

Introducing The Civil Procedure Rules 2002

On September 16, 2002 the Rules Committee of the Supreme Court made the Civil Procedure Rules (2002), (hereinafter referred to as the "CPR"). The Rules Committee ordered that the CPR will come into operation on **January 1, 2003** subject to the transitional provisions in part 73. It further ordered that all Rules of Court relating to procedure in civil proceedings in the Supreme Court except those relating to insolvency (including winding up of companies and bankruptcy) and matrimonial proceedings are revoked.

The Practice Direction of September 16, 2002

Also on September 16, 2002 the Registrar of the Supreme Court issued a Practice Direction, which has caused the Rules in relation to Case Management to be in operation as of that date. This Practice Direction had the effect of:-

- a) **vacating all trial dates scheduled for April 7, 2003 or later;**
- b) ordering that in order to ensure that matters already filed retain their priority, if the pleading have been closed and a trial date prior to April 7 has not been fixed (or if one had been fixed it was adjourned sine die), if the parties consent any party can apply **between September 16, 2002 and December 31, 2002 for a Case Management Conference .**

The Overriding Objective of the CPR

The overriding objective of the CPR is stated as being to enable the Court to deal with cases "**justly**" (R1.1). Hence there is a common thread running through the Rules, which seeks to simplify civil procedure, to concentrate on the substance of the matter, not the form. The introduction of the CPR may therefore mark the end of the importance and impact of procedural challenges, which many attorneys have grown fond of over the years.

Transitional Provisions

Part 73 of the CPR is entitled "Transitional Provisions" and deals with what it refers to as "**new proceedings**" (proceedings commenced on or after 1/1/03) and "**old proceedings**" (proceedings commenced before 1/1/03).

There will be a **dual system for the first Court Term of 2003** in that the CPR will not apply to any proceedings for which a trial date is fixed in that first term unless the date is adjourned and a judge will then fix the date (R. 73.3(1)).

For old proceedings, if they are adjourned part heard, the trial judge is entitled to give directions regarding the future conduct or direct that a pre-trial review is fixed.

In an application to adjourn a trial date, the hearing of that application will be treated as a pre trial review and the CPR will apply from that date to those proceedings.

If you do not have a trial date **it is your duty to apply for a Case Management conference** to be fixed. The Registrar will fix the Case Management conference and all parties will be given at least 28 days notice of it. The CPR will apply to case from the date that notice of the Case Management Conference is given.

Perhaps most shocking of all, **if you do not apply for the Case Management conference by 31/12/03 the proceedings are struck out without anyone needing to apply**. It is therefore clear that the Supreme Court Registry is not going forward with a backlog. This provision will enable the Registry to rid the Supreme Court of cases in which parties are not interested.

A list of all of the proceedings, which have been struck out, will be displayed in the Registry from 1/1/04 to 31/3/04. At least 3 advertisements will appear in the newspapers to give notice of the list and those advertisements will be at least 2 weeks apart.

Any party to a proceeding, which was struck out, can **apply to restore** it but the application must be made by April 1, 2002 and the restoration is by no means automatic. To restore it you will have to give affidavit evidence to show:

- a) a **"good reason"** for failing to apply for Case Management;
- b) that you have a **"realistic prospect of success"** in the proceedings;
- c) other parties to the proceedings would not be more **prejudiced** by granting the application than the applicant by refusing it.

The Forms and The Index

Practitioners now know what the form of each document looks like. If you do not sit with the CPR and get an understanding of it prior to 1/1/03, if a client asks you to file a suit or even to enter an appearance, you will not know how to do it. As of 1/1/03 everything is different and so the learning process must begin again. Thankfully the CPR contains 29 forms, which will guide practitioners as to what the major documents are to look like in civil proceedings, (see the list attached as Appendix 1). There are also 21 Probate forms (see the list attached as Appendix 2). Finally there are 4 Admiralty forms (Appendix 3).

The CPR also has an index, which we hope will be more useful than the one, which we had for the Civil Procedure Code, which is on its deathbed with an estimate by its medical personnel of about 4 months to live.

We will now take you through the CPR in summary form and highlight for you some of the important changes, which the CPR brings.

STARTING AN ACTION

Claim Form and Particulars of Claim or affidavit giving details of claim.

Form 1 is the regular form, which must be used at all times except in relation to mortgage claims, claims for possession of land, hire purchase claims, where the issue is likely to involve substantial dispute as to facts, where by any enactment proceedings are required to be commenced by originating summons or motion. For all those matters Form 2 (fixed date claim form) must be used.

Form 1 must include a short description of nature of claim, specify remedy sought, give claimants normal place of residence or business and address for service. If the claimant is an individual then state occupation. Where interest is being claimed state basis of entitlement, rate, date from which it is claimed and in claims for a specified sum state the daily rate of interest.

Form 2 must include the question the claimant wants the court to decide or the remedy being sought and what enactment is being relied on (if any).

The Claimant must attach a copy of any document he considers necessary to prove his case.

Both Forms 1 and 2 must include telephone and fax number of claimant or his Attorney's fax and telephone number. Where an Attorney is involved the Attorney's name or reference of person dealing with matter must be included.

