

MAGISTRATES COURT (CIVIL) RULES 1992 (SA)

[Updated to include Amendment 43 Gazetted 15 November 2012]

being

Magistrates Court (Civil) Rules (Govt. Gaz. 6 July 1992, p.459)

as amended by

Amendment No.1 to the Magistrates Court (Civil) Rules (Govt. Gaz. 7 January 1993, p. 47)

Amendment No.2 to the Magistrates Court (Civil) Rules (Govt. Gaz. 18 March 1993, p. 991)

Amendment No.3 to the Magistrates Court (Civil) Rules (Govt. Gaz. 18 March 1993, p. 994)

Amendment No.2 to the Magistrates Court (Civil) Rules (Govt. Gaz. 25 March 1993, p. 1092)

Amendment No.5 to the Magistrates Court (Civil) Rules (Govt. Gaz. 24 June 1993, p. 2159, re-gazetted 1 July 1994, p.447 [Commencement date 1 September 1993])

Amendment No.6 to the Magistrates Court (Civil) Rules (Govt. Gaz. 28 October 1993, p. 2132)

Amendment No.7 to the Magistrates Court (Civil) Rules (Govt. Gaz. 17 February 1994 p. 493) [Commencement date 7 March 1994]

Amendment No.8 to the Magistrates Court (Civil) Rules (Govt. Gaz. 10 March 1994, p. 701)

Amendment No.9 to the Magistrates Court (Civil) Rules (Govt. Gaz. 29 June 1995, p. 3027) [Commencement date 1 July 1995]

Amendment No.10 to the Magistrates Court (Civil) Rules (Govt. Gaz. 7 September 1995, p. 696)

Amendment No.11 to the Magistrates Court (Civil) Rules (Govt. Gaz. 7 March 1996, p. 1485)

Amendment No.12 to the Magistrates Court (Civil) Rules (Govt. Gaz. 6 June 1996, p. 2892)

Amendment No. 13 to the Magistrates Court (Civil) Rules (Govt. Gaz. 3 October 1996, p. 1284) [Commencement date 7 October 1996]

Amendment No. 14 to the Magistrates Court (Civil) Rules (Govt. Gaz. 8 May 1997, p. 1741)

Amendment No. 15 to the Magistrates Court (Civil) Rules (Govt. Gaz 15 April 1999, p. 1985)

Amendment No. 16 to the Magistrates Court (Civil) Rules (Gov. Gaz. 29 June 2000, p. 3474) [Commencement date 1 July 2000]

Erratum (Gov. Gaz. 10 August 2000, p 465)

Amendment No. 17 to the Magistrates Court (Civil) Rules (Gov. Gaz. 21 June 2001, p. 2300)

Amendment No. 18 to the Magistrates Court (Civil) Rules (Gov. Gaz. 8 November 2001, p. 4856)

Amendment No. 19 to the Magistrates Court (Civil) Rules (Gov. Gaz. 26 April 2002, p. 1679)

Erratum (Gov. Gaz. 13 June 2002, p. 2125)

Amendment No. 20 to the Magistrates Court (Civil) Rules (Gov. Gaz. 25 September 2003, p. 3631)

Amendment No. 21 to the Magistrates Court (Civil) Rules (Gov. Gaz. 29 January 2004, p. 279)

Amendment No 22 to the Magistrates Court (Civil) Rules (Gov. Gaz. 21 October 2004, p. 3909)

Amendment No 23 to the Magistrates Court (Civil) Rules (Gov. Gaz. 13 January 2005, p.44)

Amendment No 24 to the Magistrates Court (Civil) Rules (Gov. Gaz. 26 May 2005, p.1331)

Amendment No 25 to the Magistrates Court (Civil) Rules (Gov. Gaz. 10 November 2005, p.3919)

Amendment No 26 to the Magistrates Court (Civil) Rules (Gov. Gaz. 4 May 2006, p.1199)

Amendment No 27 to the Magistrates Court (Civil) Rules (Gov. Gaz. 31 August 2006, p.3035)

Amendment No 28 to the Magistrates Court (Civil) Rules (Gov. Gaz. 12 July 2007, p.3059) [*Commencement date 9 July 2007*]

Amendment No 29 to the Magistrates Court (Civil) Rules (Gov. Gaz. 17 April 2008, p.1344) [*Commencement date 30 June 2008*]

Amendment No 30 to the Magistrates Court (Civil) Rules (Gov. Gaz. 24 July 2008, p.3440)

Amendment No 31 to the Magistrates Court (Civil) Rules (Gov. Gaz. 25 September 2008, p.4558)

Amendment No 32 to the Magistrates Court (Civil) Rules (Gov. Gaz. 8 January 2009, p.62)

Amendment No 32 to the Magistrates Court (Civil) Rules (Gov. Gaz. 23 December 2009, p.6452)

Amendment No 33 to the Magistrates Court (Civil) Rules (Gov. Gaz. 1 July 2010, p.3312)

Amendment No 34 to the Magistrates Court (Civil) Rules (Gov. Gaz. 15 July 2010, p.3453)

Amendment No 36 to the Magistrates Court Rules (Gov. Gaz. 7 October 2010, p 5034)

Amendment No 35 to the Magistrates Court Rules (Gov. Gaz. 9 December 2010, p 5626)

Amendment No 37 to the Magistrates Court Rules (Gov. Gaz. 23 June 2011, p 2651)

Amendment No 38 to the Magistrates Court (Civil) Rules (Gov. Gaz. 3 November 2011, p 4402)

Amendment No 39 to the Magistrates Court (Civil) Rules (Gov. Gaz. 15 December 2011, p 4968)

Amendment No 40 to the Magistrates Court (Civil) Rules (Gov. Gaz. 27 January 2012, p 368)

Amendment No 41 to the Magistrates Court (Civil) Rules (Gov. Gaz. 8 March 2012, p 949)

Amendment No 42 to the Magistrates Court (Civil) Rules (Gov. Gaz. 10 May 2012, p 1656)

Amendment No 43 to the Magistrates Court (Civil) Rules (Gov. Gaz. 15 November 2012, p 5130)

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PRELIMINARY

1. (1) These Rules may be cited as the "Magistrates Court (Civil) Rules 1992".
- (2) These Rules commence on 6 July 1992.

DEFINITIONS

2. (1) In these Rules, unless the contrary intention appears –

"*the Act*" means the *Magistrates Court Act* 1991.

"*action*" or "*claim*" means an action or claim or request (at law or in equity), defence, counterclaim, set-off, interpleader, third and subsequent party action or claim, any other originating application or appellate action or claim and mediation and expert opinion arranged by the court in relation to an intended claim, respectively within the jurisdiction of the Civil Division of the Court.

"*application*" means an application to the Court of an interlocutory nature.

"*authorised user*" means a person authorised by the Courts Administration Authority to file documents by electronic filing. An authorised user will be given a user identifier and must nominate a password. A corporate authorized user will be required to nominate a natural person(s) as its agent with the authority to act on behalf of the body corporate, and each of those natural persons will be given a user identifier. The Principal Registrar can withdraw an authorisation by notice to the authorised user and without giving any reason.

"*costs*" means party and party costs including disbursements, witness fees, experts' charges and other expenses of and incidental to the conduct of an action.

"*costs on a solicitor/client basis*" means calculated in accordance with the Supreme Court scale unless otherwise specified.

"*date of filing*" means the date when a document was apparently sealed with the seal of the Court.

"*defendant*" includes a defendant to a counterclaim or third or subsequent party claim.

"*document*" includes, in addition to a document in writing:

- (a) an audio-tape;

- (b) a computer program or software, and any data or information recorded in or processed by a computer;
- (c) a film;
- (d) a microfiche record;

or any reproduction of such a document.

"DX" means the Australian Document Exchange at the following locations - Adelaide, Berri, Christies Beach, Elizabeth, Kadina, Modbury, Mount Barker, Mount Gambier, Murray Bridge, Naracoorte, Port Adelaide, Port Augusta, Port Lincoln, Port Pirie, Tanunda and Whyalla (or any other location fixed by Practice Direction).

"DX number" means the identifying number, at a DX, of a box at which a person is entitled to collect documents.

"*electronic filing*" means filing by electronic means at the Courts Administration Authority website.

"*e-mail*" means a transfer of documents from one computer to another correctly addressed to the name, user identification or string which the computer of the addressee recognizes.

"*Enforceable Payment Agreement*" or "*EPA*" means an agreement under Rule 20B.

"*fax*" means a facsimile of a document transmitted through a Telecom system.

"*fax number*" means the identifying Telecom number of a subscriber for the receipt of a fax.

"*film*" includes a photograph, videotape, digital images or cinematographic film.

"*judgment*" means a judgment, declaration, decree, decision or order of the Court disposing of an action, and includes an interlocutory judgment or order.

"*judgment debt*" includes costs and interest.

"*final judgment*" means any judgment –

- (a) made with the consent of the parties;
- (b) given at the conclusion of a contested hearing;

- (c) made in the terms of the acceptance of either an offer to consent to judgment or a payment of a sum of money to the Registrar; or
- (d) a summary judgment

“*Judicial intimation*” means an intimation made under Sub-rule 106 (10).

“*Non Payment Order*” or “*NPO*” means an order made under Rule 127A.

“*order*” includes the giving of a direction.

“*personal service*” includes service in accordance with Rule 47 Sub-rule (k)(i) and Sub-rule (1).

“*person under disability*” includes an infant and any person (whether under statutory protection or not) who by reason of physical or intellectual impairment is unable to give sufficient instructions to conduct or compromise an action.

“*plaintiff*” includes a plaintiff by counterclaim or third or subsequent party claim.

“*pleadings*” includes a statement in writing of the action or claim of a party and any particulars of such statement.

“*proceeding*” means a step or process in the course of an action or the enforcement of a judgment.

“*property*” means real or personal property.

“*Registrar*” means any Registrar of the Court other than the Principal Registrar.

“*Sheriff*” includes a Deputy Sheriff, a Sheriff’s Officer and any person appointed by the Court to serve or execute any action, proceeding or process, or carry out the duties of the Sheriff in relation to any matter.

“*solicitor*” includes counsel.

“*summons*” means a summons to a witness.

“*Trial Court*” means –

- (a) where an action is filed by electronic means the Adelaide Civil Registry;
- (b) in other actions the Registry nearest to where the cause of action arose or where the defendant resides or carries on business; or

- (c) such other Registry as the Court may nominate.
- (2) A reference to a Commonwealth Act includes a reference to that Act as amended from time to time and to an Act passed in substitution for that Act.
- (3) For the purposes of the Act, the *Enforcement of Judgments Act* 1991 and these Rules, the Court must be constituted under the First Schedule.

DUTY OF COURT

- 3. (1) (a) In interpreting, applying and enforcing observance of these Rules, the Court and Registrar must in all things promote the expeditious, economical and just conduct and resolution of an action or proceeding.
 - (b) These Rules are not intended to defeat the proper action brought in good faith of any party and are to be interpreted accordingly.
- (2) In the exercise of its jurisdiction and powers the Court must attempt to determine all matters in dispute in an action so as to avoid multiplicity of actions.

ORDERS

- 4. (1) Unless the contrary intention appears, where under these Rules the Court has the power to make an order, grant leave or do any other act or thing it may do so –
 - (a) subject to specified conditions, including conditions as to the payment of costs;
 - (b) at any time.
- (2) An order which requires an act to be done will be taken to require it to be done within 7 days of the date of the order, unless these Rules require, or the Court orders, otherwise.
- (3) The Court may make an incidental or ancillary order.
- (4) The Court may require a party to file draft Minutes of an order sought.
- (5) The terms of any order or leave made or granted on application need not be drawn up unless the Court orders otherwise, and any order or leave endorsed on the application has effect as a formal order or leave.

FORMS

5. (1) The Forms set out in the Second Schedule must be used for the purposes specified in the Schedule or these Rules.
- (2) Where a party is required to use a Form prescribed by these Rules, the particulars required by the Form must be provided and included in the Form before it is filed and served on any other person or party.
- (3) It is sufficient compliance with these Rules, as to the Form of any document, if the document is substantially in accordance with the Form.
- (4) The provision of a user identifier and current password in relation to the electronic filing of a document is deemed to have the same effect as if the document was signed by the agent with authority on behalf of a corporate authorised user, or by an authorised user who is a natural person.

PRACTICE DIRECTIONS

6. (1) The Chief Magistrate may issue, vary or revoke a Practice Direction and the practice and procedure of the Court, subject to these Rules, must be in conformity with any Practice Direction.
- (2) The Registrar must maintain a register of all Practice Directions.

GENERAL POWERS OF COURT

7. (1) In addition to exercising powers referred to in these Rules, the Court may —
 - (a) make an order for inspection of a document notwithstanding that a solicitor claims a lien over the document;
 - (b) make an order authorising the observation or recording of, or the taking of a sample of or from, any property;
 - (c) make an order that any person, or in the case of a body corporate a specified officer of that body corporate, make discovery (on oath or otherwise) of all documents and property which are or have been in the possession, custody or power of that person relating to the matters in issue in an action and the order may be general, or limited to such classes of documents or property as the Court thinks fit;
 - (d) make an order that any person, or in the case of a body corporate a specified officer of that body corporate,

answer on oath interrogatories relating to the matters in issue in an action.

- (2) An order under this Rule may be made against a person who is not a party to an action.

8. (1) Where a party wishes to obtain –

- (a) summary judgment in, or the disposal of the whole or part of, an action; or
- (b) immediate relief,

he or she may do so on application accompanied by an affidavit specifying –

- (c) why the other party does not have a good action or defence on the merits on any possible view of the facts or law; or
- (d) why such relief should be granted.

(2) The Court may -

- (a) enter judgment accordingly;
- (b) grant the whole or part of the relief sought, and order that the action continue in relation to the part not disposed of;
- (c) make an order for an early trial; or
- (d) make any other order.

(3) The Court may accept an Enforceable Payment Agreement verified by an affidavit of one party to it as proof of the matters contained in it.

9. The Court may order re-service of an action or proceeding where the Court is satisfied that it has not come to the attention of a person to whom it is directed and that the person has not attempted to avoid or prevent service.

