupon be given on the application for directions; and
  - (c) a date for a further directions hearing may be set.
- (2) Where the Court dispenses with holding a Settlement Conference the first Settlement Conference for that action will be deemed to have closed at the time when the dispensation is granted.

**56B.08** After a Settlement Conference has been closed the Registrar will convene a second Settlement Conference if all parties join in a request for it.

**56B.09** In actions to which Rule 56B applies no interlocutory applications are to be made to the Court before the close of the first Settlement Conference unless a party would suffer significant prejudice if that application was not dealt with before that time.

- 56B.10** In actions to which Rule 56B applies:
- (a) no time limits other than those for filing notices of address for service, pleadings and affidavits in lieu of pleadings are to run prior to the close of the first Settlement Conference;
  - (b) no lists of documents or notices to admit facts and/or documents are to be filed or served prior to the close of the first Settlement Conference.

**56B.11** Any person required by these rules to be present who without reasonable excuse does not attend at a Settlement Conference after being directed by the Court to do so is liable to be found guilty of contempt of Court.

**56B.12** The costs of all Status Hearings and Settlement Conferences are to be in the cause unless the Court otherwise orders.

- 56B.13** Subject to any agreement or direction to the contrary the proceedings at Status Hearings and Settlement Conferences are:
- (a) not open to the public;
  - (b) to be without prejudice to the legal rights of the parties and may not be referred to at trial.

- 56B.14** (1) Status Hearings and Settlement Conferences may be presided over by a Judge, a Master or an officer of the Court nominated by the Registrar for that purpose.
- (2) An officer of the Court presiding over a Status Hearing:
- (a) may insofar as it is appropriate to do so deal with non-contentious applications under subrules 56B.04(a), (d), (e) or (f); and
- (b) must refer for hearing by a Judge or a Master any other applications under Rule 56B.04.
- (3) An officer of the Court presiding over a Settlement Conference:
- (a) may insofar as it is appropriate to do so deal with non-contentious applications pursuant to Rule 56B.07(1)(b) but only for:
- (i) extending or abridging the times limited by the Rules or any order of the Court for the filing of any documents or for the inspection of documents; or
- (ii) granting leave to amend.
- (b) must refer for hearing by a Judge or a Master any other application for directions;
- (c) may enter any judgment by consent.

### **Interrogatories**

- 57.01** (1) In any action a party may only file and deliver interrogatories for the examination of another party with the leave of the Court.
- (2) Where leave is sought under sub-rule (1) above:
- (a) Such leave may be sought on the application for directions;
- (b) The proposed interrogatories must be put before the Court and served prior to the leave being sought; and
- (c) If leave is not to be granted for all of the proposed interrogatories, the Court may refuse leave generally and without specifying all the respects in which it is not appropriate to grant leave for the proposed interrogatories.
- (3) Where the party to be interrogated is a body corporate the party delivering the interrogatories may specify the officer of the body corporate who is to answer on behalf of the body corporate. If that officer does not answer the interrogatories, the party delivering the interrogatories may apply for an order that the interrogatories, or some specified interrogatories, be answered by the officer originally nominated.
- 57.02** Where interrogatories are to be answered by two or more persons, a note at the end of the interrogatories shall state which of the interrogatories each person is required to answer.
- 57.03** Unless the Court otherwise orders:
- (a) interrogatories may be filed and delivered only between the close of pleadings and twenty-eight days after the receipt of discovery of documents from all other parties;
- (b) a party shall not deliver more than one set of interrogatories to the same party or person.
- 57.04** (1) Unless the Court otherwise orders, interrogatories shall be answered by affidavit within twenty-eight days of their receipt.
- (2) An objection to answering interrogatories may be taken in the affidavit in answer:
- (a) on the basis that it is unreasonable, vexatious, prolix, oppressive, unnecessary, scandalous or not bona fide for the purpose of the proceedings;
- (b) on the basis that the matters inquired into are not material at that stage; or
- (c) on any other basis

and in each case the basis of objection shall be set out together with all of the proper grounds therefor and the facts relied upon in support of the objection.

- (3) In answers to interrogatories, there shall be set out, before each answer, the text of the interrogatory to which the answer relates.

**57.05** Where a person to whom interrogatories have been directed answers any of them insufficiently, the Court may require him to make a further and better answer either by affidavit or on oral examination.

**57.06** (1) Where a person makes default in compliance with an order under any of the preceding sub-rules, he shall be liable to attachment, and if a plaintiff, to have the proceedings dismissed, or, if a defendant, to have the defence struck out and judgment entered accordingly.

- (2) Service on a party's solicitor of an order for answers to interrogatories shall be sufficient service to found an order for attachment on failure to comply with the order but it shall be a defence for the party sought to be attached for him to show that he had no notice or knowledge of the order.

**57.07** A party may tender in evidence at the trial of any proceeding any answer, or part of any answer, to any interrogatory, but the Court may direct that any related answer, or part thereof, shall be put in evidence also.

### Discovery

**58.01** (1) Unless the Court otherwise orders, each party shall within twenty-one days after the close of pleadings or affidavits file and deliver to the other party a list of documents in Form 16 as it existed at the time when the list was filed in paper form or such other form as the Court may direct that are, or have been, in his possession, custody or power, relating to any matter in question in the action. If a party claims that any document is privileged from discovery he shall specify the document and the ground upon which privilege is claimed.

- (2) This Rule does not require a defendant to an action for the recovery of a penalty by virtue of any enactment to make discovery of any documents, or require a defendant to an action to enforce a forfeiture to make discovery of any documents relating to the issue of forfeiture.

- (3) A party discovering any document shall state a place at which the document may be inspected and copied, and if necessary by photocopying, during ordinary business hours, or deliver, if acceptable, photostat copies thereof at the cost then prescribed for such copies pursuant to Rule 101.

- (4) The place for inspection under subrule (3) shall be within a radius of 50 kilometres of the G.P.O. at Adelaide unless it is otherwise agreed by the parties or the Court otherwise orders.

- (5) A party discovering any document shall make such document available for inspection by a witness nominated for that purpose by another party.

- (6) The Court may make any order that it thinks fit to ensure the confidentiality of any document discovered.

- (7) Subject to the Court ordering to the contrary in special circumstances, and *ex parte* if desirable, a party may not oppose production of any document on the ground that it relates solely to, and does not tend to impeach, his own case and does not relate or tend to support the case of the opposing party.

**58.02** (1) A party entitled to a list of documents may at any time before seven days after the close of pleadings, by notice, require the list to be verified by affidavit;

- (2) Upon receipt of a request, an affidavit in compliance shall be filed and served on all other parties within fourteen days.

**58.03** Where a plaintiff claims relief against two or more defendants, each defendant shall serve his list of documents and affidavit of verification (if any) not only on the plaintiff, but also on all other parties.

**58.04** The Court may on application for discovery made at any stage of the proceedings:

- (a) order any party to file and deliver to any other party:
- (i) a list of documents,
  - (ii) an affidavit verifying a list of documents;
- (b) order that--
- (i) discovery be limited to certain documents or classes of documents related to the matters specified in the order;
  - (ii) discovery be made by phases in relation to any class or classes of documents in such manner as may be specified in the order;
  - (iii) notwithstanding Rule 58.01, a party be exempted from making discovery of any specified document or class or classes of document either conditionally or unconditionally and wholly or to a specified extent or for a specified time. Factors to be considered in making or refusing any order under this subrule shall include the likely time, cost and inconvenience of making discovery of any documents or classes of documents by way of comparison with the amount involved in the action, the relative importance or likely relevance of them in relation to any issue or issues in the action and the probable effect on the outcome of the action of a party obtaining access to the document or class of document.
- (c) where it appears that any issue or question in the proceeding should be determined before the discovery of all or any of the documents is made, order that that issue or question be determined, and give all such directions for the further conduct of the action as might be given on an application for directions (including directions as to the postponement of discovery of any document or class or classes of documents);
- (d) if satisfied that discovery is not necessary, or not necessary at that stage, dismiss or adjourn the application;
- (e) where it appears to the Court that there are grounds for a belief that some document or class of documents relating to any matter in question in the proceedings may be or may have been in the possession, custody or power of a party, order that party:
- (i) to file an affidavit stating whether that document, or any of that class, is or has been in his possession, custody or power and, if it has been but is not presently, to state when he parted with it and what has become of it;
  - (ii) to deliver the affidavit to any other party.
- (f) direct that the lists of documents to be filed and delivered be in such electronic computer readable form as the Court may specify.

**58.04A** (1) The Court may at any time order that the deponent to an affidavit filed under Rule 58.04(e) either answer written interrogatories and/or attend before the Court for cross-examination on the affidavit where it is satisfied that there are reasonable grounds to suspect that such deponent, or a party for whom he has made the affidavit, has not made full and proper discovery of documents in the proceedings.

- (2) In any interrogatories or cross-examination under sub-rule (1) above the Court may if it sees fit limit the questions allowed to those directly relating to the documents in issue so as not to give the party asking the questions any unfair advantage in relation to the issues to be determined in the proceedings.

- (3) The Court may discharge an order made under sub-rule (1) above if before the interrogatories are answered or the cross-examination occurs the party against whom the order has been made files a further affidavit making full and proper discovery of documents.

**58.05** Where a party delivering a list of documents under the previous Rules finds that the list delivered is inaccurate or incomplete, he shall file and serve a supplementary list.

**58.06** (1) Wherever a party has made discovery of documents pursuant to these Rules, or to any order or direction of the Court, and thereafter, but before judgment or a final order in the proceedings, further documents come into his possession, custody or power, which would have been discoverable if they had been in his possession, custody or power when he made his prior discovery, he shall from time to time and so soon as practicable, make further discovery by filing and serving a supplementary list or lists of documents describing each of such further documents.

(2) Where the prior discovery was verified by affidavit, any further discovery pursuant to this Rule shall also be verified by affidavit.

(3) Where a party in his prior discovery has made a sufficient and proper discovery of his privileged documents, he need not make further discovery under subrule (1) above where such discovery would not require any description of the further privileged documents greater than, or different from, the description of those documents already appearing in his previous discovery.

(4) A plaintiff by claim or counterclaim need only make further discovery under this Rule of documents relating to items of special damages when requested to do so by any defendant thereto or, if no such request is made, not less than 21 days before the date set for the trial of the action or when otherwise directed by the Court.

(5) Parties need only make further discovery under this Rule of the correspondence between the solicitors for the parties upon request to do so, or, if no such request is made, not less than 21 days before the date set for the trial of the action or when otherwise directed by the Court.

**58.07** (1) The documents shall be listed in numbered order with a concise description of each document, or, if that is sufficient for identification, each bundle of documents.

(2) The list of documents shall distinguish between the documents which the party making the list agrees to produce and those for which privilege is claimed.

(3) In respect of documents which are no longer in the custody, possession or power of the party making the list he shall state in his list when they were last in his custody, possession or power and how they came to leave his custody, possession or power.

(4) An investigatory film of the plaintiff in an action claiming damages for personal injury which is brought into existence solely for the purposes of the litigation is not discoverable.

(4a) 'Investigatory film' means developed or undeveloped film (other than xray film), video tape or other means of recording sight or images which purports to record in still or moving pictures the physical movements and capacity of a person who is a party to the action.

(5) Unless the Court otherwise directs the following documents need not be included in a list or affidavit of documents unless the existence or non-existence of such a document is relevant to the determination of an issue in the proceedings:

(a) Pleadings, affidavits and other documents filed in the proceedings, and copies of such documents;

(b) Communications between solicitors for the parties to the proceedings, including facsimile and telex communications, notes of telephone attendances between such solicitors and copies of such communications and notes;

- (c) Copies of documents where the original or another copy has been included in the list or affidavit of the party making discovery where the first mentioned copy does not contain any note or endorsement which would itself be discoverable; and
- (d) Cases for the opinion of counsel and opinions thereon, advices on evidence, proofs of witnesses, communications and notes of communications between solicitors and counsel for a party.

**58.08** The foregoing provisions of this Rule are without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

**58.09** Where the original discovery was made in electronic computer readable form supplementary discovery pursuant to Rule 58.05 and 58.06 may be in the same form.

### **Modified Discovery**

**58A.01** Rule 58A applies to the exclusion of Rule 58 to all lists and affidavits of documents, including those for supplementary and further discovery, filed after 3 June 2000.

- 58A.02**
- (1)
    - (a) Within 21 days of the close of any first Settlement Conference;
    - (b) within such other time as the Court may direct; or
    - (c) where there is to be no Settlement Conference within 21 days of the close of pleadings, each party is to file and serve a list of documents in Form 19.
  - (2) Within 7 days of the close of pleadings or affidavits all parties to an action may agree:
    - (a) to dispense with any discovery of documents; or
    - (b) to substitute an agreed process of informal discovery which is not to be supervised by the Court.
  - (3) Where any agreement is made under (2), discovery for the purposes of the Rules in that action is deemed to have been completed within 14 days of the date of that agreement.
  - (4) Where an agreement has been made under (2) the parties are to file before the expiration of the time for making discovery a document signed by them or their solicitors stating that such an agreement has been made and its date, but without necessarily stating its terms.

**58A.03** The parties must discover in their lists of documents, but discover only, the documents which are or have been in their possession, custody or power which are directly relevant to any issue arising on the pleadings.

- 58A.04**
- (1) Parties are not to include in their lists of documents any documents which are only indirectly relevant to any issue arising on the pleadings unless it is ordered by the Court where it is in the interests of justice to do so.
  - (2) Where an order under (1) is made after a list of documents has been filed a supplementary list of documents is to be filed within 14 days of the order.

**58A.05** Any claim by a party for privilege for a document, and the grounds for it, are to be included in that party's list of documents.

- 58A.06**
- (1) A list of documents must identify the documents discovered in such a manner that it is subsequently practicable to ascertain precisely what are the documents referred to, but it is only to contain a concise general description of them.
  - (2) A list of documents is not to describe documents individually where they are:
    - (a) part of a file which is discovered as a file;

- (b) contained on a computer disc which is discovered as a disc;
  - (c) part of a related group of documents where the group is discovered (eg the accounting records for a stated financial year);
  - (d) differing versions of the same documents (eg drafts 1 to 4 of document X);
  - and
  - (e) of similar type but of different date or content (eg letters from X to Y dated etc, invoices from P to Q numbered etc, bank statements of A for the months etc).
- (3) Rule 58.07(4), (4a) and (5) applies under Rule 58A.

**58A.07** Where it is in the interests of justice the Court may order a party to file a supplementary list of documents identifying specifically each document contained within a general description of documents given in its previous list.

**58A.08** A list of documents is only to be verified on oath where the Court in the interests of justice so directs.

**58A.09** Where at any time the Court considers that a list of documents is longer than is necessary to comply with Rule 58A it may exercise its power under Rule 101.06(1) if there has been any default by the solicitor who prepared the list.

**58A.10** Rules 58.01(2), (3), (4), (5), (6) and (7), 58.04, 58.04A, 58.05, 58.06 and 58.08 are to apply to discovery which is governed by Rule 58A, but nothing in Rule 58 is to override what Rule 58A provides about which documents need be discovered, how they are to be described in a list of documents or otherwise. For the purposes of this Rule sub rule 58.01(3) is to be read and construed as if the word “either” had been inserted before the word “photostat” in line 4 and the phrase “or electronic copies thereof at such cost as may be fair and reasonable” had been inserted at the end of it.

#### **Discovery by authorised electronic communication**

**58A.11** Where the original discovery was made by means of an authorised electronic communication, supplementary discovery in accordance with the terms of Rule 58.05 and 58.06 shall be in the same form.

#### **Production**

**59.01** The Court may:

- (a) order the production of a document for inspection and copying by any party or the Court at a time and place specified in the order;
- (b) where the production of any business book is applied for, instead of ordering the production of the original book at that stage, or at all, order a copy of any entries therein to be supplied with or without an affidavit verifying the copy and stating what erasures, interlineations or alterations there are, made by a person who has examined the copy with the original book.
- (c) where a document is not able to be comprehended by visual inspection of it order that the party having the custody of the document make available to any other party at the expense of that other party:
  - (i) the means to ascertain the information contained in the document;
  - (ii) a transcript in writing of the information contained in that document;
  - (iii) a copy of the document.

**59.01A** In any case in which the quantity of documents to be produced pursuant to Rule 59.01 is large or their nature is such that the organisation of or relationship between them is complex or difficult to understand, such documents are to be:

- (a) (i) collected together in bundles, files, folders or other receptacles;
- (ii) organised according to topic, class, category, question in dispute or otherwise in some logical fashion; and
- (iii) arranged according to a readily understood system or sequence, so as to ensure that they are readily accessible to and capable of convenient inspection by any party to whom they are produced.
- (b) so identified, indexed by number or coding or otherwise arranged or organised so as to enable particular documents to be readily retrieved at any time. Any such indexing shall conform with guidelines for the use of technology published in a Practice Direction of the Court.

**59.01B** Upon the request of any party entitled to production of documents pursuant to Rule 59.01 so to do the party producing such documents shall provide reasonable physical facilities to permit inspection and the copying thereof at the cost of the inspecting party and must nominate and make available to the inspecting party a person who is:

- (a) able to explain the system or arrangement of documents produced;
- (b) to assist in locating particular documents or classes of documents desired to be inspected.

**59.01C** (1) Notwithstanding the provisions of Rule 59.01 a party shall not, in any case in which the quantity of documents to be produced is large, produce for inspection documents:

- (a) relating only to damages;
- (b) the subject of a notice given pursuant to subrule (2) hereof, unless and until requested by an inspecting party to do so.

(2) A party may at any time deliver to any other party a notice that documents related to a specified question, or a specified class or category are not to be produced for inspection until required by that party.

**59.02** Where a party has filed a pleading or an affidavit referring to a document he shall within seven days of receipt of any request from another party in accordance with the request either make such document available for inspection by that other party, or furnish that other party with a copy of the document at that party's cost.

**59.03** An order for the production of any document or copy thereof shall not be made unless the Court is of the opinion that the order is necessary for disposing fairly and expeditiously of the action and is not injurious to the public interest.

**59.04** Where an application for production is objected to, the Court may inspect the document for the purpose of deciding the validity of the objection.

**59.05** The Court may make any order that it sees fit to ensure the confidentiality of any document ordered to be produced.

**59.06** (1) Any party required by any Rule or order to make discovery of, or produce any document, who fails to comply with that Rule or order, shall be liable:

- (a) if a plaintiff, to have the action dismissed;
- (b) if a defendant, to have the defence struck out and judgment to be entered accordingly.

(2) Any party who fails to comply with an order for discovery or production of documents shall be liable in a proper case to attachment.

(3) Service on a party's solicitor of an order for production shall be sufficient service to found an order for attachment on failure to comply with the order but it shall be a



defence for the party sought to be attached for him to show that he had no notice or knowledge of the order.

- 59.07**
- (1) A party to proceedings by whom a list or affidavit of documents is filed shall be deemed to have been served by all other parties with a notice requiring him to produce at the trial of the proceedings such of the documents specified in the list or affidavit as are in his custody, possession or power.
  - (2) In cases not falling within subrule (1), or in cases in which a party wishes to secure production of particular documents or things at the trial whether or not such documents or things have been included in a list or affidavit of documents, a party may serve on any other party to the action a notice requiring him to produce the documents or things specified in the notice at the trial of the proceedings. Such notice may be in Form 20.
  - (3) An affidavit of a solicitor or his clerk of the filing and service of any notice to produce, and of the time when it was served, shall be sufficient evidence of the service of the notice and the time when it was served.
  - (4) If a notice to produce includes documents which are not relevant or necessary, the costs occasioned thereby shall be borne by the party giving such notice.
  - (5) All documents or things the subject of a notice given pursuant to subrule (2) in the custody possession or power of the party served with such a notice shall unless the court otherwise orders be produced by that party in accordance with such notice at the trial of the proceedings without the need for any subpoena for production.
  - (6) A party obliged to produce a document or thing in accordance with subrule (5) above who fails to produce any such document or thing shall be liable to the same penalty as may be imposed upon a person served with a subpoena who fails to comply with the same.
  - (7) Where any document or thing required to be produced in accordance with a notice given pursuant to subrule (2) or deemed to be given pursuant to subrule (1) is not produced the party serving the notice may lead secondary evidence of the contents or nature of the document or thing.
  - (8) The requirement in subrule (5) for production at the trial shall be satisfied if the documents there referred to are brought by the party compelled to produce them to the precincts of the Court, which party may retain physical custody of them unless and until counsel for the party which has given or which is deemed to have given a notice to produce makes an oral application to the trial Judge for actual production whereupon any particular document so called for shall be produced by the party in possession of the same and received and marked by the court.
  - (9) In any case where compliance with subrules (5) to (8) hereof or any of them would give rise to oppression, undue expense or inconvenience, any party may apply before the trial for a direction that the application of the rule be modified or dispensed with upon such terms as to production of particular documents or otherwise as to the Court may seem fit.
- 59.08**
- (1) Subject to (3) below where a party has had in his possession or power a document:
    - (a) of which he or some other person acting as his agent was the author;
    - (b) of which he no longer has any true copy in his possession or power;
    - (c) which would be discoverable in the action in Part I of the first schedule of his list of documents if it was still in his possession or power; and
    - (d) of which he may reasonably expect to obtain a copy from some other person upon request and the payment of a reasonable fee;he shall as soon as reasonably practicable, and in any event by no later than when he files his list of documents, take all proper steps to obtain a copy of that document.

- (2) Any document obtained by a party pursuant to sub-rule (1) above shall be subject to inspection by the other parties in the action in similar manner to any other document discovered by that party.
- (3) Where a party refuses to obtain a document under sub-rule (1) above on the grounds that privilege is claimed for it, the Court may:
  - (a) determine whether the document would be privileged if it was obtained;
  - (b) order that party to comply with sub-rule (1) above in respect of that document if it is found that no privilege would attach to it;
  - (c) order that party to seek to obtain a copy of that document and produce it to the Court for the purpose of the Court determining whether privilege would attach to it.

#### **Discovery Against A Person Not A Party And Before Action**

- 60.01** (1) The Court may make an order for disclosure and production of documents:
- (a) by a party to proceedings seeking such an order against a person who is not a party;
  - (b) by any person seeking such an order against another person where both are likely to be parties to subsequent proceedings.
- (2) Such order may be made:
- (a) before commencement of proceedings, on a summons, with the person against whom the order is sought made a defendant to the summons;
  - (b) after commencement of proceedings on an application in the action to be served on that person and all other parties to the proceeding.
- (3) With the summons or application shall be filed and served a supporting affidavit, specifying the documents sought and their relevance to the proceedings or proposed proceedings.
- 60.02** On the hearing of the summons or application, where:
- (a) the applicant and the person against whom an order is sought both appear to the Court to be likely parties to subsequent proceedings; or
  - (b) the applicant is a party to proceedings and seeks an order against a person who is not a party to the proceedings; and
  - (c) the person against whom the order is sought appears likely to have or have had in his possession, custody or power, any document relevant to the proceedings or proposed proceedings,
- the Court may order that person:
- (i) to disclose whether those documents are in his possession, custody, or power;
  - (ii) to produce to the applicant such of those documents as are in his possession, custody or power; and
  - (iii) to make an affidavit stating whether any specified documents are or at any time have been in his possession, custody or power and, if not, when he parted with them, and what has become of them.
  - (iv) upon production of documents to do any other thing which could be ordered under Rules 58 and 59 if that person was a party to the action.
- 60.03** On a summons or application the Court may also make an order providing for any one or more of the following matters:
- (a) the inspection, photocopying, preservation, custody and detention of property, which is not the property of, or in the possession of any party, but which relates to:
    - (i) the subject matter of the proceedings; or
    - (ii) property to which any question arises in the proceedings;

- (b) (i) taking of samples;
  - (ii) observation;
  - (iii) carrying out of any experiment;
  - (iv) playing or screening of tape recordings and films and other means of recording sight or sound;
- with respect to any such property mentioned in paragraph (a).
- (c) the inspection, photocopying, preservation, custody and detention of any property which is in the possession or power of any party and which relates to:
    - (i) the subject matter of any likely subsequent proceedings between those parties; or
    - (ii) property to which any question may arise in any likely subsequent proceedings between those parties.
  - (d) (i) taking of samples;
  - (ii) observation;
  - (iii) carrying out of any experiment;
  - (iv) playing or screening of tape recordings and films and other means of recording sight or sound;
- with respect to any such property mentioned in paragraph (c).

**60.04** No person shall be compelled to produce any document which he could not be compelled to produce:

- (a) in the case of a summons under Rule 60.01(2)(a), if the subsequent proceedings had already begun;
- (b) in the case of an application under Rule 60.01(2)(b) if he had been served with a subpoena to produce the documents at trial.

**60.05** (1) Where a person who is ordered to do anything under Rule 60 incurs substantial expense or loss in complying with the order the Court may order that the party who requested the making of the order pay to that person in addition to any amount which the person served with the order is otherwise entitled to be paid an amount which is sufficient to compensate him for such expense or loss as is reasonably incurred or lost by that person in complying with the order.

(2) The Court may refuse to make an order under subparagraph (1) hereof if the cost incurred or to be incurred by the person requesting the issue of the order would effectively prevent such person from proceeding with his action or defence or if it seems otherwise desirable to do so or the Court may order that such costs be not recoverable until the termination of the litigation or of any subsequent proceedings.

(3) Where an order is made under subparagraph (1) hereof the Court shall either fix the amount or direct that the amount be fixed by a Master.

### **Medical Examinations And Reports**

**61.01** The following Rules do not apply to any medical examination which a plaintiff is required to undergo under the provisions of any Statute.

**61.02** (1) Where in any action the medical condition or health of any party is in issue such party shall from time to time, if and as required by the party against whom the claim is made, submit himself for examination by a legally qualified medical practitioner provided and paid by the party requiring the examination.

(2) Any examination under Rule 61.02 (1) shall be arranged for such a time so that the delivery of any report from the examination under Rule 61.06 occurs at least 7 days before the first hearing of any application to refer the action for trial.

- (3) Subrule (2) above does not apply to supplementary reports from a medical practitioner who has previously examined the party and where the supplementary report is confined to matters upon which a report could not reasonably have been obtained within the time limited under (2).
- (4) The provisions of Rule 38.02 shall apply in respect of any failure of a party to comply with subrule (2) above.

**61.03** Where requested the party requiring the examination shall pay the party to be examined a reasonable sum to cover travelling expenses to and from the place of examination and where applicable a reasonable sum to cover any loss of wages or other earnings occasioned by the attendance for examination.

**61.04** Where a party refuses to be examined or in any way obstructs the examination, the Court may order that all further proceedings in the action be stayed until the examination has taken place.

**61.05** A party shall not be entitled to any damages or compensation for any period during which he refuses to submit himself or obstructs the examination.

- 61.06**
- (1) An opposing party causing an examination to be made shall promptly deliver to every other party a copy of any written report of the examination that the examining medical practitioner may make.
  - (2) A party who makes default under paragraph (1) hereof shall be liable to an order for discovery of the report and shall, unless good cause be shown to the contrary, be ordered to pay the costs of the application for discovery.

**61.07** If the examining medical practitioner makes no written report to the opposing party requesting the examination within fourteen days from the completion of the examination, the party examined may request such medical practitioner to furnish him with a written report of such examination.

**61.08** For the purposes of Rule 61 “medical practitioner” shall extend, unless the Court shall otherwise order, to a dentist, psychologist, physio-therapist, occupational therapist, chiropodist and any other person of a similar profession or occupation who could give expert evidence about the health or medical condition of a person.

#### Summonses

**62.01** An *ex parte* summons under Rule 7.03 shall be disposed of in Chambers upon affidavit evidence unless the Court otherwise directs.

**62.02** An *inter partes* summons under Rule 7.04, which proceeds on affidavits under Rule 7.06, shall be disposed of in Chambers unless the Court otherwise directs.

**62.03** An *inter partes* summons under Rule 7.04, which proceeds on pleadings, shall be disposed of by a trial in open Court unless the Court otherwise directs.

**62.04**

- (1) In cases of urgency a summons supported by affidavit may be made returnable in Chambers for the Court to consider whether to grant the relief sought in the summons, whether the time allowed for filing a notice of address for service to the summons shall have expired or not.

(2) Direction for specially returnable summonses

The Court or a Registrar may, by administrative act, direct that a summons be dealt with under subrule (1) at a specific time and place. No notice to any other party of the hearing shall be required, other than due service of the summons, with a notification to each party served of such time and place.

- (3) If a summons is made returnable under subrule (2) above for the Chambers of a particular Judge or Master, it may be heard at that time, or so soon thereafter as is convenient, in the Chambers of another Judge or Master or in another Courtroom provided that the Judge or Master hearing the summons considers that the parties have received such notice of the change as is appropriate in the circumstances.
- 62.05** (1) A summons for hearing in Chambers may be adjourned if the Court thinks fit from Chambers into Court.
- (2) A summons for hearing in open Court may be adjourned if the Court thinks fit from open Court into Chambers.
- 62.06** A Judge or Master in Chambers may obtain the assistance of accountants, merchants, engineers, actuaries, welfare officers, experts and other qualified persons to enable the just and speedy determination of any matter, and he may act upon the certificate of such person. Rule 82.06 shall apply to an expert under this Rule *mutatis mutandis*.
- 62.07** (1) All hearings including interlocutory hearings, which by virtue of any law or any Rules or practice of the Court are authorised to occur in chambers shall be held, in a courtroom or Chambers to which the public has access unless the Court otherwise orders.
- (2) The validity of any judgment or order made in Chambers is not affected by any non-compliance or insufficient compliance with subrule (1) above.
- (3) Notwithstanding the provisions of subrule (1) the public shall not have access to hearings of Status Hearings, Settlement Conferences, mediations or interlocutory applications conducted on the telephone.
- (4) The Court may at any time direct that proceedings that would otherwise be open to the public shall not be so open if it considers that the interests of justice, of safety or of maintaining the decorum of its proceedings so require.
- 62.08** (1) Notwithstanding any other Rule or practice of the Court, the solicitor for a party may, in accordance with any Practice Direction for the time being in force, make a request to the Registrar that an application in Chambers be heard and determined electronically.
- (2) Upon receipt of such a request the Registrar shall forthwith refer it to a Judge or Master for an administrative direction as to whether the application is to be so heard and determined. Such direction shall thereupon be advised by the Registrar to the requesting solicitor.
- (3) If the Judge or Master determines that the request be granted the application shall thereafter be dealt with in accordance with the Practice Direction. It shall not be necessary for any order or orders made to be pronounced orally in a courtroom or chambers to which the public has access.

### **Special Orders And Declarations**

- 63.01** Any person claiming to be interested under a deed, will or other written document may apply by summons for the determination of any question arising under the document and for a declaration of the rights of the person interested.
- 63.02** Where any person claims to be entitled to any right, and the question whether he is so entitled depends upon the proper interpretation or validity of a Statute, a statutory instrument or by-law or a Rule made or purporting to have been made under a Statute or statutory instrument, he may apply by summons for the determination of the question, and for a declaration as to the right claimed and consequential relief.

- 63.03** Where any question arises between a vendor and purchaser of real estate (including a chattel real) in relation to the contract or alleged contract, conveyance, transfer or other instrument, or any question arising thereout or thereunder, either party, or any person claiming by through or under a party, may apply to the Court by summons for the determination of the question, and for a declaration of the rights of the person interested, and for consequential relief.
- 63.04** The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested as creditor, devisee, legatee or next of kin, or as *cestui que* trust under the trust of any deed or instrument, or under any implied or constructive trust arising in relation to such deed or instrument, may take out a summons for the determination without an administration of the estate or trust of any question relating to such estate or trust and the declaration of the rights of the person interested. Without derogating from the generality of the foregoing words the Court may:
- (a) consider any question affecting the rights or interests of any person claiming to be a creditor, devisee, legatee, next of kin or *cestui que* trust;
  - (b) ascertain any class of creditors, legatees, devisees, next of kin or other persons;
  - (c) order the furnishing of accounts by executors, administrators or trustees, the vouching of such accounts and the manner in which such accounts are to be taken;
  - (d) order the payment into Court of any moneys in the hands of executors, administrators or trustees;
  - (e) direct executors, administrators or trustees to do or abstain from doing any act relating to the estate or trust;
  - (f) approve any sale, purchase, compromise or other transaction;
  - (g) determine any question arising in the administration of the estate or trust;
  - (h) grant administration of the real and personal estate (or either) of the deceased or administration of the trust and its assets absolutely or subject to conditions;
  - (i) order any act to be done or step to be taken which could have been ordered if an order for administration had been made under subparagraph (h) hereof.
- 63.05** Any of the persons named in the last preceding Rule may in like manner apply for:
- (a) the administration of the personal estate of the deceased;
  - (b) the administration of the real estate of the deceased;
  - (c) the administration of the trust;
  - (d) any act to be done or step to be taken which the Court could have ordered to be done or taken if any such administration order as aforesaid had previously been made.
- 63.06** Upon a summons or an application for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without pronouncing, or making, a judgment or order for administration:
- (a) it shall not be obligatory on the Court to pronounce such judgment;
  - (b) the Court may pronounce or make a judgment or order for administration subject to such conditions as are deemed just.
- 63.07** Upon a summons or an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts, or insufficient accounts, have been rendered, the Court may, in addition to the powers already existing:
- (a) order that the summons or application shall stand over for a certain time, and that the executors, administrators, or trustees shall, in the meantime, render to the plaintiff a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;

- (b) when necessary, to prevent proceedings by other creditors or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of a Judge.

**63.08** Where a judgment or order is pronounced or made under Rule 63.06(b), the Court may, in addition to the powers already existing, and to the powers conferred by the said Rule 63.06:

- (a) direct what steps shall be taken with respect to the administration without further directions from the Court, and by whom such steps shall be taken, and may give any further directions that the Court thinks expedient;
- (b) direct that the executors, administrators, or trustees, or any one or more of them, shall file in the Court an account with observations, and verified by affidavit.

**63.09** Where an account is ordered under Rule 63.08(b), unless otherwise ordered:

- (a) such account shall show:
  - (i) the assets realized and unrealized;
  - (ii) the funeral and testamentary expenses, and succession and other duties, paid and unpaid;
  - (iii) the debts paid and unpaid;
  - (iv) the legacies paid and unpaid;
  - (v) the residue distributed and undistributed.
- (b) the account shall be signed by the person named in the order, and where a solicitor is employed shall also be signed by him, and the solicitor shall certify that to the best of his belief it is correct. The solicitor (if any) employed in the matter shall not be changed without the leave of the Court. A copy of the account shall be kept by the solicitor in his office, and shall be open to the inspection of any person interested in the estate upon payment of the prescribed fee. Any such person may obtain a copy of the account, which the solicitor shall furnish to him upon payment of the prescribed fee.
- (c) notice shall be given by advertisement or otherwise, as the Court shall direct, of the account having been filed. If after a certain time, to be fixed by the Judge, no application is made to a Judge respecting the account, it shall be treated as final, and shall not be reopened except under special circumstances.
- (d) the costs of the solicitor (if any) acting in the matter may be referred to the Court which may pass the same, or direct payment of a sum in gross, or direct the taxation thereof and direct by and to whom, or out of what fund, such costs shall be paid.

**63.10** The Court shall not be bound to determine any question, or make any declaration, in any of the cases set out in Rules 63.01 to 63.04 inclusive if in its opinion it is inexpedient to do so either at all or on a summons.

**63.11** The issue of proceedings under this Rule shall not interfere with the powers and discretions vested in any executor, administrator or trustee except to such extent as the Court may order.

**63.12** The consent of a new trustee to act shall be sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor.

**63.13** (1) Any mortgagor or mortgagee legal or equitable other than in respect of rights of foreclosure or sale under the *Real Property Act 1886*, any person entitled to or having property subject to a legal or equitable charge or a lien, and any person having the right to redeem any mortgage, may by summons claim any or all of the following relief:-

- (a) payment of moneys secured by the mortgage, charge or lien;
- (b) sale;

- (c) foreclosure;
  - (d) delivery of possession at any time and in particular either before or after a foreclosure to any person entitled thereto;
  - (e) redemption;
  - (f) reconveyance;
  - (g) discharge of the security.
- (2) Where a defendant in a proceeding for foreclosure desires a sale to be ordered instead of a foreclosure the Court may on payment into Court by the defendant of a sum sufficient to cover the expenses of sale order a sale in place of a foreclosure in the first instance.
  - (3) Orders for possession under this or the preceding Rule shall not be made, if the defendant is not the person actually in possession of the land, except after notice of the proceedings has been given to the person actually in possession.
  - (4) Orders for payment or possession whether made under this or the preceding Rule shall be in Form 21.

**63.14** No order under Rules 63.13 or 65, or in any action for the recovery of land, shall be made on default except with the leave of the Court.

#### **Transfer of Proceedings Between Courts and Tribunals**

**64.01** Where any civil proceedings in the Magistrates Court are transferred into this Court prior to final judgment being entered therein, subject to any direction to the contrary being given:

- (a) the proceedings shall continue in this Court in the action in which the removal was ordered;
- (ab) where proceedings if transferred from the Magistrates Court would be consolidated with an action in this Court the order for the transfer may be sought by an application in the existing action in this Court;
- (b) each pleading filed in the proceedings in the Magistrates Court shall stand in this Court as if it was the equivalent pleading under these Rules;
- (c) where the pleadings in the Magistrates Court refer to a monetary limit upon the amount of the claim the plaintiff shall be at liberty without further leave to amend that pleading within 21 days of the receipt of the file of the Magistrates Court in the Registry by deleting that monetary limit;
- (e) the time limited for the taking of the next necessary interlocutory step in the proceedings under these Rules shall run from the date of the receipt of the file of the Magistrates Court in the Registry;
- (f) without the need for any leave to amend, or any amendment, the heading on all documents filed in the proceedings in this Court after the filing of the sealed Order for the removal shall be changed (if need be) to delete any reference to the *Magistrates Court Act 1991* and to show the party being the plaintiff in the Magistrates Court as the plaintiff, the defendant in the Magistrates Court as the defendant and any third or subsequent parties in the Magistrates Court as such third or subsequent parties in this Court.

**64.02** (1) Where any order has been made for the removal of any proceedings or judgment into this Court from the Magistrates Court an office copy of such order shall be served by the plaintiff upon the Registrar of the Magistrates Court within 14 days of the making of the order.

- (2) Upon the service of the order pursuant to subrule (1) above the Registrar of the Court on whom such order has been served shall forthwith forward to the Registrar of this Court the complete file kept in that District Court for such proceedings.



- (3) At the time of serving the order pursuant to subrule (1) the party so doing shall also file an application for directions in the Court.
- 64.04**
- (1) An application pursuant to Section 19(1)(b) of the *Magistrates Act 1991* to transfer civil proceedings commenced in the Court to the Magistrates Court may be made by interlocutory application.
  - (2) Upon an order being made pursuant to subrule (1), the Registrar shall forthwith transmit a sealed copy of the order and the file relating to such proceedings to the Registrar of the Magistrates Court.
  - (3) The plaintiff in any civil proceedings in the Magistrates Court transferred to the Court pursuant to Section 19(2) of the *Magistrates Court Act 1991* shall within fourteen days of the making of the order in the Magistrates Court file a sealed copy of the order. If the plaintiff shall fail to do so within the said period, any other party shall be at liberty to file the order of the Magistrates Court.
  - (4) The party filing an order pursuant to subrule (3) shall forthwith file an application for directions.
- 64.05** Where an action before the Commercial Tribunal is transferred to the Court:
- (a) The Commercial Tribunal shall forthwith forward its file as certified by the Registrar of the Commercial Tribunal to the Registrar;
  - (b) Upon receipt of such file the Registrar shall give the action a number in the Court;
  - (c) Except where the Court directs to the contrary the party obtaining the order for transfer in the Commercial Tribunal shall within fourteen days of the making of that order take out an application for directions pursuant to Rule 55;
  - (d) The Court may upon the application for directions or upon any proper application in the proceedings, give such directions as are appropriate concerning the pleadings, interlocutory matters and other steps for the action to proceed in the Court.
- 64.06** Where an action in the Court is transferred by order of the Court to the Commercial Tribunal the Registrar shall forthwith transmit a sealed copy of the order and the file relating to the action to the Registrar of the Commercial Tribunal within 21 days of the making of that order.
- 64.07**
- (1) The plaintiff in any civil proceedings in the Supreme Court transferred to the Court pursuant to Section 24 of the Act shall within fourteen days of the making of the order in the Supreme Court file a sealed copy of the order. If the plaintiff shall fail to do so within the said time, any other party shall be at liberty to file the order of the Supreme Court.
  - (2) Upon the filing of any such order, the Registrar shall at his discretion appoint a time for a directions hearing, appoint a time for a conference or fix a day for the trial of the proceedings.
  - (3) Upon the filing of any order of the Supreme Court transferring proceedings in the Court to the Supreme Court, the Registrar shall forthwith transmit the file relating to such proceedings to the Registrar of the Supreme Court.
- 64.08** In any action transferred into the Court where any interlocutory step (other than the filing of pleadings) has been completed before the receipt of the file in the Registry of the Court it is not necessary to comply with these Rules in respect of any equivalent under these Rules of that interlocutory step.

## Possession Of Land

- 65.01** Any person claiming possession of land under Part XVII of the *Real Property Act 1886* shall do so by a summons in Form 5 returnable at a fixed date and not less than sixteen clear days after service.
- 65.02** In any proceedings for the possession of land where a defendant is not required to file a notice of address for service he shall immediately after the first return date for the summons, if the summons has not then been finally disposed of, file either in person or by a solicitor a notice of acting in accordance with Rule 11.
- 65.03**
- (1) Where in any proceedings for possession of land any person in occupation thereof is named in the summons, the summons shall be served on him personally or in such manner as the Court, or any statute, may direct.
  - (2) Any person not named as a party in proceedings for the recovery of land may file a notice of address for service stating that he, or his tenant as the case may be, is in possession of the land or part of it.
  - (3) Any person who files a notice of address for service under subparagraph (2) hereof shall thereafter become, and be named as, a defendant to the proceedings.
- 65.04** Where, on the date on which proceedings for possession for land are commenced, a person who is not a tenant (in this Rule called “an occupier”), and who is not joined as a defendant, is or may be in occupation of the whole, or any part, of the land, the plaintiff shall either:
- (a) state in the summons that he does not seek to disturb the occupation of that occupier; or
  - (b) where he does seek to disturb that occupier, unless the Court otherwise orders serve on him not less than 10 days before the date set for the hearing of the summons both the summons and a notice that he may apply to the Court for an order that he be added as a defendant, and that if he does not so apply at or before the date set for the hearing of the summons, he may be evicted pursuant to a judgment entered in his absence.
- 65.05** Without prejudice to any direction given by the Court, documents may be served on an occupier for the purposes of Rule 65.04:
- (a) personally; or
  - (b) by —
    - (i) affixing a copy of such documents to the main door or some other conspicuous part of the property; and
    - (ii) if practicable inserting through the letter box or letter slit at the property the documents enclosed in a sealed envelope addressed to “The Occupier”; or
  - (c) in any manner prescribed or permitted by statute.
- 65.06** Where in proceedings for possession of land the Court is satisfied:
- (a) that no person is in possession of the land; and
  - (b) that there is a defendant on whom the summons cannot otherwise be served without undue expense and delay,
- the Court may allow service to be effected in the manner provided by Rule 65.05(b) notwithstanding that the defendant may be outside the jurisdiction at the time of such service.
- 65.07**
- (1) Where a person claims possession of land which he alleges is occupied by a person or persons (not being a tenant or tenants lawfully holding over after termination of their tenancy) who is or are in occupation without his licence or consent or that of any predecessor in title of his which binds him, proceedings to recover possession of such land may be brought by summons in accordance with the provisions of this Rule.

- (2) The summons shall be in Form 22.
- (3) The plaintiff shall file in support of the summons an affidavit stating:
  - (a) his interest in the land;
  - (b) the circumstances in which the land has been occupied without his licence or consent and in which his claim to possession arises;
  - (c) that he does not know, and has not after reasonable enquiries been able to ascertain, the name of all, some or any persons occupying the land who is or are not named in the summons;
  - (d) that he has an immediate right to possession of the land;
  - (e) that the matter falls outside the ambit of Part V of the Residential Tenancies Act.
- (4) The provisions of Rules 65.04, 65.05 and 65.10 do not apply to proceedings under this Rule except in so far as the Court may direct.

**65.08** In proceedings for possession of land under either Part XVII of the *Real Property Act 1886* or Rule 65.07 a party with the leave of the Court may adduce evidence on information and belief.

**65.09** A final order shall not be made on a summons under Rule 65.07 less than five clear days after the date of service, except in case of urgency and by leave of the Court.

**65.10** Where any person has applied to be made a defendant to a proceeding for possession of land, judgment shall not be entered for the plaintiff until such application is disposed of.

**65.11** A judgment for possession of land shall be enforced by a warrant of possession. The warrant shall be in Form 27.

**65A.01** A plaintiff seeking a summary order for possession of land may proceed under Rules 25.01 or 25.02.

**65A.02** In any action seeking possession of land:

- (1) All persons in occupation of the land, or claiming any entitlement to possession of it, are to be defendants in the action;
- (2) Where the plaintiff cannot reasonably ascertain the identity of any person in occupation of the land that person may be described in the action as 'the occupier'.

**65A.03** Where any defendant named or described in a summons seeking possession of land cannot be served personally without undue expense and delay the summons may be served non personally on that defendant or person by affixing a sealed copy of it in a prominent position on the land.