Every statement of case (claim form, particulars of claim, defence, counterclaim, ancillary claim form or defence and reply) to be verified by certificate of truth

stating that the party believes the facts contained in the document to be true. The Certificate is to be signed by the party personally. Failure to give certificate of truth may result in document being struck out.

Where it is impracticable for the party to sign personally, the attorney may sign however the attorney must state why it is impracticable for the party to sign personally and that certificate is given on instructions of party and that the party has stated that s/he believes the facts stated to be true.

Any amendments to any of the documents for which certificate required will need further certificate in relation to the amendments.

FILING OF DOCUMENTS

Hand delivery, post or fax (except claim form)

The fax must include a cover page which states name, address and telephone number of sender, date and time of transmission, total number of pages sent including cover page, number of fax machine to which documents being sent, name and telephone number of person to contact if problems with transmission occur.

SERVICE OF DOCUMENTS

The Claim form must be served within six (6) months of issue, thereafter it is invalid, unless renewed.

Along with the claim form the Claimant must serve particulars of claim, acknowledgment of service form, form of defence, prescribed notes for defendants.

Exceptions:

- where all information that would be in particulars of claim included in claim form

- or court gives permission
- or case of emergency and impracticable to obtain permission of court in which case needs to file certificate stating that issue and service of claim form matter of emergency, say why an emergency and serve copy of certificate and application for permission with claim form.

Change of address for service

Party now has duty to inform Court and other parties of change – failure to do so means that documents served at the last address on file are deemed to be properly served.

SERVICE ON AN INDIVIDUAL

Personally by handing to or leaving it with person.

Proof of personal service

In addition to the regular affidavit of service, where the person served is identified by a third person then where practicable, that third person must also do an affidavit stating that he identified the person served and how he was able to do so. The same applies for identification by description or photograph.

Service on limited company, partnership, corporate body

Send claim form by telex, fax, registered post, courier delivery, cable or leaving it at the registered office (limited company) or place of business (partnership) or principal office (corporate body).

For limited companies you can serve director, officer, receiver, receiver manager or liquidator personally or officer or manager with real connection to the claim.

For Partnerships you can serve any partner personally, manager of firm (at any place of business) who has real connection to claim. If partnership dissolved to knowledge of claimant then serve every person seeking to make liable.

For Corporate body you can serve any principal officer (mayor, chairman, president, town clerk, chief executive officer, clerk, secretary, treasurer or other similar officer.

Parties may specify method of service of claim form by contract.

Proof of service

By affidavit exhibiting relevant, receipt, transmission record etc, affidavit must be of person who actually sent fax or telex etc.

ACKNOWLEDGMENT OF SERVICE

Defendant completes acknowledgment of service form and posts, faxes or hand delivers it to relevant Registry as well as to claimant's attorney (14 days).

May proceed directly to issue defence rather than acknowledgment of service and then defence provided defence filed within the 14 days of receipt of claim

Acknowledgment of service must contain date of receipt of claim form, whether any part of claim admitted, if yes what part. If an individual admits any part of the claim, for specified sum of money, then include proposal for payment and details of financial circumstances, address within jurisdiction for future service.

Defendant or his attorney to sign acknowledgment of service form.

Acknowledgment of service does not take away right to dispute court's jurisdiction.

DEFENCE

Period for filing defence is 42 days from service of claim form (or particulars of claim if served at another time)

Parties may agree to extend time for filing defence (maximum 2 times)

Maximum time, which may be agreed, is 56 days.

Defendant must file details of agreement.

The Defence must include what facts admitted, denied, neither, what your version of events are and attach all documents on which it is intended to rely, and verify facts by certificate of truth.

CONSEQUENCES

Defendant may not rely on any fact or allegation not set out in defence and which could have been set out, unless court gives permission.

REPLY TO DEFENCE

Can only be filed with permission of Court.

DEFAULT JUDGMENTS

Can be obtained where the defendant fails to file acknowledgment of service giving notice of intention to defend or has failed to file a defence.

No default judgment possible for probate proceedings, admiralty claim in rem, fixed date claim.

JUDGMENT FOR FAILURE TO FILE ACKNOWLEDGMENT OF SERVICE, JUDGMENT FOR FAILURE TO DEFEND

A claimant can obtain judgment in default as under the old rules.

PROCEDURE

File

- affidavit in support exhibiting all documents required to prove each aspect
- Copy of application must be served on defendant even where no acknowledgement of service of the claim or defence filed.

A claim for interest above the statutory rate must be supported by evidence.

SETTING ASIDE DEFAULT JUDGMENT

Court may set aside judgment on application or on its own motion if any of requirements not satisfied

Otherwise defendant must apply as soon as practicable after knowledge of judgment and gives good explanation for failure to file acknowledgment of service or defence, show has real prospect of successfully defending claim.

Application may be made by any person directly affected by judgment.

Application to be supported by an affidavit exhibiting draft proposed defence.

Order conditional on defendant filing defence by certain date.