10. In an action or proceeding the Court may –

- (a) amend any defect or error;
- (b) remedy or rectify any omission;
- (c) enlarge or abridge the time fixed by these Rules, or by any order, for taking a proceeding or doing any act or thing;
- (d) dispense with compliance with any of these Rules, before or after the occasion for compliance arises; or
- (e) take or regard an act or thing to be done at or from a date fixed by the Court.

11. (1) Where in an action or proceeding a person or party has been prejudiced or suffered damage or loss as a result of a wrongful act or the default, neglect, delay or non-compliance with the Act or these Rules by any other person or party, the Court may order that other person or party to pay compensation for the prejudice, damage or loss.
- (2) The order for compensation may be made in respect of any injury, embarrassment, inconvenience or expense suffered or incurred.
12. (1) Where the manner or form of commencing an action, taking a proceeding or doing any other act or thing is not prescribed by or under any Act or these Rules, the Court will, on application by any person, give directions as to the steps to be taken.
- (2) Where at any time the Court considers it necessary or expedient for the speedy administration of justice or the saving of costs, it may –
 - (a) on its own initiative, or on application of a party; or
 - (b) with the consent of the parties,
 by order, modify or dispense with the practice and procedure of the Court prescribed by these Rules, or give directions as to the practice and procedure to be adopted, in respect of any action or proceeding.
- (3) The Court may make an order or do any other act or thing (even if such order, act or thing is not specifically referred to in these Rules) if the Court thinks that it is necessary or expedient to give proper effect to the Act, any other Act, or these Rules and the justice of the case so requires.
- (4) Where these Rules do not regulate the practice and procedure of the Court or a Registrar in respect of the whole or part of any action, proceeding, act or thing, the Court or Registrar will adopt (with necessary modification) the appropriate practice and procedure of the Supreme Court.

LEGAL REPRESENTATION

- 13 (1) A solicitor is taken to be acting for a party in an action when he or she files and serves notice in writing of that fact on all other parties and must continue to act until the Court orders that he or she may cease to act, or his or her client has filed a notice in writing that the solicitor is no longer acting.
- (2) A firm or company of solicitors must nominate a person within the firm or company as the contact person and that person is a person acting for the party for the purpose of these rules unless the firm or company advises the court in writing that a different person is the contact person, or the firm or company ceases to act in accordance with these Rules.

- (3) Subject to any Act a party may do any act or thing under these Rules by his/her solicitor.
- (4) In deciding whether a party would be unfairly disadvantaged in a minor civil action, if not represented by a legal practitioner, the Court must have regard to whether –
 - (a) the party has a judgment in his/her favour in the action,
 - (b) the party will suffer undue expense or inconvenience in attending,
 - (c) the party is unable to attend due to ill health,
 - (d) any other proper cause exists.

PERSONS UNDER DISABILITY

- 14.** (1) A person under disability must have a litigation guardian to conduct an action on his or her behalf.
 - (2) Where a person under disability is a party to an action anything which he or she, if not under disability, would be required or authorised to do, is required or authorised to be done by the litigation guardian.
 - (3) Failure to appoint a litigation guardian does not invalidate an action.
- 15.** An action filed by a litigation guardian must state –
 - (a) the identity and address of the litigation guardian; and
 - (b) the identity of the person under disability and the nature of the disability (and, where it is infancy, the date of birth of the infant).
- 16.** Subject to any Act, the Court, on its own initiative or on application by a person under disability, may appoint a litigation guardian.
- 17.** A litigation guardian of a defendant, unless the Court orders otherwise, is not liable for the costs of any other party.
- 18.** (1) No compromise or settlement of an action binds a person under disability unless it is approved by order of the Court.
 - (2) The approval of the Court may be sought at any time.

- (3) Before making an order of approval, the Court must consider an opinion of counsel filed by the parties on the adequacy or desirability of the proposed compromise or settlement.
- (4) If the Court makes an order of approval, it may make an order as to the investment of any settlement money and payments of the capital and income to its full extent for the maintenance, education, benefit or advancement for and on behalf of the person under disability and as to the payment of the costs of the litigation guardian or any party.
- (5) Unless the Court orders otherwise, a compromise or settlement must be made on the basis that the solicitor acting for the person under disability limits his or her costs to the party/party costs.

AFFIDAVITS

- 19.** (1) An affidavit must be in accordance with Form 35.
- (2) In this Rule the jurat is called "*the witnessing clause*".
 - (3) The body of an affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject matter.
 - (4) An affidavit used in interlocutory proceedings may contain statements based on information received and believed by the person making the affidavit to be true with the sources and the grounds thereof.
 - (5) Except as provided by Sub-rule 19(4) and Rule 62(3), or unless the Court otherwise orders, an affidavit shall contain only such facts as the person making the affidavit is able of his or her own knowledge to prove.
 - (6) Where an affidavit is made by two or more persons, it must have the full name of each person stated in the witnessing clause, or if sworn separately in separate witnessing clauses.
 - (7) Where an affidavit is filed on behalf of a corporate party which does not have a solicitor acting for it, the affidavit must be sworn by a director, secretary or other person duly authorised by the body corporate to make the affidavit on its behalf.
 - (8) Where it appears to the witness before whom an affidavit is sworn that the person is illiterate or blind, that witness must certify in or below the witnessing clause that at the time the affidavit was sworn –
 - (a) the affidavit was read to the person making the affidavit;
and

- (b) the person making the affidavit seemed to understand the affidavit.
- (9) Where it appears to the witness before whom an affidavit is sworn that the person is by reason of physical incapacity incapable of signing the affidavit, the person must certify in or below the witnessing clause that
 - (a) the affidavit was read by or to the person making the affidavit;
 - (b) the person making the affidavit seemed to understand the affidavit; and
 - (c) that the person making the affidavit swore the affidavit.
- (10) Where an affidavit is made by a person who does not have an adequate command of the English language –
 - (a) the affidavit and the oath to be taken must be translated to the person making the affidavit by an interpreter into a language which the person making the affidavit understands; and
 - (b) the interpreter in writing state his/her full name and must certify in or below the witnessing clause that paragraph (a) has been complied with.
- (11) Where an affidavit is made by –
 - (a) an illiterate or blind person;
 - (b) a person making the affidavit who by reason of physical incapacity is incapable of signing the affidavit; or
 - (c) a person who does not have an adequate command of the English language,

and the certificate required by Sub-rule 19 (8), 19 (9) or 19 (10) has not been provided, the affidavit must not be used unless the Court is satisfied that the affidavit was read or translated to the person making the affidavit, as the case requires, and the person making the affidavit seemed to understand it.
- (12) Subject to Sub-rule 19(14), each page of an affidavit must be signed by the person making the affidavit and the witness before whom it is sworn.
- (13) Subject to Sub-rule 19 (14), alterations, interlineations or erasures in an affidavit must be initialled by the person making the affidavit and the witness before it is sworn.
- (14) A person making an affidavit who is physically incapable of signing it, need not sign it, nor initial alterations, interlineations or erasures but the witness before whom the affidavit is sworn must initial alterations, interlineations or erasures.

- (15) A document to be used in conjunction with an affidavit may be annexed and not exhibited.
- (16) An annexure or exhibit to an affidavit must bear an endorsement, signed by the witness before whom the affidavit is sworn, that identifies the annexure as the particular annexure referred to in the affidavit.
- (17) An affidavit, unless the Court otherwise orders, may be received in evidence notwithstanding any irregularity in form.
- (18) The Court, at any stage of proceedings, may order to be struck out any matter in an affidavit which –
 - (a) is unnecessary, irrelevant, prolix, scandalous or argumentative; or
 - (b) sets out opinions other than opinions of persons properly qualified to give them.
- (19) An affidavit may be sworn within South Australia before a Registrar, a Deputy Registrar, a Notary Public, a Commissioner for Taking Affidavits in the Supreme Court, a Justice of the Peace for this State, a Commissioned Officer of the South Australian Police Force, an Officer-in-Charge of a Police Station of, or above, the rank of Sergeant or as permitted by the *Evidence (Affidavits) Act 1928*.
- (20) An affidavit may be sworn outside South Australia before any of the persons specified in Section 66 of the *Evidence Act 1929*.

PRE CLAIM PROCEDURES

- 20. (1) A person intending to bring an action may, by notice in writing to another person, request the other person to make discovery, and disclose the present whereabouts, of any document or property that is relevant to the proposed action.
- (2) If such a request is not complied with within 7 days of the service of the notice, the Court may order the other person to make discovery and disclosure by letter or affidavit.
- 20A. (1) Subject to this Rule and to any order of the Court the plaintiff is not entitled to the costs for filing of a claim other than a counterclaim, a third party claim, a claim for non compliance with an EPA, or a claim under the *Workers Liens Act 1893*, unless notice in writing of the intended claim was given to the intended defendant not less than 21 days before the filing of the claim, or where Sub-rule(2) applies in accordance with that Rule, by any means authorised in these Rules for service of a claim.
- (2) In an action for damages for personal injuries notice of the claim must be given at least 90 days before the filing of the claim and must be given to the defendant's insurer if the identity of the insurer is known to the

intended plaintiff. Such notice must include notice of any intended claim for past and future economic loss and be supported by documents including medical reports setting out the nature and extent of the plaintiff's injuries and residual disabilities as known to the plaintiff at the time of the giving of the notice.

- (3) Notice of an intended claim may be given in accordance with Form 1A which must be filed with the Court and must bear the Court's seal. A plaintiff who is successful in a claim is entitled to recover from the defendant any filing fee for this notice.
 - (4) A debtor may give notice in accordance with Form 1C to a creditor of willingness to consent to judgment for a sum of money and the creditor may file a claim with the notice attached and sign judgment for that sum plus the filing fee, without service of the claim. Notwithstanding these rules but subject to any order of the Court the creditor will not be entitled to legal fees for filing a claim for that sum or less.
 - (5) Notice of an intended claim or willingness to consent to judgment may be served on a current place of business of the corporation and notice of an intended claim by the Commissioner or Deputy Commissioner of Taxation may be served in accordance with any Act or Regulation which provides for service of notices by the Commissioner or Deputy Commissioner on the taxpayer.
 - (6) The Registrar must give an action number to any action in which the Court arranges a mediation or expert opinion before a claim is filed by a party.
- 20B.** (1) An agreement of the extent of a monetary obligation and terms of repayment may be made in terms of Form 1B (an Enforceable Payment Agreement).
- (2) Where an EPA is in place and is being complied with the creditor must not make any adverse report about the non payment of the monetary obligation to any credit referencing agency.
 - (3) Where a party to an EPA does not do what was agreed the other party may seek a judgment in accordance with the EPA, provided that where the EPA is for payment by instalments two instalment payments must be in arrears before a creditor can obtain a judgment for a monetary sum.
 - (4) The Court may accept an EPA verified by an affidavit of one party to it as proof of the matters contained in it.
 - (5) If payments have been made a creditor seeking to enforce an EPA must disclose them when seeking judgment and any judgment must allow credit for them.
 - (6) An EPA may be made before or after a claim has been filed.
- 21.** (1) On an application by a person intending to bring an action, the Court may issue a summons in Form 1 to compel the attendance of another person to give evidence or produce evidentiary material relevant to the bringing of the proposed action.

- (2) The summons must be served at least 4 clear days before the date fixed for the attendance.
- (3) The Court may order the person applying for the summons to pay, at the time of service of the summons, to the person summonsed, the reasonable expenses of attendance (including transport and accommodation) fixed by the Registrar.
- (4) If a person served with a summons fails to attend or produce the evidentiary material at the date, time and place fixed in the summons, the Court may issue a warrant for the arrest of the person and make an order under Section 37(4) of the Act.
- (5) A summons issued under this Rule must bear the Court seal.

INTERIM INJUNCTIONS AND RESTRAINING ORDERS

22. On an application for an injunction or order under Sections 25 or 26 of the Act, the Court may –
- (a) give directions as to the conduct and service of the application;
 - (b) order the inspection, photographing, detention, custody or preservation of property that is the subject-matter of an action;
 - (c) require such bond, security or undertaking as may be appropriate;
 - (d) order the filing and service of any document; or
 - (e) make any other order.

PARTIES

23. (1) The misjoinder or non-joinder of parties will not defeat an action, but the Court must ensure that the correct parties are joined to enable the Court to determine all questions involved in the action.
- (2) (a) Where 2 or more persons carry on business as partners in the State they may sue and be sued in the name of their firm in respect of any cause of action accruing at the time the persons were partners, but if the partners are named they are the parties to the action;
 - (b) The Court may order a partner to provide a statement on oath of the particulars of persons who were partners of a firm at any relevant time.
 - (c) A judgment against a firm may be enforced against all partners of the firm at the relevant time

- (3) (a) A trustee, executor or administrator may sue and be sued on behalf or as a representative of the relevant trust property or estate.
- (b) The Court may order joinder of any person beneficially interested in the property or estate.
- (4) (a) This Sub-rule applies where 3 or more persons have a cause of action or defence (whether identical or not) arising out of, or in respect of, the same, or substantially the same, set of facts or circumstances.
- (b) (i) The Court may, by consent, make an order (a "*representation order*") that in the one action, 1 or more of the persons be appointed to sue or defend on behalf, or for the benefit, of all persons who so consent;
- (ii) Unless the Court orders otherwise, a representation order is to be taken to confer on any appointed person or persons complete authority and power in respect of the conduct, compromise, settlement or other disposition of the whole, or any part, of the action;
- (c) A representation order may be made even if the remedies or relief sought by the persons (whether at law or in equity) are not identical;
- (d) (i) Within 7 days of a representation order being made, the Registrar must give to the parties at least 21 days notice in writing of, and fix a date, time and place for, a directions hearing.
- (ii) At a directions hearing, the Court may –
 - (A) direct that the existence of the action be published, in such manner and form as it thinks fit, to ascertain if any other person wants to consent to being represented in the action;
 - (B) direct the manner of legal representation of the parties at trial;
 - (C) give any other directions.
- (e) A person who is represented may be entitled to, or liable for, costs in such sum or proportion as the Court may fix.
- (f) A person may withdraw his or her consent with leave of the Court not less than 21 days before the date fixed for trial, but thereafter such consent is irrevocable.