### **Interlocutory Applications**

- 67.01**
- (1) Unless the Court otherwise directs, or any enactment or Rule otherwise provides, every interlocutory application in or for the purpose of, or in relation to, proceedings commenced or to be commenced, which cannot otherwise properly be dealt with at a directions hearing shall be made by application.
  - (2) Where these Rules allow a party to apply to the Court or to make application to the Court in an existing action this shall be done by filing and setting down for hearing an application in Form 18 in accordance with these Rules.
  - (3) Subject to these Rules, and to any direction to the contrary, all applications shall be heard in Chambers.
  - (4) Applications may be made specially returnable

Notwithstanding the provisions of rule 67.04, the Court or a Registrar may, by administrative act, direct that an application be dealt with at a specific time and place. No notice to any other party of the hearing shall be required, other than due service of the application, with a notification to each party served of such time and place.

- (5) If an application is made returnable under subrule (1) above for the Chambers of a particular Judge or Master, it may be heard at that time or so soon thereafter as is convenient in the Chambers of another Judge or Master or in another Courtroom provided that the Judge or Master hearing the application considers that the parties have received such notice of the change as is appropriate in the circumstances.
- (6) No further interlocutory order shall be made under this Rule after the making of the order to proceed to trial unless special circumstances shall be shown to exist which require such order to be made in the interest of justice.

**67.02** An application shall be issued upon being sealed by the Court, and the party so issuing it must at the same time file a copy thereof.

**67.03** (1) A person may seek an interlocutory order without filing an application or without serving such application where:

- (a) the preparation of the application, or the filing or service (as the case may be) of the application would cause undue delay or other mischief to the applicant; or
- (b) where all parties interested consent to the order sought; or
- (c) under these Rules or the practice of the Court, the order may properly be made without prior filing and service of an application; or
- (d) the Court dispenses with the requirements of this Rule.

(2) Where the application affects the applicant only or where the interests of no other party can be affected thereby application may be made without previous service.

(3) In case of urgency the Court may hear an application and make an order by telephone, radio telephone, telegram, telex, computer, radio, e-mail or television.

**67.04** (1) Except in cases within Rule 67.03, no application shall be heard unless it has previously been filed, and served on all other parties likely to be affected thereby.

(2) Unless the Court gives leave to the contrary, there must be at least two clear days between the service of the notice of the initial or the adjourned time for the hearing of the application and the date for that hearing, provided that in the case of applications for time only, the application may be served on the day previous to the return thereof.

(3) Where an application is served on a person who has not filed a notice of address for service, and who is not in default of doing so, the application must be served personally, unless the Court otherwise directs.

**67.05** (1) Subject to any direction given by the Court, no attendance shall be required on any interlocutory application in respect of:

- (a) an application which will affect the interest of no party other than the applicant;
- (b) applications to which all parties who may be affected thereby consent in writing;
- (c) applications in which the parties affected thereby have filed submissions requesting in writing that attendances be dispensed with.

(2) Applications in respect of which no attendance is required may be disposed of at any time notwithstanding that the date for the hearing shown therein may not have arrived, and an officer of the Court shall, as soon as practicable after such disposal, give notice of the result thereof to the party or parties concerned or their solicitors.

**67.05A** (1) Notwithstanding the provisions of Rule 67.01 the Registrar may in any action in which all parties are represented by solicitors set down an application for hearing over the telephone.

- (2) The following provisions shall apply to the hearing of such an application over the telephone:
- (a) At the time appointed for the hearing of the application, or so soon thereafter as the Judge or Master designated to hear the application shall be ready to proceed, the Registrar will make a telephone call to the solicitor acting for each of the parties.
  - (b) The solicitors acting for the parties shall be available to receive the telephone call from the Registrar at the time appointed for the hearing of the application and for not less than 30 minutes thereafter.
  - (c) When the respective telephone calls to all of the solicitors shall have been made the Registrar shall connect such solicitors with the Judge or Master by way of the conference telephone service operated by the Court.
  - (d) Upon their being connected, the solicitors acting for the parties will respectively identify themselves to the Judge or Master before the hearing of the application is commenced.
  - (e) During the hearing of the application, the solicitors for the parties will only address the Judge or Master when invited to do so and no solicitor will interject while the Judge or Master or any other solicitor is speaking.
  - (f) On making any order in respect of the application the Judge or Master will read out to the respective solicitors the terms of the order made.
  - (g) A Judge or Master may at his discretion adjourn any hearing over the telephone for hearing in court or in chambers.
  - (h) In any case in which a solicitor for a party shall not be available to receive the telephone call from the Registrar in accordance with this subrule, the Judge or Master may proceed to hear and determine the application in the same way as he might were a party not to attend a hearing in court or in chambers.
  - (i) Notwithstanding the previous provisions of this subrule a party or a solicitor concerned in the hearing of an application that has been set down for hearing over the telephone may attend at the Court at the time appointed for such hearing and may appear directly before the Judge or Master hearing the application.

**67.06** Subject to Rule 67.05 and Rule 62.08 and subject to any direction that may be given by the Court, the parties concerned or their solicitors or counsel shall attend on the hearing of an interlocutory application.

**67.07** If it shall appear to the Court when dealing with an application to which Rules 67.05 or 67.06 apply, that it should be served on any party or person who has not been served therewith, the Court may:

- (a) dismiss the application;
- (b) direct that it be served on that party or person and adjourn its disposal until such time, and on such terms, as the Court thinks fit;
- (c) otherwise deal with the matter as justice may require.

**67.08** Upon the hearing of the application, the Court may make any order or give any directions relative to, or consequential to, the matter of such application as may be just.

#### **Interlocutory Injunctions And Interim Preservation Of Property**

**68.01** Subject to any express provision in any Act or in these Rules an applicant for any order required to be made urgently may be permitted to make the application orally or in such other manner and on such notice to any other party as the Court may deem just and expedient.

- 68.02** (1) (a) An application for the granting of an injunction or a restraining order may be made by any party before, at or after the trial of the action or proceeding and whether or not the injunction or restraining order was claimed in the party's summons, counterclaim or third party notice as the case may be;
- (b) An application for the granting of an injunction or a restraining order shall be heard by a Judge.
- (2) (a) When urgency exists, the applicant may make the application on affidavit and *ex parte*. Otherwise the application shall be made on affidavit and on notice. The Court may require an *ex parte* application to be heard on notice;
- (b) Upon an *ex parte* application, the court may only make an order for an interim injunction or restraining order which is operative to a specific date. That date will not be later than 21 days after the making of the order.
- (3) Where the Court grants an interim or interlocutory injunction or restraining order, any party may apply for an order dissolving or varying the injunction. The court shall hear and determine the application as expeditiously as possible.
- (4) In addition to any other endorsement which may be required by any Act or these rules, any order made pursuant to subrule (2)(b) shall clearly state:
- (i) the date upon which the Court will hear the parties to consider whether or not the order will be continued;
- (ii) the right of any party to make application for an earlier consideration of the terms of the order.

**68.04** The Court may, on the application of any party to any proceeding, and upon such terms as may be just:

- (a) make an order for the inspection, photographing, detention, custody, or preservation of any property that is the subject-matter of the proceeding, or as to which a question may arise in the proceeding;
- (b) authorise:
- (i) the taking of samples of any property;
- (ii) the making of any observation of any property;
- (iii) the trying of any experiment on or with any property provided that such experiment does not result in the destruction of the whole of the property or the damaging or disfigurement of a work of art;
- (iv) such other action as may be necessary for the purpose of obtaining full information and evidence;
- (c) authorise any person to enter upon or on to any land or building in the possession of any party or to do any other thing for the purpose of getting access to the land or building;
- (d) in the case of tapes, recordings, films and other means of recording sight or sound give all such directions as may be necessary for the playing or screening thereof.

**68.05** For the purposes of Rule 68.04 “property” includes any land, chattel, or other corporeal property of any description including without limiting the generality of the foregoing, video tapes, audio tapes, recordings, films and other means of recording sight or sound.

**68.06** Where the right of a party to a specific fund is in dispute in a proceeding, the Court may order the fund to be paid into Court or be otherwise secured.

**68.07** The Court may, at any time, order the sale in such manner and on such terms as are just of any property (other than land) that is of a perishable nature or likely to deteriorate, or that for any other reason it is desirable to sell at once.

**68.08** Where:

- (a) a party seeks to recover specific property other than land, and
- (b) the party from whom recovery is sought does not dispute the title of the party making the claim, but claims to be entitled to retain the property by virtue of a lien or otherwise as a security for a sum of money

the Court may order that the party making the claim be at liberty to pay into Court, to abide the event of the proceedings, the amount of money in respect of which the security is claimed and any further amount for interest and costs as the Court may direct, and that upon such payment being made the property claimed be given up to the party claiming it.

**68.09** Where:

- (a) any real or personal property forms the subject-matter of any proceedings in the Court, and
- (b) the Court is satisfied that the property will be more than sufficient to answer all the claims thereon in the proceeding or that sufficient security has been lodged with the Registrar to answer all claims

the Court may at any time allow the whole or any part of the income of the property to be paid during such period as it may direct, to any or all of the parties who have an interest therein, or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

**68.10** Where an application is made under Rules 68.02, 68.04 or 68.08 the Court shall have power to give all such directions as to the conduct of the proceedings as might be given on an application for directions.

**68.11** No writ of injunction shall be issued. An injunction shall be made by a judgment or order which shall have the same effect as a writ of injunction had previously.

**68.12** Where after judgment a plaintiff repeats or continues a wrongful or forbidden act or a breach of contract the Court may issue an injunction to restrain that act or breach.

- 68.13**
- (1) Leave to compound a penal action shall not be granted where part of the penalty goes to the Crown except upon notice to the Attorney-General.
  - (2) The order giving leave to compound a penal action shall state that the defendant undertakes to pay the sum for which the Court has given leave to compound the action.
  - (3) Where part of the penalty goes to the Crown the order giving leave to compound shall direct payment of that part to the Treasurer.

### Receivers

**69.01** The Court may appoint a receiver in any proceeding in which it appears to be just or convenient to do so.

- 69.02**
- (1) An application for an injunction may be made as incidental to an order appointing a receiver.
  - (2) Where the applicant wishes to apply for the immediate grant of an injunction, he may do so *ex parte* on affidavit.
  - (3) On the hearing of an application under subparagraph (2) hereof the Court may grant an injunction restraining the party beneficially entitled to any interest in the property of which the receiver is sought, from assigning, charging or otherwise dealing with that property until after the hearing of the application for the appointment of the receiver.

- (4) Where on the hearing of an application for the appointment of a receiver it appears that there are matters in dispute which should be speedily resolved the Court may order an early trial and make such interim orders as may be just.
- 69.03** Unless the Court otherwise orders, a person shall not be appointed receiver under this Rule until he has given security to the Registrar in a sum approved by the Court or the Registrar to account for what he shall receive as a receiver and to deal with it as the Court directs.
- 69.04** A person appointed receiver shall be allowed such remuneration, if any, as may be fixed by the Court.
- 69.05** (1) A receiver must file accounts in the Court at such intervals or on such dates as the Court may direct.  
(2) Each account shall be accompanied by an affidavit verifying it.  
(3) The party who obtained the order for the appointment of the receiver must upon the account being filed forthwith obtain an appointment for the passing of such account.  
(4) The passing of a receiver's account must be certified by the Registrar.
- 69.06** The Court shall fix the days upon which the receiver shall pay into Court the amount shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him.
- 69.07** Where a receiver fails to:  
(a) file any account or affidavit;  
(b) make any payment; or  
(c) perform any duty  
he, and any other person, may be required to attend before the Court to show cause for the failure, and the Court may give such direction as it thinks proper, including the discharge of the receiver, the appointment of another, the payment over of funds in the hands of the receiver and the payment of costs.
- 69.08** Without limiting the effect of Rule 69.07, when a receiver fails to file an account, or make any payment on the dates or times fixed, the Court may:  
(a) disallow the salary or remuneration charged by the receiver in that or any subsequent account;  
(b) where the receiver has failed to make any payment, charge him personally with interest at the rate set out in the third schedule on the amount neglected to be paid while in his possession as receiver.
- 69.09** Where a receiver in any proceedings dies, becomes of unsound mind, becomes bankrupt or is convicted of a criminal offence the Court may on application make such order as it thinks fit for the removal of such receiver and the appointment of another receiver in his place, and for the filing and passing of accounts by the former receiver or his representatives and for the payment into Court of any amount shown to be due.

#### **Sale Of Land**

- 70.01** (1) In this Rule and Rule 65 “land” includes any estate in land or any interest in or right over land.  
(2) Nothing in this Rule and Rule 65 affects any provision of the *Real Property Act 1886* relating to sale or possession of land.
- 70.02** Where in any proceedings relating to land it appears necessary or expedient for the purposes of the proceeding to do so, the Court may:



- (a) order that the whole or any part of the land be sold,
  - (b) order that any party in receipt of the rents or profits of the land, or otherwise in possession of the land, deliver up such possession or receipts to such person as the Court may direct.
- 70.03** (1) Before any land shall be put up for sale under a judgment or order an abstract of the title shall:
- (a) if the land is under the provisions of the *Real Property Act 1886*, be laid before a Master;
  - (b) if the land is not under the provisions of that Act, unless the Court shall otherwise direct, be laid before some conveyancing counsel to be appointed by the Court for his opinion thereon.
- (2) Any party may object to the opinion given by any conveyancing counsel, and thereupon the point in dispute shall be disposed of by a Judge as he may think fit.
- 70.04** Where an order is made directing that land be sold the Court may:
- (a) appoint a party or other person to have the conduct of the sale;
  - (b) permit the person having the conduct of the sale to sell the land in such manner as he thinks fit or as the Court may direct;
  - (c) direct any party to join in the sale and conveyance or transfer or in any other matter relating to the sale.
- 70.05** The Court may either on the making of the order for sale, or on a subsequent application, give such further directions as it thinks fit for the purpose of effecting the sale, including directions:
- (a) fixing the manner of sale, whether by contract conditional on the approval of the Court, by private treaty, by public auction, by tender, or by some other manner;
  - (b) fixing a reserve or minimum price;
  - (c) requiring payment of the purchase money into Court or to trustees or other persons;
  - (d) settling the particulars and conditions of sale;
  - (e) for obtaining evidence of value;
  - (f) fixing the remuneration to be allowed to any auctioneer, real estate agent or other person;
  - (g) stating whether a given person or class of persons is entitled to bid at the sale.
- 70.06** The result of a sale by order of the Court shall be certified to the Court by the person having the conduct of the sale.
- 70.07** The provisions of this Rule shall, as far as applicable and with any necessary modification, apply in relation to an exchange of any land, a partition of land, and a sale under a mortgage of land, under the general law and under an order of the Court, as they apply to the sale of any land under such an order.

### **Accounts And Inquiries**

- 71.01** Where a summons is endorsed with a claim for an account, or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defence has been filed or the time for filing it has expired, apply by application to the Court for an order under Rule 71.02.
- 71.02** On the hearing of the application, the Court may, unless there appears to be some preliminary question to be determined, order an account to be taken, and may also order that

any amount certified on taking the account to be due to either party be paid to him within the time specified in the order.

- 71.03** The Court may at any stage of proceedings in a cause or matter, on application by a party or of its own motion, direct any necessary inquiries or accounts to be taken or made.
- 71.04** Where the Court makes an order for the taking of an account, the Court by the same or a subsequent order:
- (a) may give directions concerning the manner of taking or vouching the account; and
  - (b) without limiting the provisions of the last subparagraph, may direct that in taking the account any specified relevant books of account shall be prima facie evidence of the matters contained in them, with liberty to the parties interested to take such objections thereto as they may be advised; and
  - (c) may direct that if the books are not kept in the English language that they be delivered to or made available to a translator for translation into English.
- 71.05** Where an account has been ordered to be taken, the accounting party shall, unless otherwise ordered:
- (a) make out his account;
  - (b) verify the account by affidavit;
  - (c) number the items consecutively on each side of the account; and
  - (d) file the account and affidavit notifying each other party that he has done so.
- 71.06** (1) Any party seeking to charge an accounting party beyond what he has by his account admitted to have received, or who alleges that any item in his account is erroneous in any respect, shall give notice thereof to the accounting party, stating so far as he is able, the amount sought to be charged and the particulars thereof or the grounds for alleging any item is erroneous.
- (2) On such notice being given the Court may order the accounting party to attend before a Master for viva voce examination.
- 71.07** In taking an account, all just allowances shall be made without any direction to that effect.
- 71.08** Where there has been undue delay in the prosecution of an account or inquiry, the Court may:
- (a) require the party or person involved to explain the delay;
  - (b) make an order staying or expediting the proceedings or providing for the further conduct thereof and for costs;
  - (c) direct any party or person to take over the conduct of the proceedings upon such terms and conditions as it thinks fit.
- 71.09** Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred, or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.
- 71.10** In proceedings under this Rule a Master shall have the powers conferred on the Court under Rules 78 and 81 *mutatis mutandis*.

#### **Reservation of Questions of Law to the Full Court of the Supreme Court**

- 72.01** A judge reserving any question of law for determination by the Full Court of the Supreme Court pursuant to section 44 of the Act shall do so in writing.

- 72.02** Such reservation shall:-
- (a) be divided into paragraphs numbered consecutively;
  - (b) state concisely such facts, and set out and refer to such documents, as may be necessary to enable the question reserved to be determined.

### **Consolidation**

- 73.01** Proceedings may be consolidated, ordered to be heard together, or to be heard immediately following one another as the justice of the case may require.
- 73.02** On any order being made under Rule 73.01, further orders may be made as to who has the carriage of proceedings and whether evidence given in one cause shall be evidence in the other cause or other causes consolidated or ordered to be heard together or in succession, and in appropriate cases for an abbreviated form of heading to be used on documents filed subsequent the order for consolidation.
- 73.03** Where any doubt occurs as to the practice on consolidation the matter shall be decided according to the previous practice of the Supreme Court.
- 73.04** Where orders have been made under Rule 73.01, orders for deconsolidation or orders varying the previous order may be made before or at trial.

### **Place Of Trial**

- 74.01** The place of trial shall be Adelaide unless a different place of trial shall be fixed at the pretrial conference or ordered by the Court.
- 74.02** The Court may order that the place of trial be changed or that the trial be heard partly in one place and partly in another.

### **Entry for Trial**

- 74A.01** The Registrar will maintain a list of actions awaiting trial, which is to comprise all civil proceedings ordered to proceed to trial but which have not been tried.
- 74A.02** No action may proceed to trial unless it has been ordered to proceed to trial in accordance with this rule.
- 74A.03** An order that an action proceed to trial may be made by a Judge or a Master at any time.
- 74A.04** Subject to Rule 74A.05, no order that an action proceed to trial may be made unless:
- (a) the Judge or Master hearing the application for an order that the action proceed to trial is satisfied that the action is ready to proceed to trial;
  - (b) before the hearing of an application that the action proceed to trial, a Certificate of Readiness (Form 40) has been filed by the file principal for one of the parties.
- 74A.05** Rule 75A.04 does not apply if a Judge or a Master is satisfied that, by reason of neglect or dilatoriness of the parties or one or more of them, the action should proceed to trial notwithstanding that such party or parties may not be ready and notwithstanding the fact that a certificate of readiness in accordance with this rule has not been filed.
- 74A.05A** (1) Rule 74A.05A applies only to actions commenced on and after 3 June 2000 and to such actions commenced earlier as the Court directs.
- (2) In Rule 74A.05A:

- (a) “complex action” and “ordinary action” have the meanings set out in Rule 2A.
  - (b) “Settlement Conference” has the meaning set out in Rule 56B.
- (3) Unless an ordinary action is already referred for trial or the Court has otherwise directed:
- (a) any party to it who is ready for trial may apply on the application for directions to refer it for trial; or
  - (b) the Registrar will list the application for directions for a hearing to consider referring the action for trial:
    - (i) 14 weeks after the close of the first Settlement Conference; or
    - (ii) where there has been no Settlement Conference 18 weeks after the close of pleadings or affidavits.
- (4) In a complex action the Supervising Judge may with the concurrence of the Chief Judge fix a prospective trial date before the action is referred for trial, but no trial is to proceed on that date unless prior to it the action has been referred for trial under Rule 74A.02.

**74A.06** If at any time after an action has been ordered to proceed to trial and before the commencement of the trial, an action is settled or discontinued, either wholly or in part, or a party becomes aware of anything which might have the effect of rendering inaccurate the estimation as to the length of trial set out in the certificate of readiness, or any other information therein set out, the plaintiff or such other party as may become aware of any such matter will forthwith write to the Registrar giving full particulars thereof and furnish a copy of the letter to all other parties.

- 74A.07** (1) Unless the Court otherwise orders, at least 7 days before the first hearing of any application to refer the action for trial, the plaintiff will deliver to the Registrar copy documents for the use of the Judge at trial, prepared in accordance with this rule. Where the file for the action is electronic, this Rule shall not apply unless the Court so orders.
- (2) The copy documents will be bound and indexed, and will include as well as any other document ordered to be included, a copy of the following:
- (a) the originating process and all pleadings in their final form, including third party and contribution proceedings, incorporating all amendments, the amendments to be reproduced or marked so as to distinguish them from the remainder of the pleading together with a marginal note indicating when and pursuant to what rule or order they were made or indicated by some other method;
  - (b) all particulars including Rule 46.15 Particulars furnished other than as part of a pleading;
  - (ba) any Affidavit of Loss and Answer to the Affidavit of Loss;
  - (c) if the action is proceeding on affidavits in lieu of pleadings, a copy of the affidavits and exhibits thereto;
  - (d) any interlocutory judgment and any other judgment, order or direction as to the mode of trial, or which might have a bearing on the conduct of the trial;
  - (e) the certificate of readiness for trial.
- (3) Any dispute as to the content of the copy documents is to be resolved by a summary order or direction of the Court.
- (4) The plaintiff will furnish a set of the copy documents to each other party at the reasonable cost of such other party. It may do so by an authorised electronic communication.

**74A.08** (1) A solicitor for a party, or where he or she is not represented the party in person, shall take all necessary steps to ascertain from the registry when the action is to be called on for trial.

- (2) Where a trial is warned to commence at a time to be notified on a particular day, the solicitor for each party, or if the party is not represented, the party personally, will throughout the day be available to be contacted by telephone at the telephone number shown in the last document filed by him or her showing a telephone number or at such other number as he or she notifies to the registry.

### **Mode Of Trial**

**75.02** The Court may at any time or from time to time in any proceeding order:-

- (a) that one or more questions of fact be tried before the others;
- (b) that any point or points of law arising on the pleadings be disposed of before proceeding to trial of the facts;
- and may appoint the place or places of such trials.

**75.03** (1) At any time before a day is fixed for the trial of any proceeding the parties may consent that the evidence to be adduced on the trial shall be taken on affidavit, provided that notwithstanding such consent the Court may order the whole or any part of the evidence to be taken orally.

(2) Where evidence is to be adduced on trial by affidavit, then unless the Court otherwise orders:

- (a) the plaintiff shall not later than seven days after the date for the trial of the action has been fixed file his affidavits, and serve copies of those affidavits on the defendant;
- (b) the defendant shall within seven days after receipt of such affidavits file his affidavits and serve copies thereof on the plaintiff;
- (c) the plaintiff shall within four days after the expiration of the last mentioned seven days file his affidavits in reply, such affidavits being confined to matters strictly in reply, and copies of such affidavits shall be served on the defendant.

(3) (a) When evidence is taken by affidavit any party desiring to cross examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed a written notice, requiring the production of the deponent for cross examination at the trial, such notice to be served at any time before the expiration of seven days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court may allow.

(b) Unless the deponent is produced in compliance to such notice, his affidavit shall not be used in evidence unless by special leave of the Court.

(c) The party producing such deponent for cross examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

(4) The party on whom such notice as is mentioned in the last preceding subrule is served shall be entitled to compel the attendance of the deponent for cross examination in the same way as he might compel the attendance of a witness to be examined.

**75.11** If a Judge shall direct that any judgment be entered for any party such member of staff as shall be directed to do so shall thereupon enter details of the judgment into the electronic record of the Court.

**75.12** The reasons of the Court or Judge for any order or judgment given may, if in written form be published by being delivered in open Court or in Chambers as the case may require to an officer of the Court.

- 75.13** Where no party appears when the trial of an action is called on the action may be dismissed. It may be reinstated on good cause shown by one of the parties within such time and on such terms as to costs or otherwise as the Court thinks fit.
- 75.14** (1) If, when an action is called on for trial the plaintiff appears and the defendant does not appear, then the plaintiff, in all cases in which he, she or it would have been entitled to final judgment for the whole or any part of their claim had default been made in filing a notice of address for service, shall be entitled to judgment for the whole or such part of their claim, and in other cases may prove their claim so far as the burden of proof lies upon them.
- (2) If, when an action is called on for trial, the defendant appears and the plaintiff does not appear, the defendant, if he, she or it has no counterclaim, shall be entitled to judgment dismissing the action; but if they have a counterclaim, then they may prove such claim so far as the burden of proof lies upon them; or in cases where, if plaintiffs, they would have been entitled to judgment in default of filing a notice of address for service, they shall be entitled to judgment without such proof.
- 75.15** Any judgment, order or verdict obtained where a party does not appear at trial may be set aside by the Court upon application made within seven days after the trial.
- 75.16** The Court may adjourn a trial to such time and place, and upon such terms as it thinks just.
- 75.17** The proper officer present at the trial shall maintain a record of the trial in accordance with the Registrar's directions.
- 75.18** Where a party dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death.
- 75.19** Where a plaintiff seeks relief in default of filing a notice of address for service or pleading under Rules 23.01(d) and 51.05 such application may be listed for hearing in open court in such manner as the Court may direct.
- 75.20** Nothing in Rules 55.09 or 67.01(6) shall operate to limit the power of the Court at trial to exercise any power to make directions conferred on it by Rules 55 or 56 or by any other rule or statute, or in its inherent jurisdiction, on the oral application of any party, or on its own motion, and so that any such direction shall be operative immediately upon the making of the same, without the need for any further order to carry the same into effect.

### **Trial by an Arbitrator**

- 76.01** Any application by a party pursuant to section 33 of the Act to refer an action or any issues arising in an action for trial by an arbitrator shall be made by interlocutory application.
- 76.02** An application to refer issues arising in an action for trial by an arbitrator shall clearly specify the issues sought to be referred.
- 76.03** If the parties join in seeking a reference to an arbitrator appointed by them, the consent of the proposed arbitrator to act shall be put before the Court at the time when the interlocutory application is made.
- 76.04** An arbitrator appointed pursuant to section 33 of the Act shall make his award in writing and deliver it to the Registrar. The Registrar will provide each of the parties to the reference with a copy of the award and will inform the parties of the date upon which such award was lodged with him.

- 76.05** Any party seeking to show cause why the award of an arbitrator duly appointed should not be adopted by the Court, shall do so by way of interlocutory application filed within 30 days of the receipt by the Registrar of the arbitrator's award. If no such application shall have been made within that time, the Registrar will forthwith enter judgment on the action or issues referred in terms of the award of the arbitrator.

### **Assessments Of Damages**

- 77.01** (1) Where the Court is of the opinion that the quantum of damages is substantially a matter of calculation it may direct:
- (a) that the assessment of damages be referred to an arbitrator under section 33 of the Act or an expert under section 34 of the Act;
  - (b) that damages be assessed by a Master.
- 77.02** In proceedings under this Rule the provisions of Rules 74, 75, 78 and 81 shall apply *mutatis mutandis*.
- 77.03** The foregoing provision of this Rule shall apply in relation to a judgment for the value of goods to be assessed, as they apply to damages to be assessed.
- 77.04** Where damages are to be assessed in respect of:
- (a) any continuing cause of action;
  - (b) recurring breaches of recurring obligations;
  - (c) intermittent breaches of a continuing obligation;
- the damages shall be assessed down to the time of assessment, including damages for breaches occurring after the proceedings were begun.

### **Evidence**

- 78.01** (1) The evidence of any witness at the trial of any action, or any assessment of damages, shall be taken orally in open Court unless otherwise ordered.
- (2) The Court may, at or before the trial of an action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified in the order.
- 78.02** A party may, with leave of the Court, but saving all just exceptions, read evidence taken or an affidavit filed in another action.
- 78.03** In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence-in-chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless at least seven days before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.
- 78.04** The Court may, in any action where it appears necessary, make orders for the examination of any person on oath before a Judge or a Master or an officer of the Court or before such other person as the Court may appoint as examiner at any place in the State;
- 78.05** Where an order is made under Part IIIB of the Commonwealth *Evidence Act, 1905*, the party obtaining the order shall:
- (a) be responsible for all expenses incurred by the Court, or by any person at the request of the Court, in respect of the letter of request and, on being given notice of the amount of any such expenses, and
  - (b) file:

- (i) a letter of request (Form 23);
  - (ii) the interrogatories (if any) and cross-interrogatories (if any) to accompany the letter of request; and
  - (iii) where English is not an official language of the country to whose judicial authorities the letter of request is sent, a translation of each of the documents so filed in an official language of that country appropriate to the place where the evidence is to be taken. Such translation must be certified by the person making it to be a correct translation; and the certificate must state his full name and address and his qualifications for making the translation.
- 78.06**
- (1) Where an order for examination on oath has been made pursuant to Rule 78.04, the party on whose application the order was made must supply the examiner with copies of the summons, pleadings and all other documents necessary to inform him of the questions in issue.
  - (2) Attendance before the examiner and the production of any document at that time may be enforced by subpoena.
- 78.07**
- (1) Subject to any order of the Court any person to be examined may be:
    - (a) examined, cross-examined and re-examined in the same manner as a witness at a trial; and
    - (b) examined by the examiner as to the meaning of any answer made by him, or as to any matter arising in the course of examination.
  - (2) The parties, their solicitors and counsel, and in the discretion of the examiner, their agents, shall be entitled to be present during the examination of any person.
  - (3) The examiner may adjourn an examination from time to time and from place to place.
- 78.08**
- (1) Where the examiner is a Judge or Master, the examiner may, on application of a party to the proceedings, take the examination of any person not named or provided for in the order for examination.
  - (2) Where the examiner is not a Judge or a Master, the examiner may, with the consent in writing of each party to the proceedings, take the examination of any person not provided for in the order for examination, and if he does so, he shall record in the deposition the consent of each of the parties.
- 78.09**
- (1) Where the examiner is not a Judge or Master, and the person being examined objects to answering a question put to him or to produce any document, the question, ground for objection and answer (if any) must be set out in the deposition of that person or in a statement annexed thereto.
  - (2) The Court shall on application decide the validity of the ground for objection, and, if it decides against the objector, it may order him to pay the costs occasioned by the objection.
- 78.10**
- (1) A deposition:
    - (a) shall be taken down by the examiner or a shorthand writer or some other person or on a recording machine in the presence of the examiner;
    - (b) need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.
  - (2)
    - (a) The deposition of any person shall be read by or to him, and he shall be asked to sign it in the presence of such of the parties as may attend.
    - (b) If the witness refuses to sign the deposition the examiner shall sign the same.
  - (3) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken, shall be sent by the examiner to the Registrar. The



Registrar shall cause a copy of the deposition to be entered on the electronic record of the Court in respect of the matter.

- (4) (a) The examiner may make a special report to the Court with regard to the examination before him and with regard to the absence of any person from, or the conduct of any person at, the examination.
- (b) The Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

- 78.11**
- (1) Where a person has been required by subpoena to attend before an examiner who is not a Judge or Master, and he refuses to be sworn for the purposes of the examination, or to answer any lawful question, or to produce any document, a certificate of such refusal, signed by the examiner shall be sent to the Registrar.
  - (2) The Registrar shall cause a true copy of it to be entered in the record of the proceedings, whereupon, on application of any party (either *ex parte* or on notice), the Court may:
    - (a) order that the person be sworn, or to answer the question or to produce the document, as the case may be;
    - (b) order that person to pay any costs occasioned by his refusal.

### **Obtaining Evidence For And From Foreign Tribunals**

**79.01** Where upon an application it is made to appear to the Court by:

- (a) a commission rogatoire
- (b) a letter of request
- (c) a certificate in a form acceptable to the Court
- (d) such other evidence as the Court may require;

that a foreign Court or Tribunal is desirous of obtaining testimony in relation to any civil proceeding pending before that Court or Tribunal, the Court may make orders for the examination of witnesses upon interrogatories or otherwise for attendance and production of documents and may give directions as to the time, place and manner of examination and all other connected matters, as the justice of the case may require. Any such order may be enforced in the same way as an order made in a proceeding in the Court.

**79.02** A request for an order pursuant to Rule 79.01 shall be made *ex parte* by summons by a person shown to be duly authorized to make such request.

**79.03** Where the commission rogatoire, letter of request, certificate or other document of request has been transmitted to the Court by His Excellency the Governor with an intimation that it is desirable that effect should be given to the same without requiring a request to be made to the Court by the parties to the proceeding in the foreign country or their agents in this country, the Registrar shall transmit the same to the Crown Solicitor, who may thereupon, with the consent of the Attorney-General, make such requests and take such steps as may be necessary to give effect to such document of request in accordance with the provisions of this Rule. The Crown Solicitor may, with the consent of the Attorney-General, apply to the Court for any order necessary to effect substituted service of any document or order on any person.

**79.04** The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or such other qualified person as to the Court may seem fit.

**79.05** (1) Where the commission rogatoire, letter of request, other document of request, or the plaintiff request that the examination be taken in a specific manner, the Court may, if it thinks fit, direct the examination to be taken in the manner so requested.

- (2) In the absence of any special directions the examination shall be taken in accordance with the Rules and practice of the Court.
- 79.06** (1) Unless otherwise provided in the order for examination the examiner before whom the examination is taken, shall on its completion send the depositions to the Registrar.
- (2) On receiving a deposition taken under this Rule the Registrar shall:
- (a) append thereto a certificate duly sealed with the seal of the Court;
- (b) forward the depositions so certified together with the commission rogatoire, letter of request or other document of request (if any), by registered letter addressed to the President or Chief Justice of the Foreign Court or Tribunal requiring the same or to such person in such manner as the Court may direct.
- 79.07** Rule 79 shall be read in conjunction with Rule 115.

### **Subpoenas**

- 81.01** (1) A subpoena may be issued:
- (a) to give evidence;
- (b) for production of a document or thing;
- (c) both to give evidence and for production of a document or thing.
- (2) A subpoena shall be in the Form 24.
- 81.02** Where a subpoena is required for the purpose of proceedings in Chambers, such subpoena shall issue from the Registrar with the concurrence of a Judge or Master.
- 81.03** (1) If a subpoena only requires production of a document or thing it may be complied with by delivering the document or thing to the Registrar not less than 24 hours prior to the date for compliance.
- (2) Any document or thing so delivered shall thereupon be produced by an officer of the Court as the nature of the case requires.
- (3) Sub-rule (1) does not apply if a party served with a subpoena requiring production of a document or thing wishes to object to the production of any document or thing sought to be produced on any ground, including but not limited to legal professional privilege, in which event the party must attend on the date specified in the subpoena.
- (4) A person served with a subpoena to which this rule applies, who delivers any document or thing to the Registrar:
- (a) shall be taken to have waived any objection to the production of the document or thing on any ground, including, but not limited to, legal professional privilege, and subject to sub-rules (4), (5) and (6) hereof, or to any order or direction of the Court, all parties shall be entitled to access to the same;
- (b) may be ordered to attend in person or in the case of a corporation or partnership by a proper officer or other named representative at a date, time and place specified in the order to answer any request for further or better production of documents or things the production of which is sought in the subpoena.
- (5) Where any document or thing has been delivered to the Registrar pursuant to this rule more than 7 days before the date fixed for the return of the subpoena, the Registrar shall forthwith give notice of such delivery to the parties, identifying the person effecting such delivery and the document or thing delivered, and stating that unless within 7 days of the date of the notice an application is brought by any party claiming privilege or any other right to prevent or restrict access of any other party to the document or thing, all parties will be given access to the same. Notice of delivery shall be given by the Registrar by authorised electronic communication whenever possible.

- (6) Where any document or thing has been delivered to the Registrar pursuant to this rule less than 7 days before the date fixed for the return of the subpoena, the Registrar will not allow access to such document or thing by any party, but all questions of access will be determined by the Court on the hearing at which the subpoena was returnable, or at such other time as may be ordered by the Court.
- (7) In the event that an application is brought to prevent or restrict access by the parties or any of them to any such document or thing, the Registrar will not allow access to such document or thing by any party until the application is determined.
- 81.04**
- (1) A subpoena shall not be served to compel the production of any public document except by leave of the Court.
- (2) An application for such leave may be made *ex parte*.
- (3) Any affidavit used upon an application made under subparagraph (2) of this Rule shall be sealed up and shall not be opened for or produced to any person other than the party filing the same or his solicitor until after the cause or matter in which such application has been made shall have been finally disposed of unless the Court shall otherwise order.
- 81.05**
- (1) A subpoena shall bear a unique indication of its authenticity (which may be computer generated) in a form approved by the Registrar.
- (2) Before a subpoena is issued a praecipe for its issue in Form 25 shall be filed.
- (3) Any number of persons may be included in a subpoena, and the names of witnesses may be inserted therein after the issue of the subpoena without resealing.
- (4) A request that a subpoena as to documents is to be returnable before the commencement of the trial shall be stated in the praecipe, together with an indication whether it is sought to be returnable before a registrar or a particular master or judge having the conduct of the pre-trial proceedings.
- 81.06** Where a subpoena has been issued but not served, any mistake therein may be corrected by filing an amended copy of the subpoena endorsed with the words "Amended and Resealed".
- 81.07**
- (1) A subpoena shall be served personally, and where requested the original shall be produced. If on tender of the subpoena to a person named he refuses to accept it the subpoena may be served by putting it down in his presence after he has been told of the nature of the subpoena.
- (2) A subpoena shall be served within twelve weeks after the date of issue and shall remain in force until the trial or hearing is concluded.
- (3) Service of a subpoena may be proved by affidavit except on proceedings for attachment.
- (4) Where a person served with a subpoena does not come before the Court in answer to the subpoena because the action is not called on for trial, and a further date is set for the commencement of the trial, the person served with the subpoena shall answer the subpoena as if it had inserted therein that further date for the commencement of the trial provided that within a reasonable time before that further date the party serving the subpoena upon him has served on him by certified mail notice of the further hearing date and has tendered to him reasonable expenses for his attendance at Court on the further date having taken into account what, if any, part of the amount previously tendered to him for reasonable expenses has been properly applied towards any expense incurred by him in answering the subpoena for its original return date.
- 81.08** A subpoena shall not require the person named to attend or produce any document or thing on any day on which his attendance or production by him is required unless a sum sufficient to meet the reasonable expenses of the person named of attending at court in answer to the

subpoena is paid to him at the time of service of the subpoena or not later than a reasonable time before the day upon which he is required to attend at Court.

- 81.09**
- (1) A person served with a subpoena is entitled to payment from the person requesting the issue of the subpoena of an amount equal to the reasonable expenses incurred by the person in complying with subpoena.
  - (2) The Court may make orders to ensure that the person complying with a subpoena receives the exact amount of the person's reasonable expenses in so complying.
  - (3) The court may either fix the amount of the costs or direct that the amount be fixed by a master.
- 81.10** A subpoena may be set aside by the Court where it is vexatious, oppressive or an abuse of the process of the Court.

**Subpoena for documents returnable before trial**

- 81.11**
- (a) A subpoena as to documents may be made returnable on a date and at a time before the commencement of the trial.
  - (b) No subpoena shall be issued under sub-rule (a) hereof after a civil action has been referred for trial without the leave of the court;
  - (c) Where any such subpoena is returnable before a registrar, in the event:
    - (i) of an objection to the subpoena;
    - (ii) of any objection to the production of any document;
    - (iii) any contention by the person issuing the subpoena that the return is inadequate;
    - (iv) of a dispute as to access to the documents, after receiving the documents produced on the subpoena,the registrar shall refer the matter to a judge or master to determine.
  - (d) Any objection to a subpoena, or to the production of any document sought in a subpoena, or any contention that the return to any such subpoena is inadequate raised before a judge or master, either on the initial return of the subpoena or after a reference pursuant to sub-rule (b) shall be dealt with by the judge or master before whom the subpoena is returned, or to whom a matter is referred under sub-rule 81.11(c), unless the judge or master is of the view that the matter should be dealt with by the trial judge, in which event it may be referred for hearing and determination by the trial judge.
  - (e) Unless otherwise ordered, all documents produced on the return of a subpoena to which this rule relates shall be kept in proper custody by the registrar and clearly marked to indicate the proceedings to which they relate.
  - (f) Subject to Rule 81.11(c), the Registrar, Master or Judge before whom a subpoena is returned may make such order as to access by any party to the document produced as may seem fit, provided that no order for access by any party is to be made unless all parties have had an opportunity to be heard on the question.
  - (g) Except in the case of a subpoena issued in the criminal jurisdiction of the Court, on the return of a subpoena to which this rule relates, the registrar, master or judge may, having regard to the volume of the documents produced or any other relevant consideration, in lieu of taking the documents produced into the custody of the court, permit the documents to be released into the custody of the solicitor responsible for the issue of the subpoena, in which event, subject to any other order or direction, the solicitor shall:
    - (i) keep the documents in a safe and secure place;
    - (ii) comply with any order or direction directed to preserving the integrity of the documents, including any order or direction that they be numbered or otherwise marked, collated, bound or housed in any particular way;

- (iii) include such of the documents as would ordinarily be discoverable if in the hands of the party represented by the solicitor, in the list or supplementary list of discovered documents;
- (iv) give access to the documents to all other parties;
- (v) produce all such documents at the trial;
- (vi) return all such documents to the party producing them (other than such of them as may have been tendered as exhibits at the trial) after the expiration of the period within which an appeal may be brought against the final judgment, or the determination of any such appeal, whichever is the later, or in the event that the action is settled without proceeding to final judgment, within seven days after any such settlement is entered into.

#### **Conversion of hard copy documents to electronic format**

- 81.11A** (1) The solicitor responsible for the issue of the subpoena or obtaining an order of the Court for the production of documents to the Registrar prior to trial shall take all such steps as may be necessary to convert the content of such of those documents as shall be required for use at the trial into electronic form (if not already in that form) and cause the relevant electronic files relating to them to be uploaded into the Court file or litigation support system as a Judge or Master shall direct.
- (2) For that purpose, upon receipt of documents pursuant to subpoena or order, or release of them in manner provided in rule 81.11(g), the Registrar shall cause the application for directions to be listed before a Judge or Master for consideration as to what directions ought to be given, to give effect to the provisions of (1) above.

**81.12** Where the Court has power of its own motion to call a witness or to require a person to produce evidentiary material it may direct the Registrar to issue and arrange for the service of a subpoena under Rule 81 for that purpose.

- 81.13** (1) “The Act” means the Commonwealth *Evidence and Procedure (New Zealand) Act, 1994*, No. 111.
- (2) Unless the Court otherwise directs leave to serve a subpoena in New Zealand may be obtained under section 9 of the Act on an *ex parte* application.
- (3) Where a document or thing is produced at a Registry of the High Court of New Zealand pursuant to a subpoena issued out of this Court under the Act:
- (a) The person producing the document or thing must tender to that Registry such money or vouchers as have been received by that person upon the service of the subpoena to meet the costs of transporting the document or thing from New Zealand to the Court which issued the subpoena;
  - (b) In so far as that cost has not been met under subparagraph (a) above the party which obtained leave to serve the subpoena must meet such cost.
- (4) Where a person named in a subpoena which is served in New Zealand under the Act fails to comply with the subpoena a certificate under section 16 of the Act may be issued in Form 39.
- (5) Where a person produces a document or thing to this Court under the Act in response to a subpoena issued in New Zealand:
- (a) That person must tender to the Registry such money or vouchers which have been tendered to them in relation to the subpoena as are necessary for the cost of transporting the document or thing to New Zealand;
  - (b) If the cost of transporting the document or thing to New Zealand is not tendered under subparagraph (a), that cost must be borne by the party that obtained the leave to serve the subpoena in Australia.

- (6) Where any fax of a document may be adduced pursuant to Part 6 of the Act such a fax must be on paper of durable quality capable of receiving ink and measuring about 295 mm long and 210 mm wide.
- (7) If there is no specific provision in these Rules as to any procedure under the Act the Federal Court Order 69A 'Trans-Tasman Proceedings Rules' may be a guide in so far as it is not inconsistent with these Rules.

### **Court Experts**

- 82.01** Any reference to an expert pursuant to Section 34 of the Act shall be in writing and shall specify:-
- (a) the question or questions upon which the expert's investigation and report is sought;
  - (b) any powers of the Court delegated to the expert for the purposes of the investigation.
- 82.02** The parties to an action shall be entitled to be heard before an expert is appointed as to:-
- (a) the need or otherwise for the appointment of an expert;
  - (b) the identity of the expert to be appointed;
  - (c) the question or questions to be asked of the expert.
- 82.03** The expert shall send his report to the Registrar, together with as many copies of the report as the Court may direct, and the Registrar shall send the copies of the report to each party or his solicitor.