If order made then Court must treat hearing as case management conference unless justice requires otherwise. If claimant abandoned a remedy in order to obtain default judgment and that judgment set aside the abandoned remedy is restored.

SUMMARY JUDGMENT

If Court considers that the claimant has no real prospect of succeeding on the claim or issue or the defendant has no real prospect of succeeding on the claim or issue then the Court may give summary judgment except where there is an application for redress under the Constitution, proceedings against Crown, proceedings by fixed date claim, proceedings for false imprisonment, malicious prosecution, defamation, admiralty proceedings in rem, probate proceedings.

For Summary Judgment the defendant must have filed acknowledgment of service. The Claimant must file affidavit evidence in support and serve copies on each party against whom judgment sought.

ADDING AND SUBSTITUTING PARTIES

Fundamental point of departure is that parties can be added or substituted after limitation expires on the following conditions; a new party being substituted for a party named by mistake, interest or liability of former party has passed to new party, claim cannot be properly carried on by or against an existing party unless new party added or substituted.

AMENDMENTS TO STATEMENTS OF CASE

Amendments can be made by any party, without permission, before case management conference. The Court may disallow amendment of its own motion or on application. After case management amendment by permission of Court only. Must satisfy Court that change in circumstances occurred which became known after case management conference.

After limitation amendments will only be allowed to correct mistakes as to the name of a party and only where the mistake was genuine and one, which would not cause reasonable doubt as to the identity of the party in question.

CASE MANAGEMENT

This is a new procedure. Most, if not all matters filed under the old rules without a trial date prior to April 7, 2003 will have to go to case management. Of course, matters filed under the new rules will go to case management at the appropriate stages as laid down under the rules.

Generally the Registry must fix a date for the case management conference immediately upon the filing a defence to a claim. The case management conference must take place not less than 4 weeks nor more than 8 weeks after the defence is filed. A party can however apply to fix a case management conference before a defence is filed.

At case management the Judge must be au fait with the matter as the Judge must be able to identify the issues for trial, encourage parties to settle where possible, and summarily dispose of the claim or any issue.

DISPUTE RESOLUTION CONFERENCE

A case management Judge can order the parties to go to a dispute resolution conference held by a Judge or Master. The Judge who conducts that conference may not act as trial judge in the proceedings.

Any documents used and discussions held during the dispute resolution conference may not be disclosed. At this conference the Judge has wide powers. He or she may conduct a mini-trial or give an opinion as to likely success of any issue in the matter, though any judgment or opinion rendered during this

conference will not be binding on the parties. The Judge may meet with parties individually or together to encourage settlement.

Where a settlement is reached at the dispute resolution conference, it must be recorded in writing and signed by the parties. Notice of the settlement must be filed in the Registry.

Some other powers which a Judge at case management has, are to dismiss or give judgment on a claim after a decision on a preliminary issue, strike out a case for failure to comply with any order or may make an unless order and if not complied with, enter judgment. The Judge can also order a hearing to receive evidence by telephone, or other method of direct oral communication or instead of holding an oral hearing deal with a matter on written representations submitted by the parties, and direct that any evidence be given in written form or through video link.

Apart from a list of specific powers the Judge has very wide powers and is permitted by the rules to take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.

The client and the attorney must be present at the case management session. Failure to attend a case management can lead to the case being struck out (where the claimant fails to attend) or judgment being entered (where the defendant fails to attend) once service is proved.

At case management the court can direct the service of expert reports, witness statements and disclosure of documents by a specified date. The Court can also direct that an agreed statement of issues, facts or scientific, medical or technical matters be prepared.

Ultimately at the case management session the court must fix a pre-trial date and a trial date or a period within which the trial is to commence and the date by which a listing questionnaire is to be filed by the parties. Listing Questionnaires are dealt with later in this paper.

A party can apply to dispense with case management if for instance the cost of the case management to the parties is disproportionate to the value of the proceedings. Where this is dispensed with the court must give directions for trial and fix a trial date.

If the claim is under \$2M and the parties consent, the Court may decide to dispense with case management, pre-trial review (which is another procedure dealt with later in this paper), and the requirements for bundles, and may fix a date for trial and a listing questionnaire.

The Court cannot adjourn case management without fixing a new date. A party requiring an adjournment must apply to change the date for hearing. Parties are not at liberty to agree between themselves to any change in court dates.

Each party must file a completed listing questionnaire. If this is not fully complied with then there will be a listing appointment. After the listing questionnaire is completed the Registry must fix a trial date where one has not already been fixed or to confirm one that has already been fixed.

The general rule is that the registry must give parties at least 8 weeks notice of the trial date unless the parties agree to an earlier date or the urgency of the case requires an earlier date.

At the case management session or any subsequent hearing other than the trial, the Court can order a pre-trial review or a party can apply for one at least 2 months before the trial date. Similar rules on case management apply to pre-trial

review. The Judge who conducts this review may not be the trial judge unless the parties consent or in some particular cases stipulated in the rules.

The parties must seek to agree and file a pre-trial memorandum setting out a concise statement of the nature of the proceedings, the details of any admissions, the factual and legal issues of the parties. Where the parties cannot agree this memorandum then they may file separate ones.