- (g) A consent must be in writing, signed and filed.

PLEADINGS

- 24. (1) (a) Subject to any order of the Court a short form of pleading disclosing the date(s), place(s), circumstances and the cause of action upon which the action is based is sufficient.
- (b) If the Court requires a more detailed pleading the pleading must comply with the *Supreme Court Civil Rules 2006*.
- (2) (a) Where a natural person denies personal liability on the ground that the liability was incurred or assumed by, or on behalf of, another person or body corporate instead, the natural person must plead all material facts or circumstances –
 - (i) from which the liability of the other person or body corporate can be implied or inferred; or
 - (ii) identifying when, where and how the other person or body corporate incurred or assumed the liability.
- (b) Where a party alleges that the parties are bound by a quotation, the party must plead all material facts or circumstances –
 - (i) from which the quotation can be implied or inferred; and
 - (ii) identifying by whom, when, where and how the quotation was given or made.
- (3) A claim under the *Workers Lien Act 1893* must include the particulars required to enforce a lien or charge under that Act.
- (4) A Council constituted under the *Local Government Act 1999* making a claim for an instalment of rates may plead the instalment owing and anticipate the other instalments and fines that may become owing in that financial year. The Council may obtain judgment and amend any judgment to reflect the amount owing from time to time for that financial year, up to the total anticipated, by filing a statement of the amount due at that time, which should be served.
- (5) No pleading, beyond a reply, is allowed except with leave of the Court.

CLAIM

- 25. (1) Except where otherwise provided, an action must be commenced in Form 2.
- (2) A claim which is not filed by electronic means must state the basis upon which a particular Registry is the Trial Court.

26. Except where otherwise provided, a minor civil action must be commenced in Form 3.

26A. (1) An action founded on a neighbourhood dispute or a minor statutory proceeding pursuant to the legislation listed below must be commenced in the respective forms set out below -

Building Works Contractors Act 1995 Form 3G

Fences Act 1975 Form 3A

Landlord and Tenant Act 1936 Form 3E

[other than actions under Sections 12 or 20 of the *Retail and Commercial Leases Act 1995*]

(**Note:** An application under this Act which involves a monetary claim for more than \$10,000 is not a minor statutory proceeding and must be commenced on Form 2.)

Neighbourhood Dispute Form 3B

Retail and Commercial Leases Act 1995

Sections 12, 15 or 49(2)(b) Form 3C

Section 20(6) Form 3D

Section 68, 76(8) or 77(2) Form 3E

(**Note:** An application under this Act which involves a monetary claim for more than \$10,000 is not a minor statutory proceeding and must be commenced on Form 2.)

Second-Hand Vehicle Dealers Act 1995 Form 3F

(**Note:** An application under Schedule 3 of this Act is not a minor statutory proceeding and must be commenced on Form 10.)

(2) On the filing of an action under this Rule the Registrar must fix a date, time and place for a directions hearing and give at least 7 days notice in writing to the parties and serve a copy of the form commencing the action, together with any documents attached to it, on the other parties.

(3) A party electing to exclude the dispute from the minor civil jurisdiction may do so at the directions hearing or by application.

27. (1) A plaintiff may abandon any part of a claim.

- (2) A plaintiff may not claim separately any part of a claim that has been abandoned.
 - (3) A person may not commence more than one action in respect of the same or a substantially similar cause of action.
- 28.**
- (1) An action must be served within 1 year of the date of filing.
 - (2) The time for service of an action may be extended, on application to the Court filed within 1 year of the date of filing of the action.
 - (3)
 - (a) If at the expiry of 21 days after the time for service of an action or any extension thereof –
 - (i) judgment has not been signed; or
 - (ii) a defence has not been filed, the action will stand dismissed for want of prosecution.
 - (b) If it appears that an action is not being conducted with due expedition, the Court –
 - (i) on its own initiative, and upon due notice to the parties; or
 - (ii) on application of a party or the Registrar, may make an order –
 - (iii) that is necessary or expedient to ensure that the action proceeds to trial as soon as possible (including the fixing of both time limits in respect of any subsequent proceedings and the trial date); or
 - (iv) dismissing the action for want of prosecution.
 - (c) Where an action is dismissed under this Sub-rule that dismissal has effect as a judgment but not as a final judgment.
 - (d) In determining whether an action is not being conducted with due expedition under paragraph (b) of this Sub-rule, the Court may have regard to the principles of case flow management expressed in, or time limits fixed by –
 - (i) the *Supreme Court Civil Rules 2006* in respect of the taking of any proceeding or the conduct of the action, as if such principles or time limits applied to a proceeding or action in the Court; or
 - (ii) Practice Direction.

29. (1) Subject to these Rules or to an order of the Court, the parties must conduct the whole of an action up to and including judgment in the Trial Court.
- (2) On application by any person (which may be filed at any Registry of the Court) the Trial Court may nominate another Registry of the Court to be the Trial Court.
- (3) An application to set aside or vary –
- (a) a judgment, must be filed in the Trial Court;
 - (b) an enforcement process, must be filed in the Registry of the Court in which the process was filed.

DEFENCE

30. (1) To defend an action (other than an action under Rules 26A and 37) a person must file a defence in Form 4, which may be filed at any Registry of the Court.
- (2) A party intending to object to the jurisdiction of the Court may only do so on an application filed at the same time as the defence.

COUNTERCLAIM AND SET-OFF

31. A counterclaim or set-off must be filed at the same time as the defence and in Form 5.
32. (1) A party intending to file a counterclaim or raise a set-off which is not within the jurisdiction of the Court must forthwith apply to the Court to have the matter remitted to the District Court.
- (2) The Court may remit the claim to the District Court or order that the counterclaim or set-off be heard separately from the claim.
- (3) If the party fails forthwith to apply to the Court, the claim will be heard separately from the counterclaim or set-off.
33. (1) Where there is more than one defendant to a claim, each defendant will be taken to claim contribution from any other defendant.
- (2) A defendant may require any other defendant to provide particulars of a claim to contribution.
- (3) This Rule does not apply to an action to which Section 72 of the *Development Act 1993* applies.

DEFENCE TO COUNTERCLAIM AND SET-OFF

34. (1) A plaintiff will be taken to have filed a defence forthwith to a counterclaim or set-off, and pleaded to the general issue.
- (2) A defendant may require a plaintiff to provide particulars of a defence to a counterclaim or set-off.

THIRD PARTY CLAIM

35. (1) A defendant claiming indemnity, contribution or relief related to the claim against him or her must file a Third Party Claim within 21 days of the filing of the defence, in Form 6, and serve it together with a copy of the claim.
- (2) The defendant must serve the Third Party Claim on all other parties.
- (3) Form 6 may be adapted for use in any subsequent party claim.
- (4) A third or subsequent party may plead to the plaintiff's claim.
- (5) A defendant, third party and subsequent party may with leave, join actions between themselves which are related to the plaintiff's claim.
- (6) A party may apply for directions in respect of a Third (or subsequent) Party Claim.

INTERPLEADER BY STAKEHOLDER

36. (1) Where a person (the "*applicant*") is or is about to be sued, or could be sued, in respect of personal property in his or her possession or under his or her control or in respect of the proceeds from a disposition of the property and –
- (a) is uncertain as to whom the property or proceeds belongs; or
- (b) receives a claim in respect of the property or proceeds by 2 or more persons making adverse claims,
- the applicant may apply to the Court for directions as to the parties to be served and as to the procedure to be followed.
- (2) This Rule applies only where the applicant expressly disclaims any personal interest in, or claim to, any part of the property or proceeds in dispute.

STATUTORY ACTIONS

37. (1) Actions (other than criminal proceedings) under the following legislation must be commenced in the respective forms set out below:

Any Act not otherwise specified	Form 7
<i>Australian Consumer Law (SA)</i>	Form 9
<i>Births Deaths and Marriages Registration Act 1996</i>	
Sections 22 and 25	Form 7A
Section 19	Form 7B
Section 34	Form 7C
Section 50	Form 7D
<i>Community Titles Act 1996</i>	Form 15
<i>Criminal Assets Confiscation Act 2005</i>	Form 9A
<i>Employment Agents Registration Act 1993</i>	
Section 15	Form 15A
<i>Fire and Emergency Services Act 2005</i>	
Section 38	Form 15B
<i>Marriage Act 1961 (Cth)</i>	Form in regulations
<i>Motor Vehicles Act 1959</i>	
Section 81B	Form 12
<i>National Credit Code (Cth)</i>	Form 51
<i>Problem Gambling Family Protection Orders Act 2004</i>	
Section 16	Form 49
<i>Second-Hand Dealers and Pawnbrokers Act 1996</i>	Form 8
<i>Second-Hand Vehicle Dealers Act 1995</i>	
Schedule 3	Form 10
<i>Sexual Reassignment Act 1988</i>	Form in regulations

Strata Titles Act 1988

Form 15

Unclaimed Goods Act 1987

Form 8

Warehouse Liens Act 1990

Sections 12 and 14

Form 8

- (2) An application made under the *Criminal Assets Confiscation Act 2005* must be accompanied by an affidavit in support of it.
 - (3) A warrant under s.172 of the *Criminal Assets Confiscation Act 2005* must be in form 36 and a duplicate warrant must be in form 37.
 - (4) A freezing order under section 17 of the *Criminal Assets Confiscation Act 2005* must be in form 37A.
 - (5) An order made by the Court on review of a decision of the Independent Gambling Authority under Section 16 of the *Problem Gambling Family Protection Orders Act 2004* must comply with Form 50.
 - (6) An application pursuant to Section 11B of the *Family Relationships Act 1975* must be accompanied by an affidavit that discloses, to the best of applicant's knowledge, information or belief the full names and addresses of all persons whose interests may be affected by the declaration.
 - (7) An application pursuant to Section 11B of the *Family Relationships Act 1975* must be served on all persons whose interests may be affected by the declaration.
- 37A.** (1) Under the *Serious and Organised Crime (Control) Act 2008*, the following forms must be used:
- | | |
|---|---------|
| A Notice of Objection under section 26 | Form 40 |
| An Authorisation Order under section 25 | Form 41 |
- (2) For applications under Sections 66D and 66E of the *Summary Offences Act 1953*, Form 7 must be used.
 - (3) When filing an application for an Authorisation Order, the applicant must also file with the Court an affidavit verifying the grounds for the application and if leave to have the application heard without notice to any person is sought, reasons for that.
 - (4) On the filing of an application to commence an action under the *Serious and Organised Crime (Control) Act 2008*, the Registrar must list it for a directions hearing at the earliest possible time.
 - (5) The Court may give directions as to service and as to any other matter.

- (6) When an Authorisation Order is made by telephone, and the Magistrate is satisfied that the making of the order is of sufficient urgency, the applicant must forward to the Magistrate an affidavit verifying the facts which have justified the making of the order, by delivering it in person or through a delegate, or by sending a signed copy by facsimile or email. Upon receipt of the affidavit the Magistrate must forward the applicant a copy of the order. The order or copy of the order, and the affidavit must be filed in the Registry of the Adelaide Magistrates Court or such other Registry as may be designated on the next working day.
- 37B.** (1) In this Rule, Act means the *Serious and Organised Crime (Unexplained Wealth) Act 2009*.
- (2) Under the Act, the following forms must be used:
- | | |
|---|---------|
| Application under sections 14, 15, 16, 20 and 25 | Form 43 |
| A warrant issued under section 16 | Form 44 |
| A Notice of Objection under section | Form 45 |
| A Monitoring Order under section 14 | Form 46 |
| An Examination and/or Production Order under section 15 | Form 47 |
| A Restraining Order issued under section 20 | Form 48 |
- (3) In making an application for a warrant by telephone under section 16(3) of the Act, the applicant must:
- (if the Registry is open) contact the Registry to arrange an urgent hearing by telephone with a Magistrate;
 - (if the Registry is closed) telephone the Court's rostered on-call Magistrate on the after-hours telephone number of the Court.
- (4) A notice of objection to a restraining order, under section 24 of the Act is to be filed in the proceedings in which the restraining order was made.
- 38.** <deleted>
- 39.** Subject to any Act, on the filing of an appeal or review under Rule 37 the Registrar must fix a date, time and place for the hearing and give at least 21 days notice in writing of the hearing (in Form 23I) to, and serve a copy of the appeal or review on, the person from whose decision or determination the appeal or review is brought.
- 40.** (1) Subject to any Act and these Rules, on the filing of an application under Rule 37, the Registrar must fix a date, time and place for a directions hearing and give at least 21 days notice in writing of the hearing in Form

23B to, and serve a copy of the application on, the person(s) nominated by the applicant to be the person(s) to be served

- (2) On the filing of an application to commence an action under the *Criminal Assets Confiscation Act 2005* or Section 38 of the *Fire and Emergency Services Act 2005*, the Registrar must list it for a directions hearing at the earliest possible time.
- (3) The Court may give directions –
 - (a) that persons who are not nominated, but who may be affected by the relief sought, are to be joined to the application;
 - (b) as to service; and
 - (c) as to any other matter.

41. Subject to any Act, the Court may conduct the hearing of an appeal or application under Rule 37 in such manner as it thinks fit.

FILING AND SERVICE OF CLAIMS AND PROCESS

- 42.** (1) (a) Subject to this Sub-rule the documents described in Sub-rule (2) must be prepared with sufficient copies and filed at a Registry of the Court.
- (b) It is sufficient for an authorised user to file Form 2, 3 and any other form permitted by a Practice Direction, by electronic filing.
 - (c) A form filed by electronic filing shall be deemed to be filed on the day when it is accepted for filing by the Courts Administration Authority website.
- (2) Subject to any Act, these Rules and any order of the Court, the following documents must be served on any other party to an action –
- (a) an originating process of an action (other than an action described in Rules 26A or 37);
 - (b) an injunction;
 - (c) a restraining order;
 - (d) an application and any affidavit or other document in support of it;
 - (e) an originating process of an action not otherwise described in this Sub-rule.
- (3) Copies of documents to be filed and served must bear the Court seal.
- (4) The Court seal may be placed on a document by electronic means.
- 43.** (1) Service on Good Friday or Christmas Day is not effective service.

