Reprint

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Judicature Act 1908

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Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

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An Act to consolidate certain enactments of the Parliament of New Zealand relating to the High Court and the Court of Appeal, and to certain rules and provisions of law in judicial matters generally

The words "Parliament of New Zealand" were substituted for the words "General Assembly", as from 1 January 1987, pursuant to section 29(2) Constitution Act 1986 (1986 No 114).

The words "High Court" were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

1 Short Title, etc

(1) The Short Title of this Act is the Judicature Act 1908.

(2) This Act is a consolidation of the enactments mentioned in Schedule 1 hereto.

(3) Without affecting the specific saving provisions of this Act, it is hereby declared as follows:

(a) All Proclamations, Orders in Council, districts, offices, appointments, commissions, patents, scales of fees, rules, regulations, orders, registers, records, instruments, and generally all acts of authority which originated under any of the enactments mentioned in Schedule 1 hereto or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated:

(b) All actions, matters, and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

(4) This Act is divided into Parts, as follows:

- Part 1 The High Court. (Sections 3 to 56).
- Part 2 The Court of Appeal. (Sections 57 to 75.)
- Part 3 Rules and Provisions of Law in Judicial Matters Generally. (Sections 76 to 101.)

Subsection (4) was amended, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124) by substituting the words "High Court" for the words "Supreme Court".

2 Interpretation

In this Act, unless the context otherwise requires,

Chief High Court Judge

(a) means the person holding that office under section 4A; and

(b) includes a Judge of the High Court acting in place of the Chief High Court Judge under section 4A(5)

Chief High Court Judge: this definition was inserted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Civil proceedings means any proceedings in the Court, other than criminal proceedings

Court means the High Court of New Zealand

Court of Appeal Rules means rules which are made under section 51C of this Act and which regulate the practice and procedure of the Court of Appeal (including the practice and procedure on civil appeals from any Court or person to the Court of Appeal); and includes the Court of Appeal Rules 1955

Defendant means a person served or intended to be served with any application to the Court for the exercise of its civil or criminal jurisdiction

Existing means existing on the coming into operation of this Act

High Court Rules means the rules from time to time set out in Schedule 2 to this Act

Inferior Court means any Court of judicature within New Zealand of inferior jurisdiction to the High Court

Interlocutory application

(a) Means any application to the Court in any civil proceedings or criminal proceedings or intended civil proceedings or intended criminal proceedings for an order or a direction relating to a matter of procedure or, in the case of civil proceedings, for some relief ancillary to that claimed in a pleading; and

(b) Includes an application for a new trial; and

(c) Includes an application to review an order made, or a direction given, on any application to which paragraph (a) or paragraph (b) of this definition applies:

Judge means a Judge of the High Court

Judgment includes decree

Master means a Master of the High Court

Master: this definition was inserted, as from 6 November 1986, by section 2 Judicature Amendment Act 1986 (1986 No 93).

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the

Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.

medical practitioner: this definition was inserted, as from 18 September 2004, by section 175(1) Health Practitioners Competence Assurance Act 2003 (2003 No 48). *See* sections 178 to 227 of that Act as to the transitional provisions.

Plaintiff means a person who makes an application (other than an interlocutory application) to the Court for the exercise of its civil or criminal jurisdiction.

Supreme Court means the Supreme Court of New Zealand established by section 6 of the Supreme Court Act 2003.

Supreme Court: this definition was inserted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

District: this definition was repealed, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130).

Section 2 was substituted, as from 1 January 1986, by section 2(1) Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1
The High Court

Constitution of the Court

3 Supreme Court reconstituted as High Court

(1) There shall continue to be in and for New Zealand a Court of record, for the administration of justice throughout New Zealand, henceforth to be called the High Court of New Zealand.

(2) The High Court is hereby declared to be the same Court as that established by this Act, and called, before the commencement of section 2 of the Judicature Amendment Act 1979, the Supreme Court.

Section 3 was substituted, as from 1 April 1980, by section 2 Judicature Amendment Act 1979 (1979 No 124).

4 The Judges of the High Court

(1) The High Court consists of

(a) a Judge called the Chief Justice of New Zealand; and

(b) the other Judges, up to a maximum of 55, who are from time to time appointed.

(1A) For the purposes of subsection (1)(b),

(a) a Judge who is acting on a full-time basis counts as 1:

(b) a Judge who is acting on a part-time basis counts as an appropriate fraction of 1:

(c) the aggregate number (for example, 54.5) must not exceed the maximum number of Judges that is for the time being permitted.

(1B) Subsection (1) is subject to subsections (1C) and (1D) and the other provisions of this Act

(1C) An additional Judge or additional Judges may be appointed whenever the Governor-General thinks it necessary because of the absence or anticipated absence of any of the Judges on leave preliminary to retirement.

(1D) Every appointment made under subsection (1C) must be a permanent appointment from the time when it is made, and must fill the vacancy next occurring in the office of Judge, not being a vacancy filled by an earlier appointment under subsection (1C).

(2) The Judges of the High Court shall be appointed by the Governor-General in the name and on behalf of Her Majesty.

(2A) A Judge must not undertake any other paid employment or hold any other office (whether paid or not) unless the Chief High Court Judge is satisfied that the employment or other office is compatible with judicial office.

(3) As between the Judges of the High Court who are not Judges of the Supreme Court or Court of Appeal,

(a) the Chief High Court Judge has seniority over the other Judges:

(b) the other Judges have seniority among themselves according to the dates of their appointments as Judges of the High Court:

(c) 2 or more of the other Judges appointed as Judges of the High Court on the same date,

(i) have seniority according to the precedence assigned to them by the Governor-General on appointment; or

(ii) if no precedence is assigned to them, according to the order in which they take the Judicial Oath.

(3A) Permanent Judges have seniority over temporary Judges.

(3B) Subsection (3A) overrides subsection (3).

(4) The jurisdiction of the High Court shall not be affected by any vacancy in the number of the Judges of that Court.

Section 4 was repealed, as from 1 February 1914, by section 2(6) Judicature Amendment Act 1913 (1913 No 41).

A new section 4 was inserted, as from 26 September 1957, by section 4(1) Judicature Amendment Act 1957 (1957 No 9).

Subsection (1) was amended, as from 9 April 1959, by section 2(1) Judicature Amendment Act 1969 (1959 No 20) by substituting the expression "14" for the expression "13".

Subsection (1) was amended, as from 24 March 1961, by section 2(1) Judicature Amendment Act 1961 (1961 No 11) by substituting the expression "15" for the expression "13"

Subsection (1) was amended, as from 23 October 1969, by section 2(1) Judicature Amendment Act 1969 (1969 No 86) by substituting the expression "16" for the expression "15"

Subsection (1) was amended, as from 20 October 1972, by section 17(1) Judicature Amendment Act 1972 (1972 No 130) by substituting the expression "17" for the expression "16"

Subsection (1) was amended, as from 21 October 1974, by section 2(1) Judicature Amendment Act 1974 (1974 No 57) by substituting the expression "19" for the expression "17"

Subsection (1) was amended, as from 8 December 1976, by section 2(1) Judicature Amendment Act 1976 (1976 No 134) by substituting the expression "21" for the expression "19"

Subsection (1) was amended, as from 7 October 1977, by section 2(1) Judicature Amendment Act 1977 (1977 No 32) by substituting the expression "22" for the expression "21"

Subsection (1) was amended, as from 11 October 1978, by section 2(1) Judicature Amendment Act 1978 (1978 No 55) by substituting the expression "25" for the expression "22"

Subsection (1) was amended, as from 13 December 1979, by section 3(1) Judicature Amendment Act 1979 (1979 No 124) by substituting the expression "26" for the expression "25"

Subsection (1) was amended, as from 16 December 1983, by section 2(1) Judicature Amendment Act 1983 (1983 No 103) by substituting the expression "27" for the expression "26"

Subsection (1) was amended, as from 11 June 1985, by section 2(1) Judicature Amendment Act 1985 (1985 No 88) by substituting the expression "29" for the expression "27"

Subsection (1) was amended, as from 6 November 1986, by section 3(1) Judicature Amendment Act 1986 (1986 No 93) by substituting the expression "31" for the expression "29"

Subsection (1) was amended, as from 16 December 1988, by section 2(1) Judicature Amendment Act (No 2) 1988 (1988 No 194) by substituting the expression "32" for the expression "31"

Subsection (1) was amended, as from 13 December 1995, by section 2(1) Judicature Amendment Act 1995 (1995 No 70) by substituting the expression "36" for the expression "32"

Subsection (1) was amended, as from 30 June 2002, by section 181(1) Sentencing Act 2002 (2002 No 9) by substituting the expression "37" for the expression "36". *See* sections 148 to 160 Sentencing Act 2002 (2002 No 9) for the savings and transitional provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

Subsection (1) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the number "42" for the number "37". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (1) was substituted, as from 20 May 2004, by section 3(1) Judicature Amendment Act 2004 (2004 No 45).

Subsections (1A) to (D) were inserted, as from 20 May 2004, by section 3(1) Judicature Amendment Act 2004 (2004 No 45).

Subsection (2A) was inserted, as from 20 May 2004, by section 3(2) Judicature Amendment Act 2004 (2004 No 45).

Subsection (3) was substituted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsections (3A) and (3B) were inserted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

The words "High Court" and "Judges of the High Court" were substituted for the words "Supreme Court" and "Judges of the Supreme Court" respectively, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

4A Chief High Court Judge

(1) The Governor-General must by warrant appoint a Judge of the High Court who is not a Judge of the Supreme Court or the Court of Appeal to be the Chief High Court Judge.

(2) The Chief High Court Judge holds that office until the earliest of the following:

(a) ceasing to hold office as a Judge of the High Court:

(b) being appointed a Judge of the Supreme Court or the Court of Appeal:

(c) resigning the office of Chief High Court Judge without resigning office as a Judge of the High Court.

(3) The Chief High Court Judge cannot resign the office of Chief High Court Judge without resigning office as a Judge of the High Court, except with the prior approval of the Governor-General.

(4) The Judge of the High Court who is next senior after the Chief High Court Judge may act in place of the Chief High Court Judge if,

(a) because of illness or absence from New Zealand, or for any other reason, the Chief High Court Judge is unable to exercise the duties of that office; or

(b) the office of Chief High Court Judge is vacant.

(5) While acting in place of the Chief High Court Judge, the next senior Judge

(a) may perform the functions and duties of the Chief High Court Judge; and

(b) may for that purpose exercise all the powers of the Chief High Court Judge.

(6) The fact that the next senior Judge exercises any of the powers of the Chief High Court Judge is conclusive proof of his or her authority to do so.

Sections 4A and 4B were inserted, as from 1 January 2004, by section 43 Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

4B Functions of Chief High Court Judge

The Chief High Court Judge is responsible to the Chief Justice for ensuring the orderly and prompt conduct of the High Court's business.

Sections 4A and 4B were inserted, as from 1 January 2004, by section 43 Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

4C Judges of High Court act on full-time basis but may be authorised to act part-time

(1) A person acts as a Judge of the High Court on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.

(2) The Attorney-General may, in accordance with subsection (4), authorise a Judge appointed under section 4 or section 4A to act on a part-time basis for any specified period.

(3) To avoid doubt, an authorisation under subsection (2) may take effect as from a Judge's appointment or at any other time, and may be made more than once in respect of the same Judge.

(4) The Attorney-General may authorise a Judge to act on a part-time basis only

(a) on the request of the Judge; and

(b) with the concurrence of the Chief High Court Judge.

(5) In considering whether to concur under subsection (4), the Chief High Court Judge must have regard to the ability of the Court to discharge its obligations in an orderly and expeditious way.

(6) A Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.

(7) The basis on which a Judge acts must not be altered during the term of the Judge's appointment without the Judge's consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).

(8) An authorisation may not be granted under subsection (2) for any person appointed as a Judge of the Court of Appeal or Supreme Court.

Section 4C was inserted, as from 20 May 2004, by section 4 Judicature Amendment Act 2004 (2004 No 45).

5 Senior Judge to act as Chief Justice in certain circumstances

[Repealed]

Section 5 was substituted, as from 1 January 1958, by section 5 Judicature Amendment Act 1957 (1957 No 9).

Section 5 was repealed, as from 1 January 2004, by section 48(2) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

6 Judges to be barristers or solicitors

No person shall be appointed a Judge unless he has held a practising certificate as a barrister or solicitor for at least 7 years.

Section 6 was amended, as from 1 January 1958, by section 6 Judicature Amendment Act 1957 (1957 No 9), by substituting the word "practice" for the word "standing".

Section 6 was substituted, as from 13 December 1979, by section 4 Judicature Amendment Act 1979 (1979 No 124).

7 Commissions of Judges to continue during good behaviour

[Repealed]

Sections 7, 8, 9 and 10 were repealed, as from 1 January 1987, by section 27 Constitution Act 1986 (1986 No 114).

8 Judges may be removed or suspended on address of the House of Representatives

[Repealed]

Section 8 was amended, as from 1 January 1951, pursuant to section 2(4) Legislative Council Abolition Act 1950 (1950 No 3) by substituting the words "the House of Representatives" for the words "both Houses of the General Assembly".

Sections 7, 8, 9 and 10 were repealed, as from 1 January 1987, by section 27 Constitution Act 1986 (1986 No 114).

9 Governor-General may suspend Judge when Parliament not sitting

[Repealed]

Sections 7, 8, 9 and 10 were repealed, as from 1 January 1987, by section 27 Constitution Act 1986 (1986 No 114).

9A Salaries and allowances of Judges

(1) There shall be paid to the Chief Justice, to the other Judges of the Supreme Court, to the President of the Court of Appeal, to the other Judges of the Court of Appeal, and to the other Judges, out of public money, without further appropriation than this section,

(a) Salaries at such rates as the Remuneration Authority from time to time determines; and

(b) Such allowances as are from time to time determined by the Remuneration Authority; and

(c) Such additional allowances, being travelling allowances or other incidental or minor allowances, as may be determined from time to time by the Governor-General.

(2) Subject to the Remuneration Authority Act 1977, any determination made under subsection (1) of this section, and any provision of any such determination, may be made so as to come into force on a date to be specified in that behalf in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination or the date of the commencement of this section.

(3) Every such determination, and every provision of any such determination, in respect of which no date is specified as aforesaid shall come into force on the date of the making of the determination.

(4) The salary and allowances payable for a period during which a Judge acts on a part-time basis must be calculated and paid as a pro-rata proportion of the salary and allowances for a full-time equivalent position.

(5) For the purpose of section 24 of the Constitution Act 1986, the payment of salary and allowances on a pro-rata basis under subsection (4) is not a reduction of salary.

Section 9A was inserted, as from 1 April 1985, by section 2 Judicature Amendment Act (No 3) 1985 (1985 No 136).

Section 9A was amended, as from 1 April 2003, by section 4(1) Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54) by substituting the words "Remuneration Authority" for the words "Higher Salaries Commission" in every place where they appear.

Subsection (1) was amended, as from 1 July 1989, by section 86(1) Public Finance Act 1989 (1989 No 44) by substituting the words "public money" for the words "the Consolidated Account".

Subsection (1) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the words "the other Judges of the Supreme Court, to the President of the Court of Appeal, to the other" for the words "the President of the Court of Appeal, to the". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsections (4) and (5) were inserted, as from 20 May 2004, by section 5 Judicature Amendment Act 2004 (2004 No 45).

10 Salaries not to be diminished

[Repealed]

Sections 7, 8, 9 and 10 were repealed, as from 1 January 1987, by section 27 Constitution Act 1986 (1986 No 114).

11 Temporary Judges

(1) Subject to section 11B of this Act, at any time during the illness or absence of any Judge, or for any other temporary purpose, the Governor-General may, in the name and on behalf of Her Majesty, appoint any person (including a former Judge) to be a Judge for such term, not exceeding 12 months, as the Governor-General may specify.

(2) Any person appointed a Judge under this section may be re-appointed, but no Judge shall hold office under this section for more than 2 years in the aggregate.

(3) Every person appointed a Judge under this section shall, during the term of his appointment, be paid the salary and allowances payable by law to a Judge other than the Chief Justice the other Judges of the Supreme Court, the President of the Court of Appeal, the other Judges of the Court of Appeal, or the Chief High Court Judge.

Subsection (1) was amended, as from 29 August 1923, by section 2(a) Judicature Amendment Act 1923 (1923 No 36), by substituting the words "as hereinafter provided" for the words "during His Excellency's pleasure".

Subsections (2) and (3) were inserted, as from 29 August 1923, by section 2(b) Judicature Amendment Act 1923 (1923 No 36).

Subsection (4) was inserted, as from 29 September 1961, by section 6 Judicature Amendment Act 1961 (1961 No 11).

Section 11 was substituted, as from 14 October 1981, by section 2(1) Judicature Amendment Act 1981 (1981 No 40).

Subsection (3) was amended, as from 1 April 1985, by section 3 Judicature Amendment Act (No 3) 1985 (1985 No 136) by inserting the words "or the President of the Court of Appeal or a Judge of the Court of Appeal".

Subsection (3) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the words "the other Judges of the Supreme Court, the President of the Court of Appeal, the other Judges of the Court of Appeal, or the Chief High Court Judge" for the words "or the President of the Court of Appeal or a Judge of the Court of Appeal". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

11A Former Judges

(1) Subject to section 11B of this Act, the Governor-General may, in the name and on behalf of Her Majesty, appoint any former Judge to be an acting Judge for such term not exceeding 2 years or, if the former Judge has attained the age of 72 years, not exceeding one year, as the Governor-General may specify.

(2) During the term of his appointment, the former Judge may act as a Judge during such period or periods only and in such place or places only as the Chief High Court Judge may determine.

(3) Every former Judge appointed under this section shall, during each period when he acts as a Judge, but not otherwise, be paid a salary at the rate for the time being payable by law to a Judge other than the Chief Justice or the President of the Court of Appeal or a Judge of the Court of Appeal, and shall also be paid such travelling allowances or other incidental or minor allowances as may be fixed from time to time by the Governor-General.

(4) Every former Judge appointed under this section shall, during each period when he acts as a Judge, have all the jurisdiction, powers, protections, privileges, and immunities of a Judge.

Sections 11A and 11B were inserted, as from 14 October 1981, by section 2(1) Judicature Amendment Act 1981 (1981 No 40).

Subsection (2) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the words "High Court Judge" for the word "Justice". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (3) was amended, as from 1 April 1985, by section 3 Judicature Amendment Act (No 3) 1985 (1985 No 136) by inserting the words "or the President of the Court of Appeal or a Judge of the Court of Appeal".

11B Certificate by Chief Justice and Chief High Court Judge

No appointment may be made under section 11 or section 11A except on a certificate signed by the Chief Justice and the Chief High Court Judge to the effect that, in their opinion, it is necessary for the due conduct of the Court's business that one or more temporary Judges, or (as the case may require) for one or more acting Judges, to be appointed.

Sections 11A and 11B were inserted, as from 14 October 1981, by section 2(1) Judicature Amendment Act 1981 (1981 No 40).

Section 11B was substituted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

12 Superannuation allowance of Judges

[Repealed]

Section 12 was repealed, as from 28 October 1955, by section 18(1) Superannuation Amendment Act 1955 (1955 No 107).

13 Age of retirement

Every Judge, other than a former Judge appointed under section 11 or section 11A of this Act or a person who is deemed by section 58(10) of this Act to be a Judge, shall retire from office on attaining the age of 70 years.

Subsection (1) was amended, as from 28 October 1955, by section 18(2) Superannuation Amendment Act 1955 (1955 No 107) by omitting "and on such retirement shall, if he has held office for any term as mentioned in section twelve hereof, be entitled to the superannuation allowance provided by that section".

Subsection (1) was amended, as from 29 September 1961, by section 7 Judicature Amendment Act 1961 (1961 No 11) by inserting "(other than a Judge appointed under section 11 of this Act)".

Subsection (1) was amended, as from 24 December 1980, by section 2(1) Judicature Amendment Act 1980 (1980 No 88) by substituting "68" for "seventy-two".

Subsection (2) was repealed, as from 28 October 1955, by section 18(1) Superannuation Amendment Act 1955 (1955 No 107).

Section 13 was substituted, as from 14 October 1981, by section 3(1) Judicature Amendment Act 1981 (1981 No 40). *See* section 3(2) of that Act.

Section 13 was amended, as from 6 March 2007, by section 4 Judicature Amendment Act 2007 (2007 No 3) by substituting "70" for "68".

14 Rights on retirement before attaining retiring age

If the Chief Justice or the President of the Court of Appeal resigns from office before attaining the age of 70 years and is, at the time of his or her resignation and but for the fact of his or her resignation, entitled to a period of leave of absence, he or she shall continue to receive the salary, privileges, and allowances of his or her former office until the expiration of that period or until he or she attains the age of 70 years or until he or she dies, whichever is the sooner, and his or her rights and obligations under the Government Superannuation Fund Act 1956 and all the rights which his or her surviving

wife, husband, civil union partner, or de facto partner may have under that Act shall be the same as they would have been if he or she had been in office while his or her salary, privileges, and allowances so continued.

Section 14 was repealed, as from 28 October 1955, by section 18(1) Superannuation Amendment Act 1955 (1955 No 1).

A new section 14 was inserted, as from 25 October 1963, by section 3 Judicature Amendment Act 1963 (1963 No 133).

Section 14 was amended, as from 1 January 1981, by section 2(2) Judicature Amendment Act 1980 (1980 No 88) by substituting "68" for "seventy-two".

Section 14 was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by inserting "or her" after "his" wherever it appears.

Section 14 was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by inserting "or she" after "he" wherever it appears.

Section 14 was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting "surviving wife, husband, civil union partner, or de facto partner" for "widow".

Section 14 was amended, as from 6 March 2007, by section 5 Judicature Amendment Act 2007 (2007 No 3) by substituting "70" for "68" in each place it appears.

15 How superannuation allowances of existing Judges to be computed

[Repealed]

Section 15 was repealed, as from 28 October 1955, by section 18(1) Superannuation Amendment Act 1955 (1955 No 107).

Jurisdiction of the Court

16 General jurisdiction

The Court shall continue to have all the jurisdiction which it had on the coming into operation of this Act and all judicial jurisdiction which may be necessary to administer the laws of New Zealand.

Compare: 1882 No 29 s 16

16A Power to award damages as well as, or in substitution for, injunction or specific performance

Where the Court has jurisdiction to entertain an application for an injunction or specific performance, it may award damages

in addition to, or in substitution for, an injunction or specific performance.

Compare: 21 and 22 Vict, c 27The Chancery Amendment Act 1858 (UK); the Supreme Court Act 1981 s 50 (UK)

Section 16A was inserted, as from 1 January 1989, by section 2 Judicature Amendment Act 1988 (1988 No 117).

17 Jurisdiction as to mentally disordered persons, etc

The Court shall also have within New Zealand all the jurisdiction and control over the persons and estates of idiots, mentally disordered persons, and persons of unsound mind, and over the managers of such persons and estates respectively, as the Lord Chancellor of England, or any Judge or Judges of Her Majesty's High Court of Justice or of Her Majesty's Court of Appeal, so far as the same may be applicable to the circumstances of New Zealand, has or have in England under the Sign-manual of Her Majesty or otherwise.

Compare: 1882 No 29 s 17

Section 17 was amended, as from 1 January 1970, by section 36(1)(b) Guardianship Amendment Act 1968 (1968 No 63) by omitting the word "infants".

Section 17 was amended, as from 1 January 1970, by section 36(1)(b) Guardianship Act 1968 (1968 No 63) by omitting the words "guardians and".

The words "mentally defective persons" were substituted for the words "lunatics", as from 1 March 1912, pursuant to section 134 Mental Health Act 1911 (1911 No 6). Those words were in turn substituted by the words "mentally disordered persons", as from 1 April 1970, pursuant to section 129(4) Mental Health Act 1969 (1969 No 16).

The word "managers" was substituted for the word "committees", as from 1 April 1970, pursuant to section 129(7) Mental Health Act 1969 (1969 No 16). *See* now section 117(3) Protection of Personal and Property Rights Act 1988 (1988 No 4).

17A Jurisdiction as to liquidation of associations

(1) In this section, **association** includes any partnership, company, or other body corporate, or unincorporated body of persons other than

(a) A company or an overseas company, as defined in section 2 of the Companies Act 1993; or

(b) A company as defined in section 2 of the Companies Act 1955; or

(c) A body corporate that may be put into liquidation in accordance with the provisions of any Act under which it is constituted.

(2) The Court has jurisdiction to appoint a named person or an Official Assignee for a named district as the liquidator of an association.

(3) An application for the appointment of a liquidator may be made by the association or a director or member or creditor or the Registrar of Companies.

(4) The Court may appoint a liquidator if it is satisfied that

(a) The association is dissolved or has ceased to carry on business or is carrying on business solely for the purpose of terminating its affairs; or

(b) The association is unable to pay its debts; or

(c) It is just and equitable that the association be put into liquidation.

Sections 17A to 17E were inserted, as from 1 July 1994, by section 2 Judicature Amendment Act 1993 (1993 No 117).

17B Application of Companies Act 1993

Part 16 of the Companies Act 1993 (except sections 241(1) to (4) and 268) shall apply, with such modifications as may be necessary, in relation to the liquidation of an association and as if references to

(a) A company registered under that Act included a reference to an association:

(b) A director included references to any person occupying the position of director by whatever name called:

(c) Shareholders or persons entitled to surplus assets under the constitution of a company and the Companies Act 1993 were references to such persons as the Court may determine to be justly entitled to any surplus assets after the satisfaction of the claims of all the creditors.

Sections 17A to 17E were inserted, as from 1 July 1994, by section 2 Judicature Amendment Act 1993 (1993 No 117).

17C Meaning of inability to pay debts

For the purposes of section 17A of this Act, an association is unable to pay its debts

(a) If

(i) A creditor who is owed an amount exceeding $100 by the association has served on the association a demand for payment of that amount by leaving it at the principal office of the association in New Zealand, or delivering it to the secretary or a director or manager or principal officer of the association; and

(ii) The association has for 3 weeks after the demand was served on it failed to pay the amount due or secure the payment of it or compound for it to the satisfaction of the creditor; or

(b) If

(i) An action or proceeding has been commenced against a member of the association for the payment of an amount owing by the association or that member in his or her capacity as a member; and

(ii) Notice in writing of the action or proceeding has been served on the association by leaving it at its principal place of business in New Zealand or by delivering it to the secretary or a director, or principal officer of the association or serving it on the association in such manner as the Court may approve or direct; and

(iii) The association has not, within 10 days after the notice was served on it, paid or secured the debt, or compounded for it or had the action or proceeding stayed or indemnified the member for the amount of any judgment that may be entered against him or her and any costs, damages, and expenses that may be incurred by him or her in the action or proceeding; or

(c) If execution or other process issued on a judgment, decree, or order obtained in a court in favour of a creditor against the association, or a member of the association in his or her capacity as a member, or a person authorised to be sued on behalf of the association, is returned unsatisfied; or

(d) If it is proved to the satisfaction of the High Court that the association is unable to pay its debts, and in determining whether an association is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the association.

Sections 17A to 17E were inserted, as from 1 July 1994, by section 2 Judicature Amendment Act 1993 (1993 No 117).

17D Power of liquidator to enforce liabilities

The liquidator may, by notice in writing, require any person who is liable to pay or contribute to the payment of

(a) Any debt or liability of the association; or

(b) Any sum for the adjustment of the rights of the members among themselves; or

(c) The costs and expenses of the liquidation

to pay or contribute accordingly and every such person is liable to pay or contribute the amount due in respect of that liability.

Sections 17A to 17E were inserted, as from 1 July 1994, by section 2 Judicature Amendment Act 1993 (1993 No 117).

17E Actions stayed on liquidation

Where the Court appoints a liquidator of an association, no action or proceeding shall be commenced or continued against any person referred to in section 17D of this Act in respect of any debt of the association, except with the leave of the Court, and subject to such terms as the Court may impose.

Sections 17A to 17E were inserted, as from 1 July 1994, by section 2 Judicature Amendment Act 1993 (1993 No 117).

18 No jurisdiction in cases of felonies or misdemeanours committed before 14 January 1840

[Spent]

The Court shall not have jurisdiction to try any felony or misdemeanour committed before the 14th day of January 1840.

Compare: 1882 No 29 s 18

19 Powers of High Court may be exercised by 1 or more Judges

(1) Each Judge or any 2 or more Judges may in any part of New Zealand exercise all the powers of the Court, except such powers as may by any statute be required to be exercised by the full Court or by any specified number of Judges.

(2) Subsection (1) of this section shall be read subject to the provisions of any enactment that provides for the appointment of persons other than Judges to sit with the Court or as members of the Court in respect of any specified proceedings or class of proceedings.

Subsection (2) was inserted, as from 15 August 1991, by section 2 Judicature Amendment Act 1991 (1991 No 60).

The words "High Court" were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

19A Certain civil proceedings may be tried by jury

(1) This section applies to civil proceedings in which the only relief claimed is payment of a debt or pecuniary damages or the recovery of chattels.

(2) If the debt or damages or the value of the chattels claimed in any civil proceedings to which this section applies exceeds $3,000, either party may have the civil proceedings tried before a Judge and a jury on giving notice to the Court and to the other party, within the time and in the manner prescribed by the High Court Rules, that he requires the civil proceedings to be tried before a jury.

(3) Notwithstanding anything in subsection (2) of this section, in any case where, after notice has been given pursuant to that subsection but before the trial has commenced, the debt or damages or the value of the chattels claimed is reduced to $3,000 or less, the civil proceedings shall be tried before a Judge without a jury.

(4) If, in any civil proceedings to which this section applies, the defendant sets up a counterclaim, then, unless pursuant to this section the civil proceedings and the counterclaim are both to be tried before a Judge without a jury, the following provisions shall apply:

(a) On the application of either party made with the consent in writing of the other party, both the civil proceedings and counterclaim shall be tried before a Judge without a jury, or before a Judge with a jury, whichever is specified in the application:

(b) If no such application is made, the civil proceedings and the counterclaim shall, subject to any direction of the Court or a Judge under section 19B of this Act, be tried in accordance with the foregoing provisions of this section:

Provided that if the Court or a Judge orders that the civil proceedings and the counterclaim be tried together, they shall be tried before a Judge with a jury.

(5) Notwithstanding anything to the contrary in the foregoing provisions of this section, in any case where notice is given as aforesaid requiring any civil proceedings to be tried before a jury, if it appears to a Judge before the trial

(a) That the trial of the civil proceedings or any issue therein will involve mainly the consideration of difficult questions of law; or

(b) That the trial of the civil proceedings or any issue therein will require any prolonged examination of documents or accounts, or any investigation in which difficult questions in relation to scientific, technical, business, or professional matters are likely to arise, being an examination or investigation which cannot conveniently be made with a jury,

the Judge may, on the application of either party, order that the civil proceedings or issue be tried before a Judge without a jury.

(6) Nothing in this section shall apply in respect of any civil proceedings to be heard by the Court in its admiralty jurisdiction.

Sections 19A and 19B were inserted, as from 7 October 1977, by section 9(1) Judicature Amendment Act 1977 (1977 No 32).

Subsection (1) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "civil proceedings" for the word "actions".

Subsection (2) was amended, as from 1 April 1980, by section 6 Judicature Amendment Act 1979 (1979 No 124) by substituting the expression "$3,000" for the expression "$1,000".

Subsection (2) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "HIgh Court Rules" for the words "rules of the High Court".

Subsection (2) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "civil proceedings" for the word "action".

Subsection (3) was amended, as from 1 April 1980, by section 6 Judicature Amendment Act 1979 (1979 No 124) by substituting the expression "$3,000" for the expression "$1,000".

Subsections (3) to (6) were amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "civil proceedings" for the word "action".

19B All other civil proceedings to be tried before Judge alone, unless Court otherwise orders

(1) Except as provided in section 19A of this Act, civil proceedings shall be tried before a Judge alone.

(2) Notwithstanding subsection (1) of this section, if it appears to the Court at the trial, or to a Judge before the trial, that the civil proceedings or any issue therein can be tried more conveniently before a Judge with a jury the Court or Judge may order that the civil proceedings or issue be so tried.

Sections 19A and 19B were inserted, as from 7 October 1977, by section 9(1) Judicature Amendment Act 1977 (1977 No 32).

Subsection (1) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "civil proceedings" for the words "every action".

Subsection (2) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "civil proceedings" for the word "action".

19C Questions of foreign law to be decided by Judge

(1) Where, for the purpose of disposing of any civil proceedings or any criminal proceedings which are being tried by a Judge of the High Court with a jury, it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the Judge alone.

(2) This section has effect notwithstanding anything in section 19A or section 19B of this Act.

Section 19C was inserted, as from 1 January 1986, by section 3 Judicature Amendment Act (No 2) 1985 (1985 No 112).

20 Governor-General in Council may divide New Zealand into districts

[Repealed]

Section 20 was repealed, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

21 Actions and proceedings to be taken in the district prescribed by the Code of Civil Procedure

[Repealed]

Section 21 was repealed, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

22 How applications to be made when Judge absent or unable to act

[Repealed]

Section 22 was repealed, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

23 Governor-General may appoint special sittings

The Governor-General in Council may from time to time appoint special sittings of the Court for the despatch of civil and criminal business, to be held at such time and place or places, and before such Judge or Judges, as he thinks fit.

Compare: 1882 No 29 s 24

23A Offices of the High Court

(1) The Governor-General may from time to time, by notice in the Gazette, declare an office or offices of the Court to be established at such place or places as may be specified in the notice, as from such date, in the case of each office, as may be so specified.

(1A)

(2)

(3) Where any office of the Court is abolished, the Minister of the Crown who is responsible for the Department for Courts may direct that all documents, books, and records in that office shall be delivered to some other office of the Court (in this section referred to as the substituted office). From the time of their delivery to the Registrar of the substituted office, those documents, books, and records shall be deemed to be in the lawful custody of that Registrar.

(4) Where any office of the Court is abolished, the following provisions shall apply:

(a) Any act or thing that could have been done under any enactment or rule by the Registrar of that office may be done by the Registrar of the substituted office:

(b) Any step in any proceedings that would, but for the abolition of that office, have been taken there under any enactment or rule may be taken at the substituted office:

(c) Any act or thing required or authorised by any enactment or rule to be done by any person at that office, whether in respect of any proceedings or in respect of any transaction recorded or document filed there, may be done at the substituted office:

(d) Any address for service, being an address conforming to the requirements of the rules of Court, that has been given by any party to any proceedings in respect of which the records are delivered to the substituted office shall continue to be the address for service of that party for the purposes of those proceedings, notwithstanding that because of its distance from the substituted office it may cease to conform to those requirements:

Provided that where, because of its distance from the substituted office, the address does not conform to the requirements of the rules, the party shall give a new address for service conforming to those requirements when he first files in the substituted office any document in the proceedings:

(e) If in respect of any proceedings, or of any transaction, document, record, or other matter, any question arises as to the application of any provision of this section or as to the proper procedure to be followed, the Court or a

Judge may determine the question and make such order thereon as the Court or Judge thinks fit.

Section 23A was inserted, as from 16 October 1952, by section 2(1) Judicature Amendment Act 1952 (1952 No 24).

Subsection (1) was amended, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130) by omitting the words "in any district". *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

Subsection (1A) was inserted, as from 20 October 1972, by section 19(2) Judicature Amendment Act 1972 (1972 No 130).

Subsection (1A) was repealed, as from 1 May 2002, by section 192(1) Personal Property Securities Act 1999 (1999 No 126). *See* Part 12 of that Act for transitional provisions. *See* clause 2 Personal Properties Securities Act Commencement Order 2002 (SR 2002/60).

Subsection (2) was amended, as from 20 October 1972, by section 19(2) Judicature Amendment Act 1972 (1972 No 130) by inserting the words "or revoke any direction given pursuant to subsection (1A) of this section".

Subsection (2) was repealed, as from 1 May 2002, by section 192(1) Personal Property Securities Act 1999 (1999 No 126). *See* Part 12 of that Act for transitional provisions. *See* clause 2 Personal Properties Securities Act Commencement Order 2002 (SR 2002/60).

Subsection (3) was amended, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130) by omitting the words "in the same district". *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

Subsection (3) was amended, as from 1 July 1995, by section 10(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words "Minister of the Crown who is responsible for the Department for Courts" for the words "Minister of Justice".

24 Registrar may act for Judge in certain cases

[Repealed]

Section 24 was repealed, as from 27 November 1947, by section 28(7) Statutes Amendment Act 1947 (1947 No 60).

Commercial list

The heading "Commercial List" was inserted, as from 6 November 1986, by section 4 Judicature Amendment Act 1986 (1986 No 93).

24A Establishment of commercial list

(1) The Governor-General may from time to time by notice in the *Gazette* declare a commercial list to be established at any office of the High Court as from a date to be specified in the notice.

(2) The first commercial list shall be established at the office of the High Court at Auckland for a period to be specified in the notice (which period shall not be less than 4 years).

(3) The Governor-General may, on or before the expiration of the period specified under subsection (2) of this section, either
- (a) Extend that period by notice in the *Gazette*; or
- (b) Declare by notice in the *Gazette* that the commercial list at the office of the High Court at Auckland shall continue indefinitely.

(4) Where the Governor-General exercises the power given by subsection (3)(a) of this section, the Governor-General may, on or before the expiration of the extended period, declare by notice in the *Gazette* that the commercial list established at the office of the High Court at Auckland shall continue indefinitely.

(5) Where the commercial list established at the office of the High Court at Auckland ceases to be established upon the expiration of the period specified under subsection (2) of this section or the extended period specified under subsection (3)(a) of this section, the commercial list shall be deemed to continue for the purpose of completing any proceeding entered on the commercial list at the expiration of that period.

Sections 24A to 24G were inserted, as from 6 November 1986, by section 4 Judicature Amendment Act 1986 (1986 No 93).

24B Proceedings eligible for commercial list

(1) The classes of proceedings eligible for entry on a commercial list are as follows:
- (a) Any proceedings arising out of or otherwise relating to:
  - (i) The ordinary transactions of persons engaged in commerce or trade or of shippers:
  - (ii) The carriage of goods for the purpose of trade or commerce:
  - (iii) The construction of commercial, shipping, or transport documents:
  - (iv) The export or import of merchandise:
  - (v) Insurance, banking, finance, guarantee, commercial agency, or commercial usages:

(vi) Disputes arising out of intellectual property rights between parties engaged in commerce:

(b) Applications to the Court under the Arbitration Act 1908:

(c) Appeals against determinations of the Commerce Commission:

(d) Proceedings under any of the provisions of sections 80, 81, 82, and 89 of the Commerce Act 1986:

(e) Cases stated by the Securities Commission and civil proceedings under the Securities Act 1978:

(f) The following proceedings in relation to companies registered under the Companies Act 1955 or the Companies Act 1993, as the case may be:

(i) Applications for directions by liquidators and receivers:

(ii) Defended applications under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993:

(iii) Disputes relating to takeovers:

(iv) Disputes between shareholders or classes of shareholders of companies (other than companies registered under Part 8 of the Companies Act 1955 and companies registered under the Companies Act 1993 and having not more than 25 shareholders):

(g) Proceedings of a commercial nature required or permitted to be entered on a commercial list by or under any Act or by or under the High Court Rules or any rules made under section 51C of this Act.

(2) Where any appeal belonging to the class of appeals described in subsection (1)(c) of this section is entered on a commercial list,

(a) That appeal shall, notwithstanding section 75(2) of the Commerce Act 1986, be heard and determined by the Court; and

(b) Any lay member appointed pursuant to section 77 of the Commerce Act 1986 shall, for the purpose of the hearing and determination of that appeal by the Court, be deemed to be a lay member of the Court; and

(c) Section 77 and sections 91 to 97 of the Commerce Act 1986 shall, subject to section 24E of this Act, apply with all necessary modifications to that appeal.

(3) Rules made under section 51C of this Act shall make provision for

(a) The manner in which proceedings eligible for entry on a commercial list are to be entered on a commercial list:

(b) Orders for the removal of proceedings entered on a commercial list:

(c) The procedure governing the determination of proceedings entered on a commercial list.

Sections 24A to 24G were inserted, as from 6 November 1986, by section 4 Judicature Amendment Act 1986 (1986 No 93).

Subsection (1)(f) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (2) was substituted, as from 10 July 1987, by section 2 Judicature Amendment Act (No 2) 1987 (1987 No 147).

24C Commercial list Judges

(1) A commercial list established under section 24A is supervised by a Judge nominated from time to time by the Chief Justice after consulting the Chief High Court Judge.

(1A) The Chief High Court Judge can be nominated under subsection (1).

(2) After consulting the Chief High Court Judge, the Chief Justice may nominate one or more Judges to help the Judge nominated under subsection (1) and to supervise the list when that Judge is absent from duty.

(3) Every interlocutory application in any proceeding entered on a commercial list shall be determined by a Judge nominated under subsection (1) or subsection (2) of this section.

(4) Where

(a) Any dispute has arisen concerning the construction, status, or application of a contract or document; and

(b) The dispute could be determined in a proceeding eligible for entry on a commercial list; and

(c) No proceeding has been commenced in respect of the dispute,

any party to the dispute may apply to a Judge nominated under subsection (1) or subsection (2) of this section for the determination of the questions involved in the dispute.

Sections 24A to 24G were inserted, as from 6 November 1986, by section 4 Judicature Amendment Act 1986 (1986 No 93).

Subsection (1) was substituted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (1A) was inserted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (2) was substituted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

24D Directions for speedy determination of real questions in proceedings on commercial list

The Court may from time to time give such directions as the Court thinks fit (whether or not inconsistent with the High Court Rules or any rules made under section 51C of this Act) for the speedy and inexpensive determination of the real questions between the parties to proceedings entered on a commercial list.

Sections 24A to 24G were inserted, as from 6 November 1986, by section 4 Judicature Amendment Act 1986 (1986 No 93).

24E Agreement not to appeal

The parties to any proceedings entered on a commercial list may agree that the decision of the Court shall be final.

Sections 24A to 24G were inserted, as from 6 November 1986, by section 4 Judicature Amendment Act 1986 (1986 No 93).

24F Proceedings not to be tried by jury

Notwithstanding anything in section 19A of this Act, no proceeding entered on a commercial list shall be tried before a jury.

Sections 24A to 24G were inserted, as from 6 November 1986, by section 4 Judicature Amendment Act 1986 (1986 No 93).

24G Restriction of right of appeal from interlocutory decisions

(1) No appeal shall lie from an interlocutory decision of the High Court in respect of any proceeding entered on a commercial list unless leave to appeal to the Court of Appeal is given by the High Court on application made within 7 days of the decision being given or within such further time as the High Court may allow.

(2) If the High Court refuses leave to appeal from any such interlocutory decision, the Court of Appeal may grant that leave on application made to the Court of Appeal within 21 days of the refusal of leave by the High Court.

Sections 24A to 24G were inserted, as from 6 November 1986, by section 4 Judicature Amendment Act 1986 (1986 No 93).

Administrative Division of the Court

The heading "Administrative Division of the Court" was substituted, as from 31 October 1968, by section 2 Judicature Amendment Act 1968 (1968 No 18).

25 Administrative Division of the High Court

[Repealed]

Sections 25 to 26B were substituted, as from 31 October 1968, by section 2 Judicature Amendment Act 1968 (1968 No 18).

Subsection (2) was amended, as from 1 January 1981, by section 3 Judicature Amendment Act 1980 (1980 No 88), by substituting the number "6" for the word "four".

Subsection (2) was amended, as from 17 December 1985, by section 2(1) Judicature Amendment Act (No 4) 1985 (1985 No 180), by substituting the number "7" for the number "6".

Sections 25 to 26B were repealed, as from 15 August 1991, by section 3(2) Judicature Amendment Act 1991, following the abolition of the Administrative Division of the High Court by section 3(1) of that Act. *See* also section 3(5) of that Act as to every reference to the Administrative Division of the High Court in any enactment or document executed before 15 August 1991 being read as a reference to the High Court.

26 Jurisdiction of Administrative Division

[Repealed]

Sections 25 to 26B were substituted, as from 31 October 1968, by section 2 Judicature Amendment Act 1968 (1968 No 18).

Subsection (1)(c) was amended, as from 1 January 1973, by section 15 Judicature Amendment Act 1972 (1972 No 130) by inserting the words "and such

applications or classes of applications to the Court for review under Part 1 of the Judicature Amendment Act 1872,".

Subsection (1)(c) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the word "orders" for the word "writs".

Sections 25 to 26B were repealed, as from 15 August 1991, by section 3(2) Judicature Amendment Act 1991, following the abolition of the Administrative Division of the High Court by section 3(1) of that Act. *See* also section 3(5) of that Act as to every reference to the Administrative Division of the High Court in any enactment or document executed before 15 August 1991 being read as a reference to the High Court.

26A Lay members or assessors in certain cases

[Repealed]

Sections 25 to 26B were substituted, as from 31 October 1968, by section 2 Judicature Amendment Act 1968 (1968 No 18).

Sections 25 to 26B were repealed, as from 15 August 1991, by section 3(2) Judicature Amendment Act 1991, following the abolition of the Administrative Division of the High Court by section 3(1) of that Act. *See* also section 3(5) of that Act as to every reference to the Administrative Division of the High Court in any enactment or document executed before 15 August 1991 being read as a reference to the High Court.

26B Rules relating to Administrative Division

[Repealed]

Sections 25 to 26B were substituted, as from 31 October 1968, by section 2 Judicature Amendment Act 1968 (1968 No 18).

Sections 25 to 26B were repealed, as from 15 August 1991, by section 3(2) Judicature Amendment Act 1991, following the abolition of the Administrative Division of the High Court by section 3(1) of that Act. *See* also section 3(5) of that Act as to every reference to the Administrative Division of the High Court in any enactment or document executed before 15 August 1991 being read as a reference to the High Court.

Associate Judges of the High Court

The heading "Masters of the High Court" was inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

This heading was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judges" for the word "Masters".

26C Appointment of Associate Judges

(1) The Governor-General may from time to time, by warrant, appoint fit and proper persons to be Associate Judges of the High Court.

(2) The maximum number of Associate Judges is 6.

(3) For the purposes of subsection (2),

(a) an Associate Judge who is acting on a full-time basis counts as 1:

(b) an Associate Judge who is acting on a part-time basis counts as an appropriate fraction of 1:

(c) the aggregate number (for example, 5.5) must not exceed the maximum number of Associate Judges that is for the time being permitted.

(4) A person must not be appointed as an Associate Judge unless he or she has held a practising certificate as a barrister or solicitor for at least 7 years.

(5) An Associate Judge must not undertake any other paid employment or hold any other office (whether paid or not) unless the Chief High Court Judge is satisfied that the employment or other office is compatible with judicial office.

(6) An Associate Judge holds office until, in accordance with section 26E, he or she retires or resigns or is removed from office.

(7) Subsection (6) applies to

(a) every Associate Judge appointed after the commencement of this section; and

(b) every person deemed by section 6(1) of the Judicature Amendment Act 2004 to have been appointed as an Associate Judge at the commencement of this section (despite any provision to the contrary in any enactment or warrant of appointment).

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

Subsection (2) was amended, as from 15 August 1991, by section 4(1) Judicature Amendment Act 1991 (1991 No 60) by substituting the expression "6" for the expression "4".

Sections 26C and 26D were substituted, as from 20 May 2004, by section 7 Judicature Amendment Act 2004 (2004 No 45).

26D Associate Judges act on full-time basis but may be authorised to act part-time

(1) A person acts as an Associate Judge on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.

(2) The Attorney-General may, in accordance with subsection (4), authorise an Associate Judge appointed under section 26C to act on a part-time basis for a specified period.

(3) To avoid doubt, an authorisation under subsection (2) may take effect as from an Associate Judge's appointment or at any other time, and may be made more than once in respect of the same Associate Judge.

(4) The Attorney-General may authorise an Associate Judge to act on a part-time basis only

(a) on the request of the Associate Judge; and

(b) with the concurrence of the Chief High Court Judge.

(5) In considering whether to concur under subsection (4), the Chief High Court Judge must have regard to the ability of the Court to discharge its obligations in an orderly and expeditious way.

(6) An Associate Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.

(7) The basis on which an Associate Judge acts must not be altered during the term of the Associate Judge's appointment without the Associate Judge's consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

Subsection (2) was substituted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Sections 26C and 26D were substituted, as from 20 May 2004, by section 7 Judicature Amendment Act 2004 (2004 No 45).

26E Vacation of office

(1) The Governor-General may, if the Governor-General thinks fit, remove an Associate Judge for inability or misbehaviour.

(2) An Associate Judge may resign the office of Associate Judge by notice in writing addressed to the Attorney-General.

(3) Subject to section 26H of this Act, every Associate Judge shall retire from office on attaining the age of 70 years.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

Subsection (1) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting "an Associate Judge" for "a Master".

Subsection (2) was amended, as from 20 May 2004, by section 8 Judicature Amendment Act 2004 (2004 No 45) by substituting "Attorney-General" for "Minister of Justice".

Subsection (2) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting "An Associate Judge" for "A Master".

Subsection (2) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting "office of Associate Judge" for "office of Master".

Subsection (3) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting "every Associate Judge" for "every Master".

Subsection (3) was amended, as from 6 March 2007, by section 6 Judicature Amendment Act 2007 (2007 No 3) by substituting "70" for "68".

26F Salaries and allowances of Associate Judges

(1) Subject to subsection (5) of this section, there shall be paid to every Associate Judge, out of public money, without further appropriation than this section,

(a) A salary at such rate as the Remuneration Authority from time to time determines; and

(b) Such allowances as are from time to time determined by the Remuneration Authority; and

(c) Such additional allowances, being travelling allowances or other incidental or minor allowances, as may be determined from time to time by the Governor-General.

(2) Subject to subsection (5) of this section, the salary of an Associate Judge shall not be diminished during the continuance of the Associate Judge's appointment.

(3) Subject to the Remuneration Authority Act 1977, any determination made under subsection (1) of this section, and any provision of any such determination, may be made so as to

come into force on a date to be specified in that behalf in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination or the date of the commencement of this section.

(4) Every such determination, and every provision of any such determination, in respect of which no date is specified as aforesaid shall come into force on the date of the making of the determination.

(5) The salary and allowances payable for a period during which an Associate Judge acts on a part-time basis must be calculated and paid as a pro-rata proportion of the salary and allowances for a full-time equivalent position.

(6) For the purpose of subsection (2), the payment of salary and allowances on a pro-rata basis under subsection (5) is not a diminution of salary.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

The heading to section 26F was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judges" for the word "Masters".

Section 26F was amended, as from 1 April 2003, by section 4(1) Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54) by substituting the words "Remuneration Authority" for the words "Higher Salaries Commission" in every place where they appear.

Subsection (1) was amended, as from 1 July 1989, by section 86 Public Finance Act 1989 (1989 No 44) by substituting the words "public money" for the words "the Consolidated Account".

Subsection (1) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "every Associate Judge" for the words "every Master".

Subsection (2) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master".

Subsection (2) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "the Associate Judge's" for the words "the Master's".

Subsection (5) was substituted, as from 20 May 2004, by section 9 Judicature Amendment Act 2004 (2004 No 45).

Subsection (6) was inserted, as from 20 May 2004, by section 9 Judicature Amendment Act 2004 (2004 No 45).

26G Superannuation or retiring allowances of Associate Judges

For the purpose of providing a superannuation fund or retiring allowance for persons appointed as Associate Judges, sums by way of subsidy or contribution may from time to time be paid under Part 5B of the Government Superannuation Fund Act 1956 or to any registered superannuation scheme in accordance with a determination of the Remuneration Authority.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

Subsections (2) to (4) were repealed, as from 25 December 1986, by section 21 Government Superannuation Fund Amendment Act 1986 (1986 No 132).

Section 26G was substituted, as from 4 June 1998, by section 2 Judicature Amendment Act 1998 (1998 No 52).

The heading to section 26G was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judges" for the word "Masters".

Section 26G was amended, as from 1 April 2003, by section 4(1) Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54) by substituting the words "Remuneration Authority" for the words "Higher Salaries Commission".

Section 26G was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judges" for the word "Masters".

26H Temporary Associate Judges

(1) The Governor-General may, subject to this section, appoint any person (including a former Associate Judge) to act as an Associate Judge for such period as is specified in the warrant of appointment.

(2) The period so specified shall not exceed 12 months; but any person appointed under this section may from time to time be reappointed.

(3) No person shall be appointed as an Associate Judge under this section unless that person is eligible for appointment as an Associate Judge pursuant to section 26C of this Act, save that, subject to subsection (4) of this section, a person otherwise qualified who has attained the age of 70 years (including an Associate Judge who has retired after attaining that age) may be appointed as an Associate Judge under this section.

(4) No person shall be appointed or reappointed as an Associate Judge under this section who has attained the age of 72 years.

(5) Subject to section 26F(5) of this Act, every person appointed as an Associate Judge under this section shall, during the term of that Associate Judge's appointment, be paid the salary and allowances payable by law to an Associate Judge.

(6) No appointment may be made under this section otherwise than on a certificate signed by the Chief Justice to the effect that, in the opinion of the Chief Justice, it is necessary for the due conduct of the business of the Court that a temporary Associate Judge be appointed.

(7) The Chief Justice must not sign the certificate without first consulting the Chief High Court Judge.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

The heading to section 26H was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting "Associate Judges" for "Masters".

Section 26H was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting "an Associate Judge" for "a Master" wherever it appears.

Subsection (1) was substituted, as from 15 August 1991, by section 5 Judicature Amendment Act 1991 (1991 No 60).

Subsection (1) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting "former Associate Judge" for "former Master".

Subsection (2) was amended, as from 20 May 2004, by section 10 Judicature Amendment Act 2004 (2004 No 45) by substituting "12" for "3".

Subsection (3) was amended, as from 6 March 2007, by section 7 Judicature Amendment Act 2007 (2007 No 3) by substituting "70" for "68".

Subsection (5) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting "that Associate Judge's" for "that Master's".

Subsection (6) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting "temporary Associate Judge" for "temporary Master".

Subsection (7) was inserted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

26I Associate Judge may exercise certain powers of the Court

(1) An Associate Judge shall have and may exercise all the jurisdiction and powers of the Court in relation to the following matters:

(a) Any application for summary judgment:

(b) Any application to stay or dismiss an application for the appointment of a liquidator under the Companies Act 1955 or the Companies Act 1993, as the case may be:

(c) Any proceedings under which relief is claimed solely under any of the provisions of sections 140, 143, 144, 145, 145A, and 148 of the Land Transfer Act 1952 (which provisions relate to caveats):

(d) The assessment of damages where liability has been determined, or the trial of proceedings in which only the amount of the debt or damages is disputed:

(e) The entry of any judgment by consent, or the making of any other order by consent:

(f) Any other matter in respect of which jurisdiction is conferred on an Associate Judge by or under any Act.

(2) An Associate Judge shall have and may exercise all the jurisdiction and powers which are vested in the Court or a Judge by the following enactments:

(a) Article 11 of Schedule 1 to the Arbitration Act 1996:

(b) Sections 205 to 207 of the Companies Act 1955, as applied to compromises and arrangements by section 35 of the Companies Amendment Act 1993:

(c) Sections 220 to 222, 226, 231(4), 233 to 237, 239, 240(1)(a), 246 to 249, 250 to 263, 265 to 267, 311A, 311B, 312, and 332 of the Companies Act 1955, as applied in relation to the winding up of a company by section 42(1) of the Companies Amendment Act 1993:

(d) Sections 139, 168, 209N to 209P, 209R to 209T, 209X to 209ZA, 209ZF, 211, 213, 216 to 218, 220, 231(2), 235(5), 240, 243, 258, 260, 264, 265, 268 to 270, 281, 288, and 467 of the Companies Act 1955, as continued in force by section 3 of the Companies Act Repeal Act 1993:

(e) Sections 123, 154, 165 to 168, 173, 179, 232 to 234, 236 to 238, Part 15A, and Part 16 of the Companies Act 1993:

(f) Rules 39, 41, 71, 87 to 89, 91, 94, 95, 96, 111, 125(3), 136, 137, 141 to 143, 190, and 191 of the Companies (Winding Up) Rules 1956, as continued in force by section 42(7) of the Companies Amendment Act 1993:

(g) Section 42(2) of the Corporations (Investigation and Management) Act 1989:

(h) Section 26, Part 10, section 119, and Part 15 of the Insolvency Act 1967:

(ha) the Insolvency Act 2006 (except sections 150, 166(3), 180, and 236(2)):

(hb) any regulations or rules made under the Insolvency Act 2006:

(i) Rules 41 and 43 of the Insolvency Rules 1970:

(j) Any regulations relating to liquidations made under the Companies Act 1955 or under the Companies Act 1993.

(k) sections 118, 128, 131, 167, 168, 170, 179, 181, 182, and 186 of the Personal Property Securities Act 1999.

(l)

(3) An Associate Judge shall have and may exercise all the jurisdiction and powers of the Court to deal with costs and other matters incidental to the matters over which an Associate Judge has jurisdiction pursuant to subsection (1) or subsection (2) of this section.

(4) Rules made under section 51C of this Act or rules made under any other Act in the manner provided in that section may contain such provisions as may be necessary

(a) To enable the proper exercise by Associate Judges of the jurisdiction and powers conferred by this section; and

(b) To regulate the practice and procedure of the Court on appeals against the exercise by Associate Judges of the jurisdiction and powers so conferred.

(5)

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

The heading to section 26I was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judge" for the word "Master".

Section 26I was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "An Associate Judge" for the words "A Master" wherever they appear.

Section 26I was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master" wherever they appear.

Subsection (1)(b) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (1)(c) was amended, as from 17 May 2005, by section 3 Judicature Amendment Act 2005 (2005 No 57) by inserting the expression "145A," after the expression "145,".

Subsection (2) was substituted, as from 1 July 1994, by section 2 Judicature Amendment Act 1994 (1994 No 42).

Subsection (2)(a) was substituted, as from 1 July 1997, by section 17 Arbitration Act 1996 (1996 No 99).

Subsection (2)(c) was amended, as from 8 May 1999, by section 2(a) Judicature Amendment Act 1999 (1999 No 36) by inserting the expression "311A, 311B,".

Subsection (2)(d) was amended, as from 8 May 1999, by sections 2(b) and (2)(c) Judicature Amendment Act 1999 (1999 No 36) by inserting the expression "268 to 270,", and by adding the words ", as continued in force by section 3 of the Companies Act Repeal Act 1993:".

Section 26I(2)(e): substituted, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Subsection (2)(e) was amended, as from 8 May 1999, by section 2(d) Judicature Amendment Act 1999 (1999 No 36) by inserting the expression "294 to 296, 299,".

Section 26I(2)(ha): inserted, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 26I(2)(hb): inserted, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Subsection (2)(k) was inserted, as from 15 December 2005, by section 3 Judicature Amendment Act (No 2) 2005 (2005 No 107).

Subsection (4)(a) and (b) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judges" for the word "Masters".

Subsection (5) was repealed, as from 4 June 1998, by section 3 Judicature Amendment Act 1998 (1998 No 52).

26IA Ancillary powers of Associate Judge

(1) Subject to subsection (2) of this section, an Associate Judge shall have, in all proceedings (including proceedings on an interlocutory application) properly before the Associate Judge, jurisdiction to make any order or to exercise any authority or

jurisdiction that might be made or exercised by a Judge of the High Court.

(2) Nothing in subsection (1) of this section confers on an Associate Judge any jurisdiction or power of a kind described in subsection (3) or subsection (4) of section 26J of this Act.

Section 26IA was inserted, as from 1 July 1994, by section 3 Judicature Amendment Act 1994 (1994 No 42).

The heading to section 26IA was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judge" for the word "Master".

Section 26IA was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master" in both places where they appear.

Subsection (1) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "the Associate Judge" for the words "the Master".

26IB Judge or Associate Judge may, by video link, preside at hearing of specified matters

(1) A Judge or Associate Judge may, by video link, preside at the hearing of any matter

(a) over which an Associate Judge has jurisdiction under section 26I; and

(b) that is specified in rules made under section 51C for the purposes of this section.

(2) A hearing conducted under the authority of subsection (1)

(a) has effect as if the Judge or Associate Judge were physically present:

(b) does not affect the privileges and immunities of the Judge or Associate Judge or of any witnesses, counsel, or parties appearing at the hearing.

(3) Rules made under section 51C may

(a) specify a class or classes of matters in respect of which hearings authorised by subsection (1) may be conducted:

(b) regulate the manner in which hearings authorised by subsection (1) are conducted.

Section 26IB was inserted, as from 1 September 2006, by section 7 Judicature Amendment Act 2006 (2006 No 16). *See* clause 2 Judicature Amendment Act 2006 Commencement Order (No 2) 2006 (SR 2006/210).

26J Power to make rules conferring specified jurisdiction and powers of Judge in Chambers on Associate Judges

(1) Notwithstanding anything contained in any other provision of this Act or of any other Act but subject to the provisions of this section, rules made under section 51C of this Act or rules made under any other Act in the manner provided in that section may confer on Associate Judges, subject to such limitations and restrictions as may be specified in the rules, such of the jurisdiction and powers of a Judge sitting in Chambers, conferred by this Act or any other Act, as may be specified in the rules.

(2) Any such rules may contain such other provisions as may be necessary

(a) To enable the proper exercise by Associate Judges of the jurisdiction and powers so conferred; and

(b) To regulate the practice and procedure of the Court on any application to the Court under section 26P(1) of this Act to review the exercise by an Associate Judge of the jurisdiction and powers so conferred.

(3) Nothing in subsection (1) or subsection (2) of this section authorises the making of any rule which confers on Associate Judges any jurisdiction or power in respect of any of the following matters:

(a) Any criminal proceeding, other than an uncontested application for bail, or an application for the setting aside of a witness summons:

(b) Any application for a writ of *habeas corpus*:

(c) Any proceedings for the issue or renewal of a writ of sequestration:

(d) Any proceedings under or by virtue of the Care of Children Act 2004:

(e) Any action *in rem* under or by virtue of the Admiralty Act 1973:

(f) Any application to review, or any appeal against, the exercise, or the refusal to exercise, by any Registrar or Deputy Registrar, of any jurisdiction or power conferred on any Registrar or Deputy Registrar by or under this Act or any other Act.

(4) Nothing in subsection (1) or subsection (2) of this section authorises the making of any rule which confers on Associate Judges any jurisdiction or power

(a) To grant an Anton Piller order, or an injunction (whether interlocutory or otherwise):

(b) To grant any relief on an application for review under section 4(1) of the Judicature Amendment Act 1972:

(c) To grant any relief in any proceedings for a writ or order of or in the nature of mandamus, prohibition, or certiorari, or for a declaration or injunction:

(d) To grant any application to remove any person from public office:

(e) To try the right of any person to hold any public office.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

The heading to section 26J was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judges" for the word "Masters".

Section 26J was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "on Associate Judges" for the words "on Masters" wherever they occur.

Subsection (2)(a) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "by Associate Judges" for the words "by Masters".

Subsection (2)(b) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master".

Subsection (3)(a) was amended, as from 1 February 2001, by section 128 Legal Services Act 2000 (2000 No 42) by omitting the words ", an application for offenders legal aid,".

Subsection (3)(d) was amended, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90) by substituting the words "Care of Children Act 2004" for the words "Guardianship Act 1968".

26K Power of Associate Judge to deal with witnesses and to punish for contempt

Sections 56A, 56B, and 56C of this Act shall apply in respect of any proceedings before an Associate Judge, and an Associate Judge shall have and may exercise all the jurisdiction and powers which, pursuant to those sections, are vested in the Court or a Judge.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

The heading to section 26K was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judge" for the word "Master".

Section 26K was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master" in both places where they appear.

26L Associate Judge to have no power to make order for committal, attachment, or arrest

Except as provided by section 26K of this Act, an Associate Judge shall have no jurisdiction or power to make an order for the committal, attachment, or arrest of any person.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

The heading to section 26L was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judge" for the word "Master".

Section 26L was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master".

26M Associate Judge may act as referee

An Associate Judge may act as a referee under the High Court Rules in respect of any proceedings or any question arising in the course of any proceedings.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

Section 26M was substituted, as from 1 July 1997, by section 17 Arbitration Act 1996 (1996 No 99).

The heading to section 26M was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judge" for the word "Master".

Section 26M was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "An Associate Judge" for the words "A Master".

26N Transfer of proceedings from Associate Judge to Judge

(1) In any proceedings before an Associate Judge, an Associate Judge may, on the application of any party to the proceedings, or of the Associate Judge's own motion, refer the proceedings or any matter arising therein to a Judge if the Associate Judge is satisfied that because of the complexity of the proceedings

or of that matter, or of any question in issue in the proceedings, it is expedient that the proceedings or that matter be referred to a Judge.

(2) Where any proceedings are to be dealt with or are being dealt with by an Associate Judge, a Judge may, at any time before the conclusion of those proceedings, on application made on notice by any party to the proceedings, order that the proceedings or any part thereof be transferred to a Judge if that Judge is satisfied that it is desirable that the proceedings or that part thereof be dealt with by a Judge.

(3) Upon the reference of any proceedings, or any matter arising therein, to a Judge under subsection (1) of this section, or the transfer of any proceedings or any part thereof to a Judge under subsection (2) of this section, the Judge may

(a) Dispose of the proceedings; or

(b) Refer the proceedings or the matter back to the Associate Judge with such directions as the Judge thinks fit.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

The heading to section 26N was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judge" for the word "Master".

Section 26N was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master" wherever they appear.

Subsection (1) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "the Associate Judge's" for the words "the Master's".

Subsections (1) and (3)(b) were amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "the Associate Judge" for the words "the Master".

26O Power of Associate Judge to adjourn proceedings

An Associate Judge shall have power to order the adjournment of any proceedings, notwithstanding that an Associate Judge would not otherwise have jurisdiction in respect of those proceedings.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

The heading to section 26O was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judge" for the word "Master".

Section 26O was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "An Associate Judge" for the words "A Master".

Section 26O was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master".

26P Review of, or appeals against, decisions of Associate Judges

(1) Any party to any proceedings who is affected by any order or decision made by an Associate Judge in Chambers may apply to the Court to review that order or decision and, where a party so applies in accordance with the High Court Rules, the Court

(a) Must review the order or decision in accordance with the High Court Rules; and

(b) May make such order as may be just.

(1AA) The determination of the High Court on a review under subsection (1) is final, unless the High Court gives leave (or the High Court refuses leave, but the Court of Appeal gives special leave) to appeal from it to the Court of Appeal.

(1A) Rules under section 51C may

(a) specify the nature and extent of reviews or classes of review under subsection (1):

(b) regulate the procedure for hearing applications or classes of application under subsection (1):

(c) regulate the procedure for hearing applications or classes of application for leave under subsection (1AA).

(2) Any party to any proceedings may appeal to the Court of Appeal against any order or decision of an Associate Judge in those proceedings (other than an order or decision made in Chambers).

(3) Section 66 of this Act shall apply to any appeal under subsection (2) of this section.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

The heading to section 26P was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "Associate Judges" for the word "Masters".

Subsection (1) was substituted, as from 1 January 2000, by section 4 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act 1998 Commencement Order 1999 (SR 1999/431).

Subsection (1) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master".

Subsection (1A) was inserted, as from 1 January 2000, by section 4 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act 1998 Commencement Order 1999 (SR 1999/431).

Subsection (1AA) was inserted, as from 19 December 2002, by section 3 Judicature Amendment Act 2002 (2002 No 68).

Subsection (1A) was substituted, as from 19 December 2002, by section 3 Judicature Amendment Act 2002 (2002 No 68).

Subsection (2) was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master".

26Q Immunity of Associate Judges

Every Associate Judge has the same immunities as a Judge of the High Court.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

Section 26Q was substituted, as from 20 May 2004, by section 11 Judicature Amendment Act 2004 (2004 No 45).

26R Jurisdiction of Judge not affected

Nothing in this Act or in any rules made under section 51C of this Act or in any rules made under any other Act in the manner provided in that section shall prevent the exercise by any Judge of any jurisdiction or power conferred on an Associate Judge by this Act or by any such rules.

Sections 26C to 26R were inserted, as from 6 November 1986, by section 5 Judicature Amendment Act 1986 (1986 No 93).

Section 26R was amended, as from 20 May 2004, by section 6(2) Judicature Amendment Act 2004 (2004 No 45) by substituting the words "an Associate Judge" for the words "a Master".

Officers

27 Appointment of officers

There may from time to time be appointed under the State Sector Act 1988 such Registrars, Deputy Registrars, and other

officers as may be required for the conduct of the business of the Court.

Compare: 1882 No 29 s 35; 1886 No 33 s 13

Section 27 was substituted, as from 22 May 1997, by section 2 Judicature Amendment Act 1997 (1997 No 10). *See* sections 4 and 5 of that Act for the validations and savings provisions.

Registrars

28 Powers of Registrars

(1) In order that the Court may be enabled to exercise the jurisdiction conferred upon it by this Act, every Registrar and Deputy Registrar shall have all the powers and perform all the duties in respect of the Court (except such powers and duties as any other officer may be specially appointed to exercise and perform) which Registrars and Deputy Registrars have hitherto performed or which by any rule or statute they may be required to perform.

(2) Each Deputy Registrar has the same powers and privileges, performs the same duties, and is subject to the same provisions and penalties under this Act and under any other Act as if he or she were the Registrar for the time being, whether or not those powers, privileges, duties, provisions, or penalties are conferred, imposed, or enacted under this Act or that other Act.

(3) Subsection (2) is subject to any provision to the contrary in any other enactment.

Compare: 1882 No 29 s 36

Subsections (2) and (3) were inserted, as from 15 December 2005, by section 4 Judicature Amendment Act (No 2) 2005 (2005 No 107).

Sheriffs

29 Sheriffs and deputy Sheriffs

(1) Every Registrar of the High Court for the time being shall be a Sheriff for New Zealand.

(2) There may be appointed under the State Sector Act 1988 in respect of any office of the Court one or more Deputy Sheriffs.

(3) Every Deputy Sheriff shall, in the absence of the Sheriff or when acting for the Sheriff, have the powers and privileges,

duties and responsibilities of the Sheriff under this Act or any other enactment.

Section 29 was substituted, and sections 30 and 31 were repealed, as from 1 April 1973, by section 20(1) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

The words "High Court" in subsection (1) were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

The reference to the State Sector Act 1988 in subsection (2) was substituted, as from 1 April 1988, for a reference to the State Services Act 1962 pursuant to section 90(a) State Sector Act 1988 (1988 No 20).

30 Security to be given by Sheriffs

[Repealed]

Section 29 was substituted, and sections 30 and 31 were repealed, as from 1 April 1973, by section 20(1) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

31 Sureties may withdraw

[Repealed]

Section 29 was substituted, and sections 30 and 31 were repealed, as from 1 April 1973, by section 20(1) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

32 Duties, etc, of Sheriffs

Every Sheriff shall have such powers and privileges, duties and responsibilities, as a Sheriff by law has or is liable to in England as a ministerial officer of one of Her Majesty's Courts at Westminster.

Compare: 1883 No 5 s 9

33 Sheriff to act as Queen's bailiff

In addition to his powers and privileges, duties and responsibilities, as a ministerial officer, each Sheriff shall also have and exercise the powers and duties of the Queen's bailiff.

Compare: 1883 No 5 s 10

Section 33 was amended, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130) by omitting the words "within his district". *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

34 Sheriff not to act as barrister or solicitor

No Sheriff shall be in any way concerned in any action in any Court in New Zealand either as a barrister, solicitor, or agent.

Compare: 1883 No 5 s 11

35 Service of process when Sheriff disqualified

Where any process issues which the Sheriff ought not by law to execute, the High Court shall authorise some fit person to execute the same; and in every such case the cause of such special proceeding shall be entered upon the records of the Court.

Compare: 1883 No 5 s 12

The words "High Court" were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

36 Persons arrested by Sheriffs may be committed to prison at once

Where any Sheriff, Sheriff's officer, bailiff, or other person employed under the Sheriff, has arrested any person under or by virtue of any writ or process whatsoever, he may forthwith thereafter convey such person, or cause him to be conveyed, to such prison as he ought to be sent to by virtue of the writ or process against him.

Compare: 1883 No 5 s 13

Poundage and Fees

37 Calculation of Sheriff's poundage

[Repealed]

Sections 37 to 39 were repealed, as from 11 October 1978, by section 4(1) Judicature Amendment Act 1978 (1978 No 55).

38 Appointment of, commission to, and oath taken by, appraiser

[Repealed]

Sections 37 to 39 were repealed, as from 11 October 1978, by section 4(1) Judicature Amendment Act 1978 (1978 No 55).

39 Goods defined

[Repealed]

Sections 37 to 39 were repealed, as from 11 October 1978, by section 4(1) Judicature Amendment Act 1978 (1978 No 55).

40 Sheriffs' poundage fees

[Repealed]

Sections 40 and 41 were repealed, as from 1 January 1969, by section 3(4) Judicature Amendment Act (No 2) 1968 (1968 No 59).

41 Fee in special cases

[Repealed]

Sections 40 and 41 were repealed, as from 1 January 1969, by section 3(4) Judicature Amendment Act (No 2) 1968 (1968 No 59).

42 Fees to be paid into Crown Bank Account

All fees taken by a Sheriff under this Act must be paid immediately into a Crown Bank Account.

Section 42 was amended, as from 11 October 1978 when Sheriff's poundage was abolished, by section 4(2) Judicature Amendment Act 1978 (1978 No 55) by omitting the words "and all poundage levied as aforesaid".

The words "Consolidated Revenue Account" were substituted for the words "Consolidated Fund", as from 1 April 1964, pursuant to section 4(4) Public Revenues Amendment Act 1963 (1963 No 46). Those words were in turn substituted by the words "Consolidated Account", as from 1 April 1978, pursuant to section 114(6) Public Finance Act 1977 (1977 No 65). These words were in turn substituted by the words "Crown Bank Account", as from 1 July 1989, pursuant to section 83(7) Public Finance Act 1989 (1989 No 44).

The words "Crown Bank Account" were substituted for the words "Public Account", as from 1 July 1989, pursuant to section 83(7) Public Finance Act 1989 (1989 No 44).

Section 42 was substituted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

43 Where Sheriff not present at sitting of Court, duties of Sheriff may be performed by any person appointed by the Court or Judge

[Repealed]

Sections 43 to 46 were repealed, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

44 Provision in cases of vacancy in office of Sheriff

[Repealed]

Sections 43 to 46 were repealed, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

45 Governor-General may appoint Deputy Sheriffs

[Repealed]

Sections 43 to 46 were repealed, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

46 When Deputies to act

[Repealed]

Sections 43 to 46 were repealed, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130). *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

Commissioners to Administer Oaths

47 Commissioners to take affidavits, etc, out of New Zealand

(1) Any Judge of the High Court, by a commission to be issued under the seal of the Court, may from time to time appoint any person to be and act as a Commissioner of the High Court in any country or place beyond the jurisdiction of the High Court, for the purpose of administering and taking any oath, affidavit, or affirmation, whether

(a) In any civil or criminal proceedings commenced or pending in the High Court; or

(b) In any action, cause, proceeding, matter, or thing commenced or pending in any Court of concurrent jurisdiction in New Zealand or in any inferior Court; or

(c) In any proceedings or in any matter or thing within the cognisance or jurisdiction of the High Court or of any Court of concurrent jurisdiction in New Zealand or of any inferior Court.

(2) Every such appointment shall be gazetted.

Section 47 was substituted, as from 1 January 1986, by section 11 Judicature Amendment Act (No 2) 1985 (1985 No 112).

48 Affidavits, etc, so taken to be of like effect as if taken in New Zealand

Every oath, affidavit, or affirmation taken or made before any such Commissioner as aforesaid shall within New Zealand be of the like effect in all respects as if the same had been administered, made, or taken by or before any Court or persons having authority to administer or take the same in New Zealand.

Compare: 1875 No 82 s 3

49 Commission may be revoked

(1) Any commission issued as aforesaid may be revoked by any Judge of the Court for any cause which such Judge deems sufficient; but no such revocation shall affect or prejudice any act, matter, or thing done by any Commissioner by virtue of his commission prior to a notification of such revocation having been given or sent to him.

(2) Every revocation of any such appointment shall be gazetted, and the notice published in the Gazette shall state the date when notice of revocation was given or sent to the Commissioner affected thereby.

Compare: 1875 No 82 ss 5, 6

Practice and procedure of the Court

50 Seal of the Court and Registrar's seal

(1) The Court shall have in the custody of each Registrar a seal of the Court, for the sealing of all writs and other instruments or documents issued by such Registrar and requiring to be sealed.

(2)

Compare: 1882 No 29 ss 37, 38

Subsection (2) was repealed, as from 1 May 1981, by section 4 Judicature Amendment Act 1980 (1980 No 88).

51 High Court Rules

(1) Subject to subsections (2) to (4) of this section and to sections 51A to 56C of this Act, the practice and procedure of the Court in all civil proceedings shall be regulated by the High Court Rules.

(2) The High Court Rules shall be subject to any other rules which are made pursuant to section 51C of this Act and which prescribe the procedure applicable in respect of any class of civil proceedings or in respect of the practice or procedure of the Court of Appeal.

(3) Where any provision of the High Court Rules or of any rules made under section 51C of this Act restricts or excludes the application of the High Court Rules or any provisions of the High Court Rules, the provision that effects the restriction or exclusion shall have effect according to its tenor.

(4) If in any civil proceedings any question arises as to the application of any provision of the High Court Rules or of any rules made under section 51C of this Act, the Court may, either on the application of any party or of its own motion, determine the question and give such directions as it thinks fit.

Subsection (2) was repealed, as from 1 January 1931, by section 4 Judicature Amendment Act 1930 (1930 No 14).

Section 51 was substituted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

51A Publication of High Court Rules under Acts and Regulations Publication Act 1989

(1) The High Court Rules, and any reprint of the High Court Rules, may be printed and published under section 14 of the Acts and Regulations Publication Act 1989 as if the High Court Rules were regulations within the meaning of that Act; and that section applies accordingly.

(2) Sections 16B, 16C(3), and 16D of the Acts and Regulations Publication Act 1989 apply accordingly.

Sections 51A to 51G were inserted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 51A was substituted, as from 19 December 1989, by section 26 Acts and Regulations Publication Act 1989 (1989 No 142).

Section 51A was substituted, as from 1 January 2000, by section 8 Acts and Regulations Publication Amendment Act 1999 (1999 No 111).

Subsection (2) was substituted, as from 1 August 2007, by section 216 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

51B Rules Committee

(1) For the purposes of this Act and the District Courts Act 1947, there is a Rules Committee consisting of

- (a) The Chief Justice:
- (ab) The Chief High Court Judge:
- (b) Two other Judges of the High Court appointed by the Chief Justice:
- (c) The Chief District Court Judge:
- (d) One other District Court Judge appointed by the Chief Justice on the recommendation of the Chief District Court Judge:
- (e) The Attorney-General:
- (f) The Solicitor-General:
- (g) The chief executive of the Department for Courts:
- (h) Two persons, who are barristers and solicitors of the High Court, nominated by the Council of the New Zealand Law Society and approved by the Chief Justice.

(2) The Chief Justice may appoint any other person to be a member for a special purpose. That person holds office during the pleasure of the Chief Justice.

(3) The members referred to in paragraphs (b), (d), and (h) of subsection (1)

- (a) Must be appointed for terms not exceeding 3 years:
- (b) May be reappointed:
- (c) May resign office by notice in writing to the Chief Justice.

(4) The Rules Committee is a **statutory Board** within the meaning of the Fees and Travelling Allowances Act 1951.

(5) The members referred to in subsections (1)(h) and (2) may be paid, out of money appropriated by Parliament, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951.

Sections 51A to 51G were inserted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subsection (1)(d) was amended, as from 1 July 1995 by section 10(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words "chief executive of the Department for Courts" for the words "Secretary for Justice".

Section 51B was substituted, as from 31 August 1999, by section 2 Judicature (Rules Committee and Technical Advisers) Amendment Act 1999 (1999 No 88).

Subsection (1)(ab) was inserted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

51C Power to make rules

(1) The Governor-General in Council, with the concurrence of the Chief Justice and any 2 or more of the members of the Rules Committee, of whom at least one shall be a Judge, may, for the purposes of facilitating the expeditious, inexpensive, and just dispatch of the business of the Court, or of otherwise assisting in the due administration of justice, from time to time make rules regulating the practice and procedure of the High Court and of the Court of Appeal and of the Supreme Court (including the practice and procedure on appeals from any court or person to the Supreme Court, the Court of Appeal, or the High Court).

(2) Rules made pursuant to subsection (1) of this section may

(a) Repeal the High Court Rules set out in Schedule 2 to this Act, and substitute a new set of High Court Rules:

(b) Alter or revoke any of the rules contained in the High Court Rules:

(c) Add to the High Court Rules any further rules touching the practice and procedure of the High Court in all or any of the civil proceedings within its jurisdiction:

(cc) Add to the High Court Rules any rules made for the purposes of Part 1A of this Act:

(d) Alter or revoke any rules regulating the practice or procedure of the Court of Appeal (including those contained in the Court of Appeal Rules 1955):

(e) Revoke the Court of Appeal Rules 1955:

(f) Alter or revoke any other rules of the High Court, the Court of Appeal, or the Supreme Court that are now or may hereafter be in force:

(g) Fix scales of costs.

Sections 51A to 51G were inserted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subsection (1) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the words "and of the Supreme Court (including the practice and procedure on appeals from any court or person to the Supreme Court, the Court of Appeal, or the High Court)" for the words "(including the practice and procedure on appeals from any court or person to the Court of Appeal or the High Court)". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (2)(cc) was inserted, as from 1 July 1990, by section 2 Judicature Amendment Act 1990 (1990 No 44).

Subsection (2)(f) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the words "High Court, the Court of Appeal, or the Supreme Court" for the words "High Court or the Court of Appeal". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

51D Rules of Court under other Acts to be made in manner provided by this Act

Where any other Act confers power to make rules of procedure in relation to civil proceedings, that power shall be exercised by the Governor-General in Council in the manner prescribed by section 51C of this Act, and not otherwise.

Sections 51A to 51G were inserted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

51E Power to prescribe procedure on applications to High Court, Court of Appeal, or Supreme Court

(1) Notwithstanding anything to the contrary in any Act or in any Imperial Act in force in New Zealand, rules may be made under section 51C of this Act prescribing the form and manner in which any class or classes of applications to the High Court or a Judge thereof or to the Court of Appeal or to the Supreme Court shall be made.

(2) So far as the provisions of any Act prescribing the form or manner in which any such applications are to be made, whether by petition, motion, summons, or otherwise, are inconsistent with or repugnant to the High Court Rules or the Court of Appeal Rules or to any rules made under section 51C of this Act, the Act prescribing that form or manner shall be deemed to be subject to the Rules.

Sections 51A to 51G were inserted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The heading to section 51E was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the words "", Court of Appeal, or Supreme Court" for the words "or Court of Appeal". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (1) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by inserting the words "or to the Supreme Court" after the words "Court of Appeal". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

51F Power to make rules conferring specified jurisdiction and powers of Judge on Registrars or Deputy Registrars

(1) Notwithstanding anything contained in any other provision of this Act or of any other Act, but subject to the provisions of this section, rules made under section 51C of this Act or rules made under any other Act in the manner provided in that section may confer on Registrars and Deputy Registrars (whether of the High Court, the Court of Appeal, or the Supreme Court), subject to such limitations and restrictions as may be specified in the rules, such of the jurisdiction and powers of a Judge sitting in Chambers, conferred by this Act or any other Act, as may be specified in the rules, and may contain such other provisions as may be necessary to enable the proper exercise by Registrars and Deputy Registrars of the jurisdiction and powers so conferred.

(2) Any jurisdiction and any powers conferred under this section may be conferred on specified Registrars or Deputy Registrars or on any specified class or classes of Registrars or Deputy Registrars.

(3) Where any matter in respect of which a Registrar or Deputy Registrar has jurisdiction under any rules of Court appears to the Registrar or Deputy Registrar to be one of special difficulty, the Registrar or Deputy Registrar may refer the matter to a Judge, who may dispose of the matter or may refer it back to the Registrar or Deputy Registrar with such directions as the Judge thinks fit.

(4) Any party to any proceedings or any intended proceedings who is affected by any order or decision made by any Registrar or Deputy Registrar under any rules of Court may apply to the Court to review that order or decision, and where a party so applies the Court may make such order as may be just.

(5) Nothing in this section or in the High Court Rules or in any rules made under section 51C of this Act or in any rules made under any other Act shall prevent the exercise by any Judge of any jurisdiction or powers conferred on any Registrar or Deputy Registrar by any such rules.

Sections 51A to 51G were inserted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subsection (1) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by inserting the words "(whether of the High Court, the Court of Appeal, or the Supreme Court)" after the words "Deputy Registrars". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

51G Jurisdiction of Court to award costs in all cases

(1) Where any Act confers jurisdiction on the High Court or a Judge thereof in regard to any civil proceedings or any criminal proceedings or any appeal, without expressly conferring jurisdiction to award or otherwise deal with the costs of the proceedings or appeal, jurisdiction to award and deal with those costs and to make and enforce orders relating thereto shall be deemed to be also conferred on the Court or Judge.

(2) Such costs shall be in the discretion of the Court or Judge, and may, if the Court or Judge thinks fit, be ordered to be charged upon or paid out of any fund or estate before the Court.

Sections 51A to 51G were inserted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

52 District rules

(1) Any 3 or more Judges, of whom the Chief Justice shall be one, may from time to time

(a) Appoint sittings of the Court for the despatch of civil and criminal business; and

(b) Make for each place where an office of the High Court is established rules respecting the places and times for holding sittings of the Court, sittings in Chambers, the order of disposing of business, the attendance at the office or offices of the officers thereof, and other such matters.

(2) Rules made under subsection (1)(b) of this section shall not be inconsistent with the High Court Rules or the Court of Appeal

Rules or any rules made under section 51C of this Act or the laws of New Zealand.

(3) Notwithstanding anything in subsection (1) of this section, any Judge may from time to time adjourn a sitting of the Court to any time and place the Judge may think fit; and in the event of a Judge not being present at the time appointed for a sitting of the Court, the Registrar may adjourn the sitting to such time as may be convenient.

The first proviso was amended, as from 1 January 1958, by section 8 Judicature Amendment Act 1957 (1957 No 9), by omitting the words "shall be subject to the approval of the Governor-General in Council, and".

Section 52 was amended, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130) by substituting the words "each place where an office of the Supreme Court is established" for the words "each district". *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

Section 52 was substituted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

53 Fees to be paid into Crown Bank Account

All fees received under this Act must be paid into a Crown Bank Account.

Section 53 was amended, as from 1 January 1969, by section 3(3) Judicature Amendment Act (No 2) 1968 (1968 No 59), by inserting the words "or by regulations made under this Act".

Section 53 was substituted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The words "Crown Bank Account" were substituted for the words "Public Account" and "Consolidated Account", as from 1 July 1989, pursuant to section 83(7) Public Finance Act 1989 (1989 No 44).

Section 53 was substituted, as from 9 October 2001, by section 3 Judicature Amendment Act 2001 (2001 No 83).

54 Service of process on Sundays void

(1) Subject to any rule of Court, no person shall serve or execute, or cause to be served or executed, on Sunday any statement of claim, application, writ, process, warrant, order, or judgment of the High Court or Court of Appeal (except in cases of crime or of breach of the peace), and such service or execution shall be void to all intents and purposes whatsoever.

(2) Nothing in subsection (1) of this section shall apply to

(a) The service of any writ *in rem* or warrant of arrest in respect of any proceedings heard or to be heard in the High Court in its admiralty jurisdiction; or

(b) The service of any subpoena or interlocutory injunction.

(3) Nothing in this section shall be construed to annul, repeal, or in any way affect the common law, or the provisions of any statute or rule of practice or procedure, now or hereafter in force, authorising the service of any statement of claim, application, writ, process, or warrant, in cases other than those excepted in subsection (1) of this section.

The proviso to subsection (1) was inserted, as from 21 October 1974, by section 5 Judicature Amendment Act 1974 (1974 No 57).

Subsection (1) was amended, as from 7 October 1977, by section 3(1) Judicature Amendment Act 1977 (1977 No 32), by substituting the words "Subject to any rule of Court, no" for the word "No".

Subsection (1) proviso was amended by section 3(2) Judicature Amendment Act 1977 (1977 No 32) by omitting the words ", or when sitting as a Prize Court".

Subsection (2) was repealed, as from 7 October 1977, by section 3(3) Judicature Amendment Act 1977 (1977 No 32).

Section 54 was substituted, as from 1 January 1986, by section 4 Judicature Amendment Act (No 2) 1985 (1985 No 112).

54A Verdict of three-fourths

If three-fourths at least of any jury trying any civil case shall, after the jury has retired to consider its verdict for a period of at least 4 hours, intimate to the Judge presiding that the jury has considered its verdict, and that there is no probability of such jury being unanimous, the verdict of three-fourths shall have the same effect as the verdict of the whole number.

Compare: 1908 No 90 s 152

Sections 54A and 54B were inserted, as from 1 May 1981, by section 5 Judicature Amendment Act 1980 (1980 No 88).

54B Discharge of jury

(1) Subject to the provisions of this section, the Court may in its discretion, in the case of any emergency or casualty rendering it, in the opinion of the Court, highly expedient for the ends of justice to do so, discharge the jury without their giving a verdict.

(2) Without limiting subsection (1) of this section, where a jury has remained in deliberation for such period as the Judge thinks reasonable, being not less than 4 hours, and does not agree on the verdict to be given, the Judge may discharge the jury without their giving a verdict.

(3) If, at any time before the verdict of the jury is taken, any juror becomes in the opinion of the Court incapable of continuing to perform his or her duty, or it becomes known to the Court that the juror is disqualified, or that a relative of the juror is ill or has died, the Court may, in its discretion,
- (a) discharge the jury without giving their verdict; or
- (b) proceed with the remaining jurors and take their verdict.

(3A) In subsection (3), **relative of the juror** means
- (a) the spouse, civil union partner, or de facto partner of the juror; and
- (b) a member of the juror's family; and
- (c) a member of the family of the juror's spouse, civil union partner, or de facto partner.

(4) Notwithstanding subsection (3)(b) of this section, the Court shall not proceed with less than 11 jurors unless all the parties consent.

(5) Where under subsection (3)(b) of this section the Court proceeds with less than 12 jurors, their verdict shall have the same effect as the verdict of the whole number.

(6) Where the Court discharges a jury under this section, it shall either direct that a new jury be empanelled during the sitting of the Court, or postpone the trial on such terms as justice requires.

(7) If the presiding Judge becomes incapable of trying the case or directing that the jury be discharged, the Registrar shall discharge the jury.

(8) No Court may review the exercise of any discretion under this section.

Compare: 1908 No 90 ss 153, 154; 1961 No 43 s 374; 1979 No 127 s 3

Sections 54A and 54B were inserted, as from 1 May 1981, by section 5 Judicature Amendment Act 1980 (1980 No 88).

Subsection (3) was amended, as from 1 January 2002, by section 56(a) Human Rights Amendment Act 2001 (2001 No 96), by inserting the words ", de facto

partner (whether of the same or different sex),'' after the word ''spouse'' in the first place it appears.

Subsection (3) was amended, as from 1 January 2002, by section 56(b) Human Rights Amendment Act 2001 (2001 No 96), by inserting the words ''or de facto partner of the same or different sex'' after the word ''spouse'' in the second place it appears.

Subsection (3) was substituted, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3).

Subsection (3A) was inserted, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3).

Miscellaneous rules of law and of practice

Habeas corpus

54C Procedure in respect of habeas corpus

[Repealed]

Section 54C and the heading ''Habeas Corpus'' were inserted, as from 1 January 1986, by section 5 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 54C was repealed, as from 26 May 2001, by section 22(1) Habeas Corpus Act 2001 (2001 No 31).

Absconding debtors

55 Power under certain circumstances to arrest defendant about to quit New Zealand

(1) A person shall not be arrested upon mesne process in any civil proceedings in the High Court.

(2) Where in any civil proceedings in the High Court in which, if brought before the first day of October, 1874 (being the date of the coming into operation of the Imprisonment for Debt Abolition Act 1874), the defendant would have been liable to arrest, the plaintiff proves at any time before final judgment, by evidence on oath to the satisfaction of a Judge of the Court, that the plaintiff has good cause of action against the defendant to the amount of $100 or upwards, and that there is probable cause for believing that the defendant is about to quit New Zealand unless he is apprehended, and that the absence of the defendant from New Zealand will materially prejudice the plaintiff in the prosecution of those proceedings, such Judge may, in the prescribed manner, order such defendant to be arrested and imprisoned for a period not exceeding 6 months,

unless and until he has sooner given the prescribed security, not exceeding the amount claimed in those proceedings, that he will not go out of New Zealand without the leave of the High Court.

(3) Where the civil proceedings are for a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from New Zealand will materially prejudice the plaintiff in the prosecution of those proceedings; and the security given (instead of being that the defendant will not go out of New Zealand) shall be to the effect that any sum recovered against the defendant in those proceedings will be paid or that the defendant shall be rendered to prison.

(4) All the powers conferred by this section upon a Judge may be exercised by the Registrar of the Court:

Provided that such powers shall be exercised by the said Registrar only in the absence of the Judge from the place where the office of the Court is situate at which the application for such order as aforesaid is made.

Compare: 1874 No 14 s 15; 1875 No 39 s 2

Subsection (1) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "civil proceedings" for the word "action".

In subsection (2) the expression "$100" was substituted for the expression "50 pounds", as from 10 July 1967, pursuant to section 7(1)(a) Decimal Currency Act 1964 (1964 No 27). *See* clause 2 Decimal Currency Act Commencement Order 1967 (SR 1967/67).

Subsection (2) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "any civil proceedings", "those proceedings" and "in those proceedings" for the words "any action", "his action", and "in the action", respectively.

Subsection (3) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "the civil proceedings are", "those proceedings" and "in those proceedings" for the words "the action is", "his action" and "in the action", respectively.

The words "High Court" in subsections (1) and (2) were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Foreign creditors

56 Memorials of judgments obtained out of New Zealand may be registered

(1) Any person in whose favour any judgment, decree, rule, or order, whereby any sum of money is made payable, has been obtained in any Court of any of Her Majesty's dominions may cause a memorial of the same containing the particulars hereinafter mentioned, and authenticated by the seal of the Court wherein such judgment, decree, rule, or order was obtained, to be filed in the office of the High Court; and such memorial being so filed shall thenceforth be a record of such judgment, decree, rule, or order, and execution may issue thereon as hereinafter provided.

(2) Every seal purporting to be the seal of any such Court shall be deemed and taken to be the seal of such Court until the contrary is proved, and the proof that any such seal is not the seal of such Court shall lie upon the party denying or objecting to the same.

(3) Every such memorial shall be signed by the party in whose favour such judgment, decree, rule, or order was obtained, or his attorney or solicitor, and shall contain the following particulars, that is to say: The names and additions of the parties, the form or nature of the action or other proceeding, and, when commenced, the date of the signing or entering-up of the judgment, or of passing the decree, or of making the rule or order, and the amount recovered, or the decree pronounced, or rule or order made, and, if there was a trial, the date of such trial and amount of verdict given.

(4) The Court or any Judge thereof, on the application of the person in whose favour such judgment, decree, rule, or order was obtained, or his solicitor, may grant a rule or issue a summons calling upon the person against whom such judgment, decree, rule, or order was obtained to show cause, within such time after personal or such other service of the rule or summons as such Court or Judge directs, why execution should not issue upon such judgment, decree, rule, or order, and such rule or summons shall give notice that in default of appearance execution may issue accordingly; and if the person served with such rule or summons does not appear, or does not show sufficient

cause against such rule or summons, such Court or Judge, on due proof of such service as aforesaid, may make the rule absolute, or make an order for issuing execution as upon a judgment, decree, rule, or order of the Court, subject to such terms and conditions (if any) as such Court or Judge thinks fit.

(5) All such proceedings may be had or taken for the revival of such judgment, decree, rule, or order, or the enforcement thereof by and against persons not parties to such judgment, decree, rule, or order as may be had for the like purposes upon any judgment, decree, rule, or order of the Court.

Compare: 1882 No 29 ss 27, 28, and 29

The words "High Court" in subsection (1) were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Witnesses

The heading "Witnesses" was inserted, as from 25 October 1960, by section 2 Judicature Amendment Act 1960 (1960 No 109).

56A Failure of witness to attend

(1) If any witness who is compellable to attend to give evidence at the hearing of any civil proceeding in the High Court and who has been duly summoned fails to attend at the time and place appointed, the Court may issue a warrant to arrest him and bring him before the Court, and may adjourn the hearing.

(2) The Court may impose on any such witness who fails without just excuse (the proof of which excuse shall be on him) to attend as aforesaid a fine not exceeding $500.

(3) No witness shall be compellable to attend at the hearing of any civil proceeding in the High Court unless at the time of the service of the order of subpoena, or at some other reasonable time before the hearing, a sum in respect of his allowances and travelling expenses in accordance with the scale prescribed for the time being by regulations made under the Summary Proceedings Act 1957 is tendered or paid to him.

Sections 56A and 56B were inserted, as from 25 October 1960, by section 2 Judicature Amendment Act 1960 (1960 No 109).

Subsection (2) was amended, as from 1 March 1978, by section 4(1) Judicature Amendment Act 1977 (1977 No 32) by substituting the expression

"$500" for the expression "$100". *See* clause 2 Judicature Amendment Act Commencement Order 1977 (SR 1977/328).

Subsection (3) was inserted, as from 29 September 1961, by section 10 Judicature Amendment Act 1961 (1961 No 11).

Subsection (3) was amended, as from 1 March 1978, by section 4(2) Judicature Amendment Act 1977 (1977 No 32) by substituting the words "order of subpoena" for the words "writ of subpoena". *See* section 4(5) of that Act and clause 2 Judicature Amendment Act Commencement Order 1977 (SR 1977/328).

The words "High Court" in subsections (1) and (3) were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

56B Refusal of witness to give evidence

(1) If any witness in any civil proceeding in the High Court without offering any just excuse, refuses to give evidence when required, or refuses to produce any document which he has been required to produce, or refuses to be sworn, or having been sworn refuses to answer such questions concerning that proceeding as are put to him, the Court may order that, unless he sooner consents to give evidence or to produce the document or to be sworn or to answer the questions put to him, as the case may be, he be detained in custody for any period not exceeding 7 days, and may issue a warrant for his arrest and detention in accordance with the order.

(2) If the person so detained, on being brought up again at the hearing, again refuses to give evidence or to produce the document or to be sworn or, having been sworn, to answer the questions put to him, the Court, if it thinks fit, may again direct that the witness be detained in custody for the like period, and so again from time to time until he consents to give evidence or to produce the document or to be sworn or to answer as aforesaid.

(3) Nothing in this section shall limit or affect any power or authority of the Court to punish any witness for contempt of Court in any case to which this section does not apply.

Sections 56A and 56B were inserted, as from 25 October 1960, by section 2 Judicature Amendment Act 1960 (1960 No 109).

The words "High Court" in subsection (1) were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

56BB Witnesses entitled to expenses

[Repealed]

Section 56BB was inserted, as from 29 September 1961, by section 11 Judicature Amendment Act 1961 (1961 No 11).

Section 56BB was amended, as 7 October 1977, by section 4(3) Judicature Amendment Act 1977 (1977 No 32) by substituting the words "order or subpoena" for the words "writ or subpoena".

Section 56BB was repealed, as from 14 October 1981, by section 5(2)(a) Judicature Amendment Act 1981 (1981 No 40).

Contempt of Court

The heading "Contempt of Court" was inserted, as from 25 October 1960, by section 3 Judicature Amendment Act 1960 (1960 No 109).

56C Contempt of Court

(1) If any person

(a) Assaults, threatens, intimidates, or wilfully insults a Judge, or any Registrar, or any officer of the Court, or any juror, or any witness, during his sitting or attendance in Court, or in going to or returning from the Court; or

(b) Wilfully interrupts or obstructs the proceedings of the Court or otherwise misbehaves in Court; or

(c) Wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the hearing of any proceedings

any constable or officer of the Court, with or without the assistance of any other person, may, by order of the Judge, take the offender into custody and detain him until the rising of the Court.

(2) In any such case as aforesaid, the Judge, if he thinks fit, may sentence the offender to imprisonment for any period not exceeding 3 months, or sentence him to pay a fine not exceeding $1,000 for every such offence; and in default of payment of any such fine may direct that the offender be imprisoned for any period not exceeding 3 months, unless the fine is sooner paid.

(3) Nothing in this section shall limit or affect any power or authority of the Court to punish any person for contempt of Court in any case to which this section does not apply.

Section 56C was inserted, as from 25 October 1960, by section 3 Judicature Amendment Act 1960 (1960 No 109).

Subsection (2) was amended, as from 16 December 1983, by section 3 Judicature Amendment Act 1983 (1983 No 103) by substituting the expression "$1,000" for the expression "$200".

Immigration Matters

This heading was inserted, as from 1 April 1999, by section 63 Immigration Amendment Act 1999 (1999 No 16).

56CA Judicial review of decisions under Immigration Act 1987

The provisions of this Act are to be read subject to section 146A of the Immigration Act 1987 (as inserted by section 53 of the Immigration Amendment Act 1999) in relation to any proceedings reviewing a statutory power of decision arising out of or under that Act.

Section 56CA was inserted, as from 1 April 1999, by section 63 Immigration Amendment Act 1999 (1999 No 16).

Part 1A
Special provisions applying to certain proceedings in the High Court and the Federal Court of Australia

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56D Interpretation

In this Part of this Act, unless the context otherwise requires,

Australian proceeding means a proceeding in which a matter for determination arises under

(a) Any of sections 46A, 155A, or 155B of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; or

(b) A provision of Part VI or Part XII of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it relates to any of sections 46A, 155A, or 155B of that Act,

whether or not any other matter arises for determination; and includes an interlocutory proceeding related to such a proceed-

ing and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding

Federal Court means the Federal Court of Australia

New Zealand proceeding means a proceeding in which a matter for determination arises under

(a) Any of sections 36A, 98H, or 99A of the Commerce Act 1986; or

(b) A provision of Part 6 or Part 7 of the Commerce Act 1986 in so far as it relates to any of sections 36A, 98H, or 99A of that Act,

whether or not any other matter arises for determination; and includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56E High Court may order New Zealand proceedings to be heard in Australia

(1) The High Court may, if it is satisfied that a New Zealand proceeding could more conveniently or fairly be tried or heard by the High Court in Australia or that the evidence in a New Zealand proceeding could more conveniently be given in Australia, as the case may be, order that the proceeding be tried or heard in Australia, or that the evidence be taken in Australia, and may sit in Australia for that purpose.

(2) The order shall specify

(a) The place in Australia where the proceeding will be tried or heard or the evidence taken, as the case may be:

(b) The date or dates of the trial or hearing or on which the evidence will be taken, as the case may be:

(c) Such other matters relating to the trial or the hearing or the taking of the evidence, as the case may be, as the Court thinks fit.

(3) Without limiting the powers of the High Court in relation to the proceeding, the High Court may give judgment in, or make any

determination for the purposes of, a New Zealand proceeding in Australia.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56F Australian counsel entitled to practise in High Court

A person who is entitled to practise as a barrister, or solicitor, or both, in the Federal Court is entitled to practise as a barrister, or solicitor, or both in relation to

(a) A New Zealand proceeding before the High Court sitting in Australia:

(b) The examination, cross-examination, or re-examination of a witness in Australia whose evidence is being taken by video link or telephone conference in a New Zealand proceeding before the High Court in New Zealand:

(c) The making of submissions by video link or telephone conference to the High Court in New Zealand in a New Zealand proceeding.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56G High Court may set aside subpoena issued in New Zealand proceeding

(1) The High Court may set aside an order of subpoena issued by the High Court requiring the attendance of a person in Australia to testify or to produce documents to the High Court for the purposes of a New Zealand proceeding.

(2) An application under subsection (1) of this section shall be made by the person served with the order of subpoena and may be made ex parte.

(3) Without limiting the grounds on which the order of subpoena may be set aside, the High Court may set the order aside on any of the following grounds:

(a) That the witness does not have, and could not reasonably be expected to obtain, the necessary travel documents:

(b) That the witness is liable to be detained for the purpose of serving a sentence:

(c) That the witness is liable to prosecution for an offence:

(d) That the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 or section 83 of the Commerce Act 1986:

(e) That the evidence of the witness could be obtained without significantly greater expense by other means:

(f) That compliance with the order of subpoena would cause hardship or serious inconvenience to the witness:

(g) In the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to testify, that the Court is satisfied that the documents should not be taken out of Australia and that evidence of the contents of the documents can be given by other means.

(4) Every application to set aside an order of subpoena under subsection (1) of this section shall be made by affidavit.

(5) The affidavit shall

(a) Be sworn by the applicant; and

(b) Set out the facts on which the applicant relies; and

(c) Be filed in the office of the Court that issued the order of subpoena.

(6) The Registrar of the Court shall cause a copy of the affidavit to be served on the solicitor on the record for the party to the proceedings who obtained the order of subpoena, or if there is no solicitor on the record, on that party.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56H Injunctions and orders in New Zealand proceedings

Notwithstanding any rule of law, the High Court may, in a New Zealand proceeding, make an order or grant an injunction that the Court is empowered to make or grant that requires a person to do an act, or refrain from engaging in conduct, in Australia.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56I Issue of subpoenas in New Zealand proceedings

(1) An order of subpoena may, with the leave of a Judge, be obtained in a New Zealand proceeding requiring a person in Aus-

tralia to testify, or produce documents or things, or both, to the High Court at a sitting of that Court in New Zealand or in Australia.

(2) An order of subpoena issued for the purposes of a New Zealand proceeding that requires a witness in Australia to produce documents or things, but does not require the witness to testify, must permit the witness to comply with the order of subpoena by producing the documents or things to a specified registry of the Federal Court.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56J Powers of Federal Court of Australia

(1) The Federal Court of Australia may exercise all the powers of that Court

(a) At a sitting of that Court in New Zealand held for the purposes of an Australian proceeding:

(b) At a sitting of that Court in Australia held for the purposes of an Australian proceeding at which the evidence of a witness in New Zealand is taken by video link or telephone conference or at which submissions are made in New Zealand by a barrister, or solicitor, or both or a party to the proceedings by video link or telephone conference.

(2) Without limiting subsection (1) of this section, the Federal Court of Australia Act 1976 and the Rules of Court made under that Act that are applicable in relation to Australian proceedings generally shall apply to the practice and procedure of the Federal Court at any sitting of that Court of the kind referred to in that subsection.

(3) Without limiting subsection (1) of this section, the Federal Court may, at any such sitting of the Court in New Zealand or in Australia, by order

(a) Direct that the hearing or any part of the hearing be held in private:

(b) Require any person to leave the Court:

(c) Prohibit or restrict the publication of evidence or the name of any party or any witness.

(4) Nothing in subsection (1) or subsection (2) of this section applies in relation to

(a) The power of the Court to punish any person for contempt; or

(b) The prosecution of any person for an offence committed as a witness; or

(c) The enforcement or execution of any judgment, order, injunction, writ, or declaration given, made, or granted by the Court.

(5) An order made under subsection (3) of this section may be enforced by a Judge of the High Court who, for that purpose, shall have and may exercise the powers, including the power to punish for contempt, that would be available to enforce the order if it had been made by that Judge.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56K Issue of subpoenas in Australian proceedings

(1) An order of subpoena that is issued by the Federal Court with the leave of a Judge of that Court requiring the attendance of a person in New Zealand to testify or to produce documents for the purposes of an Australian proceeding may be served on that person in New Zealand by leaving a sealed copy of the subpoena with that person personally together with a statement setting out the rights and obligations of that person, including information as to the manner in which application may be made to that Court to have the subpoena set aside.

(2) A person who has been served with an order of subpoena under subsection (1) of this section is not compellable to comply with the order unless, at the time of service of the order or at some other reasonable time before the hearing, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56L Failure of witness to comply with subpoena issued in Australian proceeding

(1) The Court may, on receiving a certificate under the seal of the Federal Court stating that a person named in the certificate has failed to comply with an order of subpoena requiring that person to attend as a witness for the purposes of an Australian proceeding, issue a warrant requiring any constable to arrest that person and bring that person before the Court.

(2) The Court may, on the appearance of that person before the Court, impose a fine not exceeding $1,000 unless the Court is satisfied, the onus of proof of which shall lie with that person, that the failure to comply with the order of subpoena should be excused.

(3) In determining whether the failure to comply with the order of subpoena should be excused, the High Court may have regard to

(a) Any matters that were not brought to the attention of the Federal Court, if the High Court is satisfied that

(i) The Federal Court would have been likely to have set aside the order of subpoena if those matters had been brought to the attention of that Court; and

(ii) The failure to bring those matters to the attention of the Federal Court was not due to any fault on the part of the person alleged to have failed to comply with the order of subpoena or was due to an omission by that person that should be excused; and

(b) Any matters to which the High Court would have regard if the order of subpoena had been issued by the High Court.

(4) For the purposes of this section, but subject to subsection (3) of this section, a certificate under the seal of the Federal Court stating

(a) That the order of subpoena was issued by that Court:

(b) That the witness failed to comply with the order of subpoena:

(c) In relation to any application made to that Court to have the order of subpoena set aside, the decision of that

Court or any orders or findings of fact made by that Court

shall be conclusive evidence of the matters stated in it.

(5) Subject to subsection (3) of this section, no findings of fact made by the Federal Court on an application to that Court to have the order of subpoena set aside may be challenged by any person alleged to have failed to comply with the order unless the Court was deliberately misled in making those findings of fact.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56M Federal Court of Australia may administer oaths in New Zealand

(1) The Federal Court may

(a) At any sitting of that Court in New Zealand held for the purposes of an Australian proceeding; or

(b) For the purposes of obtaining the testimony of a person in New Zealand by video link or telephone conference at a sitting of that Court in Australia

administer an oath or affirmation in accordance with the practice and procedure of that Court.

(2) Evidence given by a person on oath or affirmation administered by the Federal Court under subsection (1) of this section shall, for the purposes of section 108 of the Crimes Act 1961 (which relates to perjury), be deemed to have been given as evidence in a judicial proceeding on oath.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56N Orders made by Federal Court of Australia not subject to review

No application for review under Part 1 of the Judicature Amendment Act 1972 and no application for an order of mandamus or prohibition or certiorari or for a declaration or injunction may be brought in respect of any judgment or order or determination of the Federal Court made or given at a sitting of that Court in New Zealand in an Australian proceeding.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56O Contempt of Federal Court of Australia

(1) Every person commits an offence who, at any sitting of the Federal Court in New Zealand,

- (a) Assaults, threatens, intimidates, or wilfully insults
  - (i) A Judge of that Court; or
  - (ii) A registrar or officer of that Court; or
  - (iii) A person appearing as a barrister, or solicitor, or both, before that Court; or
  - (iv) A witness in proceedings before that Court; or
- (b) Wilfully interrupts or obstructs the proceedings; or
- (c) Wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the proceedings.

(2) Every person who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56P Arrangements to facilitate sittings

(1) The Chief Justice of New Zealand may make arrangements with the Chief Justice of the Federal Court for the purposes of giving effect to this Part of this Act.

(2) Without limiting subsection (1) of this section arrangements may be made

- (a) To enable the High Court to sit in Australia in New Zealand proceedings in the courtrooms of the Federal Court or in other places in Australia:
- (b) To enable the Federal Court to sit in New Zealand in the courtrooms of the High Court or in other places in New Zealand:
- (c) To enable evidence to be given and the submissions of counsel to be made in New Zealand proceedings or in Australian proceedings by video link or telephone conference:
- (d) For the provision of registry facilities and Court staff.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56Q Privileges and immunities of Judges, counsel, and witnesses in Australian proceedings

(1) A Judge of the Federal Court sitting as a Judge of that Court in New Zealand in an Australian proceeding has all the protections, privileges, and immunities of a Judge of the High Court.

(2) Every witness who gives evidence in an Australian proceeding
- (a) At a sitting in New Zealand of the Federal Court; or
- (b) By video link or telephone conference at a sitting in Australia of the Federal Court

has all the privileges and immunities of a witness in the High Court.

(3) A person appearing as a barrister, or solicitor, or both, in an Australian proceeding
- (a) At a sitting in New Zealand of the Federal Court; or
- (b) By video link or telephone conference at a sitting in Australia of the Federal Court

has all the privileges and immunities of counsel in the High Court.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56R High Court may take evidence at request of Federal Court

(1) The High Court may, at the request of the Federal Court, take evidence in New Zealand for the Federal Court for the purposes of an Australian proceeding and may, by order, make any provision it considers appropriate for the purpose of taking that evidence.

(2) An order may require a specified person to take such steps the High Court considers appropriate for taking the evidence.

(3) Without limiting subsections (2) and (3) of this section, an order may, in particular, make provision
- (a) For the examination of witnesses, either orally or in writing; or
- (b) For the production of documents or things; or
- (c) For the inspection, photographing, preservation, custody, or detention of any property; or

(d) For taking samples of property and carrying out experiments on or with property.

(4) The High Court may make an order requiring a person to give evidence either orally or by tendering a written document otherwise than on oath or affirmation if the Federal Court requests it to do so.

(5) A person who has been served with an order made under this section is not compellable to comply with the order unless, at the time of service of the order or at some other reasonable time before that person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person.

(6) A person is not compellable to give evidence pursuant to an order under this section that he or she is not compellable to give in the Australian proceeding to which the request relates.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

56S Power to make rules for purposes of this Part

(1) Rules may be made under section 51C of this Act, for or in relation to, Australian proceedings and New Zealand proceedings.

(2) Without limiting subsection (1) of this section, rules may be made that make provision for, or in relation to,

(a) The giving of evidence and the making of submissions in New Zealand proceedings by video link or telephone conference:

(b) Receiving, for the purposes of the Evidence Amendment Act 1990, facsimiles as evidence of documents or things:

(c) The issuing of subpoenas for service in Australia for the purposes of New Zealand proceedings and the service of those subpoenas:

(d) The payment of witnesses required to comply with orders of subpoena served in Australia for the purposes of New Zealand proceedings of amounts in respect of expenses and loss of income occasioned by compliance with those orders:

(e) The lodging of documents or things with the Federal Court in compliance with orders of subpoena issued in New Zealand proceedings that require only the production of documents or things by witnesses:

(f) The transmission of documents or things lodged with the High Court in Australian proceedings in compliance with orders of subpoena issued by the Federal Court or certified copies of such documents to the Federal Court:

(g) The hearing of applications for orders under section 56G of this Act:

(h) Sittings of the High Court in Australia:

(i) Giving effect to arrangements made under section 56P of this Act:

(j) The form of certification of judgments, orders, and injunctions in New Zealand proceedings:

(k) The taking of evidence under section 56R of this Act:

(l) Such other matters as are contemplated by or necessary for giving effect to this Part of this Act.

Part 1A (comprising sections 56D to 56S) was inserted, as from 1 July 1990, by section 3 Judicature Amendment Act 1990 (1990 No 44).

Part 2
The Court of Appeal

Constitution of the Court

57 Constitution of Court of Appeal

(1) There shall continue to be in and for New Zealand a Court of record called, as heretofore, the Court of Appeal of New Zealand:

Provided and it is hereby declared that the Court of Appeal heretofore and now held and henceforth to be held is and shall be deemed and taken to be the same Court.

(2) Subject to this Part, the Court of Appeal comprises

(a) a Judge of the High Court appointed by the Governor-General as a Judge of the Court of Appeal and as President of that Court:

(b) not fewer than 5 nor more than 8 other Judges of the High Court appointed by the Governor-General as Judges of the Court of Appeal.

(3) Any Judge may be appointed to be a Judge of the Court of Appeal either at the time of his appointment as a Judge of the High Court or at any time thereafter.

(4) Every Judge of the Court of Appeal shall continue to be a Judge of the High Court, and may from time to time sit as or exercise any of the powers of a Judge of the High Court.

(5) Every Judge of the Court of Appeal shall hold office as a Judge of that Court so long as he holds office as a Judge of the High Court:

Provided that, with the prior approval of the Governor-General, any Judge of the Court of Appeal may resign his office as a Judge of that Court without resigning his office as a Judge of the High Court.

(6) The Judges of the Court of Appeal have seniority over all the Judges of the High Court (including any additional Judge of the Court of Appeal) except the Chief Justice and the other Judges of the Supreme Court.

(6A) The President of the Court of Appeal has seniority over the other Judges of the Court of Appeal.

(6B) Other Judges of the Court of Appeal appointed on different dates have seniority among themselves according to those dates.

(6C) Other Judges of the Court of Appeal appointed on the same date have seniority among themselves according to their seniority as Judges of the High Court.

(6D) A Judge of the Court of Appeal who resigns office as a Judge of that Court without resigning office as a Judge of the High Court then has, as a Judge of the High Court, the seniority that he or she would have had if he or she had not been appointed as a Judge of the Court of Appeal.

(7) While any vacancy exists in the office of President of the Court of Appeal, or during any absence from New Zealand of the President, or while by reason of illness or any other cause he is prevented from exercising the duties of his office, the senior Judge of the Court of Appeal shall have authority to act as President of the Court of Appeal and to execute the duties of that office and to exercise all powers that may be lawfully exercised by the President.

(8) The jurisdiction of the Court of Appeal shall not be affected by any vacancy in the number of the Judges of that Court.

Compare: 1882 No 30 ss 3, 4

Subsection (2) was substituted, as from 1 January 1958, by section 2(1) Judicature Amendment Act 1957 (1957 No 9).

Subsection (2)(c) was amended, as from 13 December 1979, by section 7(1) Judicature Amendment Act 1979 (1979 No 124) by substituting the word "Four" for the word "Three".

Subsection (2)(c) was amended, as from 6 November 1986, by section 6(1) Judicature Amendment Act 1986 (1986 No 93) by substituting the word "Five" for the word "Four".

Subsection (2)(c) was amended, as from 30 March 1987, by section 2(1) Judicature Amendment Act 1987 (1987 No 34) by substituting the word "Six" for the word "Five".

Subsection (2) was substituted, as from 1 January 2004, by section 44 Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (2)(b) was amended, as from 10 April 2006, by section 4 Judicature Amendment Act 2006 (2006 No 16) by substituting the expression "8" for the expression "6".

Subsections (3) and (4) were repealed, as from 1 February 1914, by section 7(4) Judicature Amendment Act 1913 (1913 No 41).

Subsections (3) to (6) were inserted, as from 1 January 1958, by section 2(1) Judicature Amendment Act 1957 (1957 No 9).

Subsection (6) was amended, as from 25 October 1963, by section 4 Judicature Amendment Act 1963 (1963 No 133) by inserting the words "the dates of their appointments as Judges of the Court of Appeal or, if they are so appointed on the same day, according to".

Subsection (6) was amended, as from 13 December 1979, by section 4 Judicature Amendment Act 1979 (1979 No 124) by substituting the expression "4 Judges" for the expression "3 Judges".

Subsection (6) was amended, as from 6 November 1986, by section 6(2) Judicature Amendment Act 1986 (1986 No 93) by substituting the expression "5 Judges" for the expression "4 Judges".

Subsection (6) was amended, as from 30 March 1987, by section 2(2) Judicature Amendment Act 1987 (1987 No 34) by substituting the expression "6 Judges" for the expression "5 Judges".

Subsection (6) was substituted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsections (6A) to (6D) were inserted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (7) was inserted, as from 1 January 1958, by section 2(1) Judicature Amendment Act 1957 (1957 No 9).

Subsection (7) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by omitting the words ", not being the Chief Justice,". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (8) was inserted, as from 1 January 1958, by section 2(1) Judicature Amendment Act 1957 (1957 No 9).

In subsections (2) to (6) the words "Judges of the High Court" were substituted for the words "Judges of the Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

57A Judges of Court of Appeal act on full-time basis but may be authorised to act part-time

(1) A person acts as a Judge of the Court of Appeal on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.

(2) The Attorney-General may, in accordance with subsection (4), authorise a Judge to act on a part-time basis for any specified period.

(3) To avoid doubt, an authorisation under subsection (2) may take effect as from a Judge's appointment or at any other time, and may be made more than once in respect of the same Judge.

(4) The Attorney-General may authorise a Judge to act on a part-time basis only

(a) on the request of the Judge; and

(b) with the concurrence of the President of the Court of Appeal.

(5) In considering whether to concur under subsection (4), the President of the Court of Appeal must have regard to the ability of the Court to discharge its obligations in an orderly and expeditious way.

(6) A Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.

(7) The basis on which a Judge acts must not be altered during the term of the Judge's appointment without the Judge's consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).

(8) This section applies only to Judges who are appointed as Judges of the Court of Appeal.

Section 57A was inserted, as from 20 May 2004, by section 12 Judicature Amendment Act 2004 (2004 No 45).

58 Court of Appeal to sit in divisions

(1) Except as provided in sections 58D and 61A, for the purposes of any proceedings in the Court of Appeal, the Court sits in divisions comprising 3 Judges.

(2)

(3) There are

(a) One or more divisions of the Court of Appeal for the purposes of criminal proceedings; and

(b) One or more divisions of the Court of Appeal for the purposes of civil proceedings.

(4) Each division of the Court of Appeal may exercise all the powers of the Court of Appeal.

(5) A division of the Court may exercise any powers of the Court even though 1 or more divisions of the Court or a Full Court is exercising any powers of the Court at the same time.

(6) If the majority of the members of a division of the Court considers it desirable to do so, the division may

(a) Refer any proceeding; or

(b) State any case; or

(c) Reserve any question

for the consideration of a Full Court of the Court of Appeal, and in that case a Full Court has the power to hear and determine the proceeding, case, or question.

Section 58 was substituted, as from 1 January 1958, by section 3 Judicature Amendment Act 1957 (1957 No 9).

Subsection (1A) was inserted, as from 27 June 1973, by section 2 Judicature Amendment Act 1973 (1973 No 8).

Subsection (1A) was amended, as from 21 October 1974, by section 6(1) Judicature Amendment Act 1974 (1974 No 57) by substituting the expression "6" for the expression "12".

Subsection (1B) was inserted, as from 21 October 1974, by section 6(2) Judicature Amendment Act 1974 (1974 No 57).

Subsections (1C) and (1D) were inserted, as from 7 October 1977, by section 6 Judicature Amendment Act 1977 (1977 No 32).

Section 58 was substituted, as from 13 December 1979, by section 8(1) Judicature Amendment Act 1979 (1979 No 124).

Subsections (9) to (11) were inserted, as from 14 October 1981, by section 4 Judicature Amendment Act 1981 (1981 No 40).

Sections 58 to 58B were substituted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

Subsection (1) was amended, as from 7 August 2006, by section 5(1) Judicature Amendment Act 2006 (2006 No 16) by omitting the words "in subsection (2) and". *See* clause 2 Judicature Amendment Act 2006 Commencement Order 2006 (SR 2006/184).

Subsection (2)(b) was repealed, as from 1 January 2004, by section 48(2) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (2) was repealed, as from 7 August 2006, by section 5(2) Judicature Amendment Act 2006 (2006 No 16). *See* clause 2 Judicature Amendment Act 2006 Commencement Order 2006 (SR 2006/184).

58A Composition of Criminal Appeals Division or Divisions

(1) For the purposes of any criminal proceeding that is heard by a division, the Court of Appeal comprises

(a) Three Judges of the Court of Appeal holding office under section 57(2); or

(b) Two Judges of the Court of Appeal holding office under section 57(2) and 1 Judge of the High Court nominated by the Chief Justice under subsection (2); or

(c) One Judge of the Court of Appeal holding office under section 57(2) and 2 Judges of the High Court nominated by the Chief Justice under subsection (2).

(2) Except where the work of the High Court renders it impracticable for the Chief Justice to do so, the Chief Justice must from time to time, after consulting the President of the Court of Appeal and the Chief High Court Judge, nominate the Judges of the High Court who may comprise members of the Court of Appeal for the purposes of any proceeding or proceedings to which subsection (1) relates.

(3) Every nomination under subsection (2) must be made either

(a) In respect of a specified case or specified cases; or

(b) In respect of every case to be heard by the Court of Appeal during a specified period not exceeding 3 months.

(4) For the purposes of this section, the term **criminal proceeding** means

(a) Any appeal or application to the Court of Appeal under the Crimes Act 1961 (other than under section 406 of that Act) or under the Summary Proceedings Act 1957:

(b) Any case stated for the opinion of the Court of Appeal under the Crimes Act 1961.

Section 58A was inserted, as from 1 April 1980, by section 9(1) Judicature Amendment Act 1979 (1979 No 124).

Section 58A was substituted, as from 1 October 1991, by section 6 Judicature Amendment Act 1991 (1991 No 60).

Sections 58 to 58B were substituted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

Subsection (2) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by inserting the words "and the Chief High Court Judge" after the words "President of the Court of Appeal". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

58B Composition of Civil Appeals Division or Divisions

(1) For the purposes of any civil proceeding that is heard by a division of the Court, the Court of Appeal comprises

(a) Three Judges of the Court of Appeal holding office under section 57(2); or

(b) Two Judges of the Court of Appeal holding office under section 57(2) and 1 Judge of the High Court nominated by the Chief Justice under subsection (2); or

(c) One Judge of the Court of Appeal holding office under section 57(2) and 2 Judges of the High Court nominated by the Chief Justice under subsection (2).

(2) Except where the work of the High Court renders it impracticable for the Chief Justice to do so, the Chief Justice must from time to time, after consulting the President of the Court of Appeal and the Chief High Court Judge, nominate the Judges of the High Court who may comprise members of the Court of Appeal for the purposes of any proceeding or proceedings to which subsection (1) relates.

(3) Every nomination under subsection (2) must be made either

(a) In respect of a specified case or specified cases; or

(b) In respect of every case to be heard by the Court of Appeal during a specified period not exceeding 3 months.

(4) For the purposes of this section, the term **civil proceeding** means

(a) Any appeal to the Court of Appeal against any judgment or order given or made in a proceeding other than a criminal proceeding:

(b) Any application relating to an appeal of the kind mentioned in paragraph (a):

(c) Any application for leave to bring an appeal of the kind mentioned in paragraph (a):

(d) Any proceeding transferred to the Court of Appeal under section 64.

Section 58B was inserted, as from 1 October 1991, by section 6 Judicature Amendment Act 1991 (1991 No 60).

Sections 58 to 58B were substituted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

Subsection (2) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by inserting the words "and the Chief High Court Judge" after the words "President of the Court of Appeal". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

58C Assignment of Judges to divisions

(1) Judges are assigned to act as members of a criminal or civil division of the Court of Appeal in accordance with a procedure adopted from time to time by Judges of the Court of Appeal holding office under section 57(2).

(2) The President of the Court of Appeal must publish in the *Gazette* any procedure adopted under subsection (1).

(3) A Judge of the High Court who is eligible to act as a Judge of a division of the Court of Appeal because of a nomination made under section 58A(2) or section 58B(2) may not be assigned to a division without the concurrence of the Chief Justice and the Chief High Court Judge.

Sections 58C to 58G were inserted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

Subsection (3) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by adding the words "and the Chief High Court Judge". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

58D Court of Appeal to Sit as Full Court in certain cases

(1) Subject to subsection (3), a Full Court consists of 5 Judges.

(2) Subject to section 58F, a Full Court is constituted only by Judges of the Court of Appeal holding office under section 57(2).

(3) Where, pending the determination of any proceeding, 1 or more of the members of a Full Court before whom the proceeding is being heard or was heard

(a) Dies; or

(b) Becomes seriously ill; or

(c) Is otherwise unavailable for any reason,

it is not necessary for that proceeding to be reheard, and the remaining members may continue to act as a Full Court for the purposes of this section with power to determine the proceeding or any incidental matter (including the question of costs) that may arise in the course of that proceeding.

(4) The Court of Appeal must sit as a Full Court to hear and determine

(a) Cases that are considered, in accordance with the procedure adopted under section 58E, to be of sufficient significance to warrant the consideration of a Full Court:

(b) Any proceeding, case, or question referred under section 58(6) for hearing and determination by a Full Court:

(c) Any appeal from a decision of the Courts Martial Appeal Court under section 10 of the Courts Martial Appeals Act 1953.

Sections 58C to 58G were inserted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

Subsection (1) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by omitting the words "or 7". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

58E Cases of sufficient significance for Full Court

(1) The question whether a case is of sufficient significance to warrant the consideration of a Full Court must be determined in accordance with the procedure which those Judges of the Court of Appeal holding office under section 57(2) from time to time adopt.

(2) The President of the Court of Appeal must publish in the *Gazette* any procedure adopted by the Judges of the Court of Appeal under subsection (1).

Sections 58C to 58G were inserted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

58F High Court Judges sitting on Full Court

(1) Whenever the President of the Court of Appeal certifies in writing that due to

(a) The illness or absence on leave of any of the Judges holding office under section 57(2); or

(b) The need for the expertise of a specific Judge of the High Court in a particular case; or

(c) Any other exceptional circumstances,

it is necessary for a specified Judge who has been assigned to a division of the Court under section 58C to sit as a member of the Full Court, that Judge may sit as a member of the Full Court.

(2) No more than 1 Judge of the High Court may sit as a member of the Full Court at any one time.

Sections 58C to 58G were inserted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

58G Authority of High Court Judges

(1) The fact that a Judge of the High Court acts as a Judge of the Court of Appeal is conclusive evidence of the Judge's authority to do so, and no judgment or determination given or made by the Court of Appeal while the Judge so acts may be questioned on the ground that the occasion for the Judge so acting had not arisen or had ceased to exist.

(2) A Judge of the High Court who has acted as a Judge of the Court of Appeal may attend sittings of the Court of Appeal for the purpose of giving any judgment or passing sentence in or otherwise completing any proceeding in relation to any case that has been heard by the Judge while he or she so acted.

Sections 58C to 58G were inserted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

59 Judgment of Court of Appeal

(1) The judgment of the Court must be in accordance with the opinion of a majority of the Judges hearing the proceeding concerned.

(2) If the Judges present are equally divided in opinion, the judgment or order appealed from or under review is taken to be affirmed.

(3) The delivery of the judgment of the Court of Appeal may be effected in any manner provided by rules made under section 51C.

Section 59 was repealed, as from 1 February 1914, by section 8(5) Judicature Amendment Act 1913 (1913 No 41).

A new section 59 was inserted, as from 1 January 1958, by section 3 Judicature Amendment Act 1957 (1957 No 9).

Subsection (1) was amended, as from 1 October 1991, by section 6(2) Judicature Amendment Act 1991 (1991 No 60) by substituting the words "Subject to sections 58A and 58B of this Act," for the words "Subject to section 58A of this Act,".

Sections 59 and 60 were substituted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

Subsection (1) was substituted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (3) was inserted, as from 7 August 2006, by section 6 Judicature Amendment Act 2006 (2006 No 16). *See* clause 2 Judicature Amendment Act 2006 Commencement Order 2006 (SR 2006/184).

60 Sittings of Court of Appeal

(1) The Court of Appeal may from time to time appoint ordinary or special sittings of the Court, and may from time to time make rules, not inconsistent with the rules of practice and procedure of the Court of Appeal for the time being in force under this Act or with the laws of New Zealand, in respect of the places and times for holding sittings of the Court, the order of disposing of business, and any other necessary matters.

(2) If present at a sitting of the Court of Appeal, the President presides.

(3) If the President of the Court of Appeal is absent from a sitting of the Court, the senior Judge of the Court present presides.

(4) The Court has power from time to time to adjourn any sitting until such time and to such place as it thinks fit.

Section 60 was substituted, as from 1 January 1958, by section 3 Judicature Amendment Act 1957 (1957 No 9).

Sections 59 and 60 were substituted, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

Subsections (2) and (3) were substituted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

60A Court of Appeal may sit in divisions

[Repealed]

Section 60A was inserted, as from 7 October 1977, by section 7 Judicature Amendment Act 1977 (1977 No 32).

Subsection (4) was amended, as from 1 April 1980, by section 9(3) Judicature Amendment Act 1979 (1979 No 124) by substituting the words "sections 58A and" for the word "section".

Subsection (4) was amended, as from 1 October 1991, by section 6(3) Judicature Amendment Act 1991 (1991 No 60) by substituting the words "sections 58A, 58B, and" for the words "sections 58A and".

Section 60A was repealed, as from 1 August 1998, by section 5 Judicature Amendment Act 1998 (1998 No 52). *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

61 Adjournment in cases of absence of some of the Judges

Where, by reason of the absence of all or any one or more of the Judges of the Court of Appeal at the time appointed for the sitting of the Court or any adjournment thereof, it is necessary to adjourn the sitting of the Court to a future day, any one or more of the Judges at the time appointed for such sitting, or at the time of any adjournment thereof, or the Registrar of the said Court in case none of the Judges thereof are present, may adjourn or further adjourn such sitting to such future day and hour as such Judge or Judges or such Registrar think fit.

Compare: 1882 No 30 s 10

61A Incidental orders and directions may be made and given by one Judge

(1) In any civil appeal or in any civil proceeding before the Court of Appeal, any Judge of that Court, sitting in Chambers, may make such incidental orders and give such incidental direc-

tions as he thinks fit, not being an order or a direction that determines the appeal or disposes of any question or issue that is before the Court in the appeal or proceeding.

(2) Every order or direction made or given by a Judge of the Court of Appeal under subsection (1) of this section may be discharged or varied by any Judges of that Court who together have jurisdiction, in accordance with section 58A or section 58B or section 58D, as the case may be, to hear and determine the proceeding.

(3) Any Judge of the Court of Appeal may review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred on the Registrar by any rule of Court, and may confirm, modify, or revoke that decision as he thinks fit.

(4) The provisions of this section shall apply notwithstanding anything in section 58.

(5) This section shall have effect from a date to be appointed by the Governor-General by Order in Council.

Section 61A was inserted, as from 31 January 1978, by section 8 Judicature Amendment Act 1977 (1977 No 32). *See* clause 3 Judicature Amendment Act Commencement Order 1977 (SR 1977/328).

Subsection (1) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the word "proceeding" for the words "cause or matter pending".

Subsection (1) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "the appeal or proceeding" for the words "such appeal, cause, or matter".

Subsection (2) was amended, as from 1 August 1998, by section 7(a) Judicature Amendment Act 1998 (1998 No 52) by substituting the words "section 58A or section 58B or section 58D, as the case may be," for the words "section 59 of this Act". *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

Subsection (4) was amended, as from 1 August 1998, by section 7(b) Judicature Amendment Act 1998 (1998 No 52) by substituting the words "section 58" for the words "section 59 of this Act". *See* clause 2 Judicature Amendment Act Commencement Order (No 2) 1998 (SR 1998/184).

62 Power to remit proceedings to the High Court

The Court of Appeal shall have power to remit any proceedings in any cause pending before it to the High Court or a single Judge thereof.

Compare: 1882 No 30 s 11

The words "High Court" were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

63 Judgments of Court of Appeal may be enforced by the High Court

All judgments, decrees, and orders of the Court of Appeal may be enforced by the High Court as if they had been given or made by that Court.

Compare: 1882 No 30 s 12

The words "High Court" were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Civil jurisdiction

Removal of proceedings from the High Court

64 Transfer of civil proceedings from High Court to Court of Appeal

(1) If the circumstances of a civil proceeding pending before the High Court are exceptional, the High Court may order that the proceeding be transferred to the Court of Appeal.

(2) Without limiting the generality of subsection (1), the circumstances of a proceeding may be exceptional if

- (a) A party to the proceeding intends to submit that a relevant decision of the Court of Appeal should be overruled by the Court of Appeal:
- (b) The proceeding raises 1 or more issues of considerable public importance that need to be determined urgently, and those issues are unlikely to be determined urgently if the proceeding is heard and determined by both the High Court and the Court of Appeal:
- (c) The proceeding does not raise any question of fact or any significant question of fact, but does raise 1 or more questions of law that are the subject of conflicting decisions of the High Court.

(3) In deciding whether to transfer a proceeding under subsection (1), a Judge must have regard to the following matters:

(a) The primary purpose of the Court of Appeal as an appellate court:

(b) The desirability of obtaining a determination at first instance and a review of that determination on appeal:

(c) Whether a Full Court of the High Court could effectively determine the question in issue:

(d) Whether the proceeding raises any question of fact or any significant question of fact:

(e) Whether the parties have agreed to the transfer of the proceeding to the Court of Appeal:

(f) Any other matter that the Judge considers that he or she should have regard to in the public interest.

(4) The fact that the parties to a proceeding agree to the transfer of the proceeding to the Court of Appeal is not in itself a sufficient ground for an order transferring the proceeding.

(5) If the High Court transfers a proceeding under subsection (1), the Court of Appeal has the jurisdiction of the High Court to hear and determine the proceeding.

The words "High Court" were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Section 64 was substituted, as from 4 June 1998, by section 8 Judicature Amendment Act 1998 (1998 No 52).

65 Decision of Court of Appeal final as regards tribunals of New Zealand

[Repealed]

The words "High Court" were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Section 65 was repealed, as from 10 April 2006, by section 8 Judicature Amendment Act 2006 (2006 No 16).

Appeals from decisions of the High Court

66 Court may hear appeals from judgments and orders of the High Court

The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment, decree, or order save as hereinafter mentioned, of the High Court, subject to the provisions of this Act and to such rules and orders for regu-

lating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Act.

Compare: 1882 No 30 s 15

The words "High Court" were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Appeals from inferior Courts

67 Appeals against decisions of High Court on appeal

(1) The decision of the High Court on appeal from an inferior court is final, unless a party, on application, obtains leave to appeal against that decision

(a) to the Court of Appeal; or

(b) directly to the Supreme Court (in exceptional circumstances as provided for in section 14 of the Supreme Court Act 2003).

(2) An application under subsection (1) for leave to appeal to the Court of Appeal must be made to the High Court or, if the High Court refuses leave, to the Court of Appeal.