### **Affidavits**

- 83.01** (1) An affidavit used in a proceeding shall:
- (a) be filed and delivered to all other parties two clear days before the occasion for using it arises;
  - (b) be entitled in the proceedings;
  - (c) be expressed in the first person and show the name, address and occupation of the deponent;
  - (d) where the deponent is a person employed by a party, state that fact;
  - (e) be divided into paragraphs numbered consecutively;
  - (f) on each page be signed by the deponent and the person before whom it is sworn, and also bear the date upon which it was sworn;
  - (g) have a jurat completed and signed by the person before whom the affidavit was sworn, the name of which person shall be legibly printed or typed below his signature in the jurat;
  - (h) where made by two or more deponents have the name of each deponent inserted in the jurat, or if sworn separately in separate jurats;
  - (i) if filed on behalf of a corporate party which does not have a solicitor on the file acting for it be sworn by a director secretary or other person duly authorised by the body corporate to make the affidavit on its behalf.
  - (j) the jurat must not be on a page separate from the conclusion of the matters deposed to in an affidavit.
- (2) Where it is not reasonably practical to file an affidavit in accordance with Rule 83.01(a) the affidavit when filed shall bear a notation to the following effect prominently displayed on the Form 1.
- 'Urgent: This affidavit is required for use before [insert name of Judge or Master] on ..... day of ..... 20..... at ..... am/pm.'
- (3) An affidavit shall be in Form 42.

- 83.02** Where it appears to a person before whom an affidavit is sworn that the deponent is unable to read it, he shall certify in the jurat that the affidavit was read in the presence of the deponent who appeared to comprehend and approve it.
- 83.03** Where it appears to a person before whom an affidavit is to be sworn that the deponent does not understand the English language, the affidavit shall be interpreted to the deponent by a competent interpreter who shall certify by endorsement on the affidavit that he has interpreted the affidavit to the deponent and that the deponent appeared to comprehend and approve it. The interpreter shall also state his qualifications as an interpreter.
- 83.04** (1) An affidavit used in interlocutory proceedings may contain statements based on information received by the deponent which he believes to be true with the sources and grounds thereof.
- (2) Unless the Court otherwise orders, an affidavit shall contain only such facts as the deponent is able of his own knowledge to prove.
- (3) The costs of an affidavit which sets forth matters of hearsay or argumentative matter unnecessarily or unnecessary copies of or extracts from documents shall be paid by the party filing the same or in a proper case his solicitor.
- 83.05** An affidavit which has, in the jurat or body thereof any interlineation, erasure or other alteration shall not be used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has rewritten in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.
- 83.06** (1) An affidavit may be sworn within South Australia before a Judge, a Master, the Registrar, the Deputy Registrar, or other proper officer, a public notary enrolled on the roll of public notaries kept in the Supreme Court, a commissioner for taking affidavits in the Supreme Court, a Justice of the Peace for this State or as permitted by the *Evidence (Affidavits) Act 1928*.
- (2) Where an affidavit is taken before a public notary no greater fee shall be charged than would be charged if the affidavit were taken by a commissioner for taking affidavits.
- (3) An affidavit may be sworn outside South Australia before any of the persons specified in Section 66 of the *Evidence Act 1929*.
- 83.07** (1) No affidavit shall be sufficient if it is sworn before the party on whose behalf it is to be used, or before any clerk or servant of that party provided that in any proceedings to which the Crown is a party no affidavit shall be insufficient merely because it is sworn before any clerk or servant of the Crown.
- (2) No affidavit shall be insufficient merely because it is sworn before the solicitor acting for the party on whose behalf it is to be used or before the partner, agent or correspondent of that solicitor, or before any clerk or employee of such solicitor.
- 83.08** (1) A document to be used in conjunction with an affidavit must be exhibited and not annexed to the affidavit. Such exhibit shall be endorsed with the action number and the short title of the proceeding and a certificate signed by the person before whom the affidavit is sworn identifying such exhibit with the affidavit to which it is an exhibit.
- (2) Instead of making a document an exhibit to an affidavit, the relevant portion of the document may be included in the body of the affidavit and the party filing the affidavit shall in such case produce the document whenever the affidavit is used.
- (3) If any exhibit is very large, or would otherwise cause difficulties in storage in the office of the Registrar, the party wishing to make it an exhibit shall apply to the Registrar for directions. The Registrar may direct in what manner it is to be exhibited or may direct the party to lodge the exhibit at the office of his solicitor or at such other place as the Registrar shall direct, and may give further directions as to its inspection,

copying, testing, availability to an expert or otherwise as the case may require. This subrule shall only apply to any exhibit which, for some reason, cannot conveniently be filed with the Court in an electronic format.

- 83.09** With the leave of the Court an affidavit may be used in evidence notwithstanding any irregularity in form.
- 83.10** An affidavit may be used in a proceeding notwithstanding that it was sworn before the proceeding was commenced.
- 83.11** Where there is any scandalous, irrelevant or otherwise oppressive matter in an affidavit the Court may order that:
- (a) the matter be struck out of the affidavit,
  - (b) the affidavit be taken off the file, and may order the deponent or in a proper case the solicitor filing the affidavit to pay the costs occasioned thereby.
- 83.12**
- (1) The Court may on the application of any party order the attendance for cross-examination of the person making any affidavit.
  - (2) Such requirement shall be made in writing to the party filing, or preparing to use, the affidavit.
  - (3) Where the attendance of a person is required under Subrule (1) hereof and he does not attend, his affidavit shall not be used without the leave of the Court.
  - (4) Where a person making an affidavit is cross-examined, the party using the affidavit may re-examine him.
- 83.13** Where any party reasonably requires the affidavit of any person who refuses to make an affidavit or fails to do so after request, the party may apply to the Court for an order that the person from whom the affidavit is required attend before the Court for examination, and that the depositions taken on such examination be used in the proceedings as if they were an affidavit of that person.

### **Judgments And Orders**

- 84.01**
- (1) The Court may at any stage of any proceedings on the application of any party, direct the entry of such judgment or make such order as the nature of the case requires, notwithstanding that the applicant does not make a claim for relief extending to that judgment or order in the summons, provided that such judgment or order can be made without injustice to any other party.
  - (2) No application for judgment shall be necessary except where an enactment or these Rules otherwise provides.
  - (3) At or after trial no motion for judgment shall be necessary in order to obtain judgment.
  - (4) Where at the trial of an action the Judge abstains from directing that judgment be entered, any party may thereafter by application seek such judgment as the party considers ought to be given in the matter.
  - (5) Where by any Statute, or by these Rules, or by an order of the Court, it is provided that any judgment be entered upon the filing of an affidavit or production of any document, the proper officer shall examine the affidavit or document produced, and, if he is satisfied of the regularity and sufficiency of the affidavit or document, he shall enter judgment accordingly.
  - (6) Where by any Statute, or these Rules, or an order of the Court, any judgment may be entered pursuant to any order or certificate or the return to any warrant of execution, the production of the order or certificate sealed with the seal of the Court or otherwise



duly authenticated in accordance with its practice or of such return shall be a sufficient authority to enter judgment accordingly.

- 84.02**
- (1) A judgment or order shall unless otherwise ordered take effect on the date on which it is pronounced or made.
  - (2) Where a judgment is entered otherwise than pursuant to a direction of the Court the judgment shall take effect as of the date of entry.
  - (3) Notwithstanding paragraphs (1) and (2), the Court may order that a judgment or order take effect as of a date earlier or later than the date fixed by these paragraphs.
- 84.03**
- (1) Where an appeal from a judgment or order of the Court has been made to the Supreme Court, the order of the Supreme Court or a sealed copy thereof shall be filed in the Registry.
  - (2) Upon such order or copy order being filed, if the order reverses or modifies the judgment or order of the Court, such order of the Supreme Court shall be deemed to be an order of the Court and shall be carried into effect accordingly.
  - (3) Where the order of the Supreme Court directs that judgment be entered in the District Court, judgment shall be entered accordingly and shall be dated with the date of the order of the Supreme Court.
  - (4) Subrules (2) and (3) of this Rule shall not apply in a case where the Supreme Court awards execution from the Supreme Court.
- 84.04**
- (1) Subject to paragraph (2), a judgment or order which requires a person to do, or abstain from doing, an act shall specify the time within which he is required to do or abstain from doing, the act.
  - (2) Where the act which a person is required by judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified, but this shall not affect the power of the Court to specify such a time.
  - (3) A copy of any judgment or order requiring any person to do, or abstain from doing, any act shall unless the Court otherwise orders, be served personally upon the person required to obey the same before the time specified for compliance.
  - (3A) Every judgment or order sealed by the Court requiring any person to do, or abstain from doing, any act shall unless the Court otherwise orders have indorsed thereon a warning to the persons affected by the order of the possible consequences of their failure to obey the order.
  - (4) Where a judgment or order requires a person to do an act, but does not specify a time within which he is required to do it, the Court may by order require him to do the act within a specified time.
- 84.05**
- (1) A Judge or a Master in Court or in Chambers may enter judgment or make any order by the consent of the parties. A judgment or order so entered shall be of the same force and validity as a judgment or order pronounced in open Court.
  - (2) Unless the Court otherwise directs where a judgment is entered for a sum of money, or an order is made for the payment of a sum of money, that sum of money shall be deemed to be in addition to all sums which have previously been paid by or on behalf of the defendant to or on behalf of the plaintiff in respect of any cause of action raised by the pleadings.
  - (3) Upon the request of any party and being satisfied that all other parties consent to such course, a Master or the Registrar may draw up and enter an order in any case in which, in the opinion of the officer, the Court would make such an order upon the consent of the parties. For the purpose the Master or Registrar may act upon apparently genuine consents transmitted to him by means of authorised electronic communications.

- (4) Every order made under paragraph (3) hereof shall state that it is made by consent and shall be of the same force and validity as if it had been made by the Court.
- 84.06** (1) A party desiring to enter an order shall transmit an electronic draft of it by e-mail to the Registrar for settling, provided that, if the Registrar is satisfied that it is impractical for party to do so, the Registrar may approve either transmissions of a draft by facsimile or the delivery by the party of the draft in electronic form in a diskette and by a paper copy to the Registry.
- (2) Any documents transmitted electronically shall be in a format approved by the Court by Practice Direction.
- (3) Where a judgment depends as to amount on a reference to a Master for calculation or assessment the Master's Certificate shall be part of the fiat recording the making of the order.
- 84.07** (1) Upon receipt of a draft order the Registrar, or other officer to whom such duty may be assigned, may:
- (a) settle the draft without an appointment for the attendance of the parties; or
- (b) appoint a time and a place for attendance of the parties to settle the draft.
- (2) Subrule (1) above shall not prevent any member of the Court from settling a draft order if he sees fit to do so.
- 84.08** Where the Registrar makes an appointment for settlement under Rule 84.07(b) he shall notify the appointment to all parties concerned.
- 84.09** Where any party fails to attend on the appointment the Registrar may on or after the appointed time settle the draft in the absence of the party.
- 84.10** (1) The Registrar may draw and settle an order authorised to be entered by these Rules or a direction of the Court, where:
- (a) the Court so directs; or
- (b) a party so requests.
- (2) The Registrar may exercise his powers under paragraph (1):
- (a) notwithstanding that no party has lodged a draft with him; and
- (b) without appointing any time or place for attendance of the parties on settlement.
- 84.11** The Registrar shall on settling a draft of an order:
- (1) Where the draft is submitted in paper form, sign or initial the draft or a fair copy of it.
- (2) Where the draft is submitted electronically place his or her initials and the date at the foot of each page of the settled document.
- 84.12** The Court may vary or set aside a judgment or order at any time if the justice of the case so requires.
- 84.13** Unless the Court otherwise orders:
- (a) a party may enter an order at any time;
- (b) an order shall subject to Rule 84.14 be entered when some step is to be taken under the order, and in particular shall be entered:
- (i) where the order only takes effect on the signing of the order;
- (ii) where the order is to be served;
- (iii) where the order is to be enforced;
- (iv) where an appeal from the order has been instituted, or an application for leave to appeal from the order has been made;

(v) where the Court so directs.

**84.14** Rule 84.13 does not apply to an order which (in addition to any provision as to costs) merely:

- (a) grants an extension or abridgment of time, or
- (b) grants leave or makes a direction
  - (i) to amend any document or other order;
  - (ii) to file any document; or
  - (iii) to do any act to be done by an officer of the Court other than a solicitor; or
- (c) gives directions concerning the conduct of the proceedings.

**84.15** (1) A party may enter an order by filing it in the form in which it has been settled by the Registrar.

(1A) Where the order has been settled electronically, the Registrar shall enter the order as settled by recording the text thereof in the electronic record of the Court.

(2) The Registrar may enter an order on the direction of the Court or on the request of a party.

**84.16** (1) Upon the text of an order being recorded pursuant to subrule (1A) of Rule 84.15 it shall be deemed to have been entered and perfected. The electronic record of it shall be evidence of its terms for all purposes. A copy of such text shall be transmitted by the Registrar, by e-mail or by such other electronic or other means as the Registrar deems appropriate, to any party causing it to be entered.

(2) A paper copy of the order, duly attested by the proper officer of the Court and sealed, may be issued by the Registrar to any person reasonably requiring it.

**84.17** An order need not be served personally unless the Rules require service or the Court directs service.

**84.18** (1) In any cause or matter where the defendant has filed a notice of address for service by solicitor no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor.

(2) Where the defendant has not filed a notice of address for service or has appeared in person, no order for judgment by consent shall be made unless the defendant appears before a Judge or Master and gives his consent in person or unless his written consent is attested by a solicitor acting on his behalf except in cases where the defendant is a practitioner of the Court.

**84.19** A judgment debt shall carry interest at such rate as is prescribed by any Statute or Rule or by the judgment of the Court. If no rate is prescribed, the rate in respect of any period before 1 October 2008 shall be that set out in the Third Schedule and in respect of any period commencing on or after 1 October 2008 shall be the rate applicable from time to time specified in Rule 261 of the Supreme Court Civil Rules 2006.

**84.20** (1) Where an order is made in a cause or matter the Court may direct that the order need not be drawn up. In that case, or where the order need not be drawn up by virtue of Rule 84.14, the fiat shall operate as an order and time shall run from the date of the fiat.

(2) Any fiat pronounced by the Court shall, as soon as practicable thereafter, be authenticated by the Judge or Master pronouncing it in manner prescribed by practice direction and entered in the electronic file of the Court pertaining to the cause or matter.

(3) Unless the Court otherwise directs no notice of the fiat need be given to any party whether or not he was present in person or by his solicitor when the fiat was made.

- (4) The fiat may subsequently be settled as an order and entered in the electronic record of the Court in accordance with the foregoing rules.

**84.21** A judgment or order against a body corporate which has been wilfully disobeyed may, by leave of the Court, be enforced by sequestration against the property of the body corporate or by attachment against the directors or other officers thereof or by sequestration of their property.

### **Proceedings Under Judgments And Orders**

**85.01** “Judgment” in this rule includes an order.

**85.02** (1) Where a judgment contains directions as to any account, inquiry or other matter under the judgment, any party may, after the entry of judgment, apply to the Court to proceed under the judgment.

- (2) (a) Where judgment has been given for accounts to be taken and inquiries made before a Master without any special reference for that purpose the Master may prepare a report for the Court.
- (b) Where a Master acts under subparagraph (a) hereof he shall have the same powers and authorities as the Judge could have exercised if the matter had been continued before the Judge.

**85.03** (1) Where in any proceeding relating to:

- (a) the administration of the estate of a deceased person; or
- (b) the execution of any trust; or
- (c) any transaction or proposed transaction relating to property, the Court makes a direction for the entry of judgment:
- (d) affecting the rights or interests of a person who is not a party, or
- (e) for the taking of an account or the making of an inquiry the Court may by judgment or subsequent order:
- (f) give directions for the service of notice of the judgment on any person interested; or
- (g) if it appears to be impracticable to serve notice of the judgment on any person interested, dispense with service on him or order substituted service by advertisement or otherwise in lieu of service.

(2) Where under this Rule notice of a judgment is served on a person, or the Court dispenses with service or orders substituted service of a notice of judgment on a person:

- (a) subject to subparagraph (b) he shall be bound by the judgment to the same extent as if he were a party at the time when the direction for entry of judgment was made, except where the judgment has been obtained by fraud or non-disclosure of material facts;
- (b) the Court may, on application filed within the time limited by paragraph (3) of this Rule, discharge or vary the judgment;
- (c) he may attend the account, inquiries or other matters under the judgment

(3) An application under subparagraph (2)(b) shall be filed:

- (a) if notice of the judgment has been served on the applicant, within twenty- eight days after the date of service; or
- (b) if the Court has dispensed with service of notice of the judgment on him, within twenty-eight days after the date of the order dispensing with service or substituted service.

- 85.04** On the return of the application to proceed the Court shall give directions with respect to the proceedings to be taken under the judgment, and the conduct thereof, including in particular directions with respect to:
- (a) the manner in which any account or inquiry is to be prosecuted;
  - (b) the evidence to be adduced in support thereof;
  - (c) the persons who are required to attend all or any part of the proceedings; and
  - (d) the time within which each proceeding is to be taken.
- 85.05** The Court may, on the hearing of an application to proceed, or subsequently:
- (a) require parties whose interests are similar or identical to be represented by the same solicitor and to nominate a solicitor to represent them;
  - (b) or require that parties represented by the same solicitor be separately represented; or
  - (c) where a party insists on separate representation notwithstanding an order under subparagraph (a) hereof he may be ordered to bear his own costs and to pay the increased costs of any other party.
- 85.06** Any party to the proceedings under the judgment who has not been directed to attend may apply to the Court for leave to attend any part of the proceedings either at the cost of the estate or property to which the proceedings relate or otherwise and to have the conduct of that part either in addition to or in substitution for any other party.
- 85.07** Where the judgment directs the settlement of an instrument, the Court may give directions for:
- (a) the preparation and service of a draft instrument;
  - (b) the preparation and delivery of a statement setting out any objections to the draft.
- 85.08** Where a judgment is given, directing an account of debts, claims or liabilities, or an inquiry for next of kin or other unascertained persons, the Court may direct an advertisement for creditors and other claimants to be issued, and in deciding whether to do so shall have regard to any advertisement previously issued by the personal representatives or trustees concerned.
- 85.09** (1) Every such advertisement shall be prepared by the party prosecuting the judgment, and:
- (a) in the case of an advertisement for creditors shall be signed by the party's solicitors, or, if he has no solicitor, by the Registrar; and
  - (b) in the case of an advertisement for other claimants, shall be submitted to the Registrar, and, if approved by the Registrar, shall be signed by him, and such signature shall be sufficient authority to the printer of the Government Gazette to print the same.
- (2) Nothing in subrule (1) above shall prevent a member of the Court from settling or approving an advertisement for claimants if he sees fit to do so.
- 85.10** The Court shall fix the time within which, and the person to whom, any claimant is to send his name and address and particulars of his claim, and that time and the name and address of that person shall be stated in the advertisement.
- 85.11** A claimant who does not serve particulars of claim on the person within the time stated in the advertisement shall not be entitled to prove his claim except by leave of the Court.
- 85.12** (1) Where a claimant serves particulars of his claim in response to an advertisement under a judgment, the person on whom it is served shall, within seven days after notice of the particulars of claim, serve notice of the judgment on the claimant.

- (2) Upon service of a notice of a judgment under subparagraph (1) of this Rule, paragraphs (2) and (3) of Rule 85.03 shall apply as if notice had been served under that Rule.

**85.13** The Court may:

- (a) appoint a person to examine and list the claims for the purposes of an account or inquiry under a judgment; and  
(b) fix a date for adjudication of claims.

**85.14** In the case of an account of debts or other liabilities, the person appointed under Rule 85.13 shall:

- (a) examine the claim of each claimant and consider whether it ought to be allowed; and  
(b) at least seven days before the date for adjudication on the claims file lists of:  
(i) claims served in response to any advertisement;  
(ii) other claims received by any of the personal representatives or trustees concerned; and  
(iii) debts and liabilities for which claims have not been received, but which are or may still be due and which have come to the knowledge of any of the personal representatives or trustees concerned.

**85.15** Where an inquiry for next of kin or other unascertained claimants has been directed, the person appointed under Rule 85.13 shall:

- (a) examine the claim of each claimant and consider whether it is valid; and  
(b) at least seven days before the date for adjudication on the claims file lists of:  
(i) claims served in response to any advertisement;  
(ii) other claims received by, or which have come to the knowledge of any of the personal representatives or trustees concerned.

**85.16** (1) The list referred to in Rules 85.14 and 85.15 must, as the circumstances require, specify in relation to each alleged debt or liability whether such debt or liability should be allowed, and in relation to each claim the validity of such claim, and in either case specify the reasons for such belief.

- (2) The Court may direct a person appointed under Rule 85.13 and any of the personal representatives or trustees concerned, to verify by affidavit a list filed under Rules 85.14 and 85.15.

**85.17** (1) The Court may, on the adjudication of the claims:

- (a) allow any claim, with or without proof;  
(b) direct that any claim be investigated in such manner as the Court thinks fit;  
(c) require any claimant to attend and prove his claim or to furnish further particulars or evidence of his claim or to produce any security relating to his claim;  
(d) disallow any claim.  
(2) A claimant need not make an affidavit or attend in support of his claim, unless the Court so directs under paragraph (1)(c) of this Rule.  
(3) In this Rule “claim” includes part of a claim.

**85.18** (1) Where the Court requires a claimant to attend to prove his claim pursuant to Rule 85.17(1)(c), such party as the Court may direct must serve on that claimant a notice requiring him:

- (a) to file and serve on the party serving the notice an affidavit in support of his claim, within such time, not less than seven days after the date of service of the notice, as may be specified therein; and
  - (b) to attend before the Court for adjudication on the claim at such time as may be specified in the notice; and
  - (c) to produce to the Court at such time as may be specified in the notice such documents as may be specified or described.
- (2) Where a claimant does not comply with a notice served on him under subparagraph (1) hereof, the Court may disallow his claim.
  - (3) In this Rule “claim” includes part of a claim.

**85.19** Where upon the day appointed for adjudicating upon the claims, any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of, or in opposition to, the claim is filed.

- 85.20** (1) Where a claimant other than a creditor has established his claim then unless:
- (a) he is a party to the proceedings; or
  - (b) has previously been served with notice of the judgment; or
  - (c) the Court otherwise directs
- the party having the conduct of the proceedings must serve notice of the judgment on him.
- (2) A person duly served with notice of a judgment under this Rule shall, subject to Rule 85.03(2)(a) and (b) be bound by the judgment to the same extent as he would have been if he had originally been made a party to the proceeding.
  - (3) Where the Court directs under subparagraph (1)(c) of this Rule that notice of a judgment shall not be served on a person, the Court may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and unless the judgment has been obtained by fraud or non-disclosure of material facts, he shall be bound accordingly.

- 85.21** (1) Such party as the Court may direct must serve on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of such allowance or disallowance.
- (2) Such party as the Court shall direct must make out a list of the creditors’ claims, and a list of any other claims allowed, and leave it in the Registry.

- 85.22** (1) Where a judgment directs an account of the debts of a deceased person then, unless the Court otherwise orders, interest shall be allowed:
- (a) on any such debt as carries interest, at the rate it carries; and
  - (b) on any other debt, at the rate laid down in the third schedule, from the date of the judgment or such other rate as the Court may fix.
- (2) A creditor who has established his debt under the judgment, and whose debt does not carry interest, shall be entitled to interest upon his debt at the rate laid down in the third schedule from the date of the judgment or such other rate as the Court may fix out of any assets which may remain after satisfying the costs of the proceeding, the debts established, and the interest on such of those debts as by statute or contract carry interest.
  - (3) A creditor who successfully establishes his claim shall be entitled to such costs as the Court may allow him.

**85.23** When a judgment directs an account of legacies then, subject to any directions contained in the will or codicil in question, and to any order made by the Court, interest shall be allowed

on each legacy at the rate of ten per cent per annum beginning at the expiration of one year after the death of the testator.

- 85.24** (1) Any party may, before the proceedings before a Master under any judgment are concluded, apply to a Judge for the determination of any question arising in the course of the proceedings.
- (2) Unless the Court otherwise directs, a fresh application shall not be issued for the purposes of this Rule.
- (3) The order or directions made or given by the Judge on the determination of such question need not be drawn up, except in the event of an appeal to the Full Court, but the Master shall refer to such order or directions in his certificate under Rule 85.25.
- (4) If the Judge so directs, or is not available, the question may be determined by any other Judge.
- 85.25** The result of the proceedings before the Master shall be stated in a certificate signed by the Master, and such certificate shall:
- (a) make reference to such matters as will make it clear upon what the result stated in the certificate is founded;
- (b) where the judgment requires the taking of an account, state the result of the account, specify by reference to the numbered items in the account which, if any, items have been disallowed or varied and the additions, if any, which have been made.
- 85.26** (1) The Master may direct the preparation of a draft certificate by the solicitor of one of the parties and thereafter settle the form of it on such notice to the parties and with or without their attendance, as the Master deems proper.
- (2) Upon being settled and signed by the Master, the certificate shall be filed in the Registry, and shall thenceforth be binding on all the parties to the proceedings unless discharged or varied upon application made before the expiration of seven clear days after the filing of the certificate.
- 85.27** Upon application a Judge may in special circumstances discharge or vary a certificate after the same has become binding on the parties.
- 85.28** A proceeding adjourned for further consideration in Chambers may be brought on by application served on all other parties six clear days before the return. The application may be taken out by:
- (a) the party having the conduct of the proceedings after seven days and within fourteen days of the filing of the Master's certificate,
- (b) any other party after the expiration of fourteen days from the filing of the certificate.
- 85.29** A party who seeks to have a judgment or order reversed or varied by reason of matter arising or discovered subsequent to the making of the judgment or order, or who seeks to impeach a judgment or order on the ground of fraud, may apply in the proceeding for the relief claimed.

#### **Investigation of a Debtor's Financial Position and Orders for Payment**

- 86.01** In Rule 86 'the Act' means the *Enforcement of Judgments Act 1991*.
- 86.02** A judgment creditor may file a request in Form 29 with the Registrar to issue a summons under Sections 4(2) or 5(5) of the Act, which is to be in Form 33, together with as many copies of the summons as are required by the Registrar.
- 86.03** Where it appears proper to do so the Registrar may issue such a summons in Form 33.
- 86.04** Where the Registrar is in doubt about whether it is proper to issue such a summons he may:



- (a) Require the judgment creditor to file an affidavit justifying the issue of such a summons; and/or
  - (b) Require the judgment creditor to obtain a direction from a Master that such a summons be issued.
- 86.05** Unless the Court or the Registrar otherwise directs there shall be at least 7 days between the service of a summons under Sections 4(2) or 5(5) of the Act and when the judgment debtor or other person is required to attend in answer to it.
- 86.06** Where the amount of the judgment debt is then below \$50,000.00, or such other amount as the Court shall order:
- (a) an investigation under Section 4(1) of the Act,
  - (b) orders under Sections 5(1) and (4) of the Act,
  - (c) orders for arrest under Sections 4(4) and 5(6) of the Act;
- may be made by a Registrar of the Court.
- 86.07** All of the powers of the Court under Sections 4 and 5 of the Act may be exercised by a Master.
- 86.08** On an investigation under Section 4(1) of the Act or an examination under Section 5(5) of the Act the Court may inform itself in such manner as is just in the circumstances of all relevant matters and it is not bound by the rules of evidence in doing so.
- 86.09** An order under Section 5(1) of the Act may be made:
- (a) At the conclusion of an investigation under Section 4(1) of the Act, or
  - (b) At a subsequent time upon the application of the judgment creditor and upon giving all interested parties proper opportunity to make submissions on what order should then be made.
- 86.10** Rescission, variation, discharge or suspension of any order made or of a summons or warrant issued under Rule 86 may be sought by any person interested upon an application issued pursuant to Rule 67.
- 86.11** A warrant for arrest under Sections 4 or 5 of the Act is to be in Form 28.

### Garnishee Orders

- 87.01** In Rule 87 “the Act” means the *Enforcement of Judgments Act 1991*.
- 87.02**
- (1) A judgment creditor may by lodging a Request in Form 29 request the Registrar to make an order under Section 6(1) of the Act.
  - (2) With such a Request the judgment creditor is to file an affidavit:
    - (a) Proving what part of the judgment debt is still due and owing;
    - (b) Establishing matters under subsections 6(1)(a) or (b) of the Act entitling the judgment creditor to garnishee moneys of the judgment debtor which are held by the proposed garnishee.
  - (3) Where it appears proper to do so the Registrar may upon such a Request make an order under Section 6(1) of the Act, but, if not, he is to require the judgment debtor to proceed under subrule (4) below.
  - (4) An order under Section 6(1) of the Act may be made by the Court on an application under Rule 67 taken out in the proceedings in which the judgment was obtained.
  - (5) Any application under subrule (4) may be served on the garnishee by ordinary post at his last known address.

- (6) Where the judgment debtor is before the Court in proceedings under Section 4 or 5 of the Act the Court or the Registrar may make an order under Section 6(1) of the Act in the course of those proceedings where the evidence before the Court or the Registrar then justifies the making of such an order.
  - (7) An order made under Section 6(1) of the Act is to be in Form 34.
  - (8) An order made under Section 6(1) of the Act is to be served by the judgment creditor on each of the judgment debtor and the garnishee personally as soon as practicable after it has been made.
  - (9) The powers of the Court under Section 6(1) of the Act may be exercised by a Registrar insofar as that is permitted by this Rule.
- 87.03**
- (1) Where the judgment debtor personally or his legal representative is before the Court or the Registrar a consent for the attachment of salary or wages under Section 6(2) of the Act may be given orally.
  - (2) In any other case a consent for the attachment of salary or wages under Section 6(2) of the Act is to be in writing, signed by the judgment debtor personally and his signature is to be witnessed by a legal practitioner or a person authorised to take affidavits.
- 87.04**
- (1) Where an *ex parte* order has been made under Section 6(1) of the Act:
    - (a) If made by a Registrar, he will fix a date and a time for the further consideration of the proceedings before a Master in chambers.
    - (b) If made by the Court, the proceedings will be adjourned to a fixed date and time.
  - (2) An order under Section 6(1) of the Act must contain when it is served the date, time and place at which the proceedings will be further considered under Section 6(3) of the Act.
  - (3) An order made under Section 6(3) of the Act confirming, varying or revoking an order under Section 6(1) of the Act is to be served by the judgment creditor on each of the judgment debtor and the garnishee personally as soon as practicable after it has been made.

#### **Warrants for Sale, Possession and Arrest**

- 88.01** In Rule 88 “the Act” means the *Enforcement of Judgments Act 1991*.
- 88.02**
- (1) A warrant of sale under Section 7 of the Act is to be in Form 26.
  - (2) A warrant of possession under Section 11 of the Act is to be in Form 27.
  - (3) A warrant of arrest under Section 12 of the Act is to be in Form 28.
- 88.03** No warrant referred to in Rule 88.02 is to be issued more than 6 years after the making of the judgment upon which it is based without leave of the Court to do so first having been obtained.
- 88.04** Except as is provided by Rule 86.07 no warrant of arrest is to be issued under Section 12 of the Act unless an order for the issue of that warrant has first been made by a Judge.
- 88.05**
- (1) The person seeking the issue of a warrant referred to in Rule 88.02 is to file a request in Form 29 with the Registrar for the issue of the warrant together with such copies of the warrant as the Registrar may require.
  - (2) Where it appears proper to do so the Registrar may issue the warrant in accordance with such a Request.
  - (3) Where the Registrar is in doubt about whether it is proper to issue such a warrant he may:

- (a) Require the person lodging the Request to file an affidavit justifying the issue of the warrant; and
  - (b) Require the person requesting the issue of the warrant to obtain a direction from the Court that the warrant be issued.
- (4) A warrant may include a sum to be fixed by the Registrar for the costs and anticipated costs of the warrant, the expenses of execution and interest accrued under Rule 84.19 up to the issue of the warrant.
- (5) A judgment creditor seeking costs, expenses or interest under subrule (4) above is to lodge brief details of the amounts sought when filing the Request.
- 88.06** A warrant referred to in Rule 88.02 remains in force for 1 year after its issue, and it may be renewed for a period of up to 1 year thereafter in the same way as a summons under Rule 10.03.
- 88.07** (1) Separate warrants of sale may be issued to enforce the respective amounts of the judgment and the costs in an action.
- (2) For the purposes of issuing warrants of sale for costs the Registrar may act upon an affidavit as to the amount of any agreed costs.
- 88.08** Where any difficulty arises in executing a warrant a party or an officer of the Court may apply to the Court by application under Rule 67 for such orders or directions as are necessary or expedient.
- 88.09** (1) Any interested person may apply to the Court either by application under Rule 67 or orally during the hearing of other matters in the proceedings in which the judgment was obtained for a stay of a warrant.
- (2) Either before or after the issue of a warrant the Court may either absolutely or subject to conditions make such order for the stay of the warrant as the justice of the case requires.
- (3) Without limiting the generality of the powers conferred by subrule (2), the Court may:
- (a) Stay the warrant for a sufficient time for the judgment debtor to seek relief under laws relating to insolvency;
  - (b) Stay the warrant upon periodic payments being made in reduction of the moneys payable;
  - (c) Exempt from the operation of a warrant of sale specified property whose sale would cause extreme hardship to the judgment debtor or his family.
- 88.10** (1) A person arrested on a warrant of arrest under Section 12 of the Act is to be brought before a Judge as soon as practicable thereafter and the procedures in Rule 93 are then to be followed.
- (2) A person arrested on a warrant issued pursuant to Sections 4(4) or 5(6) of the Act may be brought as soon as practicable thereafter before a Master or before a Registrar where the arrest was ordered by a Registrar.

### **Sheriff's Rules**

**88A.01** In this Rule:

“fees” includes charges and poundage;

“Sheriff” includes deputy Sheriff and Sheriff's officer;

“warrants of execution” mean those warrants referred to in Rule 88.02.

**88A.02** (1) Where requested to do so by any party or his solicitor, the Sheriff shall serve or cause to be served in South Australia any originating process or other document issued or

prepared in relation to any proceedings in respect of which personal service is required by Statute, Rule or the practice of the Court.

- (2) Such request shall be in writing and shall contain instructions for service.
- (3) Service of any such document may be proved by the affidavit of the officer effecting service, and no subpoena shall be issued to compel the attendance of the Sheriff or officer in respect of any matter arising out of such service except by leave of the Court.

- 88A.03**
- (1) No greater expense shall be chargeable against any party for the extra cost of execution of process at a distance from Adelaide than the cost of transmitting the document by the least expensive mode to and from the office or residence of the nearest Sheriff's officer; and kilometrage shall be calculated according to the distance of the place where execution of process is made from the office or residence of such officer.
  - (2) No kilometrage shall be allowed to any such officer, unless he states in his return to the Sheriff the number of kilometres that the place of execution is distant from his office or residence.

- 88A.04**
- (1) The Sheriff shall cause any real or personal property taken in pursuance of a warrant of sale to be sold at such place as he deems most advantageous.
  - (3) Publication of an advertisement in the Government Gazette under Rule 88A.15A(1)(c) shall constitute seizure of land to which the advertisement relates and actual seizure of the land by the Sheriff shall not be necessary.
  - (4) Where perishable goods are seized in pursuance of a warrant of sale the Sheriff shall give such notice of the intended sale of the goods as may be reasonable in the circumstances.
  - (7) Property may be sold in one lot or several lots. Unless the Court otherwise directs, every sale shall be for cash on delivery, conveyance, assignment, or transfer.
  - (8) The sale shall be of the estate, right, title, or interest only of the party against whom the warrant of execution has been issued in the real or personal property put up for sale. The Sheriff may with the consent in writing of any other property having estate, right, title or interest in the property sell also such estate, right, title or interest if of the opinion that such a course would obtain a more satisfactory sale under the warrant. Before such sale takes place, the judgment creditor, the judgment debtor and the other person involved shall agree in writing as to the proportions in which the net proceeds of the sale are to be divided.
  - (9) Where property taken by the Sheriff in execution is sold through an auctioneer or agent, the gross proceeds of the sale shall, if the Sheriff so requires, be paid over to him by the auctioneer or agent, and the Sheriff shall after receipt thereof (or where the Sheriff and person liable to pay the fees and charges payable to the Sheriff in respect to execution differ as to the amount of such fees, and charges, after such fees and charges have been taxed) pay to the auctioneer or agent the proper charges and expenses due to him in connection with the sale.

- 88A.05**
- (1) Where the Sheriff has, by virtue of any warrant directed to him, received any moneys, and any person claiming to be interested in those moneys has served on the Sheriff a notice requiring him not to pay over those moneys, the Sheriff may retain such moneys in his hands.
  - (2) Where:
    - (a) the claim is not disputed by the judgment creditor or the judgment debtor; or
    - (b) the Court out of which the warrant was issued has directed the Sheriff to recognise the validity of the claim,the Sheriff shall pay to that person out of those moneys, a sum sufficient to satisfy that claim.

- 88A.06** (1) Subject to the provisions of any Act of the Commonwealth relating to bankruptcy and any amendments thereof, when the Sheriff, by virtue of any warrant directed to him, receives any moneys, he shall pay them on demand to the party entitled to receive the same, or his solicitor, deducting all lawful charges therefrom whether such warrant be then returnable or not, unless he has received from some person claiming to be interested therein notice to retain the same.
- (2) The Sheriff may deduct from the proceeds of any warrant and pay to the judgment creditor interest accrued on the judgment debt under Rule 84.19 from the time of the issue of the warrant to when he makes payment to the judgment creditor provided that if he receives payment of the judgment debt in lieu of effecting a sale he need not account to the judgment creditor for interest accrued after the date on which he receives payment of the debt.
- 88A.07** (1) The Sheriff may only suspend the execution of any process upon:
- (a) an order of the Court;
- (b) an absolute instruction in writing to that effect filed with him by the judgment creditor.
- (2) Subject to any order of the Court a judgment creditor who has filed an instruction to suspend the execution of any process may withdraw the instruction by filing with the Sheriff an instruction to execute the process.
- 88A.07A** (1) A person claiming to have an unregistered interest in property to be sold by authority of the Court is to give notice of his claim pursuant to Section 16(2) of the Act in Form 35 to the Sheriff.
- (2) Such a notice may be:
- (a) Given to any Sheriff's officer holding a warrant for the sale of the property, or
- (b) Delivered to the office of the Sheriff.
- (3) Upon receipt of a notice under Section 16(2) of the Act the Sheriff is to send a copy of it by prepaid post to the judgment creditor at his address for service shown in the warrant of sale.
- (4) If the judgment creditor does not recognise the validity of the claim in such a notice, he is within 7 days of the posting of the notice to him by the Sheriff to take out an application in the proceedings in which the judgment was obtained seeking an order that the Sheriff not recognise the validity of the claim.
- (5) Such an application is to be served forthwith on the Sheriff and on the person making the claim by prepaid ordinary post to his address for service as shown in the notice of claim.
- (6) If the Sheriff is not served with an application in accordance with subrule (4), he is entitled to act under Section 16 of the Act on the basis that the claim is not disputed.
- (7) If the Sheriff is served with an application taken out under subrule (4), he is only to act under the warrant thereafter in accordance with the directions of the Court.
- 88A.08** (1) Upon a request being made for the service or execution of any process or document, or for any work for which fees are properly chargeable in the Sheriff's Office, the Sheriff may require:
- (a) a deposit to meet such fees; and
- (b) an undertaking in writing to pay any further fees which may become payable beyond the amount deposited under clause (a).
- (2) Where it appears that the amount deposited under this Rule exceeds the fees of the Sheriff, the Sheriff shall repay the excess.

- 88A.09** (1) The fees set out in the Supreme Court (Fees) Regulations shall be payable to the Sheriff in respect of the matters set out in those Regulations.
- (2) Where the Sheriff and the person liable to pay such fees differ as to the amount thereof, the amount payable shall be taxed by the Court.
- (3) Where process is directed to any fit person appointed by the Court pursuant to Section 91 of the Act, the fees payable in ordinary cases to the Sheriff shall be due and payable by the person suing out such process, except the fees for registering the warrant and returning the same.
- 88A.10** (1) Where an execution is withdrawn, satisfied or stopped, the fees payable in respect thereof shall be paid by the person at whose instance the warrant of execution was issued, or the person at whose instance the execution was stopped, as the case may be.
- (2) Where the Sheriff has upon request withdrawn from property taken under execution, the fees upon the full amount which the Sheriff has been required to levy under the warrant of execution shall become payable by the execution creditor (or his solicitor as the case may be), unless an arrangement which renders the sale unnecessary has been reached between the execution creditor and the execution debtor or with any person on behalf of such debtor and full particulars of such arrangements have been furnished to the Sheriff within fourteen days of the making of such arrangement.
- 88A.11** Where a solicitor having requested the service or execution of any process, or any other work for which fees are properly chargeable, is in default of payment of such fees for a period of seven days after demand in writing by the Sheriff, the Sheriff may report to the Court the name of the solicitor so making default, and the Court may thereupon make all necessary orders for the enforcement of such fees, and the Sheriff may, with the consent of the Attorney-General, commit to the Crown Solicitor the conduct of such matter.
- 88A.12** When any person has been arrested by the Sheriff on any civil process of the Court, he shall where practicable be lodged in the gaol nearest to the place of his arrest, and be detained there until the Court shall order his discharge.
- 88A.13** Where the Sheriff defaults by not executing any process according to its tenor, he shall be liable to punishment as if in contempt of Court.
- 88A.14** The Sheriff may, of his own motion, or on application by a party, refer any question relating to his powers or duties in any proceedings for the direction of the Court.
- 88A.15** (1) Before any property is sold under a warrant of sale notice of the intended sale is to be given at least 14 days before the date set for the intended sale:
- (a) By written notice sent by ordinary prepaid post to the judgment debtor;
- (b) By an advertisement in a newspaper circulating generally throughout the State;
- (c) In the case of real property also by an advertisement in the Government Gazette; and
- (d) By such other means as the Sheriff considers desirable.

#### **Charging orders, Receivers, Execution of Documents and Absconding Debtors**

- 89.01** In Rule 89 'the Act' means the *Enforcement of Judgments Act 1991*.
- 89.02** (1) A charging order under Section 8 of the Act is to be sought by an application in the proceedings in which the judgment was obtained.
- (2) Any order made under Section 8 of the Act is to be served by the judgment creditor on each of the judgment debtor and any person directly interested in the property charged personally.

- 89.03** (1) The appointment of a receiver under Section 9 of the Act is to be sought by an application in the proceedings in which the judgment was obtained.
- (2) Any order made under Section 9 of the Act is to be served by the judgment creditor upon each of the judgment debtor and the receiver personally.
- (3) Rule 69 applies to receivers appointed under Section 9 of the Act except insofar as its provisions are inconsistent with the Act, Rule 89.03 or the express terms of any order made by the Court.
- 89.04** (1) The execution of documents under Section 13 of the Act is to be sought by an application in the proceedings in which the judgment was obtained.
- (2) Where a party is directed to execute or endorse a document under Section 13 of the Act the order and the document to be executed or endorsed are to be served personally upon that party.
- (3) Where the Court authorises an officer of the Court to execute or endorse a document under Section 13 of the Act the party obtaining the order is to file the document to be executed or endorsed with that officer.
- (4) An officer authorised to execute or endorse a document under Section 13 of the Act may seek directions from the Court on the form and contents of the document which is to be so executed.
- 89.05** (1) An order for the issue of a summons for the arrest of a defendant under Section 14 of the Act may be sought by an application in the proceedings in which any judgment has been obtained or is being sought.
- (2) Any application for the arrest of a defendant under Section 14 of the Act is to be heard by a Judge.
- (3) The Court may direct an examination of a defendant pursuant to Section 14 of the Act to be held before a Master or a Registrar, and may give all necessary directions for the conduct of such an examination.
- (4) An examination under Section 14 of the Act may be held in conjunction with an investigation under Section 4 of the Act or an examination under Section 5 of the Act.

#### **Execution Against Unincorporated Associations**

- 90.01** Where a judgment has been obtained against a partnership or firm in the firm name without that judgment also being obtained against the members individually execution against the individual property of any person who is liable for the debts of the partnership is only to be issued with leave of the Court.
- 90.02** (1) An order charging an individual partner's interest in the partnership property and profits with payment of a judgment debt against that partner individually under Section 23 of the *Partnership Act 1891* is to be sought by an application in the proceedings in which the judgment was obtained.
- (2) Such an application is to be served on the judgment debtors and all of the partners personally.
- 90.03** Where the plaintiff, or a partnership in which the plaintiff is a member, obtains a judgment against a partnership, of which the plaintiff is a member, in the name of the partnership or firm without also obtaining judgments against all of the other partners no execution shall issue on the judgment without the leave of the Court having first been obtained.
- 90.04** Any judgment against an unincorporated association may be enforced against the common property of the members of the association as if such property were the property of the association and the association were, and has at all material times, been a corporation.

## **Contempt of Court**

**93.01** “Contempt of court” for the purposes of this Rule shall include:-

- (a) contempt in the face or the hearing of the Court;
- (b) disruption of the proceedings of the Court;
- (c) the obstruction, prevention or intimidation of litigants, witnesses or other persons from attending Court or threats so to do;
- (d) any act or thing corrupting, punishing or harming any party or a witness in relation to any proceedings taken or defended or intended to be taken or defended or any witness in relation to evidence given or intended to be given in relation to any proceedings or any threats or attempts to do any of the aforementioned acts or things;
- (e) any assault, obstruction, threat, bribe, act, word or thing which directly or indirectly obstructs or tends to obstruct an officer of the Court in the execution or discharge of his duties for or on behalf of the Court or pursuant to any judgment or order of the Court;
- (f) any direct or indirect interference with the right of an officer of the Court to the possession of any property in the Court’s possession or in the possession of an officer of the Court in the execution or discharge of his duties for or on behalf of the Court or pursuant to any judgment or order of the Court;
- (g) any contumacious refusal to obey or comply with a judgment or order of the Court;
- (h) any attempt to commit any of the contempts in paras. (a) to (g);
- (i) words written or spoken or acts done calculated to prejudice or pervert the course of justice in the District Court.