- (2) A summons must be served personally on the person to whom it is directed.
44. A person serving a natural person (who is not a solicitor) with -
- (a) a document in Form 1, 2, 3, 3A, 3B, 3C, 3D, 3E, 3F, 6, 8, 9, 15, 15A, 15B, 20(a), 25, 25A and 26; or
 - (b) an injunction or restraining order, must at the same time serve a document in Form 17 (which need not be filed).
45. A copy of a claim for damages for personal injuries caused by, or arising out of, the use of a motor vehicle must be served by the Registrar on Allianz Australia SA-CTP.

MANNER OF SERVICE

46. (1) Subject to any other Act, these Rules and any order of the Court, the Registrar may serve a document on a person by any means provided by these Rules.
- (2) (a) Where service is, or appears to be, ineffectual the Registrar must note that fact on the Court file and -
- (i) if it was service of a claim, set aside any judgment signed in default of the filing of a defence and in any other case seek directions of the Court;
 - (ii) ensure that the party seeking service is aware that service was or appears to have been ineffectual; and
 - (iii) not again attempt service at that address unless the party seeking service has made further reasonable enquires and has ensured that the address for service is the address of the party to be served.
- (b) The Registrar may require a party to verify on oath the nature and extent of such further enquires.
- (3) The Registrar must cause a stamp showing the date of any postal or other service by the Registrar to be affixed to the Court copy of the document.
- (4) Subject to these Rules, the Registrar may only be required to serve a claim, defence or counterclaim that was not filed by electronic means.
47. (1) Subject to any other Act, these Rules and any order of the Court, a document may be served on a person:

- (a) by sending it by pre-paid post addressed to the address of the person (but note the cost risk in Rule 106(8));
- (b) by personal service on the person;
- (c) by service by any of the means set out in this Rule on the solicitor acting for the person;
- (d) by leaving it for the person at the address of the place of dwelling or business of the person with someone apparently above the age of 14 years;
- (e) by depositing it for the person at the DX addressed to the DX number of the person;
- (f) in the case of a body corporate (other than a Strata Corporation or a Community Corporation), by leaving it at or sending it by pre-paid post addressed to the registered office of the body corporate;
- (g) in the case of a strata corporation, by sending it by pre-paid post addressed to the corporation at its site or its post office box;
- (h) by fax directed to the fax number of the person;
- (i) in the case of a firm, by service under these Rules on one partner, or at the principal place of business of the firm, but if the person serving the document knows that the partnership has been dissolved before the action is filed, by service on every person sought to be made liable;
- (j) in the case of a person in custody in a government institution, by sending it by pre-paid post addressed to the person at that institution;
- (k) (i) who appears to keep his or her place of dwelling or business closed in order to avoid or prevent service; or
 - (ii) in respect of an action for the recovery of real property, (in a case of vacant possession),
 - by affixing it on a door of the place or otherwise conspicuously on the property;
- (l) in the case of threats or violence by or on behalf of that person, by leaving it near the person;
- (m) in the case of a person who has given an e-mail address for service by e-mail;
- (n) in the case of a Community Corporation by pre-paid post addressed to the Community Corporation or to the Presiding Officer, Treasurer or Secretary at the postal address of the Community Corporation or by placing it in the Community Corporation's letterbox.

- (2) A person must not rely on apparently ineffective service. If any action has been requested in reliance of service that subsequently appears to have been ineffective he or she immediately must advise the Registrar in writing of that fact and must not again attempt service at that address unless the party seeking service has made further reasonable enquiries and has ensured that the address for service is the address of the party to be served.

48. In the case of service outside the State but within the Commonwealth of Australia service must be effected in accordance with the provisions of the *Service of Execution of Process Act 1992* (Cth).

48A. (1) A claim may be served outside of the Commonwealth of Australia and its Territories where it is founded on a cause of action –

- (a) arising from a tort committed wholly or partly in South Australia;
 - (b) arising from a contract or quasi contract which was made or breached in South Australia or the terms of which are governed by the law of South Australia;
 - (c) to obtain or recover title to, or possession of, real or personal property situated in South Australia;
 - (d) which the Court determines has sufficient nexus to South Australia.
- (2) (a) Service of a claim outside the Commonwealth of Australia and its Territories is only valid if prior leave for service is granted and service is in accordance with any conditions imposed by the Court, or the person served consents to the jurisdiction by filing a defence.
- (b) Leave must only be granted if the Court is satisfied that the party applying has a prima facie case for the relief that he or she seeks.
- (3) Where it is intended that a person is to be served in accordance with a binding Convention governing service of civil claims, the party seeking leave for service in accordance with that Convention must file with the application for leave –
- (a) a current copy of the Convention,
 - (b) the document to be served,
 - (c) a bond or undertaking (as the Court may require) by the party to pay the Registrar all expenses incurred in the service of the document,
 - (d) a request for the particular manner of service required,
 - (e) if English is not the official language of the country of service, a translation into the official language of that country of the document to be served and a request for

the particular manner of service required certified in English and the official language of that country to be a correct translation by the South Australian Language Services Centre,

- (f) Form 17.
 - (4) Where it is intended that a person is to be served otherwise than in accordance with a Convention governing service of civil claims, service on a natural person must be personal service and on a company must be in accordance with the law of that country and the party seeking leave for service must file with the application for leave -
 - (a) a certificate from a representative of the country of service that the intended service is not in contravention of the law of the country,
 - (b) in the case of intended service on a company a statement of the manner of service permitted by the law of that country,
 - (c) if English is not the official language of the country of service a translation into the official language of that country of the document to be served certified in English and the official language of that country to be a correct translation by the South Australian Language Services Centre.
 - (5) The time for filing a defence after service of a document under this Rule will be 42 days or such other period fixed by the Court and all documents served will be modified to accurately advise that period to the party served.
 - (6)
 - (a) In the case of service in accordance with a Convention, proof of service must be in accordance with the Convention.
 - (b) In any other case proof of service must be an affidavit verified in accordance with Section 66 of the *Evidence Act 1929*.
- 49.** (1) Subject to any Act, a person will be taken to be served -
- (a) at the time he or she is personally served;
 - (b) where service is by fax during normal business hours on a business day, when the fax is transmitted;
 - (c) where service is by e-mail on the next business day after an acknowledgement of receipt of a transfer by e-mail is received from the computer to which it was addressed; and
 - (d) in any other case, 2 business days after the document is served in accordance with these Rules.

- (2) A statement on a fax of the date, time and place of transmission or receipt of the fax may be accepted as proof thereof.
 - (3) A statement from a computer that a computer of an addressee has acknowledged receipt of a transfer by e-mail may be accepted as proof thereof.
50. Where a person, on application to the Court, establishes proper cause, the Court may order service by advertisement, substituted service or such other means as the Court considers appropriate, and such service will be effective in the manner ordered.
51. (1) The records of the Registrar may be accepted as proof of service of a document by the Registrar.
- (2) In any other case, service must be proved by affidavit of the person serving the document.

COST PENALTIES

52. (1) This Rule applies to an action (other than a minor civil action) in which a party obtains a final judgment (other than by consent) for a sum of money being less than 50% of the amount claimed by the party at either -
- (a) the expiration of 21 days from the date of issue of a notice of trial; or
 - (b) the date of a conciliation conference,
- whichever is earlier ("*the operative date*").
- (2) The costs to which the party is finally entitled will, unless at the time of giving judgment the Court orders otherwise, be calculated in accordance with the formula:

$$CE = \frac{(2 \times C \times SJ)}{SC}$$

SC

where **CE** is the costs to which the party is finally entitled

C is the costs of the party (as agreed or taxed)

SJ is the sum of money awarded by the judgment (exclusive of costs and interest)

and **SC** is the amount claimed at the operative date.

- (3) Where leave is granted to a party at a conciliation conference to amend the amount claimed by the party to a specified sum, such amendment will, for the purposes of this Rule, be taken to be effective forthwith.
53. (1) This Rule applies to an action (other than a minor civil action) in which a party obtains a final judgment (other than by consent) for a sum of money being 200%, or more than 200%, the amount contained in -
- (a) an offer to consent to judgment filed in the Court; or
 - (b) a payment of a sum of money to the Registrar made before or at either -
 - (c) the expiration of 21 days from the date of issue of a notice of trial; or
 - (d) the date of a conciliation conference
- whichever is earlier ("*the operative date*").
- (2) The costs to which a party is finally entitled will, unless at the time of giving judgment the Court orders otherwise, be calculated in accordance with the formula -

$$CE = \frac{2 \times C \times (SJ - FO)}{SJ}$$

SJ

where **CE** is the costs to which the party is finally entitled, provided that **CE** does not exceed the actual costs of the party on a solicitor's own cost basis -

C is the costs of the party (as agreed or taxed)

SJ is the sum of money awarded by the judgment (exclusive of costs and interest)

and **FO** is the amount contained in -

- (a) the offer; or
- (b) the payment

and where in any case no offer or payment is filed or made then, for the purposes of this Rule, **FO** will be zero.

54. (1) If the Court adjourns a conciliation conference, the operative date under Rules 52 and 53 is postponed to the adjourned date.
- (2) Rules 52 and 53 are subject to Rule 59.
- (3) If both Rules 52 and 53 apply to the same action, neither will have effect.

- (4) In Rules 52 and 53 unless the contrary intention appears the word "*costs*" means party and party costs (including counsel fees) only and does not include disbursements, witness fees, experts' charges and other expenses of and incidental to the conduct of the action.

OFFERS TO CONSENT AND PAYMENTS TO REGISTRAR

- 55. (1) At any time before final judgment, a party may file and serve on any other party an offer to consent to judgment.
- (2) The offer may be made subject to specified conditions.
- (3) An offer may relate to liability, quantum, matters in issue in the action or any order, remedy or relief sought.
- (4) A party may file and serve a notice of withdrawal or variation of an offer which has not been accepted.
- (5) A party may file and serve an acceptance of an offer.
- (6) A party may request the Registrar to enter judgment in the terms of an accepted offer and the Registrar must enter it accordingly.
- 56. (1) At any time before final judgment, a party may pay (with or without an admission of liability) to the Registrar such sum of money as he or she thinks sufficient to satisfy the claim against that party, together with the costs of the other party and interest up to the time of such payment.
- (2) At the time of making any such payment, the party so paying must give notice in writing to the other party of the payment.
- (3) The other party may file and serve a notice in writing accepting the sum of money, and such notice will operate as full satisfaction of that other party's claim.
- (4) If no notice of acceptance is filed the sum of money must abide the event.
- (5) The Registrar must pay the sum of money to the party entitled to it in accordance either with the notice of acceptance or the outcome of the event.
- 57. (1) An offer to consent to judgment must specify whether the offer is inclusive of costs and interest, or if the offer is not so inclusive it must specify what is offered for the costs of the other party and what is offered for interest up to the date of such offer.
- (2) If there is a failure to comply with Sub-rule (1) the party accepting the offer is entitled to costs and interest or whichever of costs and interest is not specified up to the expiration of 14 days from the date of service of the offer in addition to the sum offered.

58. The extent of an offer to consent to judgment or payment of a sum of money to the Registrar must not be communicated to the judicial officer hearing the trial of the action until final judgment is given.
59. (1) In making an order as to costs at the trial of an action, the Court will take into account any offer to consent to judgment, or any payment of a sum of money to the Registrar, and any refusal or failure to accept such offer or payment.
- (2) Unless the Court for special reasons orders otherwise -
- (a) a plaintiff who obtains final judgment for a sum of money equal to or less than the amount of any such offer or payment by the defendant, if the offer has not been withdrawn before the time of judgment, is not entitled to costs after the expiration of 14 days from the date the notice of the offer was served or the payment was made and thereafter the defendant is entitled to costs on the scale applicable to the amount claimed by the plaintiff; and
 - (b) a plaintiff who obtains final judgment for a sum of money equal to or more than the amount of any such offer by the plaintiff, if the offer has not been withdrawn before the time of the judgment, is entitled to costs on a solicitor and client basis after the expiration of 14 days from the date the notice of the offer was served.

ACTIONS NOT DEFENDED

60. (1) Subject to sub-rule (4), where a party has been served with an action (other than an action under Rules 26A and 37) and does not file a defence within 21 days of service, or any other period fixed by the Court, the other party, on proof to the Registrar of such service, may sign judgment against the party in default, by filing a Form 18.
- (2) A party cannot sign judgment -
- (a) on a counterclaim or an interpleader action; or
 - (b) on a Third (or subsequent) Party Claim, unless a judgment has been obtained against that party.
- (3) (a) The 21 days referred to in Sub-rule (1) will be taken not to include the day on which the party was served.
- (b) Where the 21 days referred to in Sub-rule (1) expires on a Saturday, Sunday or public holiday, the period within which a defence may be filed will be extended to expire on the next working day.

- (4) Where a party has been served with an action under either Section 15 or Section 16 of the *Building and Construction Industry Security of Payment Act 2009*, and does not file a defence within 21 days of service, or any other period fixed by the Court, the other party, on proof to the Registrar of such service, may only sign judgment against the party in default by filing with the Form 18 an affidavit certifying as to the circumstances required by either Section 15(1) or Section 16(1).

61. (1) Where a party signs judgment for a claim:

- (a) for a debt or liquidated sum; or
- (b) for the cost of repairs to, or the loss of, property and any other consequential loss;

the party will have judgment for the claim, plus costs on the scale applicable to the claim, but the party has no entitlement to pre-judgment interest except if it is awarded by the Court on an Application.

- (2) A party may sign judgment for a claim under paragraph (b) of Sub-rule (1) only if the party proves that, at the same time as the action was served, a copy of any relevant evidentiary material (including a repair or loss account, quotation, invoice or receipt) upon which he or she is intending to rely, was served on the other party.
- (3) For the purposes of paragraph (b) of Sub-rule (1) the claim may also include a liquidated sum in respect of incidental expenses (including towing and storage fees in respect of the property and the reasonable cost of hire or rental of alternative property during the period the first-mentioned property underwent repairs).
- (4) Where an action for the recovery of premises or ejectment -
- (a) includes a claim for mesne profits; and
- (b) specifies that the rate of claim of the profits does not exceed the rate of rent payable at the time of termination of the tenancy, such claim will be taken to be a claim for a liquidated sum under paragraph (a) of Sub-rule (1).