(3) An application under subsection (1) for leave to appeal directly to the Supreme Court must be made to the Supreme Court.

(4) If leave to appeal referred to in subsection (1)(a) is obtained, the decision of the Court of Appeal on appeal from the High Court is final unless a party, on application, obtains leave to appeal against that decision to the Supreme Court.

(5) Subsections (1), (3), and (4) are subject to the Supreme Court Act 2003.

Section 67 was amended, as from 1 April 1980, by section 10 Judicature Amendment Act 1979 (1979 No 124) by inserting the words "by the High Court or, where such leave is refused by the Court, then by the Court of Appeal".

The words "High Court" were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Section 67 was substituted, as from 10 April 2006, by section 9 Judicature Amendment Act 2006 (2006 No 16).

68 Direct appeal from decision of inferior Courts
[Repealed]

Subsection (1) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "any civil proceedings or criminal proceedings" for the words "any cause", and by substituting the words "the proceedings" for the words "the cause".

The words "the High Court" in subsection (2) were substituted for the words "the Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Section 68 was repealed, as from 10 April 2006, by section 10 Judicature Amendment Act 2006 (2006 No 16).

Criminal jurisdiction

Trial at bar

69 Trial at bar
(1) Where a bill of indictment has been found in the High Court, or any inquisition has been found, or any criminal information been granted against any person for any crime, if it appears to the High Court on affidavit on the part of the accused or of the prosecutor that the case is one of extraordinary importance or difficulty, and that it is desirable that it should be tried before the Judges at bar, the High Court may grant a rule nisi, and, if no sufficient cause is shown, may make the same absolute for the removal of such indictment, inquisition, or information, and the proceedings thereon, into the Court of Appeal, and for the trial of the same at bar at the next or other sitting of such Court of Appeal, and may direct that a special or common jury, as the High Court thinks fit, be summoned from such jury district as the Court directs to serve upon such trial; and such proceedings, as nearly as may be, shall thereupon be had as upon a trial at bar in England.

(2) The Court of Appeal shall have the same jurisdiction, authority, and power in respect thereof as the King's Bench Division of the High Court of Justice has in England in respect of a trial at bar.

Compare: 1882 No 30 s 18

Subsection (1) was amended, as from 1 April 1973, by section 18(2) Judicial Amendment Act 1972 (1972 No 130) by substituting the words "such jury district as the Court directs" for the words "the judicial district in which the alleged offence was committed or the accused was apprehended, or from the judicial

district in which such sitting of the Court of Appeal takes place (or from some other judicial district if sufficient reason is shown to the Court),". *See* clause 2 Judicature Amendment Act Commencement Order 1972 (SR 1972/36).

The words "High Court" in subsection (1) were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Appeals from convictions

70 Appeal from Judgment of Supreme Court on conviction *[Repealed]*

Section 70 was repealed, as from 1 April 1958, by section 214(1) Summary Proceedings Act 1957 (1957 No 87).

Miscellaneous

71 Rules of practice *[Repealed]*

Subsections (2) and (3) were repealed, as from 11 October 1930, by section 4 Judicature Amendment Act 1930 (1930 No 14).

Section 71 was repealed, as from 1 January 1986, by section 6 Judicature Amendment Act (No 2) 1985 (1985 No 112).

71A Restriction on institution of vexatious actions *[Repealed]*

Section 71A was inserted, as from 22 October 1965, by section 3 Judicature Amendment Act 1965 (1965 No 62).

Section 71A was renumbered as section 88A, as from 19 October 1966, by section 3(1) Judicature Amendment Act 1966 (1966 No 67).

72 Appointment of officers

There may from time to time be appointed under the State Sector Act 1988 such Registrars, Deputy Registrars, and other officers as may be required for the conduct of the business of the Court of Appeal.

Compare: 1882 No 30 s 26

Subsection (2) was amended, as from 1 April 1973, by section 18(2) Judicature Amendment Act 1972 (1972 No 130) by omitting the words "within his district". *See* clause 2 Judicature Amendment Act Commencement Order 1973 (SR 1973/36)

The words "High Court" in subsection (2) were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Section 72 was substituted, as from 22 May 1997, by section 3 Judicature Amendment Act 1997 (1997 No 10). *See* sections 4 and 5 of that Act for the validations and savings provisions.

73 Powers and duties of officers

All such Registrars and other officers shall have in respect of the Court of Appeal such powers and duties as are prescribed by rules made under this Act.

Compare: 1882 No 30 s 27

74 Court seal

The Court of Appeal shall have in the custody of the Registrar a seal for the sealing of writs, orders, decrees, office copies, certificates, reports, and other instruments issued by such Registrar and requiring to be sealed.

Compare: 1882 No 30 s 28

75 Power to fix fees

[Repealed]

Section 75 was repealed, as from 1 January 1931, by section 4 Judicature Amendment Act 1930 (1930 No 14).

Part 3
Rules and provisions of law in judicial matters generally

Removal of technical defects

76 Power to Courts to amend mistakes and supply omissions in warrants, orders, &c

[Repealed]

Section 76 was repealed, as from 1 January 1910, by section 15 Inferior Courts Procedure Act 1909 (1909 No 13).

Limitation of actions

77 Limitation of actions for merchants' accounts

[Repealed]

Sections 77 to 82 were repealed, as from 1 January 1952, by section 35(2) Limitation Act 1950 (1950 No 65).

78 Limitation not barred by claims subsequently arising

[Repealed]

Sections 77 to 82 were repealed, as from 1 January 1952, by section 35(2) Limitation Act 1950 (1950 No 65).

79 Absence beyond seas or imprisonment of a creditor not to be a disability

[Repealed]

Sections 77 to 82 were repealed, as from 1 January 1952, by section 35(2) Limitation Act 1950 (1950 No 65).

80 Period of limitation to run as to joint debtors in New Zealand, though some are beyond seas

[Repealed]

Sections 77 to 82 were repealed, as from 1 January 1952, by section 35(2) Limitation Act 1950 (1950 No 65).

81 Judgment recovered against joint debtors in New Zealand to be no bar to proceeding against others beyond seas after their return

[Repealed]

Sections 77 to 82 were repealed, as from 1 January 1952, by section 35(2) Limitation Act 1950 (1950 No 65).

82 Part payment by one contractor, &c, not to prevent bar in favour of another contractor, &c

[Repealed]

Sections 77 to 82 were repealed, as from 1 January 1952, by section 35(2) Limitation Act 1950 (1950 No 65).

Sureties

83 Consideration for guarantee need not appear by writing

[Repealed]

Section 83 was repealed, as from 19 October 1956, by section 3(2) Contracts Enforcement Act 1956 (1956 No 23).

84 A surety who discharges the liability to be entitled to assignment of all securities held by the creditor

Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, pays or satisfies such debt or performs such duty shall be entitled to have assigned to him, or a trustee for him, every judgment, specialty, or other security held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security is or is not deemed at law to be satisfied by the payment of the debt or performance of the duty.

Compare: 1880 No 12 s 81

85 Rights of surety in such case

(1) Every such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and if need be, and upon a proper indemnity, to use the name of the creditor in any civil proceedings in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person paying or satisfying such debt or performing such duty.

(2) Such payment, satisfaction, or performance made by such surety shall not be pleadable in bar of any such action or other proceeding by him.

Compare: 1880 No 12 s 82

Subsection (1) was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "civil proceedings" for the words "action or other proceeding".

86 Rights of co-sureties, etc, as between themselves

A co-surety, co-contractor, or co-debtor shall not be entitled to recover from any other co-surety, co-contractor, or co-debtor by the means aforesaid more than the just proportion to which, as between those parties themselves, such last-mentioned person is justly liable.

Compare: 1880 No 12 s 83

Interest on money

87 Power of Courts to award interest on debts and damages

(1) In any proceedings in the High Court, the Court of Appeal, or the Supreme Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate, not exceeding the prescribed rate, as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this subsection shall

(a) Authorise the giving of interest upon interest; or

(b) Apply in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement, enactment, or rule of law, or otherwise; or

(c) Affect the damages recoverable for the dishonour of a bill of exchange.

(2) In any proceedings in the High Court, the Court of Appeal, or the Supreme Court for the recovery of any debt upon which interest is payable as of right, and in respect of which the rate of interest is not agreed upon, prescribed, or ascertained under any agreement, enactment, or rule of law or otherwise, there shall be included in the sum for which judgment is given interest at such rate, not exceeding the prescribed rate, as the Court thinks fit for the period between the date as from which the interest became payable and the date of the judgment.

(3) In this section the term **the prescribed rate** means the rate of 7 percent per annum, or such other rate as may from time to time be prescribed for the purposes of this section by the Governor-General by Order in Council.

Compare: Law Reform (Miscellaneous Provisions) Act 1934 s 3 (UK)

Section 87 was substituted, as from 16 October 1952, by section 3 Judicature Amendment Act 1952 (1952 No 24), the new section being based on section 3 Law Reform (Miscellaneous Provisions) Act 1934 (UK).

Subsections (1) and (2) were amended, as from 21 October 1974, by section 7(1) Judicature Amendment Act 1974 (1974 No 57) by substituting the words "the prescribed rate", for the words "five per cent per annum".

Subsections (1) and (2) were amended, as from 13 January 1983, by section 4(2) District Courts Amendment Act (No 2) 1982 (1982 No 130) by substituting the words "the High Court or the Court of Appeal" for the words "any Court".

Subsection (1) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the words ", the Court of Appeal, or the Supreme Court" for the words "or the Court of Appeal". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (2) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by substituting the words ", the Court of Appeal, or the Supreme Court" for the words "or the Court of Appeal". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (3) was inserted, as from 21 October 1974, by section 7(2) Judicature Amendment Act 1974 (1974 No 57).

Lost instruments

88 Actions on lost instruments

In case of any action founded on any negotiable instrument, the Court may order that the loss of such instrument shall not be taken advantage of, provided an indemnity is given to the satisfaction of the Court or a Registrar thereof against the claims of any other person upon such negotiable instrument.

Compare: 1856 No 3 s 17

Continued exercise of powers by judicial officers

88A Judicial officers to continue in office to complete proceedings

(1) A judicial officer whose term of office has expired or who has retired may continue in office for the purpose of determining, or giving judgment in, proceedings that the judicial officer has heard either alone or with others.

(2) A judicial officer must not continue in office under subsection (1) for longer than a month without the consent of the Minister of Justice.

(3) The fact that a judicial officer continues in office does not affect the power to appoint another person to that office.

(4) A judicial officer who continues in office is entitled to be paid the remuneration and allowances to which the officer would have been entitled if the term of office had not expired or the officer had not retired.

(5) In this section, **judicial officer** means a person who has in New Zealand authority under an enactment to hear, receive, and examine evidence.

Compare: 1924 No 11 s 25A; 1973 No 46 s 2; 1994 No 22 s 3

Section 88A and the heading "Continued Exercise of Powers by Judicial Officers" were inserted, as from 1 November 1999, by section 2 Judicature Amendment Act (No 2) 1999 (1999 No 87).

Miscellaneous provisions and rules of law

88B Restriction on institution of vexatious actions

(1) If, on an application made by the Attorney-General under this section, the High Court is satisfied that any person has persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior Court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, order that no civil proceeding or no civil proceeding against any particular person or persons shall without the leave of the High Court or a Judge thereof be instituted by him in any Court and that any civil proceeding instituted by him in any Court before the making of the order shall not be continued by him without such leave.

(2) Leave may be granted subject to such conditions (if any) as the Court or Judge thinks fit and shall not be granted unless the Court or Judge is satisfied that the proceeding is not an abuse of the process of the Court and that there is prima facie ground for the proceeding.

(3) No appeal shall lie from an order granting or refusing such leave.

Section 88A was first inserted, as section 71A, as from 22 October 1965, by section 3 Judicature Amendment Act 1965 (1965 No 62).

Section 71A was renumbered as section 88A, as from 19 October 1966, by section 3 Judicature Amendment Act 1966 (1966 No 67).

Section 88A was renumbered as section 88B, as from 15 December 2005, by section 5(1) Judicature Amendment Act (No 2) 2005 (2005 No 107).

The words "High Court" in subsection (1) were substituted for the words "Supreme Court", as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

89 Administration suits

[Repealed]

Section 89 was repealed, as from 1 January 1953, by section 79(1) Administration Act 1952 (1952 No 56).

90 Stipulations not of the essence of contracts

Stipulations in contracts as to time or otherwise which would not, before the 13th day of September 1882 (the date of the coming into force of the Law Amendment Act 1882), have been deemed to be or to have become the essence of such contracts in a Court of equity shall receive in all Courts the same construction and effect as they would have theretofore received in equity.

Compare: 1882 No 31 s 8

Section 90 was amended, as from 1 January 1986, by section 7 Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "13th day of September 1882 (the date of the coming into force of the Law Amendment Act 1882)" for the words "date mentioned in the last preceding section".

91 Damages by collision at sea

[Repealed]

Section 91 was repealed, as from 1 May 1913, by section 10 Shipping and Seamen Amendment Act 1912 (1912 No 53).

92 Discharge of debt by acceptance of part in satisfaction

An acknowledgement in writing by a creditor, or by any person authorised by him in writing in that behalf, of the receipt of a part of his debt in satisfaction of the whole debt shall operate as a discharge of the debt, any rule of law notwithstanding.

Compare: 1904 No 12 s 2

93 Provisions of 9 Geo. IV, c. 14, secs. 1 and 8, extended to acknowledgments by agents

[Repealed]

Section 93 was repealed, as from 1 January 1952, by section 35(2) Limitation Act 1950 (1950 No 65).

94 Judgment against one of several persons jointly liable not a bar to action against others

A judgment against one or more of several persons jointly liable shall not operate as a bar or defence to civil proceedings against any of such persons against whom judgment has not been recovered, except to the extent to which the judgment has been satisfied, any rule of law notwithstanding.

Compare: 1904 No 12 s 3

Section 94 was amended, as from 1 January 1986, by section 11(1) Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "civil proceedings" for the words "an action or other proceeding".

94A Recovery of payments made under mistake of law

(1) Subject to the provisions of this section, where relief in respect of any payment that has been made under mistake is sought in any Court, whether in civil proceedings or by way of defence, set off, counterclaim, or otherwise, and that relief could be granted if the mistake was wholly one of fact, that relief shall not be denied by reason only that the mistake is one of law whether or not it is in any degree also one of fact.

(2) Nothing in this section shall enable relief to be given in respect of any payment made at a time when the law requires or allows, or is commonly understood to require or allow, the payment to be made or enforced, by reason only that the law is subsequently changed or shown not to have been as it was commonly understood to be at the time of the payment.

Sections 94A and 94B were inserted, as from 28 September 1958, by section 2 Judicature Amendment Act 1958 (1958 No 40).

Section 94A was amended, as from 1 January 1986, by section 11 Judicature Amendment Act (No 2) 1985 (1985 No 112) by substituting the words "civil proceedings" for the words "an action or other proceeding".

94B Payments made under mistake of law or fact not always recoverable

Relief, whether under section 94A of this Act or in equity or otherwise, in respect of any payment made under mistake, whether of law or of fact, shall be denied wholly or in part if the person from whom relief is sought received the payment in good faith and has so altered his position in reliance on the validity of the payment that in the opinion of the Court, having

regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.

Sections 94A and 94B were inserted, as from 28 September 1958, by section 2 Judicature Amendment Act 1958 (1958 No 40).

95 Limitation of time within which wills may be impeached

[Repealed]

Section 95 was repealed, as from 1 January 1952, by section 35(2) Limitation Act 1950 (1950 No 65).

96 Jurisdiction as to costs in administration suits

[Repealed]

Section 96 was repealed, as from 1 January 1953, by section 79(1) Administration Act 1952 (1952 No 56).

97 Court empowered to grant special relief in cases of encroachment

[Repealed]

Section 97 was repealed, as from 18 September 1950, by section 3(2) Property Law Amendment Act 1950 (1950 No 27).

98 Custody and education of infants

[Repealed]

Section 98 was repealed, as from 1 January 1970, by section 35(1) Guardianship Act 1968 (1968 No 63).

98A Proceedings in lieu of writs

(1) Where, immediately before the commencement of the Judicature Amendment Act (No 2) 1985,

(a) The Court had jurisdiction to grant any relief or remedy or do any other thing by way of writ, whether of prohibition, mandamus, certiorari, or any other description; or

(b) In any proceedings in the Court for any relief or remedy any writ might have issued out of the Court for the purpose of the commencement or conduct of the proceedings, or otherwise in relation to the proceedings, whether the writ might have issued pursuant to any rule or order of the Court or of course,

then, after the commencement of that Act,

(c) The Court shall continue to have jurisdiction to grant that relief or remedy or to do that thing; but

(d) The Court shall not issue any such writ; and

(e) The Court shall grant that relief or remedy or do that thing by way of judgment or order under this Act and the High Court Rules; and

(f) Proceedings for that relief or remedy or for the doing of that thing shall be in accordance with this Act and the High Court Rules.

(2) Subject to the High Court Rules, this section does not apply to

(a) The writ of habeas corpus; or

(b) Any writ of execution for the enforcement of a judgment or order of the Court; or

(c) Any writ in aid of any such writ of execution.

Section 98A was inserted, as from 1 January 1986, by section 8(1) Judicature Amendment Act (No 2) 1985 (1985 No 112).

99 In cases of conflict rules of equity to prevail

Generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail.

Compare: 1882 No 31 s 11

99A Costs where intervener or counsel assisting Court appears

(1) Where the Attorney-General or the Solicitor-General or any other person appears in any civil proceedings or in any proceedings on any appeal and argues any question of law or of fact arising in the proceedings, the Court may, subject to the provisions of any other Act, make such order as it thinks just

(a) As to the payment by any party to the proceedings of the costs incurred by the Attorney-General or the Solicitor-General in so doing; or

(b) As to the payment by any party to the proceedings or out of public funds of the costs incurred by any other person in so doing; or

(c) As to the payment by the Attorney-General or the Solicitor-General or that other person of any costs incurred by any of those parties by reason of his so doing.

(2) Where the Court makes an order pursuant to subsection (1)(b) of this section, the Registrar of the Court shall forward a copy of the order to the chief executive of the Department for Courts who shall make the payment out of money appropriated by Parliament for the purpose.

Section 99A was inserted, as from 20 October 1972, by section 21 Judicature Amendment Act 1972 (1972 No 130).

Section 99A was substituted, as from 1 January 1986, by section 11 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subsection (2) was amended, as from 1 July 1995 by section 10(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words "chief executive of the Department for Courts" for the words "Secretary for Justice".

99B Technical advisers

(1) The Court of Appeal or the Supreme Court may appoint a suitably qualified person (**a technical adviser**) to assist it by giving advice in an appeal in a proceeding involving a question arising from evidence relating to scientific, technical, or economic matters, or from other expert evidence, if the Court is of the opinion that, in considering the evidence, it is desirable to have expert assistance.

(2) The technical adviser must give the advice in such manner as the Court may direct during the course of the proceeding on any question referred to the technical adviser.

(3) Advice given by a technical adviser

(a) Is information provided to the Court; and

(b) May be given such weight as the Court thinks fit.

(4)

Sections 99B to 99D were inserted, as from 31 August 1999, by section 3 Judicature (Rules Committee and Technical Advisers) Amendment Act 1999 (1999 No 88).

Subsection (1) was amended, as from 1 January 2004, by section 45(1) Supreme Court Act 2003 (2003 No 53) by omitting the word "civil". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (1) was amended, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53) by inserting the words "or the Supreme Court" after the words "Court of Appeal". *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

Subsection (4) was repealed, as from 1 January 2004, by section 45(2) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act as to the transitional and savings provisions.

99C Appointment and other matters

(1) A technical adviser may be appointed by the Court of Appeal on its own initiative or on the application of a party to the proceeding.

(2) A technical adviser may be removed from office by the Court of Appeal for disability affecting performance of duty, neglect of duty, bankruptcy, or misconduct proved to the satisfaction of the Court.

(3) A technical adviser may resign office by notice in writing to the Court of Appeal.

(4) The remuneration of a technical adviser must
- (a) Be fixed by the Court of Appeal; and
- (b) Include a daily fee for any day on which the technical adviser is required to assist the Court.

(5) Civil or criminal proceedings may not be commenced against a technical adviser in relation to advice given to the Court of Appeal in good faith under section 99B.

Sections 99B to 99D were inserted, as from 31 August 1999, by section 3 Judicature (Rules Committee and Technical Advisers) Amendment Act 1999 (1999 No 88).

99D Procedure and rules relating to technical advisers

(1) The Court of Appeal may adopt any procedures and practices in relation to the advice of a technical adviser as it considers just, but those procedures and practices are subject to any rules referred to in subsection (2).

(2) Rules may be made under section 51C relating to
- (a) The appointment of technical advisers, including (without limitation)
  - (i) The information to be given to the parties to an appeal, before a technical adviser is appointed for the appeal,
    - (A) About the persons who are considered suitable for appointment; and
    - (B) About the matters on which the assistance of the proposed technical adviser is to be sought:
  - (ii) The submissions that those parties may make to the Court of Appeal about the proposed appoint-

ment of a technical adviser and the assistance to be given by the technical adviser:

(b) The conduct of proceedings involving technical advisers.

Sections 99B to 99D were inserted, as from 31 August 1999, by section 3 Judicature (Rules Committee and Technical Advisers) Amendment Act 1999 (1999 No 88).

100 Independent medical examination

(1) Where the physical or mental condition of a person who is a party to any civil proceedings is relevant to any matter in question in those proceedings, the High Court may order that that person submit himself to examination at a time and place specified in the order by one or more medical practitioners named in the order.

(2) A person required by an order under subsection (1) of this section to submit to examination may have a medical practitioner chosen by that person attend that person's examination.

(3) The Court may order that the party seeking the order pay to the person to be examined a reasonable sum to meet that person's travelling and other expenses of and incidental to the examination, including the expenses of having a medical practitioner chosen by that person attend that person's examination.

(4) Where an order is made under subsection (1) of this section, the person required by that order to submit to examination shall do all things reasonably requested, and answer all questions reasonably asked of that person, by the medical practitioner for the purposes of the examination.

(5) If a person ordered under subsection (1) of this section to submit to examination fails, without reasonable excuse, to comply with the order, or in any way obstructs the examination, the Court may, on terms, stay the proceedings or strike out the pleading of that person.

(6) This section applies to the Crown and every Department of the public service.

(7) Nothing in this section affects the provisions of the Workers' Compensation Act 1956.

Section 100 was substituted, as from 1 January 1986, by section 9 Judicature Amendment Act (No 2) 1985 (1985 No 112).

100A Regulations

(1) Notwithstanding anything in sections 51 and 51C of this Act, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) Prescribing the matters in respect of which fees are payable under this Act:

(b) Prescribing scales of fees for the purposes of this Act and for the purposes of any proceedings before the High Court or the Court of Appeal, whether under this Act or any other enactment:

(c) Prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this Act applies:

(d) in order to promote access to justice, empowering Registrars or Deputy Registrars of the High Court and the Court of Appeal to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or an intended proceeding, or to refund, in whole or in part, such a fee that has already been paid, if satisfied on the basis of criteria specified under paragraph (da) that

(i) the person otherwise responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or

(ii) unless 1 or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued:

(da) prescribing, for the purposes of the exercise of a power under paragraph (d), the criteria

(i) for assessing a person's ability to pay a fee; and

(ii) for identifying proceedings that concern matters of genuine public interest:

(db) empowering Registrars or Deputy Registrars of the High Court and the Court of Appeal to postpone the payment of a fee pending the determination of

(i) an application for the exercise of a power specified in paragraph (d); or

(ii) an application for review under section 100B:

(dc) making provision in relation to the postponement, under the regulations, of the payment of any fee, which provision may (without limitation) include provision

(i) for the recovery of the fee after the expiry of the period of postponement; and

(ii) for restrictions to apply (after the expiry of the period of postponement and so long as the fee remains unpaid) on the steps that may be taken in the proceedings in respect of which the fee is payable:

(dd) providing for the manner in which an application for the exercise of a power specified in paragraph (d) or paragraph (db) is to be made, including, without limitation, requiring such an application to be in a form approved for the purpose by the chief executive of the Department for Courts:

(e) Altering or revoking any rules relating to fees contained in the High Court Rules or the Court of Appeal Rules or any other rules of Court.

(2) No fee is payable for an application for the exercise of a power specified in subsection (1)(d) or (db).

Section 100A was inserted, as from 1 January 1969, by section 3(1) Judicature Amendment Act (No 2) 1968 (1968 No 59).

Paragraph (ba) was inserted, as from 14 October 1981, by section 5 Judicature Amendment Act 1981 (1981 No 40).

Section 100A was substituted, as from 1 January 1986, by section 11 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subsection (1)(d) was substituted, as from 9 October 2001, by section 4 Judicature Amendment Act 2001 (2001 No 83).

Subsection (1)(da) to (dd) were inserted, as from 9 October 2001, by section 4 Judicature Amendment Act 2001 (2001 No 83).

Subsection (2) was inserted, as from 9 October 2001, by section 4 Judicature Amendment Act 2001 (2001 No 83).

100B Reviews of decisions of Registrars concerning fees

(1) Any person who is aggrieved by any decision of a Registrar or Deputy Registrar under regulations made under section 100A(d) may apply for a review,

(a) in the case of a decision by the Registrar or a Deputy Registrar of the Court of Appeal, to a Judge of that Court:

(b) in the case of a decision by a Registrar or Deputy Registrar of the High Court, to a Judge or a Master of that Court.

(2) An application under subsection (1) may be made within 20 working days after the date on which the applicant is notified of the decision of the Registrar or Deputy Registrar, or within any further time that the Judge or Master allows on application made for that purpose either before or after the expiration of those 20 working days.

(3) Applications under this section may be made on an informal basis.

(4) Reviews under this section are

(a) conducted by way of rehearing of the matter in respect of which the Registrar or Deputy Registrar made the decision; and

(b) dealt with on the papers, unless the Judge or Master directs otherwise.

(5) On dealing with an application for a review of a decision of a Registrar or Deputy Registrar, the Judge or Master may confirm, modify, or reverse the decision of the Registrar or the Deputy Registrar.

(6) No fee is payable for an application under this section.

Compare: 1991 No 71 s 16

Section 100B was inserted, as from 9 October 2001, by section 5 Judicature Amendment Act 2001 (2001 No 83).

101 Words imputing unchastity to women actionable without special damage

[Repealed]

Section 101 was repealed, as from 29 September 1954, by section 23(1) Defamation Act 1954 (1954 No 46).

Schedule 1

Section 1(2)

Enactments consolidated

- 1856, No 3-The Law Amendment Act 1856.
- 1874, No 14-The Imprisonment for Debt Abolition Act 1874: Section 15.
- 1875, No 39-The Imprisonment for Debt Abolition Act Amendment Act 1875.
- 1875, No 82-The Commissioners of the Supreme Court Act 1875.
- 1880, No 12-The Mercantile Law Act 1880: Sections 4, 41, 45-51, and 81-83.
- 1882, No 29-The Supreme Court Act 1882: Except sections 33 and 34.
- 1882, No 30-Court of Appeal Act 1882.
- 1882, No 31-The Law Amendment Act 1882: Except section 13.
- 1883, No 5-Sheriffs Act 1883.
- 1884, No 23-The Supreme Court Practice and Procedure Amendment Act 1884: Except section 4.
- 1892, No 10-The Courts of Justice (Technical Defects Removal) Act 1892.
- 1893, No 16-The Supreme Court Practice and Procedure Acts Amendment Act 1893.
- 1898, No 16-The Slander of Women Act 1898.
- 1901, No 4-The Accidents Compensation Act 1901.
- 1903, No 9-The Supreme Court Judges Act 1903.
- 1904, No 12-The Law Amendment Act 1904: Except sections 4, 8, and 10.
- 1904, No 15-The Administration Act Amendment Act 1904: Section 2.
- 1906, No 58-The Statute Law Amendment Act 1906: Section 11.
- 1907, No 23-The Supreme Court Practice and Procedure Acts Amendment Act 1907.

Schedule 2

Section 51

The High Court Rules

Schedule 2 was substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

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Part 1
Preliminary provisions

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

1 Title

These rules may be cited as the High Court Rules.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

2 Application of rules

(1) Subject to subsections (2) and (3) of section 51 and to sections 51A to 56C of the Act, the practice and procedure of the Court in all civil proceedings (other than appeals to the Court of Appeal) shall be regulated by these rules.

(2) These rules shall be subject to any other rules which are made pursuant to section 51C of the Act and which prescribe the procedure applicable in respect of any class of civil proceedings.

(3) Where any provision of these rules or of any rules made under section 51C of the Act restricts or excludes the application of these rules or any provisions of these rules, the provision that effects the restriction or exclusion shall have effect according to its tenor.

(4) If in any civil proceedings any question arises as to the application of any provision of these rules, the Court may, either on the application of any party or of its own motion, determine the question and give such directions as it thinks fit.

Compare: 1908 No 89 s 51(1); SR 1969/145 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1—*continued*

3 Interpretation

(1) In these rules, unless the context otherwise requires,

The **Act** means the Judicature Act 1908

Address for service, in relation to any party, means the address of a place in New Zealand at which any document may be left for, or sent to, that party in accordance with these rules

Address for service: this definition was substituted, as from 1 October 1991, by rule 2(1) High Court Amendment Rules 1991 (SR 1991/132).

case management conference means a conference conducted in accordance with rule 427

case management conference: this definition was inserted, as from 24 November 2003, by rule 3(1) High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Chattels includes all things not being land

Civil proceedings, in relation to the Crown, has the same meaning as in the Crown Proceedings Act 1950

control, in relation to a document, means

(a) possession of the document; or

(b) a right to possess the document; or

(c) a right, otherwise than under these rules, to inspect or copy the document

control: this definition was inserted, as from 1 November 2004, by rule 3 High Court Amendment Rules 2004 (SR 2004/320).

Court means the High Court; and includes

(a) a Judge of the High Court; and

(b) an Associate Judge of the High Court exercising the jurisdiction conferred on an Associate Judge by the Judicature Act 1908 or by rules made under section 26J of that Act

Court: this definition was substituted, as from 1 October 2001, by rule 3(1) High Court Amendment Rules 2001 (SR 2001/220).

Court: paragraph (b) of this definition was amended, as from 1 November 2004, by rule 30(1) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an Associate Judge" for the words "a Master" in both places they occur.

Court holiday means a day that is a holiday under rule 19

The **Crown** has the same meaning as in the Crown Proceedings Act 1950

Part 1—*continued*

Defendant means a person served or intended to be served with any proceeding

Document means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes

(a) Any writing on any material:

(b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:

(c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(d) Any book, map, plan, graph, or drawing:

(e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

Easter Vacation means the vacation prescribed by rule 18(b)

To file, in relation to any document, means to lodge the document in the form required by these rules in the proper office of the Court, together with the fee (if any) payable for filing the same; and **filing** has a corresponding meaning

hearing date, in relation to an interlocutory application or a proceeding, means the date on which, and the time at which, the application or the proceeding is to be heard

hearing date: this definition was inserted, as from 24 November 2003, by rule 3(1) High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

hearing in Chambers includes a case management conference

hearing in Chambers: this definition was inserted, as from 24 November 2003, by rule 3(1) High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 1—*continued*

interlocutory application means an application made in accordance with rule 237 or rule 254.

interlocutory application: this definition was substituted, as from 24 November 2003, by rule 3(2) High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

interlocutory order

(a) means an order or direction of the Court that
  (i) is made or given for the purposes of a proceeding or an intended proceeding; and
  (ii) concerns a matter of procedure or grants some relief ancillary to that claimed in a pleading; and

(b) includes
  (i) an order for a new trial; and
  (ii) an order striking out the whole or part of a pleading; and
  (iii) an order varying or rescinding an interlocutory order

interlocutory order: this definition was inserted, as from 24 November 2003, by rule 3(1) High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Judge means a Judge of the High Court; and includes an Associate Judge of the High Court exercising the jurisdiction conferred on an Associate Judge by the Judicature Act 1908 or by rules made under section 26J of that Act

Judge: this definition was inserted, as from 1 October 2001, by rule 3(2) High Court Amendment Rules 2001 (SR 2001/220).

Judge: this definition was amended, as from 1 November 2004, by rule 30(1) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an Associate Judge" for the words "a Master" in both places they occur.

Land includes any estate, right, title, or interest in land

Long Vacation means the vacation prescribed by rule 18(a)

Maori means a person of the Maori race of New Zealand; and includes any descendant of such a person

Nearer or **nearest**, in relation to any place, means nearer or nearest by the most practicable route

Notice of proceeding means a notice filed pursuant to rule 120

Part 1—*continued*

Opposite party means, in relation to any party, any other party whose interests are opposed to those of that party

Party means any person who is a plaintiff or defendant in any proceeding; and includes any person added to the proceeding

Plaintiff means the person by whom or on whose behalf a proceeding is brought

Pleading includes a statement of claim, a statement of defence, a reply, and a counterclaim

Proceeding means any application to the Court for the exercise of the civil jurisdiction of the Court other than an interlocutory application

Registrar includes a Deputy Registrar

respondent, in relation to an interlocutory application, means a party on whom the application has been served.

respondent: this definition was inserted, as from 24 November 2003, by rule 3(1) High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Trial includes a hearing before a Judge alone

Vacation means the Easter Vacation or the Long Vacation

Working day means any day of the week other than

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

Working day: this definition was inserted, as from 1 August 1988, by rule 2 High Court Amendment Rules 1988 (SR 1988/142)

(2) Where any word or expression in any rule or form in these rules is not defined in these rules but is defined in an Act dealing with the subject-matter of that rule or form, that word or expression shall, unless the context otherwise requires, bear in that rule or form the meaning given to it by that Act.

(3) In these rules, unless the context otherwise requires,

(a) A reference to a Part or rule is a reference to a Part or rule of these rules:

Part 1—*continued*

(b) A reference in a rule to a subclause is a reference to a subclause of that rule:

(c) A reference to a numbered form is a reference to the form so numbered in Schedule 1 to these rules.

(4) In a judgment, order, direction, or other document forming part of a proceeding or of an interlocutory application, unless the context otherwise requires,

month means a calendar month

working day has the same meaning as in subclause (1).

Compare: 1908 No 89 Schedule 2 rr 588D, 589, 607; SR 1950/58 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 410 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (4) was substituted, as from 1 June 2006, by rule 4 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

4 Construction

These rules shall be so construed as to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application.

Compare: SR 1969/145 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

5 Non-compliance with rules

(1) Where, in beginning or purporting to begin any proceeding or at any stage in the course of or in connection with any proceeding there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form, or content or in any other respect, the failure

(a) Shall be treated as an irregularity; and

(b) Shall not nullify

(i) The proceeding; or

(ii) Any step taken in the proceeding; or

(iii) Any document, judgment, or order in the proceeding.

Part 1—*continued*

(2) Subject to subclauses (3) and (4), the Court may, on the ground that there has been such a failure as is mentioned in subclause (1), and on such terms as to costs or otherwise as it thinks just,

(a) Set aside, either wholly or in part,

(i) The proceeding in which the failure occurred; or

(ii) Any step taken in the proceeding in which the failure occurred; or

(iii) Any document, judgment, or order in the proceeding in which the failure occurred; or

(b) Exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceeding generally as it thinks fit.

(3) The Court shall not wholly set aside any proceeding or the originating process by which the proceeding was begun on the ground that the proceeding was required by these rules to be begun by an originating process other than the one employed.

(4) The Court shall not set aside any proceeding or any step taken in a proceeding or any document, judgment, or order in any proceeding on the ground of a failure to which subclause (1) applies on the application of any party unless the application is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

Compare: 1908 No 89 Schedule 2 r 599

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 5 was substituted, as from 1 June 1990, by rule 3 High Court Amendment Rules 1990 (SR 1990/66).

6 Enlargement or abridgment of time

(1) The Court may, in its discretion, enlarge or abridge the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding or any step in a proceeding, on such terms (if any) as the Court thinks just.

Part 1—*continued*

(2) The Court may order an enlargement of time although the application for the enlargement is not made until after the expiration of the time appointed or fixed.

Compare: 1908 No 89 Schedule 2 r 594

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

7 Forms

Where, by these rules, any form is directed or authorised to be used, such variations may be made therein as the circumstances of any particular case may require.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

8 Directions in case of doubt

(1) Where any party or intended party is in doubt regarding the joinder of any person as a party, or as to the proper Court in which to take any step in the proceeding, or as to any other matter of procedure under these rules, he may apply *ex parte* to the Court for directions.

(2) Any step taken in accordance with the directions given on an application under subclause (1) shall be deemed to have been properly taken.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

9 Cases not provided for

If any case arises for which no form of procedure is prescribed by any Act or rule or regulation or by these rules, the Court shall dispose of the case as nearly as may be practicable in accordance with the provisions of these rules affecting any similar case, or, if there are no such rules, in such manner as the Court thinks best calculated to promote the ends of justice.

Compare: 1908 No 89 Schedule 2 r 604; SR 1969/145 r 5(2)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1—*continued*

10 Consent instead of leave of Court

(1) Where, by these rules, the leave of the Court is required in any matter of procedure and all parties and persons to be affected thereby consent thereto, any party may, instead of filing an interlocutory application in respect thereof, file a memorandum signed by all such parties or persons, or by their respective solicitors, or by counsel or other person appointed under these rules to represent any such party or person, signifying such consent and the terms and conditions thereof.

(2) On the filing of a memorandum under subclause (1), the Registrar shall either

(a) Make and seal an order in terms of the memorandum; or

(b) Refer the memorandum to the Court.

(3) If the Registrar refers the memorandum to the Court under subclause (2)(b), the memorandum shall be treated as an interlocutory application for the requisite leave.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2)(a) was amended, as from 1 January 1986, by rule 2 High Court Amendment Rules 1985 (SR 1985/328) by substituting the words "Make and seal" for the word "Seal".

11 Power to amend defects and errors

(1) The Court may, either before, at, or after the trial of any proceeding, amend any defects and errors in the pleadings or procedure in the proceeding, whether or not there is anything in writing to amend, and whether or not the defect or error is that of the party (if any) applying to amend.

(2) The Court may, at any stage of a proceeding, make, either of its own motion or on the application of any party to the proceedings, such amendments to any pleading or the procedure in the proceeding as are necessary for determining the real controversy between the parties.

(3) All amendments made under subclause (1) or subclause 2 shall be made with or without costs and on such terms as the Court thinks fit.

Compare: 1908 No 89 Schedule 2 rr 270, 271

Part 1—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was substituted, as from 1 February 1994, by rule 2 High Court Amendment Rules 1993 (SR 1993/420).

Subclause (3) was amended, as from 1 February 1994, by rule 2 High Court Amendment Rules 1993 (SR 1993/420) by inserting the words "or subclause 2".

12 Correction of accidental slip or omission

(1) If any judgment or order contains a clerical mistake or an error arising from any accidental slip or omission, whether the mistake, error, slip, or omission was made by an officer of the Court or not, or if any judgment or order is so drawn up as not to express what was actually decided and intended, the judgment or order may be corrected by the Court, or, where the judgment or order was made by a Registrar, then by the Registrar.

(2) The correction may be made by the Court or the Registrar, as the case may be, of its or his own motion or on an interlocutory application made for that purpose.

Compare: 1908 No 89 Schedule 2 r 426D(1)-(2); SR 1954/155 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Computation of time

13 Reckoning periods of time

(1) Where any provision of this rule or of rule 14 or rule 15 prescribes the method of reckoning any period of time, that period of time, if fixed by these rules or by any judgment, order, or direction or by any document in any proceeding, shall be reckoned in accordance with that provision.

(2) Where a time of one day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

(3) Nothing in this rule or in rules 14 and 15 affects the reckoning of any period of time fixed by the Limitation Act 1950 or any other statute or the application of the Acts Interpretation Act 1924 in relation to the Limitation Act 1950 or any other statute.

Part 1—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

14 Certain days excluded

(1) The period commencing on 25 December in 1 year and ending with the close of 15 January in the next year must be disregarded in calculating a period of time within which a particular act is to be done.

(2) A Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day must be disregarded in calculating a period of time within which a particular act is to be done if the period of time is 6 days or less.

(3) Subclauses (1) and (2) are subject to an express provision in any Act or in these rules or to a direction of the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 14 was substituted, as from 1 October 2001, by rule 4 High Court Amendment Rules 2001 (SR 2001/220).

15 When time expires on Court holiday

Where the time for doing any act at an office of the Court expires on a day on which that office is closed, and by reason thereof that act cannot be done on that day, that act shall be in time if done on the next day on which that office is open.

Compare: 1908 No 89 Schedule 2 r 591

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Taking security

16 How security to be given

(1) Where any officer is empowered to take security from any person for any purpose, the security shall be given by such number of sureties and shall be in such form and for such amount as the officer empowered to take security thinks proper.

(2) Any person required to give security may appeal to the Court against any decision under subclause (1).

Part 1—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

17 Surety becoming bankrupt or insolvent

If any surety becomes bankrupt or insolvent or makes a composition with his creditors, all further steps in the proceeding by the principal party to the security may be stayed by the Court until another surety has been found.

Compare: 1908 No 89 Schedule 2 r 580; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Vacations, holidays, and office hours

18 Vacations

There shall be

(a) A Long Vacation, beginning on the 20th day of December and ending with the close of the 31st day of January; and

(b) An Easter Vacation, beginning on the day before Good Friday and ending with the close of the Saturday following Easter.

Compare: 1908 No 89 Schedule 2 r 600; SR 1937/102 r 3(b)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

19 Court holidays

Subject to the Holidays Act 2003, holidays shall be observed in the Court and in the offices of the Court on the following days:

(a) The days in the period beginning on Good Friday and ending on the close of the Tuesday following Easter:

(b) The days in the period beginning on the 24th day of December and ending with the close of the 3rd day of January:

(c) Saturdays and Sundays:

(d) The Sovereign's birthday:

(e) Anzac Day:

Part 1—*continued*

(f) Labour Day:
(g) Waitangi Day:
(h) The day observed as the anniversary of the province in which the Court is situated:
(i) In each place where an office of the Court is situated, any day which in that place is
  (i) A public holiday; or
  (ii) A proclaimed holiday; or
  (iii) A day observed by the Government as a holiday:
(j) Any days on which a Court and its office are closed pursuant to an order under rule 20.

Compare: 1908 No 89 Schedule 2 r 601(1)-(2); SR 1957/30 r 7(1); SR 1973/39 r 3(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 19 was amended, as from 1 April 2004, by section 91(2) Holidays Act 2003 (2003 No 129) by substituting the words "Holidays Act 2003" for the words "Holidays Act 1981".

20 Epidemics and emergencies

(1) Where an epidemic or an emergency exists in any place, a Judge may order that the Court in that place and its office shall be closed for a period (not exceeding one week at any one time) to be specified in the order.

(2) Where an order is made under subclause (1), the Registrar shall ensure that the order is advertised forthwith in such manner as the Judge directs.

Compare: 1908 No 89 Schedule 2 r 601(4); SR 1957/30 r 7(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

21 Sittings in vacations or on Court holidays

(1) The Court may lawfully sit in any vacation or on any Court holiday if, subject to subclause (2), any Judge considers it desirable to do so for the despatch of business.

(2) The Court may lawfully sit on a Sunday or on Christmas Day, New Year's Day, or Good Friday, only if, in the opinion of the Judge, the business to be despatched is extremely urgent.

Part 1—*continued*

(3) Where the Court sits pursuant to subclause (1) or subclause (2), it may,

(a) For the purpose of the hearing or for the purpose of giving effect to the hearing, authorise the receipt or issue of any document complying with these rules:

(b) Notwithstanding section 54 of the Act, authorise the service of any document received or issued pursuant to authority given under paragraph (a).

Compare: 1908 No 89 Schedule 2 r 601(3); SR 1957/30 r 7(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3) was inserted, as from 1 June 1990, by rule 4 High Court Amendment Rules 1990 (SR 1990/66).

22 Office hours

The offices of the Court shall be open from 9am to 5pm on every day that is not a Court holiday.

Compare: 1908 No 89 Schedule 2 r 602; SR 1957/262 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 22 was amended, as from 1 February 1998, by rule 2 High Court Amendment Rules 1997 (SR 1997/350) by substituting the expression "8.30am to 5pm" for the expression "9.30am to 4pm".

Rule 22 was amended, as from 1 February 2003, by rule 3 High Court Amendment Rules (No 2) 2002 (SR 2002/410) by substituting the expression "9am to 5pm" for the expression "8.30am to 5pm".

Shape, etc, of documents to be filed

23 General requirements

(1) A document that does not comply with rules 24 to 40 shall be received for filing only by leave of a Judge or the Registrar.

(2) The cost of an application under subclause (1) shall be disallowed to the solicitor who presented the document for filing.

Compare: 1908 No 89 Schedule 2 r 597A(d); *Gazette* 1909, p 644

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1—*continued*

24 Paper

(1) The paper used shall be of medium weight and good quality.

(2) Each sheet of paper shall be of International size A4.

Compare: 1908 No 89 Schedule 2 r 597A(a); *Gazette*, 1909, p 644

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

25 Contents to be typed, etc

(1) The contents of each document shall be legible and shall be clearly typewritten, printed, or produced in permanent form by photocopying.

(2) Notwithstanding subclause (1), handwriting may be used for the date of the document.

(3) Nothing in subclause (1) of this rule applies in respect of the signature on a document.

Compare: 1908 No 89 Schedule 2 r 597A(a); *Gazette*, 1909, p 644

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

26 Margin

(1) Subject to subclause (2), a margin of at least one-quarter of the width of the paper shall be left on the left-hand side of each page.

(2) Where the reverse side of a page is used, a margin of at least one-quarter of the width of the paper shall be left on the right-hand side of that page.

Compare: 1908 No 89 Schedule 2 r 597A(a); *Gazette*, 1909, p 644

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 26 was substituted, as from 1 April 1994, by rule 3(1) High Court Amendment Rules 1993 (SR 1993/420).

27 Signature to be original

Where a document is required to be signed

(a) The signature shall be an original signature; and

(b) Immediately below the original signature, the name of the signatory shall be

Part 1—*continued*

(i) Legibly typed, printed, or stamped; or
(ii) Legibly written in the style of printed matter.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Paragraph (b) was substituted, as from 1 January 1987, by rule 2 High Court Amendment Rules 1986 (SR 1986/228).

28 One side only to be used

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 28 and 29 were revoked, as from 1 April 1994, by rule 4(1) High Court Amendment Rules 1993 (SR 1993/420).

29 Separate backing sheet

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 28 and 29 were revoked, as from 1 April 1994, by rule 4(1) High Court Amendment Rules 1993 (SR 1993/420).

30 Cover sheet, numbering, and fastening of document

(1) The first sheet of a document is the cover sheet, showing the matters specified in rules 31 and 33.

(2) The cover sheet is not numbered, even if the heading is continued on another sheet under rule 33(2).

(3) Each page after the cover sheet must be numbered consecutively, starting with the number 1.

(4) All sheets of a document must be securely fastened together.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 30 and 31 were substituted, as from 1 April 1994, by rule 4(1) High Court Amendment Rules 1993 (SR 1993/420).

Rule 30 was substituted, as from 24 August 2007, by rule 4 High Court Amendment Rules 2007 (SR 2007/206).

Part 1—*continued*

31 Description of document

(1) Each document shall show on its cover sheet, immediately below the heading, a description of the document adequate to show its precise nature.

(2) The description shall include

(a) Words indicating the party by whom or on whose behalf the document is filed; and

(b) The words "*ex parte* application" in the case of an application so made.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 30 and 31 were substituted, as from 1 April 1994, by rule 4(1) High Court Amendment Rules 1993 (SR 1993/420).

Subclause (1) was amended, as from 24 August 2007, by rule 5 High Court Amendment Rules 2007 (SR 2007/206) by substituting "cover sheet" for "first page".

32 Particulars of endorsement

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1)(a) was substituted, as from 8 September 1986, by R 3 High Court Amendment Rules 1986 (1986/228).

Rule 32 was revoked, as from 1 April 1994, by rule 4(1) High Court Amendment Rules 1993 (SR 1993/420).

33 Format of cover sheet

(1) The cover sheet of an originating document and of a notice of interlocutory application must

(a) include only

(i) the heading; and

(ii) the description of the document; and

(iii) if applicable, the next event date; and

(iv) if applicable, the name of the Judge or Associate Judge to whom the proceeding has been assigned; and

(v) the subscription; and

Part 1—*continued*

(b) must leave ample space between the description of the document and the subscription for the inclusion of a minute.

(2) The heading may, where necessary, be continued on another sheet.

(3) In subclause (1)(a)(iii), **next event date** means, if allocated, the date and nature of a hearing or conference that is to be held next after the date on which the document is filed.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 33 was substituted, as from 1 April 1994, by rule 4(1) High Court Amendment Rules 1993 (SR 1993/420).

Rule 33 was substituted, as from 1 November 2004, by rule 4 High Court Amendment Rules 2004 (SR 2004/320).

The heading to rule 33 was amended, as from 24 August 2007, by rule 6(1) High Court Amendment Rules 2007 (SR 2007/206) by substituting "cover sheet" for "first page".

Subclause (1) was amended, as from 24 August 2007, by rule 6(2) High Court Amendment Rules 2007 (SR 2007/206) by substituting "cover sheet" for "first page".

34 Carbon copies

Carbon copies shall not be filed as original documents; but such copies, if clear and legible, may be used as exhibits to affidavits.

Compare: 1908 No 89 Schedule 2 r 597A(b); *Gazette*, 1909, p 644

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 34 was substituted, as from 1 January 1986, by rule 3 High Court Amendment Rules 1985 (SR 1985/328).

35 Heading generally

All documents presented for filing shall bear the proper heading of the proceeding.

Compare: 1908 No 89 Schedule 2 r 598; SR 1973/39 r 3(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1—*continued*

36 Heading on statement of claim and counterclaim

(1) The heading of every statement of claim, and of every counterclaim intended to be served upon any person other than the plaintiff, shall show

(a) The number of the proceeding:

(b) The office of the Court in which it is filed:

(c) Where the statement of claim or counterclaim seeks relief in reliance on jurisdiction conferred by an Act, the Short Title of that Act:

(d) Where the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of a will, the name of the testator:

(e) Where the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an instrument other than a will, the name of the maker of, or the names of the parties to, the instrument and its date:

(f) Where the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an Act, the Short Title, and the relevant section or sections, of the Act:

(g) The full name, and the place of residence and occupation, of every plaintiff and defendant, so far as they are known to the party presenting the document for filing.

(2) Form 1 shall be used for the purposes of subclause (1).

Compare: 1908 No 89 Schedule 2 rr 598, 598A, 598C; SR 1944/35 r 8; SR 1973/39 r 3(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

36A Heading on judgment and certain orders

The heading of every judgment and of every order (being an order that is required to be registered under any enactment) shall be the same as the heading on the statement of claim or other document by which the proceeding was commenced.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1—*continued*

Rule 36 was inserted, as from 1 January 1986, by rule 4 High Court Amendment Rules 1985 (SR 1985/328)

Rule 36 was amended, as from 1 January 1987, by rule 4 High Court Amendment Rules 1986 (SR 1986/228) by inserting the words "or other document by which the proceeding was commenced".

37 Heading on other documents

(1) The heading of every document (other than a document by which a proceeding is commenced or a document to which rule 36A applies) may be abbreviated in the following respects:

(a) First or Christian names of persons shall be denoted by initials only, unless full names are necessary to distinguish between persons having the same initials:

(b) Where 2 or more persons are joined in the same interest, the name of the first named only of such persons shall be set out, followed by the words "and another" or "and others", as the case may be:

(c) Places of residence and descriptions of persons (unless necessary to distinguish 2 or more persons required to be named and bearing the same name) and indications of the interest in which a person is a party shall be omitted:

(d) The names of corporations shall be set out without abbreviation, but without stating the fact of incorporation or referring to the registered office or making other addition.

(2) Notwithstanding subclause (1), a fuller title may be used upon change of parties or if any party considers that a person has in a previous document been wrongly named or described or for other sufficient reason.

Compare: 1908 No 89 Schedule 2 rr 598B, 598C, 598D; SR 1944/35 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 1 January 1986, by rule 5 High Court Amendment Rules 1985 (SR 1985/328) by substituting the words "(other than a document to which rule 36 or rule 36A applies), and the backing of all documents may" for the words "(other than a document to which rule 36 applies), and the backing of all documents shall".

Subclause (1) was amended, as from 1 January 1987, by rule 5(1) High Court Amendment Rules 1986 (SR 1986/228) by substituting the words "The heading

Part 1—*continued*

of every document (other than a document by which a proceeding is commenced or a document to which rule 36A applies), and the backing of all documents, may be abbreviated in the following respects" for the words "The heading of every document (other than a document to which rule 36 or rule 36A applies), and the backing of all documents may be abbreviated in the following respects".

Subclause (1) was amended, as from 1 April 1994, by rule 8 High Court Amendment Rules 1993 (SR 1993/420) by omitting the words ", and the backing of all documents,".

38 Division into paragraphs

(1) Every document presented for filing shall be divided into paragraphs numbered consecutively.

(2) Each paragraph shall, as nearly as may be, be confined to a single topic.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

39 Numbers

Numbers shall be expressed in figures and not in words.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

40 Subscription at foot of cover sheet

(1) At the foot of the cover sheet of every document for filing, there shall be subscribed

- (a) The name of the solicitor or firm of solicitors (if any) presenting it for filing and the name of any agent by whom the document is filed; and
- (b) Where the document is presented for filing by or on behalf of a solicitor or firm of solicitors,
  - (i) The name and telephone number of the principal or employee dealing with the proceeding; and
  - (ii) The address of any postal box or document exchange used by the solicitor or firm; and
  - (iii) Any facsimile number used by the solicitor or firm.

(2) The fact that the name of a solicitor or firm of solicitors is subscribed on a document shall be prima facie evidence that the document was filed by that solicitor or firm of solicitors.

Part 1—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 40 and 41 were substituted, as from 1 October 1991, by rule 3(1) High Court Amendment Rules 1991 (SR 1991/132).

Rule 40 was substituted, as from 1 April 1994, by rule 9 High Court Amendment Rules 1993 (SR 1993/420).

The heading to rule 40 was amended, as from 24 August 2007, by rule 7(1) High Court Amendment Rules 2007 (SR 2007/206) by substituting "cover sheet" for "first page".

Subclause (1) was amended, as from 24 August 2007, by rule 7(2) High Court Amendment Rules 2007 (SR 2007/206) by substituting "cover sheet" for "first page".

Solicitor's authority to file and sign documents

41 Authority to file documents

No solicitor may file a document on behalf of a party unless the solicitor is

(a) authorised by, or on behalf of, the party to file the document; and

(b) the holder of a current practising certificate as a solicitor or as a barrister and solicitor issued under section 56 of the Law Practitioners Act 1982.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 40 and 41 were substituted, as from 1 October 1991, by rule 3(1) High Court Amendment Rules 1991 (SR 1991/132).

Rule 41 was substituted, as from 1 February 2003, by rule 4 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

41A Adverse parties

Where a solicitor or a solicitor's partner acts as solicitor for any party to a proceeding, or is a party to any proceeding, that solicitor shall not, without the leave of the Court, act for any other party to the proceeding not having the same interest in the subject-matter of the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 41A and 41B were inserted, as from 1 October 1991, by rule 3(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 1—*continued*

41B Solicitor's warranty as to authorisation to file documents

Every solicitor by whom, or on whose behalf, a document is filed in the Court shall be deemed to warrant to the Court and to all parties to the proceeding that he or she is authorised, by the party on whose behalf the document purports to be filed, to file the document.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 41A and 41B were inserted, as from 1 October 1991, by rule 3(1) High Court Amendment Rules 1991 (SR 1991/132).

42 Solicitor on the record

Subject to rule 45, the solicitor on the record for a party to a proceeding shall be the solicitor whose name appears on the memorandum subscribed to the first document filed by the party in accordance with rule 44.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 42 to 44 were substituted, as from 1 October 1991, by rule 3(1) High Court Amendment Rules 1991 (SR 1991/132).

43 Authority to sign documents

(1) Any document which is required by these rules to be signed by a party may, unless the party's personal signature is expressly required, be signed on behalf of the party by the party's solicitor on the record.

(2) Nothing in subclause (1) shall derogate from the authority of counsel to sign documents.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 42 to 44 were substituted, as from 1 October 1991, by rule 3(1) High Court Amendment Rules 1991 (SR 1991/132).

43A Solicitors to inform clients of orders or directions

When an order or a direction that affects a party is made, it is the responsibility of that party's solicitor on the record promptly to notify the party of the order or direction.

Part 1—*continued*

Rule 43A was inserted, as from 24 November 2003, by rule 4 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

44 Memorandum to be subscribed to first document filed by party

(1) At the end of the first document filed by a party there shall be a memorandum stating

(a) That the document is filed by the party in person, or by the party's solicitor, as the case may be; and

(b) Where it is filed by a solicitor,

(i) The name of the solicitor; and

(ii) If the solicitor is a member of a firm or practises under a firm name, the name of the firm; and

(c) Where it is filed by a solicitor who has another solicitor acting as the solicitor's agent in the proceeding,

(i) The name of the agent or of the agent's firm (if any); and

(ii) The postal address of the party's solicitor; and

(d) An address for service; and

(e) Where it is filed by a solicitor, any Post Office box address, document exchange box number, or facsimile number by which the solicitor will accept service of documents in the course of the proceeding.

(2) The memorandum may be in one of the paragraphs of form 3.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 42 to 44 were substituted, as from 1 October 1991, by rule 3(1) High Court Amendment Rules 1991 (SR 1991/132).

45 Change of representation or address for service

(1) A party must file and serve on every other party to the proceeding a notice of change of representation if

(a) the party has acted in person and appoints a solicitor to act for that party; or

(b) the party wishes to change that party's solicitor; or

(c) the party for whom a solicitor has acted wishes to act in person.

Part 1—*continued*

(2) If the party's address for service after the change of representation will be different from that which applied before the change, the party must also serve a copy of the notice at the address that was, immediately before the change, the party's address for service.

(3) The notice

(a) must be signed by the party personally or by the party's attorney; and

(b) in the case of a notice under subclause (1)(a) or (b), must contain the information about the new solicitor required by paragraphs (b) to (e) of rule 44(1); and

(c) in the case of a party referred to in subclause (1)(c), must state that the party's intention is to act in person.

(4) For the purpose of the proceeding, the change of representation takes effect on the filing of an affidavit proving service in accordance with subclause (1) and exhibiting and verifying a copy of the notice served.

(5) A party may change that party's address for service by

(a) filing a notice of the change showing the new address for service; and

(b) serving a copy of the notice on every other party.

(6) A change of address for service may be combined with a notice under subclause (1). A notice of change of address for service need not be filed under subclause (5)(a) if an affidavit is filed under subclause (4).

(7) Form 4 may be used for a notice under this rule.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1)(b) was substituted, as from 1 January 1993, by rule 2 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Subclause (2)(b) was amended, as from 1 October 1991, by rule 4 High Court Amendment Rules 1991 (SR 1991/132) by substituting the expression "(e)" for the expression "(d)".

Rule 45 was substituted, as from 1 July 2002, by rule 3 High Court Amendment Rules 2002 (SR 2002/132).

Part 1—*continued*

45A Withdrawal of solicitor who has ceased to act for party

(1) Where the solicitor on the record for a party to a proceeding has ceased to act for that party, that solicitor may apply to the Court for an order declaring that that solicitor has ceased to be the solicitor on the record for that party in that proceeding and the Court may make an order accordingly.

(2) It shall not be necessary to make an application under subclause (1) if

(a) The party has effected a change of solicitor in accordance with rule 45; or

(b) The party

(i) Has filed a notice stating that the party intends to act in person and showing the party's new address for service; and

(ii) Has served on the solicitor on the record and on every other party to the proceeding who has given an address for service a copy of the notice filed under subparagraph (i); and

(iii) Has filed an affidavit proving compliance with subparagraph (ii) and exhibiting and verifying a copy of the notice served.

(3) Except where paragraph (a) or paragraph (b) of subclause (2) applies, the solicitor on the record for a party to a proceeding shall, for the purposes of that proceeding, be considered to be the solicitor on the record for that party until the final conclusion of the proceeding unless and until the solicitor

(a) Obtains an order under subclause (1); and

(b) Serves on every party to the proceeding who has given an address for service a copy of the order obtained under subclause (1); and

(c) Files an affidavit proving compliance with paragraph (b).

(4) Every application under subclause (1) shall be made by interlocutory application and shall be supported by an affidavit giving the grounds of the application.

(5) Unless the Court otherwise directs, notice of every application under subclause (1), and a copy of the affidavit in support of

Part 1—*continued*

the application, shall be served on the party for whom the solicitor acted.

(6) The notice served under subclause (5) on the party for whom the solicitor acted shall inform the party of the effect that rule 45B will have on the party's address for service if the solicitor obtains an order under subclause (1).

(7) An order made under subclause (1) shall not affect the rights of the solicitor and the party for whom the solicitor acted as between themselves.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 45A and 45B were inserted, as from 1 February 1994, by rule 10 High Court Amendment Rules 1993 (SR 1993/420).

45B Address for service of party whose solicitor has ceased to act

Where the solicitor on the record for a party has obtained an order under rule 45A(1) and has complied with subclause (b) and (c) of rule 45A(3), then until the party either

(a) Appoints another solicitor and complies with rule 45; or

(b) Being entitled to act in person,

(i) Files a notice stating that the party intends to act in person and showing the party's new address for service; and

(ii) Serves on the solicitor who obtained the order under rule 45A(1) and on every other party to the proceeding who has given an address for service a copy of the notice filed under subparagraph (i); and

(iii) Files an affidavit proving compliance with subparagraph (ii) and exhibiting and verifying a copy of the notice served,

the last known address of the party, or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on the party of any document not required to be served personally, be deemed to be the party's address for service.

Part 1—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 45A and 45B were inserted, as from 1 February 1994, by rule 10 High Court Amendment Rules 1993 (SR 1993/420).

Costs

46 Costs at discretion of Court

(1) All matters relating to the costs of and incidental to a proceeding or a step in a proceeding are at the discretion of the Court.

(2) Rules 47 to 48G apply subject to subclause (1).

(3) This rule is subject to the provisions of any Act.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3) was amended, as from 1 February 1996, by rule 2(2) High Court Amendment Rules (No 3) 1995 (SR 1995/288) by substituting the expression "46A" for the expression "47".

Rules 46, 47 and 48 were substituted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

46A Written offers "without prejudice save as to costs"

[Repealed]

Rule 46A was inserted, as from 1 February 1996, by rule 2(1) High Court Amendment Rules (No 3) 1995 (SR 1995/288).

Rule 46A was revoked, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

47 Principles applying to determination of costs

The following general principles apply to the determination of costs:

(a) The party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:

(b) An award of costs should reflect the complexity and significance of the proceeding:

(c) Costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable

Part 1—*continued*

for each step reasonably required in relation to the proceeding or interlocutory application:

(d) An appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:

(e) What is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the actual solicitor or counsel involved or on the time actually spent by the actual solicitor or counsel involved or on the costs actually incurred by the party claiming costs:

(f) An award of costs should not exceed the costs incurred by the party claiming costs:

(g) So far as possible the determination of costs should be predictable and expeditious.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 46, 47 and 48 were substituted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

48 Categorisation of proceedings

(1) For the purposes of rule 47(b), proceedings must be classified as falling within 1 of the following categories:

Category 1 proceedings	Proceedings of a straight-forward nature able to be conducted by counsel considered junior in the High Court:
Category 2 proceedings	Proceedings of average complexity requiring counsel of skill and experience considered average in the High Court:
Category 3 proceedings	Proceedings that because of their complexity or

Part 1—*continued*

significance require counsel to have special skill and experience in the High Court.

(2) The Court may at any time determine in advance an applicable category in relation to a proceeding. If it does, the category applies to all subsequent determinations of costs in the proceeding unless there are special reasons to the contrary.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 46, 47 and 48 were substituted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

48A Appropriate daily recovery rates

For the purposes of rule 47(c), the rates specified in Schedule 2 are the appropriate daily recovery rates for the categories of proceedings referred to in rule 48 and must be applied to those categories of proceedings. Those appropriate daily recovery rates are calculated, in accordance with the principle referred to in rule 47(d), on the basis of being two-thirds of the actual daily rates referred to in that paragraph.

Rules 48A to 48G were inserted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

48B Determination of reasonable time

(1) For the purposes of rule 47(c), a reasonable time for a step in a proceeding is

(a) The time specified for that step in Schedule 3; or

(b) If Schedule 3 does not apply, a time determined by analogy with that schedule; or

(c) If no analogy can usefully be made, the time assessed as likely to be required for the particular step.

(2) In determining what is a reasonable time for a step in a proceeding under subclause (1),

Part 1—*continued*

(a) If a comparatively small amount of time for the particular step is considered reasonable, the determination must be made by reference to band A; or

(b) If a normal amount of time for the particular step is considered reasonable, the determination must be made by reference to band B; or

(c) If a comparatively large amount of time is considered reasonable, the determination must be made by reference to band C.

Rules 48A to 48G were inserted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

48C Increased costs and indemnity costs

(1) Despite rules 47 to 48B, the Court may make an order

(a) Increasing costs otherwise payable under those rules (**increased costs**); or

(b) That the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party (**indemnity costs**).

(2) The Court may make the order at any stage of a proceeding in relation to any step in the proceeding.

(3) The Court may order a party to pay increased costs if

(a) The nature of the proceeding or the step in the proceeding is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or

(b) The party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by

(i) Failing to comply with these rules or a direction of the Court; or

(ii) Taking or pursuing an unnecessary step or an argument that lacks merit; or

(iii) Failing, without reasonable justification, to admit facts, evidence, documents, or accept a legal argument; or

Part 1—*continued*

(iv) Failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, notice for interrogatories, or other similar requirement under these rules; or

(v) Failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 48G or some other offer to settle or dispose of the proceeding; or

(c) The proceeding is of general importance to persons other than just the parties and it was reasonably necessary for the party claiming costs to bring the proceeding or participate in the proceeding in the interests of those affected; or

(d) Some other reason exists which justifies the Court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.

(4) The Court may order a party to pay indemnity costs if

(a) The party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding; or

(b) The party has ignored or disobeyed an order or direction of the Court or breached an undertaking given to the Court or another party to the proceeding; or

(c) Costs are payable from a fund, the party claiming costs is a necessary party to the proceeding affecting the fund, and the party claiming costs has acted reasonably in the proceeding; or

(d) The person in whose favour the order of costs is made was not a party to the proceeding and has acted reasonably in relation to the proceeding; or

(e) The party claiming costs is entitled to indemnity costs under a contract or deed; or

(f) Some other reason exists which justifies the Court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

Part 1—*continued*

Rules 48A to 48G were inserted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

Subclause (3)(b)(iv) was amended, as from 1 November 2004, by rule 5(a) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an order for discovery, a notice" for the words "a notice for discovery, notice".

Subclause (3)(b)(v) was amended, as from 1 November 2004, by rule 5(b) High Court Amendment Rules 2004 (SR 2004/320) by omitting the words ", payment into Court, or an admission or offer of relief under rules 347 to 368,".

48D Refusal of, or reduction in, costs

Despite rules 47 to 48B, the Court may refuse to make an order for costs or may reduce the costs otherwise payable under those rules if

(a) The nature of the proceeding or the step in a proceeding is such that the time required by the party claiming costs would be substantially less than the time allocated under band A; or

(b) The property or interests at stake in the proceeding were of exceptionally low value; or

(c) The issues at stake were of little significance; or

(d) Although the party claiming costs has succeeded overall, that party has failed in relation to a cause of action or issue which significantly increased the costs of the party opposing costs; or

(e) The party claiming costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by

  (i) Failing to comply with these rules or a direction of the Court; or

  (ii) Taking or pursuing an unnecessary step or an argument that lacks merit; or

  (iii) Failing, without reasonable justification, to admit facts, evidence, or documents, or accept a legal argument; or

  (iv) Failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, notice for interrogatories, or other similar requirement under these rules; or

Part 1—*continued*

(v) Failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 48G or some other offer to settle or dispose of the proceeding; or

(f) Some other reason exists which justifies the Court refusing costs or reducing costs despite the principle that the determination of costs should be predictable and expeditious.

Rules 48A to 48G were inserted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

Paragraph (e)(iv) was amended, as from 1 November 2004, by rule 6(a) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an order for discovery, a notice" for the words "a notice for discovery, notice".

Paragraph (e)(v) was amended, as from 1 November 2004, by rule 6(b) High Court Amendment Rules 2004 (SR 2004/320) by omitting the words ", payment into Court, or an admission or offer of relief under rules 347 to 368,".

48E Costs in interlocutory applications

(1) Unless there are special reasons to the contrary, costs on an opposed interlocutory application

(a) Must be fixed in accordance with these rules when the application is determined; and

(b) Become payable when they are fixed.

(2) Despite subclause (1), the Court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made.

(3) This rule does not apply to an application for summary judgment.

Rules 48A to 48G were inserted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

48F Costs may be determined by different Judge or Associate Judge

Costs may be determined by a Judge or Associate Judge other than the Judge or Associate Judge who heard the matter to which the costs relate, if the Judge or Associate Judge who

Part 1—*continued*

heard the matter to which the costs relate is not available conveniently to make the determination.

Rules 48A to 48G were inserted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

The heading to rule 48F was amended, as from 1 November 2004, by rule 30(2) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judge" for the word "Master".

Rule 48F was amended, as from 1 November 2004, by rule 30(2) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judge" for the word "Master" wherever they occur.

48G Written offers without prejudice except as to costs

(1) A party to a proceeding may at any time make to any other party to the proceeding a written offer that
  (a) is expressly stated to be without prejudice except as to costs; and
  (b) relates to an issue in the proceeding.

(2) The fact that the offer has been made must not be communicated to the Court until the question of costs is to be decided.

Rules 48A to 48G were inserted, as from 1 January 2000, by rule 2 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules for transitional provisions relating to the application of new cost rules.

Rule 48G was substituted, as from 1 November 2004, by rule 7 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 8 of those rules as to the transitional provision.

48GA Effect on costs

(1) The effect (if any) that the making of an offer under rule 48G has on the question of costs is at the discretion of the Court.

(2) Subclauses (4) and (5)
  (a) apply subject to subclause (1); and
  (b) do not limit rules 48C or 48D.

(3) Subclauses (4) and (5) apply to an offer made under rule 48G by a party to a proceeding (**party A**) to another party to the proceeding (**party B**).

(4) If party A

Part 1—*continued*

(a) offers a sum of money to party B that exceeds the amount of a judgment obtained by party B against party A; or

(b) makes an offer that would have been more beneficial to party B than the judgment obtained by party B against party A,

the principle to be applied in determining costs is that party A is entitled to costs on the steps taken in the proceeding after the offer is made.

(5) If an offer made by party A does not fall within paragraph (a) or paragraph (b) of subclause (4), but is close to the value or benefit of the judgment obtained by party B, the principle to be applied in determining costs is that the offer may to be taken into account.

Rule 48GA was inserted, as from 1 November 2004, by rule 7 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 8 of those rules as to the transitional provision.

48H Disbursements

(1) In this rule, **disbursement**, in relation to a proceeding,

(a) means an expense paid or incurred for the purposes of the proceeding that would ordinarily be charged for separately from professional services in a solicitor's bill of costs; and

(b) includes

(i) fees of Court for the proceeding:

(ii) expenses for serving documents for the purposes of the proceeding:

(iii) expenses for photocopying documents required by these rules or by a direction of the Court:

(iv) expenses of conducting a conference by telephone or video link:

(v) expenses of conducting a hearing by video link; but

(c) does not include counsel's fee.

(2) A disbursement may be included in the costs awarded for a proceeding to the extent that the disbursement is

Part 1—*continued*

(a) of a class that is either
  (i) approved by the Court for the purposes of the proceeding; or
  (ii) specified in subclause (1)(b); and
(b) specific to the conduct of the proceeding; and
(c) necessary for the conduct of the proceeding; and
(d) reasonable in amount.

(3) A Judge or Associate Judge may direct a Registrar to exercise the powers of the Court under this rule.

Rule 48H was inserted, as from 1 February 2003, by rule 5 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 7 of those Rules as to a transitional provision relating to whether disbursements paid or invoiced before 1 February 2002 are to be included in an award of costs.

Subclause (1)(b)(iv) was substituted, as from 1 September 2006, by rule 4 High Court Amendment Rules (No 3) 2006 (SR 2006/211).

Subclause (1)(b)(v) was inserted, as from 1 September 2006, by rule 4 High Court Amendment Rules (No 3) 2006 (SR 2006/211).

Subclause (3) was amended, as from 1 November 2004, by rule 30(2) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judge" for the word "Master".

49 Proceedings within jurisdiction of District Court

Any costs ordered to be paid to a successful plaintiff in any proceeding that might have been brought in a District Court shall not, unless the Court otherwise directs, exceed the costs and disbursements that the plaintiff would have recovered in the District Court.

Compare: 1908 No 89 Schedule 2 r 559; SR 1961/174 r 10

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

50 Joint and several liability for costs

Unless the Court otherwise directs, the liability of each of 2 or more parties ordered to pay costs is joint and several.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 50 was substituted, as from 1 January 2000, by rule 3 High Court Amendment Rules 1999 (SR 1999/334).

Part 1—*continued*

51 Where defendants defend separately

Where several defendants defend a proceeding separately and it appears to the Court that they, or some of them, might have joined in their defence, the Court shall not allow more than one set of costs to the defendants who might have so joined unless it appears to the Court that there is good reason for allowing more than one set of costs to those defendants.

Compare: 1908 No 89 Schedule 2 r 567

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

52 Where claim and counterclaim both established

Where the plaintiff succeeds in his proceeding and the defendant succeeds in a counterclaim, the Court shall award costs as if each party respectively had succeeded in an independent proceeding except where, in the opinion of the Court, the justice of the case otherwise requires.

Compare: 1908 No 89 Schedule 2 r 566

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

53 Set-off where costs allowed to both parties

Where opposite parties are awarded costs against each other, their respective costs, unless the Court otherwise directs, shall be set off and the lesser sum shall be deducted from the greater.

Compare: 1908 No 89 Schedule 2 r 564

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Taxation of costs inter partes

54 Appointment to tax costs

(1) Any party entitled to costs subject to taxation may obtain from the Registrar an appointment for taxation of the costs.

(2) If the party liable to pay the costs has given an address for service, but not otherwise, the party entitled to the costs shall

Part 1—*continued*

serve a copy of the appointment on the party liable to pay the costs at least 2 clear days before the day appointed.

Compare: 1908 No 89 Schedule 2 rr 569, 571

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

55 Taxation of disbursements

On taxation, all disbursements claimed (being disbursements that may be included in an award of costs under rule 48H(2)) must be proved to the satisfaction of the Registrar.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 55 was substituted, as from 1 February 2003, by rule 6 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 7 of those Rules as to a transitional provision relating to whether disbursements paid or invoiced before 1 February 2002 are to be included in an award of costs.

56 No charge allowed for bill of costs

No charge shall be allowed on taxation for the preparation or service of the bill of costs or of any copy thereof.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

57 Registrar sole judge of questions of fact

The Registrar shall be the sole judge of all questions of fact which may arise on taxation, and his decision thereon shall be final.

Compare: 1908 No 89 Schedule 2 r 573

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

58 Direction to Registrar to ascertain expenses

Without ordering taxation of costs, the Court may direct the Registrar to ascertain what amount should be allowed in respect of witnesses' expenses and other disbursements to a party to whom costs are awarded.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1—*continued*

59 Review of taxation

Where, under these rules or by a direction of the Court, the Registrar has ascertained or fixed the amount of any costs or disbursements or the head under which costs should be allowed, and it appears that the Registrar has acted erroneously, whether as to amount or as to principle, the Court may, on the application of any party dissatisfied with the actions of the Registrar, refer the matter back to the Registrar with such directions as may be requisite, or may itself make such amendments as may appear necessary.

Compare: 1908 No 89 Schedule 2 r 574

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Security for costs

60 Power to make order for security for costs

(1) Where the Court is satisfied, on the application of a defendant,

(a) That a plaintiff

(i) Is resident out of New Zealand; or

(ii) Is a corporation incorporated outside New Zealand; or

(iii) Is, within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, as the case may be, a subsidiary of a corporation incorporated outside New Zealand; or

(b) That there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff's proceeding,

the Court may, if it thinks fit in all the circumstances, order the giving of security for costs.

(2) An order under subclause (1)

(a) Shall require the plaintiff or plaintiffs against whom the order is made to give security for costs in respect of such sum as the Court considers sufficient

(i) By paying that sum into Court; or

Part 1—*continued*

(ii) By giving, to the satisfaction of the Registrar, security for that sum; and

(b) May stay the proceeding until the sum is paid or the security given, as the case may be.

(3) This rule

(a) May apply, if the Court thinks fit, although a plaintiff may be temporarily resident within New Zealand; and

(b) Shall apply notwithstanding that the defendant may have taken a step in the proceeding before making his application for security.

(4) The references in this rule to a plaintiff and a defendant shall be construed as references to the person (however described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding, including a counterclaim.

Compare: 1908 No 89 Schedule 2 rr 577, 577A; SR 1944/35 r 7; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was substituted, as from 1 October 1991, by rule 5 High Court Amendment Rules 1991 (SR 1991/132).

Subclause (1)(a)(iii) was substituted, as from 1 July 1994, by rule 2 High Court Amendment Rules 1994 (SR 1994/135).

61 Solicitor not to be surety

A solicitor shall not be accepted as surety for his client to any security given under rule 60.

Compare: 1908 No 89 Schedule 2 r 578

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Associate Judges of the High Court

The heading "Masters of the High Court" was inserted, as from 15 July 1987, by rule 2 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

This heading was amended, as from 1 November 2004, by rule 30(3) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judges" for the word "Masters".

Part 1—*continued*

61A Jurisdiction and powers of Associate Judges

(1) All Associate Judges of the High Court shall have the jurisdiction and powers (whether conferred by the Act or any other Act or by rules of Court) of a Judge sitting in Chambers.

(2) Nothing in subclause (1) confers on Associate Judges of the High Court any jurisdiction or powers in respect of

(a) The matters specified in subsections (3) and (4) of section 26J of the Act; or

(b) An application under section 26P(1) of the Act.

(3) The jurisdiction and powers conferred on Associate Judges of the High Court by this rule are in addition to those conferred on Associate Judges of the High Court by or pursuant to section 26I of the Act.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 61A to 61D were inserted, as from 15 July 1987, by rule 2 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

The heading to rule 61A was amended, as from 1 November 2004, by rule 30(3) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judges" for the word "Masters".

Subclauses (1) to (3) were amended, as from 1 November 2004, by rule 30(3) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judges" for the word "Masters" wherever they occur.

61B Power to make interim order on transfer of proceeding

Where an Associate Judge, acting under section 26N(1) of the Act, refers any proceeding or any matter arising in a proceeding to a Judge, the Associate Judge may, pending the final disposal of the proceeding or matter, make such interim order as may be just.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 61A to 61D were inserted, as from 15 July 1987, by rule 2 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Rule 61B was amended, as from 1 November 2004, by rule 30(1) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an Associate Judge" for the words "a Master".

Rule 61B was amended, as from 1 November 2004, by rule 30(2) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judge" for the word "Master".

Part 1—*continued*

61C Review of decisions of Associate Judges

(1) Every application under section 26P(1) of the Act for the review of any order or decision made by an Associate Judge in Chambers shall be made by interlocutory application.

(2) Notice of every application under section 26P(1) of the Act shall, unless a Judge or the Associate Judge otherwise directs, be filed and served,

(a) If it is made by a party who was present or represented when the order was made or the decision was given, within 7 days thereafter:

(b) If it is made by a party who was not so present or represented, within 7 days after the receipt by that party of notice of the making of the order or the giving of the decision, as the case may be, and of its effect.

(3) The application shall not operate as a stay of the proceedings, or any step therein, unless a Judge or the Associate Judge so directs.

(4) A review under section 26P(1) of the Act of an order or decision proceeds as an appeal by way of rehearing, if the order or decision

(a) Was made following a defended hearing; and

(b) Is supported by recorded reasons.

(4A) If subclause (4) does not apply to an order or decision that is to be reviewed under section 26P(1) of the Act, the review proceeds as a rehearing *de novo*.

(4B) A Judge who reviews an order or decision in accordance with subclause (4) may, in his or her discretion, rehear the whole or any part of the evidence, or may receive further evidence, if the Judge thinks that the interests of justice so require.

(5) A Judge who reviews an order or decision in accordance with subclause (4A) may give the order or decision such weight as the Judge thinks appropriate.

(6)

(7)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1—*continued*

Rules 61A to 61D were inserted, as from 15 July 1987, by rule 2 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

The heading to rule 61C was amended, as from 1 November 2004, by rule 30(3) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judges" for the word "Masters".

Subclause (1) was amended, as from 1 November 2004, by rule 30(1) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an Associate Judge" for the words "a Master".

Subclauses (2) and (3) were amended, as from 1 November 2004, by rule 30(2) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judge" for the word "Master".

Subclauses (4) and (5) were substituted, and subclause (4A) and (4B) were inserted, as from 1 January 2000, by rule 6 High Court Amendment Rules 1999 (SR 1999/334).

Subclause (6) was revoked, as from 1 July 2002, by rule 4 High Court Amendment Rules 2002 (SR 2002/132).

Subclause (7) was inserted, as from 1 August 2000, by rule 3 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 4 of those Rules for the transitional provision relating to reviews of decisions of Masters.

Subclause (7) was revoked, as from 1 July 2002, by rule 4 High Court Amendment Rules 2002 (SR 2002/132).

61D Appeal to Court of Appeal

1Where an appeal is brought under section 26P(2) of the Act against any order or decision of an Associate Judge, the Court of Appeal Rules 1955 shall apply, in relation to that appeal, with all necessary modifications.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 61A to 61D were inserted, as from 15 July 1987, by rule 2 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (1) was amended, as from 1 November 2004, by rule 30(1) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an Associate Judge" for the words "a Master".

Translations into Maori

62 Right to translation into Maori

Where any Maori, upon whom in any proceeding a document is served,

(a) Applies, orally or in writing, to the Registrar in the place where the proceeding is pending, within 10 days after

Part 1—*continued*

the date of service, for a translation into the Maori language of the document; and

(b) If he has not already given an address for service, states a postal address for the service of the translation; and

(c) Satisfies the Registrar that he is unable to read the document but could read it if it were translated into the Maori language

that Maori shall be entitled to receive a translation of the document into the Maori language.

Compare: 1908 No 89 Schedule 2 r 588; SR 1950/58 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

63 Preparation and service of translation

(1) Where a Maori is entitled, under rule 62, to a translation of a document, the Registrar shall require that translation to be prepared by the party or person on whose behalf the document was served.

(2) The translation shall be certified correct by a person holding a licence as an interpreter under the Maori Affairs Act 1953, or by some person authorised by the Court to do so.

(3) The translation may be served

(a) Personally; or

(b) At the Maori's address for service (if any); or

(c) By sending it by registered post addressed to the Maori at the postal address stated by the Maori to the Registrar.

(4) Where the translation is sent by registered post, it shall be deemed to have been served when it would be delivered or available for delivery at its address in the ordinary course of registered post.

(5) The costs of preparing and certifying and serving the translation shall be in the discretion of the Court as costs in the proceeding.

Compare: 1908 No 89 Schedule 2 rr 588A(a)-(b), 588C; SR 1950/58 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1—*continued*

64 Consequences of requirement for translation

Where a Maori is entitled, under rule 62, to a translation of a document, then, unless the Court otherwise orders,

(a) The document shall be deemed not to have been served until the translation is served in accordance with rule 63(3); and

(b) The proceeding in which the document is issued shall be stayed as far as the Maori is concerned until the translation is so served; and

(c) Every subsequent document served on the Maori in the proceeding and every execution process or other process issued against the Maori to enforce any judgment entered or order made in the proceeding shall, unless the Maori is at the time represented by a solicitor, be accompanied by a translation into the Maori language complying with rule 63.

Compare: 1908 No 89 Schedule 2 r 588A(c)-(e); SR 1950/58 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

65 Translation may be ordered by Court

(1) The Court may at any time order that a translation into the Maori language, complying with rule 63, of any document served before or after the making of the order, upon a Maori concerned in a proceeding be served on that Maori, whether or not he has applied for it under rule 62.

(2) An order under subclause (1) may be made subject to such terms and conditions as the Court thinks proper.

(3) The Court may, on ordering a translation under this rule, grant such adjournment of the proceeding as justice may require.

Compare: 1908 No 89 Schedule 2 r 588B; SR 1950/58 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Speaking in Maori

This heading was inserted, as from 1 June 2006, by rule 5 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Part 1—*continued*

65A Speaking in Maori

(1) This rule applies to a person entitled under section 4(1) of the Maori Language Act 1987 to speak Maori in a proceeding or at the hearing of an interlocutory application.

(2) If a person to whom this rule applies wishes to speak Maori in a proceeding or at the hearing of an interlocutory application, that person, or, if the person is a witness, the party intending to call that person, must file and serve on every other party to the proceeding a notice of his or her intention to speak Maori.

(3) The notice must state that the person intends to speak Maori at

- (a) all case management conferences and hearings; or
- (b) all case management conferences and hearings held after a specified case management conference or hearing; or
- (c) a specified case management conference or hearing.

(4) The notice must be in form 4A.

(5) The notice must be filed and served

- (a) if the person intends to speak Maori at all case management conferences and hearings, not less than 10 working days before the first case management conference or hearing; or
- (b) if the person intends to speak Maori at case management conferences and hearings held after a particular case management conference or hearing, not less than 10 working days before the first case management conference or hearing at which the person intends to speak Maori; or
- (c) if the person intends to speak Maori at a particular case management conference or hearing, not less than 10 working days before the case management conference or hearing.

Rules 65A and 65B were inserted, as from 1 June 2006, by rule 5 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Part 1—*continued*

65B Failure to give notice

A failure to comply with rule 65A does not prevent a person speaking Maori at a case management conference or hearing, but

(a) the Court may adjourn the conference or hearing to enable the Registrar to arrange for a person who holds a certificate of competency under section 15(2)(a) or (c) of the Maori Language Act 1987 or some other person competent to interpret Maori to be available at the adjourned case management conference or hearing:

(b) the Court may treat the failure to comply as a relevant consideration in an award of costs.

Rules 65A and 65B were inserted, as from 1 June 2006, by rule 5 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Search of Court records

66 Search of Court records generally

(1) Subject to rule 68, any person shall, on payment of the prescribed fee, be entitled during office hours to search, inspect, and take a copy of any of the following, namely,

(a) All registers and indexes of Court records:

(b) Any document on any file in any office of the Court if

(i) A right of search or inspection of that document is given by any Act; or

(ii) That document constitutes notice of its contents to the public.

(2) A person who is

(a) A party to a proceeding or interlocutory application; or

(b) The solicitor on the record acting for a party to a proceeding or interlocutory application

has the right, without payment of a fee, to search, inspect, and take a copy of the file relating to it (despite anything in subclauses (5) and (6), but subject to subclauses (7) and (7A)).

(3) Subject to subclauses (5) to (8), a person has the right to search, inspect, and copy a document on a file relating to a proceeding that has been determined.

Part 1—*continued*

(3A) Subject to subclauses (5) to (8), a person has a right to search, inspect, and copy a document on a file relating to an interlocutory application

(a) If the interlocutory application relates to a proceeding that has been determined; or

(b) If the interlocutory application relates to an intended proceeding and leave to bring the proceeding is refused; or

(c) With the leave of a Judge in any case where the interlocutory proceeding relates to an intended proceeding and the Judge is satisfied that the proceeding has not been commenced within a reasonable time.

(4) Subject to subclause (7), any document on any file that relates to an application or action for a grant of administration under the Administration Act 1969 or to proceedings for the recall of any such grant may be searched, inspected, and copied notwithstanding that the application, action, or proceedings have not been determined.

(5) No file and no document upon any file shall be searched, inspected, or copied which relates to any proceedings under

(a) The Family Proceedings Act 1980:

(b) The Matrimonial Property Act 1963:

(c) The Property (Relationships) Act 1976:

(d) The Status of Children Act 1969:

(e) The Adoption Act 1955:

(f) The Protection of Personal and Property Rights Act 1988:

(g) The Family Protection Act 1955:

(h) The Mental Health (Compulsory Assessment and Treatment) Act 1992:

(ha) the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:

(i) The Alcoholism and Drug Addiction Act 1966:

(j) The Married Women's Property Act 1952:

(k) The Marriage Act 1955:

(ka) the Civil Union Act 2004:

(l) The Guardianship Act 1968:

Part 1—*continued*

(la) the Care of Children Act 2004:

(m) Any former provisions corresponding to provisions of any of the Acts mentioned in paragraphs (a) to (l).

(6) No document may be searched, inspected, or copied if it relates to a proceeding or interlocutory application involving

(a) Defamation:

(b) Seduction:

(c) Enticement:

(d) Breach of promise.

(7) No document which a Judge has at any time directed shall not be inspected without leave shall be searched, inspected, or copied save in accordance with the direction.

(7A) No file and no document on any file relating to an application under rule 446U or rule 502C shall, without the leave of a Judge, be searched, inspected, or copied.

(8) No person has the right to search, inspect, or copy a file or a document on a file in a proceeding or interlocutory application after the following periods:

(a) If there is a sealed judgment or order, the expiration of 6 years from its date:

(b) If there is no sealed judgment or order, the expiration of 6 years from the date of the Judge's reasons or minute making the order.

(9) A Registrar may grant to any person leave to search, inspect, or copy any file, part of a file, or document the search and inspection of which is not permitted under subclause (3) or is prohibited by any of the provisions of subclauses (5), (6), and (8) and shall, subject to any directions of a Judge, grant such leave to any person having a genuine or proper interest.

(10) An application under subclause (9) may be made on an informal basis to the Registrar.

(11) If leave is refused by the Registrar, a Judge may review the refusal.

(12) Notwithstanding anything in the foregoing provisions of this rule, any person shall, on payment of the prescribed fee (if any), be entitled during office hours to search, inspect, and

Part 1—*continued*

take a copy of any document or record filed or lodged in the Court more than 60 years before.

(13) For the purposes of this rule, **document** includes

(a) The record made of oral evidence given at any hearing other than any notes made personally by the Judge:

(b) All exhibits produced in evidence:

(c) The record made of the reasons given by the Judge for his judgment other than any notes made personally by the Judge.

(14) This rule shall apply *mutatis mutandis* to proceedings in the Court of Appeal.

(15) Nothing in this rule shall affect any Act, regulations, or rules which contain express provisions of any kind in relation to the search of Court records, and this rule shall be subject to those provisions.

Compare: 1908 No 89 Schedule 2 r 582A; SR 1973/39 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was amended, as from 1 April 1995, by rule 2(1) High Court Amendment rules 1995 (SR 1995/63) by substituting the expression "subclauses (7) and (7A)" for the expression "subclause (7)".

Subclauses (2) and (3) were substituted, as from 1 February 1998, by rule 3(1) High Court Amendment Rules 1997 (SR 1997/350).

Subclause (3A) was inserted, as from 9 November 1998, by rule 2 High Court Amendment Rules 1998 (SR 1998/310).

Subclause (5)(c) was amended, as from 1 February 2002, by rule 3 High Court Amendment Rules (No 2) 2001 (SR 2001/382), by substituting the expression "Property (Relationships) Act 1976" for the expression "Matrimonial Property Act 1976".

Subclause (5)(f) was amended, as from 1 October 1988, pursuant to section 113 Protection of Personal and Property Rights Act 1988 (1988 No 4) by substituting the reference to the "Protection of Personal and Property Rights Act 1988" for a reference to the "Aged and Infirm Persons Protection Act 1912"

Subclause (5)(h) was amended, as from 1 November 1992, pursuant to section 137(1) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) by substituting the reference to the "Mental Health (Compulsory Assessment and Treatment) Act 1992" for a reference to the "Mental Health Act 1969"

Subclause (5)(ha) was inserted, as from 1 November 2004, by rule 9 High Court Amendment Rules 2004 (SR 2004/320).

Part 1—*continued*

Subclause (5)(ka) was inserted, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) . *See* rule 3(1) High Court Amendment Rules 2005 (SR 2005/148), inserting this paragraph, although it had already been inserted by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) above.

Subclause (5)(la) was inserted, as from 1 July 2005, by rule 3(2) High Court Amendment Rules 2005 (SR 2005/148).

Subclause (6) was substituted, as from 1 February 1998, by rule 3(2) High Court Amendment Rules 1997 (SR 1997/350).

Subclause (7A) was inserted, as from 1 April 1995, by rule 2(2) High Court Amendment Rules 1995 (SR 1995/63).

Subclause (8) was substituted, as from 1 February 1998, by rule 3(3) High Court Amendment Rules 1997 (SR 1997/350).

67 Search of rolls of barristers and solicitors

The rolls of barristers and solicitors kept pursuant to section 49 of the Law Practitioners Act 1982 may be searched, inspected, and copied by any person during office hours without payment of any fee.

Compare: 1908 No 89 Schedule 2 r 582B; SR 1973/39 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

68 Search of certain records

(1) This rule applies to any proceeding, being

(a) A reference under section 90(1) of the Human Rights Act 1993; or

(b) An application made to the Court under section 19 of the Citizenship Act 1977; or

(c) An appeal made to the Court under or by virtue of any enactment, not being an appeal made to the Court under the Act or the District Courts Act 1947 or the Summary Proceedings Act 1957 or any Act specified in rule 66(5).

(2) In respect of any proceeding to which this rule applies, the Court may, of its own motion, or on the application of any party, make an order prohibiting the search of any records or documents.

(3) Subject to subclause (2), any person (whether a party or not) shall be entitled during office hours to search the records of and

Part 1—*continued*

the documents filed in the Court in relation to any proceeding (being a proceeding to which this rule applies) that is pending before the Court at the time of the search, and any former proceeding connected therewith.

(4) Subject to subclauses (2) and (3), any party to any proceeding to which this rule applies (not being a proceeding that is pending before the Court at the time of the search), and any other person who establishes to the satisfaction of the Registrar that that person has an interest in or is affected by any such proceeding, or the solicitor or agent of any such party or other person, shall, on giving the Registrar not less than 24 hours' notice in writing, be entitled to search the records of and the documents filed in the Court in relation to the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 68 was substituted, as from 15 August 1991, by rule 6(1) High Court Amendment Rules 1991 (SR 1991/132).

The reference to section 90(1) Human Rights Act 1993 in subclause (1)(a) was substituted, as from 1 February 1994, for a reference to section 42(1) Human Rights Commission Act 1977, pursuant to section 146 Human Rights Act 1993 (1993 No 82).

Investment of funds in Court

69 Application for order

(1) Where in any proceeding money has been, or is to be, paid into Court pursuant to any order of the Court or to any provision of these rules, any party to the proceeding may apply to the Court for an order directing the Registrar to invest the money on such security or securities as the Court thinks fit.

(2) Unless the Court otherwise orders, no application under this rule may be made until 21 days after the money has been paid into Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

70 Powers of Court

(1) On any application under rule 69, the Court, when making an order for investment of the money,

Part 1—*continued*

(a) May direct that any security on which the money is invested shall be taken in the name of the Registrar or in the names of the Registrar and such other person or persons as the Court may nominate; and

(b) May also give

(i) Directions as to the form and the terms of the security; and

(ii) Such other directions as may appear necessary or expedient.

(2) Any order made under this rule may from time to time be varied by the Court on the application of any party to the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

71 Disposal of securities and income

(1) The Court may, on the application of any party to the proceeding, and either at the time of making an order under rule 69 or at any time thereafter, direct

(a) That any security on which money is invested pursuant to rule 69 be transferred to any party or to 2 or more parties in such shares or proportions as it thinks fit; or

(b) That any security be converted into money and that, on any such conversion or on the repayment of the money invested therein, the capital and income received be paid to such party or parties and in such shares or proportions as the Court thinks fit; or

(c) That the capital be paid to one or more parties and the income be paid to any other party or parties and in such shares or proportions as the Court thinks fit.

(2) Unless the Court otherwise directs, the income received from any investment made pursuant to an order under rule 69 shall be paid to the party or parties who shall be found by the Court to be entitled to the capital and in the same shares or proportions.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 1—*continued*

72 No liability on Crown

Neither the Registrar nor the Crown shall be liable for any loss either of capital or of income in respect of any investment made pursuant to and in accordance with an order under rule 69.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Hearings in chambers

72A Hearings in Chambers

Where any proceeding or interlocutory application is heard and decided in Chambers, particulars of the hearing or the decision or both (including the reasons for the decision) may be published unless the Judge, Associate Judge, or Registrar, exercising jurisdiction in Chambers, otherwise directs.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 72A was inserted, as from 1 October 1991, by rule 7 High Court Amendment Rules 1991 (SR 1991/132).

Rule 72A was amended, as from 1 November 2004, by rule 30(2) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judge" for the word "Master".

Hearings by video link

This heading was inserted, as from 1 September 2006, by rule 5 High Court Amendment Rules (No 3) 2006 (SR 2006/211).

72B Interpretation

(1) In this rule and rules 72C to 72E

eligible persons means the persons that the Judge considers should be treated as eligible persons for the purposes of a hearing by video link

judicial location means the courtroom or other place where the Judge hearing a matter by video link is located

remote location means the courtroom or other place, outside the judicial location, where a party, witness, counsel, or other person participating in the hearing of a matter by video link is located

Part 1—*continued*

video link means facilities that enable audio and visual communication between persons at a judicial location and persons at a remote location.

(2) For the avoidance of doubt, **Judge** has the meaning given to it by rule 3(1).

Rules 72B to 72E were inserted, as from 1 September 2006, by rule 5 High Court Amendment Rules (No 3) 2006 (SR 2006/211).

72C Judge or Associate Judge may preside at hearing of certain matters by video link

(1) For the purposes of section 26IB of the Act, a Judge or Associate Judge may, by video link, preside at the hearing of any matter referred to in section 26I of the Act.

(2) A Judge may direct that a matter be heard by video link, on the application of 1 or more parties or on the Judge's own initiative.

(3) This rule is subject to rule 72D.

Rules 72B to 72E were inserted, as from 1 September 2006, by rule 5 High Court Amendment Rules (No 3) 2006 (SR 2006/211).

72D Requirements for hearing by video link

A Judge must not preside at the hearing of a matter by video link under rule 72C unless he or she is satisfied that

(a) the judicial location and every remote location is equipped with facilities that will

(i) enable all eligible persons at every remote location to see and hear the Judge and all eligible persons at the judicial location; and

(ii) enable the Judge and all eligible persons at the judicial location to see and hear all eligible persons at every remote location; and

(iii) enable any document necessary for the purposes of the hearing to be viewed at both the judicial location and every remote location; and

(b) use of a video link is, in all the circumstances, consistent with fairness and the interests of justice.

Part 1—*continued*

Rules 72B to 72E were inserted, as from 1 September 2006, by rule 5 High Court Amendment Rules (No 3) 2006 (SR 2006/211).

72E Incidental directions

(1) A Judge presiding at the hearing of a matter by video link under rule 72C may give directions concerning the procedure for the hearing as he or she thinks fit.

(2) Without limiting subclause (1), the Judge may

(a) direct that an officer of the Court, or other person approved by the Court, be present to operate video equipment:

(b) direct that an officer of the Court, or other person approved by the Court, be present to assist in the hearing, and in particular to

(i) introduce persons appearing or witnesses giving evidence:

(ii) assist with the administration of oaths and affirmations:

(iii) assist with the implementation of any directions or requests given or made by the Judge:

(c) direct seating arrangements at a remote location to ensure all participants in the hearing can be seen and heard:

(d) direct when the video link must be operational in relation to his or her own entry to, or rising from, the judicial location.

Rules 72B to 72E were inserted, as from 1 September 2006, by rule 5 High Court Amendment Rules (No 3) 2006 (SR 2006/211).

Part 2
Commencement and service of proceeding

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

Parties

73 Plaintiffs

(1) All persons may be joined in a proceeding as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction, matter, event, instrument, or other document, or series of the same, or of the same statute, regulation, or bylaw, is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate proceedings any common question of law or fact would arise.

(2) Notwithstanding subclause (1), if, upon the application of any defendant, it appears that any joinder may embarrass or delay the trial of the proceeding, the Court may order separate trials, or make such other order as it thinks fit.

Compare: 1908 No 89 Schedule 2 r 59; *Gazette* 1912, p 1912

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

74 Defendants

(1) All persons may be joined as defendants, against whom the right to any relief in respect of or arising out of the same transaction, matter, event, instrument, or other document, or series of the same, or of the same statute, regulation, or bylaw, is alleged to exist, whether jointly, severally, or in the alternative.

(2) It shall not be necessary that every defendant shall be interested in all the relief claimed in the proceeding, or in every cause of action included therein, but the Court may make such order as appears just to prevent any defendant from being embarrassed or put to expense by being required to attend any part of the proceeding in which he may have no interest.

(3) Where in any proceeding the plaintiff is in doubt as to the person or persons against whom he is entitled to relief, he may join two or more persons as defendants to the intent that, in the proceeding, the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all parties to the proceeding.

Compare: 1908 No 89 Schedule 2 rr 61, 62, 64; *Gazette*, 1912, p 1912

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

75 Third and subsequent parties

(1) Where in any proceeding a defendant claims against any person not already a party to the proceeding (hereinafter referred to as the third party)

(a) That the defendant is entitled to contribution or indemnity; or

(b) That the defendant is entitled to any relief or remedy relating to or connected with the subject-matter of the proceeding and substantially the same as some relief or remedy claimed by the plaintiff against him; or

(c) That any question or issue in the proceeding should properly be determined not only as between the plaintiff and the defendant but also as between the plaintiff, the defendant, and the third party or between any or either of them; or

(d) That any question or issue relating to or connected with the subject-matter of the proceeding is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined as aforesaid,

then the defendant may, within 14 days after the expiration of the time for filing his statement of defence or thereafter with leave of the Court, issue a notice to that effect (hereinafter referred to as a third party notice) to the third party in manner provided by rules 154 to 162.

(2) Where a third party makes as against any person not already a party to the proceeding (hereinafter referred to as a fourth party) such a claim as is defined by subclause (1), the third party may, within 14 days after the expiration of the time for filing his statement of defence or thereafter with the leave of the Court on notice to all other existing parties or with the written consent of all existing parties, issue a notice to that effect (hereinafter referred to as a fourth party notice) to the fourth party in manner provided by rules 154 to 162 and so on successively; but no notice to any subsequent party shall

Part 2—*continued*

be issued without the written consent of all existing parties or without the leave of the Court on an application in that behalf made on notice to the other existing parties.

(3) A third or subsequent party shall, as from the time of service of such notice upon him, be a party to the proceeding, with the same rights in respect of his defence against any claim made against him and otherwise as if he had been made a defendant to a proceeding instituted by the party by whom the notice was issued.

(4) On any application for leave under this rule the Court shall have regard to the delay to the plaintiff as well as to all other relevant circumstances and may grant or refuse leave or may grant leave upon such terms as may appear just.

(5) Where

(a) An application for judgment in any proceeding is pending under rule 136 or rule 137; or

(b) A proceeding is entered on a commercial list established under section 24A of the Act at an office of the Court,

a notice under subclause (1) or subclause (2) of this rule to any person not already a party to the proceeding may be issued only with the leave of the Court.

Compare: 1908 No 89 Schedule 2 rr 95, 99L; SR 1939/9 r 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (5) was inserted, as from 1 January 1989, by rule 3 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

76 Limitation of parties and representation

In all proceedings the number of persons named or joined as parties shall be limited as far as is practicable to those whose presence before the Court is necessary for a due and just determination of the issue or issues arising out of the proceeding or whom it is sought to bind by any judgment given therein.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

77 Trustees, executors, and administrators

Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons in the proceeding; but the Court may, at any stage, order any of such persons to be made parties to the proceeding, either in addition to or in lieu of the trustees, executors, or administrators.

Compare: 1908 No 89 Schedule 2 r 65; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

78 Persons having same interest

Where 2 or more persons have the same interest in the subject-matter of a proceeding, one or more of them may, with the consent of the other or others, or by direction of the Court on the application of any party or intending party to the proceeding, sue or be sued in such proceeding on behalf of or for the benefit of all persons so interested.

Compare: 1908 No 89 Schedule 2 r 79; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

79 Partners

(1) Any 2 or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm (if any).

(2) The opposite party may in such case apply to the firm for the names of the persons who are partners in the firm and, until an affidavit has been filed stating the names and addresses of the partners, all further steps in the proceeding on the part of the partners shall be stayed.

Compare: 1908 No 89 Schedule 2 r 77

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

80 Person trading as a firm

(1) Any person carrying on business in the name of a firm may be sued in the name of the firm.

(2) The opposite party may in such case apply to the Court for an order

(a) Directing that an affidavit be filed stating the name and address of the person carrying on the business; and

(b) Staying any further step in the proceeding on the part of the person carrying on the business until the affidavit has been filed.

Compare: 1908 No 89 Schedule 2 r 78

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

81 Representation by other persons

In respect of any proceeding or intended proceeding, the Court may, on the application of any party or intending party thereto, or of its own motion,

(a) Direct any executor or trustee to represent minors, unborn persons, or absentees, or persons otherwise unrepresented, or appoint counsel to represent them on such counsel undertaking so to do:

(b) Appoint a guardian *ad litem* to represent any person where such a course appears necessary:

(c) Direct the Public Trustee to represent any person or class of persons:

(d) Direct that the Attorney-General or the Solicitor-General be served:

(e) Direct that, with the consent of the Attorney-General, any head of a Government department or other officer may represent the public interest:

(f) Direct that any local authority, public body, or other representative body of persons represent the inhabitants of any locality or any class of persons, unless it appears to the Court that their interests, or the interests of a considerable section of them, may be adverse to those of the local authority or public body or other representative body:

Part 2—*continued*

(g) Where a local authority, public body, or other representative body is itself the plaintiff, or is a party whose interests appear to the Court to be adverse to those of the inhabitants of any locality or any class of persons, or a considerable section of them, direct in what manner those inhabitants or that class or that section shall be represented.

Compare: 1908 No 89 Schedule 2 r 554C; SR 1957/30 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

82 Incapacitated person and minor defined

For the purposes of these rules,

incapacitated person means a person who by reason of physical, intellectual, or mental impairment, whether temporary or permanent, is

(a) not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings; or

(b) unable to give sufficient instructions to issue, defend, or compromise proceedings

minor means a person who has not attained the age of 18 years; and a person is of **full age** if he or she has attained the age of 18 years.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 82 to 88 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Rules 82 to 86 were substituted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

83 Litigation guardian defined

For the purposes of these rules, **litigation guardian**

(a) means

(i) a person who is authorised by or under an enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor

Part 2—*continued*

(but only in a proceeding to which the authority extends); or

(ii) a person who is appointed under rule 86C to conduct a proceeding; and

(b) has the same meaning as the expression "guardian *ad litem*".

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 82 to 88 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Rules 82 to 86 were substituted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

84 Incapacitated person must be represented by litigation guardian

(1) An incapacitated person must have a litigation guardian as his or her representative in any proceeding, unless the Court orders otherwise.

(2) If a person becomes an incapacitated person during a proceeding, a party must not take any step in the proceeding without the permission of the Court until the incapacitated person has a litigation guardian.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 82 to 88 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Rules 82 to 86 were substituted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

85 Minor must be represented by litigation guardian

(1) A minor must have a litigation guardian as his or her representative in any proceeding, unless the Court orders otherwise.

(2) Subclause (1) does not apply to a minor who

(a) is required by an enactment to conduct a proceeding without a litigation guardian; or

(b) is permitted by an enactment to conduct a proceeding without a litigation guardian and elects to do so; or

Part 2—*continued*

(c) is authorised under rule 86 to conduct a proceeding without a litigation guardian.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 82 to 88 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Rules 82 to 86 were substituted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

86 Minor may apply to conduct proceeding without litigation guardian

(1) This rule applies to a minor who

(a) is not required or permitted by an enactment to conduct a proceeding without a litigation guardian; and

(b) is not prohibited by an enactment from conducting a proceeding without a litigation guardian.

(2) A minor who wishes to conduct a proceeding in his or her own name may apply to the Court for authorisation to conduct the proceeding without a litigation guardian.

(3) On an application under subclause (2), the Court may make an order allowing the minor to conduct the proceeding without a litigation guardian if it is satisfied that

(a) the minor is capable of making the decisions required or likely to be required in the proceeding; and

(b) no reason exists that would make it in the interests of the minor to be represented by a litigation guardian.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 82 to 88 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Rules 82 to 86 were substituted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

86A Application of rules 86B to 94 to minors

Rules 86B to 94 apply to a minor to whom rule 85(1) applies, and every reference in those rules to an incapacitated person must be read as if it was also a reference to a minor.

Part 2—*continued*

Rules 86A to 86E were inserted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

86B Court may set aside any step in proceeding

The Court may set aside a step in a proceeding if an incapacitated person did not have a litigation guardian when that step was taken and the Court considers that the incapacitated person was unfairly prejudiced.

Rules 86A to 86E were inserted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

86C Appointment of litigation guardian

(1) This rule applies if an incapacitated person does not have a litigation guardian within the meaning of rule 83(a)(i).

(2) The Court may appoint a litigation guardian if it is satisfied that

- (a) the person for whom the litigation guardian is to be appointed is an incapacitated person; and
- (b) the litigation guardian
  - (i) is able fairly and competently to conduct proceedings on behalf of the incapacitated person; and
  - (ii) does not have interests adverse to those of the incapacitated person; and
  - (iii) consents to being a litigation guardian.

(3) In deciding whether to appoint a litigation guardian, the Court may have regard to any matters it considers appropriate, including the views of the person for whom the litigation guardian is to be appointed.

(4) The Court may appoint a litigation guardian under this rule at any time

- (a) on its own initiative; or
- (b) on the application of any person, including a person seeking to be appointed as litigation guardian.

Rules 86A to 86E were inserted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

Part 2—*continued*

86D Application to be served on person for whom litigation guardian is to be appointed

(1) Unless the Court orders otherwise, an application under rule 86C

(a) may be made ex parte; and

(b) must be served on the person for whom the litigation guardian is to be appointed.

(2) When the person for whom the litigation guardian is to be appointed is a minor,

(a) subclause (1)(b) does not apply; and

(b) unless the Court orders otherwise, the application must be served instead on

(i) the minor's parent or guardian; or

(ii) if there is no parent or guardian, a person of full age who has the care of the minor or with whom the minor lives.

Rules 86A to 86E were inserted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

86E Notification of appointment

(1) A litigation guardian within the meaning of rule 83(a)(i) must file a copy of the order or other document that empowers him or her to conduct the proceeding, at the same time as the first document relating to the proceeding is filed.

(2) A person appointed under rule 86C as a litigation guardian of a party to a proceeding must give notice of the appointment to each other party in the proceeding, as soon as practicable after the appointment.

Rules 86A to 86E were inserted, as from 24 August 2007, by rule 8 High Court Amendment Rules 2007 (SR 2007/206).

87 Powers of litigation guardian

A litigation guardian may do anything in relation to a proceeding that could be done by the incapacitated person if he or she were not an incapacitated person.

Compare: 1908 No 89 Schedule 2 r 76

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

Rules 82 to 88 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

88 Heading on documents if incapacitated person represented by litigation guardian

The heading of every document filed in a proceeding in which an incapacitated person is represented by a litigation guardian must state the name of the incapacitated person followed by the words "by his/her litigation guardian" and the name of the litigation guardian.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 88 was amended, as from 1 October 1988, pursuant to section 117(3) Protection of Personal and Property Rights Act 1988 (1988 No 4) by substituting the words "person subject to a property order as defined in section 2 of the Protection of Personal and Property Rights Act 1988" and the expression "section 31" for the words "protected patient as defined in section 82 of the Mental Health Act 1969" and the expression "Part 7" respectively.

Rule 88 was substituted, as from 1 January 1993, by rule 5 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rules 82 to 88 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

88A Costs

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 88A and 88B were inserted, as from 1 January 1993, by rule 5 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rules 88A and 88B were repealed, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

88B Cessation or variation of property order

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 88A and 88B were inserted, as from 1 January 1993, by rule 5 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Part 2—*continued*

Rules 88A and 88B were repealed, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

89 Service of documents

(1) A party who knows that an incapacitated person has a litigation guardian must serve any document in a proceeding

(a) on the litigation guardian, unless the litigation guardian has filed an address for service:

(b) where the litigation guardian has filed an address for service, at that address for service.

(2) Subclause (3) applies to a party who believes on reasonable grounds that a person is an incapacitated person but does not know if that person has a litigation guardian.

(3) The party

(a) may apply to the Court for the appointment of a litigation guardian under rule 86C; and

(b) may apply for directions as to service; and

(c) must serve any documents in the proceeding in accordance with any directions as to service.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 89 to 92 were substituted, as from 1 January 1993, by rule 5 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

The reference to the Mental Health (Compulsory Assessment and Treatment) Act 1992 was substituted for a reference to the Mental Health Act 1969 pursuant to section 137(1) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Rules 89 to 94 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Rule 89 was substituted, as from 24 August 2007, by rule 9 High Court Amendment Rules 2007 (SR 2007/206).

90 Representation of incapacitated person by litigation guardian to be disregarded in making award of costs

The fact that an incapacitated person is, or has been, represented by a litigation guardian must be disregarded in making

Part 2—*continued*

an award of costs under these rules in favour of or against the incapacitated person.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 89 to 92 were substituted, as from 1 January 1993, by rule 5 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rules 89 to 94 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

91 Award of costs enforceable against incapacitated person or litigation guardian

(1) Unless the Court otherwise orders, an award of costs made against an incapacitated person may be enforced against

(a) the incapacitated person; or

(b) the person who is the litigation guardian of the incapacitated person at the time the costs determination is made; or

(c) a person against whom an order for indemnity or contribution has been made under rule 92(1) to the extent of the amount of the indemnity or contribution; or

(d) any of those persons.

(2) Unless the Court orders otherwise, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs paid by the litigation guardian under subclause (1)(b), (c), or (d).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 89 to 92 were substituted, as from 1 January 1993, by rule 5 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rules 89 to 94 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

92 Liability of former litigation guardian for costs subsequently awarded against incapacitated person

(1) The Court may make an order

(a) directing a person who has ceased to be a litigation guardian of an incapacitated person (**former litigation**

Part 2—*continued*

guardian) to indemnify the incapacitated person or the current litigation guardian of the incapacitated person for any costs subsequently awarded against the incapacitated person in relation to any steps taken in the proceeding by the former litigation guardian:

(b) directing a former litigation guardian to indemnify the incapacitated person or the current litigation guardian of the incapacitated person on a basis specified by the Court for any costs subsequently awarded against the incapacitated person in relation to any steps taken in the proceeding after the former litigation guardian ceased to be the litigation guardian:

(c) directing the former litigation guardian to make a contribution to the costs referred to in paragraph (a) or paragraph (b):

(d) declaring that the former litigation guardian is not liable for any of the costs referred to in paragraph (a) or paragraph (b).

(2) A former litigation guardian may be required by an incapacitated person or by the current litigation guardian of the incapacitated person to satisfy any order made under subclause (1)(a), (b), or (c).

(3) The Court may, on the application of a former litigation guardian, declare that the former litigation guardian is not liable to comply with an order made under subclause (1)(a), (b), or (c) if the Court is satisfied that, having regard to circumstances occurring after the order was made, it is no longer just that the former litigation guardian should have to comply with the order.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 89 to 92 were substituted, as from 1 January 1993, by rule 5 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rules 89 to 94 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Part 2—*continued*

93 Litigation guardian may be reimbursed out of property of incapacitated person for costs

Unless the Court otherwise orders, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs (including any solicitor and client costs) paid or incurred or to be paid or incurred by the litigation guardian on behalf of the incapacitated person.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 89 to 94 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

94 Retirement, removal, or death of litigation guardian

(1) A litigation guardian may not retire without the leave of the Court.

(2) Unless the Court orders otherwise, the appointment of a litigation guardian under rule 86C ends if another person is subsequently authorised by or under an enactment to conduct the proceeding in the name of, or on behalf of, the incapacitated person.

(3) A litigation guardian may be removed by the Court when it is in the interests of the person he or she represents.

(4) In the case of retirement, removal, or death of a litigation guardian, no further step may be taken in the proceeding without the leave of the Court until the incapacitated person is represented by another litigation guardian.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 89 to 94 were substituted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Rules 94 to 94B were substituted, as from 24 August 2007, by rule 10 High Court Amendment Rules 2007 (SR 2007/206).

Part 2—*continued*

94A Procedure where person ceases to be incapacitated person

(1) The Court must make an order terminating the appointment of a litigation guardian if it is satisfied that the person the litigation guardian represents is no longer an incapacitated person.

(2) The Court may make an order at any time

(a) on its own initiative; or

(b) on the application of

(i) the incapacitated person; or

(ii) his or her litigation guardian; or

(iii) a party.

(3) From the date of the order,

(a) all subsequent steps in the proceeding must be carried on by the person formerly represented by the litigation guardian; and

(b) the person formerly represented by the litigation guardian is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not an incapacitated person.

Rules 94A and 94B were inserted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Rules 94 to 94B were substituted, as from 24 August 2007, by rule 10 High Court Amendment Rules 2007 (SR 2007/206).

94B Procedure where minor attains full age

(1) A minor who attains full age must file and serve an affidavit confirming that he or she is no longer a minor.

(2) Unless the Court orders otherwise, from the date a minor attains full age

(a) the appointment of his or her litigation guardian ends; and

(b) all subsequent steps in the proceeding must be carried on by that person; and

(c) that person is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had

Part 2—*continued*

become a party to the proceeding when he or she was not a minor.

Rules 94A and 94B were inserted, as from 1 February 2003, by rule 8 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Rules 94 to 94B were substituted, as from 24 August 2007, by rule 10 High Court Amendment Rules 2007 (SR 2007/206).

95 Relators

(1) A relator seeking to bring a proceeding by the Attorney-General on his relation, must be approved by the Attorney-General and shall be liable for the costs of the proceeding.

(2) If the relator or all the relators die or become incapable of acting, the proceeding shall not abate, but the Court may stay the proceeding until the name of a new relator has been substituted after he has been approved by the Attorney-General.

(3) No person shall be named as a relator in a proceeding until he has authorised the solicitor issuing the proceeding so to name him.

(4) The authority under subclause (3) shall be in writing signed by the proposed relator and shall be filed in the office of the Court in which the proceeding is to be commenced.

Compare: 1908 No 89 Schedule 2 rr 508, 510, 511; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

96 Misjoinder of parties

No proceeding shall be defeated by reason of the misjoinder of parties, and the Court may in every proceeding deal with the matter in controversy in accordance with the rights and interests of the parties before it.

Compare: 1908 No 89 Schedule 2 r 89

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

97 Striking out and adding parties

(1) The Court may at any stage of a proceeding, either upon or without the application of any party, and on such terms as appear to the Court to be just, order

(a) That the name of any party, whether as plaintiff or as defendant, improperly or mistakenly joined be struck out:

(b) That the name of any person who ought to have been joined, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the proceeding be added, whether as plaintiff or defendant.

(2) Notwithstanding subclause (1)(b), no person shall be added as plaintiff without his consent.

Compare: 1908 No 89 Schedule 2 r 90; SR 1954/155 r 2(1); SR 1961/174 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Change of parties by death, etc

98 When proceeding not to abate

(1) No proceeding shall abate by reason of the death or bankruptcy of any of the parties if the cause of action survives or continues.

(2) No proceeding shall become defective by the assignment, creation, or devolution of any estate or title while the proceeding is pending.

Compare: 1908 No 89 Schedule 2 r 454

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

99 Procedure on devolution of interest

In case of the death, or bankruptcy, or devolution of estate by operation of law, of any party to a proceeding, the Court, if it is deemed necessary for the complete settlement of all the questions involved in the proceeding, shall order that the personal representative, trustee, or other successor in the interest (if any) of that party be made a party to the proceeding, or be

Part 2—*continued*

served with notice thereof, in such manner and form as is hereinafter prescribed, and on such terms as the Court thinks just, and shall make such order for the disposal of the proceeding as it thinks just.

Compare: 1908 No 89 Schedule 2 r 455; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

100 Devolution *pendente lite*

In the case of an assignment, creation, or devolution of any estate or title while a proceeding is pending, the proceeding may be continued by or against the person to or upon whom such estate or title has come or devolved.

Compare: 1908 No 89 Schedule 2 r 456

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

101 Order as to new parties

Where, by reason of death or bankruptcy or any other event occurring after the commencement of a proceeding and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the proceeding, it becomes necessary or desirable that any person not already a party to the proceeding should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceeding shall be carried on between the continuing parties to the proceeding and the new party or parties may be obtained *ex parte* on application to the Court upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

Compare: 1908 No 89 Schedule 2 r 457; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

102 Service and effect of order

An order obtained under rule 101 shall, unless the Court otherwise directs, be served upon the continuing party or parties to the proceeding, and also upon each new party, unless the person making the application is himself the only new party; and, subject to rules 103 and 104, the order shall from the time of service be binding on the person served therewith; and every person served therewith who is not already a party shall be bound to file a statement of defence within the same time and in the same manner as if he had been served with a statement of claim.

Compare: 1908 No 89 Schedule 2 r 458; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

103 Application to discharge or vary order

Where any person who is under no disability, or being under disability but having a next friend or guardian *ad litem* in the proceeding, is served with an order obtained under rule 101, he may apply to the Court to discharge or vary the order within 12 days from the service thereof.

Compare: 1908 No 89 Schedule 2 r 459; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

104 Application to discharge or vary order by person under disability

Where any person being under any disability and not having had a next friend or guardian *ad litem* appointed in the proceeding is served with an order obtained under rule 101, he may apply to the Court to discharge or vary the order within 12 days from the appointment of a next friend or guardian *ad litem* for that party, and until the period of 12 days has expired the order shall have no force or effect as against the last-mentioned person.

Compare: 1908 No 89 Schedule 2 r 460; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

105 Change of name

If the name of any party is incorrectly stated in the pleadings or is changed by marriage, by civil union, by deed poll, or otherwise, that name may be amended, without any application to the Court, by a notice signed by the party and filed and served on all other parties.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 105 was amended, as from 1 July 2005, by rule 4 High Court Amendment Rules 2005 (SR 2005/148) by substituting the words "", by civil union, by deed poll," for the words "or by deed poll".

Statement of claim

106 Proceeding commenced by filing statement of claim

(1) Every proceeding (other than a non-contentious application for administration or an appeal from a determination of a District Court or a statutory tribunal) shall be commenced by filing a statement of claim in the proper office of the Court, as determined in accordance with rule 107(1).

(2) Notwithstanding subclause (1), the statement of claim may be filed in any office of the Court if the parties agree, by endorsement on the statement of claim, to the filing of the statement of claim in that office.

Compare: 1908 No 89 Schedule 2 r 1

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

107 Proper office of the Court

(1) The proper office of the Court, for the purposes of rule 106(1), shall be determined as follows:

(a) Where any defendant is resident or has his principal place of business in New Zealand, that office shall be the office of the Court nearest to the residence or principal place of business of the defendant:

Provided that where there are 2 or more defendants, that office shall be determined by reference to the first-named defendant who is resident or has his principal place of business in New Zealand:

Part 2—*continued*

(b) Where no defendant is resident or has his principal place of business in New Zealand, that office shall be such office as the plaintiff selects:

(c) Notwithstanding paragraphs (a) and (b), where the Crown is a defendant, that office shall be the office nearest to the place where the cause of action or a material part thereof arose.

(d) despite paragraphs (a) to (c), that office is the office of the Court at Wellington in the case of proceedings that consist of or include 1 or more of the following kinds of action or application:

(i) an application for judicial review under Part 1 of the Judicature Amendment Act 1972 that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002:

(ii) an action for or in the nature of mandamus, prohibition, certiorari, declaration, or injunction, that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002:

(iii) an application under section 35, section 47E, or section 55 of the Terrorism Suppression Act 2002.

(2) Notwithstanding subclause (1)(a), if the place where the cause of action sued on, or some material part thereof, arose is nearer to the place where the plaintiff or the plaintiff firstnamed in the statement of claim resides than to the place where the defendant resides, the proper office of the Court for the purposes of rule 106(1) shall, at the option of the plaintiff or the plaintiff firstnamed, as the case may be, be the office nearest to the residence of the plaintiff or the plaintiff firstnamed, as the case may be.

(3) Where a plaintiff proposes to exercise the option conferred by subclause (2), he shall file with the statement of claim and notice of proceeding an affidavit by himself or his solicitor showing the place where the cause of action or the material part thereof arose and showing that that place is nearer to the place

Part 2—*continued*

where the plaintiff or the plaintiff firstnamed in the statement of claim resides than to the place where the defendant resides.

(4) Where it appears to the Court on application made to it that the statement of claim has been filed in the wrong office of the Court or that any other office of the Court would be more convenient to the parties, it may direct that the statement of claim be filed in such other office, or that all documents filed in the proceeding be transferred to the proper office or, as the case may be, to such other office which shall thereupon be deemed to be the proper office.

(5) In this rule,

(a) paragraphs (a) to (c) of subclause (1) are subject to subclauses (2) and (3); and

(b) paragraph (d) of subclause (1) overrides subclauses (2) to (4).

Compare: 1908 No 89 Schedule 2 rr 4, 8-10; SR 1973/39 r 3(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 1 June 2006, by rule 7(1) High Court Amendment Rules 2006 (SR 2006/98) by omitting the words "", subject to subclauses (2) and (3),"". *See* rule 24 of those rules as to the transitional provision relating to costs.

Subclause (1)(d) was inserted, as from 1 June 2006, by rule 7(2) High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Subclause (5) was revoked, as from 1 October 1991, by rule 8 High Court Amendment Rules 1991 (SR 1991/132).

Subclause (5) was inserted, as from 1 June 2006, by rule 7(3) High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

108 Statement of claim to show nature of claim, etc

The statement of claim

(a) Shall show the general nature of the plaintiff's claim to the relief sought; and

(b) Shall give such particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances as may suffice to inform the Court

Part 2—*continued*

and the party or parties against whom relief is sought of the plaintiff's cause of action; and

(c) Shall state specifically any claim for interest; and

(d) In a proceeding against the Crown that is instituted against the Attorney-General, shall give particulars of the Government department or officer of the Crown concerned.

Compare: 1908 No 89 Schedule 2 rr 112, 136, 136A; SR 1952/122 r 18

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

109 Statement of claim to specify relief sought

The statement of claim shall conclude by specifying the relief or remedy sought.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

110 Joinder of several causes of action

(1) Subject to subclauses (2) and (3), a plaintiff may join in the same statement of claim several causes of action.

(2) Claims by or against an Official Assignee in Bankruptcy, or a liquidator or a receiver of a company, as such, shall not, unless by leave of the Court, be joined with any claim by or against him in any other capacity.

(3) Claims by or against an executor or administrator or trustee, as such, shall not be joined with claims by or against him personally unless the last-mentioned claims are alleged to arise with reference to the estate or trust in respect of which he sues or is sued as executor or administrator or trustee.

Compare: 1908 No 89 Schedule 2 rr 100, 102, 104; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

111 Joint plaintiffs

Claims by plaintiffs jointly may be joined with claims by them or any of them against the same defendant.

Compare: 1908 No 89 Schedule 2 r 105

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

112 Joining claims by or against spouses or partners

Claims by or against spouses, civil union partners, or de facto partners may be joined with claims by or against either of those spouses, civil union partners, or de facto partners if the opposite party is the same person.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 112 was substituted, as from 1 July 2005, by rule 5 High Court Amendment Rules 2005 (SR 2005/148).

113 Court may order separate trials

In any case where justice so requires, the Court may order separate trials of causes of action and, for that purpose, may direct the order of the separate trials, or may make such other order as the Court thinks just.

Compare: 1908 No 89 Schedule 2 rr 100, 107, 108; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

114 Relief to be sought for each cause of action

A statement of claim which includes two or more causes of action shall specify separately the relief or remedy sought by the plaintiff on each cause of action.

Compare: 1908 No 89 Schedule 2 r 115

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

115 Unnecessary to ask for general relief

The relief claimed shall be stated specifically, either simply or in the alternative, and it shall not be necessary to ask for general or other relief; but the Court may, if it thinks just, grant any other relief to which the plaintiff may be entitled, notwithstanding that that relief has not been specifically claimed and there is no claim for general or other relief.

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

116 Amount of money claim

If the statement of claim seeks the recovery of a sum of money, the amount shall be stated as precisely as the nature of the case admits.

Compare: 1908 No 89 Schedule 2 r 117

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

117 Special damages

If the plaintiff seeks to recover special damages, the statement of claim shall show the nature and particulars thereof.

Compare: 1908 No 89 Schedule 2 r 114

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

118 Set-off

If the plaintiff wishes to allow a set-off or to relinquish a portion of his claim, the statement of claim shall show the amount so allowed or relinquished.

Compare: 1908 No 89 Schedule 2 r 113

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

119 Representative capacity of party

If any party to a proceeding sues or is sued in a representative capacity, the statement of claim shall show in what capacity he sues or is sued.

Compare: 1908 No 89 Schedule 2 r 111

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

Notice of proceeding

120 Notice of proceeding to be filed with statement of claim

Subject to rule 124, there shall be filed with every statement of claim a notice to the defendant to be called a notice of proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

121 Requirements as to notice of proceeding

(1) The notice of proceeding

(a) Shall be signed by the plaintiff or his solicitor:

(b) Shall state the place for the filing of a statement of defence and the time within which the statement of defence is required to be filed, in accordance with these rules:

(c) Shall warn the defendant that if he does not file his statement of defence within the required time the plaintiff may at once proceed to judgment on his claim and judgment may be given in the absence of the defendant.

(2) The notice of proceeding shall be in form 5.

(3) Where the Court has directed that any person other than the defendant named in the title of the proceeding be served, a statement to that effect setting out the name, place of residence, and occupation of every such person shall be appended to the notice of proceeding, and such statement shall be signed by the Registrar.

(4) There shall be endorsed on the notice of proceeding or annexed thereto a memorandum signed by the Registrar in form 6 or form 7 or form 8, as may be appropriate.

Compare: 1908 No 89 Schedule 2 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

122 Place and time for filing statement of defence

Unless otherwise ordered by the Court,

Part 2—*continued*

(a) The place for filing the statement of defence shall be the office of the Court in which the statement of claim was filed or into which it has been transferred; and

(b) The time within which the statement of defence is required to be filed shall be within 30 days after the day on which the statement of claim and notice of proceeding are served on the defendant.

Compare: 1908 No 89 Schedule 2 r 4; SR 1973/39 r 3(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

123 Place of trial

Subject to rule 479, the place at which the proceeding shall be tried, if a trial is necessary, shall be the town where the office of the Court in which the statement of defence is to be filed is situated:

Provided that where that office is situated at Masterton, the place for the trial of the proceedings shall be Wellington and where that office is situated at Tauranga the place for the trial of the proceedings shall be Rotorua.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The proviso was substituted, as from 1 September 1987, by rule 2 High Court Amendment Rules (No 3) 1987 (SR 1987/230).

124 When not necessary to file notice of proceeding

Unless the Court so orders, it shall not be necessary to file or serve a notice of proceeding

(a) Where no relief against any person is claimed in the statement of claim (as, for example, in the case of a company's application to be put into liquidation by the Court, or a person's application to be adjudicated bankrupt); or

(b) Where service of the notice is dispensed with

(i) By statute; or

(ii) Under these rules; or

(iii) By order of the Court.

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 124(a) was amended, as from 1 July 1994, by rule 3 High Court Amendment Rules 1994 (SR 1994/135) by substituting the words "put into liquidation" for the words "wound up".

Service of statement of claim and notice of proceeding

125 Service generally

(1) Except as otherwise provided by any Act or these rules or any order made under these rules, every statement of claim and notice of proceeding shall be served, in accordance with these rules,

(a) On every defendant named therein; and

(b) On every other person directed to be served therewith.

(2) Notwithstanding subclause (1), in any civil proceeding against the Crown in which the Attorney-General is named as defendant or is directed to be served on behalf of the Crown or in which the Crown is joined by joining the Attorney-General as a party or third or subsequent party, service on the Crown shall be effected in accordance with section 16 of the Crown Proceedings Act 1950.

Compare: 1908 No 89 Schedule 2 rr 25, 45A; SR 1952/122 r 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

126 Personal service required

Subject to rule 125(2) and except where the Court directs or these rules require or permit a different mode of service, the statement of claim and notice of proceeding shall be served personally.

Compare: 1908 No 89 Schedule 2 r 25

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

127 Prompt service required

(1) The statement of claim and notice of proceeding shall be served

Part 2—*continued*

(a) As soon as practicable after they are filed; or

(b) Where directions as to service are sought, as soon as practicable after such directions have been given.

(2) Unless service is effected within 12 months after the day on which the statement of claim and notice of proceeding are filed or within such further time as the Court may allow, the proceeding shall be deemed to have been discontinued by the plaintiff against any defendant or other person directed to be served who has not been served.

Compare: 1908 No 89 Schedule 2 r 32

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

128 Extension of time for service

(1) The plaintiff may, before or after the expiration of the period referred to in rule 127, apply to the Court for an order extending that period in respect of any person (being a defendant or other person directed to be served) who has not been served.

(2) On an application under subclause (1), the Court, if satisfied that reasonable efforts have been made to effect service on that defendant or person, or for other good reason, may extend the period of service for 6 months from the date of the order and so on from time to time while the proceeding is pending.

Compare: 1908 No 89 Schedule 2 r 35; SR 1951/75 r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Statement of defence and appearance

129 Filing and service of statement of defence

(1) A defendant who intends to defend the proceeding

(a) Shall, within the number of days stated in the notice of proceeding, file in the office of the Court named in the notice a statement of his defence to the plaintiff's claim; and

(b) Shall serve a copy of his statement of defence on the plaintiff and any other party.

Part 2—*continued*

(2)

Compare: 1908 No 89 Schedule 2 rr 2, 592, 593; SR 1963/169 r 2(2)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was revoked, as from 1 October 2001, by rule 5 High Court Amendment Rules 2001 (SR 2001/220).

130 Requirements as to statement of defence

(1) The statement of defence shall either admit or deny the allegations of fact in the statement of claim but no defendant shall be required to plead to an allegation that does not affect him.

(2) Where the defendant denies any allegation of fact in the statement of claim he must not do so evasively but must answer the point in substance. Thus, if it is alleged that the defendant received a sum of money, it shall not be sufficient to deny receipt of the particular amount, but he must deny that he received that sum or any part thereof, or set out how much he received; and when a matter is alleged with circumstances it shall not be sufficient to deny it as alleged with those circumstances, but a fair and substantial answer must be given.

(3) Every allegation not denied shall be deemed to be admitted.

(4) Where an affirmative defence is intended, it shall be pleaded.

(5) The statement of defence shall give such particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances as may suffice to inform the Court, the plaintiff, and any other parties of the defendant's defence.

Compare: 1908 No 89 Schedule 2 rr 125-128

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

131 Appearance under protest to jurisdiction

(1) A defendant who objects to the jurisdiction of the Court to hear and determine the proceeding in which he has been served may, within the time limited for filing his statement of defence and instead of so doing, file and serve an appearance stating his objection and the grounds thereof.

Part 2—*continued*

(2) The filing and serving of an appearance under subclause (1) shall not be or be deemed to be a submission to the jurisdiction of the Court in the proceeding.

(3) A defendant who has filed an appearance under subclause (1) may apply to the Court to dismiss the proceeding on the ground that the Court has no jurisdiction to hear and determine it.

(4) On hearing an application under subclause (3), the Court,

(a) If it is satisfied that it has no jurisdiction to hear and determine the proceeding, shall dismiss the proceeding; but

(b) If it is satisfied that it has jurisdiction to hear and determine the proceeding, shall dismiss the application and set aside the appearance.

(5) At any time after an appearance has been filed under subclause (1), the plaintiff may apply to the Court by interlocutory application to set aside the appearance.

(6) On hearing an application under subclause (5), the Court,

(a) If it is satisfied that it has jurisdiction to hear and determine the proceeding, shall set aside the appearance; but

(b) If it is satisfied that it has no jurisdiction to hear and determine the proceeding, shall dismiss both the application and the proceeding.

(7) The Court, in exercising its powers under this rule, may do so on such terms and conditions as may be just and, in particular, on setting aside the appearance may enlarge the time within which the defendant may file and serve a statement of defence and may give such directions as may appear necessary regarding any further steps in the proceeding in all respects as though the application were an application for directions under rule 425.

(8) Where the appearance set aside has been filed in relation to a proceeding in which the plaintiff has applied for judgment under rule 136 or rule 137, the Court

(a) Shall enlarge the time within which the defendant may file and serve

(i) A notice of opposition; and

Part 2—*continued*

(ii) An affidavit by or on behalf of the defendant in answer to the affidavit by or on behalf of the plaintiff; and

(b) May under subclause (7), give such other directions as appear necessary regarding any further steps in the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (7) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 425" for the words "rule 437 or rule 438". *See* rule 19 of those Rules as to the transitional provisions.

Subclause (8) was inserted, as from 1 January 1989, by rule 4 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

132 Appearance for ancillary purposes

A defendant who does not oppose the plaintiff's claim but who desires to be heard on any ancillary matter (including costs) may, without filing a statement of defence, file and serve an appearance setting forth those matters and thereafter no matter therein specified shall be determined except on notice to that defendant.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

133 Appearance reserving rights

(1) A defendant who does not oppose the plaintiff's claim but who desires to reserve his rights in the event that any other person may become a party to the proceeding or that any person, already a party, may take some steps in the proceeding adverse to the defendant's interests, may, without filing a statement of defence, file and serve an appearance reserving those rights, and thereafter he shall be entitled to be served with all documents relevant to the rights so reserved that may be filed in the proceeding by any person who is or may become a party thereto.