**93.02** Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of Court the Court may:

- (a) by oral order direct that the person be brought forthwith before the Court by the Sheriff or other appropriate officer, or
- (b) issue a warrant for the arrest of the person under the hand of the Judge directed to the Sheriff ordering the Sheriff to take the person into custody and to hold him in custody until he can be brought before the Court to answer the alleged contempt.

**93.03** Where it is alleged that a contempt has been committed the Court may, in lieu of ordering the immediate arrest of the person, direct the Registrar to issue a summons in Form 30 and cause it to be served upon the person alleged to be in contempt, the said summons to state the nature of the alleged contempt with sufficient particularity for the person charged to make his defence to the charge, and to state a specific time and place for him to attend.

**93.04** (1) Where the contempt consists of an insult offered to a Judge or Judges constituting the Court then, except where in the opinion of such Judge or Judges it is just and expedient to take immediate action, the contempt proceedings shall be heard before a Judge other than the Judge or those Judges to whom the insult was offered.

(2) The Judge or one of the Judges constituting the Court may direct the Registrar to issue a summons in the Form 30.

**93.05** Where the person is brought before the Court, the Court may:

- (a) cause him to be informed orally of the contempt with which he is charged, with sufficient particularity and direct him to make his defence to the charges;
- (b) upon hearing the person's defence proceed forthwith, or after an adjournment, to determine the matter of the charge; and
- (c) after hearing any submissions in mitigation make such order for the punishment or discharge of the person as is just;



- (d) remand the person for the hearing of the contempt charge before another Judge;
- (e) in a proper case recall or rescind the charge of contempt.

**93.06** When the said person comes before the Court for the hearing or the adjourned hearing of the charge, the procedure shall be:

- (a) if he is not represented by counsel, he shall be advised or reminded of the nature and substance of the charge of contempt with sufficient particularity for him to understand the charge and the nature of the proceedings;
- (b) in all proceedings, whether he is represented or not, the said person shall be asked whether he pleads guilty or not guilty;
- (c) if he is not represented by counsel, he shall be advised and reminded from time to time of his rights;
- (d) if he pleads not guilty, evidence in support of the charge of contempt shall be presented to the Court by a person and in the manner directed by the Court;
- (e) where substantial punishment is a practical possibility, the procedures to be adopted and the onus of proof to be applied and the rules of evidence to be followed, shall be those generally applicable in criminal proceedings to the extent that they are appropriate, except as follows:
  - (i) for the purposes of the proof of the charge of contempt, any affidavits previously filed in the matter, or in the preparation for the hearing of the contempt charge, or during the course of the hearing on the contempt charge, may be used in evidence as proof beyond reasonable doubt of the facts therein stated provided the Judge is satisfied that it is safe so to act and provided the said person has been given a copy of the affidavit and afforded an opportunity to peruse it and to consider the same and thereafter elects not to require the deponent to be called for cross-examination; and
  - (ii) the Judge shall be entitled to call witnesses who may then be cross-examined by those persons supporting and contesting a finding of guilt;
- (f) at the conclusion of the hearing the Court shall make a finding whether the said person is guilty or not guilty of the contempt alleged or of the substance of the alleged contempt;
- (g) where the Court finds the person guilty, he shall be heard in mitigation of penalty;
- (h) where the penalty for the contempt includes an order that the said person shall pay a substantial sum of money, whether by way of fine or costs of the contempt proceedings or both, the Court shall fix a period of imprisonment in default of payment within the time allowed;
- (i) where the said person is unable to pay the fine or costs within the time allowed, the Court may either extend the time for payment or reduce the fine but not the costs.

**93.07** The Court may, pending disposal of the charge:

- (a) direct that the person be detained in such custody as the Court directs; or
- (b) direct that the person be released, upon such terms to secure his appearance to answer the charge as the Court may direct.

**93.08**

- (1) The Court may punish contempt of Court by committal of the person to prison or fine or both, or by the imposition of a bond to be of good behaviour with such other conditions as may be proper, and by ordering the person to pay the costs of the contempt proceedings.
- (2) When the Court imposes a fine, it may allow time to pay and in default of payment within that time order that the person be imprisoned for a fixed period.
- (3) The Court may on the person making proper tender of apology and amends recall or reconsider any previous order of the Court punishing him for his contempt.

- 93.09** The Court when making an order for committal may by order direct that the execution of the order of committal be suspended for such period and on such terms or conditions as the Court thinks fit. Upon compliance with the terms and conditions during the said period the order for committal may be discharged.
- 93.10** Where a person in contempt is committed to prison for a specified period, the Court may order his discharge before the expiry of that period.
- 93.11**
- (1) Where the Court suspends the execution of an order of committal pursuant to Rule 93.09 an order shall be drawn up setting out any findings of contempt, the period of imprisonment fixed, any other orders as to fines, costs or undertakings, the terms and conditions of the suspension of the term of imprisonment and a warning to the person of the consequences of non-compliance.
  - (2) The order shall be drawn up and served on the person at the time of his release or as soon as practicable after his release.
  - (3) If the order as served does not contain one or more of the matters in Rule 93.11(1) the omissions shall not invalidate the order of suspension or relieve the person of the obligation to comply with the terms and conditions of an order or fines or undertakings.
- 93.12** Where the person is to be discharged under Rule 93.10 prior to the expiry of the original period fixed for his imprisonment, the discharge may be unconditional or conditional upon such terms and conditions as are fixed by the Court and where terms and conditions are fixed the provisions of Rules 93.11(2) and (3) shall apply.
- 93.13**
- (1) Where the person is alleged to be in breach of any term, condition, obligation or undertaking referred to in this Rule, the Court may of its own motion, or on the application of an interested party, direct the Registrar to issue an application for the revocation of the suspension order or of the order of early discharge from custody as the case may be, the application to contain the particulars referred to in Rule 93.03 and the procedures to be those provided for the hearing of the original contempt allegations.
  - (2) Where the Court is satisfied that the person has been in breach as alleged it may make such order as is just and expedient in the circumstances.
  - (3) The Court may, where it is just and expedient to do so, issue a warrant for arrest in the first instance either of its own motion or on the application of an interested party instead of directing the issue of a summons.
- 93.14** The Court may, where it is just and expedient to do so, dispense with:
- (a) the requirements of Rule 84.04(3) as to the cautionary endorsement on any judgment or order;
  - (b) the requirements as to personal or substituted service of any order, notice, application or summons;
- provided the Court is satisfied that the person had knowledge of the substance of the terms of the order, notice, application or summons and has been evading service.

#### **Applications to Review the Proceedings in Minor Civil Actions**

- 95.01**
- (1) All applications pursuant to section 38 of the *Magistrates Court Act 1991* to review the proceedings in a minor civil action shall be made by filing and serving a notice to review which shall set out:-
    - (a) a brief statement of the judgment sought to be reviewed;
    - (b) the grounds upon which such review is sought;
    - (c) the judgment sought by the applicant.

- (2) Copies of the notice to review shall:-
- (a) be served on all parties directly affected by the application;
  - (b) be lodged with the Registrar of the Magistrates Court.

**95.02** A notice to review may be filed in the Principal Registry or, where the minor civil action was heard in a trial court located nearer to a District Registry than to the Principal Registry, in that District Registry and shall be filed within 21 days of the pronouncement of the judgment sought to be reviewed.

- 95.03**
- (1) Where a party served with a notice to review is dissatisfied with the judgment sought to be reviewed, that party may file a cross-notice within fourteen days of service of the notice to review on him.
  - (2) The provisions of Rules 95.01 and 95.02 respectively shall apply with all necessary modifications to a cross-notice to review.

- 95.04**
- (1) An applicant may at any time file and serve a notice of discontinuance of a notice to review and upon its being filed the notice to review shall be abandoned.
  - (2) A notice of discontinuance filed under subrule (1) by one of several applicants shall not affect any other party to a notice to review.
  - (3) A party filing a notice of discontinuance under subrule (1) shall be liable to pay the costs of the other party or parties occasioned by his commencement of proceedings to review the judgment in the Magistrates Court.

- 95.05**
- (1) A party served with a notice to review may apply at any time to the Court for an order dismissing the notice to review as incompetent.
  - (2) Upon the hearing of the application to dismiss, the burden of establishing the competency of the notice to review is on the party filing the notice to review.

**95.06** A review shall be heard at such time and place as the Registrar shall determine and advise to the parties by notice in writing without any party being required to set it down for hearing.

**95.07** Without restricting the generality of the jurisdiction, powers and authority conferred on the Court by section 38 of the *Magistrates Court Act 1991*, the Court when dealing with proceedings under Rule 95:-

- (a) may direct that the notice to review be served on any party or person who has not previously been served, and may:-
  - (i) in the meantime, postpone or adjourn the hearing of the notice to review on such terms as may seem just; and
  - (ii) give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties;
- (b) may if there are special circumstances order that such security as the Court thinks fit be given for the costs of the review;
- (c) may request the presiding magistrate to furnish a report with respect to the hearing and may in the request particularise the matters and things with reference to which the report is sought; and a copy of such report shall be made available to the parties;
- (d) shall have all the powers and duties as to amendment and otherwise as the Magistrates Court had;
- (e) may make such order as to the costs of the trial or the review proportionate to the amount in issue as it deems fit;
- (f) may exercise its powers notwithstanding that:-

- (i) any party to the proceedings in the Magistrates Court has not made an application for review;
- (ii) any ground for allowing or dismissing the notice to review or for varying the judgment under review is not stated in any notice to review or cross-notice.

**95.08** A notice for review or cross-notice shall not:-

- (a) operate as a stay of execution or of proceedings under the judgment of the Magistrates Court;
- (b) invalidate any intermediate act or proceeding except in so far as the Court may direct or, subject to any direction of the Court, as the Magistrates Court may direct.

### **Appeals from Masters, Mediators and Officers of the Court**

**97.01** There shall be an appeal to a Judge from any finding, decision, order or direction by any mediator pursuant to Section 32(2) of the Act, or officer of the Court pursuant to Rule 56.06. Such appeals and an appeal pursuant to Section 43(2) of the Act against an interlocutory judgment of a Master shall be by way of rehearing and, in matters involving the exercise of a discretion, the Judge may exercise his own discretion without regard to the manner in which it was exercised in the decision, order or direction appealed against.

**97.02** (1) All appeals pursuant to Rule 97.01 shall be instituted by filing and serving a notice of appeal which shall set out:-

- (a) a brief statement of the decision appealed from;
- (b) the grounds of appeal in sufficient detail to enable the Judge to know what points are being relied on in support of each ground;
- (c) whether all or part only, and if so which part, of the decision is complained of;
- (d) the order sought by the appellant;

and unless the Judge hearing the appeal otherwise directs an appellant may not rely upon any grounds which are not set out in the notice of appeal.

- (2) A notice of appeal shall be filed in the Registry and served on all parties directly affected by the appeal.

**97.03** Unless any enactment otherwise provides an appeal must be instituted within fourteen days after the decision, judgment, order or award appealed from, or within such other time as the Court may fix.

**97.04** (1) Where a respondent to an appeal wishes to appeal against the whole or any part of the decision appealed, he shall file a notice of cross-appeal within fourteen days of service of the notice of appeal on him.

- (2) The provisions of Rule 97.02 relating to notices of appeal shall with all necessary modifications apply to a notice of cross-appeal.

**97.05** A notice of appeal may be amended without leave prior to the appeal being set down for hearing by filing and serving on all other parties a supplementary notice of appeal. After the appeal has been set down for hearing, the notice may only be amended by leave of a Judge.

**97.06** (1) An appellant may at any time file and serve a notice of discontinuance of appeal and upon its being filed the appeal shall be abandoned.

- (2) A notice of discontinuance filed under subrule (1) by one of several appellants shall not affect any other appellant in the appeal.

- (3) A party filing a notice of discontinuance under subrule (1) shall be liable to pay the costs of the other party or parties occasioned by his appeal.
- 97.07** (1) A respondent to an appeal may apply on notice at any time to a Judge for an order dismissing an appeal as incompetent or for want of prosecution.
- (2) Upon the hearing of the application, the burden of establishing the competency of the appeal is on the appellant.
- 97.08** A day shall be fixed by the Registrar for the hearing of an appeal without any party being required to set it down for hearing. The Registrar shall give to the parties written notice of the date fixed for the hearing.
- 97.09** Without restricting the generality of the jurisdiction powers and authority conferred on the Court by the Act or by any other enactment, a Judge when dealing with proceedings under this Rule:-
- (a) may direct that the notice of appeal be served on any party or person who has not previously been served, and may:-
- (i) in the meantime postpone or adjourn the hearing of the appeal on such terms as may seem just; and
- (ii) give such judgment and make such order, as might have been given or made if the persons served with such notice had been originally parties;
- (b) may if there are special circumstances order that such security as the Judge thinks fit be given for the costs of the appeal;
- (c) may request the Master, assessor, mediator or officer of the Court from whose judgment or order, decision or award an appeal has been brought to furnish a report with respect to the hearing and may in the request particularise the matters and things with reference to which the report is sought; and a copy of such report shall be made available to the parties.
- 97.10** A Judge when hearing an appeal:-
- (a) shall have the power to allow any amendment upon such terms as he shall think proper;
- (b) may in his discretion receive further evidence upon any question of fact;
- (c) may draw inferences of fact;
- (d) may amend, set aside or discharge any judgment, order or direction appealed from;
- (e) may give any judgment, assessment or award or make any order which might have been made by the Master, mediator or officer of the Court appealed from and make such further or other order as the justice of the case may require;
- (f) may direct that the proceeding be remitted for further consideration with or without special direction;
- (g) may make such order as to costs as he deems fit;
- (h) may exercise his powers notwithstanding that:-
- (i) any party to the proceedings under appeal has not appealed;
- (ii) any ground for allowing or dismissing the appeal or varying the decision is not stated in any notice of appeal or notice of cross-appeal;
- (iii) that there has been no appeal from some part of the decision;
- (i) may reverse or vary any interlocutory orders which are incidental to or consequent upon the decision under appeal.
- 97.11** An appeal under Rule 97 shall not:-
- (a) operate as a stay of execution or of proceedings under the decision appealed against;

- (b) invalidate any intermediate act or proceeding except so far as the Judge may direct, or subject to any direction of the Judge as the Master, mediator or officer of the Court appealed from may direct.

### **Security For Costs**

- 100.01** The Court may order security for costs to be furnished:
- (a) where the plaintiff is a mere nominal plaintiff and is in a condition of poverty or insolvency;
  - (b) where the plaintiff is ordinarily resident out of the jurisdiction;
  - (c) where the residence of the plaintiff is incorrectly stated in the summons with an intention to deceive;
  - (d) in circumstances authorised by any statute;
  - (e) where for special circumstances the justice of the case so requires.
- 100.02** Where security is ordered, it shall be given in such manner, at such times, and on such terms (if any), as the Court may direct.
- 100.03** Where security is ordered the action or other proceedings shall be stayed until the security is furnished, unless the Court otherwise orders.
- 100.04** The amount of security required by any order for security for costs may be increased or decreased by the Court at any time and from time to time.
- 100.05** The provisions of this Rule shall apply to counterclaims and third party proceedings with any necessary modifications.
- 100.06** Where money has been paid into Court as security for costs it may be paid out on the consent of the solicitors in the proceeding and may be paid to the solicitors for the party entitled thereto upon production of the consent of the party attested by a legal practitioner other than the solicitor for the party.

### **Costs**

- 101.01** (1) Notwithstanding the following provisions of this Rule and of the provisions of Rule 101A.01, the costs of any party, the amount thereof, the person by whom, or the fund or estate, or portion of an estate, out of which they are to be paid are in the discretion of the Court, and the Court may:
- (a) award a lump sum in lieu of, or in addition to, any taxed costs;
  - (b) in any action seeking damages for personal injury order that the plaintiff shall not recover costs or shall recover part only of the costs if the plaintiff has failed to submit, at least 90 days before the institution of the proceedings, to the defendant's insurer, if he is aware of such insurer, or, if he is not so aware, to the defendant, a detailed claim in writing together with copies of supporting documents including medical reports which set out the nature and extent of the plaintiff's injuries and residual disabilities as known to the plaintiff at that time.
  - (c) direct whether or not the costs are to be set off;
  - (d) where the costs of one defendant against a plaintiff ought to be paid by another defendant, order payment to be made by one defendant to the other directly, or the plaintiff to pay the costs of the successful defendant and allow him to include those costs as a disbursement in the costs payable to him by the unsuccessful defendant,

- (e) where an indemnity has been given for costs by a person not a party, inquire into and determine that person's liability as to costs in order that a final order can be made as to the costs of the proceeding.
- (2) This Rule is not intended to deprive executors, administrators, trustees or mortgagees who have not unreasonably carried on or resisted any proceedings, of any right to costs out of an estate or fund to which they would hitherto have been entitled.
- (3) The Court in exercising its discretion as to costs may take into account (inter alia) any:
  - (a) payment into Court;
  - (b) offer to consent to judgment, including a notice under Rule 41;
  - (c) offer of contribution.
- (4) The Court may in any proceeding exercise its powers and discretions as to costs at any stage of the proceeding and after the conclusion of the proceeding.
- (5) If the proceedings are removed from an inferior Court, the costs prior to removal shall be in the discretion of the Court. Where punitive orders for costs have already been made in the Court below, they shall not be disturbed except for good cause shown by the party against whom they were made.
- (6) Where the Court makes an order in any proceeding for the payment of costs the Court may require that the costs be paid forthwith notwithstanding that the proceeding is not concluded.
- (7) An order for costs of an interlocutory proceeding shall not, unless the Court otherwise orders, entitle a party to have a bill of costs taxed until the principal proceeding in which the interlocutory order was made is concluded or further order.

- 101.02**
- (1) Subject to these Rules, the costs of and incidental to a proceeding shall follow the event unless the Court otherwise orders.
  - (2) Unless the Court otherwise orders, the costs of and occasioned by:
    - (a) an amendment made pursuant to Rule 53 shall be borne to the extent provided by Rule 53.11 by the party making the amendment;
    - (b) an application to extend the time fixed by any Rule for serving or filing any document, or doing any other act, including the costs of any order made on the application shall unless the Court otherwise orders, be borne by the party making the application;
    - (c) an application which should have been made on the application for directions shall be borne by the applicant;
    - (d) an adjournment made necessary by the default of a party shall be borne by that party.
  - (3) Where a party has unreasonably failed to admit any fact or document pursuant to Rule 54.06, the trial Judge may order that party to pay the costs of proving that fact or document, and may refer the quantum of such costs to a Master for taxation under Rule 101.

**101.02A** Except in relation to proceedings under section 11 of the *Criminal Assets Confiscation Act 1996* for the purposes of Section 42(2) of the Act or pursuant to the *Criminal Assets Confiscation Act 2005* the amounts fixed below are the amounts in respect of which no order for costs will be made in favour of a plaintiff unless the court otherwise orders:-

- (a) In an action instituted prior to the commencement date upon a liquidated claim - \$20,000.
- (b) In an action instituted prior to the commencement date upon a wholly or partly unliquidated claim - \$12,500.
- (c) In an action instituted on or after the commencement date where the claim is for damages or compensation for injury, damage or loss caused by, or arising out of, the use of a motor vehicle - \$30,000;

- (d) In an action instituted on or after the commencement date upon a liquidated claim - \$25,000;
- (e) Subject to clause (f) in any other action instituted on or after the commencement date and to which the section applies - \$15,000;
- (f) In an action instituted prior to, on or after the commencement date where the claim is for damages for defamation - \$7,500.

**101.03** Where the Court appoints a practitioner or the Public Trustee to be the guardian *ad litem* of a person under disability, the Court may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties, or out of any fund in Court in which the person under disability has an interest, and may give directions for the payment or allowance of costs as are just.

**101.04** Where several defendants defend an action separately costs may be disallowed to all of such defendants except one, or to any of such defendants, if it appears that the defendants, or any of the defendants, might have joined in their defence.

**101.05** Where anything is done or omitted to be done improperly or unnecessarily, by or on behalf of a party, the Court may order:

- (a) that any costs arising from the act or omission be not allowed to the party;
- (b) that the party or in a proper case his solicitor pay the costs incurred by any other party by reason of the act or omission;
- (c) a Master to inquire into the act or omission, with power to order or disallow any costs as provided in clauses (a) and (b).

**101.06** (1) (a) Where in a proceeding, costs are incurred improperly, or without reasonable cause, or arise because of undue delay, neglect or other default, the Court may, when the solicitor whom it considers to be responsible, whether personally or through a servant or agent, is before the Court or has had notice, make an order:

- (i) disallowing the costs as between the solicitor and his client;
- (ii) directing the solicitor to repay to his client costs which the client has been ordered to pay to any other party;
- (iii) directing the solicitor personally to indemnify any other party against costs payable by the party;
- (iv) directing a Master to inquire into the act or omission with power to order or disallow any costs dealt with in clauses (i) to (iii) hereof.

(b) If upon the taxation of a bill of costs it shall appear that the costs have been increased by unnecessary delay or by improper, vexatious, prolix or unnecessary proceedings, or that for any other reason the amount claimed for costs is excessive having regard to the nature of the business transacted or the interests involved or the nature and value of the property to which the costs relate or to the other circumstances of the case, the taxing officer may reduce the costs claimed to such sum as he thinks proper and may assess the costs at a lump sum and if necessary apportion the amount among the parties where more than one party is involved.

(2) Without limiting the generality of paragraph (1), a solicitor is responsible for default for the purposes of that paragraph where any proceedings cannot conveniently proceed, or fail, or are adjourned without useful progress being made, because of the culpable failure of the solicitor:

- (a) to attend in person or by a proper representative;
- (b) to file or serve any document which ought to have been filed or served;
- (c) to deliver any document which ought to have been delivered for the use of the Court;



- (d) to cause proper discovery of documents to be made by his client;
  - (e) to be prepared with any necessary evidence or account; or
  - (f) otherwise to proceed.
- (3) The Court may, before making an order under paragraph (1), refer the matter to a taxing officer for inquiry and report.
  - (4) The Court may order that notice of any proceeding or order against a solicitor under this Rule shall be given to his client in such manner as may be specified.
  - (5) Where a solicitor has been ordered to pay any costs personally the Court may also direct:
    - (a) that the party in whose favour the costs have been ordered:
      - (i) file his bill of costs for taxation within a specified time;
      - (ii) serve the allocatur after the taxation of those costs on the solicitor ordered to pay the costs within a specified time.
    - (b) that the solicitor who has been ordered to pay the costs pay the amount fixed for the costs or allowed by such allocatur into Court within a specified time.
    - (c) that immediately after the payment of the costs into Court they be paid out to the party entitled to them.
    - (d) if any solicitor or party refuses or neglects to comply with any directions given, that the Registrar proceed against that solicitor or party for contempt under Rule 93.03.

- 101.07**
- (1) (a) Costs shall be allowed and paid in respect of work done prior to the commencement date in actions continued in the Court pursuant to Section 19(2) of the *Statutes Repeal and Amendment (Courts) Act 1991* in accordance with the provisions of the former Local Court Rules.
  - (b) Subject to clause (a), Rule 101 shall apply to the taxation of bills of costs lodged for taxation on and after the commencement date even though the whole or some part of the work charged for or disbursements claimed in such bills was done or incurred prior to the commencement date.
  - (2) (a) A refresher shall mean a fee payable to counsel in respect of a period of five hours properly occupied in any hearing or trial before the Court where such period is not properly covered by a fee on brief.
  - (b) The allowance of counsel fees including refreshers shall be in the discretion of the taxing officer upon a taxation of costs.
  - (c) In assessing fees on brief, refreshers and other fees for counsel the taxing officer shall have regard to the importance of the case, its difficulty and to the time reasonably occupied.
  - (3) Where some of the persons entitled to a distributive share of a fund are ascertained, and some or all of the remaining persons cannot be ascertained without substantial delay, the Court may allow immediate payment of the shares of those ascertained to them, after allowing for costs so far incurred, but disregarding the costs of ascertaining the persons entitled to the other shares.
  - (4) Special fees may be allowed to expert witnesses in the discretion of the taxing officer.
  - (5) Unless the Court orders to the contrary, any order for costs, whether made by consent or otherwise, is sufficient authority for a taxation of costs.
  - (5A) Where a default judgment is entered administratively in accordance with these Rules, any order for costs included within such a judgment is sufficient authority for a taxation of costs.

*Bases of Assessment of Costs*

- (6) In any rule or order unless the contrary meaning is indicated by the context or other factors:

- (a) Costs as between party and party, or a like expression, means only the costs which have been necessarily and reasonably incurred by the party in the conduct of the litigation;
- (b) Costs, or a like expression, means costs as between party and party;
- (c) Costs as between solicitor and client, or a like expression, means all costs reasonably incurred by the party in respect of the litigation and having regard to the proper interests of the persons who will ultimately bear the burden of such costs;
- (d) Costs as between solicitor and own client, or a like expression, means costs as a complete indemnity against the costs incurred by the party in respect of the litigation provided that they are not to include any amount shown by the party liable to pay them to have been incurred unreasonably in the interests of the party incurring them;
- (e) Indemnity costs, or a like expression, mean the same as costs as between solicitor and own client.

- 101.08** (1) Notwithstanding the provisions of this Rule, a legal practitioner may make an agreement in writing with a client for the payment of a specified amount by way of legal costs or of legal costs in accordance with a specified scale.
- (2) The Court may rescind or vary an agreement made pursuant to paragraph (1), if it considers that any term of the agreement is not fair and reasonable.

- 101.09** (1) After due compliance with Rule 101A.02, and in accordance with Rule 101A.02(6), a party wishing to tax costs pursuant to an order of the Court or the Rules shall file and serve a bill of costs.
- (2) A solicitor wishing or required to tax costs pursuant to section 42 of the *Legal Practitioners Act, 1981*, shall file and serve a bill of costs.
- (3) A solicitor who files a bill of costs for taxation pursuant to section 42 of the *Legal Practitioners Act 1981*, shall, at the time of filing, provide to the Registrar a true copy of any account or bill of costs previously rendered by the solicitor to the client in respect of the work done referred to in the bill of costs filed for taxation.
- (4) Every bill of costs filed for taxation shall have indorsed:
- (a) at the end thereof an allocatur in the following form, or in such similar form as may be appropriate for that bill of costs:

‘Allocatur

The bill of costs of the plaintiff/defendant has been taxed pursuant to the order/judgment/request made herein on the ..... day of ..... 20..... And has been allowed at \$.....

Dated the ..... day of ..... 20...

.....  
Registrar’

- (b) in a prominent place the words:  
‘TAKE NOTICE that under Rule 101.09(7) you are required within fourteen days of the service of this bill upon you to file and serve a notice of dispute setting out each of the items which you contest. If you fail to do so, you may be deemed to have admitted liability for any item for which you have not given such notice of dispute.’

- (5) The Court shall give notice to each party of the appointment for the taxation of the costs by sending a notice in writing to such party at his address for service.
- (6) Notice of taxing costs need not be given to any party who has not taken part in the proceedings to which the costs relate.
- (7) Where a person who is liable to pay costs is served with a bill of costs he shall within fourteen days of such service file and serve on all other persons interested in the taxation a notice of dispute setting out each of the items in the bill which he contests.
- (8) Where a person liable to pay costs fails to give a notice of dispute pursuant to sub-rule (7) above the taxing officer taxing the bill of costs may in his discretion on the taxation allow any such item without further investigation into it.

**101.10** A bill of costs shall be endorsed with the name and address of the solicitor by whom it was prepared, and where the solicitor is acting as agent for a principal solicitor, the name and address of that solicitor.

- 101.11**
- (1) Where a party has been served with a copy of the bill of costs, the taxing officer may proceed with the taxation in his absence, upon proof of service of the documents.
  - (2) When a party entitled to costs fails to tax his costs and thereby prejudices another party, the taxing officer may:
    - (a) certify the costs of the other parties incurred as a result of such refusal or neglect;
    - (b) allow a nominal or other sum, or disallow all costs to the party so refusing or neglecting;
    - (c) offset the costs certified pursuant to sub-rule (a) above and if the same exceed the costs (if any) allowed pursuant to sub-rule (b) above, direct the refusing or neglecting party to pay the excess sum, or, if no sum is allowed under sub-rule (b) hereof, the sum certified pursuant to sub-rule (a) above to the party whose costs are certified pursuant to sub-rule (a) above and an allocatur shall be issued accordingly having the same effect as an allocatur issued pursuant to Rule 101.18.

**101.12** A taxing officer may extend or limit the time for any proceeding before him, unless the Court shall otherwise direct, whether or not the time limited has already expired.

- 101.13** On a taxation of costs, a taxing officer may:
- (a) Tax the costs either item by item or by calculation or estimation of the same on a lump sum or other basis as the taxing officer may in his absolute discretion think fit or in such manner as may be specified in the order giving rise to the taxation.
  - (b) take evidence either by affidavit or orally upon oath;
  - (c) direct the production of books papers and documents;
  - (d) may direct that subpoenas be issued;
  - (e) require any party or person to be represented by a separate solicitor;
  - (f) direct the issue of any separate or interim certificates or allocaturs;
  - (g) where the taxing officer is a Master, do any other things as are directed by these Rules or the Court.

- 101.14** In respect of a taxation of costs pursuant to Section 42 of the *Legal Practitioners Act 1981*:
- (a) A taxing officer may give such direction as he thinks proper for a solicitor to lodge with the Court and serve on his client particulars in taxable form of his bill of costs;
  - (aa) unless the Court directs to the contrary sub-rules 101.09(4), (7) and (8) shall apply to bills of costs or particulars in taxable form under this Rule.

- (b) The allocatur may include an order for the refund to the client by the solicitor of any amount over paid within seven days of the service of the allocatur.
- (c) notwithstanding the provisions of Rule 101.22 a reference to a taxing officer in this Rule shall be construed to refer only to a Master except to the extent that Section 42 of the *Legal Practitioners Act 1981* authorises the Registrar to do any act or thing in relation to a taxation of costs pursuant to that Section.

- 101.15**
- (1) If, during the taxation of any bill of costs or the taking of an account between solicitor and client, it appears to the taxing officer that there must in any event be moneys due from the solicitor to the client, the taxing officer may from time to time make an interim certificate as to the amount payable by the solicitor.
  - (2) Upon the filing of such certificate the Court may order that the moneys so certified be forthwith paid to the client or brought into Court.

**101.16** The following allowances and general regulations shall apply to all taxations in a proceeding:

- (a) Subject to Rule 101A.01(a) the fees allowed for drawing any pleading or other document shall include any copy made for the use of the solicitor, agent, or client or for counsel to settle;
- (b) On every taxation the taxing officer shall allow such charges and expenses as appear to him to have been necessary or proper for the attainment of justice, but save as against the party who incurred the same, no costs shall be allowed which appear to the Master to have been incurred or increased through over caution, negligence or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses;
- (c) Where the same solicitor or firm of solicitors is employed by two or more plaintiffs or defendants, and separate pleadings are delivered or other proceedings had by or for any of the parties separately the taxing officer on the taxation of the bill of costs of the solicitor or solicitors involved may disallow any costs occasioned by separate pleadings or other proceedings that he considers to have been unnecessarily or improperly incurred;
- (d) Any just and reasonable charges and expenses that appear to have been properly incurred in procuring evidence and the attendance of witnesses are to be allowed;
- (e) Where, by reason of the non-attendance of any party, or the neglect of any party in not being prepared with any proper evidence, account or other proceeding, a proceeding is adjourned without any useful progress being made, the Court may order such an amount of costs, if any, as it thinks reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally, and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any party is interested;
- (f) A folio is comprised of seventy-two words, every figure comprised in each column, or authorised to be used, being counted as one word;
- (g) If the bill of costs is payable out of a fund or estate and more than one sixth of the total amount of costs and disbursements is disallowed on taxation, the solicitor leaving the bill for taxation shall not be allowed any costs for drawing and engrossing the bill nor for attending on taxation;
- (h) Where counsel attend on a hearing in chambers no costs of counsel's appearance shall be allowed against an opposite party unless the Court certifies that the matter in chambers was one fit for the attendance of counsel;
- (i) All costs to which any party is entitled under any interlocutory order shall be included in the final bill of costs unless the costs have already been paid;
- (j) Where a matter is of such difficulty or complexity that it requires the exercise of special skill and the taxing officer is satisfied that the exercise of that skill conducted to the satisfactory and speedy disposal of the matter, he may allow such higher

remuneration for the exercise of that skill as the Court may direct, or, in the absence of any direction, the taxing officer may think proper;

- (k) Subject to the provisions of Rule 101A.04 where a party has been ordered to pay costs or where a person is liable to pay costs pursuant to the provisions of Section 42 of the *Legal Practitioners Act 1981* he may at any time before taxation offer in writing to pay a sum of money which he claims is sufficient to satisfy those costs with any interest and if the party or solicitor (as the case may be) who is entitled to costs does not receive on taxation together with any interest a greater sum than that offered he may, at the discretion of the taxing officer, be ordered to pay the costs of the taxation or such part thereof as the taxing officer considers appropriate.

**101.17** Where the parties have agreed the amount of any costs payable pursuant to any order for costs or, subject to the provisions of subsections (6) and (7) of Section 42 of the *Legal Practitioners Act 1981*, where a solicitor and client have agreed the amount of any costs payable by the client to the solicitor the Court may issue an allocatur for the amount of such agreed costs without the parties being liable to pay any taxing fee or allocatur fee in respect thereof, but no interest is to be allowed on such costs under Section 40 of the Act up to the date of the allocatur.

**101.18** (1) Upon the completion of a taxation of costs a taxing officer, and subject to any restrictions from time to time imposed by the Chief Judge, the Registrar, may sign the allocatur endorsed upon the bill of costs pursuant to Rule 101.09(4) or an allocatur in such other form as he thinks proper.

(1a) The allocatur is to include any amount for interest up until its date which is allowed under Section 40 of the Act.

(2) An allocatur when duly signed in accordance with subrule (1) above and sealed by the Court shall have the effect of, and be enforceable in the same manner as, a judgment of the Court for the amount of the allocatur.

**101.19** (1) Where a party is dissatisfied with the decision of a taxing officer as to all or some of the items of the bill of costs he may, before the certificate of taxation or allocatur is signed, or at such other time as may be fixed by the Master:

(a) deliver specific objections to the Master;

(b) deliver to the other party interested in the allowance or disallowance a copy of such objections;

(c) thereupon apply to the Master to reconsider the taxation in respect of those items or parts.

(1a) In subrule (1) 'the Master' means the Master who conducted the taxation where the taxing officer was a Master and means any Master where a taxing officer other than a Master conducted the taxation.

(2) Upon the receipt of any written objection pursuant to sub-rule (1) above, a Master may, if he thinks fit, by notice sent to all other interested parties direct that they deliver answers in writing to the objections, or such of them as are specified by the Master, within a stipulated time before the date set for the hearing of the objections.

(3) Pending the consideration and determination of the objections, the Master may if he thinks fit, direct the issue of a certificate of taxation or allocatur for any part of the bill of costs not objected to and such further certificate or allocatur as may be necessary shall be issued after his decision upon the objections.

**101.20** Where an application is made pursuant to Rule 101.19 to reconsider the taxation, the Master:

(a) shall reconsider the taxation in relation to the objections and he may, if he thinks fit, receive further evidence in respect of the objections;

- (b) shall publish the grounds and reasons for his decision on the objection incorporating therein any special facts and circumstances relating to his decision, and thereafter the final allocatur for the taxation may be issued by the Registrar;
  - (c) may tax the costs of the objections and add them to, or deduct them from, any sum payable by or to a party to the taxation.
- 101.21**
- (1) A party dissatisfied with the certificate or allocatur made after reconsideration pursuant to the preceding two Rules may within fourteen days from the date of the certificate or allocatur, apply to a Judge in Chambers for an order to review the taxation as to the item or part of an item, the subject of dissatisfaction.
  - (2) The application shall be heard and determined by a Judge upon the evidence which has been brought in before the Master, and further evidence shall not be received upon the hearing of the application unless the Judge so orders.
  - (3) The certificate or allocatur of the taxing officer is final and conclusive as to all matters which have not been objected to in accordance with these Rules.
- 101.22**
- (1) The Chief Judge may appoint the Registrar and other members of the non-judicial staff of the Court as taxing officers and the persons so appointed shall have such power, authority and jurisdiction as is conferred upon a taxing officer by Rules 101 and 101A.
  - (2) The Chief Judge may at any time revoke any appointment made pursuant to subrule (1) above.
  - (3) Subject to Rule 101.14(c), in Rules 101 and 101A 'taxing officer' means a Master and any person appointed by the Chief Judge to be a taxing officer pursuant to subrule (1) hereof.
- 101.23**
- (1) A taxing officer other than a Master shall only tax such bills of costs as are referred to him by a Master.
  - (2) Any party to a taxation of a bill of costs before a taxing officer other than a Master may at any time prior to the completion of the taxation require that taxing officer to refer that taxation or some part of it to a Master, and thereupon that taxing officer shall desist from the taxation and refer it to a Master.
  - (3) Upon a reference under subrule (2) above the Master may:
    - (a) take over the conduct of the taxation or some part of it and complete it;
    - (b) refer the taxation or part of it back to the taxing officer with or without directions to the taxing officer about any aspect of the taxation;
    - (c) order the party requiring the reference under subrule (2) above to pay the costs of the reference where there was no good reason why the taxation should not have proceeded before the taxing officer.

#### **Further Costs Rules**

- 101A.01**
- (1) Notwithstanding the provisions of Rule 101.07:-
    - (a) in respect of work done on and after 6 July 1992 costs shall be allowed and paid in accordance with the scale of costs in the Fourth Schedule to these Rules;
    - (b) in the event of any increase or increases in costs allowed and payable under the Fourth Schedule to these Rules the costs allowed and payable pursuant to subrule (a) shall be increased as shown in the preamble to the Fourth Schedule to these Rules;
    - (c) in respect of work done on and after the 31st day of October 1998 costs shall be allowed and paid in accordance with the scale of costs in the Fifth Schedule to these Rules.

- (d) in respect of work done on and after the 1st day of July 1999 costs shall be allowed and paid in accordance with the scale of costs in the Sixth Schedule to these Rules.
  - (e) in respect of work done on and after the 1st day of July 2000 costs shall be allowed and paid in accordance with the scale of costs in the Seventh Schedule to these Rules.
  - (f) In respect of work done on and after 1 April 2002, costs shall be allowed and paid in accordance with the scale of costs in the Ninth Schedule to these Rules.
  - (g) In respect of work done on and after 3 May 2004, costs shall be allowed and paid in accordance with the scale of costs in the Tenth Schedule to these Rules.
  - (h) That in respect of work done on and after 1 August 2005, costs shall be allowed and paid in accordance with the scale of costs in the Eleventh Schedule to these Rules.
- (2) The provisions of Rule 101 shall apply to the taxation of bills of costs lodged for taxation after 6 July 1992 but only to the extent that they are not inconsistent with the provisions of this Rule.

- 101A.02** (1) Subject to sub-rules (1A) and (1B) hereof, a party wishing to tax costs pursuant to Rule 101 or an order of the Court (hereinafter referred to as 'the applicant') shall prepare and serve a short form bill of costs in the form set out in Form 36.
- (1A) If the applicant and the respondent (as defined in sub-rule (2) hereof), by notice to the other in writing, waive the requirements of sub-rule (1) hereof, the applicant may proceed to a taxation as if sub-rule (6) hereof applied.
- (1B) The Court or a taxing officer may dispense with the requirements of sub-rule (1) hereof of its or his own motion or on the application of either party.
- (1C) In the event that the applicant and the respondent waive the requirements of sub-rule (1) hereof in accordance with sub-rule (1A) hereof the applicant shall, when lodging his bill of costs for taxation, provide to the Registrar signed copies of the notices of waiver in accordance with sub-rule (1A) hereof.
- (1D) The provisions of sub-rule (1) hereof are subject to any direction to the contrary given by a taxing officer pursuant to Rule 101.14(a).
- (2) Unless the Court or a taxing officer otherwise orders a person to whom the bill is delivered (hereinafter referred to as 'the respondent') shall within 21 days of the delivery of the short form bill of costs insert in the appropriate column his response to the allowances sought therein and serve on the applicant a copy of the short form bill containing the said responses. In the event that the respondent fails to comply with this requirement the whole of the costs sought by the applicant shall be deemed to be admitted and payable.
- (3) During the period of 21 days after the delivery of the copy short form bill of costs by the respondent to the applicant, either party may be at liberty to serve on the other an offer to accept a sum of money or an offer to pay a sum of money (as the case may be) in satisfaction of the applicant's claim for costs.
- (4) If at the expiration of the period of 21 days referred to in paragraph (2) above the respondent has not delivered to the applicant a copy of the short form bill of costs containing the respondent's responses or if within 21 days of the service of an offer pursuant to paragraph (3) above the parties reach agreement as to the amount payable or part thereof, the applicant may apply by letter to the Registrar for an allocatur to be issued by the Court in accordance with the provisions of Rule 101.17 and the Registrar, upon being satisfied in such manner as he shall think fit that either the respondent has failed to comply with the provisions of subrule (2) above or (as the case may be) that the respondent consents to the issue of the allocatur, shall thereupon cause to be issued the allocatur in the sum sought.

- (5) In the event that the parties are unable to reach agreement as to the whole of the amount claimed by the applicant the issue of an allocatur for part of the amount sought shall not be a bar to the applicant seeking a taxation of the remainder of the costs.
- (6) In the event that within the period referred to in Rule (4) above no agreement is reached between the parties as to the amount payable or agreement is reached as to part only of the sum which the applicant seeks, the applicant may seek a taxation of the whole of the costs sought or of the costs remaining in dispute (as the case may be) in accordance with the provisions of Rule 101.
- (7) This rule shall not apply to a taxation of costs pursuant to section 42 of the *Legal Practitioners Act, 1981*.

**101A.03** Subject to Rule 101.14 and Rule 101A.02(7), the provisions of Rule 101A shall apply to the taxation of all bills of costs lodged on and after 6 July 1992 except that the costs for work done prior to 6 July 1992 shall be allowed at and payable in accordance with Rule 101.07.

**101A.04** (1) The costs of any taxation and the interest which is to be allowed on any costs shall be in the discretion of the taxing officer who shall take into account in exercising such discretion:-

- (a) any offer served by any party or person pursuant to Rule 101A.02(3);
- (b) any offer made by any party or person pursuant to Rule 101.16(k);
- (c) the respondent's response pursuant to Rule 101A.02(2);
- (d) any other matter relevant to the exercise of the discretion both as to the costs of the taxation and the interest on costs allowed.

(2) Without limiting the discretion conferred by subrule (1) above, in the exercise of the discretion as to the costs of taxation the taxing officer may direct:

- (a) that a party or person pay the whole or part of the costs of a taxation;
- (b) that part of the costs of taxation be paid by one party or person and the balance of the costs of the taxation by the other party or person;
- (c) that there be no order as to the costs of the taxation or no order as to the costs of some part thereof;
- (d) that any costs of a taxation directed to be paid by the applicant be offset against the costs recoverable by the applicant and in the event that such costs of taxation exceed the amount recoverable by the applicant, the provisions of Rule 101.11(2)(c) shall apply *mutatis mutandis*.

(3) In this Rule and in Rule 101 'costs of taxation' shall include, at the discretion of the taxing officer, the costs of and incidental to the preparation and delivery of a short form bill of costs and the costs of and incidental to the receipt of a short form bill of costs.

**101A.05** Where a party is entitled to interest under Section 40 of the Act the Court or the taxing officer may in the exercise of its discretion, and without proceeding to calculate that interest, award a lump sum in lieu of that interest.

**101A.06** In the event of any increase in costs allowed under the Fourth Schedule to these Rules, a short form bill of costs (Form 36) shall include provision for the division of the items of work into the following additional periods:

- for work done after the first increase in costs to the date of the next such increase
- any further periods defined by reference to the date of successive increases in costs.

**101A.07** Where a judgment is entered for a plaintiff in default of filing a notice of address for service or defence either administratively by the Registrar or by order of the Court, the judgment may provide (at the option of the plaintiff):



- (a) that the plaintiff recover the plaintiff's costs of action to be taxed; or
- (b) that the plaintiff recover lump sum costs fixed in accordance with the Eighth Schedule.

### **Documents**

- 102.01** (1) A hard copy document prepared for use in the Court may be produced by:
- (a) typewriting otherwise than by means of a carbon copy;
  - (b) printing;
  - (c) writing;
  - (d) photocopying;
  - (e) any other method authorised by the Registrar either generally or in relation to a particular proceeding;
- and may be produced partly by one of these means and partly by another of them.
- (2) For the purposes of these Rules a document shall be deemed to be printed if it is produced by lithography, stencil, duplicating or any other mechanical means.
- (3) In any case in which the Court determines that a litigation support facility or any other computer process will or may be used as an aid to the efficient management of the preparation for or trial of an action it may, at any stage of the proceedings, give such directions as it may see fit as to the production and lodgment with the Court by a party of any documents or copies thereof for use in the action in such electronic computer readable form as the Court may specify.