62. (1) Subject to sub-rule (5), in any other case not provided for in Rule 61, where a party signs judgment the Registrar must fix a date, time and place for the hearing, by the Court, in respect of the assessment of damages or such other order, remedy or relief as the action may require, and give at least 21 days notice in writing of the hearing to the parties.

- (2) The party who has signed judgment must serve on all other parties at least 21 days before the hearing date -
- (a) a notice in Form 19; and

- (b) a copy of any affidavit evidence to be relied upon and a written schedule of costs sought.
- (3) In a minor civil action, the Court may receive as evidence of the fact or quantum of injury, damage or loss an affidavit, deposed to by the party, the solicitor acting for the party, or an assessor or other expert, which annexes relevant evidentiary material.
- (4) The party who has signed judgment need not attend the hearing unless the Court so orders.
- (5) In an action for damages for personal injury, where a party signs judgment the Registrar must fix a date, time and place for a directions hearing, and give at least 21 days notice in writing of the directions hearing to the parties. The parties who have signed judgment must serve on all other parties at least 21 days before the date of the directions hearing a notice in Form 19A.

PROCEEDINGS AND APPLICATIONS

63. (1) Subject to these Rules, the Court may, on the application of a party, make an order, grant leave or do any other act or thing under the Act or these Rules.
- (2) Where proper cause exists, the applicant may make an application *ex parte*, orally or in such other manner and on such notice to any other party as the Court thinks fit.
 - (3)
 - (a) The Registrar may, at the direction of the Court or on his or her own initiative, apply to the Court for an order under these Rules.
 - (b) The Registrar must give at least four days notice in writing of the application, and the date, time and place fixed for the hearing, to all parties of the relevant action.
 - (c) The Registrar is only a nominal party in such a proceeding and need not appear and cannot be ordered to pay, and is not liable for, any costs arising in the proceeding.
 - (4)
 - (a) Where a person seeks to file an application in respect of a matter that has been determined on a previous application, the Registrar must not receive it unless the person has leave of the Court to file it.
 - (b) Leave under paragraph (a) may only be granted if -

- (i) the determination on the previous application was made in the absence of the person and the person has a reasonable excuse for such absence;
 - (ii) in any other case, if the person establishes that there were material facts or circumstances not known to, or which could not reasonably be expected to be known by, that person at the time of making the original application.

- (5) * * *

- (6) A summons or warrant under Section 14(1) of the *Enforcement of Judgments Act 1991* may be issued in Form 20 on application by the plaintiff.

- (7) The hearing of an application –
 - (a) may be adjourned on no more than 2 occasions;
 - (b) must be adjourned only to a fixed date.

- 64. (1) Except where otherwise provided, an application to the Court must be in Form 21 and accompanied by an affidavit in support of it.

- (2) On an application being filed, the Registrar will fix a date, time and place for the hearing of it and such hearing must be conducted in Chambers unless the Court orders otherwise.

- (3) An application that is required to be served must be served not less than 4 clear days before the date fixed for the hearing of it.

- (4) The Registrar may, where proper cause is established at the time of the filing of an application, make the application returnable at such date, time and place as he or she thinks fit and the time for service of the application is abridged accordingly.

- (5) On an application a fact may be proved by affidavit or an electronic copy of the contents of an affidavit in an application dealt with by electronic means.

- (6) Applications may be dealt with by electronic means in classes of matters and in the manner designated by practice direction.

- 65. No application (other than to object to jurisdiction or set aside or enforce a judgment or warrant) may be filed in respect of a minor civil action, except with leave of the Court.

- 66.** The Court may hear and determine an application without requiring service of it in such class of application as these Rules or a Practice Direction may prescribe.
- 67.** (1) The Court may permit or require a party to attend any hearing by being available at a designated telephone, a video link at a nominated facility, or by E-mail.
- (2) A request by a party to attend by telephone, video link or email must be made to the Trial Court in sufficient time prior to the hearing to allow the Court to decide whether to allow the request, and if it is granted, to put appropriate arrangements in place.
- (3) If the Court is unable to contact the party at any time within fifteen minutes after the time appointed for the hearing, at the phone number given by the party, or by video link at the nominated facility or at the computer to which the E-mail attendance is applicable, rule 85 applies.
- (4) The Court may of its own motion contact a party or any other person by telephone, video link or E-mail.
- 68.** In an action for damages for personal injuries (including a minor civil action) the plaintiff, at the time of service of the claim must file and serve a Form 22 and make discovery to the defendant.
- 69.** (1) A party who has obtained a report from an expert (including a medical expert) in relation to an action must obtain a written report from that expert and serve on the other parties, a copy of that report together with the name, address and qualifications of the expert, within 21 days of receipt of such report and in any event not less than 21 days before the date fixed for the trial of the action.
- (2) The party must file in book form (which need not be served), a copy of all such reports not less than 7 days before a date fixed for a conciliation conference.
- (3) Where a report is not served on the other parties, the Court may refuse to hear the expert.
- (4) A Form 22 and a report from an expert may be received by the Court as an exhibit whether or not the author is called as a witness.
- 69A.** (1) The Court may appoint such experts as it sees fit to advise it in the conduct of its work and pay them in accordance with rates determined by the Principal Registrar from time to time.
- (2) Where the Court refers a question arising in an action to an expert for investigation and report under Section 29 of the Act it must:
- (a) Make the *curriculum vitae* of the expert available to a party upon written request,

(b) Require the expert to give an undertaking to this effect:

“I undertake to limit my expressions of opinion to matters within my expertise, to disclose the factual material upon which my opinions are based, and to be fair, unbiased and accurate in my expression of opinion.”

and where the Court intends to adopt any part of the report which a party contests the Court may require the expert to attend for the parties to question the expert about the basis for any opinion, but not as a witness.

70. (1) A party may, by notice in writing to any other party, request better particulars of that other party's action.
- (2) If such a request is not complied with within 7 days of service of the notice, the Court may order that other party to provide all or any of the requested particulars.
71. (1) A party may by notice in writing to any other party request discovery of any document or property, relating to the matters in issue in the action, and disclosure of the present whereabouts of any discovered document or property.
- (2) If such a request is not complied with within 7 days of service of the notice, the Court may order that other party to make discovery and disclosure by letter or affidavit.
- (3) (a) Unless the parties agree otherwise, all documents or property discovered by a party that are in the possession, custody or power of that party must be produced at the trial.
- (b) A party who fails to comply with paragraph (a) may be ordered by the Court to bear relevant costs occasioned by the failure.
- (4) In any action, an investigatory film or audio-tape, taken or made of a party, is not discoverable by the party by whom, or on whose behalf, such film or tape was taken or made.
- (5) Correspondence between solicitors for the parties need not be itemised, and there is no privilege from discovery on the sole ground that a document or property only relates to and does not impeach the party's case and does not relate to or support the other party's case.
- (6) Where a party has made discovery under these Rules, but other documents or property come into his or her possession, custody or power which are also discoverable, the party must make further discovery as soon as practicable.

72. (1) A party must make a discovered document or property that is in the possession, custody or power of that party, available for inspection by any other party within 7 days of service of a notice in writing requesting inspection.
- (2) If such a request is not complied with within 7 days of service of the notice, the Court may order inspection at such date, time and place as the Court fixes.
73. Where the proper identity of a party is in issue, the Court may make such order as it thinks fit to ascertain the identity of the party.
74. The Court may make an order to expedite an action or proceeding or the hearing of an action or proceeding and may make any consequential orders.
75. The Court may consolidate or deconsolidate actions, or list separate actions for hearing at the same time or consecutively.
76. (1) A party at any time may use the procedures set out in this Rule and after a trial date is appointed must consider ways of presenting the evidence in an economical and expeditious manner including using the procedures set out in this Rule.
- (2) (a) A party may interrogate any other party with leave of the Court.
- (b) Such leave may permit any interrogatory which in the opinion of the Court will narrow the issues in dispute and shorten the trial.
- (c) A party must answer an interrogatory by affidavit.
- (3) (a) A party may by notice in writing to any other party, request that party to admit facts or the authenticity or admissibility of a relevant document specified in the notice. A copy of this Sub-rule must be served with the notice.
- (b) If and to the extent that the other party fails by notice in writing to object (including detailed reasons for the objection) to the facts or documents specified in the notice within 21 days of the service of the notice, the contents of the notice will be taken to be admitted upon proof of service of the request to admit.
- (c) At the trial of an action the Court may admit evidence contrary to any such admission.
- (4) (a) If a party believes that the attendance of a witness at a trial will not be necessary because his or her evidence, or the evidentiary material to be produced by him or

her, will be of a formal nature only or should not be the subject of real dispute, the party may give notice in writing, served on all other parties at least 14 clear days before trial –

- (i) conveying the belief;
 - (ii) identifying the witness; and
 - (iii) specifying the facts or opinions that the evidence, or evidentiary material would tend to prove or establish.
 - (b) If no other party has, within 7 clear days, given notice in writing of objection (including detailed reasons for objection) -
 - (i) the witness need not attend at trial; and
 - (ii) the contents of the notice referred to in Sub-rule (4)(a) will be taken to be admitted.
- (5) (a) Where the outcome of an action depends only upon -
- (i) the determination of a question of law; or
 - (ii) the proper construction of any written contract, instrument or other document (whose existence or validity is not disputed), a party may make application to the Court for summary determination.
- (b) The party must file, in book form -
- (i) a statement of agreed facts and the question of law or construction involved; and
 - (ii) a copy of the relevant contract, instrument or other document.
- (c) The Court, in open Court, may proceed to hear relevant submissions and give final judgment accordingly.
- (6) Where –
- (a) the Court certifies that a party failed to use one of the procedures in this Rule when it should have; or

- (b) the Court certifies that a party unreasonably objected to another party using one of the procedures in this Rule,

the Court may order that that party is not to recover costs and is to pay the costs of the other parties and of the Court caused by that failure or objection.

- 77. The Court may allow a party to amend his or her pleadings and remedy or relief sought at any time before final judgment.
- 78. The Court may allow a party to amend the description of any party but, if such amendment amounts to a change of party, the Court may require the new party to be served and may set aside any order made against the former party.
- 79. Deleted per Rule Amendment 15
- 80. Deleted per Rule Amendment 15
- 81.
 - (1) The Court may order a party to pay a sum of money, or give other security, to the Registrar in respect of the whole or part of the costs of an action, or the claim itself, and such sum or security will be held by the Registrar to abide the event.
 - (2) The Court may order a party to give a bond or undertaking.
 - (3) The Court may require a party to obtain a guarantee or other surety in respect of the whole or part of the costs of an action of that party.
- 82. Where several actions arise out of the same or similar circumstances, the parties may agree that one action be heard and determined by the Court, and the final judgment of the Court in relation to that action binds the parties to all actions in terms of the agreement.
- 83. The Court may give judgment against a party who fails or refuses to comply with an order of the Court, on proof that the terms of the order have been given in writing to the party and the order has not been complied with.
- 84.
 - (1) The Court may give judgment (including a final judgment) or make an order with the consent of the parties in the terms of the consent.
 - (2) Where a party files a consent in writing to the giving of judgment (including a final judgment) or the making of an order, the judgment or order may be given or made in the terms of the consent, in the absence of the parties.
 - (3) Sub-rule (2) does not apply to an order –
 - (a) to adjourn the trial of an action;

- (b) to enlarge the time fixed by these Rules, or by an order, for taking a proceeding or doing any act or thing;
 - (c) to dispense with compliance with any of these Rules; or
 - (d) that would in any other way affect or modify the application of the principles of case flow management, or time limits, to the action or proceeding.
- 85.** Where a party fails to attend within 15 minutes of the time fixed for the hearing of an application, the Court may give judgment or make an order against, and in the absence of that party, without hearing any evidence.
- 86.** A party may apply to the Court for judgment in, or an order staying until further order, an action or proceeding that is scandalous, frivolous, oppressive, vexatious or otherwise an abuse of the process of the Court, or an order striking out a pleading of that nature.
- 87.**
 - (1) The Court may set aside or vary a judgment (not being a final judgment.)
 - (2) The Court must not set aside such a judgment unless the party seeking to set it aside establishes that he or she –
 - (a) has an arguable case on the merits; and
 - (b) has a reasonable excuse for not having complied with these Rules, or an order of the Court, or any time limit fixed by these Rules or order of the Court, in respect of the action or proceeding.
 - (3) When setting aside a judgment the Court may order –
 - (a) payment to the other party of costs thrown away;
 - (b) payment or security under Rule 81.
- 88.**
 - (1) A party may discontinue an action at any time by notice in writing filed and served on the other parties.
 - (2) Any other party may apply for an order for costs, from the party discontinuing the action, within 7 days of the service of the notice.
 - (3) Where a party with a judgment in an action discontinues the action that judgment is set aside.
 - (4) A discontinuance of an action has effect as a judgment.