(2) A defendant who has filed an appearance under subclause (1) may at any time, by leave of the Court, file and serve a statement of defence and any other document within such

Part 2—*continued*

time and upon such terms and conditions as may be prescribed by the Court when granting such leave.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

134 Forms

Form 10 or form 11 or form 12 may be used, as appropriate, for the purpose of entering an appearance under rules 131 to 133.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Summary proceeding for recovery of land

Rules 134A to 134H and the heading "Summary Proceeding for Recovery of Land" were inserted, as from 1 August 1987, by rule 3 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

134A Application of rules relating to summary proceeding for recovery of land

(1) Rules 134B to 134H apply to every proceeding in which the plaintiff claims the recovery of land that is occupied solely by a person or persons (not being a tenant or tenants or subtenant or subtenants holding over after the termination of a tenancy or subtenancy) who entered into or remained in occupation without the plaintiff's licence or consent or that of any predecessor in title of the plaintiff.

(2) Nothing in this rule or in rules 134B to 134H limits the application, in relation to any proceeding for the recovery of land, of rules 136 to 144.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 134A to 134H and the heading "Summary Proceeding for Recovery of Land" were inserted, as from 1 August 1987, by rule 3 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

134B Defendants

(1) In a proceeding to which this rule applies, the plaintiff shall, subject to subclause (2), name as a defendant in the statement

Part 2—*continued*

of claim each person who is known to the plaintiff to be in occupation of the land.

(2) If the plaintiff does not know the name of any person in occupation of the land, the plaintiff may commence the proceeding without naming any person as defendant.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 134A to 134H and the heading "Summary Proceeding for Recovery of Land" were inserted, as from 1 August 1987, by rule 3 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

134C Affidavit in support

In a proceeding to which this rule applies, the plaintiff shall file with the statement of claim an affidavit

(a) Stating the interest of the plaintiff in the land; and

(b) Stating the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and

(c) If the statement of claim does not name any person as defendant, stating that the plaintiff does not know the name of any person in occupation of the land.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 134A to 134H and the heading "Summary Proceeding for Recovery of Land" were inserted, as from 1 August 1987, by rule 3 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

134D Service

(1) In the case of a proceeding to which this rule applies,

(a) The statement of claim; and

(b) The notice of proceeding; and

(c) A copy of the affidavit required by rule 134C; and

(d) A copy of any exhibit referred to in the affidavit required by rule 134C,

shall be served on each defendant, if any, and on each person occupying the land who is not a defendant.

(2) In the case of a defendant, service shall be effected in accordance with rule 126.

Part 2—*continued*

(3) In the case of a person occupying the land who is not a defendant, service (except where the Court directs or permits a different mode of service) shall be effected

(a) By affixing to some conspicuous part of the land the documents required to be served pursuant to subclause (1); and

(b) If practicable, by leaving in the letterbox or other receptacle for mail on the land the documents required to be served pursuant to subclause (1) (which documents shall be enclosed in a sealed envelope addressed to "The Occupiers").

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 134A to 134H and the heading "Summary Proceeding for Recovery of Land" were inserted, as from 1 August 1987, by rule 3 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

134E Time for filing statement of defence

Notwithstanding anything in rule 122(b), where service is effected in accordance with rule 134D(3), the time within which the statement of defence is required to be filed shall be within 30 days after the day on which service is effected under rule 134D(3).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 134A to 134H and the heading "Summary Proceeding for Recovery of Land" were inserted, as from 1 August 1987, by rule 3 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

134F Power of Court to make occupiers defendants

In the case of any proceeding to which this rule applies, the Court may order that a person occupying the land to which the proceeding relates who is not a defendant be made a defendant or be added as a defendant, as the case may require.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 134A to 134H and the heading "Summary Proceeding for Recovery of Land" were inserted, as from 1 August 1987, by rule 3 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Part 2—*continued*

134G Judgment for possession

Rule 461 shall not apply in respect of a proceeding to which this rule applies.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 134A to 134H and the heading "Summary Proceeding for Recovery of Land" were inserted, as from 1 August 1987, by rule 3 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Rule 134G was substituted, as from 1 February 1994, by rule 11 High Court Amendment Rules 1993 (SR 1993/420).

134H Writ of possession

(1) No writ of possession to enforce a judgment for possession in a proceeding to which this rule applies shall issue without the leave of the Court after 3 months have elapsed since the date of the judgment.

(2) An application for leave under subclause (1) may be made by way of an *ex parte* application unless the Court otherwise directs.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 134A to 134H and the heading "Summary Proceeding for Recovery of Land" were inserted, as from 1 August 1987, by rule 3 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Summary judgment procedure

135 Application of summary judgment procedure

Rules 136 to 144 apply to every proceeding other than

(a) A proceeding under Part 8, Part 9A, Part 10, Part 11, or Part 15; or

(b) An application for a writ of habeas corpus.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 135 was substituted, as from 1 February 1994, by rule 12 High Court Amendment Rules 1993 (SR 1993/420).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

Part 2—*continued*

Rule 135(a) was amended, as from 1 December 1998, by rule 3 High Court Amendment Rules (No 2) 1998 (SR 1998/325) by substituting the words "Part 14, or Part 15" for the words "or Part 14".

Paragraph (a) was amended, as from 1 January 2000, by rule 8 High Court Amendment Rules 1999 (SR 1999/334) by omitting the expression "Part 14,".

136 Judgment where there is no defence or where no cause of action can succeed

(1) The Court may give judgment against a defendant if the plaintiff satisfies the Court that the defendant has no defence to a claim in the statement of claim or to a particular part of any such claim.

(2) The Court may give judgment against a plaintiff if the defendant satisfies the Court that none of the causes of action in the plaintiff's statement of claim can succeed.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclauses (2) and (3) were inserted, as from 1 January 1989, by rule 6 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

137 Summary judgment on liability

The Court may give judgment on the issue of liability, and direct a trial of the issue of amount (at such time and place as it thinks fit), if the party applying for summary judgment satisfies the Court that the only issue to be tried is one as to the amount claimed.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

138 Interlocutory application for summary judgment

(1) Application for judgment under rule 136 or rule 137 must be made by interlocutory application.

(2) An application by a plaintiff must be made at the time the statement of claim is served on the defendant, or later with the leave of the Court.

Part 2—*continued*

(3) An application by a defendant must be made at the time the statement of defence is served on the plaintiff, or later with the leave of the Court.

(4) The party making the application must file and serve on the other party the following documents:

(a) If the party is a plaintiff, a notice of proceeding in form 13:

(b) A notice of interlocutory application in form 19:

(c) A statement of claim (if the application is made by the plaintiff):

(d) A statement of defence (if the application is made by the defendant):

(e) A supporting affidavit.

(5) That affidavit

(a) Must be by or on behalf of the person making the application:

(b) If given by or on behalf of the plaintiff, must verify the allegations in the statement of claim to which it is alleged that the defendant has no defence, and must depose to the deponent's belief that the defendant has no defence to the allegations and set out the grounds of that belief:

(c) If given by or on behalf of the defendant, must show why none of the causes of action in the plaintiff's statement of claim can succeed.

(6)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3) was inserted, as from 1 October 1991, by rule 10 High Court Amendment Rules 1991 (SR 1991/132).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

Subclause (4)(a) was substituted, as from 1 October 2001, by rule 6 High Court Amendment Rules 2001 (SR 2001/220).

Subclause (6) was revoked, as from 1 January 2000, by rule 9 High Court Amendment Rules 1999 (SR 1999/334).

Part 2—*continued*

138A Service out of New Zealand

A plaintiff who makes an application under rule 136 or rule 137 must serve the documents specified in rule 138(4) on a defendant who is overseas,

(a) if the defendant is served in the Commonwealth of Australia, not less than 21 days before the date for hearing the application:

(b) if the defendant is served elsewhere, not less than 35 days before the date for hearing the application.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 138A was inserted, as from 1 January 1989, by rule 8 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

Rule 138A was substituted, as from 1 October 2001, by rule 7 High Court Amendment Rules 2001 (SR 2001/220).

139 Requirements as to notice of proceeding

Rule 121 does not apply to a proceeding to which rules 136 to 144 apply.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

140 Time for service

(1) The documents specified in rule 138(4) must be served on the other party to the proceeding not less than 21 days before the date for hearing the application.

(2) This rule is subject to rule 138A.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was inserted, as from 1 June 1990, by rule 6 High Court Amendment Rules 1990 (SR 1990/66).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

Rule 140 was substituted, as from 1 October 2001, by rule 8 High Court Amendment Rules 2001 (SR 2001/220).

Part 2—*continued*

140A Enlargement of hearing

The Registrar, on request, may enlarge the hearing whenever the documents specified in rule 138(4) have not been served within the time prescribed by rule 140(1) by

(a) Striking out the original date of hearing shown in the notice of interlocutory application; and

(b) Inserting a new date; and

(c) Initialling the new date in the margin opposite the alteration.

Rule 140A was inserted, as from 1 January 1987, by rule 6 High Court Amendment Rules 1986 (SR 1986/228).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

141 Notice of opposition and affidavit in answer

(1) A party who intends to oppose an application for judgment under rule 136 or rule 137 must, at least 3 working days before the date for hearing the application, file in the Court and serve on the party making the application

(a) A notice of opposition in form 21; and

(b) An affidavit by or on behalf of the party intending to oppose the application in answer to the affidavit by or on behalf of the party making the application,

otherwise the party will not be heard in opposition to the application without the leave of the Court.

(2) Rule 244(3) applies, with all necessary modifications, in relation to a notice of opposition filed under subclause (1)(a).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 141 was substituted, and rules 141A and 141B were inserted, as from 1 January 1989, by rule 9 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

Subclause (2) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "Rule 244(3)" for the expression "Rule 244". *See* rule 19 of those Rules as to the transitional provisions.

Part 2—*continued*

141A Statement of defence

A defendant who has filed both a notice of opposition and an affidavit under rule 141 may, in addition, file a statement of defence in the office of the Court in which the notice of opposition and the affidavit were filed.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 141 was substituted, and rules 141A and 141B were inserted, as from 1 January 1989, by rule 9 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

141B Affidavits in reply

(1) An affidavit may be filed by or on behalf of the party making the application in reply to an affidavit filed by or on behalf of the party opposing the application.

(2) Every affidavit filed under subclause (1)

(a) Must be limited to new matters in the affidavit of the party opposing the application; and

(b) Must be filed in the Court and served on the party opposing the application not later than 1 pm on the last working day before the date for hearing the application.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 141 was substituted, and rules 141A and 141B were inserted, as from 1 January 1989, by rule 9 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

142 Disposal of application

(1) If the Court dismisses an application for judgment under rule 136 or rule 137, the Court must give directions as to the future conduct of the proceeding as may be appropriate.

(2) If it appears to the Court on an application for judgment under rule 136 or rule 137 that the defendant has a counterclaim that ought to be tried, the Court

Part 2—*continued*

(a) May give judgment for the amount that appears just on any terms it thinks fit; or

(b) May dismiss the application and give directions under subclause (1).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 1 January 1989, by rule 10 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the words "or if it is satisfied that the payment by the defendant of any sum of money into Court or into a trust account makes the exercise of those powers inappropriate".

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

142A Time for filing statement of defence on dismissal of plaintiff's application

(1) The statement of defence in the proceeding, if not already filed, must be filed within 14 days after the date on which any application by a plaintiff for judgment under rule 136 or rule 137 is dismissed.

(2) This rule is subject to any directions given under rule 142(1).

Rule 142A was inserted, as from 1 January 1989, by rule 7 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

143 Setting aside judgment

Any judgment given against a party who does not appear at the hearing of an application for judgment under rule 136 or rule 137 may be set aside or varied by the Court on such terms as it thinks fit if it appears to the Court that there has been or may have been a miscarriage of justice.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 143 was substituted, as from 1 January 1993, by rule 6 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

Part 2—*continued*

143A Discontinuance

(1) The party making the application may, at any time before an application for judgment under rule 136 or rule 137 is heard, discontinue the application

(a) By filing in the office of the Court in which the application is filed a memorandum to that effect; and

(b) By serving a copy of the memorandum on the other party to the application.

(2) Where an application for judgment under rule 136 or rule 137 is discontinued, the Court may give directions as to the future conduct of the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 143A was inserted, as from 1 January 1989, by rule 11(1) High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

144 Application to counterclaims

Rules 135 to 143A apply, with all necessary modifications, to counterclaims.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 144 was amended, as from 1 January 1989, by rule 11(2) High Court Amendment Rules (No 2) 1988 (SR 1988/269) by substituting the expression "143A" for the expression "144".

Rules 135 to 144 were substituted, as from 9 November 1998, by rule 3 High Court Amendment Rules 1998 (SR 1998/310).

Counterclaim

145 Counterclaim against plaintiff only

Subject to rule 146, where a defendant has a counterclaim which he wishes to raise in the proceeding and which is against the plaintiff only, that defendant shall file a statement of his counterclaim in the office of the Court in which he is required to file his statement of defence.

Compare: 1908 No 89 Schedule 2 rr 130, 132; SR 1952/122 r 14

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

146 Restriction where Crown involved

(1) In any proceeding by the Crown for the recovery of taxes, duties, or penalties, no defendant shall be entitled to avail himself of any set-off or counterclaim.

(2) In any proceeding of any other nature by the Crown, no defendant shall be entitled to avail himself of any set-off or counterclaim arising out of a right or claim to payment in respect of any taxes, duties, or penalties.

(3) In any proceeding by or against the Crown, being a proceeding to which neither subclause (1) nor subclause (2) applies, no defendant shall be entitled, without leave of the Court, to avail himself of any set-off or counterclaim

(a) If the Crown sues or is sued either

(i) In the name of the Attorney-General on behalf of a Government department or officer of the Crown; or

(ii) In the name of a Government department or officer of the Crown; and

(b) If the subject-matter of the set-off or counterclaim does not relate to that department or officer.

(4) Where an application for leave under subclause (3) is made by a defendant other than the Crown, that application shall be served on the Crown not less than 7 days before the date therein specified for hearing the application.

Compare: 1908 No 89 Schedule 2 rr 129-129E; SR 1952/122 rr 13-17

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

147 Heading of counterclaim

A counterclaim shall be headed with the word "Counterclaim" but shall in all other respects conform to the rules as to statements of claim.

Compare: 1908 No 89 Schedule 2 r 131

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

148 Filing and service

A counterclaim shall be filed in the Court and a copy thereof served upon the plaintiff within the time stated in the notice of proceeding for filing a statement of defence or, if no such time is stated, within a time fixed by the Court.

Compare: 1908 No 89 Schedule 2 r 132

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

149 Defence to counterclaim

(1) A plaintiff who intends to defend a counterclaim that has been served on him shall, within 30 days after the day on which the counterclaim is served on him, file his statement of defence thereto and serve a copy thereof upon the defendant.

(2) Such statement of defence shall be headed with the words "Defence to Counterclaim" but shall in all other respects conform to the rules as to statements of defence.

Compare: 1908 No 89 Schedule 2 r 132A; SR 1963/169 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

150 Counterclaim against plaintiff and another person

(1) Subject to rule 146, if the defendant has a counterclaim against the plaintiff along with any other person (whether a party to the proceeding or not) for any relief relating to or connected with the original subject-matter of the proceeding, he may, within the time limited for filing his statement of defence, file a statement of the counterclaim and serve a copy thereof on the plaintiff and such other person. Such other person shall be referred to as a counterclaim defendant.

(2) In a counterclaim filed under subclause (1) the defendant shall add to the title thereof a further title similar to the title in the statement of claim in the manner set out in form 1.

(3) The time within which a plaintiff or a counterclaim defendant may file a statement of defence to a counterclaim under subclause (1) shall be within 30 days after the day on which the counterclaim is served on him.

Part 2—*continued*

(4) A notice of proceeding in form 5 shall be served with each copy of a counterclaim served under subclause (1).

(5) Subject to this rule, rules 145 to 149 shall apply with respect to any counterclaim under subclause (1) and any defence thereto.

(6) The Court may at any time order that a counterclaim under subclause (1) be struck out, upon such terms as it thinks fit, if it shall appear

(a) That by reason of the counterclaim the plaintiff is likely to be unduly delayed in his relief; or

(b) That the trial (if a trial is necessary) is to be held at a place where it could not be held if a counterclaim defendant had been made defendant to an independent proceeding instituted against him by the defendant in respect of the subject-matter of the counterclaim; or

(c) That the relief sought in the counterclaim is not related to or connected with the original subject-matter of the proceeding.

Compare: 1908 No 89 Schedule 2 rr 135-136G; SR 1950/58 r 3; SR 1952/122 r 16; SR 1954/155 r 2(1); SR 1963/169 rr 2(5), 3(2)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

151 Place of trial

(1) A counterclaim shall be tried at the same place as the statement of claim in the original proceeding and either contemporaneously therewith or immediately thereafter.

(2) Notwithstanding subclause (1), if it appears to the Court that a counterclaim and the statement of claim can more fairly or conveniently be tried separately, it may, subject to such conditions as it thinks fit, make an order that the counterclaim be tried at some other place or time.

(3) Subject to subclauses (1) and (2), after a counterclaim has been served it shall proceed in the same manner as if the defendant had commenced an independent proceeding against the plaintiff.

Compare: 1908 No 89 Schedule 2 rr 132, 133, 134; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

152 Where claim stayed, etc

If, in any case in which the defendant sets up any counterclaim against the plaintiff, whether alone or along with any other person, the proceeding of the plaintiff is stayed, discontinued, or dismissed, the defendant may nevertheless proceed with his counterclaim.

Compare: 1908 No 89 Schedule 2 r 135H; SR 1950/58 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

153 Counterclaim by counterclaim defendant

Rules 145 to 151 shall apply to a counterclaim by a counterclaim defendant in the same way as if he were a defendant in a separate proceeding brought against him by the defendant by whom he has been joined, and in such case the term **defendant** shall be deemed to include the counterclaim defendant and the term **plaintiff** shall be deemed to include the defendant by whom he has been joined.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Third and subsequent party notices

154 Requirements of third party notice

(1) A third party notice shall be signed by the defendant and shall inform the third party of

(a) The claim by the plaintiff against the defendant; and

(b) The claim by the defendant against the third party; and

(c) The steps that the third party is required to take if he wishes to dispute either claim; and

(d) The consequences that will follow if the third party fails to dispute either claim.

(2) A third party notice may be in form 14.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

155 Filing of notice

(1) A third party notice shall be filed in the Court together with a statement of the defendant's claim against the third party.

(2) A statement of claim filed under subclause (1)

(a) Shall comply with the requirements of rules 108 to 119; and

(b) In particular, shall state

(i) The nature of the question or issue sought to be determined; and

(ii) The nature and extent of any relief or remedy claimed against the third party.

Compare: 1908 No 89 Schedule 2 rr 97-98

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

156 Service on third party

The third party shall be served, within 30 days after the date of filing of the third party notice or the date of the order granting leave to issue the same, as the case may be, with

(a) A copy of the third party notice:

(b) A copy of the defendant's statement of claim against the third party:

(c) A copy of the plaintiff's statement of claim:

(d) A copy of the notice of proceeding:

(e) A copy of the defendant's statement of defence or appearance:

(f) A list of any other documents which up till that time have been served by the plaintiff on the defendant or by the defendant on the plaintiff.

Compare: 1908 No 89 Schedule 2 r 98

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

157 Service on plaintiff

(1) The plaintiff shall be served, within 30 days after the date of filing of the third party notice or the date of the order granting leave to issue the same, as the case may be, with

(a) A copy of the third party notice; and

Part 2—*continued*

(b) A copy of the defendant's statement of claim against the third party.

(2) After such service the plaintiff may not, without the leave of the Court,

(a) Enter judgment in the proceeding; or

(b) apply for the allocation of a hearing date for the proceeding

(c)

until the time within which the third party may file a defence has expired.

(3) Application for leave under subclause (2) shall be made on notice to the defendant and (if the third party has been served) the third party.

Compare: 1908 No 89 Schedule 2 r 99

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2)(b) was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Subclause (2)(c) was revoked, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

158 Filing and service of statement of defence

(1) The time within which a third party may file and serve a statement of defence shall be within 30 days after the day of service upon the third party of the third party notice and other documents referred to in rule 156.

(2) A third party shall serve a copy of his statement of defence on both the plaintiff and the defendant.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

159 Service of application for leave

Where by these rules leave is required to issue a third party notice, application for such leave shall be made to the Court on notice to the other party or parties to the proceeding.

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

160 Setting aside notice

(1) Where a third party notice has been issued and served, the third party, or, where it has been issued and served without prior leave of the Court, the plaintiff or any other party served therewith, may apply to the Court to set aside the third party notice.

(2) On the hearing of an application under subclause (1), the Court may

(a) Set aside the third party notice and dismiss the defendant's statement of claim against the third party either on the merits or without prejudice to the right of the defendant to pursue his claim against the third party by an independent proceeding; or

(b) Give such other directions with regard to the third party notice as may appear just.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

161 Default in filing statement of defence

(1) If the third party makes default in filing his statement of defence, he shall be deemed to admit the validity of and be bound by any judgment given in the proceeding, whether by consent, default, or otherwise, and by any decision therein on any question specified in the defendant's statement of claim; and when contribution or indemnity or any relief or remedy is claimed against him in such statement of claim, he shall be deemed to admit his liability in respect thereof.

(2) Subclause (1) of this rule shall not apply in the case of third party proceedings against the Crown unless the Court so orders upon an application in that behalf served upon the Crown not less than 7 days before the day for hearing the same specified in the application.

Compare: 1908 No 89 Schedule 2 r 99D; SR 1939/9 r 6; SR 1952/122 r 11

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

162 Application of rules to fourth, etc, party notices

Rules 154 to 161 shall apply, with such modifications as may be necessary in the circumstances, to fourth and subsequent party notices.

Compare: 1908 No 89 Schedule 2 r 99L; SR 1939/9 r 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Claims between defendants

163 Right to give notice

Where in any proceeding a defendant claims against another defendant in circumstances where (had that other defendant not been a defendant) he would be entitled to issue and serve a third party notice on that other defendant, the defendant making the claim may, at any time before the setting down date for the proceeding, file and serve on that other defendant and on the plaintiff a notice to that effect.

Compare: 1908 No 89 Schedule 2 r 99N; SR 1939/9 r 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 163 was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "; at any time before the setting down date for the proceeding;" for the words "at any time before the proceeding has been set down for trial". *See* rule 19 of those Rules as to the transitional provisions.

164 Statement of claim to be filed and served

(1) Where a defendant files a notice under rule 163, he shall file and serve with that notice a statement of his claim against the other defendant.

(2) A statement of claim filed and served under subclause (1)

(a) Shall comply with the requirements of rules 108 to 119; and

(b) In particular, shall state the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed against the other defendant.

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

165 Statement of defence

(1) Unless a defendant served with a notice under rule 163 wishes to raise an affirmative defence to the claim made against him by the defendant serving the notice, it shall not be necessary for the defendant so served to file a statement of defence to that claim.

(2) Any statement of defence to a claim made in a notice served under rule 163 shall, within 10 days after the day of service of the notice, be filed and served

(a) On the defendant serving the notice; and

(b) On the plaintiff.

Compare: 1908 No 89 Schedule 2 r 99O; SR 1939/9 r 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

166 Form of notice

(1) A notice filed and served under rule 163 shall be in form 15.

(2) Every such notice shall be signed by the defendant.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

167 Effect of omission to give notice

The omission of a defendant to give a notice under rule 163 shall not prevent the Court from giving any judgment or granting any relief in favour of that defendant that might have been given or granted had that rule not been made.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

168 Application of rules relating to third and subsequent party notices

Except where otherwise provided in rules 163 to 167, the provisions of the rules relating to third and subsequent party notices (rules 154 to 162) shall apply with all necessary modifications to claims under rules 163 to 167.

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Reply

169 Right to file and serve reply

(1) Where a statement of defence pleads any affirmative defence or contains any positive allegation affecting any other party, the plaintiff or that other party may, within 10 days after the day on which that statement of defence is served on him, file a reply thereto and serve the same on the party serving the statement of defence.

(2) It shall not be obligatory to file and serve a reply under subclause (1) unless the Court so orders.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

170 Contents of reply

A reply shall be limited to answering the affirmative defence or positive allegation but shall otherwise comply with the rules as to statements of defence so far as they are applicable.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

171 Affirmative defence or positive allegation deemed to be denied unless admitted

Every affirmative defence or positive allegation in a statement of defence shall be deemed to be denied unless admitted.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Interpleader

172 Interpretation

In this rule and in rules 173 to 179, unless the context otherwise requires,

Applicant means a person or officer entitled under rule 173 to apply to the Court for relief under rule 178

Part 2—*continued*

Claimant means a person claiming against an applicant in terms of rule 173

Execution creditor means a person who has issued execution under Part 6

Execution debtor means a person against whose property execution has been issued under Part 6.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

173 Right to interplead

(1) Where a person is under a liability in respect of a debt or in respect of any money or chattels and that person is, or expects to be, sued for or in respect of the debt, money, or chattels by two or more persons making adverse claims thereto, that person may apply to the Court, on notice to the persons making the adverse claims, for relief under rule 178.

(2) Where claim is made to any money or chattels taken or intended to be taken by an officer executing a writ of sale or a writ of possession, or to the proceeds or value of any such chattels, by a person other than the person against whom the writ is issued, the officer executing the writ may (before or after the return of the writ and whether a proceeding has been commenced against that officer in respect of the money or chattels or not) apply to the Court, on notice to the execution creditor, the execution debtor, and the person making the claim for relief under rule 178.

Compare: 1908 No 89 Schedule 2 rr 482, 486; SR 1954/155 r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

174 Form of application

(1) Where a claimant has issued a proceeding in the Court against the applicant in respect of the debt or money or chattels referred to in rule 173(1), and in every case coming within rule 173(2), the application shall be in the form of an interlocutory application in the proceeding and, subject to rules 175 to 179, rules 234 to 277 shall apply thereto.

Part 2—*continued*

(2) In every other case the application shall be made by filing and serving a statement of claim and notice of proceeding under this Part of these rules.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

175 Affidavit in support

(1) Every application under rule 173(1) shall be supported by an affidavit filed by the applicant and stating

(a) That the applicant claims no interest in the subject-matter in dispute other than the charges or costs; and

(b) That adverse claims (of which details shall be given) have been made by the claimants and the steps which have already been taken by the respective claimants in support of their respective claims; and

(c) That the applicant does not collude with any of the claimants to that subject-matter; and

(d) That the applicant is willing to pay or transfer that subject-matter into Court or dispose of it as the Court may direct.

(2) A copy of the affidavit shall be served on each claimant at the time when the application under rule 173(1) is served.

Compare: 1908 No 89 Schedule 2 r 489

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

176 Time for applying

If any claimant has commenced a proceeding against the applicant to enforce his claim, any application under rule 173 shall be made before a statement of defence has been filed by the applicant, or, if no defence has been filed by the applicant, before judgment has been entered against the applicant.

Compare: 1908 No 89 Schedule 2 r 483

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

177 Claimants to file affidavits

(1) Subject to subclauses (2) and (3), every claimant who wishes to justify his claim shall, within 7 days after service upon him of an application made under subclause (1) or subclause (2) of rule 173, file and serve on every other claimant and on the applicant an affidavit deposing to the facts and matters upon which he relies in support thereof.

(2) Where, in accordance with rule 174(2), a statement of claim and notice of proceeding have been filed and served together with an affidavit in accordance with rule 175, the claimant shall file and serve, with his affidavit under subclause (1), a statement of defence.

(3) Where the claimant, had he been a defendant, might have filed an appearance under any of the provisions of rules 131 to 133, he may, instead of filing and serving an affidavit under subclause (1), file and serve an appearance.

(4) Any appearance filed and served under subclause (3) shall, for all the purposes of rules 178 and 179, have effect as though the claimant were a defendant in a proceeding brought against him by the applicant or by any other claimant referred to in the appearance.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

178 Powers of Court

(1) Upon the hearing of an application under rule 173, the Court may make such orders and give such directions as the justice of the case may require.

(2) In particular, and without limiting the general power conferred by subclause (1), the Court may

(a) Stay any proceeding commenced by any claimant:

(b) Bar the claim of any claimant who has not filed and served either

(i) An affidavit justifying his claim; or

(ii) An appearance pursuant to rule 177(3):

(c) Adjudicate upon the competing claims on the affidavits filed, or adjourn the application to such time and place

Part 2—*continued*

as it thinks fit for that purpose, and, where the question appears to be one of law only, order a special case for the opinion of the Court to be prepared by the parties:

(d) Direct the trial of the issues involved in such manner, at such time, and at such place as the Court then or at any other time may direct:

(e) Order that one of the claimants do commence a proceeding against any other or others to try the question involved; or, if a proceeding has been commenced by a claimant, order that any other claimant be joined as a defendant to that proceeding:

(f) Order that the chattels in dispute or any part thereof be sold and that the proceeds of the sale be applied in such manner and on such terms as may be just and as may be specified in the order.

(3) Where a claimant, having been duly served with an application for relief under this rule, does not appear on the hearing of the application or, having appeared, fails or refuses to comply with an order made thereon, the Court may make an order declaring that the claimant and all persons claiming under him be forever barred from prosecuting his claim against the applicant and all persons claiming under the applicant; but such an order shall not affect the rights of the claimants as between themselves.

Compare: 1908 No 89 Schedule 2 rr 482, 488; SR 1954/155 rr 2, 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

179 Costs of applicant

(1) Unless the Court orders otherwise, an applicant shall be entitled to the costs of and incidental to his application and such costs shall be allowed on the footing of solicitor and client.

(2) The Court may order that the applicant's costs be paid by any one or more of the claimants and may apportion the liability therefor between any 2 or more claimants, as it thinks fit.

(3) The Court may charge any property in dispute, or the proceeds of the sale thereof, or both, with payment of the costs of the applicant.

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Recovery of specific property subject to lien

180 Recovery of specific property subject to lien, etc

Where a party seeks in any proceeding to recover specific property other than land and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court may, at any time after such last-mentioned claim appears from the statement of defence, or, if there is no statement of defence, by affidavit or otherwise to the satisfaction of the Court, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the proceeding, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the Court directs, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

Compare: 1908 No 89 Schedule 2 r 480

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Pleadings generally

181 Distinct matters to be stated separately

(1) Distinct causes of action and distinct grounds of defence, founded on separate and distinct facts, shall be stated as nearly as may be separately and clearly.

(2) Where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention, or other condition of mind except knowledge, the party pleading shall give particulars of the facts on which that party relies in alleging that condition of mind.

Compare: 1908 No 89 Schedule 2 r 140

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

182 Denial of representative character

If any party wishes to deny the right of any other party to claim as executor or administrator or as trustee, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

Compare: 1908 No 89 Schedule 2 r 141

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

183 Denial of contract

A bare denial of a contract shall be construed only as a denial of the making of the contract in fact, and not of its legality or sufficiency in law, whether with reference to the Statute of Frauds 1677 or the Contracts Enforcement Act 1956 or otherwise.

Compare: 1908 No 89 Schedule 2 r 142

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

184 Effect of document to be stated

If a party in his statement relies upon any document or any part thereof, it shall be sufficient to state the effect thereof as briefly as possible, without setting it out, unless the precise words are material.

Compare: 1908 No 89 Schedule 2 r 143

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

185 Notice requiring further particulars or more explicit pleading

(1) A party may, by notice, require any other party

(a) To give such further particulars as may be necessary to give fair notice of

(i) The cause of action or ground of defence; or

(ii) The particulars required by these rules; or

Part 2—*continued*

(b) To file and serve a more explicit statement of claim or of defence or counterclaim.

(2) A notice under subclause (1) shall indicate as clearly as may be the points on which the pleading in respect of which it has been served is considered defective.

(3) If the party on whom a notice under subclause (1) is served neglects or refuses to comply with the notice within 7 days after service thereof, the Court may, if it considers that the pleading objected to is defective or does not give particulars reasonably required by the notice, order a more explicit pleading to be filed and served.

(4) Notwithstanding that no notice has been given under this rule, the Court may of its own motion order a more explicit pleading to be filed and served.

Compare: 1908 No 89 Schedule 2 rr 145-147; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

186 Striking out pleading

Without prejudice to the inherent jurisdiction of the Court in that regard, where a pleading

(a) Discloses no reasonable cause of action or defence or other case appropriate to the nature of the pleading; or

(b) Is likely to cause prejudice, embarrassment, or delay in the proceeding; or

(c) Is otherwise an abuse of the process of the Court,

the Court may at any stage of the proceeding, on such terms as it thinks fit, order that the whole or any part of the pleading be struck out.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

187 Filing of amended pleading

(1) Subject to subclauses (2) and (5), any party may at any time before trial file an amended pleading and serve a copy thereof on the other party or parties.

Part 2—*continued*

(2) After the setting down date for a proceeding, an amended pleading may be filed only with the leave of the Court.

(3) An amended pleading may introduce

(a) A fresh cause of action which is not statute barred; or

(b) A fresh ground of defence,

whether as an alternative or not.

(4) Subject to subclause (5), an amended pleading may introduce a fresh cause of action whether or not that cause of action has arisen since the filing of the statement of claim.

(5) Where a cause of action has arisen since the filing of the statement of claim, that cause of action may be added only by the leave of the Court and shall, if that leave is granted, have effect from the date of the filing of the application for leave to introduce that cause of action.

(6) Where an amended pleading introduces a fresh cause of action, the other party shall file and serve his defence thereto within 14 days after the day on which the amended pleading is served on him.

(7) Where an amended pleading does not introduce a fresh cause of action, the other party (if he so wishes) may, within 10 days after the day on which the amended pleading is served on him, file and serve an amended defence thereto.

(8) Where an amended pleading has been filed under any of the provisions of subclauses (1) to (7), the party filing the amended pleading shall bear all the costs of and occasioned by the original pleading and any application for amendment, unless the Court otherwise orders.

(9) Nothing in this rule limits the powers conferred on the Court by rule 11.

Compare: 1908 No 89 Schedule 2 rr 144, 148; *Gazette*, 1936, p 536; SR 1969/184 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "the setting down date for a proceeding" for the words "a proceeding has been set down for trial". *See* rule 19 of those Rules as to the transitional provisions.

Part 2—*continued*

Subclause (9) was inserted, as from 1 February 1994, by rule 13 High Court Amendment Rules 1993 (SR 1993/420).

188 Particulars in support of innuendo

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 188 to 190 and the heading "Pleadings in Defamation Proceeding" were revoked, as from 1 February 1993, by section 56(3) Defamation Act 1992 (1992 No 105).

189 Particulars where fair comment pleaded

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 188 to 190 and the heading "Pleadings in Defamation Proceeding" were revoked, as from 1 February 1993, by section 56(3) Defamation Act 1992 (1992 No 105).

190 Particulars of malice

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 188 to 190 and the heading "Pleadings in Defamation Proceeding" were revoked, as from 1 February 1993, by section 56(3) Defamation Act 1992 (1992 No 105).

Proceedings in rem

191 Proceedings *in rem* against Crown

Any application pursuant to section 28(2) of the Crown Proceedings Act 1950 (which relates to proceedings *in rem* instituted against property belonging to the Crown), may be made to the Court at any time either before or at the trial of the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

Service

192 Modes of service

(1) Except where an Act or these rules prescribes a particular and exclusive mode of service, service of a document that is required by these rules to be served may be effected in any of the following modes:

(a) Personal service:

(b) Service at an address for service given in accordance with these rules:

(c) Service at an address directed by the Court as the address for service for the party or person:

(d) Where the solicitor for the party or person has, under rule 44(1)(e), specified a Post Office box address, document exchange box number, or facsimile number,

(i) By posting the document to that Post Office box address; or

(ii) By leaving the document at a document exchange for direction to that document exchange box number; or

(iii) By transmitting the document to that facsimile number.

(2) In any case not provided for by these rules, service shall be effected in such manner and at such place as the Court directs.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 192 was substituted, as from 1 October 1991, by rule 11 High Court Amendment Rules 1991 (SR 1991/132).

193 Service of copies

Except where an Act or these rules expressly requires an original document to be served, service of a true copy thereof shall be deemed to be service of the document.

Compare: 1908 No 89 Schedule 2 r 26

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

194 Notices

The provisions of rules 192 and 193 and of rules 195 to 217 shall apply to any notice which by these rules, or by any order made pursuant to these rules, is required to be given to any person, whether that person is a party or not and whether or not the notice is required to be filed in the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

195 Notices to be given by Registrar

Subject to the provisions of any Act, where any notice is required to be given by the Registrar to any person, whether a party or not, it may be given

(a) If the person is acting by a solicitor, by sending it by ordinary post addressed to the solicitor at the address for service (if given) or at his place of business:

(b) If the person is not acting by a solicitor, by sending it by ordinary post addressed to him at the address for service (if given) or at his last known or usual place of abode or business in New Zealand:

(c) In such other manner as the Court directs.

Compare: SR 1969/145 r 16

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

196 Proof of service

(1) Where it is necessary to prove service of a document, it may be proved on oath before the Court or by affidavit in form 16.

(2) Where the service of a document is proved by affidavit in form 16, it shall not be necessary, unless the Court otherwise directs, for a copy of the document to be annexed to the affidavit if

(a) Either the original of the document or a copy of the document has, at the time of service, been filed in the office of the Court; and

(b) The affidavit contains a description of the document that

(i) Is sufficient to enable the document to be identified; and

Part 2—*continued*

(ii) Includes the date of the document (if the document bears a date).

Compare: 1908 No 89 Schedule 2 r 28

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was inserted, as from 1 November 1994, by rule 3 High Court Amendment Rules (No 2) 1994 (SR 1994/211).

197 Personal service

Personal service of a document may be effected by leaving the document with the person to be served, or, if he does not accept it, by putting it down in his presence and bringing it to his notice.

Compare: 1908 No 89 Schedule 2 r 26

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

198 Personal service on New Zealand corporations

(1) Personal service of a document on a company incorporated under the Companies Act 1955 shall be effected by service in accordance with section 460 of that Act.

(2) Personal service of a document on a company incorporated under the Companies Act 1993 shall be effected by service in accordance with section 387 of that Act.

(3) Personal service of a document on a corporation incorporated in New Zealand other than a company incorporated under the Companies Act 1955 or the Companies Act 1993, as the case may be, may be effected

(a) By service in accordance with rule 197 on

(i) The mayor, chairman, president, town clerk, managing director, secretary, treasurer, or other similar officer of the corporation; or

(ii) Any member, officer, or servant of the corporation at the corporation's head office or principal place of business; or

(b) By leaving the document at the corporation's registered office; or

Part 2—*continued*

(c) By serving the document on a member, officer, or servant of the corporation in such manner as the Court directs.

(4) Subclause (3) is in addition to any provision made by or under any Act for service of a document on a corporation unless the provision so made is expressed to be exclusive of any other mode of service.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 198 was substituted, as from 1 August 1988, by rule 3 High Court Amendment Rules 1988 (SR 1988/142).

Rule 198 was substituted, as from 1 July 1994, by rule 4 High Court Amendment Rules 1994 (SR 1994/135).

199 Personal service in New Zealand on foreign corporations

(1) Personal service on an overseas company (within the meaning of section 2 of the Companies Act 1993) and which, under these rules, may be served out of New Zealand, shall be effected in accordance with section 389 of the Companies Act 1993.

(2) Personal service on a corporation (other than an overseas company within the meaning of section 2 of the Companies Act 1993) that

(a) Is incorporated outside New Zealand; and

(b) Under these rules, may be served out of New Zealand; and

(c) Has a place or places of business in New Zealand

may be effected in New Zealand by service in accordance with rule 197 on any person appearing to have control of the business of that corporation at the principal or only place of business of that corporation in New Zealand.

Compare: 1908 No 89 Schedule 2 r 45; SR 1972/44 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 199 was substituted, as from 1 July 1994, by rule 5 High Court Amendment Rules 1994 (SR 1994/135).

Part 2—*continued*

200 Personal service on unincorporated societies

Personal service of a document on an unincorporated society may be effected by service in accordance with rule 197 on the president, chairman, or secretary or any similar officer of the society.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

201 Personal service on partnership or apparent partnership

Personal service of a document on a partnership or on a person carrying on business in the name of a firm apparently consisting of more than one person may be effected by service in accordance with rule 197

(a) On any partner or on any such person; or

(b) At the principal place in New Zealand of the business of the partnership or apparent partnership, on any person appearing to have the control of the business there.

Compare: 1908 No 89 Schedule 2 rr 43, 44

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

202 Personal service on attorney or agent of absentee

Personal service of a document on a person who is out of New Zealand and has in New Zealand

(a) An attorney or agent authorised to transact his affairs generally and to defend proceedings; or

(b) An attorney or agent authorised to transact his affairs in respect of the subject-matter of the proceeding and to defend the particular proceeding,

may be effected by service in accordance with rule 197 on the attorney or agent.

Compare: 1908 No 89 Schedule 2 r 47; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

203 Personal service on minors

[Repealed]

Compare: 1908 No 89 Schedule 2 r 41; SR 1954/155 r 2(1)

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 203 and 204 were revoked, as from 1 February 2003, by rule 9 High Court Amendment Rules 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

204 Personal service on mentally disordered persons *[Repealed]*

Compare: 1908 No 89 Schedule 2 r 42; SR 1954/155 r 1(2)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The reference to the Mental Health (Compulsory Assessment and Treatment) Act 1992 was substituted, as from 1 November 1992, for a reference to the Mental Health Act 1969 pursuant to section 137(1) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Rules 203 and 204 were revoked, as from 1 February 2003, by rule 9 High Court Amendment Rules 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

205 Personal service on spouses or partners

(1) This rule applies when defendants to a proceeding are
- (a) husband and wife; or
- (b) civil union partners; or
- (c) de facto partners.

(2) When this rule applies, service on one spouse, civil union partner, or de facto partner, as the case may be, is not to be treated as service on the other unless the Court so orders.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 205 was substituted, as from 1 July 2005, by rule 6 High Court Amendment Rules 2005 (SR 2005/148).

206 Service at address for service

Service of a document at an address for service may be effected by leaving the document at that address at any time between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

206A Service by means of Post Office box, document exchange, or facsimile number

(1) Where a document is served on a party or person in accordance with rule 192(1)(d), that document shall,

(a) If posted to a Post Office box address, be deemed to have been duly served on the earlier of

(i) The fifth working day after the day on which it was so posted; or

(ii) The day on which it was received; and

(b) If left at a document exchange, be deemed to have been duly served on the earlier of

(i) The second working day after the day on which it was so left; or

(ii) The day on which it was received; and

(c) If transmitted to a facsimile number, be deemed, subject to subclauses (2) and (3), to have been duly served on the day on which it was so transmitted.

(2) Where a document is transmitted to a facsimile number after 5pm on any day, that document shall, subject to subclause (3), be deemed to have been duly served on the first working day after the day on which the document was received in a complete and legible condition.

(3) A document transmitted to a facsimile number shall be deemed to have been received in a complete and legible condition unless

(a) The contrary is shown; and

(b) As soon as practicable after the transmission is concluded, the solicitor to whom the document was transmitted notifies the person who transmitted the document that the document was incomplete or illegible or both when it was received.

(4) Where a document is served under rule 192(1)(d), the solicitor to whom the document was sent or transmitted shall, on receiving the document, immediately give to the person by whom the document was served an acknowledgment, in writing or by facsimile transmission, that the document has been

Part 2—*continued*

received and shall include in that acknowledgment a statement of the date of service.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 206A was inserted, as from 1 October 1991, by rule 12 High Court Amendment Rules 1991 (SR 1991/132).

207 Service of statement of claim on certain days void

(1) Service of a statement of claim on Christmas Day, New Year's Day, or Good Friday shall be void.

(2) Nothing in this rule limits section 54 of the Act.

Compare: 1908 No 89 Schedule 2 r 33

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

208 Service on representatives

Where

(a) Any person is appointed by the Court to represent any person or persons, or any class of persons; or

(b) Any person, pursuant to these rules, sues or defends on behalf of himself and any other person or persons,

service on the person so appointed or so suing or defending shall be deemed to be service on behalf of all persons whom he has been appointed to represent or on whose behalf he sues or defends.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

209 Service on solicitor

Where a solicitor signs on a copy of a document a note that he accepts service of the document on behalf of any person, the document shall be deemed to have been duly served on that person on the date on which the solicitor signs the note or on such earlier date of service as may be proved.

Compare: 1908 No 89 Schedule 2 r 27

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

210 Service under agreement

Where any party has, before or after the commencement of the proceeding, agreed in writing that any document in the proceeding may be served on him or on some other person on his behalf in a manner or at a place (whether in or outside New Zealand) specified in the agreement, service in accordance with the agreement shall be sufficient service on that party.

Compare: 1908 No 89 Schedule 2 r 47A; SR 1951/157 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

211 Substituted service

If it appears to the Court that reasonable efforts have been made to effect service of any document by any of the modes permitted or required under these rules and either that the document has come to the knowledge of the person to be served or that prompt personal service thereof cannot be effected, the Court may

(a) Direct

(i) That instead of service, such steps as are specified in the order be taken for the purpose of bringing the document to the notice of the person to be served; and

(ii) That the document be deemed to have been served on the happening of any specified event, or on the expiry of any specified time:

(b) Where steps have been taken for the purpose of bringing, or which have a tendency to bring, the document to the notice of the person on whom it is required to be served, direct that the document be deemed to have been served on that person on a date specified in the order:

(c) Subject to such conditions as the Court thinks fit to impose, dispense with service of any document on any person and give leave to the party by whom the document is required to be served to proceed as if service thereof had been effected on that person.

Compare: 1908 No 89 Schedule 2 r 34; SR 1954/155 r 2(1)

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

212 Failure to give address for service

Until a party to a contentious proceeding has given an address for service in terms of these rules, he shall not be entitled to be served with notice of any step in connection with the proceeding or with copies of any further documents filed in the proceeding or to address the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Service of foreign process in New Zealand

213 Service of foreign process

(1) Where

(a) A letter of request,

(i) Which is from a Court or tribunal of a country other than a Commonwealth country (as defined in rule 522); and

(ii) Which requests the service on any person in New Zealand of a process or citation required in connection with any civil or commercial matter pending before that Court or tribunal,

is transmitted to the Court by the chief executive of the Department for Courts with an intimation that it is desirable that effect should be given to that request; and

(b) Subclause (2) is complied with,

rules 214 to 217 shall apply in relation to the service of that process or citation.

(2) The letter of request for service shall be accompanied

(a) By a translation thereof in the English language; and

(b) By 2 copies of the process or citation to be served; and

(c) By 2 copies of the process or citation in the English language.

(3) The transmission of a letter of request under subclause (1)(a)(ii) shall be effected by sending the letter of request, and the accompanying papers required by subclause (2), to the

Part 2—*continued*

Registrar of the Court nearest to the place where the person to be served resides.

Compare: 1908 No 89 Schedule 2 rr 51J, 51K; *Gazette*, 1912, p 2938; SR 1939/9 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The proviso to subclause (1) was amended, as from 1 July 1995, by rule 2 High Court Amendment Rules (No 2) 1995 (1995 No 135) by substituting the words "chief executive for the Department for Courts" for the words "Secretary for Justice".

214 Sheriff to effect service

Service of the process or citation shall be effected by the Sheriff whose office is nearest to the place where the person to be served resides, or by any officer appointed by that Sheriff.

Compare: 1908 No 89 Schedule 2 r 51L; SR 1973/39 r 3(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

215 Mode of service

(1) Subject to subclause (2), service shall be effected by leaving, in accordance with the provisions of these rules regulating service of process, one copy of the process or citation to be served and one copy of the translation thereof with the person to be served.

(2) Upon the application of the Solicitor-General, the Court may make an order for substituted service of the process or citation.

Compare: 1908 No 89 Schedule 2 rr 51M, 51S; *Gazette*, 1912, p 2938; SR 1939/9 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

216 Return as to service

After service of the process or citation has been effected or (if such be the case) attempts to effect service of the process or citation have failed, the Sheriff or the officer effecting or attempting to effect service shall return to the Registrar of the Court nearest to the place of service or attempted place of service

Part 2—*continued*

(a) One copy of the process or citation; and

(b) An affidavit made by the Sheriff or the officer who served, or attempted to serve, the process or citation, which affidavit shall state when, where, and how the Sheriff or officer effected service or attempted to effect service; and

(c) A statement of the costs incurred in effecting, or attempting to effect, service.

Compare: 1908 No 89 Schedule 2 r 51N; SR 1973/39 r 3(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

217 Transmission of documents

(1) The Registrar shall give a certificate in form 17 in which he shall

(a) Identify the documents annexed thereto, that is to say, the letter of request for service, a copy of the process or citation received with the letter, and a copy of the affidavit referred to in rule 216(b);

(b) Certify

(i) That the method of service of the process and the proof of service are such as are required by the law and practice of the High Court of New Zealand regulating the service of New Zealand legal process in New Zealand and the proof thereof; or

(ii) If such be the case, that service of the process could not be effected for the reason specified in the certificate; and

(c) Certify the cost of effecting, or attempting to effect, service.

(2) The certificate given under subclause (1) shall be sealed with the seal of the Court and sent to the chief executive of the Department for Courts for transmission to the foreign Court or tribunal.

Compare: 1908 No 89 Schedule 2 rr 51O-51R, 51T; *Gazette*, 1912, p 2938; SR 1939/9 r 4

Part 2—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was amended, as from 1 July 1995, by rule 2 High Court Amendment Rules (No 2) 1995 (1995 No 135) by substituting the words "chief executive for the Department for Courts" for the words "Secretary for Justice".

Service of foreign process in New Zealand where Conventions exist

218 Service where Conventions exist

(1) Where any Convention between Her Majesty in right of the Dominion of New Zealand and the Head of State of any other country or between the Government of New Zealand and the Government of any other country is in force relating to the service in New Zealand of documents relating to any proceeding pending in the Court of that country, this rule shall, subject to any special provisions contained in the Convention, apply in relation to the service on a person in New Zealand of any such document.

(2) Where a request for the service on a person in New Zealand of a document to which this rule applies is received

(a) By any Registrar from the chief executive of the Department for Courts; or

(b) By the Registrar at Wellington from the Consular or other authority of any country,

rules 214 to 217 shall, subject to subclauses (2) and (3), apply with such modifications as are necessary.

(3) No fees of Court shall be charged for the filing of any document or the doing of any act relating to the service or the certification thereof.

(4) The Registrar shall transmit the certificate in form 17

(a) To the chief executive of the Department for Courts; or

(b) Where the request was received by the Registrar at Wellington from the Consular or other authority of any country, to that Consular or other authority.

Compare: 1908 No 89 Schedule 2 rr 51V-51X; SR 1939/9 r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

Subclauses (2)(a) and (4)(a) were amended, as from 1 July 1995, by rule 2 High Court Amendment Rules (No 2) 1995 (SR 1995/135) by substituting the words "chief executive of the Department for Courts" for the words "Secretary for Justice".

Service out of New Zealand

219 When allowed without leave

Where in any proceeding a statement of claim or counterclaim and the relevant notice of proceeding or third party notice cannot be served in New Zealand under these rules, they may be served out of New Zealand without leave in the following cases:

(a) Where any act or omission for or in respect of which damages are claimed was done or occurred in New Zealand:

(b) Where the contract sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any proceeding, or for the breach whereof damages or other relief is demanded in the proceeding

(i) Was made or entered into in New Zealand; or

(ii) Was made by or through an agent trading or residing within New Zealand; or

(iii) Was to be wholly or in part performed in New Zealand; or

(iv) Was by its terms or by implication to be governed by New Zealand law:

(c) Where there has been a breach in New Zealand of any contract, wherever made:

(d) Where it is sought to compel or restrain the performance of any act in New Zealand:

(e) Where the subject-matter of the proceeding is land, stock, or other property situated in New Zealand, or any act, deed, will, instrument, or thing affecting such land, stock, or property:

(f) Where the proceeding is for the execution of the trusts of any written instrument of which the person to be served is a trustee and which ought to be executed according to the law of New Zealand:

Part 2—*continued*

(g) Where any relief is sought against any person domiciled or ordinarily resident in New Zealand:

(h) Where any person out of New Zealand is a necessary or proper party to a proceeding properly brought against some other person duly served or to be served within New Zealand:

(i) Where the proceeding is for the administration of the estate of any deceased person who at the time of his death was domiciled in New Zealand:

(j) Where the proceeding is brought under Part 9A or Part 9B of the Civil Aviation Act 1990, unless the party to be served is a High Contracting Party or a Party to a Convention referred to in Part 9A of the Civil Aviation Act 1990:

(k)

(l) Where the proceeding is brought under the Marine Pollution Act 1974:

(m) Where the person to be served has submitted to the jurisdiction of the Court.

Compare: 1908 No 89 Schedule 2 r 48; SR 1951/157 r 4; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Paragraph (j) was substituted, as from 1 December 1999, by rule 10 High Court Amendment Rules 1999 (SR 1999/334).

Paragraph (j) was amended, as from 1 June 2004, by section 41(3) Civil Aviation Amendment Act 2004 (2004 No 8) by substituting the words "Part 9A or Part 9B" for the words "the Carriage by Air Act 1967, or Part 9A".

Paragraph (k) was revoked, as from 1 February 2002, by rule 4 High Court Amendment Rules (No 2) 2001 (SR 2001/382).

220 When allowed with leave

(1) In any other proceeding which the Court has jurisdiction to hear and determine, any document may be served out of New Zealand by leave of the Court.

(2) An application for leave under this rule shall be made on notice to every party other than the party intended to be served.

(3) A sealed copy of every order made under this rule shall be served with the document to which it relates.

Part 2—*continued*

(4) Upon any application for leave under this rule, the Court, in exercising its discretion, shall have regard to
  (a) The amount or value of the property in dispute or sought to be recovered; and
  (b) The existence, in the place of residence of the person to be served, of a Court having jurisdiction in the matter in question; and
  (c) The comparative cost and convenience of proceeding in New Zealand or in the place of residence of the person to be served.

(5) Every application for leave under this rule shall be supported by an affidavit
  (a) Stating the particulars referred to in subclause (4); and
  (b) Showing
    (i) In what place or country the person to be served is or possibly may be found; and
    (ii) Whether or not the person to be served is a New Zealand citizen.

Compare: 1908 No 89 Schedule 2 rr 49, 50; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

221 Notice to defendant served overseas

(1) Where a defendant is to be served out of New Zealand, the memorandum required by rule 121(4) shall also include a notice informing the defendant of
  (a) The scope of the jurisdiction of the Court in respect of claims against persons who are not resident in New Zealand; and
  (b) The grounds alleged by the plaintiff in relying on that jurisdiction; and
  (c) The defendant's right to enter an appearance under protest to the jurisdiction of the Court.

(2) A notice under subclause (1) may be in form 9.

Compare: 1908 No 89 Schedule 2 r 51A; SR 1939/9 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

222 Mode of service

Subject to rules 223 and 224, rules 192 to 212 shall apply to service outside New Zealand.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

223 Service in certain proceedings

Where, for the purpose of a proceeding under Part 9A or Part 9B of the Civil Aviation Act 1990, leave is given to serve a High Contracting Party or a Party to a Convention,

(a) The document to be served must be transmitted by the Registrar to the Secretary of Foreign Affairs and Trade, together with a copy of it translated into an official language of the country of the High Contracting Party or Party (if that language is a language other than English), with a request for the further transmission of the documents to the Government of that country; and

(b) A certificate by the Secretary of Foreign Affairs and Trade that is transmitted to the Registrar and that certifies that the document was delivered on a specified date to the Government of the country of the High Contracting Party or Party is sufficient proof of service on that date, and must be filed on record as, and is equivalent to, an affidavit of service.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 223 was substituted, as from 1 December 1999, by rule 11 High Court Amendment Rules 1999 (SR 1999/334).

Rule 223 was amended, as from 1 June 2004, by section 41(3) Civil Aviation Amendment Act 2004 (2004 No 8) by inserting the words "Part 9A or Part 9B" for the words "the Carriage by Air Act 1967, or Part 9A".

224 Service in Convention countries

(1) Where

(a) Any Convention is in force between the Sovereign of New Zealand and the Head of State of any other country or between the Government of New Zealand and the Government of any other country relating to the ser-

Part 2—*continued*

vice of documents in proceedings in the Courts of the respective countries; and

(b) A party to a proceeding in New Zealand desires to take advantage of any provision made in the Convention for service in such other country by official means for which provision is made in the Convention, then, subject to any special provisions contained in the Convention,

the party seeking such service may file a request for service in form 18 stating the official means of service desired and containing the undertaking set out in that form covering the payment of expenses.

(2) In respect of each person to be served, the request for service shall be accompanied by

(a) The document to be served; and

(b) A copy thereof to be exhibited to the evidence verifying service; and

(c) When the language of the person to be served is not English,

(i) A translation of the document into his language (verified as correct to the satisfaction of the Registrar) for service with the document; and

(ii) A copy of that translation to be exhibited to the evidence verifying service.

(3) The document and translation thereof to be served shall be sealed by the Registrar with the seal of the Court and the documents required to accompany the request for service shall be forwarded by the Registrar to the chief executive of the Department for Courts for transmission through the appropriate channels to the country concerned for service in accordance with the request for service.

(4) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a British or New Zealand consular officer, and transmitted by the chief executive of the Department for Courts to the Registrar, shall be sufficient proof of such service.

Part 2—*continued*

(5) The Registrar may file a certificate under subclause (4) and, if he does so, that certificate shall thereupon be equivalent to an affidavit of service of the documents referred to in the certificate.

(6) The provisions of subclauses (1) to (5) shall not render invalid or insufficient any mode of service in any country referred to in subclause (1) if that mode of service is otherwise valid or sufficient under these rules and is not expressly excluded by the Convention with, or contrary to the law of, the country concerned.

Compare: 1908 No 89 Schedule 2 rr 51B-51G; SR 1939/9 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclauses 3 and 4 were amended, as from 1 July 1995, by rule 2 High Court Amendment Rules (No 2) 1995 (SR 1995/135) by substituting the words "chief executive of the Department for Courts" for the words "Secretary for Justice".

225 Time for filing defence

Except where the Court otherwise orders, the time after the day of service within which a defendant who has been served out of New Zealand may file a statement of defence or appearance shall be 30 days if he is served within the Commonwealth of Australia and 50 days if he is served elsewhere.

Compare: 1908 No 89 Schedule 2 r 51; SR 1963/169 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

226 Judgment by default

Where any document has been transmitted abroad for service on a party under the provisions of rule 219 and that person has not appeared, judgment by default against that party shall not be sealed without the leave of the Court, which leave shall not be granted unless the Court is satisfied

(a) That the party applying for leave was entitled to effect service without leave in accordance with that rule; and

(b) That the document was duly served by a method prescribed by the internal law of the country where service was to be effected, being a method prescribed in respect

Part 2—*continued*

of the service of documents in domestic actions upon persons who are within that country; and

(c) That such service was effected in sufficient time to enable that party to appear.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

227 Application to Crown

Rules 219 to 226 shall not apply to civil proceedings against the Crown alone or in respect of service on the Crown where the Crown is joined as a defendant or third party.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Actions, etc, transferred from District Courts

228 Application of rules

Rules 229 to 233 apply to every action, counterclaim, and other proceeding transferred to the Court from a District Court pursuant to an order made under section 43 (except an order of *certiorari* under subsection (6)), section 44, or section 45 of the District Courts Act 1947.

Compare: 1908 No 89 Schedule 2 r 596A; SR 1950/58 r 9

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

229 Documents to be filed in proper office

(1) If the office of the Court at which the documents are received from the District Court is not the office in which, had the action, counterclaim, or other proceeding been commenced in the High Court, the statement of claim would have been filed in accordance with rule 106, the Registrar receiving the documents shall forthwith transmit the same to the Registrar at that office.

(2) When the documents are received at the office of the Court in which, had the action, counterclaim, or other proceeding been commenced in the High Court, the statement of claim would

Part 2—*continued*

have been filed in accordance with rule 106, the Registrar shall forthwith file the documents.

Compare: 1908 No 89 Schedule 2 rr 596A, 596C; SR 1950/58 r 9

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

230 On filing deemed to be proceeding

(1) When the documents have been filed in accordance with rule 229, the action, counterclaim, or other proceeding shall be deemed to be a proceeding commenced under these rules, and, subject to the provisions of subclause (2) and of rules 231 and 232, the provisions of these rules shall apply thereto with all necessary modifications.

(2) Any party who has not given an address for service which complies with these rules shall forthwith do so.

Compare: 1908 No 89 Schedule 2 rr 596B, 596C, 596J, 596M; SR 1950/58 r 9

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

231 Title of documents

All documents filed in the proceeding after it has been filed in the Court in accordance with rule 229 shall be intituled as if the proceeding had been commenced in the High Court.

Compare: 1908 No 89 Schedule 2 r 596D; SR 1950/58 r 9

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

232 Time for filing statement of defence

Where no statement of defence has been filed in the District Court, a statement of defence may be filed within 30 days from the date when the proceeding is filed in accordance with rule 229.

Compare: 1908 No 89 Schedule 2 r 596F; SR 1950/58 r 9

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 2—*continued*

233 Transfer under section 45 of District Courts Act 1947

(1) An application under section 45 of the District Courts Act 1947 shall be by interlocutory application and shall,

(a) If made by the counterclaimant, be made within 10 days after the counterclaim or set-off and counterclaim is filed in the District Court:

(b) If made by the party against whom the counterclaim or set-off and counterclaim is made, be made within 10 days after service upon him of the counterclaim or set-off and counterclaim.

(2) At any time after an application under subclause (1) has been filed, the Court may order the proceedings in the District Court to be stayed pending the disposal of the application.

(3) An order under subclause (2) may, if the Court thinks fit, be made *ex parte* and may be made subject to such conditions or undertakings as the Court thinks fit to impose.

(4) Where the Court orders that the counterclaim or set-off and counterclaim alone be transferred, references in rules 228 to 232 and in the other provisions of these rules to the plaintiff shall be construed as references to the counterclaimant and references to the defendant shall be construed as references to the party against whom the counterclaim or set-off and counterclaim is made.

Compare: 1908 No 89 Schedule 2 rr 596K, 596L, 596M; SR 1950/58 r 9

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3
Interlocutory matters

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Interlocutory orders

This heading was substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). It previously read "Interlocutory applications". *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

234 Making of interlocutory orders

(1) The Court may make any interlocutory order that
  (a) is provided for in these rules; or
  (b) may be made under rule 9.

(2) An interlocutory order may be made
  (a) on the interlocutory application of a party; or
  (b) on the Court's own initiative.

(3) Before making an order under subclause (2)(b), the Court must give the parties an opportunity to be heard.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

235 Power to grant interlocutory order or interlocutory relief

The Court may make any interlocutory order or grant any interlocutory relief it thinks just, even though the order or relief has not been specifically claimed and there is no claim for general or other relief.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

236 Interlocutory orders may be made subject to conditions

The Court may make an interlocutory order subject to any terms or conditions that the Court thinks just, including, without limitation, any condition that
  (a) a party give an undertaking:
  (b) the order operate only for a specified period.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

236A Application for injunction

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 236A and 236B were inserted, as from 1 January 1989, by rule 12 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Subclause (3) was substituted, and subclause (4) was inserted, as from 9 November 1998, by rule 4 High Court Amendment Rules 1998 (SR 1998/310).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

236B Interim injunction in relation to party's assets

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 236A and 236B were inserted, as from 1 January 1989, by rule 12 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Interlocutory applications

This heading was inserted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

237 Form, contents, and filing of interlocutory application

(1) An interlocutory application is made by filing a notice of the application in form 19 or form 20.

(2) The application must

(a) state

(i) the relief sought; and

(ii) the grounds justifying that relief; and

(b) contain a reference to any particular provision of an enactment or principle of law or judicial decision on which the applicant relies.

(3) It is not necessary in an application to ask for general or other relief.

Part 3—*continued*

(4) The application or a document that relates to it
- (a) may be posted to the Registrar at the proper office of the Court; and
- (b) is filed when that Registrar receives it with any applicable fee.

(5) The Registrar
- (a) must acknowledge the receipt of all documents sent by post; and
- (b) must
  - (i) notify the applicant of the hearing date allocated for the application; or
  - (ii) in the case of an *ex parte* application for which no appearance is required, notify the applicant of the result of the application.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclauses (3) and (4) were substituted, and (4A) and (4B) were inserted, as from 1 October 1991, by rule 13 High Court Amendment Rules 1991 (SR 1991/132).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

238 Application for injunction

(1) An application for an interlocutory injunction may be made by a party before or after the commencement of the hearing of a proceeding, whether or not a claim for an injunction is included in that party's statement of claim, counterclaim, or third party notice, as the case may be.

(2) The plaintiff may not make an application for an interlocutory injunction before the commencement of the proceeding except in case of urgency, and any injunction granted before the commencement of the proceeding
- (a) must provide for the commencement of the proceeding; and
- (b) may be granted on any further terms that the Court thinks just.

Part 3—*continued*

(3) An applicant for an interlocutory injunction must file a signed undertaking that the applicant will comply with any order that the Court may make for the payment of damages to the other party for any damage that party may sustain through the granting of the interlocutory injunction.

(4) The undertaking must be referred to in the order granting the interlocutory injunction and is part of it.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 238 was substituted, as from 1 January 1986, by rule 6 High Court Amendment Rules 1985 (SR 1985/328).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

239 Interlocutory injunction in relation to party's assets

(1) It is declared that the Court may grant an interlocutory injunction restraining a party from removing, or otherwise dealing with, assets in New Zealand whether or not the party is domiciled, resident, or present in New Zealand.

(2) The power to grant an interlocutory injunction of the kind described in subclause (1) does not limit the generality of the Court's power to grant interlocutory injunctions.

(3) A party who makes an application for an interlocutory injunction of the kind described in subclause (1) must, in making the application, identify any person who is not a party to the proceeding but who would be adversely affected by the granting of the injunction.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

240 Ex parte application

(1) If the applicant wishes the application to be heard without any other party being served (in these rules referred to as an **ex parte application**), the applicant must use form 20.

Part 3—*continued*

(2) An *ex parte* application must contain a certificate that
  (a) is personally signed by the applicant's solicitor or counsel in his or her own name; and
  (b) uses the words "Certified pursuant to the rules of Court to be correct".

(3) The solicitor or counsel who signs the certificate
  (a) must, before signing it, be personally satisfied
    (i) that the notice of application and every affidavit filed in support of it complies with these rules; and
    (ii) that the order sought is one that ought to be made; and
    (iii) that there is a proper basis for seeking the order in an *ex parte* application; and
  (b) is responsible to the Court for the matters specified in paragraph (a).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 1 June 1990, by rule 7 High Court Amendment Rules 1990 (SR 1990/66) by omitting the word "registered".

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

241 Affidavit to be filed with application

Evidence given in support of an application must be in an affidavit, which must be filed and served at the same time as the application.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

242 Allocation of hearing date

(1) On or following the filing of an application (other than an *ex parte* application), the Registrar must allocate a hearing date for the application.

Part 3—*continued*

(2) The Registrar must refer an *ex parte* application to a Judge for direction or decision.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

243 Service of application

(1) The applicant must serve a copy of the application (other than an *ex parte* application) and any affidavit in support of it on every party as soon as practicable after filing it.

(2) As soon as practicable after the applicant is notified of the hearing date for the application, the applicant must give notice of the hearing date to every respondent.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 243 was amended, as from 1 January 1986, by rule 7 High Court Amendment Rules 1985 (SR 1985/328) by inserting the words "without the leave of the Court".

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

244 Notice of opposition to application

(1) A respondent who intends to oppose an application must file and serve on every other party a notice of opposition to the application within the earlier of

(a) 10 working days after being served with the application; or

(b) 3 working days before the hearing date for the application.

(2) The notice of opposition must be in form 21.

(3) The notice of opposition must

(a) state the respondent's intention to oppose the application and the grounds of opposition; and

(b) contain a reference to any particular provision of an enactment or principle of law or judicial decision on which the respondent relies.

Part 3—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

245 Affidavit to be filed with notice of opposition

If the respondent intends to support the notice of opposition with evidence, the evidence must be in an affidavit, which must be filed and served at the same time as the notice of opposition.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

246 Affidavit in reply

(1) If the applicant wishes to reply to the notice of opposition or to an affidavit filed by the respondent, the applicant must reply by affidavit, which must be filed and served within the earlier of

(a) 5 working days after being served with the notice of opposition; or

(b) 1 pm on the working day before the hearing date for the application.

(2) The affidavit in reply must be limited to new matters raised in the notice of opposition or in an affidavit filed by the respondent.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

247 When admissions binding

An admission of a fact expressly made only for the purpose of an application binds the party only for the application.

Part 3—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

248 Previous affidavits and agreed statements of fact

(1) Affidavits already filed in the Court and agreed statements of fact, if made in the same proceeding or, with the leave of the Court, in any other proceeding between the same parties, may be used on the disposal of any application, if

(a) prior notice of the intention to use them has been given to the opposite party (whether in the notice of application or in the notice of opposition or otherwise); or

(b) in the case of an *ex parte* application, if they are referred to in the notice of application.

(2) Subclause (1) does not apply to an affidavit or to an agreed statement to the extent that the affidavit or statement contains any admission of the kind described in rule 247.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

249 Provisions as to affidavits

(1) The provisions of rules 510 to 524 apply, with all necessary modifications, to affidavits filed in respect of interlocutory applications.

(2) Despite subclause (1), the Court may accept statements of belief in an affidavit in which the grounds for the belief are given if

(a) the interests of no other party can be affected by the application; or

(b) the application concerns a routine matter; or

(c) it is in the interests of justice.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Hearing of interlocutory applications

This heading was inserted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

250 Where respondents consent or do not oppose

(1) If every respondent to an interlocutory application indicates, by endorsement on the application or in a memorandum filed in the Court, that the respondent consents or does not oppose the orders sought in the application, the Registrar may refer the interlocutory application to a Judge, who may

(a) make the orders sought without a hearing being held; or

(b) direct that a hearing be held on the hearing date allocated under rule 242.

(2) If the Judge makes the orders sought under subclause (1)(a), the Registrar must immediately advise the parties that the hearing date is vacated.

(3) If a respondent (**respondent A**) to an interlocutory application consents or does not oppose, but another respondent (**respondent B**) does oppose, respondent A does not need to attend the hearing of the interlocutory application.

(4) Subclause (3) does not apply if, on the hearing date allocated for the interlocutory application, a case management conference is also due to be held.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

251 Mode of hearing

(1) Every application for judgment under rule 138 must be heard in open court.

Part 3—*continued*

(2) Every other interlocutory application must be heard in Chambers unless the Court otherwise directs.

(3) A hearing in Chambers may be held in the chambers of a Judge or Associate Judge, or in court.

(4) Unless the Court otherwise directs, no hearing is required for an application to which there is no opposition.

(5) On its own initiative or on the application of 1 or more of the parties, the Court may conduct a hearing in Chambers by telephone or video link.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Subclause (3) was amended, as from 1 November 2004, by rule 30(2) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judge" for the word "Master".

251A Synopsis of argument

(1) This rule applies to a defended interlocutory application unless or to the extent that the Court directs otherwise.

(2) The applicant must file and serve a synopsis of argument (**synopsis**) on every other party,

(a) if the respondent has filed a notice of opposition under rule 244(1)(a), at least 3 working days before the hearing of the interlocutory application; or

(b) if the respondent has filed a notice of opposition under rule 244(1)(b), at least 2 working days before the hearing of the interlocutory application.

(3) The applicant's synopsis must

(a) identify the general nature of the case:

(b) include a chronology of the material facts:

(c) outline the applicant's principal submissions:

(d) be accompanied by or have annexed to it

(i) an indexed and paginated set of relevant documents; and

(ii) a list of authorities.

Part 3—*continued*

(4) The material required to be included in the applicant's synopsis under subclause (3)(a), (b), and (c) must not exceed 10 pages.

(5) The respondent must, at least 1 working day before the hearing, file and serve a synopsis on every other party.

(6) The respondent's synopsis must

(a) identify any material facts that are not referred to in the applicant's synopsis:

(b) state any facts that are disputed:

(c) outline the respondent's principal submissions:

(d) be accompanied by or have annexed to it

(i) an indexed and paginated set of any relevant documents not included in the applicant's synopsis; and

(ii) a list of any authorities not included in the applicant's synopsis.

(7) The material required to be included in the respondent's synopsis under subclause (6)(a), (b), and (c) must not exceed 10 pages.

Rule 251A was inserted, as from 1 June 2006, by rule 8 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

252 Failure to appear

(1) If a party is neither present nor represented at the hearing of an application, the Court may

(a) determine the application in the party's absence in any manner that appears just; or

(b) adjourn the application; or

(c) strike out the application.

(2) If an order determining an application is made in the absence of a party, the Court may, if it thinks it just to do so, recall the order at any time before a formal record of it has been drawn up and sealed.

(3) The Court may, in any manner that the Court thinks just, reinstate an application that has been struck out for non-appearance.

Part 3—*continued*

(4) The Court may make a determination referred to in subclause (2) or subclause (3) on its own initiative or on the application of a party.

(5) Notice of an application under subclause (4) must be filed and served,

(a) if it is made by a party who was present or represented at the hearing, within 5 working days after the hearing:

(b) if it is made by a party who was neither present nor represented, within 5 working days after receipt by the party of notice of the decision given at the hearing.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Rule 252 was substituted, as from 1 June 2006, by rule 9 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

253 Oral evidence in special circumstances

(1) Despite rules 241, 245, and 246, the Court may, on the hearing of an application, accept oral evidence in special circumstances.

(2) The Court may in special circumstances, on the application of a party, order the attendance for cross-examination of a person who has made an affidavit in support of, or in opposition to, an interlocutory application.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

254 Oral application

(1) At a hearing, the Court may entertain an oral application for an interlocutory order if

(a) all parties interested consent to the order sought; or

(b) these rules permit the application to be made without filing a notice of the application; or

Part 3—*continued*

(c) the order sought has been outlined in a memorandum filed for a case management conference, and no party will be unduly prejudiced by the absence of a formal notice of the application; or

(d) because of the nature of the order sought, no party will be unduly prejudiced by the absence of a formal notice.

(2) If the Court entertains an oral application, it may make any interlocutory order or grant any interlocutory relief it could have made or granted on a formal notice of the application.

(3) This rule overrides rule 237.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

255 Adjournment

The hearing of an application may, from time to time, be adjourned on any terms that the Court thinks just.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was substituted, as from 15 July 1987, by rule 4(1) High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

256 Determination of *ex parte* application

(1) The Court, on receiving an *ex parte* application, must determine whether the application can properly be dealt with on an *ex parte* basis.

(2) The Court may determine that an application can properly be dealt with on an *ex parte* basis only if the Court is satisfied that

(a) requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant; or

(b) the application affects only the applicant; or

(c) the application relates to a routine matter; or

Part 3—*continued*

(d) an enactment expressly permits the application to be made without serving notice of the application; or

(e) the interests of justice require the application to be determined without serving notice of the application.

(3) If the Court determines that the application can properly be dealt with on an *ex parte* basis, it may

(a) make the order sought in the application; or

(b) make any other order that the Court thinks just in the circumstances; or

(c) dismiss the application.

(4) If the Court determines that the application cannot properly be dealt with on an *ex parte* basis, the Court may adjourn the determination of the application until the application has been served on persons who are affected by the application, but if the Court considers that the application has no chance of success, the Court may dismiss the application.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Post-hearing matters

This heading was inserted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

257 Drawing up and sealing interlocutory order

(1) A party may draw up an interlocutory order and submit it to the Registrar for sealing.

(2) Despite subclause (1), a party who obtains an interlocutory order must draw up the order and submit it to the Registrar for sealing if the order affects a person who

(a) is not a party; or

(b) is, by the order, joined as a party or directed to be served.

(3) If a party elects to have an order sealed, or is required by the Court or by these rules to have an order sealed, the following provisions apply:

Part 3—*continued*

(a) the party must file an original order together with sufficient copies so that he or she and the other parties who have given an address for service can each receive a duplicate sealed order:
(b) the order must be in form 22:
(c) the order must specify both the date on which it was made and the date on which it was sealed:
(d) the Registrar, when satisfied with the form of the order, must sign and seal the original and every copy:
(e) the Registrar must mark every copy with the word "duplicate"
(f) the Registrar must retain the original on the file:
(g) the party who submitted the order for sealing must promptly serve a sealed copy on every other party who has given an address for service and on any person affected by the order.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3) was substituted, and subclause (4) was inserted, as from 1 January 1986, by rule 9 High Court Amendment Rules 1985 (SR 1985/328).

Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

258 Enforcement of interlocutory order

(1) If a party fails to comply (the **party in default**) with an interlocutory order, the Court may, subject to any express provision of these rules, make any order that it thinks just.

(2) The Court may, for example,
(a) if the party in default is a plaintiff, order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceeding:
(b) if the party in default is a defendant, order that the defence be struck out and that judgment be sealed accordingly:
(c) order that the party in default be committed:

Part 3—*continued*

(d) if any property in dispute is in the possession or control of the party in default, order that the property be sequestered:
(e) order that any fund in dispute be paid into Court:
(f) appoint a receiver of any property or of any fund in dispute.

(3) An order must not be enforced by committal unless the order has been served personally on the person in default or that person had notice or knowledge of the order within sufficient time for compliance with the order.

(4) For the purposes of this rule,

defendant includes a party defending or opposing any proceeding

plaintiff includes
(a) a defendant who has counterclaimed; and
(b) a party claiming under rules 154 to 168; and
(c) an applicant or claimant in a proceeding under rules 172 to 179

proceeding includes
(a) a counterclaim; and
(b) a claim under rules 154 to 168; and
(c) an application or claim in a proceeding under rules 172 to 179.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

259 Order may be varied or rescinded if shown to be wrong

(1) A party affected by an interlocutory order (whether made on the Court's own initiative or on an interlocutory application) or by a decision given on an interlocutory application may, instead of appealing against the order or decision, apply to the Court to vary or rescind the order or decision, if that party considers that the order or decision is wrong.

Part 3—*continued*

(2) A party may not apply under this rule if the order or decision was made or given
  (a) with the consent of the parties; or
  (b) on an interlocutory application for judgment under rule 138; or
  (c) by an Associate Judge in Chambers.

(3) Notice of an application under subclause (1) must be filed and served,
  (a) if it is made by a party who was present or represented when the order was made or the decision given, within 5 working days after the order was made or the decision was given:
  (b) if it is made by a party who was not present and not represented, within 5 working days after receipt by the party of notice of the making of the order or the giving of the decision, and of its effect.

(4) The application does not operate as a stay unless the Court so orders.

(5) Unless the Court otherwise directs, the application must be heard by the Judge who made the order or gave the decision.

(6) The Court may,
  (a) if satisfied that the order or decision is wrong, vary or rescind the order or decision; or
  (b) on its own initiative or on the application of a party, transfer the application to the Court of Appeal.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Subclause (2)(c) was amended, as from 1 November 2004, by rule 30(1) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an Associate Judge" for the words "a Master".

260 Order relating to management of proceeding may be varied if circumstances change

(1) This rule applies to an order or direction (a **determination**) that

Part 3—*continued*

(a) relates to the management of a proceeding; and
(b) has been made by a Judge in Chambers or by an Associate Judge in Chambers.

(2) If there has been a change in circumstances affecting a party or the party's solicitor or counsel since the making of a determination, a Judge or an Associate Judge may, on application, vary the determination.

(3) Despite subclause (2), a Judge may, on application or on the Judge's own initiative, direct that
(a) an application under subclause (2) to vary a determination made by an Associate Judge in Chambers be heard as a review of an order made by an Associate Judge in Chambers under section 26P of the Act and these rules:
(b) an application under subclause (2) to vary a determination made by a Judge in Chambers be heard as an application under rule 259 or be transferred to the Court of Appeal.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Subclauses (1)(b), (2), and (3)(a) were amended, as from 1 November 2004, by rule 30(1) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an Associate Judge" for the words "a Master".

261 Order may be rescinded if fraudulently or improperly obtained

(1) The Court may rescind any order that has been fraudulently or improperly obtained.

(2) The Court may grant any further relief by way of costs that the interests of justice require.

(3) This rule does not limit any other remedies of a party who has been adversely affected by an order that has been fraudulently or improperly obtained.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

262 Limitation as to second interlocutory application

(1) A party who fails on an interlocutory application must not apply again for the same or a similar order without first obtaining the leave of the Court.

(2) The Court may grant leave only in special circumstances.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 234 to 262 were substituted, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

263 Orders may be made subject to conditions, etc

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 263 to 269 were revoked, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

264 Review of orders

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 1 January 1989, by rule 13 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the words "(other than an interlocutory application for judgment under rule 136 or rule 137)".

Subclause (2) was amended, as from 1 August 2000, by rule 5(1) High Court Amendment Rules 2000 (SR 2000/109) by inserting after the word "filed" the words "and served".

Subclause (5) was inserted, as from 1 August 2000, by rule 5(2) High Court Amendment Rules 2000 (SR 2000/109). *See* rule 6 of those Rules for a transitional provision relating to reviews of orders.

Rules 263 to 269 were revoked, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

265 Limitation as to second application

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 263 to 269 were revoked, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

266 Rescinding order for fraud, etc

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 263 to 269 were revoked, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

267 Drawing up and sealing orders

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3) was substituted, as from 1 January 1989, by rule 14 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Subclause (5) was inserted, as from 1 June 1990, by rule 8 High Court Amendment Rules 1990 (SR 1990/66).

Rules 263 to 269 were revoked, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

268 When drawing up of order unnecessary

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 268(g) was amended, as from 1 January 1986, by rule 10 High Court Amendment Rules 1985 (SR 1985/328) by omitting the words "doing or".

Rules 263 to 269 were revoked, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

269 Duplicate orders

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 263 to 269 were revoked, as from 24 November 2003, by rule 5 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Powers of Registrars

270 General jurisdiction of Registrars in relation to interlocutory applications

Every Registrar (not being a Deputy Registrar) shall have the jurisdiction and powers of the Court in Chambers

(a) To hear and determine any application to enlarge or abridge the time for filing a statement of defence or any notice of interlocutory application:

(aa) To hear and determine any application under rule 138A:

(b) To adjourn a trial, reserving to the Court the costs of or arising out of the adjournment:

(c)

(d) To order a stay on any application being made to vary or rescind any order or decision of the Registrar:

(e) To make an order on any interlocutory application in proceedings *inter partes* where the consent of all necessary parties is endorsed thereon or filed, or on receiving a draft order consented to in writing by all necessary parties or by their solicitors or counsel.

Compare: 1908 No 89 Schedule 2 r 426G; SR 1954/155 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Paragraph (aa) was inserted, as from 1 October 1991, by rule 14 High Court Amendment Rules 1991 (SR 1991/132).

Paragraph (c) was revoked, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

271 Additional jurisdiction of certain Registrars

The Registrars (not being Deputy Registrars) for the time being exercising their office at the registries at Auckland, Hamilton, Rotorua, Palmerston North, Wellington, Christchurch, and Dunedin shall have the jurisdiction and powers of the Court sitting in Chambers conferred by the following enactments, namely:

(a) Section 13(1) of the Chattels Transfer Act 1924, but only in respect of the extension of time for the registration of an instrument or of an affidavit or renewal of an instrument:

(b) Subsections (2) and (3) of section 26 of the Penal Institutions Act 1954:

(c) Rule 6 so far as it applies to:

(i) Rule 128:

(ii)

(iii) rule 295(4):

(iv) Rule 504:

(v) Rule 505:

(vi) Rule 506:

(d) rule 86C(2), but only in respect of an application for the appointment of a litigation guardian for a minor for the purposes of the Administration Act 1969:

(e)

(f) Rule 560:

(g) Rule 107(4).

Compare: 1908 No 89 Schedule 2 r 426H(1)(d)-(f); SR 1977/330 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Paragraph (c)(ii) was revoked, as from 1 January 1986, by rule 11 High Court Amendment Rules 1985 (SR 1985/328).

Paragraph (c)(iii) was substituted, as from 1 November 2004, by rule 10 High Court Amendment Rules 2004 (SR 2004/320).

Paragraph (d) was substituted, as from 1 February 2003, by rule 10 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Paragraph (d) was substituted, as from 24 August 2007, by rule 11 High Court Amendment Rules 2007 (SR 2007/206).

Part 3—*continued*

Paragraph (e) was repealed, as from 1 February 2003, by rule 10 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

272 Exercise of jurisdiction

Subject to any general or special directions of a Judge, the Registrar may exercise his jurisdiction under rule 270 or rule 271 without any further directions; but shall not exercise that jurisdiction otherwise than in Chambers.

Compare: 1908 No 89 Schedule 2 rr 426I-426J; SR 1954/155 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

273 Ancillary powers

In all matters in which a Registrar has jurisdiction under rule 270 or rule 271, he shall be entitled to exercise, as ancillary to that jurisdiction, all powers that a Judge might exercise in like circumstances.

Compare: 1908 No 89 Schedule 2 r 426H(3); SR 1977/330 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

274 Other registries

The jurisdiction and powers conferred by rule 270 or rule 271 may be exercised in respect of applications filed in other registries, as well as in the registry at which the Registrar exercises his office.

Compare: 1908 No 89 Schedule 2 r 426H(4); SR 1977/330 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

275 Form of order

An order made by a Registrar under rule 270 or rule 271 shall, when it is drawn up,

(a) Be headed "before the Registrar at ....., in Chambers":

(b) Be signed by a Registrar or Deputy Registrar, and sealed with the seal of the Court:

Part 3—*continued*

(c) Refer to the rule under which it is made.

Compare: 1908 No 89 Schedule 2 r 426K; SR 1954/155 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

276 Review of Registrar's decision

(1) Any party to a proceeding or an intended proceeding who is affected by

(a) Any decision of a Registrar in exercise of his jurisdiction under rule 270 or rule 271; or

(b) The refusal of a Registrar to file any document tendered by that party for filing or to perform any duty incumbent on him under these rules,

may apply to the Court by interlocutory application to review that decision or that refusal, and the Court may make such order thereon as may be just.

(2) In any case coming within subclause (1)(b) it shall not be necessary to apply for an order for mandamus or to make an application for review under Part 1 of the Judicature Amendment Act 1972.

(3) Notice of every application made under this rule shall be filed

(a) If it is made by a party who was present or represented when the decision or refusal of the Registrar was given, within 7 days thereafter:

(b) If it is made by a party who was not so present or represented, within 7 days after the receipt by him of notice of the giving of the decision or refusal, and of its effect.

(4) The application shall not operate as a stay of the proceeding, or any step therein, unless the Court, or the Registrar, acting under rule 270, so directs.

Compare: 1908 No 89 Schedule 2 r 426L; SR 1954/155 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

277 Enforcement of interlocutory order

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Subclause (5) was substituted, as from 1 October 1991, by rule 15 High Court Amendment Rules 1991 (SR 1991/132).

Rule 277 was revoked, as from 24 November 2003, by rule 6 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Interrogatories

278 Interrogatories by notice

(1) After a statement of defence has been filed, any party who has filed a pleading may file and serve on any other party who has filed a pleading a notice in form 23 requiring that party to answer specified interrogatories relating to any matter in question in the proceeding between the interrogating party and the party served.

(2) The notice may require that the answers be verified and may so require notwithstanding that the interrogating party has previously required all or any of the interrogatories to be answered without requiring the answers to be verified.

Compare: 1908 No 89 Schedule 2 r 155; SR 1952/122 r 20; SR 1954/155 r 2(1).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

279 Duties of party served

Subject to rule 280, a party required by notice under rule 278 to answer interrogatories shall

(a) Answer the interrogatories within such time, not being less than 14 days (or, if that party be resident out of New Zealand, 28 days) after the day on which the notice under rule 278 is served on that party, as may be specified in the notice; and

(b) If verification is not required, answer the interrogatories by filing and serving on the party requiring the answers, a statement in accordance with rule 283; and

(c) If verification is required, answer the interrogatories by filing and serving on the party requiring the answers, an affidavit verifying the statement together with the

Part 3—*continued*

statement so verified unless the statement has already been filed and served.

Compare: 1908 No 89 Schedule 2 r 158

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

280 Limitation of interrogatories by notice

(1) The Court may, on the application of any party made before or after he has been served with a notice under rule 278, order that answers to interrogatories under rule 279 by that party shall not be required, or shall be limited to such interrogatories or classes of interrogatories or to such of the matters in question in the proceeding, as may be specified in the order.

(2) On any such application, the Court shall make such orders as may be required to prevent unnecessary or oppressive interrogatories or unnecessary answers to interrogatories.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

281 Multiple parties

Where there are more than 2 parties to a proceeding, any party who is required under rule 279 to answer interrogatories shall serve his statement in answer and affidavit (if any) not only on that party but also on every other party who has given an address for service.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

282 Order to answer

(1) The Court may, at any stage of any proceeding, order any party to file and serve on any other party (whether the interrogating party or not)

(a) A statement in accordance with rule 283 in answer to interrogatories specified or referred to in the order relating to any matter in question in the proceeding; or

(b) A statement as mentioned in paragraph (a) verified by affidavit.

Part 3—*continued*

(2) The Court shall not make an order under subclause (1) unless satisfied that the order is necessary at the time when the order is made.

Compare: 1908 No 89 Schedule 2 r 159; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

283 Contents of statement

(1) A statement in answer to interrogatories shall, unless the Court otherwise orders, conform to the requirements of this rule.

(2) A statement in answer to interrogatories shall deal with each interrogatory specifically either

(a) By answering the substance of the interrogatory without evasion; or

(b) By objecting to answer the interrogatory on one or more of the grounds mentioned in rule 284 and briefly stating the facts on which the objection is based.

(3) The statement shall set out above or opposite to each answer or objection the interrogatory to which it relates.

Compare: 1908 No 89 Schedule 2 r 158A; *Gazette*, 1911, p 3268

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

284 Objection to answer

(1) Subject to subclauses (2) and (3) and to rule 285, a party may object to answer any interrogatory on the following grounds but no other:

(a) That the interrogatory does not relate to any matter in question between him and the party requiring the answer:

(b) That the interrogatory is vexatious or oppressive:

(c) Privilege:

(d) That the sole object of the interrogatory is to ascertain the names of the witnesses.

(2) It shall not be a sufficient objection that the answer to any interrogatory will determine a substantial issue in the proceeding.

Part 3—*continued*

(3) On an application under rule 280(1) or rule 282 in respect of any interrogatory, the Court may require the applicant to specify on what grounds he objects to answer that interrogatory and may determine the sufficiency of the objection and, if the Court determines that the objection is not sufficient, the applicant shall not be entitled to object to answer that interrogatory in a statement in answer to interrogatories.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

285 Defamation proceedings

If, in a proceeding for defamation, the defendant pleads that the words or matters complained of are honest opinion on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed unless the interrogatories are necessary in the interests of justice.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 285 was substituted, as from 1 November 2004, by rule 11 High Court Amendment Rules 2004 (SR 2004/320).

286 Who may swear affidavit verifying statement in answer to interrogatories

(1) An affidavit verifying a statement of a party in answer to interrogatories may be made as follows:

(a) By the person required to make the statement:

(b) by the person's litigation guardian if the person required to make the statement is

(i) a minor, except a minor to whom rule 85(2) applies; or

(ii) an incapacitated person:

(c) If the person required to make the statement is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 517:

Part 3—*continued*

(d) If the person required to make the statement is the Crown, or an officer of the Crown who sues or is sued in an official capacity, or as representing a Government department, by an officer of the Crown.

(2) Despite subclause (1), if paragraph (c) or paragraph (d) of that subclause applies, and if the affidavit is to be filed and served in accordance with an order, the Court may

(a) Specify by name or otherwise the person to make the affidavit; or

(b) Specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 286 was substituted, as from 1 January 2000, by rule 12 High Court Amendment Rules 1999 (SR 1999/334).

Subsection (1)(b) was substituted, as from 24 August 2007, by rule 12 High Court Amendment Rules 2007 (SR 2007/206).

287 Insufficient answer

Where a party fails to answer an interrogatory sufficiently, the Court may, without prejudice to its powers under rule 277,

(a) If he has made an insufficient answer, order him to make a further answer verified by affidavit in accordance with rule 286; or

(b) Order him, or any of the persons mentioned in paragraphs (b) to (d) of rule 286(1) as the nature of the case requires, to attend to be orally examined.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

288 Incorrect answer to be amended

If, by reason of any change of circumstances or from the discovery of any error or omission, any statement filed pursuant to any notice given or order made under rule 278 or rule 282 or rule 287 appears to the party by or on whose behalf it was filed to be defective or erroneous, he shall forthwith file and serve an amended statement or, if the amendment is necessary solely to

Part 3—*continued*

remedy an omission, at his option a supplementary statement, and shall, if the original statement has been verified, verify the amended or supplementary statement.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

289 Answers as evidence

(1) A party may tender as evidence

(a) One or more answers to interrogatories without tendering the others:

(b) Part of an answer to an interrogatory without tendering the whole of the answer.

(2) Where the whole or part of an answer to an interrogatory is tendered as evidence, the Court may look at the whole of the answers, and if it appears to the Court that any other answer or any part of an answer is so connected with a matter tendered that the matter tendered ought not to be used without that other answer or part, the Court may reject the tender unless that other answer or part is also tendered.

Compare: 1908 No 89 Schedule 2 r 160

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

290 Public interest

The provisions of these rules which relate to interrogatories do not affect any rule of law which authorises or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Admission of facts

291 Notice to admit facts

(1) A party who is entitled to serve a notice under rule 278 may at any time serve on any other party a notice in form 24 requiring him to admit, for the purpose of that proceeding only, the facts specified in the notice.

Part 3—*continued*

(2) An admission made in compliance with a notice under this rule

(a) May be amended or withdrawn by the party by whom it was made at any time, if the Court so allows and on such terms as the Court thinks just:

(b) Must not be used against the party by whom it was made in a proceeding or interlocutory application other than the proceeding or interlocutory application for the purpose of which it was made.

(3) If the party on whom a notice to admit facts has been served under the provisions of subclause (1) refuses or neglects to admit the facts within 7 days after the day on which the notice is served on that party or within such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was substituted, as from 1 February 1998, by rule 4 High Court Amendment Rules 1997 (SR 1997/350).

292 Judgment on admission of facts

Where admissions of facts are made by a party to a proceeding either by his pleadings or otherwise, any other party to the proceeding may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Discovery orders

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

This heading was substituted , as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320). The heading previously read "Discovery and inspection of documents".

Part 3—*continued*

293 Contents of discovery order

(1) In this rule and in rules 294 to 314, discovery order means an order, made under rule 294, that requires each party to a proceeding to discover the existence of documents to every other party.

(2) To the extent that a discovery order does not modify the terms set out in rule 295, the order contains those terms.

(3) A discovery order may modify the terms set out in rule 295 in any 1 or more of the following ways:

(a) by suspending the operation of the order until a date fixed or to be fixed by the Court:

(b) by excluding 1 or more of those terms:

(c) by varying 1 or more of those terms:

(d) by replacing 1 or more of those terms with different terms:

(e) by adding any terms that are not set out in rule 295 to the order.

(4) A discovery order may, for example, specify 1 or more of the following matters:

(a) the kinds of documents that a party is to discover:

(b) the manner in which the documents are to be discovered:

(c) the period within which the documents are to be discovered.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

294 Discovery orders to be made at case management conferences

(1) If discovery of documents is appropriate for a proceeding on the standard track, the Court must make a discovery order.

(2) An order under subclause (1) must be made at the first case management conference that is held for the proceeding, unless there is good reason for making the order later.

Part 3—*continued*

(3) The Court may make a discovery order for a proceeding on the swift track if

(a) a case management conference is held for the proceeding; and

(b) a party to the proceeding sets out in a memorandum, filed under rule 429, why the order is sought.

(4) To the extent that a party wishes a discovery order to contain terms that are not contained in, or that differ from, the terms set out in rule 295, the party must, in a memorandum filed under rule 429, set out the terms sought and why they are sought.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Paragraph (a) was amended, as from 1 August 1995, by rule 3(a) High Court Amendment Rules (No 2) 1995 (SR 1995/135) by substituting the expression "28 days" for the expression "14 days".

Paragraph (a) was amended, as from 1 August 1995, by rule 3(b) High Court Amendment Rules (No 2) 1995 (SR 1995/135) by substituting the expression "42 days" for the expression "28 days".

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

295 Default terms of discovery order

(1) A discovery order is in the terms set out in this rule to the extent that those terms are not modified by the order.

(2) Each party must make an affidavit of documents that lists the documents that

(a) are or have been in that party's control; and

(b) relate to a matter in question in the proceeding.

(3) The affidavit of documents must

(a) comply with rules 297 and 298; and

(b) be filed and served on every other party who has given an address for service.

(4) Each party must comply with the order within 20 working days after the date on which the order is made.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

Part 3—*continued*

296 Solicitor's obligations on discovery

As soon as practicable after a party becomes bound to comply with a discovery order, the solicitor who acts for the party in the proceeding must, to the best of the solicitor's ability, ensure that the party

(a) understands the party's obligations under the order; and

(b) faithfully fulfils those obligations.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

297 Affidavit of documents

(1) This rule applies to an affidavit of documents that a party is required to make under rule 295(2), but only to the extent that the requirement is not modified by the order.

(2) In the affidavit of documents, the party must

(a) refer to the discovery order under which the affidavit is made and, if the order contains particular terms that are not set out in rule 295, state the nature of those particular terms; and

(b) state that the party understands the party's obligations under the order; and

(c) give particulars of the steps taken to fulfil those obligations, such as, for example, any inquiries made of named persons; and

(d) identify or list the documents required to be discovered under the order in a schedule that complies with rule 298; and

(e) if the party claims confidentiality for a document or part of a document, state the restrictions that the party proposes to apply in order to protect that confidentiality.

(3) The affidavit may be in form 26.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was inserted, as from 1 January 1993, by rule 3 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Part 3—*continued*

Subclause (2) was amended, as from 1 January 1993, by rule 2 High Court Amendment Rules (No 3) 1992 (SR 1992/335) by inserting the words "and shall, for the purposes of rule 277, be deemed to be an order made on an interlocutory application".

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 14 of those Rules as to the transitional provision relating to discovery.

298 Schedule appended to affidavit of documents

(1) The schedule referred to in rule 297(2)(d) must identify or list the documents in the following categories and provide the information specified in relation to each category:

(a) documents that are in the control of the party giving discovery and for which the party does not claim privilege or confidentiality. These documents may be identified by number:

(b) documents that are in the control of the party giving discovery for which privilege is claimed, together with a statement as to the nature of the privilege claimed:

(c) documents that are in the control of the party giving discovery for which confidentiality is claimed, together with a statement as to the nature and extent of the confidentiality:

(d) documents that have been, but are no longer, in the control of the party giving discovery, together with a statement as to when the documents ceased to be in the party's control and the person who now has control of them:

(e) documents that have not been in the control of the party giving discovery but that are known by that party to relate to a matter in question in the proceeding, together with a statement as to who has control of them.

(2) Documents in any of categories (b), (c), (d), or (e) may be described as a group or groups if all documents concerned are of the same nature.

(3) The schedule need not include

(a) copies of documents filed in Court; or

Part 3—*continued*

(b) correspondence that may reasonably be assumed to be in the possession of all parties.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

299 Variation of discovery order

A party may, at any time, apply for an order varying the terms of a discovery order on the ground that

(a) compliance or attempted compliance with the terms of the order has revealed a need for a variation; or

(b) there has been a change of circumstances justifying reconsideration.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was substituted, as from 1 January 1993, by rule 4 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

Inspection of document referred to in pleading or other document

This heading was inserted, as from 1 June 2006, by rule 10 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

299A Inspection of document referred to in pleading or other document

(1) A party (**party A**) on whom a pleading or other document is served may, by notice in writing served on the party or person by whom the pleading or other document was filed (**party B**), require party B to produce for inspection a document referred to in the pleading or other document.

(2) Party B must, within 5 working days after service of a notice under subclause (1), make the document available for inspection by the parties to the proceeding.

Part 3—*continued*

(3) Subclause (2) is subject to any claim by party B to privilege or confidentiality.

(4) If party A challenges a claim to privilege or confidentiality, party A may apply to the Court for an order setting aside or modifying the claim.

Rule 299A was inserted, as from 1 June 2006, by rule 10 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Orders for particular discovery

This heading was inserted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

300 Order for particular discovery against party after proceeding commenced

(1) If at any stage of the proceeding it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for believing that a party has not discovered 1 or more documents or a group of documents that should have been discovered, the Court may order that party

(a) to file an affidavit stating

(i) whether the documents are or have been in the party's control; and

(ii) if they have been, but are no longer, in the party's control, the party's best knowledge and belief as to when the documents ceased to be in the party's control and the person who now has control of them; and

(b) to serve the affidavit on any other party.

(2) The Court may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

Part 3—*continued*

301 Order to discover particular documents before proceeding commenced

(1) This rule applies if it appears to the Court that

(a) a person (the **intending plaintiff**) is or may be entitled to claim in the Court relief against another person (the **intended defendant**) but that it is impossible or impracticable for the intending plaintiff to formulate the intending plaintiff's claim without reference to 1 or more documents or group of documents; and

(b) there are grounds to believe that the documents may be or may have been in the control of a person (the **person**), who may or may not be the intended defendant.

(2) The Court may, on the application of the intending plaintiff made before any proceeding is brought, order the person

(a) to file an affidavit stating

(i) whether the documents are or have been in the person's control; and

(ii) if they have been, but are no longer, in the person's control, the person's best knowledge and belief as to when they ceased to be in the person's control and who now has control of them; and

(b) to serve the affidavit on the intending plaintiff.

(3) An application under subclause (2) must be by interlocutory application made on notice

(a) to the person; and

(b) to the intended defendant.

(4) The Court may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

Part 3—*continued*

302 Order for particular discovery against non-party after proceeding commenced

(1) This rule applies if it appears to the Court that a person who is not a party to a proceeding (the **person**) may be or may have been in the control of 1 or more documents or a group of documents that the person would have had to discover if the person were a party to the proceeding.

(2) The Court may, on application, order the person

(a) to file an affidavit stating

(i) whether the documents are or have been in the person's control; and

(ii) if they have been, but are no longer, in the person's control, the person's best knowledge and belief as to when they ceased to be in the person's control and who now has control of them; and

(b) to serve the affidavit on a party or parties specified in the order.

(3) An application for an order under subclause (2) must be made on notice to the person and to every other party who has filed an address for service.

(4) The Court may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

303 Expenses

If an order is made under rule 301(2) or rule 302(2), the Court may, if it thinks fit, order the applicant to pay to the person from whom discovery is sought the person's expenses (including solicitor and client costs) of and incidental to the application and in complying with any order made on the application.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Rule 303 was substituted, as from 1 January 2000, by rule 13 High Court Amendment Rules 1999 (SR 1999/334).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

Discovery: Affidavits of documents, privilege, and public interest

This heading was inserted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

304 Incorrect affidavit of documents to be amended

If, by reason of any change of circumstances or because of an error or omission, an affidavit of documents filed under an order made under any of the provisions of rules 294, 299, and 300 to 302 appears to the person making discovery to be defective or erroneous, the person must promptly file and serve an affidavit that corrects or supplements the affidavit of documents.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

305 Where process impeded by discovery of irrelevant documents

If the Court considers that a party has impeded the process of discovery and inspection by including documents in an affidavit that are not required to be included, the Court may order the party to pay costs to a party or parties specified in the order.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

306 Who may swear affidavit of documents

(1) When the Court makes an order under any of the provisions of rules 294, 299, and 300 to 302, it may

Part 3—*continued*

(a) specify by name or otherwise the person to make the affidavit of documents; or

(b) specify by description or otherwise the persons from whom the person required to make discovery may choose the person to make the affidavit.

(2) If the Court does not specify the person, the affidavit of documents may be made as follows:

(a) by the person required to make discovery:

(b) if the person required to make discovery is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 517:

(c) if the person required to make discovery is the Crown, an officer of the Crown who sues or is sued in an official capacity, or as representing a Government department, by an officer of the Crown.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

307 Challenge to privilege or confidentiality claim

(1) If a party challenges a claim to privilege or confidentiality made in an affidavit of documents, the party may apply to the Court for an order setting aside or modifying the claim.

(2) In considering the application, the Court may require the document under review to be produced to the Court and inspect it for the purpose of deciding the validity of the claim.

(3) The Court may

(a) set aside the claim to privilege or confidentiality; or

(b) modify the claim to privilege or confidentiality; or

(c) dismiss the application; or

(d) make any other order with respect to the document under review that the Court thinks fit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

308 Crown documents and public interest

Any order made under section 27(1) of the Crown Proceedings Act 1950 must be construed as not requiring disclosure of the existence of any document if

(a) the Prime Minister certifies that the disclosure of the existence of that document would be likely to prejudice

(i) the security or defence of New Zealand or the international relations of the Government of New Zealand; or

(ii) any interest protected by section 7 of the Official Information Act 1982; or

(b) the Attorney-General certifies that the disclosure of the existence of that document would be likely to prejudice the prevention, investigation, or detection of offences.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

Inspecting and copying discovered documents

This heading was inserted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

309 Inspection of documents

(1) As soon as a person who is required to make discovery has served an affidavit of documents, the person must make the documents listed in the affidavit available for inspection by the parties to the proceeding.

(2) The person is not required to make privileged documents or documents no longer in the person's control available for inspection.

(3) The person may limit inspection of confidential documents to the persons specified in the affidavit of documents and subject to the restrictions proposed in the affidavit.

Part 3—*continued*

(4) Subclause (1) is subject to subclauses (2) and (3).

(5) Subclauses (2) and (3) are subject to any contrary order made under rule 307.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

310 Order facilitating inspection

(1) The Court may, on application, make any order it thinks appropriate to facilitate the efficient inspection of documents.

(2) An order under subclause (1) may, for example, require the person who is to produce the documents for inspection to do either or both of the following:

(a) arrange the documents in a stated manner or order:

(b) assist the party inspecting the documents to locate and identify particular documents or group of documents.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

311 Cost of production by non-party

If an order is made under rule 301(2) or rule 302(2), the Court may, if it thinks fit, order that the applicant pay the person from whom discovery is sought that person's expenses (including solicitor and client costs) in making the documents discovered available for inspection by the parties to the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

312 Right to make copies

(1) A party to whom a document is produced for inspection under rule 309 or rule 310 may make copies of the document.

(2) On the application of a party to whom a document is produced for inspection under rule 309 or rule 310, the Court may order

Part 3—*continued*

the person who has control of the document to furnish the applicant with a legible copy.

(3) An order under subclause (2) may be made on any terms the Court thinks fit, and, in particular, the Court may order the applicant to pay the reasonable expenses of the other party, and may order that the document be marked to the effect that it is a copy furnished for purposes of inspection only.

(4) A party who obtains a copy under this rule

(a) may use that copy only for the purposes of the proceeding; and

(b) except for the purposes of the proceeding, must not make it available to any other person.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

Evidentiary provisions related to discovery and inspection

This heading was inserted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

313 Effect of failure to include document

A document that should have been included in a party's affidavit of documents may be produced in evidence at the hearing only with the consent of the other party or parties or the leave of the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

314 Admission of documents discovered

(1) Whenever a party (**party A**) is permitted to inspect a document specified in an affidavit of documents served by another party (**party B**) on party A under any of the provisions of rules 294 to 299, party A is (subject to any contrary order by the Court)

Part 3—*continued*

deemed to have made the following admissions in favour of party B :

(a) that the document, if described in the affidavit as an original document, is an original document and was printed, written, signed, or executed as it appears to have been; or

(b) that the document, if described in the affidavit as a copy, is a true copy.

(2) Subclause (1) does not apply if

(a) a party has in a pleading denied the authenticity of the document; or

(b) within 10 working days after inspecting the document, party A serves on party B a notice disputing the authenticity of the document.

(3) At the hearing of a proceeding, party A may give secondary evidence of a document and of its contents if

(a) the document is shown in an affidavit served in accordance with any of the provisions of rules 294 to 299 to be in the control of party B; and

(b) party B has not produced the document after being requested to do so by party A.

(4) Subclause (3) applies whether or not a notice to produce the document has been served on party B.

(5) Subclauses (1) to (3) apply, with all necessary modifications, in relation to an affidavit made in compliance with an order under any of the provisions of rules 300 to 302 (which relate to discovery of particular documents) as they apply in relation to an affidavit made under a discovery order.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

315 Notice to produce documents

(1) A party to a proceeding may serve on another party a notice requiring the other party to produce a document or thing for the purpose of evidence at the hearing of the proceeding, or before

Part 3—*continued*

a Judge, officer, examiner, or other person having authority to take evidence in the proceeding.

(2) If the document or thing is in the control of the party who is served with the notice, the party must, unless the Court otherwise orders, produce the document or thing in accordance with the notice, without the need for a subpoena for production.

(3) The notice must be treated as an order of the Court to produce the document or thing specified in the notice.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

316 Notice to admit authenticity of documents

(1) A party (**party A**) to a proceeding may, by notice served on another party (**party B**), require party B to admit, for the purpose of that proceeding only, the authenticity of the documents specified in the notice.

(2) For the purposes of the proceeding, party B is deemed to have admitted the authenticity of any document specified in the notice unless, within 10 working days after the date on which party B is served with the notice, party B serves on party A a notice disputing the authenticity of the document.

(3) A party may, with the leave of the Court, withdraw an admission under subclause (2).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

317 Restricted effect of admission

An admission under rule 314 or rule 316 for the purpose of a proceeding may not be used against the admitting party in another proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

Part 3—*continued*

Non-compliance by non-parties with orders for discovery or inspection

This heading was inserted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

317A Contempt of Court

(1) Every person is guilty of contempt of Court who,

(a) being a person from whom discovery is sought by an order made under rule 301(2) or rule 302(2), wilfully and without lawful excuse disobeys the order or fails to ensure that the order is complied with; or

(b) being a person who is not a party to the proceeding and who is required by an order made under rule 310 to produce for inspection the whole or part of a document, wilfully and without lawful excuse disobeys the order or fails to ensure that it is complied with.

(2) Nothing in this rule limits or affects any power or authority of the Court to punish any person for contempt of Court.

Rule 317A was inserted, as from 1 August 1987, by rule 5 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Rules 293 to 317A were substituted, as from 1 November 2004, by rule 12 High Court Amendment Rules 2004 (SR 2004/320).

Medical examinations under section 100(1) of the Act

318 Order for medical examination

(1) An order under section 100(1) of the Act may be made

(a) At any time after pleadings are closed, on the application of any party to the proceeding; or

(b) By the Court of its own motion.

(2) The time and place of the examination shall be fixed by the order.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

319 Report

An order made under section 100(1) of the Act shall require any medical practitioner making the examination

(a) To furnish to the Court, within such time as may be specified in the order, a report in writing setting out

(i) The medical practitioner's clinical findings; and

(ii) The medical practitioner's opinion of the physical condition or mental condition or both of the person examined so far as the same is relevant to the matter in question in the proceeding; and

(iii) Where appropriate, the medical practitioner's prognosis in respect of the condition; and

(b) If the order was obtained on the application of any party, to deliver to that party within the same time, a copy of the report furnished to the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

320 Service of report

(1) The party to whom the copy of the report is delivered under rule 319(b) shall forthwith serve a copy of the report on the person examined or that person's solicitor.

(2) If the order under section 100(1) of the Act was made by the Court of its own motion, the Registrar shall, as soon as practicable after the report is furnished to the Court, serve a copy of the report on the parties to the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

321 Evidence of medical practitioner where medical examination ordered

If the parties do not agree to accept a report obtained pursuant to an order under section 100(1) of the Act, the Court

(a) May summon the medical practitioner named in the order to attend at the trial; and

(b) May, at such stage of the trial before counsel's addresses as the Court thinks fit, examine the medical

Part 3—*continued*

practitioner about the matters referred to in the medical practitioner's report; and

(c) May permit any party to cross-examine the medical practitioner on the evidence then given.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Inspection and testing of property

322 Order for inspection, etc

(1) The Court may, for the purpose of enabling the proper determination of any matter in question in any proceeding, make orders, on terms, for:

(a) The inspection of any property:

(b) The taking of samples of any property:

(c) The making of any observation of any property:

(d) The measuring, weighing, or photographing of any property:

(e) The making of any experiment on or with any property:

(f) The observation of any process.

(2) An order under subclause (1) may authorise any person to enter any land or do any other thing for the purpose of getting access to the property.

(3) In this rule **property** includes any land and any document or other chattel, whether in the ownership, possession, custody, or power of a party or not.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

323 Notice of application for order for inspection, etc

A party applying for an order under rule 322 shall, so far as practicable, serve notice of the application on each person who would be affected by the order if made.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Court appointed experts

The heading "Court appointed experts" was substituted for the heading "Expert Evidence", as from 1 July 2002, by rule 5 High Court Amendment Rules 2002 (SR 2002/132).

324 Appointment of Court expert

(1) In any proceeding which is to be tried without a jury and in which any question for an expert witness arises, the Court may at any time, of its own motion or on the application of any party, appoint an independent expert or, if more than one such question arises, 2 or more such experts, to inquire into and report upon any question of fact or opinion not involving questions of law or of construction.

(2) An expert appointed under subclause (1) is referred to in this rule and in rules 325 to 330 as a **Court expert**.

(3) Any Court expert in a proceeding shall, if possible, be a person agreed upon by the parties and, failing agreement, shall be appointed by the Court from persons named by the parties.

(3A) A person appointed as an independent expert in a proceeding under rule 330B(3)(a) may not be appointed as a Court expert unless the parties to the proceeding agree.

(4) In this rule, **expert**, in relation to any question arising in a proceeding, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3A) was inserted, as from 1 July 2002, by rule 6 High Court Amendment Rules 2002 (SR 2002/132).

325 Submission of question to Court expert

The question to be submitted to the Court expert and the instructions (if any) given to the Court expert shall, failing agreement between the parties, be settled by the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

326 Report of Court expert

(1) The Court expert shall send his report to the Court, together with such number of copies thereof as the Court may direct.

(2) The Registrar shall send copies of the report to the parties or their solicitors.

(3) The Court may direct the Court expert to make a further or supplemental report.

(4) Any part of the Court expert's report which is not accepted by all the parties to the proceeding in which it is made shall be treated as information furnished to the Court and shall be given such weight as the Court thinks fit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

327 Experiments and tests

(1) If the Court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report, the Court expert

(a) Shall inform the parties or their solicitors; and

(b) Shall, if possible, make an arrangement with the parties or their solicitors about

(i) The expenses involved; and

(ii) The persons to attend the experiment or test; and

(iii) Any other relevant matters.

(2) If the parties or their solicitors are unable to agree on any of the matters referred to in subclause (1)(b), the matters on which they are unable to agree shall be settled by the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

328 Cross-examination of Court expert

(1) Any party may, within 14 days after receiving a copy of the Court expert's report, apply to the Court for leave to cross-examine the Court expert on his report.

(2) On an application under subclause (1), the Court shall make an order for the cross-examination of the Court expert by all parties, either

Part 3—*continued*

(a) At the trial; or
(b) Before an examiner at such time and place as may be specified in the order.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

329 Remuneration of Court expert

(1) The remuneration of the Court expert shall be fixed by the Court and shall include
(a) A fee for his report; and
(b) A proper sum for each day during which he is required to be present either in Court or before an examiner.

(2) The Court may, by the order appointing the Court expert or at any later time, make such order as it thinks fit for and incidental to the payment of the remuneration of the Court expert, including (without limiting the generality of the foregoing provisions of this rule) any one or more of the following:
(a) An order directing that the remuneration of the Court expert shall be paid by one or more of the parties and, if more than one, in such proportions as the Court thinks proper:
(b) An order that any party or parties give security, on such terms as the Court thinks fit, for the remuneration of the Court expert.

(3) Where the Court appoints the Court expert of its own motion, the Court, instead of making an order under subclause (2), may, by the order appointing the expert or at any later time, order that the remuneration of the Court expert shall be paid by the chief executive of the Department for Courts out of money appropriated by Parliament for the purpose.

(4) The provisions of subclauses (2) and (3) are without prejudice to the power of the Court to make an order providing for the payment of the Court expert's remuneration as part of the costs of the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Subclause (3) was amended, as from 1 July 1995, by rule 2 High Court Amendment Rules (No 2) 1995 by substituting the words "chief executive of the Department for Courts" for the words "Secretary for Justice".

330 Calling of expert witnesses

(1) If a Court expert is appointed in a proceeding or interlocutory application,

(a) A party may call 1 expert witness to give evidence on the question reported on by the Court expert, if the party gives notice of the party's intention to do so a reasonable time before the trial; but

(b) No party may call more than 1 such witness without the leave of the Court.

(2) The Court shall not grant leave under subclause (1)(b) unless it considers that the circumstances of the case are exceptional.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was substituted, as from 1 February 1998, by rule 5 High Court Amendment Rules 1997 (SR 1997/350).

Expert evidence generally

The heading "Expert evidence generally" was inserted, as from 1 July 2002, by rule 7 High Court Amendment Rules 2002 (SR 2002/132).

330A Expert witness to comply with Code of Conduct

(1) A party to a proceeding who engages an expert witness must give the expert witness a copy of the Code of Conduct set out in Schedule 4.

(2) An expert witness must

(a) state in any written statement of the proposed evidence of the witness served under rule 441B or rule 441C or at the time of giving any oral evidence or in any affidavit containing the evidence of the expert witness that the expert witness has read the Code of Conduct and agrees to comply with it:

(b) comply with the Code of Conduct in preparing any written statement of the proposed evidence of the witness to

Part 3—*continued*

be served under rule 441B or rule 441C or in giving any oral or affidavit evidence in any proceeding.

(3) The evidence of an expert witness who has not complied with subclause (2)(a) may be adduced only with the leave of the Court.

Rules 330A to 330D were inserted, as from 1 July 2002, by rule 7 High Court Amendment Rules 2002 (SR 2002/132). *See* rule 8 of those Rules for the transitional provision relating to expert evidence.

330B Court may direct conference of expert witnesses

(1) The Court may, on its own initiative or on the application of a party to a proceeding, direct expert witnesses

(a) to confer:

(b) on the matters on which the expert witnesses must confer:

(c) to confer in the absence of the legal advisers of the parties:

(d) to try to reach agreement on matters in issue in the proceeding:

(e) to prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement:

(f) to prepare the joint witness statement without the assistance of the legal advisers to the parties.

(2) The Court may not give a direction under subclause (1)(c) or (f) unless the parties agree.

(3) The Court may, on its own initiative or on the application of a party to the proceeding,

(a) appoint an independent expert to convene and conduct the conference of expert witnesses:

(b) give any directions for convening and conducting the conference the Court thinks fit.

(4) The Court may not appoint an independent expert or give a direction under subclause (3) unless the parties agree.

Part 3—*continued*

(5) Subject to any subsequent order of the Court as to costs, the Court may determine the remuneration of an independent expert and the party by whom it must be paid.

(6) The matters discussed at the conference of the expert witnesses must not be referred to at the hearing unless the parties by whom the expert witnesses have been engaged agree.

(7) An independent expert appointed under subclause (3) may not give evidence at the hearing unless the parties agree.

Rules 330A to 330D were inserted, as from 1 July 2002, by rule 7 High Court Amendment Rules 2002 (SR 2002/132). *See* rule 8 of those Rules for the transitional provision relating to expert evidence.

330C Status of joint witness statement by expert witnesses

(1) A joint witness statement prepared by expert witnesses under rule 330B

(a) must be circulated by the parties to the proceeding by whom the expert witnesses have been engaged to every other party who has given an address for service; and

(b) may be produced in evidence by any expert witness who signed the statement as part of his or her evidence; and

(c) may, if the parties to the proceeding agree, be produced in evidence without the need to call any of the expert witnesses who signed the statement.

(2) Rules 441D to 441L apply, with all necessary modifications, to a joint witness statement as if the statement were a written statement under rule 441B or rule 441C.

(3) An expert witness is not precluded from giving evidence on any matter at the hearing simply because the expert witness has participated in the preparation of a joint witness statement under rule 330B or because the witness statement is evidence at the hearing under rule 441F.

Rules 330A to 330D were inserted, as from 1 July 2002, by rule 7 High Court Amendment Rules 2002 (SR 2002/132). *See* rule 8 of those Rules for the transitional provision relating to expert evidence.

330D Evidence of expert witnesses at trial

The Court may, at the hearing, direct that the evidence of expert witnesses is given after all or certain factual evidence is

Part 3—*continued*

given or in an order the Court thinks best suited to the circumstances of the proceeding.

Rules 330A to 330D were inserted, as from 1 July 2002, by rule 7 High Court Amendment Rules 2002 (SR 2002/132). *See* rule 8 of those Rules for the transitional provision relating to expert evidence.

Interim preservation, etc, of property

331 Preservation of property

(1) In any proceeding, the Court may make orders for the detention, custody, or preservation of any property.

(2) An order under subclause (1) may authorise any person to enter any land or to do any other thing for the purpose of giving effect to the order.

(3) In a proceeding concerning the right of any party to a fund, the Court may order that the fund be paid into Court or otherwise secured.

Compare: 1908 No 89 Schedule 2 rr 476, 478; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

332 Sale of perishable property, etc

Where in any proceeding concerning any property (other than land) or in any proceeding in which any question may arise concerning any property (other than land), it appears to the Court that

(a) The property is of a perishable nature or is likely to deteriorate by keeping; or

(b) For any other reason it is desirable that the property should be sold before trial,

the Court, on the application of any party to a proceeding, may make an order for the sale of the property, by a person named in the order, in such manner and on such terms as the Court thinks appropriate.

Compare: 1908 No 89 Schedule 2 r 477; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

333 Interim distribution

Where, in a proceeding concerning property, it appears to the Court that the property is more than sufficient to answer the claims on the property for which provision ought to be made in the proceeding, the Court may allow any part of the property to be conveyed, transferred, or delivered to any person having an interest in the property.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

334 Interim income

Where, in a proceeding concerning property, it appears to the Court that the whole or any part of the income of the property is not required to answer the claims on the property or its income for which provision ought to be made in the proceeding, the Court may allow that income or part to be paid, during such period as the Court may determine, to all or any of the persons having an interest in the income.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

335 Directions

Where application is made for an order under rule 331 or rule 332, the Court may treat the application as though it were also an application for directions under rule 425 and may give directions accordingly.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 335 was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 425" for the expression "rule 437". *See* rule 19 of those Rules as to the transitional provisions.

336 Time and terms for order

The Court may make orders under rules 331 to 335 on terms and at any stage of the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Receivers

337 Application

Rules 338 to 345 apply whenever the Court appoints a receiver and shall have effect subject to the express provisions of any order by which a receiver is appointed.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

338 Address for service

A receiver shall, within 7 days after his appointment, file a notice specifying an address for service.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

339 Security

(1) Where the Court appoints a receiver, the Court may give directions for the giving by the receiver of security in accordance with this rule.

(2) Where the Court directs the appointment of a receiver, then, unless the Court otherwise orders, a person shall not be appointed receiver pursuant to the direction until he has given a security in accordance with this rule.

(3) Subclauses (1) and (2) shall have effect subject to any provision for the time being in force made by or under any Act.

(4) Security to be given in accordance with this rule shall be a security approved by the Registrar that the receiver will account for what he receives as receiver and will deal with what he receives as the Court may direct.

(5) Where the Court has directed security to be given the Court may

(a) Vary such order; or

(b) Order the security to be varied or discharged.

Compare: 1908 No 89 Schedule 2 r 452; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

340 Remuneration

(1) A receiver shall be allowed such remuneration as may be fixed by the Court.

(2) The Court may, by the order appointing a receiver or at any later time, direct the party or parties by whom the receiver's remuneration shall be paid and, if more than one, in what proportions.

(3) Without prejudice to the provisions of subclause (2), the Court may order any party or parties to give security for the receiver's remuneration.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

341 Accounts

A receiver shall file accounts at such intervals or on such dates as the Court may direct.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

342 Appointment to pass accounts

(1) The receiver

(a) Shall, on the day on which he files an account, obtain an appointment to pass the account; and

(b) Shall serve the account, with a note of the appointment, on each party interested who has given an address for service in the proceeding.

(2) The receiver shall, unless the Court otherwise orders, attend on the appointment to pass the account.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

343 Default

(1) Where a receiver

(a) Is required by these rules or by an order or direction of the Court

(i) To file any account or affidavit; or

Part 3—*continued*

(ii) To attend on an appointment to pass his account; or

(iii) To do any other thing; and

(b) Does not carry out the requirement,

the Court may make such orders and give such directions as the Court thinks fit.

(2) Orders and directions made under subclause (1) may include orders and directions for

(a) The discharge of the receiver; and

(b) The appointment of another receiver; and

(c) The payment of costs.

(3) Without limiting subclauses (1) and (2), where a receiver is required by these rules or by an order or direction of the Court to pay into Court any sum shown by his account as due from him, and he does not carry out the requirement, the Court may charge him with interest at the rate from time to time prescribed for the purposes of section 87 of the Act.

(4) This rule does not limit the powers of the Court to enforce orders or to punish contempt.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

344 Powers

(1) The Court may authorise a receiver to do (either in his own name or in the name of the parties or any of them and either generally or in any particular instance) any act or thing which the parties or any of them might do if of full age and capacity.

(2) Subclause (1) has effect notwithstanding that the parties or any of them are not of full age and capacity.

(3) This rule does not limit the powers of the Court apart from this rule to authorise a receiver to do any act or thing.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

345 Account on death of receiver

(1) Where the receiver in any proceeding dies, the Court may, on application in the proceeding, make such orders as the Court

Part 3—*continued*

thinks fit for the filing and passing of accounts by the personal representatives of the deceased receiver and for the payment into Court of any amount shown to be due.

(2) The Court shall not make any order under subclause (1) unless notice of the application has been served on the personal representatives.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

346 Service of notice of application for account on death of receiver

Notice of an application under rule 345 may be served in any manner in which a statement of claim may be served.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Interim payments

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

346A Interpretation

In rules 346B to 346J, **interim payment** means a payment on account of any damages, debt, or other sum (excluding costs) which the defendant in a proceeding may be held liable to pay to or for the benefit of the plaintiff in that proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

346B Application for interim payment

(1) The plaintiff in a proceeding may, at any time after the statement of claim and notice of proceeding have been served on a defendant and the time for the filing a statement of defence by that defendant expired, apply to the Court for an order requiring that defendant to make an interim payment.

Part 3—*continued*

(2) An application under this rule shall be supported by an affidavit which shall

(a) Verify the amount of the damages, debt, or other sum to which the application relates and the grounds of the application; and

(b) Exhibit any documentary evidence relied on by the plaintiff in support of the application.

(3) The application and a copy of the affidavit in support and any documents annexed thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the date fixed for the hearing of the application.

(4) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

346C Order for interim payment in respect of damages

If, on the hearing of an application under rule 346B, the Court is satisfied

(a) That the defendant against whom the order is sought has admitted liability for the plaintiff's damages; or

(b) That the plaintiff has obtained, against the defendant against whom the order is sought, judgment for damages to be assessed; or

(c) That, if the proceeding were tried, the plaintiff would obtain judgment for substantial damages against the defendant against whom the order is sought, or, where there are two or more defendants, against any of them

the Court may, if it thinks fit, order that defendant to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-

Part 3—*continued*

off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rule 346C was amended, as from 1 January 1993, by rule 3 High Court Amendment Rules (No 3) 1992 (SR 1992/335) by omitting the words "and subject to subclause (2)".

Paragraph (c) was amended, as from 1 February 1994, by rule 14 High Court Amendment Rules 1993 (SR 1993/420) by omitting the word "judgment".

346D Order for interim payment in respect of sums other than damages

If, on the hearing of an application under rule 346B, the Court is satisfied

(a) That the plaintiff has obtained an order for an account to be taken as between the plaintiff and the defendant and for any amount certified due on taking the account to be paid; or

(b) That the plaintiff's claim includes a claim for possession of land and, if the proceeding were tried, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the proceeding, even if a final judgment or order were given or made in favour of the defendant; or

(c) That, if the proceeding were tried, the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

346E Manner of payment

(1) Subject to subclause (2), the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into Court, and where the amount is paid into Court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to the plaintiff at such time or times as the Court thinks fit.

(2) Where a minor, except a minor to whom rule 85(2) applies, or an incapacitated person is or may be entitled to an interim payment, or to part of an interim payment, under these rules,

(a) acceptance of that payment is subject to the approval of the Court; and

(b) payment out of Court must not be made without the leave of the Court.

(3) An application under subclause (1) for money in Court to be paid out may be made *ex parte*, but the Court hearing the application may direct that notice of the application be served on the other party.

(4) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

(5) Where a payment is ordered in respect of the defendant's use and occupation of land, the order may provide for periodical payments to be made during the pendency of the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Subclause 2 was substituted, as from 24 August 2007, by rule 13 High Court Amendment Rules 2007 (SR 2007/206).

346F Directions on application under rule 346B

Where an application is made under rule 346B, the Court may give directions as to the further conduct of the proceeding as

Part 3—*continued*

the Court thinks fit, and, in particular, the Court may order an early trial of the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

346G Non-disclosure of interim payment

The fact that an order has been made under rule 346C or rule 346D shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

346H Payment into Court in satisfaction

Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into Court under rule 347, the notice of payment into Court must state that the defendant has taken into account the interim payment.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

346I Adjustment on final judgment or order or on discontinuance

Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether volun-

Part 3—*continued*

tarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue the proceeding or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceeding on the application of any party, make such order with respect to the interim payment as may be just, and, in particular,

(a) An order for the repayment by the plaintiff of all or part of the interim payment; or

(b) An order for the payment to be varied or discharged; or

(c) An order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from that other defendant by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

346J Counterclaims and other proceedings

Rules 346A to 346I shall apply, with the necessary modifications, to any counterclaim or proceeding where one party seeks an order for an interim payment to be made by another.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 346A to 346J and the heading "Interim Payments" were inserted, as from 1 January 1993, by rule 7 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Payment into Court

This heading was revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

Part 3—*continued*

347 Payment of a sum of money into Court

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

348 Time of payment into Court

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "the setting down date for the proceeding" for the words "the proceeding is set down for trial". *See* rule 19 of those Rules as to the transitional provisions.

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

349 Notice of payment

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

350 Place of payment where hearing held at different Court

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 350 was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

Part 3—*continued*

351 Restrictions on disclosure of payment into Court
[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

352 Acceptance and payment out
[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

353 Acceptance in respect of general damages only
[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

354 Restriction on acceptance after commencement of trial
[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

355 Refund in event of non-acceptance
[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

Part 3—*continued*

356 Restrictions on payment out

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

357 Admission of part of relief claimed or of other relief

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "the setting down date for the proceeding" for the words "the proceeding is set down for trial". *See* rule 19 of those Rules as to the transitional provisions.

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

358 Money paid in with admission of liability on claim for liquidated demand

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

359 Consequences of acceptance of payment or relief offered

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

Part 3—*continued*

360 Consequences of non-acceptance of payment or relief offered

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

361 Offer of contribution

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

362 Amendment of notice of payment

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

363 Interest

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 363 was substituted, as from 1 February 1994, by rule 15 High Court Amendment Rules 1993 (SR 1993/420).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

364 Counterclaim

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

365 Payments to be made to solicitor

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

366 Payment out when person entitled under disability

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1)(c) was amended, as from 1 October 1988 pursuant to section 117(3) Protection of Personal and Property Rights Act 1988 (1988 No 4) by substituting the words "person subject to a property order as defined in section 2 of the Protection of Personal and Property Rights Act 1988" for the words "protected person as defined in section 2 of the Aged and Infirm Persons Protection Act 1912".

Subclause (1)(c) was substituted, as from 1 January 1993, by rule 8 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Subclause (2) was amended, as from 1 October 1988, pursuant to section 117(3) Protection of Personal and Property Rights Act 1988 by substituting the words "person subject to a property order" for the words "protected person".

The references to the Mental Health (Compulsory Assessment and Treatment) Act 1992 in subcls (1)(b) and (2) were substituted for references to the Mental Health Act 1969 pursuant to section 7(1) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

The reference to the Protection of Personal and Property Rights Act 1988 in subsection (2) was substituted, as from 1 October 1988, for a reference to the Aged and Infirm Persons Protection Act 1912 pursuant to section 113 Protection of Personal and Property Rights Act 1988 (1988 No 4).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

Part 3—*continued*

367 Application of rules to admissions of relief

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

368 Forms

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 347 to 368 were revoked, as from 1 November 2004, by rule 15 High Court Amendment Rules 2004 (SR 2004/320). *See* rule 16 of those Rules as to the transitional provision relating to payment into Court.

Evidence by deposition

369 Order for examination of witness or for letters of request

(1) Where in any proceeding any party desires to have the evidence of any person or persons taken otherwise than at the time and place appointed or to be appointed for the trial of the proceeding, the Court may, on application by that party, make orders on such terms as it thinks fit

(a) For the examination of any person on oath before a Judge or any Registrar or Deputy Registrar or before such other person as the Court may appoint (in rules 370 to 375 referred to as the examiner) at any place whether in or out of New Zealand; or

(b) For the sending of a letter of request to the judicial authorities of another country, to take, or cause to be taken, the evidence of any person.

(2) On the application of any opposite party and upon being satisfied that the party securing an order under subclause (1) is not proceeding with due diligence to implement the order, the Court may rescind the order and may make such other order as justice requires.

Compare: 1908 No 89 Schedule 2 rr 177, 177A; SR 1939/9 r 8; SR 1954/155 rr 2(1), 5; SR 1969/145 r 24(1)

Part 3—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

370 Security for costs

On any application for an order under rule 369 for the taking of evidence out of New Zealand, the Court may, as a condition of making the order, require the party applying to give security for

(a) The estimated fees and expenses of the examiner; and

(b) The costs of any opposite party of and incidental to the taking of the evidence, in such amount as the Court thinks fit, but not exceeding the estimated reasonable solicitor and client costs and disbursements of that opposite party.

Compare: 1908 No 89 Schedule 2 r 177B; SR 1939/9 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

371 Documents for examiner

(1) The party obtaining an order for examination before an examiner shall, unless the examination is conducted by the Registrar or Deputy Registrar at the Court where the file of the proceeding is held, furnish the examiner with copies of such of the documents in the proceeding as are necessary to inform the examiner of the matters to which the examination is to relate.

(2) Where the documents in the proceeding are not sufficient to inform the examiner of the matters to which the examination is to relate, the Court shall, in the order for examination or in a later order, state those matters.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

372 Procedure for examination before examiner

(1) On receipt of a copy of the order for examination, the examiner shall appoint a time and place for the examination and shall give notice thereof to all parties.

(2) The examiner may adjourn the examination from time to time and from place to place as may be necessary or expedient.

Part 3—*continued*

(3) The examiner may administer an oath to each witness examined and each witness may be examined, cross-examined, and re-examined as at the hearing of a proceeding.

(4) The examiner shall cause to be put down in writing the evidence tendered at the examination, together with notes as to any objections to the evidence.

(5) The depositions so taken shall be signed on each page by the witness and by the examiner.

(6) The depositions when taken shall be securely fastened together and shall, together with the exhibits and the report of the examiner, be sent without delay to the office of the Court in which the file of the proceeding is for the time being held.

(7) If, at the time and place appointed for the examination or at any adjournment, there is no appearance by or on behalf of the party obtaining the order or the witness does not attend, or if, at that time and place, the applicant intimates that it is not intended to proceed with the taking of the evidence, the examiner may send a certificate to that effect to the office of the Court in which the file of the proceeding is for the time being held.

(8) On application to the Registrar any party may inspect any depositions taken under this rule and make copies of them or extracts from them.

Compare: SR 1969/145 r 24(3)-(9)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

373 Examination of additional persons

The examiner may, with the consent in writing of each party to the proceeding, take the examination of any person in addition to the person named or provided for in the order for examination and, if he does so, the consent of each of the parties shall be annexed to the deposition of that person.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

374 Objection to question

Where objection is taken to a question put to a person being examined before an examiner, or a person being so examined takes objection to answering a question put to him or to produce any document or any thing

(a) The examiner shall state to the parties his opinion on, but shall not decide, the validity of the ground for objection; and

(b) The question, the ground for the objection, the opinion of the examiner, and the answer (if any) to the question shall be set out in the deposition of that person or in a statement attached to the deposition; and

(c) The Court may, on application by any party, decide the validity of the ground for the objection.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

375 Form of report

The report of the examiner may be in form 32.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

376 Depositions as evidence

Any depositions taken in accordance with these rules pursuant to an order under rule 369 may be tendered in evidence at the trial of the proceeding and shall be admitted subject to all just exceptions.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

377 Letters of request where Convention exists

Where a Convention is in force between the Sovereign of a country and the Sovereign of New Zealand or the Government of a country and the Government of New Zealand relating to the taking of evidence in that country for use in New Zealand, the provisions of rules 378 to 380 shall apply subject to any special provisions contained in the Convention.

Compare: 1908 No 89 Schedule 2 r 177C; SR 1939/9 r 8

Part 3—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

378 Issue of letters of request

(1) Where an order has been made for the issue of a letter of request, the party obtaining the order shall

(a) Lodge with the Registrar

(i) A form of the appropriate letter of request; and

(ii) The interrogatories and cross-interrogatories (if any) to accompany the letter of request; and

(iii) Where required by the Convention, a translation of each of the documents mentioned in subparagraphs (i) and (ii) into the language, or an appropriate language, of the country concerned; and

(b) File

(i) A copy of each of the documents mentioned in paragraph (a); and

(ii) A personal undertaking by the party obtaining the order or his solicitor to be responsible for all expenses in respect of the execution of the letter of request incurred by the Court or by any person at the request of the Court, and, on being given notice of the amount of any such expenses, to pay such amount forthwith into the Crown Bank Account and produce evidence of such payment to the Registrar.