Like at case management such matters like settlement are also addressed at the pre-trial review.

Matters such as skeleton arguments, chronology of events, list of authorities and so on are dealt with by the Judge. The Judge would also direct the total time for the trial and time allocated to each party.

A party can apply for an order for a person to be examined before the trial or hearing of any application in the proceedings. The Court can order that the evidence be taken on depositions by an appointed examiner of the Court. An examiner can be a Judge, Master, Registrar, Resident Magistrate or attorney of at least 5 years in practice. The Judge must direct the time and place for the examination and the examination must be conducted as if the witness were giving evidence at a trial.

The examiner must send the original deposition to the registry and a copy to each party to the proceedings and to the deponent. Depositions can also be taken from witnesses out of the jurisdiction. The Court must direct payment of the examiner's fees and expenses for the witness such as traveling.

With the parties consent the court can order that depositions be taken without an examiner. The deposition may be used as evidence at the trial or the court may require a deponent to attend the hearing to give evidence orally.

The Court may also accept evidence at trial or other proceedings on Affidavits though the Court can require a witness to attend a hearing for cross-examination.

The Court can also order that witness statements be taken and used at trial or at a hearing in the proceedings. The witness statement may be used as the examination in chief but may however be expanded upon where the witness attends to give oral evidence. The witness statement may also be used as a hearsay document and the witness can be cross-examined upon his statement.

It is not unrealistic under these new rules for a matter to come on for trial within 6- 12 months of an action being filed.

The main difference between the new and the old rules is that in the new the Court takes charge of the proceedings whilst in the old the parties had more control. What will not be a feature of the new rules is lengthy waits for matters to be heard, matters not being ready for trial, frequent adjournments and shorter trials.

TRIAL

FILING OF BUNDLES

The new rules provide specifically for the preparation, content, filing and serving of bundle of documents for trial. The responsibility for the preparation and filing of bundles falls solely on the claimant, except that three weeks prior to the commencement of trial all parties must inform the claimant of the documents that they wish to have included in the bundle. Now the bundle must be filed ten (10) days before the trial date and shall comprise:

1. The claim form;

2. All statements of case (and remember, these comprise the claim form, the particulars of claim, defence, counterclaim, ancillary claim form or defence and a reply);
3. Any requests for information and replies; and
4. Documents that the parties were ordered to file under pre-trial review. The Court may give directions for the filing by each party and service on the others of skeleton arguments; chronology of relevant events; summary of any legal propositions to be relied on at the trial; list of authorities). The provision for these documents are new and mirrors appellate procedure.

In addition to this bundle, the claimant must file at the same time a second bundle comprising witness statements; all expert reports and any agreed statement.

HEARING TO BE IN PUBLIC

The rules also state that the hearing is to be in public (nothing new here). The rule is not absolute however and allow certain limited exceptions such as where publicity would defeat the object of the hearing, in matters involving national security, where a private hearing is necessary to protect minors or patients. Importantly, the Court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of a third party or witness. This restriction is broadly framed and "interests" is not defined or explained.

CROSS-EXAMINATION

The Court may now limit the examination, cross-examination or re-examination of any witness, where previously the Court only had power to disallow vexatious or irrelevant questions only. This provision properly exercised will go a far way in

saving time and give effect to the overriding objective so far as it relates to saving expense.

WRITTEN SUBMISSIONS

This is a permissive and not mandatory provision, providing for the filing by the parties with the Court's consent, written submissions instead of or in addition to closing speeches. The written submissions, if filed, in addition to the closing speech can be filed up to **seven (7) days** of the conclusion of the trial. Again, this new provision can be an effective time and costs saving exercise if the submissions are filed in lieu of lengthy closing speeches by Counsel.

FAILURE OF PARTY TO ATTEND TRIAL

Where neither party appears on the trial date the judge may strike out the claim and counterclaim. However, if as is more frequently the case, one party appears and the other does not the judge may proceed in the absence of the other. While the present code which says specifically that if the absent party is the Plaintiff, the Court may dismiss the case for want of prosecution, this provision says simply that the Court may proceed, but the Court would clearly retain the power to dismiss.

Also, where a party is absent and judgment is given, notwithstanding this absence, the party now has **fourteen (14) days** to apply to set aside the Judgment or order where formerly such a party had ten (10) days and must now file an affidavit showing good reasons for his absence and showing also that had he attend some other judgment or order would have been made.

ADJOURNMENT

Under the present rules, the Court had wide powers to adjourn a trial to such time and place as the trial judge thinks fit. Now the power is much more restricted and adjournments must now be to a date and time fixed by the judge or

the registry. Adjournments "without a date" which are presently by far the most common mode of adjournments will become a thing of the past.

EXHIBITS

The rules provide that exhibits handed in evidence during the trial must now be kept by the Court until conclusion of trial, but thereafter each party **MUST** obtain the return of the exhibits and preserve them during any period in which an appeal is pending. This is therefore a new additional responsibility of Counsel to secure the return of exhibits at the end of trials.