CONCILIATION CONFERENCES AND DIRECTIONS HEARINGS

- 89.** (1) (a) The Registrar by notice served on a party may require him/her to attend a directions hearing, mediation hearing, listing conference or conciliation conference at a date, time and place fixed in the notice.
- (b) The Registrar must use the form in the Second Schedule appropriate to the type of action and hearing.
- (c) Subject to this Rule where the notice requires a party to attend in person a natural person must do so and a body corporate must attend by a natural person who is authorised to represent it.
- (d) An insurer which is subrogated to the rights of a party may attend on behalf of that party.
- (e) Where in a general claim for damages for personal injury a settlement conference has been held prior to the filing of the claim, attendance in person at the first directions hearing is not required.
- (2) At a conciliation or listing conference or directions hearing the Court may make any order or do any act or thing that it is empowered to make or do under these Rules.
- (3) No offer or admission made at a conciliation or listing conference or directions hearing may be communicated to the judicial officer hearing the trial of the action, until final judgment is given.
- (4) Subject to any Act, and Rule 89(5)(c)(iv) the Court may conduct a conciliation or listing conference or directions hearing in such manner as it thinks fit.
- (5) (a) At a conciliation conference, the Court and parties must consider –
- (i) settlement or compromise of the action;
 - (ii) simplifying or limiting the issues for trial;
 - (iii) the avoidance of unnecessary evidence;
 - (iv) limiting the number of witnesses; and
 - (v) any other matter to facilitate the disposition of the action or trial.
- (b) At a conciliation conference, the Court may –

- (i) require the disclosure and consideration of any offer of settlement;
 - (ii) give directions as to the subsequent course of the action or trial.
- (c) A conciliation conference –
 - (i) may be adjourned on no more than 2 occasions;
 - (ii) on any one occasion, may be adjourned for a period not exceeding 3 months;
 - (iii) must be adjourned only to a fixed date; and
 - (iv) must not be open to the public unless the Court directs to the contrary.
- (6) A conciliation or listing conference or directions hearing may be conducted by a Registrar.

TRIAL

- 90.** (1) The Court at any hearing or conference, may fix the date, time and place for trial and the Registrar must give notice of trial to any party who is not present at that hearing.
- (2) The Registrar must give a notice of trial in Form 23(b), Form 23(c) or Form 23(d) when directed by the Court to do so.
- (3) (a) The date fixed for the trial of an action will not be adjourned in the absence of special reasons.
- (b) A trial must be adjourned only to a fixed date.
- (c) If the Court fails to fix a date, the Registrar must do so.
- 91.** (1) If a party or witness of the party needs the assistance of an interpreter, the party, on receiving a notice of a date fixed for a hearing, must forthwith notify the Registrar in writing of that need and of the language, and dialect, to be interpreted.
- (2) If the party so fails to notify the Registrar, costs occasioned by the non-attendance of the appropriate interpreter must be borne by that party.
- 92.** Unless the Court orders otherwise, a claim, counterclaim, set-off, third and subsequent party claim and an interpleader claim must be heard together.

- 93.** A waiver of any monetary limit on the civil jurisdiction of the Court may be effected by the parties on an application, by a notice in writing jointly signed and filed or by oral application at trial.
- 94.** (1) The Court may direct the order, manner and form in which evidence and submissions on evidence (including the time allotted for evidence and submissions) are to be given.
- (2) The Court may disallow a question that is irrelevant, prolix or repetitious.
- (3) Exhibits put in by a party are to be consecutively numbered and a record is to be kept of them.
- (4) At trial, on its own initiative, or on oral application of a party, the Court may make any order or do any act or thing that it is empowered to make or do under these Rules.
- (5) At trial the Court may sit with an expert(s) and under Section 29 of the Act may at and during the trial refer any question of a technical nature for immediate or reserved investigation and report by the expert(s).
- 95.** (1) The Court may receive as evidence a document or property which has not been discovered.
- (2) The Court may receive as evidence (without further proof) evidentiary material served under Rule 61(2) a request to admit facts, a list of discovered documents, interrogatories and their answers, an affidavit or any document that has been filed and served pursuant to these Rules.
- (3) Where the Court accepts as evidence for any purpose a document that records the delivery of goods, the Court may accept the document as prima facie evidence of that delivery.
- 96.** If, at the trial of an action –
- (a) Objection is taken to the authenticity or admissibility of relevant evidence or a reproduction or specimen of relevant evidentiary material; and
- (b) the authenticity or admissibility of the evidence or evidentiary material is subsequently proved or established,
- the party objecting must pay costs occasioned by the objection, unless the Court orders otherwise.
- 97.** (1) A Magistrate, on oral or written application of a party, may issue a summons in Form 1 requiring the attendance of a witness to give evidence or produce evidentiary material at a trial.

- (2) The summons must be served at least 4 clear days before the date fixed for the attendance.
 - (3) The Magistrate may require the person applying for the summons to pay, at the time of service of the summons, to the witness, the reasonable expenses of attendance (including transport and accommodation) fixed by the Magistrate.
 - (4) The Court may order any party to compensate a witness for the loss and expense caused to the witness by attending at the Court.
- 98.** Where there are grounds for believing that, if a summons were issued, a person would not comply with it, the Court may issue a warrant to have the person arrested and brought before the Court.
- 99.** (1) The attendance at trial of a witness will not be required if an affidavit of that witness has been served on all other parties at least 14 days prior to the trial and no other party has objected, by notice in writing (including detailed reasons for the objection), to the use of the affidavit at the trial within at least 7 clear days of service of the affidavit.
- (2) A party who so objects may be ordered by the Court to bear relevant costs if the objection was not reasonable.
 - (3) (a) Where the attendance at trial of a witness was not necessary, the Court, on application of the witness, may order a party or the solicitor acting for the party, to pay a witness fee in respect of that attendance.
 - (b) An application under this Sub-rule must be filed no later than 7 days after the date of such attendance, and such application may be filed even if a final judgment has been made or given in the action.
- 100.** (1) The Court may, for proper reason –
- (a) fix a date, time and place for the examination of a witness on oath and require the attendance of that witness for that purpose; or
 - (b) order a Commission to issue under the seal of the Court for the examination of a witness on oath.
- (2) The Court may give such directions regarding the examination or Commission as it thinks fit.
- 101.** Where a party fails to attend within 15 minutes of the time fixed for a conciliation or listing conference, directions hearing or trial, the Court may give judgment or make an order against, and in the absence of, that party, without hearing any evidence.

- 102.** In endeavouring to achieve a negotiated settlement of an action, the Court may exclude solicitors of the parties from any interview in Chambers.

JUDGMENT

- 103.** (1) The Court must give reasons for a final judgment after the conclusion of a contested hearing.
- (2) Where the Court delivers an *ex tempore* final judgment and reasons for it, the Court is taken to reserve to itself the power –
- (a) to edit formally those reasons; and
 - (b) to make further findings of fact or determinations of law consistent with the judgment and reasons,
- in the event that their publication in final written form is required.
- (3) Where the Court has reserved its decision, it must give final judgment within 2 months of the date it was reserved.
- (4) Where for any reason the Court is unable to deliver a reserved final judgment, the Registrar may read the judgment to the parties in open Court.
- 104.** (1) The Court may vary or set aside a judgment -
- (a) before it is entered; or
 - (b) after it is entered -
 - (i) if the judgment was obtained by fraud;
 - (ii) if the judgment does not reflect the intention of the Court;
 - (iii) if the parties consent; or
 - (iv) if it was obtained consequent upon any irregularity.
- (2) A clerical mistake in a judgment, or an error arising in it from a slip or omission, may at any time be corrected by the Court, or the Registrar at the direction of the Court.
- 105.** A judgment takes effect on the date on which it is given unless the Court orders otherwise.

COSTS

- 106.** (1) Subject to these Rules or to an order of the Court, a successful party in an action (other than a minor civil action) is entitled on judgment to costs against an unsuccessful party, or any other party that the Court may order, in accordance with the following principles –
- (a) where judgment is in respect of an action for a sum of money –
 - (i) a successful plaintiff is entitled to costs on the relevant scale in the Third Schedule applicable to the sum actually recovered;
 - (ii) a successful defendant is entitled to costs on the relevant scale in the Third Schedule applicable to the sum claimed;
 - (b) where judgment is in respect of any other action – a successful party is entitled to costs on the scale in the Third Schedule specified by the Court; or
 - (c) where the action involved unusual difficulty or intricacy, or other proper cause exists - a successful party is entitled to costs on such percentage of the Supreme Court scale as the Court specifies.
- (2) In a minor civil action, a successful party is entitled on judgment to costs against an unsuccessful party, or any other party that the Court may order, in accordance with the relevant scale in the Third Schedule.
- (3) If, on the hearing of an action (other than a minor civil action), a successful party recovers a sum of money being \$3,000 or less, that party is, unless for special reasons the Court orders otherwise, entitled to costs only as if it were a minor civil action.
- (4) Where proper cause exists, the Court may order that a successful party is entitled to costs on a solicitor and client basis.
- (5) Unless the Court orders otherwise, a party is not entitled to costs on both a claim and counterclaim in the same action.
- (6) Where there is no scale of costs applicable to an action or proceeding, the Court may fix the appropriate scale of costs on application of the successful party or at the request of the Registrar.
- (7) (a) A party may, by notice in writing served on all other parties, certify that the nature of an action entitles the

parties to costs on the relevant scale in the Third Schedule as a complex action and, unless any other party by notice in writing objects (including detailed reasons for the objection) within 21 days of the service of the notice, a party entitled to costs in the action is entitled to costs on the relevant scale as a complex action.

- (b) If a party so objects, the relevant scale may be determined by the judicial officer hearing the trial of the action.
 - (c) In any other case, unless the Court orders otherwise, the relevant scale for a complex action will not apply.
- (8) A plaintiff who serves a claim by post (except by the agency of the Registrar) is not entitled to the costs thrown away up to the time a judgment relying upon that service is set aside unless the Court is satisfied that the claim form came to the attention of the defendant.
- (9) A magistrate may intimate her or his view of the likely result of a case at any time in pre trial processes and if s/he does so that intimation must not be available to the trial magistrate until after judgment when the trial magistrate may take it into account in relation to costs.

Note that a plaintiff may not be entitled to the costs for the filing of a claim unless notice of the claim is given, or if the defendant has given notice of willingness to consent to judgment, in accordance with Rule 20A.

- 107.** (1) Unless the Court orders otherwise, where costs of proceedings are reserved, such costs will abide the event.
- (2) The Court may make it a condition of an action proceeding any further that a party, against whom an order for costs is made, must make payment of the costs within a time fixed by the Court.
- 108.** (1) The Court may tax costs and allow costs in respect of the taxation.
- (2) The successful party must make a genuine attempt to agree his or her costs but if they cannot be agreed may file and serve on the unsuccessful party a Bill of Costs in taxable form.
- (3) If the unsuccessful party does not file and serve a written notice of objection to an item of the Bill of Costs (including detailed reasons for the

objection) within 21 days of the service of the Bill of Costs, he or she will be taken to admit the item.

- (4) When a Bill of Costs in taxable form is filed, the Registrar must fix, and give notice in writing to the parties, of the date, time and place for the taxation, which may proceed in the absence of any party.
 - (5) Where costs taxed off represent 10%, or more, of the costs allowed and certified on a taxation, the successful party is not entitled to any costs in respect of the taxation.
- 109.** (1) The Court may award costs in respect of the exercise of its jurisdiction under the *Enforcement of Judgments Act 1991*.
- (2) Where the Court appoints a person to execute a process or to carry out the duties of the Sheriff in relation to any matter pursuant to Section 7(1) of the *Sheriff's Act 1978*, the Court must not allow any additional costs or fees to the judgment creditor against the judgment debtor unless it is satisfied by affidavit evidence that the judgment debtor has been avoiding service or there is other proper cause.
- 110.** The Court, notwithstanding that it has no jurisdiction to hear an action or proceeding, may award costs as if it had jurisdiction.

APPEALS

- 111.** (1) An appeal to the Supreme Court must be instituted under chapter 13 *Supreme Court Civil Rules 2006*.
- (2) A review by the District Court of proceedings in a minor civil action must be instituted under r. 279A *District Court Civil Rules 2006*

ADMINISTRATION

- 112.** (1) A Magistrate may exercise any power or do anything that a Registrar is empowered to exercise or do under these Rules.
- (2) (a) A person dissatisfied with a decision or act of a Registrar acting in pursuance of these Rules may apply to a Magistrate for a review of the decision or act and, on such review, the Magistrate may confirm, vary or reverse the decision or make any appropriate order in respect of the act.

- (b) The Magistrate will conduct the review by way of rehearing and in such manner as he or she thinks fit.
- (3)
 - (a) The Registrar or a Special Justice may refer any matter to a Magistrate.
 - (b) The Registrar may apply for directions of the Court in respect of the discharge of the Registrar's functions under the Act or these Rules.
- 113.**
 - (1) The Registrar has the custody of all books, records, actions, proceedings and the Court seal.
 - (2) Subject to an order of the Court, the Registrar has custody of all exhibits until the expiration of any relevant appeal or review period. Following the expiration of any such period, the Registrar shall return the exhibit to the person who produced the exhibit, or the solicitor for the party tendering the exhibit. The person to whose custody any exhibit is returned shall be liable for any costs incurred by the Registrar in returning the exhibit.
 - (3) In the event that the Registrar is unable to return an exhibit in accordance with sub-rule (2), the Court may make any order as it thinks fit for the custody or disposal of the exhibit.
 - (4) The Registrar must keep a record of all actions, proceedings and judgments of the Court and may keep such record in electronic form.
 - (5) The Registrar must –
 - (a) forthwith after the issue of any summons, or the receipt of any request for process to issue under the *Enforcement of Judgments Act 1991*, deliver the summons or process to the Sheriff;
 - (b) fix the seal by physical or electronic means to any document required to be sealed under the Act or these Rules;
 - (c) keep books of account to comply with the *Public Finance and Audit Act 1987*; and
 - (d) perform such other acts and discharge such other functions as may be necessary or expedient to give proper effect to the Act, any other Act or these Rules.
- 114.**
 - (1) The Registrar may, in writing, delegate to an officer of the Court any of his or her powers or functions under the Act, any other Act or these Rules.