(2) The correctness of every translation shall be certified or otherwise verified to the satisfaction of the Registrar.

(3) The Registrar may require security to his satisfaction in lieu of an undertaking under subclause (1)(b)(ii).

(4) The letter of request shall be in such form as the Court may approve and shall be issued under the hand of a Judge and the seal of the Court.

Compare: 1908 No 89 Schedule 2 rr 177B, 177E; SR 1939/39 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

The words "Crown Bank Account" in subclause (1)(b)(ii) were substituted for the words "Consolidated Account", as from 1 July 1989, pursuant to section 83(7) Public Finance Act 1989 (1989 No 44).

379 Agents of parties

The party obtaining an order for the issue of a letter of request shall file a statement of the names and addresses of the persons in the country to which the letter of request is directed who have been appointed by the respective parties as their agents in connection with the execution of the letter of request.

Compare: 1908 No 89 Schedule 2 r 177D; SR 1939/39 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

380 Consequences of non-compliance with undertaking as to expenses

Where a party who has given an undertaking under rule 378(1)(b)(ii) does not, within 7 days after service on him of notice of the amount of the expenses concerned, pay the amount of the expenses to the Registrar, the Court may, on application by the Registrar,

(a) Order the party to pay the amount of the expenses to the Registrar; and

(b) Until payment, stay the proceeding as far as concerns the whole or any part of any claim for relief by that party; and

(c) Strike out any statement of defence filed by that party.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

381 Application by Solicitor-General on letters of request from abroad

Where, in any proceedings to which sections 182 to 187 of the Evidence Act 2006 apply, a letter of request is received in any office of the Court and it does not appear that the same is desired or intended to be carried into effect by an application to the Court made by the agent in New Zealand of a party to the proceedings, the Registrar shall transmit the same to the

Part 3—*continued*

Solicitor-General, who may thereupon make such application and take such steps as may be necessary to give effect to the same.

Compare: 1908 No 89 Schedule 2 r 178I; *Gazette*, 1911, p 1937

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 381 was amended, as from 1 August 2007, by rule 4 High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "sections 182 to 187 of the Evidence Act 2006" for "sections 48 and 48A of the Evidence Act 1908".

Consolidation of proceedings

382 When order may be made

Where 2 or more proceedings are pending and it appears to the Court

(a) That some common question of law or fact arises in both or all of them; or

(b) That the rights to relief claimed therein are in respect of or arise out of

(i) The same event; or

(ii) The same transaction; or

(iii) The same event and the same transaction; or

(iv) The same series of events; or

(v) The same series of transactions; or

(vi) The same series of events and the same series of transactions; or

(c) That for some other reason it is desirable to make an order under this rule,

the Court may order those proceedings to be consolidated on such terms as it thinks just, or may order them to be tried at the same time or one immediately after another, or may order any of them to be stayed until after the determination of any other of them.

Compare: 1908 No 89 Schedule 2 r 210; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

383 Application of rule 382

Rule 382 shall apply notwithstanding

Part 3—*continued*

(a) That the relief claimed in the proceedings is not the same; or

(b) That one or more of the proceedings

(i)

(ii) Is pending in the Court in the exercise of its Admiralty jurisdiction; or

(iii) Is brought pursuant to the provisions of an Act conferring special jurisdiction on the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 383(b)(i) was revoked, as from 15 August 1991, by rule 16(1) High Court Amendment Rules 1991 (SR 1991/132).

Arbitration by consent

383A Arbitration by consent

(1) The parties to a proceeding may agree to arbitration of their dispute or any part of it under the Arbitration Act 1996 at any time during the course of the proceeding.

(2) If an arbitration agreement entered into during the course of a proceeding relates to all the matters in dispute in the proceeding, the Court must stay the proceeding.

(3) If an arbitration agreement entered into during the course of a proceeding relates to some but not all of the matters in dispute in the proceeding, the Court must stay those parts of the proceeding to which the arbitration agreement relates.

(4) Subclauses (2) and (3) do not apply if the Court finds that the agreement has no effect or is inoperative or incapable of being performed.

Rule 383A and the preceding heading were inserted, as from 1 February 1998, by rule 6 High Court Amendment Rules 1997 (SR 1997/350).

Accounts and inquiries

384 When accounts and inquiries may be ordered

The Court may, on the application of any party, before, at, or after the trial of a proceeding, make orders for the taking of

Part 3—*continued*

any account or the making of any inquiry, whether or not that relief has been claimed in that party's pleading.

Compare: 1908 No 89 Schedule 2 rr 427, 428; SR 1954/155 r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

385 Directions

Where the Court makes an order for the taking of an account or the making of an inquiry, the Court may, by the same or a subsequent order

(a) Give directions or further directions as to the account or inquiry:

(b) Order additional accounts or inquiries:

(c) Direct that, in the taking of any account, the relevant books of account shall be prima facie evidence of the truth of the matters contained in them.

Compare: 1908 No 89 Schedule 2 rr 427, 428, 437; SR 1954/155 r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

386 Summary order for accounts

(1) Subject to subclause (2), where a party in his pleading claims an account or makes a claim which involves taking an account, the Court may, on application by that party at any stage of the proceeding, order that an account be taken and that any amount certified on taking the account to be due to any party be paid to him.

(2) The Court shall not make an order under subclause (1)

(a) If it appears that there is some preliminary question to be determined; or

(b) As against a defendant who has not filed a statement of defence or an appearance, until the time for filing a statement of defence has expired.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

387 Mutual accounts

(1) Where, on any application for an order under rule 384 or rule 386 for the taking of an account, it appears to the Court that by reason of the relationship of the parties or their course of dealing or for any other reason each is accountable to the other, the Court may order that accounts be taken between them on that footing.

(2) At the time of making an order under subclause (1), or at any time thereafter, the Court may direct

(a) That the result of taking the account be certified as the net balance found to be due to one party; or

(b) That the certificate show the amounts shown to be due to the respective parties.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

388 Before whom accounts may be taken

(1) Accounts may be ordered to be taken before

(a) The Registrar; or

(b) An accountant; or

(c) The Registrar and an accountant.

(2) Unless otherwise ordered, any accountant who takes an account shall be a member of the Institute of Chartered Accountants of New Zealand who is classified as a chartered accountant in public practice.

Compare: 1908 No 89 Schedule 2 rr 430, 430A; *Gazette*, 1916, p 2344

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The words "Institute of Chartered Accountants of New Zealand" in subclause (2) were substituted, as from 1 October 1996, for the words "New Zealand Society of Accountants" pursuant to section 18 Institute of Chartered Accountants Act of New Zealand Act 1996 (1996 No 39).

389 Remuneration of accountant

(1) Where, pursuant to rule 388, accounts are ordered to be taken by an accountant, the remuneration of the accountant shall be fixed by the Court.

Part 3—*continued*

(2) The Court may by the order for the taking of accounts or at any later time make such order as it thinks fit for and incidental to the payment of the remuneration of the accountant, including (without limiting the generality of the foregoing provisions of this rule) any one or more of the following:

(a) An order directing that the remuneration of the accountant shall be paid by one or more of the parties and, if more than one, in such proportions as the Court thinks proper:

(b) An order that any party or parties give security, on such terms as the Court thinks fit, for the remuneration of the accountant.

(3) The provisions of subclause (2) are without prejudice to the power of the Court to make an order providing for the payment of the accountant's remuneration as part of the costs of the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

390 Form, etc, of accounts

(1) This rule and rules 391 to 404 apply subject to any order or direction made or given under rule 385 or rule 387.

(2) In this rule and in rules 391 to 404, **accounting party**

(a) Means the party required by the order for the taking of an account to account to the other; and

(b) In a case coming within rule 387, means each party.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

391 Form and verification of account

(1) The items on each side of an account shall be numbered consecutively.

(2) An accounting party shall verify his account by affidavit and the account shall be made an exhibit to the affidavit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

392 Filing and service of account

An accounting party shall, within 14 days after the order for taking the account has been served on him,

(a) File his account and verifying affidavit; and

(b) Serve a copy of his account and verifying affidavit on each other party.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

393 Notice of surcharge

Where a party seeks to charge an accounting party with the receipt of an amount beyond that admitted by the accounting party in his account, he shall, within 14 days after being served with the account, give to the accounting party notice of the charge stating, so far as he is able, the amount which he seeks to charge, with brief particulars.

Compare: 1908 No 89 Schedule 2 r 435

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

394 Notice of error

Where a party alleges that any item in the account of an accounting party is erroneous in amount or otherwise, he shall, within 14 days after being served with the account, give to the accounting party notice of the allegation, stating the grounds for alleging the error.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

395 Admission of items

Except to the extent shown in a notice given under rule 393 or rule 394, all items in the account shall be deemed to be admitted as correct.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

396 Appointment and notice for taking accounts

As soon as may be after the accounting party has filed his account, the person or persons before whom the account is to be taken

(a) Shall appoint a time (not being less than 21 days after the day of the filing of the account) and a place for taking the account; and

(b) Shall give notice of that time and place to the parties not less than 7 days before the day on which the account is to be taken.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

397 Parties to attend taking of account

At the time and place appointed under rule 396, the parties or their solicitors or counsel shall attend and, on being satisfied that notice of the appointment has been duly given and received, the person or persons before whom the account is to be taken may thereupon proceed therewith, notwithstanding the absence of any party.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

398 Adjournment

The person or persons before whom the account is to be taken may adjourn the taking thereof from time to time and from place to place as may be necessary or expedient.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

399 Power of summary decision

(1) Where accounts have been ordered to be taken, the accountant or the Registrar or the accountant and the Registrar, as the case may be, shall have the power to decide summarily on all disputed items of account.

(2) Notwithstanding subclause (1)

(a) Any item may be referred for the decision of the Court by

Part 3—*continued*

(i) Any party; or

(ii) The accountant or the Registrar or the accountant and the Registrar, as the case may be; and

(b) All items of account in respect of which the Registrar and the accountant disagree shall be referred for the decision of the Court.

Compare: 1908 No 89 Schedule 2 r 432

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

400 Examination of accounting party

Where any item has been referred to the Court under rule 399(2), the Court may, on the application of a party who has given a notice under rule 393 or rule 394, order that the accounting party appear before the Court to be examined orally with regard to the disputed item of account.

Compare: 1908 No 89 Schedule 2 r 433

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

401 Production of vouchers

When required by written notice to that effect, the accounting party shall produce, at the taking of the account or at his examination under rule 400, all vouchers in his possession or power relating to any disputed item of account specified in the notice.

Compare: 1908 No 89 Schedule 2 r 437

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

402 Interest on debts of deceased person

Where a judgment or order is made directing an account of the debts of a deceased person, interest shall be computed on such debts, unless otherwise ordered, from the date of the judgment, and as to such of them as carry interest, at the rate they respectively carry, and as to all others at the rate from time to

Part 3—*continued*

time prescribed for the purposes of section 87 of the Act or such lower rate as the Court may order.

Compare: 1908 No 89 Schedule 2 r 446; SR 1954/155 r 2(1); SR 1975/140 r 6(2)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

403 Interest on legacies

Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies, unless otherwise ordered, at the rate for the time being prescribed by or under section 39 of the Administration Act 1969 from the end of one year after the death of the deceased, unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

Compare: 1908 No 89 Schedule 2 r 447; SR 1970/251 r 3(3)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

404 Just allowances

In taking an account all just allowances shall be made.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

405 Directions as to inquiries, etc

The Court may direct that inquiries as to next of kin, creditors, and other claimants, or as to any other matters of like nature, shall be made by or before the Registrar or any other person, at such time and in such manner as the Court may direct.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

General provisions affecting accounts and inquiries

406 Powers of persons taking accounts or making inquiries

The person or persons before whom accounts are directed to be taken or inquiries made under rule 388 or rule 405 may, as he or they think fit,

Part 3—*continued*

(a) Issue advertisements; and
(b) Summon parties and witnesses; and
(c) Administer oaths; and
(d) Receive affidavits and acknowledgments; and
(e) Examine parties and witnesses either upon interrogatories or *viva voce*.

Compare: 1908 No 89 Schedule 2 r 439

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

407 Duty of persons summoned to attend

(1) Persons so summoned shall be bound to attend in accordance with the summons, and to attend further from time to time without further summons, at such times as may be appointed for the consideration or further consideration of the matter.

(2) If any person so summoned fails so to attend, that person shall be liable to the same extent as if that person had disobeyed an order of the Court.

Compare: 1908 No 89 Schedule 2 r 440

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

408 Time for proving claims

The time to be allowed for persons to come in and prove their claims (as creditors, next of kin, etc) shall be fixed by the Court and shall not be less than one clear month after the date of the first publication of the advertisement to come in and prove.

Compare: 1908 No 89 Schedule 2 r 450; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

409 Statement of claim to be filed

Every person coming in to claim as creditor or next of kin or otherwise shall file a statement of claim verified by affidavit.

Compare: 1908 No 89 Schedule 2 r 451

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

410 Failure to claim within time

Subject to sections 75, 76, and 76A of the Trustee Act 1956, all persons who do not come in and prove their claims within the time fixed for that purpose by advertisement shall be excluded from the benefit of the judgment or order directing accounts or enquiries.

Compare: 1908 No 89 Schedule 2 r 445

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

411 Result to be certified

The result of any accounts or inquiries shall not, unless the Court so directs, be embodied in a formal report but shall be stated in a short certificate to the Court.

Compare: 1908 No 89 Schedule 2 r 441

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

412 Certificate when approved to be signed by Judge

When the Court approves a certificate or report given under rule 411, that certificate or report shall be signed as adopted by a Judge.

Compare: 1908 No 89 Schedule 2 r 441

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

413 Party may take opinion of Court

Any party may, either while any accounts are being taken or inquiries made, or within 14 clear days after such accounts or inquiries have been completed, and before the certificate or report has been signed as adopted, take the opinion of the Court on any particular point or matter arising in the course thereof or on the general result thereof when completed.

Compare: 1908 No 89 Schedule 2 r 442

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

414 Effect of certificate when filed

(1) When any certificate or report has been signed as adopted by the Judge, it shall be filed in the office of the Court and shall thenceforth be binding on all parties to the proceeding, unless discharged or varied by the Court upon application made within one month.

(2) Nothing in this rule shall prejudice or affect the power of the Court at any time to re-open any certificate or report upon the grounds of fraud, surprise, or mistake.

Compare: 1908 No 89 Schedule 2 r 443

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

415 Distribution before all persons entitled are ascertained

Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

416 Payment of share carried over to separate trust account

Where the rights or circumstances of the parties at the time judgment is given are not such as to enable the Court to order absolutely that payment be made to the persons entitled thereto, and the Court has ordered the share of any party which has not become absolute to be carried over on trust in the proceeding to a separate account, such party on becoming entitled may apply for payment of his share on notice to the other persons interested in the separate account, whereupon payment to the party so entitled may be ordered.

Compare: 1908 No 89 Schedule 2 r 453; SR 1954/155 rr 2(1), 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Inquiries under Companies Act 1955 as to debts, claims, or liabilities

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

416A Application of rules 416B to 416K

The provisions of rules 416B to 416K apply in any case where the Court makes, under rule 458A(3), an order for an inquiry of the kind described in rule 458A(4).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

416B Affidavit as to creditors

(1) The company shall, within 7 days after the order or such further or other time as the Court allows, file in the registry an affidavit made by some officer or officers of the company competent to make it, verifying a list containing so far as possible the names, addresses, and descriptions of the creditors of the company to whom the inquiry extends.

(2) The list shall also contain the amounts due to the creditors therein named respectively in respect of debts, claims, or liabilities to which the inquiry extends, or in the case of any such debt payable on a contingency or not ascertained or any such claim admissible against a company in liquidation, the value, so far as can be justly estimated, of the debt or claim.

(3) Every such list shall be annexed to the affidavit verifying it.

Compare: SR 1956/216 r 9(a).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (2) was amended, as from 1 July 1994, by rule 6 High Court Amendment Rules 1994 (SR 1994/135) by substituting the words "against a company in liquidation" for the words "to proof in a winding up of the company".

Part 3—*continued*

416C Form of affidavit

The person making the affidavit required by rule 416B shall state therein

(a) That person's belief

(i) That the list verified by the affidavit is correct; and

(ii) That there was not, at the date by reference to which the list of creditors is made out, any debt, claim, or liability which, if that date were the commencement of the liquidation of the company, would be admissible as a claim against the company, except the debts, claims, and liabilities set forth in the list and any debts, claims, or liabilities to which the inquiry does not extend; and

(b) That person's means of knowledge of the matters deposed to in the affidavit.

Compare: SR 1956/216 r 9(b)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Paragraph (a)(ii) was amended, as from 1 July 1994, by rule 7 High Court Amendment Rules 1994 (SR 1994/135) by substituting the words "liquidation of the company, would be admissible as a claim" for the words "winding up of the company, would be admissible to proof".

416D Inspection of list of creditors

(1) Copies of the list containing the names, addresses, and descriptions of the creditors, and the total amount so due to them (including the value of any debts or claims estimated as aforesaid), but omitting the individual amounts so due to them respectively, or (as the Court thinks fit) complete copies of the list, shall be kept,

(a) At the registered office of the company; and

(b) At the office of the solicitors of the company; and

(c) At the address for service of the company.

Part 3—*continued*

(2) Any person desirous of inspecting the copies referred to in subclause (1) may at any time during the ordinary hours of business inspect and take extracts from them.

Compare: SR 1956/216 r 9(c)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

416E Notice to creditors

(1) The company shall, within 7 days after the filing of the affidavit or such further or other time as the Court may allow, send to each creditor whose name is entered on the list a notice stating

(a) The amount of the proposed reduction in capital; and

(b) The effect of the order directing the inquiry; and

(c) The amount or estimated value of the debt or the contingent debt or claim or both for which the creditor is entered on the list; and

(d) The time (that time to be fixed by the Court) within which, if the creditor claims to be entitled to be entered on the list as a creditor for a larger amount, the creditor must send in to the solicitor of the company

(i) The creditor's name, address, and description; and

(ii) Particulars of the creditor's debt or claim; and

(iii) The name and address of the creditor's solicitor (if any).

(2) Every notice under subclause (1) shall be sent through the post in a prepaid letter addressed to each creditor at the creditor's last known business or residential address or place of abode.

Compare: SR 1956/216 r 9(d)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Part 3—*continued*

Subclause (1)(d) was amended, as from 14 July 1988, by rule 4(1) High Court Amendment Rules 1988 (SR 1988/142) by inserting the word "for".

416F Advertisement of application and list of creditors

(1) Notice of the filing of the proceeding under the Companies Act 1955, of the effect of the order directing the inquiry, and of the list of creditors shall, after the filing of the affidavit mentioned in rule 416B be published at such times and in such newspapers as the Court directs.

(2) Every notice under subclause (1) shall state

(a) The amount of the proposed reduction of capital; and

(b) The places where the list of creditors may be inspected; and

(c) The time within which creditors of the company who are not, but are entitled to be, entered on the list, and are desirous of being entered thereon, must send in

(i) Their names, addresses, and descriptions; and

(ii) The names and addresses of their solicitors (if any)

to the solicitor of the company.

(3) Every notice under subclause (1) may be in form 32A, with such variations as the circumstances of the case may require.

Compare: SR 1956/216 r 9(e)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

416G Affidavit as to results of rules 416E and 416F

(1) The company shall, within such time as the Court directs, file in the registry an affidavit made by the person to whom the particulars of debts or claims are, by such notices as are mentioned in rules 416E and 416F, required to be sent in

(a) Stating the result of the notices respectively; and

(b) Verifying a list containing the names, addresses, and descriptions of the persons (if any) who have sent in the particulars of their debts or claims in pursuance of

Part 3—*continued*

the notices respectively, and the amounts of those debts and claims.

(2) Some competent officer or officers of the company shall join in the affidavit, and shall in the list distinguish

(a) Which (if any) of the debts and claims are wholly, or as to any and what part thereof, admitted by the company; and

(b) Which (if any) of the debts and claims are wholly, or as to any and what part thereof, disputed by the company; and

(c) Which (if any) of the debts and claims are alleged by the company to be wholly, or as to any and what part thereof, not included in the inquiry.

(3) The affidavit shall also state which of the persons who are entered on the list as creditors and which of the persons who have sent in particulars of their debts or claims in pursuance of the notices have been paid or have consented to the proposed reduction.

(4) The affidavit may be in form 32B, with such variations as the circumstances of the case may require; and the list shall be annexed to the affidavit.

Compare: SR 1956/216 r 9(f).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (4) was amended, as from 14 July 1988, by rule 4(2) High Court Amendment Rules 1988 (SR 1988/142) by omitting the word "to".

416H Procedure where claim not admitted

(1) If the company contends that a person is not entitled to be entered on the list of creditors in respect of any debt or claim, whether admitted or not, or if any debt or claim, the particulars of which are so sent in, is not admitted by the company at its full amount, then and in every such case, unless the company is willing to appropriate in such manner as the Court directs the full amount of the debt or claim, the company shall, if the

Part 3—*continued*

Court thinks fit so to direct, send to the creditor a notice that the creditor is required to come in and establish the creditor's title to be entered on the list or, as the case may be, to come in and prove the debt or claim, or such part thereof, as is not admitted by the company, by a day to be therein named, being not less than 4 clear days after the notice, and being the time appointed by the Court for adjudicating upon those titles, debts, and claims.

(2) The notice under subclause (1) shall be sent in the manner mentioned in rule 416E, and may be in form 32C, with such variations as the circumstances of the case may require.

Compare: 1956/216 r 9(g)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (1) was amended, as from 14 July 1988, by rule 4(3) High Court Amendment Rules 1988 (SR 1988/142) by substituting the words "debt or claim" for the words "debt of claim".

416I Costs of proof

Such creditors as come in to prove their titles, debts, or claims in pursuance of a notice under rule 416H shall be allowed their costs of proof against the company and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under an administration judgment.

Compare: SR 1956/216 r 9(h)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

416J Certificate as to creditors

(1) The result of the settlement of the list of creditors shall be stated in a certificate by the Registrar of the Court.

(2) The certificate

Part 3—*continued*

(a) Shall state what debts or claims (if any) have been disallowed; and

(b) Shall distinguish

(i) The debts or claims the full amount of which the company is willing to appropriate; and

(ii) The debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 76(2) of the Companies Act 1955 and these rules; and

(iii) The debts or claims (if any) the full amount of which the company does not admit or is not willing to appropriate, or the amount of which has not been fixed by inquiry and adjudication as aforesaid; and

(c) Shall show

(i) Which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them; and

(ii) The total amount of the debts or claims the payment of which has been secured in manner provided by section 76(2) of the Companies Act 1955, and the persons to or by whom the same are due or claimed.

(3) The certificate shall also state what creditors have under rule 416H come in and sought to establish their title to be entered on the list and whether their claims have been allowed or not, but it shall not be necessary

(a) To make in the certificate any further or other reference to any creditors who are not entitled to be entered on the list or to any debts or claims to which the inquiry does not extend; or

(b) To show in the certificate the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured in the manner provided by section 76(2) of the Companies Act 1955.

Compare: SR 1956/216 r 9(i)

Part 3—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

416K Evidence of consent of creditor

The consent of any creditor, whether in respect of a debt due or presently due, or a debt payable on a contingency or not ascertained, or a claim admissible against a company in liquidation, may be evidenced in any manner which the Court thinks reasonably sufficient, having regard to the amount of the creditor's debt or claim and all the circumstances of the case.

Compare: SR 1956/216 r 9(j)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 416A to 416K and the heading "Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities" were inserted, as from 1 August 1987, by rule 6 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Rule 416K was amended, as from 1 July 1994, by rule 8 High Court Amendment Rules 1994 (SR 1994/135) by substituting the words "against a company in liquidation" for the words "to proof in a winding up of the company".

Separate decision of questions

417 Definition of question

In rules 418 to 424, **question** includes any question or issue in any proceeding, whether of fact or of law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties, or otherwise.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

418 Orders for decision

The Court may, whether or not the decision will dispose of the proceeding, make orders for

(a) The decision of any question separately from any other question, before, at, or after any trial or further trial in the proceeding; and

Part 3—*continued*

(b) The formulation of the question for decision and, if thought necessary, the statement of a case.

Compare: 1908 No 89 Schedule 2 r 245

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

419 Removal into Court of Appeal

Where the Court makes an order under rule 418 for the decision of a question of law, the Court may further order that the question of law be removed into the Court of Appeal.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

420 Agreed result

(1) The parties to a proceeding in which an order is sought or has been made under rule 418 may agree that, on any question being decided in the sense specified in the agreement, a specified direction for entry of judgment or a specified order shall be made.

(2) On that question being so decided, the Court may make the agreed direction or order.

(3) Where an agreement is made pursuant to subclause (1) before a case is stated, the terms of the agreement shall be set out in the case stated.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

421 Record, etc, of decision

Where any question is decided pursuant to an order made under rule 418, the Court shall, subject to rule 422, either

(a) Cause the decision to be recorded; or

(b) Direct the entry of such declaratory judgment or make such declaratory order, as the nature of the case requires.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

422 Disposal of proceeding

Where a decision of a question pursuant to an order made under rule 418

(a) Substantially disposes of the proceeding or of the whole or any part of any claim for relief in the proceeding; or

(b) Renders unnecessary any trial or further trial in the proceeding or on the whole or any part of any claim for relief in the proceeding,

the Court, at the time of deciding the question or at any subsequent time, may, as the nature of the case requires,

(c) Dismiss the proceeding or the whole or any part of any claim for relief in the proceeding; or

(d) Direct the entry of any judgment; or

(e) Make any other order.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

423 Form and contents of case

A case stated pursuant to an order under rule 418(b)

(a) Shall be divided into paragraphs numbered consecutively; and

(b) Shall state concisely such facts, and have attached to it such documents, as are necessary to enable the Court

(i) To decide the questions arising on the case stated; or

(ii) Otherwise to hear and determine the questions arising on the case stated; and

(c) State the questions and matters to be decided or determined.

Compare: 1908 No 89 Schedule 2 r 245

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

424 Insufficient case, disputed facts or documents

Where it appears to the Court that a case stated does not state the facts and documents sufficiently to enable the Court to decide the questions arising or otherwise to hear and determine the questions and matters on the case stated, or in any case

Part 3—*continued*

in which any relevant fact or document is disputed, the Court may

(a) With the consent of all parties interested, amend the case stated; or

(b) Receive evidence, make findings of fact, and amend the case stated in accordance with the findings of fact of the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Directions as to conduct of proceeding

This heading was substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). It previously read "Setting down and fixtures for trial". *See* rule 19 of those Rules as to the transitional provisions.

425 Directions as to conduct of proceeding

The Court may, by interlocutory order,

(a) give directions to secure the just, speedy, and inexpensive determination of a proceeding:

(b) fix the time by which a step in a proceeding must be taken:

(c) fix the time by which all interlocutory steps must be completed:

(d) direct the steps that must be taken to prepare a proceeding for substantive hearing:

(e) direct how the hearing of a proceeding is to be conducted.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Paragraph (b) was substituted, as from 1 July 1994, by rule 9 High Court Amendment Rules 1994 (SR 1994/135).

Paragraph (e) was revoked, as from 1 February 1994, by rule 16 High Court Amendment Rules 1993 (SR 1993/420).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

Tracks for proceedings and case management conferences

This heading was inserted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

426 Tracks for proceedings

(1) All proceedings (other than proceedings entered on the commercial list) are on either of the following 2 tracks:
- (a) the swift track; or
- (b) the standard track.

(2) Subject to subclause (3),
- (a) the following proceedings are on the swift track:
  - (i) applications by plaintiffs under rule 138 (which relates to applications for summary judgment):
  - (ii) applications under Part 4A (which relates to originating applications):
  - (iii) applications under Part 9A (which relates to applications for putting companies into liquidation):
  - (iv) applications for leave to appeal, and appeals, under Part 10:
  - (v) applications under rule 831 (which relates to applications for adjudication in bankruptcy):
  - (vi) applications for leave to appeal, and appeals, under Part 17; and
- (b) all other proceedings are on the standard track.

(3) The Court may, at any time, on its own initiative or on an application by a party, move a proceeding
- (a) from the swift track to the standard track; or
- (b) from the standard track to the swift track.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclauses (1) and (2) were amended, as from 1 February 1994, by rule 17 High Court Amendment Rules 1993 (SR 1993/420) by inserting the phrase "(other than an appeal under Part 5 of the District Courts Act 1947)".

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

426A Consequences of failure to set down within 12 months after last step in proceeding

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 426A was inserted, as from 1 January 1993, by rule 9 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Subclause (1) was amended, as from 1 January 1993, by rule 4 High Court Amendment Rules (No 3) 1992 (SR 1992/335) by substituting the words "the last" for the words "that last".

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

427 Convening of case management conferences

(1) The Court may, at any time, hold a case management conference.

(2) Case management conferences are held so that the Court may

(a) assist the parties in the just, speedy, and inexpensive determination of the proceeding:

(b) make orders under rule 425:

(c) if practicable, make other interlocutory orders.

(3) A case management conference may be convened by the Court on its own initiative or on the application of 1 or more of the parties.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

427A Right of respondent to appeal under District Courts Act 1947 to be heard

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 427A and 427B were inserted, as from 1 February 1994, by rule 18 High Court Amendment Rules 1993 (SR 1993/420).

Part 3—*continued*

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

427B Procedure for setting down appeal under District Courts Act 1947

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 427A and 427B were inserted, as from 1 February 1994, by rule 18 High Court Amendment Rules 1993 (SR 1993/420).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

428 Case management and pre-trial conferences for proceedings on standard track

(1) Unless the Court otherwise directs, the following provisions apply to the convening of case management conferences for a proceeding on the standard track:

(a) a first case management conference must be held within 35 working days after the commencement of the proceeding:

(b) a second case management conference must be held within 75 working days after the commencement of the proceeding:

(c) a pre-trial conference must be held on a date arranged by the Registrar in accordance with subclause (6).

(2) Following the commencement of a proceeding on the standard track,—

(a) the Registrar must make arrangements for a case management conference to be held in accordance with subclause (1)(a); and

(b) the plaintiff must, as soon as practicable after being notified of the date of the case management conference, give notice of that date to every other party.

(3) The Registrar must make arrangements to ensure that, within 25 working days after a proceeding is moved to the standard

Part 3—*continued*

track from the swift track, a case management conference is held for the proceeding.

(4) Unless the Court otherwise directs, the first case management conference that is held for a proceeding must be conducted by telephone or video link.

(5) At the second case management conference, the presiding Judge or Associate Judge must—

(a) issue directions for the trial; and

(b) fix a date for the holding of the pre-trial conference.

(6) The date referred to in subclause (5)(b) must be as close as practicable to the date that is 10 working days after the date specified by these rules or directed by the Court for service of the first written statements of evidence proposed to be called at the trial.

(7) The Registrar must—

(a) make arrangements for the pre-trial conference to be held; and

(b) at least 10 working days before the date fixed for the pre-trial conference, remind the parties or their counsel of that date.

(8) At the pre-trial conference the parties must be prepared to discuss with the presiding Judge the matters listed in Schedule 7.

(9) Counsel must file and serve 2 working days before the pre-trial conference a memorandum which addresses each of the items in Schedule 7, or, alternatively, a joint memorandum.

Schedule 2 rule 428: substituted, on 1 November 2007, by rule 4 of the High Court Amendment Rules (No 3) 2007 (SR 2007/314).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

429 Matters to be considered at case management conferences for proceedings other than appeals

(1) This rule applies to a case management conference that is convened for a proceeding other than an appeal under Part 10 or Part 17.

(2) The matters to be considered at the case management conference are

(a) the matters set out in Schedule 5 that are relevant to the proceeding and its current stage; and

(b) any interlocutory applications allocated for hearing at that conference under rule 242; and

(c) any application for an interlocutory order outlined in a memorandum filed under subclause (3).

(3) Unless excused by the Court, the parties must, not later than 2 working days before the case management conference,

(a) file a joint memorandum; or

(b) each file a memorandum.

(4) Any memorandum filed must

(a) address the matters set out in Schedule 5 that are relevant to the proceeding and its current stage; and

(b) outline any application for an interlocutory order intended to be made at the case management conference.

(5) Any memorandum may be filed by facsimile.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

430 Case management conferences for appeals

(1) In the case of an appeal under Part 10 or Part 17 (but not under Part 11), the Registrar must make arrangements for a case management conference to be held within 15 working days after any of the following dates:

(a) the date on which a notice of appeal under rule 706(1) or an originating application under rule 879(1) is filed:

(b) the date on which leave to appeal is granted on an application under rule 703(6) or rule 891(1).

Part 3—*continued*

(2) The person who brings the appeal must, as soon as practicable after being notified of the date of the case management conference, give notice of that date to everyone who has been, or is to be, served with a copy of the notice of appeal or the originating application.

(3) The parties must, not later than 2 working days before the case management conference,
- (a) file a joint memorandum; or
- (b) each file a memorandum.

(4) Any memorandum filed must
- (a) estimate the time required for the hearing; and
- (b) suggest the costs category for the appeal for the purpose of rule 48(2) and, where applicable, for the purpose of rule 713; and
- (c) advise if any party has been granted legal aid under the Legal Services Act 2000 or has applied for legal aid and is awaiting a decision; and
- (d) if a full Court is sought, set out the reasons for that; and
- (e) in the case of an appeal under Part 10, specify any directions in Schedule 6 that should be deleted or modified, and why; and
- (f) in the case of an appeal under Part 17, specify any directions in Schedule 6 that would be appropriate for the appeal; and
- (g) set out any additional directions sought, and why.

(5) Any memorandum may be filed by facsimile.

(6) The directions set out in Schedule 6 apply,
- (a) in the case of an appeal under Part 10, to the extent that those directions are not modified by any directions given by the Judge:
- (b) in the case of an appeal under Part 17, to the extent that those directions are applied by a direction given by the Judge.

(7) At the conference, the Judge must give directions for the conduct of the appeal; those directions may, without limitation, include directions

Part 3—*continued*

(a) as to service of the notice of appeal or the originating application, including service on persons not currently parties:

(b) about any cross-appeal, including directions as to service:

(c) in the case of an appeal under Part 10, as to how and when any application to adduce further evidence on appeal is to be dealt with:

(d) in the case of an appeal under Part 17,

(i) as to the preparation of the record in accordance with rule 886 or in any other manner the Court thinks fit:

(ii) as to the transcription of the evidence in accordance with rule 887:

(e) on any other matter for the purposes of best securing the just, speedy, and inexpensive determination of the appeal.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

431 Cancellation of conference

The Court may cancel a case management conference if, after reading the memoranda prepared under rule 429(3) or rule 430(3) for the conference, the Court is satisfied that

(a) all orders sought can be made by consent; and

(b) the attendance of counsel is not required.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

Allocation of hearing dates and setting down dates

This heading was inserted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

432 Hearing dates for proceedings on swift track

(1) In the case of appeals under Part 10 or Part 17, the Court must, at a case management conference or, if the case management conference is cancelled under rule 431, by minute, give a direction that

(a) allocates a hearing date for the appeal; or

(b) requires the Registrar to allocate a hearing date for the appeal.

(2) In the case of all other proceedings on the swift track (including applications for leave to appeal under Part 10 or Part 17), the Registrar must, as soon as practicable after the first document in the proceeding is filed or the proceeding is moved from the standard track to the swift track, allocate a hearing date for the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

433 Application of rules 434 to 438AA

Rules 434 to 438AA apply to all proceedings other than proceedings that are on the swift track.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 433 was substituted, as from 1 October 1991, by rule 17(1) High Court Amendment Rules 1991 (SR 1991/132).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

434 Allocation of hearing dates and setting down dates

(1) The Court may give a direction that

Part 3—*continued*

(a) allocates a hearing date for a proceeding; or

(b) requires the Registrar to allocate a hearing date for the proceeding.

(2) Unless the Court otherwise directs, if no hearing date has been allocated for the proceeding by the time that a second case management conference is, under rule 428, held for the proceeding, the hearing date must be allocated at that conference whether or not any interlocutory application is outstanding.

(3) When the Court gives a direction under subclause (1), the Court may also give a direction that fixes the setting down date for the proceeding.

(4) A direction under subclause (1), or directions under subclauses (1) and (3), may be given at any time on the Court's own initiative or on the application of 1 or more parties to the proceeding.

(5) If the Court gives a direction under subclause (1) without giving a direction under subclause (3), then the setting down date for the proceeding is the later of

(a) the date that is 60 working days before the hearing date for the proceeding; or

(b) the date on which the hearing date for the proceeding is allocated.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 434 was revoked, as from 1 October 1991, by rule 17(1) High Court Amendment Rules 1991 (SR 1991/132).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Subclause (5)(a) was amended, as from 24 August 2007, by rule 14 High Court Amendment Rules 2007 (SR 2007/206) by substituting "60" for "40".

435 Jury notice

If either party to a proceeding to which section 19A of the Act applies requires the proceeding to be tried before a Judge and a jury, the party must give notice to that effect to the Court and to the other party not later than

(a) 5 working days before the setting down date for the proceeding; or

Part 3—*continued*

(b) a date fixed by the Court for the purpose.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was amended, as from 1 October 1991, by rule 17(2) High Court Amendment Rules 1991 (SR 1991/132) by omitting the words "or rule 434".

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

436 Lists of proceedings

The Registrar must cause the following lists to be kept:

(a) a list of proceedings that have been allocated a hearing date under rule 434(1)(a); and

(b) a list of proceedings for which the Registrar is, under rule 434(1)(b), required to allocate a hearing date.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

437 Registrar's functions in relation to hearing dates

(1) After the Court has allocated a hearing date for a proceeding under rule 434(1)(a), the Registrar must promptly

(a) record the hearing date and the setting down date for the proceeding in the appropriate list; and

(b) give written confirmation of both dates to all parties to the proceeding.

(2) After the Court gives a direction under rule 434(1)(b) for a proceeding, the Registrar must

(a) promptly record the proceeding in the appropriate list; and

(b) allocate a hearing date for the proceeding

(i) as soon as practicable; and

(ii) so far as practicable, in the order in which the directions for the proceedings recorded in the appropriate list have been given; and

(c) then promptly

Part 3—*continued*

(i) record the hearing date and the setting down date in the appropriate list; and

(ii) give written confirmation of both dates to all parties to the proceeding.

(3) The performance of the Registrar's functions under subclause (2)(b) is subject to any direction by a Judge or Associate Judge.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (8) was inserted, as from 1 February 1998, by rule 7 High Court Amendment Rules 1997 (SR 1997/350).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Subclause (3) was amended, as from 1 November 2004, by rule 30(2) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judge" for the word "Master".

438 Parties to keep Registrar informed

It is the duty of all parties to a proceeding that has been allocated a hearing date to notify the Registrar, without delay, if the proceeding is settled.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (5) was inserted, as from 1 February 1998, by rule 8 High Court Amendment Rules 1997 (SR 1997/350).

Rules 425 to 438 were substituted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

438AA No steps after setting down date without leave

(1) No statement of defence or amended pleading or affidavit may be filed, and no interlocutory application may be made or step taken, in the proceeding after the setting down date without the leave of the Court.

(2) Subclause (1) does not apply to

(a) an application for leave under that subclause; or

(b) an application for directions under rule 425; or

(c) a pleading or an affidavit that merely brings up to date the information before the Court.

Part 3—*continued*

Rule 438AA was inserted, as from 24 November 2003, by rule 7 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

438A Counsel assisting

At the request of the Court, the Solicitor-General must appoint counsel to appear and be heard as counsel assisting the Court.

Rule 438A was inserted, as from 1 February 1998, by rule 9 High Court Amendment Rules 1997 (SR 1997/350).

439 Court to seek admissions and agreements

(1) At a case management conference, the Court

(a) Shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceeding which ought reasonably to be made by them; and

(b) With a view to such special order (if any) as to costs as may be just being made at the trial, may cause a record to be made, in such form as the Court may direct, of any refusal to make any admission or agreement.

(2) Nothing in this rule shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the Court shall cause a record to be made, in such form as the Court may direct, of any such agreement.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "At a case management conference" for the words "At the hearing of an application made under rule 438". *See* rule 19 of those Rules as to the transitional provisions.

440 Order may be varied at trial

Any order or direction made or given pursuant to rule 425 may, if justice so requires, be varied or revoked (in whole or in part) by the Court at the trial.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3—*continued*

Subclause (2) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 425" for the expression "rule 438". *See* rule 19 of those Rules as to the transitional provisions.

441 Court may convene conference of parties

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 441 was amended, as from 1 January 1986, by rule 12 High Court Amendment Rules 1985 (SR 1985/328) by substituting the words "rule 437 or rule 438" for the expression "rule 438".

Rule 441 was revoked, as from 24 November 2003, by rule 8 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Exchange of witnesses' statements and preparation of common bundle of documents

This heading was inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

This heading was substituted, as from 24 November 2003, by rule 9 High Court Amendment Rules 2003 (SR 2003/280). It previously read "Exchange of witnesses' statements". *See* rule 19 of those Rules as to the transitional provisions.

441A Application of rules 441B to 441I and 441M to 441Q

(1) In this rule, specified proceeding means a proceeding

(a) that is on the swift track; or

(b) in which evidence is to be given by affidavit; or

(c) in which an agreed statement of facts has been filed under rule 502.

(2) In the case of a proceeding that is not a specified proceeding, rules 441B to 441I and 441M to 441Q apply to the extent that they are not modified or excluded by a direction of the Court.

(3) In the case of a specified proceeding, the provisions of rules 441B to 441I and 441M to 441Q do not apply unless they are applied, with or without modifications, by a direction of the Court.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

Part 3—*continued*

Rules 441A and 441B were substituted, as from 24 November 2003, by rule 9 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

441B Service by plaintiff of written statements of proposed evidence in chief

(1) The plaintiff in a proceeding must, not later than the specified date, serve on every other party who has given an address for service a written statement of the proposed evidence in chief of each witness to be called by the plaintiff.

(2) For the purposes of subclause (1), the specified date is
- (a) the date fixed by the Court for the purpose; or
- (b) if no date is fixed, 15 working days after the setting down date.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

Rules 441A and 441B were substituted, as from 24 November 2003, by rule 9 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

441C Service by other parties of written statements of proposed evidence in chief

Any party who has been served with a written statement under rule 441B and who wishes to adduce evidence shall, not later than 15 working days after the date on which that party was served with that written statement, serve on every other party to the proceeding who has given an address for service a written statement of the proposed evidence in chief of each witness to be called by the party who has been served with a written statement under rule 441B and who wishes to adduce evidence.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

Rules 441C was amended, as from 24 November 2003, by rule 10 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "15 working days" for the expression "21 days". *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

441D Requirements in relation to written statements

Every written statement served under rule 441B or rule 441C shall

(a) Be signed by the witness by whom the statement is made; and

(b) Shall not contain evidence that is inadmissible in the proceeding.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

441E Supplementary written statements

(1) Any party to a proceeding who wishes to adduce any new or further evidence after a written statement has been served on that party under rule 441B or rule 441C (not being evidence in response to any matter contained in that written statement) may serve on every other party to the proceeding who has given an address for service a supplementary written statement of the new or further evidence.

(2) Every supplementary written statement served under subclause (1) shall be served as soon as possible after the party wishing to adduce the new or further evidence becomes aware of the new or further evidence or of the relevance of the evidence.

(3) A supplementary statement served under this rule may be adduced as evidence only with the leave of the Court.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

441F Evidence in chief at trial

(1) Where a written statement signed by a witness has been served under rule 441B or rule 441C, that written statement, together with any supplementary statement adduced as evidence with the leave of the Court under rule 441E,

(a) Shall, unless the trial Judge otherwise directs, be read by the witness at the trial as the witness's evidence in chief; and

Part 3—*continued*

(b) Shall, when read by the witness at the trial, be the evidence in chief adduced by the witness at the trial; and

(c) Shall, after being read by the witness at the trial, be endorsed by or on behalf of the Registrar with the words "Given in evidence on [*Date*]".

(2) The endorsement made under subclause (1)(c) shall be signed and dated by or on behalf of the Registrar.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

441G Oral evidence in chief

(1) Oral evidence in chief of any person (whether a person who has given a written statement served under rule 441B or rule 441C or rule 441E or a person who has not given such a statement) may be adduced at the trial only if that oral evidence

(a) Is in response to evidence adduced by another party to the proceeding; or

(b) Is adduced with the leave of the trial Judge.

(2) Leave may be granted under subclause (1)(b) only where

(a) The evidence relates to matters contained in a written statement served under rule 441B or rule 441C and is required to explain elaborate, or otherwise clarify those matters; or

(b) The evidence relates to evidence in response to matters contained in

(i) A written statement served under rule 441B or rule 441C; or

(ii) A supplementary statement adduced in evidence under rule 441E; or

(c) The evidence relates to new or further matters that could not reasonably have been included in the witness's written statement or a supplementary written statement; or

(d) The admission of the evidence is required in the interests of justice; or

(e) Every party to the proceeding who is represented at the hearing consents.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

Part 3—*continued*

441H References to written statements on opening of case

Where a written statement served under rule 441B or rule 441C has not been adduced in evidence at the time when a party opens his or her case, that party may, in opening his or her case, refer to that statement only if

(a) That statement was served by that party; or

(b) The trial Judge grants that party leave to do so.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

441I Cross-examination in relation to written statements

(1) Where any part of the evidence contained in a written statement served under rule 441B or rule 441C is not adduced as evidence at the trial by the person who signed the statement, any other party to the proceeding may, unless the trial Judge otherwise directs, put that part of the statement to that person in cross-examination.

(2) Where a written statement served under rule 441B or rule 441C, or any part of any such statement, has not been adduced in evidence, any party may with the leave of the trial Judge, put that written statement or that part of it to any witness in cross-examination.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

441J Privilege and admissibility

Nothing in rules 441A to 441I

(a) Deprives any party of that party's right to treat any communication as privileged; or

(b) Changes inadmissible evidence into admissible evidence; or

(c) Changes admissible evidence into inadmissible evidence; or

(d) Deprives any party of that party's right to cross-examine any party to a proceeding on a statement served under rule 441B or rule 441C or rule 441E that is inconsistent with a statement previously made by that party; or

Part 3—*continued*

(e) Allows a statement served under rule 441B or rule 441C or rule 441E to be made available, before it is given in evidence, for use for any other purpose or any other proceeding.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

441K Rule in *Browne v Dunn*

Unless the parties to any proceeding to which rules 441B to 441I apply otherwise agree, the rule in *Browne v Dunn* (1893) 6 R 57, HL (which provides that if the Court is to be asked to disbelieve a witness, the witness should be cross-examined) shall apply to every such proceeding.

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

441L Election as to evidence in relation to nonsuit

[Repealed]

Rules 441A to 441L were inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

Rule 441L was revoked, as from 1 February 2003, by rule 14(a) High Court Amendment Rules (No 2) 2002 (SR 2002/410).

441M Exchange of indexes of documents intended for hearing

(1) A party who wishes to rely on documents at a hearing must refer to those documents in an index and serve that index on every other party to the proceeding at the same time that the party serves, whether under rule 441B or rule 441C or under a direction of the Court, written statements of the evidence in chief to be adduced.

(2) An index served by a party under subclause (1) must include only documents that

(a) will be referred to in evidence to be given, or submissions to be made, at the hearing; and

(b) are not already included in any index previously served under this rule on the party by another party.

Part 3—*continued*

Rules 441M to 441Q were inserted, as from 24 November 2003, by rule 11 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

441N Bundle of documents for hearing

(1) Following the expiry of the period of 15 working days specified in rule 441C, the plaintiff must, in accordance with subclause (2), prepare a bundle of documents (in this rule and in rules 441O and 441P referred to as the **common bundle**) that contains every document referred to in

(a) the index served by the plaintiff under rule 441M: and

(b) each index (if any) served by another party under that rule.

(2) In preparing the common bundle, the plaintiff must

(a) set out the documents in chronological order or any other appropriate order agreed on by counsel; and

(b) number each page of the common bundle in consecutive order; and

(c) set out before the first document an index that shows

(i) the date and nature of each document; and

(ii) the party from whose custody each document has been produced; and

(iii) the page number of each document as it appears in the common bundle.

(3) The plaintiff must, not later than 5 working days before the hearing,

(a) file 2 copies of the common bundle in the Court; and

(b) serve 1 copy of the common bundle on every party to the proceeding.

Rules 441M to 441Q were inserted, as from 24 November 2003, by rule 11 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

441O Consequences of incorporating document in common bundle

(1) Each document contained in the common bundle is, unless the Court otherwise directs, to be considered

(a) to be admissible; and

Part 3—*continued*

(b) to be accurately described in the index to the bundle; and
(c) to be what it appears to be; and
(d) to have been signed by any apparent signatory; and
(e) to have been sent by any apparent author and to have been received by any apparent addressee; and
(f) to have been produced by the party indicated in the index to the common bundle.

(2) If a party objects to the admissibility of a document included in the common bundle or to the application of any of paragraphs (b) to (f) of subclause (1) to a document, the objection must be
(a) recorded in the common bundle; and
(b) determined by the Court at the hearing or at any prior time that the Court directs.

(3) The fact that a document has been included in the common bundle is not relevant to the determination, under subclause (2), of an objection that relates to the document.

(4) A document in the common bundle is received into evidence when a witness refers to it in evidence or when counsel refers to it in submissions (made otherwise than in a closing address).

(5) A document in the common bundle may not be received in evidence except under subclause (4).

(6) The Court may direct that any provision of this rule is not to apply to a particular document.

Rules 441M to 441Q were inserted, as from 24 November 2003, by rule 11 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

441P Consequence of not incorporating document in common bundle

A document that is not incorporated in the common bundle may be produced at the hearing only with the leave of the Court.

Rules 441M to 441Q were inserted, as from 24 November 2003, by rule 11 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 3—*continued*

441Q Plaintiff's synopsis of opening and chronology

The plaintiff must, not later than 2 working days before the hearing, file in the Court and serve on every other party to the proceeding

(a) a copy of the plaintiff's opening; and

(b) a chronology of the material events that form part of the plaintiff's evidence.

Rules 441M to 441Q were inserted, as from 24 November 2003, by rule 11 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Negotiations for settlement

The heading "Negotiations for Settlement" was inserted, as from 1 March 1996, by rule 3 High Court Amendment Rules (No 3) 1995 (SR 1995/288).

442 Court may assist in negotiating for settlement

(1) The Court may, at any time before the hearing of a proceeding, convene a conference in Chambers of the parties for the purpose of negotiating for a settlement of the proceeding or of any issue, and may assist in those negotiations.

(2) A Judge who presides at a conference under subclause (1) may not preside at the hearing of the proceeding unless

(a) all parties taking part in the conference consent; and

(b) the Judge is satisfied that there are no circumstances that would make it inappropriate for the Judge to do so.

(3) A Judge may, at any time during the hearing of a proceeding, with the consent of the parties, convene a conference of the parties for the purpose of negotiating for a settlement of the proceeding or of any issue.

(4) A Judge who convenes a conference under subclause (3) may not assist in the negotiations, but must arrange for an Associate Judge or another Judge to do so unless

(a) the parties agree that the Judge should assist and continue to preside at the hearing; and

(b) the Judge is satisfied that there are no circumstances that would make it inappropriate for the Judge to do so.

Part 3—*continued*

(5) The Court may, with the consent of the parties, make an order at any time directing the parties to attempt to settle their dispute by the form of mediation or other alternative dispute resolution (to be specified in the order) agreed to by the parties.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 442 was substituted, as from 1 January 1986, by rule 13 High Court Amendment Rules 1985 (SR 1985/328).

Rule 442 was amended, as from 1 February 1996, by rule 4(1) High Court Amendment Rules (No 3) 1995 (SR 1995/288) by omitting the words "At the request of all the parties to a proceeding,".

Subclause (2) was inserted, as from 1 February 1998, by rule 10 High Court Amendment Rules 1997 (SR 1997/350).

Rules 442 was substituted, as from 24 November 2003, by rule 12 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Subclause (4) was amended, as from 1 November 2004, by rule 30(1) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "an Associate Judge" for the words "a Master".

Perpetuating testimony

443 Right to perpetuate testimony

Any person who would, in the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any estate or interest in any property or to any other relief, the right or claim to which cannot be established before the happening of the future event, may commence a proceeding claiming by way of relief an order for the examination of any witness whose testimony may be material for establishing such right or claim.

Compare: 1908 No 89 Schedule 2 r 534

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

444 Procedures where Crown may have interest

In any proceeding under rule 443 concerning any matter or thing in which the Crown may have any estate or interest, the plaintiff may proceed against the Crown under section 14 of

Part 3—*continued*

the Crown Proceedings Act 1950 and the provisions of that Act and these rules shall apply accordingly.

Compare: 1908 No 89 Schedule 2 r 535; SR 1952/122 r 31

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

445 Examination of witnesses

No proceeding under rule 443 shall be set down for hearing but in any such proceeding the Court may make such order under rules 369 to 379 for the examination of witnesses (whether tendered by the plaintiff or any other party) as may be appropriate.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 445 was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the word "hearing" for the word "trial". *See* rule 19 of those Rules as to the transitional provisions.

446 Depositions as evidence

Any depositions taken pursuant to an order made under rule 445 may be tendered in evidence at the trial of any proceeding brought thereafter to enforce the claim or interest to which they relate and shall be admitted subject to all just exceptions.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A
Commercial list

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

446A Interpretation

In this Part, unless the context otherwise requires,

Commercial list means a commercial list established under section 24A of the Act at an office of the High Court

Part 3A—*continued*

Commercial list Judge in charge means, in relation to a commercial list, the Judge nominated from time to time by the Chief Justice under section 24C(1) of the Act to supervise that commercial list

Commercial list Judge means, in relation to a commercial list,

(a) The Commercial list Judge in charge:

(b) Any Judge nominated under section 24C(2) of the Act to assist the Commercial list Judge in charge:

The general rules means the rules comprised in Parts 1, 2, 3, 4, 5, and 6.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

446B Application of this Part

(1) Subject to this rule, this Part shall apply in relation to

(a) Commercial lists; and

(b) The entry of proceedings on commercial lists; and

(c) The making of orders for the removal of proceedings entered on commercial lists; and

(d) Proceedings entered for the time being on commercial lists.

(2) This Part shall not apply in relation to proceedings commenced before the date of the commencement of this Part.

(3) If in any civil proceedings any question arises as to the application of any provision of this Part, the Court may, either on the application of any party or of its own motion, determine the question and give such directions as it thinks fit.

(4) Subject to any directions of the Court, the general rules shall apply in relation to any proceeding entered on a commercial list except in so far as those rules are modified by or are inconsistent with the Act or this Part.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Part 3A—*continued*

446C Entry on commercial list by endorsement

(1) Where

(a) A statement of claim or a statement of defence in any proceeding (being a proceeding referred to in paragraphs (a) to (f) of section 24B(1) of the Act) is filed in an office of the Court at which a commercial list is established; and

(b) Either

(i) A plaintiff, by endorsement on the statement of claim; or

(ii) A defendant, by endorsement on the statement of defence,

requires the proceeding to be entered on the commercial list, the proceeding shall be entered on that list without any order for entry.

(2) A requirement under subclause (1) shall be made by a party by endorsing on the statement of claim or statement of defence, as the case may be, immediately under the reference to the registry in which the proceeding is filed, the words "Commercial list".

(3) The endorsement shall be made before the document is filed in the office of the Court.

(4) A requirement under subclause (1) shall not be made

(a) On a statement of claim which is to be served on the defendant with an application for judgment under rule 136 or rule 137; or

(b) On a statement of defence filed by a defendant who has been served with, or who is serving, an application for judgment under rule 136 or rule 137; or

(c) On a counterclaim; or

(d) By a defendant to a counterclaim; or

(e) By a third or subsequent party.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Subclause (4)(b) was substituted, as from 9 November 1998, by rule 5 High Court Amendment Rules 1998 (SR 1998/310).

Part 3A—*continued*

446D Entry on commercial list by order

(1) Where a statement of claim that could have been endorsed under rule 446C(1)(b)(i) has not been so endorsed, the plaintiff may, at any time after the filing of the statement of claim but not later than 14 days after the day on which a statement of defence in the proceeding is filed, make application to a Commercial list Judge for the entry of the proceeding on the commercial list.

(2) Where a statement of claim that, but for rule 446C(4)(a), could have been endorsed under rule 446C(1)(b)(i) is served with an application for judgment under rule 136 or rule 137 and an affidavit by or on behalf of the defendant is, in accordance with rule 141, filed and served in answer to the affidavit by or on behalf of the plaintiff, the defendant may, at any time before the date for hearing of the application for judgment, make application to a Commercial list Judge for the entry of the proceeding on the commercial list.

(3) Where the statement of claim in a proceeding which is of a commercial nature but which is not within any of the classes of proceeding specified in paragraphs (a) to (f) of section 24B(1) of the Act is filed in an office of the Court at which a commercial list is established, any party to the proceeding may, at any time after the filing of the statement of claim but not later than 14 days after the day on which a statement of defence in the proceeding is filed, make application to a Commercial list Judge for the entry of that proceeding on the commercial list.

(4) Where an application is made under subclause (1) or subclause (2) or subclause (3), in relation to any proceeding, a Commercial list Judge may, in that Judge's discretion, order that the proceeding be entered on the commercial list.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Part 3A—*continued*

446DA Entry on commercial list of appeals against determinations of Commerce Commission

(1) Any appellant who files a notice of appeal pursuant to rule 691 appealing against any determination of the Commerce Commission may, by endorsement of the notice of appeal, require the proceeding to be entered on the commercial list, and the proceeding shall thereupon be entered on that list without any order for entry.

(2) A requirement under subclause (1) shall be made by endorsing on the notice of appeal, immediately under the reference to the registry, the words "Commercial list".

(3) Any party to an appeal against a determination of the Commerce Commission (including any person who participated in any conference held by the Commission relating to the determination appealed against) may, within 14 days after the day on which that party is served with a copy of the notice of appeal, make application for the proceeding to be entered on the commercial list.

(4) Where an application is made under subclause (3) in relation to any appeal, a Commercial list Judge may, in that Judge's discretion, order that the appeal be entered on the commercial list.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Rules 446DA and 446DB were inserted, as from 1 June 1990, by rule 9 High Court Amendment Rules 1990 (SR 1990/66).

446DB Entry on commercial list of applications by liquidators or receivers for directions

(1) Any liquidator or receiver who files under Part 4A an originating application for directions may, by endorsement of the originating application, require the proceeding to be entered on the commercial list, and the proceeding shall thereupon be entered on that list without any order for entry.

Part 3A—*continued*

(2) A requirement under subclause (1) shall be made by endorsing on the originating application, immediately under the reference to the registry in which the proceeding is filed, the words "Commercial list".

(3) Any party to the proceeding may, at any time before the date for hearing of the application, make application for the proceeding to be entered on the commercial list.

(4) Where an application is made under subclause (3) in relation to any proceeding, a Commercial list Judge may, in that Judge's discretion, order that the proceeding be entered on the commercial list.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Rules 446DA and 446DB were inserted, as from 1 June 1990, by rule 9 High Court Amendment Rules 1990 (SR 1990/66).

446E Documents to be served on and filed and served by defendant

Where a proceeding is entered on a commercial list before the notice of proceeding to a defendant is served,

(a) That notice of proceeding shall be in form 34A; and

(b) The defendant shall not be obliged by rule 129(1) to file and serve a statement of defence but may, within 14 days after the service on the defendant of the notice of proceeding, file and serve either a statement of defence or an appearance in form 34B or in form 10 or form 11 or form 12.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

446F Heading of documents

The heading of every document filed or issued in any proceeding that is on a commercial list shall show, immediately after

Part 3A—*continued*

the reference to the registry in which the proceeding is filed, the words "Commercial list".

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

446G Interlocutory applications

(1) If

(a) A proceeding is entered on a commercial list; and

(b) Any party to the proceeding wishes to apply to the Court for an order that, unless the Court otherwise directs, it is not necessary to draw up or seal,

that party may make the interlocutory application by sending it to the Court and to all other parties intended to be affected by it.

(2) An interlocutory application sent pursuant to subclause (1) may be sent to the Court and to the parties by post, facsimile, telex, or other written communication.

(3) The Court's copy of the application shall be addressed to the Registrar for the attention of a Commercial list Judge.

(4) No order made or decision given on an interlocutory application in a proceeding entered on a commercial list (other than an order or decision made *ex parte*) may be varied or rescinded under rule 259.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Subclause (1) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the word "If" for the words "Notwithstanding anything in rule 234, where". *See* rule 19 of those Rules as to the transitional provisions.

Subclause (4) was amended, as from 1 January 1989, by rule 15 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the words "(other than an order or decision made ex parte)".

Subclause (4) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 259" for the expression "rule 264". *See* rule 19 of those Rules as to the transitional provisions.

Part 3A—*continued*

446H Application for directions

(1) Where a proceeding has been entered on the commercial list, the party who required the proceeding to be so entered on the commercial list or the party who obtained the order for the entry of the proceeding on that list, as the case may be, shall file, under rule 425, an interlocutory application for directions regarding the proceeding.

(2) The application filed pursuant to subclause (1) shall specify the details of a proposed timetable for the steps leading to the hearing of the proceeding.

(3) Where the proceeding has been entered on the commercial list pursuant to an endorsement on the statement of claim, the application required by subclause (1) may be filed at any time after the statement of claim has been filed but not later than 7 days after the date on which any defendant files a statement of defence or an appearance in the proceeding, whichever first occurs.

(4) Where the proceeding has been entered on the commercial list pursuant to an endorsement on an appearance or a statement of defence, the application required by subclause (1) shall be filed not later than 7 days after the date on which the appearance or statement of defence is filed.

(5) Where the proceeding has been entered on the commercial list pursuant to an order under rule 446D(4), the application required by subclause (1) shall be filed not later than 7 days after the date of the making of the order.

(6) Notwithstanding rule 240, every application under subclause (1) shall be made on notice.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Subclause (1) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 425" for the expression "rule 437". *See* rule 19 of those Rules as to the transitional provisions.

Subclause (2) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by omitting the words ", in addition

Part 3A—*continued*

to the matters required by rule 437(2),". *See* rule 19 of those Rules as to the transitional provisions.

Subclause (6) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 240" for the expression "rule 239". *See* rule 19 of those Rules as to the transitional provisions.

446I Response to application for directions

(1) A party who has been served with an application for directions filed pursuant to rule 446H(1) shall file in the Court and serve on the applicant and on all other parties affected by the application a memorandum stating

(a) The directions to which the party consents:

(b) The directions which the party intends to oppose:

(c) Where the party intends to oppose a direction, a brief statement of the grounds of opposition:

(d) Whether or not the party intends to oppose the proposed timetable:

(e) Where the party intends to oppose the proposed timetable, a brief statement of the grounds of opposition:

(f) Any modifications suggested by the party to the proposed timetable:

(g) Any other directions sought by the party.

(2) Every memorandum under subclause (1) shall be filed and served at least 2 days before the day for the hearing of the application to which the memorandum relates:

Provided that such a memorandum may, with the leave of a Commercial list Judge, be filed and served on that day or less than 2 days before that day.

(3) Where a memorandum under subclause (1) is filed and served in accordance with this rule in relation to any application for directions, it shall not be necessary for that party to file and serve in relation to that application a notice of opposition in form 21.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A—*continued*

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

446J Hearing of application for directions

(1) On the hearing of any application for directions made pursuant to rule 446H(1), a Commercial list Judge may give any directions which could be given by a Judge under rule 425 and may give such other directions as the Commercial list Judge thinks fit (whether or not inconsistent with any other provision of these rules or of any rules made under section 51C of the Act) for the speedy and inexpensive determination of the real questions between the parties to the proceeding.

(2) Without limiting the generality of subclause (1), directions under that subclause may concern any of the following matters:

- (a) Pleadings or points of claim or of defence:
- (b) Counterclaim and third party proceedings:
- (c) Particulars of any claim, defence, or other matter:
- (d) Interrogatories and discovery:
- (e) The exchange of documents or lists of documents:
- (f) The formulation and determination of questions of fact or law:
- (g) An agreed statement of facts:
- (h) The proof of facts:
- (i) The giving by any party to the proceeding of notice of trial, the setting of the proceeding down for hearing, and the fixing of a date for trial:
- (j) The provision of copies of documents for the use of the Court at the trial:
- (k) The exchanging by the parties and supplying to the Court of lists of authorities:
- (l) The preparation of a Court book containing the pleadings, issues or questions, and the documents which the parties to the proceeding expect to be relied on at the hearing:
- (m) The exchange of reports of experts:
- (n) The determination of any question of fact by a referee:

Part 3A—*continued*

(o) The making of orders under section 14 or section 15 of the Arbitration Act 1908:

(p) Any other matters which the nature of the case or its speedy and inexpensive determination may require.

(3) Without in any way limiting the generality of subclauses (1) and (2), a Commercial list Judge may dispense with

(a) Pleadings or further pleadings:

(b) Any interlocutory proceedings or step:

(c) The proof of any fact which is not in dispute.

(4) Nothing in this rule limits the generality of rules 425 and 439.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Subclause (1) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 425" for the words "the rule 438". *See* rule 19 of those Rules as to the transitional provisions.

Subclause (4) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "rules 425 and 439" for the words "rules 437, 438, 439, and 441". *See* rule 19 of those Rules as to the transitional provisions.

446K Removal from list

(1) A Commercial list Judge may, on the application of any party or on the Judge's own motion, at any time remove any proceeding (including a proceeding to which section 24B(1) of the Act applies) from the commercial list.

(2) Where a proceeding is removed from the commercial list, the Commercial list Judge making the order shall give directions as to the future conduct of the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

446L Proceedings in other Registries

(1) Any party to a proceeding to which section 24B(1) of the Act applies and which, by virtue of the operation of rule 106, may

Part 3A—*continued*

not be filed in an office of this Court at which a commercial list is established, may apply to a Commercial list Judge for an order that the proceeding be entered on a commercial list established at any office of this Court.

(2) An application under subclause (1) may be made at any time after the filing of the statement of claim in the proceeding but not later than 14 days after the day on which a statement of defence in the proceeding is filed.

(3) As a condition of any order under subclause (1) a Commercial list Judge may give such further directions as that Judge thinks fit to minimise difficulties caused to any party arising from distance from the office of this Court at which the commercial list is established.

(4) Without limiting the generality of subclause (3), a Commercial list Judge may order that the trial, or part of the trial, or any interlocutory application relating thereto, shall be heard and determined in the registry in which the proceeding was originally commenced or at any other venue.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

446M Praecipe or notification of readiness not necessary

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Rule 446M was revoked, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

446N Memorandum that decision to be final

Where the parties desire that the decision of a Judge hearing and determining any proceeding entered on the commercial list shall be final, a memorandum to that effect executed by

Part 3A—*continued*

the parties to the proceeding shall be filed before the trial of the proceeding begins.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

446O Additional powers of Commercial list Judge

(1) In addition to all other powers conferred on a Commercial list Judge, such a Judge may give such directions as the Judge thinks fit for the speedy and inexpensive determination of the real questions between the parties to any proceeding entered on a commercial list.

(2) Without limiting the generality of subclause (1), the Judge may

(a) Require the parties or counsel to file and exchange memoranda before any hearing of the proceeding in order to clarify the matters in issue in advance of the hearing:

(b) Where appropriate deal with applications or hold conferences by way of a telephone conference link-up at the expense of one or more of the parties:

(c) Where appropriate deal with applications by way of telegram, facsimile, telex message, or courier post at the expense of one or more of the parties:

(d) Give directions to assist the convenience of the parties and witnesses in the case:

(e) Change the venue of the trial, or adjourn the trial part heard to continue at different venue:

(f) With the consent of counsel, make such use of video tape, film projection, computers and other equipment as the Judge sees fit in the proceeding, subject to a direction as to the manner in which the parties shall defray the costs of so doing:

(g) With the consent of counsel, make arrangements for the more speedy and effective recording of evidence, subject to a direction as to the manner in which the parties shall defray the costs of so doing:

Part 3A—*continued*

(h) Appoint any person authorised in law to administer an oath to any witness giving evidence in any manner envisaged by this rule.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

446P Disputes concerning construction

(1) Where a party to a dispute concerning the construction, status, or application of a contract or document wishes to apply to a Commercial list Judge under section 24C(4) of the Act for the determination of the questions involved in the dispute, that party shall file

(a) A statement of claim setting out the questions involved in the dispute; and

(b) An affidavit exhibiting all documents necessary for the Commercial list Judge to make a proper determination of the questions involved in the dispute.

(2) The notice of proceeding to a defendant in relation to an application under section 24C(4) of the Act shall be in form 34C.

(3) The defendant shall not be obliged by rule 129(1) to file and serve a statement of defence but may, within 14 days after the service on the defendant of the notice of proceeding or within such shorter time as a Commercial list Judge may order, file and serve a statement of defence or an appearance in form 34B.

(4) The Commercial list Judge may hear and determine the question involved in the dispute at such time and on such terms as that Judge considers appropriate.

(5) If the proper determination of the question requires evidence other than that contained in or exhibited to the affidavit filed pursuant to subclause (1)(b) or cross-examination on that affidavit or those exhibits, a Commercial list Judge may, on the application of any party or on the Judge's own motion, order that such a proceeding be placed on the commercial list.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A—*continued*

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Subclause (2) was amended, as from 1 August 1987, by rule 7 High Court Amendment Rules (No 2) 1987 (SR 1987/169) by substituting the expression "34C" for the expression "34B".

446Q Form of documents

(1) Notwithstanding rule 31, all documents filed in respect of a proceeding entered on the commercial list and all documents filed in relation to an application under section 24C(4) of the Act shall be filed flat.

(2) The party seeking to have a proceeding entered on the commercial list and the party making an application under section 24C(4) of the Act shall provide at that party's expense, for the filing of all documents in the proceeding or in relation to the application, a folder or ring-binder of a type approved by the Registrar.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3A (comprising rr 446A to 446Q) was inserted, as from 1 April 1987, by rule 2 High Court Amendment Rules 1987 (SR 1987/29).

Part 3B
Special provisions applying to certain proceedings under Commerce Act 1986 and to certain proceedings in Federal Court of Australia under Trade Practices Act 1974 of the Commonwealth of Australia

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446R Interpretation

In this Part, unless the context otherwise requires,

Part 3B—*continued*

Australian proceeding means a proceeding in which a matter for determination arises under

(a) Any of sections 46A, 155A, or 155B of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; or

(b) A provision of Part VI or Part XII of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it relates to any of sections 46A, 155A, or 155B of that Act;

and includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding

Federal Court means the Federal Court of Australia

New Zealand proceeding means a proceeding in which a matter for determination arises under

(a) Any of sections 36A, 98H, or 99A of the Commerce Act 1986; or

(b) A provision of Part 6 or Part 7 of the Commerce Act 1986 in so far as it relates to any of sections 36A, 98H, or 99A of that Act;

and includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446S Commencement of New Zealand proceedings

(1) Every New Zealand proceeding shall be commenced by filing a statement of claim in the office of the Court at Auckland or Wellington or Christchurch in accordance with rule 446T.

(2) Notwithstanding subclause (1), the statement of claim may be filed in any of those offices of the Court if the parties agree,

Part 3B—*continued*

by endorsement on the statement of claim, to the filing of the statement of claim in that office.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446T Office of the Court in which proceedings to be commenced

(1) Notwithstanding rule 107, the office of the Court, for the purposes of rule 446S(1), shall, subject to subclauses (2) and (3), be determined as follows:

(a) Where any defendant is resident or the defendant's principal place of business is in New Zealand, that office shall be whichever of the offices of the Court at Auckland or Wellington or Christchurch is nearest to the residence or principal place of business of the defendant:

Provided that where there are 2 or more defendants, that office shall be determined by reference to the first-named defendant who is resident or whose principal place of business is in New Zealand:

(b) Where no defendant is resident or no defendant's principal place of business is in New Zealand, that office shall be such of those offices as the plaintiff selects:

(c) Notwithstanding paragraphs (a) and (b), where the Crown is a defendant, that office shall be such of those offices as the plaintiff selects.

(2) Where it appears to the Court on application made to it that the statement of claim has been filed in the wrong office of the Court or that any other office of the Court in which the statement of claim may be filed would be more convenient to the parties, it may direct that the statement of claim be filed in that other office, or that all documents filed in the proceeding be transferred to the proper office or, as the case may be, to that other office which shall thereupon be deemed to be the proper office.

(3) Where an order is made under subclause (2), each party shall change that party's address for service accordingly.

Part 3B—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446U Issue of subpoenas for service in Australia

(1) Notwithstanding rule 497, an order of subpoena in a New Zealand proceeding for service in Australia shall not be issued without the leave of a Judge, and shall,

(a) In the case of an order of subpoena that requires a person to testify, whether or not it also requires a person to produce documents, be in form 34CA:

(b) In the case of an order that requires a person to produce documents, but does not require a person to testify, be in form 34CB.

(2) Every application for the issue of an order of subpoena under subclause (1) shall be made *ex parte* by originating application and the provisions of Part 4A (other than rule 458H) shall apply, subject to all necessary modifications, to the application.

(2A) Every such application shall be accompanied by an affidavit containing the following matters:

(a) The name, designation, occupation, and address of the witness:

(b) The nature of the evidence required from the witness and the relevance of that evidence:

(c) The date on which it is intended to serve the order of subpoena:

(d) The availability of suitable means of transport to enable the witness to comply with the order of subpoena:

(e) The amounts proposed to be paid or tendered to the witness in respect of expenses in complying with the order of subpoena:

(f) In any case where the subpoena requires the witness to testify, an estimate of the date on which and the length of time that person will be required to attend at the Court:

(g) If the applicant is aware of any fact or circumstance which may constitute a ground for setting the subpoena

Part 3B—*continued*

aside under section 56G of the Act, the fact or circumstance.

(3) In determining whether to grant leave the Judge shall, in addition to any other matter which the Judge considers to be relevant, have regard to

(a) The adequacy of the amount proposed to be paid or tendered to the witness in respect of expenses; and

(b) Whether the time between the date of service and the date on which the witness is required to comply with the order of subpoena is reasonable in the circumstances.

(4) Leave may be granted under subclause (1) subject to such conditions the Judge thinks fit.

(5) Without limiting the conditions which may be imposed by a Judge under subclause (4), leave may be granted under subclause (1) subject to conditions relating to

(a) The amount to be paid or tendered to the witness in respect of expenses:

(b) The date or dates on which the witness is required to comply with the order of subpoena:

(c) The documents or class or classes of documents to be produced.

(6) A Judge may direct that service on a body corporate shall be effected by serving the order of subpoena on a member or officer or servant of the body corporate in such manner as the Judge directs.

(6A) The file relating to every such application shall be kept separate from the file relating to the New Zealand proceeding.

(7) Notwithstanding rule 66, no document relating to an application under this rule shall be searched or inspected or copied without the leave of a Judge.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Subclause (2) was substituted, and subclause (2A) was inserted, as from 1 April 1995, by rule 3(1) High Court Amendment Rules 1995 (SR 1995/63).

Subclause (6A) was inserted, as from 1 April 1995, by rule 3(2) High Court Amendment Rules 1995 (SR 1995/63).

Part 3B—*continued*

446V Service of subpoena

(1) An order of subpoena issued in a New Zealand proceeding with the leave of a Judge may be served on a person in Australia personally by leaving with that person a sealed copy of the order together with a statement in form 34CC setting out the person's rights and obligations.

(2) Service of the order of subpoena on a corporation shall be in accordance with any directions given by the Judge under rule 446U(6).

(3) A person who has been served with an order of subpoena under subclause (1) is not compellable to comply with the order unless, at the time of service or at some other reasonable time before the date on which the person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to meet the person's reasonable expenses of complying with the order are tendered or paid to that person.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446W Subpoenas for production

(1) An order of subpoena issued in a New Zealand proceeding which requires a person in Australia to produce documents or things, but does not require the person to testify, shall permit the person to comply with the order by producing the documents or things at a specified registry of the Federal Court.

(2) Unless the Court otherwise orders, the registry of the Federal Court specified under subclause (1) shall be the registry nearest to the place where the order of subpoena is served.

(3) A person served with an order of subpoena of the kind described in subclause (1) may comply with the subpoena by

(a) Producing the subpoena and the required documents or things to the specified registry of the Federal Court not later than 7 working days before the date specified in the order as the date on which the documents or things are required for production in the High Court; and

Part 3B—*continued*

(b) Obtaining a receipt from a Registrar, Deputy Registrar, District Registrar, or Deputy District Registrar of the Federal Court for the documents or things produced and sending, as soon as practicable, a copy of the receipt with a copy of the order of subpoena by facsimile to the registry of the High Court where the order was made; and

(c) Providing an officer of the Federal Court with a sum sufficient to send the documents or things to New Zealand.

(4) A receipt obtained pursuant to paragraph (b) of subclause (3) shall be sufficient evidence of compliance with the order of subpoena.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446X Setting aside subpoena issued in New Zealand proceeding

(1) An application to set aside an order of subpoena issued in a New Zealand proceeding and served on a person in Australia under section 56G of the Act may be filed by facsimile.

(2) The Registrar shall send to the applicant by facsimile an acknowledgment of an application that has been filed by facsimile.

(3) The Court shall give such directions for the conduct of the hearing of the application as it thinks fit.

(4) Without limiting subclause (3), the Court may give directions requiring

(a) The applicant to give evidence or make submissions by video link or telephone conference; or

(b) Further evidence by the applicant be taken in Australia; or

(c) The application to be heard in Australia.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Part 3B—*continued*

446Y Failure to comply with subpoena in New Zealand proceeding

The Court may, on the application of a party to a New Zealand proceeding, or of its own motion, issue a certificate in form 34CD stating that a person in Australia who has been served with an order of subpoena in a New Zealand proceeding has failed to comply with the order and may direct the Registrar of the Court to transmit the certificate to the Federal Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446Z Payment of additional amounts to persons complying with subpoena in New Zealand proceeding

The Court may, on the application of a person resident in Australia who has complied with an order of subpoena issued in a New Zealand proceeding, or of its own motion, order the person on whose application the order was obtained to pay to that person

(a) An amount for expenses reasonably incurred by that person in complying with the order in addition to any expenses tendered or paid to that person under rule 446V; or

(b) An amount for any loss of income occasioned by that person in complying with the order

and may direct that the amount or amounts shall be fixed by the Registrar.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446ZA Transmission of documents to Federal Court

The Registrar exercising office at a registry at which a document or thing is produced in compliance with a subpoena for production issued by the Federal Court for service in New Zealand in an Australian proceeding shall

Part 3B—*continued*

(a) Issue a receipt for the document or thing produced; and
(b) Mark the document or thing so as to indicate the date and time of its production; and
(c) Advise the officer of the Federal Court who issued the subpoena by facsimile; and
(d) Send the document or thing to the Federal Court with a copy of the subpoena so as to ensure that it will be received by the Federal Court before the date on which it is required to be produced to that Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446ZB Certification of judgments, orders, and injunctions in New Zealand proceedings

(1) The Court may, on the application of a party to a New Zealand proceeding, issue to that party a copy of a judgment or order or injunction given or made or issued in that proceeding.

(2) An application under this rule may be made *ex parte*.

(3) Every copy of the judgment or order or injunction shall be
(a) Sealed with the seal of the Court; and
(b) Certified to be a true copy of a judgment or order or injunction given, made, or issued in a New Zealand proceeding within the meaning of section 56D of the Act and section 32B of the Federal Court of Australia Act 1976.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

446ZC Evidence and submissions by video link and telephone conference

(1) On an application by a party to a New Zealand proceeding a Judge may, if satisfied that the necessary equipment and facilities are available, direct that a witness may give evidence from Australia or a person appearing as a barrister or solicitor,

Part 3B—*continued*

or both, may make submissions from Australia by video link or telephone conference.

(2) An application under subclause (1) may be made *ex parte* and shall be accompanied by an affidavit stating

(a) The reasons for the proposed course of action:

(b) The nature of the evidence:

(c) The witnesses to be examined:

(d) In a case where evidence is proposed to be given, an estimate of the time the examination of the witness will take:

(e) Whether issues of character or credibility are likely to be raised:

(f) In a case where submissions are proposed to be made, an estimate of the time that will be required to make the submissions.

(3) In giving a direction under subclause (1), the Judge shall instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions which the Judge may make.

(4) Without limiting the generality of subclause (3), the Judge may direct that

(a) The evidence be given or the submissions be made at the Federal Court or at a place approved by the Federal Court:

(b) An officer of the Federal Court or other person approved by the Judge be present to assist in the transmission of the evidence or submissions, and, in particular to

(i) Introduce witnesses giving evidence or a barrister or solicitor, or both, making submissions:

(ii) Assist with the administration of oaths:

(iii) Assist with the implementation of any directions or requests given or made by the Judge hearing the evidence or submissions:

(c) The evidence or the submissions be heard at a location other than the precincts of the High Court.

(5) Unless the Court otherwise orders, the costs incurred in giving the evidence or making the submissions by video link or

Part 3B—*continued*

telephone conference and transmitting the evidence or submissions in accordance with a direction given under this rule shall be paid by the applicant.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 3B (comprising rr 446R to 446ZC) was inserted, as from 19 October 1990, by rule 2 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Part 4
Procedure in special cases

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

447 Application of this Part to proceedings within equitable jurisdiction

This Part applies to proceedings in which the relief claimed is wholly within the equitable jurisdiction of the Court, and, in particular, those which involve

(a) The determination of any question affecting the right or interest of any person claiming to be creditor, devisee, legatee, wife, husband, civil union partner, de facto partner, child, or next of kin of a deceased person or any person claiming as beneficiary under any trust, or any person claiming by assignment or otherwise under any such person:

(b) The ascertainment of any class of creditors, legatees, devisees, or next of kin of a deceased person, or of beneficiaries under any trust:

(c) The furnishing of any particular accounts by executors, administrators, or trustees:

(d) The payment into Court of any money in the hands of executors, administrators, or trustees:

(e) Directing executors, administrators, trustees, or beneficiaries to do or abstain from doing any particular act in their character as such executors, administrators, trustees, or beneficiaries:

Part 4—*continued*

(f) The approval of any sale, purchase, compromise, or other transaction by executors, administrators, or trustees:

(g) The carrying-on of any business authorised to be carried on by any deed or instrument creating a trust or by the Court:

(h) The interpretation of any deed or instrument creating a trust:

(i) The determination of any question arising in the administration of any estate or trust, or which it may be necessary or desirable to determine for the protection of the executors, administrators, or trustees.

Compare: 1908 No 89 Schedule 2 r 538(a)-(i).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Paragraph (a) was amended, as from 1 July 2005, by rule 7 High Court Amendment Rules 2005 (SR 2005/148) by inserting the words "civil union partner, de facto partner," after the word "husband,".

448 Application of this Part to proceedings under certain Acts

(1) This Part applies to proceedings in which the relief is claimed solely under the following Acts:

(a)

(b) The Charitable Trusts Act 1957:

(c)

(ca) The Corporations (Investigation and Management) Act 1989:

(d) The Declaratory Judgments Act 1908:

(e) The Family Protection Act 1955:

(f) the Care of Children Act 2004:

(fa) The Incorporated Societies Act 1908:

(fb) The Industrial and Provident Societies Act 1908:

(g) The Insolvency Act 2006:

(h) The Law Reform (Testamentary Promises) Act 1949:

(i)

(j)

(k) The Mental Health (Compulsory Assessment and Treatment) Act 1992:

Part 4—*continued*

(l) The Trustee Act 1956.

(2) Where any rules are in force under the Act under which relief is claimed, the application of this Part to the proceedings shall be subject to those rules.

Compare: 1908 No 89 Schedule 2 r 538(j)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1)(a) was revoked, as from 22 June 1987, by rule 8 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (1)(c) was substituted, as from 1 July 1994, by rule 10 High Court Amendment Rules 1994 (SR 1994/135).

Subclause (1)(c) was revoked, as from 1 August 2000, by rule 7 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

Subclause (1)(ca) was inserted, as from 1 February 1994, by rule 19(1) High Court Amendment Rules 1993 (SR 1993/420).

Subclause (1)(f) was substituted, as from 1 July 2005, by rule 8 High Court Amendment Rules 2005 (SR 2005/148).

Subclause (1)(fa) and (fb) were inserted, as from 1 February 1994, by rule 19(2) High Court Amendment Rules 1993 (SR 1993/420).

Schedule 2 rule 448(1)(g): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Subclause (1)(k) was substituted, as from 1 February 1994, by rule 19(3) High Court Amendment Rules 1993 (SR 1993/420).

Subclause (1)(i) and (j) were revoked, as from 1 February 2002, by rule 4 High Court Amendment Rules (No 2) 2001 (SR 2001/382).

448A Application of this Part to proceedings under Chattels Transfer Act 1924

(1) This Part applies to every proceeding in which the relief claimed is solely under section 13 of the Chattels Transfer Act 1924.

(2) The Registrars (not being Deputy Registrars) for the time being exercising their office at the registries of Auckland, Hamilton, Rotorua, Palmerston North, Wellington, Christchurch, and Dunedin shall have the jurisdiction and powers of the Court in Chambers conferred by section 13(1) of the Chattels Transfer Act 1924, but only in respect of the

Part 4—*continued*

extension of time for the registration of an instrument or of an affidavit of renewal of an instrument.

(3) The provisions of rules 272 to 275 shall apply to the exercise of the jurisdiction conferred by subclause (2).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 448A and 448B were inserted, as from 1 January 1986, by rule 14 High Court Amendment Rules 1985 (SR 1985/328).

448B Application of this Part to certain proceedings under the Land Transfer Act 1952 in relation to caveats

This Part applies to every proceeding in which the relief is claimed solely under any of the provisions of sections 140, 143, 144, 145, and 148 of the Land Transfer Act 1952 (all of which provisions relate to caveats).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 448A and 448B were inserted, as from 1 January 1986, by rule 14 High Court Amendment Rules 1985 (SR 1985/328).

448C Application of this Part to certain proceedings under Companies Acts

This Part applies to every proceeding

(a) in which the relief claimed is solely under the Companies Act 1955 or the Companies Act 1993, as the case may be; and

(b) that is not a proceeding properly brought under Part 4A or Part 9A.

Rule 448C was inserted, as from 1 August 2000, by rule 8(1) High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

448D Application of certain rules in this Part to proceedings under Property (Relationships) Act 1976

Rule 454 (which relates to joinder of claims and consolidation) and rule 455 (which relates to evidence) apply to proceedings transferred to the Court by order of a Family Court Judge under

Part 4—*continued*

section 22(3) of the Property (Relationships) Act 1976, but no other rule in this Part applies to proceedings under that Act.

Rule 448D was inserted, as from 1 February 2002, by rule 5 High Court Amendment Rules (No 2) 2001 (SR 2001/382).

449 Application of this Part to other proceedings

This Part applies to

(a) Proceedings in which the only relief claimed is one or more of the extraordinary remedies under Part 7:

(b) Any proceeding

(i) By any mortgagee or mortgagor, whether legal or equitable, of real property; or

(ii) By any person entitled to or owning real property subject to a legal or equitable charge; or

(iii) By any person having the right to exercise any powers, whether statutory or otherwise, under any mortgage or charge of real property or to redeem any mortgage or charge whether legal or equitable, of real property

for the purpose of determining any sufficient question arising out of the plaintiff's status as such mortgagee or mortgagor or person, or the exercise or purported or threatened exercise of any right or power conferred or alleged to be conferred by the mortgage or charge:

(c) Any proceeding by any vendor or purchaser of real or leasehold estate, or the assignee of either, for relief in respect of

(i) Any requisitions or objections; or

(ii) Any claim for compensation; or

(iii) Any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract):

(d) Any other proceeding to which the Court directs that this Part shall apply.

Compare: 1908 No 89 Schedule 2 rr 550-551

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 4—*continued*

Paragraph (b) was substituted, as from 1 October 1991, by rule 18 High Court Amendment Rules 1991 (SR 1991/132).

449A Proceedings commenced by originating application

Nothing in rule 448 or rule 448A or rule 448B or rule 448C prevents relief under any of the provisions specified both in those rules and in rule 458D(1)(a) being claimed in a proceeding commenced by the filing of an originating application under Part 4A; but where relief under any of the provisions so specified is claimed in a proceeding so commenced, nothing in this Part applies to that proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 449A was inserted, as from 1 August 1987, by rule 9 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Rule 449A was amended, as from 1 August 2000, by rule 8(2) High Court Amendment Rules 2000 (SR 2000/109) by inserting the expression "or rule 448C" after the expression "448B". *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

450 Naming of defendants

(1) If, in the case of any proceeding to which this Part applies by virtue of rule 447, the person who is the personal representative of the deceased person or the trustee of the trust, as the case may be, is not the plaintiff, that person shall be the only defendant named in the statement of claim.

(2) In proceedings under the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949, the only defendant named in the statement of claim shall be the personal representative of the deceased person against whose estate the claim is brought.

(3) It shall not be necessary to name as defendants in a proceeding persons who become such by being directed by the Court to be served.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 4—*continued*

451 Directions as to service

(1) Where

(a) The law so requires; or

(b) The plaintiff is in doubt regarding the persons on whom the statement of claim should be served; or

(c) An order is sought that any person represent any other person or class of persons who should be served; or

(ca) The proceeding is under the Companies Act 1955 and is not a proceeding in the liquidation of a company or a proceeding under section 209ZG of that Act; or

(cb) The proceeding is under the Companies Act 1993 and is not a proceeding in the liquidation of a company or a proceeding under section 174 of that Act; or

(d) The Court, being of the opinion that the plaintiff should apply to the Court under this rule, so directs,

the plaintiff shall apply to the Court *ex parte* for directions as to service and for such orders for representation as may be required.

(2) In support of the application the plaintiff shall furnish (by affidavit or otherwise) such information as may be necessary to enable the Court to decide what persons or classes of persons are interested in or may be adversely affected by the relief sought by the plaintiff and by what means the interests of each such person or class of persons may be adequately represented.

(3) In the case of claims under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, the information required by subclause (2) includes

(a) The date of death of the deceased and the date of grant of probate or letters of administration:

(b) Whether the deceased died testate or intestate, and, if testate, a copy of his last will with codicils (if any):

(c) The value of the estate, so far as it is known to the plaintiff:

(d) The names, addresses, occupations, and ages of the beneficiaries under the will or persons entitled on intestacy, as the case may be:

Part 4—*continued*

(e) The names, addresses, occupations, and ages of the persons of each class entitled to claim under the Family Protection Act 1955:

(f) Any other information that is relevant.

(4) The application shall specify the directions that are considered appropriate and shall be accompanied by a memorandum by the plaintiff's solicitor or counsel giving the reasons therefor.

(5) On an application under this rule, the Court may make any orders for service or representation that it considers proper, and, in particular, it may make orders with regard to the representation of incapacitated persons or minors, without the appointment of a litigation guardian under rule 86C if it considers it is not necessary to appoint one.

(6) The effect of every order for directions as to service or for representation made pursuant to this rule shall be set out in the notice of proceeding in accordance with rule 121(3).

Compare: 1908 No 89 Schedule 2 rr 540, 541, 554A, 554B, 554C, 554D, 554E; SR 1957/30 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1)(ca) was inserted, as from 1 August 1987, by rule 10 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (1)(ca) was substituted, and subclause (1)(cb) was inserted, as from 1 July 1994, by rule 11 High Court Amendment Rules 1994 (SR 1994/135).

Subclause (3) was substituted, as from 1 January 1993, by rule 10 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Subclause (3) was amended, as from 1 February 2002, by rule 7 High Court Amendment Rules (No 2) 2001 (SR 2001/382), by substituting "or the Law Reform (Testamentary Promises) Act 1949, the information required by subclause (2) includes" for the ", the Law Reform (Testamentary Promises) Act 1949, or the Matrimonial Property Act 1963, the information required by subclause (2) shall include".

Subclause (5) was substituted, as from 1 February 2003, by rule 11 High Court Amendment Rules (No 2) 2002 (SR 2002/410). *See* rule 12 of those Rules as to the application of this amendment to existing proceedings.

Subclause (5) was amended, as from 24 August 2007, by rule 15(a) High Court Amendment Rules 2007 (SR 2007/206) by inserting "or minors" after "incapacitated persons".

Subclause (5) was amended, as from 24 August 2007, by rule 15(b) High Court Amendment Rules 2007 (SR 2007/206) by substituting "86C" for "85(3)".

Part 4—*continued*

452 Proceeding without service

(1) Where

(a) By any Act or by these rules service of the statement of claim in a proceeding to which this Part applies is not required; or

(b) Service has been dispensed with by the Court,

the facts alleged in the statement of claim shall be verified by or on behalf of the plaintiff by an affidavit (which may be appended to the statement of claim or filed separately) deposing that, so far as they relate to matters within the personal knowledge of the deponent, they are true, and, so far as they relate to matters not within his personal knowledge, he believes them to be true.

(2) Notwithstanding subclause (1), the Court may require any fact not within the personal knowledge of the deponent to be proved by the affidavit of a person having such personal knowledge.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

453 Joining in proceedings under the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949

(1) A defendant in a proceeding under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949 who wishes to claim against the same estate shall file a statement of claim in the proceeding, and thereafter these rules shall apply as if he were a plaintiff and the plaintiff were a defendant.

(2) Where a statement of claim is filed under subclause (1), it shall not be necessary for the person filing it to apply for directions for service or to file or serve a notice of proceeding but that person shall serve his statement of claim and affidavits

(a) On the personal representative; and

(b) On the plaintiff; and

(c) On all other persons (except himself) upon whom the plaintiff has been directed to effect service.

Part 4—*continued*

(3) Where a person, who has not been directed to be served in a proceeding under the above-mentioned Acts, wishes to claim thereunder against the same estate, that person shall file a statement of claim in the proceeding, and thereafter the provisions of subclauses (1) and (2) shall apply as if that person were a defendant in the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

454 Joinder of claims and consolidation

(1) Claims under the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949 may be joined in one statement of claim, whether or not the claims are made, in the alternative.

(2) Separate proceedings against the estate of the same deceased person may be consolidated under rules 382 and 383 if they are

(a) proceedings under the Family Protection Act 1955; or

(b) proceedings under the Law Reform (Testamentary Promises) Act 1949; or

(c) proceedings under the Property (Relationships) Act 1976, transferred to the Court by order of a Family Court Judge under section 22(3) of that Act.

(3)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was substituted, and subclause (3) was revoked, as from 1 February 2002, by rule 8 High Court Amendment Rules (No 2) 2001 (SR 2001/382).

455 Evidence

(1) Subject to any direction by the Court in any particular case, evidence in any proceeding to which this Part applies shall be given

(a) By means of an agreed statement of facts in accordance with rule 502; or

(b) By affidavit in accordance with rules 507 to 519.

Part 4—*continued*

(2) Subject to any direction by the Court in any particular case, nothing in subclause (1) applies in respect of

(a) A proceeding under the Law Reform (Testamentary Promises) Act 1949:

(b) A proceeding in which relief by way of specific performance is sought.

Compare: 1908 No 89 Schedule 2 r 546.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was inserted, as from 1 January 1986, by rule 15 High Court Amendment Rules 1985 (SR 1985/328).

456 Time for serving claimant's affidavit in proceedings under Family Protection Act 1955

A claimant against the estate of a deceased person under the Family Protection Act 1955 must, at the time of serving his or her statement of claim, serve his or her own affidavit in support of his or her statement of claim.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 456 was substituted, as from 1 February 2002, by rule 9 High Court Amendment Rules (No 2) 2001 (SR 2001/382).

457 Time for serving affidavit in support of appearance

(1) Where a defendant in any proceeding to which this Part applies files an appearance in lieu of a statement of defence, he may, at the time of serving his appearance, without leave, and at any time thereafter with leave of the Court, serve his affidavits in support of any matters referred to in the appearance.

(2) These rules shall apply to affidavits filed under subclause (1) as though they were affidavits filed by a plaintiff in support of a statement of claim.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

458 Statement of defence to be filed

(1) Subject to rule 457, no affidavit may be filed by a defendant in opposition to the claim of the plaintiff or of any claimant under

Part 4—*continued*

rule 453 unless the defendant has filed and served a statement of defence thereto or an appearance.

(2) Affidavits filed by any party after a statement of defence or appearance has been filed shall be confined to matters put in issue by pleadings or by the appearance.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

458A Directions as to conduct of proceedings under Companies Act 1955

(1) In any proceeding to which

(a) Rule 451(1)(ca) applies (other than a proceeding to which section 464 of the Companies Act 1955 applies); or

(b) Rule 451(1)(cb) applies,

as the case may be, the plaintiff shall, within 14 days after the expiration of the time for filing statements of defence in the proceeding, apply to the Court on notice for directions as to the subsequent conduct of the proceeding.

(2) The application shall specify the directions (if any) that are considered appropriate.

(3) On hearing the application the Court may make such orders and give such directions (whether sought by the plaintiff or not) as it deems proper.

(4) Where the proceeding is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve fund, of a company, then, without prejudice to the generality of subclause (3), the Court may give directions for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims.

(5) Every Registrar (not being a Deputy Registrar) shall have the jurisdiction and powers of the Court in Chambers to hear and determine an application under this rule.

(6) The provisions of rules 272 to 275 shall apply to the exercise of the jurisdiction conferred by subclause (4).

Compare: SR 1956/216 rr 2, 8; The Rules of the Supreme Court (Revision) 1956 Order 102 r 7(4) (UK)

Part 4—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 458A to 458C were inserted, as from 1 August 1987, by rule 11 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (1) was substituted, as from 1 July 1994, by rule 12 High Court Amendment Rules 1994 (SR 1994/135).

458B Procedure where inquiry ordered under Companies Act 1955 as to debts, claims, or liabilities

(1) Where the Court makes, under rule 458A(3), an order for an inquiry of the kind described in rule 458A(4), rules 416B to 416K shall apply in relation to the inquiry.

(2) The order may include provisions relating to any or all of the following matters:

(a) The settling of the list of creditors entitled to object:

(b) The dispensing with the observance of section 76(2) of the Companies Act 1955 as regards any class or classes of creditors:

(c) The date with reference to which the list of creditors entitled to object is to be made out:

(d) The fixing of a time for and the giving of directions as to all other necessary or proper steps in relation to the inquiry.

(3) Where the Court makes, under rule 458A(3), an order for an inquiry of the kind described in rule 458A(4),

(a) The proceeding under the Companies Act 1955 in which it is made shall not be heard until the expiration of at least 8 clear days from the filing of the certificate mentioned in rule 416J; and

(b) Before the hearing of the proceeding under the Companies Act 1955, in which it is made, notices stating the day on which the proceeding is appointed to be heard shall be published at such times and in such newspapers as the Court directs.

(4) Notices under subclause (3)(b) may be in form 34D, with such variations as the circumstances of the case may require.

Compare: SR 1956/216 rr 8(2)(b), 9(k), (l)

Part 4—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 458A to 458C were inserted, as from 1 August 1987, by rule 11 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

458C Delivery of copy of order under section 65 of the Companies Act 1955 to Registrar of Companies

Unless in any particular case the Court otherwise directs, every order sanctioning the issue of shares at a discount shall direct that a sealed copy of the order shall be delivered to the Registrar of Companies for registration within 7 days after the date thereof or within such further or other time as the Court may allow, and that the order shall not take effect until the sealed copy has been so delivered.

Compare: SR 1956/216 r 10

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 458A to 458C were inserted, as from 1 August 1987, by rule 11 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Part 4A
Originating applications

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

458D Application of Part 4A

(1) This Part applies to

(a) Any application to the Court under any of the following provisions:

(i) Sections 6(2) and 10 of the Arbitration Act 1908:

(ii) Sections 5(1) and (2) and 7(3) of the Arbitration Amendment Act 1938:

(iii) Section 21(1)(a) and (b) and Parts 3, 4, and 5 of the Charitable Trusts Act 1957:

(iv) Sections 13 and 45 of the Chattels Transfer Act 1924:

Part 4A—*continued*

(v) sections 108, 209J(1)(d), 209O(1)(c), 209O(2)(c), 209R, 264, 268(2), 269, and 273 of the Companies Act 1955:

(vi) sections 228(1)(d), 233(1)(c), 233(2)(c), 236, 290, 296(5), 295, and 299 of the Companies Act 1993:

(via) section 239L of the Companies Act 1993 (application for the appointment of an administrator by the Court in a voluntary administration):

(vii) Sections 58 and 59 of the Corporations (Investigation and Management) Act 1989:
(viiaa)

(viia) section 166E of the Customs and Excise Act 1996:

(viii) section 43(6) of the District Courts Act 1947:

(viiia) The Habeas Corpus Act 2001:

(ix) Section 23A of the Incorporated Societies Act 1908:

(x) Section 10A of the Industrial and Provident Societies Act 1908:

(xi) Section 56 of the Judicature Act 1908:

(xii) Sections 132, 133, 140, 143, 145, 145A, 148, 216, and 217 of the Land Transfer Act 1952:

(xiii) Sections 46, 55, and 149 of the Law Practitioners Act 1982:

(xiv) Section 9A(3) of the Law Reform Act 1936:
(xv)

(xvi) Section 12(1) (a) of the Minors' Contracts Act 1969:

(xvia) sections 128, 131, 167, 168, 179, 181, 182, and 186 of the Personal Property Securities Act 1999:

(xvii) The Proceeds of Crime Act 1991:

(xviii) Sections 92, 118, 119, 120, and 152 of the Property Law Act 1952:

(xix) The Protection of Personal and Property Rights Act 1988:

(xx) The Reciprocal Enforcement of Judgments Act 1934:

Part 4A—*continued*

(xxi) Section 44C(2) and (8) of the Securities Act 1978:

(xxia) section 47E of the Terrorism Suppression Act 2002:

(xxii) Section 76 of the Trustee Act 1956:

(xxiii) the Arbitration Act 1996 (other than article 35 of Schedule 1, and clause 5 of Schedule 2, of that Act):

(xxiv) sections 206 and 207 of the Insolvency Act 2006:

(xxv) article 15(1) of chapter 3 of Schedule 1 of the Insolvency (Cross-border) Act 2006 (application for recognition of foreign proceedings):

(b) Any originating proceeding for contempt of Court:

(c) Any originating proceeding for relief against forfeiture for non-payment of rent:

(d) Any application for directions by

(i) A liquidator; or

(ii) A receiver; or

(iii) A judicial manager appointed under Part 1A of the Life Insurance Act 1908; or

(iv) A statutory manager appointed under the Corporations (Investigation and Management) Act 1989; or

(v) A statutory manager appointed under the Reserve Bank of New Zealand Act 1989:

(da) Any application to the Court under rule 446U or rule 502C:

(e) Any other proceeding that the Court, in the interests of justice, permits to be commenced by the filing of an originating application.

(2) Subject to Part 11A, this Part applies to any application to the Court under section 31 or section 32 or section 33 or section 41 of the Patents Act 1953.

(3) The Registrars (not being Deputy Registrars) for the time being exercising their office at the registries of Auckland, Hamilton, Rotorua, Napier, Palmerston North, Wellington,

Part 4A—*continued*

Christchurch, and Dunedin shall have for the purposes of this Part the jurisdiction and powers of the Court in Chambers conferred by section 13(1) of the Chattels Transfer Act 1924, but only in respect of the extension of time for the registration of an instrument or of an affidavit of renewal of an instrument.

(4) The provisions of rules 272 to 275 shall apply to the exercise of the jurisdiction conferred by subclause (3).

(5) Despite subclause (1)(a)(xxiii), a second or subsequent application to the Court under the Arbitration Act 1996 with respect to the same arbitration, whether brought by the plaintiff or the defendant, must be made by interlocutory application in the same proceeding as the first application.

(6) Despite subclause (1)(a)(xvia), a second or subsequent application to the Court under the Personal Property Securities Act 1999 with respect to the same security, whether brought by the plaintiff or the defendant, must be made by interlocutory application in the same proceeding as the first application.

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Schedule 2 rule 458EA(2)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Subclause (1)(a)(vi) and (vii) were substituted, as from 1 January 1989, by rule 16(1) High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Subclause (1)(a)(vi) was substituted, as from 1 July 1994, by rule 13 High Court Amendment Rules 1994 (SR 1994/135).

Subclause (1)(a)(via) was inserted, as from 1 July 1994, by rule 13 High Court Amendment Rules 1994 (SR 1994/135).

Subclause (1)(a)(xiva) was inserted, as from 1 January 1993, by rule 11 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Subclause (1)(ba) was inserted, as from 1 January 1989, by rule 16(2) High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Subclause (1)(bb) was inserted, as from 1 June 1990, by rule 10 High Court Amendment Rules 1990 (SR 1990/66).

Subclause (1A) was inserted, as from 1 October 1990, by rule 2 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Subclause (2) was amended, as from 1 January 1989, by rule 16(1) High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the word "Napier,".

Rule 458D was substituted, as from 1 November 1994, by rule 4(1) High Court Amendment Rules (No 2) 1994 (SR 1994/211).

Part 4A—*continued*

Subclause (1)(a)(v) was substituted, as from 1 August 2000, by rule 9(1) High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

Schedule 2 rule 458D(1)(a)(vi): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Subclause (1)(a)(vi) was substituted, as from 1 August 2000, by rule 9(1) High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

Schedule 2 rule 458D(1)(a)(via): inserted, on 1 November 2007, by rule 4(1) of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Subclause (1)(a)(viia) was inserted, as from 1 November 2004, by rule 17(1) High Court Amendment Rules 2004 (SR 2004/320).

Subclause (1)(a)(viii) was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Subclause (1)(a)(viiia) was inserted, as from 1 July 2002, by rule 9 High Court Amendment Rules 2002 (SR 2002/132).

Subclause (1)(a)(xii) was amended, as from 1 November 2004, by rule 17(2) High Court Amendment Rules 2004 (SR 2004/320) by inserting the expression "145A," after the expression "145,".

Subclause (1)(a)(xv) was revoked, as from 1 February 2002, by rule 9 High Court Amendment Rules (No 2) 2001 (SR 2001/382).

Subclause (1)(a)(xvia) was inserted, as from 1 November 2004, by rule 17(3) High Court Amendment Rules 2004 (SR 2004/320).

Subclause (1)(a)(xxia) was inserted, as from 1 November 2004, by rule 17(4) High Court Amendment Rules 2004 (SR 2004/320).

Subclause (1)(a)(xxiii) was inserted, as from 1 August 2000, by rule 9(2) High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000. *See* also rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Schedule 2 rule 458D(1)(a)(xxiv): added, on 1 November 2007, by rule 4(2) of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Schedule 2 rule 458D(1)(a)(xxv): added, on 1 November 2007, by rule 4(2) of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Subclause (1)(da) was inserted, as from 1 April 1995, by rule 4 High Court Amendment Rules 1995 (SR 1995/63).

Part 4A—*continued*

Subclause (5) was inserted, as from 1 August 2000, by rule 9(3) High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000. *See* also rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Subclause (6) was inserted, as from 1 November 2004, by rule 17(5) High Court Amendment Rules 2004 (SR 2004/320).

458E Originating applications

(1) Any proceeding to which this Part applies may be commenced by the filing of an originating application in the proper office of the Court, as determined in accordance with rule 107(1).

(2)

(3) Rule 44 shall apply in relation to any proceeding commenced by the filing of an originating application.

(4) Subject to rule 7, the proper heading of a document presented for filing in a proceeding commenced by the filing of an originating application shall,

(a) Where there is a defendant or respondent to the application, be in form 1; and

(b) In any other case, be as follows:

In the Matter of [*Short Title of Act*]

And

In the matter of [*Full name*],

of [*Place of residence*],

[*Occupation*]

(5) This rule has effect notwithstanding anything in rule 106 or Part 4.

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (2) was revoked, as from 1 January 1993, by rule 12 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Part 4A—*continued*

458EA Originating applications relating to certain proceedings under Companies Acts

(1) Despite rule 458E(1),

(a) an originating application under section 268(2) of the Companies Act 1955 or section 269 of that Act must be filed in the same office of the Court in which the notice under section 268(1) of that Act was filed; and

(b) an originating application under section 296(5) of the Companies Act 1993 or section 295 of that Act must be filed in the same office of the Court in which the notice under section 294(1) of that Act was filed; and

(c) an originating application under section 273 of the Companies Act 1955 or section 299 of the Companies Act 1993, as the case may be, must be filed in the proper office of the Court, as determined in accordance with rule 700ZK(1).

(2) The affidavit filed in support of

(a) an originating application under section 268(2) of the Companies Act 1955 must have attached to it a copy of the notice under section 268(1) of that Act; and

(b) an originating application under section section 296(5) of the Companies Act 1993 must have attached to it a copy of the notice under section 294(1) of that Act.

Rule 458EA was inserted, as from 1 August 2000, by rule 10 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

Schedule 2 rule 458EA(1)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Schedule 2 rule 458EA(2)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

458F Application of provisions relating to interlocutory applications

(1) In relation to originating applications, rules 236, 237, 240, 241, 243, 244, 245, 246, 249, 252, 255, 256, and 257 apply,

Part 4A—*continued*

subject to this Part and to all necessary modifications, as they apply in relation to interlocutory applications.

(2) Despite subclause (1), rule 236, in its application to an originating application, is subject to the Act under which the originating application is made.

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Rule 458F was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

458G Date of hearing

In the case of an *inter partes* application, the date shown on the notice of application as the date for the hearing of the application shall be that allocated by the Registrar when the notice of application is filed and the Registrar shall enter the application on the list for that date without any further request.

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

458H Directions as to service

(1) In relation to a proceeding commenced by the filing of an originating application, the provisions of subclauses (1), (2), (4), and (5) of rule 451 shall apply, subject to this Part and to all necessary modifications, as they apply in relation to a proceeding to which Part 4 applies.

(2) The effect of every order for directions as to service or for representation made pursuant to subclause (1) or subclause (5) of rule 451 (as applied by subclause (1) of this rule) shall be set out in the notice of originating application as if that notice were a notice of proceeding to which rule 121(3) applied.

(3) Nothing in this rule applies to an originating application under any of the following provisions:

(a) sections 264, 268(2), 269, and 273 of the Companies Act 1955:

(b) sections 290, section 296(5), 295, and 299 of the Companies Act 1993.

Part 4A—*continued*

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (3) was inserted, as from 1 August 2000, by rule 11 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

Schedule 2 rule 458H(3)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

458I Directions before hearing

(1) At any time before the hearing of an originating application,

(a) the Court may, of its own motion, do any of the following:

(i) give such directions regarding the proceeding commenced by the filing of the application as the Court thinks fit:

(ii) direct the parties to file a statement of claim and a statement of defence respectively, if the application has been made under any of the following provisions:

(A) sections 268(2), 269, and 273 of the Companies Act 1955:

(B) sections section 296(5), 295, and 299 of the Companies Act 1993:

(b) any party may file an interlocutory application for directions regarding the proceeding commenced by the filing of the application.

(2) In relation to an interlocutory application made under subclause (1), rule 425 applies, subject to this Part and to all necessary modifications.

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (1) was substituted, as from 1 August 2000, by rule 12 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

Schedule 2 rule 458I(1)(a)(ii)(B): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Part 4A—*continued*

Subclause (2) was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

458J Directions affecting the hearing

(1) At any time after the filing of an originating application, any party may apply to the Court for an order for directions affecting the hearing, stating the directions sought.

(2) In relation to a proceeding commenced by the filing of an originating application, rule 425 applies, subject to this Part and to all necessary modifications.

(3) Any order or direction made or given pursuant to this rule may, if justice so requires, be varied or revoked (in whole or in part) by the Court at the hearing.

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Subclause (2) was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

458K Court may convene conference of parties

The Court may, at any time before or during the hearing, require the parties to attend in Chambers with a view to making any order or giving any directions which might be made or given on an application under rule 458J and may, after hearing the parties, make any order or give any directions which might be made or given pursuant to rule 458J.

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

458L Evidence

Notwithstanding the provisions of rules 247 and 248 (as applied by rule 458F), in the case of a proceeding commenced by the filing of an originating application evidence may be taken orally on oath if the Court, on any application before or at the hearing, so directs.

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Part 4A—*continued*

Rule 458L was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "rules 241 and 245" for the words "rules 247 and 248". *See* rule 19 of those Rules as to the transitional provisions.

458M Cross-examination of deponent

Rule 508 shall apply in relation to any proceeding commenced by the filing of an originating application.

Part 4A (comprising rules 458D to 458M) was inserted, as from 1 August 1987, by rule 12 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

458N Application of this Part to application for writ of habeas corpus

Nothing in rules 458H, 458I, 458J, and 458K applies to an originating application for a writ of habeas corpus under the Habeas Corpus Act 2001.

Rule 458N was inserted, as from 1 July 2002, by rule 10 High Court Amendment Rules 2002 (SR 2002/132).

Part 5
Disposal of proceedings

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Judgment by default

459 Application where appearance

(1) Rules 460 to 470 shall not apply where the defendant has filed an appearance under rule 131(1).

(2) Where an appearance has been filed under rule 132 or rule 133(1), rules 460 to 470 shall apply subject thereto.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

460 Liquidated demand

(1) If the relief claimed by the plaintiff is payment of a liquidated demand in money and the defendant does not file a statement of defence within the number of days stated for that purpose in the notice of proceeding, the plaintiff may at once seal final

Part 5—*continued*

judgment for any sum not exceeding the sum claimed in his statement of claim, together with

(a) Interest (if any) payable as of right, if such interest has been specifically claimed in the statement of claim, calculated up to the date of judgment; and

(b) costs and disbursements of an amount fixed by the Registrar.

(2) If the plaintiff claims costs and disbursements, the plaintiff must file a memorandum setting out the amount claimed and how that amount is calculated, together with any submissions in support of the claim.

(3) Every Registrar has the jurisdiction and powers of the Court under these rules to fix costs and disbursements under subclause (1)(b).

Compare: 1908 No 89 Schedule 2 r 226

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Paragraph (b) was substituted, as from 1 November 2004, by rule 18(1) High Court Amendment Rules 2004 (SR 2004/320).

Subclauses (2) and (3) were inserted, as from 1 November 2004, by rule 18(2) High Court Amendment Rules 2004 (SR 2004/320).

461 Land

If the relief claimed by the plaintiff is the recovery of land, and the defendant does not file a statement of defence within the number of days stated for that purpose in the notice of proceeding or if the statement of defence is limited to part only of the land claimed, the plaintiff may at once seal judgment that the person whose title is asserted in the statement of claim do recover possession of the land claimed, or any part to which the statement of defence does not apply, together with judgment for the costs of the proceeding up to the date of sealing judgment.

Compare: 1908 No 89 Schedule 2 r 227; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

462 Chattels

(1) If the relief claimed by the plaintiff is the recovery of chattels and the defendant does not file a statement of defence within the number of days stated for that purpose in the notice of proceeding or if the statement of defence is limited to part only of the chattels claimed, the plaintiff may seal judgment that he do recover possession of the chattels claimed, or any of them to which the statement of defence does not apply, or the value thereof, together with judgment for the costs of the proceeding up to the date of sealing of judgment.

(2) If the possession of any chattels claimed is not recovered, the plaintiff may have the proceeding tried for the purpose of assessing the value of those chattels.

Compare: 1908 No 89 Schedule 2 rr 228-229; SR 1950/58 r 5; SR 1963/169 r 3(2)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

463 Unliquidated demand

If the relief claimed by the plaintiff is payment of an unliquidated demand in money and the defendant does not file a statement of defence within the number of days stated for that purpose in the notice of proceeding, the proceeding shall be tried for the purpose of assessing damages.

Compare: 1908 No 89 Schedule 2 r 230; SR 1963/169 r 3(2)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

464 Evidence on trial

(1) On any trial for assessment of damages under rule 462(2) or rule 463, no defendant shall, except by leave of the Court, adduce evidence, save in mitigation of damages.

(2) Unless the proceeding is required to be tried with a jury, the plaintiff may adduce evidence of his damages by affidavit.

Compare: 1908 No 89 Schedule 2 rr 231, 234

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

465 Other proceedings

(1) Subject to rule 470, in all other proceedings in which the defendant or any defendant has not filed a statement of defence within the number of days stated for that purpose in the notice of proceeding, the plaintiff may apply on due notice to the defendant for such judgment against the defendant who has not filed a statement of defence as he considers himself entitled to, and on such application judgment may be given for such relief as the plaintiff may be entitled to on the facts set out in the statement of claim.

(2) Where justice so requires, the Court may, subject to rule 470, dispense with the giving of notice to the defendant under subclause (1).

(3) In lieu of applying under subclause (1), the plaintiff may apply for the allocation of a hearing date for the proceeding and judgment may be given for such relief as the plaintiff shall be entitled to.

Compare: 1908 No 89 Schedule 2 r 232; *Gazette*, 1913, p 175; SR 1952/122 r 25; SR 1954/155 rr 2(1), 5; SR 1963/169 r 3(2)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "apply for the allocation of a hearing date for the proceeding" for the words "set the case down for hearing". *See* rule 19 of those Rules as to the transitional provisions.

466 Where several causes of action

Where the plaintiff's statement of claim contains more than one cause of action, the plaintiff may proceed separately under rules 460 to 465 in respect of any or each cause of action to which no statement of defence has been filed.

Compare: 1908 No 89 Schedule 2 r 233

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

467 Where several defendants

Where there are several defendants, the plaintiff may proceed against any one or more of the defendants under rules 460 to

Part 5—*continued*

466 and may, notwithstanding any judgment given under those rules, continue the proceeding against any other defendant in respect of whom the cause of action subsists.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

468 Affidavits to be filed

Before judgment by default can be sealed, there must be filed

(a) An affidavit of service of the statement of claim and notice of proceeding; and

(b) If the statement of claim and notice of proceeding have not been served personally on the defendant or on a solicitor accepting service on his behalf, an affidavit verifying the statement of claim.

Compare: 1908 No 89 Schedule 2 r 235

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

469 Judgment may be set aside or varied

Any judgment obtained by default may be set aside or varied by the Court on such terms as it thinks fit if it appears to the Court that there has been, or may have been, a miscarriage of justice.

Compare: 1908 No 89 Schedule 2 r 236; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

470 Crown

Judgment by default under rules 460 to 467 shall not be entered against the Crown except by leave of the Court obtained on an application notice of which has been served at least 7 days before the time specified in the notice for hearing the application.

Compare: 1908 No 89 Schedule 2 r 237A; SR 1952/122 r 26

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

Judgment on admission

471 Admission of claim or cause of action

(1) A party who admits any claim or cause of action alleged in any proceeding served upon him may at any time thereafter file an admission thereof and serve a copy thereof on the other party.

(2) Where an admission is filed and served under subclause (1), the party on whom the admission is served may thereupon seal judgment on the claim or cause of action so admitted, without prejudice to his right (if any) to proceed on any other claim or cause of action.

(3) An admission under subclause (1) with regard to any cause of action in which a sum of money is claimed shall state the exact amount admitted.

(4) Any judgment entered on an admission filed and served under subclause (1) may, upon application, be set aside by the Court if

(a) The plaintiff, being under a duty or obligation to the defendant not to enter judgment on the admission, acted contrary to that duty or obligation in entering judgment; or

(b) The plaintiff, in entering judgment, acted fraudulently, unconscionably, or in wilful or reckless disregard of the defendant's rights.

(5) Upon any application under subclause (4), the Court may direct that a proceeding be brought in order to determine whether judgment was wrongfully entered.

Compare: 1908 No 89 Schedule 2 rr 309-312; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

472 Admission of defence

(1) Where a party in his original or amended statement of defence alleges any ground of defence that goes to the whole of any cause of action alleged by the other party, the other party, if he admits that ground of defence, may file and serve an admission of that ground of defence.

Part 5—*continued*

(2) If the ground of defence so admitted arose after the filing of the pleading containing the cause of action to which it refers, the party filing and serving the admission shall be entitled to an order for his costs in respect of the cause of action to which the admission applies, up to the time of filing such statement of defence, unless the Court otherwise orders.

(3) Subject to subclause (2), a party on whom an admission has been served under subclause (1) may at any time thereafter seal judgment upon the cause of action to which it relates.

Compare: 1908 No 89 Schedule 2 rr 149-150; SR 1954/155 rr 2(1), 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

473 Certain rules not affected

Nothing in rules 471 and 472 affects the operation of

(a) Rule 292 (judgment on admission of facts); or

(b) Rule 357(3) (relating to sealing of judgment on admission of part of relief claimed).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Discontinuance

474 Interpretation

For the purposes of rules 475 to 476E, a reference to discontinuing a proceeding means discontinuing a proceeding against 1 or more defendants.

Compare: 1908 No 89 Schedule 2 rr 238, 239

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was inserted, as from 1 January 1993, by rule 5 High Court Amendment Rules (No 3) 1992 (SR 1992/335).

Rules 474 to 476 were substituted, as from 1 February 2003, by rule 11 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

475 Right to discontinue proceeding

(1) A plaintiff may, at any time before the giving of judgment or a verdict, discontinue a proceeding by

Part 5—*continued*

(a) filing a notice of discontinuance and serving a copy of the notice on every other party to the proceeding; or

(b) orally advising the Court at the hearing of the discontinuance.

(2) A notice of discontinuance under subclause (1)(a) must be in form 34E.

(3) This rule is subject to rule 476.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Amendment Rules (No 3) 1992 (SR 1992/335).

Rules 474 to 476 were substituted, as from 1 February 2003, by rule 11 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

476 Restrictions on right to discontinue proceeding

(1) A plaintiff may discontinue a proceeding only with the leave of the Court if

(a) the Court has granted an interim injunction or made an interim order under rule 627B or, in the case of an application for review under section 4 of the Judicature Amendment Act 1972, made an interim order under section 8 of that Act; or

(b) a party to the proceeding has given an undertaking to the Court.

(2) A plaintiff to whom an interim payment has been made, whether voluntarily or under an order made under rule 346C or rule 346D, may discontinue the proceeding only with the written consent of the party by whom the payment was made or with the leave of the Court.

(3) A plaintiff may discontinue a proceeding in which there is more than 1 plaintiff only with the consent of every other plaintiff or with the leave of the Court. If the plaintiff files a notice of discontinuance under rule 475(1)(a), the consent of every other plaintiff must be in writing.

(4) If there is more than 1 defendant in a proceeding, a plaintiff may discontinue a proceeding against a particular defendant only with the consent of every other defendant or with the leave of the Court. If the plaintiff files a notice of discontinu-

Part 5—*continued*

ance under rule 475(1)(a), the consent of every other defendant must be in writing.

Compare: 1908 No 89 Schedule 2 rr 240, 241

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Amendment Rules (No 3) 1992 (SR 1992/335).

Rules 474 to 476 were substituted, as from 1 February 2003, by rule 11 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

476A Effect of discontinuance

(1) A proceeding ends against a defendant or defendants, as the case may be, on

(a) the filing and service of a notice of discontinuance under rule 475(1)(a); or

(b) the giving of oral advice of the discontinuance at the hearing under rule 475(1)(b); or

(c) the making of an order under rule 476.

(2) The discontinuance of a proceeding does not affect the determination of costs.

(3) This rule is subject to rule 476B.

Rules 476A to 476E were inserted, as from 1 February 2003, by rule 11 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

476B Court may set discontinuance aside

(1) The Court may, on the application of a defendant against whom a proceeding is discontinued, make an order setting the discontinuance aside if it is satisfied that the discontinuance is an abuse of the process of the Court.

(2) An application under subclause (1) must be made within 30 days after discontinuance under rule 475(1).

Rules 476A to 476E were inserted, as from 1 February 2003, by rule 11 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

476C Costs

Unless the defendant otherwise agrees or the Court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

Part 5—*continued*

Rules 476A to 476E were inserted, as from 1 February 2003, by rule 11 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

476D Restriction on subsequent proceedings

A plaintiff who discontinues a proceeding (**proceeding A**) against a defendant may not commence another proceeding (**proceeding B**) against the defendant if proceeding B arises out of facts that are the same or substantially the same as those relating to proceeding A unless the plaintiff has paid any costs ordered to be paid to the defendant under rule 476C relating to proceeding A.

Rules 476A to 476E were inserted, as from 1 February 2003, by rule 11 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

476E Certain remedies not affected

If a plaintiff discontinues a proceeding in which a defendant has issued a third party notice under rules 154 to 162 or has filed a notice under rules 163 to 168, the discontinuance does not affect the continuation of the proceeding in relation to the third party notice or the notice filed under rules 163 to 168.

Rules 476A to 476E were inserted, as from 1 February 2003, by rule 11 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

Stay or dismissal

477 Summary stay or dismissal

Where in any proceeding it appears to the Court that in relation to the proceeding generally or in relation to any claim for relief in the proceeding

(a) No reasonable cause of action is disclosed; or

(b) The proceeding is frivolous or vexatious; or

(c) The proceeding is an abuse of the process of the Court,

the Court may order that the proceeding be stayed or dismissed generally or in relation to any claim for relief in the proceeding.

Compare: 1908 No 89 Schedule 2 rr 242-244; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

478 Application to dismiss for want of prosecution

Where the plaintiff fails to prosecute his proceeding or any part thereof, or the defendant fails to prosecute his counterclaim or any part thereof, to trial and judgment, any opposite party may apply to have the proceeding or counterclaim, or such part thereof as aforesaid, dismissed, and the Court may, on such application, make such order as may be just.

Compare: 1908 No 89 Schedule 2 r 273; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Trial

479 Change of venue

(1) Notwithstanding the provisions of rule 123 specifying, in respect of any proceeding, the place where the proceeding is to be tried, where

(a) The parties to the proceeding consent to the proceeding being tried at any other place where sittings are held; or

(b) It appears to the Court that the proceeding can be more conveniently or more fairly tried at any other place where sittings are held,

the Court may at any time order that the proceeding be tried there.

(2) Where the Court makes an order, under subclause (1), it may direct that all subsequent steps in the proceeding be taken at the place where the trial is to take place.

Compare: 1908 No 89 Schedule 2 r 249; SR 1973/39

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

480 Adjournment of trial

The Court may, before or at the trial, if it appears expedient in the interests of justice to do so, postpone or adjourn the trial for such time, to such place, and upon such terms as it thinks fit.

Compare: 1908 No 89 Schedule 2 r 252; SR 1954/155 r 2(1)

Part 5—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

481 Mode of trial

Proceedings shall be tried either before a Judge alone or before a Judge and a jury.

Compare: 1908 No 89 Schedule 2 r 253

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

482 Existence or accuracy of record

In any proceeding tried before a Judge and a jury any question as to the existence or accuracy of a record of the Court shall be determined by the Judge and not by the jury.

Compare: 1908 No 89 Schedule 2 r 260

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

483 Where neither party appears

(1) If neither party appears when the proceeding is called, the Court may order it to be struck out.

(2) Where a proceeding is struck out under subclause (1), the Court may order it to be reinstated on good cause shown by either party and on such terms as it thinks just.

Compare: 1908 No 89 Schedule 2 r 262

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

484 Where only plaintiff appears

If the plaintiff appears and the defendant does not, the plaintiff shall prove his cause of action so far as the burden of proof lies on him.

Compare: 1908 No 89 Schedule 2 r 263

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

485 Where only defendant appears

If the defendant appears but the plaintiff does not, the defendant,

(a) If he does not admit the claim, shall be entitled to judgment dismissing the proceeding; and

(b) If he has a counterclaim, shall prove it so far as the burden of proof lies on him.

Compare: 1908 No 89 Schedule 2 r 264

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

486 Judgment following non-appearance may be set aside

Any verdict or judgment obtained where one party does not appear at the trial may be set aside or varied by the Court on such terms as may seem just if it appears to the Court that there has, or may have been, a miscarriage of justice.

Compare: 1908 No 89 Schedule 2 r 265; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

487 Where both parties appear

(1) If both the plaintiff and the defendant appear, the plaintiff or such other party as has the right to begin shall state his case and adduce his evidence in support thereof.

(2) When the party who begins has closed his case, the other party shall state his case and adduce his evidence in support thereof.

(3) After the evidence has been taken, the party who did not begin may address the Court generally on the case, and after him the other party may address the Court in reply; but if the party who did not begin has not adduced evidence in support of his case, the opposite party shall address the Court on the case, and after him the party who did not begin may address the Court in reply.

(4) This rule applies subject

(a) To any directions given under rule 425; and

(b) To the provisions of any Act.

Compare: 1908 No 89 Schedule 2 rr 266, 268

Part 5—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (4)(a) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 425" for the words "rule 437 or rule 438". *See* rule 19 of those Rules as to the transitional provisions.

488 Where proceeding tried with jury

(1) Where the proceeding is tried with a jury, the Judge shall, after the conclusion of counsel's addresses, direct the jury on the evidence given in the case and on any points of law connected therewith, and may leave the case to the jury generally to find for either party, or may ask the jury to answer such issues as he thinks fit, or as the parties agree upon, and take the verdict of the jury on such issues only.

(2) The jury may, in lieu of finding a verdict for either party, state the facts as they find them to have been proved. The statement shall be put into writing and signed by the foreman of the jury before they are discharged.

(3) The jury may give a verdict for either party, subject to a special case to be stated by the parties.

(4) This rule applies subject to the provisions of any Act.

Compare: 1908 No 89 Schedule 2 rr 269, 290, 291

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Nonsuit

Rules 489 to 491 and the preceding heading were revoked, as from 1 February 2003, by rule 14(b) High Court Amendment Rules (No 2) 2002 (SR 2002/410).

489 Nonsuit

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 489 to 491 and the preceding heading were revoked, as from 1 February 2003, by rule 14(b) High Court Amendment Rules (No 2) 2002 (SR 2002/410).

Part 5—*continued*

490 Defendant may be put to election as to evidence

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 489 to 491 and the preceding heading were revoked, as from 1 February 2003, by rule 14(b) High Court Amendment Rules (No 2) 2002 (SR 2002/410).

491 Costs to be paid before again setting down

[Repealed]

Compare: 1908 No 89 Schedule 2 r 272

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 489 to 491 and the preceding heading were revoked, as from 1 February 2003, by rule 14(b) High Court Amendment Rules (No 2) 2002 (SR 2002/410).

Discharge of jury

492 Discharge of jury by consent

Where the proceeding is tried before a judge and a jury, the jury may, by consent of both parties, be discharged from giving a verdict.

Compare: 1908 No 89 Schedule 2 r 274

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

493 Subsequent conduct of proceeding

(1) If a jury is discharged under rule 492, the hearing must, if the parties so agree, proceed before the Judge presiding at the hearing and judgment may be given by that Judge.

(2) If a jury is discharged under rule 492 and the parties do not agree to the hearing proceeding before the Judge presiding at the hearing, each party must pay his or her own costs of the hearing and either party may apply for the allocation of a new hearing date for the proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 493 was substituted, as from 24 November 2003, by rule 18. *See* rule 19 of those Rules as to the transitional provisions.

Part 5—*continued*

New trial

494 Power to order new trial

(1) A new trial may be ordered only where, in the opinion of the Court, there has been a miscarriage of justice that justifies a new trial.

(2) An order under subclause (1) may be made on such terms as the Court thinks fit.

(3) Without limiting the circumstances in which the Court may hold that there has been a miscarriage of justice that justifies a new trial, it is hereby declared that the Court may hold that there has been such a miscarriage of justice if

- (a) The Judge has misdirected the jury on any material point of law, or, if the action is tried without a jury, has during the course of the trial decided any point of law erroneously; or
- (b) The Judge has admitted improper evidence, or rejected evidence which ought to have been admitted; or
- (c) The damages are excessive or too small; or
- (d) The verdict has been obtained by any unfair or improper practice of the successful party to the prejudice of the opposite party; or
- (e) Material evidence has been discovered since the trial which could not reasonably have been foreseen or known before the trial; or
- (f) The jury or any juror has been guilty of misconduct, if such misconduct can be proved by extrinsic evidence; but the verdict cannot be impugned on the evidence of any of the jurors; or
- (g) A special verdict or other finding of the jury is so defective that the Judge cannot give judgment upon it; or
- (h) Any witness has been guilty of such misconduct as to affect the result of the trial; or
- (i) The verdict is against the weight of evidence.

(4) If it appears to the Court that the miscarriage of justice affects part only of the matter in dispute, the Court may give final

Part 5—*continued*

judgment as to the part not so affected, and direct a new trial as to the affected part only:

Provided that no new trial shall be ordered as to the affected part if the amount of damages awarded in respect thereof can be separately ascertained, and the plaintiff consents to reduce the whole sum awarded to him by that amount.

(5) A new trial may be ordered on any question in a proceeding, whatever be the grounds on which a new trial is applied for, without interfering with the decision upon any other question.

(6) Where there is more than one defendant, a new trial may be ordered against any one or more of them.

Compare: 1908 No 89 Schedule 2 rr 276, 277, 279, 280

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

495 Application for new trial

(1) Application for a new trial shall be made by interlocutory application filed within 14 days after the verdict of the jury, or, in the case of trial before a Judge alone, from the date of delivery of judgment.

(2) The application shall state the circumstances alleged to have resulted in a miscarriage of justice and no other circumstances will be considered by the Court.

(3) The application shall not operate as a stay of proceeding unless the Court so orders.

(4) The Court shall not receive

(a) Any affidavit of any witness to explain or add to evidence given by him at the trial; or

(b) An affidavit of any facts which might have been given in evidence at the trial.

(5) Notwithstanding subclause (4), the Court may receive an affidavit from a material witness showing that he made a serious mistake in giving his testimony.

(6) Where misdirection by the Judge is relied upon, the terms of the direction may be proved by reference to any record

Part 5—*continued*

thereof approved by the Judge, including the transcription of any shorthand note or tape taken at his direction.

Compare: 1908 No 89 Schedule 2 rr 277A, 283, 284, 285; *Gazette*, 1912, p 2657; SR 1952/123 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Evidence at trial

496 Evidence to be given orally

Except where otherwise directed by the Court or required or authorised by these rules or by any Act, disputed questions of fact arising at the trial of any proceeding shall be determined on evidence given by means of witnesses examined orally in open Court.

Compare: 1908 No 89 Schedule 2 r 172; SR 1954/155 r 2(1); SR 1961/174 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

497 Issue of subpoenas

(1) Orders of subpoena in form 35 to require the attendance of witnesses at the trial to testify or to produce documents, or both, may be obtained by any party, at any time after the filing of the statement of claim.

(2) A party requiring the issue of an order of subpoena shall file a praecipe therefor.

(3) The names of more than one witness may be included in one order of subpoena, but it shall not be necessary to show the names on the praecipe.

Compare: 1908 No 89 Schedule 2 r 173; SR 1977/330 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

498 Service of subpoena

The order of subpoena shall be served on the witness personally, by leaving a sealed copy thereof with the witness, together

Part 5—*continued*

with any allowances and travelling expenses required by section 56A of the Act.

Compare: 1908 No 89 Schedule 2 r 174; SR 1977/330 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

499 Evidence of person in custody

(1) An application for an order under section 26 of the Penal Institutions Act 1954 may be made *ex parte*.

(2)

Compare: 1908 No 89 Schedule 2 r 175

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was revoked, as from 24 November 2003, by rule 13 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

500 Evidence by affidavit by agreement

(1) In any proceeding heard by a Judge sitting without a jury, the parties may file an agreement signed by the parties, that the evidence, or any part of the evidence, shall be given by affidavit.

(2) Notwithstanding any agreement filed under subclause (1), the Court may direct that evidence of any disputed fact or issue be given in accordance with rule 496.

Compare: 1908 No 89 Schedule 2 r 172; SR 1954/155 r 2(1); SR 1961/174 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

501 Evidence by affidavit pursuant to order of Court

(1) The Court may, even though no agreement for the giving of evidence by affidavit has been made, at any time for sufficient reason order, on such conditions as the Court thinks reasonable,

(a) That any particular fact or facts may be proved by affidavit; or

Part 5—*continued*

(b) That the evidence of any witness may be given by affidavit read at the trial, or on any application for judgment.

(2) Notwithstanding subclause (1), but subject to any order made under rule 425, where

(a) An opposite party desires the production of a witness for cross-examination; and

(b) The witness can be produced,

an order shall not be made authorising the evidence of the witness to be given by affidavit.

Compare: 1908 No 89 Schedule 2 r 172; SR 1954/155 r 2(1); SR 1961/174 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was amended, as from 1 January 1987, by rule 7 High Court Amendment Rules 1986 (SR 1986/228) by inserting the words "but subject to any order made under rule 438,".

Subclause (2) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 425" for the expression "rule 438". *See* rule 19 of those Rules as to the transitional provisions.

502 Agreed statement of facts

(1) Where the parties so agree, the evidence at the trial of any proceeding heard by a Judge sitting without a jury, or any issue therein, may be given, without examining any witnesses or filing any affidavits, by a statement of facts agreed upon by them:

Provided that, notwithstanding such agreement, the Court may direct that evidence of any fact or issue be given in accordance with rule 496 or rule 501.

(2) Every agreement under subclause (1) shall be in writing signed by the parties and shall be filed.

(3) The agreement shall set out the facts agreed upon and the Court shall be entitled to draw any necessary inferences from the agreed facts.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

Evidence in Trans-Tasman proceedings

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

502A Interpretation

In rules 502B to 502J, unless the context otherwise requires, terms that are defined in the Evidence Act 2006 have the meanings given to them by that Act.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

Rule 502A was amended, as from 1 August 2007, by rule 5 High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "Evidence Act 2006" for "Evidence Amendment Act 1994".

502B Issue of subpoenas by High Court for service in Australia

(1) An order of subpoena of the High Court for service on a witness in Australia that requires the witness to testify, whether or not it also requires the witness to produce documents or things, shall be in form 35A.

(2) An order of subpoena of the High Court for service on a witness in Australia that requires the witness to produce documents or things, but does not require the witness to testify, shall be in form 35B.