JUDGMENTS AND ORDERS

The rules stipulates in

Part 42 that a party present in person or by an Attorney-at-Law when judgment is given or order made is bound by the terms of the judgment or order whether or not these are served subsequently.

Every judgment or order must state the name and judicial title of the person making it, unless it is a default judgment, judgment on admissions or consent order and must be signed by the Registrar, Judge or Master, sealed and be dated with the date given or made.

Upon filing a draft judgment or order, the party filing must serve every other party to the claim. Even though a party is acting by an Attorney, the Court may direct that any judgment or order must be additionally served on the party himself. Under the present rules, it normally is sufficient to serve the Attorney on the record but this provision enables certain orders, likely to be "unless orders" (by virtue of which a party is ordered to do a particular act within a specified time or face dismissal of his claim or defence) to be served on a party personally.

TIME JUDGMENT TAKES EFFECT

This rule also states that a judgment or order takes effect from the day it is given or made, that is, at the time the judge pronounces it.

THE SLIP RULE

Under the Slip Rule, the Court is empowered at any time to correct a clerical mistake in a judgment or order, or any error in a judgment or order from any accidental slip or omission and unlike under the present rule, where a party had to apply for such an order by Summons or Motions, now a party may apply without notice.

General Enforcement Provisions

The new Rules are meant to be more “public reader friendly” and this is exhibited throughout these parts beginning with Part 43 in which a definition is given for Judgment Creditor and Judgment Debtor. As well as the title suggests, this Part contains general provisions, namely how enforcement is begun. Most of the provisions in this Part, if not all, were included in the old CPC.

The terms as you will see have changed and have made the rules easier to understand.

Oral Examination in Aid of Enforcement

This was formerly known as Judgment Debtor Summons whereby a Judgment Debtor is brought before the Court to be examined as to his means to satisfy the Judgment Debt.

Once again, the procedure to be adopted is clearly set out. Periods and means required for service of documents on Judgment Debtor are clearly defined.

Conduct of the Examination of the Judgment Debtor is set out, step by step.

There is no a provision in the Rules for traveling expenses to be given to the examinee (the person who is being examined) by the Judgment Creditor.

An entirely new provision is that for Financial Position Notice (44.9).

This is a notice, (the format is set out in the Rules Forms) which the Judgment Creditor may serve **in addition to or in place of** an Order for an Oral Examination. The Notice requires a Judgment Debtor to complete a statement of his financial position in the practice form and serve it on the Judgment Creditor within 14 days of service.

If satisfied, Judgment Creditor may file a Notice in the Registry to say that it is satisfied with the information provided by the Judgment Debtor. Where the Judgment Creditor is satisfied with the information provided, the Judgment Creditor must notify the examinee, the person to be examined, that he need not attend the examination.

This is also applicable where a body corporate is the Judgment Creditor. The Financial Position Notice must be completed by an officer of the Company.

How Judgments may be enforced

This part sets out the many ways in which Judgments may be enforced.

Money Judgments may be enforced by:-

1. Order for Seizure & Sale

2. Charging Order
3. Order for Attachment of Debt
4. Appointment of Receiver
5. Judgment Summons
6. Order for Sale of Land

Order for the Payment into Court can be enforced by: -

1. Appointment of Receiver
2. Order for Confiscation of Assets
3. A committal Order

Orders for Possession of Land and Judgments for Possession of Land can be enforced by: -

1. Writ of Possession of Land, which may include a provision for the enforcement of the payment of any monies ordered to be paid
2. Confiscation of Assets Order
3. Order for Committal to Prison

Judgments & Orders for Delivery of Goods can be enforced by: -

1. Writ of Delivery to recover the goods or their assessed value
2. Writ of Specific Delivery for the recovery of specific goods

Orders requiring a Person to do an Act within a specified time or not to do an act, can be enforced by: -

1. Committal to Prison
2. Confiscation of Assets (this is also applicable where Judgment Debtor is a Company)

General Rules about Writs of Execution

This part sets out the circumstances in which a person would need permission before issuing a Writ of Execution and how you would ask the Court for permission and that which is deemed at Writ Execution: -

1. Order for Seizure & Sale of goods
2. Writ of Possession
3. Order for Sale of Land
4. Writ of Delivery
5. Order for Confiscation of Assets

Under the provisions of the old CPC, the Court would renew the Writ of Execution for a period of a year; it has now been reduced to a period of **no more than 6 months**.

The New Rules provide for an application to be made to renew the Writ of Execution after the period (1 year) for which the Writ is in existence, has elapsed. On the Application for renewal, no notice is needed but the application needs to be supported by Affidavit Evidence and the Court needs to be satisfied that all reasonable steps were taken to execute the Writ of Execution and that nevertheless; the Judgment Creditor was unable to execute.

The Court will consider other Judgment Creditors in granting this application and the Judgment Creditor must include in his affidavit information in relation to other Judgment Creditors, if he has it.

In relation to Execution of an Order for Seizure & Sale, the Judgment Debtor can now apply, once his goods have been seized, to the Court to direct an earlier sale than the 5-day period, which was set out in the old CPC.