- 102.02** (1) Unless the nature of the document renders it impracticable, every hard copy document prepared for use in Court shall:
- (a) be on international size A4 paper of good and durable quality;
  - (b) be upon one side of the paper only with a left hand margin of at least four centimetres and a right hand margin of at least two centimetres;
  - (c) be legibly and clearly printed, typed or and written in ink without blotting, erasure or other such alteration as to cause material disfigurement;
  - (d) have a front sheet as in Form 1 in the First Schedule;
  - (e) not be required to have a back sheet.
- (2) The Registrar may refuse to file any document which contravenes the provisions of this Rule.
- (3) The Court or the Registrar may require any document to be filed or for use in an action:
- (a) to be printed or otherwise produced in hard copy format in any particular manner it, she or he thinks fit;
- and/or
- (b) to be submitted to the court in such electronic readable form as the Court may specify.
- (4) Where any number or figure is contained in any document to be filed in Court, such number or figure may be designated by numerals only, and not by words and numerals.
- (5) (a) Where in any action a category of party comprises more than one person the heading of the document is only to state the name of the first person constituting such a party and is to be followed by 'and another or others'.
- eg. AB and another/others

Plaintiffs

v

CD and another/others

Defendants

and

EF and another/others

Third Parties

- (b) Where any document refers to a party whose name does not appear in the heading to that document that reference is to be initially by stating the full name of that party and what party it is (eg. P Q, the second plaintiff or X Y, the third defendant), but thereafter in that document that party may be referred to merely by its designation as a party (eg the second plaintiff or the third defendant).
- (6) Any document transmitted to the Court by means of an authorised electronic communication shall, in its format, comply with the requirements of this Rule as to presentation of a hard copy document.
- 102.03** Any notice, request or consent required or allowed by these Rules may be transmitted as an authorised electronic communication where it is practicable to do so. In any case in which it is necessary to transmit such a document in hard copy format it shall be printed, typed or handwritten, unless the Court otherwise orders.
- 102.04** Unless the Court otherwise directs wherever a party files any document, other than a praecipe or documents relating to an *ex parte* application, that party shall on that day serve a true copy of such document upon every other party to the action who then has an address for service.
- 102.05** (1) Where a document prepared by a party for use in the Court is in written, typewritten or photocopied, or in an approved electronic computer readable form, the party by whom it was prepared must supply to any other party entitled to a copy, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it. The copy must be ready for delivery within 48 hours (excluding Saturdays, Sundays and holidays) after a written request for it, together with an undertaking to pay proper charges, is received, and must be supplied thereafter on payment of those charges. Such copy shall be supplied by means of an authorised electronic communication, or in electronic format on diskette, unless the requesting party can demonstrate good reason for requiring it in hard copy form.
- (2) Where, upon an *ex parte* hearing, an order is made against or affecting the rights of any person such person may obtain a copy of the affidavits filed by the applicant in support of his summons or application in the manner provided by paragraph (1).
- 102.06** (1) Before a copy of a document is supplied to a party under this Rule, it must be endorsed with the name and address of the party or solicitor by whom it was supplied.
- (2) The party or solicitor by whom a copy is supplied under Rule 102.05 shall be answerable for the copy not being a true copy of the original or an office copy, as the case may be.
- 102.07** Upon being satisfied that there is good reason to do so, the Registrar may issue to any person a copy of any document filed, or to be filed, in a proceeding, duly authenticated as an office copy of it.
- 102.08** (1) Impounded documents in the custody of the Court shall not be inspected, except on a written order signed by the Judge on whose order they were impounded; or in the case of documents impounded on the order of the Full Court, by an order of that Court.
- (2) Such documents shall not be delivered out of the custody of the Court except upon an order made on application. Provided that impounded documents in the custody of the

Court shall, upon the request in writing of the Attorney-General or the Crown Solicitor, be given into the custody of the Attorney-General or the Crown Solicitor.

**Note: italics indicate suspension of a Rule (partially or in full) from 12 June 2003.**

**102.09** If any summons, application or documents filed for the purposes of an appeal which is presented for filing or issue appears to the Registrar to be an abuse of the process of the Court, or a frivolous or vexatious proceeding, or contains scandalous or indecent material the Registrar shall seek the direction of the Court which may direct him to file or issue it, or to refuse to file or issue it without the leave of the Court first having been obtained by the party seeking to file or issue it. *In the event that such a document has been filed by a party by means of the Court electronic filing system, the Court may, of its own motion or on application of another party, by order, direct that it be deleted from such file.*

#### **Administration Of Estates: Execution Of Trusts**

**103.01** (1) For the purposes of this Rule “administration proceedings” means proceedings for the administration of an estate or the execution of a trust under the direction of the Court.  
(2) “Estate” means estate of a deceased person.  
(3) This Rule is cumulative upon the provisions of Rules 63.01 to 63.07.

**103.02** Proceedings may be brought by summons by any executor, trustee, administrator, beneficiary, next of kin, or creditor for:

- (a) any relief which could be granted in administration proceedings;
- (b) the determination of any question which could be determined in administration proceedings, including any question:
  - (i) arising in the administration of an estate or in the execution of a trust;
  - (ii) as to the composition of any class of persons having a claim against an estate or a beneficial interest in an estate or in property subject to a trust;
- (c) an order directing an executor, administrator or trustee:
  - (i) to furnish accounts;
  - (ii) to verify accounts;
  - (iii) to pay funds of the estate or trust into Court; or
  - (iv) to do or abstain from doing any act;
- (d) (i) an order approving any sale, purchase, compromise or other transaction by an executor, administrator or trustee; or  
(ii) directing any act to be done in the administration of an estate or in the execution of a trust which the Court could order to be done if the estate were being administered, or the trust were being executed, under the direction of the Court;
- (e) an order appointing a receiver or a receiver and manager of a trust.

**103.03** Where proceedings are brought pursuant to Rule 103.02 a claim need not be made for the administration of the estate, or the execution of the trust, under the direction of the Court.

**103.04** The following Rules apply to administration proceedings and to proceedings brought pursuant to Rule 103.02.

**103.05** Unless the Court otherwise directs:

- (a) In proceedings relating to an estate, all the executors of the will of the deceased, or all the administrators of the estate, must be parties.
- (b) In proceedings relating to a trust, all trustees must be parties.

- (c) Where proceedings are brought by executors, administrators, or trustees, any executor, administrator or trustee who does not consent to being joined as a plaintiff may be made a defendant.
- 103.06**
- (1) In proceedings relating to an estate, all persons having a beneficial interest in, or claim against, the estate need not be parties.
  - (2) In proceedings relating to a trust, all persons having a beneficial interest under the trust need not be made parties.
  - (3) In proceedings relating to an estate or trust, the plaintiff may, subject to any direction by the Court, make parties, such as he thinks fit, of the persons mentioned in paragraphs (1) and (2).
  - (4) Any residuary legatee, devisee or next of kin entitled to a judgment or order for administration, may have the order without serving the remaining residuary legatees, devisees or next of kin, unless the Court otherwise directs.
  - (5) Unless the Court otherwise directs, any one of several beneficiaries under any deed or instrument entitled to a judgment or order for the execution of trusts or of the deed or instrument may have the same without serving any other beneficiary.
  - (6) Any executor, administrator or trustee entitled thereto may have a judgment or order against any one legatee, next of kin or beneficiary, for the administration of the estate or the execution of the trusts.
- 103.07** Where, in the taking of an account of debts or liabilities under a judgment or order in proceedings relating to an estate or trust, a person not a party makes a claim:
- (a) a party other than the executors or administrators of the estate or trustees under the trust shall not be entitled to appear in relation to that claim except by leave of the Court; and
  - (b) the Court may, on terms, direct or allow any party to appear, either in addition to or in substitution for the executors, administrators or trustees.
- 103.08**
- (1) The Court need not direct the entry of judgment, or make an order for the administration of an estate, or the execution of a trust under the direction of the Court, unless the judgment or order is necessary for the determination of the questions arising between the parties.
  - (2) When it appears to the Court that a judgment or order for the administration of an estate or the execution of a trust under the direction of the Court is necessary to prevent proceedings by creditors of the estate or by persons claiming to be entitled under the will or on the intestacy of the deceased or to be beneficially entitled under the trust, the Court may:
    - (a) direct the entry of judgment;
    - (b) order that no steps shall be taken under the judgment or order, or under any account or inquiry directed, without the leave of the Court;
    - (c) stay any proceedings until proper accounts be furnished;
    - (d) stay any other proceedings by creditors or persons entitled to the same or similar relief or give judgment or make an order for administration of the estate in the other proceedings and direct that no further proceedings be taken under the judgment or order without the leave of the Court.
- 103.09**
- (1) Where the Court makes an order for the sale of property comprised in an estate, or of trust property, the executors or administrators, or the trustees, as the case may require, shall, unless the Court otherwise orders, have the conduct of the sale.
  - (2) The Court may either on the making of the order for sale or on a subsequent application, give such directions as it sees fit for the purpose of effecting the sale.

**103.10** In an administration action or an action brought under Rule 103.02 the Court may make any certificate or order and grant any relief to which any party may be entitled by reason of any breach of trust, wilful default or other misconduct of any party.

### **Jurisdiction of Masters**

- 106.01** (1) A Master shall have power, authority and jurisdiction to exercise the jurisdiction of the Court to pronounce and make any judgment or order by consent.
- (2) A Master may do and transact all such business and exercise all such authority and jurisdiction in respect thereof as by virtue of any Statute, custom, Rule or practice of the court may be done, transacted or exercised in an action or a minor civil action review by a Judge in chambers except in respect of the following proceedings and matters:
- (a) Injunctions and restraining orders;
  - (b) Reviewing taxations of costs;
  - (c) Any proceeding or matter where a Judge has ordered that this rule is not to apply; or
  - (d) Any other proceeding or matter which is excluded from the jurisdiction of a Supreme Court Master under Supreme Court Rule 106.01(3).
- (3) Where:
- (a) a party has judgment for damages to be assessed; and
  - (b) the assessment can be conveniently conducted in chambers rather than by a trial in open court,
- a Master may assess the damages in chambers.
- 106.02** Wherever a Master is exercising the jurisdiction of the Court he has subject to these Rules all of the powers of the Court.
- 106.03** (1) A Master shall not exercise the jurisdiction of the Court in respect of any contempt of Court.
- (2) Where any person appearing before a Master is, or is alleged to be, in contempt of Court a Master may:
- (a) order that such person to be taken into custody by the Sheriff or an officer of the Court until he can be brought before a Judge on a proceeding for contempt pursuant to Rule 93;
  - (b) direct that any such person taken into custody pursuant to (a) above be admitted to bail pending him being brought before a Judge;
  - (c) direct the Registrar to proceed against such person for contempt under Rule 93.03.
- (3) In relation to any proceedings for any contempt or alleged contempt before a Master the Master may inform the Court of what occurred before him by giving a written report to the Judge or Judges who hear the proceedings for contempt.
- 106.04** (1) A Master may refer any summons or application to a Judge who may either dispose of the matter or refer it back to the Master with such directions as he may think fit.
- (2) Pending the final disposal of the summons or application or matter the Master may make such interim order as he shall think just.

### **Registrar and Deputy Registrar**

- 107.01** The Registrar, and subject to any restrictions from time to time imposed by the Chief Judge or the Registrar, the Deputy Registrar or proper officer, may:
- (a) draw up, settle and authenticate judgments and orders;

- (b) tax such non-contentious bills of costs as are referred by a Master for that purpose; and
- (c) exercise and perform, if so directed or authorised by the Chief Judge, such powers and duties as a Master is by any Act, Rule or practice of the Court, empowered or required to exercise and perform, not being powers or duties which a Master is empowered or required to perform by any Rules of Court made pursuant to Section 51(c) of the Act.

Provided that while any proceeding or matter is before the Registrar, the Deputy Registrar or the proper officer, until the Registrar, Deputy Registrar or proper officer as the case may be, has completely exercised any power or duty under this Rule, he or any party may seek the opinion of a Master, or, alternatively in cases of emergency, or on reference from a Master, of a Judge upon any question arising in the course of such proceedings or matter.

**107.02** The Registrar, the Deputy Registrar, or the proper officer, as the case may be, shall act in accordance with such opinion, or if the Master or Judge, as the case may be, thinks fit, he may assume control over the proceedings or matter, in which case he shall, in addition to any other powers and authority vested in him, have all of the powers and authority vested in the Registrar, the Deputy Registrar or the proper officer, as the case may be, in relation to those proceedings or that matter.

- 107.03**
- (1) Every decision, direction, certificate or act made or done by an officer of the Court is subject to review by the Court.
  - (2) Unless the Court otherwise directs such a review is to be carried out by a Master.
  - (3) Such a review is to be initiated by an application taken out under Rule 67 within 7 days of the decision, direction, certificate or act complained of and is to be disposed of in chambers.
  - (4) Upon the review the Court in its discretion may receive further evidence, and in matters involving the exercise of a discretion may exercise its own discretion without regard to the manner in which the discretion has been exercised by the officer of the Court.

- 107.04**
- (1) All fees and expenses chargeable by the Court under Section 53 of the Act and the Regulations made thereunder shall be paid by the practitioner or the party as the case may be before any process, affidavit, order or document is issued from, or filed in, the Registry or upon the doing of any other matter or thing in the Court or by any officer thereof in respect of which a fee is payable or a charge is provided.
  - (2) Where a Court fee, charge or expense or any part thereof payable under this Rule is not paid within fourteen days after demand in writing by the Registrar has been served by certified mail on the practitioner or party at whose instance the charge or expense has been incurred at the address for service or at his usual or last known place of abode or business, the Registrar may report to the Court the name of the practitioner or party in default and the amount of the fee charged or expense unpaid and the Court may thereupon make all necessary orders to enforce payment thereof (including the costs of the application against the practitioner or party as the case may be) and the Registrar may with the consent of the Attorney General commit to the Crown Solicitor conduct of the matter.

- 107.05**
- (1) The records of the Court in its civil jurisdiction shall be in the custody, and under the control, of the Registrar.
  - (2) Subject to the next succeeding subrule and subject to the Act a person shall not be entitled to search or inspect any such record, or to take or bespeak any copy thereof, without first having obtained the leave of the Registrar or of a proper officer.
  - (3) Any party to an action may search or inspect any such record in the proceedings in which he is a party, or take or bespeak a copy thereof on payment of the appropriate copying fee, except to the extent that the same would be contrary to any Act, Rule or order of the Court.

- (4) No such record shall be taken out of the Court without an order of the Court, and no subpoena for the production of any such record shall be issued.
- (5) Where any such record is required to be produced to any Court or Tribunal (including an umpire or arbitrator):
  - (a) Subject to paragraph (f) of this Rule it shall not be necessary for an officer of the Court (whether served with a subpoena in that behalf or not) to attend for the purpose of producing the record, but the record may be sent to such Court or Tribunal by messenger or by security post.
  - (b) Upon receipt of a request in writing for such production, the Registrar may direct that such request be complied with, subject to conditions, (if any) as the Registrar may direct.
  - (c) Subject to compliance with any such conditions, the proper officer shall thereupon send the record to the Court or Tribunal indicated in the request, together with a certificate signed by the Registrar certifying that such record is filed in, or is in the custody of, the Court and specifying the date upon which, and the matter in which, it was filed.
  - (d) The Court or Tribunal to which any record is sent under this Rule shall keep it in safe custody and shall return it personally or by security post to the Registrar as soon as such Court or Tribunal no longer requires it.
  - (e) A Register shall be kept in the Registry containing a description of each record sent, the date when it is sent, the Court or Tribunal to which it is sent and the date of its return. The proper officer shall see that each record is duly returned within a reasonable time and shall make enquiries and report to the Registrar if it is not so returned.
  - (f) In any case in which he considers it proper to do so, the Registrar may require that an officer of the Court attend a Court or Tribunal for the purpose of producing the record.
  - (g) Notwithstanding the foregoing provisions of this subrule unless the Registrar is satisfied that there is good reason why the original of any record should be produced in any other Court or Tribunal he may answer the request for the production of that record by sending a photostat copy of it certified by him to be a true copy for which the person seeking the production of the record shall be liable to pay the charges then prescribed pursuant to Section 53 of the Act. In such a case the photocopy of the record need not be returned to the Court.
- (6) The expression "records of the Court" include without limiting the generality thereof all documents and all exhibits (whether documentary or otherwise) which come into the possession of, or are produced by, the Court or any officer of the Court for the purpose of, or in the course of, any proceeding in the civil jurisdiction of the Court.
- (7) Where the record of the Court for an action is maintained as an electronic file the Registrar may satisfy a proper requirement for production of the record to any Court or Tribunal either by granting to it read only access to such record (where it is practicable to do so) or by transmitting a copy of such record to it by means of an authorised electronic communication.

- 107.06**
- (1) Subject to the Act all exhibits which come into the possession of the court in any proceedings in its civil jurisdiction shall be in the custody, and under the control, of the Registrar.
  - (2) The person appointed by the Registrar for that purpose shall record the identity of the party tendering each exhibit, and, if it is not produced from that party's custody, the identity of the person from whose custody it was produced.
  - (3) Subject to any contrary order of the court, within 14 days of the expiration of the time for any appeal against a final judgment or order, or where there has been any appeal against that final judgment or order, within 14 days of the expiration of the time for any further appeal, the party who has tendered an exhibit, or where an exhibit came

from the custody of another party, that other party, shall collect such exhibit from the registry.

- (4) If an exhibit is not collected pursuant to sub rule (3) above, the Registrar may return it to the party or person from whose custody the exhibit came, and recover any costs thereof from the party who tendered it.
- (5) Where a party tendering an exhibit has made an agreement, or given any undertaking, subsequently to return that exhibit to some other person, such party's obligation to do so shall not be affected by this rule, but the Registrar shall not be obliged to give effect to any such agreement or undertaking.
- (6) Notwithstanding sub rule (3) above, where exhibits are received from a lower court or tribunal upon an appeal from it, the Registrar may return those exhibits after the conclusion of the appeal to the court or tribunal from which they came.

### **Legal Practitioners**

- 108.01** (1) Where the relationship of solicitor and client exists, or has existed, the Court may, on the application of the client or his personal representatives, make an order for:
- (a) the delivery by the solicitor of a cash account;
  - (b) the payment or delivery up by the solicitor of money or securities;
  - (c) the delivery to the plaintiff of a list of the moneys or securities which the solicitor has in his possession or control on behalf of the plaintiff;
  - (d) the payment into, or lodging in Court, of any such moneys or securities.

**108.02** An order under this Rule must be sought by summons.

**108.03** If the solicitor alleges that he has a claim for costs, the Court may make such order for the taxation and payment, or securing the payment thereof and the protection of the solicitor's lien, if any, as the Court thinks fit.

### **Suitors' Fund**

**109.01** Every order which directs funds to be lodged in Court shall contain particulars to be prescribed by practice direction.

**109.02** Every order which directs funds in Court to be dealt with shall state with precision how they are to be dealt with and shall contain the whole of the instructions to be acted upon by the Registrar and all particulars necessary to be known by him.

**109.03** Neither a Master nor a Registrar shall be liable for giving effect to any order for payment out of funds.

- 109.04** (1) Where any order is made for payment in or payment out of funds, the order, unless the Court otherwise directs, is to be prepared by the solicitor having the carriage of the order for settlement by the Registrar. This subrule is cumulative upon the provisions of Rule 84.
- (2) Unless the Court otherwise directs, where an order relates to a fund in Court of an amount not exceeding \$2,000, the order need not be drawn up and the fiat shall be sealed and shall operate as the order.

**109.05** There shall be a District Court Suitors' Fund into which all deposits of money received by the Registrar are to be paid.

**109.06** Moneys in the Suitors' Fund shall, subject to any order of the Court in a particular case, unless they are lodged solely for safe custody, be invested as follows:



- (a) according to the investment provisions in the relevant Statute, deed, will or other instrument. If the provisions require investment in a specified security, which is unavailable, then subject to any prohibition contained in the Statute, deed, will or other instrument, in any of the securities referred to in subparagraphs (b) hereof;
- (b) in a common fund which shall itself be invested, as far as practicable
  - (i) in securities authorised by the *Trustee Act, 1936*, subject in the case of investments to which subsections (2), (3), (4) and (b) of Section 5 inserted by the *Trustee Act Amendment Act, 1980*, apply to the safeguards prescribed by those subsections and/or
  - (ii) in an account pursuant to Section 21 of the *Public Finance and Audit Act, 1987*;
- (c) in such other investments as a Master may from time to time determine with the approval of a Judge.

**109.07** Interest earned on the investments made from the common fund shall be paid into the common fund.

**109.08** Money received in respect of the payment off of securities shall form part of the common fund until it is reinvested in other securities.

**109.09** The Court may direct that any moneys in Court or interest thereon be invested otherwise than in the common fund.

**109.10** Unless the Court shall otherwise order, all securities which are ordered to be transferred into Court are to be registered in the names of the Registrar and a proper officer. If any difficulty arises as to the transfer of any securities it shall be referred to a Master who shall give directions in a summary way thereon.

**109.11** (1) Where money has been paid into Court under Rule 39 hereof, the Registrar may on such authority as he thinks proper pay the money out to the person entitled thereto or his solicitor except in the case of persons under disability.

- (2) This Rule shall not apply:
  - (a) where an order has been received restraining payment;
  - (b) where there is a plea of tender before action;
  - (c) where money has been lodged on behalf of one or some of several defendants.

**109.12** The payment, delivery or transference out of funds in Court or their investment for sale or other dealing therewith, shall be done in pursuance of any Statute, regulation, Rule of Court, or order of Court in a particular matter.

**109.13** (1) Where interest accrues after the date of an order, on funds directed to be transferred, delivered out, or carried over, it shall, unless the order otherwise directs, be dealt with in the same manner as the funds are directed to be dealt with from the date of the order when the amount of the funds is specified in the order, or from the date when the amount is ascertained if not so specified.

- (2) Where no order has been made as to accrued or accruing interest, a direction may be made by a Master summarily to deal with the question of such interest.

**109.14** Where moneys have been paid into Court as security for the costs of an appeal to the Supreme Court, such moneys shall on receipt of a copy of the order of the Supreme Court or a certificate of the Registrar of that Court, unless a special order has been placed on the fund, be paid out in accordance with the order or certificate.

- 109.15** (1) Interest earned in a common fund and not credited to accounts to which money forming part of the common fund was standing during any half year shall be carried to a reserve fund.
- (2) Such reserve fund may with the approval of a Judge be used:
- (a) to make good deficiencies (if any) in the funds in Court; or
  - (b) to make good the amount (if any) by which the amount of interest to be credited to the accounts forming part of the common fund during any half year exceeds the amount of interest earned for that half year; or
  - (c) to defray any sundry expenses incurred in administering the funds in the Court, to be approved by a Judge; or
  - (d) for the purposes of the Sir Samuel Way Library.
- 109.16** (1) Interest in the reserve fund not appropriated under Rule 109.15(2) shall be invested as part of the common fund and shall not be treated as unclaimed for the purposes of Section 49(5) of the Act.
- (2) Such reserve fund shall not be credited in the books of the Court with interest.
- 109.17** (1) The Registrar shall, as soon as practicable after the 30th day of June and the 31st day of December each year, with the approval of the Auditor-General, fix the rate of interest payable in respect of funds in Court for the preceding half year and shall credit interest to the common fund or any special fund on those dates.
- (2) Where money is paid out during any half yearly period, the rate of interest applicable to the previous half year shall apply unless the Registrar otherwise directs.
- (3) Interest accrues from day to day up to the date when the cheque for payment out is signed.
- 109.18** Where any calculations are required to be made to ascertain the amount of any payment, the Registrar may require the solicitor for the party interested to make or cause to be made those calculations.
- 109.19** (1) The Registrar may, in his discretion, give any information respecting unclaimed funds, whether before or after they have been paid, to the Treasurer upon a request signed by the person applying for such information or by his solicitor.
- (2) If such request is made by a solicitor, such information shall not be given unless the request states the name and address of the person on whose behalf it is made, and that such person, in the opinion of the applicant, is or may be beneficially interested in such funds.
- (3) If such request be made by any person other than a solicitor, such information shall not be given unless the applicant is able to satisfy the Registrar that the request is such as may in the particular case be properly complied with.
- 109.20** The Masters and the Registrar respectively may make and issue such practice directions from time to time in relation to moneys in Court as may be requisite to control the payment in, investment, control and payment out of such moneys.

## **PART III - THE CIVIL DIVISION – PROCEDURES UNDER SPECIAL ACTS**

### **General Matters**

- 110.01** The Rules in Part II apply in proceedings under Part III in so far as they are not inconsistent with the provisions of Part III.
- 110.02** Except as is expressly otherwise provided, the Rules in Part III shall apply to proceedings pending at the commencement date.
- 110.03** The heading of any summons instituted under Part III shall refer to the statute under which the proceedings are brought.

### ***Aged and Infirm Persons Property Act 1940***

*[III-2A Rule 111 is only to apply to the District Court insofar as it has jurisdiction under the Aged and Infirm Persons Property Act 1940 pursuant to Section 4(1a) of that Act.]*

- 111.01** This Rule applies to proceedings under the *Aged and Infirm Persons Property Act 1940* which for the purposes of Rule 111 only is referred to as “the Act”.
- 111.02** (1) Proceedings under Part II of the Act shall proceed on affidavits and not on pleadings.  
(2) A summons seeking orders under Part II of the Act need only set out in general terms the nature of each of the orders sought.
- 111.03** In any proceedings under Part II of the Act:  
(a) The evidence of any legally qualified medical practitioner may be given by a report signed by him which is duly exhibited to an affidavit sworn by a solicitor who has obtained the report.  
(b) The consent of a person to act as a manager pursuant to Section 10 of the Act may be proved by an affidavit of a solicitor deposing to the consent of the proposed manager; Provided that at the request of any other party, or of its own volition, the Court may decline to receive any such evidence adduced in such manner and may require the evidence to be proved in accordance with the normal rules of evidence.
- 111.04** (1) Wherever practicable a summons under Part II of the Act is to be served on the defendant by a solicitor, or, if this is not practicable, by some other responsible person, who is to endeavour to explain to the defendant as clearly as possible the nature of the proceedings and the effect of the making of the orders sought.  
(2) Details of the explanation made to the person served shall be contained in the affidavit of service together with details of any response made by the defendant.
- 111.05** Upon the making of a protection order under the Act the plaintiff shall:  
(a) Have the order settled and entered as soon as possible;  
(b) As soon as possible after the entry of the order have it served upon the protected person and Public Trustee;  
(c) Within seven days of such service file an affidavit proving the same.
- 111.06** Within three months of his appointment a manager shall file, and, if he is not Public Trustee, serve on Public Trustee, a statement verified by affidavit showing particulars and the estimated values and condition of each item of property comprising the protected estate as at the date of the protection order together with details of all income payable to the protected estate and of its liabilities, present, future and contingent as at that date.

- 111.07** (1) Every manager other than Public Trustee shall by 30th September in each year file, and serve on Public Trustee, an affidavit containing a full and true account of all of the assets, income and liabilities of the protected estate for the period since the last similar account was filed up until 30th June in that year provided that it shall not be necessary to file such an affidavit where a statement filed under Rule 111.06 covered the period up to 30th April in that year.
- (2) Where the Court rescinds a protection order pursuant to Section 11 (1) of the Act, within one month of such rescission the manager shall prepare and file in the Court a statement as at the date of rescission similar (so far as may be appropriate) in form and substance to the statement required by (1) above, such statement to be verified by affidavit and to cover any period of management not previously covered by statements filed by the manager.
- (3) Where a protection order is determined pursuant to Section 11 (3) of the Act, within two months of such determination the manager shall prepare and file in the Court a statement as at the date of such determination similar (so far as may be appropriate) in form and substance to the statements required by (1) and (2) above, and to cover any period of management not previously covered by statements filed by him.
- (4) Where a manager other than Public Trustee does not comply with his obligations under Rules 111.07 or 111.08 Public Trustee may report such default to the Court.
- (5) Unless the Court shall direct the filing of any application or affidavit, a report under subrule (4) may be made by filing a document bearing the heading of the proceedings in which the protection order was made, setting out briefly the defaults complained of and signed by or on behalf of Public Trustee.
- (6) Upon filing any report under subrule (5) Public Trustee shall:
- (a) serve a copy on the manager by posting the same to his last known address;
  - (b) set the matter down in the Masters' chamber list;
  - (c) notify the manager by letter posted to his last known address of the date and time set for the consideration of the report in Chambers.
- (7) Upon such a report coming on for consideration by a Master the Master may, and *ex parte* if the manager does not appear:
- (a) give any necessary or proper directions as to the further conduct of the matter;
  - (b) direct service on any other interested person;
  - (c) remove the manager from office, and give consequential directions as to the appointment of a new manager and the conduct of the protected estate;
  - (d) give directions as to the conduct of the protected estate or the performance by the manager of his duties;
  - (e) dispense with compliance with any Rule in respect of the protected estate;
  - (f) make any other order which could be made on an application taken out by Public Trustee in respect of the protected estate which it is then appropriate to make; and
  - (g) make any order concerning the costs of the report including against the manager personally.

**111.08** A manager other than Public Trustee shall deliver to Public Trustee such documents and vouchers as Public Trustee may require in relation to any matter relevant to the accounts which have or should have, been filed by the Manager so as to ensure that Public Trustee will be in a position if he wishes to verify all accounts filed.

**111.09** A trustee company appointed as manager under the Act shall be entitled to remuneration of a commission of five per centum on all income collected and a capital commission of four per cent on the first \$50 000, three per cent on the next \$50 000, two per cent on the next \$100 000 and one per cent on the balance provided that the capital commission is only to be taken on condition that in the event of the manager on the death of the protected person being

granted administration of his estate no further corpus commission shall be charged on the proceeds of the realization of such estate without the prior approval of the Court.

- 111.10** (1) Where any person who has given a bond for the due conduct of the administration of a protected estate under the Act, or any surety for any such bond, has died, ceased to carry on business, become bankrupt, entered into an arrangement with his creditors, been put into liquidation, or gone under official management or receivership the manager shall forthwith apply to the Court for directions.
- (2) In every affidavit filed under Rules 111.06 and 111.07 above, a manager other than Public Trustee shall depose, if it be the case, that he is not required to apply to the Court under (1) above.
- 111.12** Service on a former manager for the purposes of Section 30(2) of the Act is to be effected by serving a copy of the notice of appointment upon him personally.

### ***Criminal Assets Confiscation Act 1996***

- 113.01** This rule applies to proceedings under the *Criminal Assets Confiscation Act 1996* which for the purposes of Rule 113 only is referred to as “the Act”.
- 113.02** Proceedings under Section 15 of the Act are to be instituted in the civil jurisdiction of the Court by either:
- (a) Issuing a summons; or
- (b) Where there are already proceedings under the Act in the civil jurisdiction of the Court in respect of a similar subject matter issuing an application in those proceedings.
- 113.03** Proceedings under Part 2 of the Act, other than those under Section 11(2)(b), are to be instituted in the civil jurisdiction of the Court by either:
- (a) Issuing a summons; or
- (b) Where there are already proceedings in the civil jurisdiction of the Court in respect of a similar subject matter by issuing an application in those proceedings.
- 113.04** Upon the institution of any proceedings under the Act in the civil jurisdiction of the Court an affidavit is to be filed setting out the matters relied upon by the plaintiff, and to the best of the deponent’s knowledge, information and belief the names and addresses of all of the persons who may have any interest in the subject matter of the proceedings.
- 113.05** (1) In civil proceedings under the Act, other than under Section 11(2)(b), where any person is entitled to notice of an application under Section 11(3) of the Act the plaintiff as soon as practicable after commencing the proceedings is to apply to the Court for directions as to the notice which is to be given to such person.
- (2) Upon an application under (1) above the Court may:
- (a) Add such a person as a defendant to the proceedings;
- (b) Direct that such person be served with notice of the proceedings and be at liberty to intervene in them or to apply to be joined as a defendant to them;
- (c) Direct the service of the proceedings, or notice of them, in such manner as may be appropriate; or
- (d) Give such other directions as are appropriate.
- 113.06** Subject to any other directions given by the Court all defendants in civil proceedings under the Act, other than those under Section 11(2)(b), are to file within 21 days of the time limited for filing a notice of address for service affidavits in answer to those in support of the

proceedings in which they are to set out all of the matters on which they rely in answer to the proceedings.

- 113.07** Upon the making of any orders under the Act that property vest in an administrator, or conferring any powers upon an administrator, the plaintiff is forthwith to give notice of the order to the administrator and as soon as practicable to serve a sealed copy of the order on the administrator.
- 113.08** Any person who has a right under the Act to apply to the Court for orders not otherwise dealt with by Rule 113 may make such application by issuing an application in civil proceedings previously commenced under the Act in respect of similar subject matter.
- 113.09** Where an *ex parte* restraining order has been made under Section 15(1) of the Act the owner of the property may upon filing a notice of address for service in the proceedings apply to the Court under Section 15(2) of the Act by issuing an application in the proceedings whether that owner is then a party to the proceedings or not.
- 113.12** Rule 113 applies to proceedings under the *Crimes (Confiscation of Profits) Act 1986* as if the references to the Act in Rule 113 are references to corresponding provisions in the *Crimes (Confiscation of Profits) Act 1986*.

#### **Proceedings under the *Criminal Assets Confiscation Act 2005***

- 113A.01** This rule applies to proceedings under the *Criminal Assets Confiscation Act 2005* which for the purposes of this rule only is referred to as “the Act”.
- 113A.02** Every proceeding under the Act which is to be disposed of in the civil jurisdiction of the Court is to be instituted by:
- (a) issuing a Summons; or
  - (b) where there are already proceedings in the civil jurisdiction of the Court in respect of a similar subject matter by issuing an application in those proceedings.
- 113A.03** (1) An *ex-parte* summons issued pursuant to this Rule is to be supported by an affidavit.  
(2) Such a summons is to be brought on for hearing before the Court for orders and directions about how any evidence is to be adduced and how the application is to proceed thereafter.
- 113A.04** (1) The plaintiff on any *inter partes* summons seeking relief under the Act is to request a directions hearing which is to take place no later than 14 days after the service of the summons on all defendants.  
(2) Upon such a directions hearing the Court may make orders and give directions about how the action is to proceed thereafter.
- 113A.05** Any person making application for an order under the Act who is not otherwise a party to the proceedings may apply to be joined as a party thereto.
- 113A.06** Unless the Court otherwise orders, Rules 46A (pleadings), 56B (conferences) and 58A (discovery) do not apply to proceedings under the Act.
- 113A.07** (1) Unless the Court otherwise directs, evidence is to be given on the hearing of an application under the Act by affidavit.  
(2) The Court may make any order that it thinks fit to ensure the confidentiality of any affidavit in the proceedings.

**113 A.08** An order made in the Magistrates Court pursuant to Section 14 of the Act may be registered by being filed with the Registrar.

- 113A.09** (1) An application for a monitoring order is to be made by providing the Court with a form setting out the order sought in compliance with the requirements of Section 166 of the Act.
- (2) In case of urgency the Court may hear the application and make an order by telephone, radio telephone, telegram, telex, computer, radio, email or television.

### **Commonwealth Proceeds of Crime Act 2002**

**114AA.01** Rule 114AA applies to proceedings under the *Commonwealth Proceeds of Crime Act 2002* which for the purpose of rule 114AA is referred to as 'the Act'.

**114AA.02** Other than for matters governed by Rules 114AA.05 and 114AA.06 every proceeding under the Act which is to be disposed of in the civil jurisdiction of the Court is to be instituted by issuing an *ex parte* or an *inter partes* summons in the Court.

- 114AA.03** (1) An *ex parte* summons issued by the Commonwealth Director of Public Prosecutions is to be supported by an affidavit;
- (2) Such a summons is to be brought on for hearing before a Judge in chambers who will give directions about how any evidence is to be adduced and how the application is to proceed thereafter.

- 114AA.04** (1) The plaintiff on any *inter partes* summons seeking relief under the Act is to request a directions hearing before a Master which is to take place no later than 14 days after the service of the summons on all defendants.
- (2) Upon such a directions hearing a Master will give directions about how the action is to proceed thereafter.

- 114AA.05** (1) Where there are in the Court completed or uncompleted actions seeking relief under the Act relating to:
- (a) particular property; or
- (b) particular offenders or suspected offenders
- other relief under the Act generally related to 9(a) or (b) may be sought by an application taken out in such an action.
- (2) An application under (1) is to be set down forthwith for hearing before a Master for directions about how it is to proceed thereafter.

- 114AA.06** (1) Where proceedings seeking relief under the Act have been brought in the criminal jurisdiction of the Court a Judge in the criminal jurisdiction may transfer those proceedings into the civil jurisdiction of the Court.
- (2) Upon such a transfer the proceedings will proceed thereafter under Rule 114AA.
- (3) Upon such an order for transfer being made the Commonwealth Director of Public Prosecutions will file a summons under these Rules and the transferred proceedings will continue in the action commenced by that summons.
- (4) Upon such a transfer the proceedings will continue in accordance with any applicable directions given by a Judge in the criminal court and any directions given in the civil proceedings.

**114AA.07** Unless the Court otherwise directs rule 46A (pleadings), 56B (conferences) and 58A (discovery) do not apply to proceedings under the Act.

- 114A.08** (1) Unless the Court otherwise directs evidence is to be given on the hearing of any summons or application for relief under the Act by affidavit.
- (2) Where requested by a party such affidavits are to remain confidential unless inspection is authorised by a Judge or Master.

***Criminal Law (Legal Representation) Act 2001***

- 114A.01** (1) This rule applies to proceedings under the *Criminal Law (Legal Representation) Act 2001* which for the purposes of this Rule only is referred to as ‘the Act’.
- (2) The definitions in the Act apply to Rule 114A.
- 114A.02** (1) Proceedings under Part 5 of the Act other than proceedings under subsection 12(7) and (8) are to be actions in the civil jurisdiction of the Court commenced by an *inter partes* summons.
- (2) The heading to the action is to contain the words ‘In the matter of an application for legal assistance by (full name of the assisted person).’
- 114A.03** (1) A summons under Part 5 is to be supported by an affidavit which sets out the relief sought and the matters giving rise to it.
- (2) An application for directions containing a return date not less than 28 days from the issue of the summons is to be issued upon the filing of the summons.
- 114A.04** (1) The summons is to be served on the assisted persons whether they are named as defendants or not.
- (2) The summons may be served on assisted persons by delivering it to the solicitors acting for them in the related criminal proceedings.
- 114A.05** The time limited for each defendant served within this State to file a notice of address for service is to be 7 days after service.
- 114A.06** (1) Defendants who wish to oppose an application must file an affidavit in answer to the relief sought against them within 14 days of the service of the summons upon them.
- (2) Where the summons seeks contribution from financially associated persons under section 13 of the Act those persons are to set out their financial positions, insofar as it is relevant to the relief sought, in their answering affidavits.
- 114A.07** Unless the Court otherwise directs Rule 56B is not to apply to actions under the Act.
- 114A.08** Discovery of documents is to be made in actions under the Act only as directed by the Court and Rule 58A is only to apply to such discovery as is specifically directed by the Court.
- 114A.09** Where any defendant to an action under the Act does not file a notice of address for service, or does not attend at any hearing, the Court may order relief under the Act against such defendant in default of filing a notice of address for service or attendance.
- 114A.10** In giving directions in actions under Rule 114A the Court is to endeavour to resolve the action as quickly as possible so as to avoid any undue delay in having the criminal proceedings against the assisted person brought to trial.
- 114A.11** (a) A party who is dissatisfied with the decision of a Master under Part 5 of the Act may, within 14 days from the date of the Master’s decision, apply to a Judge for a review of the decision of the Master.
- (b) An application under (a) shall set out the grounds upon which the review is sought.



- (c) The review shall be heard and determined by the Judge upon the evidence which has been brought before the Master, and further evidence shall not be received upon the hearing of the review unless the Judge so orders.

### ***Evidence Act 1929--Part VI Reciprocal Procedures for obtaining Evidence out of the State***

- 115.01** Rule 115 applies to proceedings under Part VIB of the *Evidence Act 1929*, which for the purpose of Rule 115 only is referred to as “the Act”.
- 115.02** A party seeking that evidence be taken out of the State pursuant to the Act may file an application seeking such an order.
- 115.03** A request pursuant to Section 59e(1)(c) of the Act shall be generally in Form 23 to the Rules, but shall include a reference to Part VIB of the Act.
- 115.04** Rule 78.05 shall apply *mutatis mutandis* to the sending of the request.
- 115.05** A request under Section 59e(1)(c) of the Act shall be forwarded by the Registrar to the Attorney-General for the State of South Australia for transmission through the proper channels to the corresponding Court in the relevant country or state.
- 115.06** (1) Where the Attorney-General receives a request from a Court under the Act for evidence to be taken in this State he may forward the same to this Court which shall file the request as the originating process for an action under these Rules.
- (2) Where any request under the Act is received by the Court otherwise than through the Attorney-General the Court shall refer the same to the Attorney-General who may request the Court to act on it in all respects as though it had been forwarded to it through him.
- 115.07** Rules 78 and 79 shall apply *mutatis mutandis* to all proceedings in the Court upon a request received under the Act.
- 115.08** When the evidence taken pursuant to the request under the Act has been taken, and any documents required to be produced thereby have been produced, the Court shall forward the same to the Attorney-General for transmission through the proper channels to the Court from which the request emanated.

### **Evidence Act - Audio Visual Rule**

#### **Scope of Rule 115A**

**115A.01** This Rule applies:

- (a) to an application for a direction under Section 59IE of the *Evidence Act 1929* (which for the purposes of Rule 115A only is referred to as ‘the Act’); and
- (b) to the provisions of Section 59IL of the Act.

#### **Form of Application**

**115A.02** Notice of an application shall be in Form 41.

#### **Filing**

**115A.03** The applicant shall file the notice at least 14 days before the commencement of the hearing or trial at which the person, the subject of the application is due to appear, to give evidence or to make a submission to the Court.

## **Service**

**115A.04** As soon as practicable after the filing of the notice, the applicant shall serve a copy on every other party.

## **Duty of Applicant**

**115A.05** If, whether before or after a direction has been given, an applicant no longer requires the person, the subject of the application, to appear before or give evidence or make a submission to the Court by audio visual link or audio link, the applicant shall notify the Registrar forthwith.

## **Payment of Costs**

**115A.06** Unless the Court otherwise orders, the appropriate amount, as fixed by the Court pursuant to section 59IF of the Act, shall be paid in the first instance by the applicant.

## **Authority of Masters**

**115A.07** Master shall have jurisdiction to hear and determine any application made pursuant to section 59IE of the Act, except an application made in a criminal proceeding.

## **Enforcement of Orders made by a Recognised Court**

- 115A.08** (1) Where a party to proceedings has obtained an order of a recognised Court (as defined in Section 59IA of the Act) pursuant to the provisions of Division 3 of Part 6C of the Act, and that party wishes to enforce the order, such party shall file with the Registrar a sealed copy of the order.
- (2) The Registrar shall maintain a register of orders made by a recognised Court filed pursuant to sub-paragraph (1). Such register may be maintained in electronic format.
- (3) After the filing of the order of the recognised Court the party seeking to enforce the same may do so in accordance with the provisions of Section 59IL(2) of the Act.

## ***Family Relationships Act 1975***

**116.01** Rule 116 applies to proceedings under the *Family Relationships Act 1975*, which for the purposes of Rule 116 only is referred to as “the Act”.

**116.02** Rule 116 applies to actions where under Section 14 (1) of the Act the plaintiff also seeks relief other than that under the Act.

**116.03** Where proceedings under the Act are pending at the commencement date, it shall not be necessary to amend the originating summons, but otherwise these Rules shall apply to such proceedings.

**116.04** Upon instituting proceedings under the Act the plaintiff shall file an affidavit disclosing to the best of his knowledge, information and belief the full names, addresses, and, if infants, the respective ages, of all persons whose interests are or may be affected by any declaration sought under the Act, and state what use he intends to make of such declarations if they are obtained.

**116.05** All persons whose interests may be affected by the declarations sought under the Act shall be named as defendants to the summons.

**116.06** Upon a hearing of the application for directions in any action under the Act the Court may if it sees fit:

(a) Direct service on particular defendants by means other than personal service;

(b) Strike out a defendant from the proceedings if he does not file a notice of address for service after service upon him.

- 116.07** Where the paternity of a child is in issue in an action under the Act any birth certificate for the child shall be exhibited to an affidavit filed by the plaintiff.
- 116.08** Where a plaintiff is required by Sections 9(4) or 11(5) of the Act to support his claim by corroborative evidence an affidavit containing such corroborative evidence shall be filed when the action is instituted, or within such further time as the Court may allow.
- 116.09** Actions under the Act shall proceed on affidavits and not on pleadings.