(3) An order of subpoena referred to in subclause (1) or subclause (2) may be obtained in the same manner and subject to the same conditions as an order of subpoena under rule 497.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

502C Leave to serve New Zealand subpoena on witness in Australia

(1) Every application for leave to serve a New Zealand subpoena on a witness in Australia shall be made *ex parte* by originating application and the provisions of Part 4A (other than rule 458H) shall apply, subject to all necessary modifications, to the application.

Part 5—*continued*

(2) Every application for leave to serve a New Zealand subpoena on a witness in Australia shall be accompanied by an affidavit containing the following matters:

(a) The name, occupation, and residential address of the witness:

(b) Proof that the witness has attained the age of 18 years:

(c) If the subpoena requires the witness to testify and to attend at the New Zealand Court, whether consideration has been given to requiring the witness to testify from Australia by video link or telephone conference and the reason it is not considered appropriate that the witness do so:

(d) The latest date proposed for service of the subpoena:

(e) If the subpoena requires the witness to attend at the New Zealand Court or at any other place,

(i) The availability of suitable means of transport to enable the witness to comply with the subpoena:

(ii) An estimate of the length of time that the witness will be required to attend at the Court or other place; and

(iii) An estimate of the cost of transport and accommodation likely to be incurred by the witness in complying with the subpoena:

(f) The amounts or the amounts represented by vouchers, as the case may be, proposed to be paid or tendered to the witness to enable the witness to comply with the subpoena:

(g) If the applicant is aware of any fact or circumstance that may constitute a ground for setting the subpoena aside under section 160 of the Evidence Act 2006, the fact or circumstance.

(3) A Judge may direct that a New Zealand subpoena may be served in Australia on a body corporate by serving the subpoena on a member or officer or employee of the body corporate in such manner as the Judge directs.

Part 5—*continued*

(4) The file relating to every such application shall be kept separate from the file relating to the proceeding to which the subpoena relates.

(5) Notwithstanding rule 66, no document relating to an application under this rule shall be searched or inspected or copied without the leave of a Judge.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

Subclause (2)(g) was amended, as from 1 August 2007, by rule 6 High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "section 160 of the Evidence Act 2006" for "section 11 of the Evidence Amendment Act 1994".

502D Service of subpoena on witness in Australia

Every statement that, in accordance with section 156(2) of the Evidence Act 2006, is required to accompany a subpoena that is served on a witness in Australia shall be in form 35C.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

Rule 502D was amended, as from 1 August 2007, by rule 7 High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "section 156(2) of the Evidence Act 2006" for "section 7(2) of the Evidence Amendment Act 1994".

502E Application to set aside New Zealand subpoena

(1) An application to set aside a New Zealand subpoena served on a witness in Australia may be filed by

(a) A person who is entitled to file documents under these rules; or

(b) A person who is entitled to practise as a solicitor of a Supreme Court of a State or Territory of Australia and who is in practice on his or her own account or as a principal in a firm of solicitors.

(2) The application may be filed by sending it by facsimile to the office of the High Court in which leave to serve the subpoena was given.

(3) Every application shall be made by way of interlocutory application.

Part 5—*continued*

(4) The heading on the application may be the same as the heading on the order granting leave to serve the subpoena.

(5) Every application
- (a) Shall state an address in New Zealand or Australia that is the applicant's address for service:
- (b) May state a facsimile number in New Zealand or Australia to which documents relating to the application may be sent to the applicant.

(6) Where the application is filed by facsimile, the Registrar
- (a) Shall send by facsimile to the applicant or the applicant's solicitor, as the case may be, an acknowledgment that the application has been received:
- (b) May, if the application is not clear or legible, require the applicant or the applicant's solicitor, as the case may be, to transmit the application by facsimile again.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

502F Service of documents on applicant

(1) A document relating to an application to set aside a New Zealand subpoena may be served on the applicant by:
- (a) Leaving it at the address for service of the applicant stated in the application; or
- (b) If a facsimile number is stated in the application, sending it by facsimile to that number.

(2) Where a document relating to the application is served on the applicant by facsimile, the document shall, subject to subclauses (3) and (4), be deemed to have been served on the day on which it was sent.

(3) Where a document is sent by facsimile to a facsimile number in a State or Territory of Australia at a time later than 5 pm in that State or Territory, the document shall, subject to subclause (4), be deemed to have been served on the first working day after the day on which it was sent.

Part 5—*continued*

(4) A document sent to a facsimile number in Australia shall, unless the contrary is proved, be deemed to have been received in a complete and legible condition.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

502G Hearing of application

(1) Notwithstanding any other rule, if neither the applicant for an order to set aside a New Zealand subpoena nor the person at whose request the subpoena was issued states that a hearing is required, the Court may determine an application to set the subpoena aside without a hearing.

(2) For the purposes of determining an application, the Court may, if it thinks fit, hold a hearing by video link or telephone conference pursuant to section 168 of the Evidence Act 2006.

(3) Subject to the Part 4 of the Evidence Act 2006, the Court shall hold a hearing by video link or telephone conference if the applicant requests, either in the application or within a reasonable time after the filing of the application, that the Court direct that the hearing be held by video link or telephone conference.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

Subclause (2) was amended, as from 1 August 2007, by rule 8(1) High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "section 168 of the Evidence Act 2006" for "section 19 of the Evidence Amendment Act 1994".

Subclause (3) was amended, as from 1 August 2007, by rule 8(2) High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "Part 4 of the Evidence Act 2006" for "Evidence Amendment Act 1994".

502H Failure to comply with subpoena

A certificate under section 161 of the Evidence Act 2006 shall be in form 35D.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

Part 5—*continued*

Rule 502H was amended, as from 1 August 2007, by rule 9 High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "section 161 of the Evidence Act 2006" for "section 12 of the Evidence Amendment Act 1994".

502I Transmission of documents or things to Australian Court

(1) Every person who produces a document or thing at a registry of the High Court in compliance with an Australian subpoena shall provide the Registrar with a copy of the subpoena.

(2) Where a document or thing is produced at a registry of the High Court, the Registrar shall, on compliance with subclause (1),

(a) Issue a receipt for the document or thing that states the date and time of its production; and

(b) Send to the Registrar of the Australian Court that issued the subpoena, by facsimile or other means of communication, a copy of the receipt and of the subpoena; and

(c) Send the document or thing together with a copy of the subpoena without delay, to the Australian Court by a means that will enable it to be received before the date on which it is required to be produced to that Court.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

502J Evidence and submissions by video link and telephone conference

(1) An application under section 168 of the Evidence Act 2006 for a direction that evidence be given from Australia or submissions be made from Australia by video link or telephone conference may be made *ex parte* and, except in the case of an application under section 160 of that Act, shall be accompanied by an affidavit containing the following matters:

(a) The nature of the evidence or the submissions:

(b) The place in Australia from which the evidence is to be given or the submissions are to be made:

(c) If it is proposed that evidence be given or submissions be made by video link, particulars of the video link facilities available at the courtroom or other place where

Part 5—*continued*

the Court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:

(d) If it is proposed that evidence be given or submissions be made by telephone conference, particulars of the telephone conference facilities available at the court-room or other place where the Court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:

(e) In a case where evidence is proposed to be given, an estimate of the time that the examination of the witness will take:

(f) Whether issues of character or credibility are likely to be raised:

(g) In a case where submissions are proposed to be made, an estimate of the time that will be required to make the submissions.

(2) Where the Court gives a direction under section 168(1) of the Evidence Act 2006, the Court shall instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions which the Court may make.

(3) Without limiting the generality of subclause (2), the Court may

(a) Direct that the evidence be given or the submissions be made at an Australian Court or at another place in Australia:

(b) Request that an officer of an Australian Court or other person approved by the Judge be present to assist in the transmission of evidence or submissions, and in particular to

(i) Introduce witnesses giving evidence or a barrister or solicitor, or both, making submissions:

(ii) Assist with the administration of oaths:

(iii) Assist with the implementation of any directions or requests given or made by the Judge hearing the evidence or submissions:

Part 5—*continued*

(c) Direct that the evidence or the submissions be heard at a location other than the precincts of the High Court.

Rules 502A to 502J and the heading "Evidence in Trans-Tasman Proceedings" were inserted, as from 1 April 1995, by rule 5 High Court Amendment Rules 1995 (SR 1995/63).

Subclause (1) was amended, as from 1 August 2007, by rule 10(1)(a) High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "section 168 of the Evidence Act 2006" for "section 19 of the Evidence Amendment Act 1994".

Subclause (1) was amended, as from 1 August 2007, by rule 10(1)(b) High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "section 160 of that Act" for "section 11 of that Act".

Subclause (2) was amended, as from 1 August 2007, by rule 10(2) High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "section 168(1) of the Evidence Act 2006" for "section 19(1) of the Evidence Amendment Act 1994".

Procedure when evidence given by affidavit

503 Application of rules 504 to 509

The provisions of rules 504 to 509 shall apply subject to any direction of the Court and to any rule affecting any particular class of proceeding.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

504 Time for filing plaintiff's affidavits

(1) In this rule, **the prescribed date** means

(a) Where the parties have agreed under rule 500 that evidence be given by affidavit, the date when the agreement was filed:

(b) Where these rules provide that the evidence be given by affidavit, the date when the pleadings were closed.

(2) Within 14 days after the prescribed date the plaintiff shall, subject to rule 456, file his affidavits and serve copies on the defendant and on any other party.

Compare: 1908 No 89 Schedule 2 r 179; SR 1951/75 r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

505 Time for filing defendant's affidavits

The defendant, within 14 days after service on him of the plaintiff's affidavits, shall file his affidavits and serve copies thereof on the plaintiff and on any other party.

Compare: 1908 No 89 Schedule 2 r 180; SR 1951/75 r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

506 Time for filing affidavits in reply

Within 10 days after service on him of the defendant's affidavits, the plaintiff shall file his affidavits in reply and serve copies thereof on the defendant and on any other party.

Compare: 1908 No 89 Schedule 2 r 181

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

507 Use of affidavits

(1) No affidavit shall be read or used until it has been filed.

(2) When an affidavit has been filed, it may be used by any party.

(3) No affidavit shall be taken off the file without the leave of the Court.

Compare: 1908 No 89 Schedule 2 rr 204-205; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

508 Cross-examination of deponent

(1) Any party desiring to cross-examine a deponent who has sworn an affidavit on behalf of an opposite party may serve on that opposite party a notice in writing (which may be by letter addressed to the opposite party's solicitor) requiring the production of the deponent for cross-examination before the Court at the trial.

(2) The notice shall be served, and copies thereof filed in the Court and delivered to all other parties who have taken any step in the proceeding, not less than 3 clear days before the day fixed for the trial.

Part 5—*continued*

(3) Unless the deponent is produced accordingly, his affidavit shall not be used as evidence except by the special leave of the Court.

(4) The party to whom the notice is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

Compare: 1908 No 89 Schedule 2 rr 182-183; SR 1976/270 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

509 Person refusing to make affidavit

(1) If any person having knowledge of facts relevant to a proceeding or interlocutory application refuses to make an affidavit as to those facts, any party may apply for an order to such person to appear and be examined on oath before the Court, or such person as the Court appoints, as to the matters concerning which he has refused to make an affidavit.

(2) Upon any application under subclause (1), the Court may

(a) Make such orders, as the Court thinks just, for the attendance of that person before the Court, or before the person therein named, for the purpose of being examined as aforesaid, and for the production of any documents specified in the order; and

(b) Impose such terms, as the Court thinks just, as to the examination and the costs of and incidental to the application and examination.

(3) Any person who disobeys any order made under subclause (2) shall be liable to proceedings for contempt.

Compare: 1908 No 89 Schedule 2 rr 206-208; SR 1954/155 rr 2(1), 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 1 January 1987, by rule 8 High Court Amendment Rules 1986 (SR 1986/228) by substituting the words "a proceeding or interlocutory application" for the words "the proceeding".

510 Form and contents of affidavits

(1) Every affidavit

Part 5—*continued*

(a) Shall be expressed in the first person; and
(b) Shall state the deponent's full name, occupation, and place of residence; and
(c) Shall either
  (i) Be signed by the deponent; or
  (ii) If the deponent cannot write, have the deponent's mark set to it by the deponent; and
(d) Shall be confined
  (i) To such matters as would be admissible if given in evidence at trial by the deponent; and
  (ii) If in reply, to matters strictly in reply.

(2) The Court
(a) May refuse to read an affidavit that
  (i) Unnecessarily sets forth any argumentative matter or copies of or extracts from documents; or
  (ii) Being in reply, introduces new matter; and
(b) May order the costs incurred in respect of or occasioned by an affidavit to which paragraph (a) applies be paid by the party filing the affidavit.

(3) The date and place of swearing an affidavit shall be stated in the jurat, which shall be signed by the person before whom the affidavit is sworn.

(3A) Where an affidavit has more than one page,
(a) The deponent shall initial or set the deponent's mark on each page, except the cover sheet, that precedes the page on which the jurat appears; and
(b) The person before whom the affidavit is sworn shall initial each page, except the cover sheet, that precedes the page on which the jurat appears.

(4) Nothing in this rule limits the extent to which rules 23 to 40 apply in respect of affidavits.

Compare: 1908 No 89 Schedule 2 rr 185, 191-194, 198

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3A) was inserted, as from 1 June 1990, by rule 11 High Court Amendment Rules 1990 (SR 1990/66).

Part 5—*continued*

Subclause (3A)(a) was amended, as from 24 August 2007, by rule 16 High Court Amendment Rules 2007 (SR 2007/206) by inserting "", except the cover sheet," after "each page".

Subclause (3A)(b) was amended, as from 24 August 2007, by rule 16 High Court Amendment Rules 2007 (SR 2007/206) by inserting "", except the cover sheet," after "each page".

511 Exhibits to affidavits

(1) Exhibits to an affidavit
- (a) Shall be marked, in each case, with a distinguishing letter or number; and
- (b) Shall be annexed to the affidavit
  - (i) If this is practicable; and
  - (ii) If none of them exceed International size A4; and
- (c) Shall, in each case, be identified by a note made thereon and signed by the person before whom the affidavit is sworn.

(2) Exhibits that are not annexed to the affidavit shall, subject to subclause (3), be filed with the affidavit in a separate bundle, which bundle shall
- (a) Be securely bound; and
- (b) Include a sheet bearing a proper heading, endorsement, and subscription.

(3) Where the size, shape, or nature of an exhibit makes it impracticable to comply with subclause (1)(b) or subclause (2), that exhibit shall have firmly affixed to it a sheet bearing a proper heading, endorsement, and subscription.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 511 was substituted, as from 1 April 1994, by rule 21 High Court Amendment Rules 1993 (SR 1993/420).

512 Affidavit in language other than English

(1) An affidavit in a language other than English (**non-English-language affidavit**) may be filed in a proceeding.

(2) The non-English-language affidavit must be accompanied by an affidavit by an interpreter to which is exhibited
- (a) a copy of the non-English-language affidavit; and

Part 5—*continued*

(b) the interpreter's translation of the non-English-language affidavit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 512 was substituted, as from 1 June 2006, by rule 11 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

513 Interlineation, alteration, or erasure in affidavit

No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall, without leave of the Court, be read or made use of in any proceeding unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the person before whom it is sworn, or, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the person taking it.

Compare: 1908 No 89 Schedule 2 r 196; *Gazette*, 1912, p 2657

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

514 Irregularity in form of affidavit

The Court may receive any affidavit sworn for the purpose of being used in any proceeding, notwithstanding any defect by misdescription of parties in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

Compare: 1908 No 89 Schedule 2 r 199; *Gazette* 1912, p 2657

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

515 Service copies of affidavits

Every service copy of an affidavit shall be legible and shall, where practicable, include legible copies of all exhibits.

Compare: 1908 No 89 Schedule 2 r 205A(2); SR 1961/174 r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

516 Affidavit may be sworn on Sunday

An affidavit may be sworn on any day, including Sunday.

Compare: 1908 No 89 Schedule 2 r 201; SR 1963/170 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

517 Affidavits made on behalf of corporation

A person may make an affidavit on behalf of a corporation or body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office) if the person

(a) Knows the relevant facts; and

(b) Is authorised to make the affidavit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 517 was substituted, as from 1 January 2000, by rule 14 High Court Amendment Rules 1999 (SR 1999/334).

518 Affidavit by two or more deponents

In every affidavit made by two or more deponents the names of all the deponents shall be inserted in the jurat, but if the affidavit of all the deponents is sworn at the one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of "the above-named deponents".

Compare: 1908 No 89 Schedule 2 r 194A; *Gazette*, 1910, p 3819

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

519 Affidavit by blind or illiterate deponent

Where it appears to the person before whom an affidavit is sworn that the deponent is wholly or partially blind, or (whether because of physical handicap or otherwise) is unable to read or has severe difficulty in reading, that person shall certify in the jurat

(a) That the affidavit was read and explained by him to the deponent; and

(b) That the deponent appeared perfectly to understand the affidavit; and

Part 5—*continued*

(c) That the deponent wrote his signature or made his mark in the presence of that person.

Compare: 1908 No 89 Schedule 2 r 195

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

520 Swearing of affidavits

An affidavit may be read and used in a proceeding only if the affidavit is sworn

(a) in accordance with the Oaths and Declarations Act 1957; and

(b) before a person authorised to administer oaths under that Act or under rule 521 or rule 522.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 520 was substituted, as from 1 November 2004, by rule 19 High Court Amendment Rules 2004 (SR 2004/320).

521 Authority to take affidavits in New Zealand

(1) Any affidavit may be sworn in New Zealand before a solicitor of the Court or before a Registrar or before a Justice of the Peace; but no affidavit, except one sworn in respect of a non-contentious proceeding, is permitted to be read or used if it was sworn before a solicitor who, at the time of taking it, was acting as

(a) The solicitor of a party to the proceeding; or

(b) A partner in, or a solicitor employed or engaged by, the firm of the solicitor of a party to the proceeding; or

(c) The agent of the solicitor of a party to the proceeding.

(2) In this rule,

Registrar includes

(a) a Deputy Registrar of the High Court:

(b) a Registrar of a District Court:

(c) a Deputy Registrar of a District Court

solicitor means a person enrolled as a barrister and solicitor of the High Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

Rule 521 was substituted, as from 1 February 1998, by rule 11 High Court Amendment Rules 1997 (SR 1997/350).

Subclause (2) was substituted, as from 1 November 2004, by rule 20 High Court Amendment Rules 2004 (SR 2004/320).

522 Authority to take affidavits in places outside New Zealand

(1) An affidavit may be sworn in a place outside New Zealand before

- (a) a Commissioner of the High Court of New Zealand who has authority in that place; or
- (b) a person who is authorised to administer oaths by the law of that place; or
- (c) a person who is authorised by a Judge to administer the oath required for the affidavit.

(2) The person administering an oath under subclause (1) must state in the jurat of the affidavit that he or she is

- (a) a Commissioner of the High Court of New Zealand who has authority in the place where the affidavit is sworn; or
- (b) a person authorised to administer oaths by the law of the place where the affidavit is sworn; or
- (c) a person who is authorised by a Judge to administer the oath.

(3) An affidavit that appears to comply with subclauses (1) and (2) must be taken to have been properly sworn unless the Court requires verification by evidence or other means of any matter affecting compliance with either of those subclauses.

(4) Nothing in this rule affects the administering of oaths under the Oaths and Declarations Act 1957.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 522 to 524 were substituted, as from 1 November 2004, by rule 21 High Court Amendment Rules 2004 (SR 2004/320).

523 Meaning of authenticated deposition

In rules 524 and 524A, **authenticated deposition** means a written statement

Part 5—*continued*

(a) made in a place outside New Zealand before a court or a judicial or other authority or person; and

(b) the maker of which is, under the law in force in the place in which the statement is made, liable to imprisonment or a fine or to some other punishment if the statement is false; and

(c) that purports to be

(i) signed by a person holding judicial office or by an official exercising authority under the law in force in the place in which the statement is made; or

(ii) sealed with an official or public seal or with the seal of a Minister of State, or of a department or an official of the government exercising authority in the place in which the statement is made; or

(iii) endorsed with or accompanied by a certificate given by a person having authority under the law in force in the place in which the statement is made to give the certificate that the statement complies with the requirements of the law in force in that place and that, under that law, the maker of the statement is liable to imprisonment, or a fine or to some other punishment if the statement is false.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 522 to 524 were substituted, as from 1 November 2004, by rule 21 High Court Amendment Rules 2004 (SR 2004/320).

524 Admissibility of authenticated deposition

Evidence that may, under these rules, be given by affidavit, may be given in an authenticated deposition.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 522 to 524 were substituted, as from 1 November 2004, by rule 21 High Court Amendment Rules 2004 (SR 2004/320).

Part 5—*continued*

524A Application of other rules

(1) Rules 504 to 510 apply, with such modifications as may be necessary, in relation to an authenticated deposition as if the deposition were an affidavit.

(2) Nothing in rule 524 or this rule affects rules 369 to 381.

Rule 524A was inserted, as from 1 November 2004, by rule 21 High Court Amendment Rules 2004 (SR 2004/320).

Judgment

525 Procedure after taking verdict

On the trial of any proceeding with a jury, the Judge, after taking the verdict of the jury, may

(a) Give judgment at once:

(b) Adjourn the proceeding for further consideration:

(c) Give judgment for either party and reserve leave for either party to apply to set aside the judgment and for any other judgment.

Compare: 1908 No 89 Schedule 2 r 286

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

526 Leave to apply to set aside judgment

Where leave has been reserved to either party to apply to set aside judgment and for any other judgment, the party to whom leave has been reserved may apply within such time as may have been fixed by the Court for the purpose, or, if no time has been fixed, then within 14 days after leave has been reserved.

Compare: 1908 No 89 Schedule 2 r 287

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

527 Judgment not in accordance with verdict

Where the proceeding has been tried with a jury, either party may, without leave reserved, apply, within 14 days after judgment has been given, to set aside the judgment and for any

Part 5—*continued*

other judgment, on the ground that the judgment given is not in accordance with the verdict of the jury.

Compare: 1908 No 89 Schedule 2 r 288

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

528 Judgment wrong on finding of Judge

[Repealed]

Compare: 1908 No 89 Schedule 2 r 289

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 528 was revoked, as from 3 February 1992, by rule 2 High Court Amendment Rules (No 2) 1991 (SR 1991/291).

529 Application for judgment on special verdict or subject to special case

(1) Where the jury have stated the facts or found a verdict subject to a special case, either party may apply, within 14 days thereafter, for such judgment as he considers himself entitled to.

(2) If the application is on a special case, a copy of the case shall be filed in Court with the notice of application.

Compare: 1908 No 89 Schedule 2 r 292

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

530 Application for judgment by both parties

If both parties apply for judgment, the applications shall be heard together, unless it appears to the Court desirable to hear them separately.

Compare: 1908 No 89 Schedule 2 r 293

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

531 Final judgment or judgment directing accounts

(1) A judgment may be either

(a) A final judgment; or

(b) A judgment directing such accounts to be taken, inquiries made or other acts done, and steps instituted

Part 5—*continued*

under rules 384 to 404, as the Court giving judgment considers necessary.

(2) The Court may give the conduct of the proceeding after judgment to such party to the proceeding as the Court thinks proper.

Compare: 1908 No 89 Schedule 2 r 294

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

532 Procedure when accounts, etc, not proceeded with

(1) If any party having the conduct of the proceeding does not proceed with the accounts, inquiries, acts, or steps ordered, or does not take all necessary steps to have the same completed, the opposite party may apply to dismiss the proceeding.

(2) On an application under subclause (1), the Court may make such order as it thinks proper, being

(a) An order as to the prosecution of the account, inquiries, acts, or steps; or

(b) An order for the dismissal of the proceeding; or

(c) An order giving the conduct of the proceeding to some other party.

Compare: 1908 No 89 Schedule 2 r 295; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

533 Judgment directing sale of property

(1) Where by any judgment or order any property is directed to be sold it shall, unless the Court otherwise directs, be sold in such manner as will ensure that the best price therefor will be obtained.

(2) The Court may, either at the time of giving the judgment or making the order or at any time thereafter, give directions as to the mode of the sale and as to terms and conditions of sale, including, where the sale is by auction, fixing a reserve price, if thought advisable, and defining the rights of parties to bid at the sale.

(3) All parties shall co-operate in effecting the sale of the property and do all things necessary to give effect thereto, includ-

Part 5—*continued*

ing signing any documents required to transfer or assure the property to the purchaser.

(4) For the purpose of giving effect to the sale of the property, the Court

(a) May give all necessary directions, including directions in relation to the transfer or assurance of the property sold; and

(b) May appoint a person to sign any documents required to transfer or assure to the purchaser the property sold.

Compare: 1908 No 89 Schedule 2 r 448

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

534 Judgment for balance of claim over counterclaim

If a counterclaim to any cause of action is proved to an amount less than that recovered on that cause of action, the plaintiff shall have judgment on that cause of action for the balance of his claim, after deducting the amount of the counterclaim proved by the defendant.

Compare: 1908 No 89 Schedule 2 r 300

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

535 Judgment for balance of counterclaim

If a counterclaim to any cause of action is proved to an amount exceeding that recovered on that cause of action, the defendant shall have judgment for the excess.

Compare: 1908 No 89 Schedule 2 r 301

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

536 Cross judgments

(1) Where there are cross judgments for money between the same parties, whether for debt, or damages, and costs, or for costs alone, the one may be set off against the other by leave of the Court.

Part 5—*continued*

(2) Leave shall not be granted under subclause (1) if the set-off would prejudice any solicitor's lien for costs in the particular proceeding against which the set-off is sought.

Compare: 1908 No 89 Schedule 2 r 302; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

537 Judgment when third party defends

(1) When a third party has filed his statement of defence pursuant to the third party notice, then either at or after the trial of the proceeding or (whether the proceeding is decided by trial or otherwise) on application, the Court may

(a) Order such judgment as the nature of the case may require to be entered for or against the defendant giving the notice against or for the third party; and

(b) Grant to the defendant or to the third party any relief or remedy which might properly have been granted if the third party had been made a defendant to a proceeding duly instituted against him by the defendant; and

(c) Make such further or other order as the nature of the case may require.

(2) This rule shall apply, with all necessary modifications, whenever a fourth or subsequent party notice has been issued.

Compare: 1908 No 89 Schedule 2 r 99J; SR 1939/9 r 6; SR 1954/155 rr 2(1), 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

538 Interest on judgment debt

(1) Every judgment debt shall carry interest from the time of judgment being given until the judgment is satisfied.

(2) The interest shall be at the rate for the time being prescribed by or under section 87 of the Judicature Act 1908 or at such lower rate as shall be fixed by the Court.

(3) The interest may be levied under any execution order upon the judgment.

Compare: 1908 No 89 Schedule 2 r 305; SR 1975/140 r 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 5—*continued*

539 Judgment and reasons for judgment defined

In rules 540 to 544

Judgment includes any decree or order of the Court

Reasons for judgment means

(a) The written reasons given by the Judge for his decision; or

(b) Where the Judge gives reasons orally, means a proper report, approved by the Judge, of the oral statement made by him of the reasons for his decision.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

540 Time and mode of giving judgment

(1) A Judge may give a judgment orally or in writing.

(2) Except in the case of a judgment on an *ex parte* application, a Judge may give a judgment orally only if the affected parties or their counsel have been given a reasonable opportunity to

(a) be present when the judgment is given; or

(b) hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link.

(3) A judgment is given orally when the Judge pronounces it, with or without reasons.

(4) On receiving a written judgment from the Judge responsible for it, the Registrar must endorse the judgment with a date and time directed by the Judge or, if no direction is given, with a date and time nominated by the Registrar (the **delivery time**). The date and time nominated by the Registrar must be subsequent to the date and time the Registrar endorses the judgment.

(5) A written judgment must for all purposes be treated as having been given at the delivery time directed or nominated under subclause (4).

(6) Immediately after endorsing a judgment, the Registrar must attempt to notify the parties, by telephone or otherwise, of the delivery time.

(7) A party may request the Registrar to

Part 5—*continued*

(a) send the party, immediately after the delivery time, a copy of the written judgment by email or facsimile; or

(b) make a copy of the written judgment available, immediately after the delivery time, for uplifting from the Registry.

(8) If a party who has given an address for service does not make a request under subclause (7), the Registrar must immediately after the delivery time post a copy of the written judgment to that party.

(9) A failure by the Registrar to comply with any of subclauses (6) to (8) does not affect the validity of a judgment or its delivery time.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 540 was substituted, as from 1 August 2000, by rule 13 High Court Amendment Rules 2000 (SR 2000/109).

Subclauses (4) to (6) were substituted, as from 1 November 2004, by rule 22 High Court Amendment Rules 2004 (SR 2004/320).

Subclauses (7) to (9) were inserted, as from 1 November 2004, by rule 22 High Court Amendment Rules 2004 (SR 2004/320).

541 Judgments to be sealed, dated, and served

(1) Every judgment shall be drawn up in a form approved by the Registrar, who shall seal it with the seal of the Court.

(2) Forms 36 to 39 may be used.

(3) A judgment may be sealed

(a) in accordance with any direction given by the Judge relating to the sealing of the judgment; or

(b) if no such direction is given, at any time after the judgment has been given.

(3A) Except with the leave of the Court, a judgment may not be sealed until any application under rule 542 for the recall of the judgment has been determined.

(4) A sealed judgment must state

(a) the date on which, in accordance with rule 540, the judgment is given; and

(b) the date on which it is sealed.

Part 5—*continued*

(5) A party who has a judgment sealed must forthwith serve a sealed copy of the judgment on

(a) every other party who has given an address for service; and

(b) any other person who, although not a party, is affected by the judgment.

Compare: 1908 No 89 Schedule 2 rr 306-308

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The heading to rule 541 was substituted, as from 1 November 2004, by rule 23(1) High Court Amendment Rules 2004 (SR 2004/320).

Subclause (3) was substituted, as from 1 August 2000, by rule 14 High Court Amendment Rules 2000 (SR 2000/109).

Subclause (3A) was inserted, as from 1 November 2004, by rule 23(2) High Court Amendment Rules 2004 (SR 2004/320).

Subclause (4) was inserted, as from 1 January 1989, by rule 17 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Subclause (4) was substituted, as from 1 August 2000, by rule 14 High Court Amendment Rules 2000 (SR 2000/109).

Subclause (5) was inserted, as from 1 November 2004, by rule 23(3) High Court Amendment Rules 2004 (SR 2004/320).

541A Duplicate judgments

Duplicates of any judgment, enfaced with the word "duplicate", may be issued to any party.

Rule 541A was inserted, as from 1 January 1986, by rule 16 High Court Amendment Rules 1985 (SR 1985/328).

542 When judgment takes effect

(1) A judgment takes effect when it is given.

(2) Unless the Judge otherwise directs, no step may be taken on a judgment before it has been sealed.

(3) A judgment, whether given orally or in writing, may be recalled by the Judge at any time before a formal record of it has been drawn up and sealed.

(4) A party may bring an appeal under rule 7 of the Court of Appeal (Civil) Rules 1997 even though the judgment appealed against has not been sealed, as long as the party takes steps to

Part 5—*continued*

ensure that the judgment is sealed promptly after the appeal is brought.

(5) In this rule

(a) subclause (2) overrides subclause (1):

(b) subclause (4) overrides subclause (2).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 542 was substituted, as from 1 August 2000, by rule 15 High Court Amendment Rules 2000 (SR 2000/109).

Rule 542 was substituted, as from 1 November 2004, by rule 24 High Court Amendment Rules 2004 (SR 2004/320).

543 Death, etc, of Judge before judgment

(1) Where a Judge who has signed a judgment or reasons for judgment dies or otherwise becomes incapable before the judgment is given or the reasons are delivered, any other Judge or the Registrar may give that judgment or deliver those reasons.

(2) Where subclause (1) does not apply and a Judge who is sitting without a jury, as one of a Court comprising 3 or more Judges, on the trial of any proceeding or issue,

(a) Dies or otherwise becomes incapable of giving judgment after the hearing has been completed; and

(b) A majority of the number of Judges who constituted the Court when the trial began concur in the decision on the proceeding or issue,

that decision shall be the judgment of the Court and may be given accordingly.

(3) Where neither subclause (1) nor subclause (2) applies and a Judge who is sitting without a jury on the trial of any proceeding or issue dies or otherwise becomes incapable of giving judgment, the proceeding or issue shall be retried.

(4) Where a Judge sitting with a jury on the trial of any proceeding or issue dies or becomes incapable of acting for any other reason after the jury has retired to consider its verdict and before judgment has been given, any other Judge

(a) May give any further directions required by the jury; and

Part 5—*continued*

(b) May take the verdict and give judgment thereon or may discharge the jury without verdict; and

(c) May generally do all such things necessary up to and including the sealing of judgment in the proceeding or issue in the same way as the Judge presiding at the trial might have done had that Judge not died or become incapable of acting.

(5) Where a Judge sitting with a jury on the trial of any proceeding or issue dies or becomes incapable of acting for any other reason before the jury has retired to consider its verdict, another Judge or the Registrar shall discharge the jury and order a new trial.

(6) Nothing in this rule limits the provisions of section 25A of the Acts Interpretation Act 1924.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 543 was substituted, as from 1 November 1994, by rule 5 High Court Amendment Rules (No 2) 1994 (SR 1994/211).

544 Satisfaction of judgment

(1) As soon as any judgment has been satisfied by payment, levy, or in any other manner, the party against whom the judgment has been given shall be entitled to have satisfaction of the judgment entered up.

(2) For the purposes of subclause (1), the party against whom the judgment has been given shall produce and file in the office of the Court an acknowledgment of satisfaction signed by the party obtaining judgment or on his behalf.

(3) Notwithstanding subclause (2), the Court may order satisfaction to be entered upon proof that the judgment has been satisfied.

Compare: 1908 No 89 Schedule 2 r 313; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6
Execution

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

General provisions

545 Execution process defined

In this Part, unless the context otherwise requires, **execution process** includes every writ or order referred to in rule 547.

Compare: 1908 No 89 Schedule 2 r 336

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

546 Mode of enforcing orders

Every order of the Court, other than an order made on an interlocutory application, may be enforced in the same manner as if it were a judgment in the proceedings to the same effect.

Compare: 1908 No 89 Schedule 2 r 348; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

547 Mode of enforcing judgments

(1) Subject to the provisions of this Part, a judgment may be enforced by means of any one or more of the following execution processes, namely,

(a) A charging order:

(b) A writ of sale:

(c) A writ of possession:

(d) A writ of arrest:

(e) A writ of sequestration.

(2) If a judgment is for payment or performance within a period specified in the judgment, no execution process shall be issued until that period has expired.

Compare: 1908 No 89 Schedule 2 rr 336, 386(a)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

548 Effect of charging order

(1) A charging order shall charge the estate, right, title, or interest of the person against whom it is issued in the property described in the order with payment of the amount for which the person issuing the order may obtain or has obtained judgment, as the case may be.

(2) A charging order may be in form 40 or form 41 or form 42 as is appropriate.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

549 Effect of writ of sale

(1) A writ of sale shall authorise and command the officer to whom it is directed

(a) To seize all the chattels (including money, cheques, bills of exchange, promissory notes, bonds, and other securities for money) of the judgment debtor, except his necessary tools of trade to a value not exceeding $500 and his necessary household furniture and effects, including the wearing apparel of himself and his family, to a value not exceeding $2,000; and

(b) To the extent that the money so seized is insufficient to discharge any claims which by law are entitled to be paid in priority to the claim of the judgment creditor, and to pay the fees and expenses of executing the order, and to satisfy the amount of the judgment and interest payable to the judgment creditor,

(i) To receive and recover the sum or sums payable under any cheques, bills of exchange, and promissory notes or secured by bonds or other securities for money; and

(ii) To sell, in accordance with rules 588 to 607, the chattels so seized and the estate, right, title, or interest in any land, whether in possession, remainder, reversion, or expectancy, of the judgment debtor; and

(c) To deal, in accordance with rules 588 to 607,

Part 6—*continued*

(i) With the money so seized or received or recovered from any cheques, bills of exchange, and promissory notes, and any bonds or other securities for money; and

(ii) With the proceeds of the sale of such chattels and land or interest in land.

(2) A writ of sale may be in form 43.

Compare: 1908 No 89 Schedule 2 rr 362, 363, 365; SR 1939/9 r 11; SR 1976/270 r 5(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1)(a) was amended, as from 1 August 1987, by rule 13(a) High Court Amendment Rules (No 2) 1987 (SR 1987/169) by substituting the expression "$500" for the expression "$300".

Subclause (1)(a) was amended, as from 1 August 1987, by rule 13(b) High Court Amendment Rules (No 2) (SR 1987/169) by substituting the expression "$2,000" for the expression "$1,000".

550 Effect of writ of possession

(1) A writ of possession shall authorise and command the officer to whom it is directed to deliver to the person named in the writ, possession of the land or chattels described in the writ, and, for that purpose, to eject any other person from such land, or to seize and take possession of any such chattels.

(2) A writ of possession may be in form 44.

Compare: 1908 No 89 Schedule 2 r 383

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

551 Effect of writ of arrest

(1) A writ of arrest shall authorise and command the officer to whom it is directed to arrest any person named in the writ and shall command such officer to bring that person before the Court at such time and place as are specified in the writ, and to keep him in the meantime in such safe custody as may be by law allowed.

(2) A writ of arrest may be in form 45.

Compare: 1908 No 89 Schedule 2 rr 384, 513

Part 6—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

552 Effect of writ of sequestration

(1) A writ of sequestration shall authorise and command the person to whom it is directed to enter upon and take possession of all the real and personal property of the person against whom it is directed and to get into his hands the rents and profits therefrom until that person clears his contempt of Court in the manner specified in the writ or until the Court orders otherwise.

(2) A writ of sequestration may be in form 46.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

553 Enforcement against Crown

(1) Notwithstanding anything in these rules, no execution process shall be issued for enforcing satisfaction by the Crown, or by the Attorney-General, or by any Government department, or by any officer of the Crown, of any judgment, order, decree, rule, award, or declaration given or made in any civil proceedings under the Crown Proceedings Act 1950.

(2) Nothing in subclause (1) limits the provisions of section 24 of the Crown Proceedings Act 1950.

Compare: 1908 No 89 Schedule 2 r 393A; SR 1952/122 r 29

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

554 Enforcement by or against non-parties

(1) Any person, not being a party to a proceeding, who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to that order by the same process as if he were a party to the proceeding.

(2) Any person, not being a party to a proceeding, against whom judgment or obedience to an order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party to the proceeding.

Compare: 1908 No 89 Schedule 2 r 349

Part 6—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

555 Enforcement against partners or alleged partners

(1) Subject to rule 556, where a judgment is against partners sued in the name of the firm, execution may be issued as of right

(a) Against any property of the partners as such:

(b) Against any person who has admitted on the pleadings that he is, or has been adjudged to be, a partner:

(c) Against any person who has been served as a partner with the notice of proceeding and has failed to file and serve a statement of defence.

(2) Where, in any case to which subclause (1) does not apply, a party, being a party who has obtained judgment against partners sued in the name of the firm, claims to be entitled to issue execution against any person as a member of that firm, that party may apply to the Court for leave to do so.

(3) On an application under subclause (2), the Court,

(a) If liability is not disputed by the person against whom the applicant claims to be entitled to issue execution, may give the leave sought; or

(b) If liability is disputed by the person against whom the applicant claims to be entitled to issue execution, may order that the liability of that person be tried and determined in such manner as it thinks fit.

Compare: 1908 No 89 Schedule 2 rr 350-351; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

556 When leave to issue execution process necessary

(1) No writ of arrest or writ of sequestration shall issue without leave of the Court.

(2) No other execution process shall issue without leave of the Court

(a) Before judgment has been sealed; or

(b) After 6 years have elapsed since the date of the judgment; or

Part 6—*continued*

(c) Where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment; or

(d) Where the judgment is against the assets of a deceased person coming into the hands of his executor or administrator after the date of the judgment, and execution is sought against those assets; or

(e) Where, under the judgment, any person is entitled to relief subject to the fulfilment of a condition which is alleged to have been fulfilled; or

(f) Where any goods sought to be seized under an execution process are in the hands of a receiver appointed by the Court, or a sequestrator.

(3) Except where subclause (1) or subclause (2) applies or where execution has been stayed, an execution process may be issued as of right on the filing with the praecipe of an affidavit by the applicant or his solicitor deposing that paragraphs (c) to (e) of subclause (2) do not apply.

(4) The Court may set aside any execution process issued under subclause (3) if it is satisfied that any provision of paragraphs (c) to (e) applied when the execution process was issued.

(5) Where the Court grants leave, whether under this rule or otherwise, for the issue of an execution process and the process is not issued within one year after the date of the order granting leave, the order granting leave shall cease to have effect, without prejudice, however, to the making of a fresh order granting leave.

Compare: 1908 No 89 Schedule 2 rr 337, 346, 347; SR 1954/155 r 2(1); The Rules of the Supreme Court (Revision) 1965 (UK) Order 46 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

Preparation and issue of execution process

557 Execution process to follow judgment

An execution process must strictly follow the judgment or order in pursuance of which it has been issued, or show on the face of it why it does not.

Compare: 1908 No 89 Schedule 2 r 356

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

558 Preparation and issue of execution processes

(1) A party applying for an execution process shall file an appropriate praecipe therefor, and an engrossment of the process for sealing by the Registrar.

(2) When the engrossment of the process has been sealed, the Registrar shall deliver it to the officer for the time being appointed to execute execution processes.

(3) An execution process is issued at the time when the engrossment of it is delivered under subclause (2).

Compare: 1908 No 89 Schedule 2 rr 338, 358

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

559 Date of execution process

Every execution process shall be dated as of the day on which it is issued.

Compare: 1908 No 89 Schedule 2 r 339

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

560 Currency and renewal of execution processes

(1) Subject to subclauses (2) and (6), an execution process shall, unless unexecuted, expire one year after the date of its issue.

(2) By leave of the Court, an execution process may be renewed once only for one year from the original date of expiry.

(3) Leave under subclause (2) may be given before or after the execution process expires.

Part 6—*continued*

(4) When an execution process is renewed, it shall retain its original priority unless the Court otherwise orders.

(5) The fact and date of renewal shall be noted on the process by the Registrar and shall be sufficient evidence of its having been renewed.

(6) Nothing in this rule applies in respect of a charging order.

Compare: 1908 No 89 Schedule 2 rr 341-344; SR 1951/75 r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

561 Expenses of execution

The party issuing an execution process may levy from the person against whom it is issued the fees and expenses to which he may be entitled in respect of and incidental to the issue and execution of the execution process, including, in the case of a writ which is issued against a person and which is also a writ of possession, the fees and expenses incidental to the execution of the process as a writ of possession.

Compare: 1908 No 89 Schedule 2 r 340; SR 1950/58 r 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

562 Concurrent execution processes

(1) Two or more execution processes of the same kind may be issued to one or more places, and, if necessary, addressed to different officers.

(2) The costs of more than one concurrent process shall not be allowed unless by order of the Court.

Compare: 1908 No 89 Schedule 2 r 357; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

563 Return of execution process

The officer of the Court to whom a process has been delivered for execution shall, immediately after execution, if he succeeds in executing it, or after reasonable attempts to execute it have been made but without success, return the same into

Part 6—*continued*

the office of the Court out of which it has been issued, with a memorandum endorsed thereon stating the mode in which it has been executed or the reason for not executing it.

Compare: 1908 No 89 Schedule 2 r 359

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

564 Re-issue of execution process

If any process is returned unexecuted, it may, on the application of the party issuing it, be again issued to the proper officer for execution, if it appears that there are grounds for believing that the process can be successfully executed.

Compare: 1908 No 89 Schedule 2 r 360

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

565 Stay of execution

Any party against whom judgment has been given may apply to the Court for a stay of execution, or other relief against the judgment, upon the ground that a substantial miscarriage of justice would be likely to result if the judgment were executed, and the Court may give relief on such terms as appear just.

Compare: 1908 No 89 Schedule 2 rr 352-354; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

566 Execution may be set aside

If execution is issued contrary to any order of the Court or to the agreement of the party issuing it, or otherwise contrary to good faith, it may be set aside by the Court.

Compare: 1908 No 89 Schedule 2 r 355; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

Charging orders

567 Leave to issue charging order

Leave to issue a charging order before judgment shall be granted only on proof that the opposite party, with intent to defeat either his creditors or the party applying or both

(a) Is making away with his property; or

(b) Is absent from or about to quit New Zealand.

Compare: 1908 No 89 Schedule 2 r 314; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 567 was amended, as from 1 January 1986, by rule 17 High Court Amendment Rules 1985 (SR 1985/328) by substituting the words "either his creditors or the party applying or both" for the words "his creditors, or the party applying".

568 Issue of charging order without leave after judgment

After judgment has been sealed, a charging order may be issued, without leave, at the request of the judgment creditor.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

569 Charging order where amount involved small

Where it appears that the amount involved is so small that the issue of a charging order is vexatious or worthless, the Court may refuse the application for a charging order, or, if the charging order has been issued (whether as of right or on application), revoke the charging order.

Compare: 1908 No 89 Schedule 2 r 332; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

570 Application for relief by persons prejudicially affected

(1) Any person alleging that he is prejudicially affected by any charging order may at any time apply to the Court for relief in accordance with this rule.

(2) On an application under subclause (1) the Court may

(a) Vary or rescind the order; or

Part 6—*continued*

(b) Cancel the registration or modify the effect of registration of any order affecting land.

(3) The powers of the Court under this rule are in addition to its powers under rule 259.

Compare: 1908 No 89 Schedule 2 rr 320, 327; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 259" for the expression "rule 264". *See* rule 19 of those Rules as to the transitional provisions.

571 Claim of third person on property charged

(1) Where it is alleged that the land or money or other property affected by a charging order belong to some third person or that some third person has a claim thereon by way of lien, charge, or otherwise, such third person may be ordered to attend and state the nature and particulars of his claim.

(2) Such third person may also attend without special order on the application to make the order absolute, or on any application to set aside or vary the same, on giving 24 hours' notice of his intention to do so.

Compare: 1908 No 89 Schedule 2 r 328

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

572 Apportionment when more than one charging order

Where more than one charging order has been issued against the same person, the Court may at any time, on the application of that person, or any other person claiming to be affected, determine how much or what part of the property affected by such order or paid into Court shall be for the separate use of each party who has obtained a charging order.

Compare: 1908 No 89 Schedule 2 r 335; SR 1954/155 rr 2(1), 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

Charging orders affecting land in name of opposite party

573 Order absolute in first instance

Where the property sought to be charged is an estate, right, title, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land held by the opposite party in his own name, the charging order shall be absolute in the first instance.

Compare: 1908 No 89 Schedule 2 r 314(a)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

574 Registration of charging order under Land Transfer Act 1952

(1) A charging order which is made under rule 573 and which is in respect of land that is under the Land Transfer Act 1952 shall be registered against the certificate of title to the land under that Act.

(2) Such a charging order

(a) Shall

(i) Contain a description of the land affected sufficient to identify that land; or

(ii) Refer to a certificate of title or other instrument containing such a description; and

(b) Unless the land is the whole of the land comprised in a certificate or certificates of title, or is shown separately on a plan deposited under the provisions of the Land Transfer Act 1952, shall also have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

(3) When the charging order is presented for registration, a duplicate of it shall be deposited with the District Land Registrar.

Compare: 1908 No 89 Schedule 2 rr 315(a), 316; SR 1957/30 r 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

575 Registration of charging order under Deeds Registration Act 1908

(1) A charging order which is made under rule 573 and which is in respect of land that is not under the Land Transfer Act 1952 shall be registered with the Registrar of Deeds for the district in which the land is situated according to the law in force for the time being for the registration of deeds.

(2) Such a charging order

(a) Shall contain a description of the land affected, or shall refer to a Crown grant or other instrument, sufficient to identify that land; and

(b) Shall also have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

Compare: 1908 No 89 Schedule 2 rr 315(b), 316; SR 1957/30 r 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

576 Sale before registration of charging order

Until registration of a charging order in respect of land, no sale or transfer of the land or of any part thereof under a writ of sale shall have any effect as against a purchaser for valuable consideration, notwithstanding that the writ of sale may have been actually delivered for execution at the time of purchase, and that the purchaser may have had actual or constructive notice of the delivery of the writ of sale for execution.

Compare: 1908 No 89 Schedule 2 r 317

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

577 Discharge of land from charging order

1Land that is subject to a charging order made under rule 573 shall be discharged from that order upon registration with the District Land Registrar or Registrar of Deeds, as the case may require, of

(a) A memorandum of satisfaction of the judgment in the proceeding in which the charging order

Part 6—*continued*

has been issued or other sufficient evidence of satisfaction; or

(b) An order of the Court to the effect that the land shall be discharged from the charging order; or

(c) The consent of the person who registered the charging order to the discharge of the land from the charging order.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 577 was substituted, as from 1 February 1994, by rule 22(1) High Court Amendment Rules 1993 (SR 1993/420).

578 Lapse of charging order after 2 years

(1) Unless an instrument of transfer or a deed of conveyance or assignment consequent upon a writ of sale of the land affected by a charging order is registered within 2 years after the date of the charging order, the charging order shall, subject to subclause (2), cease to bind the land and shall be deemed to have been discharged.

(2) The Court may, where justice so requires, extend the effect of a charging order for such period as may be necessary.

Compare: 1908 No 89 Schedule 2 r 317; *Gazette*, 1936, p 536

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Charging orders affecting other property

579 Property that may be charged

A charging order may charge property, other than land referred to in rule 573, as follows:

(a) Any debts payable by or accruing due from the Crown to the opposite party and not excepted by the proviso to section 26 of the Crown Proceedings Act 1950:

(b) A debt or sum of money due or accruing due to the opposite party, including money due or accruing due

(i) To the opposite party by a public body; or

(ii) Standing to the credit of the opposite party in a proceeding or interlocutory application; or

Part 6—*continued*

(iii) Standing to the credit of the opposite party in the hands of a Sheriff or officer of a Court:

(c) The right or interest of the opposite party in any partnership:

(d) Shares held by the opposite party in any company incorporated in New Zealand, or having an office in New Zealand in which transfers of shares may be registered:

(e) The estate, right, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land, or in any money, shares, or other chattels held under or by virtue of any express or implied trust for the opposite party.

Compare: 1908 No 89 Schedule 2 r 314(aa)-(e); SR 1952/122 r 27; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Paragraph (b) was substituted, as from 1 February 1998, by rule 12 High Court Amendment Rules 1997 (SR 1997/350).

580 Order *nisi* in first instance

(1) A charging order under rule 579 shall be a charging order limited until sufficient cause is shown to the contrary and such a charging order, so limited, is hereinafter referred to in this rule and in rules 581 to 586 as a charging order *nisi*.

(2) A charging order *nisi* shall be served

(a) On the person it is intended to affect thereby; or

(b) On such person as the Court directs, if money is

(i) Due by the Crown or a public body; or

(ii) Standing to the credit of an opposite party in a proceeding or interlocutory application.

(3) Where a charging order *nisi* is intended to affect an estate, right, or interest in land under or by virtue of any trust, that charging order *nisi* may also be registered against the land or a caveat may be entered in respect of the charging order *nisi*.

Compare: 1908 No 89 Schedule 2 r 321; SR 1952/122 r 28; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

Subclause (2)(b) was substituted, as from 1 February 1998, by rule 13 High Court Amendment Rules 1997 (SR 1997/350).

581 Effect of order *nisi*

A charging order *nisi* shall restrain the person served with it

(a) From paying over any debt, income, interest, dividends, bonus, profits, or other money due or accruing due to the opposite party named in it; or

(b) From making, or concurring in making or permitting any conveyance, transfer, assignment, or disposition of any estate, right, or interest, or of any share in a partnership or company, of such opposite party,

except in accordance with the provisions hereinafter contained or by leave of the Court.

Compare: 1908 No 89 Schedule 2 r 322; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

582 Liability of persons contravening charging order *nisi*

Where any person, who has been served with a charging order *nisi*,

(a) Pays over any money in contravention of the terms of the order; or

(b) Makes or concurs in making, or permits any conveyance, transfer, assignment, or disposition in contravention of the terms of the order,

that person, in addition to or in lieu of any penalty that may be imposed upon him under any other rule, may be ordered to pay to the party obtaining the order the amount of the money so paid or the value of the property disposed of, or a sufficient part thereof to satisfy any judgment the party obtaining the order may obtain or may have obtained in the proceeding.

Compare: 1908 No 89 Schedule 2 r 323

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

583 Money may be paid into Court

Any person served with a charging order *nisi* may pay into Court any money affected by the order, to abide the result of the proceeding or the order of the Court.

Compare: 1908 No 89 Schedule 2 r 324

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

584 Court may order sale of property affected

The Court, when making a charging order *nisi*, or at any time thereafter before judgment, on application by the party obtaining the order or by the person affected by the order,

(a) May further order that any property affected thereby be sold; and

(b) May give such directions as to the sale as the Court thinks fit; and

(c) May order that the net proceeds of the sale be paid into Court, to abide the result of the proceeding or the order of the Court.

Compare: 1908 No 89 Schedule 2 r 325; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

585 Application to make order absolute after judgment

(1) At any time after he has sealed judgment in the proceeding, the judgment creditor may apply to the Court to have a charging order *nisi* made absolute.

(2) On an application under subclause (1), the Court may make such orders and give such directions for the disposal of money paid into Court pursuant to rule 583 or rule 584 as may be just.

Compare: 1908 No 89 Schedule 2 r 326

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

586 Execution after order made absolute

After a charging order *nisi* has been made absolute, the judgment creditor may,

Part 6—*continued*

(a) In respect of any money due or accruing due to the judgment debtor by any person bound by the order, issue a writ of sale under rules 588 to 607 on the property of any person bound by the order in the same manner as if judgment had been sealed by the judgment debtor against that person; and

(b) In respect of any property of the kinds referred to in paragraphs (c) to (e) of rule 579, sell the same under a writ of sale in the same manner, as nearly as may be, as sales of land are to be conducted under the provisions of rules 588 to 607.

Compare: 1908 No 89 Schedule 2 r 329

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

587 Discharge of person served with order

Payment made by or execution levied upon any person served with an order which has been made absolute shall be a valid discharge to that person as against the judgment debtor to the extent of the amount so paid, or in respect of the property levied upon, notwithstanding that such order, or the judgment in the proceeding in which such order was obtained, may thereafter be set aside or reversed.

Compare: 1908 No 89 Schedule 2 r 331

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Writs of sale and writs of possession

588 When writ of sale may be issued

At any time after judgment for a sum of money has been sealed, the judgment creditor may issue a writ of sale.

Compare: 1908 No 89 Schedule 2 r 387

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

589 Execution for less than full amount of judgment

(1) Where

Part 6—*continued*

(a) Any money has been paid on account of a judgment; or

(b) The judgment creditor wishes to waive any portion of the money due on account of a judgment or to waive payment of his costs or any portion of those costs; or

(c) A judgment has been given for a larger amount than is due,

the judgment creditor, on applying for a writ of sale, shall endorse on the writ a memorandum showing the amount that he claims to recover under the writ.

(2) Where the amount due on account of a judgment is less than the amount of the judgment and the judgment creditor fails to endorse on the writ the memorandum required by subclause (1), the execution may be set aside.

Compare: 1908 No 89 Schedule 2 rr 388-390

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

590 Recovery of money owing on cheques, etc

(1) If the money seized under a writ of sale is not sufficient to satisfy the amount thereby directed to be levied, the officer to whom the writ is directed shall hold any cheques, bills of exchange, promissory notes, bonds, or other securities for money as security for any balance of that amount and may sue in his own name for the sum or sums secured thereby if and when the time for payment thereof arrives.

(2) The officer to whom the writ is directed shall not be required to sue any person on any such cheque, bill of exchange, promissory note, bond, or other security, unless the judgment creditor enters into a bond, with 2 sufficient sureties, indemnifying that officer against all costs and expenses to be incurred in so suing, or to which he may become liable in consequence thereof, the expenses of such bond to be deducted out of any money recovered in the proceeding.

Compare: 1908 No 89 Schedule 2 rr 363-364

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

591 Discharge of person paying on cheque, etc

Payment to the officer to whom a writ of sale is directed by the person liable on any such cheque, bill of exchange, promissory note, bond, or other security, with or without suit, or the recovery and levying execution against the person so liable, shall discharge that person to the extent of such payment, or of such recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, or other security.

Compare: 1908 No 89 Schedule 2 r 364

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

592 Disposal of proceeds

The officer to whom a writ of sale is directed shall, out of the money seized under the writ, or recovered from any person liable on any cheques, bills of exchange, promissory notes, bonds, or other securities seized thereunder,

(a) Discharge all claims which by law are entitled to be paid in priority to the claim of the judgment creditor; and

(b) Pay the fees and expenses of executing the writ; and

(c) Pay over to the judgment creditor a sufficient sum to satisfy the amount directed to be levied; and

(d) Pay any surplus to the judgment debtor.

Compare: 1908 No 89 Schedule 2 r 364

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

593 Not necessary to seize land

It shall not be necessary for the officer to whom a writ of sale is directed to make any seizure of land before the sale of land.

Compare: 1908 No 89 Schedule 2 r 366

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

594 Removal of chattels for sale

The officer to whom the writ is directed shall as soon as possible remove the chattels seized to some proper place for

Part 6—*continued*

the purpose of sale, unless the parties whose chattels have been seized consent in writing to the chattels being left on the premises where the same were seized, in the custody of some proper person to be put in possession by the officer, and sold there.

Compare: 1908 No 89 Schedule 2 r 367

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

595 Place of sale

Subject to rule 594, the sale shall be held at such place as the officer to whom the writ is directed deems most advantageous, and, with the consent of the judgment debtor, may, in the case of chattels, be at the place of seizure, and, in the case of land, on the land to be sold.

Compare: 1908 No 89 Schedule 2 r 368

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

596 Advertising of notice of sale

(1) Notice of the time and place of every intended sale shall be given by advertisement in such newspaper or newspapers as the officer deems sufficient.

(2) The notice shall be first published,

- (a) In any case where the property to be sold is or includes land, in some newspaper at least 21 days before the date of the intended sale:
- (b) In any other case, in some newspaper at least 5 days before the date of the intended sale.

(3) The notice may be republished in the same or such other newspaper or newspapers in such manner and to such extent as the officer deems sufficient.

(4) The notice

- (a) Shall contain the information specified in rule 598; and
- (b) Shall be in such form and shall contain such further particulars as the officer deems sufficient.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

Rule 596 was substituted, as from 1 January 1986, by rule 18 High Court Amendment Rules 1985 (SR 1985/328).

597 Service of notice of sale on judgment debtor

(1) A copy of the notice referred to in rule 596 shall, at least 10 days before the sale, be served by the officer on the judgment debtor at his address for service, if any.

(2) If the judgment debtor has not filed an address for service, the copy of the notice may be sent by post to his last known place of residence.

Compare: 1908 No 89 Schedule 2 r 371

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

598 Contents of notice of sale

The notice referred to in rule 596

(a) Shall state that the sale is made on behalf of the judgment creditor; and

(b) Shall specify

(i) The chattels, or the right or interest in the chattels, or the land, or the estate, right, title, or interest in the land, intended to be sold; and

(ii) The name of the officer executing the writ; and

(iii) The name of the solicitor (if any) for the judgment creditor.

Compare: 1908 No 89 Schedule 2 r 372

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

599 Mode and conditions of sale

(1) All sales under a writ of sale shall be

(a) By public auction upon the terms and conditions approved by the Registrar; or

(b) With the consent of the parties, or by order of the Court made on the application of either party, by private treaty.

(2) A sale under a writ of sale may, at the discretion of the officer executing the writ, be of all the property seized in one lot or in several lots.

Part 6—*continued*

(3) Unless the Court otherwise directs, all sales

(a) Shall be for cash on delivery, assignment, or transfer; and

(b) Shall be of the estate, right, title, or interest only of the judgment debtor in the chattels or land put up for sale.

Compare: 1908 No 89 Schedule 2 r 373; SR 1961/174 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

600 Powers of officer in relation to sale by auction

Where any sale under a writ of sale is to be by way of public auction, the officer to whom the writ is directed

(a) May, by himself or by his deputy, sell by auction all land and chattels taken by him in execution, without having taken out an auctioneer's licence, notwithstanding anything in any Act to the contrary; and

(b) May place a reserve upon the land or chattels; and

(c) May put the land or chattels up for sale as often as may be required until they are sold.

Compare: 1908 No 89 Schedule 2 rr 375, 378; SR 1961/174 r 9

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

601 Power of officer to seize title deeds

The officer to whom the writ is directed may

(a) require the party against whom the writ has been issued to provide to the officer, and if the party refuses seize, the certificate of title and any title deeds for the land that is to be sold that are in the party's possession:

(b) require the party against whom the writ has been issued to disclose to the officer

(i) the name of any person who has possession of the certificate of title and any title deeds for the land that is to be sold; and

(ii) the address where the certificate of title and title deeds are kept:

(c) require a person referred to in paragraph (b)(i) to provide to the officer, and if the person refuses seize, the

Part 6—*continued*

certificate of title and any title deeds for the land that is to be sold that are in that person's possession:

(d) produce the certificate of title and any title deeds to an intending purchaser.

Compare: 1908 No 89 Schedule 2 r 374

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 601 was substituted, as from 1 October 2001, by rule 9 High Court Amendment Rules 2001 (SR 2001/220).

602 Order of sale of land and chattels

(1) If both land and chattels belonging to the same person are taken in execution under the same writ of sale, the officer executing the writ shall, unless that person otherwise desires or the Court otherwise directs, cause the chattels to be sold first.

(2) The Court may, notwithstanding the desires of the person to whom the land and chattels belong, direct under subclause (1)

(a) That the land be sold first; or

(b) That the land be sold at the time as a specified chattel or a specified class of chattels.

(3) Where the proceeds of the sale of the chattels or of the land or of the land and some of the chattels are insufficient to satisfy the execution, the Officer executing the writ shall

(a) Where the chattels have been sold first, sell the land; and

(b) Where the land has been sold first, sell the chattels; and

(c) Where the land and some of the chattels have been sold first, sell the remaining chattels.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 602 was substituted, as from 1 August 1995, by rule 4 High Court Amendment Rules (No 2) 1995 (SR 1995/135).

603 Power of judgment debtor or mortgagee to give directions concerning sale of land

(1) A judgment debtor whose interest in land is to be sold, or a mortgagee of that interest may, by notice in writing delivered

Part 6—*continued*

to the officer to whom the writ is directed, require that any specified portions of the land so advertised which may lawfully be sold separately be first sold.

(2) Notice under subclause (1) shall be given at least 10 days before the date of the sale.

(2A) In the case of conflict between a direction given by a judgment debtor and a mortgagee, the direction given by the mortgagee prevails.

(3) Where a notice is given under subclause (1), the officer shall cause the specified portions to be first put up for sale accordingly.

(4) If the sum realised by the sale of the specified portions is sufficient to satisfy the execution, interest, officer's fees, and expenses, no other part of the land shall be sold.

(5) Unless subclause (4) applies, the officer shall, following the putting up for sale of the specified portions, proceed with the sale of the remainder.

Compare: 1908 No 89 Schedule 2 r 377

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The heading to rule 603 was amended, as from 1 October 2001, by rule 10(1) High Court Amendment Rules 2001 (SR 2001/220) by inserting, after the word "debtor", the words "or mortgagee".

Subclause (1) was amended, as from 1 October 2001, by rule 10(2) High Court Amendment Rules 2001 (SR 2001/220) by inserting, after the word "sold" in the first place where it appears, the words ", or a mortgagee of that interest,".

Subclause (2A) was inserted, as from 1 October 2001, by rule 10(3) High Court Amendment Rules 2001 (SR 2001/220).

604 Transfers, etc, to purchaser

(1) A proper instrument of transfer or deed of conveyance or assignment to the purchaser of the estate, right, title, or interest of the judgment debtor in any land or chattels sold

(a) Shall be prepared by the purchaser at his own expense; and

(b) Shall be left for approval with the officer by whom the writ has been executed 4 days before he is called upon to execute it.

Part 6—*continued*

(2) The officer may and shall (if required) execute the instrument if and when it is approved by him.

(3) The instrument, when executed by the officer,

(a) Shall be equally effective for all purposes as if it had been duly executed by the judgment debtor; and

(b) Shall be prima facie evidence of

(i) The existence of a valid judgment and writ to support a levy by the officer; and

(ii) All necessary notices having been given and published; and

(iii) A levy having been duly made; and

(iv) A sale having taken place according to law.

Compare: 1908 No 89 Schedule 2 rr 379-381

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

605 Disposal of proceeds of sale

The officer executing any writ of sale shall, out of the proceeds of sale,

(a) Discharge all claims which by law are entitled to be paid in priority to the claim of the judgment creditor; and

(b) Pay the fees and expenses of executing the writ; and

(c) Pay over to the judgment creditor a sufficient sum to satisfy the amount directed to be levied; and

(d) Pay any surplus to the judgment debtor.

Compare: 1908 No 89 Schedule 2 r 382

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

606 When writ of possession may be issued

Where, by the judgment of the Court, a party is ordered to deliver possession of land or chattels, the party to whom the land or chattels are ordered to be delivered may issue a writ of possession.

Compare: 1908 No 89 Schedule 2 r 391

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

607 Combined writ of sale and possession

Where, by the judgment of the Court, a party is ordered to pay a sum of money and to deliver land or chattels, the party entitled to the benefit of the judgment may issue a writ, to be called a writ of sale and possession, to recover the sum of money and delivery of the land or chattels.

Compare: 1908 No 89 Schedule 2 r 393

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Writs of arrest and writs of sequestration

608 Power to issue writ of arrest

Where in any proceeding a party is ordered by the Court to do or abstain from doing any act (not being the payment of a sum of money) and fails to obey the order, the party entitled to the benefit of the order may, by leave of the Court, obtained on notice to the defaulting party, issue a writ for the arrest of that party.

Compare: 1908 No 89 Schedule 2 r 392; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

609 Power to commit to prison for disobedience

Where any person has been brought before the Court upon a writ of arrest, the Court may commit him to prison for such term as to the Court appears necessary and as may be by law allowed, unless he sooner complies with the order of the Court for non-performance or non-observance of which he has been committed.

Compare: 1908 No 89 Schedule 2 r 385

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

610 Power to issue writ of sequestration

(1) Where any person is, by any judgment or order, directed to pay money into Court, or to do any other act in a limited time, or to abstain from doing any thing, and after due service of that

Part 6—*continued*

judgment or order, refuses or neglects to obey the judgment or order, the Court may, on the application of the person entitled to the benefit of the judgment or order, issue a writ of sequestration against the estate and effects of the person in default.

(2) The sequestrator shall be appointed by the Court and the provisions of rules 339 to 346 shall apply, with all necessary modifications, as if the sequestrator were a receiver.

Compare: Rules of the Supreme Court 1965 (Tasmania) Order 48 rr 4-5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Absconding debtors and imprisonment for debt

611 Arrest of absconding debtor

(1) An order to arrest and imprison a defendant under section 55 of the Act may be made on an *ex parte* application to the Court.

(2) The defendant may at any time before or after arrest apply to the Court to rescind or vary the order or to be discharged from custody, or for other relief.

(3) The Court may, on an application under subclause (2), make such order as may be just.

(4) An order to arrest and imprison a defendant under section 55 of the Act

(a) Shall be in form 47; or

(b) Where subsection (3) of section 55 applies, in form 48.

(5) Concurrent orders may be issued for arrest in different places.

(6) Before delivery to the Sheriff the order shall be endorsed with the address for service of the plaintiff.

(7) The Sheriff or other officer named in an order to arrest and imprison a defendant under section 55 of the Act shall, within 2 days after the arrest, endorse on the order the true date of the arrest.

Compare: 1908 No 89 Schedule 2 rr 385A, 385B, 385G, 516; *Gazette*, 1911, p 3268; SR 1954/155 rr 2(1), 5; SR 1975/140 r 10

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 6—*continued*

612 Security by absconding debtor

(1) Where the Court has made an order for the arrest of a defendant under section 55 of the Act, and for his imprisonment until he has given security, the security to be given by the defendant may be

(a) A deposit in Court of the amount mentioned in the order; or

(b) A bond to the plaintiff by the defendant and 2 sufficient sureties; or

(c) With the plaintiff's consent, any other form of security.

(2) The plaintiff may, within 4 days after receiving particulars of the names and addresses of the proposed sureties, and the form of the proposed bond, give notice that he objects thereto, stating therein in what particulars.

(3) If the plaintiff gives a notice under subclause (2), the sufficiency of the security shall be determined by the Registrar, who shall have power to award the costs of the reference to either party.

Compare: 1908 No 89 Schedule 2 r 385C; *Gazette*, 1911, p 3268

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

613 Orders as to security

The Court may, at any time after judgment, order

(a) That any sum of money paid or secured under rule 612, or any part of that sum, be paid over to the plaintiff; or

(b) That any security given under rule 612 by the defendant be enforced.

Compare: 1908 No 89 Schedule 2 rr 385D, 515; *Gazette*, 1911, p 3268; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

614 Discharge on payment

(1) Upon payment into Court of the amount mentioned in the order, a receipt shall be given by the proper officer.

(2) Upon receipt of the bond or other security, a certificate to that effect shall be given by the plaintiff or his solicitor.

Part 6—*continued*

(3) The delivery of the receipt or certificate to the Sheriff shall entitle the defendant to be discharged out of custody.

Compare: 1908 No 89 Schedule 2 r 385F; *Gazette*, 1911, p 3268

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

615 Procedure

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 615 to 619 and the heading "Committal to Prison under Imprisonment for Debt Limitation Act 1908" were revoked, as from 1 January 1990, by section 4 Imprisonment for Debt Limitation Amendment Act 1989 (1989 No 108).

616 Application to be served personally

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 615 to 619 and the heading "Committal to Prison under Imprisonment for Debt Limitation Act 1908" were revoked, as from 1 January 1990, by section 4 Imprisonment for Debt Limitation Amendment Act 1989 (1989 No 108).

617 Oral examination

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 615 to 619 and the heading "Committal to Prison under Imprisonment for Debt Limitation Act 1908" were revoked, as from 1 January 1990, by section 4 Imprisonment for Debt Limitation Amendment Act 1989 (1989 No 108).

618 Form of order for committal

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 615 to 619 and the heading "Committal to Prison under Imprisonment for Debt Limitation Act 1908" were revoked, as from 1 January 1990, by section 4 Imprisonment for Debt Limitation Amendment Act 1989 (1989 No 108).

Part 6—*continued*

619 Discharge on payment

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 615 to 619 and the heading "Committal to Prison under Imprisonment for Debt Limitation Act 1908" were revoked, as from 1 January 1990, by section 4 Imprisonment for Debt Limitation Amendment Act 1989 (1989 No 108).

Discovery in aid of execution

620 Notice to judgment debtor to complete financial statement

(1) Where a judgment is for the recovery or payment of a sum of money, the party entitled to enforce it may serve on the debtor a notice in form 49 requiring him to complete and return to that party, within 14 days after the date on which the notice is served on the debtor, a statement in form 50 of

(a) The debtor's receipts and payments for the preceding 52 weeks; and

(b) The debtor's assets and liabilities.

(2) An additional copy of form 50, for the debtor's own use, shall be served with the notice.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

621 Order for examination of judgment debtor or defendant

(1) Whether or not a notice and form of statement has been served under rule 620, a party to a proceeding for the recovery or payment of money may apply for an order under this rule

(a) At any time after he has commenced the proceeding, if he desires to obtain a charging order under rules 567 to 587; and

(b) In all other cases, at any time after he has sealed judgment.

(2) Such a party may apply to the Court for an order that the other party or, if the party is a corporation, an officer thereof, do attend before the Court, or any person whom the Court may appoint, and be orally examined as to his income and expenditure, his assets and liabilities, and generally as to his means

Part 6—*continued*

for satisfying the judgment, or, if judgment has not been obtained, as to such matters as are relevant to the issue of a charging order.

(3) Upon granting the application, the Court may order the production at the examination of any books or other documents and may impose such terms and conditions as it shall think proper in respect of the conduct of the examination or otherwise.

Compare: 1908 No 89 Schedule 2 rr 333, 333A; *Gazette*, 1924, p 2790

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 7
Extraordinary remedies

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

622 Crown Proceedings Act 1950 not affected

This Part does not limit or affect the Crown Proceedings Act 1950.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 622 to 627 were substituted, as from 1 February 1998, by rule 14 High Court Amendment Rules 1997 (SR 1997/350).

623 Mandamus

(1) This rule applies when an application is made to the Court to compel

(a) An inferior Court; or

(b) A tribunal; or

(c) A person

to perform a public duty of the court, tribunal, or person.

(2) This rule does not apply if the duty is to

(a) Pay a sum of money for the non-payment of which a writ of sale may be issued; or

(b) Perform an act for the non-performance of which a writ of arrest may be issued.

Part 7—*continued*

(3) When this rule applies, the Court may make an order for mandamus ordering the Court, tribunal, or person to perform the public duty.

(4) No proceeding may be commenced against a Court, tribunal, or person for anything done to comply with an order for mandamus.

Compare: 1908 No 89 Schedule 2 r 461

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 622 to 627 were substituted, as from 1 February 1998, by rule 14 High Court Amendment Rules 1997 (SR 1997/350).

624 Injunction

(1) This rule applies when an application is made to the Court to restrain

(a) An inferior Court; or

(b) A tribunal; or

(c) A person

from a threatened or actual breach, continuation of a breach, or further breach of a duty of the Court, tribunal, or person.

(2) When this rule applies, the Court may make an order for injunction restraining a threatened or actual breach, continuation of a breach, or further breach of the duty.

(3) This rule does not affect the power of the Court to grant the equitable remedy of injunction in a case that does not come within this rule.

Compare: 1908 No 89 Schedule 2 r 462

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 622 to 627 were substituted, as from 1 February 1998, by rule 14 High Court Amendment Rules 1997 (SR 1997/350).

625 Prohibition

(1) This rule applies when an application is made to the Court to prohibit

(a) An inferior Court; or

(b) A tribunal; or

(c) A person

Part 7—*continued*

from exercising a jurisdiction that the Court, tribunal, or person is not by law empowered to exercise.

(2) When this rule applies, the Court may make an order for prohibition prohibiting the exercise of the jurisdiction.

Compare: 1908 No 89 Schedule 2 r 463

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 622 to 627 were substituted, as from 1 February 1998, by rule 14 High Court Amendment Rules 1997 (SR 1997/350).

626 Certiorari

(1) This rule applies when an application is made to the Court to review all or part of a determination of

(a) An inferior Court; or

(b) A tribunal; or

(c) A person exercising a statutory or prerogative power; or

(d) A person exercising a power that affects the public interest.

(2) When this rule applies, the Court may do 1 or both of the following:

(a) Make an order for certiorari:

(b) Make any other order that the Court thinks just.

Compare: 1908 No 89 Schedule 2 r 465

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 622 to 627 were substituted, as from 1 February 1998, by rule 14 High Court Amendment Rules 1997 (SR 1997/350).

627 Removal from office

When an application is made to the Court to remove a person from a public office, or to try the right of a person to hold a public office, the Court may

(a) Order that the person be removed from the office; or

(b) Declare who is entitled to hold the office; or

(c) Make both an order under paragraph (a) and a declaration under paragraph (b).

Compare: 1908 No 89 Schedule 2 r 464

Part 7—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 622 to 627 were substituted, as from 1 February 1998, by rule 14 High Court Amendment Rules 1997 (SR 1997/350).

627A Death, resignation, or removal of party

(1) This rule applies if

(a) An order is sought under this Part against a person; and

(b) The person no longer holds office because of death, resignation, or removal.

(2) This rule does not apply if the cause of action has come to an end.

(3) When this rule applies, the proceeding may be continued

(a) In the name of the person; or

(b) In the name of the person's successor, on the application of the successor or a person interested, and with all necessary amendments.

(4) An order directed to, or made in the name of, the person is binding on the successor.

Compare: 1908 No 89 Schedule 2 r 468(j); *Gazette*, 1936, p 536

Rules 627A and 627B were inserted, as from 1 February 1998, by rule 14 High Court Amendment Rules 1997 (SR 1997/350).

627B Interim orders

(1) When an application is made under this Part, the Court may make interim orders on such terms and conditions as the Court thinks fit.

(2) An applicant who applies for an interim order must file a signed undertaking in the terms stated in subclause (3).

(3) Those terms are to the effect that the applicant will abide by any order that the Court may make in respect of damages

(a) That are sustained by any other party through the making of the interim order; and

(b) That the Court decides the applicant ought to pay.

(4) The undertaking must be referred to in the order and is part of it.

Compare: 1908 No 89 Schedule 2 rr 468B, 468C; *Gazette*, 1909, p 644

Part 7—*continued*

Rules 627A and 627B were inserted, as from 1 February 1998, by rule 14 High Court Amendment Rules 1997 (SR 1997/350).

628 Procedure

(1) Every application for the assistance of the Court under this Part, and every application for review under Part 1 of the Judicature Amendment Act 1972 shall (notwithstanding section 4 of that Act) be commenced by statement of claim and notice of proceeding in accordance with Part 2 of these rules.

(2) In the case of an application for review, the backing sheet shall state that it is an application for review.

(3) Where relief is claimed under this Part, the statement of claim may claim more than one of the remedies referred to in this Part and may claim any other relief (including damages) to which the plaintiff may be entitled.

(4) The procedure prescribed in Part 1 of the Judicature Amendment Act 1972 shall apply, subject to these rules, to applications for review under that Part.

(5) Section 9 of the Judicature Amendment Act 1972 shall apply in respect of an application for review under Part 1 of that Act as if the reference to a motion were a reference to a notice of proceeding filed in accordance with these rules.

(6) Subject to subclause (7), every proceeding to which this Part applies shall continue as provided in Part 4 unless some other substantial relief is claimed or the Court otherwise orders, in which case it shall continue as an ordinary proceeding.

(7) In an application for review under Part 1 of the Judicature Amendment Act 1972, a Judge may exercise the powers conferred by section 10 of that Act.

Compare: 1908 No 89 Schedule 2 r 466B; *Gazette*, 1936, p 536

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

629 Interim orders

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 7—*continued*

Rules 629 to 631 were revoked, as from 1 February 1998, by rule 19(e) High Court Amendment Rules 1997 (SR 1997/350).

630 Undertakings in relation to interim orders

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 1 January 1989, by rule 19 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by substituting the words "the applicant shall give an undertaking" for the words "there shall be filed an undertaking by the applicant".

Rules 629 to 631 were revoked, as from 1 February 1998, by rule 19(e) High Court Amendment Rules 1997 (SR 1997/350).

631 Death, etc, of party

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 629 to 631 were revoked, as from 1 February 1998, by rule 19(e) High Court Amendment Rules 1997 (SR 1997/350).

Part 8
Probate and administration

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

General

Heading: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

632 Definitions for rules 632 to 664

For the purposes of rules 632 to 664,—

administration—

(a) means probate of a deceased's will; and

(b) includes letters of administration of a deceased's estate, granted with or without a will annexed, for general, special, or limited purposes; and

Part 8—*continued*

(c) for Public Trust or the Maori Trustee or a trustee company as defined in the Trustee Companies Act 1967, includes—

(i) an order to administer; and

(ii) an election to administer

administrator—

(a) means a person to whom administration is granted; and

(b) includes Public Trust or the Maori Trustee or a trustee company as defined in the Trustee Companies Act 1967 treated as an executor or administrator because it has filed an election to administer

executed,—

(a) for a will made on or after 1 November 2007, means signed and witnessed as described in section 11(3) and (4) of the Wills Act 2007; and

(b) for a will made before 1 November 2007, means signed and witnessed as described in section 11(3) and (4), as modified by section 40(2)(i), of the Wills Act 2007

grant means a grant of administration

will is defined in the Wills Act 2007.

Schedule 2 rule 632: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "rules 237 and 240" for the words "rules 234 to 237". *See* rule 19 of those Rules as to the transitional provisions.

Subclause (2) was inserted, as from 1 January 1986, by rule 19 High Court Amendment Rules 1985 (SR 1985/328).

Subclause (2) was revoked, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

633 Kinds of applications for grants

An application for a grant is made by—

(a) an application without notice under rule 634; or

(b) an application in solemn form under rule 636.

Part 8—*continued*

Schedule 2 rule 633: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Applications without notice

Heading: inserted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

634 Applications without notice

(1) This rule applies to an application without notice.

(2) Rule 41 does not apply to the application.

(3) The application is headed in the same way as form 51.

(4) A lawyer may give the certificate required by rule 240(2), even though he or she—

(a) is one of the witnesses to the will that the application is about; or

(b) is named as an executor in the will; or

(c) is an executor of the will according to its tenor.

(5) If the applicant knew the deceased or knows about the deceased's death personally, the applicant must file an affidavit in whichever is appropriate of forms 51 to 56 to prove the deceased's death.

(6) If the applicant did not know the deceased and does not know about the deceased's death personally,—

(a) paragraphs 1 and 2 of forms 51 to 56 must be omitted; and

(b) another person must swear an affidavit proving the deceased's death, in the form of paragraphs 1 and 2 of form 51.

(7) If the application is for a grant of probate or a grant of letters of administration with the will annexed, the applicant must file an affidavit in form 51 or 52 to prove the validity of the will that the application is about.

(8) The procedure for dealing with the application is the same as for an *ex parte* application under rules 237 and 240, subject to rules 632 to 664.

Part 8—*continued*

(9) A form presented for filing under this rule is not invalid just because it contains minor differences from a prescribed form as long as the form still has the same effect and is not misleading.

Compare: 1908 No 89 Schedule 2 rr 632, 634(1), 635, 636 (pre-1 November 2007); 1999 No 85 s 26

Schedule 2 rule 634: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1)(aa) was inserted, as from 1 January 1987, by rule 9 High Court Amendment Rules 1986 (SR 1986/228).

Subclause (1)(b) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 240(2)" for the expression "rule 237(1)". *See* rule 19 of those Rules as to the transitional provisions.

Subclause (1)(c) was revoked, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

635 Restrictions if possibly invalid will exists

(1) This rule applies if the applicant—

(a) knows of a will later than the will that the application is about;

(b) and has reason to believe that the later will is invalid.

(2) This rule also applies if the applicant—

(a) seeks a grant because the deceased was intestate; and

(b) knows of a will; and

(c) has reason to believe that the will is invalid.

(3) The applicant may make an application under rule 634 containing proof that—

(a) the applicant has given the executor named in the will written or electronic notice of the applicant's intention to apply; and

(b) the executor has not applied for a grant within 1 month after service of the notice; and

(c) a caveat has not been lodged against a grant within 1 month after service of the notice.

(4) The Court—

Part 8—*continued*

(a) may direct the applicant to apply for an order under section 53 of the Administration Act 1969; and

(b) must defer dealing with the application under rule 634 until the application under section 53 has been determined.

Compare: 1908 No 89 Schedule 2 r 634(2), (3) (pre-1 November 2007)

Schedule 2 rule 635: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 635 was amended, as from 1 January 1987, by rule 10 High Court Amendment Rules 1986 (SR 1986/228) by substituting the words "does not" for the words "is unable to".

Applications in solemn form

Heading: inserted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

636 Applications in solemn form

(1) This rule applies to an application in solemn form.

(2) An application is made in solemn form if—

(a) the applicant chooses to apply in that way; or

(b) the applicant is ordered to apply in that way.

(3) Part 2 applies to the application.

(4) The procedure for dealing with the application is the same as for an ordinary proceeding, subject to rules 632 to 664.

Compare: 1908 No 89 Schedule 2 rr 633, 638 (pre-1 November 2007)

Schedule 2 rule 636: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

637 Respondents and additional parties

(1) The applicant may apply to the Court for directions as to the persons to be named as respondents to an application under rule 636.

(2) If the applicant does not apply, or if the Court does not give directions, the applicant must name as respondents—

Part 8—*continued*

(a) the person who may be entitled to a grant if the applicant does not obtain the grant; and
(b) all persons who have lodged caveats under rule 641.

(3) A person interested in the result of an application under rule 636 may apply to the Court to be added as a party.

(4) If the Court is satisfied that the interests of the person are not already adequately represented, it may—
(a) order that the person be added; and
(b) impose conditions on the order, if necessary; and
(c) give directions as to the part that the person is to take in the hearing of the application.

Compare: 1908 No 89 Schedule 2 rr 639, 640 (pre-1 November 2007)

Schedule 2 rule 637: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

638 Compromises

(1) This rule applies if an application under rule 636 is the subject of a compromise, whether or not a statement of defence has been filed.

(2) The Court may direct—
(a) that the application is to be treated as an application under rule 634; and
(b) that evidence on the application may be given by affidavit.

Compare: 1908 No 89 Schedule 2 r 642 (pre-1 November 2007)

Schedule 2 rule 638: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

639 Pleadings

(1) This rule applies to an application under rule 636 in which a pleading states that the will that the application is about is invalid.

Part 8—*continued*

(2) This rule also applies to an application under rule 636 in which a pleading states that a will that is the subject of a grant obtained by way of an application without notice is invalid.

(3) The pleading must state the substance of the case against validity.

(4) If the allegation is that the will's execution was not valid, the pleading must state the facts on which the allegation is based.

(5) If the allegation is that the will-maker did not have testamentary capacity when the will was executed, the pleading must state whether the incapacity lay in—

(a) the will-maker's lack of ability to comprehend or recollect the extent of his or her estate; or

(b) the will-maker's lack of ability to comprehend or recollect the claims of persons excluded from participating in his or her estate; or

(c) the will-maker's insane delusions about the persons who have claims on his or her estate; or

(d) some other specified incapacity.

Compare: 1908 No 89 Schedule 2 r 641 (pre-1 November 2007)

Schedule 2 rule 639: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Filing and lodging

Heading: inserted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

640 Where application is filed

(1) This rule applies to an application, and all other documents, filed under rules 632 to 664.

(2) If the deceased resided in New Zealand when he or she died, the application and documents must be filed in the office of the Court nearest, by the most practicable route, to the place where he or she resided at death.

(3) If the deceased did not reside in New Zealand when he or she died and his or her property is situated in only 1 place in New

Part 8—*continued*

Zealand, the application and documents must be filed in the office of the Court nearest, by the most practicable route, to the place where his or her property is situated.

(4) If the deceased did not reside in New Zealand when he or she died and his or her property is situated in more than 1 place in New Zealand, the application and documents must be filed in the office of the Court in Wellington or an office specified under subclause (6).

(5) If the deceased did not reside in New Zealand when he or she died and left no property in New Zealand, the application and documents must be filed in the office of the Court in Wellington or an office specified under subclause (6).

(6) If subclause (4) or (5) applies,—

(a) the applicant may make an interlocutory application for an order specifying the office of the Court in which the application and documents are to be filed; and

(b) the Court may make an order specifying the office.

(7) If an application or a document is filed in the wrong office of the Court, the Court may order the transfer of the application or document to the right office.

Compare: 1908 No 89 Schedule 2 r 643 (pre-1 November 2007)

Schedule 2 rule 640: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

641 Where caveat is lodged

(1) This rule applies to a caveat under section 60 of the Administration Act 1969.

(2) The caveat must be in form 60.

(3) The caveat must be lodged with the Registrar in the office in which the application is required to be filed under rule 640.

Compare: 1908 No 89 Schedule 2 r 644 (pre-1 November 2007)

Schedule 2 rule 641: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 8—*continued*

Rules that apply whether or not will advanced and relied on

Heading: inserted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

642 Evidence of death

(1) The Court may accept any evidence that satisfies it of the death of a person whose estate is the subject of an application for a grant, unless no dead body has been identified as that of the person.

(2) If no dead body has been identified as that of the person, the applicant must apply for leave to swear death.

(3) The applicant applies by—

(a) making an interlocutory application before filing an application for a grant; or

(b) incorporating the application for leave to swear death in an application without notice under rule 634.

(4) The applicant must file affidavits stating—

(a) the circumstances under which the application is made; and

(b) the facts from which the Court is invited to infer death; and

(c) whether or not the person's life was insured and, if it was, the name and address of the insurer.

(5) If the person's life was insured,—

(a) the applicant must serve notice of the application and copies of the affidavits on the insurer; and

(b) the insurer is treated as a party to the application for the purposes of rules 234 to 277.

(6) The Court may make an order that the person is presumed to be dead for the purposes of the grant.

(7) The Court may accept any evidence that satisfies it of the death of a person who, if alive, would have been entitled to a grant.

Compare: 1908 No 89 Schedule 2 rr 645, 646 (pre-1 November 2007)

Schedule 2 rule 642: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

Part 8—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

643 Sale of perishable property

(1) This rule applies if—

(a) a deceased leaves perishable property; and

(b) the property's value may be greatly diminished before the Court can make a grant.

(2) A person interested in the deceased's estate may apply to the Court for an order—

(a) authorising a named person to sell the property; and

(b) directing the payment of the proceeds to the Registrar for the deceased's estate.

(3) The Court may make the order.

Compare: 1908 No 89 Schedule 2 r 649 (pre-1 November 2007)

Schedule 2 rule 643: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was amended, as from 1 October 2001, by rule 11 High Court Amendment Rules 2001 (SR 2001/220) by inserting, after the words "New Zealand" in the second place where they appear, the words "or if the deceased left no property in New Zealand".

Subclause (4) was inserted, as from 1 January 1986, by rule 20 High Court Amendment Rules 1985 (SR 1985/328).

644 Registrars may make some orders

(1) This rule applies to the following registrars:

(a) all Registrars; and

(b) all Senior Deputy Registrars in the Auckland office; and

(c) no other deputy registrars.

(2) The registrars have the powers of the Court under—

(a) sections 5 to 9A and sections 12, 19, 21, 44, and 61(a)(ii) of the Administration Act 1969; and

(b) section 380(4)(c)(iii) of the Insolvency Act 2006; and

(c) section 154(3) of the Insolvency Act 1967; and

(d) section 76 of the Public Trust Act 2001; and

(e) section 35(4) of the Trustee Act 1956; and

(f) section 8(1) of the Trustee Companies Act 1967; and

Part 8—*continued*

(g) rule 640(6)(b); and
(h) rule 642(6), if an unopposed application has been made under rule 642(3); and
(i) rule 643(3); and
(j) rule 659(2); and
(k) rule 660(1) to (4); and
(l) rule 664(2).

(3) Rules 272 to 276 apply to a registrar acting under subclause (2). For this purpose, references in them to "rule 270 or rule 271" must be read as references to "rule 644(2)".

Compare: 1908 No 89 Schedule 2 r 651 (pre-1 November 2007)

Schedule 2 rule 644: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules that apply when will advanced and relied on

Heading: inserted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

645 Application of rules 646 to 658

Rules 646 to 658 apply to every case in which a will is advanced and relied on—

(a) for a grant of probate; or
(b) for a grant of letters of administration with the will annexed.

Compare: 1908 No 89 Schedule 2 r 654 (pre-1 November 2007)

Schedule 2 rule 645: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

646 Evidence as to execution

(1) A person who knows the relevant facts personally may provide the evidence required by rules 647 to 658.

Part 8—*continued*

(2) If the evidence relates to the fact, date, manner, or circumstances of the execution of a will, the person providing the evidence must be—

(a) an attesting witness; or

(b) a person present when the will was executed.

(3) If the authenticity of the signature of the will-maker or an attesting witness is in doubt, the Court may accept evidence from any appropriate person to prove that the signature is in the handwriting of the will-maker or the attesting witness.

(4) If the application is unopposed, evidence given under this rule must be given by affidavit. Form 62 may be used.

Compare: 1908 No 89 Schedule 2 r 664 (pre-1 November 2007)

Schedule 2 rule 646: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

647 Valid execution

(1) For wills made on or after 1 November 2007, each of the following is evidence that a will's execution was valid:

(a) a clause, in the will, consisting of a statement describing the actions complying with section 11(3) and (4) of the Wills Act 2007:

(b) evidence given under rule 646 satisfying the Court that the will complies with section 11(3) and (4) of the Wills Act 2007:

(c) an order made under section 14 of the Wills Act 2007.

(2) For wills made before 1 November 2007, each of the following is evidence that a will's execution was valid:

(a) an attestation clause, in the will, consisting of a recital describing the actions complying with section 11(3) and (4), as modified by section 40(2)(i), of the Wills Act 2007:

(b) evidence given under rule 646 satisfying the Court that the will complies with section 11(3) and (4), as modified by section 40(2)(i), of the Wills Act 2007.

Compare: 1908 No 89 Schedule 2 r 657 (pre-1 November 2007)

Part 8—*continued*

Schedule 2 rule 647: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

648 Doubt as to will-maker's understanding

(1) This rule applies if—

(a) a person directed by the will-maker signed the will-maker's will in the will-maker's presence; and

(b) the will does not state that the will-maker read over the will and thoroughly understood it before the will-maker directed the person to sign it.

(2) This rule also applies if—

(a) the will-maker—

(i) was blind; or

(ii) was illiterate; or

(iii) signed the will by mark; and

(b) the will does not state that the will was read over to and thoroughly understood by the will-maker before the will-maker signed it.

(3) This rule also applies if the Court is doubtful for any other reason whether or not the will-maker, at the time the will was signed,—

(a) thoroughly understood the will; or

(b) had full knowledge of its contents.

(4) Evidence must be given under rule 646 satisfying the Court that the will-maker, at the time the will was signed,—

(a) thoroughly understood the will; or

(b) had full knowledge of its contents.

Compare: 1908 No 89 Schedule 2 r 658 (pre-1 November 2007)

Schedule 2 rule 648: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

649 Doubt as to originality of signature

(1) This rule applies if it appears to the Court, when it inspects a will, that a signature on it—

Part 8—*continued*

(a) may not be an original signature; or
(b) may be a reproduction of the original signature.

(2) The Court may require evidence to prove whether or not the signature is an original signature.

Compare: 1908 No 89 Schedule 2 r 662(3) (pre-1 November 2007)

Schedule 2 rule 649: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

650 Doubt as to date

If there is doubt as to the date on which a will was executed, the Court may require evidence to prove the date.

Compare: 1908 No 89 Schedule 2 r 661 (pre-1 November 2007)

Schedule 2 rule 650: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

651 Changes

(1) This rule applies if—
(a) a change appears on a will; and
(b) the change is of practical importance; and
(c) the change was not made,—
(i) for a will made on or after 1 November 2007, by a means described in section 15 of the Wills Act 2007; or
(ii) for a will made before 1 November 2007, by a means described in section 15, as modified by section 40(2)(1), of the Wills Act 2007.

(2) The Court may require evidence to prove whether or not the change was present when the will was executed.

(3) The Court may give directions as to the form in which the will is to be proved.

(4) Words that have been changed form part of a will as proved if the change does not obliterate the words in such a way as to prevent their effect being apparent.

Part 8—*continued*

(5) Subclause (4) applies even though there is no satisfactory evidence that the words were changed before the will was executed.

Compare: 1908 No 89 Schedule 2 r 659 (pre-1 November 2007)

Schedule 2 rule 651: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 1 January 1989, by rule 20 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the word "Napier,".

Subclause (1) was amended, as from 1 June 1990, by rule 12 High Court Amendment Rules 1990 (SR 1990/66) by substituting the words "Every Registrar, and the Deputy Registrar who is for the time being designated as the Senior Deputy Registrar at the registry of Auckland," for the words "The Registrars (not being Deputy Registrars) for the time being exercising their office at the registries of Auckland, Hamilton, Rotorua, Napier, Palmerston North, Wellington, Christchurch, and Dunedin".

Subclause (1) was amended, as from 24 August 2007, by rule 17 High Court Amendment Rules 2007 (SR 2007/206) by substituting "any Deputy Registrar who is for the time being designated as a Senior Deputy Registrar at the Auckland registry," for "the Deputy Registrar who is for the time being designated as the Senior Deputy Registrar at the registry of Auckland,".

652 Revocations or revivals by other document

(1) This rule applies if—

(a) it appears to the Court, when it inspects a will, that some other document has been attached to it; or

(b) a will contains a reference to another document in terms suggesting that it ought to be incorporated in the will.

(2) The Court may require the other document to be produced or its non-production to be explained.

(3) The Court may require evidence as to—

(a) the attaching or incorporation of the document; and

(b) when it came into existence.

Compare: 1908 No 89 Schedule 2 r 660 (pre-1 November 2007)

Schedule 2 rule 652: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 8—*continued*

653 Revocation

(1) This rule applies if it appears to the Court that,—

(a) for a will made on or after 1 November 2007, one of the means of revocation described in section 16 of the Wills Act 2007 may have been used; or

(b) for a will made before 1 November 2007, one of the means of revocation described in section 16, as modified by section 40(2)(m) and (n), of the Wills Act 2007 may have been used.

(2) The applicant must satisfy the Court that the will has not been revoked.

Compare: 1908 No 89 Schedule 2 r 663 (pre-1 November 2007)

Schedule 2 rule 653: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2) was amended, as from 24 May 1999, by section 15(1) Estate Duty Abolition Act 1999 (1999 No 64) by inserting the words "(as in force before its repeal by the Estate Duty Repeal Act 1999)".

654 Duplicate wills

(1) This rule applies if more than 1 copy of a will has been executed.

(2) All executed copies must be produced to the Court, or accounted for to its satisfaction, to exclude an inference of revocation.

(3) If the Court doubts whether subclause (2) has been complied with, it may require evidence to prove that it was.

Compare: 1908 No 89 Schedule 2 r 662(1), (2) (pre-1 November 2007)

Schedule 2 rule 654: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Grant with will annexed

Heading: inserted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

Part 8—*continued*

655 Circumstances in which grant may be made

(1) This rule applies if a will exists but does not appoint an executor.

(2) This rule also applies if a will exists but appoints an executor who—

- (a) has died during the will-maker's life; or
- (b) has survived the will-maker but has died without obtaining a grant; or
- (c) has renounced probate of the will; or
- (d) is a former spouse or former civil union partner of the will-maker whose appointment is void under section 19 of the Wills Act 2007, for a will made on or after 1 November 2007; or
- (e) is a former spouse of the will-maker whose appointment is void under section 19, as modified by section 40(2)(q), of the Wills Act 2007, for a will made before 1 November 2007; or
- (f) is incapable of acting as an executor but does not have an attorney for the purposes of section 9A of the Administration Act 1969.

(3) This rule also applies if—

- (a) section 19 of the Administration Act 1969 applies to an executor; and
- (b) no one entitled to apply for an order nisi under the section has done so within 4 months after the willmaker's death.

(4) The Court may grant letters of administration with the will annexed to the person entitled to them according to the priority in rule 656.

Compare: 1908 No 89 Schedule 2 r 655(1), (3) (pre-1 November 2007)

Schedule 2 rule 655: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1)(b)(iv) was amended, as from 1 June 1990, by rule 13 High Court Amendment Rules 1990 (SR 1990/66) by omitting the word "minority,".

Part 8—*continued*

656 Priority of potential administrators for purposes of rule 655(4)

(1) The first in priority is a residuary beneficiary holding in trust for any other person.

(2) The second in priority is a residuary beneficiary for life.

(3) The third in priority is,—

- (a) if the will disposes of the whole residue, the ultimate residuary beneficiary; or
- (b) if the will does not dispose of the whole residue but the Court is satisfied that it disposes of the whole or substantially the whole of the estate as ascertained by the time the application for the grant is made,—
  - (i) a beneficiary entitled to the estate; or
  - (ii) a beneficiary entitled to a share in the estate; or
- (c) if the will does not dispose of the whole residue and the Court is not satisfied that it disposes of the whole or substantially the whole of the estate as ascertained by the time the application for the grant is made,—
  - (i) a person entitled to a share in the residue not disposed of or the person's personal representative; or
  - (ii) the Attorney-General, if entitled to claim the residue as bona vacantia on behalf of the Crown.

(4) The fourth in priority is—

- (a) a specific beneficiary or the beneficiary's personal representative; or
- (b) a creditor or the creditor's personal representative; or
- (c) if the will does not dispose of the whole estate, a person who has no immediate beneficial interest in the estate because of its small amount but may have a beneficial interest if the estate increases.

(5) The fifth in priority is a specific or residuary beneficiary who is entitled on the happening of a contingency.

(6) The sixth in priority is a person who—

- (a) has no interest under the will; and
- (b) would be entitled to a grant if the deceased had died wholly intestate.

Part 8—*continued*

(7) Persons who are third, fourth, or fifth in priority, and are entitled to the grant, are entitled to the grant in order of priority in their class according to the value of their interests or the amounts of their debts.

Compare: 1908 No 89 Schedule 2 r 655(2), (4) (pre-1 November 2007)

Schedule 2 rule 656: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was amended, as from 1 February 2002, by rule 11(a) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by inserting the words "and not disqualified" after the word "competent".

Subclause (1) was amended, as from 1 February 2002, by rule 11(b) High Court Amendment Rules (No 2) 2001 (SR 2001/382) by inserting the words "or disqualified" after the word "incompetent".

656A Grant of letters of administration with will annexed during minority of executor

[Repealed]

Schedule 2 Rule 656A: revoked, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 656A was inserted, as from 1 June 1990, by rule 14 High Court Amendment Rules 1990 (SR 1990/66).

657 Proving entitlement to grant

(1) This rule applies if—

(a) an applicant applies for a grant of letters of administration with the will annexed; and

(b) rule 656 would give persons other than the applicant a priority that is higher than, or equal to, that of the applicant.

(2) The applicant must—

(a) satisfy the Court that all the persons are dead, incompetent, or disqualified; or

(b) satisfy the Court that the applicant has given all the persons notice of the intended application; or

Part 8—*continued*

(c) attach the written consents of all the persons to an affidavit in form 52.

(3) The Court may excuse the applicant from giving notice to, or obtaining the consent of, a person who, at the time of the application,—

(a) is beyond the jurisdiction of the Court; or

(b) cannot be found.

(4) The Court may impose conditions under subclause (3).

Compare: 1908 No 89 Schedule 2 r 656 (pre-1 November 2007)

Schedule 2 rule 657: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

658 Grant while executor is minor

(1) This rule applies if a person is, when the Court grants letters of administration with the will annexed—

(a) the sole executor of the will; and

(b) a minor; and

(c) not entitled to a grant under section 9(3) of the Administration Act 1969.

(2) The Court may grant letters of administration with the will annexed to any appropriate person.

(3) The person is entitled to the grant until the minor becomes entitled to and obtains a grant.

Compare: 1908 No 89 Schedule 2 r 656A (pre-1 November 2007)

Schedule 2 rule 658: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 658 was substituted, as from 1 January 1986, by rule 21 High Court Amendment Rules 1985 (SR 1985/328).

Grants

Heading: inserted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

Part 8—*continued*

659 Time for making grant

(1) The following time limits apply to the making of a grant:

(a) for probate or letters of administration with the will annexed, no earlier than 7 days from the date of the will-maker's death; and

(b) for other letters of administration, no earlier than 14 days from the date of the deceased's death.

(2) If the applicant for the grant applies for the shortening of a time limit, the Court may shorten it.

Compare: 1908 No 89 Schedule 2 r 648 (pre-1 November 2007)

Schedule 2 rule 659: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

660 Grants to attorneys

(1) The Court may make a grant to the lawfully constituted attorney of a person who—

(a) is entitled to the grant; and

(b) does not reside in New Zealand.

(2) The Court may make a grant to the holder of an enduring power of attorney for a donor to whom section 9A of the Administration Act 1969 applies.

(3) If the person or the donor is 1 of 2 or more executors, the Court may make the grant to the attorney or the holder only after—

(a) the attorney or the holder has given notice to the other executors; or

(b) the Court has dispensed with notice.

(4) The Court may limit the grant in any way.

(5) A grant under section 9A of the Administration Act 1969 must convey the effect of sections 9A(6) and 9B(2) of the Act.

(6) The grant is for the use and benefit of the person or donor.

Compare: 1908 No 89 Schedule 2 r 647 (pre-1 November 2007)

Schedule 2 rule 660: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 8—*continued*

661 Common or solemn form

(1) A grant on an application under rule 634 must be in common form in whichever is appropriate of forms 57, 58, and 59.

(2) A grant on an application under rule 636 must be in solemn form.

Compare: 1908 No 89 Schedule 2 rr 637, 638 (pre-1 November 2007)

Schedule 2 rule 661: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

After grant made

Heading: inserted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

662 Inventory and account filed by administrator

(1) A person interested in a deceased's estate may apply for an order that the estate's administrator file the following documents:

- (a) an accurate inventory of the estate; and
- (b) an account of the estate that—
  - (i) is accurate; and
  - (ii) states the dates and details of all receipts and disbursements; and
  - (iii) states which of the receipts and disbursements were on capital account and which on revenue account.

(2) The applicant must—

- (a) make the application within 3 years after the date of the grant appointing the administrator; and
- (b) serve the administrator with notice of the application.

(3) If the Court makes an order,—

- (a) the administrator must file the documents within the period after the service of the order that the Court specifies; and
- (b) the account must be current to—
  - (i) the date of service of the order; or

Part 8—*continued*

(ii) another date specified in the order.

(4) If no one makes an application, or if the Court does not make an order,—

(a) the administrator may file the documents if he or she wishes to do so and at any time he or she wishes; and

(b) the account must state the date to which it is current.

(5) The administrator must file an affidavit verifying the documents.

(6) The administrator must file the documents in the office of the Court in which the grant was made.

Compare: 1908 No 89 Schedule 2 r 652 (pre-1 November 2007)

Schedule 2 rule 662: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

663 Administration of overseas assets

(1) An administrator administering overseas assets may request the Court to seal an exemplification of administration in form 61

(2) Alternatively, an administrator administering overseas assets may request the Court to—

(a) seal a duplicate of the grant; or

(b) seal and certify a copy or photocopy of the grant.

(3) The administrator must file an affidavit as to the purpose for which the duplicate, copy, or photocopy is required.

Compare: 1908 No 89 Schedule 2 r 653 (pre-1 November 2007)

Schedule 2 rule 663: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

664 Recall of grant

(1) If a grant is made in common form, a person may make an interlocutory application for an order for the recall of the grant.

(2) The Court may make an order recalling the grant only if—

(a) the application is unopposed; and

Part 8—*continued*

(b) one of the following circumstances exists:
  (i) the grant was made on the basis that the deceased died intestate and a will has been found; or
  (ii) a will has been found with a date later than that of the will of which probate was granted; or
  (iii) the person to whom the grant was made applies for the recall; or
  (iv) the person to whom the grant was made consents to the recall.

(3) If subclause (2) is not satisfied, a person wishing to apply for an order for the recall of the grant must bring proceedings.

(4) Rule 639 applies to an application under subclause (1) and the proceedings referred to in subclause (3).

Compare: 1908 No 89 Schedule 2 r 650 (pre-1 November 2007)

Schedule 2 rule 664: substituted, on 1 November 2007, by rule 5 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Applications on intestacy

665 Order of priority for grant in case of intestacy

(1) Subject to section 6 of the Administration Act 1969, where a person has died wholly intestate, the right to apply for letters of administration of his estate shall be determined in accordance with the order of priority set out in subclause (2).

(2) The order of priority referred to in subclause (1) is as follows:
  (a) First, the persons having a beneficial interest in the estate, according to the order of priority set out in subclause (3):
  (b) Second, the Attorney-General, if he claims *bona vacantia* on behalf of the Crown:
  (c) Third, a creditor of the deceased, or any person who, notwithstanding that he has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.

Part 8—*continued*

(3) Persons having a beneficial interest in the estate shall be entitled to a grant of administration in the following order of priority, namely:

(a) the surviving spouse or the surviving civil union partner or the surviving de facto partner entitled to succeed on the intestacy, if paragraph (aa) does not apply and his or her beneficial interest in the estate is not affected,

(i) in the case of a surviving spouse, by section 12(2) of the Matrimonial Proceedings Act 1963 (as applied by section 191(3) of the Family Proceedings Act 1980); or

(ii) in the case of a surviving spouse or a surviving civil union partner, by section 26(1) of the Family Proceedings Act 1980; or

(iii) in every case, by the choice he or she has made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he or she has chosen option B:

(aa) in a case of the kind referred to in section 77C of the Administration Act 1969 (succession on intestacy if intestate dies leaving a spouse or a civil union partner and 1 or more de facto partners, or 2 or more de facto partners), any surviving spouse, surviving civil union partner, or surviving de facto partner entitled to succeed on the intestacy, if his or her beneficial interest in the estate is not affected in any of the ways stated in paragraph (a)(i) to (iii):

(b) The children of the deceased (including any persons entitled by virtue of the Legitimation Act 1939 or the Status of Children Act 1969) or, failing them, the issue of any such child who has died during the lifetime of the deceased:

(c) The parent or parents of the deceased:

(d) Brothers and sisters of the full or half blood, or, failing them, the issue of any such brother or sister who has died during the lifetime of the deceased:

(e) Grandparents:

Part 8—*continued*

(f) Uncles and aunts of the full or half blood, or failing them, the issue of any such uncle or aunt who has died during the lifetime of the deceased.

(4) The personal representative of a person in any of the classes referred to in subclause (3) or the personal representative of a creditor shall have the same right to a grant as the person whom he represents.

(5) Where the deceased died on or after the 27th day of October 1955, the provisions of the Adoption Act 1955 shall apply in determining entitlement to a grant in the same manner as they apply to devolution of property on intestacy.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (3)(a) was substituted, as from 1 February 2002, by rule 12 High Court Amendment Rules (No 2) 2001 (SR 2001/382).

Subclause (3)(aa) was inserted, as from 1 February 2002, by rule 12 High Court Amendment Rules (No 2) 2001 (SR 2001/382).

Subclause (3)(a) and (3)(aa) were substituted, as from 1 July 2005, by rule 9 High Court Amendment Rules 2005 (SR 2005/148).

666 Justification of entitlement to grant

(1) Where application is made for a grant of letters of administration of the estate of a person who has died wholly intestate and persons other than the applicant would (if living and competent) have, under rule 665, a priority that is higher than or equal to that of the applicant, the applicant

(a) Shall adduce proof to the satisfaction of the Court

(i) That such persons are dead or incompetent; or

(ii) That notice of his intended application has been given to them; or

(b) Shall file their consents in writing, duly verified by affidavit.

(2) Notwithstanding subclause (1), the Court may, in its discretion, on such conditions (if any) as it thinks fit, dispense with the giving of notice to, or the obtaining of the consent of, any person who, at the time of the application,

Part 8—*continued*

(a) Is beyond the jurisdiction of the Court; or

(b) Cannot be found.

(3) The applicant shall adduce proof to the satisfaction of the Court of the identity and relationship with the deceased of any person who, under rule 665, has a priority that is higher than or equal to that of the applicant.

(4) Where the applicant is the surviving spouse or the surviving civil union partner, the applicant shall adduce proof to the satisfaction of the Court that at the time of the death of the deceased neither a decree of separation made under section 11 of the Matrimonial Proceedings Act 1963 nor a separation order made under Part 3 of the Family Proceedings Act 1980 was in force between the applicant and the deceased.

(5) Nothing in this rule shall limit the power of the Court to require evidence of other facts which may be necessary to enable the Court to exercise its discretion in relation to making a grant to the applicant, including evidence where it appears that the Crown is or may be entitled to a grant under the law relating to *bona vacantia.*

Compare: 1908 No 89 Schedule 2 r 531C; *Gazette*, 1909, p 644; SR 1954/155 r 2(1)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (4) was amended, as from 1 July 2005, by rule 10 High Court Amendment Rules 2005 (SR 2005/148) by inserting the words "or the surviving civil union partner" after the words "the surviving spouse".

Trustees' commission

667 Form of application for commission

(1) Every application to the Court under section 72 of the Trustee Act 1956 for the allowance to any person who is or has been a trustee of the property subject to any trust, or to that person's personal representative, of a commission or percentage out of that property shall be made by statement of claim in accordance with Part 2.

(2) Notwithstanding subclause (1),

Part 8—*continued*

(a) Where the trust was created by will or arises upon an intestacy; or

(b) Where there has been a previous application for commission (whether or not by the same applicant),

the application shall be made by interlocutory application in the proceeding for probate or letters of administration, or in the earlier proceeding for commission, as the case may be.

Compare: SR 1961/81 r 2

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

668 Affidavit in support

Every such application shall be supported by an affidavit or affidavits showing:

(a) How and when the trust was constituted, the names of all present and previous trustees thereof, and the period during which each held office:

(b) Such information as may be necessary in accordance with rule 451 to enable an order giving directions as to service to be made:

(c) Particulars of any commission or percentage out of the trust property previously allowed by the Court to, or taken in accordance with the instrument (if any) creating the trust or with the consent of the beneficiaries or otherwise by, each person who is or has been a trustee or the personal representative of a trustee:

(d) Whether any profit, benefit, or advantage has been derived directly or indirectly by any trustee of the trust property or by any partner, relative, servant, or personal representative of any trustee, from or in connection with the administration thereof; and, if so, particulars of every such profit, benefit, and advantage:

(e) The amount of the allowance sought by each applicant, and the basis or principle by which the same is arrived at; and, if an order is sought under section 72(3) of the Trustee Act 1956 apportioning the total amount allowed, the basis on which the proposed apportionment is sought:

Part 8—*continued*

(f) If the trustees who or whose personal representatives are making the application have not been the only trustees since the inception of the trust, information as to the extent to which, up to the date to which a commission or percentage is applied for, the trust property has been realised and income got in and the administration of the trust carried on and its responsibilities discharged by each person who is or has been a trustee:

(g) If the application is not made at or about the time of the final distribution of the trust property, sufficient information to enable the Court to determine what commission or percentage (if any) should be ordered forthwith having regard to the extent to which the duties of the trusteeship have already been discharged, and the period likely to elapse before that final distribution, and the changes in trusteeship which may occur during that period, and other relevant facts.

Compare: SR 1961/81 r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

669 Documents to be filed and verified

Subject to rules 670 and 675, the following documents, duly verified by an affidavit or affidavits of a solicitor or chartered accountant, shall be filed in respect of every such application:

(a) A copy of the will or other instrument (if any) creating the trust:

(b) Capital and income accounts of the trust or summarised statements thereof showing

(i) The trust property and liabilities at the inception of the trust and at the date to which a commission or percentage is sought:

(ii) The gross capital realisations and other capital receipts, and the capital liabilities discharged and investments of capital made, and distributions of capital to beneficiaries and other capital payments made, during the period from the inception of the trust to the date to which a commission

Part 8—*continued*

or percentage is sought, distinguishing those received and made by the trustees who or whose personal representatives are making the application from those received and made by other trustees (if any):

(iii) The gross income received and liabilities and outgoings discharged from income, and the distributions of income to beneficiaries, and other disbursements from income, during the last-mentioned period, distinguishing those received and made by the trustees who or whose personal representatives are making the application from those received and made by other trustees (if any):

(iv) The sums retained by or paid to solicitors, accountants, auctioneers, real estate agents, commission agents, brokers, and other agents during the said period in respect of capital and income respectively.

Compare: SR 1961/81 r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

670 Power to adopt previous accounts

(1) Unless the Court otherwise orders, the accounts of the trustees or summarised statements thereof previously kept or made for the purposes of the trust may, subject to subclause (2), be adopted for the purposes of the application.

(2) Any information required by rules 668 and 669 and not contained in the accounts or summarised statements previously kept or made (including any information required in respect of administration by other trustees) shall be supplied by supplementary accounts or summarised statements verified in each case by an affidavit of a chartered accountant or solicitor.

(3) So far as any information and accounts or summarised statements required in support of the application have been supplied in support of any previous application to the Court for

Part 8—*continued*

a commission or percentage, the provisions of rules 668 and 669 shall be deemed to that extent to have been complied with in connection with that application.

Compare: SR 1961/81 rr 5, 6

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

671 Power to refer matter to Registrar for inquiry

The Court may at any time, if it thinks fit, refer the application or any matter being part thereof or connected therewith to the Registrar for inquiry and report.

Compare: SR 1961/81 r 7

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

672 Notice of inquiry by Registrar

Unless the Court otherwise orders, reasonable notice to the satisfaction of the Registrar of any appointment made by the Registrar to proceed with his inquiry shall be given to every person who was entitled to be served with the application, unless the person has given notice in writing to the Registrar that the person does not intend to appear or be represented at the inquiry.

Compare: SR 1961/81 r 8

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

673 Evidence before Registrar

The evidence of every witness called on the inquiry before the Registrar shall be taken down in writing and signed by the witness, and shall accompany the Registrar's report to the Court.

Compare: SR 1961/81 r 9

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 8—*continued*

674 Costs

(1) The Court may, in its discretion, award costs to any applicant or other person affected by the application, whether any commission or percentage is allowed or not.

(2) The Court may direct that any costs be paid out of the trust property or any part thereof.

Compare: SR 1961/81 rr 10(1), 11

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

675 Power to dispense with rules

(1) The Court, upon an interlocutory application made before or after the filing of an application for a commission or percentage, and upon sufficient grounds, may dispense with the observance of all or any of the provisions of rules 667 to 674.

(2) An application under subclause (1) may in the first instance be made *ex parte*, but the Court may require notice thereof to be given to such person or persons and in such manner as the Court may direct.

Compare: SR 1961/81 r 12

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9
Administrative Division

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

676 Interpretation

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

Part 9—*continued*

677 Application of this Part

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

678 Limitation of application of rules 679 to 688

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

679 Heading of documents

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

680 Place where documents to be filed

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

681 Method of service

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

Part 9—*continued*

682 Withdrawal of proceeding

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

683 Reinstatement of proceeding

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

684 Notification of readiness for hearing

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

685 Notice of hearing

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

686 Mode of taking evidence

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

Part 9—*continued*

687 Written submissions

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

688 Right of audience

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

689 Application of rules 690 to 700

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

690 Extension of time for appeal

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

691 Notice of appeal

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

Part 9—*continued*

692 Contents of notice of appeal

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

692A Appeal not to operate as stay

[Repealed]

Rule 692A was inserted, as from 8 September 1986, by rule 11 High Court Amendment Rules 1986 (1986/228).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

693 Documents to be lodged with Registrar by Tribunal

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

694 Appeal from decision under section 21 of the Valuation of Land Act 1951

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

695 Power of tribunal to file report

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

Part 9—*continued*

696 Hearing of appeal

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

697 Power to refer back to tribunal

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

698 Dismissal of appeal for want of prosecution

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

699 Registrar to send memorandum of decision of Court

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

700 Land valuation claims, etc, referred to the Court

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 9 (comprising rules 676 to 700) was revoked, as from 15 August 1991, by rule 19(1) High Court Amendment Rules 1991 (SR 1991/132). *See* rule 26 of those regulations for the transitional provisions.

Part 9A
Companies (winding up)

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

700A Application of Part

(1) This Part applies in respect of every application to the Court
- (a) For putting a company into liquidation; or
- (b) For an order under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be.

(2) Rules 700ZJ and 700ZK apply in respect of a notice under section 268(1) of the Companies Act 1955 or section 294(1) of the Companies Act 1993, as the case may be.

(3) The other Parts of these rules, and the general practice of the Court, apply to applications to which subclause (1) applies and notices to which subclause (2) applies except in so far as they are modified by or inconsistent with this Part or the Companies Act 1955 or the Companies Act 1993, as the case may be.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rule 700A was substituted, as from 1 July 1994, by rule 14 High Court Amendment Rules 1994 (SR 1994/135).

Subclause (2) was substituted, and subclause (3) was inserted, as from 1 August 2000, by rule 16 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

700B Hearing of applications

Unless the Court otherwise directs, every application to which this Part applies shall be heard in open Court.

Compare: SR 1956/215 r 5(1)(a)

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

700C Applications to be made by statement of claim

(1) Every application to the Court to put a company into liquidation under section 211(2)(c) of the Companies Act 1955 or section 241(2)(c) of the Companies Act 1993, as the case may

Part 9A—*continued*

be, shall be made by statement of claim in form 64A in accordance with these rules.

(2) Every application to the Court under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be, shall be made by statement of claim in form 64B in accordance with these rules.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rule 700C was substituted, as from 1 July 1994, by rule 15 High Court Amendment Rules 1994 (SR 1994/135).

700D Proper office of the Court

(1) Notwithstanding anything in rules 106(1) and 107(1) to (3), the proper office of the Court for the purposes of the filing of a statement of claim pursuant to rule 700C shall be

(a) The office of the Court in the town where, or the office of the Court in the town nearest to where, the defendant company's registered office is situated; or

(b) If the defendant company does not have a registered office, the office of the Court in the town where, or the office of the Court in the town nearest to where, the defendant company's principal or last known place of business is or was situated.

(2) Nothing in this rule limits the provisions of rule 107(4) and (5).

Compare: SR 1956/215 r 16(1); SR 1973/39 r 3(4)

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

700E Notice of proceeding and verifying affidavit

(1) Rules 120 and 121 shall not apply to a proceeding commenced by the filing of a statement of claim pursuant to rule 700C.

(2) Subject to rule 124, there shall be filed and served with every statement of claim filed pursuant to rule 700C

(a) A notice of proceeding in form 64C; and

(b) An affidavit in form 64D or form 64E verifying the allegations in the statement of claim.

Part 9A—*continued*

(3) The affidavit shall be made by the plaintiff, or by one of the plaintiffs, if more than one, or, where the proceeding is being brought by a corporation, by a person who meets the requirements of rule 517.

(4) The affidavit shall be sufficient prima facie evidence of the statements in the statement of claim.

Compare: SR 1956/215 r 19

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Subclause (3) was amended, as from 1 January 2000, by rule 15 High Court Amendment Rules 1999 (SR 1999/334) by substituting the words "a person who meets the requirements of rule 517" for the words "an officer of the corporation having knowledge of the facts".

700F Date of hearing

(1) On the filing of a statement of claim pursuant to rule 700C, the Registrar shall as soon as practicable appoint the time and place at which the proceeding is to be heard.

(2) Unless the Court otherwise orders, the place for the hearing of the proceeding shall be

(a) The High Court in the town in which the statement of claim is filed; or

(b) If there will be no Judge available in that town at the time to be appointed for the hearing of the proceeding, the High Court in such other town as the Registrar appoints; or

(c) If the statement of claim is filed in Masterton, the High Court in Wellington; or

(d) If the statement of claim is filed in Tauranga, the High Court in Rotorua.

(3) Notice of the time and place appointed for hearing the application shall be included in the notice of proceeding in form 64C, and the Registrar may, at any time before the proceeding has been advertised, alter the time appointed and fix another time.

Compare: SR 1956/215 r 16(2), (3)

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Part 9A—*continued*

700G Exclusion of rules relating to setting down

The provisions of rules 426 to 435 shall not apply to any proceeding commenced by the filing of a statement of claim pursuant to rule 700C.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

700H Directions

Rules 425, 439, 440, and 442 shall apply, with all necessary modifications, in relation to every proceeding commenced by the filing of a statement of claim pursuant to rule 700C.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rule 700H was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "Rules 425, 439, 440, and 442" for the words "Rules 436 to 442". *See* rule 19 of those Rules as to the transitional provisions.

700I Advertisement of application

(1) Subject to rule 700J and to any order made on an application under rule 700K, every proceeding commenced by a statement of claim filed pursuant to rule 700C shall be advertised in accordance with this rule at least 7 clear days before the hearing.

(2) Where the registered office of the defendant company, or, if there is no such office, the principal or last known principal place of business of that company, is or was situated within a town in which there is an office of the Court, the advertisement shall be published

- (a) Once in the *Gazette*; and
- (b) Once at least
  - (i) In one daily newspaper published in that town; or
  - (ii) In such other newspaper as the Registrar directs.

(3) In the case of a defendant company to which subclause (2) does not apply, the advertisement shall be published

- (a) Once in the *Gazette*; and
- (b) Once at least
  - (i) In one local newspaper circulating in the locality where the registered office, or principal or last

Part 9A—*continued*

known principal place of business, as the case may be, of the defendant company is or was situated; or

(ii) In such other newspaper as the Registrar directs.

(4) The advertisement, which shall be in form 64F or form 64G, as the case may require, shall

(a) State the day on which the application to put the defendant company into liquidation was filed; and

(b) State the name and address of the plaintiff and of the plaintiff's solicitor (if any); and

(c) State the plaintiff's address for service; and

(d) State the place, date, and time of the hearing of the application; and

(e) State that the statement of claim and the verifying affidavit may be inspected at the office of the Court or at the plaintiff's address for service; and

(f) State that any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than the second working day before the day appointed for the hearing of the application.

(5) If the plaintiff or the plaintiff's solicitor does not within the time hereby prescribed, or within such extended time as the Registrar may allow, duly advertise the proceeding in the manner prescribed by this rule, the appointment of the time and place at which the proceeding is to be heard shall be cancelled by the Registrar and the proceeding shall be removed from the list, unless the defendant company has been served or the Court otherwise directs.

Compare: SR 1956/215 r 17

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Subclause (4)(a) was substituted, as from 1 July 1994, by rule 16 High Court Amendment Rules 1994 (SR 1994/135).

700J Restriction on advertising of proceeding

Except where a statement of claim filed pursuant to rule 700C is filed by the defendant company, no person shall,

Part 9A—*continued*

unless the Court otherwise directs, publish any advertisement required by rule 700I or any other information relating to that statement of claim until at least 7 days after the date on which the statement of claim in the proceeding is served on the defendant company.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rule 700J was substituted, as from 1 October 1991, by rule 21 High Court Amendment Rules 1991 (SR 1991/132).

700K Power to stay liquidation proceedings

(1) Where an application for putting a company into liquidation is made by the filing of a statement of claim pursuant to rule 700C(1), the defendant company, or, with the leave of the Court, any creditor or contributory or shareholder, as the case may be, of that company, or the Registrar of Companies, may, within 7 days after the date of the service of the statement of claim on the defendant company, apply to the Court for an order restraining publication of any advertisement required by rule 700I or any other information relating to that statement of claim and staying any further proceedings in relation to the liquidation.

(2) The Court shall deal with every application under subclause (1) as if it were an application for an interim injunction and, if it makes the order sought, may make it on such terms as the Court thinks fit.

(3) Nothing in this rule limits the inherent jurisdiction of the Court.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Subclause (1) was amended, as from 1 October 1991, by rule 22 High Court Amendment Rules 1991 (SR 1991/132) by substituting the words "any advertisement required by rule 700I or any other information relating to that statement of claim" for the words "the advertising required by rule 700I".

Subclause (1) was substituted, as from 1 July 1994, by rule 17 High Court Amendment Rules 1994 (SR 1994/135).

Part 9A—*continued*

700L Service of proceeding

(1) Every statement of claim filed pursuant to rule 700C shall, unless the plaintiff is the defendant company, be served, together with the verifying affidavit and notice of proceeding, upon the defendant company.

(2)

(3) Service under this rule shall be effected not less than 21 days before the date of hearing appointed or fixed under rule 700F.

Compare: SR 1956/215 r 18

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Subclause (2) was revoked, as from 1 July 1994, by rule 18 High Court Amendment Rules 1994 (SR 1994/135).

700M Affidavit of service

(1) The plaintiff shall, before the hearing, file an affidavit of service in form 64H proving the service of the statement of claim, verifying affidavit, and notice of proceeding on the defendant company.

(2) Subclause (1) shall not apply in relation to service on the company if the plaintiff is the defendant company.

(3) Subclause (1) shall not apply in relation to service on any person who, before the hearing, files a statement of defence.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Subclause (1) was substituted, as from 1 July 1994, by rule 19 High Court Amendment Rules 1994 (SR 1994/135).

700N Evidence of advertising

The plaintiff shall, before the hearing, file in the office of the Court

(a) Copies of the advertisements published in accordance with rule 700I; and

(b) A statement of the newspapers in which, and the dates on which, the advertisements appeared.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Part 9A—*continued*

700O Entitlement to copy of statement of claim, etc

Every contributory or shareholder, as the case may be, and every creditor of the defendant company, and the Registrar of Companies, shall be entitled to be supplied by the plaintiff's solicitor with a copy of the statement of claim, verifying affidavit, and notice of proceeding, within 24 hours after requiring it, on paying for it at the rate, inclusive of any goods and services tax, of not more than 50 cents per page.

Compare: SR 1956/215 r 20

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rule 700O was amended, as from 1 July 1994, by rule 20 High Court Amendment Rules 1994 (SR 1994/135) by inserting the words "or shareholder, as the case may be,".

700P Statement of defence

(1) Rule 129(1) shall not apply to a proceeding commenced by the filing of a statement of claim pursuant to rule 700C.

(2) Any person, being the defendant company or a creditor or contributory or shareholder, as the case may be, of that company, who intends to defend a proceeding commenced by a statement of claim filed pursuant to rule 700C shall file a statement of defence in the office of the Court named in the notice of proceeding.

(3) Every person who files a statement of defence shall serve a copy of that statement of defence on

(a) The plaintiff; and

(b) Any other person who, when the statement of defence is filed, has filed a statement of defence in the proceeding.

(4) Where the defendant company has filed a statement of defence, any statement of defence filed by a creditor or contributory or shareholder, as the case may be, of that company shall state specifically any grounds of opposition that are additional to those appearing in the company's statement of defence.

Compare: SR 1956/215 r 22

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Part 9A—*continued*

Subclause (2) was amended, as from 1 July 1994, by rule 21(1) High Court Amendment Rules 1994 (SR 1994/135) by inserting the words "or shareholder, as the case may be,".

Subclause (4) was amended, as from 1 July 1994, by rule 21(2) High Court Amendment Rules 1994 (SR 1994/135) by inserting the words "or shareholder, as the case may be,".

700Q Time for filing statement of defence

If any person to whom rule 700P(2) applies is a person on whom the statement of claim is served, that person shall file a statement of defence within 14 days after the date on which the statement of claim is served upon that person.

Compare: SR 1956/215 rr 22, 24

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rule 700Q was amended, as from 1 July 2002, by rule 11 High Court Amendment Rules 2002 (SR 2002/132), by substituting the word "If" for the words "Subject to rule 129(2), where,".

700R Appearance

Any person (other than the defendant company) who intends to appear on the hearing of the proceeding may, without filing a statement of defence, file an appearance in form 64I

(a) Stating that that person intends to appear; and

(b) Indicating whether that person supports or opposes the application to put the company into liquidation or the application for an order under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rule 700R was amended, as from 1 July 1994, by rule 22(1) High Court Amendment Rules 1994 (SR 1994/135) by substituting the expression "64I" for the expression "64J".

Paragraph (b) was substituted, as from 1 July 1994, by rule 22(2) High Court Amendment Rules 1994 (SR 1994/135).

700S Time for filing appearance

Every appearance shall be filed not later than the second working day before the day appointed for the hearing.

Part 9A—*continued*

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

700T Effect of failure to file statement of defence or appearance

Where any person, being a person who is entitled to file a statement of defence or an appearance in a proceeding commenced by the filing of a statement of claim pursuant to rule 700C, fails to file a statement of defence or an appearance within the time prescribed by these rules, that person shall not, without an order for extension of time granted on application made under rule 700V or the special leave of the Court, be allowed to appear on the hearing of the proceeding.

Compare: SR 1956/215 r 22

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

700U Evidence as to unpaid debts

(1) A certificate by the solicitor for the plaintiff that, after having made due inquiries, the solicitor is satisfied that any debt remains unpaid may be accepted by the Court as sufficient prima facie evidence that that debt remains unpaid.

(2) Subject to any direction of the Court, evidence that any debt remains unpaid may be given by an affidavit sworn by or on behalf of the plaintiff and so sworn not earlier than the third day before the day of the hearing of the proceeding.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

700V Interlocutory applications

(1) Where a proceeding is commenced by the filing of a statement of claim pursuant to rule 700C, no interlocutory application (other than an application made with the leave of the Court) shall be made to the Court before the date of hearing specified in the notice of proceeding served with that statement of claim unless that application is

(a) An application for an extension or abridgement of time; or

(b) An application under rule 700F(2) or rule 700K; or

Part 9A—*continued*

(c) An application for the appointment of an interim liquidator; or

(d) An application for directions; or

(e) An application to excuse non-compliance with any provision of these rules.

(2) Where a statement of defence is filed in a proceeding commenced by the filing of a statement of claim pursuant to rule 700C and the hearing of that proceeding is adjourned for a fixture on a defended basis, the provisions of these rules (including those relating to interlocutory applications) shall apply as if the proceeding had been commenced by a statement of claim filed under Part 2 alone and not by a statement of claim filed under that Part pursuant to rule 700C.

(3) Nothing in this rule limits the inherent jurisdiction of the Court.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Subclause (1)(c) was substituted, as from 1 July 1994, by rule 23 High Court Amendment Rules 1994 (SR 1994/135).

700W Power to appoint interim liquidator

(1) Where a proceeding for putting a company into liquidation has been commenced by the filing of a statement of claim under rule 700C(1), the plaintiff and any person entitled to apply to the Court for the appointment of a liquidator under section 211(2)(c) of the Companies Act 1955 or section 241(2)(c) of the Companies Act 1993, as the case may be, may apply to the Court for the appointment of an interim liquidator.

(2) If, on an application under subclause (1), the Court is satisfied, upon proof by affidavit, that there is sufficient ground for the appointment of an interim liquidator, it may make the appointment, and may limit the rights and powers of the interim liquidator in such manner as it thinks fit.

Compare: SR 1956/215 r 21(1)

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Subclause (1) was substituted, as from 1 January 1989, by rule 21 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Part 9A—*continued*

Rule 700W was substituted, as from 1 July 1994, by rule 24 High Court Amendment Rules 1994 (SR 1994/135).

Rule 700W was substituted, as from 1 November 1994, by rule 6(1) High Court Amendment Rules (No 2) 1994 (SR 1994/211).

700X Additional and substituted plaintiffs in liquidation proceeding

(1) This rule applies to any person, who is entitled to make an application to the Court for putting the company into liquidation under section 211(2)(c) of the Companies Act 1955 or section 241(2)(c) of the Companies Act 1993, as the case may be.

(2) Where a proceeding to put a company into liquidation has been commenced, a person to whom this rule applies may become a plaintiff in that proceeding, not later than the second working day before the day appointed for the hearing of the proceeding, by filing in the office of the Court and serving on all the other parties to the proceeding, in the same manner as if that person were commencing the proceeding,

(a) A statement of claim in form 64A; and

(b) A notice of proceeding in form 64C; and

(c) An affidavit in form 64D.

(3) Where a person to whom this rule applies has filed an appearance under rule 700R in a proceeding to put a company into liquidation and, on the day appointed for the hearing, or on any day to which the hearing has been adjourned, no plaintiff wishes to proceed, on that day, with the hearing of the application to put the company into liquidation, the Court may, on the oral application of that person, but subject to subclause (4),

(a) Add that person as a plaintiff in the proceeding; or

(b) Substitute that person for the plaintiff or plaintiffs or any of the plaintiffs in the proceeding.

(4) The addition or substitution of a person as a plaintiff under subclause (3) shall be subject to the condition that that person file in the office of the Court and serve on all the other parties to the proceeding, within 7 days after the day on which the addition or substitution is made,

(a) A statement of claim in form 64A; and

Part 9A—*continued*

(b) A notice of proceeding in form 64C; and

(c) An affidavit in form 64D.

(5) If any person to whom rule 700P(2) applies is a person on whom the statement of claim is served pursuant to this rule, that person shall file a statement of defence within 14 days after the date on which the statement of claim is served upon that person.

Compare: SR 1956/215 r 25

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Subclause (1) was substituted, as from 1 July 1994, by rule 25(1) High Court Amendment Rules 1994 (SR 1994/135).

Subclause (2) was amended, as from 1 July 1994, by rule 25(2) High Court Amendment Rules 1994 (SR 1994/135) by substituting the words "to put a company into liquidation" for the words "for the winding up of a company by the court".

Subclause (3) was amended, as from 1 June 1990, by rule 15(1) High Court Amendment Rules 1990 (SR 1990/66) by inserting the words "or on any day to which the hearing has been adjourned".

Subclause (3) was substituted, as from 1 July 1994, by rule 25(3) High Court Amendment Rules 1994 (SR 1994/135).

Subclause (4) was amended, as from 1 June 1990, by rule 15(2) High Court Amendment Rules 1990 (SR 1990/66) by substituting the words "on which the addition or substitution is made" for the words "appointed for the hearing".

Subclause (5) was amended, as from 1 July 2002, by rule 12 High Court Amendment Rules 2002 (SR 2002/132), by substituting the word "If" for the words "Subject to rule 129(2), where,".

700Y Consolidation of proceedings

(1) Where 2 or more proceedings have been commenced in respect of the same company by the filing of statements of claim pursuant to rule 700C, the Court may order those proceedings to be consolidated on such terms as it thinks just.

(2) Nothing in this rule limits the provisions of rules 382 and 383.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Part 9A—*continued*

700YA Discontinuance of proceeding

A proceeding commenced by the filing of a statement of claim pursuant to rule 700C may be discontinued only with the leave of the Court.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rule 700YA was inserted, as from 1 June 1990, by rule 16 High Court Amendment Rules 1990 (SR 1990/66).

700Z Requirements in relation to order appointing interim liquidator

The order appointing the interim liquidator shall

(a) Bear the number of the proceeding; and

(b) State the nature and a short description of the property of which the provisional liquidator is ordered to take possession; and

(c) State the duties to be performed by the interim liquidator.

Compare: SR 1956/215 r 21(2)

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rule 700Z was amended, as from 1 July 1994, by rule 26 High Court Amendment Rules 1994 (SR 1994/135) by substituting the word "interim" for the word "provisional".

700ZA Costs, charges, and expenses of interim liquidator and Official Assignee

(1) Subject to any order of the Court, if

(a) No order for putting the defendant company into liquidation is made in the proceeding; or

(b) An order for putting the defendant company into liquidation is rescinded; or

(c) All proceedings for putting the defendant company into liquidation are stayed

the person holding office as interim liquidator shall be entitled to be paid, out of the property of the defendant company, all costs, charges, and expenses properly incurred by that person

Part 9A—*continued*

as interim liquidator, or, where that person is the Official Assignee, such sum as the Court directs.