There is also a new provision in relation to Orders for Sale otherwise than by Public Auction. The Judgment Creditor or Bailiff may make this application. The Application must be supported by Affidavit Evidence and the Bailiff must prepare a list of other persons, how had instructed him to seize and sell the Judgment Debtor's goods. This list is to be sent to the Judgment Creditor.

The Judgment Creditor or Bailiff, whomever is the Applicant, must give no less than 5 days notice to Judgment Debtor and ever other person on the list. All the persons served may attend and be heard on the Application and the Judgment Creditor must produce the list prepared by the bailiff at the hearing of the application.

Variation of Terms of Judgments and Suspension of Orders for Seizure & Sale of Goods and Orders of Delivery & Possession

This rule applies to Judgments for the payment of money, Judgments for Delivery of Goods or Payment of their value; Orders for Seizure & Sale of goods and Writs of Delivery where the Judgment Debtor has the alternative of paying the assessed value.

The Application to vary or suspend must be supported by Affidavit Evidence and served on the Judgment Creditor who can file objections to the variation or suspension application. Judgment Creditor must however file the objections within 14 days of being served with the application.

Where the Judgment Creditor objects to the rate and time of payment, the Court may make a decision without a hearing. Once the Court has made that decision, the Registry must serve a copy of the Order on the Judgment Creditor and Debtor.

Either party (Judgment Creditor/Judgment Debtor) can apply to the Court for a re-determination of the decision but the application must be made within 14 days of the date of service of the Order. The Registry will fix the date for hearing and give the Judgment Creditor and Judgment Debtor not less than 7 days notice of the hearing.

If the Court hears an application to vary Judgment or suspend Writ of Execution, the Court may add those costs to Judgment Debt.

Charging Orders

You can enforce a Judgment Debt by charging:-

1. Land
2. Stock (this includes stock held by the Court)
3. Other personal property

Application for Provisional Charging Order

1. You apply for a provisional Charging Order, without notice, but this application must be supported by Affidavit Evidence. The contents of the affidavit are clearly set out in 48.3.
2. The Court deals with the application for the provisional charging order, without a hearing and may make provisional charging order.
3. On the Application of the Judgment Creditor, the Court may grant an Injunction to secure the provisional charging order. The Application for the Injunction is also made without notice and, once obtained may remain in force for a period of 7 days after the making of the Order.
4. The provisional charging order will state the date, time and place when the Court will consider making the final charging order.

5. The Judgment Creditor then needs to serve the provisional order on the Judgment Creditor along with the affidavit in support not less than 28 days before the hearing for the Final Order.
6. The Judgment Creditor must also serve all interested persons personally. The rules describe who an interested person would be.
7. The Judgment Creditor must ensure that the interested persons and Judgment Debtor have not less than 28 days before the date of the hearing for Final Order.
8. The Judgment Creditor must file an affidavit of service not less than 7 days before the hearing.
9. Objections must be filed not less than 14 days before the hearing.

The Court must be satisfied that the provisional charging order was served on the Judgment Creditor and then the Court can make either make the Final Charging Order or discharge the provisional Charging Order or give directions for the resolution of objections that cannot be resolved summarily.

The Court, if it gives directions for resolution, can continue any injunction made until 7 days after the application is finally determined.

The Final Charging Order is to be served on the Judgment Creditor and all other interested persons who had filed objections.

Where the charging order has been made against stock, the Company and the person who is responsible for the register are to be served. In addition to this, every copy of the charging order must contain a stop notice.

What Does it mean for a Charging Order to be made against your Company's stock or land?

1. You cannot dispose of your interest in the property because if you do so with a provisional charging order or final charging order in place, it is not valid against the Judgment Creditor;
2. No person or body corporate may permit the transfer of any stock (this being the stock specified in the order) or pay any interest or dividend payable out of stock to any person while the Order remains in force.
3. If the person or body breaches **no.2**, then the person or body is liable to the Judgment Creditor to an amount equivalent to the value of the stock transferred or payment made or as much as is necessary to satisfy the Judgment Debt. This includes costs.
4. You must however be served with a copy of the charging order for these provisions to be applicable.

You can also enforce a Charging Order by Sale. This is done by application by the Judgment Creditor to the Court, on affidavit and is to be served on the Judgment Debtor.

The Court may give such directions as seem appropriate to secure the expeditious sale of the land, stock or property charged at a price that is fair to both Judgment Creditor and Judgment Debtor.

Stop Notices and Stop Orders

This is an entirely new provision. Stop Notices are notices, which ask A to notify the Judgment Creditor, if any steps are being proposed to be taken in relation to stock for example, whereas a Stop Order prevents A from taking any steps.

Stop Notice is served along with a Charging Order and is served on the Company or the person responsible for the register of the particular stock.

The steps which are not to be taken without the Judgment Creditor being notified are the following: -

1. Register transfer of stock
2. In relation to stocks or funds, transfer, sale or other dealing with the stock or funds or the payment out of income thereof.
3. Making of any payment by way of dividends, interest or otherwise in respect of the stock.

Who can apply for a stop notice?