***Commercial Arbitration Act 1986***

- 120.01** (1) This Rule applies to proceedings under the *Commercial Arbitration Act 1986* which for the purposes of Rule 120 only is referred to as 'the Act'.  
(2) Subject to Rule 120.02 applications pursuant to the Act shall be made by summons.
- 120.02** (1) The Registrar may issue a subpoena under Section 17(1) of the Act without any action being commenced for that purpose upon an affidavit being filed by the party to the arbitration seeking its issue setting out the matters justifying its issue.  
(2) Where the Registrar is not satisfied that it is proper to issue the subpoena he may require the person seeking its issue to obtain the leave of the Court to do so *ex parte* in Chambers upon the affidavit referred to in subrule (1) above.  
(3) Subject to the Act Rules 81.01, 81.04, 81.05, 81.06, 81.07, 81.08, 81.09 and 81.10 shall apply *mutatis mutandis* to any subpoena issued pursuant to this Rule.
- 120.03** (1) Leave to enforce an award under Section 33 of the Act may be sought *ex parte*.  
(2) If it thinks fit the Court may direct service of the summons, or an application, seeking such enforcement on any other party to the arbitration.
- 120.04** (1) Proceedings for a taxation of costs under Section 34(2) of the Act may be commenced by filing a request to tax the costs and lodging a bill of costs in taxable form.  
(2) Subject to the Act Rules 101.09 to 101.21 inclusive shall apply *mutatis mutandis* to a taxation of costs under Section 34(2) of the Act.  
(3) A taxing officer in taxing such costs shall apply such scale of costs or other basis of taxation as is proper in the circumstances.  
(4) The Court or the Registrar may give directions to the party seeking the taxation for him to serve the request to tax, the bill of costs and the notice of taxation on other interested parties.
- 120.05** (1) A payment into Court of moneys under Section 34(5) of the Act may be made without any proceedings being commenced in the Court in relation to the arbitration.  
(2) The payment into Court shall be accompanied by a notice of payment in setting out:  
(a) The name and address of the person making the payment in.  
(b) The names and addresses of all other parties to the arbitration.  
(c) The name and address of each arbitrator.  
(d) Full details of the arbitration agreement or reference to arbitration on which the arbitration is proceeding.  
(e) Such other matters as are required by the Rules or any Practice Direction.  
(3) Subject to the Act Rules 39.01 to 39.04 inclusive, 39.09 and 39.12 shall apply *mutatis mutandis* to a payment into court under Section 34(5) of the Act.  
(4) At the request of any party to the arbitration, or of an arbitrator, the Registrar may issue a certificate which shall be conclusive evidence as to the amount paid into Court, the date of payment in and any other relevant details contained in the certificate.

- (5) Subject to no order to the contrary having been made by the Court the Registrar may pay out the whole or part of the moneys paid into Court under Section 34(5) of the Act and the interest accrued thereon in accordance with directions contained in a certificate from the arbitrator, but unless all of the parties to the arbitration so consent in writing no payment out shall be made until fourteen days after the filing of such certificate.
- (6) Subject to (5) above the Registrar shall not pay out any moneys paid into Court under Section 34(5) of the Act and the interest accrued thereon except pursuant to an order of the Court.
- (7) Except with the leave of the Court the fact of any payment into court under this Rule shall not be communicated to the arbitrator until all questions of liability and amount of debt or damages have been decided.

- 120.06** (1) Where a taxation of the fees and expenses of an arbitrator is sought under Section 35(1)(b) of the Act, the Court may refer such taxation to a taxing officer.
- (2) Upon such a taxation the taxing officer may direct the arbitrator:
- (a) To submit details of his fees and expenses in taxable form;
  - (b) To produce all documents relevant to the fees and expenses claimed.

**120.07** Any action under section 42 of the Act is to be instituted within 14 days of the making of the award to which the action relates.

**120.09** Where there are any proceedings before the Court under the Act arising out of an arbitration agreement or a reference to arbitration, any further application or proceedings under the Act may be brought in those proceedings subject to the necessary amendments being made or application being issued provided that all necessary parties are before the Court and any new cause of action can properly be raised in those proceedings.

#### *Unclaimed Goods Act 1987*

**121.01** Rule 121 applies to proceedings under the *Unclaimed Goods Act 1987* which for the purpose of Rule 121 only is referred to as the "Act".

- 121.02** In respect of proceedings under Section 6 of the Act for authorisation for the sale or disposal of goods:
- (a) where the identity, or the possible identity, of the bailor is known an *inter partes* summons shall be used and such bailor shall be named as the defendant;
  - (b) where the identity of the bailor is not known an *ex parte* summons may be used;
  - (c) the application for directions shall seek specific directions as to whom notice of the proceedings shall be given;
  - (d) notice of the proceedings shall be given to the Commissioner of Police by serving on him at least 7 days before the first hearing of the application for directions copies of the summons, any statement of claim, any affidavit in support and the application for directions showing the first return date therefor;
  - (e) service on the Commissioner of Police pursuant to sub-rule (d) above may be effected by:
    - (i) delivering the same to the office of the Commissioner; or
    - (ii) posting the same by certified mail or security post to the Commissioner of Police;
  - (f) if the Commissioner of Police wishes to take any part in the proceedings he may apply under either Rules 27 or 33.

- 121.03** In respect of an application by a bailor for a review of an account under Section 7(4) of the Act:
- (a) the application may be commenced by a notice to the Registrar requesting a review, and to which shall be attached a copy of the written account of the bailee;
  - (b) the review shall be conducted by a Master in Chambers in similar manner to a taxation of costs under Rule 101 *mutatis mutandis*, and the Master shall have similar powers to those which he may exercise on such a taxation of costs.

***Worker's Liens Act 1893***

**122.01** Rule 122 applies to proceedings under the *Worker's Liens Act 1893*, which for the purpose of Rule 122 only is referred to as “the Act”.

**122.02** A certificate of judgment under Section 24 of the Act may be in the following form:

‘Action heading

It is certified that on 19 the plaintiff  
obtained in this Court judgment against the defendant (insert name)  
for the sum of \$ (state whether being for wages, contract price  
payable or other basis of claim).

Dated 19 .

.....  
Registrar

THIS CERTIFICATE OF JUDGMENT was obtained by etc.’

- 122.02A** (1) A notice of claim under Section 29 paragraph II of the Act shall, as between persons already parties to an action, be given in the summons, defence or subsequent pleadings of the party seeking to join such a claim and shall be answered in the defence or subsequent pleadings of the party against whom the claim is made.
- (2) A notice of claim under Section 29 paragraph II of the Act shall as against a person who is not already a party to an action be substantially in accordance with Form 13.
- (3) The action shall thereafter proceed as if the party named in the notice had originally been named as a defendant in the action or, as the case may be, joined by the defendant as a third party in the action.

**122.03** An application for intervention under Section 30 of the Act may be made under the procedure laid down in Rule 27.06.

**122.05** Costs of work other than litigious work awarded under Section 37 of the Act may be taxed under the Second and Fourth Schedule to these Rules unless the Court otherwise directs.

***Minors Contracts (Miscellaneous Provisions) Act, 1979***

**124.01** This Rule applies to proceedings under the *Minors Contracts (Miscellaneous Provisions) Act, 1979*, which for the purposes of Rule 124 only is referred to as ‘the Act’.

- 124.02** (1) Where any proceedings under the Act are brought by a minor he may issue the summons and serve it without a next friend being named, but the action shall not proceed further unless the minor first obtains leave to continue the action without the appointment of a next friend.
- (2) Upon an application by a minor in proceedings under the Act the Court may if it thinks fit dispense with the provisions of Rule 35 concerning the need for him to have either a next friend or a guardian *ad litem* for the purposes of those proceedings.

**124.03** If the place of residence of a minor is nearer to a District Registry than to the Principal Registry, the summons may be filed in that District Registry. Any documents filed subsequently may be filed either in the Principal Registry or in that District Registry.

***Warehouse Liens Act 1990***

**128.01** This Rule applies to proceedings under the *Warehouse Liens Act 1990*, which for the purposes of Rule 128 only is referred to as “the Act”.

**128.02** (1) An application pursuant to Section 12 of the Act shall be commenced by summons substantially in accordance with Form 3.

(2) If the premises referred to in an application under subrule (1) is nearer to a District Registry than to the Principal Registry, the summons may be filed in that District Registry. Any documents filed subsequently may be filed either in the Principal Registry or in that District Registry.

**128.03** The summons shall be accompanied by an affidavit or affidavits setting out such facts and circumstances as the plaintiff may ask the Court to take into account.

**128.04** Notwithstanding the provisions of Rules 128.02 and 128.03, the Court may, prior to the service of the summons and the accompanying affidavit or affidavits make an interim order pursuant to Section 12(2) of the Act.

**128.05** As soon as practicable after the summons shall have been served upon any person, the plaintiff shall file an affidavit verifying such service.

**128.06** (1) A person served with a summons issued pursuant to Rule 128 and wishing to be heard shall enter a notice of address for service within fourteen days of the date of the service upon him.

(2) A person entering an a notice of address for service pursuant to subrule (1) shall, within fourteen days of such entry, file and serve an affidavit or affidavits setting out such facts and circumstances as such person may ask to be taken into account upon the hearing of the application.

**128.07** (1) No pleadings shall be required in respect of an application made pursuant to Rule 128.

(2) Such application shall be set down by the Registrar for hearing as soon as practicable after the last notice of address for service has been filed or after the time for all notices of address for service has expired, as the case may be, and the Registrar shall give notice of the time appointed for such hearing to the plaintiff and to any defendant who shall have entered a notice of address for service.

**128.08** The operator of a warehouse required by Section 14(2) of the Act to pay money into Court shall, upon making such payment into Court, file a notice substantially in accordance with Form 45 and the following form:-

SOUTH AUSTRALIA

IN THE DISTRICT COURT

No. of 19

IN THE MATTER OF THE  
WAREHOUSE LIENS ACT 1990

and

In the matter of money paid into Court  
by (insert full names)

TO THE REGISTRAR

I, (insert the full name and address of the person making the payment into Court) hereby give notice that:

1. I am the operator of a warehouse at (state full address).
2. The goods referred to in the schedule hereunder were deposited with me by (insert name and address of person who deposited the goods) on (insert date).
3. I have had a lien on the said goods for charges and costs pursuant to the *Warehouse Liens Act 1990*.
4. I have satisfied such lien by the sale of the said goods and there is a surplus from the proceeds of such sale.
5. I am uncertain as to the validity of the claim to such surplus that has been made by (insert name and address of person claiming surplus)  
(or) The claim of (insert name and address of first claimant) to such surplus is disputed by (insert name and address of second claimant)  
(or) Conflicting claims to such surplus had been made by (insert name and address of first claimant) and (insert name and address of second claimant).

I HEREBY PAY INTO COURT the sum of \$            being the amount of such surplus AND I PROVIDE herewith to the Court:

- (a) A statement of account, verified by statutory declaration, showing how the amount of surplus has been computed.
- (b) Copies of receipts for all charges covered by the lien on the goods.

SCHEDULE

(Insert particulars of the goods)

Dated the            day of            , 19            .

.....  
SIGNATURE OF OPERATOR OF WAREHOUSE

**128.09** The Registrar shall give notice of the payment into Court to all persons named by the operator of the warehouse in the notice filed by him pursuant to Rule 128.08.

**128.10** Any person claiming an interest in money paid into Court in accordance with Rule 128.08 may make application for the payment out of all or part of such money by issuing a summons substantially in accordance with Form 3.

- 128.11**
- (1) A summons issued pursuant to Rule 128.10 shall be accompanied by an affidavit or affidavits setting out such facts and circumstances as the plaintiff may ask the Court to take into account in considering the application.
  - (2) The summons and the accompanying affidavit or affidavits shall be served upon all such persons as shall be liable to be affected by the determination of the application.
  - (3) The application for directions may seek directions from the Court as to the person or persons to be served with the summons and the Court may either on the hearing of the application for directions or at any time of its own motion direct service of the summons on any person.

- (4) As soon as practicable after the summons shall have been served upon any person, the plaintiff shall file an affidavit verifying such service.
- 128.12** (1) A person served with a summons issued pursuant to Rule 128.10 and wishing to be heard upon the application shall enter a notice of address for service within fourteen days of the date of the service of the summons upon him.
- (2) Such person shall, within fourteen days of such entry, file and serve an affidavit or affidavits setting out such facts and circumstances as such person may ask the Court to take into account in considering the application.
- 128.13** (1) No pleadings shall be required in respect of an application made pursuant to Rule 128.10.
- (2) Such application shall be set down by the Registrar for hearing as soon as practicable after the last notice of address for service has been filed or after the time for all notices of address for service has expired, as the case may be, and the Registrar shall give notice of the time appointed for such hearing to the plaintiff and to any person who shall have entered a notice of address for service.

### ***Strata Titles Act 1988***

- 130.01** Rule 130 applies to proceedings under Part IIIA of the *Strata Titles Act 1988* which, for the purposes of Rule 130 only is referred to as “the Act”.
- 130.02** (1) An application under section 41a of the Act shall be commenced by summons.
- (2) If the premises referred to in an application under subrule (1) is nearer to a District Registry than to the Principal Registry, the summons may be filed in that District Registry. Any documents filed subsequently may be filed either in the Principal Registry or in that District Registry.
- (3) Any person against whom the plaintiff seeks an order is to be a defendant to the summons.
- (4) At the time of issuing the summons the plaintiff shall also issue an interlocutory application seeking leave under section 41a(3) of the Act to bring the proceedings in the District Court.
- (5) The plaintiff shall serve the summons and the interlocutory application upon all of the defendants and shall arrange for the interlocutory application to be brought on for hearing.
- (6) The plaintiff shall not proceed further with the action without either obtaining leave under section 41a(3) of the Act or leave of the Court to take other interlocutory steps prior to the question of leave under the said section 41a(3) being determined.
- (7) An application under section 41a(4) of the Act shall be made in the manner provided in Rule 91.02.
- (8) In case of any doubt or uncertainty as to the correct procedure to be followed in proceedings under the Act, the Court may give directions on the procedures to be followed and *ex parte* if necessary.

### ***Associations Incorporation Act 1985***

- 132.01** Rule 132 applies to proceedings under section 39d of the *Associations Incorporation Act 1985* which for the purposes of Rule 132 only is referred to as “the Act”.
- 132.02** (1) An application under section 39d of the Act shall be commenced by summons.
- (2) If the place at which the association referred to in the summons is situated or established is nearer to a district registry than to the principal registry, the summons



may be filed in that district registry. Any documents filed subsequently may be filed either in the principal registry or in that district registry.

- (3) The association referred to in the summons and any person against whom the plaintiff seeks an order are to be defendants to the summons.

**132.03** The summons shall be accompanied by:

- (a) an affidavit or affidavits setting out such facts and circumstances as the plaintiff may ask the Court to take into account;
- (b) an application for directions in duplicate in Form 14 to these Rules.

**132.04** No pleadings shall be required in respect of an application made pursuant to Rule 132.

**132.05** The application for directions shall be set down by the Registrar for hearing as soon as practicable after the last appearance has been filed or after the time for all appearances has expired, as the case may be, and the Registrar shall give notice of the time appointed for such hearing to the plaintiff and to any defendant who shall have entered an appearance.

### ***Consumer Credit (South Australia) Act 1995***

**134.01** This Rule applies to proceedings in which the only relief sought is under the *Consumer Credit (South Australia) Act 1995* which, for the purposes of Rule 134 only is referred to as “the Act”.

**134.02** The *Consumer Credit (South Australia) Code* established pursuant to the Act is in Rule 134 referred to as “the Consumer Credit Code”.

**134.03** An application pursuant to the Act must be commenced by summons substantially in accordance with Form 3.

**134.04** If any defendant resides or carries on business nearer to a District Registry than to the principal Registry, the summons may be filed in the District Registry. Any documents filed subsequently may be filed either in the principal Registry or in that District Registry.

**134.05** The summons must be accompanied by an affidavit or affidavits setting out such facts and circumstances as the plaintiff may ask the Court to take into account.

**134.06** Notwithstanding the provisions of Rules 134.03 and 134.04, the Court may, prior to the service of the summons and the accompanying affidavit or affidavits, make an interim order pursuant to section 112 of the Consumer Credit Code.

- 134.07** (1) A person served with a summons issued pursuant to Rule 134.03 or Rule 134.04 and wishing to be heard is to file a notice of address for service under Rules 8 and 21.
- (2) A person entering a notice of address for service pursuant to sub-rule (1) must, within fourteen days of such entry, file and serve an affidavit or affidavits setting out such facts and circumstances as that person may ask to be taken into account upon the hearing of the application.

**134.08** If a person served with a summons does not file a notice of address for service within the required time, the plaintiff must file an affidavit verifying such service.

- 134.09** (1) As soon as shall be practicable after the filing of a notice of address for service, or after the time for the filing of a notice of address for service shall have expired, the Registrar must appoint a time for a directions hearing and must give notice in writing to the parties of the place and time appointed for that hearing.
- (2) On a directions hearing a Judge or Master may:

- (a) summarily dispose of the action or part of it where it is appropriate to be disposed of in a summary way;
  - (b) give directions as to how the matter is to be disposed of by a Judge or a Master;
  - (c) where no notice of address for service has been entered make such orders as are justified on the affidavit evidence.
- (3) A directions hearing may be adjourned from time to time and from place to place as the Court shall direct.

**134.10** No pleadings shall be required in respect of an application made pursuant to the Act unless the Court shall otherwise direct.

revoked

## FIRST SCHEDULE

### Table of Forms

- 1 Front sheet
- 2 Ex parte summons
- 3 Inter partes summons
- 4 Statement of claim / orders sought
- 5 Summons under Part XVII of the Real Property Act 1886
- 5A Verifying Affidavit/Affirmation/Statement of Facts
- 6 Address for service / and of solicitor
- 7 Notice of change of address for service
- 8 Defence (and counterclaim)
- 9 Reply
- 11 Notice of summons to be served out of the jurisdiction
- 12 Request for service abroad pursuant to convention
- 13 Third party notice
- 14 Contribution notice
- 15 Notice of payment into court
- 16 Notice to admit
- 17 Application for directions
- 18 Notice for specific directions
- 19 List of documents
- 20 Notice to produce
- 21 Order for possession of property forming a security for payment to the plaintiff of any principal or interest
- 22 Summons for possession under Rule 65.07
- 23 Letter of request
- 24 Subpoena
- 25 Request for issue of subpoena(s)
- 26 Warrant of sale
- 27 Warrant of possession
- 28 Warrant of arrest
- 29 Request for issue of summons, order or warrant
- 30 Registrar's summons for contempt
- 33 Summons for examination in respect of a judgment debt
- 34 Garnishee order
- 35 Notice of claim to property subject to execution
- 36 Short form bill of costs
- 39 Certificate of non-compliance with subpoena
- 40 Certificate of readiness for trial
- 41 Application under Section 59ie of the Evidence Act 1929
- 42 Affidavit
- 43 Affirmation
- 44 Electronic statement of facts
- 45 Other documents
- 46 Request for electronic processing of matter
- 47 Minutes of order

FDN [computer generated]

IN THE SUPREME [DISTRICT] COURT OF SOUTH AUSTRALIA

No. of

BETWEEN

[Name] [and Another / Others], [Nature of Party / Parties]

and

[Name] [and Another / Others], [Nature of Party / Parties]

[Document type, e.g. Inter Partes Summons, Third Party Notice, etc.]

Filed on behalf of the [Nature of Party / Parties], [Name(s)] by [Solicitor]

[OR]

Filed by [Nature of Party / Parties] [Name(s)]

[Address] [Mandatory Field]

[Telephone]

[Mobile]

[Facsimile]

[DX Box]

[Email]

[L' Code]

[P' Code]

Settled by:

Date and time of filing or transmission: [Computer generated if filed electronically]

## EX PARTE SUMMONS

Summons issued [by / on behalf of ] [Name(s) of Party / Parties], of [Address(es)]

The following orders are sought:-

Summons issued pursuant to [Section /No] of the [Act]]

[or] [Rule [No.] of the [Court] Rules].

It is requested that this summons be heard and determined by the Court without attendance on behalf of any other party.

The above application will be heard by a [Judge/Master] in Chambers at [Place] at [Time] am/pm, on [date] [month] [year].

[Signed] .....  
[Solicitor for the Plaintiff(s)]

[OR]  
[Plaintiff(s)]

**NOTE:** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

INTER PARTES SUMMONS

Summons issued [by/on behalf of] [Name (s) of Party/Parties] of [Address (es)].

To the [Defendant(s)], [Name(s)], of [Address (es)]

You are advised that the Plaintiff(s) make(s) a claim against you or which may affect you. Details of the claim and orders sought are attached.

If you wish to defend the claim, you or your solicitor must file a Notice of Address for Service within [number] days after service of this Summons on you.

The Notice of Address for Service must be filed either electronically through the Website of the Courts Administration Authority ([www.courts.sa.gov.au](http://www.courts.sa.gov.au)) in the case of a proceeding commenced using the Court electronic filing system or at a Registry of the Court. A list of the Registry addresses is attached.

If you do not have a Solicitor, you may attend personally at a Registry to do this.

If a Notice of Address for Service is not filed within the time stated, orders may be made against you in your absence.

Summons issued pursuant to [Section [No.]of the [Act]]  
[or] [Rule [No.] of the [Court] Rules].

This Summons has the following statutory endorsements under Section [No.] of the [Act] [or] Rule [No] of the [Court] Rules:

[Signed] .....  
[Solicitor for the Plaintiff(s)]  
[OR]  
[Plaintiff(s)]

- NOTES :**
- 1. If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.**
  - 2. A list of Registry addresses must be attached if the summons is filed in hard copy. It will be computer generated if filed electronically.**

**STATEMENT OF CLAIM / ORDERS SOUGHT**

Part 1:

The facts and basis of the claim are:-

Part 2:

The orders sought are:-

Certificate :

This pleading is put forward in accordance with the instructions of the [*Nature of Party / Parties*], [*Name(s)*], by [*Name of File Principal*], who certifies that it complies with the Rules concerning pleadings.

[*Signed*] .....

Print Name .....

Date .....

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

**SUMMONS UNDER PART XVII  
OF THE REAL PROPERTY ACT 1886**

Summons issued *[by/on behalf of]* *[Name (s) of Party/Parties]* of *[Address (es)]*.

To the *[Defendant(s)]*, *[Name(s)]*, of *[Address(es)]*.

The Plaintiff(s) make(s) a claim against you for an order for possession of the following property:

*[Detailed description of property, to include address and certificate of title Volume and Folio reference(s)]*

The detailed facts alleged and orders sought by the Plaintiff(s) are set out in the affidavits filed in the proceedings in support of this summons, copies of which are served herewith.

If you wish to defend the claim, you must attend either personally or by solicitor at *[Place of Hearing]* on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ am/pm, when the matter will be heard.

If no-one attends at this time, the order(s) sought, or some other order may be made in your absence.

This Summons is issued pursuant to Part XVII of the Real Property Act, 1886, and Rule 65 of the Supreme Court Rules, 1987.

*[Signed]* .....  
*[Solicitor for the Plaintiff(s)]*  
*[OR]*  
*[Plaintiff(s)]*

**NOTE :If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.**



## VERIFYING AFFIDAVIT / AFFIRMATION / STATEMENT OF FACTS

I, *[Full name, address and occupation]* *[MAKE OATH AND SAY]:-*

*[DO SOLEMNLY AND SINCERELY DECLARE AND AFFIRM]:-*

*[MAKE THE STATEMENT WHICH FOLLOWS]:-*

1. That I am *[the Plaintiff / one of the Plaintiffs / an Agent of the Plaintiff(s) duly authorised to verify the Statement of Claim herewith. If an agent, specify the nature of the agency and how it arises]*.
2. *[Here set out, in successive numbered paragraphs, the following factual information:*
  - (1) a detailed description of the relevant property, including its address and the Volume and Folio reference of the certificate (s) of title.
  - (2) the nature of the title of the defendant (s) to that property.
  - (3) the basis of the status of the plaintiff (s) to bring the claim. (Copies of the relevant certificate of title and any security or other relevant documents upon which the claim is based should be exhibited). This paragraph should state whether the Consumer Credit (South Australia) Act, 1955, applies to the contract.
  - (4) the facts and circumstances relied upon as giving rise to a present right of possession of the relevant property. (These should include particulars of the computation of any monies claimed by the plaintiff (s), details of any default said to have been made by the defendant (s) under a relevant security, and particulars of service of any relevant notice of default. A copy of any such notice should be exhibited and verified. Due service of the notice should be proved by separate affidavit/affirmation/statement of facts, where appropriate.)
  - (5) any other facts and circumstances relevant to the proceedings.]
3. That I understand that if the statements made above contain material that I know to be false or misleading, I may be found guilty of contempt of Court and I may be liable to be prosecuted for criminal offences.

*[Sworn / Affirmed]* by the abovenamed *[Deponent / Affirmant]*

at *[Place]*

on *[Date]*

.....  
*[Signature of Deponent / Affirmant]*

Before me *[Signature of JP / Commissioner]*

*[Print Name of JP / Commissioner]*

*[ID Number of JP / Commissioner]*

*[OR]*

Made by the abovenamed maker

at *[Place]*

on *[Date]*

.....  
*[Signature of Maker]*

In my presence *[Signature of Attesting Witness]*

*[Print Name of Witness]*

*[ID Number of Witness, where relevant]*

**NOTES :** 1. **In the case of a document filed electronically, the initials and names of the relevant signatories and other information in the jurat should be typed in the appropriate spaces.**

2. **Delete any inapplicable alternatives.**

revoked

**ADDRESS FOR SERVICE /AND OF SOLICITOR**

The [*Nature of Party / Parties*], [*Name(s)*] acknowledge/s service of the [*document*] in this action.

The address for service of such [*Nature of Party / Parties*] is shown on Form 1 attached hereto.

[*Signed*] .....  
[*Solicitor for the abovenamed [Nature of Party / Parties],[Name(s)]*]  
[*OR*]  
[*Name(s)*],[*Nature of Party / Parties*]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

**NOTICE OF CHANGE OF ADDRESS FOR SERVICE**

The address for service of the [*Nature of Party / Parties*], [*Name(s)*] is now as shown on Form 1, attached hereto.

[*Signed*] .....  
[*Solicitor for the [Nature of Party / Parties],[Name(s)]*]  
[*OR*]  
[*Name(s),[Nature of Party / Parties]*]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

**DEFENCE (AND COUNTERCLAIM)**

**DEFENCE**

In answer to the statement of claim the [*Nature of Party / Parties*], [*Name(s)*] say(s):

[*Plead as required by Rules 22 and 46A.05, in successive numbered paragraphs*]

[*If applicable*]  
**COUNTERCLAIM**

The [*Nature of Party / Parties*],[*Name(s)*] counterclaim(s) against the [*Nature of Party / Parties*], [*Name(s)*].

**Part 1:**  
The facts and basis of the claim are:

**Part 2:**  
The orders sought are:

Certificate :

This pleading is put forward in accordance with the instructions of the [*Nature of Party / Parties*], [*Name(s)*], by [*Name of File Principal*], who certifies that it complies with the Rules concerning pleadings.

[*Signed*] .....

Print Name .....

Date .....

**Note :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

REPLY

In answer to the defence of the [Nature of Party / Parties], [Name (s)] say(s):

[Plead in successive numbered paragraphs]

[If applicable]

In answer to the counterclaim of the [Nature of Party / Parties], [Name (s)] the [Nature of Party / Parties], [Name(s)] say(s):

[Plead in successive numbered paragraphs]

Certificate :

This pleading is put forward in accordance with the instructions of the [Nature of Party / Parties], [Name(s)], by [Name of File Principal], who certifies that it complies with the Rules concerning pleadings.

[Signed] .....

Print Name .....

Date .....

**Note :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

**NOTICE OF SUMMONS TO BE SERVED  
OUT OF THE JURISDICTION**

To the [*Defendant(s)*], [*Name(s)*] of [*Address(es)*].

TAKE NOTICE that [*Name(s) of Plaintiff(s)*] of [*Address(es) of Plaintiff(s)*] has / have commenced an action against you in the [*Court*] of South Australia by a Summons issued on [*date issued*] in [*Action No.*]. Copies of the Summons and the detailed Statement of Claim are attached hereto.

You must within [*number*] clear days of the service of this Notice upon you, file a notice of address for service in accordance with the Rules of Court in the Registry of the [*Court*] of South Australia, at [*address*] in the State of South Australia if you wish to defend the action.

If you do not file such a notice of address for service, judgment may be given against you in your absence, without further notice.

[*Signed*] .....  
[*Solicitor for the Plaintiff(s)*]  
[*OR*]  
[*Plaintiff(s)*]

revoked

**REQUEST FOR SERVICE ABROAD  
PURSUANT TO CONVENTION**

I request that a [*Notice of Summons OR other document as the case may be*] in this action, be transmitted through the proper channel to [*Name of Country*] for service on the Defendant, [*Name(s) of Defendant(s)*] at [*Address(es) of Defendant(s)*] or elsewhere in [*Name of Country*] directly through [*an Embassy, High Commission, Consul or relevant Judicial Authority*].

I personally undertake to be responsible for all expenses incurred by the Attorney- General for South Australia in respect of the service hereby requested.

On receiving due notification of the amount of such expenses I undertake to pay the same to the Attorney-General’s Office, and to produce the receipt for such payment to the proper officer of the [*Court*].

[Signed] .....  
[Solicitor for the Plaintiff(s)]  
[OR]  
[Plaintiff(s)]





**THIRD PARTY NOTICE**

To the [*Third Party / Parties*], [*Name(s)*] of [*Address(es)*].

This action has been brought by the Plaintiff(s) against the Defendant(s). The Plaintiff's(s') claim against the Defendant(s) is set out in the copy Summons and Statement of Claim attached hereto.

The Defendant(s), [*Name(s)*], claim(s) against you on the grounds contained in the separate Statement of Claim also attached hereto.

If you wish to dispute the Plaintiff's (s') claim against the Defendant, or the Defendant's (s') claim against you, you must file a Notice of Address for Service within [*number*] clear days after the service of this Notice upon you and then file a Defence, in accordance with the Rules of Court.

The Notice of Address for Service must be filed either electronically through the Website of the Courts Administration Authority ([www.courts.sa.gov.au](http://www.courts.sa.gov.au)) in the case of a proceeding commenced using the Court electronic filing system or a Registry of the [*Court*] of South Australia. A list of the Registry addresses is attached.

If you do not have a Solicitor, you may attend personally at a Registry to do this.

Unless you file a Notice of Address for Service and Defence, you will not be entitled to challenge the Defendant's(s') liability to the Plaintiff(s) and will be taken to have admitted the Defendant's(s') claim against you, and your liability to reimburse or contribute to the amount of judgment in favour of the Plaintiff(s). A judgment in respect of such liability may be given against you without further notice.

[Signed]: .....  
[Solicitor for the [*Nature of Party / Parties*]]

[OR]

[*Name(s)*], [*Nature of Party / Parties*]

- NOTES :**
- 1. If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.**
  - 2. A list of Registry addresses must be attached if the summons is filed in hard copy. It will be computer-generated if filed electronically.**

**CONTRIBUTION NOTICE**

To the [*Nature of Party / Parties*], [*Name(s)*]

In this action the [*Nature of Party / Parties*], [*Name(s)*], of [*Address(es)*], claim(s) relief against you as follows.

Part 1:

The facts and basis of the claim are:-

Part 2:

The orders sought are:-

[*Signed*] .....  
[*Solicitor for the [Nature of Party / Parties]*]  
[*OR*]  
[*Name(s)*],[*Nature of Party / Parties*]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party / Parties should be typed in, in lieu of a signature.

**NOTICE OF PAYMENT INTO COURT**

To the Registrar, [Court] Court

To the [Nature of Party / Parties], [Name(s)].

On [Date] the [Nature of Party / Parties], [Name(s)] has paid \$AUD [Amount] into Court with an [admission / denial] of liability and says that this sum is sufficient to satisfy the [Nature of Party / Parties], [Name(s)] claim(s) in this action.

[NOTE : *If there is more than one cause of action and a specific amount is allotted to a particular cause of action, and if a set off or counterclaim has been taken into account, this must also be expressly stated.*]

[Signed]: .....  
[Solicitor for the [Nature of Party / Parties]]  
[OR]  
[Name(s)], [Nature of Party / Parties]

revoked

## NOTICE TO ADMIT

To the [*Nature of Party / Parties*], [*Name(s)*].

You are required, within fourteen clear days or such other extended time as may be fixed by the Court or agreed between the parties, to admit or specifically deny the truth of the following facts:

[*Where relevant -*

You are also required to admit, or specifically deny, within the time specified above the authenticity and admissibility of the following documents, or set forth in detail your reasons for refusal to do so. True copies are attached.]

[Signed]

.....  
[Solicitor for the [*Nature of Party / Parties*]]

[OR]

[*Name(s)*],[*Nature of the Party / Parties*]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

## APPLICATION FOR DIRECTIONS

To the *[Nature of Party / Parties]**[Name(s)]*.

The *[Nature of Party / Parties]**[Name(s)]* apply/ies for the following orders or directions:-

1. General directions.
  
  
  
  
  
  
  
  
  
  
2. *[Other specific directions or orders]*

Application made pursuant to Section *[No.]* of the *[Act]*  
*[or]* Rule *[No.]* of the *[Court]* Rules.

You will be notified separately of the time and place of the hearing of the application.

*[Signed]* .....  
*[Solicitor for the [Nature of Party / Parties]]*  
*[OR]*  
*[Name(s)], [Nature of the Party / Parties]*

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

## NOTICE FOR SPECIFIC DIRECTIONS

To the [*Nature of Party / Parties*][*Name(s)*].

The [*Nature of Party / Parties*][*Name(s)*] intend/s to apply to the court for specific directions in this action as follows:-

[*Details of Orders to be sought*]

The application will be made pursuant to Section [*No.*] of the [*Act*]  
[*or*] Rule [*No.*] of the [*Court*] Rules.

The above application will be heard by a [*Judge / Master*] in Chambers at [*Place*] at [*time*] am / pm,  
on the [*date*] [*month*] [*year*].

[*Signed*] .....  
[*Solicitor for the [Nature of Party / Parties]*]  
[*OR*]  
[*Name(s)*],[*Nature of the Party / Parties*]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

LIST OF DOCUMENTS

To the [Nature of Party / Parties], [Name(s)].

The [Nature of Party / Parties], [Name(s)] make(s) discovery as follows:-

1. The documents which are at present in the possession, custody or power of such [Party / Parties] and directly relevant to any issue arising on the pleadings -

(a) for which privilege is not claimed are:

[Numbered list of documents]

(b) for which privilege is claimed are:

[Numbered list of documents specifying grounds on which privilege is claimed]

2. The documents which have been, but are no longer in possession, custody or power of the said [Party / Parties] and directly relevant to any issue arising on the pleadings are -

[Numbered list of documents stipulating when they were last in the possession, custody or power, and what happened to them.]

3. The [Nature of Party / Parties], by this list of documents, has / have now fully discharged the obligations of such [Nature of Party / Parties], as at the date of delivery of this list, regarding discovery of documents in this action.

[Signed] .....  
[Solicitor for the [Nature of Party / Parties]]  
[OR]  
[Name(s)], [Nature of the Party / Parties]

NOTE : If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

**NOTICE TO PRODUCE**

To the [*Nature of Party / Parties*], [*Name(s)*].

You are required to produce and show to the Court at the trial of this action, the following documents which are in your possession, custody or power:-

[*Numbered paragraphs describing each of the documents for which production is sought.*]

[*Signed*] .....  
[*Solicitor for the [Nature of Party / Parties]*]  
[*OR*]  
[*Name(s)*],[*Nature of the Party / Parties*]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

revoked



ORDER FOR POSSESSION OF PROPERTY FORMING A SECURITY FOR PAYMENT TO THE PLAINTIFF OF ANY PRINCIPAL OR INTEREST

Judicial Officer(s): [The Honourable..... His/Her Honour Judge..... [Master of the Supreme Court]]

Date of Summons: ..... [DD/MM/YYYY]

Date (s) of hearing: ..... [DD/MM/YYYY]

Date of order: .....[DD/MM/YYYY]

Appearances: [Name(s)] [Solicitor/Counsel] for the [Nature of Party/Parties], [Name(s)]

THE COURT ORDERS THAT:

1. The [Defendant(s)] [Name(s)] give[(s)] the Plaintiff [(s)] possession within [number] days of the service of a copy of this Order on [him / her / them] of the land subject to Memorandum of Mortgage, Registered No. [number], being:-

- (1) Description of land – [Address]
(2) Title Reference – Volume..... Folio.....

2. [Specify any other relief granted, pursuant to Rule 63.13]

3. The Plaintiff [(s)] recover from the said Defendant [(s)] the sum of \$AUD [Amount] for the costs of these proceedings [or "the costs of these proceedings to be taxed"].

4. [If appropriate]

If the said Defendant [(s)] pay(s) to the Plaintiff [(s)] all the moneys secured by the above Memorandum of Mortgage, the Plaintiff [(s)] (subject and without prejudice to the due exercise of any power of sale under that security) is/are to re-deliver possession of the property to the said Defendant [(s)] and discharge the Memorandum of Mortgage.

5. Any party be at liberty to apply to the Court for the discharge or a variation of this Order.

NOTE : If the within-named defendant [(s)] [does / do] not give up possession of the land referred to in this Order by the time specified, all persons then in possession of the land may be forcibly ejected from the land by the Sheriff. [This text may need to be modified to suit circumstances of the case.]

[Facsimile Seal]

[Name]

For Registrar

**SUMMONS FOR POSSESSION UNDER RULE 65.07**

Summons issued [by/on behalf of] [Name (s) of Party/Parties] of [Address (es)].

To the [Nature of Party /Parties], [Name(s)], of [Address(es)]

You and any other person(s) occupying the premises hereinafter referred to, are to attend the [Court] at [address of Court or Registry] on [day], the [date] day of [month] 20 , at [time] am/pm on the hearing of an application by the Plaintiff(s) for an order to recover possession of [full description of premises, including relevant title reference(s)], on the ground/s that the Plaintiff(s) is /are entitled to possession of those premises and that you are in occupation without licence or consent.

This summons is issued pursuant to [Section [No] of the [Act]] [and/or] [Rule [No] of the [Court] Rules].

A person served with this Summons may apply to the Court personally, or by Solicitor, to be joined as a Defendant. If a person occupying the premises does not attend personally or by Solicitor at the time and place abovementioned, such order will be made as the Court thinks appropriate, without further notice.

[Signed ] .....  
[Solicitor for the [Nature of Party / Parties]]  
[OR]  
[Name(s)],[Nature of the Party / Parties]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

## LETTER OF REQUEST

To the Competent Judicial Authority of [*Place*],  
in [*Country*].

A civil action has been commenced in the [*Court*] Court of South Australia, in which [*name(s)*] of [*address(es)*] is/are the Plaintiff(s) and [*name(s)*] of [*address(es)*] [*is/are*] the Defendant. In it the Plaintiff(s) claim(s) [*set out details*].

It is necessary, for the determination of the matters in dispute, that the following persons, resident within your jurisdiction, be examined as witnesses upon oath concerning those matters: --

[*Insert names and addresses of proposed witnesses*]

I [*name*], the Registrar of the [*Court*] Court of South Australia, request that, for the assistance of such Court, you summon the said witnesses (and such other witnesses as the agents of the Plaintiff(s) and the Defendant(s) shall request you in writing so to summon) to attend, at such time and place as you shall appoint, before such person as, according your procedure, is competent to take examination of witnesses, and that you cause such witnesses to be examined [*either upon the interrogatories which accompany this letter of request or orally*] with regard to the matters in question, in the presence of the agents of the Plaintiff(s) and Defendant(s), or such of them as shall, on due notice given, attend the examination.

I further request that you permit the agents of both the Plaintiff(s) and the Defendant(s), or such of them as shall be present, to examine such witnesses as may, after due notice in writing, be produced on their behalf, and permit any other party to cross examine the witnesses and the party producing any witness for examination to re-examine that witness orally.

I also request that the evidence of all witnesses be reduced into writing and all books, letters, papers and documents produced upon the examination be duly marked for identification, and that you further authenticate such examination by the seal of your Tribunal or in such other way as is in accordance with your procedure, and return the same to me together with a note of the charges and expenses payable in respect of this request through the Ambassador, High Commissioner or Consul from whom the same was received, for transmission to the [*Court*] Court of South Australia.

I finally request that you cause me, or the agents of the parties, if appointed, to be informed of the date and place where the examination is to take place.

[*Facsimile Seal*]

[*Name*]

For Registrar

## SUBPOENA

TO: *[full names and addresses of proposed witnesses]*

The *[Court]* Court of South Australia **ORDERS** that you attend before it at *[place]* on *[day of week]* the *[date]* day of *[month]* *[year]* at *[time]*, and thereafter until you have fully complied with this subpoena, or have been excused from further attendance, to:

*[Delete either A or B if not applicable]*

- A. Give evidence to the Court.
- B. Produce to the Court the following documents:

*[Set out a proper description of each of the documents]*

Dated this *[date]* day of *[month]* *[year]*

*[Facsimile Seal]*

*[Name]*

For Registrar

**NOTE :** A person served with this subpoena is entitled to receive, a reasonable time before the day on which that person is to attend Court, payment of a sufficient sum to meet the reasonable expenses of the attendance. Disobedience of the subpoena may result in conviction for contempt of court and liability to imprisonment or other punishment. An explanation of how to comply with the subpoena is attached.

## EXPLANATORY NOTES

1. This document is called a subpoena. It requires you to attend at court to give evidence (and/or to produce documents) to the Court.
2. If you do not understand what you must do, or if you do not wish to, or cannot, comply with it, you should consult a lawyer about it as soon as possible. The subpoena is only valid if it is served within 12 weeks of the date of its issue.
3. If this subpoena only requires the production of documents or things, you may comply with it by delivering all of the documents or things to the Registrar of the Court at [address] not less than 24 hours before the time and date referred to in the subpoena. If you do that, you do not have to attend at the time shown in the subpoena. You should only so deliver the documents or things to the Registrar if you have all the documents and things referred to in the subpoena and if you have no objection to producing them to the Court and to them being inspected by the parties to the action. If you do deliver documents or things to the Registrar, they should be securely packaged and **CLEARLY MARKED WITH THE ACTION NUMBER AND THE NAMES OF THE PARTIES AS APPEARING ON THE HEADING TO THE SUBPOENA AND WITH YOUR NAME AND ADDRESS.**
4. If the subpoena requires you to attend to give evidence, the progress of the hearing may be such that you will not be called to give your evidence until after the time shown on the subpoena. If you do not wish to wait outside the courtroom until it is your turn to give evidence, you can contact the solicitor who issued this subpoena (whose name, address and telephone number appear on the front sheet). That solicitor may be able to arrange a later time for you to attend. Otherwise you **must** attend at the date and time shown.
5. When you attend at Court, you will need to locate the room in the Court building where the hearing is taking place and how to get to that room. That room may not be known until shortly before you have to attend. You can find this out either by contacting the solicitor who issued this subpoena, or by inquiry at the Registry Office of the Court, or the reception desk of the Court building. You may be able to obtain some information by telephoning the Court Registry on [telephone number].
6. **PURSUANT TO THE RULES OF COURT, YOU WILL BE TAKEN TO HAVE WAIVED ANY OBJECTION TO THE PRODUCTION OF ANY DOCUMENT OR THING WHETHER ON THE GROUND OF LEGAL PROFESSIONAL PRIVILEGE OR ANY OTHER GROUND, IF YOU DELIVER THE DOCUMENT OR THING TO THE REGISTRAR, RATHER THAN TO THE COURT ON THE DATE SPECIFIED ABOVE (THE RETURN DATE). IF YOU CLAIM TO BE ENTITLED TO RESIST, ON ANY GROUND, PRODUCTION OF ANY DOCUMENT OR THING, OR ITS INSPECTION BY ANY PARTY TO THE PROCEEDINGS, YOU MUST ATTEND BEFORE THE COURT ON THE RETURN DATE, WHEN YOU WILL BE GIVEN AN OPPORTUNITY TO EXPLAIN YOUR OBJECTION.**
7. In addition to your reasonable expenses of attending at Court you are also entitled to be paid by the party issuing the subpoena your reasonable expenses incurred in complying with the subpoena, including an appropriate witness fee. If you need all, or some, of these expenses to be paid **before** you comply with this subpoena, you should contact the solicitor issuing it about the matter.

## REQUEST FOR ISSUE OF SUBPOENA(S)

To the Registrar, [Court] Court

Please issue subpoenas, in the respective forms attached hereto.

[As appropriate]

Those subpoenas will be served by the requesting party

or

It is requested that the Sheriff serve the subpoenas, at the expense of the requesting party

[If applicable]

It is requested that the subpoena addressed to [Name] be returnable prior to trial before [the Registrar OR a Judge OR a Master] at [time] on [date] at [address]. [If a subpoena is to be returnable before a specific judicial officer having the conduct of pre-trial proceedings this should be stated].

[Signed]

.....  
[Solicitor for the [Nature of Party / Parties]]

[OR]

[Name(s)], [Nature of the Party / Parties]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

## WARRANT OF SALE

To: The Sheriff of South Australia

In this action the [*Nature of Party / Parties*], [*Name(s)*] of [*Address(es)*] is/are, pursuant to a judgment or order dated [*date*], indebted to the [*Nature of Party/Parties*], [*Name(s)*] as follows:-

Balance of judgment sum	\$
Costs	\$
Interest under Rule 84.19 to date of warrant	\$
Costs and expenses of this warrant	\$
Total	\$

**YOU ARE DIRECTED:**

- (1) To sell such of the personal and real property of the [*Nature of Party / Parties*], [*Name(s)*], as are within the State of South Australia in order to satisfy the unsatisfied judgment, interest and costs and further interest accruing under Rule 84.19 after the date of this warrant, until you receive payment of the monies which are the subject of this warrant and all of your expenses and fees relating to its execution.
- (2) To report to this Court concerning your execution of this warrant and the results thereof.

[*Facsimile Seal*]

[*Name*]

For Registrar

## WARRANT OF POSSESSION

To: The Sheriff of South Australia

In this action, on [date], it was ordered that the Plaintiff(s) [Name(s) of Plaintiff(s)] recover from the Defendant(s), [Name(s) of Defendant(s)] possession of [full description of property, including relevant title reference(s)].

YOU ARE DIRECTED to take whatever lawful steps are necessary to cause the Plaintiff(s) to have possession of the said property and to report to this Court concerning your execution of this Warrant and the results and your costs and expenses thereof.