(2) Where any person other than the Official Assignee has been appointed interim liquidator and the Official Assignee has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty prescribed by these rules, the interim liquidator shall pay the Official Assignee such sum, if any, as the Court directs.

Compare: SR 1956/215 r 21(3), (4)

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Subclause (1) was substituted, as from 1 July 1994, by rule 27(1) High Court Amendment Rules 1994 (SR 1994/135)

Subclause (2) was amended, as from 1 July 1994, by rule 27(2) High Court Amendment Rules 1994 (SR 1994/135) by substituting the word "interim" for the word "provisional".

Order to put company into liquidation

700ZB Obligation to send notice of order appointing liquidator or interim liquidator of a company

(1) When the Court has made an order appointing a person to be liquidator of a company, or has made an order appointing an interim liquidator before an order putting the company into liquidation is made, the Registrar shall, on the same day, send to the liquidator or interim liquidator a notice informing him or her of his or her appointment.

(2) The notices shall be in form 64J or in form 64K, as the case may require, with such variations as circumstances may require.

Compare: SR 1956/215 r 26

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rules 700ZB to 700ZG and the heading "Order to Put Company into Liquidation" were substituted, as from 1 July 1994, by rule 28(1) High Court Amendment Rules 1994 (SR 1994/135).

Part 9A—*continued*

700ZC Order and copies to be sealed

The plaintiff or the plaintiff's solicitor shall, at latest on the second working day after the day on which an order putting a company into liquidation is pronounced in Court, leave the order and 2 copies thereof at the office of the Court for sealing.

Compare: SR 1956/215 r 27

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rules 700ZB to 700ZG and the heading "Order to Put Company into Liquidation" were substituted, as from 1 July 1994, by rule 28(1) High Court Amendment Rules 1994 (SR 1994/135).

700ZD Contents of order putting a company into liquidation

(1) An order putting a company into liquidation may be in form 64L.

(2) An order for the appointment of an interim liquidator may be in form 64M.

Compare: SR 1956/215 r 28

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rules 700ZB to 700ZG and the heading "Order to Put Company into Liquidation" were substituted, as from 1 July 1994, by rule 28(1) High Court Amendment Rules 1994 (SR 1994/135).

700ZE Transmission of order putting a company into liquidation

When an order that a company be put into liquidation or an order for the appointment of an interim liquidator has been made,

(a) One copy of the order sealed with the seal of the Court shall forthwith be sent by post or otherwise by the Registrar to the liquidator or interim liquidator, as the case may be:

(b) One copy of the order sealed with the seal of the Court shall be served by the plaintiff upon the company in accordance with the Companies Act 1955 or the Companies Act 1993, as the case may be.

Compare: SR 1956/215 r 29(1)

Part 9A—*continued*

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rules 700ZB to 700ZG and the heading "Order to Put Company into Liquidation" were substituted, as from 1 July 1994, by rule 28(1) High Court Amendment Rules 1994 (SR 1994/135).

700ZF Service of order made under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993

(1) Where an order is made under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be, an office copy of the order shall, unless the Court otherwise orders, be served by the plaintiff on

(a) The defendant company in accordance with the Companies Act 1955 or the Companies Act 1993, as the case may be:

(b) The Registrar of Companies.

(2) Where the order involves a reduction of capital or alteration of the memorandum of association or constitution of the company, the Companies Act 1955 or the Companies Act 1993, as the case may be, and the provisions of these rules relative to those matters shall apply as the Court may direct.

Compare: SR 1956/215 r 29(3)

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rules 700ZB to 700ZG and the heading "Order to Put Company into Liquidation" were substituted, as from 1 July 1994, by rule 28(1) High Court Amendment Rules 1994 (SR 1994/135).

700ZG Service of notice of company being put into liquidation

Any notice given for the purposes of section 222 of the Companies Act 1955 or section 252 of the Companies Act 1993, as the case may be, being

(a) A notice that an application has been made to the Court to appoint a liquidator; or

(b) A notice that the Court has made an order appointing a liquidator; or

(c) A notice that the Court has appointed an interim liquidator; or

Part 9A—*continued*

(d) A notice of the calling of a meeting at which a special resolution is proposed to appoint a liquidator; or

(e) A notice that a special resolution has been passed appointing a liquidator; or

(f) A notice of the calling of a meeting of the board at which a resolution is proposed to appoint a liquidator; or

(g) A notice that a resolution has been passed appointing a liquidator,

shall be in writing and shall be addressed to the officer charged with the execution, and may be served by being delivered by hand or by registered post at the office of the officer charged with the execution.

Part 9A (comprising rr 700A to 700ZG) was inserted, as from 1 August 1988, by rule 5 High Court Amendment Rules 1988 (SR 1988/142).

Rules 700ZB to 700ZG and the heading "Order to Put Company into Liquidation" were substituted, as from 1 July 1994, by rule 28(1) High Court Amendment Rules 1994 (SR 1994/135).

700ZH Procedure in respect of miscellaneous applications

(1) Subject to subclauses (2) and (3), where any provision of the Companies Act 1955 or the Companies Act 1993, as the case may be, provides for an application to be made to the Court in respect of

(a) A company that is the defendant company in relation to an application made for putting that company into liquidation under section 211(2)(c) of the Companies Act 1955 or section 241(2)(c) of the Companies Act 1993; or

(b) A company in respect of which a liquidator has been appointed under section 211(2)(c) of the Companies Act 1955 or section 241(2)(c) of the Companies Act 1993, as the case may be; or

(c) A company in respect of which an application under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993 is pending, as the case may be,

the application to be made to the Court shall, unless any provision of those Acts or some other provision of these rules

Part 9A—*continued*

otherwise requires or the Court otherwise directs, be made to the Court in accordance with these rules as if that application were an interlocutory application and Part 3 shall, with all necessary modifications, apply accordingly.

(2) Every application to which subclause (1) applies shall show, in addition to any matters required by these rules, the same intitulment as the intitulment shown on the application for putting the company into liquidation or for the order under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be.

(3) To avoid doubt, nothing in subclause (1) applies to
- (a) an application to which rule 700ZI applies; or
- (b) an application to which Part 4 or Part 4A applies.

Rules 700ZH to 700ZJ were inserted, as from 1 January 1993, by rule 13 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rules 700ZH and 700ZI were substituted, as from 1 July 1994, by rule 28(1) High Court Amendment Rules 1994 (SR 1994/135).

Subclause (3) was substituted, as from 1 August 2000, by rule 17 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

700ZI Applications involving allegations of fraud, negligence, misfeasance, or like behaviour

(1) Where an application that involves an allegation of fraud, negligence, misfeasance, or like behaviour is to be made to the Court under the Companies Act 1955 or Companies Act 1993, as the case may be, in respect of
- (a) A company that is the defendant company in relation to an application made to put that company into liquidation under section 211(2)(c) of the Companies Act 1955 or section 241(2)(c) of the Companies Act 1993; or
- (b) A company in respect of which a liquidator has been appointed under section 211(2)(c) of the Companies Act 1955 or section 241(2)(c) of the Companies Act 1993; or

Part 9A—*continued*

(c) A company in respect of which an application under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993 is pending,

that application shall be made by filing a statement of claim in accordance with these rules.

(2) Where a statement of claim to which subclause (1) applies is filed in accordance with these rules, the applicant shall, as soon as practicable after the statement of defence has been filed or the time for filing a statement of defence has expired, file, under rule 425, an application for directions regarding the proceeding.

(3) Every statement of claim to which subclause (1) applies shall show, in addition to any matters required by these rules, the same intitulment as the intitulment shown on the application for putting the company into liquidation or for the order under section 209ZG of the Companies Act 1955 or section 174 of the Companies Act 1993.

Rules 700ZH to 700ZJ were inserted, as from 1 January 1993, by rule 13 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rules 700ZH and 700ZI were substituted, as from 1 July 1994, by rule 28(1) High Court Amendment Rules 1994 (SR 1994/135).

Subclause (2) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 425" for the expression "rule 437". *See* rule 19 of those Rules as to the transitional provisions.

Notice for setting aside voidable transactions and charges

The heading "Notice for setting aside voidable transactions and charges" was inserted, as from 1 August 2000, by rule 18 High Court Amendment Rules 2000 (SR 2000/109).

700ZJ Liquidator's notice to set aside voidable transaction or voidable charge

A notice under section 268(1) of the Companies Act 1955 or section 294(1) of the Companies Act 1993, as the case may be, must

(a) contain the heading in form 64N; and

Part 9A—*continued*

(b) be in form 64O or form 64P or form 64Q or form 64R, as the case may require; and

(c) comply with rules 36 and 44 (with any necessary modifications).

Rules 700ZH to 700ZJ were inserted, as from 1 January 1993, by rule 13 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Rule 700ZJ was revoked, as from 1 July 1994, by rule 28(1) High Court Amendment Rules 1994 (SR 1994/135).

A new rule 700ZJ was inserted, as from 1 August 2000, by rule 18 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

700ZK Proper office of Court

(1) A notice under section 268(1) of the Companies Act 1955 or section 294(1) of the Companies Act 1993, as the case may be, must,

(a) if the company has been put into liquidation by the Court, be filed in the office of the Court in which the order putting the company into liquidation was made under the same file number as the liquidation file number (even though the heading of the notice is different); and

(b) in any other case, be filed in the office of the Court in the town where, or the office of the Court in the town nearest to where, the registered office of the company in liquidation was situated at the date of liquidation.

(2) If more than 1 notice under section 268(1) of the Companies Act 1955 or section 294(1) of the Companies Act 1993 relating to the same company in liquidation has been filed in accordance with subclause (1)(b), those notices must be filed under the same file number (even though the heading of each notice is different).

Rule 700ZK was inserted, as from 1 August 2000, by rule 18 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 of those Rules which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000.

Part 9B
Voluntary administration

Schedule 2 Part 9B: inserted, on 1 November 2007, by rule 5 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

700ZL Appointment of administrator under section 239L of Companies Act 1993

An application by a creditor, the liquidator (if the company is in liquidation), or the Registrar of Companies for the appointment by the Court of an administrator under section 239L of the Companies Act 1993 (inserted by section 6 of the Companies Amendment Act 2006) must be made by originating application under Part 4A of these rules.

Schedule 2 rule 700ZL: inserted, on 1 November 2007, by rule 5 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

700ZM Applications in course of administration

(1) An application to the Court by the administrator or other person entitled to apply to the Court under Part 15A of the Companies Act 1993 must be made by originating application under Part 4A of these rules.

(2) If an application in relation to a company has been made to the Court under subclause (1), any further application in relation to the voluntary administration of that company may be made by interlocutory application under Part 3 of these rules.

(3) Subclause (1) is subject to subclause (2).

Schedule 2 rule 700ZM: inserted, on 1 November 2007, by rule 5 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

700ZN Proper office of Court

(1) The proper office of the Court for the purpose of filing an originating application under rule 700ZL is—

(a) the office of the Court in the town where, or the office of the Court in the town nearest to where, the company's registered office is situated; or

(b) if the company does not have a registered office, the office of the Court in the town where, or the office of the Court in the town nearest to where, the principal or last known place of business is or was situated.

Part 9B—*continued*

(2) If it appears to the Court on application to it that the originating application has been filed in the wrong office of the Court, or that any other office of the Court would be more convenient to all parties affected, it may direct that the originating application and any documents filed in relation to that application be filed in, or transferred to, the proper office or the other office of the Court.

(3) This rule overrides rule 107.

Schedule 2 rule 700ZN: inserted, on 1 November 2007, by rule 5 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 10
Appeals

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). The heading to Part 10 previously read "Appeals to the High Court". *See* rule 19 of those Rules as to the transitional provisions.

Preliminary provisions

701 Application of this Part

(1) This Part applies to appeals to the Court under any enactment other than

(a) appeals under the Summary Proceedings Act 1957:

(b) appeals under the Arbitration Act 1996:

(c) appeals under the Bail Act 2000:

(d) appeals or references to the Court by way of case stated to which Part 11 applies.

(2) For the purposes of subclause (1)(a), appeals under an enactment that incorporates provisions of the Summary Proceedings Act 1957, whether modified or not, are not appeals under the Summary Proceedings Act 1957.

Part 10—*continued*

(2A) In any case where an enactment provides for an appeal to the Court of Appeal with leave of the Court, this Part also applies to an application for that leave.

(3) This Part applies subject to any express provision in the enactment under which the appeal is brought or sought to be brought.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Subclause (1) was amended, as from 1 August 2000, by rule 19 High Court Amendment Rules 2000 (SR 2000/109) by inserting the words "or the Arbitration Act 1996" after the expression "1957". *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Subclause (2A) was inserted, as from 7 August 2006, by rule 4 High Court Amendment Rules (No 2) 2006 (SR 2006/183).

702 Interpretation

In this Part,

administrative office means the registry or office at which the decision-maker gave the decision appealed against

administrative officer means the registrar, secretary, or other officer responsible for the administration of the administrative office

Court office means the office of the Court

(a) at which an appeal is required to be filed under rule 708(1); or

(b) to which documents relating to an appeal are transferred under rule 708(3)(b)

decision includes a finding, order, or judgment made by a decision-maker

Part 10—*continued*

decision-maker means a court, tribunal, or person or body of persons

(a) that exercises a power of decision from which there is, or may be, a right of appeal to the Court; and

(b) against the decision of which an appeal is brought or sought to be brought.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Applications for leave to appeal

703 Applications for leave to appeal to Court

(1) In any case where an enactment provides that an appeal to the Court against a decision may not be brought without leave, an application for that leave must be made to the decision-maker or, as the case requires, the Court within 20 working days after the decision is given.

(2) In any case where an enactment provides that the Court may grant leave to appeal to the Court against a decision after the decision-maker refuses leave, an application for the Court's leave must be made within 20 working days after the refusal.

(3) The appeal must be brought

(a) by the date fixed when the decision-maker or the Court grants leave; or

(b) if the decision-maker or the Court fails to fix a date, within 20 working days after the grant of leave.

(4) Any date fixed by the decision-maker is, for the purposes of rule 260, to be treated as a determination.

(5) The decision-maker or, as the case requires, the Court may, on application, extend the period for bringing an application under this rule, if the enactment under which the appeal is sought to be brought

(a) permits the extension; or

Part 10—*continued*

(b) does not limit the time prescribed for making the application.

(6) A party may apply for the extension of a period before or after the period expires.

(7) Every application under this rule must be made on notice to every party affected by the proposed appeal and, if made to the Court, must be made by interlocutory application.

(8) In this rule, **leave** includes special leave.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

703A Power of Judge to call conference and give directions *[Repealed]*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Rule 703A was inserted, as from 1 August 1995, by rule 5 High Court Amendment Rules (No 2) 1995 (SR 1995/135).

Rule 703A was revoked, as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Commencement of appeal

704 Time for appeal where there is right of appeal

(1) This rule applies when a party has a right of appeal to the Court.

(2) An appeal must be brought,

(a) if the enactment that confers the right of appeal specifies a period within which the appeal must be brought, within that period; or

(b) in every other case, within 20 working days after the decision appealed against is given.

Part 10—*continued*

(3) By special leave, the Court may extend the time prescribed for appealing if the enactment that confers the right of appeal
  (a) permits the extension; or
  (b) does not limit the time prescribed for bringing the appeal.

(4) An application for an extension
  (a) must be made by an interlocutory application on notice to every other party affected by the appeal; and
  (b) may be made before or after the expiry of the time for appealing.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Rule 704 was substituted, as from 1 January 2000, by rule 16 High Court Amendment Rules 1999 (SR 1999/334).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

705 Commencement of periods in rules 703 and 704

For the purposes of rules 703 and 704, a period begins when the decision to which it relates is given, whether or not
  (a) reasons for the decision are then given or are given later; or
  (b) formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Subclause (1)(c) was revoked, as from 1 January 2000, by rule 17 High Court Amendment Rules 1999 (SR 1999/334).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 10—*continued*

706 When appeal brought

(1) An appeal is brought when the appellant

(a) files a notice of appeal in the High Court; and

(b) files a copy of the notice of appeal in the administrative office; and

(c) serves a copy of the notice of appeal on every other party directly affected by the appeal.

(2) Service at the address for service stated in the proceedings to which the appeal relates is sufficient service for the purposes of this rule.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Rule 706 was substituted, as from 1 February 1998, by rule 15 High Court Amendment Rules 1997 (SR 1997/350).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

707 Power to dispense with service

Despite rule 706(1)(c), the Court may, on any terms the Court thinks fit, dispense with service of a notice of appeal on a party.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Subclause (4) was amended, as from 1 January 1993, by rule 14 High Court Amendment Rules (No 2) 1992 (SR 1992/318), by substituting te word "of" for the words "given under rule 684 by".

Subclause (4) was revoked, as from 1 August 1995, by rule 6 High Court Amendment Rules (No 2) 1995 (SR 1995/135).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

708 Filing of notice of appeal

(1) A notice of appeal must be filed in

Part 10—*continued*

(a) the office of the Court nearest to the place where the decision appealed against was given; or

(b) any other office of the Court in which the parties agree that the notice of appeal may be filed.

(2) If subclause (1)(b) applies, the parties must endorse on, or file with, the notice of appeal a memorandum recording their agreement to the filing of the notice of appeal in the office of the Court in which it is filed.

(3) If it appears to the Court, on application, that a notice of appeal has been filed in the wrong office of the Court or that another office of the Court would be more convenient to the parties, the Court may direct that

(a) the notice of appeal be filed in another office of the Court; or

(b) the documents relating to the appeal be transferred to another office of the Court.

(4) The filing of a notice of appeal in the wrong office of the Court does not invalidate an appeal.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Subclauses (2) and (3) were inserted, as from 1 January 1993, by rule 15 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

709 Contents of notice of appeal

(1) Unless the Court otherwise directs, a notice of appeal must

(a) have a heading in form 1 that also refers to the enactment under which the appeal is brought; and

(b) specify the decision or part of the decision appealed against; and

(c) specify the grounds of the appeal in sufficient detail to fully inform the Court, the other parties to the appeal, and the decision-maker of the issues in the appeal; and

Part 10—*continued*

(d) specify the relief sought.

(2) The notice of appeal must not name the decision-maker as a respondent.

(3) Subclause (2) does not

(a) apply to appeals to the Court under the Commerce Act 1986:

(b) limit or affect rule 717 (which entitles a decision-maker, other than a District Court, to be represented and heard on an appeal).

(4) An appellant may, at any time with the leave of the Court, amend a notice of appeal.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

710 Stay of proceedings

(1) An appeal does not operate as a stay of the proceedings appealed against or as a stay of execution of any judgment or order appealed against.

(2) However, pending the determination of an appeal, the decision-maker or the Court may, on application,

(a) order a stay of proceedings in relation to the decision appealed against or a stay of execution of any judgment or order appealed against; or

(b) grant any interim relief.

(3) An order made or relief granted under subclause (2) may

(a) relate to execution of the whole of a judgment or order or to a particular form of execution:

(b) be subject to any conditions for the giving of security the decision-maker or the Court thinks fit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10—*continued*

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

711 Cross-appeal

(1) A respondent who wishes to contend at the hearing of an appeal that the decision appealed against should be varied must
- (a) file a notice of cross-appeal in the Court office; and
- (b) file a copy of the notice of cross-appeal in the administrative office; and
- (c) serve a copy of the notice of cross-appeal on every other party directly affected by the cross-appeal.

(2) Except with the leave of the Court, a notice of cross-appeal must be filed not later than 2 working days before the holding of the case management conference relating to the appeal.

(3) A notice of cross-appeal must specify
- (a) the decision or part of the decision to which the cross-appeal relates; and
- (b) the grounds of the cross-appeal in sufficient detail to fully inform the Court, the other parties to the appeal, and the decision-maker of the issues in the cross-appeal; and
- (c) the relief sought.

(4) The Court may, despite a failure by a respondent to file and serve a notice of cross-appeal,
- (a) allow the respondent to contend at the hearing of an appeal that the decision appealed against should be varied; or
- (b) adjourn the hearing of an appeal to allow the respondent time to file and serve a notice of cross-appeal; or
- (c) make any other order, including an order for the payment of costs, as the Court thinks fit.

(5) A respondent may at any time, with the leave of the Court, amend a notice of cross-appeal.

Part 10—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

712 Dismissal or abandonment of appeal or cross-appeal for failure to proceed

(1) The Court may, on application, dismiss an appeal or a cross-appeal if the Court is satisfied that the appellant or the respondent has failed to proceed with the appeal or cross-appeal.

(2) If the appellant files and serves on every other party a statement signed by the appellant to the effect that the appellant abandons the appeal, the appeal is, subject to the right of the respondent to apply for an order as to costs, taken to have been dismissed.

(3) If the respondent files and serves on every other party a statement signed by the respondent to the effect that the respondent abandons the cross-appeal, the cross-appeal is, subject to the right of the appellant to apply for an order as to costs, taken to have been dismissed.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

713 Security for appeal

(1) This rule applies to an appeal other than an appeal in which the appellant has been granted legal aid under the Legal Services Act 2000.

Part 10—*continued*

(2) At the case management conference relating to the appeal, the Judge must fix security for costs unless the Judge considers that in the interests of justice no security is required.

(3) Unless the Judge otherwise directs, the amount of security must be fixed in accordance with the following formula:

$$\frac{a}{2} \times b$$

where

a is the daily recovery rate for the proceeding as classified by the Judge under rule 48; and

b is the number of half days estimated by the Judge as the time required for the hearing.

(4) Unless the Judge otherwise directs, security must be paid to the Registrar at the Court office not later than 10 working days after the case management conference relating to the appeal.

(5) If an appellant has applied for legal aid under the Legal Services Act 2000 and, at the time of the case management conference, the application has not been determined, the Judge must defer the fixing of security until the application for legal aid has been determined.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Matters leading up to hearing

714 Order for transcription of evidence

(1) The Court may, on application, order that

(a) a transcript be made of the whole or part of the evidence given at the hearing before the decision-maker; and

(b) the transcript be sent to the Registrar at the Court office.

(2) An application under subclause (1) must be filed not later than the first of the following dates:

Part 10—*continued*

(a) the date that is 20 working days after the date on which notice of appeal is filed in the High Court:
(b) the working day before the date of the case management conference relating to the appeal.

(3) The Registrar of the Court must give notice in writing to the administrative officer of any order under subclause (1).

(4) The administrative officer must
(a) arrange for the transcript to be made; and
(b) certify that the transcript is correct; and
(c) send the certified copy of the transcript to the Registrar at the Court office.

(5) The Court may, on application by the administrative officer, order that a party to the appeal pay some or all of the costs of making a transcript.

(6) An order made under subclause (1) or subclause (5) may be made on any conditions the Court thinks fit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

715 Report by decision-maker

(1) The decision-maker must, if the Court directs, provide to the Registrar at the Court office a report setting out
(a) any considerations, other than findings of fact, to which the decision-maker had regard in making the decision appealed against, but that are not set out in the decision:
(b) any information about the effect that the decision might have on the general administration of the enactment under which the decision was made:
(c) any other matters relevant to the decision or to the general administration of the enactment under which the decision was made that should be drawn to the attention of the Court.

Part 10—*continued*

(2) The Registrar must provide a copy of the report to every party to the appeal.

(3) Every party to the appeal is entitled to be heard, and tender evidence, on any matter referred to in the report.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

716 Further evidence

(1) A party to an appeal may, without leave, adduce further evidence on a question of fact if the evidence is necessary to determine an interlocutory application that relates to the appeal.

(2) In all other cases, a party to an appeal may adduce further evidence only with the leave of the Court.

(3) The Court may grant leave only if there are special reasons for hearing the evidence, for example, if the evidence relates to matters that have arisen after the date of the decision appealed against and that are or may be relevant to the determination of the appeal.

(4) Unless the Court otherwise directs, further evidence under this rule must be given by affidavit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 10—*continued*

Conduct of the appeal

717 Decision-maker entitled to be heard on appeal

Unless the Court otherwise directs, at the hearing of an appeal the decision-maker, other than a District Court, is entitled to be represented and heard on all matters arising in the appeal.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

718 Appeal to be a rehearing

All appeals must be by way of rehearing.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Subclause (9) was substituted, as from 3 February 1992, by rule 3 High Court Amendment Rules (No 2) 1991 (SR 1991/291).

Subclause (10) was revoked, as from 3 February 1992, by rule 3 High Court Amendment Rules (No 2) 1991 (SR 1991/291).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

718A Powers of Court on appeal

(1) Having heard an appeal, the Court may

- (a) make any decision or decisions it thinks should have been made:
- (b) direct the decision-maker
  - (i) to rehear the proceedings concerned; or
  - (ii) to consider or determine (whether for the first time or again) any matters the Court directs; or
  - (iii) to enter judgment for any party to the proceedings the Court directs:

Part 10—*continued*

(c) make any further or other order the Court thinks fit (including any order as to costs).

(2) The Court must state its reasons for giving a direction under subclause (1)(b).

(3) The Court may give the decision-maker any direction it thinks fit relating to
(a) rehearing any proceedings directed to be reheard; or
(b) considering or determining any matter directed to be considered or determined.

(4) The Court may act under subclause (1) in respect of a whole decision, even if the appeal is against only part of it.

(5) Even if an interlocutory or similar decision in the proceedings has not been appealed against, the Court
(a) may act under subclause (1); and
(b) may set the interlocutory or similar decision aside; and
(c) if it sets the interlocutory or similar decision aside, may make in its place any interlocutory or similar decision or decisions the decision-maker could have made.

(6) The powers given by this rule may be exercised in favour of a respondent or party to the proceedings concerned, even if the respondent or party did not appeal against the decision concerned.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

718B Repayment of judgment sum and interest

(1) This rule applies if
(a) a party to proceedings before a decision-maker (**party A**) has, in accordance with any judgment or order of the decision-maker, paid an amount to another party to the proceedings (**party B**); and

Part 10—*continued*

(b) on appeal to the Court, the effect of the Court's determination is that some or all of the amount did not need to be paid.

(2) If subclause (1) applies, the Court

(a) may order party B to repay to party A some or all of the amount paid by party A; and

(b) may also order party B to pay to party A interest at a rate not greater than the prescribed rate (within the meaning of section 87(3) of the Judicature Act 1908) on the sum ordered to be repaid.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

718C Registrar to notify result of appeal

On the determination of an appeal, the Registrar must

(a) give notice in writing to the administrative officer of the result of the appeal; and

(b) return to the administrative officer any documents and exhibits filed in accordance with any direction given at a case management conference relating to the appeal.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

718D Land valuation claims, etc, referred to Court

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 10—*continued*

Part 10 (comprising rr 701 to 718D) was substituted, as from 15 August 1991, by rule 20(1) High Court Amendment Rules 1991 (SR 1991/132).

Part 10 (comprising rr 701 to 718D) was substituted by a new Part 10 (comprising rr 701 to 718C), as from 24 November 2003, by rule 14 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Applications for leave to appeal to Court of Appeal

This heading was inserted, as from 7 August 2006, by rule 5 High Court Amendment Rules (No 2) 2006 (SR 2006/183).

718E Time for making application for leave

(1) In any case where an enactment provides that an appeal against a decision may be made to the Court of Appeal with leave of the Court, an application for that leave must be made to the Court within 20 working days after the decision is given.

(2) A respondent who wishes to cross-appeal must apply for leave to cross-appeal within 10 working days after the date on which a copy of the appellant's application for leave is served on the respondent.

Rule 718E was inserted, as from 7 August 2006, by rule 5 High Court Amendment Rules (No 2) 2006 (SR 2006/183).

718F Form of application for leave

An application for leave to appeal or cross-appeal must be by interlocutory application.

Rule 718F was inserted, as from 7 August 2006, by rule 5 High Court Amendment Rules (No 2) 2006 (SR 2006/183).

Part 11
Cases stated for opinion of Court

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

Part 11—*continued*

719 Application of this Part

This Part shall apply to

(a) Any appeal by way of case stated for the opinion of the Court on a question of law only:

(b) Any other reference to the Court by way of case stated for an opinion on a question of law pursuant to any Act.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

720 This Part subject to other enactments

This Part shall apply subject to

(a) Any specific provision contained in the Act that confers the right of appeal or provides for the reference; and

(b) Any specific provision of any other Act that relates to the right of appeal or reference,

other than a provision prescribing the form of the case.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

721 Interpretation

In this Part,

Appropriate officer, in relation to a tribunal, means the Registrar or the Secretary or the clerk or such other officer of the tribunal who is responsible for the administration of the tribunal

Part 11—*continued*

Appropriate registry means the registry of the Court at which the appeal or reference is, in accordance with rule 724C, to be filed

Appropriate registry: this definition was amended, as from 1 January 1993, by rule 6 High Court Amendment Rules (No 3) 1992 (SR 1992/335) by substituting the expression "rule 724C" for the expression "rule 725B".

Decision includes any order made by a tribunal or person

Tribunal includes

(a) Any Minister of the Crown:

(b) Any Government department or officer:

(c) Any other person or body who or which may be required, or is authorised, by or under any Act to state or refer a case for the opinion of the Court.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

722 Application of Part 10

The following rules apply, with all necessary modifications, to every appeal to which this Part applies:

(a) rule 704(3) and (4) (as to extension of time for appeal):

(b) rule 707 (as to power to dispense with service):

(c) rule 710 (as to stay of proceedings).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

Rule 722 was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 11—*continued*

723 Mode of commencing appeal or reference

(1) Every appeal to which this Part applies shall be instituted by the appellant

(a) Giving a notice of appeal to the appropriate officer of the tribunal by which the decision was made, or if there is no such officer, to the person who made the decision; and

(b) Filing a copy of the notice of appeal in the appropriate registry of the Court.

(2) Every other reference to which this Part applies (other than a reference effected by a tribunal of its own motion) shall be made in such manner as the tribunal directs on application made to it by a party to the matter in which the question of law has arisen.

(3) Every person who gives a notice of appeal under subclause (1)(a) shall, as soon as practicable after giving that notice, lodge a draft case with the appropriate officer of the tribunal by which the decision was made, or if there is no such officer, with the person who made the decision.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

724 Service of copies of notice of appeal on other parties

Either before or immediately after the giving and filing of the notice of appeal under rule 723(1), the appellant shall serve a copy of the notice of appeal on every other party to the matter in which the decision was given.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

Part 11—*continued*

724A Time for appeal

Every notice of appeal under rule 723(1) shall be given and filed within one month after the date of the decision to which the appeal relates.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

724B Notice of appeal

Unless otherwise provided by any enactment, every notice of appeal under rule 723(1) shall specify

(a) The decision or the part of the decision appealed from; and

(b) Any error of law alleged by the appellant; and

(c) Any question of law to be resolved; and

(d) The relief sought.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

724C Place for filing notice and case

(1) The appropriate registry for the filing of a notice of appeal and of a case stated to which this Part applies shall be

(a) The office of the Court nearest to the place where the inquiry or arbitration was or is being conducted or the application or other matter was or is being considered; or

(b) Any other office of the Court in which the parties agree that the notice or case may be filed.

(2) In any case to which subclause (1)(b) applies, the parties shall endorse on or lodge with the notice of appeal a memorandum

Part 11—*continued*

of their agreement to the appeal being filed in the office of the Court in which it is filed.

(3) In any case to which subclause (1)(a) applies, if it appears to the Court, on application made to it, that the notice of appeal has been filed in the wrong office of the Court or that any other office of the Court would be more convenient to the parties, it may direct that the notice of appeal be filed in such other office, or that all documents filed in the appeal be transferred to the proper office or (as the case may be) to such other office.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

724D Contents of case

(1) Every case shall state concisely

(a) The circumstances of the application, inquiry, arbitration, or other matter leading to the statement of the case:

(b) The relevant facts as determined by the tribunal (attaching copies of documents, if any) necessary to enable the Court to decide the questions enumerated for the opinion of the Court:

(c) Where appropriate, the respective contentions of the parties with reference to those questions:

(d) The questions upon which the opinion of the Court is sought.

(2) In addition to the requirements of subclause (1), in any case stated by way of appeal on a question of law only in which a ground of the appeal is that there was no evidence on which the tribunal could properly have reached the decision or any specified part of the decision, there shall be attached to the case, in addition to copies of documents, affidavits, and exhibits which were placed before the tribunal, a copy of such notes of any evidence given at the hearing and made for or under the direction of the tribunal as have been transcribed.

Part 11—*continued*

(3) If the transcript is certified to be correct by the appropriate officer of the tribunal by which, or the person by whom, the decision was made, no further verification of its contents shall be required.

(4) No document or transcript of any evidence shall be attached to the case unless it is necessary for a proper determination by the Court of the questions of law specified in the case.

(5) The case shall be signed by or on behalf of the tribunal.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

724E Order for transcription of evidence

(1) Where, in any case stated by way of appeal on a question of law only,

(a) There has been a hearing before the tribunal by which the decision was made and the evidence given at the hearing was recorded but has not been transcribed; and

(b) A ground of the appeal is that there is no evidence on which the tribunal by which the decision was made could properly have reached the decision or any part of the decision,

the Court may order, subject to such conditions as it thinks fit, that a transcript be made of all evidence given material to the issues involved (being issues specified in the notice of appeal).

(2) Rule 714(2) to (6) applies, with all necessary modifications, in relation to an application for an order under subclause (1) as if the application were an application for an order under rule 714(1).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by

Part 11—*continued*

rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

Subclause (2) was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

724F When case deemed to be stated

(1) A case shall be deemed to have been stated when a case stated under this Part has been duly filed.

(2) It is the responsibility of the appellant or of the party to the proceedings before the tribunal who has sought the stating of a case for the opinion of the Court to ensure that, when the case has been settled and signed by or on behalf of the tribunal, the case is filed in the appropriate registry.

(3) Immediately after the case stated has been filed in the appropriate registry, the party filing it shall serve a copy on every other party to the matter before the tribunal by which the case has been stated.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

724G Power to amend case

(1) The Court may, if it thinks fit, cause a case stated to be sent back to the tribunal for amendment

(a) To clarify the questions of law on which the opinion of the Court is sought; or

(b) To provide any further information necessary to enable the Court properly to dispose of the questions enumerated in the case stated.

(2) The Court may amend the case at the hearing if the tribunal agrees.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11—*continued*

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

724H Setting down

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

Rule 724H was revoked, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

724I Security for costs

In the case of any appeal to which this Part applies, the Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

724J Counsel assisting

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

Rule 724J was revoked, as from 1 February 1998, by rule 19(e) High Court Amendment Rules 1997 (SR 1997/350).

Part 11—*continued*

725 Determination of questions

The Court shall hear and determine the question or questions of law arising on any case filed under this Part, and shall thereupon do any one or more of the following things:

(a) In the case of an appeal, reverse, confirm, or amend the determination in respect of which the case has been stated:

(b) In the case of an appeal, remit the matter to the tribunal for reconsideration and determination in accordance with the opinion of the Court on the question or questions of law:

(c) In every other case, remit the matter to the tribunal with the opinion of the Court thereon:

(d) In any case, make such other order in relation to the matter as it thinks fit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11 (comprising rr 719 to 725J) was substituted, as from 1 January 1993, by rule 16 High Court Amendment Rules (No 2) 1992 (SR 1992/318). Rules 725 to 725J were renumbered as rr 724A to 724J, as from 1 January 1993, by rule 6(1) High Court Amendment Rules (No 3) 1992 (SR 1992/335) to correct a duplication error.

Part 11A
Patents

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725A Interpretation

In this Part, unless the context otherwise requires

Commissioner means the Commissioner of Patents

Journal means the Patent Office Journal

Report means a report by a scientific adviser

Respondent's notice means a notice given under rule 725ZU

Scientific adviser includes

(a) A person with scientific qualifications; and

(b) A medical practitioner; and

(c) An engineer; and

Part 11A—*continued*

(d) An architect; and
(e) A surveyor; and
(f) An accountant; and
(g) An actuary; and
(h) Any other specially skilled person whose opinion in relation to any matter may be of assistance to the Court.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Scientific advisers

725B Appointment of scientific advisers

In any proceeding under the Patents Act 1953 or any proceeding for infringement of a patent, the Court may at any time, and whether or not an application has been made by any party for that purpose, appoint an independent scientific adviser to assist the Court or to inquire and report upon any questions of fact or opinion not involving questions of law or construction:

Provided that, if all the parties to the proceeding so request, the Court shall appoint a scientific adviser as aforesaid.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725C Nomination of scientific adviser and settlement of questions and instructions

The Court shall nominate the scientific adviser and shall settle the questions or instructions to be submitted or given to the scientific adviser.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725D Reports of scientific adviser

(1) Where, under rule 725B or rule 725C, the Court has appointed or nominated an independent scientific adviser, any report made by that scientific adviser, so far as it is not accepted by all parties to the proceeding,
   (a) Shall be treated as information furnished to the Court; and

Part 11A—*continued*

(b) Shall be given such weight as the Court may think fit.

(2) All reports by any such independent scientific adviser

(a) Shall be made in writing to the Court; and

(b) Shall be accompanied by such copies thereof as the Court may require.

(3) Copies of the report shall be forwarded by the Court to the parties to the proceeding.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725E Cross-examination of scientific adviser

(1) Any party may, within 14 days of receiving a copy of the report, or within such other time as the Court may direct, apply for leave to cross-examine the scientific adviser on his or her report.

(2) The Court may, on an application under subclause (1), make an order for the cross-examination of the scientific adviser at the hearing of the proceeding.

(3) The Court shall, at the hearing, direct at what stage the scientific adviser is to be called.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725F Experiment or test

(1) If the scientific adviser considers that an experiment or test (other than one of a trifling character) is necessary to enable the scientific adviser to report in a satisfactory manner, the scientific adviser

(a) Shall inform the parties; and

(b) Shall endeavour to agree with the parties as to

(i) The expenses involved; and

(ii) The persons to attend the experiment or test.

(2) In default of agreement between the parties, all such matters shall be determined by the Court.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Part 11A—*continued*

725G Further or supplemental report

The Court may at any time direct the scientific adviser to make a further or supplemental report, and the provisions of rules 725D and 725E shall apply to any such report as they apply to an original report.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725H Remuneration of scientific adviser

The remuneration of the scientific adviser shall be fixed by the Court, and shall include the costs of making a report and a proper daily fee for any day on which the scientific adviser may be required to attend before the Court.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Extension of term of patent

725I Application for extension of term of patent

(1) Every application to the Court under section 31 or section 32 or section 33 of the Patents Act 1953 shall be made by way of an originating application.

(2) The originating application shall be filed in the office of the Court at Wellington (unless the Court otherwise directs).

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725J Applications for directions

The applicant shall file with the originating application an interlocutory application under rule 458I for directions regarding the proceeding commenced by the filing of the originating application.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725K Copy of specifications and drawing

The applicant shall file with the originating application a copy of the specifications and drawings of the patent.

Part 11A—*continued*

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725L Affidavit concerning material facts

The applicant shall, when filing the originating application or not later than 21 days before the date appointed for the hearing of the interlocutory application for directions, file an affidavit stating all material facts on which the applicant relies.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725M Grounds and facts

Nothing in rules 725I to 725L shall prevent the Court from making an order on grounds or facts other than those stated or referred to in the originating application and affidavit if the Court considers it expedient to do so.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725N Advertisement

(1) As soon as possible after filing the originating application, the applicant shall cause an advertisement in accordance with subclause (2) to be published once in the Journal and once in a daily newspaper published at each of the following cities, namely, Auckland, Wellington, Christchurch, and Dunedin.

(2) The advertisement shall

(a) State the nature of the application:

(b) State that the application for directions will be heard on a day and at a time to be appointed, which day shall not be earlier than 30 clear days after the date of the last publication of the advertisement:

(c) Have at the foot thereof the name of the applicant and of the applicant's solicitor, if any, and the applicant's address for service:

(d) Contain a statement as to the effect of rule 725P.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Part 11A—*continued*

725O Service on Commissioner

Forthwith after filing any document (other than the specifications and drawings) the applicant shall serve on the Commissioner a copy of that document.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725P Notice of opposition and notice of intention to appear

(1) Any person (other than the applicant) who intends to appear at the hearing to oppose or support the originating application or to claim the inclusion therein of any restrictions or conditions or provisions shall,

(a) Not later than 7 clear days before the date appointed for the hearing of the interlocutory application for directions,

(i) File a notice of opposition or a notice of intention to appear, as the case may require, in the office of the Court in which the originating application has been filed; and

(ii) Serve a copy of the notice of opposition or notice of intention to appear on the applicant or the applicant's solicitor and on the Commissioner:

(b) If the person intends to oppose the application or to claim the inclusion therein of any restrictions or conditions or provisions, not later than 7 clear days before the date appointed for the hearing of the interlocutory application for directions,

(i) File in the office of the Court in which the originating application has been filed particulars of the applicant's objection or claim; and

(ii) Serve a copy thereof on the applicant or the applicant's solicitor and on the Commissioner.

(2) Every notice of opposition and every notice of intention to appear filed by any person under this rule shall have at the foot thereof the person's address for service.

Part 11A—*continued*

(3) Any person who fails to comply with subclause (1) shall be deemed to have abandoned that person's opposition, support, or claim.

(4) Except by leave of the Court, which may be granted on such terms as may be just, no person shall be heard or adduce evidence in support of any objection or claim as regards any matters not specified in the particulars filed by that person as aforesaid.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725Q Obligation of applicant to supply copy of originating application, etc

The applicant shall, upon the request and at the expense of any person who has served a notice of opposition or a notice of intention to appear, supply that person with

(a) A copy of the originating application; and

(b) A copy of the receipts and payments account; and

(c) A copy of any affidavit filed in the Court.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725R Obligation of applicant to comply with request of Commissioner

The applicant shall, upon request by the Commissioner, give the Commissioner or any person appointed by the Commissioner reasonable facilities for inspecting and taking extracts from the books of account by reference to which the Commissioner proposes to verify the receipts and payments account or from which the materials for making up that account have been derived.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725S Notice of Commissioner's election to appear

If the Commissioner elects to appear on the hearing of the originating application, the Commissioner shall, not later than 7 clear days before the day appointed for that hearing,

Part 11A—*continued*

(a) Lodge notice of the Commissioner's election in the Court; and

(b) Serve a copy of the Commissioner's notice of election

(i) On the applicant; and

(ii) On any other person who has given notice of opposition or notice of intention to appear.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725T Particulars of Commissioner's objection

If the Commissioner elects or is directed to appear on the hearing of the originating application, the Commissioner shall, not later than 7 clear days before the day appointed for the main hearing, file particulars of any objection the Commissioner intends to make.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725U Affidavit proving publication of advertisement

Before the date appointed for hearing the interlocutory application for directions, the applicant shall file in the Court an affidavit to prove that a sufficient advertisement has been published in accordance with rule 725N.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725V Costs

If the Court refuses to grant an order extending the term of the patent, it shall not, except under special circumstances, award more than one set of costs among all the opponents.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725W Reference to Court of application made to Commissioner

(1) Where the Commissioner decides to refer to the Court an application made to the Commissioner under section 31 or section 32 or section 33 of the Patents Act 1953, the Commissioner shall give notice of the decision in writing to the appli-

Part 11A—*continued*

cant and to any person who has supported the application and to any opponent.

(2) The applicant shall, within 28 days after the date of the receipt of the notice,

(a) File an originating application setting out the relief which the applicant seeks; and

(b) Serve a copy of the originating application

(i) On the Commissioner; and

(ii) On any person who supported the application made to the Commissioner; and

(iii) On any opponent to the application made to the Commissioner.

(3) The Commissioner shall, within 14 days after the date of the service of the originating application upon the Commissioner, send the Commissioner's file of proceedings to the Registrar of the Court.

(4) If the person who made the application to the Commissioner fails to file an originating application or to withdraw the application to the Commissioner within the said 28 days, the Commissioner may, after giving 7 clear days' further notice to the parties, prepare and file a statement of case referring the application for decision by the Court, which may award costs against the applicant if the applicant fails to proceed on the application.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Amendment of specification with leave of Court

725X Application for amendment of specification

Rules 725Y to 725ZE shall apply to every application made by a patentee under section 39 of the Patents Act 1953 for an order allowing the patentee to amend the patentee's complete specification.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Part 11A—*continued*

725Y Notice of intention to make application for amendment of specification

The patentee shall give notice to the Commissioner of the patentee's intention to make an application under section 39 of the Patents Act 1953.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725Z Advertisement

(1) The notice under rule 725Y shall be accompanied by a copy of a suitable advertisement of the proposed amendment.

(2) The Commissioner shall insert the advertisement once in the Journal.

(3) The advertisement

(a) Shall give particulars of the amendments sought and of the patentee's address for service within New Zealand; and

(b) Shall state that any person desiring to oppose the amendment must, within 14 days after the date of the actual issue of the Journal in which the advertisement is published, give notice in writing of that person's desire to the patentee at that address.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZA Right to be heard

Any person giving any notice under rule 725Z(3)(b) shall be entitled to be heard upon the application, subject to any direction of the Court as to costs.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZB Time for making of application

The patentee shall, as soon as may be after the expiration of 21 days after the date of the actual issue of the Journal in which the advertisement is published, proceed by way of interlocutory application in the proceeding pending before the Court.

Part 11A—*continued*

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZC Service of notice of interlocutory application

Notice of the interlocutory application, together with a copy of the specification certified by the Commissioner showing in a distinguishing ink or type the amendment proposed to be made, shall be served by the patentee on

(a) The Commissioner; and

(b) The parties to the proceedings; and

(c) Such persons, if any, as have given notice of intention to oppose.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZD Duty of Court to give directions

On the hearing of the interlocutory application, the Court

(a) Shall decide whether, and on what terms as to costs or otherwise, the application shall be allowed to proceed; and

(b) Shall direct whether the application shall be heard on oral or affidavit evidence, and, if on affidavit evidence, shall fix the times within which affidavits shall be filed by the parties and by any other person entitled to be heard under the Act or these rules.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZE Procedure where amendment to specification allowed

(1) Where the Court allows a specification be amended,

(a) The patentee shall forthwith lodge with the Commissioner an office copy of the order allowing the amendment; and

(b) The Commissioner shall advertise the order allowing the amendment once in the Journal and otherwise as the Court may direct.

(2) The patentee shall also, if so required by the Court or by the Commissioner, leave at the Patent Office a new specification

Part 11A—*continued*

and drawings as amended which shall be prepared as far as may be in accordance with the Patents Regulations 1954.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Revocation of patents

725ZF Application to Court for revocation of patent

(1) Every application to the Court under section 41 of the Patents Act 1953 for the revocation of a patent (not being an application made in the course of a proceeding) shall be made by way of an originating application.

(2) The originating application shall be filed in the office of the Court at Wellington (unless the Court otherwise directs).

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZG Respondent in revocation proceedings to begin

(1) The respondent to an application under section 41 of the Patents Act 1953 for the revocation of a patent

(a) Shall be entitled to begin and give evidence in support of the patent; and

(b) If the applicant gives evidence impeaching the validity of the patent, shall be entitled to reply.

(2) This rule has effect notwithstanding anything in rule 487.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Objections

725ZH Particulars of objections where validity of patent disputed

Particulars of objections as to the validity of a patent

(a) Shall be delivered

(i) With an application for revocation under section 41 of the Patents Act 1953; or

(ii) With the defence in a proceeding for infringement of a patent; or

Part 11A—*continued*

(iii) With a counterclaim for revocation under section 70 of the Patents Act 1953; and

(b) Shall state every ground upon which the validity of the patent is disputed; and

(c) Shall include such particulars as will clearly define every issue which it is intended to raise.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZI Particulars where want of novelty alleged

(1) If one of the objections taken in the particulars of objections as to the validity of a patent is want of novelty, the particulars shall state the time and place of the previous knowledge, publication, or user alleged.

(2) If it is alleged that the invention has been used prior to the date of the patent, the particulars shall also

(a) Specify the name and address of the person who is alleged to have made the prior user and the place of the prior user; and

(b) Specify whether the prior user is alleged to have continued down to the date of the patent, and, if not, the earliest and latest dates on which the prior user is alleged to have taken place; and

(c) Contain a description (accompanied by drawings, if necessary) sufficient to identify the alleged prior user; and

(d) If the user relates to any machinery or apparatus, specify whether it is in existence and where it can be inspected.

(3) No evidence as to any machinery or apparatus which is alleged to have been used prior to the date of the patent and which is in existence at the date of the delivery of the particulars shall be receivable unless it is proved that the party relying on the prior user has (if the machinery or apparatus is in that party's own possession) offered inspection of it, or (if it is not in that party's own possession) has used best endeavours to obtain the inspection of it for the other parties to the proceeding.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Part 11A—*continued*

725ZJ Service of notice on Solicitor-General

In any proceeding before the Court, any party who intends to dispute the validity of a patent

(a) Shall give notice of that intention to the Solicitor-General at least 21 days before the hearing; and

(b) Shall supply the Solicitor-General with a copy of such papers filed in the proceeding by that party or by any other party as the Solicitor-General requires.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Particulars in proceeding for infringement of patent

725ZK Particulars to be supplied by plaintiff

In a proceeding for infringement of a patent, the plaintiff

(a) Shall deliver with the plaintiff's statement of claim particulars of the breaches relied upon; and

(b) Shall specify which of the claims in the specification of the patent sued upon are alleged to be infringed; and

(c) Shall give at least one instance of each type of infringement of which complaint is made.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZL Particulars to be supplied by defendant

(1) If a defendant in a proceeding for infringement of a patent intends to rely, as a defence to the proceeding, on the insertion by the patentee in any contract or contracts of any condition which is void by virtue of section 66 of the Patents Act 1953, that defendant shall deliver with that defendant's defence

(a) Full particulars of the dates of, and parties to, all contracts on which that defendant intends to rely as containing any such condition; and

(b) Full particulars of the particular conditions on which that defendant intends to rely as being void by virtue of that section.

Part 11A—*continued*

(2) A defendant shall not be entitled to rely on a defence available to that defendant under section 66(2) of the Patents Act 1953 of which particulars have not yet been delivered in accordance with the provisions of this rule.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZM Evidence restricted to particulars delivered

Except by leave of the Court, which may be granted on such terms as the Court thinks just, no person shall be heard or adduce evidence in support of any alleged infringement or objection or defence as regards any matters which are not specified in or are at variance with the particulars that person has delivered.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZN Amendment of particulars

(1) Particulars filed in the Court under these rules may from time to time be amended by leave of the Court upon such terms as the Court thinks just.

(2) Further and better particulars may at any time be ordered by the Court.

(3) This rule has effect notwithstanding anything in rule 187.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Appeals

725ZO Mode of bringing appeal

Any person who desires to appeal to the Court from any decision of the Commissioner in a case in which a right of appeal is given by the Patents Act 1953 shall file a notice of appeal in the Court.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Part 11A—*continued*

725ZP Time for appeal

(1) The notice of appeal shall be filed within 28 days after the date of the decision.

(2) Except by leave of the Court, no appeal shall be entertained unless notice of appeal has been given within the period specified in subclause (1).

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZQ Contents of notice of appeal

The notice of appeal shall state

(a) The decision or the part of the decision appealed against; and

(b) Any error of law alleged by the appellant; and

(c) Any question of law to be resolved; and

(d) The grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the Court and the other parties of the issues involved; and

(e) The relief sought.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZR Grounds of appeal

Except with the leave of the Court, which may be granted on such terms as the Court thinks just, no grounds other than those stated in the notice of appeal shall be allowed to be taken by the appellant at the hearing.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZS Service of notice of appeal

The appellant shall, within 7 days of filing the notice of appeal, serve a copy of the notice on

(a) The Commissioner; and

(b) Any other party to the proceedings before the Commissioner.

Part 11A—*continued*

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZT Obligation of Commissioner to transmit papers to Court

On receiving the notice of appeal, the Commissioner shall forthwith transmit to the Court all the papers relating to the matter the subject of the appeal.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZU Contentions that may be raised by respondent

(1) A respondent who has not appealed from the decision of the Commissioner, but desires to contend on the appeal that the decision should be varied either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of that contention and the relief which the respondent seeks from the Court. It shall not be necessary for any such respondent to file a further notice of appeal under rule 725ZO.

(2) A respondent who desires to contend on the appeal that the decision of the Commissioner should be affirmed on grounds other than those set out in the decision shall give notice to that effect specifying the grounds of that contention.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZV Respondent's notice

(1) A respondent's notice shall be sent to the Commissioner and to the appellant and every other party to the proceedings before the Commissioner within 28 days after the date of the receipt of the notice of appeal by the respondent or within such further time as the Court may direct.

(2) A party by whom a respondent's notice is given shall, within 7 days after the date of the service of the notice on the appellant, furnish 2 copies of the notice to the Court.

(3) Where more than one party files a notice of appeal in accordance with these rules, any party to the proceedings, whether or

Part 11A—*continued*

not that party has filed a notice of appeal, may file a respondent's notice in respect of any notice of appeal given by any other party.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZW Appeal to be by way of rehearing

An appeal to the Court shall be by way of rehearing, and the evidence used on appeal shall be the same as that used before the Commissioner, and no further evidence shall be given, except with the leave of the Court.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZX Proceedings to be heard and determined in public

(1) Subject to the provisions of this rule, all proceedings before the Court (being proceedings under the Patents Act 1953 or for infringement of a patent) shall be heard and determined in public unless in any particular case the Court directs that they shall be heard in private.

(2) Proceedings before the Court relating to a decision of the Commissioner in any case in which the complete specification of the patent application has not been published shall be heard and determined in private unless the Court directs that they shall be heard in public.

(3) A direction under this rule may be given by the Court either of its own motion or on the application of a party to the proceedings, and the direction may relate to all the proceedings or to any specified part of them.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 11A (comprising rules 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZY Documentary evidence

The rules applicable to the filing of documentary evidence on proceedings before the Commissioner shall apply to documentary evidence filed on an appeal to the Court.

Part 11A—*continued*

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZZ Cross-examination of witnesses

(1) The Court may, at the request of any party, order the attendance at the hearing, for the purpose of cross examination, of any person who has made a statutory declaration or sworn an affidavit in the matter to which the appeal relates.

(2) Any person requiring the attendance of a witness for cross examination shall tender to the witness whose attendance is required the appropriate fees, allowances, and travelling expenses payable to any witness in accordance with the appropriate scales specified in the Schedule to the Witnesses and Interpreters Fees Regulations 1974.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

725ZZA Application of Part 10

Part 10 shall apply in relation to any appeal under the Patents Act 1953 except to the extent that provisions of that Part are modified by or are inconsistent with this Part or the Patents Act 1953.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Costs

725ZZB Costs

Where a proceeding for infringement of a patent goes to trial, no costs shall be allowed to the parties delivering any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent except so far as the issues or particulars are certified by the Court to have been proved or to have been reasonable and proper.

Part 11A (comprising rr 725A to 725ZZB) was inserted, as from 1 October 1990, by rule 3 High Court Amendment Rules (No 2) 1990 (SR 1990/187).

Part 12
Reciprocal enforcement of judgments

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

General provisions

726 Interpretation

(1) In this Part, unless the context otherwise requires,

The Act means the Reciprocal Enforcement of Judgments Act 1934

Application for registration means an application made under section 4 of the Act

Foreign judgment means any judgment to which, pursuant to section 3 or section 3A or section 3B, as the case may be, of the Act, Part 1 of the Act for the time being applies

The general rules means the rules comprised in the other Parts of these rules.

(2) Expressions not defined in this Part but defined in the Act have, in this Part, the meaning so defined.

Compare: *Gazette*, 1935, p 3600, r 4

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) "Foreign judgment": amended, as from 8 May 1992, by rule 3 High Court Amendment Rules 1992 (SR 1992/88) by inserting the words "or section 3A or section 3B, as the case may be,"

727 Application of other Parts

The general rules shall apply except so far as those rules are modified by or are inconsistent with this Part.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

728 This Part to have effect subject to Orders in Council

This Part shall have effect subject to such provisions contained in Orders in Council made under section 3 or section 3A or section 3B, as the case may be, of the Act as are declared by the said Orders to be necessary for giving effect to any agreement made by or on behalf of the Government of New Zealand in

Part 12—*continued*

relation to matters in respect of which there is power to make rules of Court for the purposes of Part 1 of the Act.

Compare: *Gazette*, 1935, p 3600, r 3

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 728 was amended, as from 8 May 1992, by rule 3 High Court Amendment Rules 1992 (SR 1992/88) by inserting the words "or section 3A or section 3B, as the case may be,".

Registration of foreign judgments

729 Mode of application for registration

(1) Every application for registration shall be made by originating application under Part 4A, and the provisions of that Part shall apply except so far as they are modified by or inconsistent with this Part.

(2) An application for registration may be made without notice to the judgment debtor, but, where it is so made, it shall be certified in accordance with rule 240(2) as if it were an *ex parte* application.

Compare: *Gazette*, 1935, p 3600, rr 6-7

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1) was substituted, as from 8 May 1992, by rule 4(1) High Court Amendment Rules 1992 (SR 1992/88).

Subclause (2) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "rule 240(2)" for the expression "rule 237". *See* rule 19 of those Rules as to the transitional provisions.

730 Title of proceeding

The heading to each document filed in an application for registration

(a) Shall include both a reference to the Act and a reference to the judgment sought to be enforced; and

(b) Shall specify, in relation to the judgment, both the Court in which it was given and the parties to the judgment; and

(c) May be in form 65.

Compare: *Gazette*, 1935, p 3600, r 8

Part 12—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

731 Place of filing

Every application for registration shall be filed in the office of the Court in which the defendant would have been required to file his statement of defence had the proceeding been commenced by way of proceeding on the foreign judgment and not by way of application for registration.

Compare: *Gazette*, 1935, p 3600, r 5

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

732 Supporting affidavits

Every application for registration shall be supported by one or more affidavits.

Compare: *Gazette*, 1935, p 3600, r 9

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

733 Copy judgment and translation

(1) The foreign judgment, or a verified or certified or otherwise duly authenticated copy thereof, shall be exhibited to an affidavit filed in support of the application for registration.

(2) If the judgment is expressed in a language other than English, a translation of the judgment in English shall be filed.

(3) Any such translation shall be verified by the affidavit of a person qualified as a translator from that language.

Compare: *Gazette*, 1935, p 3600, r 10

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

734 Judicial notice of authentication of judgment

Judicial notice shall be taken of any seal or signature by which a copy of a foreign judgment is verified and which purports to be

Part 12—*continued*

(a) The seal of the Court in which the judgment was given or of a Judge thereof or of a Registrar or similar officer thereof; or

(b) The signature of a Judge or of a Registrar or similar officer of the Court in which the judgment was given.

Compare: *Gazette*, 1935, p 3600, r 11

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

735 Evidence of exchange rates and interest

Matters deposed to in the affidavit or affidavits filed in support of the application for registration of a money judgment shall include

(a) Where the application does not state that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed

(i) The rate of exchange prevailing on the day of the application between New Zealand currency and the currency in which the sum payable under the judgment is expressed:

(ii) The amount which the sum payable under the judgment represents in New Zealand currency calculated at the rate specified pursuant to subparagraph (i):

(b) The rate of interest (if any) carried by the judgment by the law of the country under which it is given:

(c) The amount of interest which, by that law, will have become due under the judgment up to the time of the application, expressed,

(i) Where the application does not state that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed, in New Zealand currency calculated at the rate of exchange specified pursuant to subparagraph (i) of paragraph (a):

Part 12—*continued*

(ii) Where the application states that the judgment is to be registered in the currency in which it is expressed, in that currency.

Compare: *Gazette*, 1935, p 3600, r 12

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 735 was substituted, as from 8 May 1992, by rule 5 High Court Amendment Rules 1992 (SR 1992/88).

736 Evidence of right to registration

(1) An affidavit filed in support of the application for registration shall state, to the best of the information and belief of the deponent,

(a) That the applicant is entitled to enforce the judgment; and

(b) As the case may require, either

(i) That, at the date of the application, the judgment has not been satisfied; or

(ii) That, at the date of the application, the judgment has been partly satisfied; and

(c) Where, at the date of the application the judgment has been partly satisfied, the balance remaining payable or other action required to be taken to satisfy the judgment, as the case may be, at that date; and

(d) That at the date of the application the judgment can be enforced in the country of the original Court; and

(e) That if the judgment were registered the registration would not be or be liable to be set aside under section 6 of the Act; and

(f) The full name, title, trade, or business, and the usual or last-known place of abode or of business of the judgment creditor and the judgment debtor respectively.

(2) The deponent shall specify in that affidavit the source of his information and the grounds for his belief.

Compare: *Gazette*, 1935, p 3600, r 13

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 12—*continued*

Subclause (1)(c) was substituted, as from 8 May 1992, by rule 6(1) High Court Amendment Rules 1992 (SR 1992/88)

Subclause (1)(d) was amended, as from 8 May 1992, by rule 6(2) High Court Amendment Rules 1992 (SR 1992/88) by omitting the words "by execution".

737 Further evidence

The application for registration shall be supported by such other evidence as may be required having regard,

(a) In the case of a money judgment of a superior Court, to the provisions of the Order in Council under section 3 of the Act by which Part 1 of the Act was extended to the country of the original Court:

(b) In the case of a money judgment of an inferior Court, to the provisions of the Order in Council under section 3A of the Act directing that the inferior Court is a specified inferior Court for the purposes of Part 1 of the Act:

(c) In the case of a non-money judgment of a superior Court, to the provisions of the Order in Council under section 3B(1) of the Act directing that the judgment is a specified non-money judgment for the purposes of Part 1 of the Act:

(d) In the case of a non-money judgment of an inferior Court, to the provisions of the Order in Council under section 3B(2) of the Act directing that the judgment of the inferior Court is a specified non-money judgment for the purposes of Part 1 of the Act.

Compare: *Gazette*, 1935, p 3600, r 15

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 737 was substituted, as from 8 May 1992, by rule 7 High Court Amendment Rules 1992 (SR 1992/88).

738 Registration of part of judgment

Where

(a) A foreign judgment is in respect of different matters; and

(b) Some of the provisions of the foreign judgment are such that if those provisions had been contained in separ-

Part 12—*continued*

ate judgments those judgments could not properly have been registered,

the application for registration shall specify, and the order giving leave to register the foreign judgment shall be limited to, the provisions which, in accordance with the Act and these rules, are entitled to registration.

Compare: *Gazette*, 1935, p 3600, r 14

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

739 Security for costs

The Court may, on any application for registration, order the judgment creditor to give security for the costs of the judgment debtor in opposing the application or in applying to set aside the registration.

Compare: *Gazette*, 1935, p 3600, r 16

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

740 Order for registration

(1) The order giving leave to register a judgment or part of a judgment

(a) Shall state the period, being a period computed from the date of service of notice of registration, within which an application may be made to set aside the registration; and

(b) Shall prohibit enforcement of the judgment until after the expiration of the period stated pursuant to paragraph (a).

(2) Unless the Court otherwise orders, the period stated pursuant to subclause (1)(a) shall be the same as would apply under the general rules to the filing of a statement of defence in a proceeding.

(3) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally

Part 12—*continued*

fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

(4) It shall not be necessary to serve an order made under subclause (1) on the judgment debtor.

Compare: *Gazette*, 1935, p 3600, rr 17-18

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (1)(b) was amended, as from 8 May 1992, by rule 8 High Court Amendment Rules 1992 (SR 1992/88) by substituting the word "enforcement" for the word "execution".

741 Mode of registration

(1) The registration of every judgment ordered to be registered under the Act shall be effected by entry of particulars in an appropriate record book kept by the Registrar.

(2) There shall be entered in that record book

(a) The date of the order for registration:

(b) The name, title, trade, or business of the judgment debtor and the judgment creditor respectively:

(c) The usual or last-known place of abode or business of the judgment debtor and the judgment creditor respectively:

(d) In the case of a money judgment, the sum payable under the judgment, expressed

(i) Where the application states that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed, in that currency; or

(ii) In any other case, as if it were for an equivalent amount in New Zealand currency, based on the rate of exchange prevailing on the day of the application for registration:

(e) The interest (if any), up to the time of registration, for which the judgment is registered:

(ea) Where the judgment is a non-money judgment, particulars of the judgment:

(f) The costs allowed of and incidental to registration:

Part 12—*continued*

(g) Any special directions contained in the order for registration:

(h) The particulars of any action taken to enforce the judgment.

Compare: *Gazette*, 1935, p 3600, r 19

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Subclause (2)(d) was substituted, as from 8 May 1992, by rule 9(1) High Court Amendment Rules 1992 (SR 1992/88).

Subclause (2)(ea) was inserted, as from 8 May 1992, by rule 9(2) High Court Amendment Rules 1992 (SR 1992/88).

Subclause (2)(h) was substituted, as from 8 May 1992, by rule 9(3) High Court Amendment Rules 1992 (SR 1992/88).

742 Date of registration

Unless the Court otherwise orders, both the order for registration and the registration shall be deemed to be of the date when the statement of claim was filed in the Court.

Compare: *Gazette*, 1935, p 3600, r 20

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

743 Notice of registration

(1) Notice in writing of the registration of a foreign judgment in New Zealand must be served on the judgment debtor.

(2) The notice shall be served personally in accordance with the general rules unless some other mode of service is ordered by the Court.

(3) If the judgment debtor is out of New Zealand, the notice may, notwithstanding rule 220, be served on him without the leave of the Court.

Compare: *Gazette*, 1935, p 3600, r 21

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

744 Contents of notice of registration

(1) The notice of registration shall state

(a) Full particulars of

Part 12—*continued*

(i) The judgment registered; and
(ii) The order for registration; and
(iii) Any special direction contained in the order for registration; and

(b) Whether the notice is issued by the judgment creditor or by a solicitor on his behalf; and

(c) An address for service; and

(d) Subject to subclause (2), the right of the judgment debtor to apply, on the grounds appearing in the Act, to have the registration set aside; and

(e) In accordance with the terms of the order giving leave to register, within what time from the date of service of the notice an application to set aside may be made.

(2) Subclause (1)(d) does not require the notice to set out in terms the grounds on which the registration can be set aside.

Compare: *Gazette*, 1935, p 3600, r 22

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

745 Application to set aside registration

(1) An application to set aside the registration of a foreign judgment shall be made by interlocutory application.

(2) On any such application the Court may direct that an issue between the judgment creditor and the judgment debtor shall be stated and tried and may give such directions in relation to the trial of the issue as may be necessary.

Compare: *Gazette*, 1935, p 3600, r 23

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

746 Determination of certain questions

If, whether under the Act or under this Part, any question arises about whether a judgment to which Part 1 of the Act applies can be enforced in the country of the original Court or what interest is payable under any judgment under the law of that country, that question shall be determined in accordance with such provisions (if any) in that behalf as are contained

Part 12—*continued*

(a) In the case of a money judgment of a superior Court, in the Order in Council under section 3 of the Act by which Part 1 of the Act was extended to the country of the original Court:

(b) In the case of a money judgment of an inferior Court, in the Order in Council under section 3A of the Act directing that the inferior Court is a specified inferior Court for the purposes of Part 1 of the Act:

(c) In the case of a non-money judgment of a superior Court, in the Order in Council under section 3B(1) of the Act directing that the judgment is a specified non-money judgment for the purposes of Part 1 of the Act:

(d) In the case of a non-money judgment of an inferior Court, in the Order in Council under section 3B(2) of the Act directing that the judgment of the inferior Court is a specified non-money judgment for the purposes of Part 1 of the Act.

Compare: *Gazette*, 1935, p 3600, r 26

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rule 746 was substituted, as from 8 May 1992, by rule 10 High Court Amendment Rules 1992 (SR 1992/88).

747 Enforcement of judgments

(1) A registered judgment shall not be enforced at any time in

(a) The period specified in the order for registration; or

(b) Any extension of the period specified in the order for registration; or

(c) The period between the filing and the disposal of any application to set aside the registration.

(2) In every case the fact and date of service of the notice of registration shall be proved by an affidavit filed in that behalf.

Compare: *Gazette*, 1935, p 3600, r 24

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 747 and 748 were substituted, as from 8 May 1992, by rule 11 High Court Amendment Rules 1992 (SR 1992/88).

Part 12—*continued*

748 Form of execution process

An execution process within the meaning of rule 547 issued on a foreign judgment registered under the Act shall describe the sum recovered or the order or other relief granted, as the case may be, in these terms: "which sum/order/(specify other relief)* (*delete if inapplicable) [*Name of judgment creditor*] of [*Address of judgment creditor*] has recovered/obtained* (*delete if inapplicable) against him in [*Description of Court in which the judgment was obtained*] by virtue of a judgment bearing date the ..... day of ..... 19....., and which judgment has been duly registered in this Court pursuant to Part 1 of the Reciprocal Enforcement of Judgments Act 1934".

Compare: *Gazette*, 1935, p 3600, r 25

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Rules 747 and 748 were substituted, as from 8 May 1992, by rule 11 High Court Amendment Rules 1992 (SR 1992/88).

Certified copies of New Zealand judgments

749 Mode of application for certified copy

(1) An application under section 11 of the Act for a certified copy of a judgment obtained in the Court shall be made by *ex parte* application filed in the office of the Court in which the judgment was sealed.

(2) The application shall be supported by the affidavit of the judgment creditor or his solicitor, which affidavit shall

- (a) Give particulars of the proceeding in which the judgment was sealed; and
- (b) Have annexed to it
  - (i) A copy of the statement of claim by which the proceeding was instituted; and
  - (ii) Evidence of the service of the statement of claim upon the judgment debtor or of appearance by the judgment debtor in the proceeding; and
  - (iii) Copies of the pleadings, if any, in the proceeding; and

Part 12—*continued*

(c) Verify the copies and evidence annexed to it pursuant to paragraph (b); and
(d) State the grounds on which the judgment was based; and
(e) State whether the judgment debtor did or did not object to the jurisdiction, and, if so, on what grounds; and
(f) State
  (i) That the judgment is not subject to any stay of execution; and
  (ii) That no notice of appeal against it has been given; and
  (iii) Whether the time for appealing has expired; and
(g) State the rate at which the judgment carries interest.

Compare: *Gazette*, 1935, p 3600, r 27(1)-(2)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

750 Issue of certified copy

(1) It shall not be necessary to seal any order made on an application under rule 749 but, on such order being made, the Registrar shall issue to the judgment creditor
  (a) A copy of the judgment sealed with the seal of the Court, which copy shall be certified by the Registrar
    (i) To be a true copy; and
    (ii) To be issued in accordance with section 11 of the Act; and
  (b) A separate certificate under the seal of the Court in which the Registrar shall certify
    (i) The matters deposed to in the affidavit filed in accordance with rule 749(2); and
    (ii) Such other particulars as it may be necessary to give to the tribunal in which execution of the judgment will be sought.

(2) In giving a certificate under subclause (1)(b) the Registrar may act on the faith of the affidavit filed pursuant to rule 749(2) and the documents annexed thereto.

Compare: *Gazette*, 1935, p 3600, r 27(3)-(4)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Part 13
Enforcement of certain judgments and orders of Federal Court of Australia

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

General provisions

751 Interpretation

(1) In this Part, unless the context otherwise requires,

The Act means the Reciprocal Enforcement of Judgments Act 1934

Federal Court means the Federal Court of Australia

Judgment creditor means the person in whose favour a judgment or order or injunction was given or made or granted in a specified proceeding; and includes any person in whom the rights under it have become vested by succession or assignment or otherwise

Judgment debtor means the person against whom a judgment or order or injunction was given or made or granted in a specified proceeding; and includes any person against whom it is enforceable under the law of the Commonwealth of Australia or any State or Territory of Australia

The general rules means the rules comprised in the other Parts of these Rules.

(2) Expressions not defined in this Part but defined in Part 1A of the Act have, in this Part, the meanings so defined.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

752 Application

This Part applies to judgments, orders, and injunctions given or made or granted in specified proceedings.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

753 Application of other Parts

The general rules, except Part 12, shall apply except so far as those rules are modified by or are inconsistent with this Part.

Part 13—*continued*

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Registration

754 Mode of application

(1) Every application for an order that a judgment or order or injunction to which this Part applies be registered under section 8D of the Act shall be made by originating application under Part 4A; and the provisions of Part 4A shall apply except so far as they are modified by or inconsistent with this Part.

(1A) Every application under subclause (1) shall be accompanied by a copy of the judgment or order or injunction certified by the Federal Court to be a true copy or by a legible facsimile of such a copy so certified.

(2) An application under subclause (1) may be made *ex parte*.

(3) If a facsimile of a certified copy of a judgment or order or injunction to which this Part applies accompanies the application, the application shall be supported by an affidavit of the judgment creditor, if that person is present in New Zealand, or, if not, by that person's solicitor in New Zealand.

(4) The affidavit shall state that the deponent has been advised by

(a) The Federal Court; or

(b) A barrister or solicitor, or both, being a person entitled to practise in Australia before the Federal Court in all proceedings in respect of which that Court has jurisdiction and who also practised in relation to the proceeding in which the judgment or order or injunction appears to have been made or given or granted,

that the Federal Court gave the judgment, issued the order, or granted the injunction, as the case may be.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Subclause (1) was substituted, and subclause (1A) was inserted, as from 8 May 1992, by rule 12 High Court Amendment Rules 1992 (SR 1992/88).

Part 13—*continued*

755 Title of proceeding

The heading to an application under Rule 754 shall include a reference to Part 1A of the Act and shall include

(a) A reference to the judgment or order or injunction; and

(b) The names of the judgment creditor and of the judgment debtor.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

756 Place of filing

Every application for an order that a judgment or order or injunction to which this Part applies be registered shall be filed in the office of the Court determined as follows:

(a) Where the judgment debtor is resident or the judgment debtor's principal place of business is in New Zealand, that office shall be whichever of the offices of the Court at Auckland or Wellington or Christchurch is nearest to the residence or principal place of business of the judgment debtor:

Provided that where there are 2 or more judgment debtors, that office shall be determined by reference to the first-named judgment debtor who is resident or whose principal place of business is in New Zealand:

(b) Where no judgment debtor is resident or no judgment debtor's principal place of business is in New Zealand, that office shall be such of those offices as the plaintiff selects:

(c) Notwithstanding paragraphs (a) and (b), where the Crown is the judgment debtor, the office shall be the office of the Court at Wellington.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

757 Evidence of exchange rates and interest

In the case of an application for an order that a judgment or order to which this Part applies be registered, being a judgment or order for the payment of a sum of money in Australian currency, the application shall be supported by an affidavit stating

Part 13—*continued*

(a) Where the application does not state that the judgment creditor wishes the judgment to be registered in Australian currency

(i) The rate of exchange prevailing on the day of the application between New Zealand currency and Australian currency:

(ii) The amount which the sum payable under the judgment or order represents in New Zealand currency calculated at the rate specified pursuant to subparagraph (i):

(b) The rate of interest (if any) carried by the judgment or order:

(c) The amount of interest which, under Australian law, will have become due and payable under the judgment or order up to the time of the application, expressed,

(i) Where the application does not state that the judgment creditor wishes the judgment to be registered in Australian currency, in New Zealand currency calculated at the rate of exchange specified pursuant to subparagraph (i) of paragraph (a):

(ii) Where the application states that the judgment is to be registered in Australian currency, in Australian currency.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Rule 757 was substituted, as from 8 May 1992, by rule 13 High Court Amendment Rules 1992 (SR 1992/88).

758 Mode of registration

(1) The registration under section 8D of the Act of every judgment or order or injunction to which this Part applies shall be effected by entry of particulars in an appropriate record book kept by the Registrar.

(2) There shall be entered in that record book

(a) The date of the order for registration:

(b) The name, title, and trade or business of the judgment debtor and the judgment creditor respectively:

Part 13—*continued*

(c) The usual or last-known place of abode or business of the judgment debtor and judgment creditor respectively:

(d) In any case where a sum of money is payable under a judgment or order

(i) The sum payable under the judgment or order, expressed,

(A) Where the application states that the judgment creditor wishes the judgment to be registered in Australian currency, in Australian currency; or

(B) In any other case, as if it were for an equivalent amount in New Zealand currency based on the rate of exchange prevailing on the day of the application for registration; and

(ii) The interest, if any, up to the time of registration, for which the judgment or order is registered:

(e) In the case of an order or injunction, the terms of the order or injunction:

(f) The costs allowed of and incidental to registration:

(g) In the case of a judgment or order, the particulars of any execution issued.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Subclause (2)(d) was substituted, as from 8 May 1992, by rule 14 High Court Amendment Rules 1992 (SR 1992/88).

759 Notice of registration

(1) Notice in writing of the registration of a judgment or order or injunction to which this Part applies must be served on the judgment debtor.

(2) The notice shall be served personally in accordance with the general rules unless some other mode of service is ordered by the Court.

(3) If the judgment debtor is out of New Zealand, the notice may, notwithstanding rule 220, be served on the judgment debtor without the leave of the Court.

Part 13—*continued*

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

760 Contents of notice of registration

The notice of registration shall state

(a) Full particulars of

(i) The judgment or order or injunction; and

(ii) The order for registration; and

(b) Whether the notice is issued by the judgment creditor or by a solicitor on behalf of that person; and

(c) An address for service; and

(d) The right of the judgment debtor to apply to the Court under section 8E of the Act on the grounds set out in that section to have the registration set aside or to apply to the Court under section 8G of the Act on the grounds set out in that section for a stay of execution.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

761 Service of copy of judgment, order, or injunction

Where a judgment or order or injunction to which this Part applies is registered, a copy of the judgment or order or injunction, or a legible facsimile of it, or a legible copy of such a facsimile, shall be served on the judgment debtor either with notice of registration or separately.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

762 Copy of judgment, order, or injunction to be filed if facsimile produced

(1) Where a judgment or order or injunction to which this Part applies has been registered on the production of a facsimile or a copy of it, the applicant shall file the copy from which the facsimile was made not later than 7 working days after the making of the order.

(2) No proceedings for the execution of the judgment or for the enforcement of the order or injunction, as the case may be,

Part 13—*continued*

shall be commenced before the copy is filed without the leave of the Court.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

763 Application to set aside registration or for stay of execution

(1) An application to set aside the registration of a judgment or order or injunction to which this Part applies or an application for a stay of enforcement of such a judgment or order or injunction shall be made by interlocutory application.

(2) On any such application the Court may direct that an issue between the judgment creditor and the judgment debtor shall be stated and tried and may give such directions in relation to the trial as may be necessary.

Part 13 (comprising rr 751 to 763) was inserted, as from 19 October 1990, by rule 3 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Part 14
Proceedings in admiralty

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Preliminary provisions

764 Interpretation

(1) In this Part, unless the context otherwise requires,

The Act means the Admiralty Act 1973

Action in rem means an admiralty action *in rem*

Central Registry means the Wellington Registry of the Court

Foreign ship has the same meaning as it has in section 2(1) of the Maritime Transport Act 1994

Limitation action means an action by shipowners or other persons under the Maritime Transport Act 1994 for the limitation of the amount of their liability in connection with a ship or other property.

Part 14—*continued*

(2) Expressions not defined in this Part but defined in the Act have, in this Part, the meanings so defined.

Compare: SR 1975/85 r 2

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

765 Application of this Part

This Part applies to

(a) Proceedings in the admiralty jurisdiction of the Court; and

(b) Appeals in the Court of Appeal arising out of that admiralty jurisdiction whether commenced before, on, or after the date of commencement of this Part.

Compare: SR 1975/85 r 3

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

766 Application of other rules and practice of Court

The provisions of other Parts of these rules, and the general practice of the Court, apply where this Part applies except so far as they are modified by or inconsistent with the Act or this Part.

Compare: SR 1975/85 r 4

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

767 Directions where procedure not prescribed

(1) If a party or intending party wishes to take a step in a proceeding and the manner and form of the procedure is not prescribed by this Part or any other Part or by the general practice of the Court, that party may apply to the Court or a Judge for directions.

(2) A step in a proceeding is properly taken if it is taken in accordance with the directions given on an application under subclause (1).

Compare: SR 1975/85 r 5

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Part 14—*continued*

768 Forms

(1) The prescribed forms must be used wherever appropriate.

(2) If a form has not been prescribed for any application under this Part to the Court, the application must be in the form of an interlocutory application and any order made on that application must be in the form prescribed for an order made on an interlocutory application under these rules.

(3) If subclause (2) does not apply, the parties may frame a form for the special purpose of the particular case or the Court may frame the form.

(4) Variations to a prescribed form are permitted if the circumstances of any particular case so require.

Compare: SR 1975/85 r 6

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Commencement of proceedings

769 Types of action and issue of notice of proceeding

(1) Actions may be *in personam* or *in rem*, or both *in personam* and *in rem*.

(2) An action must be commenced by a notice of proceeding

(a) Issued out of any office of the Court; and

(b) Endorsed, before being issued, with a concise statement of

(i) The nature of the claim; and

(ii) The relief or remedy required; and

(iii) The amount claimed (if any).

(3) The concise statement referred to in subclause (2) is not a statement of claim within the meaning of these rules.

(4) An action in any case is to be treated as having commenced when a notice of proceeding complying with subclause (2) is filed in that case.

Compare: SR 1975/85 r 7

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Part 14—*continued*

770 Actions *in personam* and service out of jurisdiction

(1) An action *in personam* must be commenced by a notice of proceeding in form 67.

(2) The action must be intituled as in form 66.

(3) Rules 219 to 227 apply in relation to service out of the jurisdiction in an action *in personam*.

Compare: SR 1975/85 r 8

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

771 Actions *in rem* and service out of jurisdiction

(1) An action *in rem* must be commenced by a notice of proceeding in form 69.

(2) The action must be intituled as in form 68.

(3) No proceedings *in rem* concerning any claim against the Crown may be brought.

(4) A notice of proceeding *in rem* may not be served out of the jurisdiction, but a notice of proceeding that is both *in rem* and *in personam* may be served out of the jurisdiction in so far as it is *in personam*.

(5) Rules 219 to 227 apply to service out of the jurisdiction under subclause (4).

(6) An action that is both *in rem* and *in personam*, or notice of an action that is both *in rem* and *in personam*, must be intituled as in form 66 and be commenced by a notice of proceeding in form 70.

Compare: SR 1975/85 r 9

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

772 Service of notice of proceeding in action *in rem*

(1) The notice of proceeding in an action *in rem* must be served as follows:

(a) On a ship or on cargo or other property on board a ship,

(i) By attaching a sealed copy of the notice adjacent to the bridge or some conspicuous part of the

Part 14—*continued*

ship, or adjacent to an entrance way to the superstructure or accommodation section of the ship; and

(ii) By leaving a copy of the notice with the person apparently in charge of the ship, if that person is available at the time of service:

(b) On cargo or other property not on board a ship,

(i) By attaching a sealed copy of the notice to that cargo or other property; and

(ii) By leaving a copy of the notice attached to that place:

(c) On freight in the hands of an individual,

(i) By showing the person a sealed copy of the notice; and

(ii) By leaving a copy of the notice with that person:

(d) On proceeds in Court,

(i) By showing the Registrar a sealed copy of notice; and

(ii) By leaving a sealed copy of the notice with the Registrar:

(e) On inaccessible cargo or other property,

(i) By showing a sealed copy of the notice to any person appearing to be in charge of that cargo or other property; and

(ii) By leaving a copy of the notice with that person:

(f) In any case, by taking such other steps as the Court may order.

(2) The notice of proceeding must be served by or on behalf of the plaintiff or the plaintiff's solicitor on any person at whose instance a caveat against arrest is entered under rule 777 and a sealed copy of the notice must be delivered to the address for service given in the request for the caveat as soon as the plaintiff or the plaintiff's solicitor becomes aware that the caveat is in force.

(3) The notice of proceeding may be served on a Sunday, Good Friday or Christmas Day, or any public holiday, as well as on any other day.

Part 14—*continued*

(4) An affidavit of service exhibiting a sealed copy of the notice of proceeding and deposing to the time, place, and method of service must be filed.

(5) In an action *in rem*, service of a notice of proceeding or a warrant of arrest is not required if the solicitor for a person interested in the defendant undertakes in writing to
- (a) Accept service; and
- (b) Enter an appearance; and
- (c) Give security or pay money into Court instead of giving security.

Compare: SR 1975/85 r 10

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Subclause (1)(a), (1)(b), and (1)(e) was amended, as from 1 February 2003, by rule 15(1) High Court Amendment Rules (No 2) 2002 (SR 2002/410) by omitting the word "", freight,"" in each place where it appears..

Subclause 5 was amended, as from 1 February 2003, by rule 15(2) High Court Amendment Rules (No 2) 2002 (SR 2002/410) by inserting the words ""a person interested in"" after the words ""solicitor for"".

773 Appearance

(1) A party intending to defend an action must enter an appearance in person, or by a solicitor, by filing a memorandum in form 71 within the time and at the place directed in the notice of proceeding.

(2) The time for entering an appearance is
- (a) For a notice of proceeding to be served within the jurisdiction, within 14 days after the day of service:
- (b) For a notice of proceeding to be served outside the jurisdiction, within the time fixed by any order granting leave to serve the notice outside the jurisdiction.

(3) The provisions of this rule apply, with all necessary modifications, to an added or substituted defendant, to a third or further party who is served with a third party notice, and to an intervener who has obtained leave to intervene in an action.

(4) If 2 or more defendants to an action enter an appearance by the same solicitor at the same time, only 1 memorandum need be completed and filed.

Part 14—*continued*

(5) A party not entering an appearance within the time fixed by the notice of proceeding may, by consent of the other parties or by leave of the Judge, enter an appearance at any time on such terms as the Judge may order, but a party may not enter an appearance after judgment has been entered except with the leave of a Judge.

(6) A defendant to an action may enter a conditional appearance in the action, but a conditional appearance has effect as an unconditional appearance unless

(a) A Judge otherwise orders; or

(b) The defendant applies to the Court, within the time fixed for the purpose, for an order under subclause (7) and the Court makes an order under that subclause.

(7) A defendant to an action may at any time before entering an appearance in the action, or, if the defendant has entered a conditional appearance, within 10 days after the day on which that conditional appearance is entered, apply to the Court for an order

(a) Setting aside the notice of proceeding or service of the notice on the defendant; or

(b) Declaring that the notice has not been duly served on the defendant; or

(c) Discharging any order giving leave to serve the notice on the defendant out of the jurisdiction.

(8) On the filing of a memorandum of appearance, the Registrar must enter an appearance in the Register of Admiralty Proceedings, and must return to the party filing the memorandum a duplicate copy showing the date of filing.

(9) The party filing the memorandum must, as soon as practicable, serve the duplicate copy on the plaintiff, and must immediately serve office copies on those other parties who have entered appearances.

(10) At the end of every memorandum of appearance there must be an endorsement stating

(a) Whether the appearance is filed by the party appearing in person or by the party's solicitor, as the case may be; and

Part 14—*continued*

(b) If applicable, the solicitor's name and address, and the name of the solicitor's firm (if any); and

(c) If applicable, the name and address of the solicitor acting as agent in the proceeding of the solicitor filing the appearance or of the agent's firm (if any); and

(d) An address for service.

(11) In an action *in rem*, the appearance must state

(a) The name and true address of the party appearing and the capacity in which that party appears, whether as owner or part owner or otherwise; and

(b) The port of registry or port to which the ship belongs;

and each statement is prima facie evidence of the matters stated in it.

(12) A solicitor who, on behalf of any person, undertakes in writing to give security or to pay money into Court instead of bail in an admiralty action *in rem*, and fails to fulfil that undertaking, is liable to attachment.

(13) If the last day for entering an appearance falls on a Saturday, a Sunday, or a holiday, the memorandum may be filed on the next day following that Saturday, Sunday, or holiday which is not a holiday.

(14)

(15) A memorandum of appearance may be filed by post, and

(a) The appearance is not to be treated as having been entered until the memorandum is actually received by the Registrar:

(b) The duplicate copy to be returned to the party filing the memorandum may be returned by post.

Compare: SR 1975/85 r 11

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Subclause (14) was revoked, as from 1 July 2002, by rule 13 High Court Amendment Rules 2002 (SR 2002/132).

774 Pleadings

(1) Every action must be heard with pleadings, unless the Court or a Judge otherwise orders.

Part 14—*continued*

(2) Unless the Court or a Judge gives leave to the contrary, the plaintiff must

(a) File in Court and serve a full and explicit statement of claim on each defendant; and

(b) Take the steps specified in paragraph (a) either when the notice of proceeding is served on that defendant or at any time after service of the notice on that defendant, but in no case later than 14 days after that defendant enters an appearance.

(3) If preliminary acts are required under rule 785, then, unless the Court or a Judge orders the action to be tried without pleadings, the plaintiff must file in Court and serve a statement of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the action is filed.

(4) Subclause (3) overrides subclause (2) to the extent that there is a conflict between the application of those provisions in any case.

Compare: SR 1975/85 r 12

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

775 Statement of defence

(1) Every defendant who enters an appearance in, and intends to defend, an action must, unless the Court or a Judge gives leave to the contrary, file in Court and serve a statement of defence on the plaintiff within 30 days after the day on which a statement of claim is served on the defendant.

(2)

Compare: SR 1975/85 r 13

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Subclause (2) was revoked, as from 1 July 2002, by rule 14 High Court Amendment Rules 2002 (SR 2002/132).

Part 14—*continued*

Provisions relating to arrest of property

776 Warrant of arrest

(1) After the issue of a notice of proceeding or counterclaim *in rem*, the plaintiff or the defendant to the notice or counterclaim may, by an application in form 72, apply for the issue of a warrant of arrest of the property against which the action or counterclaim is brought.

(2) If 2 or more ships owned by the same person are named as defendant in an action arising from a cause of action concerning 1 ship only, a warrant of arrest may issue against 1 ship only, and the plaintiff must name that ship in the application for the warrant of arrest.

(3) The party applying for the issue of a warrant of arrest must cause a search to be made in the Central Registry to determine whether any caveat against the issue of the warrant is in force.

(4) In support of the application for a warrant of arrest, there must be filed

(a) An affidavit deposing to

(i) The name and description of the party at whose instance the warrant is to issue; and

(ii) The nature of the claim; and

(iii) The name or nature of the property to be arrested; and

(iv) The extent to which the claim has been satisfied, the amount claimed paid into Court, or security for payment of the claim which has been given to the Registrar; and

(v) Whether any caveat against the issue of a warrant of arrest has been filed and, if so, whether a copy of the notice of proceeding or a notice requiring payment or security has been served on the caveator; and

(vi) any other relevant information known to the applicant at the time the application is made; and

(b) An indemnity to the Registrar in form 73 and security to the satisfaction of the Registrar for the fees, expenses,

Part 14—*continued*

and harbour dues (if any) of the Registrar and of the Registrar's appointed officers and agents.

(5) The Registrar may from time to time require additional security to cover fees, expenses, and harbour dues (if any) referred to in subclause (4)(b).

(6) If an application for a warrant of arrest is made in a registry other than the Central Registry, the Registrar must, before issuing the warrant of arrest, ascertain from the Central Registry whether a caveat against the issue of a warrant of arrest has been entered.

(7) Subject to compliance with the preceding provisions of this rule, the Registrar must complete the certificate on the application for a warrant of arrest and must issue a warrant of arrest in form 74.

(8) The warrant must be served by the Registrar, or any person lawfully authorised (whether generally or specially for the purpose) to act as the Registrar, in the manner prescribed by these rules for the service of a notice of proceeding in an action *in rem*, and the property is to be treated as having been arrested when the warrant has been served in the prescribed manner.

(9) The warrant may be served on a Sunday, Good Friday, or Christmas Day, or any public holiday, as well as on any other day.

(10) A Registrar may, by fax or other means of communication, send notice to the Registrar's appointed officer or agent, or to any other Registrar, of the issue of a warrant of arrest of any ship, and give instructions for the execution of the warrant.

(11) It is contempt of Court for

(a) The master of a ship, after notice of the issue of a warrant of arrest of that ship has been communicated to the master; or

(b) Any other person having notice of the arrest of the ship to move that ship from where it is lying without the consent of the Registrar.

(12) A Registrar may, in the case of any emergency or special circumstances, issue a warrant of arrest forthwith if the Registrar

Part 14—*continued*

(a) Is satisfied that a notice of proceeding has been issued and that there is either an emergency or special circumstances which justify the immediate issue of a warrant of arrest; and

(b) Is given such indemnity as the Registrar may require against any claim arising out of the issue of a warrant of arrest.

(13) The Registrar may, instead of completing the certificate on the application for warrant of arrest, endorse the application to the effect that the warrant is issued under subclause (12).

(14) A warrant of arrest is valid for 6 months commencing on the day of issue unless sooner withdrawn, but successive warrants may be issued.

(15) The Registrar must give notice of the arrest of property by serving on any person or by affixing on a conspicuous part of the property a notice in form 75; and service may be effected by the Registrar's duly appointed officer or agent.

(16) Subclauses (4)(b) and (12)(b) do not require the Crown to give any indemnity or security in the cases mentioned in either of those subclauses.

(17) In the application of this rule,

(a) Subclause (2) overrides subclause (1); and

(b) Subclause (12) overrides subclause (6),

to the extent that there is a conflict between the application of those provisions in any case.

Compare: SR 1975/85 r 15

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Subclause (4)(a)(vi) was inserted, as from 1 February 2003, by rule 16 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

776A Application for directions concerning property under arrest

(1) The Registrar or any party to an action *in rem* may apply to the Court for directions concerning any property under arrest (including directions for the removal of the property).

Part 14—*continued*

(2) The person applying must give notice of the application to all parties to the action unless the Court orders otherwise.

Rule 776A was inserted, as from 1 February 2003, by rule 17 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

777 Caveat against arrest

(1) A person may prevent the arrest of any property by filing in the Central Registry a request in form 76 signed by the person or the person's solicitor undertaking

(a) To enter an appearance in any action that may be commenced against the property described in the request; and

(b) Within 3 days after receiving notice that such an action has been commenced, to give security to the satisfaction of the Registrar in the sum specified in the request or to pay that sum into Court.

(2) Immediately on the filing of such a request, the Registrar must enter a caveat in the Register of Admiralty Proceedings.

(3) If the amount claimed in the action does not exceed the amount specified in the undertaking, the caveator must pay into Court or give security for the amount claimed within 3 days after the day of service of the notice of proceeding or counterclaim.

(4) If the caveator fails to pay into Court or give security in accordance with this rule, and the party seeking the issue of a warrant of arrest suffers any loss as a result, the Court may order the caveator to pay to that party damages for that loss unless the caveator shows good and sufficient reason for that failure.

(5) Neither any provision of this Part nor the entry of a caveat under this rule prevents a party from taking out a warrant for the arrest of property, but, if a caveat is entered under this rule against the arrest of the property and a party has that property arrested, that party is liable for costs and damages unless the party shows good and sufficient reason for the arrest.

(6) A caveat under this rule is valid for 6 months commencing on the day after the date on which it is entered unless sooner withdrawn, but successive caveats may be entered.

Part 14—*continued*

(7) A caveat under this rule may be withdrawn at any time by the filing of a notice of withdrawal signed by the caveator or the caveator's solicitor but the withdrawal does not affect any rights or obligations that may have accrued at the date of the withdrawal.

(8) The Court may of its own motion or on application set aside a caveat under this rule.

Compare: SR 1975/85 r 16

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

778 Release of property under arrest

(1) Unless the property arrested is sold under an order of the Court, property arrested under a warrant of arrest may be released only under the authority of an instrument of release (**a release**) in form 77 issued out of the registry where the action in which the warrant was issued is proceeding.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if the party files the notice, a release must be issued for that property unless such action contravenes subclause (3) or subclause (7).

(3) Unless the Court otherwise orders, a release must not be issued for property if a caveat against release of that property is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders or, unless the Court orders otherwise, if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Unless a caveat against release is in force, a Registrar may issue a release either on payment into Court of the amount claimed in the notice of proceeding together with the costs of issue and execution of the warrant of arrest, or on security (including a bail bond in form 78) for those amounts first given to the satisfaction of the Registrar.

(6) If a release is to issue out of a registry other than the Central Registry, the Registrar must, before issuing the release, cause

Part 14—*continued*

a search to be made in the Register of Admiralty Proceedings in the Central Registry for the purpose of ascertaining whether a caveat against release of the property in question is in force.

(7) Before a release is issued, the party entitled to its issue must

(a) If a caveat against release of the property in question is in force, give notice to the party at whose instance it was entered or that party's solicitor requiring that the caveat be withdrawn; and

(b) File a request for the issue of a release.

(8) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the Registrar, either pay the costs, charges, and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to pay those costs, charges, and expenses.

(9) The Court, on the application of any party who objects to directions given to that party by the Registrar under subclause (8), may vary or revoke the directions.

(10) Subclause (5) overrides subclause (1) to the extent that there is a conflict between the application of those provisions in any case.

Compare: SR 1975/85 r 17

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

779 Caveat against release and payment

(1) A person may prevent the release of property under arrest in an action *in rem* or the payment out of Court of any money in Court representing the proceeds of sale of that property, or both that release and that payment, by filing in the Central Registry a request in form 79.

(1A) On the filing of the request, the Registrar must enter in the Register of Admiralty Proceedings a caveat against the issue of a release for that property or, as the case may be, against the payment out of Court of that money, or against both that release and that payment.

Part 14—*continued*

(1B) The caveator must serve a copy of the caveat on every party to the action.

(2) A party who delays the release of property by entry of a caveat is liable in damages to any person having an interest in the property, unless that party shows to the satisfaction of the Court good and sufficient reason for having the caveat entered.

(3) A caveat under this rule is valid for 6 months commencing on the day after the date of entering, unless sooner withdrawn, but successive caveats may be entered.

(4) A caveat under this rule may be withdrawn by filing a notice of withdrawal signed by the caveator or the caveator's solicitor.

(5)

(6) The Court may of its own motion or on application set aside a caveat under this rule.

Compare: SR 1975/85 r 18

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Subclause (1) was substituted, as from 1 February 2003, by rule 18(1) High Court Amendment Rules (No 2) 2002 (SR 2002/410).

Subclauses (1A) and (1B) were inserted, as from 1 February 2003, by rule 18(1) High Court Amendment Rules (No 2) 2002 (SR 2002/410).

Subclause (5) was revoked, as from 1 February 2003, by rule 18(2) High Court Amendment Rules (No 2) 2002 (SR 2002/410).

780 Discharge of cargo under arrest from ships not under arrest and of cargo not under arrest

(1) If a ship is not under arrest but cargo on board the ship is, persons interested in the ship who wish to discharge the cargo under arrest may, without intervening in the action, request the Registrar to take the appropriate steps, and the Registrar must apply to the Court under rule 776A for the appropriate order if

(a) The Registrar considers the request reasonable; and

(b) The applicant gives to the Registrar a satisfactory undertaking in writing to pay on demand the fees and expenses incurred by the Registrar and any of the Registrar's appointed officers or agents in taking the desired steps.

Part 14—*continued*

(2) If the interested persons are unable or unwilling to arrange for an undertaking under subclause (1) to be given, they may intervene in the action in which the cargo is under arrest and apply for an order for discharge of the cargo and for directions as to the fees and expenses incurred by the Registrar, and any of the Registrar's appointed officers or agents, in discharging and storing the cargo under the order.

(3) If a ship is under arrest but cargo on board the ship is not, persons interested in cargo who wish to secure its discharge may follow 1 or other of the procedures specified in this rule.

Compare: SR 1975/85 r 19

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Subclause (1) was amended, as from 1 February 2003, by rule 19 High Court Amendment Rules (No 2) 2002 (SR 2002/410) by substituting the expression "rule 776A" for the expression "rule 779(5)".

Security and payment out of Court

781 Security

(1) The amount and form of any security required under this Part may be determined by the Court or a Judge on an application by any party.

(2) If security is being given by a person not ordinarily resident within the jurisdiction, that person must,

(a) Unless otherwise ordered by the Court, submit to the jurisdiction of the Court for all purposes relating to the security and its enforcement; and

(b) Give an address for service within the jurisdiction of the Court.

Compare: SR 1975/85 r 20

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

782 Payment out of Court

(1) No money paid into Court in any action may be paid out of Court except under subclause (2) or by order of the Court or a Judge.

Part 14—*continued*

(2) With the written consent of all parties to the action and of any caveator and of any intervener under rule 783, the Registrar may authorise money to be paid out of Court.

Compare: SR 1975/85 r 21

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Leave to intervene in proceedings

783 Interveners

(1) If property against which an action *in rem* is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has an interest in that property or money but who is not a defendant to the action may intervene in the action.

(2) The intervener must file papers appropriate to the proceeding and serve those papers on every other party.

Compare: SR 1975/85 r 22

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Rule 783 was substituted, as from 1 February 2003, by rule 20 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

Sale of arrested property

784 Appraisement and sale of property

(1) The Court may either before or after final judgment, order that any property under the arrest of the Court

(a) Be appraised; or

(b) Be sold with or without appraisement, and either by public auction or by private contract.

(2) If the property is deteriorating in value, the Court may order that it be sold immediately.

(3) If the property sold is of small value, the Court may, if it thinks fit, order that it be sold without a commission of sale being issued.

(4) A commission for the appraisement and sale of any property under an order of the Court must not be issued until the party applying for it has filed a request in form 80.

Part 14—*continued*

(5) The commission for the appraisement must be in form 81 and must, unless the Court otherwise orders, be executed by the Registrar or the Registrar's duly appointed officer or agent.

(6) A commission for appraisement and sale may not be executed until an undertaking in writing, satisfactory to the Registrar, to pay the Registrar's fees and expenses on demand has been lodged in the Registrar's office.

(7) The Registrar must pay into Court the gross proceeds of the sale of any property sold by the Registrar under a commission for sale, and must bring into Court the account relating to the sale (with vouchers in support).

Compare: SR 1975/85 r 23

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Preliminary acts

785 Preliminary acts to be filed in collision cases

(1) In an action arising out of a collision between ships, unless the Court otherwise orders,

(a) The plaintiff must file a preliminary act within 30 days after the issue of the notice of proceeding:

(b) The defendant must file a preliminary act within 30 days after entering an appearance in the action and before any pleading is filed or served.

(2) A preliminary act is a document containing a statement of the following particulars:

(a) The names of the ships which came into collision and their ports of registry:

(b) Particulars (referring to the period immediately before the collision) of the person in command, the persons on the bridge, and the persons keeping a lookout on the plaintiff's ship (if the plaintiff is filing a preliminary act) and on the defendant's ship (if the defendant is filing a preliminary act):

(c) The date and time of the collision:

(d) The place of the collision:

(e) The direction and force of the wind:

Part 14—*continued*

(f) The state of the weather including visibility:

(g) The state, direction, and force of the tidal or other current:

(h) The ship's course and speed through the water when the other ship was first seen or immediately before any measures were taken in connection with its presence, whichever was the earlier:

(i) The lights (if any) carried by the ship:

(j) The distance and bearing of the other ship if and when its echo was first observed by radar:

(k) The distance, bearing, and approximate heading of the other ship when first seen:

(l) The other ship's light or combination of lights (if any) when first seen:

(m) The other lights or combination of lights (if any) of the other ship that were subsequently seen before the collision, and the time of the sighting:

(n) The alterations (if any) made to the ship's course and speed after the earlier of the 2 times referred to in paragraph (h) up to the time of the collision, and the times of those alterations, and the measures (if any), other than alterations of course or speed, taken to avoid the collision, and times of those measures:

(o) The parts of each ship that first came into contact and the approximate angle between the 2 ships at the moment of contact:

(p) The sound signals or other signals (if any) given, and the times of those sound signals or other signals:

(q) The sound signals or other signals (if any) heard or seen from the other ship, and the times of hearing or seeing those sound signals or other signals.

(3) The Registrar must seal every preliminary act and file it in a closed envelope (which must be sealed with the official stamp of the Court and show the date of filing), and, unless the Court or a Judge otherwise orders, the envelope must not be opened until the pleadings are closed and a consent signed by each of the parties to the opening of the preliminary acts is filed.

Part 14—*continued*

(4) Every party filing a preliminary act concerning a collision must, within 3 days after it is filed, serve notice of the filing on every other party who has filed a preliminary act concerning the same collision.

(5) If the Court orders that the preliminary acts be opened, the Court may also order that the action be tried without pleadings.

(6) If the Court or a Judge orders the action to be tried without pleadings, the Court or a Judge may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which the party charges any other party with negligence in connection with the collision and to serve a copy of the statement on that other party.

Compare: SR 1975/85 r 24

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Subclause (5) was substituted, as from 1 February 2003, by rule 21 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

786 Proceedings against party in default where other party fails to lodge preliminary act

(1) If, in an action referred to in rule 785(1), the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged a preliminary act may apply to the Court for an order to dismiss the action and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) If, in an action referred to in rule 785(1) that is an action *in personam*, a defendant fails within the prescribed period to lodge a preliminary act and the plaintiff has lodged a preliminary act, rule 787 applies as if the defendant's failure to lodge a preliminary act within that period were a failure to enter an appearance or to file a statement of defence within the periods respectively fixed by or under these rules for doing those things.

(3) If, in an action referred to in rule 785(1) that is an action *in rem*, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff (if the plaintiff has lodged a preliminary act) may apply to the Court by motion for judg-

Part 14—*continued*

ment against that defendant and the plaintiff need not file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of the motion under subclause (3), the Court may make such order as it thinks just, and, if the defendant does not appear on the hearing and the Court considers that judgment should be given for the plaintiff provided the plaintiff proves the plaintiff's case, the Court must order that the plaintiff's preliminary act be opened and require the plaintiff to satisfy the Court that the plaintiff's claim is well founded.

(5) The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction.

(6) If the plaintiff in accordance with a requirement under subclause (4) satisfies the Court that the plaintiff's claim is well founded, the Court may give judgment for the claim and, at the same time, may order that the property against which the action is brought be appraised and sold and the proceeds to be paid into Court or make such order as it thinks just.

(7) The Court may, on such terms as it thinks just, set aside any judgment entered under this rule.

(8) In this rule, references to the prescribed period are to be construed as references to the period within which, by virtue of rule 785(1) or of any order of the Court or a Judge, the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

Compare: SR 1975/85 r 25

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Judgment by default

787 Judgment by default in actions *in personam*

(1) Rules 459 to 470 apply to actions *in personam*.

(2) A plaintiff is entitled to proceed to judgment if the defendant fails, within the time fixed by or under this Part, either to enter an appearance or to file a statement of defence, as the case may be, but judgment in such a case must not exceed the amount

Part 14—*continued*

endorsed on the notice of proceeding or claimed in the statement of claim concerning the demand for costs.

Compare: SR 1975/85 r 26

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

788 Default in filing and service of statement of claim

(1) If the plaintiff is required by these rules to file in Court a statement of claim and to serve it on a defendant, and the plaintiff fails to do either of those things,

(a) The defendant may, after the expiration of the period fixed by or under these rules for filing the statement of claim, apply to the Court for an order to dismiss the action; and

(b) The Court may by order dismiss the action or make an order on such terms as it thinks just.

(2) This rule applies to actions *in personam* and to actions *in rem*.

(3) The Court may, on such terms as it thinks just, set aside or vary any default judgment entered under this rule.

Compare: SR 1975/85 r 27

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

789 Third parties

If a third party fails to enter an appearance, rule 161 applies as if the failure to enter an appearance were a failure to file a statement of defence.

Compare: SR 1975/85 r 28

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

790 Judgment by default in actions *in rem*

(1) If a notice of proceeding is served under rule 772(2) on a party at whose instance a caveat against arrest has been issued, and

(a) The sum claimed in the action begun by the notice of proceeding does not exceed the amount specified in the undertaking given by that party or that party's solicitor to procure the entry of that caveat; and

Part 14—*continued*

(b) That party or that party's solicitor does not within 14 days after service of the notice of proceeding fulfil that undertaking,

the plaintiff may, on filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under subclause (1) may be enforced by

(a) Arrest of the property against which the action was brought:

(b) Committal of the party at whose instance the caveat against that property was entered.

(3) A plaintiff to an action *in rem* may apply to the Court for judgment by default if

(a) The defendant to the action fails to enter an appearance within the time fixed for appearing; and

(b) Not less than 14 days has passed since the notice of proceeding was served; and

(c) The plaintiff has filed an affidavit proving due service of the notice of proceeding, a statement of claim (where one has not already been filed), and an affidavit verifying the facts on which the action is based.

(4) A plaintiff to an action *in rem* may apply to the Court for judgment by default if

(a) The defendant to the action fails to file and serve a statement of defence on the plaintiff within the period fixed by or under these rules for filing and service of the defence; and

(b) The plaintiff has filed

(i) An affidavit stating that no defence was served on the plaintiff by that defendant during the period referred to in paragraph (a); and

(ii) An affidavit verifying the facts on which the action is based.

(5) A party making a counterclaim in an action *in rem* may apply to the Court for judgment by default if

(a) The defendant to the counterclaim fails to file and serve a defence to the counterclaim on the party making the

Part 14—*continued*

counterclaim within the period fixed by or under these rules for the filing and service of the defence to a counterclaim; and

(b) The party making the counterclaim has filed

(i) An affidavit stating that no defence to the counterclaim has been served on that party by the defendant during that period; and

(ii) An affidavit verifying the facts on which the counterclaim is based.

(6) An application to the Court under this rule must be made by motion, and, if at the hearing the Court is satisfied that the applicant's claim is well founded, it may give judgment for the claim, and, at the same time, it may

(a) Order the property against which the action, or, as the case may be, the counterclaim is brought to be appraised and sold and the proceeds to be paid into Court; or

(b) Make such other order as it thinks just.

(7) In default actions *in rem*, evidence may, unless the Court otherwise orders, be given by affidavit.

(8) The Court may, on such terms as it thinks just, set aside or vary any judgment entered under this rule.

Compare: SR 1975/85 r 29

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Priority of claims

791 Determination of priority of claims where Court orders sale of ship

(1) If in an action *in rem* against a ship the Court orders the ship to be sold, any party who obtains judgment against the ship or the proceeds of sale of the ship may, on obtaining judgment, apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of the sale of the ship.

(2) In making an order for the sale of a ship, the Court may further order

Part 14—*continued*

(a) That the order of priority of the claims against the proceeds of sale of the ship not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court:

(b) That any party to the action or to any other action *in rem* against the ship or the proceeds of sale of the ship may apply to the Court in the action to which that party is a party to extend the period specified in the order:

(c) That, within 7 days after the date of payment into Court of the proceeds of sale, the Registrar must send for publication in the *Gazette* and such newspaper (if any), as the Court may direct, a notice in form 82.

(3) If the order for sale contains a further order referred to in subclause (2), an application for an order determining priorities may be made only after the expiration of such period as has been specified by the Court under paragraph (a) or paragraph (b) of that subclause.

(4) The Registrar must lodge in the registry a copy of each newspaper in which the notice referred to in subclause (2)(c) appeared.

(5) The expenses incurred by the Registrar in complying with an order of the Court under this rule must be included in the Registrar's expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in subclause (2)(a) must be served on each party who has begun an action *in rem* against the ship or the proceeds of sale of the ship.

(7) Subclause (3) overrides subclause (1) to the extent that there is a conflict between the application of those provisions in any case.

Compare: SR 1975/85 r 30

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Part 14—*continued*

Limitation of liability

792 Actions for limitation of liability

(1) This rule applies to proceedings for relief under Part 7 of the Maritime Transport Act 1994.

(2) The proceedings must be in the form of an admiralty action *in personam*.

(3) In the action the person seeking relief is the plaintiff and must be described in the notice of proceeding by name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(4) For the purposes of this rule,

(a) **Name** includes a firm name or the name under which a person carries on business:

(b) If any person with a claim against the plaintiff concerning the casualty to which the action relates has been described for the purposes of that claim merely as the owner of, or as bearing some other relation to, a ship or other property, that person may be described in that way as defendant to the notice of proceeding and, if described in that way, is to be treated for the purposes of this rule to have been named in the notice of proceeding by that person's name.

(5) The plaintiff must make defendant to the action such 1 or more of the persons with claims against the plaintiff concerning the casualty to which the action relates as the plaintiff thinks fit, and must describe those defendants in the notice of proceeding by name.

(6) If the plaintiff thinks fit, all other persons with claims against the plaintiff concerning the casualty to which the action relates, described generally and not by their names, may be included as defendants to the notice of proceeding.

(7) The notice of proceeding must be served on 1 or more of the defendants who are named by their names, and need not be served on any other defendant.

(8) Within 7 days after the entry of appearance by 1 of the defendants named by their names in the notice of proceeding, or, if

Part 14—*continued*

none of them enters an appearance, within 7 days after the time fixed for appearing, the plaintiff, without filing a statement of claim, must apply to the Court by notice of motion for an order limiting the plaintiff's liability or, in default of such an order, for directions as to the further proceedings in the action, and the following provisions apply:

(a) The application must be supported by an affidavit or affidavits proving

(i) The plaintiff's case in the action; and

(ii) If none of the defendants named in the notice of proceeding by their names has entered an appearance, service of the notice of proceeding on at least 1 of the defendants so named; and

(iii) The names of all the persons (other than defendants to the action who are named in the notice of proceeding by their names) who, to the knowledge of the plaintiff, have claims against the plaintiff concerning the casualty to which the action relates; and

(iv) The address of each of those persons, if known to the plaintiff:

(b) At least 7 clear days before the hearing of the application, the motion and every affidavit in support of the motion must be served on any defendant who has entered an appearance:

(c) If at the hearing of the application it appears to the Court that it is not disputed that the plaintiff has a right to limit the plaintiff's liability, the Court must make a decree limiting the plaintiffs liability and fix the amount to which the liability is to be limited:

(d) If at the hearing of the application it appears to the Court that any defendant does not have sufficient information to enable the defendant to decide whether or not to dispute that the plaintiff has a right to limit the plaintiff's liability, the Court must

(i) Give such directions as appear to be appropriate for enabling the defendant to obtain such information; and

Part 14—*continued*

(ii) Adjourn the hearing:

(e) If on the hearing or resumed hearing of the application the Court does not make a decree limiting the plaintiff's liability, the Court must give such directions as to the further proceedings in the action as appear to be appropriate:

(f) Any defendant who, after directions have been given under paragraph (e), ceases to dispute the plaintiff's right to limit the plaintiffs liability must immediately file a notice to that effect in the registry of the Court and serve a copy on the plaintiff and on any other defendant who has entered an appearance:

(g) If every defendant who disputes the plaintiff's right to limit the plaintiff's liability serves a notice on the plaintiff under paragraph (f), the plaintiff may apply to the Court for an order limiting the plaintiffs liability; and paragraphs (b) and (c) apply to an application under this paragraph as they apply to an application under the preceding provisions of this subclause.

(9) If the only defendants in the action are those named in the summons by their names and all those persons have been served,

(a) Any order limiting the plaintiff's liability

(i) Need not be advertised; and

(ii) Operates only to protect the plaintiff against claims by the persons so named or persons claiming through or under those persons:

(b) In any case not covered by paragraph (a), any order limiting the plaintiff's liability

(i) Must be advertised by the plaintiff in such manner and within such time as the order may provide; and

(ii) Must fix a time within which persons with claims against the plaintiff concerning the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which sub-

Part 14—*continued*

clause (10) applies, file a motion, if they think fit, to set the order aside:

(c) The time to be allowed under paragraph (b)(ii) must, unless the Court otherwise orders, be not less than 2 months from the latest date allowed for the appearance of the advertisement and, after the expiration of the time so allowed, leave of the Court is required to enter an appearance, file a claim, or to make an application to set aside the order.

(10) lf an order limiting the plaintiff's liability fixes a time in accordance with subclause (9)(b),

(a) Any person with a claim against the plaintiff concerning the casualty to which the action relates who

(i) Is not named in the notice of proceeding as a defendant to the action; or

(ii) If so named, was not served with the notice of proceeding and has not entered an appearance

may, within that fixed time after entering an appearance, apply on notice for the order to be set aside:

(b) The application must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff concerning the casualty in question and that the defendant has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given to the plaintiff by the order:

(c) At least 7 clear days before the hearing of the motion, the application and every affidavit in support of the application must be served on the plaintiff and on any defendant who has entered an appearance:

(d) On the hearing of the application, the Court, if satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given to the plaintiff by the order, must set the order aside and give such direction as to the further proceedings in the action as appear appropriate.

Part 14—*continued*

(11) Any order limiting the plaintiff's liability may make any provision authorised by section 89 of the Maritime Transport Act 1994.

Compare: SR 1975/85 r 31

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Miscellaneous provisions

793 Inspection of ship, etc

Without limiting its powers under these rules, the Court may, on the application of any party, make an order for the inspection by a Court expert, or by any party or witness, of any ship or other property, whether real or personal, if the inspection is necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

Compare: SR 1975/85 r 35

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

794 Consent orders

Any agreement in writing, between the parties to a cause or matter, that is dated and signed by the parties or their solicitors may be filed if the Registrar thinks it is reasonable to file the agreement and thinks that a Judge would under the circumstances have allowed it to be filed, and, on its filing, the agreement becomes an order of the Court.

Compare: SR 1975/85 r 36

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

795 Registrar may seek Court's assistance and parties may seek review of Registrar's decision

(1) The Registrar may apply to the Court for orders to assist the Registrar in the performance or exercise of any function, duty, right, or power conferred or imposed on the Registrar by this Part, and the Court may make such orders in relation to the

Part 14—*continued*

performance or exercise of that function, duty, right, or power as the Court thinks fit.

(2) Any party to a proceeding who is affected by a decision of the Registrar under this Part may apply by interlocutory application to review that decision, and the Court may make such order as it thinks just.

Part 14 (comprising rr 764 to 795) was inserted, as from 1 February 1998, by rule 16 High Court Amendment Rules 1997 (SR 1997/350).

Part 15
Constituency election petitions

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Preliminary provisions

796 Interpretation

In this Part, unless the context otherwise requires,

Act means the Electoral Act 1993

Petition

(a) Means an election petition presented under section 229(3) of the Act (that is, an election petition relating to either

(i) The return of a member of Parliament representing an electoral district; or

(ii) A failure to present a return at an election for a member of Parliament representing an electoral district); and

(b) Includes a petition complaining of no return that the Court, under section 229(2) of the Act, allows to be heard as provided with respect to an ordinary petition under section 229(3) of the Act:

Registrar of Electors means, in relation to an electoral district, the Registrar of Electors appointed under the Act for that district

Part 15—*continued*

Returning Officer means, in relation to an electoral district, the Returning Officer appointed under the Act for that district.

Compare: SR 1996/218 r 3

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

797 Application of this Part

This Part applies to the determination, under sections 230 to 257 of the Act, of a petition.

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

798 Application of other rules and practice of Court

(1) The other Parts of these rules (except the rules referred to in subclause (2)), and the general practice of the Court, apply where this Part applies except so far as they are modified by or inconsistent with the Act or this Part.

(2) The following rules do not apply where this Part applies:

- (a) Rule 16 (How security to be given):
- (b) Rule 60 (Power to make order for security for costs):
- (c) Rules 98 to 104 (Change of parties by death, etc):
- (d) Rule 106 (Proceeding commenced by filing statement of claim):
- (e) Rule 107 (Proper office of the Court):
- (f) Rule 120 (Notice of proceeding to be filed with statement of claim):
- (g) Rule 121 (Requirements as to notice of proceeding):
- (h) Rule 122 (Place and time for filing statement of defence):
- (i) Rule 123 (Place of trial):
- (j) Rule 129 (Filing and service of statement of defence):
- (k) Rule 130 (Requirements as to statement of defence):
- (l) Rules 135 to 144 (Summary judgment procedure):
- (m) rules 433 to 438AA (allocation of hearing dates and setting down date):
- (n) Rule 474 (Discontinuance of cause of action):
- (o) Rule 481 (Mode of trial).

Part 15—*continued*

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Subclause (2)(m) was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Petitions

799 Petitions

(1) A petition must

(a) Be in form 83, and contain the information required by that form; and

(b) Be signed by the petitioner or, if there are 2 or more petitioners, each petitioner; and

(c) Be presented to the Court by being filed in the registry of the Court nearest to the place where the election was held.

(2) The Registrar of the Court must send a copy of the petition to the Returning Officer as soon as it is filed.

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Service of petition

800 Service of petition

A petition must be served as nearly as may be in the manner in which a statement of claim is served.

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Advertisement of petition

801 Advertisement of petition

(1) Within 7 days of the filing of a petition, a petitioner must, at his or her own expense, publish the petition in a newspaper circulating in the district to which the petition relates.

(2) On an application made by a petitioner for the purpose, the Court may order that a petition need not be advertised in accordance with subclause (1).

Compare: SR 1996/218 r 17

Part 15—*continued*

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Representation of respondents

802 Respondent must file notice

Within 7 days of being served with a petition, a respondent to a petition must file in the registry of the Court in which the petition is filed a notice

(a) Signed by or on behalf of the respondent; and

(b) Either

  (i) Appointing a solicitor to act for the respondent in relation to the petition; or

  (ii) Stating that the respondent intends to act for himself or herself in relation to the petition; and

(c) Stating, for the purposes of proceedings to determine the petition,

  (i) An address for service; and

  (ii) If a solicitor is appointed to act for the respondent, any Post Office box address, document exchange box number, or facsimile number by which the solicitor will accept service of documents.

Compare: SR 1996/218 r 16

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Security for costs

803 Security by deposit of money

Security given by deposit of money must be given by the deposit of the money to the credit of the High Court Trust Account.

Compare: SR 1996/218 r 23

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Part 15—*continued*

804 Registrar of Court may withdraw money deposited as security

The Registrar of the Court may from time to time withdraw from the High Court Trust Account all or part of any money deposited as security if the Court orders, or all parties to the proceedings agree, that that money be

(a) Paid to a respondent, for costs, charges, or expenses incurred by or on behalf of that respondent; or

(b) Paid to a witness summoned on a petitioner's behalf, for costs, charges, or expenses incurred by or on behalf of that witness; or

(c) Returned to a petitioner; or

(d) Otherwise disposed of in accordance with the Act.

Compare: SR 1996/218 r 24

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

805 Security by bond

(1) Security given by bond must be given by a bond in form 84 containing the information required by that form.

(2) A bond may be executed by no more than 5 sureties.

(3) If a Registrar of the Court believes on reasonable grounds that a surety is insufficient, or that a bond is defective or inadequate, he or she may

(a) Require a surety to lodge an affidavit of justification with the bond; or

(b) Impose any other requirement the Registrar of the Court considers necessary.

Compare: 1996/218 rr 25, 26, 27

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Particulars of objections

806 Petitioner must list objections to votes

(1) This rule applies if a petitioner in his or her petition

(a) Alleges that a candidate not elected or returned has a majority of lawful votes; and

Part 15—*continued*

(b) Objects to any vote.

(2) If this rule applies, the petitioner must prepare a list of
(a) Each vote objected to; and
(b) The heads of objection to each of those votes.

(3) A petitioner must, at least 6 days before the day appointed for the trial of the petition, deliver a copy of the list
(a) To the Registrar of the Court; and
(b) To any other party to the proceeding at that party's address for service.

(4) A petitioner must also deliver to the Registrar of the Court enough copies of that list to enable the Registrar to supply the copies required to be supplied under rule 808.

Compare: SR 1996/218 r 29

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

807 Respondent must list objections to petition

(1) This rule applies if
(a) A petitioner in a petition complains of an unlawful election or return and claims the seat for some person; and
(b) A respondent to the petition intends to give evidence, under section 236(8) of the Act, to prove that that person was not duly elected.

(2) If this rule applies, the respondent must prepare a list of
(a) The specific grounds upon which the respondent claims that that person was not duly elected or returned; and
(b) In relation to each of those grounds, particulars of the facts upon which the respondent intends to rely.

(3) The respondent must, at least 6 days before the day appointed for the trial, deliver a copy of the list
(a) To the Registrar of the Court; and
(b) To any other party to the proceeding at that party's address for service.

(4) The respondent must also deliver to the Registrar of the Court enough copies of that list to enable the Registrar to supply the copies required to be supplied under rule 808.

Compare: SR 1996/218 r 30

Part 15—*continued*

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

808 Inspection and supply of lists

On a request for the purpose by any person at the office of the Court, the Registrar of the Court must allow the person to inspect, or supply the person with a copy of, a list delivered to the Registrar under rule 806 or rule 807.

Compare: SR 1996/218 r 32

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Trial of petition

809 Notice of time and place appointed for trial of petition under section 236 of the Act

(1) The Court must appoint a time at or after which the petition is to be tried.

(2) The time appointed must be at least 21 days after the day on which the Court appoints that time.

(3) The Registrar of the Court must, at least 14 days before the day of the time appointed for the trial,

(a) Give a notice of the time and place appointed for the trial to each party to the proceeding at that party's address for service; and

(b) Publish a notice of the time and place appointed for the trial in a newspaper circulating in the district to which the petition relates.

(4) A notice of the time and place appointed for the trial must be in form 85.

Compare: SR 1996/218 rr 35, 36, 37

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Part 15—*continued*

Withdrawal of petition

810 Notice of intention to apply for leave to withdraw petition under section 252 of the Act

(1) A petitioner who intends to apply to the Court for leave to withdraw a petition must, at least 7 days before the time appointed for the hearing of the application,

(a) Serve a copy of a notice of intention to apply for leave to withdraw the petition on each respondent to the petition; and

(b) Publish a notice of intention to apply for leave to withdraw the petition at least once in a newspaper circulating in the district to which the petition relates.

(2) A notice of intention to apply for leave to withdraw a petition must be in form 86 and contain the information required by that form.

Compare: SR 1996/218 r 40

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

811 Form of application for leave to withdraw petition

An application for leave to withdraw a petition must be in form 87.

Compare: SR 1996/218 r 42

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

812 Time and place of hearing of application for leave to withdraw petition

(1) The Court must appoint a time at or after which an application for leave to withdraw a petition is to be heard.

(2) The time appointed must be at least 8 days after the day on which the Court appoints the time.

(3) The Registrar of the Court must, in such manner as the Court may direct, give notice of the time and place of the hearing to

(a) Each respondent; and

Part 15—*continued*

(b) Each person who, under rule 813(b), gives notice of an intention to apply to be substituted as a petitioner.

Compare: SR 1996/218 r 41

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

813 Application to be substituted as a petitioner

A person may, at a hearing of an application for leave to withdraw a petition, apply to be substituted as a petitioner in respect of the petition, if (and only if)

(a) The person would, under section 230(1) of the Act, have been entitled to have presented the petition; and

(b) The person has given the Registrar of the Court, within 7 days after the publication of the notice of intention to apply for leave to withdraw the petition, written notice that the person intends to apply to be substituted as a petitioner in respect of the petition.

Compare: SR 1996/218 r 44

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Abatement of petition

814 Notice of abatement of petition under section 255(3) of the Act

(1) If a petition abates under section 255(1) of the Act (because of the death of a sole petitioner or of the survivor of several petitioners), the Registrar of the Court must, on learning of the death,

(a) Serve a notice of the abatement on each respondent; and

(b) Publish the notice of the abatement at least once in a newspaper circulating in the district to which the petition relates.

(2) A notice of the abatement must be in form 88.

Compare: SR 1996/218 r 45

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Part 15—*continued*

815 Application to be substituted as petitioner on abatement

An application under section 255(3) of the Act (to be substituted as petitioner on the abatement of a petition) must be made by written notice given to the Registrar of the Court.

Compare: SR 1996/218 r 46

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Withdrawal and substitution of respondent before trial

816 Notice of respondent's death or loss of seat before trial of petition under section 256(1)(a) or (c) of the Act

(1) This rule applies if, before the trial of a petition, a respondent (other than a Returning Officer or a Registrar of Electors) dies or loses his or her seat because the House of Representatives resolves that his or her seat is vacant.

(2) If this rule applies, the Registrar of the Court must, on learning of the death or the loss by the respondent of his or her seat, give notice of the death or loss.

(3) The Registrar of the Court must give the notice by

(a) Publishing the notice at least once in a newspaper circulating in the district to which the petition relates; and

(b) Leaving a copy of the notice signed by him or her, or on his or her behalf, with the Returning Officer; and

(c) Serving a copy of the notice signed by him or her, or on his or her behalf, on each petitioner.

Compare: SR 1996/218 r 47

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

817 Notice of intention not to oppose petition under section 256(1)(b) of the Act

(1) A respondent to a petition (other than a Returning Officer or a Registrar of Electors) who does not intend to oppose the petition must give written notice of that intention to the Registrar of the Court at least 10 days before the time appointed for the trial of the petition.

Part 15—*continued*

(2) A respondent who gives notice must immediately
- (a) Publish the notice in a newspaper circulating in the district to which the petition relates; and
- (b) Leave a copy of the notice with the Returning Officer; and
- (c) Serve a copy of the notice on each petitioner.

Compare: SR 1996/218 r 48

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

818 Notice of application to be admitted as respondent to oppose petition

An application under section 256(1) of the Act (to be admitted as a respondent to oppose a petition) must be made by written notice given to the Registrar of the Court.

Compare: SR 1996/218 r 49

Part 15, comprising rr 796 to 818, was inserted, as from 1 December 1998, by rule 2 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Part 16
Insolvency

Schedule 2 part 16: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 1—Scope

Schedule 2 subpart 1: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

819 Interpretation

(1) In this Part, unless the context otherwise requires, **Act** means the Insolvency Act 2006.

(2) Expressions not defined in this Part but defined in the Act have, in this Part, the meanings so defined.

Part 16—*continued*

(3) Subclause (1) does not apply to subpart 14 (cross-border proceedings).

Compare: 1908 No 89 Schedule 2 former r 819

Schedule 2 rule 819: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Schedule 2 rule 819(1): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

820 Application of Part

This Part applies to matters arising under the Act or Part 4 of the Administration Act 1969, and to proceedings relating to them in the Court, whenever commenced.

Compare: 1908 No 89 Schedule 2 former r 820

Schedule 2 rule 820: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

821 Application of general rules and practice of Court

The other Parts of these rules and the general practice of the Court apply when this Part applies unless they are modified by or inconsistent with the Act or this Part.

Compare: 1908 No 89 Schedule 2 former r 821

Schedule 2 rule 821: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 2—Proceedings generally

Schedule 2 subpart 2: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

822 Forms

(1) The prescribed forms must be used wherever appropriate.

(2) If a form has not been prescribed for an application, it must be an interlocutory application and an order made on that ap-

Part 16—*continued*

plication must be in the form prescribed for an interlocutory order.

(3) If subclause (2) does not apply, the parties may frame a form for the special purpose of the particular case or the Court may frame the form.

(4) If no form is prescribed, a notice must contain sufficient details to inform the recipient fairly of its substance.

(5) A warrant to search for and seize a bankrupt's property under section 150 or 151 of the Act must be in form 95.

Compare: 1908 No 89 Schedule 2 former rr 822, 823

Schedule 2 rule 822: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

823 General requirements of documents filed in Court

Every document filed must—

(a) comply with rules 23 to 40 so far as they are applicable and with any necessary modifications; and

(b) be headed by the words "In the matter of the Insolvency Act 2006, and in the matter of the bankruptcy (or proposal, as the case may be) of".

Compare: 1908 No 89 Schedule 2 former r 824

Schedule 2 rule 823: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

824 Advertising of notices or proceedings

An advertisement of a notice or proceeding that is published in a newspaper circulating in the area in which the proceeding is pending must comply with the advertising requirements of the Act or this Part.

Compare: 1908 No 89 Schedule 2 former r 825

Schedule 2 rule 824: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Part 16—*continued*

Schedule 2 rule 824(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

825 Discretion of Court as to method of taking evidence

Unless otherwise provided in this Part, the Court may, in any proceeding, take all or any part of the evidence orally or by written interrogatories or on affidavit or by commission, as the Court thinks just.

Compare: 1908 No 89 Schedule 2 former r 826

Schedule 2 rule 825: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 3—Bankruptcy notices

Schedule 2 subpart 3: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

826 Issue of bankruptcy notice

(1) A request for the issue of a bankruptcy notice must be in form 89.

(2) The Registrar may approve the issue of a bankruptcy notice if—

(a) the request is founded on a judgment or order of a court; and

(b) the Registrar has no knowledge that payment of the debt has occurred.

(3) A bankruptcy notice must be in form 90. A certified copy of the judgment or order on which the bankruptcy notice is based must be attached to it.

(4) The bankruptcy notice must state the amount of any costs claimed.

Compare: 1908 No 89 Schedule 2 former r 827

Schedule 2 rule 826: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Part 16—*continued*

827 Service of bankruptcy notice in New Zealand

(1) A bankruptcy notice that is to be served in New Zealand must be served within 1 month from the date of its issue.

(2) If, however, the Registrar is satisfied that reasonable efforts have been made to comply with subclause (1), and service has not been effected, the Registrar,—

(a) on the request in writing of the judgment creditor made not later than 1 month after the end of that period, may extend the time by 1 month or by successive periods of 1 month:

(b) must mark the notice with the word "renewed" and the date of the renewal.

(3) A notice must not, without a Judge's consent, be extended for a period exceeding 3 months from the date on which the notice was first issued.

Compare: 1908 No 89 Schedule 2 former rr 828, 829

Schedule 2 rule 827: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subclause (2) was inserted, as from 1 November 2004, by rule 25 High Court Amendment Rules 2004 (SR 2004/320).

828 Setting aside bankruptcy notice

(1) If an application to set aside a bankruptcy notice cannot be heard until after the expiration of the time specified in the notice as the day on which the act of bankruptcy will be complete, the time is treated as extended until the application has been determined.

(2) An act of bankruptcy is not committed by reason only of non-compliance with the notice until the application has been determined.

Compare: 1908 No 89 Schedule 2 former r 830

Schedule 2 rule 828: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Part 16—*continued*

Subpart 4—Adjudication proceedings

Schedule 2 subpart 4: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

829 Application for adjudication by creditor

(1) A creditor's application for adjudication must be commenced by filing an originating application in form 91. In all other respects, Part 4A applies to the application.

(2) An affidavit in form 92 and a summons to debtor in form 93 must be filed (in duplicate) with a creditor's application.

(3) A summons must also state the amount of any costs claimed.

Compare: 1908 No 89 Schedule 2 former r 831

Schedule 2 rule 829: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

830 Verification of creditor's application

A creditor's application must be verified by affidavit of the creditor or some other person having knowledge of the facts.

Compare: 1908 No 89 Schedule 2 former r 832

Schedule 2 rule 830: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subclause (1) was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "262" for the expression "269". *See* rule 19 of those Rules as to the transitional provisions.

831 Where application for adjudication to be filed

An application for adjudication must be filed,—

(a) if the debtor is resident in New Zealand, in the office of the High Court nearest by the most practicable route to the place in which the debtor has resided or carried on business for the longest period during the 6 months immediately before the time when the application is filed:

Part 16—*continued*

(b) if the debtor is in custody, in the office of the High Court nearest by the most practicable route to the place in which the debtor is in custody:

(c) if the debtor is absent from New Zealand or the applying creditor cannot ascertain the debtor's place of residence, in the office of the High Court nearest by the most practicable route to the place in which the applying creditor resides or carries on business:

(d) if a debtor has never been resident in New Zealand, in the office of the High Court nearest by the most practicable route to the place in which the applying creditor resides or carries on business:

(e) if any act of bankruptcy relied on by the applying creditor is specified in sections 20 and 21 of the Act, in any office of the Court.

Compare: 1908 No 89 Schedule 2 former r 833

Schedule 2 rule 831: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subclause (3) was inserted, as from 1 November 2004, by rule 26 High Court Amendment Rules 2004 (SR 2004/320).

832 Registrar to fix hearing date for creditor's application

(1) The Registrar must fix a hearing date for the application and insert the date in the summons to the debtor before releasing the summons to the creditor for service.

(2) If the application and summons have not been served, the Registrar may, from time to time, alter the hearing date.

Compare: 1908 No 89 Schedule 2 former r 834

Schedule 2 rule 832: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

833 Court may alter hearing date for creditor's application

If it is proved to the Court's satisfaction that the debtor has absconded or there is any other good reason, the Court may,

Part 16—*continued*

on any terms it thinks just, hear the creditor's application on any date the Court considers expedient.

Compare: 1908 No 89 Schedule 2 former r 835

Schedule 2 rule 833: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

834 Service of creditor's application on debtor

(1) A copy of the creditor's application and the summons to the debtor must be served on the debtor at least 10 working days before the hearing of the creditor's application.

(2) If the debtor dies before service of the creditor's application and summons, the Court may order service to be effected on the debtor's administrator or any other person as it thinks just.

Compare: 1908 No 89 Schedule 2 former r 836

Schedule 2 rule 834: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

835 Service of creditor's application on trustee or supervisor

(1) A copy of the creditor's application and the summons to the debtor must be served personally on the trustee or supervisor, as the case may be,—

(a) if the act of bankruptcy alleged is that the debtor has made a disposition of all or substantially all of the debtor's property to a trustee for the benefit of all or any of the debtor's creditors; or

(b) if, at the time of the filing of the application, a proposal under subpart 2 of Part 5 of the Act has been approved by the Court or a summary instalment order has been made under subpart 3 of Part 5 of the Act.

(2) The documents set out in subclause (1) must be served at least 10 working days before the hearing of the creditor's application.

Compare: 1908 No 89 Schedule 2 former r 837

Part 16—*continued*

Schedule 2 rule 835: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

836 Debtor's notice of intention to oppose adjudication

A debtor who intends to oppose the making of an order of adjudication must, by 1 pm on the last working day before the hearing of the creditor's application,—

(a) file a notice of opposition in form 94, together with an affidavit in support of the opposition; and

(b) serve a copy of those documents on the applying creditor.

Compare: 1908 No 89 Schedule 2 former r 838

Schedule 2 rule 836: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

837 Affidavit evidence of applying creditor

(1) Unless the Court otherwise directs, an applying creditor's evidence of a debt, an act of bankruptcy, or any other material statements may be given by affidavit.

(2) The affidavit must be sworn by or on behalf of the applying creditor not earlier than 3 working days before the date of the hearing of the application.