Any person who claims to be beneficially entitled to an interest. The application must be made to the Court supported by affidavit evidence, which identifies: -

1. the stock
2. the applicant's interest in the stock and
3. the address for service of the applicant

The stop notice must be served with the affidavit on the Company and on the keeper of the Register (on whom a Charging Order would have had to have been served).

After service of the stop notice, the Company cannot transfer, register any transfer of the stock or take any step mentioned in the stop notice until 14 days after sending notification of the proposed registration or other step to the applicant.

Stop Notices can be withdrawn or discharged. If you want to apply to vary the Stop Notice, an application must be done and supported by evidence on affidavit.

Stop Orders are order of the Court, which prevent persons or the Company from taking steps in relation to the stock or funds in Court. Any person beneficially

entitled to stock or any person who has a charge on the interest of a person with funds in Court, can apply to vary or discharge the Order.

Attachments of Debts

Attachments of Debts is the process whereby a Judgment Creditor can obtain payment of all or part of a Judgment Debt from a person ("the garnishee"), within the Jurisdiction, who owes the Judgment Debtor, money.

An order is made for Attachment of Debt where: -

1. A debt is due or accruing to Judgment Creditor on the date when the provisional order for Attachment is served on the garnishee; or
2. A debt becomes due or accrues due to Judgment Debtor at any time between the service of the provisional order and the date of hearing.

An Application is made, without notice, and is supported by affidavit evidence. The Court considers whether on the evidence, the Judgment Creditor is entitled to the Attachment of Debt Order and when the provisional order is made; it is to be served on the Judgment Debtor and the garnishee.

The provisional order is given without hearing but it must state the date, time and place for hearing.

What can be attached?

1. Money in bank accounts.
2. Joint Funds. The Court will presume that the joint funds are owned equally by the parties and Joint funds can be attached even if owned by Judgment Debtor and other persons.

Each owner of the fund must be served personally with the provisional order.

3. Firm, debts accrued or accruing from a firm, even if there are firm members out of the jurisdiction.

The provisional order must be served on the Managing Partner or the person who has control and management of the Partnership business or a member of the firm.

Any member of the firm may attend a hearing of an application for Attachment of Debt Order.

The provisional Attachment of Debt Order must be served on the garnishee not less than **21 days** before the hearing. The provisional order must be served on the garnishee **7 days** before it is served on the Judgment Debtor. Service on the Judgment Debtor is to be effected not less than 7 days before the date of hearing.

At the provisional order stage, the garnishee does not have to pay any money to the Judgment Creditor but is bound by the terms of the Order.

Once the Court is satisfied that the provisional order was served, the Order can be made and the Court can give directions for resolution.

If the Court is made aware that someone other than the Judgment Debtor is entitled to the debt or has a charge or lien on the debt (whereby the garnishee's goods are in the possession of 'person A' to secure the debt), the Court will order that the provisional order be served on them with a notice which states that if they do not appear at the hearing, the issues will be made in the absence. Person 'A' must be served personally.

Appointment of Receiver

This part deals with the appointment of a Receiver to obtain payment of the Judgment Debt from the income or capital assets of the Judgment Debtor.

Judgment Summons

This part deals with applications and procedures used to commit a Judgment Debtor to prison for non-payment of a debt.

Committal is an option when the Court has before it, evidence that the Judgment Debtor had the means to satisfy the Judgment debt and still chose not to do so.

Imprisonment as you know, does not operate to satisfy the debt.

Committal & Confiscation of Assets

Confiscation of Assets replaces the term 'sequestration'.

This part deals with the power of the Court to commit to prison or to make an order for confiscation of assets for failure of Judgment Debtor to comply with: -

1. Order requiring that Judgment Debtor to do an act
2. Undertaking to do an act within a specified time or by a specific date or
3. Not to do an act.

The Order for Committal or Confiscation of Assets will only be made if the Court is sure that: -

1. The order was served personally on the Judgment Debtor;

2. The order when served, was endorsed with a notice warning the Judgment Debtor of the consequence of non-compliance to the Order.
3. That the Judgment Debtor was give sufficient time within which it was reasonable for him to comply with the terms of the Order.

In relation to an officer of a Corporate Body, a committal order can be made, once it is proved to the Court that: -

1. That particular officer was served personally with the Order of the Court
2. That the Order was endorsed with a the notice warning that particular officer of the Company, (officer's name must be in the notice) of the consequence of non-compliance to the Order, namely imprisonment or having the assets confiscated and
3. That the Officer and/or Company was given sufficient time within which it was reasonable for him/it to comply with the terms of the Order.

Committal Order or Order for Confiscation of Assets can be made without the Judgment Debtor being served, if the Court is satisfied that the Judgment Debtor would have had notice of the Order because the Judgment Debtor was present when the Order was made or was notified by Fax, post, telephone or otherwise.

Undertakings when given to the Court must be in writing and must be endorsed with a notice warning of consequence of non-compliance with the undertaking given to the Court, namely committal or confiscation of assets.

The Application for an order for Committal or confiscation of Assets must be supported by affidavit evidence. The Court must have before it, proof of service of the Order endorsed with the Notice warning of consequences of non-compliance and that the Judgment Debtor had notice of the terms of the Order not less than 7 days before the hearing.