[Facsimile Seal]

[Name]

For Registrar

## WARRANT OF ARREST

To the Sheriff of South Australia

In this action, on [date], this court ordered [set out terms of the order for arrest]

YOU ARE THEREFORE DIRECTED to arrest [insert name and address of person to be arrested] pursuant to the said order and to bring that person before the court in accordance with the terms of the said order.

[Facsimile Seal]

[Name]

For Registrar



**REQUEST FOR ISSUE OF SUMMONS, ORDER OR WARRANT**

To the Registrar of the [Court] Court.

The [Nature of Party / Parties], [Name(s)] request(s) you to issue a [Summons / Warrant / Garnishee] in the form herewith against [name of person] of [address] in relation to the judgment entered in this action on [date], which remains [wholly unsatisfied] [or, if partly satisfied, unsatisfied as to the sum of \$[Amount]].

[Signed] .....  
[Solicitor for the [Nature of Party / Parties]]  
[OR]  
[Name(s)], [Nature of the Party / Parties]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

revoked

## REGISTRAR'S SUMMONS FOR CONTEMPT

To the *[name(s) and address(es) of person(s) summoned]*

You are required to attend before the *[Court]* Court at *[time]* on *[date][month][year]* at *[place]* on the hearing of this summons, which is issued by the Registrar of the Court, to answer a charge of contempt of Court in that you did, on *[date][month][year]*, *[set out details of the alleged contempt]*.

*[Facsimile Seal]*

*[Name]*

For Registrar

This summons is issued pursuant to Rule 93.03/93.04 (2) of the *[Court]* Rules.

**NOTE :** If you fail to attend at the above time and place, orders may be made against you in your absence and you may be punished for contempt of Court.

## SUMMONS FOR EXAMINATION IN RESPECT OF A JUDGMENT DEBT

To *[full name and address of person summoned]*

You are a judgment debtor in the sum of \$*[amount]* pursuant to a judgment entered on *[date]* *[or You are alleged to be a person who may be able to assist with the investigation of the means of a judgment debtor, *[full name of judgment debtor]*, to satisfy a judgment of \$*[amount]* entered against that person on *[date]*].*

You are summoned to appear before the *[Court]* Court of South Australia at *[time]* on *[date]* and *[place]* for examination in connection with the payment of such judgment debt and/or to then produce the following documents *[full description of all of the documents required]*.

*[Facsimile Seal]*

*[Name]*

For Registrar

**NOTE :** If you fail to appear, as required by the summons, the Court may, pursuant to section 4 (4) of the Enforcement of Judgments Act, 1991, issue a warrant for your arrest.

**GARNISHEE ORDER**

By a judgment entered by *[Name (s)] of judgment creditor(s)* on *[date][month][year]* it was ordered that the *[judgment debtor(s)]* pay to *[Name (s) judgment creditor(s)]* \$*[Amount]* (of which \$*[Amount]* remains owing).

THE COURT ORDERS that *[name(s) and address(es) of garnishee(s)]* ("the garnishee(s)") pay to the *[judgment creditor(s)]* \$*[amount]* in reduction of any moneys payable to the *[judgment debtor(s)]* by the garnishee and in satisfaction, to the extent of the payment, of the judgment debt of the *[judgment debtor(s)]* to the *[judgment creditor(s)]*.

The Court will sit in chambers at *[place]* at *[time]* on *[date][month][year]* to hear any submissions from the *[judgment debtor(s)]* or the garnishee to confirm, vary or revoke this order.

*[If required]*

AND IT IS FURTHER ORDERED that the garnishee(s) be authorised to retain from the money subject to attachment the sum of \$*[Amount]* as compensation for the garnishee's / garnishees' expenses in complying with this order.

*[Facsimile Seal]*

*[Name]*

For Registrar

**NOTE :** If you do not attend at the above time and place, it may be taken that you do not contest your liability in this matter and orders may be made in your absence.

## NOTICE OF CLAIM TO PROPERTY SUBJECT TO EXECUTION

To the Sheriff of South Australia

I/we, [*name(s) and address(es)*] claim to have an interest in the property mentioned below and seek that you give effect to such claim. This notice is given pursuant to Section 16(2) of the Enforcement of Judgments Act, 1991 and Rule 88A.07A(1) of the [*Court*] Court Rules.

Particulars of the property are:

*[Set out full details of the property in which the interest is claimed]*

Particulars of interest claimed are:

*[Set out full details of the nature of the claim(s)]*

**[NOTE :** *If notice relates to more than one item of property, separately identify each item and the details related to it.]*

[Signed] .....  
[Solicitor for the [*Nature of Party / Parties*]]  
[OR]  
[*Name(s)*],[*Nature of the Party / Parties*]

**NOTE :** **If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.**

**SHORT FORM BILL OF COSTS**

SHORT FORM BILL OF COSTS  
 OF THE [NATURE OF PARTY / PARTIES], [NAME(S)]  
 (Presented pursuant to order dated [date])

TO THE [NATURE OF PARTY / PARTIES], [NAME(S)]

If you wish to dispute any item in this bill you must, pursuant to Rule 101A.02(2) of the [Court Name] Court Rules, within 21 days of receipt of this bill-

- (1) set out in the appropriate column below, your response to each disputed item; and
- (2) serve a copy of the bill containing such responses by sending the same by prepaid post to [Party / Parties presenting bill] at the address(es) of such party shown on Form 1 attached hereto.

In the event that you do not forward a copy of the bill with your response(s) set out therein within the period of 21 days, you will be deemed to have admitted liability to pay the costs sought in this bill.

Cost Item	No. of Pages/ Length of Attendance	Rate Per Page / Hour / Letter / Attendance	Amount Claimed \$	Response (eg Agreed, Not Agreed, Agreed in part)	Offer \$
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[NOTE: This form is to be read in conjunction with the costs schedules allowed by an amendment to the Supreme Court Rules, which fixes the percentage increase to costs from time to time. Where the period during which costs were incurred includes more than one schedule of costs, the items claimed for relevant periods should be separately set out in each of the paragraphs of this form and the "Amount claimed" should be calculated by reference to the fee allowed for the relevant period. The items referred to in the square brackets below are items contained in the Fifth Schedule to the Supreme Court Rules.]

- 1. Preparation of documents [1 and 23]
  - A. Documents filed at Court  
 Briefly state the nature of the documentation and the number of A4 pages
    - (i) For the period ..... and (if applicable)
    - (ii) For the period .....
  - B. Any other documents (apart from documents referred to items 13, 14, 16, 17 and 18) including conveyancing documents.  
 Briefly state the nature of the documentation and the number of A4 pages
    - (i) For the period ..... and (if applicable)
    - (ii) For the period .....

c/f

c/f

- 
2. *Copying documents* [4]  
Briefly state the nature of the documentation and the number of A4 pages
    - (i) For the period..... and (if applicable)
    - (ii) For the period.....
  3. *Perusals* [5]  
Briefly state the nature of the documentation and the number of A4 pages
    - (i) For the period..... and (if applicable)
    - (ii) For the period.....
  4. *Scanning Documents* [6]  
Briefly state the nature of the documentation and the number of A4 pages
    - (i) For the period..... and (if applicable)
    - (ii) For the period.....
  5. *Attendances* [7]  
Specify attendances claimed (eg 5 attendances on plaintiff/defendant to obtain instructions—total 7.5 hours; 3 conferences with counsel—total 2.5 hours)
    - (i) For the period.....and (if applicable)
    - (ii) For the period.....
  6. *Attendances* [8]  
Briefly summarise attendances claimed and state total number of hours
    - (i) For the period..... and (if applicable)
    - (ii) For the period.....
  7. *Solicitor attending in chambers (including pre-trial conferences, conciliation conferences and callovers)* [9]
    - (i) For the period.....  
Specify
      - (a) total number of short attendances;
      - (b) total number of ordinary attendances;
      - (c) total number of protracted attendances and number of hours.
    - (ii) For the period..... (specify as above).

---

b/f

b/f

8. *Clerk's (other than junior clerk) attendances and travelling time* [10]  
Briefly summarise the nature and number of attendances  
(i) For the period..... and (if applicable)  
(ii) For the period.....
9. *Junior clerk's attendances* [11]  
Briefly summarise the nature and number of attendances  
(i) For the period..... and (if applicable)  
(ii) For the period.....
10. *Telephone attendances (solicitor)* [12]  
Specify number of calls by reference to 6 minute intervals (= 1 unit), eg. 15 x 1 unit,  
10 x 2 units etc.  
(i) For the period..... and (if applicable)  
(ii) For the period.....
11. *Telephone attendances (clerk)* [13]  
Specify number of calls by reference to 6 minute intervals (= 1 unit), eg. 15 x 1 unit,  
10 x 2 units etc.  
(i) For the period..... and (if applicable)  
(ii) For the period.....
12. *Attendances re affidavits* [14]  
Specify number of attendances  
(i) For the period..... and (if applicable)  
(ii) For the period.....
13. *Letters* [15]  
Specify (eg. 8 x 1 page, 10 x 2 pages etc.)  
(i) For the period..... and (if applicable)  
(ii) For the period.....

---

c/f

c/f

---

b/f

b/f



- 
14. *Facsimile transmissions* [16]  
 Specify number of and length of transmissions (eg. 8 x 1 page, 10 x 2 pages etc.)  
 (i) For the period..... and (if applicable)  
 (ii) For the period.....
15. *Payment of accounts* [17]  
 Specify number of accounts paid  
 (i) For the period..... and (if applicable)  
 (ii) For the period.....
16. *Registration of judgment* [18]  
 Briefly summarise work done
17. *Copy documents* [19]  
 Specify number of A4 pages and divide into costs periods where necessary
18. *Briefs & Appeal Books* [20]  
 Specify number of A4 pages and divide into costs periods where necessary
19. *Care and consideration in preparation of a brief* [21]  
 Briefly state basis of claim
20. *Preparation of short form bill of costs* [22]  
 Disbursements  
 Specify and attach scanned copy of accounts  
 Counsel fees  
 (Copy of account(s) to be available to Taxing Officer on Taxation)

---

TOTAL: \$ \$

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revoked

## CERTIFICATE OF NON-COMPLIANCE WITH SUBPOENA

I CERTIFY AS FOLLOWS:

- (1) A subpoena in the form filed herewith was issued by this Court against [*insert name and address of person*].
- (2) Leave was given by a Judge of this Court, on [*date*][*month*][*year*], to serve the subpoena in New Zealand.
- (3) The [*name*] failed to comply with the subpoena in that [*insert details of respects in which the person failed to comply with the subpoena*].
- (4) [*If Applicable*] An application to have the subpoena set aside was made and [*insert details of result of the application*].

[*Facsimile Seal*]

[*Name*]

For Registrar

## CERTIFICATE OF READINESS FOR TRIAL

[To be filed by the file principal for one of the parties]

IT IS CERTIFIED, by [name], the file principal for the [Nature of Party / Parties], [Name(s)] on due enquiry having been made of all other parties to the proceedings, that:

1. All pleadings are closed and no party has any intention of filing any further pleading or seeking any amendment of any pleading.
2. All particulars ordered or requested have been given as between all parties and no further particulars are sought.
3. The parties have made discovery of all documents in their possession or power relating to any matter in the issue in the action, and are not aware of any other documents of which discovery should be made.
4. No party has any intention of making any further application for discovery of documents by a stranger to the action, and any such application already made is completed and complied with and no further application in respect thereof will be made.
5. All parties have completed inspection of all documents of which discovery has been made.
6. No party has any intention of interrogating any party, or, if interrogatories have already been delivered, no party has any intention of seeking to deliver any further interrogatories.
7. All interrogatories which have been delivered have been answered and no party has any intention of seeking any further or better answers.
8. All requests to admit facts or documents have been served and responded to and no party has any intention of bringing a further application with respect to the same.
9. Except for any subpoena which, on the advice of counsel, should not have been made returnable before trial, all subpoenas for the production of documents have been issued, served and complied with the satisfaction of the party issuing the same, save for any matter specifically reserved on the return of any such subpoena for the consideration of the trial Judge.
10. Where Rule 55A has been ordered to apply, tender lists have been filed and served by all parties in accordance with that rule.
11. All medical and other expert reports to be used by the parties have been obtained and made available to all parties, save for any such report as may be the subject of an order pursuant to Rule 38.01(4) that a party be not required to deliver the same to any other party. Such reports, the tender of which can be agreed, have been agreed and no direction is sought or thought to be desirable to limit the number of expert witnesses to be called.

12. Special damages have been agreed in the sum of \$[*amount*] [*or state any other situation*].
13. Actuarial Certificates will be tendered by consent.
14. All interlocutory processes are completed and the action is in all respects ready for trial.
15. The estimated length of trial is [*period*] days.
16. The following Judges may possibly be disqualified from hearing the action:  
[*List Names*]
17. The provisions of Rule 74A.07 as to copy documents have been complied with.
18. All endeavours to resolve the matter other than by trial have been exhausted without success and the parties and their advisers do not believe that the matter can be resolved other than by proceeding trial.

[*Signed*] .....

[*Solicitor for the [Nature of Party / Parties]*]

[*OR*]

[*Name(s)*],[*Nature of the Party / Parties*]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

## APPLICATION UNDER SECTION 591E OF THE EVIDENCE ACT 1929

To the [Nature of Party / Parties], [Name(s)].

The [Nature of Party / Parties], [Name(s)] intend/s to apply to the Court for specific directions that the [specify whether 'the hearing of the application for.....' or 'the trial of this action'] be conducted with the aid of an [specify either 'audio' or 'audio visual'] link.

The following information is provided in support of the application for directions:

1. It is proposed that such link be utilised in relation to [specify whether 'the whole of the proceeding' or 'portion only of the proceeding, namely.....'].
2. The link is required from [originating City/town] to [receiving City/town].
3. Details of the persons to appear before the Court, or give evidence by the proposed link are as follows-
 

[Set out names and roles]
4. The suggested time for the commencement of the link is [time and date].
5. The estimated duration of the link is [period].
6. The application is made [with/without] the consent of all parties to the proceedings.  
[If all parties do not consent indicate who are dissenting parties and the nature of the objection raised by them]
7. [If a hearing date has been fixed, indicate time and place].

[Signed] .....

[Solicitor for the [Nature of Party / Parties]]

[OR]

[Name(s)], [Nature of the Party / Parties]

**NOTE :** If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

**FORM 42**

**AFFIDAVIT**

I (*full name, address and occupation*) TAKE AN OATH/MAKE AN AFFIRMATION (delete one or the other) AND SAY:

*[set out text of affidavit in successive, numbered paragraphs]*

Sworn/affirmed (delete one or the other) by the abovenamed person

at *[Place]*

on *[Date]*

.....  
*[Signature of Person]*

Before me *[Signature of Attesting witness]*

*[Print name of Witness]*

*[ID Number of Witness]*

**NOTE: Where the affidavit is filed electronically a signed copy of the original is to be retained by the transmitter of the Affidavit.**

- (3) in Form 46 deleting the whole of paragraph 3 and replacing it by:  
“3 *[Where order is by consent]* The consent is evidenced by:  
*(set out how consent is being given, eg by endorsement on minutes of order, by e-mail from another solicitor dated ..... 20..... or otherwise).”*

**FORM 45**

**OTHER DOCUMENTS**

*[Any other documents to be filed in an action, for which no specific form is prescribed, may utilise this full text form. It may also be used to electronically file any document for which a form is prescribed, but in respect of which no other electronic template is currently available on the Courts Administration Authority website. This form must be accompanied by Form 1, duly completed, and its content must comply with the general format and substance requirements prescribed by the Rules of Court.]*

ELECTRONIC NON-CONTENTIOUS APPLICATION

By consent

[Mark box]

Ex parte

Action title [Abbreviated]:

Action No:

Applicant [Nature of Party/Parties], [Name(s)]:

Date of application:

1. The applicant (s) seek (s) the following specific orders/directions:

[State specific orders/directions sought]

2. The grounds/reasons for the orders/directions sought are:

[State reasons for application or refer to relevant affidavit evidence]

3. [Where order is by consent] The consent is evidenced by:

*(Set out how consent is being given, eg by endorsement on minutes of order, by e-mail from another solicitor dated ..... 20.... or otherwise).*

4. ORDER MADE:

.....  
Judge/Master/Registrar

Date:

NOTES:

1. Draft minutes of order should be attached to the electronic application other than in the case of short or routine orders in the District Court.
2. If it is necessary to rely on an affidavit not already on file a completed electronic copy is to be attached, with an undertaking to file the original.

MINUTES OF ORDER

Judicial Officer: [The Honourable.....  
His/Her Honour Judge.....  
[Master of the Supreme Court]  
Master.....]

Date of application: ..... [DD/MM/YYYY]

Application made by: ..... [Party/Parties]

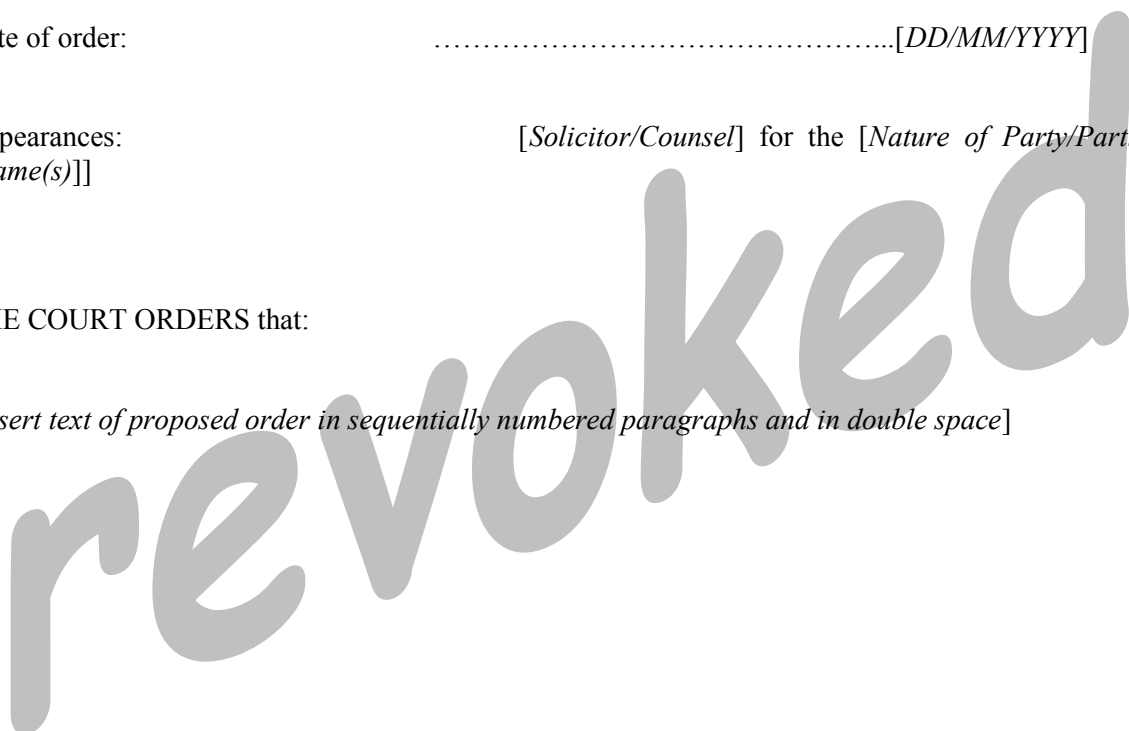
Date (s) of hearing: .....[DD/MM/YYYY]

Date of order: .....[DD/MM/YYYY]

Appearances: [Solicitor/Counsel] for the [Nature of Party/Parties,  
[Name(s)]]

THE COURT ORDERS that:

[Insert text of proposed order in sequentially numbered paragraphs and in double space]





## SECOND SCHEDULE

### PREAMBLE

In accordance with subrule 101.07(1)(b) the costs to be allowed and paid for under this Schedule shall be increased as follows:

- (1) For work done from and including 1 January 1987 to and including 30 June 1987 by 13 per cent.
- (2) For work done from and including 1 July 1987 by 18.65 per cent.
- (3) For work done from and including 1 January 1988 to and including 30 June 1988 by 22.21 per cent.
- (4) For work done from and including 1 July 1988 to and including 31 December 1988 by 26.78 per cent.
- (5) For work done from and including 1 January 1989 to and including 30 June 1989 by 30.58 per cent.
- (6) For work done from and including 1 July 1989 to and including 28 February 1990 by 32.79 per cent.
- (7) For work done from and including 1 March 1990 to and including 30 June 1990 by 34.95 per cent.
- (8) For work done from and including 1 July 1990 to and including 31 December 1990 by 38.77 per cent.
- (9) For work done from and including 1 January 1991 to and including 30 June 1991 by 42.93 per cent.
- (10) For work done from and including 1 July 1991 to and including 31 December 1991 by 43.51 per cent.
- (11) For work done from and including 1 January 1992 by 46.26 per cent.

#### *Instructions*

1. Instructions to sue, defend or appeal or to act in any matter of substance whether litigious or otherwise where no other charge is made for the work comprised in such instructions.....	\$ 60.00
---	-------------

#### *Summonses, Etc.*

2. Summonses and third party notices, including an indorsement for a summons of up to one folio, and including all instructions for the indorsement and the third party notice not otherwise charged, drawing, engrossment of the original, and of the solicitor's own copy, and attending to issue .....	45.00
---	-------

3. Drawing an indorsement of claim on a summons where the same exceeds one folio, for each folio after the first, including instructions not otherwise charged, the engrossment of the original, and the solicitor's own copy, per folio .....	7.00
4. For each additional engrossment of the summons required for service or for a brief .	4.50
5. (1) Contribution notices and warrants of execution, including instructions not otherwise charged, the engrossment of the original, and the solicitor's own copy, and attending to issue .....	40.00
(2) For each engrossment to serve or for a brief .....	4.50
6. Any subpoena, including the praecipe, the engrossment of the original, and the solicitor's own copy, and attending to issue.....	24.00
For each engrossment to serve .....	4.50
<i>Preparation of Documents:</i>	
7. Drawing any other document, other than a praecipe or a formal notice, which is necessary to originate, or for use in, or in connection with, any proceedings or in a matter whether litigious or otherwise for which no other charge is prescribed by this scale, including all instructions not otherwise charged, the engrossment of the original and the solicitor's own copy, per folio .....	7.00
PROVIDED THAT a greater amount may be allowed in conveyancing matters where the matter is of importance and/or difficulty	
8. Where any document is partly printed and partly drawn, the drawing fee for the drawn part shall be allowed and, in addition for the printed matter (inclusive of all instructions not otherwise charged, all perusals, the original copy, and the solicitor's own copy) per folio .....	1.50
9. Preparing any praecipe and any formal notice, including drawing, the engrossment of the original, and the solicitor's own copy, where not otherwise provided for.....	7.50
11. Preparing, entering and serving an appearance or an address for service, including all charges for drawing, the engrossment of the original, one copy for service and solicitor's own copy, attending to issue and to serve one other party .....	36.00
Each additional copy for service and for attending to service upon each additional party .....	9.00
12. Engrossing any original copy of any document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per folio .....	1.50
13. For any carbon copies of any typewritten document for which no allowance is made elsewhere if in the opinion of the taxing Master a carbon copy instead of a photostat copy is justified, per folio.....	0.60

14. Photostating copies of any document	
(a) per sheet .....	0.90
(b) where a substantial number of sheets are or should be photostated at the same time, in respect of multiple copies of the same document for each sheet after the first .....	0.30
15. Perusing documents, per folio .....	0.75
If of substance, not exceeding .....	2.00
15A. Scanning of documents where full perusal is not justified, per folio .....	0.20
<i>Attendances:</i>	
16. The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour .....	84.00
17. The attendance of a solicitor where work done does not require special skill or legal knowledge, but where it is proper that a solicitor should personally attend, and travelling time, per hour .....	54.00
18. Attending on any application, matter or taxation in Chambers, which is not certified fit for counsel:	
(a) If short or matter adjourned without substantial argument .....	32.00
(b) If ordinary .....	54.00
(c) If protracted or of difficulty, per hour .....	84.00
18A. Attending on a pretrial conference under Rule 56 by a solicitor, which is not certified fit for counsel, (and including preparing for the conference):	
(a) If short as for 18(a) or (b)	
(b) If ordinary .....	84.00
(c) If protracted, per hour .....	84.00
19. An attendance by a solicitor at Court on the calling over of the general list of cases awaiting trial, where the matter is likely to be mentioned in the callover .....	15.00
19A. An attendance by a solicitor at any other callover at Court .....	32.00
20. Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour .....	32.00
21. Attending at Court to file documents or papers, or to set down, attendances to deliver documents, or any other attendance capable of performance by a junior clerk, where not otherwise provided for, per attendance .....	9.00
(Separate charges will not be allowed to file, deliver or serve several documents which could or should have been filed, delivered or served at the same time.)	
22. Attending to set down any Chamber application and to search the list for the appointment, including all attendances to file documents which could or should have been done at the same time .....	15.00

23. All attendances necessary to settle and seal an order or other document, including attendances of lodging the draft order to be settled, collecting the settled draft order, lodging the engrossed settled order and collecting the sealed order ..... 27.00

*Telephone Attendances:*

24. An attendance by telephone of a solicitor:  
 (a) on a matter involving the exercise of special skill or legal knowledge..... 11.00  
 (b) if properly over 15 minutes on such a matter, for each 15 minutes ..... 21.00

25. An attendance by telephone of a solicitor not involving the exercise of special skill or knowledge, but of substance ..... 6.00

26. An attendance by telephone of a clerk on a matter of substance . ..... 4.00

*Affidavits:*

27. An attendance on the swearing of an affidavit:  
 (a) of a solicitor to be sworn to an affidavit ..... 15.00  
 (b) of a solicitor to take an affidavit where he or his form has prepared the affidavit . ..... 6.00  
 (c) of a clerk to be sworn to an affidavit..... 9.00  
 (d) of a solicitor on any other person to be sworn to an affidavit where no charge is made under (b) ..... 15.00

(such fee is to include all charges for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes)

*Letters:*

28. Any formal letter or a letter of any kind of less than one folio..... 7.50

29. Any letter in excess of one folio and not being a formal letter..... 14.00

30. For each two folios or part of two folios by which any letter properly exceeds three folios, per each two folios ..... 6.00

31. Circular letters:  
 (a) if short, after the first ..... 4.50  
 (b) if exceeding six folios, after the first a charge equal to one-quarter of the amount properly chargeable for the original.

32. Telegrams, including the drawing, the engrossment of the text of the message to be sent, and the solicitor's own copy and the attendances to dispatch, unless the text properly exceeds two folios in which case Item 7 shall apply ..... 12.00

32B. receiving any telex communication on the solicitor's telex machine, in addition to the cost for perusal under Item 15, per folio..... 3.00

32C. (a) Sending any facsimile transmission including drawing, the engrossment of the header page and including any message thereon and the attendances to dispatch and where proper to serve by this means.....	4.00
(b) For each page transmitted after the header page, per page.....	1.40
32D. (a) Receiving any facsimile transmission on the solicitor's facsimile machine, in addition to the perusal under item 15 for the first page.....	3.00
(b) For each additional page received, per page.....	0.90
33. For the payment of any account where an account in writing has been rendered and which is in order, including any letter sent with the payment of the account, if the letter relates solely to the account, and to include all disbursements on cheques.....	2.00
<i>Registration of Certificate of Judgment under Service and Execution of Process Act:</i>	
33A. Instructions for and attending to registration of a certificate of judgment pursuant to the Service and Execution of Process Act including all correspondence, documents, attendances in relation thereto as assessed pursuant to Section 22A(1) of the Act but not exceeding.....	150.00
<i>Miscellaneous:</i>	
34. Paging, collating, binding and indexing copy documents for use of the Trial Judge, including the drawing and engrossing of indices:	
(a) where the copy documents are 10 pages or less.....	4.50
(b) more than 10 pages.....	7.50
35. Arranging any appointment where necessary to do so, including all attendances and correspondence.....	6.00
36. Attending any person at the solicitor's own office to receive documents, execute authorities, give undertakings etc. where it is necessary that the person should be attended upon:	
By a solicitor.....	15.00
By any other person.....	3.00
37. Marking exhibits to an affidavit, per exhibit.....	3.00
38. Authorities and consents to obtain reports and other like documents, including drawing and the first three copies of the authority.....	6.00
39. Drawing and the engrossment of the original, and of the solicitor's own copy of:	
(a) a proof of a witness for a brief, where it is not necessary to substantially recast any notes made of the statement of the witness or to collate any number of previous statements	
(b) indices (where not otherwise provided for)	
(c) formal lists	
(d) copies or extracts from other documents, (per folio).....	3.00

40. Paging, collating, binding and indexing a brief, or appeal book, including the drawing and the engrossment of any indices for the brief or appeal book:

(a) 10 pages or less.....	8.00
(b) more than 10 pages and less than 50 pages.....	30.00
(c) more than 50 pages and less than 100 pages .....	50.00
(d) more than 100 pages and less than 200 pages .....	80.00
(e) more than 200 pages.....	120.00

Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of one half of the amount allowable under this item for the first copy of the brief or appeal book for each additional brief or appeal book will be allowed. Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 may be treated as a separate brief or appeal book.

41. Care and consideration in the preparation of a brief to be an amount in the discretion of the taxing Master but in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters 35.00

*Notes:*

A. The Amount allowed for each of the above items is to be at the discretion of the taxing Master, who shall be at liberty in the particular circumstances of the matter to disallow any item entirely or to allow a greater or a lesser amount for any item AND PROVIDED THAT a greater amount may be allowed in conveyancing matters where the matter is of importance or difficulty.

B. Each bill of costs must show:

- (1) the time spent on any attendance;
- (2) the number of folios contained in any document for which a charge is made;
- (3) the name of any solicitor and the status of any clerk in respect of whom any attendance is charged;
- (4) a separate identifying number for each item;
- (5) the items of work and disbursements in chronological order.

C. Where the time for any attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of an hour.

D. The number of folios in a document is not to include the heading or the backsheet to the document.

E. Only the amount of disbursements actually paid or payable are to be shown in the bill as disbursements. Where a disbursement is yet to be paid, this must be specifically stated.

F. Where a document is less than one folio in length or contains part of a folio, the fee for one folio may be allowed.

G. For drawing any bill of costs the taxing Master may allow an additional 50 per cent on all drawing fees.

H. Such allowance for kilometrage by motor vehicle or other conveyance will be made as the Master shall consider reasonable.

revoked

### THIRD SCHEDULE

The interest rates laid down by this schedule shall be:

- (1) For the purposes of Rules 69.08 and 84.19 from and including 1 January 1987 to and including 30 November 1987 the rate of 15 per cent per annum.
- (2) For the purposes of Rule 85.22 from and including 1 January 1987 to and including 30 November 1987 the rate of 18 per cent per annum.
- (3) For the purposes of all Rules referring to this schedule from and including 1 December 1987 to and including 31 March 1989 the rate of 13.5 per cent per annum.
- (4) For the purposes of all Rules referring to this schedule from and including 1 April 1989 to and including 31 May 1989 the rate of 18 per cent per annum.
- (5) For the purposes of all Rules referring to this schedule from and including 1 June 1989 to and including 31 August 1989 the rate of 19 per cent per annum.
- (6) For the purposes of all Rules referring to this schedule from and including 1 September 1989 to and including 28 February 1990 the rate of 20 per cent per annum.
- (7) For the purpose of all Rules referring to this Schedule from and including 1 March 1990 to and including 31 May 1990 the rate of 18 per cent per annum.
- (8) For the purpose of all Rules referring to this Schedule from and including 1 June 1990 the rate of 17 per cent per annum.
- (9) For the purposes of all Rules referring to this schedule from and including 1 December 1990 to and including 30 November 1991 the rate of 13 per cent per annum.
- (10) For the purposes of all Rules referring to the schedule from and including 1 December 1991 to and including 29 February 1992 10 per cent per annum.
- (11) For the purposes of all Rules referring to the schedule from and including 1 March 1992 to and including 30 November 1993, the rate of 9 per cent per annum.
- (12) For the purposes of all Rules referring to the schedule from and including 1 December 1993 to and including 28 February 1995 the rate of 7 per cent per annum.
- (13) For the purposes of all Rules referring to the schedule from and including 1 March 1995 to and including 30 November 1995, the rate of 9.5 per cent per annum.
- (14) For the purposes of all Rules referring to this schedule from and including 1 December 1995 to and including 31 October 1996 the rate of 9 per cent per annum.
- (15) For the purposes of all Rules referring to this schedule from and including 1 November 1996 to and including 31 March 1997, at the rate of 8.5 per centum per annum.
- (16) For the purposes of all Rules referring to this schedule from and including 1 April 1997 to and including 30 June 1997 at the rate of 8 per centum per annum.
- (17) For the purposes of all Rules referring to this schedule from and including 1 July 1997 to and including 31 December 1997 at the rate of 7 per centum per annum.



- (18) For the purposes of all Rules referring to this schedule from and including 1 January 1998 to and including 31 March 2000 at the rate of 6 per centum per annum.
- (19) For the purposes of all Rules referring to this schedule from and including 6 April 2000 to and including 17 September 2000 at the rate of 6.5 per centum per annum.
- (20) For the purposes of all Rules referring to this schedule from and including 18 September 2000 to and including 22 April 2001 at the rate of 7 per centum per annum.
- (21) For the purposes of all Rules referring to this schedule from and including 23 April 2001 to and including 1 August 2004 at the rate of 6 per centum per annum.
- (22) For the purposes of all Rules referring to this schedule from and including 2 August 2004 at the rate of 6.5 per centum per annum.

revoked

## FOURTH SCHEDULE

In accordance with subrule 101A.01(b) the costs to be allowed and paid for under this Schedule shall be increased as follows:

- (1) For work done from and including 13 July 1992, up to and including 28 February 1995, by 0.38 per cent.
- (2) For work done from and including 1 March 1995, by 1.26 per cent.

### *Preparation of Document*

	\$
1. Drawing any document which is necessary to originate, or for use in, or in connection with, any proceeding or in a matter whether litigious or otherwise, including the engrossment of the original per A4 page.....	40.00
PROVIDED THAT a greater amount may be allowed in conveyancing matters where the matter is of importance and/or difficulty.	
2. Where any document is partly printed and partly drawn, the drawing fee for the drawn part shall be allowed and, in addition, for the printed matter (including all perusals thereof) per A4 page .....	9.00
2A. Engrossing the original of any document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per A4 page.....	9.00
3. Where a document is prepared on other than A4 paper the amounts to be allowed under items 1 and 2 may be increased or decreased in the discretion of the taxing officer. The fees under items 1 and 2 shall include the preparation of a backsheet.	
4. Photocopying any document:	
(a) per sheet .....	1.35
(b) where a substantial number of sheets are or should be photocopied at the same time, in respect of multiple copies of the same document for each sheet after the first .....	0.45
5. Perusing document, per A4 page or the equivalent thereof .....	4.50
If of substance not exceeding per A4 page.....	12.00
6. Scanning of documents where full perusal is not justified, per A4 page or the equivalent thereof.....	1.20

### *Attendances*

7. The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour .....	124.00
8. The attendance of a solicitor where work done does not require special skills or legal knowledge, but where it is proper that a solicitor should personally attend, and travelling time, per hour .....	80.00

9.	Attending on any application, matter or taxation in chambers or on a pretrial conference, or a conciliation conference (not certified fit for counsel) or on any callover:	
	(a) if short or matter adjourned without substantial argument.....	45.00
	(b) if ordinary.....	80.00
	(c) if protracted or of difficulty, per hour .....	124.00
10.	Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour.....	45.00
11.	Attending at Court to file or lodge documents or papers, or to set down, attendance to deliver documents or any other attendance capable of performance by a junior clerk, including attending to set down any Chamber application and to search the list for Chamber appointments and all attendances necessary to settle and seal an order or other document, per attendance .....	13.00
12.	An attendance by telephone of a solicitor, for each six minute interval thereof or part thereof.....	12.00
13.	An attendance by telephone of a clerk on a matter of substance .....	6.00
14.	An attendance on the swearing of an affidavit:	
	(a) of a solicitor to be sworn to an affidavit .....	20.00
	(b) of a solicitor to take an affidavit where he or his firm has prepared the affidavit ...	9.00
	(c) of a clerk to be sworn to an affidavit.....	13.00
	(d) of a solicitor on any other person to be sworn to an affidavit where no charge is made under (b).....	20.00
	(such fee is to include all charges for marking exhibits and for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes).	

*Letters*

15.	Any letter:	
	(a) not exceeding one A4 page .....	25.00
	(b) exceeding more than one A4 page, for the first page .....	25.00
	and for subsequent pages .....	40.00
	(c) circular letters (including the cost of copying) per A4 page .....	5.00

- |   |      |
|---|------|
| 16. (a) Sending any facsimile transmission including drawing, the engrossment of the header page and including any message thereon and the attendances to dispatch and where proper to serve by this means, per A4 page .....                                     | 6.00 |
| (b) For each page transmitted after the header page.....  | 2.00 |
| (c) Receiving any facsimile transmission on the solicitor's facsimile machine, in addition to the perusal under item 5 or scanning under item 6 for the first page ....   | 4.50 |
| (d) For each additional page received, per A4 page.....   | 1.50 |
| 17. For the payment of any account where an account in writing has been rendered and which is in order, including any letter sent with the payment of the account, if the letter relates solely to the account, and to include all disbursements on cheques ..... | 5.00 |

*Registration of Certificate of Judgment under Service and Execution of Process Act*

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| 18. Instructions for and attending to registration of certificate of judgment pursuant to the <i>Service and Execution of Process Act</i> including all correspondence documents, attendances in relation thereto as assessed pursuant to Section 22A(1) of the Act but not exceeding..... | 220.00 |
|--|--------|

*Miscellaneous*

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| 19. Paging, collating binding and indexing copy documents for use of the Trial Judge, including the index: |        |
| (a) where the copy documents are 10 A4 pages or less .....   | 6.00   |
| (b) more than 10 A4 pages .....  | 11.00  |
| 20. Paging, collating, binding and indexing a brief, or:   |        |
| (a) 10 pages or less.....  | 12.00  |
| (b) more than 10 pages and less than 50 pages.....   | 45.00  |
| (c) more than 50 pages and less than 100 pages .....   | 75.00  |
| (d) more than 100 pages and less than 200 pages .....  | 120.00 |
| (e) more than 200 pages.....   | 175.00 |

Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of one half of the amount allowable under this time for the first copy of the brief or appeal book for each additional brief or appeal book will be allowed. Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 may be treated as a separate brief or appeal book.

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|---|-------|
| 21. Care and consideration in the preparation of a brief to be an amount in the direction of the taxing Master but in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters ..... | 50.00 |
| 22. Preparation of short from Bill of Costs, per A4 page.....   | 40.00 |

23. Drawing and the engrossment of the original, and of the solicitor's own copy, of:

- (a) a proof of a witness for a brief, where it is not necessary substantially to recast any notes made of the statement of the witness or to collate any number of previous statements;
- (b) indices (where not otherwise provided);
- (c) formal lists;
- (d) copies or extracts from other documents, per A4 page .....

20.00

*Notes:*

- A. The amount allowed for each of the above items is to be at the discretion of the taxing officer, who shall be at liberty in the particular circumstances of the matter to disallow any item entirely or to allow a greater or a lesser amount for any item AND PROVIDED THAT a greater amount may be allowed in conveyancing matters where the matter is of importance or difficulty.
- B. Each bill of costs (other than a short form bill of costs) must show:
  - (1) the time spent on any attendance;
  - (2) the number of A4 pages (or the equivalent thereof) contained in any document for which a charge is made;
  - (3) the name of any solicitor and the status of any clerk in respect of whom any attendance is charged;
  - (4) a separate identifying number for each item and the date thereof;
  - (5) the items of work and disbursements in chronological order.
- C. Where the time for any attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of an hour.
- D. Where in this schedule fees (other than for photocopying) are set by reference to an A4 page, such fee is fixed (except in the case of correspondence) on the basis that the typed or printed content of each page consists of 30 lines in courier 10 size print with margins approximating the minimum referred to in Rule 102.02(b). Where correspondence is concerned, the fee is fixed on the basis that the typed content of each page after the first page consists of 45 lines in courier 10 sized print with margins approximating the minimum referred to in Rule 102.02(b). The fee allowable may be adjusted by the taxing officer depending on whether the document in question exceeds or falls short of those standards.
- E. Only the amount of disbursements actually paid or payable are to be shown in the bill as disbursements. Where a disbursement is yet to be paid, this must be specially stated.
- F. Where the contents of a document (or page thereof) are less than one A4 page in length the fee allowed therefor is to be at the discretion of the taxing officer.
- G. For drawing any bill of costs (not including a short form bill of costs) the taxing officer may allow an additional 50 per cent on all drawing fees.

- H. Such allowance for kilometreage by motor vehicle or other conveyance will be made as the taxing officer shall consider reasonable.
- I. Where the Court orders a party, or a party or person is otherwise required, to tax costs both as between party and party and solicitor and client, Form 37 of the Supreme Court Rules shall be modified by the applicant so as to provide for the inclusion of both party and party and solicitor and client costs and the respondents' respective responses thereto.

revoked

## FIFTH SCHEDULE

<i>Preparation of Documents</i>	\$
1. Drawing any document which is necessary to originate, or for use in, or in connection with, any proceeding or in a matter whether litigious or otherwise, including the engrossment of the original per A4 page.....	40.50
PROVIDED THAT a greater amount may be allowed in conveyancing matters where the matter is of importance and/or difficulty.	
2. Where any document is partly printed and partly drawn, the drawing fee for the drawn part shall be allowed and, in addition, for the printed matter (including all perusals thereof) per A4 page .....	9.10
2A. Engrossing the original of any document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per A4 page .....	9.10
3. Where a document is prepared on other than A4 paper the amounts to be allowed under items 1 and 2 may be increased or decreased in the discretion of the taxing officer. The fees under items 1 and 2 shall include the preparation of a backsheet.	
4. Photocopying any document:	
(a) per sheet.....	1.35
(b) where a substantial number of sheets are or should be photocopied at the same time, in respect of multiple copies of the same document for each sheet after the first.....	0.45
5. Perusing document, per A4 page or the equivalent thereof.....	4.55
If of substance not exceeding per A4 page.....	12.20
6. Scanning of documents where full perusal is not justified, per A4 page or the equivalent thereof.....	1.20
<i>Attendances</i>	
7. The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour.....	165.00
8. The attendance of a solicitor where work done does not require special skills or legal knowledge, but where it is proper that a solicitor should personally attend, and travelling time, per hour.....	100.00
9. Attending on any application, matter or taxation in chambers or on a pretrial conference, or a conciliation conference (not certified fit for counsel) or on any callover:	
(a) if short or matter adjourned without substantial argument .....	60.00
(b) if ordinary .....	100.00
(c) if protracted or of difficulty, per hour .....	165.00
10. Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour .....	80.00

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|--|-------|
| 11. Attending at Court to file or lodge documents or papers, or to set down, attendance to deliver documents or any other attendance capable of performance by a junior clerk, including attending to set down any Chamber application and to search the list for Chamber appointments and all attendances necessary to settle and seal an order or other document, per attendance ..... | 13.20 |
| 12. An attendance by telephone of a solicitor, for each six minute interval thereof or part thereof.....   | 15.00 |
| 13. An attendance by telephone of a clerk on a matter of substance.....  | 6.10  |
| 14. An attendance on the swearing of an affidavit:   |       |
| (a) of a solicitor to be sworn to an affidavit .....   | 20.25 |
| (b) of a solicitor to take an affidavit where he or his firm has prepared the affidavit...   | 9.10  |
| (c) of a clerk to be sworn to an affidavit .....   | 13.20 |
| (d) of a solicitor on any other person to be sworn to an affidavit where no charge is made under (b).....  | 20.50 |
| (such fee is to include all charges for marking exhibits and for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes).  |       |

*Letters*

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|---|-------|
| 15. Any letter:   |       |
| (a) not exceeding one A4 page .....   | 25.30 |
| (b) exceeding more than one A4 page, for the first page.....  | 25.30 |
| and for subsequent pages .....  | 40.50 |
| (c) circular letters (including the cost of copying) per A4 page.....   | 5.05  |
| 16. (a) Sending any facsimile transmission including drawing, the engrossment of the header page and including any message thereon and the attendances to dispatch and where proper to serve by this means, per A4 page.....                                      | 6.10  |
| (b) For each page transmitted after the header page, per A4 page .....  | 2.00  |
| (c) Receiving any facsimile transmission on the solicitor's facsimile machine, in addition to the perusal under item 5 or scanning under item 6 for the first page ...  | 4.55  |
| (d) For each additional page received, per A4 page.....   | 1.50  |
| 17. For the payment of any account where an account in writing has been rendered and which is in order, including any letter sent with the payment of the account, if the letter relates solely to the account, and to include all disbursements on cheques ..... | 5.05  |

*Registration of Certificate of Judgment under Service and Execution of Process Act*

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|---|--------|
| 18. Instructions for and attending to registration of certificate of judgment pursuant to the <i>Service and Execution of Process Act</i> including all correspondence documents, attendances in relation thereto as assessed pursuant to Section 22A(1) of the Act but not exceeding ..... | 223.00 |
|---|--------|

*Miscellaneous*



19. Paging, collating binding and indexing copy documents for use of the Trial Judge, including the index:	
(a) where the copy documents are 10 A4 pages or less .....	6.10
(b) more than 10 A4 pages.....	11.15
20. Paging, collating, binding and indexing a brief, of:	
(a) 10 pages or less.....	12.20
(b) more than 10 pages and less than 50 pages .....	45.60
(c) more than 50 pages and less than 100 pages .....	76.00
(d) more than 100 pages and less than 200 pages .....	121.50
(e) more than 200 pages.....	177.00
Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of one half of the amount allowable under this time for the first copy of the brief or appeal book for each additional brief or appeal book will be allowed. Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 may be treated as a separate brief or appeal book.	
21. Care and consideration in the preparation of a brief to be an amount in the direction of the taxing Master but in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters .....	51.00
22. Preparation of short from Bill of Costs, per A4 page .....	40.50
23. Drawing and the engrossment of the original, and of the solicitor's own copy, of:	
(a) a proof of a witness for a brief, where it is not necessary substantially to recast any notes made of the statement of the witness or to collate any number of previous statements;	
(b) indices (where not otherwise provided);	
(c) formal lists;	
(d) copies or extracts from other documents, per A4 page .....	20.50

*Notes:*

- A. The amount allowed for each of the above items is to be at the discretion of the taxing officer, who shall be at liberty in the particular circumstances of the matter to disallow any item entirely or to allow a greater or a lesser amount for any item AND PROVIDED THAT a greater amount may be allowed in conveyancing matters where the matter is of importance or difficulty.
- B. Each bill of costs (other than a short form bill of costs) must show:
  - (1) the time spent on any attendance;
  - (2) the number of A4 pages (or the equivalent thereof) contained in any document for which a charge is made;
  - (3) the name of any solicitor and the status of any clerk in respect of whom any attendance is charged;
  - (4) a separate identifying number for each item and the date thereof;
  - (5) the items of work and disbursements in chronological order.
- C. Where the time for any attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of an hour.
- D. Where in this schedule fees (other than for photocopying) are set by reference to an A4 page, such fee is fixed (except in the case of correspondence) on the basis that the typed or printed content of each page consists of 30 lines in courier 10 size print with margins approximating the minimum referred to in Rule 102.02(b). Where correspondence is concerned, the fee is fixed on the basis that the typed content of each page after the first page consists of 45 lines in courier 10 sized print with margins approximating the minimum referred to in Rule 102.02(b). The fee allowable may be adjusted by the taxing officer depending on whether the document in question exceeds or falls short of those standards.
- E. Only the amount of disbursements actually paid or payable are to be shown in the bill as disbursements. Where a disbursement is yet to be paid, this must be specially stated.
- F. Where the contents of a document (or page thereof) are less than one A4 page in length the fee allowed therefor is to be at the discretion of the taxing officer.
- G. For drawing any bill of costs (not including a short form bill of costs) the taxing officer may allow an additional 50 per cent on all drawing fees.
- H. Such allowance for kilometrage by motor vehicle or other conveyance will be made as the taxing officer shall consider reasonable.
- I. Where the Court orders a party, or a party or person is otherwise required, to tax costs both as between party and party and solicitor and client, Form 37 of the Supreme Court Rules shall be modified by the applicant so as to provide for the inclusion of both party and party and solicitor and client costs and the respondents' respective responses thereto.