Compare: 1908 No 89 Schedule 2 former r 839

Schedule 2 rule 837: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

838 Applying creditor's solicitor's certificate as to unpaid debt

A certificate by the applying creditor's solicitor to the effect that, after having made due inquiries, the solicitor is satisfied that the debt remains unpaid, may be accepted by the Court as sufficient prima facie evidence that the debt remains unpaid.

Compare: 1908 No 89 Schedule 2 former r 840

Part 16—*continued*

Schedule 2 rule 838: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

839 Death of debtor against whom application filed

If a debtor against whom a bankruptcy application is filed dies, the application must, unless the Court otherwise orders, be continued as if the debtor were alive.

Compare: 1908 No 89 Schedule 2 former r 841

Schedule 2 rule 839: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subclause (2) was amended, as from 1 January 2001, by rule 3 High Court Amendment Rules (No 2) 2000 (SR 2000/254), by substituting the words "not earlier than the third day" for the words "at least 3 days".

Subpart 5—Appointment of Official Assignee

Schedule 2 subpart 5: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

840 Applicant to deposit sum for Official Assignee's expenses

The person who has applied for an order appointing the Official Assignee to be a receiver and manager of all or any part of the debtor's estate must, before the order is made, deposit with the Official Assignee any sum that the Court directs for the Official Assignee's expenses.

Compare: 1908 No 89 Schedule 2 former r 842

Schedule 2 rule 840: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

841 Official Assignee may seek additional sum where original deposit insufficient

(1) If the sum deposited for the Official Assignee's expenses under rule 840 is insufficient, the person who paid the deposit must deposit with the Official Assignee any additional sum as the

Part 16—*continued*

Court may, on the application of the Official Assignee, from time to time direct.

(2) If the additional sum is not deposited within 24 hours after the making of the order, the Official Assignee may apply to have the order appointing the Official Assignee as receiver and manager discharged by the Court.

Compare: 1908 No 89 Schedule 2 former r 843

Schedule 2 rule 841: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

842 Notification of order appointing Official Assignee as receiver and manager

(1) The Registrar must, immediately after the order appointing the Official Assignee as receiver and manager has been made, forward 2 copies of the order to the Official Assignee.

(2) If the debtor is in New Zealand, the Official Assignee must cause a copy of the order appointing the Official Assignee as receiver and manager to be served on the debtor.

(3) The Official Assignee must advertise the Official Assignee's appointment as receiver and manager within 5 working days after the making of the order.

Compare: 1908 No 89 Schedule 2 former r 844

Schedule 2 rule 842: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

843 Repayment of deposits after order of adjudication

(1) If an order of adjudication is made after the Official Assignee is appointed receiver and manager, the Official Assignee must repay to the creditor the deposits made under rules 840 and 841 out of the proceeds of the estate.

(2) If there are insufficient proceeds in the estate to pay the Official Assignee's fees and expenses as receiver and manager,

Part 16—*continued*

the Official Assignee may keep all or any part of the deposits as payment of those fees and expenses.

Compare: 1908 No 89 Schedule 2 former r 845

Schedule 2 rule 843: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

844 Dismissal of application after order appointing Official Assignee as manager and receiver

If, after an order has been made appointing the Official Assignee as receiver and manager, the application upon which the order was made is dismissed,—

(a) the Court must, on an application made within 15 working days from the date of the dismissal, make an order relating to any damages or claim arising out of the Official Assignee's appointment; and

(b) the Court may make any other order it thinks just.

Compare: 1908 No 89 Schedule 2 former r 846

Schedule 2 rule 844: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 6—Contributions from bankrupt

Schedule 2 subpart 6: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

845 Application for order under section 147

A creditor who intends to make an application under section 147 of the Act must give at least 10 working days' notice of that intention to the Official Assignee and to the bankrupt.

Compare: 1908 No 89 Schedule 2 former r 851

Schedule 2 rule 845: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Part 16—*continued*

846 Official Assignee's report

(1) If the Official Assignee or a creditor applies for an order under section 147 of the Act, the Official Assignee must prepare a report as to the circumstances of the bankruptcy, the bankrupt's conduct, and the bankrupt's earning power, responsibilities, and prospects.

(2) At least 5 working days before the time fixed for the hearing, the Official Assignee must lodge the report in the Court, and forward a copy to the bankrupt, and to the applicant, if the applicant is a creditor.

Compare: 1908 No 89 Schedule 2 former r 852

Schedule 2 rule 846: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

847 Official Assignee to notify employer, etc, about proposed assignment or charge

If it is proposed that an order be made assigning to, or charging in favour of, the Official Assignee any money due or becoming due to the bankrupt by way of wages or salary or from any other source,—

(a) the Official Assignee must notify the employer or other person against whom the assignment or charge is proposed; and

(b) the person who is notified may be heard.

Compare: 1908 No 89 Schedule 2 former r 853

Schedule 2 rule 847: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

848 Official Assignee to serve order of assignment, etc

The Official Assignee must serve a duplicate of any order assigning or charging in favour of the Official Assignee any money due or becoming due to the bankrupt on the employer

Part 16—*continued*

or other person against whom the assignment or charge was given.

Compare: 1908 No 89 Schedule 2 former r 854

Schedule 2 rule 848: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 7—Compositions during bankruptcy

Schedule 2 subpart 7: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

849 Application for order approving composition

(1) The Official Assignee may apply to the Court to approve a composition (whether or not the Official Assignee reports in favour of it) if—

(a) the creditors have passed a confirming resolution in relation to the composition; and

(b) the bankrupt does not, within 3 working days from the date of the confirmation, apply to the Court for approval of the composition.

(2) The Official Assignee is not, by making the application, treated as approving the composition.

Compare: 1908 No 89 Schedule 2 former r 855

Schedule 2 rule 849: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

850 Notice to Official Assignee of application to approve composition

Any person, other than the Official Assignee, who applies to the Court to approve a composition must, at least 10 working days before the day appointed for hearing the application, serve notice of the application on the Official Assignee.

Compare: 1908 No 89 Schedule 2 former r 856

Schedule 2 rule 850: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16—*continued*

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

851 Notice of application to approve composition

If an application is made to the Court to approve a composition, the Official Assignee must, at least 5 working days before the day appointed for hearing the application, send notice of the application to every creditor whose debt has been proved.

Compare: 1908 No 89 Schedule 2 former r 857

Schedule 2 rule 851: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

852 Official Assignee to account when composition approved

If a composition is approved by the Court, the Official Assignee must account to the bankrupt, or, as the case may be, to the trustee.

Compare: 1908 No 89 Schedule 2 former r 858

Schedule 2 rule 852: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 8—Irregular transactions

Schedule 2 subpart 8: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

853 Applications by Assignee for cancellation of irregular transactions or retransfer of property or payment of value

(1) An application to the Court by the Assignee under section 206 of the Insolvency Act 2006 (for the cancellation of an irregular transaction) or under section 207 of that Act (for the retransfer of property or payment of value) must be made by originating application under Part 4A of these rules.

(2) An application under section 206 must be in form 102.

(3) An application under section 207 must be in form 103.

Part 16—*continued*

Schedule 2 rule 853: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 9—Discharge of bankrupt

Schedule 2 subpart 9: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

854 Filing and service of objection to discharge

(1) An objection to a discharge under section 292 of the Act is entered by filing an objection in form 96.

(2) A creditor who enters an objection to a discharge must serve the objection on the Official Assignee.

Compare: 1908 No 89 Schedule 2 former r 859

Schedule 2 rule 854: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

855 Service, etc, of notice of application for discharge

At least 15 working days before the hearing date, the bankrupt must—

(a) serve on the Official Assignee, and every creditor whose debt has been proved, notice of application for discharge under section 294 of the Act; and

(b) cause notice of the application and of the hearing date to be advertised.

Compare: 1908 No 89 Schedule 2 former r 860

Schedule 2 rule 855: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

856 Report of Official Assignee

At least 5 working days before the hearing date, the Official Assignee must—

Part 16—*continued*

(a) lodge in the Court a copy of the Official Assignee's report under section 296 of the Act; and

(b) serve a copy of the report on the bankrupt and all creditors known to the Official Assignee.

Compare: 1908 No 89 Schedule 2 former r 861

Schedule 2 rule 856: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

857 Opposition by creditor to discharge

A creditor who intends to oppose the discharge of a bankrupt on grounds other than those specified in the Official Assignee's report must file and serve on the Official Assignee and the bankrupt a notice of the creditor's intended opposition and the grounds of opposition by 1 pm on the day before the hearing.

Compare: 1908 No 89 Schedule 2 former r 862

Schedule 2 rule 857: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

858 Conditions affecting salary, etc, after order of discharge

(1) The Official Assignee must notify the bankrupt's employer of the Official Assignee's intention to ask the Court to impose a condition that affects any salary or wages that may, after the date of the order of discharge, become due to the bankrupt.

(2) The Official Assignee must notify the employer of an order made under section 298 of the Act before receiving payment of any salary or wages.

Compare: 1908 No 89 Schedule 2 former r 863

Schedule 2 rule 858: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Part 16—*continued*

859 Annulment of adjudication to be advertised

The Official Assignee must immediately cause a notice of an order annulling an adjudication to be advertised.

Compare: 1908 No 89 Schedule 2 former r 864

Schedule 2 rule 859: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 10—Proposals

Schedule 2 subpart 10: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

860 Proposal and statement of affairs and affidavit

A proposal under subpart 2 of Part 5 of the Act must be in form 97 and must be accompanied by a statement of affairs and affidavit in form 98.

Compare: 1908 No 89 Schedule 2 former r 865

Schedule 2 rule 860: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

861 Trustee's report on proposal

The trustee must file a report in form 99 with the application for approval under section 333 of the Act.

Compare: 1908 No 89 Schedule 2 former r 866

Schedule 2 rule 861: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 11—Insolvent deceased estates

Schedule 2 subpart 11: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16—*continued*

862 Application for order to administer under Part 6 of Act

An application for an order to administer under Part 6 of the Act must be by originating application.

Compare: 1908 No 89 Schedule 2 former r 867

Schedule 2 rule 862: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

863 Application by creditor or beneficiary

(1) Notice of an application under section 381 of the Act must be given by serving on the administrator, or, if no administrator has been appointed, on those persons that the Court directs, a copy of the application together with a copy of any supporting affidavit.

(2) The Court may, within such time as the Court requires, direct the administrator to file the account in form 100 if—

(a) an application is made by a creditor, or any person beneficially interested, after a request has been made to an administrator; and

(b) the administrator, having been requested in writing to apply, has failed to make an application within 15 working days after receiving the request.

Compare: 1908 No 89 Schedule 2 former r 868

Schedule 2 rule 863: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

864 Duty of Registrar

If an order is made under section 379 or 381 of the Act, the Registrar must send to the appointee and to the Commissioner of Inland Revenue a copy of the order and of the account specified in section 380(3) of the Act.

Compare: 1908 No 89 Schedule 2 former r 869

Schedule 2 rule 864: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Part 16—*continued*

865 Duty of administrator where order made

If an order has been made under section 379 or 381 of the Act,—

(a) the administrator must immediately send an account of the administrator's dealings and administration of the deceased estate to the appointee; and

(b) the administrator must, at the same time, give whatever particulars of the affairs of the deceased that are required by the appointee.

Compare: 1908 No 89 Schedule 2 former r 870

Schedule 2 rule 865: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

866 Person who has intermeddled in estate may be ordered to give particulars

The Court may, on an appointee's application, direct that an account be made, verified, and given by any person the Court considers has administered or otherwise intermeddled with all or any part of the deceased's property, if—

(a) an order has been made under section 379 or 381 of the Act; and

(b) it appears to the Court that no administrator exists and the appointee is unable to find any person willing to give the particulars required by rule 865.

Compare: 1908 No 89 Schedule 2 former r 871

Schedule 2 rule 866: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

867 Administration election

A certificate by Public Trust or the Maori Trustee recording an election to administer an insolvent estate under Part 6 of the Act must be in form 101.

Schedule 2 rule 867: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16—*continued*

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 12—Appeals

Schedule 2 subpart 12: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

868 Applications to vary or discharge order or decision of Registrar or District Court Judge

(1) An application to the Court under section 414 of the Act to vary or discharge the order or decision of a Registrar or District Court Judge under section 413 of the Act must be filed,—

(a) if it is made by a party who was present or represented when the order was made or the decision given, within 5 working days after the making of the order or the giving of the decision; or

(b) if it is made by a party who was not then present or represented, within 5 working days after the receipt by the party of notice of the order or decision.

(2) The application does not stay proceedings unless a Judge, the Registrar, or the District Court Judge otherwise orders.

Compare: 1908 No 89 Schedule 2 former r 872

Schedule 2 rule 868: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

869 Appeals to Court of Appeal

(1) The Court of Appeal (Civil) Rules 2005, so far as they are applicable and with any necessary modifications, apply to appeals to the Court of Appeal under section 414 of the Act.

(2) The Official Assignee of the bankrupt's property is a party to an appeal.

Compare: 1908 No 89 Schedule 2 former r 873

Schedule 2 rule 869: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Part 16—*continued*

Subpart 13—Official Assignee

Schedule 2 subpart 13: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

870 Applications to Court by Official Assignee

An application by the Official Assignee to the Court may be made personally, by counsel, or by any agent duly appointed under paragraph (t) of Schedule 1 of the Act.

Compare: 1908 No 89 Schedule 2 former r 874

Schedule 2 rule 870: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

871 Official Assignee's liability for costs

Unless the Court otherwise directs, the Official Assignee is not personally liable for costs if—

(a) proceedings are brought against the Official Assignee representing the estate of the bankrupt; or

(b) the Official Assignee is made a party to a proceeding on the application of another party.

Compare: 1908 No 89 Schedule 2 former r 875

Schedule 2 rule 871: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Subpart 14—District Court filings

Schedule 2 subpart 14: inserted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

872 Filing decisions of District Court

(1) If, under the Act, an application relating to bankruptcy may be filed in a District Court, the Registrar of that Court must forward to the nearest High Court a certified copy of the decision of that Court.

Part 16—*continued*

(2) The certified copy of the decision of the District Court must be filed by the Registrar and forms part of the proceedings of the High Court.

Compare: 1908 No 89 Schedule 2 former r 876

Schedule 2 rule 872: substituted, on 3 December 2007, by rule 6 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

873 Appeals to Court of Appeal

(1) The Court of Appeal (Civil) Rules 1997, so far as they are applicable and with any necessary modifications, apply to appeals to the Court of Appeal under section 8 of the Act.

(2) The Official Assignee of the bankrupt's property is a party to any appeal.

Compare: SR 1970/245 r 65(3), (6)

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Official Assignee

874 Applications to Court by Official Assignee

Applications by the Official Assignee to the Court may be made personally, by counsel, or by any agent duly appointed under section 71(p) of the Act.

Compare: SR 1970/245 r 8

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

875 Official Assignee's liability for costs

Unless the Court otherwise directs, the Official Assignee is not personally liable for costs if

(a) Proceedings are brought against the Official Assignee representing the estate of the bankrupt; or

(b) The Official Assignee is made a party to a proceeding on the application of any other party.

Compare: SR 1970/245 r 11

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Part 16—*continued*

Miscellaneous

876 Filing decisions of District Court

(1) If, under the Act, an application relating to bankruptcy may be filed in a District Court, the Registrar of that Court must forward to the nearest High Court a certified copy of the decision of the District Court.

(2) The certified copy of the decision of the District Court must be filed by the Registrar and forms part of the proceedings of the High Court.

Compare: SR 1970/245 r 14.

Part 16 (comprising rr 819 to 876) was inserted, as from 1 February 2000, by rule 2 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Part 17
Arbitration Act 1996

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Preliminary provisions

877 Interpretation

In this Part, unless the context otherwise requires,

Act means the Arbitration Act 1996

Arbitral tribunal has the same meaning as in section 2(1) of the Act

Schedule 1 means Schedule 1 of the Act

Schedule 2 means Schedule 2 of the Act.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

878 Application of this Part

This Part applies to any application to the Court

Part 17—*continued*

(a) by way of appeal under clause 5(1)(a) or (b) of Schedule 2:

(b) for leave to appeal under clause 5(1)(c) of Schedule 2:

(c) for entry of an award as a judgment under article 35 of Schedule 1.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Appeals under clause 5(1)(a) or (b) of Schedule 2

879 Appeals

(1) In cases to which clause 5(1)(a) or (b) of Schedule 2 applies, the plaintiff must commence the appeal by filing an originating application in the proper office of the Court, as determined in accordance with rule 107(1).

(2) The originating application must be in form 108.

(3) Rule 44 applies in relation to the originating application.

(4) This rule has effect despite anything in rule 106 or Part 4.

(5) The originating application must not name the arbitral tribunal as a defendant.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

880 Affidavit to be filed in support

At the same time as the originating application is filed, the plaintiff must file an affidavit

(a) exhibiting the award; and

(b) proving the matters set out in clause 5(1)(a) or (b), as the case may be, of Schedule 2.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does

Part 17—*continued*

not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

881 Amendment of grounds of appeal

The grounds of the appeal may subsequently be amended by leave of the Court.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

882 Service

Either before or immediately after the filing of the originating application and the affidavit referred to in rule 880, the plaintiff must serve copies of both documents on the defendant.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

883 Notice of opposition to application

(1) If the defendant intends to oppose the originating application, the defendant must, within 14 days after service of the originating application, file in the Court and serve on the plaintiff and on all other parties a notice of opposition.

(2) The notice of opposition

(a) must state the defendant's intention to oppose the application and the grounds of opposition, including a denial of any fact stated in the originating application that is not admitted and a statement of any fact or matter, not mentioned in the originating application, upon which the defendant relies; and

(b) must contain a reference to any statutory provision, regulation, or rule, or any principle of law on which the defendant relies; and

(c) must be in form 21, with such modifications as are appropriate.

Part 17—*continued*

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

884 Cross-appeal

(1) If

(a) a defendant wishes to contend on the hearing of the originating application that another question of law arises out of the award and that it therefore wishes to cross-appeal; and

(b) clause 5(1)(a) or (b) of Schedule 2 applies with respect to that other question of law,

the defendant must, within 14 days after service of the plaintiff's originating application, file in the Court and serve on the plaintiff and on all other parties a notice of cross-appeal.

(2) The notice of cross-appeal must be in form 108, with such modifications as are appropriate.

(3) This Part applies to cross-appeals with all necessary modifications.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

885 Directions conference

[Repealed]

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Rule 885 was revoked, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Part 17—*continued*

886 Record to be filed

(1) This rule applies if the Court gives a direction under rule 430(7)(d)(i) (whether at a case management conference or otherwise).

(2) The plaintiff must, within 28 days of the direction being given, serve on the defendant a copy of the record of the arbitration, properly indexed.

(3) The record of the arbitration comprises

(a) any application, documents, written submissions, statements, reports, and other papers lodged with the arbitral tribunal; and

(b) any transcript of evidence; and

(c) any exhibits.

(4) Within 7 days after service of the proposed record and index, the defendant must

(a) agree the record and index and signify such agreement by signing the index; or

(b) advise the plaintiff of changes sought to the proposed record or index.

(5) The plaintiff must then promptly file in the Court a copy of the record, properly indexed. If the defendant has sought changes and the plaintiff has not agreed to the changes, then the plaintiff must file a memorandum setting out the changes sought by the defendant and the plaintiff's reasons for not agreeing to the changes. The plaintiff must also file any further documents that the defendant contends form part of the record.

(6) Despite subclause (3), if the parties agree that any part of the record is unnecessary for the hearing of the appeal, that part must be omitted from the record filed.

(7) The plaintiff must meet the cost of preparing the record, which is a disbursement in the proceeding.

(8) If an appeal is to be heard by more than 1 Judge, the Court may direct the plaintiff to file in the Court a further copy or further copies of the record.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does

Part 17—*continued*

not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Subclause (1) was substituted, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

887 Transcription of evidence

(1) This rule applies if the Court gives a direction under rule 430(7)(d)(ii) (whether at a case management conference or otherwise).

(2) The Court may order, subject to any conditions that the Court thinks just, that a transcript be made of any recorded evidence given in the arbitration if it is satisfied that the transcript is required for the proper determination of the appeal.

(3) If the Court gives a direction to which this rule applies, the plaintiff must, within 28 days of the direction being given, serve on the defendant the proposed transcript.

(4) Within 7 days after service of the proposed transcript, the defendant must

(a) agree the transcript and signify such agreement by an appropriate certification of the transcript; or

(b) advise the plaintiff of changes sought or of additional evidence to be transcribed.

(5) The plaintiff must then promptly file the transcript in the Court. If the defendant has sought changes and the plaintiff has not agreed to the changes, then the plaintiff must file a memorandum setting out the changes sought by the defendant and the plaintiff's reasons for not agreeing to the changes.

(6) If the defendant has sought to have additional evidence transcribed and the plaintiff has disputed the relevance of, or the necessity of transcription of, that evidence for the hearing of the appeal, the defendant may file in the Court a transcript of that evidence.

(7) The cost of preparing any transcript is a disbursement in the proceeding.

Part 17—*continued*

(8) If an appeal is to be heard by more than 1 Judge, the Court may direct any party submitting a transcript to file in the court a further copy or further copies.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Subclauses (1) and (2) were substituted, as from 24 November 2003, by rule 15 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

888 Setting down appeal for hearing

[Repealed]

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Rule 888 was revoked, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

889 Hearing of appeal

(1) Every appeal is to be by way of rehearing.

(2) In any appeal, the Court has all the powers and discretions of the arbitral tribunal

(a) to hold the hearing or any part of it in private; and

(b) to make orders prohibiting the publication of any report or description of the proceedings or any part of them.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

890 Leave to appeal to Court of Appeal

Any application to the High Court under clause 5(5) of Schedule 2 for leave to appeal to the Court of Appeal must be filed within 28 days of the High Court's determination of the appeal under clause 5(4) of Schedule 2.

Part 17—*continued*

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Leave to appeal under clause 5(1)(c) of Schedule 2

891 Applications for leave to appeal

(1) In cases to which clause 5(1)(c) of Schedule 2 applies, the plaintiff must commence the proceeding by filing an originating application in the proper office of the Court, as determined in accordance with rule 107(1).

(2) The originating application must be in form 109.

(3) Rule 44 applies in relation to the originating application.

(4) This rule has effect despite anything in rule 106 or Part 4.

(5) The originating application must not name the arbitral tribunal as a defendant.

(6) Rules 880 to 883 apply, with all necessary modifications.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

892 Submissions

(1) Within 14 days of

(a) the date on which the plaintiff is served with a notice of opposition; or

(b) the date by which the defendant had to file a notice of opposition if the defendant wished to oppose the application,

the plaintiff must file the following:

(c) submissions as to why leave should be granted:

(d) copies of any authorities relied on.

(2) Copies of the materials filed must immediately be served on any defendant who has filed and served a notice of opposition.

Part 17—*continued*

(3) At any such hearing, unless otherwise directed by the Judge, the plaintiff or his or her counsel is restricted to 30 minutes, the defendant or his or her counsel is restricted to 30 minutes, and the plaintiff or his or her counsel is restricted to 10 minutes by way of reply.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

893 Granting leave

(1) If the Court grants leave, it must not give reasons unless, in the opinion of the Court, the circumstances require it to do so.

(2)

(3)

(4)

(5)

(6)

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Subclauses (2) to (6) were revoked, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

894 Refusing leave

(1) If the Court refuses to grant leave, it must give reasons.

(2) Any application to the High Court under clause 5(5) of Schedule 2 for leave to appeal to the Court of Appeal from the High Court's refusal to grant leave to appeal must be filed within 28 days of the High Court's refusal.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Part 17—*continued*

Entry of award as judgment under article 35 of Schedule 1

895 Entry of judgment where all parties agree

(1) If all parties to an award agree that it may be entered as a judgment, they may apply to any Registrar by letter signed by all parties or their solicitor or counsel requesting the entry of the award as a judgment.

(2) If the Registrar is satisfied

(a) that all parties have agreed; and

(b) with respect to the matters set out in article 35(2) of Schedule 1,

the Registrar must enter the award as a judgment as soon as practicable.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

896 Entry of judgment in other cases

(1) In all other cases, a party to an award who wishes to enforce it may

(a) enforce it by action; or

(b) apply to the Court for entry of the award as a judgment.

(2) If a party elects the method set out in subclause (1)(a), the party must commence an ordinary proceeding under Part 2.

(3) If a party elects the method set out in subclause (1)(b), the party must apply to the Court in accordance with the procedure set out in rules 897 to 901.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

897 Application for entry of award as judgment

(1) The party to the award must file an originating application in the proper office of the Court, as determined in accordance with rule 107(1).

Part 17—*continued*

(2) The originating application must be in form 110.

(3) Rule 44 applies in relation to the originating application.

(4) This rule has effect despite anything in rule 106 or Part 4.

(5) The originating application must not name the arbitral tribunal as a defendant.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

898 Affidavit to be filed in support

At the same time as the originating application is filed, the plaintiff must file an affidavit proving the matters set out in article 35(2) of Schedule 1.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

899 Service

(1) Either before or immediately after the filing of the originating application and the affidavit referred to in rule 898, the plaintiff must serve copies of both documents on the defendant.

(2) Subclause (1) does not apply if the plaintiff obtains an order under rule 899A.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Subclause (2) was inserted, as from 1 June 2006, by rule 12 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

899A Ex parte entry as judgment in exceptional circumstances

(1) In exceptional circumstances, the plaintiff may, on or after the filing of the originating application, file an *ex parte* application for an order that the award be entered as a judgment.

Part 17—*continued*

(2) The application must be supported by an affidavit that sets out the exceptional circumstances that justify the order sought.

(3) The Court may determine the application on an *ex parte* basis and make the order sought if satisfied that the order is required in the interests of justice.

(4) If the Court makes the order sought, the Court may also direct that the award not be enforced before the order has been served on the defendant and a period specified by the Court has expired after that service.

Rule 899A was inserted, as from 1 June 2006, by rule 13 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

900 Entry as judgment by Registrar where originating application served on defendant who takes no steps

(1) On the application of the plaintiff, the Registrar must promptly enter the award as a judgment unless within either period referred to in subclause (2) the defendant files and serves an application under rule 901 seeking an order that recognition and enforcement of the award be refused.

(2) The periods are

(a) 10 working days after service on the defendant of the plaintiff's application; or

(b) a period fixed by the Court of less than 10 working days after service on the defendant of the order fixing that period.

(3) An application to the Registrar under subclause (1) need not be served on the defendant, and may be made by letter signed by the plaintiff or his or her solicitor or counsel requesting the entry of the award as a judgment.

(4) An application for an order fixing a shorter period under subclause (2)(b) may be made *ex parte*.

(5) An order fixing a shorter period under subclause (2)(b) does not take effect unless it is served on the defendant together with the documents referred to in rule 899(1).

Part 17—*continued*

(6) Subclause (5) applies even if the originating application to which the order relates has already been served on the defendant, and in that case the previous service of the application ceases to have effect when the order is made.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Rule 900 was substituted, as from 1 June 2006, by rule 14 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

901 Opposition to entry as judgment

(1) If the defendant wishes to oppose the originating application, the defendant must, within the applicable period specified by or fixed under rule 900(2), file and serve an application seeking an order that recognition and enforcement be refused in terms of article 36 of Schedule 1.

(2) The application referred to in subclause (1) is treated as if it were an originating application under Part 4A and must be disposed of in accordance with Part 4A.

(3) The plaintiff's application to enforce the award by entry as a judgment is stayed pending the determination of the defendant's application referred to in subclause (1). When determining that application, the Court must also determine the plaintiff's application to enforce the award by entry as a judgment.

Part 17 (comprising rr 877 to 901) was inserted, as from 1 August 2000, by rule 20 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 24 of those Rules which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Subclause (1) was substituted, as from 1 June 2006, by rule 15 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Schedule 1

Rule 3(3)(c)

Forms

Form 1

r 36(2)

General Heading for Documents Filed in a Proceeding

In the High Court of New Zealand No

Registry

Under the Act 19

[*Where appropriate*]

In the Matter of

[*Where appropriate*]

Between [*Full name*], of [*Place of residence*], [*Occupation*],
Plaintiff

And [*Full name*], of [*Place of residence*], [*Occupation*],
Defendant

And [*Where counterclaim against plaintiff and other person*]

Between [*Full name*], of [*Place of residence*], [*Occupation*],
Defendant

And [*Full name*], of [*Place of residence*], [*Occupation*],
Plaintiff

And [*Full name*], of [*Place of residence*], [*Occupation*],
Counterclaim
Defendant

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 2

Rule 41(1)(a)

Warrant to Act

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 2 was revoked, as from 1 October 1991, by rule 23 High Court Amendment Rules 1991 (SR 1991/132).

Form 3

r 44

Memorandum to be Subscribed to First Document Filed by Party

THIS document is filed by the above-named plaintiff (or defendant, etc) in person. The address for service of the above-named plaintiff (or defendant, etc) is

OR

This document is filed by A B, solicitor for the above-named plaintiff (or defendant, etc), of the firm of X Y Z. The address for service of the above-named plaintiff (or defendant, etc) is

Documents for service on the above-named plaintiff (or defendant, etc) may be left at that address for service or may be—

(a) Posted to the solicitor at [*Insert Post Office box address*]; or

(b) Left for the solicitor at a document exchange for direction to [Insert document exchange box number]; or

(c) Transmitted to the solicitor by facsimile to [*Insert facsimile number*].

OR

This document is filed by A B, solicitor for the above-named plaintiff (or defendant, etc), of the firm of X Y Z, whose postal address is

The solicitor's agent in the proceeding is

The address for service of the above-named plaintiff (or defendant, etc) is

Documents for service on the above-named plaintiff (or defendant, etc) may be left at that address for service or may be—

(a) Posted to the solicitor at [*Insert Post Office box address*]; or

(b) Left for the solicitor at a document exchange for direction to [*Insert document exchange box number*]; or

(c) Transmitted to the solicitor by facsimile to [*Insert facsimile number*].]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 3 was substituted, as from 1 October 1991, by rule 24 High Court Amendment Rules 1991 (SR 1991/132).

Form 4

r 45

Notice of change of representation or Address for Service

(General headingForm 1 and endorsement)

Form 4—*continued*

TAKE notice that—

* the solicitor for the plaintiff (*or* defendant *or* third party) is now [*name and address of solicitor and the solicitor's firm, if any*]

* the plaintiff (*or* defendant *or* third party) now acts in person in place of [*name and address of previous solicitor and the solicitor's firm, if any*].

* the address for service of the plaintiff (*or* defendant *or* third party) is now [*address complying with the definition of the term address for service in rule 3 of the High Court Rules*].

Dated this day of 20 .

. . . . . .
Plaintiff *or* Defendant *or* Third Party
[*If this document notifies a change of solicitor, it must be signed by the party personally or by the party's attorney*]

To: The Registrar of the High Court at
and to [*name of other party to proceeding*].

*Delete if inapplicable

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 4 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 4 was substituted, as from 1 July 2002, by rule 15 High Court Amendment Rules 2002 (SR 2002/132).

Form 4A

r 65A(4)

Notice of intention to speak Maori

(General heading as in form 1)

Form 4A—*continued*

Take notice that [**full name*] of [*address*] intends to speak Maori at—

†all case management conferences and hearings relating to the above proceeding

†all case management conferences and hearings relating to the above proceeding held after [*specify particular case management conference or hearing after which the person wishes to speak Maori*]

†the case management conference/†hearing relating to the above proceeding to be held at [*specify details of the particular case management conference or hearing at which the person wishes to speak Maori*].

*Insert name of party, counsel, or witness intending to speak Maori.

†Delete if inapplicable.

Dated at ..... this ..... day of ..... 20 .....

.....

Signature of person intending to speak Maori or party (or solicitor)

To the Registrar of the High Court at [*place*]

and

To [*names of parties to be served*]

Notes

1 The Maori Language Act 1987 entitles certain persons to speak Maori in legal proceedings. They include the parties to the proceedings, witnesses, counsel, and, with the leave of the Court, other persons.

Form 4A—*continued*

2 If a person intends to speak Maori at all case management conferences and hearings relating to a proceeding or application, the person, or, if the person is a witness, the party intending to call the person as a witness, must, at least 10 working days before the first case management conference or hearing, file this notice in the office of the Court and serve a copy of the notice on every other party to the proceeding or application.

3 If a person intends to speak Maori at all case management conferences and hearings after a particular case management conference or hearing, the person, or, if the person is a witness, the party intending to call the person as a witness, must, at least 10 working days before the first case management conference or hearing at which the person intends to speak Maori, file this notice in the office of the Court and serve a copy of the notice on every other party to the proceeding or application.

4 If a person intends to speak Maori at a particular case management conference or hearing, the person, or, if the person is a witness, the party intending to call the person as a witness, must, at least 10 working days before the case management conference or hearing, file this notice in the office of the Court and serve a copy of the notice on every other party to the proceeding or application.

5 Failure to give notice of intention to speak Maori does not prevent a person speaking Maori at a case management conference or hearing, but the Court may—

(a) adjourn the conference or hearing to enable the Registrar to arrange for an interpreter to be available at the adjourned case management conference or hearing; and

(b) treat the failure to give notice as a relevant consideration in an award of costs.

Form 4A was inserted, as from 1 June 2006, by rule 6 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Form 5

r 121

Notice of Proceeding (General)

(General headingForm 1 and endorsement)

Form 5—*continued*

To the above-named defendant(s)

and

To every other person directed to be served.

Take notice that unless, within 30 days after the date on which this notice is served upon you, you file in this office of this Court a statement of your defence to the plaintiff's claim, a copy of which is served herewith, the plaintiff may proceed to a hearing and judgment on his claim in your absence.

The trial of the proceeding, if a trial is necessary, will be held in this Court at [*Place*] at a time to be fixed by the Court.

Dated this day of 19 .

.....

Plaintiff (or Solicitor for Plaintiff)

*The Court has directed that this notice and the statement of claim be served, not only on the defendant(s) above-named but also on the following persons:

[Full name, place of residence, and occupation of each person so directed to be served.]

.....

Registrar

*Your attention is particularly directed to the Memorandum endorsed hereon or attached hereto.

* Delete if inapplicable.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 5 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 5 was amended, as from 1 October 2001, by rule 12 High Court Amendment Rules 2001 (SR 2001/220) by omitting the sentence "The plaintiff claims the sum of $ for costs of and incidental to issuing this proceeding."

Form 6 r 121(4)
Memorandum (General Form)

Advice

1. Although it is not essential to employ a solicitor for the purpose of this proceeding, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to defend this proceeding or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—

(a) carry on proceedings in the Court except by a solicitor; and

(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).

Legal aid

2. If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2000 and regulations made under that Act.

3. The plaintiff is in receipt of (*or* is not in receipt of *or* has applied for) legal aid for the purpose of this proceeding.

Statement of defence

4. If the last day for filing your statement of defence falls on a day on which the office of the Court is closed, you may file your statement of defence on the next day on which that office is open.

5. In calculating the time for filing your statement of defence you must disregard the period that commences with the 25th day of December and ends with the 15th day of January. [*This paragraph must be deleted if it conflicts with a direction given by the Court.*]

6. If you file a statement of defence, you must also, within the time limited for filing it in the office of the Court, serve a copy of the statement on the plaintiff and on any other defendant who has given an address for service.

Counterclaim

7. If you have a counterclaim against the plaintiff, you should, within the time limited for filing your statement of defence,—

(a) File in the office of the Court; and

(b) Serve on the plaintiff and on any other person against whom the same claim is made,—

a statement of the counterclaim.

Witnesses

13. Summonses for the attendance of witnesses will be issued on application at the office of the Court.

Office hours

14. The office hours of the Court are from 9 am to 5 pm except on Court holidays.

Dated this day of 19 .

.....

(Deputy) Registrar

Form 6—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 6 clause 1 of the memorandum was substituted, as from 1 November 2004, by rule 28 High Court Amendment Rules 2004 (SR 2004/320).

Form 6 clause 2 of the memorandum was editorially amended, as from 1 February 2001, by substituting the words "Legal Services Act 2000" for the words "Legal Services Act 1991". *See* section 126(1) Legal Services Act 2000 (2000 No 42)

Form 6 clause 5 of the memorandum was substituted, as from 1 October 2001, by rule 13 High Court Amendment Rules 2001 (SR 2001/220).

Form 6 the headings above cls 8, 9, and 11 were revoked, as from 1 June 2006, by rule 16 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Form 6 clauses 8 to 10 were revoked, as from 1 June 2006, by rule 16 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Form 6 clause 11 of the memorandum was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the words "setting down date" for the words "proceeding is set down for trial". *See* rule 19 of those Rules as to the transitional provisions.

Form 6 clauses 11 and 12 were revoked, as from 1 June 2006, by rule 16 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Form 6 clause 14 of the memorandum was amended, as from 1 February 1998, by rule 18 High Court Amendment Rules 1997 (SR 1997/350) by substituting the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 6 clause 14 of the memorandum was amended, as from 1 February 2003, by rule 24 High Court Amendment Rules (No 2) 2002 (SR 2002/410) by substituting the expression "9 am to 5 pm" for the expression "8.30 am to 5 pm".

Form 7

r 121(4)

Memorandum to be Endorsed on Form 5 in Proceeding under the Declaratory Judgments Act 1908

Advice

1. [*As in form 6.*]

Legal aid

2.
3. } [*As in form 6.*]

Statement of Defence

4.
5.
6. } [*As in form 6.*]

Appearance objecting to jurisdiction of Court

7. If you object to the jurisdiction of the Court to hear and determine this proceeding, you may, within the time limited for filing your statement of defence,—

(a) File in the office of the Court, instead of a statement of defence, an appearance stating your objection and the grounds thereof; and

(b) Serve a copy of the appearance on the plaintiff and on any other defendant who has given an address for service.

8. Such an appearance will not be or deemed to be a submission for the jurisdiction of the Court.

Appearance for ancillary purposes

9. If you do not oppose the plaintiff's claim but desire to be heard on any ancillary matter (including costs), you may, without filing a statement of defence,—

(a) File in the office of the Court an appearance setting forth the matters on which you wish to be heard; and

(b) Serve a copy of the appearance on the plaintiff and on any other defendant who has given an address for service.

10. Thereafter no matter therein specified will be determined except on notice to you.

Form 7—*continued*

Appearance reserving rights

11. If you do not oppose the plaintiff's claim but desire to reserve your rights in the event that any other person may become a party to the proceeding or that any person already a party may take some step in the proceeding adverse to your interest, you may, without filing a statement of defence,—

(a) File in the office of the Court an appearance reserving those rights; and

(b) Serve a copy of the appearance on the plaintiff and on any other defendant who has given an address for service.

12. Thereafter—

(a) You will be entitled to be served with all documents relevant to the rights so reserved that may be filed in the proceeding by any person who is or may become a party thereto; and

(b) You may at any time, by leave of the Court, file and serve a statement of defence and any other document within such time and upon such terms and conditions as may be prescribed by the Court when granting such leave.

Office hours

13. The office hours of the Court are from 9 am to 5 pm except on Court holidays.

Dated this day of 19 .

. . . . . .
(Deputy) Registrar

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 7 was amended, as from 1 February 1998, by rule 18 High Court Amendment Rules 1997 (SR 1997/350) by substituting the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 7 was amended, as from 1 February 2003, by rule 24 High Court Amendment Rules (No 2) 2002 (SR 2002/410) by substituting the expression "9 am to 5 pm" for the expression "8.30 am to 5 pm".

Form 8

r 121(4)

Memorandum to be Endorsed on Form 5 in Proceeding under the Family Protection Act 1955

Advice

1. [*As in form 6.*]

Legal aid

2. } [*As in form 6.*]
3. }

Statement of Defence

4. }
5. } [*As in form 6.*]
6. }

Appearance objecting to jurisdiction of Court

7. } [*As in form 7.*]
8. }

Appearance in relation to ancillary matters

9. } [*As in form 7.*]
10. }

Appearance reserving rights

11. } [*As in form 7.*]
12. }

Claim by defendant

13. If you wish to make a claim under the Family Protection Act 1955 provision for yourself out of the estate of the deceased, you should, within the time limited for filing your statement of defence,—

(a) File in the office of the Court a statement of claim setting out your claim for the facts upon which you rely in support thereof; and

(b) Serve a copy of your statement of claim on—

(i) The plaintiff; and

(ii) The defendant; and

(iii) Any other person (other than yourself) directed to be served with the plaintiff's proceeding.

Office hours

14. The office hours of the Court are from 9 am to 5 pm except on Court holidays.

Dated this day of 19 .

. . . . . .
(Deputy) Registrar

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 8—*continued*

Form 8 was amended, as from 1 February 1998, by rule 18 High Court Amendment Rules 1997 (SR 1997/350) by substituting the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 8 was amended, as from 1 February 2003, by rule 24 High Court Amendment Rules (No 2) 2002 (SR 2002/410) by substituting the expression "9 am to 5 pm" for the expression "8.30 am to 5 pm".

Form 9

Rules 121(4), 221

Notice to Defendant Served Overseas

[*To be added to form 6 or form 7 or form 8, as appropriate*]

The foregoing notice is the usual notice given to every defendant but as you are resident out of New Zealand you are further notified as follows:

1. These documents are documents by which the above-named plaintiff has commenced a proceeding against you in the High Court of New Zealand. In that proceeding the plaintiff claims against you the relief specified in the attached statement of claim.

2. Although you are resident outside New Zealand, the plaintiff claims that he can bring this proceeding against you in the High Court of New Zealand.

3. By New Zealand law, the High Court may exercise jurisdiction in a case even though the defendant is resident outside New Zealand, if the case comes within the class or classes in which that Court has jurisdiction.

4. One (two, etc) of the classes of case in which the High Court may exercise jurisdiction is (*or* are) where:

[*Here specify the particular provision of rule 219 on which the plaintiff relies to serve the proceeding overseas.*]

5. In this case the plaintiff claims:

[*Here specify the facts alleged by the plaintiff to confer jurisdiction.*]

6. Notwithstanding that the Court may have jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied—

(a) That in all the circumstances some country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and

(b) That the plaintiff will have a fair opportunity to prove his claim and receive proper justice in that other country.

7. If you wish to dispute the jurisdiction of the Court in this proceeding, you must, within the time specified for filing a statement of defence, and instead of filing and serving a statement of defence,—

(a) File in this Court an appearance in the form required by the rules of this Court stating your objection to the Court's jurisdiction and the grounds thereof; and

(b) Serve a copy of that appearance on the plaintiff.

Such an appearance will not be or be deemed to be a submission to the jurisdiction of the Court in this proceeding.

Form 9—*continued*

8. If you desire to protest at the jurisdiction of the High Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send authority to a solicitor in New Zealand by airmail instructing him to act for you.

Dated this day of 19 .

.....
(Deputy) Registrar

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 10

r 134

Appearance under Protest to Jurisdiction

(General headingForm 1 and endorsement)

1. The defendant, CD, appears under protest to object to the jurisdiction of the Court to hear and determine this proceeding.

2. The defendant's objection is based on the following grounds:

(1)

(2)

Dated this day of 19 .

.....
(Solicitor *or* Counsel for)
Defendant

[*Subscribe memorandum in form 3.*]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 10 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 11

r 134

Appearance for Ancillary Purpose

(General headingForm 1 and endorsement)

Form 11—*continued*

The defendant, CD, does not oppose the plaintiff's claim but appears so that he may be heard on the following matters:

(1)

(2)

Dated this day of 19 .

.....
(Solicitor *or* Counsel for)
Defendant

[*Subscribe memorandum in form 3.*]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

This form was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 12 r 134
Appearance Reserving Rights

(General headingForm 1 and endorsement)

The defendant, CD, does not oppose the plaintiff's claim but appears in order to reserve his rights in the event that any other person may become a party to this proceeding or that any person, already a party, may take some step in the proceeding adverse to the interests of this defendant.

Dated this day of 19 .

.....
(Solicitor *or* Counsel for)
Defendant

[*Subscribe memorandum in form 3.*]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 12 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 13 r 139
Notice of Proceeding When Summary Judgment Sought by Plaintiff

(General headingForm 1 and endorsement)

Form 13—*continued*

To the above-named defendant(s)

Take notice—

(a) That a claim, a copy of which is served herewith, has been filed in this Court by the plaintiff; and

(b) That the plaintiff has also applied to this Court for immediate judgment against you (thereon *or, if judgment is not sought on the full claim*, to the extent stated in the notice of application for summary judgment also served herewith) on the ground that you have no defence (to the plaintiff's claim *or* to the plaintiff's claim to the extent stated in the application).

Notice of Opposition and Affidavit Setting Out Defence

If you have a defence to the plaintiff's claim, you should, not less than **[[**3 working days**]]** before the date of hearing shown in the notice of application for summary judgment also served herewith,—

(a) File in the office of this Court at [*Place*]—

(i) A notice of opposition; and

(ii) An affidavit sworn by you or on your behalf setting out your defence to the plaintiff's claim; and

(b) Serve a copy of that notice of opposition and a copy of that affidavit on the plaintiff.

If you fail—

(a) To file both a notice of opposition and such an affidavit and to serve copies of them on the plaintiff; **[[**and**]]**

(b) To appear on the date of hearing in opposition to the plaintiff's application,—

the Court may give such judgment on the plaintiff's claim against you as may be just.

If you are a natural person, you may at the hearing appear personally or by counsel.

If you are a company or other corporation, you may at the hearing appear only by counsel.

Statement of Defence

You may, in addition to filing a notice of opposition and such an affidavit, file a statement of defence.

If you wish to file a statement of defence,—

(a) You must file it in the office of this Court in which your notice of opposition and your affidavit were filed; and

(b) You must serve a copy of it on the plaintiff; and

Form 13—*continued*

(c) You must so file it and so serve it not less than 3 days before the date for the hearing of the application.

Dated this day of 19 .

.....
(Solicitor for) Defendant

Your attention is particularly directed to the Memorandum endorsed hereon or attached hereto.

MEMORANDUM

Advice

1. Although it is not essential to employ a solicitor for the purpose of this application, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this application or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—

(a) carry on proceedings in the Court except by a solicitor; and

(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).

Legal Aid

2. If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 1991 and regulations made under that Act.

3. The plaintiff is in receipt of (*or* is not in receipt of *or* has applied for) legal aid for the purpose of this proceeding.

Appearance objecting to jurisdiction of Court

4. If you object to the jurisdiction of the Court to hear and determine this proceeding, you may, within the time allowed for filing your notice of opposition and your affidavit,—

(a) File in the office of the Court, instead of a notice of opposition and an affidavit, an appearance stating your objection and the grounds thereof; and

(b) Serve a copy of the appearance on the plaintiff.

5. Such an appearance will not be deemed to be a submission to the jurisdiction of the Court.

Office hours

6. The office hours of the Court are from 9 am to 5 pm except on Court holidays.

Form 13—*continued*

Working days

7. "Working day" means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(b) A day in the period commencing with 25 December in any year and ending with 15 January in the following year.

Dated this day of 19 .

.....

(Deputy) Registrar

[*Where the defendant is to be served overseas add the following notice:*]

NOTICE TO DEFENDANT SERVED OVERSEAS

The foregoing memorandum is the usual memorandum given to every defendant against whom summary judgment is sought but as you are resident out of New Zealand you are further notified as follows:

1. These documents are documents by which the above-named plaintiff has commenced a proceeding against you in the High Court of New Zealand. In that proceeding the plaintiff claims against you the relief specified in the attached statement of claim.

2. Although you are resident outside New Zealand, the plaintiff claims that the plaintiff can bring this proceeding against you in the High Court of New Zealand.

3. By New Zealand law the High Court may exercise jurisdiction in a case even though the defendant is resident outside New Zealand, if the case comes within the class or classes in which that Court has jurisdiction.

4. One (two, etc) of the classes of case in which the High Court may exercise jurisdiction is (*or* are) where:

[*Having regard to rule 135, here specify the particular provision of rule 219 on which the plaintiff relies to serve the proceeding overseas.*]

5. In this case the plaintiff claims:

[*Having regard to rule 135, here specify the facts alleged by the plaintiff to confer jurisdiction.*]

6. Notwithstanding that the Court may have jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied—

(a) That in all the circumstances some country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and

(b) That the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive proper justice in that other country.

Form 13—*continued*

7. If you desire to protest at the jurisdiction of the High Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send authority to a solicitor in New Zealand by airmail instructing that solicitor to act for you.

Dated this day of 19 .

.....

(Deputy) Register

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 13 was substituted, as from 1 January 1989, by rule 23 High Court Amendment Rules (No 2) 1988 (SR 1988/269).

Form 13 Notice of Opposition and Affidavit Setting Out Defence was amended, as from 1 June 1990, by rule 17 High Court Amendment Rules 1990 (SR 1990/66) by substituting the word "and" for the word "or".

Form 13 Notice of Opposition and Affidavit Setting Out Defence was amended, as from 1 January 1993, by rule 17(1) High Court Amendment Rules (No 2) 1992 (SR 1992/318) by substituting the paragraph beginning with the words "If you fail".

Form 13 MEMORANDUM: paras 1 to 3 (and related headings) were substituted, as from 1 January 1993, by rule 17(2) High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Form 13 MEMORANDUM Office Hours was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 13 was amended, as from 1 February 1998, by rule 18 High Court Amendment Rules 1997 (SR 1997/350) by substituting the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 13 heading was substituted for the heading "NOTICE OF PROCEEDING WHEN SUMMARY JUDGMENT SOUGHT", as from 9 November 1998, by rule 6(1) High Court Amendment Rules 1998 (SR 1998/310).

Form 13 was amended, as from 9 November 1998, by rule 6(2) High Court Amendment Rules 1998 (SR 1998/310) by omitting from the section headed "Notice of Opposition and Affidavit Setting Out Defence" the expression "3 days" and substituting the expression "3 working days".

Form 13 MEMORANDUM Working days was inserted, as from 9 November 1998, by rule 6(3) High Court Amendment Rules 1998 (SR 1998/310).

Form 13 was amended, as from 1 February 2003, by rule 24 High Court Amendment Rules (No 2) 2002 (SR 2002/410) by substituting the expression "9 am to 5 pm" for the expression "8.30 am to 5 pm".

Form 13 clause 1 of the memorandum was substituted, as from 1 November 2004, by rule 28 High Court Amendment Rules 2004 (SR 2004/320).

Form 13A

r 138(4)

Notice of Proceeding When Summary Judgment Sought by Defendant

[Repealed]

Form 13A was inserted, as from 9 November 1998, rule 6(4) High Court Amendment Rules 1998 (SR 1998/310).

Form 13A was revoked, as from 1 October 2001, by rule 14 High Court Amendment Rules 2001 (SR 2001/220).

Form 14

r 154

Third Party Notice

(General headingForm 1 and endorsement)

Form 14—*continued*

To [*Full name, address, and occupation*]

Claim by plaintiff against defendant

Take notice that this proceeding has been brought by the plaintiff against the defendant. In the proceeding the plaintiff claims the relief set out in the plaintiff's statement of claim, a copy of which is delivered herewith. The defendant has (*or* has not) filed a statement of defence to the claim.

(*A copy of that statement of defence is delivered herewith.)

Claim by defendant against you

The defendant claims against you relief or remedy in respect of, or arising out of, the plaintiff's claim. Both the relief or remedy claimed against you by the defendant and the grounds on which that relief or remedy is claimed are set out in the defendant's statement of claim, a copy of which is also delivered herewith.

Your right to dispute claims

If you wish to dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must, within 30 days after the day on which this notice is served upon you,—

(a) File in this office of this Court at [*Place*] a statement of your defence to the plaintiff's claim or the defendant's claim, or both, as the case may be; and

(b) Serve a copy of that statement of your defence on the plaintiff and the defendant and on the other parties to the proceeding.

Consequences of failure to dispute claims

In default of your so doing—

(a) You will be deemed to admit—

(i) The plaintiff's claim against the defendant; and

(ii) The defendant's right to the relief or remedy that the defendant claims against you; and

(iii) The validity of any judgment that may be given in the proceeding, whether by consent, default, or otherwise; and

(b) You will be bound by any judgment so given, which judgment may be enforced against you pursuant to the rules of Court.

Trial of proceeding

The trial of the proceeding, if a trial is necessary, will take place at [*Here specify place*] at a time to be fixed by the Court.

(*This notice is issued pursuant to an order of the Court made on the day of 19 .)

Dated this day of 19 .

.....
(Solicitor for) Defendant

*Delete if inapplicable

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 14 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 15
r 166

Notice to other Defendant

(General headingForm 1 and endorsement)

To the above-named defendant, [*full name*].

Claim against you

Take notice that the above-named defendant, [*full name*], claims against you the relief or remedy set out in the annexed statement of claim. The grounds on which the relief or remedy is sought appear in that statement of claim.

Your right to dispute claim

If you dispute the claim, you may, within 10 days after the day on which this notice is served upon you,—

(a) File in this office of this Court a statement of your defence to the claim; and

(b) Serve a copy of that statement of your defence on—

(i) The above-named defendant [*full name*]; and

(ii) The plaintiff; and

(iii) Any other party who has filed an address for service.

Dated this day of 19 .

.....
(Solicitor for) Defendant

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 15 was amended, as from 1 April 1994, by adding the words "and endorsement" to the expression "(General heading - Form 1)" pursuant to rule 24 High Court Amendment Rules 1993 (SR 1993/420).

Form 16
Affidavit of Service

Rule 196

(General heading—Form 1 and endorsement)

I, [*Full name*], of [*Place of residence*], [*Occupation*], swear:

1. On day, the day of 20 , I served the above-named defendant, [*Full name*], with the following documents:

   [*Describe each document served, e.g., statement of claim and notice of proceeding. If, under rule 196(2) of the High Court Rules, a copy of any document served is not to be annexed to the affidavit, the description of the document—*

   (*a*) *Must be sufficient to enable the document to be identified; and*

   (*b*) *Must include the date of the document (if the document bears a date)*].

2. I served the documents on the above-named defendant at [*Place*] in New Zealand by delivering the documents personally to the defendant [*or as the case may be*].

3. 1 believe it was the defendant I served because—

   *(a) the defendant acknowledged that he/she is the defendant

   *(b) I know the defendant

   *(c) other [please state].

   *Delete inapplicable paragraphs

†[4. True copies of the documents served are annexed to this affidavit and marked "A" and "B".

†[Delete if inapplicable (see rule 196(2))

Signature of Deponent: .....

Sworn at this day of 20 , before me—

.....

(Deputy) Registrar.

A solicitor of the High Court of New Zealand.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 16 was substituted, as from 1 February 1994, by rule 23 High Court Amendment Rules 1993 (SR 1993/420).

Form 16 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 16 was substituted, as from 1 November 1994, by rule 7(1) High Court Amendment Rules (No 2) 1994 (SR 1994/211).

Form 16 was substituted, as from 1 October 2001, by rule 15 High Court Amendment Rules 2001 (SR 2001/220).

Form 17

Rules 217, 218(5)

Service of Foreign Process in New ZealandRegistrar's Certificate

I, [*Full name*], Registrar of the High Court of New Zealand, at [*Here specify place*], hereby certify that the documents annexed hereto are as follows:

(1) The original letter of request for service of process received from [*Description of foreign Court or tribunal*] at [*Place where foreign Court or tribunal sits*] in [*Name of foreign country*], in the matter of [*Description or name of matter pending before foreign Court or tribunal*]; and

(2) The copy of the process (*or* citation) received with the letter of request; and

(3) The evidence of service upon [*Full name*], the person named in the letter of request.

And I certify that the service so proved and the proof thereof are such as are required by the law and practice of the High Court of New Zealand regulating the service of New Zealand legal process in New Zealand and the proof thereof, and I certify that the cost of effecting the service so proved amounts to the sum of .

Dated at this day of 19 .

.....
Registrar

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 18

Rule 224(1)

Request for Service Abroad

(General headingForm 1 and endorsement)

Form 18—*continued*

I hereby request that the statement of claim and notice of proceeding in this proceeding be transmitted through the proper channel to [*Name of country*] for service (*or* substituted service) on the above-named defendant [*Name of defendant*] at [*Here specify place*] or elsewhere in [*Name of country*], such service to be effected directly through a New Zealand or British consular officer (*or* by the competent authority of that country).

And I hereby personally undertake—

(a) To be responsible for all expenses of effecting or endeavouring to effect service incurred by the Government of New Zealand and by any British Government acting in the matter or by any officer thereof respectively; and

(b) On receiving due notification of the amount of those expenses,—

(i) To pay the same forthwith to the [Crown Bank Account]; and

(ii) To produce evidence of the payment to the Registrar.

Dated this day of 19 .

.....

(Solicitor for) Plaintiff

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 18 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 19

r 237(1)

Notice of Interlocutory Application

Inter Partes

(General headingForm 1 and endorsement)

TAKE notice that on the day of 19 , at am (*or* pm) or as soon thereafter as counsel (*or* parties) may be heard the [*Party applying*] will move the Court at [*Place*] for [*Here specify the order or orders sought, numbering them if more than one is sought*] upon the grounds [*State concisely the grounds in respect of each order sought*].

This application is made in reliance on [*refer to any particular provision of an enactment or principle of law or judicial decision relied on*].

Dated this day of 19 .

.....

(Solicitor *or* Counsel for) [*Party applying*]

To the Registrar of the High Court at

And to [*Names of parties to be served*]

Form 19—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 19 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)".

Form 19 was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "r 237(1)" for the expression "Rule 236(1)" and by substituting the words "[*refer to any particular provision of an enactment or principle of law or judicial decision relied on*]" for the words "[*State any statutory provision, regulation, rule, or principle of law relied upon*]". *See* rule 19 of those Rules as to the transitional provisions.

Form 20 r 237(1)
Notice of Interlocutory Application

Ex Parte

(General headingForm 1 and endorsement)

TAKE notice that the [*Party applying*] will move the Court for [*Here specify the order or orders sought, numbering them if more than one is sought*] upon the grounds [*State concisely the grounds in respect of each order sought*].

This application is made in reliance on [*refer to any particular provision of an enactment or principle of law or judicial decision relied on*].

Certified pursuant to the rules of Court to be correct.

Dated this day of 19 .

.....

(Solicitor or Counsel for) [*Party applying*]

To: The Registrar of the High Court at

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 20 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 20 was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "r 237(1)" for the expression "Rule 236(1)" and by substituting the words "[*refer to any particular provision of an enactment or principle of law or judicial decision relied on*]" for the words "[*State any statutory provision, regulation, rule, or principle of law relied upon*]". *See* rule 19 of those Rules as to the transitional provisions.

Form 21
r 244(2)

Notice of Opposition

(General headingForm 1 and endorsement)

TAKE notice that the [*respondent*] intends to oppose the interlocutory application by the [*Plaintiff, defendant, etc*] dated the day of 19 [and for hearing on the day of 19].

The [*respondent*] is opposed to the making of the order numbered in the notice of application.

The grounds on which the [*respondent*] opposes the making of the orders are [*State concisely*].

The [*respondent*] relies upon [*refer to any particular provision of an enactment or principle of law or judicial decision relied on*].

Dated this day of 19 .

.....

(Solicitor *or* Counsel for) [*Party opposing*]

To: The Registrar of the High Court at

And to: [*Party applying and any other party served with notice of application*]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 21 was amended, as from 1 January 1989, by rule 24 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting at the end of the first paragraph the words "and for hearing on the day of 19 ."

Form 21 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 21 was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the word "[*respondent*]" for the words "[*Party opposing*]" wherever they occur and by substituting the words "[*refer to any particular provision of an enactment or principle of law or judicial decision relied on*]" for the words "[*State statutory provision, regulation, rule, or principle of law relied upon*]". *See* rule 19 of those Rules as to the transitional provisions.

Form 22
r 257(3)

Order Made by the Court

(General headingForm 1 and endorsement)

Form 22—*continued*

BEFORE the Honourable Mr Justice

day, the day of 19

Upon reading (the statement of claim and) the interlocutory application of the [*Party applying*] for [*State concisely the order or orders sought*] and the affidavit(s) of [*Full name(s)*] [*Refer also to any other relevant document*] and upon hearing (*or, if no appearance*, upon the application of) [*Name*], counsel (*or* solicitor) on behalf of the [*Applicant*] and [*Name*], counsel (*or* solicitor) on behalf of the [*Other party*] this Court orders (by consent, *if appropriate*]):

[*Here specify the order or orders made. Where more than one order is made, they may be numbered.*]

By the Court,

.....

(Deputy) Registrar

[Sealed this day of 19 .]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 22 was amended, as from 1 January 1989, by rule 25 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the words "Sealed this ... day of ... 19 ..."

Form 22 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 22 was amended, as from 24 November 2003, by rule 18 High Court Amendment Rules 2003 (SR 2003/280) by substituting the expression "r 257(3)" for the expression "Rule 267(2)". *See* rule 19 of those Rules as to the transitional provisions.

Form 23 r 278
Notice to Answer Interrogatories

(General headingForm 1 and endorsement)

Form 23—*continued*

TAKE notice that, pursuant to rule 278 of the High Court Rules the above-named plaintiff (*or* defendant, etc) requires you, within days after the day on which this notice is served on you,—

(a) To answer specified interrogatories relating to matters in question in this proceeding between you and him; and

*(b) To verify your answers by affidavit.

The specified interrogatories are as follows:

[*Here set out, and number, the interrogatories.*]

Dated this day of 19 .

.....

(Solicitor *or* Counsel for)

[*Party interrogating*]

To the [*Party interrogated*]

*Delete if the party interrogating does not require the answers to be verified by affidavit.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 23 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 24 r 291
Notice to Admit Facts

(General headingForm 1 and endorsement)

TAKE notice that, pursuant to rule 291 of the High Court Rules, the above-named plaintiff (*or* defendant, etc) requires you, within 7 days after the date on which this notice is served on you, to admit, for the purpose of this proceeding only, the following facts:

[*Here set out, and number, the facts required to be admitted.*]

Dated this day of 19 .

.....

(Solicitor *or* Counsel for)

[*Party giving notice*]

To the [*Party served*]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 24 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 25

r 293(1)

Notice for Discovery

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 25 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 25 was revoked, as from 1 November 2004, by rule 13(1) High Court Amendment Rules 2004 (SR 2004/320). *See* rule 14 of those Rules as to the transitional provision relating to discovery.

Form 26
r 297

Affidavit of Documents

[*General heading as in form 1 and endorsement*]

I [*full name*], of [*address*], swear:

1 I am [*state which party you are (or the capacity in which you make the affidavit) and your authority to make the affidavit*].

2 I make this affidavit under an order for discovery made under rule 294 on [*state date*] (referred to in this affidavit as the discovery order).

*3 The discovery order contains particular terms that are not set out in rule 295, and those particular terms are [*state nature of particular terms*].

4 I am aware of my obligations under the discovery order and understand those obligations.

5 In order to fulfil my obligations under the discovery order, I have diligently searched for all documents required to be discovered under the order, and I have also taken the following particular steps [*describe the steps taken, such as, for example, inquiries made of named persons*].

6 I identify the documents that I am required to discover in the Schedule of this affidavit.

7 I identify in Part 1 of the Schedule the documents that are in my control and for which I do not claim privilege or confidentiality.

8 I list in Part 2 of the Schedule the documents in my control for which I claim privilege and state in relation to each document the applicable privilege.

*9 I list in Part 3 of the Schedule the documents in my control for which I claim confidentiality. I propose that inspection of these documents be restricted to [*state persons*] and that the following restrictions apply [*state proposed restrictions on inspection*].

10 I list in Part 4 of the Schedule documents that are no longer in my control and state when, to the best of my knowledge and belief, each document ceased to be in my control and the persons who, to the best of my knowledge and belief, now have control of each document.

11 I list in Part 5 of the Schedule other documents known to me relating to a matter in question in the proceeding.

12 To the best of my knowledge and belief, this affidavit is correct in all respects and faithfully carries out my obligations under the discovery order.

Sworn at ..... this ..... day of ..... 20 ....., before me:

A solicitor of the High Court of New Zealand

* Delete if inapplicable.

Form 26—*continued*

Schedule

Part 1

[*Documents that are in the control of the party giving discovery and for which neither privilege nor confidentiality is claimed.*]

Documents numbered 1 to ...

Part 2

[*Documents that are in the control of the party giving discovery and for which privilege is claimed. State the nature of the privilege claimed for each document or category of document, eg, legal professional privilege, litigation privilege, privilege against self-incrimination.*]

Part 3

[*Documents in the control of the party giving discovery for which confidentiality is claimed.*]

Part 4

[*Documents that are no longer in the control of the party giving discovery. State, to the best of your knowledge and belief—*

(a) when each document or category of document ceased to be in the control of the party giving discovery; and

(b) the persons who now have control of each document.]

Part 5

[*Other documents that relate to a matter in question in the proceeding that are not and have never been in the control of the party giving discovery. Identify the documents by category or their nature. State, to the best of your knowledge and belief, where the documents are.*]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 26 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 26 was substituted, as from 1 November 2004, by rule 13(2) High Court Amendment Rules 2004 (SR 2004/320). *See* rule 14 of those Rules as to the transitional provision relating to discovery.

Form 27

r 357(1)

Memorandum Admitting Relief

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 27 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 27—*continued*

Forms 27 to 31 were revoked, as from 1 November 2004, by rule 29 High Court Amendment Rules 2004 (SR 2004/320).

Form 28

r 368

Notice of Payment into Court With Denial of Liability

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 28 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Forms 27 to 31 were revoked, as from 1 November 2004, by rule 29 High Court Amendment Rules 2004 (SR 2004/320).

Form 29

r 368

Notice of Payment into Court of Full Amount Claimed

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 29 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Forms 27 to 31 were revoked, as from 1 November 2004, by rule 29 High Court Amendment Rules 2004 (SR 2004/320).

Form 30

r 368

Notice of Payment into Court With Admission of Liability

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 30 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Forms 27 to 31 were revoked, as from 1 November 2004, by rule 29 High Court Amendment Rules 2004 (SR 2004/320).

Form 31

Rule 368

Notice of Acceptance of Money Paid in

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 31 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Forms 27 to 31 were revoked, as from 1 November 2004, by rule 29 High Court Amendment Rules 2004 (SR 2004/320).

Form 32

Rule 375

Report of Examiner

(General headingForm 1 and endorsement)

Form 32—*continued*

TO the High Court of New Zealand at

1. Pursuant to the order of this Court made on the day of 19 and to rule 372 of the High Court Rules, I, [*Full name and address of Examiner*], the Examiner appointed by that order—

(a) Duly appointed am/pm on the day of 19 as the time and [*Description and address of place where examination to be held*] as the place for the examination of the persons named in the order; and

(b) Notified the parties accordingly.

2. At the time and place so appointed the parties appeared by counsel, namely [*Name*] for the plaintiff and [*Name*] for the defendant. [*Give particulars of any adjournments*].

3. The examination of the witnesses named in the order was conducted before me in accordance with the provisions of rule 372 on the [*Set out the days on which the witnesses were examined*].

*4. With the consent in writing of each party and in accordance with rule 373 of the High Court Rules, the following witnesses were also examined before me on the [*State days on which the additional witnesses were examined*].

5. Before each witness was examined I administered to that witness an oath (*or* took from that witness an affirmation) to tell the truth, the whole truth, and nothing but the truth in the evidence which the witness was about to give.

6. The evidence of each witness was duly recorded, together with, in accordance with rule 374 of the High Court Rules,—

(a) A note of each objection thereto; and

(b) The ground for each objection; and

(c) My opinion on each objection; and

(d) The answer (if any) of the witness to the question.

7. The record of the evidence given, together with—

(a) A note of each objection to any question; and

(b) The ground for each objection; and

(c) My opinion on each objection; and

(d) The answer (if any) of the witness to the question; and

(e) The exhibit produced (if any),—

is enclosed with this report.

8. I certify that the out-of-pocket expenses incurred by me in and incidental to this examination were as follows: [*Specify the items, eg rent, transport, stenographer, and attach vouchers*].

Dated at this day of 19 .

Form 32—*continued*

.....
Examiner

*Delete if inapplicable

Note: If the evidence of any witness is not taken for any of the reasons set out in rule 372 (7), the following certificate shall be inserted either in place of or in addition to paragraphs 2 to 7 of this form:

I certify that at the time and place appointed, as set out in paragraph 1 (*or* at am/pm on the day of 19 at [*Place*], the time and place to which I had adjourned the examination)—

*(a) There was no appearance by or on behalf of the [*Party who had obtained the order*]; or

*(b) The witness [*Name*] did not attend; or

*(c) The plaintiff (*or* defendant) intimated that it was not intended to proceed with the taking of the evidence.

*Delete if inapplicable

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 32 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 32A

Rule 416F(3)

Advertisement of Proceeding and List of Creditors

In the matter of the Companies Act 1993

and

In the matter of ..... Limited

NOTICE is hereby given that an application for an order confirming the reduction of the capital of the above company from $..... to $..... was on the ..... day of ..... 19..... filed in the High Court of New Zealand at ....., and is now pending: And that by an order dated the ..... day of ..... 19..... an inquiry was directed as to the debts, claims, and liabilities of the said company as on the ..... day of ..... 19..... [other than debts, claims and liabilities in respect of (*Here set out the nature of the debts, claims, or liabilities to which the inquiry does not extend*)]. A list of the persons admitted to have been creditors of the company for debts, claims, and liabilities to which the inquiry extends on the said ..... day of ..... 19..... may be inspected at the offices of the company, at ..... or at the office of ....., at any time during usual business hours.

Any person who claims to have been on the said ..... day of ..... 19....., and still to be, a creditor of the company in respect of any such debt, claim, or liability, and who is not entered on the said list and claims to be so entered, must on or before the ..... day of ..... 19....., send in the person's name, address, and description, and the particulars of the person's claim, and the name and address of that person's solicitor (if any) to the undersigned at ....., or, in default thereof, that person will be precluded from objecting to the proposed reduction of capital.

Dated this ..... day of ..... 19.....

A B,

Solicitor for the said Company.]

Forms 32A to 32C were inserted, as from 1 August 1987, by rule 19(1) High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Form 32B
Rule 416G(4)

Affidavit in Answer to Inquiry

(Endorsement)

In the High Court of New Zealand

..... Registry No.....

In the matter of the Companies Act 1993,

and

In the matter of ..... Limited.

We, CD, of ....., [the secretary of the above-named company], EF, of . . [the solicitor of the said company], and A B, of ..... [the managing director of the said company], severally make oath and say as follows:

I, the said CD, for myself, say as follows:

1 I did, on the ..... day of ..... 19..., in the manner hereinafter mentioned, serve a true copy of the notice hereunto annexed and marked B upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of creditors, marked A, referred to in the affidavit of ..... filed herein on the ..... day of ..... 19 ... .

2 I served the said respective copies of the said notice by putting the copies respectively duly addressed to those persons respectively, according to their respective names and addresses appearing in the said list (being the last known business or residential address or places of abode of those persons respectively), and with the proper postage stamps affixed thereto as prepaid letters, into the post office at ..... between the hours of ..... and ..... of the clock in the ..... noon of the said ..... day of ..... 19 ... .

And I, the said EF, for myself, say as follows:

3 A true copy of the notice hereunto annexed and marked C as appears in the ..... newspaper of the ..... day of ..... 19 ..., the ..... newspaper of the ..... day of ..... 19 .., etc.

4 I have, in the paper writing hereunto annexed and marked D, set forth a list of all claims the particulars of which have been sent in to me pursuant to the said notice B hereunto annexed by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors, marked A, referred to in the affidavit of ..... , filed herein on the ..... day of ..... 19... .

or

4 No person has sent in to me pursuant to the said notice B a claim to be entered on the said list for a larger sum than that in respect of which that person is entered on the said list A.

Form 32B—*continued*

5 I have in the paper writing hereunto annexed and marked E set forth a list of all claims the particulars of which have been sent in to me pursuant to the notice referred to in paragraph 3 of this affidavit by persons claiming to be creditors of the said company on the ..... day of ..... 19 ., not appearing on the said list of creditors marked A, and who claimed to be entered thereon.

or

5 No claims have been sent in to me pursuant to the notice referred to in paragraph 3 hereof by persons not entered on the said list A and claiming to be so entered.

And we, C D, and A B, for ourselves, say as follows:

6 We have, in the first part of the said paper writing marked D, and also in the first part of the said paper writing marked E, respectively set forth such of the said debt and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted, and such of the same debts and claims as the company contends are wholly or as to any and what part thereof not included in the inquiry in this matter.

7 We have, in the second part of each of the said paper writings marked D and E, set forth such of the said debts and claims as are wholly disputed by the said company, and such of the same debts and claims as the company contends would, even if admitted, be wholly or as to any and what part thereof not included in the inquiry in this matter.

8 In the said exhibits D and E are distinguished such of the debts the full amounts whereof are proposed to be appropriated in such manner as the Judge directs.

And I, the said C D, further say:

9 The exhibit now produced and shown to me marked F contains the [Invoices to the amount of the receipt should be attached when the receipt is for a larger sum than that stated in list A (and exhibits D and E) invoices and] receipts and the written concepts of such of the persons named in the said list A (and in the said exhibits D and E) as have been paid by the said company or have consented to the proposed reduction of capital.

10 The said company is willing to set apart and appropriate the full amount of the debts, claims, and liabilities specified in the said list A [and in the said exhibits D and E] in respect of which consents have not been obtained or which the said company has not paid and discharged.

Form 32B—*continued*

11 All rents, rates, taxes, salaries, wages, and other incidental expenses current on the said ..... day of ..... 19... and since become due have been paid and discharged by the said company.

Sworn, etc.

Exhibit D referred to in the above affidavit

D

In the matter, etc

List of Debts and Claims of which the particulars have been sent in to ..... by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors made out by the company.

First part-debts or claims wholly or partly admitted by the company

Names, addresses, and descriptions of creditors	Particulars of debt or claim	Total amount claimed	Amount admitted by the company to be within the inquiry and to be owing to the creditor	Debts proposed to be appropriated in full although disputed	Amount admitted by the company to be owing to the creditor but which it is contended is not within the inquiry

Second part-debts and claims wholly disputed by the company

Names, addresses, and descriptions of claimants	Particulars of claim	Total amount claimed	Debts proposed to be appropriated in full although disputed	Amount which, even if admitted, it is contended would not be within the inquiry

Exhibit E referred to in the above affidavit

E

In the matter, etc

List of Debts and Claims of which the particulars have been sent in to ..... by persons claiming to be creditors of the company, and to be entered on the list of creditors made out by the company.

Part 1

[*Same as in Exhibit D.*]

Part 2

[*Same as in Exhibit D.*]

Note: The names are to be inserted alphabetically.

Forms 32A to 32C were inserted, as from 1 August 1987, by rule 19(1) High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Form 32B was amended, as from 1 April 1994, by rule 24(2) High Court Amendment Rules 1993 (SR 1993/420) by inserting between the intitulement and the body of the Form the word "(Endorsement)".

Form 32C

Rule 416H(2)

Notice to Creditors to Come in and Prove

In the matter of the Companies Act 1993

and

In the matter of ..... Limited

To

YOU are hereby required to come in and prove [*or* establish your title to be entered on the list of creditors in this matter in respect of] the debt claimed by you against the company, by filing your affidavit in the registry of the High Court at.....and serving a copy thereof at the offices of ....., the solicitor of the company, or on or before the ..... day of ..... next; and you are to attend by your solicitor at the Chambers of the Honourable Mr Justice ..... at the High Court, ..., on the ..... day of ..... 19....., at ..... o'clock in the ..... noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

In default of your complying with the above directions, you will [be precluded from objecting to the proposed reduction of the capital of the company], *or* [in all proceedings relative to the proposed reduction of the capital of the company be treated as a creditor for such amount only as is set against your name in the list of creditors].

Dated this ..... day of ..... 19.....

A B,
Solicitor for the said Company.]

Forms 32A to 32C were inserted, as from 1 August 1987, by rule 19(1) High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Form 33

Rule 426

Praecipe to Set Down Proceeding for Trial
[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 33 was amended, as from 1 January 1986, by rule 22 High Court Amendment Rules 1985 (SR 1985/328) by substituting the words beginning "The length of time required for the trial or hearing is estimated" for the words "The estimated length of time required for the trial (*or* hearing) is ..... days"

Form 33 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 33 was revoked, as from 24 November 2003, by rule 16 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Form 34

Rule 430(3)

Notice that Praecipe Filed

[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 34 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 34 was revoked, as from 24 November 2003, by rule 16 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

Form 34A

Rule 446E(a)

Notice of Proceeding (Commercial List)

(General headingForm 1 and endorsement)

Form 34A—*continued*

Modified by the addition, immediately under reference to the registry, of the words "Commercial list"

To the above-named defendant(s)

This proceeding is entered on the commercial list established at the office of this Court at [*Place*].

Take notice that unless, within 14 days after the date on which this notice is served upon you, you file in this office of this Court at [*Place*]—

(a) A statement of your defence to the plaintiff's claim, a copy of which is served herewith; or

(b) An appearance indicating that you oppose the plaintiff's claim and that you wish to be heard in relation to it; or

(c) An appearance under protest to jurisdiction; or

(d) An appearance for ancillary purpose; or

(e) An appearance reserving rights—

the plaintiff may proceed to a hearing and judgment on the claim in your absence

The trial of the proceeding, if a trial is necessary, will be held in this Court at [*Place*] at a time to be fixed by the Court.

As this proceeding is entered on a commercial list it cannot be tried before a jury.

A Commercial list Judge may, on the application of any party or on the Judge's own motion, order the removal of any proceeding from the commercial list.

Dated this day of 19 .

Plaintiff (*or* Solicitor for Plaintiff)

* The Court has directed that this notice and the statement of claim be served, not only on the defendant(s) above-named but also on the following persons:

[*Full name, place of residence, and occupation of each person so directed to be served.*]

Registrar

* Your attention is particularly directed to the Memorandum endorsed hereon or attached hereto.

* Delete if inapplicable.

Forms 34A to 34C were inserted, as from 1 April 1987, by rule 3 High Court Amendment Rules 1987 (SR 1987/29).

Form 34A was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General

Form 34A—*continued*

heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 34A was amended, as from 1 July 2002, by rule 16 High Court Amendment Rules 2002 (SR 2002/132) by omitting the words "The plaintiff claims the sum of $ for costs of and incidental to issuing this proceeding".

Form 34B

Rule 446E(b), 446P(3)

Appearance in Proceeding Entered on Commercial List

(General headingForm 1 and endorsement)

Modified, where the form is filed under rule 446E(b), by the addition, immediately under the reference to the registry of the words "Commercial list".

The defendant, by this appearance, gives notice that the defendant opposes the plaintiff's claim and wishes to be heard in relation to it.

Dated this day of 19 .

(Solicitor *or* Counsel for) Defendant

[*Subscribe memorandum in form 3*]

Forms 34A to 34C were inserted, as from 1 April 1987, by rule 3 High Court Amendment Rules 1987 (SR 1987/29).

Form 34B was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 34C

Rule 446P(2)

Notice of Proceeding (Being Application to Commercial List Judge) under Section 24C(4) of Judicature Act 1908

(General headingForm 1 and endorsement)

Form 34C—*continued*

To the above-named defendant(s)

The above-named plaintiff seeks the determination of questions involved in a dispute.

Take notice that unless, within 14 days after the date on which this notice is served upon you, you file in this office of this Court at [*Place*]—

(a) A statement of your defence to the plaintiff's claim, a copy of which is served herewith; or

(b) An appearance indicating that you oppose the plaintiff's claim and that you wish to be heard in relation to it; or

(c) An appearance under protest to jurisdiction; or

(d) An appearance for ancillary purpose; or

(e) An appearance reserving rights,—

a Commercial list Judge may determine the questions involved in the dispute in your absence.

The determination of the questions involved in the dispute will take place in this Court at [*Place*] at a time fixed by a Commercial list Judge.

If the proper determination of the questions involved in the dispute requires the hearing of evidence other than that contained in or exhibited to the affidavit filed by the plaintiff or cross-examination on that affidavit or those exhibits, a Commercial list Judge may, on the application of any party or on the Judge's own motion, order that the proceeding be placed on the commercial list.

Dated this day of 19 .

_____

Plaintiff (*or* Solicitor for Plaintiff)

*The Court has directed that this notice and the statement of claim be served, not only on the defendant(s) above-named but also on the following persons:

[*Full name, place of residence, and occupation of each person so directed to be served.*]

_____

Registrar

*Your attention is particularly directed to the Memorandum endorsed hereon or attached hereto.

*Delete if inapplicable

Forms 34A to 34C were inserted, as from 1 April 1987, by rule 3 High Court Amendment Rules 1987 (SR 1987/29).

Form 34C was amended, as from 1 July 2002 by rule 17 High Court Amendment Rules 2002 (SR 2002/132) by omitting the words "The plaintiff claims the sum of $ for costs of and incidental to issuing this proceeding".

Form 34CA

Rule 446U

Subpoena to Give Evidence in New Zealand Proceeding for Service in Australia

(General headingForm 1 and endorsement)

To [*Name, place of residence, occupation*]

You are ordered to attend at the High Court of New Zealand at [*Place*] on the ..... day of ..... 19..... at .....am (or pm) and from day to day thereafter until you are discharged from attendance to give evidence on behalf of the [*State party*] in the above-named proceeding.

* And you are ordered to bring with you and produce at the same time and place [*Set out details of the documents to be produced*].

This order of subpoena is issued by [*Full name*] (*solicitor for) the [*State party*] with the leave of the Honourable Mr Justice ..... under the Seal of the High Court of New Zealand at [*Place*] this ..... day of ..... 19.....

*Delete if inapplicable

.....
(Deputy) Registrar

Full name of (Deputy) Registrar:

Postal address of Registry:

Telephone:

Facsimile:

Forms 34CA to 34CD were inserted, as from 19 October 1990, by rule 4 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Form 34CA was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 34CB

Rule 446U, 446W

Subpoena for Production Only Issued in New Zealand Proceeding for Service in Australia

(General headingForm 1 and endorsement)

Form 34CB—*continued*

To [*Name, place of residence, occupation*]

You are ordered to produce this subpoena and the documents or things set out in the Schedule—

EITHER

at the High Court of New Zealand at [*Place*] on the ..... day of ..... 19..... at ..... am (or pm)

OR

at the Federal Court of Australia at [*Place*] not later than [*State a date that is 7 working days before the date given above*.]

[If you produce the documents or things at the Federal Court you must obtain a receipt for the documents or things produced from a Registrar, Deputy Registrar, District Registrar, or Deputy District Registrar of that Court and send a copy of that receipt and a copy of this subpoena by facsimile to the Registry of the High Court of New Zealand shown below and provide an officer of the Federal Court with a sum that is sufficient to send the documents or things to New Zealand.]

SCHEDULE

(Description)

This order of subpoena is issued by [*Full name*] (*solicitor for) the [*State party*] with the leave of the Honourable Mr Justice ..... under the Seal of the High Court of New Zealand at [*Place*] this ..... day of ..... 19.....

*Delete if inapplicable

.....

(Deputy) Registrar

Full name of (Deputy) Registrar:
Postal address of Registry:
Telephone:
Facsimile:

Forms 34CA to 34CD were inserted, as from 19 October 1990, by rule 4 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Form 34CB was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 34CC

Rule 446V

Statement of Rights and Obligations of Person Served in Australia With Subpoena Issued in New Zealand Proceeding

(General headingForm 1 and endorsement)

Form 34CC—*continued*

Allowances and travelling expenses

- You are entitled to have tendered or paid to you, at the time of the service of this order on you or at some other reasonable time before the hearing, vouchers for, or a sum in respect of, allowances and travelling expenses sufficient to meet your reasonable expenses in complying with the order.
- You cannot be compelled to comply with this order unless vouchers are or that sum is tendered or paid to you.
- You are also entitled to apply to the High Court of New Zealand for an order that you be paid for expenses incurred by you in complying with the order additional to any amount paid or tendered to you and also for any loss of income as a result of complying with the order.

Failure to comply

- Failure to comply with this order constitutes contempt of the Federal Court of Australia, unless you establish that the failure to comply should be excused, and is punishable accordingly.

Setting subpoena aside

- You are entitled to apply to the High Court of New Zealand to have the order of subpoena set aside. An application to do so must be made under section 56G of the Judicature Act 1908 of New Zealand. Section 56G of the Judicature Act 1908 provides that, without limiting the grounds on which the order may be set aside, the High Court may set the order aside on any of the following grounds:
  - (a) That the witness does not have, and could not reasonably be expected to obtain, the necessary travel documents:
  - (b) That the witness is liable to be detained for the purpose of serving a sentence:
  - (c) That the witness is liable to prosecution for an offence:
  - (d) That the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 or section 83 of the Commerce Act 1986:
  - (e) That the evidence of the witness could be obtained without significantly greater expense by other means:
  - (f) That compliance with the order of subpoena would cause hardship or serious inconvenience to the witness:
  - (g) In the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to testify, that the Court is satisfied that the documents should not be taken out of Australia and the evidence of the contents of the documents can be given by other means.

Form 34CC—*continued*

- The application must be made by affidavit and must be filed in the office of the High Court of New Zealand that issued the order of subpoena.
- The affidavit must be sworn by the applicant and must set out the facts relied on to set the subpoena aside.
- You can send the affidavit by facsimile. If you do this—
  - (a) Mark the facsimile for the attention of the officer whose name appears on the subpoena; and
  - (b) Give a facsimile number so that a receipt can be sent to you; and
  - (c) Post the original affidavit to the Court.

Your affidavit will be served on the party who obtained the subpoena.

The High Court of New Zealand will decide whether a hearing is necessary. If it is, you will be advised by an officer of the Court.

IF YOU ARE IN DOUBT ABOUT ANY MATTER RELATING TO THIS SUBPOENA YOU SHOULD OBTAIN LEGAL ADVICE.

Forms 34CA to 34CD were inserted, as from 19 October 1990, by rule 4 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Form 34CC was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 34CD

Rule 446Y

Certificate of Non-compliance With Subpoena Issued in New Zealand Proceeding for Service in Australia

(General headingForm 1 and endorsement)

Form 34CD—*continued*

To: The Federal Court of Australia

[*Place*]

The High Court of New Zealand hereby certifies that [*State name of person subpoenaed*], having been served with a New Zealand subpoena within the meaning of section 32B of the Federal Court of Australia Act 1976, a copy of which subpoena is annexed to this certificate, has contravened that subpoena in that [*State particulars of contravention*].

No application to set aside the subpoena under section 56G of the Judicature Act 1908 of New Zealand has been made to the High Court.*

An application to the High Court of New Zealand under section 56G of the Judicature Act 1908 of New Zealand has been dismissed. A copy of the reasons for judgment dismissing the application is annexed to this certificate.*

Dated at ..... this ..... day of ..... 19 .

.....

(Deputy) Registrar

*Delete if inapplicable.

Forms 34CA to 34CD were inserted, as from 19 October 1990, by rule 4 High Court Amendment Rules (No 3) 1990 (SR 1990/300).

Form 34CD was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 34D

Rule 458B(4)

Advertisement of Hearing of Application

In the matter of [the Companies Act 1993],

and

In the matter of ..... Limited

NOTICE is hereby given that an application filed in the High Court of New Zealand on the ..... day of ..... 19....., for confirming the reduction of the capital of the above company from $..... to $....., is directed to be heard at the High Court at ....., on the ..... day of ..... 19....., at ..... o'clock in the ..... noon.

[Agents for E and F, of .....],

Solicitors for the Company.

Dated the ..... day of ..... 19.....

Form 34D was inserted, as from 1 August 1987, by rule 19(2) High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Form 34E
r 475

Notice of discontinuance

(General headingForm 1 and endorsement)

Take notice that [*name of plaintiff discontinuing proceeding*] discontinues this proceeding against [*name of the defendant or, if there is more than 1 defendant, the names of the defendants or the names of the defendants against whom the plaintiff discontinues the proceeding*].

*Copies of the written consents of the plaintiffs who are required under rule 476(3) of the High Court Rules to consent to this discontinuance are attached to this notice.

*Copies of the written consents of the defendants who are required under rule 476(4) of the High Court Rules to consent to this discontinuance are attached to this notice.

*The High Court has granted leave to the plaintiff to discontinue this proceeding.

*Delete if inapplicable.

Dated this ..... day of ..... 20 .....

(Solicitor for) Plaintiff

To the Registrar of the High Court at and to [*name of other parties to proceeding*].

Form 34E was inserted, as from 1 February 2003, by rule 22 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

Form 35
Rule 497

Subpoena

(General headingForm 1 and endorsement)

Form 35—*continued*

TO [*Name, place of residence, occupation*]

You are ordered to attend at the High Court at [*Place*] on the day of 19 at am (*or* pm) and from day to day thereafter until you are discharged from attendance, to give evidence on behalf of the [*State party*] in the above-named proceeding.

*And you are ordered to bring with you and produce at the same time and place [*Set out details of the documents to be produced*].

This order of subpoena is issued by [*Full name*] (*solicitor for) the [*State party*] under the Seal of the High Court of New Zealand at [*Place*] this day of 19 .

.....
(Deputy) Registrar

*Delete if inapplicable

Notes

Allowances and travelling expenses

- You are entitled to have tendered or paid to you, at the time of the service of this order on you or at some other reasonable time before the hearing, a sum in respect of your allowances and travelling expenses.
- The scale of allowances and travelling expenses applicable is that prescribed for the time being by [the Witnesses and Interpreters Fees Regulations 1974].

Failure to appear

- If, having been tendered or paid allowances and travelling expenses at the appropriate rate, you fail to attend, the Court may issue a warrant to arrest you and bring you before the Court.
- The penalty for failing to attend without just excuse is a fine not exceeding $500.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 35 was amended, as from 1 January 1986, by rule 23 High Court Amendment Rules 1985 (SR 1985/328) by substituting the words "the Witnesses and Interpreters Fees Regulations 1974" for the words "regulations made under the Summary Proceedings Act 1957".

Form 35 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 35A Rule 502B(1)
Subpoena to Give Evidence for Service in Australia

(General headingForm 1 and endorsement)

Form 35A—*continued*

TO [*Name, place of residence, occupation*].

You are ordered to attend at [*Here state the High Court of New Zealand and the place of the Court or, if the witness is required to attend at a place other than the High Court, that other place*] on the ..... day of ..... 19..... at ..... a.m. (or p.m.) and from day to day thereafter until you are discharged from attendance to give evidence on behalf of the [*State party*] in the above-named proceeding.

*And you are ordered to bring with you and produce at the same time and place [*Set out details of the documents to be produced*].

This order of subpoena is issued by [*Full name*] (*solicitor for) the [*State party*] under the Seal of the High Court of New Zealand at [*Place*] this ..... day of ..... 19.....

*Delete if inapplicable.

.....
(Deputy) Registrar

Full name of (Deputy) Registrar:

Postal address of Registry:

Telephone:

Facsimile:

Forms 35A to 35D were inserted, as from 1 April 1995, by rule 6 High Court Amendment Rules 1995 (SR 1995/63).

Form 35B

Rule 502B(2)

Subpoena for Production Only for Service in Australia

(General headingForm 1 and endorsement)

Form 35B—*continued*

TO [*Name, place of residence, occupation*].

You are ordered to produce this subpoena and the documents or things set out in the Schedule at the High Court of New Zealand at [*Place*] on the ..... day of ..... 19..... at ..... a.m. (or p.m.).

You may comply with this subpoena by producing the documents or things at any registry of an Australian Court authorised by the law of the Commonwealth of Australia to receive such documents or things not later than 10 days before the above date.

SCHEDULE

(Description)

This order of subpoena is issued by [*Full name*] (*solicitor for) the [*State party*] under the Seal of the High Court of New Zealand at [*Place*] this ..... day of ..... 19.....

*Delete if inapplicable.

.....
(Deputy) Registrar

Full name of (Deputy) Registrar:

Postal address of Registry:

Telephone:

Facsimile:

Forms 35A to 35D were inserted, as from 1 April 1995, by rule 6 High Court Amendment Rules 1995 (SR 1995/63).

Form 35C

Rule 502D

Statement of Rights and Obligations of Person Served in Australia With Subpoena Issued by High Court of New Zealand

(General headingForm 1 and endorsement)

Form 35C—*continued*

THIS STATEMENT IS IMPORTANT
PLEASE READ THE STATEMENT AND THE ATTACHED DOCUMENT OR DOCUMENTS CAREFULLY

IF YOU ARE IN ANY DOUBT ABOUT THIS STATEMENT OR THE ATTACHED DOCUMENT OR DOCUMENTS, YOU SHOULD GET LEGAL ADVICE IMMEDIATELY

Attached to this statement is a subpoena issued by the High Court of New Zealand. A subpoena is a summons to a witness to give evidence or produce documents. The subpoena attached to this statement requires you to [*Here state whether the witness is required to attend at the High Court or some other place to give evidence or give evidence and produce documents or is required only to produce documents*].

The subpoena may be served in Australia under section 19 of the Evidence and Procedure (New Zealand) Act 1994.

This statement sets out your rights and obligations relating to the subpoena.

YOUR RIGHTS

You are entitled to have paid or tendered to you at the time the subpoena is served on you or at some other reasonable time before you are required to comply with the subpoena, allowances and travelling expenses or vouchers in substitution for allowances and travelling expenses that are sufficient to meet your reasonable expenses of complying with the subpoena.

You are not required to comply with the subpoena unless those allowances and travelling expenses or vouchers are paid or tendered to you.

You are also entitled to be paid any reasonable expenses you incur in complying with the subpoena in addition to any expenses tendered or paid to you. You may apply to the High Court of New Zealand for an order specifying such an amount.

You may apply to the High Court of New Zealand to have the subpoena set aside. If you wish to have the subpoena set aside, you should get legal advice as soon as possible.

An application to set the subpoena aside can be made and determined without you having to go to New Zealand. You are entitled to have Australian solicitors act for you.

The High Court of New Zealand may determine the application without a hearing if neither you nor the party who requested the issue of the subpoena require a hearing. The Court may hold a hearing by video link or telephone conference if the Court thinks fit. If a party applies to the Court for a direction to hear the application by video link or telephone conference, the Court is required to hear it by video link or telephone conference.

[Note: Details of the grounds on which a subpoena can be set aside and the procedure for setting aside a subpoena are referred to later in this statement.]

Form 35C—*continued*

YOUR OBLIGATIONS

Unless the subpoena is set aside, you must comply with it if:

(a) When the subpoena was served on you, or at some reasonable time before the time specified for compliance, there have been paid or tendered to you allowances and travelling expenses or vouchers in substitution for them sufficient to meet your reasonable expenses of complying with the subpoena; and

(b) A copy of the order of the Judge of the High Court of New Zealand granting leave to serve the subpoena was served on you with the subpoena:

(c) The subpoena was served on you not later than the date specified by the Judge of the High Court who granted leave to serve the subpoena; and

(d) Any other conditions relating to the service of the subpoena have been complied with; and

(e) You have attained 18 years of age.

If the subpoena only requires you to produce documents or things, you may comply with the subpoena by producing the documents or things at any registry of an Australian Court that is authorised by the law of the Commonwealth of Australia to receive them not later than 10 days before the date specified in the subpoena for producing them in the High Court. If you produce the documents or things at a registry of an Australian Court, you will be required to produce the subpoena and to pay the cost of sending the documents or things to the High Court. You are entitled to have the costs of producing the documents or things and of sending them to the New Zealand Court paid or tendered to you before you are required to comply with the subpoena.

FAILURE TO COMPLY WITH THE SUBPOENA

Failure to comply with the subpoena constitutes contempt of the Federal Court of Australia and, unless you establish that the failure to comply should be excused, is punishable accordingly.

SETTING SUBPOENA ASIDE

You are entitled to apply to the High Court of New Zealand to have this subpoena set aside. An application to do so must be made under section 160 of the Evidence Act 2006. Section 160 provides that the High Court must set the subpoena aside if—

(a) The subpoena requires the witness to attend at a sitting of a Court and the High Court is satisfied that—

(i) The witness does not have, and cannot by the exercise of reasonable diligence within the time required for compliance obtain, the necessary travel documents; or

Form 35C—*continued*

(ii) The witness is liable to be detained in New Zealand for the purpose of serving a sentence; or

(iii) The witness is liable to prosecution for an offence, or is being prosecuted for an offence, in New Zealand; or

(iv) The witness is liable to the imposition of a civil penalty in civil proceedings in New Zealand, not being proceedings for a pecuniary penalty under the Commerce Act 1986; or

(b) The witness is subject to a restriction on his or her movements, imposed by law or by order of a Court, that would prevent the witness complying with the subpoena.

Section 160 further provides that the High Court may set a subpoena aside if it is satisfied that—

(a) The evidence of the witness could be obtained satisfactorily without significantly greater expense by other means; or

(b) Compliance with the subpoena would cause hardship or serious inconvenience to the witness, or

(c) In the case of a subpoena that requires a witness to produce documents or things, whether or not it also requires the witness to give oral evidence, the documents or things should not be taken out of Australia and that satisfactory evidence of the contents of the documents or evidence of the things can be given by other means.

An application to set the subpoena aside must be filed in the office of the High Court of New Zealand in which leave to serve the subpoena was given together with any affidavit setting out the grounds on which you rely.

The application and the affidavit may be sent by facsimile. The facsimile number of the office of the Court is [*Specify facsimile number*].

The application must contain an address for service in New Zealand or Australia and may also state a facsimile number in New Zealand or Australia to which documents relating to the application may be sent.

The Registrar of the High Court will arrange for service of the application and any affidavit.

The High Court can decide the application without a hearing if neither you nor the party who requested the issue of the subpoena state that a hearing is required. If there is to be a hearing, the hearing may, if the Court thinks fit, be by video link or telephone conference. You may, however, either in your application to set the subpoena aside or within a reasonable time after filing the application, request that the Court direct that the hearing be by video link or telephone conference. If you make such a request, the Court will direct that the hearing be by video link or telephone conference.

Forms 35A to 35D were inserted, as from 1 April 1995, by rule 6 High Court Amendment Rules 1995 (SR 1995/63).

Form 35C was amended, as from 1 August 2007, by rule 11(a) High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "section 160

Form 35C—*continued*

of the Evidence Act 2006" for "section 11 of the Evidence Amendment Act 1994".

Form 35C was amended, as from 1 August 2007, by rule 11(b) High Court Amendment Rules (No 2) 2007 (SR 2007/208) by substituting "Section 160" for "Section 11".

Form 35D

Rule 502H

Certificate of Non-compliance With Subpoena for Service in Australia

(General headingForm 1 and endorsement)

To: The Federal Court of Australia
[*Place*]

The High Court of New Zealand hereby certifies that on the ..... day of ..... 19..... the Honourable Justice ..... gave leave to serve a subpoena, being a subpoena to which Part 3 of the Evidence and Procedure (New Zealand) Act 1994 applies, on [*Specify name of person subpoenaed*] and that [*Specify name of person subpoenaed*] has failed to comply with the subpoena in that [*State particulars of the failure to comply*].

Dated at ..... this ..... day of ..... 19.....

.....
(Deputy) Registrar

Forms 35A to 35D were inserted, as from 1 April 1995, by rule 6 High Court Amendment Rules 1995 (SR 1995/63).

Form 36

Rule 541

Judgment by Default in Case of Liquidated Demand

(General headingForm 1 and endorsement)

Form 36—*continued*

THE defendant not having filed a statement of defence herein, it is this day adjudged that the plaintiff recover against the said defendant $ and $ for costs.

Dated this day of 19 .

.....
(Deputy) Registrar

[Sealed this day of 19 .]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 36 was amended, as from 1 January 1989, by rule 25 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the words "Sealed this ... day of ... 19 ..."

Form 36 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 37
Rule 541

Judgment by Default in Proceeding for Recovery of Land

(General headingForm 1 and endorsement)

THE defendant not having filed a statement of defence herein, it is this day adjudged that the plaintiff recover possession of the land mentioned in the plaintiff's statement of claim and $ for costs.

Dated this day of 19 .

.....
(Deputy) Registrar

[Sealed this day of 19 .]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 37 was amended, as from 1 January 1989, by rule 25 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the words "Sealed this ... day of ... 19 ..."

Form 37 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 38

Rule 541

Judgment on Trial by a Judge

(General headingForm 1 and endorsement)

THIS proceeding coming on for trial on the day of 19 , before the Honourable Mr Justice [*State surname*] at [*Place*], after hearing [*State name*] of counsel for the plaintiff and [*State name*] of counsel for the defendant, and the evidence then adduced, it is adjudged that [*State the terms of the judgment*].

Dated this day of 19 .

.....

(Deputy) Registrar

[Sealed this day of 19 .]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 38 was amended, as from 1 January 1989, by rule 25 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the words "Sealed this ..... day of ..... 19 ....."

Form 38 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 39

Rule 541

Judgment on Trial by a Jury

(General headingForm 1 and endorsement)

THIS proceeding coming on for trial on the day of 19 , before the Honourable Mr Justice [*State surname*] and a jury at [*Place*], after hearing [*State name*] of counsel for the plaintiff and [*State name*] of counsel for the defendant, and the jury having found [*State verdict or finding*], it is adjudged that [*State the terms of the judgment*].

Dated this day of 19 .

.....

(Deputy) Registrar

[Sealed this day of 19 .]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 39 was amended, as from 1 January 1989, by rule 25 High Court Amendment Rules (No 2) 1988 (SR 1988/269) by inserting the words "Sealed this ..... day ..... of ..... 19 ..... .".

Form 39—*continued*

Form 39 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 40
Rule 548

Charging Order on Land

(General headingForm 1 and endorsement)

BEFORE the Honourable Mr Justice

day, the day of 19

Upon reading (etc) and upon hearing [*State name*] of counsel for the plaintiff and [*State name*] of counsel for the defendant [*or, as the case may be*], it is ordered that the estate, right, title, or interest of the [*State party*] in [*Here describe the land intended to be affected*] do stand charged with payment of the amount for which the [*State party*] may obtain judgment in this proceeding (*or*, of $, being the amount for which the [*State party*] has sealed judgment in this proceeding).

By the Court,

.....

(Deputy) Registrar

(*Note*: When leave to issue the charging order is not required, the words preceding "it is ordered" may be omitted.)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 40 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 41
Rule 548

Charging Order *Nisi*

(General headingForm 1 and endorsement)

Form 41—*continued*

BEFORE the Honourable Mr Justice
day, the day of 19

Upon reading (etc) and upon hearing [*State name*] of counsel for the plaintiff and [*State name*] of counsel for the defendant [*or, as the case may be*], it is ordered that, until sufficient cause is shown to the contrary, the interest of the [*State party*] in [*Here describe the property intended to be affected*] do stand charged with payment of the amount for which the [*State party*] may obtain judgment in this proceeding (*or*, of $, being the amount for which the [*State party*] has sealed judgment in this proceeding).

By the Court,

.....
(Deputy) Registrar

(*Note*: When leave to issue the charging order *nisi* is not required, the words preceding "it is ordered" may be omitted.)

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 41 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 42
Rule 548

Charging Order Absolute

(General headingForm 1 and endorsement)

BEFORE the Honourable Mr Justice
day, the day of 19

Upon reading the order *nisi* made herein on the day of 19 , and the affidavits of [*State name*] filed herein and upon hearing [*State name*] of counsel for the plaintiff and [*State name*] of counsel for the defendant, it is ordered that [*Here specify the property to be charged*] do stand charged with $, being the amount for which the [*State party*] has entered judgment in this proceeding.

By the Court,

.....
(Deputy) Registrar

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 42 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 43
Rule 549(2)

Writ of Sale

(General headingForm 1 and endorsement)

Elizabeth the Second, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith

To the Sheriff at : Greeting

Whereas on the day of 19 , the above-named [*State name*] sealed judgment in this Court at against the above-named [*State name*] for the sum of $, together with interest thereon at the rate of [*Insert the rate for the time being prescribed by or under section 87 of the Judicature Act 1908*], you are authorised and commanded—

(a) To seize all the chattels (including money, cheques, bills of exchange, promissory notes, bonds and other securities for money) of the above-named [*State name of judgment debtor*], except his necessary tools of trade to a value not exceeding $300 and his necessary household furniture and effects, including the wearing apparel of himself and his family, to a value not exceeding $1,000; and

(b) To the extent that the money so seized is insufficient to discharge any claims which by law are entitled to be paid in priority to the claim of the above-named [*State name of judgment creditor*], and to pay the fees and expenses of executing this order, and to satisfy the amount of the judgment and interest payable to the above-named [*State name of judgment creditor*],—

(i) To receive and recover the sum or sums payable under any cheques, bills of exchange, and promissory notes or secured by bonds or other securities for money; and

(ii) To sell, in accordance with rules 588 to 607 of the High Court Rules, the chattels so seized and the estate, right, title, or interest in any land, whether in possession, remainder, reversion, or expectancy, of the above-named [*State name of judgment debtor*]; and

(c) To deal, in accordance with rules 588 to 607 of the High Court Rules—

(i) With the money so seized or received or recovered from any cheques, bills of exchange, and promissory notes, and any bonds or other securities for money; and

(ii) With the proceeds of the sale of such chattels and land or interest in land.

Witness the Chief Justice of Our High Court of New Zealand this day of 19 .

By Order of Court,

.....

(Deputy) Registrar

Form 43—*continued*

(*Note*: If execution is sought for less than the full amount for which judgment was sealed, together with interest, the judgment creditor shall endorse on the writ the following memorandum:

"The sum of $ only, together with interest thereof at the rate of [*Insert rate for the time being prescribed by or under section 87 of the Judicature Act 1908*], and the expenses of execution, is to be levied under this writ.)

Dated this day of 19 .

.....
Judgment Creditor

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 43 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 44
Rule 500(2)

Writ of Possession

(General headingForm 1 and endorsement)

Elizabeth the Second, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith

To the Sheriff at : Greeting

You are authorised and commanded to deliver to [*Full name*], of [*Address*] possession of—

*(a) All that parcel of land [*Here describe land so as to identify it*]:

*(b) The following chattels [*Here describe chattels so as to identify them*]—

and for that purpose to eject any other person from that land (*or* to seize and take possession of those chattels).

Witness the Chief Justice of Our High Court of New Zealand this day of 19 .

By Order of Court,

.....
(Deputy) Registrar

*Delete if inapplicable

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 44 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 45
Rule 551(2)

Writ of Arrest

(General headingForm 1 and endorsement)

Elizabeth the Second, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith

To the Sheriff at : Greeting

You are authorised and commanded to arrest [*Full name*], of [*Address*], and to bring him before this Court at [*Place*] on the day of 19 , at am (*or* pm) there to answer to such matters as are there and then laid to his charge and further to abide such order as the Court shall make.

And you are further authorised and commanded to keep him in the meantime in such safe custody as may be by law allowed.

Witness the Chief Justice of Our High Court of New Zealand this day of 19 .

By Order of Court,

.....
(Deputy) Registrar

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 45 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 46
Rule 552(2)

Writ of Sequestration

(General headingForm 1 and endorsement)

Form 46—*continued*

Elizabeth the Second, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith

To: [*Name and address of sequestrator*]

Whereas in the above-mentioned proceeding it was on the day of 19 adjudged (*or* ordered) that the above-named [*State name of person against whom writ is directed*] should pay into Court the sum of $ [*or, as the case may be*], you are authorised and commanded—

(a) To enter upon and take possession of all the real and personal property of the above-named [S*tate name of person against whom writ is directed*]; and

(b) To get into your hands the rents and profits from that real and personal property; and

(c) To keep that real and personal property and the rents and profits therefrom under sequestration in your hands until—

(i) The above-named [*State name of person against whom writ is directed*] pays into Court in the said proceeding the sum of $ [*or, as the case may be*] and clears his contempt; or

(ii) This Court makes other order to the contrary.

Witness the Chief Justice of Our High Court of New Zealand this day of 19 .

By Order of Court,

.....
(Deputy) Registrar

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 46 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 47

Rule 611(4)(a)

Order for Arrest under Section 55(2) of the Judicature Act 1908

(General headingForm 1 and endorsement)

Form 47—*continued*

Before the Honourable Mr Justice

day, the day of 19

Upon reading the notice of interlocutory application of the plaintiff and the affidavit of [*State name*] filed in support thereof, it is ordered—

(a) That the defendant be arrested and imprisoned in the prison at [*State place*] for months(s) from the date of his arrest, including the day of such date, unless and until he sooner—

(i) Deposits in the Court the sum of $ by way of security; or

(ii) Gives to the plaintiff a bond executed by him and 2 sufficient sureties in the penalty of $ [*or some other security satisfactory to the plaintiff*],—

that he will not go out of New Zealand without leave of the Court; and

(b) That the Sheriff at [*State place*] do, within one month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid.

By the Court,

.....
(Deputy) Registrar

The plaintiff's address for service is at [*Insert address complying with the definition of the term address for service in rule 3 of the High Court Rules*].

The defendant was arrested by me in terms of this order on the day of 19 .

.....
Arresting Officer

.....
Date

Notes

The defendant may at any time before or after arrest apply to the Court to rescind or vary this order or to be discharged from custody, or for some other relief.

The Court may, on any such application, make such order as may be just.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 47 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 48

Rule 611(4)(b)

Order for Arrest under Section 55(3) of the Judicature Act 1908

(General headingForm 1 and endorsement)

Before the Honourable Mr Justice

day, the day of 19

Upon reading the notice of interlocutory application of the plaintiff and the affidavit of [*State name*] filed in support thereof, it is ordered—

(a) That the defendant be arrested and imprisoned in the prison at [*State place*] for month(s) from the day of his arrest, including the day of such date, unless and until he sooner—

(i) Deposits in the Court the sum of $ by way of security; or

(ii) Gives to the plaintiff a bond executed by him and 2 sufficient sureties in the penalty of $ [*or some other security satisfactory to the plaintiff*],—

that the sum recovered against the defendant in this proceeding will be paid (*or* that the defendant shall be rendered to prison); and

(b) That the Sheriff at [*State place*] do, within one month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid.

By the Court,

.....
(Deputy) Registrar

The plaintiff's address for service is at [*Insert address complying with the definition of the term address for service in rule 3 of the High Court Rules*].

The defendant was arrested by me in terms of this order on the day of 19 .

.....
Arresting Officer

.....
Date

Notes

The defendant may at any time before or after arrest apply to the Court to rescind or vary this order or to be discharged from custody, or for some other relief.

The Court may, on any such application, make such order as may be just.

[*Where the proceeding is for a penalty, or sum in the nature of the penalty, other than a penalty in respect of any contract, this form must be used and the security must be sufficient to cover the probable costs of the proceeding.*]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 48—*continued*

Form 48 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 49
Rule 620(1)

Notice to Judgment Debtor

(General headingForm 1 and endorsement)

To [*Name of judgment debtor*]

Take notice that—

(1) Judgment has been given against you in the High Court at [*State place*] for $ and for costs, disbursements, and witnesses' expenses amounting to a further $.

(2) The above-named [*Name*], the judgment creditor, is entitled to enforce payment of these sums by you.

(3) The judgment creditor requires you, within 14 days after the date on which this notice is served on you, to complete, sign, and return to him at [*Address*] one copy of the attached form of statement relating to your financial position.

(4) You may be required to attend before the Court for oral examination as to your income and expenditure, your assets and liabilities, and generally as to your means of satisfying the judgment.

(5) If you pay the above-mentioned sums within 14 days after the date on which this notice is served on you, you need not complete or return the attached form of statement.

Dated this day of 19 .

.....
(Solicitor for) Judgment Creditor

Notes

Assistance

If you require help in completing the attached form of statement, you should consult your solicitor or seek help from a Citizens' or Legal Advice Bureau or other community service if one is operating in your district.

Office hours

The office hours of the Court are from 9 am to 5 pm except on Court holidays.

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 49—*continued*

Form 49, paras (3) and (5), was amended, as from 1 June 1990, by rule 18 High Court Amendment Rules 1990 (SR 1990/66) by substituting the expression "14 days" for the expression "7 days".

Form 49 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Form 49 Office hours was amended, as from 1 February 1998, by rule 18 High Court Amendment Rules 1997 (SR 1997/350) by substituting the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 49 was amended, as from 1 February 2003, by rule 24 High Court Amendment Rules (No 2) 2002 (SR 2002/410) by substituting the expression "9 am to 5 pm" for the expression "8.30 am to 5 pm".

Form 50
Rule 620

Statement of Financial Means of Judgment Debtor

(General headingForm 1 and endorsement)

Form 50—*continued*

I, [*Full name*], of [*Insert place of residence and occupation*], the judgment debtor, state:

1. My income for the 52 weeks immediately preceding the date of this was as follows: [*Use "Nil statement" where applicable*].

Item	Particulars	$
(a)	Salary, wages, or other personal earnings:	
(b)	Gross income from business, shop, farm, or sale of produce [*Annex the latest balance sheet and profit and loss account*]:	
(c)	Amount received from boarders (including children over 16 years of age): ([*Insert number*] boarders at $ per week) ([*Insert number*] boarders at $ per week):	
(d)	Allowances from relatives and other persons (including board and lodging received in return for services rendered):	
(e)	Gross rents from property (including let rooms):	
(f)	compensation or damages received (including payments from the Accident Compensation Corporation):	
(g)	Superannuation, pension, or benefit (including any from overseas):	
(h)	Dividends and interest:	
(i)	All other sources of income [*Specify*]:	
	Total income in the 52 weeks	$

The relevant numbers are as follows:

Form 50—*continued*

2. The employers and other persons from whom I received the income specified in paragraph 1 (other than that specified under item (b)) are as follows:

	Amount $	Name and Address
Item (1) (a):		[*State names and addresses of employers*]
Item (1) (c):		[*State names and addresses of boarders*]
Item (1)(d):		[*State names and addresses of relatives and other persons*]
Item (1) (e):		[*State names and addresses of tenants*]
Item (1) (f):		[*State names and addresses of persons from whom compensation or damages received*]
Item (1) (g):		[*State names and addresses of persons by whom the amount by way of superannuation, pension, or benefit was paid*]
Item (1) (h):		[*State names and addresses of persons by whom the dividends and interest were paid*]
Item (1) (i):		[*State names and addresses of persons by whom the other income was paid*]

3. My expenses for the 52 weeks specified in clause 1 of this statement were as follows:

Item	Particulars	$
(a)	Income Tax:	
(b)	Insurance and superannuation:	
(c)	Medical and hospital benefits:	
(d)	Rent:	
(e)	Rates:	
(f)	Mortgage payments:	
(g)	Repairs and maintenance:	
(h)	Food and household supplies:	
(i)	Electricity, gas, and fuel:	
(j)	Telephone:	
(k)	Laundry and cleaning:	
(l)	Clothing:	
(m)	Child maintenance, care, and education:	
(n)	Maintenance for previous marriage partner:	
(o)	Entertainment:	
(p)	Fares:	
(q)	Car maintenance, running, and registration:	
(r)	Hire purchase payments:	
(s)	Other expenses [*Specify*]:	
	Total expenses in the 52 weeks	$

Form 50—*continued*

4. Separate income for the 52 weeks of members of household whose expenses are included:

(a) [*List full names, ages, and relationship of all such members of household*]

(b) [*List details of separate income of any such member of household*].

5. The persons to whom I paid rent (the amount set out in item 3(d)) were as follows:

Amount $	Names and Addresses

6. The persons to whom I paid mortgage payments (the amount set out in item 3(f)), were as follows:

Amount $	Names and Addresses

7. The persons to whom I paid hire purchase instalments (the amount set out in item 3(r)) were as follows:

Amount $	Names and Addresses

8. My assets (both in New Zealand and elsewhere) are as follows:

Item	Particulars	$
(a)	Land and buildings [*State address and capital value*]:	
(b)	Money in bank accounts [*Specify banks and account numbers*]:	
(c)	Money not in bank or invested:	
(d)	Money lent or in hands of any person [*Name and address*]:	
(e)	Government stock, shares, debentures, or bonds [*State details*]:	
(f)	Plant and machinery [*State details*]:	
(g)	Livestock [*State details*]:	
(h)	Interest in business, stock in trade, or venture of any kind [*State details*]:	
(i)	Motor vehicles [*State details*]:	
(j)	Any other property or assets not specified above, including interest in any estate [*State details*]:	
	Total assets	$

9. The property specified in items [*Specify*] of clause 8 of this statement is mortgaged, or otherwise secured to [*Full name*]] of [[*Address*]] for the sum of $

10. Assets sold or otherwise disposed of by me at any time in the 52 weeks immediately preceding the date of this statement are as follows:

Form 50—*continued*

Description of asset	Name and address of person to whom property given, sold, or otherwise disposed of	Date of disposal	Amount received $

11. Debts owed by me that are secured by mortgage or charge are as follows: $

12. The persons to whom the debts specified in paragraph 11 are owed and the items specified in paragraph 8 on which the debts are secured are as follows:

Name	Address	Amount of debt $	Item

13. My unsecured debts are as follows: $

14. The person to whom the debts specified in paragraph 13 are owed are as follows:

Name	Address	Amount of debt

15. The liabilities that I expect I will be obliged to meet within the period of 6 months beginning on the date of this statement are as follows: $

16. The persons to whom I expect to be obliged to pay money during the period of 6 months beginning on the date of this statement in discharge of liabilities specified in paragraph 15 are as follows:

Name	Address	Nature of liability	Amount $

I certify that the particulars given in this statement are correct. I am aware that I may be called on to verify those particulars in Court.

Dated this day of 19 .

. . . . . .
Judgment Debtor

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 50 was amended, as from 1 April 1994, by rule 24(1) High Court Amendment Rules 1993 (SR 1993/420) by substituting the words "(General heading-Form 1 and endorsement)" for the words "(General heading-Form 1)."

Clause (1)(f) was substituted, as from 1 July 1999, by section 415(1) Accident Insurance Act 1998 (1998 No 114).

Clause 1(f) was substituted, as from 1 April 2002, by section 337(1) Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49). *See* Part 10 of that Act for provisions relating to transition from competitive provision of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Form 51

r 634(5)-(7)

Affidavit for obtaining grant of probate

(Endorsement)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

I/We*, [*full name, place of residence, occupation, of deponent or each deponent*], swear/severally swear*/I/We*, [*full name of deponent or each deponent*], of [*place of residence of deponent or each deponent*], solemnly and sincerely affirm/severally solemnly and sincerely affirm*—

**Select one.*

1 The deceased (whom I/we* knew) died at [*place, country*] on or about [*date*].

**Select one.*

2 *For this paragraph, select the first of the following statements that applies.*

Statement A

I was/We were* present when the deceased died.

**Select one.*

Form 51—*continued*

Statement B

I/We* attended the deceased's funeral.

**Select one.*

Statement C

I/We* saw the deceased's dead body.

**Select one.*

Statement D

The deceased is the person named [*full name*] in the death certificate that is attached and marked "A".

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased or knows or know about the deceased's death personally.

3 When the deceased died, he or she resided at [*place, country*].

4 The nearest registry of this Court to the place stated in paragraph 3, by the most practicable route, is [*name of registry*].

If the deceased did not reside in New Zealand when he or she died, rule 640(3) to (7) apply.

5 The deceased left a last will dated [*date*]. I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is the deceased's last will.

**Select one.*

6 *Include this paragraph only if there is a separate document associated with the will.*

There is a separate document associated with the will. I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is the separate document.

**Select one.*

7 *For this paragraph, select the statement that applies.*

Statement A

I am the executor/We are the executors* named in the will.

**Select one.*

Form 51—*continued*

Statement B

I am one/We are some* of the executors named in the will.

**Select one.*

Statement C

I am the/an* executor/We are the/some of the* executors of the will according to its tenor.

**Select one.*

8 *Include this paragraph only if it applies. Select the statement that applies.*

Statement A

The deceased's will was made on or after 1 November 2007. I am the deceased's surviving spouse/surviving civil union partner*. When the deceased died, no order, decree, or enactment was in force between the deceased and myself providing for our separation or the dissolution of our marriage/civil union*.

**Select one.*

Statement B

The deceased's will was made before 1 November 2007. I am the deceased's surviving spouse. When the deceased died, no order, decree, or enactment was in force between the deceased and myself providing for the dissolution of our marriage.

Statement C

The deceased's will was made on or after 1 November 2007. I am the deceased's former spouse/former civil union partner*. When the deceased died, a [*state the details of the order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*] was in force. However, my appointment as executor is not void under section 19 of the Wills Act 2007 because [*state why*].

**Select one.*

Form 51—*continued*

Statement D

The deceased's will was made before 1 November 2007. I am the deceased's former spouse. When the deceased died, a [*state the details of the order, decree, or enactment in force between the parties providing for the dissolution of their marriage*] was in force. However, my appointment as executor is not void under section 19, as modified by section 40(2)(q), of the Wills Act 2007 because [*state why*].

9 *Include this paragraph only if it applies. Select the statement that applies.*

Statement A

[*Full name*], the other executor named in the will, died at [*place, country*] on or about [*date*].

Statement B

[*Full name*], the other executor named in the will, renounced probate of the will by the renunciation document dated [*date*] that is attached and marked "[*specify*]".

Statement C

The deceased's will was made on or after 1 November 2007. [*Full name*], the other executor named in the will, is the deceased's former spouse/former civil union partner*. Section 19 of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state the details of the order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

**Select one.*

Form 51—*continued*

Statement D

The deceased's will was made before 1 November 2007. [*Full name*], the other executor named in the will, is the deceased's former spouse. Section 19, as modified by section 40(2)(q), of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state the details of the order, decree, or enactment in force between the parties providing for the dissolution of their marriage*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

**Select one.*

Statement E

[*Full name*], the other executor named in the will, does not join in the application because he/she* is incapable of acting as an executor because [*state why*].

**Select one.*

Statement F

[*Full name*], the other executor named in the will, does not join in the application because he/she* is overseas at present. His/her* current address is [*address*]. I/We* gave notice to him/her* of his/her* appointment as executor under the will and of my/our* intention to make the application. A copy of the notice/An acknowledgment of the notice* is attached and marked "[*specify*]".

**Select one.*

Statement G

[*Full name*], the other executor named in the will, does not join in the application because he/she* is 19 years old and is not, and never has been, married and is not, and never has been, in a civil union/is 18 years old and is not, and never has been, married and is not, and never has been, in a civil union/is not yet 18 years old*. He/she* was born on [*date*].

**Select one.*

Statement H

[*If the applicant or applicants is or are the executor or executors according to the tenor of the will, state the facts proving this.*]

Form 51—*continued*

10 *If you selected statement A for paragraph 9, for this paragraph select the first of the following statements that applies.*

Statement A

I was/We were* present when the other executor died.

**Select one.*

Statement B

I/We* attended the other executor's funeral.

**Select one.*

Statement C

I/We* saw the other executor's dead body.

**Select one.*

Statement D

The other executor is the person named [*full name*] in the death certificate that is attached and marked "[*specify*]".

11 I/We* will faithfully execute the will of which probate is granted in accordance with the law. If the Court requires me/us* to, I/we* will file in the Court and verify by affidavit—

(a) an accurate inventory of the deceased's estate; and

(b) an account of the deceased's estate that—

(i) is accurate; and

(ii) states the dates and details of all receipts and disbursements; and

(iii) states which of the receipts and disbursements were on capital account and which on revenue account.

**Select one.*

Sworn* at: [*place, date*]

Before me: [*name, signature*]

Affirmed* at this day of 20 before me:

**Select one.*

(A solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*/ High/District* Court/Justice of the Peace*)

**Select one.*

Schedule 2 schedule 1 form 51: substituted, on 1 November 2007, by rule 8 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 51—*continued*

Paragraphs 1 and 8 were substituted, as from 1 January 1986, by rule 24 High Court Amendment Rules 1985 (SR 1985/328).

Paragraph 9 was amended, as from 1 January 1986, by rule 24(3) High Court Amendment Rules 1985 (SR 1985/328) by substituting the words "a former spouse" for the words "the widow (or the widower or a former spouse)".

This Form was amended, as from 1 January 1987, by rule 12 High Court Amendment Rules 1986 (SR 1986/228) by substituting the words "does not" for the words "is unable to".

Form 51 was amended, as from 1 April 1994, by rule 24(2) High Court Amendment Rules 1993 (SR 1993/420) by inserting between the intitulement and the body of the Form the word "(Endorsement)".

Form 52

r 634(5)-(7)

Affidavit for obtaining grant of letters of administration with will annexed

(Endorsement)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

I/We*, [*full name, place of residence, occupation, of deponent or each deponent*], swear/severally swear*/I/We*, [*full name of deponent or each deponent*], of [*place of residence of deponent or each deponent*], solemnly and sincerely affirm/severally solemnly and sincerely affirm*—

**Select one.*

1 The deceased (whom I/we* knew) died at [*place, country*] on or about [*date*].

**Select one.*

2 *For this paragraph, select the first of the following statements that applies.*

Statement A

I was/We were* present when the deceased died.

**Select one.*

Statement B

I/We* attended the deceased's funeral.

**Select one.*

Statement C

I/We* saw the deceased's dead body.

**Select one.*

Statement D

The deceased is the person named [*full name*] in the death certificate that is attached and marked "A".

Form 52—*continued*

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased or knows or know about the deceased's death personally.

3 When the deceased died, he or she resided at [*place, country*].

4 The nearest registry of this Court to the place stated in paragraph 3, by the most practicable route, is [*name of registry*].

If the deceased did not reside in New Zealand when he or she died, rule 640(3) to (7) apply.

5 The deceased left a last will dated [*date*]. I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is the deceased's last will.

**Select one.*

6 *Include this paragraph only if there is a separate document associated with the will.*

There is a separate document associated with the will. I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is the separate document.

**Select one.*

7 *For this paragraph, select the statement that applies.*

Statement A

No executor is named in the will.

Statement B

[*Full name*], the sole executor named in the will, died at [*place, country*] on or about [*date*].

Statement C

[*Full name*], the sole executor named in the will, renounced probate of the will by the renunciation document dated [*date*] that is attached and marked "[*specify*]".

Form 52—*continued*

Statement D

The deceased's will was made on or after 1 November 2007. [*Full name*], the sole executor named in the will, is the deceased's former spouse/former civil union partner*. Section 19 of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state the details of the order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

**Select one.*

Statement E

The deceased's will was made before 1 November 2007. [*Full name*], the sole executor named in the will, is the deceased's former spouse. Section 19, as modified by section 40(2)(q), of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state the details of the order, decree, or enactment in force between the parties providing for the dissolution of their marriage*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

**Select one.*

Statement F

[*Full name*], the sole executor named in the will, is incapable of acting as an executor because [*state why*].

Statement G

[*Full name*], the sole executor named in the will, is 19 years old and is not, and never has been, married and is not, and never has been, in a civil union/is 18 years old and is not, and never has been, married and is not, and never has been, in a civil union/is not yet 18 years old*. He/she* was born on [*date*].

**Select one.*

Statement H

[*Full name*], an executor named in the will, is an executor to whom section 19 of the Administration Act 1969 applies. No one entitled to apply for
an order nisi under the section has done so within 4 months after the will-maker's death.

Form 52—*continued*

8 *If you selected statement B for paragraph 7, for this paragraph select the first of the following statements that applies.*

Statement A

I was/We were* present when the sole executor died.

**Select one.*

Statement B

I/We* attended the sole executor's funeral.

**Select one.*

Statement C

I/We* saw the sole executor's dead body.

**Select one*.

Statement D

The sole executor is the person named [*full name*] in the death certificate attached and marked "[*specify*]".

9 I am/We are* *[state the facts showing the applicant's or applicants' right to the grant in terms of rules 655 and 656 or 658. Attach any consent given by any other person whose priority is higher than, or equal to, that of the applicant or applicants.*].

**Select one.*

10 *Omit this paragraph if it does not apply.*

No child of the deceased died before the deceased leaving issue entitled to share under the will.

11 *Omit this paragraph if it does not apply.*

I am the deceased's surviving spouse/surviving civil union partner/surviving de facto partner/former spouse/former civil union partner/former de facto partner*.

I am still a beneficiary under the will.

I have not ceased to be a beneficiary under the will under section 19 of the Wills Act 2007 [*if the will was made on or after 1 November 2007*]/section 19, as modified by section 40(2)(q), of the Wills Act 2007 [*if the will was made before 1 November 2007*]*.

Form 52—*continued*

I have not ceased to be a beneficiary under the will under section 61 of the Property (Relationships) Act 1976. I chose option B under section 61. I lodged a notice of choice of option under section 65(2)(c) in this Court on [*date*]. A copy is attached and marked "[*specify*]".

**Select one.*

Omit paragraphs 12 and 13 when a trustee corporation within the meaning of section 2 of the Administration Act 1969 applies for the grant, either alone or jointly with another person.

12 *For this paragraph, select the statement that applies.*

Statement A

I/We* have made reasonable inquiries for the purposes of section 5A(1)(a) of the Status of Children Act 1969 as to the existence of a parent or child of the deceased, in addition to those I/we* already know, who could claim an interest in the deceased's estate/part of the deceased's estate* only because of the Status of Children Act 1969 and the deceased's will. The inquiries included those required by section 5A(2) of the Status of Children Act 1969. The nature of the inquiries was [*specify*].

**Select one.*

Statement B

No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

Statement C

Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay a grant of administration because [*state why*].

Statement D

Getting in or preserving the assets of the deceased's estate requires the making of an immediate grant of administration because [*state why*].

Form 52—*continued*

13 *If you selected statement A for paragraph 12, for this paragraph select the statement that applies.*

Statement A

The result of my/our* inquiries was that I/we* did not discover any such parent or child.

**Select one.*

Statement B

The result of my/our* inquiries was that I/we* discovered [*full names and the relationship of those discovered. In the case of children, also state their ages*]. They are children to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

**Select one.*

14 To the best of my/our* knowledge, information, and belief, the gross value of the deceased's estate does not exceed $ [*amount*].

**Select one.*

15 I/We* will faithfully execute the will annexed to the letters of administration in accordance with the law. If the Court requires me/us* to,
I/we* will file in the Court and verify by affidavit—

(a) an accurate inventory of the deceased's estate; and

(b) an account of the deceased's estate that—

(i) is accurate; and

(ii) states the dates and details of all receipts and disbursements; and

(iii) states which of the receipts and disbursements were on capital account and which on revenue account.

**Select one.*

Sworn* at: [*place, date*]

Before me: [*name, signature*]

Affirmed* at this day of 20 before me:

**Select one.*

(A solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*/ High/District* Court/Justice of the Peace*)

**Select one.*

Schedule 2 schedule 1 form 52: substituted, on 1 November 2007, by rule 8 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

Form 52—*continued*

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 52 was amended, as from 1 April 1994, by rule 24(2) High Court Amendment Rules 1993 (SR 1993/420) by inserting between the intitulement and the body of the Form the word "(Endorsement)".

Paragraph 7 was amended, as from 1 January 1986, by rule 25 High Court Amendment Rules 1985 (SR 1985/328) by substituting the words "a former spouse" for the words "the widow (or the widower or a former spouse)".

The fifth paragraph 7A was amended, as from 1 July 2005, by rule 11(1) High Court Amendment Rules 2005 (SR 2005/148) by adding the words "or in a civil union".

Paragraph 9 was substituted, as from 1 February 2002, by regulation 13(1) High Court Amendment Rules (No 2) 2001 (SR 2001/382).

Paragraph 9 was amended, as from 1 July 2005, by rule 11(2) High Court Amendment Rules 2005 (SR 2005/148) by substituting the words "[*If the deponent is the surviving spouse or the surviving civil union partner or a surviving de facto partner of the deceased or a former spouse or a former civil union partner or a former de facto partner of the deceased.*] I am the surviving spouse (*or* the surviving civil union partner *or* a surviving de facto partner *or* a former spouse *or* a former civil union partner *or* a former de facto partner)" for the words "[*If the deponent is the surviving spouse or a surviving de facto partner of the deceased or a former spouse or a former de facto partner of the deceased.*] I am the surviving spouse (*or* a surviving de facto partner *or* a former spouse *or* a former de facto partner)".

Paragraph 10A was substituted, as from 1 August 1987, by rule 14 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Form 53

r 634(1)(d)

Affidavit to Lead Grant of Administration on Intestacy to surviving spouse, civil union partner, or de facto partner

Form 53—*continued*

In the High Court of New Zealand

Registry No

In the estate of [*full name*], of [*Place*], [*Occupation*], deceased

(Endorsement)

I, [*Full name*], of [*Place of residence*], [*Occupation*], swear:

1.
2. As in paragraphs 1 to 4 of form 51.
3.
4.

5. I have made full inquiries and searches for any will made by the above-named deceased and I am satisfied that the above-named deceased did not leave a will [*or, as the case may require, where the deceased left a will but there is an intestacy as to some beneficial interest in the real or personal estate of the deceased*].

6. I believe that the above-named deceased died intestate (*or* intestate as to [*State the beneficial interest in the real or personal property of the deceased as to which the deceased died intestate*]).

7. I am the surviving spouse (*or* the surviving civil union partner *or* the surviving de facto partner) of the above-named deceased. I am entitled to succeed on the intestacy. My beneficial interest in the estate is not affected—

   (a) (in the case only of a surviving spouse) by section 12(2) of the Matrimonial Proceedings Act 1963 (as applied by section 191(3) of the Family Proceedings Act 1980); or

   (b) (in the case of a surviving spouse or of a surviving civil union partner) by section 26(1) of the Family Proceedings Act 1980; or

   (c) (in every case) by the choice I have made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because I have chosen option B and lodged a notice of choice of option in accordance with section 65(2)(c) of that Act, a copy of which is annexed and marked '...'.

7A. The above-named deceased was not survived by a de facto partner entitled to succeed on the intestacy (*or, if the affidavit is one by a surviving de facto partner*, The above-named deceased was not survived by a husband or wife, or by a civil union partner, or by another de facto partner, entitled to succeed on the intestacy).

OR

Form 53—*continued*

[*In a case of the kind referred to in section 77C of the Administration Act 1969, insert the alternative paragraph 7A and, if applicable, the paragraph 7B, 7C, or 7D at the end of this form*].

8. The above-named deceased was not survived by any child—
   (a) Who was born to the above-named deceased; or
   (b) Who was adopted by the above-named deceased; or
   *(c) In respect of whom the above-named deceased had admitted paternity; or
   *(d) In respect of whom the above-named deceased was adjudged, before or after his death, to be the father.

* Delete if the deceased was the applicant's wife or female civil union partner or female de facto partner.

OR

8. The above-named deceased left him surviving the following children all of whom, except where otherwise shown, are adult: [*State the full names and countries of residence of the children of the deceased and, in the case of any child who is a minor, the child's age*].

8A. The children named in paragraph 8 of this affidavit are children to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable.

8B. The above-named deceased left him surviving no other child–
   (a) Who was born to the above-named deceased; or
   (b) Who was adopted by the above-named deceased; or
   *(c) In respect of whom the above-named deceased had admitted paternity; or
   *(d) In respect of whom the above-named deceased was adjudged, before or after his death, to be the father.

* Delete if the deceased was the applicant's wife or female civil union partner or female de facto partner.

9. I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of any parent or child of the above-named deceased (in addition to those already known to me) who could claim an interest in the estate of the above-named deceased (*or* that part of the estate of the above-named deceased in respect of which I am seeking a grant of administration) by reason only of that Act and the provisions of the enactments governing the distribution of intestate estates.

Form 53—*continued*

9A. The inquiries referred to in paragraph 9 of this affidavit, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*give a brief indication of the nature of the inquiries*)

9B The inquiries referred to paragraph 9 of this affidavit did not result in the discovery of any parent or child of the kind described in that paragraph.

OR

9B The inquiries referred to in paragraph 9 of this affidavit resulted in the discovery of [*State the full names and the relationship of those discovered. In the case of children, give, in addition their ages, and add* being children to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable.]

OR

9. The making of the inquiries specified in section 5A(1) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because (*State the facts showing why the making of those inquiries would unduly delay the making of a grant of administration*].

OR

9. The getting in or preservation of the assets of the estate of the above-named deceased requires the making of an immediate grant of administration because [*State the facts showing why the getting in or preservation of the assets require the making of an immediate grant of administration*].

OR

9. No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*State the facts showing why no useful purpose would be served by the making of those inquiries*].

10. To the best of my knowledge, information, and belief, the gross value of the estate left by the above-named deceased does not exceed $.

11. I will faithfully administer the estate of the above-named deceased in accordance with the law, and will, when required by the Court so to do, file in the Court, and verify by affidavit—

Form 53—*continued*

(a) A true and perfect inventory of the estate of the above-named deceased; and

(b) A true and perfect account of the estate of the above-named deceased, which account shall—

(i) Set forth the dates and particulars of all receipts and disbursements; and

(ii) Show which of the receipts and disbursements are, in my opinion, on account of capital and on account of income respectively.

Paragraphs for cases of the kind referred to in section 77C of the Administration Act 1969

7A [*In a case of the kind referred to in section 77C of the Administration Act 1969, that is, if the deceased has left a spouse or a civil union partner and 1 or more de facto partners, or 2 or more de facto partners, entitled to succeed on the intestacy.*] The above-named deceased was also survived by a husband or wife, or by a civil union partner, or by a de facto partner, or by 1 or more other de facto partners, entitled to succeed on the intestacy, namely [*full name*], of [*address*], and [*full name*], of [*address*], etc.

7B [*Include this paragraph, where it is applicable, in a case of the kind referred to in section 77C of the Administration Act 1969.*] On [*date*], I gave written notice to [*full names*], the survivors of the above-named deceased who are named in paragraph 7A of this affidavit, that I intended to apply to this Court for letters of administration of the estate of the above-named deceased.

7C [*Include this paragraph, where it is applicable, in a case of the kind referred to in section 77C of the Administration Act 1969.*] Of the survivors of the above-named deceased who are named in paragraph 7A of this affidavit, [*number*], namely, [*full name*] who resides in [*country*], and [*full name*] who resides in [*country*], etc, reside beyond the jurisdiction of the Court.

7D [*Include this paragraph, where it is applicable, in a case of the kind referred to in section 77C of the Administration Act 1969.*] The consents of [*full names*], survivors of the above-named deceased who are named in paragraph 7A of this affidavit, to the grant to me of letters of administration of the estate of the above-named deceased are annexed to this affidavit and marked " ".