Confiscation Orders bind property, from the date of the Order.

Confiscation Orders are to be directed to a Commissioner for Confiscation, who will be appointed by the Court.

The Commissioner for Confiscation can: -

1. Enter on land or interests in land of the Judgment Debtor
2. Take all rents and profits of such lands or interests in lands
3. Take possession of all Judgment Debtor's personal estate and keep such assets under their control until the Court so orders.

The property however cannot be sold either by the Judgment Creditor or the Commissioner for Confiscation without the permission of the Court.

MICHELE CHAMPAGNIE

NADINE AMOS

MALIACA WONG

CHRISTOPHER KELMAN

HELGA McINTYRE

November 27, 2002

"Appendix 1"

General Forms

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| Form 1 | Claim Form | Rule 8.1(3) |
| Form 1A | Prescribed Notes for Defendants (Claim Form) | Rule 8.16(1)(c) |
| Form 2 | Fixed Date Claim Form | Rule 8.1(4) |
| Form 2A | Prescribed Notes for Defendants (Fixed Date Claim Form) | Rule 8.16(1)(c) |
| Form 3 | Acknowledgement of Service of Claim Form | Rule 8.16(1)(a) |
| Form 4 | Acknowledgement of Service of Fixed Date Claim Form | Rule 8.16(1)(a) |
| Form 5 | Defence | Rule 8.16(1)(b) |
| Form 6 | Application to Pay by Instalments | Rule 8.16(1)(e) |
| Form 7 | Notice of Application for Court Orders | Rule 11.8(3) |
| Form 8 | Request for Default Judgment | Rule 12.7 |
| Form 9 | Request for Entry of Judgment on Admission | Rule 14.6(2) |
| Form 10 | Ancillary Claim Form | Rule 18.2(2) |
| Form 11 | Listing Questionnaire | Rule 27.12(1) |
| Form 12 | List of Documents | Rule 28.8(2) |
| Form 13 | Witness Summons | Rule 33.2(2) |
| Form 14 | Notice of Judgment or Order to person not a party | Rule 42.12(3) |
| Form 15 | Order for Oral Examination | Rule 44.4(1) |
| Form 16 | Notice of Adjourned Hearing | Rule 44.6(6) |
| Form 17 | Financial Position Notice | Rule 44.9(1) |
| Form 18 | Order for Seizure and Sale of Goods | Rule 46.1(a) |
| Form 19 | Writ of Possession | Rule 46.1(b) |
| Form 20 | Order for Recovery of Specified Goods | Rule 46.1(d)(i) |
| Form 21 | Order for Recovery of Goods or their Assessed Value | Rule 46.1(d)(ii) |
| Form 22 | Judgment Summons | Rule 52.2(1) |
| Form 23 | Writ of Habeas Corpus | Rule 57.3(1)(a) |
| Form 24 | Notice of Appeal | Rule 62.3 |
| Form 25 | Basic Costs Certificate | Rule 65.10(2) |
| Form 26 | Default Costs Certificate | Rule 65.21(b) |
| Form 27 | Interim Costs Certificate | Rule 65.24(1)(a) |
| Form 28 | Final Costs Certificate | Rule 65.25(1) |
| Form 29 | Appeal Notice (Costs) | Rule 65.28(1) |

Probate Forms

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| Form P.1 | Oath of Executors | Rule 68.7(1)(a) |
| Form P.2 | Grant of Probate | Rule 68.7(1)(d) |
| Form P.3 | Oath of Administrator with Will Annexed | Rule 68.8(1)(a) |
| Form P.4 | Grant of Administration with the Will Annexed | Rule 68.8(1)(d) |
| Form P.5 | Oath of Administrators | Rule 68.9(a) |
| Form P.6 | Grant of Administration | Rule 68.9(c) |
| Form P.7 | Affidavit of Due Execution | Rule 68.13(2)(a)(i) |
| Form P.8 | Affidavit as to Handwriting | Rule 68.13(2)(b)(i) |
| Form P.9 | Affidavit of Search | Rule 68.13(3) |
| Form P.10 | Affidavit of Plight and Condition | Rule 68.15(1) |
| Form P.11 | Marking of Will | Rule 68.16(1) |
| Form P.12 | Advertisement (Resealing) | Rule 68.26(2) |
| Form P.13 | Application to Reseal Grant | Rule 68.26(3)(a) |
| Form P.14 | Renunciation of Probate | Rule 68.33(1) |
| Form P.15 | Renunciation of Administration with Will Annexed | Rule 68.33(3) |
| Form P.16 | Renunciation of Administration | Rule 68.33(3) |
| Form P.17 | Caution | Rule 68.38(1) |
| Form P.18 | Warning to Caution | Rule 68.39(2) |
| Form P.19 | Acknowledgment of Service (Probate) | Rule 68.40(1)(a) |
| Form P.20 | Witness Summons to bring in Will | Rule 68.45(3) |
| Form P.21 | Notice of Application | Rule 68.48(1) |