- (2) A delegation by the Registrar may be absolute or conditional, does not derogate from the powers exercisable personally by the Registrar and is revocable at will.
- 115.** (1) The Registrar may provide a certified copy of any record kept by the Registrar.
- (2) The contents of any record in the custody of the Registrar may be proved by a certified copy of it.
- 116.** (1) The Registrar must establish an interest-bearing bank account to be known as the *Magistrates Court (Civil Jurisdiction) Litigants' Fund* with the State Bank of South Australia for each Registry of the Court.
- (2) The signatory to the account must be the Registrar.
 - (3) Money paid to the Registrar under Rules 56 and 81 must, unless the Court orders otherwise, be paid into the Fund.
 - (4) The Registrar must pay money from the account in accordance with an order of the Court, or the terms of consent of the parties.
 - (5) As soon as practicable after 30 June and 31 December in each year the Registrar must certify the rate of interest applicable to the Fund for the immediately preceding six month period ("*the certified rate*"), and the Registrar must maintain a register of his or her certifications.
 - (6) The certified rate must be not more than, and within 1% of, the average rate of interest paid on money in the account of the Fund by the State Bank during the relevant period.
 - (7) Money paid into the Fund will accrue interest at the certified rate and such interest will (unless the Court orders otherwise) be taken to be part of the principal paid into the Fund.
 - (8) No interest will accrue in respect of any period until the Registrar certifies the rate.
 - (9) The Court may order the proper disposition of interest accrued under this Rule.
 - (10) The Court may order the proper disposition for use in the Civil (General Claims) Division of the Court of any balance in the fund that will not accrue to litigants.

117. (1) A party to an action, or a legal practitioner acting for a party to an action, may access the record of that action.
- (2) Access by a legal practitioner to a document may be by e-mail but such access shall be deemed to be the provision of a copy of the document and a fee may be charged for it.
118. (1) A Registry of the Court will be open between such hours and on such days as the Chief Magistrate directs.
- (2) The Registrar may accept an action or proceeding outside the hours specified.
119. (1) The first document in an action will have an action number assigned to it and each other document in the action must bear that action number, together with any prefix given to it by the court to designate that it was an action filed by electronic means, or the Trial Court, and the calendar year when the action was commenced.
- (2) A new series of numbers will be commenced for claims filed by electronic means and each Trial Court, each calendar year.

FEES

120. (1) The fees payable in relation to an action or proceeding in the Court are the fees prescribed in the *Magistrates Court (Fees) Regulations 1992* and the *Sheriff's Regulations 1992*.
- (2) An application for the remission or reduction of a fee must be made to the Registrar on oath in Form 24 and the Registrar must place it on the file of the action or proceeding.
- (3) Where proper cause exists, the Registrar may, by notice in writing served on a person or party, impose conditions in respect of the mode or time of payment of a fee by that person or party.
- (4) Payment of a fee may be ordered by the Court, and the Registrar may enforce the order pursuant to these Rules.

ENFORCEMENT OF JUDGMENTS – GENERAL

121. (1) The Registrar must not issue an enforcement process in respect of a judgment that is more than 6 years old, except with leave of the Court,

which must only be given if the judgment creditor establishes proper reasons to explain the delay in enforcement.

- (2) A person may, on application, apply to the Court for a review under Section 18(2) of the *Enforcement of Judgments Act 1991* of a Registrar's decision.
- (3) Where cross-judgments are obtained by both parties (whether in separate actions or the same action):
 - (a) if the judgment debts are unequal, only the balance is enforceable;
 - (b) if the judgment debts are equal, neither is enforceable.

122. (1) Subject to an order of the Court and to these Rules an enforcement process must be served:

- (a) on the person to whom it is directed; and
- (b) on a natural person personally or in any other case in a manner prescribed by these Rules.

- (2) Subject to any order of the Court an Investigation Summons, Examination Summons and a Warrant must be served by the Sheriff.
- (3) An application to appoint a person under Section 7 of the *Sheriff's Act 1978* must be served on the Sheriff who has a right to be heard on the appropriateness of the proposed appointment.

123. (1) Subject to this rule or an order of the Court the first enforcement process in respect of a judgment debt against a natural person in a minor civil action that does not arise from the carrying on of a business must be an Investigation Hearing.

- (2) Where the judgment creditor identifies real estate owned by the defendant on the form 18 it can issue a warrant of sale.
- (3) The first enforcement process for the purpose of this rule ends when an order, other than an adjournment, is made at an investigation hearing in the matter.

INTEREST ON JUDGMENTS

124. (1) Subject to an order of the court, interest for the purpose of section 35 must be calculated at the rate of 5% per annum on the judgment debt excluding any part of it that is interest.
- (2) A payment made by a judgment debtor will be credited first against the judgment debt excluding interest and, after that has been discharged, to any sum that has accrued on account of interest.

INVESTIGATION AND EXAMINATION HEARINGS

125. (1) At the request of a judgment creditor filed in Form 18 the Registrar may fix a date and time at the Registry of the court nearest to the place of residence or registered office of a judgment debtor to investigate the judgment debtor's means of satisfying a monetary judgment (an "*Investigation Hearing*") or to examine a judgment debtor who has failed to comply with an order under section 5(1) of the *Enforcement of Judgments Act 1991* (an "*Examination Hearing*").
- (2) The Registrar may issue a summons requiring the judgment debtor to attend an Investigation Hearing, in Form 25, or an Examination Hearing, in Form 26, or any other person who may be able to assist the investigation to attend or produce documents at the Investigation Hearing, in Form 25A.
- (3) A summons under this Rule must be served at least 4 clear days before the date fixed for the Investigation or Examination Hearing.
- (4) The judgment creditor may appear at an Investigation and Examination Hearing.
- (5) If a person summonsed to appear at an Investigation or Examination Hearing has not attended within 15 minutes of the time fixed for the hearing, or an adjourned hearing arranged with the knowledge of the judgment debtor, the Court, on proof of service of the summons, may order the issue a warrant for the arrest of the person.
- (6) At an Investigation or Examination Hearing the Court must have the judgment debtor give evidence about his or her financial circumstances on oath. A Registrar sitting as the Court must not sit on the bench.
- (7) The Registrar must keep a record of the evidence of a judgment debtor's financial circumstances taken at an Investigation or Examination Hearing and may make that available to other creditors.
- (8) The Court at an Investigation or Examination hearing on its own motion may make any appropriate order for payment, for imprisonment, an order

for the judgment debtor to execute or endorse a direct debit arrangement or any other document or authorising an officer of the Court to do so on behalf of the judgment debtor, the issue of a warrant of sale and that it not be first executed against personal property, a charging order, an order appointing a receiver, a garnishee order and any other order for or to assist the enforcement of a judgment.

- (9) A request to rescind, suspend or vary an order will be by Application in form 21. If such an Application is to be served on a judgment debtor it is an enforcement process and must be served personally on a natural person (r.122).

CHRONIC DEBTORS

- 126.** (1) If a judgment debtor has no assets available against which execution could be levied, nor other means of satisfying a judgment debt, and an order for payment which does not impose an unreasonable obligation on the judgment debtor will not within twelve months satisfy the judgment debtor's current unpaid judgment debts in the Court record on which there has been an enforcement process in the last twelve months, the court may declare that the judgment debtor is a chronic debtor.
- (2) The Court will ascertain any pecuniary sum payable by the chronic debtor under Part 9 division 3 of the *Criminal Law (Sentencing) Act 1988*, and all current unpaid judgment debts in the Court record on which there has been an enforcement process in the last twelve months and will make one order for payments by the chronic debtor to be apportioned in accordance with this rule.
- (3) Where the Registrar has reason to think a chronic debtor's financial circumstances have changed or a chronic debtor fails to make two payments the Registrar will summons the chronic debtor to appear at an Investigation Hearing or Examination hearing as the case requires.
- (4) Subject to an order of the Court any payments made by a chronic debtor to the Court shall distributed in accordance with Section 62(2) of the *Criminal Law (Sentencing) Act 1988*:
- (a) firstly, if a VIC levy is payable by the defendant, then into the Victims of Crime Fund in satisfaction of that levy; and
 - (b) secondly, if the sentencing court has ordered the defendant to pay any amount by way of compensation or restitution to a particular person, then to that person in satisfaction of that amount; and

- (c) thirdly, if any costs are payable to a party to the proceedings, then in satisfaction of those costs; and
 - (d) fourthly, if any other money is payable under the order of the court to the complainant, then to the complainant; and
 - (e) fifthly, under the *Enforcement of Judgments Act 1991* equally to any judgment creditors,
 - (f) then if any pecuniary sum is owing, to Treasury.
- (5) A judgment creditor may register a judgment debt to share in any distribution of payments collected by the Court from a chronic debtor, and the Registrar must advise the judgment debtor of that registration.
 - (6) A judgment creditor is not entitled to shift the costs of an enforcement process to a chronic debtor unless the creditor establishes that at the time of filing the process it had reasonable grounds to believe the debtor was no longer a chronic debtor.
 - (7) Subject to an order of the Court a chronic debtor declaration remains in place until the debtor pays all his or her judgment debts that are subject to the distribution of payments in accordance with this rule.
 - (8) The Registrar must keep a register of current chronic debtors and allow any person to identify if a named person is a chronic debtor.

127. Nothing in these rules:

- (a) permits the proceeds of the sale of property sold under the *Criminal Law (Sentencing) Act 1988* to be available to judgment creditors unless the property was also available for sale under section 7 of the *Enforcement of Judgments Act 1991*.
- (b) prevents an action in bankruptcy against a judgment debtor.

GARNISHEE ORDERS

- 128.** (1) Subject to these Rules on application by a judgment creditor the Court may make an order for attachment (garnishee).
- (2) The Court may receive affidavit evidence to prove:
- (a) the extent to which the judgment debt remains unpaid;
 - (b) the matters under Section 6(1)(a) or (b) of the *Enforcement of Judgments Act 1991*; and

- (c) any other relevant matter.
- (3) A consent in respect of the attachment of salary or wages must be:
- (a) given by the judgment debtor personally;
 - (b) given by a solicitor on his or her behalf; or
 - (c) in writing signed by the judgment debtor.
- 129.** Where the Court makes an order for attachment in the absence of either a garnishee or a judgment debtor:
- (a) the judgment creditor must forthwith serve a garnishee, who was not present, with the order of attachment;
 - (b) the Court must adjourn the hearing to a date, time and place fixed by the Court; and
 - (c) the judgment creditor must serve notice of the adjourned hearing and the application on a garnishee or a judgment debtor who was not present when the order was made at least 4 clear days before the adjourned date.
- 130.** (1) On proof of service of any document required to be served under Rule 129, the Court may proceed in the absence of a garnishee or a judgment debtor.
- (2) An order for attachment, which is confirmed or varied at an adjourned hearing in the absence of a garnishee, must be served forthwith by the judgment creditor on the garnishee.
- 131.** (1) A judgment creditor may, on application, request the Court to register a judgment against a garnishee.
- (2) The application must be served by the judgment creditor on the garnishee by any means authorised by Rule 47.
- (3) The Court may receive affidavit evidence to prove -
- (a) the extent to which the judgment debt remains unpaid;
 - (b) the matters under Section 6(6) of the *Enforcement of Judgments Act 1991*; and
 - (c) any other relevant matter.
- 132.** (1) A judgment creditor, a judgment debtor or a garnishee may make application to the Court to vary or revoke an attachment order.

- (2) The application must be served on the other parties at least 4 clear days before the date fixed for the hearing of the application.
- (3) The Court must not vary or revoke an order for attachment, unless there are material facts or circumstances that have changed since the attachment order was made.

WARRANTS TO SELL OR RECOVER PROPERTY

- 133.** (1) Subject to these Rules, the Registrar on request of a judgment creditor in Form 18, may issue a warrant for the sale of a judgment debtor's real or personal property (and it shall be presumed to be for both unless the creditor specifies it is for either) in Form 28.
- (2) The Sheriff, the judgment creditor or the judgment debtor, on application, may seek the Court's directions as to the manner of the sale, or a direction that real property be sold before personal property.
 - (3) The Sheriff when executing a warrant issued under this Rule must (subject to these Rules and any order of the Court) comply with rule 320 of the *Supreme Court Civil Rules 2006*.
 - (4) Subject to an order of the Court, the Registrar must not issue a warrant under this Rule where the judgment debtor is subject to an order for payments under Section 5(1) of the *Enforcement of Judgments Act 1991* unless s/he is satisfied by affidavit evidence that the judgment debtor has failed to comply with the order or, if the order is for payment by instalments, that at least 2 instalments are in arrears.
 - (5) A judgment creditor in a claim that is not a minor civil action may request a summons for an investigation hearing and a warrant of sale at the same time.
- 134.** The Registrar on request, in Form 18, of a person in whose favour a judgment for recovery or delivery up of possession of property has been given, must issue to the Sheriff a warrant of possession in Form 29.

SHERIFF'S INTERPLEADER

- 135.** Disputes in respect of property taken or intended to be taken by the sheriff in execution of any process shall be dealt with in accordance with Rule 321 of the *Supreme Court Civil Rules 2006*.

OTHER ORDERS OF ENFORCEMENT

- 136.** (1) Subject to these Rules on application by a judgment creditor the Court may make an order:

- (a) charging property of a judgment debtor;
 - (b) appointing a receiver for the purpose of enforcing a judgment; or
 - (c) ordering a party to execute or endorse a document or authorising an officer of the Court to do so on behalf of the party.
- (2) The Court may receive affidavit evidence to prove –
- (a) the extent to which the judgment debt remains unpaid; and
 - (b) any other relevant matter.
- (3) The application must be served by the judgment creditor on the judgment debtor at least 4 clear days before the date fixed for the hearing of the application.
- (4) The Court may, where proper cause exists, dispense with service under this Rule.

WARRANTS AGAINST THE PERSON

- 137.** (1) A request to the Registrar for the issue of a warrant must be in Form 18.
- (2) A warrant for the arrest of a person must be in Form 30.
- (3) A warrant for commitment under Section 5(7) of the *Enforcement of Judgments Act 1991* must be in Form 31.
- (4) A warrant for commitment on remand must be in Form 32.
- (5) Any other warrant for commitment must be in Form 33.
- (6) A warrant lapses 1 year after the date of its issue, unless that period is extended by the Court.
- (7) The Registrar must withdraw a Warrant of Commitment for non-compliance with a payment order on payment made to the Registrar of the judgment debt or all arrears of instalments up to the date of the Order of Commitment (as the case requires).
- 138.** (1) Prior to a warrant (other than a warrant under Rule 137(5)) being executed, the person to whom it is directed may apply to the Court to have the warrant stayed.
- (2) Such an application does not itself operate to stay the warrant.