## SIXTH SCHEDULE

<i>Preparation of Documents</i>	\$
1. Drawing any document which is necessary to originate, or for use in, or in connection with, any proceeding or in a matter whether litigious or otherwise, including the engrossment of the original per A4 page.....	40.50
PROVIDED THAT a greater amount may be allowed where the matter is of importance and/or difficulty.	
2. Where any document is partly printed and partly drawn, the drawing fee for the drawn part shall be allowed and, in addition, for the printed matter (including all perusals thereof) per A4 page .....	9.10
2A. Engrossing the original of any document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per A4 page.....	9.10
3. Where a document is prepared on other than A4 paper the amounts to be allowed under items 1 and 2 may be increased or decreased in the discretion of the taxing officer. The fees under items 1 and 2 shall include the preparation of a backsheet.	
4. Photocopying any document:	
(a) per sheet .....	0.50
(b) where a substantial number of sheets are or should be photocopied at the same time, in respect of multiple copies of the same document for each sheet after the first regard may be had to commercial photocopying rates.	
5. Perusing document, per A4 page or the equivalent thereof ( <i>see note J</i> ).....	4.60
If of substance not exceeding per A4 page .....	12.20
6. Scanning of documents where full perusal is not justified, per A4 page or the equivalent thereof.....	1.20
<i>Attendances (see Note K)</i>	
7. The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour .....	165.00
8. The attendance of a solicitor where work done does not require special skills or legal knowledge, but where it is proper that a solicitor should personally attend, and travelling time, per hour .....	100.00
9. Attending on any application, matter or taxation in chambers or on a pretrial conference, or a conciliation conference (not certified fit for counsel) or on any callover:	
(a) if short or matter adjourned without substantial argument.....	60.00
(b) if ordinary.....	100.00
(c) if protracted or of difficulty, per hour .....	165.00
10. Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour.....	80.00

11. Attending at Court to file or lodge documents or papers, or to set down, attendance to deliver documents or any other attendance capable of performance by a junior clerk, including attending to set down any Chamber application and to search the list for Chamber appointments and all attendances necessary to settle and seal an order or other document, per attendance .....	13.20
12. An attendance by telephone of a solicitor, for each six minute interval thereof or part thereof.....	15.00
13. An attendance by telephone of a clerk on a matter of substance:	
(a) on a matter of substance.....	8.00
(b) on a short call where a message is left.....	2.00
14. An attendance on the swearing of an affidavit:	
(a) of a solicitor to be sworn to an affidavit .....	20.25
(b) of a solicitor to take an affidavit where he or his firm has prepared the affidavit ...	9.10
(c) of a clerk to be sworn to an affidavit.....	13.20
(d) of a solicitor on any other person to be sworn to an affidavit where no charge is made under (b).....	20.50

(such fee is to include all charges for marking exhibits and for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes. If the attendance exceeds 15 minutes, the attendance will be allowed proportionately, at the rate fixed by Item 8 of the Scale).

*Letters*

15. Any letter:	
(a) not exceeding one A4 page .....	15.00-25.30
(b) exceeding more than one A4 page, for the first page.....	25.30
and for subsequent pages .....	40.50
(c) circular letters (including the cost of copying) per A4 page .....	5.05
16. (a) For incoming facsimile transmissions per page.....	0.50
(b) For outgoing facsimile transmissions:	
for the first page.....	4.00
for each subsequent page .....	1.00

Where applicable, STD and ISD charges will be allowed as disbursement.

17. For the payment of any account where an account in writing has been rendered and which is in order, including any letter sent with the payment of the account, if the letter relates solely to the account, and to include all disbursements on cheques .....	5.10
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*Registration of Certificate of Judgment under Service and Execution of Process Act*

18. Instructions for and attending to registration of certificate of judgment pursuant to the *Service and Execution of Process Act* including all correspondence documents, attendances in relation thereto as assessed pursuant to Section 22A(1) of the Act but not exceeding..... 223.00

*Miscellaneous*

19. Paging, collating binding and indexing copy documents for use of the Trial Judge, including the index:
- (a) where the copy documents are 10 A4 pages or less ..... 6.10
  - (b) more than 10 A4 pages ..... 11.20
20. Paging, collating, binding and indexing a brief, of:
- (a) 10 pages or less ..... 12.20
  - (b) more than 10 pages and less than 50 pages ..... 45.60
  - (c) more than 50 pages and less than 100 pages ..... 76.00
  - (d) more than 100 pages and less than 200 pages ..... 121.50
  - (e) more than 200 pages ..... 177.00
- Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of one half of the amount allowable under this time for the first copy of the brief or appeal book for each additional brief or appeal book will be allowed. Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 may be treated as a separate brief or appeal book.
21. Care and consideration in the preparation of a brief to be an amount in the direction of the taxing Master but in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters ..... 51.00
22. Preparation of short form Bill of Costs, per A4 page ..... 40.50
23. Drawing and the engrossment of the original, and of the solicitor's own copy, of:
- (a) a proof of a witness for a brief, where it is not necessary substantially to recast any notes made of the statement of the witness or to collate any number of previous statements;
  - (b) indices (where not otherwise provided);
  - (c) formal lists;
  - (d) copies or extracts from other documents, per A4 page ..... 20.50

*Notes:*

- A. The amount allowed for each of the above items is to be at the discretion of the taxing officer, who shall be at liberty in the particular circumstances of the matter to disallow any item entirely or to allow a greater or a lesser amount for any item AND PROVIDED THAT a greater amount may be allowed where the matter is of importance or difficulty.
- B. Each bill of costs (other than a short form bill of costs) must show:
- (1) the time spent on any attendance;

- (2) the number of A4 pages (or the equivalent thereof) contained in any document for which a charge is made;
  - (3) the name of any solicitor and the status of any clerk in respect of whom any attendance is charged;
  - (4) a separate identifying number for each item and the date thereof;
  - (5) the items of work and disbursements in chronological order.
- C. Where the time for any attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of an hour.
- D. Where in this schedule fees (other than for photocopying) are set by reference to an A4 page, such fee is fixed (except in the case of correspondence) on the basis that the typed or printed content of each page consists of 30 lines in courier 10 size print with margins approximating the minimum referred to in R 102.02(b). Where correspondence is concerned, the fee is fixed on the basis that the typed content of each page after the first page consists of 45 lines in courier 10 sized print with margins approximating the minimum referred to in Rule 102.02(b). The fee allowable may be adjusted by the taxing officer depending on whether the document in question exceeds or falls short of those standards.
- E. Only the amount of disbursements actually paid or payable are to be shown in the bill as disbursements. Where a disbursement is yet to be paid, this must be specially stated.
- F. Where the contents of a document (or page thereof) are less than one A4 page in length the fee allowed therefor is to be at the discretion of the taxing officer.
- G. For drawing any bill of costs (not including a short form bill of costs) the taxing officer may allow an additional 50 per cent on all drawing fees.
- H. Such allowance for kilometrage by motor vehicle or other conveyance will be made as the taxing officer shall consider reasonable.
- I. Where the Court orders a party, or a party or person is otherwise required, to tax costs both as between party and party and solicitor and client, Form 37 of the Supreme Court Rules shall be modified by the applicant so as to provide for the inclusion of both party and party and solicitor and client costs and the respondents' respective responses thereto.
- J. The maximum rate is appropriate for documents such as pleadings, particulars, advices and opinions and for the more complicated medical and expert reports. A middle range figure will be appropriate for standard expert reports, lists of documents and medical reports. The lower rate will apply to appearances, ordinary correspondence, special damages, vouchers and the like. In cases where a large volume of documents is required to be perused, an hourly rate may be allowed by the Taxing Officer in lieu of a perusal fee.
- K. When an instructing solicitor is in Court the lower rate should be allowed if the solicitor is merely assisting counsel by being present, but the higher rate should be allowed if the solicitor is more actively involved, eg by proofing witnesses, preparing indices, etc.

## SEVENTH SCHEDULE

<i>Preparation of documents</i>	\$
1. Drawing any document which is necessary to originate, or for use in, or in connection with, any proceeding or in a matter whether litigious or otherwise, including the engrossment of the original per A4 page .....	44.00
PROVIDED THAT a greater amount may be allowed where the matter is of importance and/or difficulty.	
2. Where any document is partly printed and partly drawn, the drawing fee for the drawn part shall be allowed and, in addition, for the printed matter (including all perusals thereof) per A4 page .....	10.00
2A. Engrossing the original of any document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per A4 page .....	10.00
3. Where a document is prepared on other than A4 paper the amounts to be allowed under items 1 and 2 may be increased or decreased in the discretion of the taxing officer. The fees under items 1 and 2 shall include the preparation of a backsheet.	
4. Photocopying any document:	
(a) per sheet .....	0.55
(b) where a substantial number of sheets are or should be photocopied at the same time, in respect of multiple copies of the same document for each sheet after the first regard may be had to commercial photocopying rates.	
5. Perusing document, per A4 page or the equivalent thereof ( <i>see Note J</i> )....	5.00
If of substance, not exceeding per A4 page .....	13.40
6. Scanning of documents where full perusal is not justified, per A4 page or the equivalent thereof .....	1.30
<i>Attendances (see Note K)</i>	
7. The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour .....	180.00
8. The attendance of a solicitor where work done does not require special skills or legal knowledge, but where it is proper that a solicitor should personally attend, and travelling time, per hour.....	110.00
9. Attending on any application, matter or taxation in chambers or on a pre-trial conference, or a conciliation conference (not certified fit for counsel) or on any callover:	
(a) if short or matter adjourned without substantial argument .....	65.00
(b) if ordinary.....	110.00
(c) if protracted or of difficulty, per hour .....	180.00
10. Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour .....	86.00

11. Attending at Court to file or lodge documents or papers, or to set down, attendance to deliver documents or any other attendance capable of performance by a junior clerk, including attending to set down any Chamber application and to search the list for Chamber appointments and all attendances necessary to settle and seal an order or other document, per attendance .....	14.50
12. An attendance by telephone of a solicitor, for each six minute interval thereof or part thereof.....	16.50
13. An attendance by telephone of a clerk:	
(a) on a matter of substance.....	8.80
(b) on a short call where a message is left .....	2.20
14. An attendance on the swearing of an affidavit:	
(a) of a solicitor to be sworn to an affidavit .....	22.00
(b) of a solicitor to take an affidavit where he or his firm has prepared the affidavit.....	10.00
(c) of a clerk to be sworn to an affidavit .....	14.50
(d) of a solicitor on any other person to be sworn to an affidavit where no charge is made under (b).....	22.50
(such fee is to include all charges for marking exhibits and for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes. If the attendance exceeds 15 minutes, the attendance will be allowed proportionately, at the rate fixed by Item 8 of the Scale.)	

*Letters*

15. Any letter:	
(a) not exceeding one A4 page .....	16.00-28.00
(b) exceeding more than one A4 page:	
for the first page.....	28.00
and for subsequent pages.....	44.00
(c) circular letter (including the cost of copying) per A4 page .....	5.50
16. (a) For incoming facsimile transmissions per page.....	0.55
(b) For outgoing facsimile transmissions:	
for the first page.....	4.50
for each subsequent page .....	1.10

Where applicable, STD and ISD charges will be allowed as a disbursement.

17. For the payment of any account where an account in writing has been rendered and which is in order, including any letter sent with the payment of the account, if the letter relates solely to the account, and to include all disbursements on cheques.....	5.50
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*Registration of Certificate of Judgment Under Service and Execution of Process Act*

18. Instructions for and attending to registration of a certificate of judgment pursuant to the Service and Execution of Process Act including all correspondence documents, attendances in relation thereto as assessed pursuant	
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to section 22A(1) of the Act but not exceeding.....	245.00
<i>Miscellaneous</i>	
19. Paging, collating, binding and indexing copy documents for use of the Trial Judge, including the index:	
(a) where the copy documents are 10 A4 pages or less.....	6.50
(b) more than 10 A4 page.....	12.20
20. Paging, collating, binding and indexing a brief, of:	
(a) 10 pages or less.....	13.00
(b) more than 10 pages and less than 50 pages.....	50.00
(c) more than 50 pages and less than 100 pages.....	83.00
(d) more than 100 pages and less than 200 pages.....	132.00
(e) more than 200 pages.....	193.00
Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of one half of the amount allowable under this time for the first copy of the brief or appeal book for each additional brief or appeal book will be allowed. Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 may be treated as a separate brief or appeal book.	
21. Care and consideration in the preparation of a brief to be an amount in the discretion of the taxing Master but in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters	56.00
22. Preparation of short form Bill of Costs, per A4 page.....	44.00
23. Drawing and the engrossment of the original, and of the solicitor's own copy, of:	
(a) a proof of a witness for a brief, where it is not necessary substantially to recast any notes made of the statement of the witness or to collate any number of previous statements;	
(b) indices (where not otherwise provided);	
(c) formal lists;	
(d) copies of extracts from other documents, per A4 page.....	22.00

Notes:

- A. The amount allowed for each of the above items is to be at the discretion of the taxing officer, who shall be at liberty in the particular circumstances of the matter to disallow any item entirely or to allow a greater or a lesser amount for any item AND PROVIDED THAT a greater amount may be allowed where the matter is of importance or difficulty.
- B. Each bill of costs (other than a short form bill of costs) must show:
- (1) the time spent on any attendance;
  - (2) the number of A4 pages (or the equivalent thereof) contained in any document for which a charge is made;
  - (3) the name of any solicitor and the status of any clerk in respect of whom any attendance is charged;
  - (4) a separate identifying number for each item and the date thereof;
  - (5) the items of work and disbursements in chronological order.
- C. Where the time for any attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of an hour.
- D. Where in this schedule fees (other than for photocopying) are set by reference to an A4 page, such fee is fixed (except in the case of correspondence) on the basis that the typed or printed content of each page consists of 30 lines in courier 10 size print with margins approximating the minimum referred to in R 102.02(b). Where correspondence is concerned, the fee is fixed on the basis that the typed content of each page after the first page consists of 45 lines in courier 10 sized print with margins approximating the minimum referred to in Rule 102.02(b). The fee allowable may be adjusted by the taxing officer depending on whether the document in question exceeds or falls short of those standards.
- E. Only the amount of disbursements actually paid or payable are to be shown in the bill as disbursements. Where a disbursement is yet to be paid, this must be specially stated.
- F. Where the contents of a document (or page thereof) are less than one A4 page in length the fee allowed therefor is to be at the discretion of the taxing officer.
- G. For drawing any bill of costs (not including a short form bill of costs) the taxing officer may allow an additional 50 per cent on all drawing fees.
- H. Such allowance for kilometrage by motor vehicle or other conveyance will be made as the taxing officer shall consider reasonable.
- I. Where the Court orders a party, or a party or person is otherwise required, to tax costs both as between party and party and solicitor and client, Form 37 of the Supreme Court Rules shall be modified by the applicant so as to provide for the inclusion of both party and party and solicitor and client costs and the respondents' respective responses thereto.
- J. The maximum rate is appropriate for documents such as pleadings, particulars, advices and opinions and for the more complicated medical and expert reports. A middle range figure will be appropriate for standard expert reports, lists of documents and medical reports. The lower rate will apply to appearances, ordinary correspondence, special damages, vouchers and the like. In cases where a large volume of documents is required to be perused, an hourly rate may be allowed by the Taxing Officer in lieu of a perusal fee.

- K. When an instructing solicitor is in Court the lower rate should be allowed if the solicitor is merely assisting counsel by being present, but the higher rate should be allowed if the solicitor is more actively involved, eg by proofing witnesses, preparing indices, etc.
- L. The costs allowed in this scale are inclusive of the Goods and Services Tax (GST).

revoked

## EIGHTH SCHEDULE

1. The lump sum costs recoverable pursuant to Rule 101A.07 are:

- (a) in default of appearance    \$1 500.00
- (b) in default of defence        \$1 600.00

2. The costs referred to in paragraph 1 are inclusive of disbursements.

## NINTH SCHEDULE

### *Preparation of documents:*

	\$
1. Drawing any document which is necessary to originate, or for use in, or in connection with, any proceeding or in a matter whether litigious or otherwise including the engrossment of the original per A4 page .....	44.00
PROVIDED THAT a greater amount may be allowed where the matter is of importance and/or difficulty.	
2. Where any document is partly printed and partly drawn, the drawing fee for the drawn part shall be allowed and, in addition, for the printed matter (including all perusals thereof) per A4 page .....	10.00
3. Engrossing the original of any document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per A4 page .....	10.00
4. Where a document is prepared on other than A4 paper the amounts to be allowed under items 1 and 2 may be increased or decreased in the discretion of the taxing officer. The fees under items 1 and 2 shall include the preparation of a backsheet.	
5. Photocopying any document:	
(a) per sheet .....	0.55
(b) where a substantial number of sheets are or should be photocopied at the same time, in respect of multiple copies of the same document for each sheet after the first regard may be had to commercial photocopying rates.	
6. Printing any e-mails (sent or received) or the electronic scanning of any documents, per sheet.....	0.55
7. Perusing document, per A4 page or the equivalent thereof ( <i>see Note J</i> ).....	5.00
If of substance, not exceeding per A4 page .....	13.40
8. Scanning of documents including e-mails where full perusal is not justified, per A4 page or the equivalent thereof.....	1.30

### *Attendances (see Note K):*

9. The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour .....	180.00
10. .... T	110.00

11.	Attending on any application, matter or taxation in chambers or on a pre-trial conference, or a conciliation conference (not certified fit for counsel) or on any callover:	
	(c) if short or matter adjourned without substantial argument .....	65.00
	(d) if ordinary.....	110.00
	(e) if protracted or of difficulty, per hour .....	180.00
12.	Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour .....	86.00
13.	Attending at Court to file or lodge documents or papers, or to set down, attendance to deliver documents or any other attendance capable of performance by a junior clerk, including attending to set down any Chamber application and to search the list for Chamber appointments and all attendances necessary to settle and seal an order or other document, per attendance .....	14.50
14.	Filing or lodging documents or papers at Court electronically, per lodgement.....	14.50
15.	An attendance by telephone of a solicitor, for each six minute interval thereof or part thereof.....	16.50
16.	An attendance by telephone of a clerk:	
	(a) on a matter of substance.....	8.80
	(b) on a short call where a message is left .....	2.20
17.	An attendance on the swearing of an affidavit:	
	(a) of a solicitor to be sworn to an affidavit .....	22.00
	(b) of a solicitor to take an affidavit where he or his firm has prepared the affidavit.....	10.00
	(c) of a clerk to be sworn to an affidavit .....	14.50
	(d) of a solicitor on any other person to be sworn to an affidavit where no charge is made under (b).....	22.50
	(such fee is to include all charges for marking exhibits and for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes. If the attendance exceeds 15 minutes, the attendance will be allowed proportionately, at the rate fixed by Item 10 of the Scale.)	
<i>Letters:</i>		
18.	Any letter (including an e-mail letter):	
	(a) not exceeding one A4 page .....	16.00
	(b) exceeding more than one A4 page:	
	for the first page .....	28.00
	and for subsequent pages .....	44.00
	(c) circular letters (including the cost of copying) per A4 page.....	5.50

19. (a) For incoming facsimile transmissions per page.....	0.55
(b) For outgoing facsimile transmissions:	
for the first page.....	4.50
for each subsequent page.....	1.10
Where applicable, STD and ISD charges will be allowed as a disbursement.	
20. For the payment of any account where an account in writing has been rendered and which is in order, including any letter sent with the payment of the account, if the letter relates solely to the account, and to include all disbursements on cheques.....	5.50
<i>Registration of Certificate of Judgment Under Service and Execution of Process Act:</i>	
21. Instructions for and attending to registration of a certificate of judgment pursuant to the Service and Execution of Process Act including all correspondence documents, attendances in relation thereto as assessed pursuant to section 22A(1) of the Act but not exceeding.....	245.00
<i>Miscellaneous:</i>	
22. Paging, collating, binding and indexing copy documents for use of the Trial Judge, including the index:	
(a) where the copy documents are 10 x A4 pages or less.....	6.50
(b) more than 10 x A4 pages.....	12.20
23. Paging, collating, binding and indexing a brief, of:	
(a) 10 pages or less.....	13.00
(b) more than 10 pages and less than 50 pages.....	50.00
(c) more than 50 pages and less than 100 pages.....	83.00
(d) more than 100 pages and less than 200 pages.....	132.00
(e) more than 200 pages.....	193.00
Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of one half of the amount allowable under this time for the first copy of the brief or appeal book for each additional brief or appeal book will be allowed. Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 may be treated as a separate brief or appeal book.	
24. Care and consideration in the preparation of a brief to be an amount in the discretion of the taxing Master but in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters	56.00
25. Preparation of short form Bill of Costs, per A4 page.....	44.00

26. Drawing and the engrossment of the original, and of the solicitor's own copy, of:
- (a) a proof of a witness for a brief, where it is not necessary substantially to recast any notes made of the statement of the witness or to collate any number of previous statements;
  - (b) indices (where not otherwise provided);
  - (c) formal lists;
  - (d) copies of extracts from other documents, per A4 page ..... 22.00

Notes:

- A. The amount allowed for each of the above items is to be at the discretion of the taxing officer, who shall be at liberty in the particular circumstances of the matter to disallow any item entirely or to allow a greater or a lesser amount for any item AND PROVIDED THAT a greater amount may be allowed where the matter is of importance or difficulty.
- B. Each bill of costs (other than a short form bill of costs) must show:
  - (1) the time spent on any attendance;
  - (2) the number of A4 pages (or the equivalent thereof) contained in any document for which a charge is made;
  - (3) the name of any solicitor and the status of any clerk in respect of whom any attendance is charged;
  - (4) a separate identifying number for each item and the date thereof;
  - (5) the items of work and disbursements in chronological order.
- C. Where the time for any attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of an hour.
- D. Where in this schedule fees (other than for photocopying) are set by reference to an A4 page, such fee is fixed (except in the case of correspondence) on the basis that the typed or printed content of each page consists of 30 lines in Courier 10 size print with margins approximately the minimum referred to in Rule 102.02(b). Where correspondence is concerned, the fee is fixed on the basis that the typed content of each page after the first page consists of 45 lines in Courier 10 sized print with margins approximating the minimum referred to in Rule 102.02(b). The fee allowable may be adjusted by the taxing officer depending on whether the document in question exceeds or falls short of those standards.
- E. Only the amount of disbursements actually paid or payable are to be shown in the bill as disbursements. Where a disbursement is yet to be paid, this must be specially stated.
- F. Where the contents of a document (or page thereof) are less than one A4 page in length the fee allowed therefor is to be at the discretion of the taxing officer.
- G. For drawing any bill of costs (not including a short form bill of costs) the taxing officer may allow an additional 50 per cent on all drawing fees.
- H. Such allowance for kilometrage by motor vehicle or other conveyance will be made as the taxing officer shall consider reasonable.
- I. Where the Court orders a party, or a party or person is otherwise required, to tax costs both as between party and party and solicitor and client, Form 37 of the Supreme Court Rules shall be

modified by the applicant so as to provide for the inclusion of both party and party and solicitor and client costs and the respondents' respective responses thereto.

- J. The maximum rate is appropriate for documents such as pleadings, particulars, advices and opinions and for the more complicated medical and expert reports. A middle range figure will be appropriate for standard expert reports, lists of documents and medical reports. The lower rate will apply to notices of address for service, ordinary correspondence, special damages, vouchers and the like. In cases where a large volume of documents is required to be perused, an hourly rate may be allowed by the Taxing Officer in lieu of a perusal fee.
- K. When an instructing solicitor is in Court the lower rate should be allowed if the solicitor is merely assisting counsel by being present, but the higher rate should be allowed if the solicitor is more actively involved, eg by proofing witnesses, preparing indices, etc.
- L. The costs allowed in this scale do not include the Goods and Services Tax (GST).

The GST should not be included in a claim for costs in a party/party Bill of Costs if the receiving party is able to recover the GST as an input tax credit. Where the receiving party is able to obtain an input tax credit for a proportion of the GST only, only that portion which is eligible for credit should be claimed in the party/party bill.

Where there is a dispute as to whether the GST is properly claimed in the party/party Bill of Costs, the receiving party must provide a certificate signed by the solicitors or the auditors of the receiving party as to the extent of any input tax credit available to the receiving party.

revoked



**TENTH SCHEDULE**  
**PLEASE READ NOTES ATTACHED TO THIS SCHEDULE**

	\$
<i>Documents</i>	
1. Drawing any document which is necessary to originate, or for use in, or in connection with, any proceeding or in a matter whether litigious or otherwise including the engrossment of the original per A4 page.....	62.00
PROVIDED THAT a greater amount may be allowed where the matter is of importance and/or difficulty.	
<i>(see Notes D, E and G)</i>	
2. Where any document is partly printed and partly drawn, the drawing fee for the drawn part shall be allowed and, in addition, for the printed matter (including all perusals thereof) per A4 page.....	14.00
<i>(see Notes D and E)</i>	
3. Engrossing the original of any document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per A4 page .....	14.00
<i>(see Notes D and E)</i>	
4. Photocopying or printing any document, including printing any e-mail (sent or received) per sheet .....	0.80
<i>(see Note L)</i>	
5. Perusing any document, per A4 page or the equivalent thereof.....	7.00
If of substance, not exceeding per A4 page.....	19.00
<i>(see Notes D and J)</i>	
6. Scanning of documents including e-mails where full perusal is not justified, per A4 page or the equivalent thereof.....	1.80
<i>(see Note D)</i>	
<i>Attendances (see Note C)</i>	
7. The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour.....	250.00
<i>(see Note K)</i>	
8. The attendance of a solicitor where work done does not require special skills or legal knowledge, but where it is proper that a solicitor should personally attend, and travelling time, per hour.....	154.00
<i>(see Note K)</i>	

9.	Attending on any application, matter or taxation in chambers or on a pre-trial conference, or a settlement conference (not certified fit for counsel) or any callover:	
	(a) if short or matter adjourned without substantial argument .....	90.00
	(b) if ordinary .....	155.00
	(c) if protracted or of difficulty, per hour - in a range .....	250.00
10.	Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour .....	120.00
11.	Attending at Court to file or lodge documents or papers, or to set down, attendance to deliver documents or any other attendance capable of performance by a junior clerk, including attending to set down any Chamber application and to search the list for Chamber appointments and all attendances necessary to settle and seal an order or other document and including filing or lodging documents or papers at Court electronically, per attendance or lodgement .....	20.00
12.	An attendance by telephone of a solicitor, for each six minutes interval or part thereof	25.00
13.	An attendance by telephone of a clerk:	
	(a) on a matter of substance .....	12.50
	(b) on a short call where a message is left .....	3.00
14.	An attendance on the swearing of an affidavit:	
	(a) of a solicitor to be sworn to an affidavit .....	36.00
	(b) of a solicitor to take an affidavit where he or his firm has prepared the affidavit .....	20.00
	(c) of a clerk to be sworn to an affidavit .....	20.00
	(d) of a solicitor on any other person to be sworn to an affidavit where no charge is made under (b) .....	38.00
	(such fee is to include all charges for marking exhibits and for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes. If the attendance exceeds 15 minutes, the attendance will be allowed proportionately, at the rate fixed by Item 7 of the Scale.)	

*Letters*

15. Any letter (including an e-mail letter):
- (a) per A4 page, provided that letters of less than one page and the first page of any letter are to be charged proportionally ..... 62.00
  - (b) circular letters after the first (including the cost of copying/printing per A4 page ..... 8.00
- (see Notes D and E)
16. For receiving and sending facsimile transmissions and e-mails and the electronic scanning of documents:
- (a) for incoming facsimile transmissions per printed page ..... 1.00
  - (b) for outgoing facsimile transmissions:
    - for the first page ..... 9.00
    - for each subsequent page ..... 2.00
  - (c) for outgoing e-mails (not charged under item 15): ..... 6.50
    - for each attachment ..... 6.50
  - (d) for electronically scanning documents:
    - for the first sheet..... 6.50
    - for each subsequent sheet..... 2.00

Where applicable, STD and ISD charges will be allowed as a disbursement.

17. For the payment of any account where an account in writing has been rendered and which is in order, including any letter sent with the payment of that account, if the letter relates solely to the account, and to include all disbursements on cheques ..... 8.00

*Registration of Certificate of Judgment Under Service and Execution of Process Act*

18. Instructions for and attending to registration of a certificate of judgment pursuant to the Service and Execution of Process Act including all correspondence, documents, attendances in relation thereto as assessed pursuant to section 22A(1) of the Act but not exceeding..... 345.00

*Miscellaneous*

19. Paging, collating, binding and indexing copy documents for use of the Trial Judge, including the index:
- (a) where the copy documents are 10 x A4 pages or less ..... 9.00
  - (b) more than 10 x A4 pages..... 17.00

20.	Paging, collating, binding and indexing a brief of:	
	(a) 10 pages or less .....	18.00
	(b) from 11 to 50 pages.....	70.00
	(c) from 51 to 100 pages.....	116.00
	(d) from 101 to 200 pages.....	185.00
	(e) more than 200 pages.....	270.00

Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of one half of the amount allowable under this item for the first copy of the brief or appeal book for each additional brief or appeal book will be allowed.

Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 pages may be treated as a separate brief or appeal book.

21.	Care and consideration in the preparation of a brief to be an amount in the discretion of the taxing Master but in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters	80.00
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22.	Preparation of short form bill of costs, per A4 page .....	62.00
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23.	Drawing and the engrossment of the original, and of the solicitor's own copy of:	
	(a) a proof of a witness for a brief, where it is not necessary substantially to recast any notes made of the statement of the witness or to collate any number of previous statements;	
	(b) indices (where not otherwise provided);	
	(c) formal lists;	
	(d) copies of extracts from other documents, per A4 page.....	30.00

Notes:

- A. The amount allowed for each of the above items is to be at the discretion of the taxing officer, who shall be at liberty in the particular circumstances of the matter to disallow any item entirely or to allow a greater or lesser amount for any item AND PROVIDED THAT a greater amount may be allowed where the matter is of importance or difficulty.
- B. Each bill of costs (other than a short form bill of costs) must show:
- (1) the time spent on any attendance;
  - (2) the number of A4 pages (or the equivalent thereof) contained in any document for which a charge is made;
  - (3) the name of any solicitor and the status of any clerk in respect of whom any attendance is charged;
  - (4) a separate identifying number for each item and the date thereof;
  - (5) the items of work and disbursements in chronological order.
- C. Where the time for any attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of an hour.
- D. Where in this schedule fees (other than for photocopying, printing, electronically scanning, or sending and receiving by facsimile transmission) are set by reference to an A4 page, such fees are fixed (except in the case of correspondence) on the basis that the typed or printed content of each page consists of 30 lines of 12 size print with margins approximately the minimum referred to in R 102.02(b). Where correspondence is concerned, the fee is fixed on the basis that the typed content of each page consists of 45 lines in 12 size print with margins approximately the minimum referred to in R 102.02(b). The fee allowable may be adjusted by the taxing officer depending on whether the document in question exceeds or falls short of those standards.
- Where the contents of a document (or page thereof) are less than one A4 page in length the fee allowed is therefore to be at the discretion of the taxing officer.
- E. Where a document is prepared on other than A4 paper the amounts to be allowed under items 1, 2, 3 and 15 may be increased or decreased in the discretion of the taxing officer.
- F. Only the amount of disbursements actually paid or payable are to be shown in the bill as disbursements. Where a disbursement is yet to be paid, this must be specially stated.
- G. For drawing of any bill of costs (not including a short form bill of costs) the taxing officer may allow an additional 50 per cent on all drawing fees.
- H. Such allowance for kilometreage by motor vehicle or other conveyance will be made as the taxing officer shall consider reasonable.
- I. Where the Court orders a party, or a party or person is otherwise required, to tax costs both as between party and party and solicitor and client, Form 37 of the Supreme Court Rules shall be modified by the applicant so as to provide for the inclusion of both party and party and solicitor and client costs and the respondent's respective responses thereto.
- J. The maximum rate for perusal is appropriate for documents such as pleadings, particulars, advices and opinions and for the more complicated medical and expert reports. A middle range figure will

be appropriate for standard expert reports, lists of documents and medical reports. The lower rate will apply to appearances, ordinary correspondence, special damages, vouchers and the like. In cases where a large volume of documents is required to be perused, an hourly rate may be allowed by the taxing officer in lieu of a perusal fee.

- K. When an instructing solicitor is in Court the lower attendance rate should be allowed if the solicitor is merely assisting counsel by being present, but the higher rate should be allowed if the solicitor is more actively involved, eg by proofing witnesses, preparing indices, etc.
- L. Where a substantial number of sheets are or should be photocopied at the same time, in respect of multiple copies of the same document for each sheet after the first regard may be had to commercial photocopying rates.
- M. The costs allowed in scale do not include the Goods and Services Tax (GST) which is to be added except in the following circumstances.

The GST should not be included in a claim for costs in a party/party Bill of Costs if the receiving party is able to recover the GST as an input tax credit. Where the receiving party is able to obtain an input tax credit for a proportion of GST only, only the portion which is not eligible for credit should be claimed in the party/party bill.

Where there is a dispute as to whether the GST is properly claimed in the party/party Bill of Costs, the receiving party must provide a certificate signed by the solicitors or the auditors of the receiving party as to the extent of any input tax credit available to the receiving party.

revoked

**ELEVENTH SCHEDULE**  
**PLEASE READ NOTES ATTACHED TO THIS SCHEDULE**

<b>Documents</b>		\$
1.	Drawing any document which is necessary to originate, or for use in, or in connection with, any proceeding or in a matter whether litigious or otherwise including the engrossment of the original per A4 page.....	63.00
	PROVIDED THAT a greater amount may be allowed where the matter is of importance and/or difficulty. (see Notes D, E and G)	
2.	Where any document is partly printed and partly drawn, the drawing fee for the drawn part shall be allowed and, in addition, for the printed matter (including all perusals thereof) per A4 page.....	14.00
	(see Notes D and E)	
3.	Engrossing the original of any document where no allowance is made for such engrossment elsewhere, including the solicitor's own copy, per A4 page .....	14.00
	(see Notes D and E)	
4.	Photocopying or printing any document, including printing any e-mail (sent or received) per sheet .....	1.00
	(see Note L)	
5.	Perusing any document, per A4 page or the equivalent thereof.....	7.00
	If of substance, not exceeding per A4 page.....	19.00
	(see Notes D and J)	
6.	Scanning of documents including e-mails where full perusal is not justified, per A4 page or the equivalent thereof.....	2.00
	(see Note D)	
	<b>Attendances</b> (see Note C)	
7.	The attendance of a solicitor where the nature of the work requires the exercise of special skill or legal knowledge, per hour.....	255.00
	(see Note K)	
8.	The attendance of a solicitor where work done does not require special skills or legal knowledge, but where it is proper that a solicitor should personally attend, and travelling time, per hour.....	157.00
	(see Note K)	

9.	Attending on any application, matter or taxation in chambers or on a pre-trial conference, or a settlement conference (not certified fit for counsel) or any callover:	
	(a) if short or matter adjourned without substantial argument .....	92.00
	(b) if ordinary .....	158.00
	(c) if protracted or of difficulty, per hour - in a range .....	255.00
10.	Attendance of a clerk on work not properly able to be carried out by a junior clerk, including travelling time, per hour .....	123.00
11.	Attending at Court to file or lodge documents or papers, or to set down, attendance to deliver documents or any other attendance capable of performance by a junior clerk, including attending to set down any Chamber application and to search the list for Chamber appointments and all attendances necessary to settle and seal an order or other document and including filing or lodging documents or papers at Court electronically, per attendance or lodgement .....	20.00
12.	An attendance by telephone of a solicitor, for each six minutes interval or part thereof	26.00
13.	An attendance by telephone of a clerk:	
	(a) on a matter of substance .....	13.00
	(b) on a short call where a message is left .....	3.00
14.	An attendance on the swearing of an affidavit:	
	(a) of a solicitor to be sworn to an affidavit .....	37.00
	(b) of a solicitor to take an affidavit where he or his firm has prepared the affidavit .....	20.00
	(c) of a clerk to be sworn to an affidavit .....	20.00
	(d) of a solicitor on any other person to be sworn to an affidavit where no charge is made under (b) (such fee is to include all charges for marking exhibits and for perusing or reading over the affidavit when the attendance properly does not exceed 15 minutes. If the attendance exceeds 15 minutes, the attendance will be allowed proportionately, at the rate fixed by Item 7 of the Scale.) .....	39.00

### Letters

15.	Any letter (including an e-mail letter):	
	(a) per A4 page, provided that letters of less than one page and the first page of any letter are to be charged proportionally .....	63.00
	(b) circular letters after the first (including the cost of copying/printing per A4 page	8.00
	(see Notes D and E)	



16. For receiving and sending facsimile transmissions and e-mails and the electronic scanning of documents:
- (a) for incoming facsimile transmissions per printed page ..... 1.00
  - (b) for outgoing facsimile transmissions:
    - for the first page ..... 9.00
    - for each subsequent page ..... 2.00
  - (c) for outgoing e-mails (not charged under item 15): ..... 7.00
    - for each attachment ..... 7.00
  - (d) for electronically scanning documents:
    - for the first sheet..... 7.00
    - for each subsequent sheet..... 2.00

Where applicable, STD and ISD charges will be allowed as a disbursement.

17. For the payment of any account where an account in writing has been rendered and which is in order, including any letter sent with the payment of that account, if the letter relates solely to the account, and to include all disbursements on cheques ..... 8.00

**Registration of Certificate of Judgment Under Service and Execution of Process Act**

18. Instructions for and attending to registration of a certificate of judgment pursuant to the Service and Execution of Process Act including all correspondence, documents, attendances in relation thereto as assessed pursuant to section 22A(1) of the Act but not exceeding..... 352.00

**Miscellaneous**

19. Paging, collating, binding and indexing copy documents for use of the Trial Judge, including the index:
- (a) where the copy documents are 10 x A4 pages or less ..... 9.00
  - (b) more than 10 x A4 pages..... 17.00
20. Paging, collating, binding and indexing a brief of:
- (a) 10 pages or less ..... 18.00
  - (b) from 11 to 50 pages..... 72.00
  - (c) from 51 to 100 pages..... 119.00
  - (d) from 101 to 200 pages..... 189.00
  - (e) more than 200 pages..... 276.00

Where it is proper to deliver more than one brief, and in respect of appeal books after the first, an additional amount of one half of the amount allowable under this item for the first copy of the brief or appeal book for each additional brief or appeal book will be allowed.

Where a brief or appeal book exceeds 300 pages, the pages in excess of 300 pages may be treated as a separate brief or appeal book.

21.	Care and consideration in the preparation of a brief to be an amount in the discretion of the taxing Master but in cases where oral evidence is to be called on disputed matters or where there is to be substantial argument on legal matters	82.00
22.	Preparation of short form bill of costs, per A4 page .....	63.00
23.	Drawing and the engrossment of the original, and of the solicitor's own copy of:	
	(a) a proof of a witness for a brief, where it is not necessary substantially to recast any notes made of the statement of the witness or to collate any number of previous statements;	
	(b) indices (where not otherwise provided);	
	(c) formal lists;	
	(d) copies of extracts from other documents, per A4 page.....	31.00

**NOTES:**

- A. The amount allowed for each of the above items is to be at the discretion of the taxing officer, who shall be at liberty in the particular circumstances of the matter to disallow any item entirely or to allow a greater or lesser amount for any item AND PROVIDED THAT a greater amount may be allowed where the matter is of importance or difficulty.
- B. Each bill of costs (other than a short form bill of costs) must show:
- (1) the time spent on any attendance;
  - (2) the number of A4 pages (or the equivalent thereof) contained in any document for which a charge is made;
  - (3) the name of any solicitor and the status of any clerk in respect of whom any attendance is charged;
  - (4) a separate identifying number for each item and the date thereof;
  - (5) the items of work and disbursements in chronological order.
- C. Where the time for any attendance is only a portion of an hour, such amount may be allowed in accordance with the scale as the proportion of the hour bears to the amount allowed for the whole of an hour.
- D. Where in this schedule fees (other than for photocopying, printing, electronically scanning, or sending and receiving by facsimile transmission) are set by reference to an A4 page, such fees are fixed (except in the case of correspondence) on the basis that the typed or printed content of each page consists of 30 lines of 12 size print with margins approximately the minimum referred to in R 102.02(b). Where correspondence is concerned, the fee is fixed on the basis that the typed content of each page consists of 45 lines in 12 size print with margins approximately the minimum referred to in R 102.02(b). The fee allowable may be adjusted by the taxing officer depending on whether the document in question exceeds or falls short of those standards.

Where the contents of a document (or page thereof) are less than one A4 page in length the fee allowed is therefore to be at the discretion of the taxing officer.

- E. Where a document is prepared on other than A4 paper the amounts to be allowed under items 1, 2, 3 and 15 may be increased or decreased in the discretion of the taxing officer.
- F. Only the amount of disbursements actually paid or payable are to be shown in the bill as disbursements. Where a disbursement is yet to be paid, this must be specially stated.
- G. For drawing of any bill of costs (not including a short form bill of costs) the taxing officer may allow an additional 50 per cent on all drawing fees.
- H. Such allowance for kilometrage by motor vehicle or other conveyance will be made as the taxing officer shall consider reasonable.
- I. Where the Court orders a party, or a party or person is otherwise required, to tax costs both as between party and party and solicitor and client, Form 36 of the Supreme Court Rules shall be modified by the applicant so as to provide for the inclusion of both party and party and solicitor and client costs and the respondent's respective responses thereto.
- J. The maximum rate for perusal is appropriate for documents such as pleadings, particulars, advices and opinions and for the more complicated medical and expert reports. A middle range figure will be appropriate for standard expert reports, lists of documents and medical reports. The lower rate will apply to appearances, ordinary correspondence, special damages, vouchers and the like. In cases where a large volume of documents is required to be perused, an hourly rate may be allowed by the taxing officer in lieu of a perusal fee.
- K. When an instructing solicitor is in Court the lower attendance rate should be allowed if the solicitor is merely assisting counsel by being present, but the higher rate should be allowed if the solicitor is more actively involved, eg by proofing witnesses, preparing indices, etc.
- L. Where a substantial number of sheets are or should be photocopied at the same time, in respect of multiple copies of the same document for each sheet after the first regard may be had to commercial photocopying rates.
- M. The costs allowed in scale do not include the Goods and Services Tax (GST) which is to be added except in the following circumstances.

The GST should not be included in a claim for costs in a party/party Bill of Costs if the receiving party is able to recover the GST as an input tax credit. Where the receiving party is able to obtain an input tax credit for a proportion of GST only, only the portion which is not eligible for credit should be claimed in the party/party bill.

Where there is a dispute as to whether the GST is properly claimed in the party/party Bill of Costs, the receiving party must provide a certificate signed by the solicitors or the auditors of the receiving party as to the extent of any input tax credit available to the receiving party.