Sworn at this day of 19 , before me—

A solicitor of the High Court of New Zealand

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

The heading to Form 53 was amended, as from 1 February 2002, by regulation 13(2) High Court Amendment Rules (No 2) 2001 (SR 2001/382) by substituting

Form 53—*continued*

the words "SURVIVING SPOUSE OR DE FACTO PARTNER" for the words "WIDOW OR WIDOWER".

The heading to Form 53 was amended, as from 1 July 2005, by rule 12(1) High Court Amendment Rules 2005 (SR 2005/148), by inserting the words ", civil union partner," after the words "surviving spouse".

Form 53 was amended, as from 1 April 1994, by rule 24(2) High Court Amendment Rules 1993 (SR 1993/420) by inserting between the intitulement and the body of the Form the word "(Endorsement)".

Paragraph 7 was substituted, as from 1 February 2002, by rule 13(3) High Court Amendment Rules (No 2) 2001 (SR 2001/382).

Paragraph 7 was amended, as from 1 July 2005, by rule 12(2) High Court Amendment Rules 2005 (SR 2005/148) by substituting the words "(*or* the surviving civil union partner *or* the surviving de facto partner)" for the words "(*or* the surviving de facto partner)".

Paragraph 7 was substituted, as from 1 June 2006, by rule 17 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Paragraph 7A was inserted, as from 1 February 2002, by rule 13(4) High Court Amendment Rules (No 2) 2001 (SR 2001/382).

The first paragraph 7A was amended, as from 1 July 2005, by rule 12(3) High Court Amendment Rules 2005 (SR 2005/148) by inserting the words "or by a civil union partner," after the words "husband or wife,".

The second paragraph 7A was amended, as from 1 July 2005, by rule 12(6)(a) High Court Amendment Rules 2005 (SR 2005/148) by inserting the words "*or a civil union partner*" after the words "*a spouse*".

The second paragraph 7A was amended, as from 1 July 2005, by rule 12(6)(b) High Court Amendment Rules 2005 (SR 2005/148) by inserting the words "or by a civil union partner," after the words "husband or wife,".

Paragraphs 8 and 8B were amended, as from 1 February 2002, by rule 13(5) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by adding the words "or female de facto partner" to the footnotes.

The note to first paragraph 8 was amended, as from 1 July 2005, by rule 12(4) High Court Amendment Rules 2005 (SR 2005/148) by inserting the words "or female civil union partner" after the words "the applicant's wife".

The note to paragraph 8B was amended, as from 1 July 2005, by rule 12(5) High Court Amendment Rules 2005 (SR 2005/148) by inserting the words "or female civil union partner" after the words "the applicant's wife".

Paragraph 9A was substituted, as from 1 August 1987, by rule 15 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Paragraph 11 was amended, as from 1 January 1986, by rule 26 High Court Amendment Rules 1985 (SR 1985/328) by substituting the word "administer" for the word "execute".

Form 53 was amended, as from 1 February 2002, by rule 13(6) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by adding the heading "**Para-**

Form 53—*continued*

graphs for cases of the kind referred to in section 77C of the Administration Act 1969" and paras 7A, 7B, 7C and 7D.

Form 54

r 634(1)(d)

Affidavit to Lead Grant of Administration on Intestacy to Daughter or Son of Deceased

In the High Court of New Zealand

Registry No

In the estate of [*full name*], of [*Place*], [*Occupation*], deceased

[[(Endorsement)**]]**

I, [*Full name*], of [*Place of residence*], [*Occupation*], swear:

1.
2.
3.
4. As in paragraphs 1 to 4 of form 51.

5. I have made full inquiries and searches for any will made by the above-named deceased and I am satisfied that the above-named deceased did not leave a will [*or, as the case may require, where the deceased left a will but there is an intestacy as to some beneficial interest in the real or personal estate of the deceased*].

6. I believe that the above-named deceased died intestate (*or* intestate as to [*State the beneficial interest in the real or personal property of the deceased as to which the deceased died intestate*]).

7. I am a daughter (*or* son) of the above-named deceased.

8. My father (*or* mother) was at the time of his (*or* her) death a widower (*or* widow *or* surviving civil union partner), and was not living in a de facto relationship.

OR

8. Annexed hereto and marked "..." is a copy of the order (*or* decree absolute) dissolving my father's (*or* mother's) marriage (*or* civil union). He (*or* She) did not subsequently marry or enter into a civil union and at the time of his (*or* her) death, he (*or* she) was not living in a de facto relationship.

OR

8. Annexed hereto and marked "..." is a copy of the separation order (*or* decree of judicial separation) made between the above-named deceased and his (*or* her) spouse (*or* civil union partner) and in force at the time of his (*or* her) death, and, at the time of his (*or* her) death, he (*or* she) was not living in a de facto relationship.

OR

8. The above-named deceased was survived by a spouse, civil union partner, or de facto partner who was entitled to succeed on the intestacy, but his or her beneficial interest in the estate was affected by the choice he or she made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he or she chose option A.

Form 54—*continued*

9. The above-named deceased was not survived by any other child —

(a) Who was born to the above-named deceased; or

(b) Who was adopted by the above-named deceased; or

*(c) In respect of whom the above-named deceased had admitted paternity; or

*(d) In respect of whom the above-named deceased was adjudged, before or after his death, to be the father.

* Delete if the deceased was the applicant's mother.

OR

9. In addition to myself the above-named deceased left him (*or* her) surviving the following children all of whom, except where otherwise shown, are adult: [*State the full names, countries of residence, and occupations of the other children of the deceased and, in the case of a child who is a minor, the age of that child*].

10. Neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable to me.

OR

10 Both in the case of the children of the above-named deceased who are named in paragraph 9 of this affidavit and in the case of myself neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable.

11. I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of any parent or child of the above-named deceased (in addition to those already known to me) who could claim an interest in the estate of the above-named deceased (*or* that part of the estate of the above-named deceased in respect of which I am seeking a grant of administration) by reason only of that Act and the provisions of the enactments governing the distribution of intestate estates.

[[11A The inquiries referred to in paragraph 11 of this affidavit, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*Give a brief indication of the nature of the inquiries*].**]]**

11B. The inquiries referred to in paragraph 11 of this affidavit did not result in the discovery of any parent or child of the kind described in that paragraph.

OR

Form 54—*continued*

11B. The inquiries referred to in paragraph 11 of this affidavit resulted in the discovery of [*State the full names and the relationship of those discovered. In the case of children, give, in addition, their ages, and add* being children to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable.]

OR

11. The making of the inquiries specified in section 5A(1) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because [*State the facts showing why the making of those inquiries would unduly delay the making of a grant of administration*].

OR

11. The getting in or preservation of the assets of the estate of the above-named deceased requires the making of an immediate grant of administration because [*State the facts showing why the getting in or preservation of the assets require the making of an immediate grant of administration*].

OR

11. No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*State the facts showing why no useful purpose would be served by the making of those inquiries*].

12. [*Include this paragraph where it is applicable and where the deceased has left other adult children surviving*] On [*Date*] I gave written notice to [*Full names*], adult children of the above-named deceased who are named in paragraph 9 of this affidavit, that I intended to apply to this Court for letters of administration of the estate of the above-named deceased.

12A. [*Include this paragraph where it is applicable and where the deceased has left other adult children surviving*] Of the surviving adult children of the deceased who are named in paragraph 9 of this affavit, [*Number*], namely, [*Full name*] who resides in [*Country*] and [*Full name*] who resides in [*Country*], etc., reside beyond the jurisdiction of the Court.

12A. [*Include this paragraph where it is applicable and where the deceased has left other adult children surviving*] The consents of [*Full names*], adult children of the above-named deceased who are named in paragraph 9 of this affavit, to the grant to me of letters of administration of the estate of the above-named deceased are annexed hereto and marked " ".

13. To the best of my knowledge, information, and belief, the gross value of the estate left by the above-named desceased does not exceed $.

Form 54—*continued*

14. I will faithfully **[[**administer**]]** the estate of the above-named deceased in accordance with the law, and will, when required by the Court so to do, file in the Court and verify by affidavit—

(a) A true and perfect inventory of the estate of the above-named deceased; and

(b) A true and perfect account of the estate of the above-named deceased, which account shall—

(i) Set forth the dates and particulars of all receipts and disbursements; and

(ii) Show which of the receipts and disbursements are, in my opinion, on account of capital and on account of income respectively.

Sworn at this day of 19 , before me—

A solicitor of the High Court of New Zealand

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 54 was amended, as from 1 April 1994, by rule 24(2) High Court Amendment Rules 1993 (SR 1993/420) by inserting between the intitulement and the body of the Form the word "(Endorsement)".

Form 54 was amended, as from 1 February 2002, by rule 13(7) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by revoking the alternative paragraph 8, immediately after paragraph 6 and inserting paragraph 7.

Form 54 was amended, as from 1 February 2002, by rule 13(8)(a) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by adding the words ", and was not living in a de facto relationship" in the first alternative version of paragraph 8.

Form 54 was amended, as from 1 February 2002, by rule 13(8)(b) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by adding the words ", and, at the time of his (or her) death, he (or she) was not living in a de facto relationship" in the second and third alternative versions of paragraph 8.

Form 54 was amended, as from 1 February 2002, by rule 13(9) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by inserting a fourth alternative version of paragraph 8 immediately before paragraph 9.

The first paragraph 8 was substituted, as from 1 June 2006, by rule 18(1) High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

The second paragraph 8 was substituted, as from 1 June 2006, by rule 18(2) High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

The third paragraph 8 was amended, as from 1 June 2006, by rule 18(3) High Court Amendment Rules 2006 (SR 2006/98) by substituting the words "the

Form 54—*continued*

above-named deceased and his (*or* her) spouse (*or* civil union partner)" for the words "my father and his wife (*or* my mother and her husband)". *See* rule 24 of those rules as to the transitional provision relating to costs.

The fourth paragraph 8 was amended, as from 1 June 2006, by rule 18(4) High Court Amendment Rules 2006 (SR 2006/98) by inserting the words ", civil union partner," after the words "a spouse". *See* rule 24 of those rules as to the transitional provision relating to costs.

Paragraph 11A was substituted, as from 1 August 1987, by rule 16 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Paragraph 14 was amended, as from 1 January 1986, by rule 27 High Court Amendment Rules 1985 (SR 1985/328) by substituting the word "administer" for the word "execute".

Form 55

r 634(1)(d)

Affidavit to Lead Grant of Administration on Intestacy to Parent of Deceased

In the High Court of New Zealand

Registry No

In the estate of [*full name*], of [*Place*], [*Occupation*], deceased

[[(Endorsement)**]]**

I, [*Full name*], of [*Place of residence*], [*Occupation*], swear:

1. 2. 3. 4. As in paragraphs 1 to 4 of form 51.

5. I have made full inquiries and searches for any will made by the above-named deceased and I am satisfied that the above-named deceased did not leave a will [*or, as the case may require, where the deceased left a will but there is an intestacy as to some beneficial interest in the real or personal estate of the deceased*].

6. I believe that the above-named deceased died intestate (*or* intestate as to [*State the beneficial interest in the real or personal property of the deceased as to which the deceased died intestate*]).

7. I am the father (*or* mother) of the above-named deceased.

8. The above-named deceased was not survived by a spouse, civil union partner, or by any de facto partners, entitled to succeed on the intestacy; and

OR

8. Annexed hereto and marked "..." is a copy of the order (*or* decree absolute) dissolving the marriage or civil union of my son (*or* daughter), the above-named deceased. He (*or* She) did not subsequently marry or enter into a civil union, and, at the time of his (*or* her) death, he (*or* she) was not living in a de facto relationship.

OR

8. Annexed hereto and marked "..." is a copy of the separation order (*or* decree of judicial separation) made between the above-named deceased and his (*or* her) spouse (*or* civil union partner) and in force at the time of his (*or* her) death, and, at the time of his (*or* her) death, he (*or* she) was not living in a de facto relationship.

OR

8. The above-named deceased was survived by a spouse, civil union partner, or de facto partner who was entitled to succeed on the intestacy, but his or her beneficial interest in the estate was affected by the choice he or she made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he or she chose option A.

Form 55—*continued*

9. The consent of [*Full name*], the mother (*or* the father) of the above-named deceased to my application for letters of administration of the estate of the above-named deceased is annexed hereto and is marked "".

OR

9. [*Full name*], the mother (*or* father) of the above-named deceased, died at [*Place*] in [*Country*] on or about [*Date*] and thus predeceased her [*or* his] son [*or* daughter).

OR

9. [*Full name*], the mother (*or* father) of the above-named deceased, does not join in the application by reason of the fact that she (*or* he) is at present overseas. Her (*or* His) present address is [*Address*).

OR

9. [*Full name*], the mother (*or* father) of the above-named deceased, does not join in the application as she (*or* he) is incapable of acting as administrator because [*State why the other parent is incapable of acting as an administrator*].

10. The above-named deceased was not survived by any child—

(a) Who was born to the above-named deceased; or

(b) Who was adopted by the above-named deceased; or

*(c) In respect of whom the above-named deceased had admitted paternity; or

*(d) In respect of whom the above-named deceased was adjudged, before or after his death, to be the father.

* Delete if the deceased was a daughter of the applicant.

11. The above-named deceased was not survived by any grandchild—

(a) Who was born to a child of the above-named deceased; or

(b) Who was adopted by a child of the above-named deceased; or

*(c) In respect of whom a son of the above-named deceased had admitted paternity; or

*(d) In respect of whom a son of the above-named deceased was adjudged, before or after the death of the child of the above-named deceased, to be the father.

12 I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of any parent *or* child of the above-named deceased (in addition to those already known to me) who could claim an interest in the estate of the above-named deceased (*or* that part of the estate of the above-named deceased in

Form 55—*continued*

respect of which I am seeking a grant of administration) by reason only of that Act and the provisions of the enactments governing the distribution of intestate estates.

[[12A The inquiries referred to in paragraph 12 of this affidavit, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [Give a brief indication of the nature of the inquiries].]]

12B The inquiries referred to in paragraph 12 of this affidavit did not result in the discovery of any parent or child of the kind described in that paragraph.

OR

12B The inquiries referred to in paragraph 12 of this affidavit resulted in the discovery of [*State the full names and the relationship of those discovered. In the case of children, give, in addition, their ages, and add* being children to whom neither section 16(2)(d) of the Adoption Act 1969 nor section 4 of the Status of Children Act 1969 is relevant or applicable.]

OR

12. The making of the inquiries specified in section 5A (1) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because [*State the facts showing why the making of those inquiries would unduly delay the making of a grant of administration*].

OR

12. The getting in or preservation of the assets of the estate of the above-named deceased requires the making of an immediate grant of administration because [*State the facts showing why the getting in or preservation of the assets require the making of an immediate grant of administration*].

OR

12. No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*State the facts showing why no useful purpose would be served by the making of those inquiries*].

13. To the best of my knowledge, information, and belief, the gross value of the estate left by the above-named deceased does not exceed $.

14. I will faithfully [[administer]] the estate of the above-named deceased in accordance with the law, and will, when required by the Court so to do, file in the Court and verify by affidavit—

Form 55—*continued*

(a) A true and perfect inventory of the estate of the above-named deceased; and

(b) A true and perfect account of the estate of the above-named deceased, which account shall—

(i) Set forth the dates and particulars of all receipts and disbursements; and

(ii) Show which of the receipts and disbursements are, in my opinion, on account of capital and on account of income respectively.

Sworn at this day of 19 , before me—

A solicitor of the High Court of New Zealand

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 55 was amended, as from 1 April 1994, by rule 24(2) High Court Amendment Rules 1993 (SR 1993/420) by inserting between the intitulement and the body of the Form the word "(Endorsement)".

Form 55 was amended, as from 1 February 2002, by rule 13(10)(a) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by substituting the words "a spouse, or by any de facto partners, entitled to succeed on the intestacy" for the words "a lawful wife or husband" in the first alternative version of paragraph 8.

Form 55 was amended, as from 1 February 2002, by rule 13(10)(b) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by adding the words ", and, at the time of his (or her) death, he (or she) was not living in a de facto relationship" in the second and third alternative versions of paragraph 8.

Form 55 was amended, as from 1 February 2002, by rule 13(11) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by inserting a fourth alternative version of paragraph 8 immediately before paragraph 9.

The first paragraph (8) was amended, as from 1 June 2006, by rule 19(1) High Court Amendment Rules 2006 (SR 2006/98) by inserting the words ", civil union partner," after the words "a spouse". *See* rule 24 of those rules as to the transitional provision relating to costs.

The second paragraph (8) was substituted, as from 1 June 2006, by rule 19(2) High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

The third paragraph (8) was amended, as from 1 June 2006, by rule 19(3) High Court Amendment Rules 2006 (SR 2006/98) by substituting the words "the above-named deceased and his (*or* her) spouse (*or* civil union partner)" for the words "my son (*or* daughter), the above-named deceased, and his wife (*or* her husband)". *See* rule 24 of those rules as to the transitional provision relating to costs.

The fourth paragraph 8 was amended, as from 1 June 2006, by rule 19(4) High Court Amendment Rules 2006 (SR 2006/98) by inserting the words ", civil

Form 55—*continued*

union partner," after the words "a spouse". *See* rule 24 of those rules as to the transitional provision relating to costs.

Paragraph 12A was substituted, as from 1 August 1987, by rule 17 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Paragraph 14 was amended, as from 1 January 1986, by rule 28 High Court Amendment Rules 1985 (SR 1985/328) by substituting the word "administer" for the word "execute".

Form 56

r 634(1)(d)

Affidavit to Lead Grant of Administration on Intestacy to Brother or Sister of Deceased

In the High Court of New Zealand

Registry No

In the estate of [*full name*], of [*Place*], [*Occupation*], deceased

[[(Endorsement)**]]**

I, [*Full name*], of [*Place of residence*], [*Occupation*], swear:

1.
2.
3.
4. As in paragraphs 1 to 4 of form 51.

5. I have made full inquiries and searches for any will made by the above-named deceased and I am satisfied that the above-named deceased did not leave a will [*or, as the case may require, where the deceased left a will but there is an intestacy as to some beneficial interest in the real or personal estate of the deceased*].

6. I believe that the above-named deceased died intestate (*or* intestate as to [*State the beneficial interest in the real or personal property of the deceased as to which the deceased died intestate*]).

7. I am a brother (*or* sister) of the above-named deceased.

8. The above-named deceased was not survived by a spouse, civil union partner, or by any de facto partners, entitled to succeed on the intestacy.

OR

8. Annexed hereto and marked "..." is a copy of the order (*or* decree absolute) dissolving the marriage (*or* civil union) of my brother (*or* sister), the above-named deceased. He (*or* She) did not subsequently marry or enter into a civil union, and, at the time of his (*or* her) death, he (*or* she) was not living in a de facto relationship.

OR

8. Annexed hereto and marked "..." is a copy of the separation order (*or* decree of judicial separation) made between the above-named deceased and his (*or* her) spouse (*or* civil union partner) and in force at the time of his (*or* her) death, and, at the time of his (*or* her) death, he (*or* she) was not living in a de facto relationship.

OR

8. The above-named deceased was survived by a spouse, civil union partner, or de facto partner who was entitled to succeed on the intestacy, but his or her beneficial interest in the estate was affected by the choice he or she made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he or she chose option A.

Form 56—*continued*

9. The above-named deceased left him (*or* her) surviving no parent.

10. The above-named deceased was not survived by any child —

(a) Who was born to the above-named deceased; or

(b) Who was adopted by the above-named deceased; or

*(c) In respect of whom the above-named deceased had admitted paternity; or

*(d) In respect of whom the above-named deceased was adjudged, before or after his death, to be the father.

* Delete if the deceased was a sister of the applicant.

11. The above-named deceased was not survived by any grandchild–

(a) Who was born to a child of the above-named deceased; or

(b) Who was adopted by a child of the above-named deceased; or

(c) In respect of whom a son of the above-named deceased had admitted paternity; or

(d) In respect of whom a son of the above-named deceased was adjudged, before or after the death of the child of the above-named deceased, to be the father.

12. The above-named deceased was not survived by any other brother or sister.

OR

12. In addition to myself the above-named deceased left him (*or* her) surviving the following brothers and sisters all of whom, except where otherwise shown, are adult: [*State the full names, countries of residence, and occupations of the other brothers and sisters of the deceased and in the case of any brother or sister who is a minor, the age of that brother or sister*].

13 Neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable to me.

OR

13. Both the brothers and sisters of the above-named deceased who are named in paragraph 12 of this affidavit and I are children of my parents (*or* one of them). Both in the case of my brothers and sisters so named and in the case of myself neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable.

13. I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of any parent or child of the above-named deceased (in addition to those already known to me) who could claim an interest in the estate of the above-named deceased (*or* that part of the estate of the above-named deceased in

Form 56—*continued*

respect of which I am seeking a grant of administration) by reason only of that Act and the provisions of the enactments governing the distribution of intestate estates.

[[13A. The inquiries referred to in paragraph 13 of this affidavit, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*Give a brief indication of the nature of the inquiries*].]]

13B. The inquiries referred to in paragraph 13 of this affidavit did not result in the discovery of any parent or child of the kind described in that paragraph.

OR

13B. The inquiries referred to in paragraph 13 of this affidavit resulted in the discovery of [*State the full names and the relationship of those discovered. In the case of children, give, in addition, their ages, and add* being children to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable].

OR

13. The making of the inquiries specified in section 5A(1) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because [*State the facts showing why the making of those inquiries would unduly delay the making of a grant of administration*].

OR

13. The getting in or preservation of the assets of the estate of the above-named deceased requires the making of an immediate grant of administration because [*State the facts showing why the getting in or preservation of the assets require the making of an immediate grant of administration*].

OR

13. No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*State the facts showing why no useful purpose would be served by the making of those inquiries*].

14. [*Include this paragraph where it is applicable and where the deceased has left other adult brothers and sisters surviving*] On [*Date*] I gave written notice to [*Full names*], adult brothers and sisters of the above-named deceased who are named in paragraph 12 of this affidavit, that I intended to apply to this Court for letters of administration of the estate of the above-named deceased.

Form 56—*continued*

14A. [*Include this paragraph where it is applicable and where the deceased has left other adult brothers and sisters surviving*] Of the surviving brothers and sisters of the above-named deceased who are named in paragraph 12 of this affidavit [*Number*], namely, [*Full name*] who resides in [*Country*] and [*Full name*] who resides in [*Country*], etc., reside beyond the jurisdiction on the Court.

14B. [*Include this paragraph where it is applicable and where the deceased has left other adult brothers and sisters surviving*] The consents of [*Full names*], adult brothers and sisters of the above-named deceased who are named in paragraph 12 of this affidavit, to the grant to me of letters of administration of the estate of the above-named deceased are annexed hereto and marked " ".

15. To the best of my knowledge, information, and belief, the gross value of the estate left by the above-named deceased does not exceed $.

16. I will faithfully **[[**administer**]]** the estate of the above-named deceased in accordance with the law, and will, when required by the Court so to do, file in the Court and verify by affidavit—

(a) A true and perfect inventory of the estate of the above-named deceased; and

(b) A true and perfect account of the estate of the above-named deceased, which account shall—

(i) Set forth the dates and particulars of all receipts and disbursements; and

(ii) Show which of the receipts and disbursements are, in my opinion, on account of capital and on account of income respectively.

Sworn at this day of 19 , before me—

A solicitor of the High Court of New Zealand

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 56 was amended, as from 1 April 1994, by rule 24(2) High Court Amendment Rules 1993 (SR 1993/420) by inserting between the intitulement and the body of the Form the word "(Endorsement)".

Form 56 was amended, as from 1 February 2002, by rule 13(12)(a) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by substituting the words "a spouse, or by any de facto partners, entitled to succeed on the intestacy" for the words "a lawful wife or husband" in the first alternative version of paragraph 8.

Form 56 was amended, as from 1 February 2002, by rule 13(12)(b) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by adding the words ", and, at

Form 56—*continued*

the time of his (or her) death, he (or she) was not living in a de facto relationship" in the second and third alternative versions of paragraph 8.

Form 56 was amended, as from 1 February 2002, by rule 13(13) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by inserting a fourth alternative version of paragraph 8 immediately before paragraph 9.

The first paragraph 8 was amended, as from 1 June 2006, by rule 20(1) High Court Amendment Rules 2006 (SR 2006/98) by inserting the words ", civil union partner," after the words "a spouse". *See* rule 24 of those rules as to the transitional provision relating to costs.

The second paragraph 8 was substituted, as from 1 June 2006, by rule 20(2) High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

The third paragraph 8 was amended, as from 1 June 2006, by rule 20(3) High Court Amendment Rules 2006 (SR 2006/98) by substituting the words "the above-named deceased and his (*or* her) spouse (*or* civil union partner)" for the words "my brother (*or* sister), the above-named deceased, and his wife (*or* her husband)". *See* rule 24 of those rules as to the transitional provision relating to costs.

The fourth paragraph 8 was amended, as from 1 June 2006, by rule 20(4) High Court Amendment Rules 2006 (SR 2006/98) by inserting the words ", civil union partner," after the words "a spouse". *See* rule 24 of those rules as to the transitional provision relating to costs.

Paragraph 13A was substituted, as from 1 August 1987, by rule 18 High Court Amendment Rules (No 2) 1987 (SR 1987/169).

Paragraph 16 was amended, as from 1 January 1986, by rule 29 High Court Amendment Rules 1985 (SR 1985/328) by substituting the word administer' for the word "execute".

Form 57

r 661(1)

Probate in common form

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

1 *For this paragraph, select the statement that applies.*

Statement A

On [*date*] the last will of the deceased, [*full name*], who died on or about [*date*], was proved before the Honourable Justice [*name*]. A copy is attached.

Statement B

On [*date*] the last will of the deceased, [*full name*], who died on or about [*date*], was proved in Chambers before Registrar/Senior Deputy Registrar* [*name, place*], acting under rule 644 of the High Court Rules. A copy is attached.

**Select one.*

2 This probate document appoints [*full name, place of residence, occupation, of executor or each executor*], the executor/executors* named in the will, as the administrator/administrators* of the deceased's estate.

**Select one.*

3 *Omit this paragraph if it does not apply.*

The Court reserves the power to grant probate to [*full name or full names*], the other executor/executors* named in the will, if they appear before this Court and apply.

**Select one.*

Dated:

(Registrar/Deputy Registrar)

[*Seal of the High Court*]

Schedule 2 schedule 1 form 57: substituted, on 1 November 2007, by rule 8 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 57 was amended, as from 1 January 1986, by rule 30 High Court Amendment Rules 1985 (SR 1985/328) by inserting the words "of [Place], [Occupation],".

Form 58

r 661(1)

Letters of administration with will annexed

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

To [*full name, place of residence, occupation*] [*State circumstance in rule 656 that allowed grant of administration.*]

1 The deceased, [*full name*], died on or about [*date*], leaving a will. A copy is attached.

2 *For this paragraph, select the statement that applies.*

Statement A

On [*date*] the will was proved before the Honourable Justice [*name*].

Statement B

On [*date*] the will was proved in Chambers before Registrar/Senior Deputy Registrar* [*name, place*], acting under rule 644 of the High Court Rules.

**Select one.*

3 The circumstance in rule 655(1) to (3) that allowed the grant of administration was [*specify*].

4 These letters of administration authorise you—

(a) to administer the deceased's estate; and

(b) to demand and recover whatever debts may belong to the deceased's estate; and

(c) to pay whatever debts the deceased owed; and

(d) to pay the legacies contained in the will to the extent that the estate allows.

5 You are appointed as the administrator with the will annexed of all the deceased's estate.

Dated:

(Registrar/Deputy Registrar)

[*Seal of the High Court*]

Schedule 2 schedule 1 form 58: substituted, on 1 November 2007, by rule 8 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 58—*continued*

Form 58 was amended, as from 1 February 2002, by rule 13(14) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by inserting the words "or surviving de facto partner" after the word "widower".

Form 59

r 661(1)

Letters of Administration on Intestacy

In the High Court of New Zealand

Registry No

In the estate of [*full name*], of [*Place*], [*Occupation*], deceased

TO, [*Full name*], widow (*or* widower *or* surviving de facto partner *or show other relationship*) of [*Full name*], deceased [*or as the case may be*].

WHEREAS the above-named [*Full name*] died intestate on or about the day of 19 :

You are hereby fully empowered and authorised—

(a) To administer the estate of the above-named deceased; and

(b) To demand and recover whatever debts may belong to the estate of the above-named deceased; and

(c) To pay whatever debts the above-named deceased owed, so far as the estate extends; and

You are therefore hereby constituted administratrix (*or* administrator) of all the estate of the above-named deceased.

This grant was made this day by the Honourable Mr Justice [*Surname*] [*or, where the grant is made by a Registrar acting under rule 644* by Mr Registrar [*Surname*] in Chambers at [*Place*], acting under rule 644 of the High Court Rules].

Given under the Seal of the High Court of New Zealand [[at]] this day of 19 .

. . . . . .

(Deputy) Registrar

Schedule 2 schedule 1 form 59 heading: amended, on 1 November 2007, by rule 7(2) of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

Form 59—*continued*

Schedule 2 schedule 1 form 59: amended, on 1 November 2007, by rule 7(3) of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 59 was amended, as from 1 February 2002, by rule 13(14) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by inserting the words "or surviving de facto partner" after the word "widower".

Form 60
Caveat

Rule 644

No

Under section 60 of the Administration Act 1969;

and

In the matter of the will (*or* estate) of [*Full name*], of [*Place*], [*Occupation*], deceased

LET nothing be done in the will (*or* estate) of the above-named [*Full name*] deceased, without notice to [*Full name*], solicitor for [*Full name*] of [*Place*], [*Occupation*], having interest (*or* the widow *or* the widower *or* a surviving de facto partner *or* a creditor of the deceased).

Dated this day of 19 .

. . . . . .

(Solicitor for) Caveator

[*Subscribe memorandum in form 3*]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 60 was amended, as from 1 February 2002, by rule 13(15) High Court Amendment Rules (No 2) 2001 (SR 2001/382), by inserting the words "or a surviving de facto partner" after the word "widower".

Form 61

r 663(1)

Exemplification of probate or letters of administration

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

1 This document certifies a record in the [*name of registry*] Registry of the High Court of New Zealand, which is a Court of Record. The record is that on [*date*]—

Select the statement that applies.

Statement A

the last will of [*full name, place, occupation*], who died at [*place*] on or about [*date*], was proved by, and probate was granted to, [*full name, place of residence, of executor or each executor*], the named executor/executors*.

**Select one.*

Statement B

letters of administration with will annexed of the estate of [*full name, place, occupation*], who died at [*place*] on or about [*date*], were granted to [*full name, place of residence*] as [*state circumstance in rule 656 that allowed grant of administration*].

Statement C

letters of administration of the estate of [*full name, place, occupation*], who died at [*place*] on or about [*date*], were granted to [*full name, place of residence*].

2 *For this paragraph, select the statement that applies.*

Statement A

The probate is on record in the office of that Registry.

Statement B

The letters of administration with will annexed/letters of administration* are on record in the office of that Registry.

**Select one.*

Form 61—*continued*

3 *Omit this paragraph if the exemplification relates only to letters of administration on intestacy.*

The text of the will is shown by the copy/copies* of it attached and endorsed on each page with the seal of the High Court of New Zealand.

**Select one.*

4 *Omit this paragraph if the exemplification relates only to letters of administration on intestacy.*

The sealing of this document is evidence of the acceptance by this Court of the authenticity of the wording of the will.

Dated:

(Registrar/Deputy Registrar)

[*Seal of the High Court*]

Schedule 2 schedule 1 form 61: substituted, on 1 November 2007, by rule 8 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 62
r 646(4)

Affidavit of valid execution

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased).

I, [*full name, place of residence, occupation*], swear/I, [*full name, occupation*], of [*place of residence*], solemnly and sincerely affirm*—

**Select one.*

1 I am one of the witnesses to/I was present at the signing of* the last will of the deceased, [*full name, place*]. The last will is the document marked "A" now produced and shown to me.

**Select one.*

2 *For this paragraph, select the statement that applies.*

Statement A

The deceased made his/her* will on or after 1 November 2007. The deceased signed the will on [*date*] by signing his/her* name as it now appears on the will, intending the signing to be a valid signing of his/her* will.

**Select one.*

Statement B

The deceased made his/her* will on or after 1 November 2007. The deceased acknowledged that a person directed by the deceased signed the will on [*date*] in the deceased's presence, intending the signing to be a valid signing of the deceased's will.

**Select one.*

Statement C

The deceased made his/her* will before 1 November 2007. The deceased signed the will on [*date*] by signing his/her* name on the last page as it now appears on the will, intending the signing to be a valid signing of his/her* will.

**Select one.*

Form 62—*continued*

Statement D

The deceased made his/her* will before 1 November 2007. The deceased acknowledged that a person directed by the deceased signed the will on [*date*] on the last page in the deceased's presence, intending the signing to be a valid signing of the deceased's will.

**Select one.*

3 *For this paragraph, select statement A if you selected statement A or B for paragraph 2 or statement B if you selected statement C or D for paragraph 2.*

Statement A

The signing referred to in paragraph 2 was completed in my presence and in the presence of [*full name, place of residence, occupation, of each witness*] and both of us/they* then signed the will as witnesses in the presence of each other and in the presence of the deceased.

**Select one.*

Statement B

The signing referred to in paragraph 2 was completed in my presence and in the presence of [*full name, place of residence, occupation, of each witness*] and both of us/they* then signed the last page of the will as witnesses in the presence of each other and in the presence of the deceased.

**Select one.*

4 *Include this paragraph only if there is a change on the will. Select the statement that applies.*

Statement A

The change on the will was executed by [*describe the actions complying with section 15(a) or (b) of the Wills Act 2007*].

Statement B

The change on the will was made by the obliteration of words in the will in such a way as to prevent their effect being apparent. The deceased indicated his/her* consent to the obliteration by [*describe the actions by which the deceased indicated consent to the obliteration*].

**Select one.*

Form 62—*continued*

5 *Include this paragraph only if it must be proved that the deceased knew the contents of the will or a separate document.*

Before the deceased signed the will/separate document*, I read/[*full name*] in my presence read* the will/separate document* to the deceased and the deceased seemed to understand it thoroughly/seemed to have full knowledge of its contents*.

**Select one.*

Sworn* at: [*place, date*]

Before me: [*name, signature*]

Affirmed* at this day of 20 before me:

**Select one.*

(A solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*/ High/District* Court/Justice of the Peace*)

**Select one.*

Schedule 2 schedule 1 form 62: substituted, on 1 November 2007, by rule 8 of the High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313).

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 63
Rule 685

Notice of Hearing (High Court)

Form 63—*continued*

[In the High Court of New Zealand

. . .

Registry No

Under the [*Specify enactment*]

In the matter of [*Specify claim, etc*]

Between [*Full name*]

Appellant

and [*Full name*]

Respondent**]**

THIS proceeding (*or* appeal) has been set down for hearing before the Court at [*Place*] on day, the day of 19 at am (*or* pm).

If you do not appear at the place and at the time so fixed, the Court may hear and determine the proceeding (*or* appeal) in your absence.

A hearing fee of $ is payable. This fee must be paid to the Registrar before the hearing.

Dated at this day of 19 .

. . . . . .

(Deputy) Registrar

To: [*Name of party*]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 63 was amended, as from 1 January 1986, by rule 32 High Court Amendment Rules 1985 (SR 1985/328) by substituting the words "In the High Court of New Zealand (Administrative Division)" to the word "Respondent" for the words "(General heading-Form 1)."

Form 64
Notice of Appeal to Administrative Division
[Repealed]

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 64 was revoked, as from 15 August 1991, by rule 25(1) High Court Amendment Rules 1991 (SR 1991/132).

Form 64A

r 700C(1)

Statement of Claim in Proceeding for Putting Company into Liquidation

(General headingForm 1)

The plaintiff says:

1. The..... Company Limited (hereinafter called the defendant company) was in [*State month and year*] incorporated under the Companies Act 19 and was reregistered under the Companies Act 1993 on [*State month and year*] */has not been reregistered under the Companies Act 1993*.

*Delete if not applicable

OR

1. The..... Company Limited (hereinafter called the defendant company) was in [*State month and year*] incorporated under the Companies Act 1993.

2. The registered office of the defendant company is at [*State the full address of the registered office*].

[*Here set out in paragraphs the facts on which the plaintiff relies*].

The plaintiff therefore prays that the defendant company be put into liquidation by the Court under the Companies Act 1955.

OR

The plaintiff therefore prays that the defendant company be put into liquidation by the Court under the Companies Act 1993.

[*Subscribe memorandum in Form 3.*]

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64A was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64B

r 700C(2)

Statement of Claim in Proceedings for Order under section 209ZG of the Companies Act 1955 or Statement of Claim in Proceedings for Order under section 174 of the Companies Act 1993

(General headingForm 1)

The plaintiff says:

1. The ..... Company Limited (hereinafter called the defendant company) was in [*State month and year*] incorporated under the Companies Act 19 and was reregistered under the Companies Act 1993 on [*State month and year*] */has not been reregistered under the Companies Act 1993*.

*Delete if not applicable

OR

1. The ..... Company Limited (hereinafter called the defendant company) was in [*State month and year*] incorporated under the Companies Act 1993.

2. The registered office of the defendant company is at [*State the full address of the registered office*].

3. The affairs of the defendant company have been (or are being or are likely to be) conducted in a manner that is oppressive (or unfairly discriminatory or unfairly prejudicial) to the plaintiff in the plaintiff's capacity as a member*/shareholder* of the defendant company (*or* [*State any other capacity*]).

OR

3. An act (*or* acts) of the defendant company have been (*or* are being *or* are likely to be) oppressive (*or* unfairly discriminatory *or* unfairly prejudicial) to the plaintiff in the plaintiff's capacity as a member*/shareholder* of the defendant company (*or* [*State any other capacity*]).

*Delete if not applicable

Form 64B—*continued*

OR

[*Where the case falls within section 173(3) of the Companies Act 1955*

3. A report has been made in respect of the defendant company under section 172 of the Companies Act 1955.

4. The report has been referred to the Attorney-General under section 173(1) of the Companies Act 1955.

5. The defendant company is liable to be put into liquidation under the Companies Act 1955.

6. It appears to the Attorney-General from the report that it is expedient to put the defendant company into liquidation by reason of circumstances suggesting

*(a) That its business is being conducted with intent to defraud its creditors.

*(b) That its business is being conducted with intent to defraud the creditors of [*Full name*].

*(c) That its business is being conducted for a fraudulent or unlawful purpose.

*(d) That its business is being conducted in a manner oppressive of part of its members.

*(e) That it was formed for a fraudulent or unlawful purpose.

*(f) That persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, or other misconduct towards it or towards its members.

[*Here set out in paragraphs the facts on which the plaintiff relies*].

Form 64B—*continued*

The plaintiff therefore applies, under section 209ZG of the Companies Act 1955, for an order [*Set out the nature of the order sought*].

* Delete if inapplicable

[*Subscribe memorandum in Form 3*

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64B was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

The second paragraph 3 was amended, as from 1 November 1994, by rule 8 High Court Amendment Rules (No 2) 1994 by substituting the word "act" for the word "Act".

Form 64C

r 700E(2)(a)

Notice of Proceeding for Putting Company into Liquidation (*or* for Order under Section 209ZG of Companies Act 1955) (*or* for Order under Section 174 of the Companies Act 1993)

(General headingForm 1)

TO [*Full name of company*] (hereinafter called the defendant company)

and

[*Where a liquidator or interim liquidator has been appointed*]

TO [*Full name*], [*Address*], [*Description*], the liquidator*/interim liquidator* of the defendant company*

*Delete if not applicable

Form 64C—*continued*

Take notice that the plaintiff is, by a statement of claim, making application for an order that the defendant company put into liquidation under the Companies Act 1955 (*or* the Companies Act 1993) (*or* for an order in respect of the defendant company under section 209ZG of the Companies Act 1955) (*or* for an order in respect of the defendant company under section 174 of the Companies Act 1993).

A copy of the statement of claim is served herewith.

The application will be heard in this Court at [*Place*] at am/pm on [*Date*].

Take notice that unless, within 14 days after the date on which this notice is served on you, you file in this office of this Court a statement of your defence to the plaintiff's claim, a copy of which is served herewith, the plaintiff may proceed to a hearing and an order may be made for the liquidation of the defendant company by the Court under the Companies Act 1955 (*or* the Companies Act 1993) (*or* an order may be made in respect of the defendant company under section 209ZG of the Companies Act 1955) (*or* an order may be made in respect of the defendant company under section 174 of the Companies Act 1993).

Dated this day of 19 .

.....

Plaintiff (*or* Solicitor for Plaintiff)

Your attention is particularly directed to the Memorandum endorsed hereon or attached hereto.

MEMORANDUM

Advice

Form 64C—*continued*

1. If the defendant company wishes to oppose this application or to appear at the hearing, it is essential that it consult a solicitor without delay. A company cannot

(a) carry on proceedings in the Court except by a solicitor; and

(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).

Advertising

2. The application to put the defendant company into liquidation under the Companies Act 1955 (*or* the Companies Act 1993) (*or* for the making in respect of the defendant company of an order under section 209ZG of the Companies Act 1955) (*or* the Companies Act 1993) is to be advertised in the *New Zealand Gazette* and in a newspaper.

3. The advertisements will not be published until at least 7 days after the date on which the statement of claim is served on the defendant company.

Power of Court to restrain advertising and stay proceedings

[*Delete this heading and paragraphs 4 and 5 if the application is not an application to put the defendant company into liquidation*].

4. The Court has power to make an order restraining the publication of the advertisement and staying any further proceedings in relation to the liquidation.

5. The defendant company or, with the leave of the Court, any creditor or contributory or shareholder of the defendant company may apply for such an order within 7 days after the date of the service of the statement of claim on the defendant company.

Statement of defence

Form 64C—*continued*

6. If the last day for filing your statement of defence falls on a day on which the office of the Court is closed, you may file your statement of defence on the next day on which that office is open.

7. In calculating the time for filing your statement of defence, you must disregard the period that commences with 25 December and ends with 15 January. [*This paragraph must be deleted if it conflicts with a direction by the Court.*]

8. If you file a statement of defence, you must also, within the time limited for filing it in the office of the Court, serve a copy of the statement on the plaintiff and on any other person who, when the statement of defence is filed, has filed a statement of defence in the proceeding.

9. If a statement of defence is not filed on behalf of the defendant company within the time prescribed, counsel for the defendant company will not, without an order for extension of time or the special leave of the Court be allowed to appear on the hearing. A company cannot appear in person. If it wishes to appear on the hearing, it must appear by counsel.

Appearance by persons other than the defendant company

10. Any person (other than the defendant company) who intends to appear on the hearing of the application must file an appearance

(a) Stating that that person intends to appear; and

(b) Indicating whether the person supports or opposes the appointment of a liquidator by the Court (*or* the making in respect of the defendant company of an order under section 209ZG of the Companies Act 1955) (*or* section 174 of the Companies Act 1993).

11. Any person who files an appearance need not file a statement of defence.

12. Every appearance must be filed not later than the second working day before the day appointed for the hearing.

Form 64C—*continued*

13. If you fail to file an appearance within the time prescribed, neither you nor counsel on your behalf will, without an order for extension of time or the special leave of the Court, be allowed to appear on the hearing.

Office hours

14. The office hours of the Court are from 9 am to 5 pm except on Court holidays.

Dated this day of 19 .

.....

(Deputy Registrar).]

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64C was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64C clause 1 of the memorandum was substituted, as from 1 November 2004, by rule 28 High Court Amendment Rules 2004 (SR 2004/320).

Form 64C clause 7 of the memorandum was substituted, as from 1 July 2002, by rule 18 High Court Amendment Rules 2002 (SR 2002/132)

Form 64C clause 14 of the memorandum was amended, as from 1 February 1998, by rule 18 High Court Amendment Rules 1997 (SR 1997/350) by substituting the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 64C clause 14 of the memorandum was amended, as from 1 February 2003, by rule 24 High Court Amendment Rules (No 2) 2002 (SR 2002/410) by substituting the expression "9 am to 5 pm" for the expression "8.30 am to 5 pm".

Form 64D
r 700E(2)(b)

Verifying Affidavit

(General headingForm 1)

I, [*Full name*], of [*Place of residence*], [*Occupation*], swear that such of the allegations in the statement of claim herein (a copy of which is hereunto annexed, and marked with the letter A as relate to my own acts and deeds [*or, where the plaintiff is a firm*, the acts and deeds of my firm] are true and such of those allegations as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn at this day of 19 ,

before me

A Solicitor of the High Court of New Zealand

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64D was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64E
r 700E(2)(b)

Affidavit Verifying Statement of Claim of a Limited Company

(General headingForm 1)

I, [*Full name*], of [*Place of residence*], [*Occupation*], swear:

1. I have knowledge of the facts stated in this affidavit and am duly authorised by the plaintiff in the above matter to make this affidavit on its behalf.

Form 64E—*continued*

2. Such of the statements in the statement of claim herein (a copy whereof is hereunto annexed and marked with the letter "A") as relate to the acts and deeds of the plaintiff are true and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn at this day of 19 ,

before me

A Solicitor of the High Court of New Zealand

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64E was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Subclause (1) was substituted, as from 1 January 2000, by rule 18 High Court Amendment Rules 1999 (SR 1999/334).

Form 64F

r 700I(4)

Advertisement of Application for Putting Company into Liquidation

TAKE NOTICE that on [*Date*] an application for putting [*Full name of company*] into liquidation by the High Court was filed in the High Court at [*Place*].

The application is to be heard before the High Court at [*Place*] on [*Date*] at am/pm.

Any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than the second working day before that day.

The [[plaintiff]] is [*Full name*], whose address for service is . . . . . .

.

Further particulars may be obtained from the office of the Court or from the [[plaintiff or the plaintiff's solicitor]].

.....

(Solicitor for . . .) [[Plaintiff]]]

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64F was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64F—*continued*

Form 64F was amended, as from 1 August 2000, by rule 21(1)(a) High Court Amendment Rules 2000 (SR 2000/109) by substituting the word "plaintiff" for the word "applicant".

Form 64F was amended, as from 1 August 2000, by rule 21(1)(b) High Court Amendment Rules 2000 (SR 2000/109) by substituting the words "plaintiff or plaintiff's solicitor" for the words "applicant or the applicant's solicitor".

Form 64F signature block was amended, as from 1 August 2000, by rule 21(1)(c) High Court Amendment Rules 2000 (SR 2000/109) by substituting the word "Plaintiff" for the words "the Applicant".

Form 64G

Rule 700I(4)

Advertisement of Application for Order under Section 209ZG of Companies Act 1955 (*or* for Order under Section 174 of Companies Act 1993)

TAKE NOTICE that on [*Date*] an application for an order under section 209ZG of the Companies Act 1955 (or section 174 of the Companies Act 1993) in respect of [*Full name of company*] was filed in the High Court at [*Place*].

The order sought is an order [*Set out the nature of the order sought*].

The application is to be heard before the High Court at [*Place*] on [*Date*] at am/pm.

Any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than the second working day before that day.

The [[plaintiff]] is [*Full name*], whose address for service is .....

Further particulars may be obtained from the office of the Court or from the [[plaintiff or the plaintiff's solicitor]].

.....

(Solicitor for the) Plaintiff]

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64G was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64G was amended, as from 1 August 2000, by rule 21(2)(a) High Court Amendment Rules 2000 (SR 2000/109) by substituting the word "plaintiff" for the word "applicant".

Form 64G was amended, as from 1 August 2000, by rule 21(2)(b) High Court Amendment Rules 2000 (SR 2000/109) by substituting the words "plaintiff or the plaintiff's solicitor" for the words "applicant or the applicant's solicitor".

Form 64G signature block was amended, as from 1 August 2000, by rule 21(2)(c) High Court Amendment Rules 2000 (SR 2000/109) by substituting the word "Plaintiff" for the words "the Applicant".

Form 64H
Rule 700M(1)

Affidavit of Service

(General headingForm 1)

I, [*Full name*], of [*Place of residence*], [*Occupation*], swear:

1. I, did on day, the day of 19 , serve the defendant company with

   (a) The statement of claim in the above-mentioned proceeding; and

   (b) The verifying affidavit made by [*Full name*] and dated the day of 19 ; and

   (c) The notice of proceeding dated the day of 19] .

OR

*1. I did on day, the day of 19, serve the defendant company with a statement of claim, verifying affidavit, and notice of proceeding (true copies of which are hereunto annexed and marked "A" , "B", and "C" respectively).

2. I served the documents on the defendant company at [*Place*] in New Zealand by [*Specify the method by which service was effected*].

Signature of deponent:
.....

Sworn at this day of 19 , before me

.....

A Solicitor of the High Court of New Zealand.]

*Delete if inapplicable.

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64H—*continued*

Form 64H was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64H was substituted, as from 1 November 1994, by rule 9 High Court Amendment Rules (No 2) 1994 (SR 1994/211).

Form 64I

Rule 700R

Appearance in Support of (*or* in Opposition to) Application for Putting a Company into Liquidation (*or* for Making of Order under Section 209ZG of the Companies Act 1955) (*or* for Making of Order under Section 174 of The Companies Act 1993)

(General headingForm 1)

I, [*Full name*], of [*Address and description*] intend to appear on the hearing of this proceeding.

I support (*or* oppose) the application for putting the defendant into liquidation by the High Court (*or* the application for an order under section 209ZG of the Companies Act 1955 (*or* section 174 of the Companies Act 1993)).

*I am a creditor for $.....in the defendant company.

I am a contributory/shareholder* holding [*State number and class of shares held*] shares in the defendant company.

Dated this day of 19 .

.....

(Solicitor or Counsel for) Person filing the Appearance

*Delete if inapplicable

[*Subscribe memorandum in Form 3.*]

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64I was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64J

r 700ZB(2)

Notification to Liquidator of Order Putting Company into Liquidation

To [*Full name*], liquidator [*Full address*].

ORDER pronounced this day by the Honourable Justice..... [*or as the case may be*] that the undermentioned defendant company be put into liquidation by the Court under the Companies Act 1955 (*or* the Companies Act 1993).

Name of company	Registered Office of company	Plaintiff's Solicitor	Date of Filing of Statement of Claim

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64J was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64K

r 700ZB(2)

Notification to Interim Liquidator of Appointment

To [*Full name*], interim liquidator [*Full address*].

ORDER pronounced this day by the Honourable Justice..... [*or as the case may be*] for the appointment of (a)..... as interim liquidator prior to any order putting company into liquidation being made.

Name of company	Registered Office of company	Plaintiff's Solicitor	Date of Filing of Statement of Claim

Form 64K—*continued*

(a) *Insert* "*the Official Assignee*" *or, if some other person has been appointed, the name, address, and description of that person*.

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64K was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64L
r 700ZD(1)

Order Putting Company into Liquidation

(General HeadingForm 1)

Before the Honourable Justice.....

..... day, the.....day of.....19...

UPON the application of the above-named plaintiff, on the.....day of.....19....., and upon the hearing.....for the plaintiff, and.....for.....and upon reading the statement of claim, the affidavit of [*Full name*] verifying the allegations in the statement of claim, the *New Zealand Gazette* of the .....day of.....19....., the.....newspaper of the.....day of.....19.....[*Enter any other papers*], each containing an advertisement of the said statement of claim [*Enter any other evidence*], this Court doth order that the defendant company be put into liquidation by this Court under the provisions of the Companies Act 1955, (*or* the Companies Act 1993), and that [*State name of liquidator*] be appointed liquidator.

And it is ordered that the cost of.....of the said application be taxed and paid out of the assets of the defendant company.

By the Court,

.....

(Deputy) Registrar]

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64L was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64M
r 700ZD(2)

Order Appointing an Interim Liquidator

(General HeadingForm 1)

Form 64M—*continued*

Before the Honourable Mr Justice .....

..... day, the.....day of.....19...

UPON the application, etc, and upon reading, etc, the Court doth hereby appoint [*State full name of interim liquidator*] to be liquidator of the defendant company. And the Court doth hereby limit and restrict the powers of the said interim liquidator to the following acts, that is to stay [*Describe the acts which the interim liquidator is to be authorised to do and the property of which the interim liquidator is to take possession*].

By the Court,

.....

(Deputy) Registrar]

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64M was substituted, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Form 64N

r 700ZJ(a)

General heading for notices in forms 64O to 64R

In the High Court of New Zealand File no: [*Number*]

[*Place*] Registry

*The Companies Act 1955/*The Companies Act 1993

*Delete if inapplicable

In the matter of the liquidation of

[*Full name of company in liquidation*]

Between [*Full name of liquidator*], liquidator

And [*Here insert full name, place of residence, and occupation of intended recipient of notice*

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64N was revoked, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Forms 64N to 64R were inserted, as from 1 August 2000, by rule 22 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 High Court Amendment Rules 2000 (SR 2000/109) which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000. See rule 24 High Court Amendment Rules 2000 (SR 2000/109) which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Form 64O

r 700ZJ(b)

Notice to set aside voidable transaction under Companies Act 1955

[*General heading as in form 64N*]

Take notice that—

1 [*Full name*], the liquidator of [*Full name of company in liquidation*] (the **company**) wishes to have set aside the following transaction by the company that is voidable under section 266 of the Companies Act 1955:

[*Details of transaction to be set aside, including dates, amounts, and nature*].

2 The company was put into liquidation by the appointment of a liquidator on [*Date and time*] by—

*• special resolution of those shareholders entitled to vote and voting on the question

*• the board of the company on the occurrence of an event specified in the memorandum or articles

*• the High Court at [*Place*] under proceeding No [*Number*], as a result of an application for the appointment of a liquidator that was filed on [*Date*].

*Delete if inapplicable

3 The property or value that the liquidator wishes to recover is [*Details of property or value*].

4 In giving this notice, the liquidator relies on the following grounds:

Note: Here specifically and separately address each element of section 266 of the Companies Act 1955.

5 A person may apply to the Court for an order that the transaction not be set aside if the person—

(a) would be affected by the setting aside of the transaction; and

(b) considers that the transaction is not voidable.

6 In the case of a transaction that is voidable under section 266 of the Companies Act 1955, the transaction is set aside on the 28th day after the date of service of this notice unless, **before** that date, you apply to the Court for an order that the transaction not be set aside.

7 If 1 or more persons have applied to the Court for an order that the transaction not be set aside, the transaction is set aside on the day on which the last application is finally determined, unless the Court orders otherwise.

Dated at [*Place*] [*Date*].

.....
(Solicitor or Counsel for)
the Liquidator

Form 64O—*continued*

To the Registrar of the High Court at [*Place*].

And to [*Full names of the parties to be served*].

[*Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 3*].

Important information for recipient of notice

Legal advice

1 Although it is not essential to employ a solicitor for the purpose of this notice, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—

(a) carry on proceedings in the Court except by a solicitor; and

(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).

Legal aid

2 If you cannot afford to meet the cost of proceedings relating to this notice, you may be entitled to assistance under the Legal Services Act 1991 and the regulations made under that Act.

Application for order that transaction not be set aside

3 You may apply to the Court for an order that the transaction not be set aside. The application must be by way of originating application in accordance with Part IVA of the High Court Rules.

Last day for filing application

4 If you intend to apply to the Court for an order that the transaction not be set aside and the 28th day after the date of service of this notice falls on a day specified in column 1 of the following table, you must apply **on or before** the day specified in column 2 of the following table:

Form 64O—*continued*

28th day after date of service of notice	**Last day for filing**
Saturday or Sunday	The Friday before
Labour Day or the Sovereign's Birthday	The Friday before
Anzac Day, Waitangi Day, or the day observed as the anniversary of the province in which the Court is situated	The last day before the specified day on which the Court is open
A day in the period beginning on Good Friday and ending with the close of the Tuesday following Easter	The Thursday before Good Friday
A day in the period beginning on 24 December and ending with the close of 3 January (or 4 January, if 3 January is a Sunday or a Monday)	23 December, unless 23 December is a Saturday or a Sunday, in which event the last day for filing is the Friday before (either 21 or 22 December)

Office hours

5 The office hours of the Court are from 8.30 am to 5 pm except on Court holidays.

Forms 64A to 64O were inserted, as from 1 August 1988, by rule 6 High Court Amendment Rules 1988 (SR 1988/142).

Form 64O was revoked, as from 1 July 1994, by rule 29(1) High Court Amendment Rules 1994 (SR 1994/135).

Forms 64N to 64R were inserted, as from 1 August 2000, by rule 22 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 High Court Amendment Rules 2000 (SR 2000/109) which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000. See rule 24 High Court Amendment Rules 2000 (SR 2000/109) which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Form 64O clause 1 after the heading "*Legal Advice*" was substituted, as from 1 November 2004, by rule 28 High Court Amendment Rules 2004 (SR 2004/320).

Form 64P

r 700ZJ(b)

Notice to set aside voidable charge under Companies Act 1955

[*General heading as in form 64N*]

Form 64P—*continued*

Take notice that—

1 [*Full name*], the liquidator of [*Full name of company in liquidation*] (the **company**) wishes to have set aside the following charge by the company that is voidable under section 267 of the Companies Act 1955:

[*Details of charge to be set aside, including dates, amounts*].

2 The company was put into liquidation by the appointment of a liquidator on [*Date and time*] by—

*• special resolution of those shareholders entitled to vote and voting on the question

*• the board of the company on the occurrence of an event specified in the memorandum or articles

*• the High Court at [*Place*] under proceeding No [*Number*], as a result of an application for the appointment of a liquidator that was filed on [*Date*].

*Delete if inapplicable

3 In giving this notice, the liquidator relies on the following grounds:

Note: Here specifically and separately address each element of section 267 of the Companies Act 1955.

4 A person may apply to the Court for an order that the charge not be set aside if the person—

(a) would be affected by the setting aside of the charge; and

(b) considers that the charge is not voidable.

5 In the case of a charge that is voidable under section 267 of the Companies Act 1955, the charge is set aside on the 28th day after the date of service of this notice unless, **before** that date, you apply to the Court for an order that the charge not be set aside.

6 If 1 or more persons have applied to the Court for an order that the charge not be set aside, the charge is set aside on the day on which the last application is finally determined, unless the Court orders otherwise.

Dated at [*Place*] [*Date*].

.....
(Solicitor or Counsel for)
the Liquidator

To the Registrar of the High Court at [*Place*].

And to [*Full names of the parties to be served*].

[*Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 3*].

Form 64P—*continued*

Important information for recipient of notice

Legal advice

1 Although it is not essential to employ a solicitor for the purpose of this notice, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—

(a) carry on proceedings in the Court except by a solicitor; and

(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).

Legal aid

2 If you cannot afford to meet the cost of proceedings relating to this notice, you may be entitled to assistance under the Legal Services Act 1991 and the regulations made under that Act.

Application for order that charge not be set aside

3 You may apply to the Court for an order that the charge not be set aside. The application must be by way of originating application in accordance with Part IVA of the High Court Rules.

Last day for filing application

4 If you intend to apply to the Court for an order that the charge not be set aside and the 28th day after the date of service of this notice falls on a day specified in column 1 of the following table, you must apply **on or before** the day specified in column 2 of the following table:

Form 64P—*continued*

28th day after date of service of notice	**Last day for filing**
Saturday or Sunday	The Friday before
Labour Day or the Sovereign's Birthday	The Friday before
Anzac Day, Waitangi Day, or the day observed as the anniversary of the province in which the Court is situated	The last day before the specified day on which the Court is open
A day in the period beginning on Good Friday and ending with the close of the Tuesday following Easter	The Thursday before Good Friday
A day in the period beginning on 24 December and ending with the close of 3 January (or 4 January, if 3 January is a Sunday or a Monday)	23 December, unless 23 December is a Saturday or a Sunday, in which event the last day for filing is the Friday before (either 21 or 22 December)

Office hours

5 The office hours of the Court are from 8.30 am to 5 pm except on Court holidays.

Forms 64N to 64R were inserted, as from 1 August 2000, by rule 22 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 High Court Amendment Rules 2000 (SR 2000/109) which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000. See rule 24 High Court Amendment Rules 2000 (SR 2000/109) which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Form 64P clause 1 after the heading "*Legal Advice*" was substituted, as from 1 November 2004, by rule 28 High Court Amendment Rules 2004 (SR 2004/320).

Form 64Q

r 700ZJ(b)

Notice to set aside voidable transaction under Companies Act 1993

[*General heading as in form 64N*]

Form 64Q—*continued*

Take notice that—

1 [*Full name*], the liquidator of [*Full name of company in liquidation*] (the **company**) wishes to have set aside the following transaction by the company that is voidable under section 292 of the Companies Act 1993:

[*Details of transaction to be set aside, including dates, amounts, and nature*].

2 The company was put into liquidation by the appointment of a liquidator on [*Date and time*] by—

*• special resolution of those shareholders entitled to vote and voting on the question

*• the board of the company on the occurrence of an event specified in the constitution

*• the High Court at [*Place*] under proceeding No [*Number*], as a result of an application for the appointment of a liquidator that was filed on [*Date*].

*Delete if inapplicable

3 The property or value that the liquidator wishes to recover is [*Details of property or value*].

4 In giving this notice, the liquidator relies on the following grounds:

Note: Here specifically and separately address each element of section 292 of the Companies Act 1993.

5 A person may apply to the Court for an order that the transaction not be set aside if the person—

(a) would be affected by the setting aside of the transaction; and

(b) considers that the transaction is not voidable.

6 In the case of a transaction that is voidable under section 292 of the Companies Act 1993, the transaction is set aside on the 20th working day after the date of service of this notice unless, **before** that date, you apply to the Court for an order that the transaction not be set aside.

7 If 1 or more persons have applied to the Court for an order that the transaction not be set aside, the transaction is set aside on the day on which the last application is finally determined, unless the Court orders otherwise.

Dated at [*Place*] [*Date*].

.....
(Solicitor or Counsel for)
the Liquidator

To the Registrar of the High Court at [*Place*].

And to [*Full names of the parties to be served*].

[*Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 3*].

Form 64Q—*continued*

Important information for recipient of notice

Legal advice

1 Although it is not essential to employ a solicitor for the purpose of this notice, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—

(a) carry on proceedings in the Court except by a solicitor; and

(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).

Legal aid

2 If you cannot afford to meet the cost of proceedings relating to this notice, you may be entitled to assistance under the Legal Services Act 1991 and the regulations made under that Act.

Application for order that transaction not be set aside

3 You may apply to the Court for an order that the transaction not be set aside. The application must be by way of originating application in accordance with Part IVA of the High Court Rules.

Last day for filing application

4 If you intend to apply to the Court for an order that the transaction not be set aside and the 20th working day after the date of service of this notice falls on a day specified in column 1 of the following table, you must apply **on or before** the day specified in column 2 of the following table:

Form 64Q—*continued*

20th working day after date of service of notice	Last day for filing
The Tuesday following Easter	The Thursday before Good Friday
24 December	23 December in the same year, unless 24 December is a Monday, in which event the last day for filing is 21 December
3 January	23 December in the previous year, unless 3 January is a Wednesday or a Thursday, in which event the last day for filing is 21 December in the previous year
The day observed as the anniversary of the province in which the Court is situated	The last day before the specified day on which the Court is open

Office hours

5 The office hours of the Court are from 8.30 am to 5 pm except on Court holidays.

Definition of working day (Companies Act 1993)

6 **Working day** means a day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and

(b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and

(c) if 1 January in any year falls on a Friday, the following Monday; and

(d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

Forms 64N to 64R were inserted, as from 1 August 2000, by rule 22 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 High Court Amendment Rules 2000 (SR 2000/109) which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000. See rule 24 High Court Amendment Rules 2000 (SR 2000/109) which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Form 64Q clause 1 after the heading "*Legal Advice*" was substituted, as from 1 November 2004, by rule 28 High Court Amendment Rules 2004 (SR 2004/320).

Form 64R

r 700ZJ(b)

Notice to set aside voidable charge under Companies Act 1993

[*General heading as in form 64N*]

Take notice that—

1 [*Full name*], the liquidator of [*Full name of company in liquidation*] (the **company**) wishes to have set aside the following charge by the company that is voidable under section 293 of the Companies Act 1993:

[*Details of charge to be set aside, including dates, amounts*].

2 The company was put into liquidation by the appointment of a liquidator on [*Date and time*] by—

*• special resolution of those shareholders entitled to vote and voting on the question

*• the board of the company on the occurrence of an event specified in the constitution

*• the High Court at [*Place*] under proceeding No [*Number*], as a result of an application for the appointment of a liquidator that was filed on [*Date*].

*Delete if inapplicable

3 In giving this notice, the liquidator relies on the following grounds:

Note: Here specifically and separately address each element of section 293 of the Companies Act 1993.

4 A person may apply to the Court for an order that the charge not be set aside if the person—

(a) would be affected by the setting aside of the charge; and

(b) considers that the charge is not voidable.

5 In the case of a charge that is voidable under section 293 of the Companies Act 1993, the charge is set aside on the 20th working day after the date of service of this notice unless, **before** that date, you apply to the Court for an order that the charge not be set aside.

6 If 1 or more persons have applied to the Court for an order that the charge not be set aside, the charge is set aside on the day on which the last application is finally determined, unless the Court orders otherwise.

Dated at [*Place*] [*Date*].

.....
(Solicitor or Counsel for)
the Liquidator

To the Registrar of the High Court at [*Place*].

And to [*Full names of the parties to be served*].

[*Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 3*].

Form 64R—*continued*

Important information for recipient of Notice

Legal advice

1 Although it is not essential to employ a solicitor for the purpose of this notice, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—

(a) carry on proceedings in the Court except by a solicitor; and

(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).

Legal aid

2 If you cannot afford to meet the cost of proceedings relating to this notice, you may be entitled to assistance under the Legal Services Act 1991 and the regulations made under that Act.

Application for order that charge not be set aside

3 You may apply to the Court for an order that the charge not be set aside. The application must be by way of originating application in accordance with Part IVA of the High Court Rules.

Last day for filing application

4 If you intend to apply to the Court for an order that the charge not be set aside and the 20th working day after the date of service of this notice falls on a day specified in column 1 of the following table, you must apply **on or before** the day specified in column 2 of the following table:

Form 64R—*continued*

20th working day after date of service of notice	**Last day for filing**
The Tuesday following Easter	The Thursday before Good Friday
24 December	23 December in the same year, unless 24 December is a Monday, in which event the last day for filing is 21 December
3 January	23 December in the previous year, unless 3 January is a Wednesday or a Thursday, in which event the last day for filing is 21 December in the previous year
The day observed as the anniversary of the province in which the Court is situated	The last day before the specified day on which the Court is open

Office hours

5 The office hours of the Court are from 8.30 am to 5 pm except on Court holidays.

Definition of working day (Companies Act 1993)

6 **Working day** means a day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and

(b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and

(c) if 1 January in any year falls on a Friday, the following Monday; and

(d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

Forms 64N to 64R were inserted, as from 1 August 2000, by rule 22 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 High Court Amendment Rules 2000 (SR 2000/109) which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000. See rule 24 High Court Amendment Rules 2000 (SR 2000/109) which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Form 64R clause 1 after the heading "*Legal Advice*" was substituted, as from 1 November 2004, by rule 28 High Court Amendment Rules 2004 (SR 2004/320).

Form 65
r 730

Title of Documents in Application for Registration of Foreign Judgment

In the High Court of New Zealand

Registry No

In the matter of the Reciprocal Enforcement of Judgments Act 1934

and

In the matter of a judgment of the [*Describe foreign Court*]

Between [*Name of judgment creditor*]
Judgment Creditor

And [*Name of judgment debtor*]
Judgment Debtor

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Form 66
Rule 770(2)

General Heading for Action *in Personam*

In the High Court of New Zealand

In Admiralty

..... Registry No AD
..... / .....

Between [*Insert name of plaintiff*]

Plaintiff

And [*Insert name of defendant*]

Defendant

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 67

Rule 770(1)

Notice of Proceeding *in Personam*

[*General heading as in form 66*]

To [*insert name of defendant(s)*]

1. Unless, within 14 days after the service of this notice of proceeding on you (which period begins on the day after the day of service), you cause an appearance to be entered for you in the office of this Court at [*State place*], the plaintiff may proceed in the plaintiff's action without having it heard in Court and judgment may be given in your absence.

2. The trial of the action, if a trial is necessary, will take place at the Court at [*State place*] at a time to be fixed by the Court.

3. Revoked.

4. This notice of proceeding was issued by [*Insert full name*] appearing in person. My address for service is at [*Insert address*].

OR

This notice of proceeding was issued by [*Insert full name*], solicitor for the above named plaintiff(s). My firm is [*Insert name*] of [*Insert address*]. My address for service is at [*Insert address**].

*Where the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Given under the seal of the High Court of New Zealand at [*State place*] on ..... 19 .

.....

(Deputy) Registrar.

[*Note*: This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.]

Directions for Entering an Appearance

1. You may enter an appearance either personally (if suing in person) or by a solicitor at the office of the Court mentioned in the notice of proceeding, by filing a memorandum of appearance (in duplicate) in that office or by posting the memorandum (in duplicate) to the Registrar at that office. The appropriate form may be obtained at any office of the High Court.

2. If the last day for entering your appearance falls on a Saturday, a Sunday, or a holiday, you may file the memorandum of appearance on the day next following that Saturday, Sunday, or holiday, as the case may be, which is not a holiday.

3. In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January. [*This paragraph must be deleted if it conflicts with a direction given by the Court* .]

Form 67—*continued*

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 67 paragraph 3 was omitted, as from 1 July 2002, by rule 19(1) High Court Amendment Rules 2002 (SR 2002/132)

Form 67 was amended, as from 1 July 2002, by rule 19(2) High Court Amendment Rules 2002 (SR 2002/132) by substituting paragraph 3 under the heading "Directions for entering an appearance".

Form 68
Rule 771(2)

General Heading for Action *in Rem*

In the High Court of New Zealand

In Admiralty

.....Registry
No AD ...../
.....

Admiralty Action *in Rem*:

Between *See note 1*

Plaintiff(s)

And *See note 2*

Defendant(s)

Notes

1. Insert name of plaintiff(s), eg, The owners of the Ship "X".
2. Insert name of defendant(s), eg, The Ship "Y" (*or* The Ship "Y" and its freight *or* The Ship "Y" and its cargo and freight *or* The cargo ex the Ship "Y" *or* The proceeds of the Ship "Y" *or* The proceeds of the cargo ex the Ship "Y").

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 69
Rule 771(1)

Notice of Proceeding *in Rem*

[*General heading as in form 68*]

To the owners and all others interested in the [*Insert name of ship or describe property*].

1. Unless, within 14 days after the service of this notice of proceeding on you (which period begins on the day after the day of service), you cause an appearance to be entered for you in the office of this Court at [*State place*], the plaintiff may proceed in the plaintiff's action without having it heard in Court, and judgment may be given in your absence, and, if the thing described in this notice of proceeding is then under arrest of the Court, it may be sold by order of the Court.

2. The trial of the action, if a trial is necessary, will take place at the Court at [*State place*] at a time to be fixed by the Court.

3. Revoked

4. This notice of proceeding was issued by [Insert full name] appearing in person. My address for service is at [Insert address].

Form 69—*continued*

OR

This notice of proceeding was issued by [*Insert full name*], solicitor for the above named plaintiff(s). My firm is [*Insert name*] of [*Insert address*]. My address for service is at [*Insert address**].

*Where the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Given under the seal of the High Court of New Zealand at [*State place*] on ..... 19 .

.....

(Deputy) Registrar.

[*Note*: This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.]

Directions for Entering an Appearance

1. You may enter an appearance either personally (if suing in person) or by a solicitor at the office of the Court mentioned in the notice of proceeding, by filing a memorandum of appearance (in duplicate) in that office or by posting the memorandum (in duplicate) to the Registrar at the office. The appropriate form may be obtained at any office of the High Court.

2. The appearance must state the name and true address of the party appearing and the capacity in which that party appears, whether as owner or part owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them.

3. If the last day for entering your appearance falls on a Saturday, a Sunday, or a holiday, you may file the memorandum of appearance on the day next following that Saturday, Sunday, or holiday, as the case may be, which is not a holiday.

4. In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January. [*This paragraph must be deleted if it conflicts with a direction given by the Court.*]

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 69 paragraph 3 was omitted, as from 1 July 2002, by rule 20(1) High Court Amendment Rules 2002 (SR 2002/132)

Form 69 was amended, as from 1 July 2002, by rule 20(2) High Court Amendment Rules 2002 (SR 2002/132) by substituting para 4 under the heading "Directions for entering an appearance".

Form 70

Rule 771(6)

Notice of Proceeding Both *in Rem* and *in Personam*

[*General heading as in form 66*]

To the owners and all others interested in the [*Insert name of ship or describe property*].

And to the abovenamed second defendant.

1. Unless, within 14 days after the service of this notice of proceeding on you (which period begins on the day after the day of service), you cause an appearance to be entered for you in the office of this Court at [*State place*], the plaintiff may proceed in the plaintiff's action without having it heard in Court, and judgment may be given in your absence, and, if the thing described in this notice of proceeding is then under arrest of the Court, it may be sold by order of the Court.

2. The trial of the action, if a trial is necessary, will take place at the Court at [*State place*] at a time to be fixed by the Court.

3. This notice of proceeding was issued by [*Insert full name*] appearing in person. My address for service is at [*Insert address*].

Form 70—*continued*

OR

This notice of proceeding was issued by [*Insert full name*], solicitor for the above named plaintiff(s). My firm is [*Insert name*] of [*Insert address*]. My address for service is at [*Insert address**].

*Where the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Given under the seal of the High Court of New Zealand at [*State place*] on ..... 19 .

.....
(Deputy) Registrar

[*Note*: This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.]

Directions for Entering an Appearance

1. You may enter an appearance either personally (if suing in person) or by a solicitor at the office of the Court mentioned in the notice of proceeding, by filing a memorandum of appearance (in duplicate) in that office or by posting the memorandum (in duplicate) to the Registrar at the office. The appropriate form may be obtained at any office of the High Court.

2. If you are entering an appearance for the ship [*Insert name of ship or describe property*], the appearance must state the name and true address of the party appearing and the capacity in which that party appears, whether as owner or part owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them.

3. If the last day for entering your appearance falls on a Saturday, a Sunday, or a holiday, you may file the memorandum of appearance on the day next following that Saturday, Sunday, or holiday, as the case may be, which is not a holiday.

4. In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January. [*This paragraph must be deleted if it conflicts with a direction given by the Court.*]

Endorsements to be made on notice of proceeding before issue

The plaintiff claims against the [*Insert name of ship or describe property*] under sections [*Specify*] of the Admiralty Act 1973. [*Insert summary of claim and amount*.]

The plaintiff claims against the second defendant under [*Insert summary of claim and amount*].

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 70 was substituted, as from 1 July 2002, by rule 21(1) High Court Amendment Rules 2002 (SR 2002/132) by substituting para 4 under the heading "Directions for entering an appearance"

Form 70—*continued*

Form 70 was amended, as from 1 July 2002, by rule 21(2) High Court Amendment Rules 2002 (SR 2002/132) by omitting the words "The plaintiff also claims against the [*Insert name of ship or describe property*] and against the second defendant the sum of $[*Insert sum*] for the costs of and incidental to service of this notice of proceeding".

Form 71

Rule 773(1)

Memorandum of Appearance

[*General heading as in form 66 or form 68, as the case requires*]

Please enter an appearance for [*See notes 1-3*] in this action.

This appearance is filed by [*Insert full name*] appearing in person. My address for service is at [*Insert address*].

Dated this ..... day of ..... 19 .

.....

(Signed (party or solicitor))

Directions

1. If the last day for entering an appearance falls on a Saturday, a Sunday, or a holiday, the memorandum of appearance may be filed on the day next following that Saturday, Sunday, or holiday, as the case may be, which is not a holiday.

2. Subject to any direction by the Court, in calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.

Notes

1. Enter the name of defendant, defendant's occupation, and place of residence or business. In an action in rem, the appearance must state the name and true address of the party appearing and the capacity in which that party appears, whether as owner or part owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them (*See rule 773(11)*).

2. If the appearance is to a counterclaim, it should state accordingly and the heading to the memorandum should contain the double title of claim and counterclaim. If the appearance is by an added defendant or a third party or an intervener, the memorandum should contain brief particulars of the order or notice served on the party entering the appearance.

3. If the appearance is filed by a solicitor who has another solicitor acting as that solicitor's agent at the place of filing, the name and address of the agent or the agent's firm should be added to the name and address of the principal or the principal's firm. If the appearance is conditional, add the words "This appearance has effect as an unconditional appearance unless within 10 days after the filing of the appearance application is made to set aside the notice of proceeding or service of the notice of proceeding and an order is made accordingly (*See rule 773(6)*)."

Form 71—*continued*

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 71 paragraph 2 under the heading "directions" was substituted, as from 1 July 2002, by rule 22 High Court Amendment Rules 2002 (SR 2002/132).

Form 72
Rule 776(1)

Application for Warrant of Arrest

[*General heading as in form 68*]

1. The plaintiff applies for a warrant for the arrest of [*Insert name of ship or describe property*].

2. The present location of the property to be arrested is [*Specify location*].

3. This application is accompanied by the affidavit(s) of [*Insert names of deponents*] deposing to the matters referred to in Part 14 of the High Court Rules, and an indemnity to the Registrar.

Dated this day of 19 .

.....
(Solicitor for) Plaintiff.

To the Registrar of the High Court at [*State place*].

Certificate of Registrar

I certify that according to the records of the Court—

(a) A notice of proceeding in an action in rem has been issued against [*Insert name of ship or describe property to be arrested*].

(b) That on [*Insert date*] I made inquiries from the Central Registry and ascertained that [*State result of inquiries*].

(c) This application was filed at [*Insert time and date*].

Dated this day of 19 .

.....
(Deputy) Registrar.

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 73
Rule 776(4)(b)

Indemnity to Registrar

[*General heading as in form 68*]

Form 73—*continued*

To The Registrar of the High Court at [*State place*].

The applicant indemnifies you—

(a) For any fees and expenses (including harbour dues) that may be incurred by you in the execution of the warrant of arrest issued against [*Specify*]; and

(b) Against any liability arising out of or incidental to any act lawfully done by you in executing that warrant.

Dated this day of 19 .

.....
(Solicitor for) Applicant.

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 74
Rule 776(7)

Warrant of Arrest

[*General heading as in form 68*]

To the Registrar of the High Court at [*State place*] **and to** the Registrar's appointed officers or agents.

You are directed to arrest the [*Insert name of ship or describe property*] and keep it under safe arrest until you receive further orders from the Court.

Dated this day of 19 .

.....
(Deputy) Registrar.

This Warrant of Arrest is taken out by [*Insert name of solicitor*], solicitor for [*Insert name of party*].

Registrar's endorsement as to service

This warrant was executed by [*Insert name of person executing the warrant*] at [*Insert time and date*].

.....
(Deputy) Registrar.

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 75
Rule 776(15)

Notice by Registrar of Arrest of Property

[*General heading as in form 68*]

Form 75—*continued*

[*Insert name of ship or describe property*]

1. The ship named (or property described) above is in custody or possession of the Registrar of the High Court of New Zealand by virtue of a warrant from this Court.

2. All persons are cautioned not to attempt to remove the property or interfere with it without the written authority of the Registrar, or of the Registrar's officers or agents, otherwise they will be in contempt of Court.

Given under the seal of the High Court of New Zealand at [*State place*] on ..... 19 .

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 76
Rule 777(1)

Request for Caveat Against Arrest

[*NB No general heading*]

[*Insert name of ship or describe property*]

1. I request a caveat be entered against the arrest of the ship named (or property described) above.

2. I undertake to enter an appearance in any action that may be begun against it in the Court.

3. I undertake, within 3 days after receiving notice of an action in the Court concerning the arrested property, to give security to the satisfaction of the Registrar in a sum not exceeding $ [*Insert sum*] or to pay that sum into Court.

4. My address for service is at [*Insert address*].

Given under the seal of the High Court of New Zealand at [*State place*] on ..... 19 .

.....
(Solicitor for) Applicant.

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 77
Rule 778(1)

Release From Arrest

[*General heading as in form 68*]

Form 77—*continued*

To the Registrar of the High Court of New Zealand at [*State place*] and the Registrar's appointed officers and agents.

1. The [*Insert name of ship or describe property*] has been held under arrest in accordance with a warrant of arrest issued at [*Insert place and date*].

2. You are now directed to release the arrested property.

3. The ground for release is [*Specify ground, eg Court order, payment into Court, etc*] Given under my hand (**or* Given under the seal of the High Court of New Zealand) at [*Insert place and date*].

.....
Registrar.

*If the release is under an order of the Court, it must be issued under the seal of the Court

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 78
Rule 778(5)

Bail Bond

[*Heading as in action*]

1. An action in rem against the [*Insert name of ship or describe property*] is pending in this Court and the parties to the action are [*Insert names*].

2. I (or We) submit to the jurisdiction of the Court.

3. If the defendant does not satisfy any judgment in this proceeding or does not pay any sum due to be paid by the defendant under any admission of liability in this action or under any settlement agreement which is filed in this Court, then execution may issue against me (or us), my (or our) executors or administrators or assigns, and my (or our) goods and chattels, and the goods and chattels of my (or our) executors, administrators, or assigns, for a sum not exceeding $[*Insert sum*].

The Common Seal etc, *or*
This bond was signed by
(Sureties)
at this day of
19

before me
A Solicitor of the High Court
of New Zealand (or A Registrar
of the High Court of
New Zealand) (or A Notary Public).

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 79
Rule 779(1)

Request for Caveat Against Release and Payment

[*NB No general heading*]

[*Insert name of ship or describe property*]

I request a caveat be entered against—

(a) The issue of a release for the arrested property; and

(b) Payment out of Court of the proceeds of sale (if the Court should order that the arrested property be sold).

Dated this day of 19 .

.....
[Signed].

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 80
Rule 784(4)

Request for Commission for Appraisement and Sale

[*General heading as in form 68*]

I (*or* We) request a commission for the appraisement and sale of [*Insert name of ship or describe property*] which was ordered by the Court on [*Insert date*].

Dated this day of 19 .

.....
[Signed].

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 81
Rule 784(5)

Commission for Appraisement and Sale

[*Heading as in action*]

Form 81—*continued*

To the Registrar of the High Court at [*State place*] **and to** the Registrar's appointed officers and agents.

1. The Court has ordered that the [*Insert name of ship or describe property*] be appraised and sold.

2. You are directed to choose one or more experienced persons and to swear them to appraise the property according to its true value.

3. You are also directed that, once that value has been certified in writing by the appraiser or appraisers, you are to cause the property to be sold by [*Specify whether sale to be by way of private treaty or public auction*] for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.

4. You are further directed that, immediately on the sale being completed, you are to pay the proceeds of the sale into Court and to file in the Court the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Dated this day of 19 .

.....
(Deputy) Registrar.

This Commission is taken out by [*Insert name*], solicitor for the [*Specify party*].

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 82

Rule 791(2)(c)

Notice for Priority of Claims on Sale of Ship

[*General heading as in form 68*]

Form 82—*continued*

1. The [*Insert name of ship or describe property*] has been sold and the gross proceeds of such sale, amounting to $[*Insert sum*] have been paid into Court at [*State place*].

2. The priority of the claims against the proceeds of sale will not be determined until after [*Insert date of expiry of period specified in the order for sale*].

3. Any person having a claim against the ship or the proceeds of sale of the ship on which that person intends to proceed to judgment should commence an action to enforce that claim before the date specified in paragraph 2 and, if necessary, apply to the Court to extend the period within which the order of priority of claims will not be determined.

4. If the steps referred to in paragraph 3 are not taken, an order determining the priority of claims against the ship or the proceeds of sale of the ship may be made without notice to the person claiming against the ship or the proceeds of sale of the ship.

Dated this day of 19 .

.....
(Deputy) Registrar.

Forms 66 to 82 were inserted, as from 1 February 1998, by rule 17 High Court Amendment Rules 1997 (SR 1997/350).

Form 83
Rule 799(1)(a

Constituency Election Petition

Form 83—*continued*

Part 8, Electoral Act 1993

In the High Court of New Zealand

No .....

.....Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

AB [*and others*], Petitioner(s), and
CD [*and others*], Respondent(s)

Election

This petition relates to the election of a member of Parliament for the Electoral District of: .....

Polling day: .....

Candidate(s): .....

Candidate returned as duly elected by Returning Officer: .....

Day on which the Returning Officer publicly notified result of poll: .....

Petitioner(s)

Note: See section 230(1) of the Electoral Act 1993 for the persons who may present a constituency election petition.

Name(s): .....

Respondent(s)

Name(s): [*Insert the name of the member whose election or return this petition complains of, and, if the petition complains of the conduct of the Returning Officer, the name of the Returning Officer, and, if the petition complains of the conduct of the Registrar of Electors, the name of the Registrar of Electors.*]

Grounds

The petition is based on the following grounds: .....
.....
.....
.....
.....

Facts

The petition relies on the following facts: .....
.....
.....
.....
.....

Form 83—*continued*

Determination(s) sought

The petition seeks the following determination(s): [*For example, That the candidate returned was not duly elected or returned and that the election was void, or That the candidate ..... was duly elected and should have been duly returned, or as the case may be.*]

....
Signature(s) of petitioner(s): [*Insert name(s)*] Date

Note: Once completed this petition must be presented by being filed—

(a) In the Registry of the High Court nearest the place where the election was held (see section 230(4) of the Electoral Act 1993); and

(b) Within 28 days after the day on which the Returning Officer publicly notified the result of the poll (unless section 231(2) of the Electoral Act 1993 applies).

The petition is filed by the petitioner(s) in person. The address for service of the petitioner(s) is

or

The petition is filed by AB, solicitor for the petitioner(s), of the firm of XYZ.

The address for service of the petitioner(s) is

Documents for service on the petitioner(s) may be left at that address for service or may be—

(a) Posted to the solicitor at [*Insert Post Office box address*]; or

(b) Left for the solicitor at a document exchange for direction to [*Insert document exchange box number*]; or

(c) Transmitted to the solicitor by facsimile to [*Insert facsimile number*].

or

The petition is filed by AB, solicitor for the petitioner(s), of the firm of XYZ, whose postal address is

The solicitor's agent in the proceeding is

The address for service of the petitioner(s) is

Documents for service on the petitioner(s) may be left at that address for service or may be—

(a) Posted to the solicitor at [*Insert Post Office box address*]; or

(b) Left for the solicitor at a document exchange for direction to [*Insert document exchange box number*]; or

(c) Transmitted to the solicitor by facsimile to [*Insert facsimile number*].

Forms 83 to 88 were inserted, as from 1 December 1998, by rule 4 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 84
Bond for Security

Rule 805(1)

In the High Court of New Zealand

No .....

.....Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

AB [*and others*], Petitioner(s), and
CD [*and others*], Respondent(s)

I (*or* We):
[*Insert the full name, residence, and occupation of the, or each, surety*]

am (*or* are jointly and severally) bound to pay to Her Majesty in respect of the Government of New Zealand any amount not exceeding $[*Insert sum*], unless the petitioner(s) pays (*or* pay) all costs that in proceedings to determine the petition may become payable by the petitioner(s)—

(a) To any witness summoned on the petitioner's (*or* s') behalf; and
(b) To the respondent(s).

The Common Seal etc, *or*
This bond was signed by
[*Insert name of the, or each, surety*]
at this day
of 19

[*Insert signature(s) or seal(s)*]

before me

Signature: .....
.....

A Solicitor of the High Court of New Zealand (*or* A Registrar, *or* Deputy Registrar, of the High Court of New Zealand) (*or* A Notary Public).

Forms 83 to 88 were inserted, as from 1 December 1998, by rule 4 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 85

Rule 809(4)

Notice of Time and Place Appointed for the Trial of a Constituency Election Petition

In the High Court of New Zealand

No .....

.....Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

AB [*and others*], Petitioner(s), and
CD [*and others*], Respondent(s)

The petition will be tried at ..... on the ..... day of ..... 19...., at ..... am (*or* pm), or as soon after that time as the parties may be heard.

Dated this ..... day of ..... 19.... .

Signature: .....
.....
(Deputy) Registrar of the High Court at

Forms 83 to 88 were inserted, as from 1 December 1998, by rule 4 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 86

Rule 810(2)

Notice of Intention to Apply for Leave to Withdraw a Constituency Election Petition

In the High Court of New Zealand

No .....

.....Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

AB [*and others*], Petitioner(s), and
CD [*and others*], Respondent(s)

The petitioner(s) will at such time and place as the Court may appoint for the purpose, being at least 7 days after the ..... day of ..... 19...., apply to the High Court for leave to withdraw the petition on the grounds that: .....
.....

At the hearing of the application for leave to withdraw the petition, a person may apply to be substituted as a petitioner, if (and only if)—

(a) The person might in the first instance have presented the petition; and

(b) The person has given the Registrar of the Court, within 7 days after the publication of this notice, written notice that the person intends to apply to be substituted.

Dated this ..... day of ..... 19.... .

Signature(s) of Petitioner(s): .....

Forms 83 to 88 were inserted, as from 1 December 1998, by rule 4 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 87

Rule 811

Application for Leave to Withdraw a Constituency Election Petition

In the High Court of New Zealand

No .....

.....Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

AB [*and others*], Petitioner(s), and
CD [*and others*], Respondent(s)

The petitioner(s) will on the ..... day of ..... 19...., at ..... am (*or* pm) (the time and place appointed for the purpose by the Court), or as soon after that time as the petitioner(s) may be heard, apply to the Court for leave to withdraw the petition on the grounds that: .....

and on the grounds that the prescribed notice of the petitioner's (*or* s') intention to make this application has been duly served and published.

Dated this ..... day of ..... 19 .... .

Signature(s) of Petitioner(s): .....

Forms 83 to 88 were inserted, as from 1 December 1998, by rule 4 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 88

Rule 814(2)

Notice of Abatement of a Constituency Election Petition

In the High Court of New Zealand

No .....

.....Registry. In the matter of an Election Petition relating to the [*Name of electoral district*] Electoral District

Between

AB [*and others*], Petitioner(s), and
CD [*and others*], Respondent(s)

This petition has abated because the petitioner (*or* the survivor of the petitioners) has died.

Any person who might in the first instance have presented the petition may apply to the High Court to be substituted as a petitioner, by giving notice to the Registrar of the Court within 28 days from the date of publication of this notice.

Dated this ..... day of ..... 19.... .

Signature: .....
(Deputy) Registrar of the High Court at .....

Forms 83 to 88 were inserted, as from 1 December 1998, by rule 4 High Court Amendment Rules (No 2) 1998 (SR 1998/325).

Form 89

r 826(1)

Request for issue of bankruptcy notice

Complete in accordance with the requirements of rule 823.

To the Registrar of the High Court at [*place*]

1 I, [*full name, address, description of judgment creditor*], request that the Court issue a bankruptcy notice against [*full name, address, description of judgment debtor*].

2 *If rule 831 requires a different statement, include that instead of this statement.*

The judgment debtor, [*name*], has, for the greater part of the past 6 months, resided at [*full address*] or carried on business at [*full address*]*.

**Include this address if the judgment debtor resides at a place other than the debtor's place of business, otherwise omit.*

3 I produce a certified copy of a final judgment/final order* against [*name of judgment debtor*], obtained by me in the [*name*] Court on [*date*].

**Select one.*

4 Execution on the judgment has not been stayed.

Dated:

Signed:

(judgment creditor/solicitor for judgment creditor*)

**Select one.*

Schedule 2 schedule 1 form 89: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 90
r 826(3)

Bankruptcy notice

Complete this notice in accordance with the requirements of rule 823.

1 Within [*10 working days, or, if the notice is served outside New Zealand, the period specified in the order for service*] after you are served with this notice (excluding the day of service)—

(a) you must pay to the judgment creditor, [*full name, address*], [*amount*], either in person or at the address for service of the judgment creditor (or the solicitor for the judgment creditor). This amount is the amount the judgment creditor claims is due (or remains unpaid) on a final judgment or final order, on which execution has not been stayed, that the judgment creditor obtained against you in the [*name*] Court on [*date*]; or

(b) you must secure or enter into a new formal agreement for the amount referred to in paragraph (a) to the judgment creditor's satisfaction or to the satisfaction of the High Court; or

(c) you must satisfy the High Court that you have a counterclaim, set-off, or cross-demand against the judgment creditor—

(i) that equals or exceeds the amount claimed by the judgment creditor; and

(ii) that you could not put forward in the action or proceeding in which the judgment or order was obtained.

2 The judgment creditor also claims costs against you of [*amount*], including a fee for filing a request for this notice of [*amount*] and a fee of $150 for serving this notice.

3 A copy of the judgment referred to in paragraph 1 is attached.

Form 90—*continued*

Notes

Please carefully read the following information.

Consequences of not complying with notice

If you do not comply with paragraph 1, you will have committed an act of bankruptcy on which bankruptcy proceedings may be taken against you.

Procedure for counterclaiming, etc

If you consider you have a counterclaim, set-off, or cross-demand against the judgment creditor that comes within paragraph 1(c), you must apply to the High Court to set aside this notice.

You must apply within 10 working days from the date of receiving this notice. Your application must be supported by affidavit.

You must, within the same time, also serve a copy of the application and supporting affidavit on the judgment creditor.

Costs

If you do not dispute the claim for costs, you must, within 10 working days, pay the costs claimed to the judgment creditor, either in person or at the address for service of the judgment creditor, or the solicitor for the judgment creditor, unless—

(a) the amount claimed has been secured or has become the subject of a new formal agreement to the judgment creditor's satisfaction or to the satisfaction of the High Court; or

(b) the amount of any counterclaim, set-off, or cross-demand that you advance is sufficient to cover the costs claimed as well as the amount specified in paragraph 1(a).

If you dispute the claim for costs, you must, within 10 working days, apply to the High Court to fix costs.

If you do not pay the costs claimed or dispute the claim for costs, you will commit an act of bankruptcy for which you may be adjudicated bankrupt.

This notice is issued by [*name, address of judgment creditor*] in person/ by [*full name and address for service of solicitor for judgment creditor*]*.

**Select one.*

Note: The amount claimed for costs in paragraph 2 must be determined as if the proceeding were a category 2 proceeding specified in Schedule 2 of the High Court Rules and the time allocation were the time allocation for item 18 and band B specified in Schedule 3 of the High Court Rules.

Schedule 2 schedule 1 form 90: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 90—*continued*

Form 90 was substituted, as from 1 November 2004, by rule 27(1) High Court Amendment Rules 2004 (SR 2004/320).

Form 91

r 829(1)

Creditor's application for adjudication order

Complete this application in accordance with the requirements of rule 823.

To the Registrar of the High Court at [*place*]

and

To [*full name of debtor*]

This document notifies you that—

1 The creditor of [*full name, address of debtor*] will on [*date*] at [*time*] ask the Court to make orders—

(a) adjudicating [*full name of debtor*] bankrupt; and

(b) as to costs.

2 The creditor claims that—

(a) the debtor has, for the greater part of the past 6 months, resided at/carried on business at [*full address*]* [*or state other relevant facts under rule 831*]; and

*Select one.

(b) the debtor owes the creditor [*amount and particulars of debt, including when it is payable*]; and

(c) the debtor has committed an available act of bankruptcy, as follows: [*state particulars, including date, of the act of bankruptcy*]; and

(d) the creditor has no security for the debt/is a secured creditor as follows: [*state particulars of the security*].*

*Select one.

3 The creditor's name and address is [*creditor's full name and address*].

Dated at [*place, date*]

Applicant creditor:

Witness:

Signed:

(Deputy Registrar/Registrar/solicitor/Justice of the Peace)*

*Select one.

Schedule 2 schedule 1 form 91: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 92

r 829(2)

Affidavit supporting creditor's application for adjudication

Complete this affidavit in accordance with the requirements of rule 823.

Select the statement that applies.

Statement A

I, [*full name, address, description of applying creditor*], the applicant, swear that the statements I make in the accompanying application are, to the best of my knowledge, information, and belief, true.

Statement B

I, [*full name, address, description*], being a person having knowledge of the facts to which the accompanying application relates, swear that the statements in the application are, to the best of my knowledge, information, and belief, true.

Signed:

(applicant creditor/deponent*)

*Select one.

Sworn at [*place, date*]

Before me: [*name, signature*]

(A solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*)

**Select one.*

Note: If the applicant cannot state on oath that the statements in the application are, to the best of the applicant's knowledge and belief, true, the applicant must set out the statements that the applicant can swear to the truth of, and file a further affidavit by some person or persons who can swear to the truth of, the remaining statement(s).

Schedule 2 schedule 1 form 92: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 92 was amended, as from 1 July 2002, by rule 23 High Court Amendment Rules 2002 (SR 2002/132) by inserting, below the words "Petitioning Creditor", the word "Witness".

Form 93
r 829(2)

Summons to debtor

Complete this summons in accordance with the requirements of rule 823.

To [*full name, address, description of debtor*]

1 You are summoned to attend before the High Court at [*place, time, date*] (the **hearing date**).

2 [*Full name, address, description of applicant*] has filed an application in this Court to adjudicate you bankrupt.

3 The Court will consider whether you should be adjudicated bankrupt—

(a) on the following grounds: [*specify grounds*]; and

(b) on the evidence contained in the affidavit filed in support of the application.

4 If, by the hearing date, you have not paid the amount of [*amount specified in the creditor's application*] to the applicant, either in person or at the address for service of the applicant (or solicitor for the applicant), and you have not paid or disputed the amount of the costs claimed by the applicant in the bankruptcy notice served on you, the applicant is entitled to ask the Court to adjudicate you bankrupt.

5 The applicant also claims costs against you of [*amount*], including a fee for filing this summons of [*amount*] and a fee of $150 for serving this summons.

6 If you intend to oppose the making of an order adjudicating you bankrupt you must, by 1 pm on the last working day before the hearing of the application, take the following steps:

(a) file a notice of opposition in form 94, together with an affidavit in support of the opposition; and

(b) serve a copy of those documents on the applicant creditor.

7 If you do not dispute the claim for costs you must, by the hearing date, pay the costs claimed by the applicant, either in person or at the address for service of the applicant (or the solicitor for the applicant).

Form 93—*continued*

8 If you dispute the claim for costs, you may—

(a) before the hearing date, apply to the Court to fix costs; or

(b) at the hearing, apply orally to the Court to fix costs.

9 You are not required to attend the hearing and no warrant will be issued if you do not attend, but if you do not attend the hearing the Court will proceed in your absence.

Dated:

Signed:

(Registrar/Deputy Registrar*)

**Select one.*

This summons is issued by [*full name and address for service of applicant*] in person/by [*full name and address for service of solicitor for applicant*]*.

**Select one.*

Note: The amount claimed for costs in paragraph 5 must be determined as if the proceeding were a category 2 proceeding specified in Schedule 2 of the High Court Rules and the time allocation were the time allocation for item 19 and band B specified in Schedule 3 of the High Court Rules.

Schedule 2 schedule 1 form 93: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 94

r 836

Notice by debtor of intention to oppose application

Complete this notice in accordance with the requirements of rule 823.

To [*full name and address for service of* (*solicitor for*) *the applicant creditor*] and the Registrar of the Court at [*place*]

This document notifies you that—

1 I, [*full name, address, description of debtor*], intend to oppose the making of an order of adjudication as sought in the application.

2 I intend to dispute the applicant creditor's debt/the act of bankruptcy*—

(a) on the following grounds: [*specify grounds*]; and

(b) on the evidence contained in the affidavit filed in support of this notice.

**Select one*.

3 *For this paragraph, select the statement that applies.*

Statement A

I dispute the claim for costs and now apply to the Court to fix costs on the following grounds: [*specify grounds*].

Statement B

I dispute the claim for costs and will apply orally to the Court to fix costs at the hearing.

Dated:

Signed:

(debtor)

Schedule 2 schedule 1 form 94: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 94 was substituted, as from 1 November 2004, by rule 27(2) High Court Amendment Rules 2004 (SR 2004/320).

Form 95

r 822(5)

Warrant to search for and seize bankrupt's property under section 150 or 151 of Insolvency Act 2006

To [*the Official Assignee or other authorised person*]

1 [*Full name, address, description of bankrupt*] was adjudicated a bankrupt on [*date*].

2 You and your assistants are authorised to—

(a) enter and search [*specify locality*]; and

(b) seize all or any part of the property of the bankrupt in the custody or possession of the bankrupt or any other person; and

(c) if necessary to effect that seizure,—

(i) to break open any building or room of the bankrupt where the bankrupt is believed to be; and

(ii) to break open any building, room, or receptacle of the bankrupt where any of the bankrupt's property is believed to be; and

(iii) to seize and take possession of that property; and

(d) *Include this paragraph only in a warrant under section 150 of the Insolvency Act 2006, otherwise omit.*

seize any document relating to the bankrupt's property, conduct, or dealings.

3 You must safely detain and keep in your possession anything that you have seized until it is disposed of or dealt with by the Official Assignee in accordance with the insolvency Act 2006.

Dated:

Signed:

(Registrar/Deputy Registrar*)

**Select one.*

Schedule 2 schedule 1 form 95: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 96
r 854(1)

Notice of objection

Complete this notice in accordance with the requirements of rule 823.

This document notifies you that I, the Official Assignee/[*full name, address, description of creditor*]*, object to the automatic discharge of the bankrupt.

**Select one.*

Omit the following sentence if the Official Assignee is objecting.
A copy of the order of the Court permitting the objection is attached.

Dated:

Signed:

(Official Assignee/Deputy Official Assignee/creditor*)

**Select one.*

Schedule 2 schedule 1 form 96: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 97
r 860

Proposal by insolvent to creditors under Part 5, subpart 2, of the Insolvency Act 2006

Form 97—*continued*

I, [*full name, address, description of insolvent person*] (the **insolvent**), submit the following proposal under the Insolvency Act 2006:

1 That payment/satisfaction* of my debts to the secured creditors will be made in the following manner: [*specify terms of proposal in respect of secured claims*].

**Select one.*

2 That payment/satisfaction* of debts directed by the Insolvency Act 2006 to be paid in priority to all other debts in the distribution of the property of a bankrupt will be made as follows: [*specify terms of proposal in respect of preferred claims*].

**Select one.*

3 That provision for payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal will be made in the following manner: [*specify terms of proposal in respect of the fees and expenses of the trustee*].

4 *For this paragraph, select the statement that applies.*

Statement A

That a dividend of [*amount*] will be paid on all unsecured debts.

Statement B

That the terms of the proposal in respect of unsecured claims are as follows: [*specify terms*].

5 [*Specify the terms of any other offer, otherwise omit this paragraph.*]

6 That the money payable under this proposal will be paid over to the trustee, [*full name, address*], and the payment of the money will be secured in the following manner: [*list full names and addresses of sureties, if any, and specify the terms of any proposed security or charge or guarantee*].

7 That [*full name, address*] is willing to act as trustee in terms of this proposal.

Dated:

Signed:

(insolvent)

I am willing to act as trustee in terms of this proposal.

Dated:

Signed:

(trustee)

936 Schedule 2 schedule 1 form 97: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Form 97—*continued*

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 98

r 860

Statement of affairs and affidavit

Form 98—*continued*

Statement showing the assets, debts, and liabilities of [*full name, address, description of insolvent person*] (the **insolvent**).

Assets	**$**
Stock-in-trade at [*place*], estimated at	
Book debts, estimated to produce	
Cash in hand	
Cash in [*name of bank*]	
Furniture and other personal property according to list attached and marked "A"	
Real property according to list attached and marked "B"	
Surplus from securities in hands of secured creditors	
Other assets	
Total assets	
Debts and liabilities	
Unsecured creditors according to list attached and marked "C"	
Secured creditors according to list attached and marked "D"	
Less estimated value of securities	
Surplus	
Other liabilities according to list attached and marked "E"	
Total debts	

I, [*full name, address, description of insolvent person*], swear that the above statement and the lists marked "A", "B", "C", "D", and "E" are a correct statement of my assets, debts, and liabilities, the names and addresses of my creditors, and the securities held by them.

Sworn at [*place, date*]
(insolvent person)

Before me: [*name, signature*]

(A solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*
**Select one.*

Schedule 2 schedule 1 form 98: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Form 98—*continued*

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 99

r 861

Report of trustee on proposal

I, [*full name, address, description of trustee*], the trustee named in the proposal of [*full name, address, description of insolvent*] (the **insolvent**), report to the Court as follows:

1 The insolvent on [*date*] lodged in the Court a proposal. A correct copy (marked "A") is attached.

2 On [*date*], I gave notice to every known creditor affected by the proposal (the names and addresses of whom are listed in the document marked "B" attached), that a meeting of creditors would be held on [*date*] to consider the proposal.

3 The notice was accompanied by the following:

(a) a statement of the assets, debts, and liabilities of the insolvent:

(b) a list of the insolvent's creditors affected by the proposal and showing the amounts of their claims:

(c) a copy of the insolvent's proposal, a form of proof of debt, and a voting letter.

4 I attach correct copies of the notice (marked "C"), the statement of affairs (marked "D"), and the list of creditors (marked "E").

5 The meeting of creditors was held on [*date*] and was presided over by [*full name*].

6 *For this paragraph, select the statement that applies.*

Statement A

The proposal was accepted by the required majority of creditors.

Statement B

The proposal was amended at the meeting and was accepted by the required majority of creditors (as amended).

7 A correct copy of the resolution of the meeting (marked "F") is attached.

8 In my opinion—

Form 99—*continued*

(a) the assets of the insolvent and their fair realisable value are as follows: [*details of assets, giving the value as carried on the books of the insolvent and the trustee's estimate in each case of their realisable value*]; and

(b) the debts and liabilities of the insolvent are as follows: [*details of debts and liabilities, including whether secured, preferred, or unsecured, and pointing out discrepancies (if any) between the debts and liabilities as declared by the insolvent and as subsequently proved and admitted by the trustee*].

(c) *For this paragraph, select the statement that applies.*

Statement A

the debtor's proposal is an advantageous one for the creditors for the following reasons: [*specify fully the reasons of the trustee*].

Statement B

the debtor's proposal is not advantageous for the creditors for the following reasons: [*specify fully the reasons of the trustee*].

Dated:

Signed:

(trustee)

Schedule 2 schedule 1 form 99: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 100

r 863(2)

Account of assets, debts, etc, of deceased person verified by affidavit

Form 100—*continued*

Statement showing the assets, debts, and liabilities of the estate of [*full name, former address of deceased*] (the **deceased**).

Assets	**$**
Stock-in-trade at [*place*], estimated at	
Book debts, according to list attached marked "A"	
Cash in hand	
Cash in [*name of bank*]	
Household furniture and effects	
Real property according to list attached and marked "B"	
Surplus from securities in hands of secured creditors	
Other assets according to list attached and marked "C"	
Total assets	
Debts and liabilities	
Unsecured creditors, according to list attached and marked "D"	
Secured creditors according to list attached and marked "E"	
Less estimated value of securities	
Surplus	
Other liabilities, according to list attached and marked "F"	
Total debts	

According to the above statement there appears to be a deficiency in the estate amounting to [*amount*].

I, [*full name, address, description of administrator*], swear—

1 I am the administrator of the estate.

2 The above statement and the lists marked "A", "B", "C", "D", "E", and "F" show the assets, debts, and liabilities of the deceased so far as they are known to me.

Dated:

Signed:

(administrator)

Before me: [*name, signature*]

(A solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

Schedule 2 schedule 1 form 100: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Form 100—*continued*

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 101

r 867

Certificate by Public Trust or Maori Trustee of election to administer under Part 6 of Insolvency Act 2006

Public Trust/the Maori Trustee* certifies as follows:

**Select one.*

1 *For this paragraph, select the statement that applies.*

Statement A

[*Public Trust or the Maori Trustee*] is the executor under the will of the deceased, which was proved in this Court on [*date*].

Statement B

[*Public Trust or the Maori Trustee*] is the administrator of the estate of the deceased under an order to administer the estate granted to [*Public Trust or the Maori Trustee*] on [*date*].

2 [*Public Trust or the Maori Trustee*] has control of the estate, and is satisfied that the assets of the deceased that are available, or reasonably likely to be available, are not sufficient to meet the various claims on the estate, and that the estate appears to be insolvent.

3 Under the circumstances, [*Public Trust or the Maori Trustee*] elects to administer the estate under Part 6 of the Insolvency Act 2006, and makes this certificate accordingly.

Dated:

Signed:

(Signed for Public Trust/by the Maori Trustee*)

**Select one.*

Sealed: [*name, date*]

Witness: [*name, address, description*]

Note: When this certificate is filed it has the effect of both an application for the estate to be administered and an order that the estate be administered under Part 6 of the Insolvency Act 2006 (*see* section 386(2) of the Insolvency Act 2006).

Form 101—*continued*

Schedule 2 schedule 1 form 101: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 102

r 853(2)

Originating application to cancel irregular transaction under section 206 of the Insolvency Act 2006

To the Registrar of the High Court at [*place*]

and

To [*full names of the parties to be served*]

This document notifies you that—

1 The Assignee of [*full name, address of the bankrupt*] will on [*date*] at [*time*] ask the Court to—

(a) order the cancellation of the irregular transaction identified in paragraph 4 of this application:

(b) make the following additional orders: [*specify*].

2 [*Full name of the bankrupt person*] was adjudicated bankrupt on [*date*].

3 The property or value that the Assignee wants to recover is [*details of property or value*].

4 The transaction claimed to be irregular is described in the attached notice, which was filed and served under section 206(2) of the Insolvency Act 2006.

5 The transaction is claimed to be irregular because it was an insolvent transaction/an insolvent charge/an insolvent gift*.

**Select one.*

6 The Assignee relies on the following matters in support of the claim in paragraph 5: [*specify them with particularity*].

7 The Assignee relies on the following evidence: [*list any affidavits filed or to be filed*].

8 A person who, having been served with this application, wishes to oppose the making of an order referred to in paragraph 1—

(a) is advised to consult a solicitor for that purpose without delay:

(b) must comply with the procedural rules set out in Part 4A of the High Court Rules:

Form 102—*continued*

(c) must file and serve a notice of opposition in form 21 of the High Court Rules to the application within the earlier of—

(i) 10 working days after being served with this application:

(ii) 3 working days before the hearing date for this application.

Dated:

Signed:

(Assignee/counsel for the Assignee)*

**Select one.*

Note: The notice filed and served under section 206(2) of the Insolvency Act 2006 and the written notice of objection received by the Assignee under section 206(4) must both be attached to this application.

Schedule 2 schedule 1 form 102: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 103

r 853(3)

Originating application to order retransfer of property or payment of value under section 207 of the Insolvency Act 2006

To the Registrar of the High Court at [*place*]

and

To [*full names of the parties to be served*]

This document notifies you that—

1 The Assignee of [*full name, address of the bankrupt*] will on [*date*] at [*time*] ask the Court to—

(a) *For this paragraph, select the statement that applies.*

Statement A

order the retransfer to the Assignee of the property/an interest in the property* described in paragraph 2 of this application:

**Select one.*

Statement B

order the payment to the Assignee of a sum of money:

(b) make the following additional order: [*specify any additional order sought under section 207(2), otherwise omit this paragraph*].

2 [*Specify the property or interest in property or sum of money to which the application refers.*]

3 The Assignee relies on the following matters as justifying the orders asked for in this application: [*specify them with particularity*].

4 The Assignee relies on the following evidence: [*list any affidavits filed or to be filed*].

5 A person who, having been served with this application, wishes to oppose the making of an order referred to in paragraph 1—

(a) is advised to consult a solicitor for that purpose without delay:

(b) must comply with the procedural rules set out in Part 4A of the High Court Rules:

(c) must file and serve a notice of opposition in form 21 of the High Court Rules to the application within the earlier of—

Form 103—*continued*

(i) 10 working days after being served with this application:

(ii) 3 working days before the hearing date for this application.

Dated:

Signed:

(Assignee/Counsel for the Assignee)*

**Select one.*

Schedule 2 schedule 1 form 103: substituted, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 104
Rule 865

Statement of Affairs and Affidavit
[Repealed]

Schedule 2 schedule 1 form 104: revoked, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 105
Rule 866

Report of Trustee on Proposal
[Repealed]

Schedule 2 schedule 1 form 105: revoked, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 106
Rule 868(2)

Account of Assets, Debts, Etc, of Deceased Person Verified by Affidavit
[Repealed]

Schedule 2 schedule 1 form 106: revoked, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 107
Certificate by Public Trustee or Maori Trustee of Election to Administer under Part 17 of the Insolvency Act 1967
[Repealed]

Schedule 2 schedule 1 form 107: revoked, on 3 December 2007, by rule 7 of the High Court Amendment Rules (No 4) 2007 (SR 2007/325).

Forms 89 to 107 were inserted, as from 1 February 2000, by rule 3 High Court Amendment Rules (No 2) 1999 (SR 1999/382).

Form 108
r 879, 884

Appeal under Arbitration Act 1996

[*General headingForm 1 and endorsement*]

Form 108—*continued*

Take notice that on the day of at am (*or* pm), or as soon thereafter as counsel (*or* parties) may be heard, the plaintiff will move the Court at [*Place*] by way of appeal from an award made by [*Name/s of arbitral tribunal*] dated [*Insert date of award*].

The question [*or* questions] of law arising out of the award is [*or* are]:

[*Here set out in precise form the question or questions of law alleged to arise, and, if more than 1, number them.*]

The plaintiff contends that the question [*or* questions] should be answered as follows:

[*Here set out the answer or answers contended for.*]

The plaintiff seeks the following relief:

[*Here set out the relief sought by the plaintiff.*]

The grounds on which this application is made are—

(a) the plaintiff was a party to the arbitration: and

(b) the parties to the arbitration agreed before the making of the award that any party might appeal to the High Court on any question of law arising out of the award; and

[*Or*]

after the making of the award every other party to the arbitration gave consent to an appeal on the question [*or* questions] of law stated above; and

(c) [*Here set out any other grounds with such reasonable particularity as to give full advice of the issues involved to the Court and the other parties.*]

This application is made in reliance on clause 5(1)(a)* [*or* clause 5(1)(b)*] of the Second Schedule of the Arbitration Act 1996. [*Add any other statutory provision, regulation, rule, or principle of law relied upon.*]

Dated this day of

.....

(Solicitor *or* Counsel for the Plaintiff)

To the Registrar of the High Court at .....

And to [*Names of parties to be served*] .....

*Delete if not applicable

Note to the defendant

1 You should immediately seek legal advice with respect to this application.

2 If you wish to oppose this application, you must, within 14 days after service of this application on you, file in the Court and serve on the plaintiff and on all other parties a notice of opposition.

3 If you do not file and serve a notice of opposition within that period, the Court may proceed to determine this application in your absence.

Forms 108 to 110 were inserted, as from 1 August 2000, by rule 22 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 High Court Amendment Rules 2000 (SR 2000/109) which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section

Form 108—*continued*

294(1) Companies Act 1993 (as the case may be) after 1 August 2000. See rule 24 High Court Amendment Rules 2000 (SR 2000/109) which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Form 109

r 891

Notice for leave to appeal under Arbitration Act 1996

[*General headingForm 1 and endorsement*]

Take notice that the plaintiff seeks leave to appeal from an award made by [*Name/s of arbitral tribunal*] dated [*Insert date of award*].

The question [*or* questions] of law arising out of the award is [*or* are]:

[*Here set out in precise form the question or questions of law alleged to arise, and, if more than 1, number them.*]

The plaintiff contends that the question [*or* questions] should be answered as follows:

[*Here set out the answer or answers contended for.*]

If granted leave to appeal, the plaintiff will seek the following relief:

[*Here set out the relief to be sought by the plaintiff if granted leave to appeal.*]

The grounds on which this application is made are—

(a) the plaintiff was a party to the arbitration; and

(b) [*Here set out any other grounds with such reasonable particularity as to give full advice of the issues involved to the Court and the other parties.*]

This application is made in reliance on clause 5(1)(c) of the Second Schedule of the Arbitration Act 1996. [*Add any other statutory provision, regulation, rule, or principle of law relied upon.*]

Dated this day of

.....

(Solicitor *or* Counsel for the Plaintiff)

To the Registrar of the High Court at .....

And to [*Names of parties to be served*] .....

Note to the defendant

1 You should immediately seek legal advice with respect to this application.

2 If you wish to oppose this application, you must, within 14 days after service of this application on you, file in the Court and serve on the plaintiff and on all other parties a notice of opposition.

3 If you do not file and serve a notice of opposition within that period, the Court may proceed to determine this application in your absence.

Form 109—*continued*

Forms 108 to 110 were inserted, as from 1 August 2000, by rule 22 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 High Court Amendment Rules 2000 (SR 2000/109) which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000. See rule 24 High Court Amendment Rules 2000 (SR 2000/109) which states that, unless the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Form 110

r 897

Application to enter award as judgment

[*General headingForm 1 and endorsement*]

Take notice that the plaintiff seeks to enforce the award made by [*name/s of arbitral tribunal*] dated [*insert date of award*] by entry as a judgment.

This application is made in reliance on article 35 of Schedule 1 of the Arbitration Act 1996.

Dated this day of

.....

(Solicitor *or* Counsel for the Plaintiff)

To the Registrar of the High Court at .....

and

To [*names of parties to be served*] .....

Note to the defendant

1 You should immediately seek legal advice with respect to this application.

2 If you wish to oppose this application, you must file in the Court and serve on the plaintiff and on all other parties an application seeking an order that recognition and enforcement be refused in terms of article 36 of Schedule 1 of the Arbitration Act 1996. You must do this within—

(a) 10 working days after service of this application on you; or

(b) any period fixed by the Court of less than 10 working days after service on you of the order fixing that period.

3 If you do not file and serve such an application within that period, the Registrar of the High Court will proceed to enter the award as a judgment.

Forms 108 to 110 were inserted, as from 1 August 2000, by rule 22 High Court Amendment Rules 2000 (SR 2000/109). *See* rule 23 High Court Amendment Rules 2000 (SR 2000/109) which states that this amendment applies only in relation to notices served under section 268(1) Companies Act 1955 or section 294(1) Companies Act 1993 (as the case may be) after 1 August 2000. See rule 24 High Court Amendment Rules 2000 (SR 2000/109) which states that, unless

Form 110—*continued*

the Court directs otherwise, this amendment does not apply in respect of any application referred to in rule 878 High Court Rules that is made to the Court before 1 August 2000.

Clause 2 was substituted, as from 1 June 2006, by rule 21 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

Schedule 2

r 48A

Appropriate daily recovery rates

The High Court Rules were substituted, as from 1 January 1986, by section 10 Judicature Amendment Act (No 2) 1985 (1985 No 112).

Item 34(ca) of the previous Schedule 2 was inserted, as from 1 January 1993, by rule 19 High Court Amendment Rules (No 2) 1992 (SR 1992/318).

Schedule 2 was substituted, as from 1 January 2000, by rule 4 High Court Amendment Rules 1999 (SR 1999/334). *See* rule 5 of those Rules as to the transitional provision.

Schedule 2 was substituted, as from 1 January 2004, by rule 3 High Court Amendment Rules (No 2) 2003 (SR 2003/342). *See* rule 4 of those Rules as to the transitional provision.

Schedule 2 was substituted, as from 1 June 2006, by rule 22 High Court Amendment Rules 2006 (SR 2006/98). *See* rule 24 of those rules as to the transitional provision relating to costs.

(*Note:* The following are the appropriate daily recovery rates for the categories of proceedings referred to in rule 48.)

Category of proceedings referred to in rule 48	**Appropriate daily recovery rate**
Category 1 proceedings	$1,070 per day
Category 2 proceedings	$1,600 per day
Category 3 proceedings	$2,370 per day

Schedule 3

r 48B

Time allocations

Schedule 3 was inserted, as from 1 January 2000, by rule 4 High Court Amendment Rules 1999 (SR 1999/334).

Schedule 3 was substituted, as from 1 January 2001, by rule 4 High Court Amendment Rules (No 2) 2000 (SR 2000/254). *See* rule 5 High Court Amendment Rules (No 2) 2000 (SR 2000/254) as to the transitional provisions relating to the application of the new Schedule 3.

Item 4.10 was amended, as from 1 June 2006, by rule 23(1) High Court Amendment Rules 2006 (SR 2006/98) by substituting the words "Filing memorandum for case management conference" for the words "Filing and serving memorandum in anticipation of judicial conference". *See* rule 24 of those rules as to the transitional provision relating to costs.

Item 4.11 was amended, as from 1 June 2006, by rule 23(2) High Court Amendment Rules 2006 (SR 2006/98) by substituting the words "case management conference" for the words "judicial conference". *See* rule 24 of those rules as to the transitional provision relating to costs.

Item 5.2A was inserted, as from 1 July 2002, by rule 24 High Court Amendment Rules 2002 (SR 2002/132).

Item 12 was revoked, as from 1 February 2003, by rule 23 High Court Amendment Rules (No 2) 2002 (SR 2002/410).

The heading above item 13 was amended, as from 1 November 2004, by rule 30(3) High Court Amendment Rules 2004 (SR 2004/320) by substituting the words "Associate Judges" for the word "Masters" wherever they occur.

Items 14 and 15 were amended, as from 1 June 2006, by rule 23(2) High Court Amendment Rules 2006 (SR 2006/98) by substituting the words "case management conference" for the words "judicial conference". *See* rule 24 of those rules as to the transitional provision relating to costs.

Schedule 3, after the heading Bankruptcy proceedings, was amended, as from 1 June 2006, by rule 23(3) High Court Amendment Rules 2006 (SR 2006/98) by substituting the words "Items 18 to 21 apply to bankruptcy proceedings instead of items 1, 2, 4.10, 4.11, 8, and 9" for the words "(additional to costs in items 1 to 12 if allowed by Court)". *See* rule 24 of those rules as to the transitional provision relating to costs.

Schedule 3, after the heading Company liquidation proceedings, was amended, as from 1 June 2006, by rule 23(4) High Court Amendment Rules 2006 (SR 2006/98) by substituting the words "Items 22 to 25 apply to company liquidation proceedings instead of items 1, 2, 4.10, 4.11, 8, and 9" for the words "(additional to costs in items 1 to 12 if allowed by Court)". *See* rule 24 of those rules as to the transitional provision relating to costs.

Schedule 3 was amended, as from 1 June 2006, by rule 23(5) High Court Amendment Rules 2006 (SR 2006/98) by adding the headings, provisions, and items relating to "Specified originating applications (relating to relief in respect of statutory demands and caveats)" and "Specified originating applications (relating to relief in respect of statutory demands and caveats)". *See* rule 24 of those rules as to the transitional provision relating to costs.

General civil proceedings		Allocated days or part days		
		A	B	C
1	Commencement of proceeding by plaintiff (receiving instructions, researching facts and law, and preparing, filing, and serving statement of claim and notice of proceeding or equivalent or originating application)	1.6	3	10
2	Commencement of defence by defendant (receiving instructions, researching facts and law, and preparing, filing, and serving statement of defence or notice of opposition)	1	2	6
3	Other pleadings and notices:			
3.1	Counterclaim	.8	1.6	4.8
3.2	Cross-notice between defendants	.6	1.2	4
3.3	Commencement of proceedings against third parties, including notice and statement of claim	1.2	2.4	7

General civil proceedings		Allocated days or part days		
		A	B	C
3.4	Notice of appearance with protest to jurisdiction	.3	.6	2
3.5	Notice of appearance	.2	.2	.2
3.6	Pleading in response to other party's amended pleading (payable regardless of outcome except where formal or consented to)	.3	.6	2
4	Interlocutory proceedings and related steps:			
4.1	Notice to answer interrogatories	.4	1	4
4.2	Answer to interrogatories	.4	1	4
4.3	Notice to admit facts	.4	.8	2.4
4.4	Admission of facts	.4	.8	2.4
4.5	List of documents on discovery	.7	1.5	6
4.6	Production of documents for inspection	.3	1	3

General civil proceedings		Allocated days or part days		
		A	B	C
4.7	Inspection of documents	.5	1.5	6
4.8	Payment into Court	.3	.3	.3
4.9	Filing offer of other relief	.3	.3	.3
4.10	Filing memorandum for case management conference or mentions hearing	.2	.4	1
4.11	Appearance at case management conference	.3	.3	.7
4.12	Preparing and filing interlocutory application (excluding summary judgment application) and supporting affidavits	.3	.6	2
4.13	Preparing and filing opposition to interlocutory application (excluding summary judgment application) and supporting affidavits	.3	.6	2
4.14	Preparation for hearing of defended interlocutory application (excluding summary judgment application)	The time occupied by the hearing measured in quarter days		

General civil proceedings		Allocated days or part days		
		A	B	C
4.15	Appearance at hearing of defended interlocutory application (excluding judgment summary application) for sole or principal counsel	Appearance in Court measured in quarter days		
4.16	Second and subsequent counsel if allowed by Court	50% of allowance for appearance for principal counsel		
4.17	Appearance at mentions hearing or callover	.2	.2	.2
4.18	Sealing order or judgment	.2	.2	.2
5	Summary judgment application (additional to costs in items 1 to 3):			
5.1	Preparing and filing summary judgment application and supporting affidavits	.3	.6	2
5.2	Preparing and filing opposition and supporting affidavits	.3	.6	2
[5.2A	Preparation for hearing of defended summary judgment application	The time occupied by the hearing measured in quarter days]		

General civil proceedings		Allocated days or part days		
		A	B	C
5.3	Arguing defended summary judgment application	Appearance in Court measured in quarter days		
5.4	Second and subsequent counsel if allowed by Court	50% of allowance for appearance for principal counsel		
6	Obtaining judgment without appearance (additional to costs in items 1 to 5)	.3	.3	.5
7	Preparation for hearing following setting down or direction for trial if trial does not eventuate:			
7.1	Plaintiff's preparation of affidavits or written or oral statements of evidence to be used at hearing	1.5	2.5	5
7.2	Plaintiff's preparation of lists of issues and authorities, selecting documents for common bundle of documents, and all other preparation	1.5	2.5	5

General civil proceedings		Allocated days or part days		
		A	B	C
7.3	Defendant's preparation of affidavits or written or oral statements of evidence to be used at hearing	1	2	4
7.4	Defendant's preparation of lists of issues and authorities, selecting documents for common bundle of documents, and all other preparation	1	2	4
8	Preparation for hearing if case proceeds to hearing	Twice the time occupied by the hearing measured in half days		
9	Appearance at hearing:			
9.1	For sole or principal counsel	Appearance in Court measured in half days		
9.2	Second and subsequent counsel if allowed by Court	50% of allowance for principal counsel		
10	Execution of judgment or order			
10.1	Charging order without application	.3	.3	1
10.2	Charging order with application, including any unopposed order	.5	.5	1.4

General civil proceedings		Allocated days or part days		
		A	B	C
10.3	Writ of sale	.5	.5	.7
10.4	Other execution process	.5	.5	.7
11	Other steps in the proceeding not specifically mentioned	As allowed by Court		

Appeals and Reviews of Associate Judges		Allocated days or part days		
		A	B	C
13	Commencement of appeal or review (including assessing original decision, noting appealable or reviewable points, and filing and serving notice of appeal and points of appeal or notice of application)	.2	.5	1.5
14	Preparation for case management conference	.1	.2	.4
15	Appearance at case management conference	.1	.2	.4
16	Preparation for appeal or review	The time occupied by the hearing measured in quarter days		

General civil proceedings		Allocated days or part days		
		A	B	C
17	Appearance at hearing	Appearance in Court measured in quarter days		
Bankruptcy proceedings		**Allocated days or part days**		
	Items 18 to 21 apply to bankruptcy proceedings instead of items 1, 2, 4.10, 4.11, 8, and 9	A	B	C
18	Preparing, filing, and serving bankruptcy notice	.1	.2	.6
19	Preparing bankruptcy petition and other documents	.2	.4	1.2
20	Appearance at hearing	.2	.4	1.2
21	Supporting party on bankruptcy	.2	.4	1.2
Company liquidation proceedings		**Allocated days or part days**		
	Items 22 to 25 apply to company liquidation proceedings instead of items 1, 2, 4.10, 4.11, 8, and 9	A	B	C
22	Preparing and issuing statutory demand	.1	.2	.6
23	Preparing statement of claim and other documents	.3	.6	1.8

General civil proceedings		Allocated days or part days		
		A	B	C
24	Appearance at hearing	.2	.4	1.2
25	Supporting party on liquidation	.2	.4	1.2

Specified originating applications (relating to relief in respect of statutory demands and caveats)

In items 26 to 31, **specified originating application** means an originating application that is made to the Court under any of the following provisions:

(a) sections 143, 145, or 145A of the Land Transfer Act 1952:

(b) section 264 of the Companies Act 1955:

(c) section 290 of the Companies Act 1993.

Items 26 to 31 apply to a specified originating application instead of items 1, 2, 4.10, 4.11, 8, and 9.

Specified originating applications(relating to relief in respect of statutory demands and caveats)		**Allocated days or part days**		
		A	**B**	**C**
26	Preparing and filing specified originating application and supporting affidavits	0.8	1.6	4.8
27	Preparing and filing notice of opposition and supporting affidavits	0.8	1.6	4.8

General civil proceedings		Allocated days or part days		
		A	B	C
28	Filing memorandum for case management conference	0.2	0.4	1
29	Appearance at case management conference	0.3	0.3	0.7
30	Preparing for hearing of defended specified originating application	The time occupied by the hearing measured in quarter days		
31	Appearance at hearing of defended specified originating application	Appearance in Court measured in quarter days		

Schedule 4

r 330A

Code of Conduct for expert witnesses

Schedule 4 was inserted, as from 1 July 2002, by rule 25 High Court Amendment Rules 2002 (SR 2002/132).

Duty to the Court

1 An expert witness has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise.

2 An expert witness is not an advocate for the party who engages the witness.

Evidence of expert witness

3 In any evidence given by an expert witness, the expert witness must

(a) acknowledge that the expert witness has read this Code of Conduct and agrees to comply with it:

(b) state the expert witness' qualifications as an expert:

(c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise:

(d) state the facts and assumptions on which the opinions of the expert witness are based:

(e) state the reasons for the opinions given by the expert witness:

(f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness:

(g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.

4 If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.

5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

Duty to confer

6 An expert witness must comply with any direction of the Court to

(a) confer with another expert witness:

(b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses:

(c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.

7 In conferring with another expert witness, the expert witness must exercise independent and professional judgment and must not act on the instructions or directions of any person to withhold or avoid agreement.

Schedule 5

r 429

Matters for consideration at case management conference for proceeding other than appeal

Schedules 5 and 6 were inserted, as from 24 November 2003, by rule 17 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

1 Whether the proceeding should be moved to another track.

2 A list of the essential issues of fact and law.

3 The categorisation of the proceeding for the purposes of rule 48(2).

4 Whether the pleadings are in final form or require amendment.

5 Whether further particulars of the claim or defence are required.

6 The scope and timetable for any discovery and inspection.

7 Whether additional parties should be joined.

8 The timetable for future events, including

(a) the filing of any interlocutory applications and how and when they will be dealt with:

(b) any further case management conference (if required).

9 Whether any further conference is to be conducted by telephone or video link.

10 Whether it is appropriate to schedule a conference under rule 442 or to allow time for negotiation or a form of alternative dispute resolution.

11 The duration of the hearing of the proceeding.

12 Whether the hearing is to be heard before a jury.

13 The allocation of a hearing date for the proceeding, and whether a setting down date for the proceeding should be fixed under rule 434(3).

14 Trial directions for evidence and exhibits (to be addressed only if a party to a proceeding that is not a specified proceeding (within the meaning of rule 441A(1)) seeks directions that are not set out in, or that differ from, rules 441B to 441I or rules 441M to 441Q).

15 Any proposals for expert evidence (including prior exchange and the order in which witnesses will be heard).

16 Whether the proceeding should be placed on a short notice list as suitable to be brought on for hearing on not less than

3 working days' notice, subject to the availability of counsel and (where appropriate) the parties and witnesses.

17 Whether the proceeding is suitable as a back-up fixture to be brought on at 5 working days' notice.

18 Any special resources required at the hearing of the proceeding.

19 Whether the proceeding is suitable for assignment to a specific Judge who will, after the assignment, be responsible for all pre-hearing matters and the conduct of the hearing of the proceeding.

Schedule 6

r 430

Standard directions for appeals

Schedules 5 and 6 were inserted, as from 24 November 2003, by rule 17 High Court Amendment Rules 2003 (SR 2003/280). *See* rule 19 of those Rules as to the transitional provisions.

1 The appeal will be heard (at [*time*] on [*date*]) [**OR**] (at a time and date to be allocated by the Registrar).

2 The time for the hearing is estimated to be [*half days or days*].

3 The appeal is categorised as a category [*type*] proceeding for the purposes of rule 48(2).

4 The appellant must pay security in the sum of [*$*] not later than 10 working days after the conference.

5 Unless detailed and specific points on appeal have been included in the notice of appeal, the appellant must file and serve, not later than 10 working days after the conference, points on appeal that clearly state the issues on appeal.

6 The appellant must file and serve, not later than 20 working days after the conference, a common bundle of paginated and indexed copies of all relevant documents, including, if applicable,

(a) the reasons for the decision; and

(b) the sealed order or judgment appealed from; and

(c) the pleadings; and

(d) the statements of evidence or affidavits; and

(e) the exhibits; and

(f) the notes of evidence, to the extent that they are relevant to the issues on appeal.

7 If a party insists on including a document in the common bundle even though another party objects to its inclusion on the ground that it is unnecessary or irrelevant, the objection must be recorded for the purpose of any award of costs relating to the inclusion of the document.

8 The appellant must file and serve no later than 25 working days after the conference
- (a) the appellant's submissions; and
- (b) a chronology (if relevant).

9 The appellant's submissions must contain
- (a) references to any specific passages in the evidence that the appellant will refer to at the hearing; and
- (b) a list of the names and correct citations of any authorities mentioned.

10 The respondent must file and serve, not later than 30 working days after the conference,
- (a) submissions that meet the requirements set out in clause 9; and
- (b) if the respondent disagrees with the appellant's chronology, a separate chronology noting areas of disagreement.

11 The appellant must prepare a bundle of any authorities referred to in the submissions provided in accordance with clauses 8 and 10 that the appellant or the respondent considers ought to be produced to the Court. The bundle may be produced at the hearing of the appeal or filed before the appeal is heard.

12 If the appeal is to be heard by a single Judge, 1 copy of each document must be filed.

13 If the appeal is to be heard by a full Court, 2 copies of each document must be filed.

Schedule 7

r 428

Matters for consideration at pre-trial conference for proceedings on standard track

Schedule 2 Schedule 7: added, on 1 November 2007, by rule 5 of the High Court Amendment Rules (No 3) 2007 (SR 2007/314).

The agenda for each pre-trial conference must include—

(a) a review of timetable compliance; and

(b) a review of the time required for the hearing; and

(c) agreement on relevant facts not in dispute; and

(d) identification of the issues requiring resolution at trial; and

(e) openings to include—

(i) a summary of the plaintiff's or the defendant's claim:

(ii) chronology:

(iii) an issues statement:

(iv) a summary of legal principles with reference to directly relevant authorities; and

(f) a bundle of documents; and

(g) any other issues raised by a party that should be dealt with before the trial.

Schedule 3

Section 71

Rules of the Court of Appeal

[Repealed]

Schedule 3 was repealed, as from 21 October 1974, by section 4(2)(a) of the Judicature Amendment Act 1974 (1974 No 57).

High Court Amendment (Wills Act 2007) Rules 2007

(SR 2007/313)

At Wellington this 15th day of October 2007

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

1 Title

These rules are the High Court Amendment (Wills Act 2007) Rules 2007.

2 Commencement

These rules come into force on 1 November 2007.

4 Wills to which these rules apply

(1) These rules apply to the wills of persons who die on or after 1 November 2007.

(2) These rules do not apply to the wills of persons who die before 1 November 2007, except rule 6, which does apply to the wills of persons who die before 1 November 2007.

(3) The High Court Rules set out in Schedule 2 of the Judicature Act 1908 before their amendment by these rules, except for the amendment in rule 6, apply to the wills of persons who die before 1 November 2007.

6 Rule 651 substituted

Rule 651 is revoked and the following rule substituted:

651 Registrars may make some orders

"(1) This rule applies to the following registrars:

"(a) all Registrars; and

"(b) all Senior Deputy Registrars in the Auckland office; and

"(c) no other deputy registrars.

"(2) The registrars have the powers of the Court under—

"(a) sections 5 to 9A and sections 12, 19, 21, 44, and 61(a)(ii) of the Administration Act 1969; and

"(b) section 154(3) of the Insolvency Act 1967; and

"(c) section 76 of the Public Trust Act 2001; and

"(d) section 35(4) of the Trustee Act 1956; and

"(e) section 8(1) of the Trustee Companies Act 1967; and

"(f) rule 643(2); and

"(g) rule 646(1), if an unopposed application has been made; and

"(h) rule 647; and

"(i) rule 648; and

"(j) rule 649; and

"(k) rule 650(1).

"(3) Rules 272 to 276 apply to a registrar acting under subclause (2). For this purpose, references in them to 'rule 270 or rule 271' must be read as references to 'rule 651(2)'."

Diane Morcom,

Clerk of the Executive Council.

Date of notification in *Gazette*: 18 October 2007.

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3 List of amendments incorporated in this eprint (most recent first)

Notes

1 General

This is an eprint of the Judicature Act 1908. It incorporates all the amendments to the Judicature Act 1908 as at 3 December 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 18 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

High Court Amendment Rules (No 4) 2007 (SR 2007/325)
High Court Amendment Rules (No 3) 2007 (SR 2007/314)
High Court Amendment (Wills Act 2007) Rules 2007 (SR 2007/313)
Insolvency Act 2006 (2006 No 55): section 445