- (3) An application to stay a warrant must be served on the judgment creditor at least 2 clear days before the date fixed for the hearing of the application.
 - (4) The Court may stay a warrant subject to conditions to ensure that the person to whom it is directed attends at the hearing, or complies with any other order.
 - (5) The Court may conduct an Investigation or Examination Hearing on the hearing of an application for the stay of a warrant.
- 139.** (1) Where a person is arrested under a warrant for arrest, s/he must be brought before the Court as soon as reasonably possible.
- (2) If it is anticipated that it may be necessary to arrest a person outside normal court hours the Court may order the person to be held in police custody until s/he can be brought before the Court and the warrant will be endorsed accordingly.
 - (3) Where a person is brought before the Court under a warrant, the Court may remand the person in custody, to be brought before the Court at any hearing at which the attendance of the person is required, but the hearing must be re-listed not more than 7 days after the date when the person was remanded in custody.
 - (4) The Court may release an arrested person to appear at the date, time and place fixed for any hearing at which the person's attendance is required.
 - (5) (a) Where the Court has reason to believe that the person brought before the Court on a warrant may leave the jurisdiction, the Court may require the person to surrender his or her passport to the Registrar as a condition of release.
 - (b) The Court may impose other conditions of release.
 - (6) Where a debtor fails to appear on a date fixed in the presence of the debtor the Court may issue a warrant of arrest of the debtor of its own motion and without fee.

FIRST SCHEDULE

CONSTITUTION OF THE COURT

- 1. Subject to the Act and this Schedule the Court must be constituted by a Magistrate and in deciding whether a Magistrate is available for the purposes for section 7A(2) of the Act preference must be given to a Magistrate hearing

the matter by phone or video link, or adjourning the matter to an occasion when a Magistrate is available before any alternative.

2. For the purposes of the *Enforcement of Judgments Act 1991* and these Rules the Court may be constituted by a Registrar or a Deputy Registrar to deal with matters under the following provisions:

- (i) *The Enforcement of Judgments Act 1991*-

Sections 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 17;

- (ii) *The Rules* -

Rules 120, 125, 126, 128, 129, 130, 131, 132, 133(2), 133(4), 136, 137(6), 138, 139(4), 139(5) and 139(6).

THE SECOND SCHEDULE (FORMS) IS PUBLISHED SEPARATELY

THIRD SCHEDULE: COSTS

SCALE 1: ROUTINE ACTIONS

ITEM	\$1 - \$20,000	\$20,001 - \$80,000
1 Application in the nature of an application for an interim injunction.	70% of the Supreme Court scale	90% of the Supreme Court scale
2 Pre-action Application	\$150	\$250
3 (a) deleted per Rule Amendment 20 (b) deleted per Rule Amendment 20		
4 Filing an action (other than under Rule 37) including where necessary attending the first Directions Hearing. A defence and counterclaim will only be allowed as one item on the higher scale applicable.	4.4% of the judgment sum	4.4% of the judgment sum up to a maximum of \$2,640
5 Filing an action under Rule 37.	As allowed by the Court.	
6 Any and all activity after the first directions hearing until the trial date is set or the last pre-trial conference or hearing whichever is the latter.	10%	10% up to a maximum of \$6,000

ITEM	\$1 - \$20,000	\$20,001 - \$80,000
7 All aspects not otherwise specified of and incidental to preparing for trial including proofing witnesses, advice on evidence and law (solicitor and counsel) and delivering brief to counsel.	11% of the judgment sum	11% of the judgment sum up to a maximum of \$6,600
8 Arranging witnesses for trial - per witness (includes obtaining and filing and serving expert reports).	\$50	\$75
9 Issuing and serving summons to witness.	\$50	\$75
10 Filing request (Form 18) not otherwise provided for.	\$50	\$50
11 Request for Investigation or Examination Summons including attendance at the hearing.	\$90	\$100
12 Service of any document which is not in the usual course served by the Court and is not otherwise specified		
(a) Personal where required	\$100	\$100
(b) Other	\$50	\$50
13 Preparing bill for taxation (includes attendance).	\$250	\$330

ATTENDANCE AND COUNSEL FEES

ITEM	\$1 - \$20,000	\$20,001 - \$80,000
14 To advise on compromise or settlement for a person under disability –		
(a) Where quantum only is in dispute;	\$250	\$500
(b) Where quantum and liability are in dispute;	\$350	\$700
14A Where no amount has been claimed under item 14, to provide an opinion (including to advice on evidence) -		
(a) Where quantum only is in dispute;	\$250	\$500
(b) Where quantum and liability are in dispute;	\$350	\$700
15 Attendance as counsel at trial (includes fee		

ITEM	\$1 - \$20,000	\$20,001 - \$80,000
on brief and refreshers)		
- first day	\$1,200	\$1,500
- subsequent day(s)	\$800	\$1,000
- attendance for judgment	\$150	\$200
16 Attendance on an application to set aside a warrant.	\$50	\$50
17 Any other attendance where the costs are not within items 4, 6 or 7.	\$100	\$120

NOTES:

- A** The Court may allow any larger or lesser amount for any item and any amount in respect of any other matter that the Court allowed at the time of making any order.
- B** All the above items are all inclusive of all costs for all incidental and necessary activity and advice for each item to the intent that no costs will be allowed in addition to the costs set forth for each item nor for anything not itemised.
- C** For the purposes of items 4, 6 and 7 the costs calculated must be rounded to the nearest \$10.
- D** For the purpose of determining the applicable scale, any cents must be rounded up to the next dollar and unless the Court orders to the contrary any interest component in the judgment sum will be excluded.
- E** The costs allowed in this scale do not include 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.

WITNESS FEES AND DISBURSEMENTS

Professional scientific or other expert witnesses per day	\$600 or such amount ordered by the Court
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Other adult person per day	\$300
Persons under 18 years of age per day	\$120
Travel expenses	Where the witness is normally resident more than 50 km from the trial Court at the rate of 70 cents per km or the least expensive return air fare whichever is the lesser or the cheapest combination of both.
Accommodation expenses	In the discretion of the taxing officer where the witness is required to be absent from his or her normal place of residence overnight for accommodation and sustenance per night \$240 or such larger amounts allowed by the Court at the time of or before judgment.
Photocopying	50 cents per page
STD calls	The actual cost.
Expert Reports	\$525 or such other amount ordered by the Court
Other	All Court fees, search fees, and other fees and payments to the extent to which they have been properly and reasonably incurred and paid; but excluding the usual and incidental expenses and overheads of a legal practice and in particular excluding postage, telephone charges (non STD) and courier expenses.

NOTES:

- A** If a witness is released before or is required to first attend after the luncheon break on any day, half a day will be allowed.
- B** Where a party intends to serve a claim by means other than post, e-mail or fax a disbursement equal to the amount a Sheriff is entitled to receive for serving a claim form is allowed, but if the process is returned to the Court unserved, or is served by post, e-mail or fax, the disbursement must be disallowed unless a Registrar is satisfied that the party made reasonable efforts to serve the claim by means other than post, e-mail or fax.
- C** The costs allowed in this scale do not include 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.

SCALE 2: COMPLEX ACTIONS

SCHEDULE 21: COSTS OF LITIGATION		
ITEM	\$1 - \$20,000	\$20,001 - \$80,000
1 Application in the nature of an application for an interim injunction.	70% of the Supreme Court scale	Other than actions to which Item 5 applies, costs in actions of this class will be allowed on the basis of 90% of the Supreme Court scale
2 Pre-action Application.	\$150	
3 (a) deleted per Rule Amendment 20 (b) deleted per Rule Amendment 20.		
4 Filing an action (other than under Rule 37) including where necessary attending the first directions hearing. A defence and counterclaim will only be allowed as one item on the higher scale applicable.	6.5% of the judgment sum	
5 Filing an action under Rule 37.	As allowed by the Court	
6 Any and all activity after the first directions hearing until the trial date is set or the last pre-trial conference whichever is the latter.	12%	
7 All aspects not otherwise specified of and incidental to preparing for trial including proofing witnesses, advice on evidence and law (solicitor and counsel) and delivering brief to counsel.	16.5% of the judgment sum	
8 Arranging witnesses for trial per witness (includes obtaining and filing and serving expert reports).	\$50	
9 Issuing and serving summons to witness.	\$50	
10 Filing request (Form 18) not otherwise provided for.	\$50	
11 Request for Investigation or Examination Summons including attendance at the	\$90	

hearing.		
12 Service of any document which is not in the usual course served by the Court and is not otherwise specified: (a) Personal where required (b) Other	\$100 \$50	
13 Preparing bill for taxation (includes attendance)	\$250	

ATTENDANCE AND COUNSEL FEES

ITEM	\$1 - \$20,000	\$20,001 - \$80,000
14 To advise on compromise or settlement for a person under disability - (a) Where quantum only is in dispute (b) Where quantum and liability are in dispute	\$350 \$450	
15 Attendance as counsel at trial (includes fee on brief and refreshers) - - first day - subsequent day(s) - attendance for judgment	\$1,500 \$1,000 \$200	
16 Attendance on an application to set aside a warrant.	\$50	
17 Any other attendance where the costs are not within items 4, 6 or 7	\$120	

NOTES:

- A** The Court may allow any larger or lesser amount for any item and any amount in respect of any other matter that the Court allowed at the time of making any order.

- B** All the above items are all inclusive of all costs for all incidental and necessary activity and advice for each item to the intent that no costs will be allowed in addition to the costs set forth for each item nor for anything not itemised.
- C** For the purposes of items 4, 6 and 7 the costs calculated must be rounded to the nearest \$10.
- D** For the purpose of determining the applicable scale, any cents must be rounded up to the next dollar and unless the Court orders to the contrary any interest component in the judgment sum will be excluded.
- E** The costs allowed in this scale do not include 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.

WITNESS FEES AND DISBURSEMENTS

Professional scientific or other expert witnesses per day	\$600 or such amount ordered by the Court
Other adult person per day	\$300
Persons under 18 years of age per day	\$120
Travel expenses	Where the witness is normally resident more than 50 km from the trial Court at the rate of 70 cents per km or the least expensive return air fare whichever is the lesser or the cheapest combination of both.
Accommodation expenses	In the discretion of the taxing officer where the witness is required to be absent from his or her normal place of residence overnight for accommodation and sustenance per night \$240 or such larger amounts allowed by the Court at the time of or before judgment.
Photocopying	50 cents per page
STD calls	The actual cost
Expert Reports	\$525 or such other amount ordered by the Court
Other	All Court fees, search fees, and other fees and payments to the extent to which they have been properly and reasonably incurred and paid; but excluding the usual

	and incidental expenses and overheads of a legal practice and in particular excluding postage, telephone charges (non STD) and courier expenses.
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NOTES:

- A** If a witness is released before or is required to first attend after the luncheon break on any day, half a day will be allowed.
- B** Where a party intends to serve a claim by means other than post, e-mail or fax a disbursement equal to the amount a Sheriff is entitled to receive for serving a claim form is allowed, but if the process is returned to the Court unserved, or is served by post, e-mail or fax, the disbursement must be disallowed unless a Registrar is satisfied that the party made reasonable efforts to serve the claim by means other than post, e-mail or fax.
- C** The costs allowed in this scale do not include 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.

SCALE 3: MINOR CIVIL ACTIONS

ITEM	\$0- \$1,000	\$1,001- \$3,000	\$3,001- \$6,000
1 Filing an action (if prepared and filed by a solicitor)	\$20 plus 11% up to a maximum of \$264		
2 P I particulars	\$50	\$90	\$150
3 Any attendance at Court by party or solicitor (where solicitor is entitled to attend)	\$50	\$60	\$75
4 Witness fees	\$45	\$60	\$75
	[or actual charge by witness if allowed by Court]		
5 Filing and serving a summons to witness	\$45	\$45	\$45
6 Request for Investigation/ Examination summons including attendance at the hearing	\$45	\$60	\$75
7 Any other request (Form18) for	\$45	\$45	\$45

enforcement of judgment			
8 All other Court fees	As allowed by the Court		
9 Other disbursements	As allowed by the Court		
10 To advise on a compromise or settlement for a person under disability -			
(a) Where quantum only is in dispute	\$165	\$165	\$165
(b) Where quantum and liability are in dispute	\$330	\$330	\$330

NOTES :

- A** For the purpose of item 1 the costs calculated must be rounded up to the nearest dollar.
- B** Debt collecting fees in addition to the above amounts are not allowed.
- C** Where a party intends to serve a claim by means other than post, e-mail or fax a disbursement equal to the amount a Sheriff is entitled to receive for serving a claim form is allowed, but if the process is returned to the Court unserved, or is served by post, e-mail or fax, the disbursement must be disallowed unless a Registrar is satisfied that the party made reasonable efforts to serve the claim by means other than post, e-mail or fax.

SCALE 4: WORKERS LIENS, CHARGING ORDERS AND WARRANTS OF SALE

ITEM	\$1 - \$4,000	Above \$4,000
1 (a) Notice of Demand and registration of Lien and registration and Notice of Demand under the <i>Workers Liens Act 1893</i> .	\$220	\$390
(b) Notice of withdrawal/ satisfaction of Lien and registration.	\$80	\$120
2 (a) Preparing and registering a warrant of sale against real property.	\$120	\$150
(b) Discharging a warrant of sale.	\$80	\$120
3 (a) Applying for and obtaining a charging order over real property and registering it.	\$220	\$390
(b) Discharging a charging order at the	\$80	\$120

Lands Titles Office.		
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NOTES :

- A** All the above items are all inclusive of all costs for all incidental and necessary activity and advice for each item to the intent that no costs will be allowed in addition to the costs set forth for each item nor for anything not itemised, save for disbursements for registration fees incurred at the Lands Titles Office which are allowed in addition to these items.
- B** Subject to any order of the Court costs for only one of these items is allowed in any action and no costs for a Charging Order are allowed if the Judgment Creditor has a mortgage over the subject property.
- C** The Court may allow any larger or lesser amount for any item and any amount in respect of any other matter that the Court allowed at the time of making any order.
- D** For the purpose of determining the applicable scale, any cents must be rounded up to the next dollar and unless the Court orders to the contrary any interest component in the judgment sum will be excluded.
- E** The costs allowed in this scale do not include 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.